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15 **ARIZONA SUPERIOR COURT**
16 **MARICOPA COUNTY**

17 KARI LAKE,

18 Contestant/Plaintiff,

19 v.

20 KATIE HOBBS, personally as Contestee and
21 in her official capacity as the Secretary of
22 State; et al.,

23 Defendants.

) No. CV2022-095403

) **MOTION TO QUASH SUBPOENA**
) **FOR APPEARANCE AT HEARING**

) (Assigned to Hon. Peter Thompson)

24
25 Defendant Katie Hobbs, in her official capacity as Arizona's Secretary of State
26 ("Secretary"), moves to quash the Subpoena for Appearance at Hearing ("Subpoena") dated
December 15, 2022.¹

¹ Undersigned counsel sent two emails to Bryan Blehm, Plaintiff's counsel, to schedule a meet and confer before filing this Motion. Mr. Blehm did not respond to either email.

1 **I. Introduction.**

2 On December 9, 2022, Plaintiff/Contestant Kari Lake filed an election contest asking this
3 Court to overturn the results of the 2022 General Election based on unfounded and wildly
4 speculative allegations. Now, she has served the Secretary – one of Arizona’s highest-ranking
5 officials who is in the midst of transitioning into her new role as Arizona’s incoming Governor
6 – with a subpoena seeking her appearance at a hearing that will occur within days. [See **Exhibit**
7 **A]**

8 Because the Secretary’s testimony is irrelevant, Plaintiff’s actions can only be explained
9 by a desire to generate publicity. The Subpoena is proof positive that Plaintiff wants to turn the
10 proceedings before this Court into a show designed for public consumption, and the Court
11 shouldn’t allow it.

12 It is well-settled that high-ranking government officials should be compelled to testify
13 only in exceptional circumstances. Not only do those exceptional circumstances not exist, but
14 the Subpoena serves no conceivable purpose given that: (1) Plaintiff’s factual allegations against
15 the Secretary are undisputed, and (2) even if they were not, the Secretary is not the official best-
16 equipped to testify as to those facts. In short, Plaintiff’s need for testimony from the Secretary is
17 non-existent, while the burden on the Secretary is considerable. For these reasons, this Court
18 should quash the Subpoena.

19 **II. Argument.**

20 **A. Legal Standard.**

21 Rule 45 of the Arizona Rules of Civil Procedure provides that the Court “must” quash or
22 modify a subpoena if it “subjects a person to undue burden or expense.” Rule 45(e)(2)(A)(iv),
23 Ariz. R. Civ. P. Where subpoenas seek the testimony of high-ranking government officials,
24 courts have found the “undue burden” standard satisfied where: (i) the testimony of the officer
25 would be “either completely irrelevant or marginally relevant”; and (ii) “any marginal relevance
26 would be outweighed by the significant burden associated with requiring the highest-level state

1 constitutional officers to come to . . . court and testify on short notice.” *Arkansas State Conf.*
2 *NAACP v. Arkansas Bd. of Apportionment*, No. 4:21-CV-01239-LPR, 2022 WL 300917, at *8
3 (E.D. Ark. Jan. 31, 2022) (granting motion to quash plaintiffs’ subpoenas to high-ranking state
4 officials, including the secretary of state and the governor).

5 Other courts have found that “[d]epartment heads and similarly high-ranking officials
6 should not ordinarily be compelled to testify unless it has been established that the testimony to
7 be elicited is necessary and relevant and unavailable from a lesser ranking officer.” *Halderman*
8 *v. Pennhurst State Sch. and Hosp.*, 96 F.R.D. 60, 64 (E.D. Pa. 1982); *see also E.E.O.C. v. Exxon*
9 *Corp.*, No. CIV.A.3-95-CV-1311-H, 1998 WL 50464, at *1 (N.D. Tex. Jan. 20, 1998) (noting
10 that “the practice of calling high-ranking officials as witnesses should be discouraged,” and that
11 a corporation seeking discovery from high-ranking agency official failed to establish the
12 “exceptional circumstances” required to obtain such discovery) (internal citations omitted).

13 Courts’ reluctance to compel the testimony of prominent government officials stems from
14 concerns about the welfare of the officials and the public at large. *Arkansas Bd. of*
15 *Apportionment*, 2022 WL 300917, at *8 (“Requiring a high-level government official to testify
16 in any form takes that official away from doing the public’s business.”); *Monti v. State*, 151 Vt.
17 609, 612 (Vt. 1989) (limitations on testimony are “founded on notions of the public’s interest in
18 limiting unnecessary demands on the time of highly-placed public officials.”); *Pinson v. United*
19 *States Dep’t of Just.*, No. CV-19-00235-TUC-RM, 2021 WL 4060556, at *5 (D. Ariz. Sept. 7,
20 2021) (noting the “tremendous potential for abuse or harassment” for depositions of individuals
21 at the “apex” of government hierarchies) (internal citations and quotation marks omitted); *see*
22 *also Andrich v. Dusek*, No. CV-17-00173-TUC-RM, 2019 WL 2775472, at *2 (D. Ariz. July 2,
23 2019) (relevant considerations in compelling the deposition testimony of high-ranking officials
24 include whether the officials have personal knowledge of the facts and whether the party seeking
25 testimony has “made a good faith effort to seek the information from other reasonably available
26 sources.”).

1 **III. The Secretary’s Testimony is Irrelevant, Unnecessary, and Available from Other**
2 **Sources.**

3 Most of Plaintiff’s allegations do not even involve the Secretary; instead, they focus on
4 an unnamed “state actor” who purportedly intentionally interfered with Maricopa County’s
5 voting equipment. [Stmnt. ¶¶ 10, 104] Plaintiff casts a wide net of blame that includes the officials
6 at Maricopa County Vote Centers (who allegedly commingled tabulated ballots); the Maricopa
7 County Board of Supervisors’ Report (which allegedly minimized the extent of the tabulator
8 breakdowns at various vote centers); and unnamed Maricopa County election officials and/or
9 workers (who allegedly failed to properly verify signatures or properly document the chain of
10 custody for mail-in and drop box early voting ballots).

11 In contrast, Plaintiff makes only a handful of allegations against the Secretary directly.
12 First, Plaintiff alleges that the Secretary participated in a “secret censorship operation” to remove
13 certain Twitter and Facebook posts from the public domain by reporting them to the federal
14 government’s Election Misinformation Reporting Portal in violation of Arizonans’
15 constitutional rights. [Stmnt. ¶¶ 6-7, 91-95] Second, Plaintiff contends that the Secretary
16 unlawfully threatened “county supervisors” with prosecution if they did not certify the
17 countywide election, and insinuates that the Secretary wanted the Board to simply “rubber-
18 stamp” the countywide election results. [*Id.* ¶ 122, n.14]. Third, Plaintiff alleges that the
19 Secretary improperly certified the 2022 General Election on December 5, 2022. [*Id.* ¶ 125] As
20 discussed below, the factual bases for these allegations are largely undisputed – and even if they
21 weren’t, there is no conceivable reason why the Secretary herself (as opposed to a lower-ranking
22 officer) should be called to testify about them.

23 **A. Alleged Social Media “Censorship.”**

24 In support of her claims about alleged social media censorship by the Secretary, Plaintiff
25 cites two emails submitted by two employees of the Secretary’s office – a communications
26 director and an information security officer – identifying certain posts on social media platforms

1 that contained election information. [See Olsen Decl., Ex. 2 (January 7, 2021 email from a
2 communications director) Ex. 4 (November 6, 2020 email from an information security officer)]

3 No testimony (let alone the Secretary’s testimony) is required on these issues; neither
4 party is disputing the existence or authenticity of these documents. The only disputed issue is
5 purely legal: that is, whether these emails constitute “misconduct” under the election contest
6 statutes or a violation of constitutional rights. [Mtn. to Dismiss at 4-5]

7 Even if a factual dispute existed (it does not), the Secretary has no personal knowledge
8 about the emails in question. As should be obvious, the people best equipped to testify about
9 these materials are the employees who wrote the emails – yet Plaintiffs have clearly not made a
10 “good faith effort to seek the information from other reasonably available sources.” *Dusek*, 2019
11 WL 2775472, at *2.

12 **B. Alleged “Threats” to County Supervisors.**

13 Plaintiff also claims that the Secretary “recently threatened county supervisors with arrest
14 if they did not certify the election.” [Stmt ¶ 122] The news article cited by Plaintiff in support of
15 this proposition appears to reference recent communications between the Secretary’s office and
16 the Mohave County Board of Supervisors (“Board”). [Stmt ¶ 122 n.14]

17 Some background is helpful here. At a meeting on November 21, 2022, the Board voted
18 to delay its non-discretionary duty to canvass the 2022 General Election Results in what its
19 members claimed was “purely a political statement” and “a statement of solidarity” with other
20 counties (namely, Cochise County) that were similarly delaying the canvassing process.² On
21 November 23, 2022, the Secretary’s office (not the Secretary, but State Elections Director Kori
22 Lorick) sent a letter to the Board reminding it of its duty to canvass the election and transmit the
23 certified canvass to the Secretary.³ On the morning of November 28 – after the Board noted that
24

25 _____
26 ² See <https://www.youtube.com/watch?v=e6mbuD8w4r0&t=8838s> (2:30:00-2:34:30 mark).

³ A true and correct copy of Ms. Lorick’s November 23, 2022 letter is attached as **Exhibit B**.

1 it was still “uncomfortable” with canvassing the election – Ms. Lorick warned that⁴ any failure
2 to complete the canvass would trigger legal action and a potential referral for criminal
3 enforcement under A.R.S. § 16-1010.⁵ This email appears to be the basis of Plaintiff’s allegation
4 that the Secretary made an unlawful “threat” against the Board. [Stmt. ¶ 122 n.14]

5 Ms. Lorick’s communications to the Board are undisputed, a matter of public record, and
6 their legal import can be resolved as a matter of law. The applicable statutes make clear that: (i)
7 the Board had a mandatory duty to canvass the election by the statutorily prescribed deadline
8 (A.R.S. § 16-642(A)); and (ii) failure to do so justified potential criminal enforcement (A.R.S. §
9 16-1010). No testimony is needed to establish that Ms. Lorick’s communications with the Board,
10 far from being unlawful, simply sought to ensure that the countywide canvass was completed in
11 accordance with Arizona law. And even if such testimony were needed (it is not), it would be
12 Ms. Lorick – not the Secretary – who would be in the best position to testify as to this issue.

13 **C. “Improper” Certification of the Statewide Election.**

14 Lastly, under the heading “Improper Certification of Election,” Plaintiff alleges the
15 following:

16 On December 5, 2022, The Secretary of State, Katie Hobbs, formally certified that
17 she, Hobbs, received 1,287, 891 votes in the 2022 Election and Kari Lake received
18 1,270,774 votes, a difference of 17,117 votes.

19 [Stmt. ¶ 125] The Secretary does not dispute this allegation; on the contrary, she readily
20 acknowledges that she fulfilled her statutory duty to “canvass all offices” by the fourth Monday
21 following the general election—here, December 5, 2022. *See* A.R.S. § 16-648. Both the
22

23 _____
24 ⁴ A true and correct copy of Ms. Lorick’s November 28, 2022 email is attached as **Exhibit C**.

25 ⁵ A.R.S. § 16-1010 provides that “[a] person charged with performance of any duty under any
26 law relating to elections who knowingly refuses to perform such duty, or who, in his official
capacity, knowingly acts in violation of any provision of such law, is guilty of a class 6 felony
unless a different punishment for such act or omission is prescribed by law.”

1 statewide canvass⁶ and the associated statewide proclamations⁷ are a matter of public record,
2 and there's even a video of the ceremony during which the canvass occurred for anyone to watch
3 and see for themselves.⁸

4 **IV. The Secretary Would Face a Significant Burden by Testifying at the Hearing.**

5 Lastly, requiring the Secretary to appear and testify at trial would impose a significant
6 burden on her and her important official duties. Not only is the Secretary and her office busy
7 transitioning out of the Secretary of State's Office and supporting the upcoming transition of the
8 newly elected Secretary of State, but the Secretary, as Governor-Elect, is busy transitioning into
9 that significant new role.

10 **Conclusion**

11 For all these reasons, the Court should quash the Subpoena. It serves no purpose other
12 than pure harassment. Plaintiff should not be permitted to use the Subpoena and the imprimatur
13 of this Court to try and settle political scores.

14 RESPECTFULLY SUBMITTED this day of December, 2022.

15 **COPPERSMITH BROCKELMAN PLC**

16 By /s/ D. Andrew Gaona
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22
23
24 ⁶ https://azsos.gov/sites/default/files/2022Dec05_General_Election_Canvass_Web.pdf

25 ⁷ https://azsos.gov/sites/default/files/2022Dec05a_General_Election_Canvass_Proclamati
26 [ons.pdf](https://azsos.gov/sites/default/files/2022Dec05a_General_Election_Canvass_Proclamati)

⁸ https://www.youtube.com/watch?v=Uh_XkGNI4hE

1 ORIGINAL efiled and served via electronic
2 means this 17th day of December, 2022, upon:

3 Honorable Peter Thompson
4 Maricopa County Superior Court
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