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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

) **ARIZONA SECRETARY OF**
) **STATE'S OBJECTION TO**
) **VERIFIED AMENDED PETITION**
) **TO INSPECT BALLOTS**

) (Assigned to Hon. Peter Thompson)

24 **Introduction and Background**

25 Defendant Katie Hobbs, in her official capacity as Arizona Secretary of State objects to
26 Plaintiff Kari Lake's ("Plaintiff) Amended Petition to Inspect Ballots Pursuant to A.R.S. § 16-
677 ("Amended Petition"). In connection with her Complaint in Special Action and Verified
Statement of Election Contest Pursuant to A.R.S. § 16-672, Plaintiff filed a Verified Petition to
Inspect Ballots Pursuant to A.R.S. § 16-677 on December 13 and then filed the Amended
Petition on December 14. The Secretary asks this Court to deny the Amended Petition for the

1 reasons stated in Defendant Maricopa’s County’s Response to Petitioner’s Verified Petition to
2 Inspect Ballots Pursuant to A.R.S. § 16-672 and in Defendant Maricopa County’s Response to
3 Petitioner’s Amended Verified Petition to Inspect Ballots Pursuant to A.R.S. § 16-672
4 (“Maricopa County’s Responses”). Additionally, as detailed in the motion to dismiss just filed
5 by the Secretary, Plaintiff’s election contest fails to state any cognizable claims for relief and
6 should be dismissed, thereby mooted Plaintiff’s petition to inspect ballots under A.R.S. § 16-
7 677

8 Argument

9 The Secretary joins in full the arguments set forth in Maricopa County’s Responses, and
10 files this Objection to raise one additional and independent reason to reject Plaintiff’s Amended
11 Petition: because discovery should not be granted in connection with an invalid election contest.

12 An election contest must meet threshold pleading requirements to proceed. *See Hancock*
13 *v. Bisnar*, 212 Ariz. 344, 348 ¶ 17 (2006) (assessing election contest under Rule 8(a) notice
14 pleading requirements); *Griffin v. Buzard*, 86 Ariz. 166, 169-70 (1959) (election contest subject
15 to dismissal if it fails to state a claim upon which relief can be granted). For all the reasons
16 detailed in the Secretary’s Motion to Dismiss, Plaintiff’s election contest fails to clear that bar
17 and should be dismissed.

18 A plaintiff is not entitled to use an invalid pleading as a springboard for discovery. *See*
19 *Lakewood Cmty. Ass’n v. Orozco*, No. 1 CA-CV 19-0194, 2020 WL 950225, at *1 (Ariz. Ct.
20 App. Feb. 27, 2020) (holding that “[a] motion to dismiss under Rule 12(b)(6) tests the allegations
21 of a pleading by assuming the truth of the well-pleaded facts in the complaint *before* the parties
22 engage in discovery” and “[t]hus, no discovery was necessary or appropriate” before a trial court
23 rules on such a motion) (emphasis added).

24 Although Arizona appellate courts have not addressed the specific question of whether
25 an election contest statement that fails to clear the pleading threshold may be used to justify a
26 ballot inspection, many other courts have made amply clear that it cannot. For instance, the

1 Minnesota Supreme Court recently denied a defeated candidate the opportunity to inspect ballots
2 under an inspection provision similar to Arizona’s because the contest allegations failed to state
3 a cognizable claim. *See Bergstrom v. McEwen*, 960 N.W.2d 556, 565-66 (Minn. 2021). The
4 candidate alleged that “irregularities” in the conduct of the election and in the absentee ballot
5 canvass “raised questions over who received the largest number of votes legally cast in the
6 election,” and argued that “transparency and public confidence in the integrity of the election
7 require[d]” that she be allowed to inspect the ballots. *Id.* at 558 & 566 (internal quotation marks
8 omitted). The court rejected the argument that the mere filing of an election contest created an
9 “absolute right” to ballot inspection, holding that inspection was only allowed if the contest
10 notice stated a claim upon which relief could be granted. *Id.* at 565.

11 The highest courts of many other states agree. *See, e.g., Zahray v. Emricson*, 182 N.E.2d
12 756, 757-58 (Ill. 1962) (election contest “cannot be employed to allow a party, on mere
13 suspicion, to have the ballots opened and subjected to scrutiny to find evidence upon which to
14 make a tangible charge”); *McClendon v. McKeown*, 323 S.W.2d 542, 545 (Ark. 1959) (“It is not
15 the duty, or within the power, of the Court within the scope of the allegations and prayer of the
16 Petition herein, to impound and open the ballot box or boxes, and, in effect *canvas* the votes cast
17 for Mayor in order to declare the nominee” merely on the allegation ““that after said cancellation
18 and retabulation, the Petitioner verily believes that he will have received more votes[.]””)
19 (Emphasis in original); *Cruse v. Richards*, 37 P.2d 382, 383–84 (Colo. 1934) (“In a contest
20 proceeding it is always necessary to allege facts which will enable the court to determine that a
21 different result would follow in the vote by reason of such alleged facts. . . . Courts cannot
22 properly embark on a mere fishing expedition by opening up ballot boxes when there is an utter
23 lack of specific allegations as to the distribution of the votes.”); *Gollmar’s Election, Case of*, 175
24 A. 510, 513 (Pa. 1934) (“The pleadings before us would seem only an effort to place the situation
25 in such a light as to justify a voyage of exploration into a large number of ballot boxes, in the
26 hope of an ultimate discovery. Such is not province of a contest[.]”)

1 These courts were all cognizant of the harm that would follow the too-careless
2 deployment of the election contest process, and the need to ensure that every election contest
3 would not involve the re-opening of ballot boxes and judicial review of the work performed by
4 election officials. As the Louisiana Supreme Court stated nearly a century ago:

5 It can not be disputed that elections are conducted by duly appointed and sworn
6 election officials and not by the courts. These officials are presumed to do their
7 duty. Their official acts are entitled to respect. In the absence of specific allegations
8 of fraud, mistake, error or misconduct, the returns which they make under oath,
9 showing the results of an election, will not be inquired into by the courts.

 * * * * *

10 There is nothing in plaintiff’s allegations that any defeated candidate could not set
11 up after his defeat and thereby throw an election into the courts. If this were
12 permitted it is easy to see that in every case in which a candidate was defeated by
13 a small margin of the votes, two elections would inevitably be held—one at the
14 polls and the other in the courts.

15 *Landry v. Ozenne*, 195 So. 14, 23 (La. 1940).

16 Because, as in *Landry*, Plaintiff cannot point to specific facts indicating that the alleged
17 irregularities changed the result of the Governor’s race, the Secretary’s Motion to Dismiss is
18 likely to be granted, and will thus moot Plaintiff’s Amended Petition. *See* 195 So. at 22 (“It is
19 axiomatic that the irregularities charged would in fact alter the result of the election before a
20 contest can be entertained.”) (Internal citation and quotation omitted). The Secretary therefore
21 asks this Court to deny Plaintiff’s Amended Petition for this additional reason.

22 DATED this 15th day of December, 2022.

23 **COPPERSMITH BROCKELMAN PLC**

24 By /s/ D. Andrew Gaona

25 D. Andrew Gaona

26 **STATES UNITED DEMOCRACY CENTER**

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1 ORIGINAL efiled and served via electronic
2 means this 15th day of December, 2022, upon:

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26 /s/ Diana Hanson _____