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CLERK OF SUPERIOR COURT
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DEPUTY

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11 **ARIZONA SUPERIOR COURT**
12 **COCHISE COUNTY**

13 KATIE HOBBS, in her official capacity as
14 Arizona Secretary of State,

15 Plaintiff,

16 v.

17 TOM CROSBY, ANN ENGLISH, PEGGY
18 JUDD, in their official capacities as members
19 of the Cochise County Board of Supervisors;
20 and COCHISE COUNTY, a political
21 subdivision of the State of Arizona,

22 Defendants.

No. **CV 202200553**

**APPLICATION FOR ORDER TO
SHOW CAUSE**

22 Pursuant to Rule 7.3 of the Arizona Rules of Civil Procedure and Rule 4(c) of the Arizona
23 Rules of Procedure for Special Actions, and for the reasons set forth in the Verified Complaint
24 for Special Action filed herewith, Plaintiff Katie Hobbs, in her official capacity as Arizona
25 Secretary of State ("Secretary"), respectfully requests that this Court promptly enter an Order to
26 Show Cause requiring Defendants to show cause why the relief sought in the Verified Complaint

1 for Special Action should not be granted. A proposed form of order is submitted herewith.

2 Because this is a statutory special action and a show cause procedure is being used, “the
3 court shall set a speedy return date” on this Application. Ariz. R.P.S.A. 4(c). The Secretary thus
4 requests that the Court order that: (1) Defendants shall file a response to Plaintiff’s Verified
5 Complaint for Special Action by no later than November 29, 2022 at 5:00 PM; (2) Plaintiff may
6 file a reply, if it so chooses, by no later than November 30, 2022 at 12:00 P.M.; and (3)
7 Defendants shall appear at the earliest date and time available to the Court to show cause why
8 the requested relief should not be granted. Because of the extremely expedited nature of this
9 proceeding, and further because no facts are reasonably in dispute, the Secretary requests that
10 the parties be permitted to appear telephonically or by video conference at the hearing.

11 As detailed in the Verified Complaint, this is a special action to: (1) compel Defendants
12 and their agents to meet and canvass the Cochise County election by December 1, 2022 to allow
13 the Secretary sufficient time to meet the final December 8, 2022 deadline for completing the
14 statewide canvass; or (2) alternatively, request a declaratory judgment and injunction declaring
15 the actions of the Cochise County Board of Supervisors (“Board”) to be unlawful and compelling
16 Defendants and their agents to meet and canvass the countywide election by December 1, 2022.

17 Special action relief is appropriate when an officer “has failed . . . to perform a duty
18 required by law as to which he has no discretion,” or “has proceeded or is threatening to proceed
19 without or in excess of jurisdiction or legal authority.” Ariz. R.P.S.A. 3(a), (b). That is exactly
20 the case here. Specifically, the Board has, without justification, failed to fulfill its mandatory
21 duty to meet and approve its canvass of the results of the 2022 General Election by the statutory
22 deadline of November 28, 2022.

23 Arizona law provides, with a limited exception inapplicable here, that the Board “shall
24 meet and canvass the election not less than six days nor more than twenty days following the
25 election.” A.R.S. § 16-642(A) (emphasis added). The statute’s plain language makes clear that
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1 this duty is not discretionary. The Board was thus required to meet and canvass the election by
2 November 28th, but it has failed to do so.

3 The Board held a special meeting on the evening of November 18, 2022, where it heard
4 statements from various conspiracy theorists – known for filing spurious lawsuits before the
5 Arizona courts – who made demonstrably false allegations about the vote tabulation equipment
6 used in Cochise County being improperly certified under state and federal law. At that meeting,
7 both Cochise County Elections Director Lisa Marra and State Elections Director Kori Lorick
8 emphasized that claims of improper certification were baseless. Nonetheless, Board members
9 Tom Crosby and Peggy Judd voted to delay the canvass until 10 a.m. on November 28 – the last
10 day possible under Arizona law – purportedly so that someone with the requisite “expertise”
11 could prove to them that the machines were properly certified by an accredited laboratory.

12 On November 28, the Board met again and refused to certify the canvass by the statutory
13 deadline. In the end, the Board voted 2-1, with Supervisors Crosby and Judd voting in the
14 affirmative, to keep the agenda item related to the certification of the canvass “on the table” until
15 December 2, and that the item would only be removed from the table and voted on after the
16 Board hears from a group of individuals opposing certification and representatives of the
17 Secretary.

18 Not only does the Board’s failure to act violate the applicable statute, but it will
19 potentially disenfranchise the voters of Cochise County. Arizona law requires the Secretary to
20 “canvass all offices” by the fourth Monday following the general election – here, December 5,
21 2022. *See* A.R.S. § 16-648; *see also* Ariz. Const. art. V, § 10. And while postponement of the
22 canvass is permitted if the official canvass of any county has not been received by that
23 deadline, this postponement is limited to no more than “thirty days from the date of the
24 election.” *See* A.R.S. § 16-648(C). Thus, the very last day for the Secretary to complete the
25 statewide canvass is December 8, 2022 – only three days after the Secretary’s original deadline
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1 (and 10 days from today). On information and belief, the Board has no intention of canvassing
2 the election before the December 8, 2022 deadline.

3 Absent this Court's intervention, the Secretary will have no choice but to complete the
4 statewide canvass by December 8 without Cochise County's votes included. Thus, the Board's
5 inaction not only violates the plain language of the statute, but also undermines a basic tenet of
6 free and fair elections in this state: ensuring that every Arizonan's voice is heard.

7 The Board's unprecedented inaction should not disenfranchise tens of thousands of
8 voters in Cochise County. The Secretary thus brings this action for special action relief
9 (through a writ of mandamus) to ensure that those voters' voices are heard and their votes
10 counted. Otherwise, the Board's failure to perform its non-discretionary duty will impede the
11 timely and accurate canvass of results, undermine the will of Cochise County voters, and sow
12 further confusion and doubt about the integrity of Arizona's election system.

13 Respectfully submitted this 28th day of November, 2022.

14 **COPPERSMITH BROCKELMAN PLC**

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16 By  _____

D. Andrew Gaona

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18 **STATES UNITED DEMOCRACY CENTER**

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