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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9
10 ELI DALTON-WEBB, a candidate for
Clerk of the Superior Court,

11 Plaintiff,

12
13 vs.

14 ADRIAN FONTES, in his official capacity
as Arizona Secretary of State; MELISSA
15 AVANT, in her official capacity as Officer
in Charge of Elections in Cochise County;
16 BILLY CLOUD, in his official capacity as
Cochise County Recorder,
17

18 Defendants.
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CASE NO. CV2026-000232

**COUNTY DEFENDANTS' MOTION
TO DISMISS AND GOOD FAITH
CONSULTATION CERTIFICATE**

Assigned to: Hon. Michael Valenzuela

20 Defendants Melissa Avant, Officer in Charge of Elections in Cochise County and
21 Billy Cloud, Cochise County Recorder (collectively, the "County Defendants"), by and
22 through undersigned counsel, move this Court for its order dismissing with prejudice
23 Plaintiff's Initial Complaint pursuant to Rules 12(b)(1) and (b)(6), Arizona Rules of Civil
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1 Procedure. This Motion is supported by the following Memorandum of Points and
2 Authorities.

3 MEMORANDUM OF POINTS AND AUTHORITIES

4 I. INTRODUCTION

5 Plaintiff's Initial Complaint filed January 5, 2026 sought relief based on alleged
6 barriers to his candidacy for Clerk of the Superior Court in Cochise County. Compl. ¶ 1.
7 At the Status Conference held on January 16, 2026, the Court found that Plaintiff is
8 recognized as a Libertarian, is permitted to collect signatures and has access to the
9 electronic petition circulation system. (*See* Minute Entry, at 2 (Jan. 21, 2026) ("Plaintiff
10 has the ability to collect ballot signatures through the electronic process provided by the
11 Secretary of State to run as a libertarian candidate.)) The Court further found that Plaintiff
12 is not suffering irreparable injury, denied all requests for expedited relief, and declined to
13 set the matter for trial. *Id.* at 2-3.
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16 Plaintiff's claims are moot. Plaintiff initiated this action alleging that he was denied
17 the ability to run as a Libertarian Party candidate for Cochise County Clerk of the Superior
18 Court, asserting claims for declaratory and injunctive relief related to, *inter alia*, Cochise
19 County's recognition of the Libertarian Party for purposes of partisan primary ballots,
20 release of the County's public records responses, and Plaintiff's ability to circulate petitions
21 for his Libertarian Party candidacy. *See* Compl. ¶¶ 15-16, 24, 27-29, 33-36. Since the filing
22 of the Complaint, County Defendants have accepted Plaintiff's Statement of Interest,
23 publicly recognized his candidacy, and confirmed the continued recognition of the
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1 Libertarian Party in Cochise County. **(Ex. A.)** Plaintiff has therefore obtained the relief he
2 sought.

3 Plaintiff fails to state a claim upon which relief can be granted. Additionally,
4 because no live controversy remains, Plaintiff's claim is moot, and this Court lacks a
5 justiciable dispute to adjudicate. Any further proceedings would amount to an
6 impermissible advisory opinion. *See Contempo-Tempe Mobile Home Owners Ass'n v.*
7 *Steinert*, 144 Ariz. 227, 228-29 (App. 1985). The Complaint should be dismissed.
8

9 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

10 Defendant Avant received Plaintiff's Statement of Interest on December 22, 2025
11 to run as a Libertarian Party candidate for the office of the Clerk of the Superior Court of
12 Cochise County. (Ex. A.) This ended Defendant Avant's limited, non-discretionary role
13 over these statements under A.R.S. § 16-311(H). Around January 5, 2026, Plaintiff filed
14 several public records requests through Cochise County's public records portal. The
15 Cochise County public records portal reflects various records were quickly released to
16 Plaintiff since he filed these requests on or around the time he filed his lawsuit.
17

18 On January 8, Defendant Avant confirmed to Plaintiff via email her receipt of the
19 Statement of Interest as well as his ability to use Defendant Fontes' E-Qual online petition
20 signature system. On January 12, Defendant Avant learned via email Plaintiff created his
21 Libertarian Party candidate petition on E-Qual. Defendant Cloud further published a
22 statement pursuant to A.R.S. § 16-804(D), confirming the recognition of the Libertarian
23 Party in Cochise County. **(Ex. B.)**
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1 Plaintiff filed his Initial Complaint on January 5, 2026, asserting claims for
2 declaratory and injunctive relief related to, *inter alia*, Cochise County’s recognition of the
3 Libertarian Party for purposes of partisan primary ballots, the County’s public records
4 responses, and Plaintiff’s ability to circulate petitions for his Libertarian Party candidacy.
5 Compl. ¶¶ 15-16, 24, 27-29, 33-36.
6

7 On January 16, the Court denied Plaintiff’s motions for expedited declaratory
8 judgment and injunctive relief and declined to set a trial, while allowing Defendants to file
9 motions to dismiss by February 6, 2026.

10 **III. LEGAL AUTHORITY**

11 Pursuant to Rule 12(b)(1), Arizona Rules of Civil Procedure, a court must dismiss
12 an action when it lacks subject-matter jurisdiction, including when a claim is moot or does
13 not present a justiciable controversy. Arizona courts do not decide moot questions or render
14 advisory opinions. *Contempo-Tempe*, 144 Ariz. at 228-29. Pursuant to Rule 12(b)(6), a
15 complaint must be dismissed when it fails to state a claim upon which relief can be granted
16 under any plausible interpretation of the facts. *Silverman v. Ariz. Health Care Cost*
17 *Containment Sys.*, 255 Ariz. 387, ¶ 9 (App. 2023). The Court can dismiss under both rules.
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20 **A. The Court must dismiss for mootness.**

21 Arizona courts do not decide moot questions. *Arpaio v. Maricopa Cnty. Bd. of*
22 *Supervisors*, 225 Ariz. 358, 361, ¶ 7 (App. 2010) (quoting *Sedona Private Prop. Owners*
23 *Ass’n v. City of Sedona*, 192 Ariz. 126, 127, ¶ 5 (App. 1998)). Though our state courts are
24 not constrained on standing, “our court has consistently held that it will refrain from
25 considering moot or abstract questions.” *Fraternal Order of Police v. Phoenix Employee*



1 *Relations Bd.*, 133 Ariz. 126, 127 (1982). “A case becomes moot if an event occurs that
2 ends the underlying controversy and transforms the litigation into ‘an abstract question
3 which does not arise upon existing facts or rights.’” *Workman v. Verde Wellness Center,*
4 *Inc.*, 240 Ariz. 597, 603, ¶ 17 (App. 2016) (citing *Contempo-Tempe*, 144 Ariz. at 229)).

5
6 A.R.S. § 16-804 allows an interested candidate for a partisan election, like Plaintiff,
7 to run in a partisan primary election if the party is entitled to continued representation.
8 Here, the Court has already found that Plaintiff is registered as a Libertarian, may circulate
9 Libertarian Party petitions electronically, and is currently able to pursue his candidacy
10 without restriction Defendant Cloud concluded the Libertarian Party is one of three
11 political parties entitled to continued representation on partisan primary ballots. A.R.S. §
12 16-804(B). And Defendant Avant published Plaintiff’s name on the Cochise County
13 Elections Department’s website on the list of individuals who have filed Statements of
14 Interest. *See* Compl. ¶ 52.

15
16 Consequently, all actual issues in this proceeding have been resolved. Both County
17 Defendants have thus fulfilled their non-discretionary statutory obligations. Plaintiff may
18 proceed to collect signatures, either on paper or via the E-Qual website. And if he files the
19 requisite number of signatures, he can appear on the Libertarian Party primary ballot in
20 Cochise County.

21
22 Plaintiff thus appears to shoehorn the declaratory relief statute to seek an advisory
23 opinion on speculative injuries (that are conditioned upon Plaintiff’s submission of a
24 requisite number of signatures to appear on the ballot). *See* Compl. ¶¶ 47-51.



1 As noted, Arizona law specifically precludes the Court from issuing a judgment on
2 the abstract question of whether Plaintiff can appear on the ballot without first collecting a
3 requisite number of signatures under A.R.S. § 16-322. *See Contempo-Tempe*, 144 Ariz. at
4 229 (holding that courts cannot resolve abstract legal questions about the parties’ statutory
5 rights). If anything, Plaintiff appears to improperly use the judicial forum to shield himself
6 from future challenges to his candidacy by potential political opponents or members of the
7 public. A.R.S. § 16-351 is the proper statutory procedure for candidacy challenges.

9 Plaintiff, for example, asks the Court to address “problems” that amount to a request
10 for legal advice, like (i) asking the Court to investigate the legislative history of the relevant
11 statutes, Compl. ¶ 17; (ii) inquiring whether he may use his own Statement of Interest
12 form—which Defendant Avant accepted anyway, Compl. ¶¶ 33-34; and (iii) requesting
13 clarification as to “which electors are qualified to sign [Plaintiff]’s petition for his
14 candidacy.” Compl. ¶ 43. Though County Defendants welcome Plaintiff’s participation in
15 the democratic process, neither the Court nor Defendants can freely answer these questions.
16 Independent legal counsel can. *Contempo-Tempe*, 144 Ariz. at 229 (highlighting that courts
17 do not “act as a fountain of legal advice”) (citing *Allen v. Graham*, 8 Ariz. App. 336
18 (1968)). Given the foregoing, Plaintiff’s claims are moot or abstract in this posture.

21 Further, Plaintiff’s claims under the Arizona Public Records Act are also moot or
22 abstract at this stage. A.R.S. § 39-121.01(D)(1) requires that public records custodians
23 answer all public records requests “promptly.” Courts evaluate the circumstances of each
24 public records request in timeliness inquiries. *See McKee v. Peoria Unif. Sch. Dist.*, 236
25 Ariz. 254, 258, ¶ 15 (App. 2014). Here, all of Plaintiff’s records requests have either been



1 closed with records or no responsive records, or they will be answered “promptly” while
2 the County works on the requests in an orderly fashion. The County has not denied any
3 record and will answer all of Plaintiff’s requests depending on the complexity and volume
4 of records.

5
6 Because Plaintiff has already obtained the relief sought, no live controversy
7 remains. Any ruling would be advisory only and outside the jurisdiction of Arizona courts.

8 **B. No exception to mootness applies here.**

9 Courts may only consider moot questions when they involve “a question of great
10 public importance or one which is likely to recur even though the question is presented in
11 a moot case.” *Fraternal Order of Police*, 133 Ariz. at 127 (internal citations omitted). The
12 Arizona Court of Appeals has adopted a high bar as to what constitutes a matter of public
13 importance, like fraudulent misrepresentation. *Prutch v. Town of Quartzsite*, 231 Ariz. 431,
14 434-35, ¶¶ 9-11 (App. 2013).

15
16 Plaintiff’s claims are not questions of great public importance. First, this case
17 concerns a single candidate’s eligibility in a single county election and pertains to issues
18 which the election statutes cleanly resolve while Plaintiff is still at the early stage of petition
19 circulation. These issues are not systemic. *See Lana A. v. Woodburn*, 211 Ariz. 62, 64-65,
20 ¶ 8 (App. 2005) (holding mootness did not apply because many incorrigible juveniles not
21 enjoying the right to counsel was systemic and constituted an issue of public importance).
22 Defendant Fontes and County Defendants agree that the Libertarian Party is entitled to
23 continued representation in Cochise County, and that this lawsuit is abstract and premature
24 at this stage given Defendant Avant’s acceptance of Plaintiff’s Statement of Interest, the
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1 condition precedent to petition circulation. The Arizona Court of Appeals has held that a
2 town’s fraudulent misrepresentation of election types for filling a town council vacancy is
3 a matter of public importance. *See Prutch*, 231 Ariz. at 435. This situation is different.
4 County Defendants have not fraudulently misrepresented any material statement to
5 Plaintiff, especially at this early stage of his candidacy. They merely executed their
6 ministerial, non-discretionary acts, thereby allowing Plaintiff to run for office in Cochise
7 County. Plaintiff’s claims therefore do not concern questions of public importance.

9 Plaintiff’s claims are also not capable of repetition yet evading review. Not only did
10 Plaintiff’s question arise in this instance alone, but there is no “reasonable
11 expectation...that the same controversy will recur involving *the same complaining party*.”
12 *Kondaur Capital Corp. v. Pinal Cnty.*, 235 Ariz. 189, 193-94, ¶ 11 (App. 2014) (internal
13 citations omitted) (emphasis added). Plainly, a controversy that has not yet even occurred
14 cannot recur. Here, Plaintiff has neither faced this issue nor shown he is ever likely to face
15 this issue. Though other Libertarian Party candidates may file Statements of Interest, this
16 does not create any potential controversy, let alone a recurring one involving Plaintiff.
17 There are no restraints to Libertarian Party candidates so long as they follow the
18 procedures. Because this issue is never likely to recur, it is not capable of repetition yet
19 evading review.
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22 Hence, no exception to mootness applies to Plaintiff’s claims.
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1 **IV. CONCLUSION**

2 The Court has already resolved the central issue underlying Plaintiff’s Complaint
3 and found no basis for emergency or declaratory relief. What remains is a request for
4 advisory opinions and speculative future rulings which our courts do not provide.
5

6 Accordingly, the County Defendants respectfully request that the Court dismiss the
7 Complaint.

8 RESPECTFULLY SUBMITTED THIS 6th day of February, 2026.

9 COCHISE COUNTY ATTORNEY

10 BY: /s/ Dylan Hendel
11 DYLAN HENDEL
12 Civil Deputy County Attorney
13 Attorney for County Defendants
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1 **GOOD FAITH CONSULTATION CERTIFICATE**

2 Pursuant to Rules 12(j) and 7.1(h), Arizona Rules of Civil Procedure, and the
3 Court’s Order entered on January 16, 2026, undersigned counsel certifies that he,
4 alongside counsel for Defendant Adrian Fontes, consulted in good faith with Plaintiff via
5 telephone on February 5, 2026. Plaintiff and counsel for County Defendants were unable
6 to resolve any of the claims.
7

8 RESPECTFULLY SUBMITTED THIS 6th day of February, 2026.

9 COCHISE COUNTY ATTORNEY

10 BY: /s/ Dylan Hendel
11 DYLAN HENDEL
12 Civil Deputy County Attorney
13 Attorney for County Defendants
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1 **CERTIFICATE OF SERVICE**

2 A copy of the foregoing **COUNTY DEFENDANTS’ MOTION TO DISMISS**
3 **AND GOOD FAITH CONSULTATION CERTIFICATE** was delivered on this 6th day
4 of February, 2026, electronically via TurboCourt’s E-Filing & Service System and
5 emailed, addressed to:
6

7 Eli Dalton-Webb
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