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12 **ARIZONA SUPERIOR COURT**  
13 **MARICOPA COUNTY**

15 ELI DALTON-WEBB,

16 Plaintiff,

17 vs.

18 ADRIAN FONTES, in his official capacity  
19 as Arizona Secretary of State, MELISSA  
20 AVANT, in her official capacity as Officer  
21 in Charge of Elections in Cochise County,  
22 BILLY CLOUD, in his official capacity as  
23 Cochise County Recorder,

24 Defendants.

No. CV2026-000232

**ARIZONA SECRETARY OF  
STATE'S MOTION TO DISMISS**

(Assigned to Hon. Michael Valenzuela)

24 Pursuant to Ariz. R. Civ. P. 12(b)(1) and (6), defendant Arizona Secretary of State  
25 Adrian Fontes, in his official capacity (the "Secretary"), moves to dismiss the Complaint  
26 filed by Plaintiff Eli-Dalton Webb ("Dalton-Webb" or "Plaintiff"). This Motion is  
27 supported by the following Memorandum of Points and Authorities.  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Introduction**

3 In this action, the only relief that Plaintiff seeks against the Secretary is an  
4 injunction “requiring Adrian Fontes to add Mr. Dalton-Webb to the electronic petition  
5 circulation system for his candidacy for Clerk of the Superior Court in Cochise County.”  
6 (Compl. ¶ 53). But it is undisputed that Plaintiff has had access to the electronic petition  
7 circulation system for weeks. (See Minute Entry, at 2 (Jan. 21, 2026) (“Jan. 21 ME”)).  
8 And as a candidate for a county office, the Secretary has no role in his candidacy.  
9 Accordingly, Plaintiff cannot establish that he has suffered or will imminently suffer an  
10 injury, traceable to the Secretary, that can be redressed by this Court. Nor has he offered  
11 any cognizable legal theory under which he would be entitled to the relief that he seeks  
12 against the Secretary.

13 At most, Plaintiff’s allegations against the Secretary boil down to a  
14 misunderstanding about whether Plaintiff was seeking to appear on the general election  
15 ballot by way of being the successful candidate in the Libertarian primary or as a  
16 candidate with no party affiliation who does not run in a partisan primary. Plaintiff’s  
17 bespoke statement of interest – which he insisted on using in lieu of the form that the  
18 Cochise County Elections Department provided – was the source of that  
19 misunderstanding, because it stated that “this statement of interest [is] within the meaning  
20 of A.R.S. § 16-341” (relating to candidates not registered with a political party) and  
21 “**NOT** within the meaning of A.R.S. § 16-311” (relating to recognized political party  
22 candidates. (Compl. Ex. 2). But that misunderstanding has been resolved, Plaintiff is  
23 able to circulate petitions – on paper and online – to run in the Libertarian primary, and  
24 he cannot maintain this action against the Secretary. Accordingly, the Complaint should  
25 be dismissed.

1 **Factual and Procedural Background**

2 On or about December 22, 2025, Plaintiff filed a statement of interest to run for  
3 the nomination of the Libertarian Party to be its 2026 candidate for Cochise County Clerk  
4 of the Superior Court. A statement of interest is the first step in the process of becoming  
5 a candidate for office and must be filed before gathering signatures on nomination  
6 petitions. A.R.S. § 16-311(H) (governing those seeking to run in primary elections); *see*  
7 *also* A.R.S. § 16-341(I) (governing those seeking access to the general election ballot  
8 other than by primary). Once a potential candidate submits a statement of interest to the  
9 appropriate filing officer (here, the Cochise County Election Director), the potential  
10 candidate may collect signatures on nomination petitions, both in paper format and via a  
11 secure internet portal (“E-Qual”). *See* A.R.S. §§ 16-311(A), (F); -317(A). Plaintiff was  
12 able to collect signatures on paper petitions upon submitting his statement of interest. On  
13 or about January 12, 2026 he set up his E-Qual petition and could thereafter obtain  
14 signatures online, as well. (*See* Jan. 21 ME, at 2) (“Plaintiff has the ability to collect  
15 ballot signatures through the electronic process provided by the Secretary of State to run  
16 as a libertarian candidate.”)). He will have until March 23, 2026 to gather the requisite  
17 number of signatures and submit his petitions and nomination papers to the filing officer.  
18 *See* H.B. 2022, §§ 4, 10 (57th Leg. 2d Reg. Sess.) (including an emergency clause and  
19 amending A.R.S. § 16-206 to move the primary election from the first Tuesday in August  
20 to the second to last Tuesday in July – July 21, 2026); A.R.S. § 16-311(A) (requiring  
21 candidates to file nomination papers not less than 120 days before the primary).

22 As was established on the record during the January 16, 2026 hearing in this case,  
23 Plaintiff is registered to vote as a member of the Libertarian Party and is seeking the  
24 nomination of that party to be its general election candidate for Clerk of the Superior  
25 Court. (Jan. 21 ME, at 2 (“[T]here is no dispute that Plaintiff is a libertarian and that the  
26 libertarian party is being recognized in this case.”)). A person registered with a political  
27 party that is entitled to continued representation on the ballot pursuant to A.R.S. § 16-804  
28

1 may run for partisan office only by securing the party’s nomination at a primary  
2 election.<sup>1</sup> See A.R.S. § 16-301(A); cf. A.R.S. § 16-341(A). Accordingly, to be the  
3 Libertarian candidate for Cochise County Clerk of Superior Court, Plaintiff must collect a  
4 sufficient number of signatures on his nomination petitions, then be the successful  
5 candidate in the Libertarian primary.

6 Plaintiff’s Complaint contains just a few allegations about the Secretary’s conduct.  
7 Specifically, he alleges that (a) the Secretary has a duty to provide E-Qual to county  
8 candidates, (b) he sent the Secretary a copy of his statement of interest, (c) the State  
9 Election Director told Plaintiff that the Secretary “will be refusing to allow Mr. Dalton-  
10 Webb to use E-Qual,” and (d) the Secretary “is not allowing Mr. Dalton-Webb to  
11 circulate his petition.” (Compl. ¶¶ 37-40). These allegations, however, are belied by the  
12 facts stated on the record at the January 16 hearing. In particular, the Court’s Minute  
13 Entry memorializing the hearing states that “Plaintiff has the ability to collect ballot  
14 signatures through the electronic process provided by the Secretary of State to run as a  
15 libertarian candidate and that collecting those signatures on the partisan portal is  
16 acceptable.” (Jan. 21 ME, at 2).

### 17 **Argument**

18 Dismissal under Rule 12(b)(1) “allows a trial court to dismiss an action for lack of  
19 subject matter jurisdiction.” *Falcone Brothers & Assoc., Inc. v. City of Tucson*, 240 Ariz.  
20 482, 487, ¶ 10 (App. 2016). Dismissal for failure to state a claim under Rule 12(b)(6) is  
21 appropriate when the plaintiff is not, under any interpretation of the facts that can be  
22 proven, entitled to relief. *Silverman v. Ariz. Health Care Cost Containment Sys.*, 255  
23 Ariz. 387, ¶ 9 (App. 2023). In this case, dismissal is warranted under both rules.

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26 <sup>1</sup> Currently, the Republican, Democratic, and Libertarian Parties are entitled to continued  
27 representation on Cochise County ballots because they have “registered electors in the  
28 party equal to at least two-thirds of one percent of the total registered electors in such  
jurisdiction.” A.R.S. § 16-804(B).

1 **I. Plaintiff lacks standing to bring this action against the Secretary because the**  
2 **Complaint alleges no injury caused by the Secretary.**

3 Arizona courts have “a rigorous standing requirement” that requires a plaintiff to  
4 “allege a distinct and palpable injury” before a case may be heard. *Fernandez v. Takata*  
5 *Seat Belts, Inc.*, 210 Ariz. 138, 140, ¶ 6 (2005). A declaratory judgment is not available  
6 to every person who thinks a government official has misinterpreted a law or acted  
7 beyond the official’s authority. Instead, “a plaintiff must show that its ‘rights, status or  
8 other legal relations’ are ‘affected by’” the law at issue. *Arizona Sch. Bds. Ass’n, Inc. v.*  
9 *State*, 252 Ariz. 219, 224, ¶ 16 (2022) (quoting A.R.S. § 12-1832). For a case to be  
10 justiciable, a plaintiff must be “seeking judicial relief from actual or threatened injuries.”  
11 *Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, 420, ¶ 11 (2022). When a  
12 plaintiff has not already incurred a “distinct and palpable” injury, the standing question is  
13 “whether an actual controversy [otherwise] exists” because the plaintiff has a “real and  
14 present need” to resolve the case to avoid imminent harm. *Id.* at 424-25, ¶¶ 29-30. A  
15 “speculative fear” does not merit declaratory relief. *See Klein v. Ronstadt*, 149 Ariz. 123,  
16 124 (App. 1986).

17 Here, the only injury that the Complaint alleges against the Secretary is that the  
18 Secretary “is not allowing [Plaintiff] to circulate his petition.” (Compl. ¶ 40). But  
19 Plaintiff admitted on the record that he is able to circulate petitions via E-Qual. (Jan. 21  
20 ME, at 2). Moreover, the Secretary does not control access to E-Qual for county-level  
21 candidates. *See* E-Qual for Local Jurisdictions, [https://azsos.gov/webform/e-qual-local-](https://azsos.gov/webform/e-qual-local-jurisdictions)  
22 [jurisdictions](https://azsos.gov/webform/e-qual-local-jurisdictions) (stating that “[i]f you are a CANDIDATE interested in using the system,  
23 please contact your local filing office”); *see also* Running for Public Office,  
24 [https://azsos.gov/sites/default/files/docs/2026-Running-for-Office-Candidate-Guide-](https://azsos.gov/sites/default/files/docs/2026-Running-for-Office-Candidate-Guide-2025-1020.pdf)  
25 [2025-1020.pdf](https://azsos.gov/sites/default/files/docs/2026-Running-for-Office-Candidate-Guide-2025-1020.pdf), at 11, 17-19 (explaining procedures for candidates for federal, statewide,  
26 or legislative – but not county – offices).<sup>2</sup> As such, any harm to Plaintiff with respect to

27 <sup>2</sup> The Court may take judicial notice of public records of the Secretary of State. *See* Ariz.  
28 R. Evid. 201; *Mathieu v. Mahoney*, 174 Ariz. 456, 457 & n.1 (1993).

1 his ability to circulate his E-Qual petition is not fairly traceable to the Secretary. *See*  
2 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (describing the second  
3 requirement to demonstrate standing as “a causal connection between the injury and the  
4 conduct complained of – the injury has to be ‘fairly . . . trace[able] to the challenged  
5 action of the defendant.’”) (internal citation omitted). As a matter of law, Plaintiff cannot  
6 demonstrate that he has standing to maintain his claim against the Secretary.

7 **II. The Complaint Fails to State a Claim for Relief.**

8 Even if Plaintiff could clear the standing hurdle, his Complaint does not state a  
9 claim for relief against the Secretary. “Even under liberal notice pleading rules, a  
10 plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than  
11 labels and conclusions, and a formulaic recitation of the elements of a cause of action will  
12 not do.” *Dube v. Likins*, 216 Ariz. 460, 424, ¶ 14 (App. 2007) (cleaned up). Importantly,  
13 even at the motion to dismiss stage, this Court is not obligated to accept as true facts that  
14 are contradicted by the record in this case. *See Sprewell v. Golden State Warriors*, 266  
15 F.3d 979, 988 (9th Cir. 2001) (“The court need not, however, accept as true allegations  
16 that contradict matters properly subject to judicial notice or by exhibit); *see also Jeter v.*  
17 *Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4 (App. 2005) (“[The court does] not accept as  
18 true allegations consisting of conclusions of law, inferences or deductions that are not  
19 necessarily implied by well-pleaded facts, unreasonable inferences or unsupported  
20 conclusions from such facts, or legal conclusions alleged as fact.”).

21 The legal theory that Plaintiff has advanced does not fit the facts of this case. In  
22 particular, Plaintiff alleges that the Secretary “is violating his rights under Article 2 § 5 of  
23 the Arizona Constitution.” (Compl. ¶ 41). Like the First Amendment, Ariz. Const. art.  
24 II, § 5 guarantees individuals the right to petition the government for redress of  
25 grievances. (“The right of petition, and of the people to peaceably assemble for the  
26 common good, shall never be abridged.”). It has no bearing on the administrative steps  
27 required to run for office. *See City of Tucson v. Pima County*, 199 Ariz. 509, 519, ¶ 33  
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1 (App. 2001) (“The right to petition bars state action interfering with access to the  
2 legislature, the executive branch and its various agencies, and the judicial branch.”)  
3 (quoting *Ruiz v. Hull*, 191 Ariz. 441, 457, ¶ 61 (1998)). As in *City of Tucson*, Plaintiff  
4 has made “no allegations that [he] was denied an opportunity to be heard by either the  
5 executive or legislative branches of government, and, certainly, it is evident that [he]  
6 enjoy[s] access to the judicial branch.” *Id.* Accordingly, Plaintiff has not stated a claim  
7 for relief based on the constitutional right of petition.

8 Even if Plaintiff had offered some other legal basis for his claim against the  
9 Secretary, the established facts in this case foreclose his Complaint. *See Sprewell*, 266  
10 F.3d at 988. The crux of Plaintiff’s claim against the Secretary is that the Secretary has  
11 barred him from using E-Qual. (*See* Compl. ¶ 40). But Plaintiff admitted in open court  
12 that he has access to E-Qual and is able to gather signatures online. (*See* Minute Entry, at  
13 2 (Jan. 21, 2026)). That undisputed fact dooms Plaintiff’s claim against the Secretary and  
14 this Court should dismiss the Complaint.

### 15 **Conclusion**

16 For the foregoing reasons, this Court should dismiss Plaintiff’s Complaint against  
17 the Secretary.

18 RESPECTFULLY SUBMITTED this 6th day of February, 2026.

19  
20 Kristin K. Mayes  
21 Attorney General

22 /s/ Karen J. Hartman-Tellez  
23 Karen J. Hartman-Tellez  
24 Kara Karlson  
25 Kyle Cummings  
26 *Attorneys for Defendant Arizona*  
27 *Secretary of State Adrian Fontes*  
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**Certificate of Good Faith Consultation**

Pursuant to Ariz. R. Civ. P. 7.1(h) and 12(j), undersigned counsel hereby certifies that on February 5, 2026, counsel for Secretary of State Adrian Fontes participated in a teleconference with Plaintiff, as well as counsel for the Cochise County Defendants. During the teleconference the parties discussed whether the issues identified in the foregoing Motion to Dismiss could be resolved. Despite good faith efforts, the parties were unable to come to an agreement during the conference.

/s/ Karen J. Hartman-Tellez  
Karen J. Hartman-Tellez

1 The foregoing document was electronically  
2 filed through AZTurboCourt  
3 this 6th day of February, 2026.

4 COPIES served via TurboCourt or email  
5 this 6th day of February, 2026, to:

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29 By: /s/ Monica Quinonez  
30 Monica Quinonez, Legal Assistant