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10 ARIZONA SUPERIOR COURT

11 MOHAVE COUNTY

12 TED BOYD, et al.,

13 Plaintiffs/Contestants,

14 v.

15 KRIS MAYES,

16 Defendant/Contestee,

17 and

18 ADRIAN FONTES, et al.,

19 Defendants.

No. S8015CV202201468

**RESPONSE TO NOTICE OF  
SUPPLEMENTAL AUTHORITY IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR A NEW TRIAL**

(Assigned to the Hon. Lee F. Jantzen)

20  
21 Contestee Kris Mayes hereby responds to Contestants' Notice of Supplemental Authority  
22 concerning the Arizona Supreme Court's March 22, 2023 Order in *Lake v. Hobbs*, No. CV-23-  
23 0046-PR, attached as Exhibit 1. Contrary to Contestants' misleading assertions, the Order  
24 neither supports their request for a new trial nor provides any basis for reinstating Count V.

1 **I. The Supreme Court’s Order does not support Contestants’ request for a new trial.**

2 Nothing in the Order supports Contestants’ Motion for a New Trial. In its Order (Ex. 1  
3 at 3–4), the Arizona Supreme Court granted Kari Lake’s Petition for Review on one of seven  
4 issues raised therein and remanded to the trial court to determine whether Ms. Lake “fails to  
5 state a claim” under Rule 12(b)(6) or “whether Petitioner can prove her claim as  
6 alleged . . . and establish that ‘votes [were] affected ‘in sufficient numbers to alter the outcome  
7 of the election’ based on a competent mathematical basis to conclude that the outcome would  
8 plausibly have been different, not simply an untethered assertion of uncertainty.” [Id.]

9 Contestants contend (at 2) that the Order supports their arguments “that the rules of civil  
10 procedure not only apply to election contests, but that the time provisions in A.R.S. § 16-676  
11 do not conflict to prevent this Court from granting a new trial”<sup>1</sup> and that “the narrow recount  
12 vote deficit . . . provides a basis for a new trial.” How so? Contestants fail to explain this  
13 supposed correlation. Indeed, it does not exist. Entirely absent from the Order is any discussion  
14 of (or even reference to) Section 16-676’s time limits or new-trial motions. [See Ex. 1] This is  
15 unsurprising, as neither question was at issue in *Lake*. The Order simply does not speak to  
16 Contestants’ Motion for a New Trial.

17 **II. The Order provides no basis for reversing this Court’s dismissal of Count V.**

18 Despite filing a “Notice of Supplemental Authority in Support of Plaintiffs’ Motion for  
19 a New Trial,” Contestants ask this Court for relief entirely absent from their new-trial motion:  
20 reversal of this Court’s ruling dismissing Count V. This is not the proper vehicle to ask this  
21 Court to change a substantive ruling.<sup>2</sup> But even overlooking the procedural defects in

22 \_\_\_\_\_  
23 <sup>1</sup> Contrary to Contestants’ assertion here, Ms. Mayes has never disputed that the Rules  
of Civil Procedure apply in election contests, so long as they do not conflict with a statute.

24 <sup>2</sup> Contestants cannot ask this Court for relief under the guise of a “Notice.” See Ariz. R.  
Civ. P. 7.1(a)(1) (“An application to the court for an order must be by motion which, unless  
made during a hearing or trial, must be in writing, state with particularity the grounds for

1 Contestants’ “Notice,” their argument fails on the merits.

2 In the *Lake* case, the Supreme Court remanded because it found that the superior court  
3 had mischaracterized Ms. Lake’s claim. [Ex. 1 at 2–3] Ms. Lake, unlike Contestants here,  
4 alleged that during the 2022 election Maricopa County failed to follow the Election Procedures  
5 Manual (“EPM”) and its established policies and procedures. Because Ms. Lake’s challenge  
6 was “to the application of the policies, not to the policies themselves,” the Court held that “it  
7 was erroneous to dismiss this claim under the doctrine of laches.” [*Id.* at 3]

8 But here, Contestants’ Count V did not challenge (as Ms. Lake did) how Maricopa  
9 County *applied* the EPM. As this Court concluded, in this case: “There is not an allegation of  
10 election workers improperly not complying with the EPM.” [Order Ruling on Motion to  
11 Dismiss at 4] This Court concluded, further, that Count V (unlike Ms. Lake’s claim) was  
12 entirely “based on the early voting provision and the procedures to verify ballots that are  
13 contained in the [EPM].” [*Id.*; *see* Trial Tr. at 113 (The Court noting that it dismissed Count V  
14 “for a specific reason that that was kind of an attack on some of the processes in the election  
15 manual that that’s been in place several years now, at least since 2019.”)]

16 Contestants’ own filings further confirm that they challenged only the legal validity of  
17 the EPM—not how it was applied. As Count V itself states, “To the extent the [EPM] purports  
18 to authorize the validation of early ballot affidavit signatures by reference to a signature  
19 specimen that is not found in the voter’s ‘registration record,’ it is contrary to the plain  
20 language of A.R.S. § 16-550(A), and hence unenforceable.” [Statement of Election Contest at  
21 24 ¶ 99] Contestants’ Response to the Motion to Dismiss (at 17), further, agreed that this is a

22  
23 granting the motion, and set forth the relief or order sought.”). Nor should this Court “reopen  
24 questions previously decided in the same case by the same court.” *Sholes v. Fernando*, 228  
Ariz. 455, 458 ¶ 8 (App. 2011) (describing “[t]he ‘law of the case’ doctrine”) (citation  
omitted).

1 “dispute implicating the validity or enforceability of an EPM rule.”

2 In short, Contestants simply did not, as they assert (at 3), bring an “as-applied  
3 challenge” to the EPM, like the contestants in *Lake*. The Supreme Court’s Order therefore not  
4 only confirms that this Court properly dismissed Count V, but also does not call that dismissal  
5 into question.<sup>3</sup>

6 **CONCLUSION**

7 The Supreme Court’s Order has no bearing on Contestants’ Motion for a New Trial,  
8 and this Court should deny Contestants’ procedurally improper request to vacate the Court’s  
9 dismissal of Count V.

10 Ms. Mayes also joins in the responses to the notice of supplemental authority filed by  
11 the Secretary of State and Maricopa County defendants.

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<sup>3</sup> Contestants’ own faith in this argument is belied by the fact that Mr. Hamadeh agreed  
24 to voluntarily dismiss it in the first case he filed. [*See Hamadeh v. Mayes*, No. CV2022-  
015455, Response to Contestee’s Motion to Dismiss at 13 (Maricopa Cnty. Super. Ct. Nov. 28,  
2022)]

1 Dated: March 27, 2023  
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