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ARIZONA SUPERIOR COURT

MOHAVE COUNTY

TED BOYD, et al.,

Plaintiffs/Contestants,

v.

KRIS MAYES,

Defendant/Contestee,

and

KATIE HOBBS, et al.,

Defendants.

No. S8015CV202201468

DEFENDANT KRIS MAYES' NOTICE OF SUPPLEMENTAL AUTHORITY

(Assigned to the Hon. Lee F. Jantzen)

Defendant Kris Mayes submits this notice of supplemental authority in support of her motion to dismiss and reply.

On December 16, after Ms. Mayes submitted her reply in support of her motion to dismiss, Maricopa County Judge Melissa Julian issued a detailed ruling dismissing—in full and with prejudice—an election contest brought by Mark Finchem, former nominee in the 2022 general election for Arizona Secretary of State. [*See* Exhibit A, 12/16/2022 Under Advisement Ruling] Judge Julian's ruling bears directly on several issues in the present election contest—issues that will be considered by this Court in deciding Mayes' motion to dismiss.

First, in reaffirming and applying long-standing Arizona pleading standards, Judge Julian properly found that a statement of election contest—like any other complaint—must rest on allegations of *fact*, not "legal conclusions masquerading as alleged facts." [Ex. A at 9] When evaluating the sufficiency of an election contest complaint, "[t]he Court will not . . . speculate about hypothetical facts that might entitle the plaintiff to relief." [*Id.* at 4 (quoting *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 420, ¶ 14 (2008))] "Nor will the Court 'accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts.'" [*Id.* (quoting *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4 (App. 2005))] As set forth in detail in Mayes' motion to dismiss and supporting reply, Plaintiffs' complaint here is devoid of any facts necessary to survive beyond the pleading stages, resting instead entirely on speculation, hypotheticals, and unsupported conclusions. The complaint should be dismissed in full and with prejudice.

Second, again applying well-established Arizona law, the court held Mr. Finchem's claim that the voting machines used on election day were not properly certified was barred by the doctrine of laches. [*Id.* at 4-6] The voting machine challenge, the court found, constituted a

"procedural challenge" because it involves "'the manner in which an election is held.'" [*Id.* at 5 (quoting *Sherman v. City of Tempe*, 202 Ariz. 339, 342, ¶ 10 (2002))] And a "procedural challenge to an election filed *after* the election has taken place is particularly vulnerable" to laches because of the heightened prejudice to voters and the public that a post-election challenge poses. [*Id.* (emphasis added)] That prejudice, combined with the fact that Mr. Finchem could have brought his certification challenge "anytime" over the last few years but waited to do so until after he lost the election, warranted application of laches and dismissal of prejudice.

The same is true here for Plaintiffs' procedural challenge to the method by which election officials verify signatures on early ballots (Count V of Plaintiffs' complaint). That method has been part of the Elections Procedure Manual since 2019. Plaintiffs' delay in waiting to challenge it until after Mr. Hamadeh lost the election is unreasonable and would work an immeasurable prejudice on the public and Ms. Mayes. The Court should reach the same result as Judge Julian and hold Count V is barred by laches.

Dated: December 18, 2022

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