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23 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

24 **IN AND FOR THE COUNTY OF MOHAVE**

25 JEANNE KENTCH, an individual; TED BOYD,
26 an individual; ABRAHAM HAMADEH, an
27 individual; and REPUBLICAN NATIONAL
28 COMMITTEE, a federal political party
committee

Plaintiffs/Contestants,

v.

KRIS MAYES,

Defendant/Contestee,

and

ADRIAN FONTES, *et al.*,

Defendants.

No. S8015CV202201468

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

(assigned to Hon. Lee F. Jantzen)

(ORAL ARGUMENT
REQUESTED)

1 Plaintiffs provide notice of supplemental authority from the Arizona Supreme Court
2 in support of Section II (pages 12 through 14) of the Reply In Support Of Plaintiffs' Motion
3 For A New Trial.

4 In *Lake v. Hobbs*, the Supreme Court held that “it was erroneous to dismiss” one of
5 Lake’s claims and thus remanded to the trial court to determine issues that may require an
6 evidentiary hearing. *Lake v. Hobbs, et al.*, Ariz. Sup. Ct. No. CV-23-0046-PR Order (Mar.
7 22, 2023) at 3 (“Order”). The Supreme Court specifically remanded to the trial court to
8 determine whether “Petitioner can prove her claim as alleged pursuant to A.R.S. § 16-672
9 and establish that ‘votes [were] affected “in sufficient numbers to alter the outcome of the
10 election”’ based on a ‘competent mathematical basis to conclude that the outcome would
11 plausibly have been different, not simply an untethered assertion of uncertainty.’” *Id.* at 3-
12 4. The Supreme Court’s Order supports Plaintiffs’ argument in this case that the rules of
13 civil procedure not only apply to election contests, but that the time provisions in A.R.S.
14 § 16-676 do not conflict to prevent this Court from granting a new trial. The Order further
15 supports Plaintiffs’ argument that, based on the narrow recount vote deficit that Secretary
16 Hobbs revealed *after* the initial trial and fact-intensive arguments provided in Plaintiffs’
17 pending motion, Plaintiffs’ “competent mathematical basis to conclude that the outcome
18 would plausibly have been different” provides a basis for a new trial and relief in this Court.
19 *Id.* at 3.

20 It is worth noting that the Arizona Supreme Court found that the Maricopa County
21 Superior Court erred in dismissing Lake’s claims related to Maricopa County’s signature
22 verification procedures *under laches*. Plaintiffs thus request that this Court vacate the non-
23 final order entered on December 20, 2022 dismissing Count V of Plaintiffs’ complaint. As
24 in *Lake*, Plaintiffs allege that Maricopa County did not comply with A.R.S. § 16-550(A).
25 According to the Supreme Court, “[c]ontrary to the ruling of the trial court and the Court of
26 Appeals Opinion, this signature verification challenge is to the application of the policies,
27 not to the policies themselves. Therefore, it was erroneous to dismiss this claim under the
28 doctrine of laches because Lake could not have brought this challenge before the election.”

1 *Id.* The same rationale applies here to resume Plaintiffs' as-applied challenge concerning
2 2022 election issues that could not have been brought before the 2022 election occurred,
3 consistent with the Supreme Court's directives in *Lake*.

4 RESPECTFULLY SUBMITTED this 23rd day of March, 2023.

5 By: /s/ Jennifer J. Wright

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24 ORIGINAL efiled and served via electronic means
25 this 23rd day of March, 2023, upon:

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27 Mohave County Superior Court c/o
28 Danielle Lecher
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/s/ Jennifer J. Wright

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SUPREME COURT OF ARIZONA

KARI LAKE,) Arizona Supreme Court
) No. CV-23-0046-PR
 Plaintiff/Appellant,)
) Court of Appeals
 v.) Division One
) No. 1 CA-CV 22-0779
 KATIE HOBBS, et al.,) 1 CA-SA 22-0237
) (Consolidated)
 Defendants/Appellees.)
) Maricopa County
 KARI LAKE,) Superior Court
) No. CV2022-095403
)
 Petitioner,)
)
 v.)
)
 THE HONORABLE PETER THOMPSON,)
 JUDGE OF THE SUPERIOR COURT OF)
 THE STATE OF ARIZONA, in and for)
 the County of Maricopa,)
)
 Respondent Judge,)
)
 KATIE HOBBS, personally as)
 Contestee; ADRIAN FONTES, in his)
 official capacity as Secretary)
 of State; STEPHEN RICHER, in his)
 official capacity as Maricopa)
 County Recorder, et al.,)
)
 Real Parties in Interest.)
)
) **FILED 03/22/2023**

O R D E R

On December 24, 2022, the trial court issued its Under Advisement Ruling rejecting Petitioner Lake's challenge and "confirming the election of Katie Hobbs as Arizona Governor-elect pursuant to A.R.S. § 16-676(B)." The Court of Appeals affirmed in an Opinion issued February 16, 2023.

Petitioner Lake filed her Petition for Review and request for Expedited Consideration on March 1, 2023. The Court, *en banc*, granted Petitioner's Motion for Expedited Consideration of her Petition for Review on March 3, 2023.

The Court has considered Petitioner Lake's Petition for Review and responses filed by Governor Katie Hobbs, Secretary of State Adrian Fontes, and the Maricopa County defendants. The Court has also considered the record, the trial court ruling, and the Court of Appeals' Opinion affirming the trial court. The Court has also considered briefing of amici curiae in support of Petitioner.

Upon consideration of the Court, *en banc*,

IT IS ORDERED denying review of issues one through five and seven. The Court of Appeals aptly resolved these issues, most of which were the subject of evidentiary proceedings in the trial court, and Petitioner's challenges on these grounds are insufficient to warrant the requested relief under Arizona or federal law.

IT IS FURTHER ORDERED granting review of issue number six to the extent count three of the complaint challenges the Maricopa County Recorder's application of signature-verification policies during the election. Issue number six asks, "Did the panel err in dismissing the signature-verification claim on laches[,] mischaracterizing Lake's claim as a challenge to existing signature verification policies, when Lake in fact alleged that Maricopa failed to follow these

policies during the 2022 general election?" In Count three of her complaint, which alleged a violation of A.R.S. § 16-550(A), Petitioner alleged in paragraph 151, "Upon information and belief, a material number of early ballots cast in the November 8, 2022 general election were transmitted in envelopes containing an affidavit signature that the Maricopa County Recorder or his designee determined did not match the signature in the putative voter's 'registration record.' The Maricopa County Recorder nevertheless accepted a material number of these early ballots for processing and tabulation." Contrary to the ruling of the trial court and the Court of Appeals Opinion, this signature verification challenge is to the application of the policies, not to the policies themselves. Therefore, it was erroneous to dismiss this claim under the doctrine of laches because Lake could not have brought this challenge before the election.

IT IS FURTHER ORDERED vacating ¶¶ 26-30 of the Court of Appeals Opinion.

IT IS FURTHER ORDERED remanding to the trial court to determine whether the claim that Maricopa County failed to comply with A.R.S. § 16-550(A) fails to state a claim pursuant to Ariz. R. Civ. P. 12(b)(6) for reasons other than laches, or, whether Petitioner can prove her claim as alleged pursuant to A.R.S. § 16-672 and establish that "votes [were] affected 'in sufficient numbers to alter the outcome of the election'" based on a "competent mathematical basis to

conclude that the outcome would plausibly have been different, not simply an untethered assertion of uncertainty.” (Opinion ¶ 11.)

IT IS FURTHER ORDERED Petitioner may file a response and Respondents may file a reply to Respondents’ Motions for Sanctions in accordance with ARCAP Rule 6(a)(2). The parties shall address as a basis for sanctions only Petitioner’s factual claims in her Petition for Review (i.e., that the Court of Appeals should have considered “the undisputed fact that 35,563 unaccounted for ballots were added to the total of ballots at a third party processing facility”), and not legal arguments (i.e., pertaining to the burden of proof or purported conflict in the lower courts). The record does not reflect that 35,563 unaccounted ballots were added to the total count. The motions for sanctions will be considered in due course.

DATED this 22nd day of March, 2023.

/s/

ROBERT BRUTINEL
Chief Justice

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