

1 RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

2 By: Thomas P. Liddy (Bar No. 019384)
3 Joseph J. Branco (Bar No. 031474)
4 Joseph E. La Rue (Bar No. 031348)
5 Karen J. Hartman-Tellez (Bar No. 021121)
6 Jack L. O'Connor III (Bar No. 030660)
7 Sean Moore (Bar No. 031621)
8 Rosa Aguilar (Bar No. 037774)
9 Deputy County Attorneys
10 liddy@mcao.maricopa.gov
11 brancoj@mcao.maricopa.gov
12 laruej@mcao.maricopa.gov
13 hartmank@mcao.maricopa.gov
14 connorj@mcao.maricopa.gov
15 moores@mcao.maricopa.gov
16 aguilarr@mcao.maricopa.gov
17 Deputy County Attorneys
18 MCAO Firm No. 0003200

11 CIVIL SERVICES DIVISION
12 225 West Madison Street
13 Phoenix, Arizona 85003
14 Telephone (602) 506-8541
15 Facsimile (602) 506-4316
16 ca-civilmailbox@mcao.maricopa.gov

15 Emily Craiger (Bar No. 021728)
16 emily@theburgesslawgroup.com
17 THE BURGESS LAW GROUP
18 3131 East Camelback Road, Suite 224
19 Phoenix, Arizona 85016
20 Telephone: (602) 806-2100

21 *Attorneys for Maricopa County Defendants*

22 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

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

24 JEANNE KENTCH, *et al.*,
25 Plaintiffs/Contestants,
26 v.

27 KRIS MAYES,
28 Defendant/Contestee

and
KATIE HOBBS, *et al.*,
Official Capacity Defendants.

No. S8015CV202201468

**MARICOPA COUNTY DEFENDANTS'
RESPONSE TO PLAINTIFFS' NOTICE
OF SUPPLEMENTAL AUTHORITY**

(Expedited Challenge Matter)

(Assigned to the Hon. Lee F. Jantzen)

1 On March 23, 2023, Plaintiff filed a Notice of Supplemental Authority concerning
2 the Arizona Supreme Court’s March 22, 2023 Order in *Lake v. Hobbs*, No. CV-23-0046-PR
3 (the “Order”). Because Plaintiff significantly misrepresented the Order and its application
4 to the matter before this Court, the Maricopa County Defendants file this short Response.

5 As a preliminary matter, an order of the Arizona Supreme Court is not binding
6 precedent. *See* Ariz. R. S. Ct. 111; *see also* ARCAP 28. Indeed, it does not even suggest
7 persuasive value. *See* Ariz. R. S. Ct. 111(c)(1)(C) (describing when memorandum
8 decision—not order—has persuasive value). Had the Arizona Supreme Court intended its
9 determination to carry precedential or persuasive value it would not have issued an order.
10 *Cf.* ARCAP 17(a) (limiting supplemental citation of legal authority to “Pertinent and
11 *significant* legal authority”).

12 The Order related to Kari Lake’s Petition for Review of the Court of Appeals decision,
13 which affirmed the trial court’s rejection of Lake’s election contest. [Ex. 1, Order, at 1-2.]
14 Plaintiff falsely claimed that “[t]he Supreme Court’s Order supports Plaintiffs’ argument in
15 this case that the rules of civil procedure not only apply to election contests, but that the time
16 provisions in A.R.S. § 16-676 do not conflict to prevent this Court from granting a new trial.”
17 [Pl.s’ Ntc. of Supp. Auth. at 2.] But this is incorrect: the Order does not say anything about
18 those things. Neither the extent to which the Rules of Civil Procedure apply in election
19 contests, nor § 16-676’s time provisions, nor the question of new trials, was at issue in the
20 Lake Petition for Review. Unlike Lake, Plaintiff in this matter chose not to appeal, but
21 instead asked for a “do over” of his trial. The Rules for election contests, set out in statute,
22 do not allow a do over. Contrary to Plaintiff’s assertion, the Order does not change that fact.

23 Specifically, the Order denied Lake’s Petition as it related to six of the seven items she
24 asked the Court to review, but granted it as it related to one item that concerned signature
25 verification of early ballot affidavit envelopes. The Supreme Court remanded that one item
26 to the trial court as follows:

27 IT IS FURTHER ORDERED remanding to the trial court to determine whether
28 the claim that Maricopa County failed to comply with A.R.S. § 16-550(A) fails

1 to state a claim pursuant to Ariz. R. Civ. P. 12(b)(6) for reasons other than laches,
2 or, whether Petitioner can prove her claim as alleged pursuant to A.R.S. § 16-672
3 and establish that “votes [were] affected ‘in sufficient numbers to alter the
4 outcome of the election’” based on a “competent mathematical basis conclude
5 that the outcome would plausibly have been different, not simply an untethered
6 assertion of uncertainty.”

7 [Id. at 3-4 (citation omitted).]

8 In his Notice of Supplemental Authority, Plaintiff quoted **only** the second part of the
9 sentence (*i.e.*, “whether Petitioner can prove her claim”) and did not quote the first part of
10 the sentence related to Rule 12(b)(6). [Pl.’s Ntc. of Supp. Auth. at 2.] This cherry-picking
11 gave the impression that the Supreme Court either (1) ordered a new trial on that issue, or
12 (2) ruled that contestants may bring election contests or “new evidence” whenever they
13 believe they can prove mathematically that the outcome of the election plausibly should have
14 been different, regardless of the A.R.S. § 16-676’s time bars and the long-settled doctrine
15 concerning the need for finality in elections. But the Court ruled neither of those things.
16 Rather, it ruled on a timely-taken *appeal*, and remanded one issue raised on appeal to the
17 trial court for additional consideration *of that issue*.

18 Plaintiff suggests that because it was error to dismiss Lake’s challenge in Count III of
19 her Complaint to signature verification based on the doctrine of *laches*, it was likewise error
20 for this Court to dismiss Plaintiff’s challenge in Count V of his Complaint to signature
21 verification. But Plaintiff is incorrect: while Plaintiff’s Count V is similar to Lake’s Count
22 III, it does not raise the particular challenge that the Supreme Court deemed could not be
23 dismissed on *laches*. This suggestion is incorrect.

24 The Lake challenge to signature verification, brought in Count III of her Complaint,
25 contained two separate allegations. First, that the Recorder’s signature-verification *policies*
26 violated state law. (Plaintiff makes that same allegation in his Count V). The Supreme
27 Court’s Order did not find that the trial court erred in dismissing that part of the claim on the
28 basis of *laches*; indeed, under binding precedent such claims *must* be brought prior to the
election. *Sherman v. City of Tempe*, 202 Ariz. 339, 342 ¶ 9 (2002). If the Supreme Court
had intended the Order to disturb the holding of *Sherman*, it would have said so. It did not.

1 But Lake also made a second allegation in her Count III, which Plaintiff does not make
2 in his Count V. Lake claimed that, in the 2022 general election, the Recorder failed to follow
3 his policy to exclude ballots from tabulation that were transmitted in affidavit envelopes
4 containing an affidavit signature that did not match the signature in the voter's registration
5 record, resulting in a material number of early ballots being tabulated that should have been
6 excluded. [Ex. 1, Order at 3.] The Supreme Court explained that such challenges, which
7 allege malfeasance *during* the election, could not have been brought prior to the election.
8 [Id.] Thus, the trial court erred by dismissing Lake's Count III on the basis of *laches*. [Id.]

9 Plaintiff, however, did not allege that the Recorder failed to follow his signature-review
10 policies during the 2022 general election. Rather, Plaintiff's allegation was *only* that the
11 Recorder's signature-review policies *failed to comply with the requirements of state law*,
12 because the Recorder used voters' prior early ballot affidavits or early ballot request forms
13 to verify their signatures whereas Plaintiff's understanding of state law is that only the
14 signature on the voters' registration forms may be used.¹ Plaintiff's challenge was thus
15

16 ¹ Compare Lake's allegation, found in Paragraph 151 of Lake's Complaint and cited in the
17 Order at 3 ("Upon information and belief, a material number of early ballots cast in the
18 November 8, 2022 general election were transmitted in envelopes containing an affidavit
19 signature that the Maricopa County Recorder or his designee determined did not match the
20 signature *in* the putative voter's 'registration record.' The Maricopa County Recorder
21 nevertheless accepted a material number of these early ballots for processing and
22 tabulation") (emphasis added) *with* Plaintiff's allegation, found in Paragraphs 98 and 99 of
23 Plaintiff's Complaint ("Upon information and belief, a material number of early ballots cast
24 in the November 8, 2022 general election were transmitted in envelopes containing an
25 affidavit signature that the County Recorder or the Recorder's designee determined did not
26 correspond to the signature in the putative voter's "registration record." The County
27 Recorder, however, nevertheless accepted the early ballot for processing and tabulation
28 because the affidavit signature ostensibly matched a signature on an election-related
document *that was not the voter's "registration record," such as a prior early ballot
affidavit or early ballot request form.*" *To the extent the Elections Procedures Manual
purports to authorize the validation of early ballot affidavit signatures by reference to a
signature specimen that is not found in the voter's "registration record," it is contrary to
the plain language of A.R.S. § 16-550(A), and hence unenforceable.*") (emphasis added).
The Recorder's policy, consistent with the Elections Procedures Manual, is to compare the
affidavit envelope signature with all signatures in the registration record, including prior
early ballot affidavit signatures and early ballot request form signatures. See Elections
Procedures Manual (2019) at 68 (available at
https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf). Plaintiff in this case challenged the legality of the Recorder's policy, while
Lake alleged that the Recorder failed to follow his policy during the 2022 general election.

1 solely to the legality of election procedures, which *must* be brought prior to the election.
2 *Sherman*, 202 Ariz. at 342 ¶ 9. Accordingly, this Court properly dismissed Plaintiff's Count
3 V on the basis of laches, and the Arizona Supreme Court's remand in Lake provides no basis
4 for this Court to revisit that sound decision.

5 The upshot of all of this is that the Supreme Court Order that Plaintiff cites as
6 supplemental authority has no application to whether this Court should grant Plaintiff's
7 motion for a new trial.

8 RESPECTFULLY SUBMITTED this 27th day of March, 2023.

9
10 RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

11 BY: /s/ Joseph E. La Rue
12 Thomas P. Liddy
13 Joseph J. Branco
14 Joseph E. La Rue
15 Karen J. Hartman-Tellez
16 Jack L. O'Connor
17 Sean M. Moore
18 Rosa Aguilar
19 Deputy County Attorneys

20 THE BURGESS LAW GROUP

21 Emily Craiger

22 *Attorneys for Maricopa County Defendants*

23 ORIGINAL of the foregoing E-FILED
24 this 27th day of March 2023 with
25 AZTURBOCOURT, and copies e-served / emailed to:

26 HONORABLE LEE F JANTZEN
27 MOHAVE COUNTY SUPERIOR COURT
28 Danielle Lecher, Judicial Assistant
DLecher@courts.az.gov
division4@mohavecourts.com

1 David A. Warrington,
Gary Lawkowski
2 DHILLON LAW GROUP, INC.
DWarrington@dhillonlaw.com
3 GLawkowski@dhillonlaw.com

4 Timothy A La Sota,
5 TIMOTHY A. LA SOTA, PLC
tim@timlasota.com
6

7 Alexander Kolodin
Veronica Lucero
8 Arno Naeckel
James C. Sabalos (pro hac vice)
9 Davillier Law Group, LLC
10 akolodin@davillierlawgroup.com
vlucero@davillierlawgroup.com
11 anaeckel@davillierlawgroup.com
12 jsabalos@davillierlawgroup.com
phxadmin@davillierlawgroup.com
13

14 Jennifer J. Wright
JENNIFER WRIGHT ESQ., PLC
15 jen@jenwesq.com

16 Sigal Chattah
17 CHATTAH LAW GROUP
chattahlaw@gmail.com
18

19 *Attorneys for Plaintiffs/Contestants*

20 Craig Morgan
Shayna Stuart
21 Jake T. Rapp
22 SHERMAN & HOWARD L.L.C.
CMorgan@ShermanHoward.com
23 SStuart@ShermanHoward.com
JRapp@ShermanHoward.com
24

Attorneys for Defendant Secretary of State Adrian Fontes

25 Paul F. Eckstein
26 Alexis E. Danneman
Samantha J. Burke
27 PERKINS COIE LLP
28 peckstein@perkinscoie.com

- 1 adanneman@perkinscoie.com
2 sburke@perkinscoie.com
3 *Attorneys for Kris Mayes*
- 4 Celeste Robertson
5 Joseph Young
6 APACHE COUNTY ATTORNEY'S OFFICE
7 crobertson@apachelaw.net
8 jyoung@apachelaw.net
9 *Attorneys for Defendants Larry Noble, Apache County Recorder*
- 10 Christine J. Roberts
11 Paul Correa
12 COCHISE COUNTY ATTORNEY'S OFFICE
13 croberts@cochise.az.gov
14 pcorrea@cochise.az.gov
15 *Attorneys for Defendants David Stevens, Cochise County Recorder*
- 16 Bill Ring
17 COCONINO COUNTY ATTORNEY'S OFFICE
18 wring@coconino.az.gov
19 *Attorney for Defendants Patty Hansen, Coconino County*
- 20 Jeff Dalton
21 GILA COUNTY ATTORNEY'S OFFICE
22 jdalton@gilacountyaz.gov
23 *Attorney for Defendants Sadie Jo Bingham, Gila County Recorder*
- 24 Jean Roof
25 GRAHAM COUNTY ATTORNEY'S OFFICE
26 jroof@graham.az.gov
27 *Attorney for Defendants Wendy John, Graham County Recorder*
- 28 Scott Adams
29 GREENLEE COUNTY ATTORNEY'S OFFICE
30 sadams@greenlee.az.gov
31 *Attorney for Defendants Sharie Milheiro, Greenlee County Recorder*
- 32 Ryan N. Dooley
33 LA PAZ COUNTY ATTORNEY'S OFFICE
34 rdooley@lazpazcountyaz.org
35 *Attorney for Defendants Richard Garcia, La Paz County Recorder*
- 36 Ryan Esplin

RETRIEVED FROM DEMOCRACYDOCKET.COM

1 MOHAVE COUNTY ATTORNEY'S OFFICE – CIVIL DIVISION

2 esplinr@mohave.gov

3 *Attorney for Defendants Kristi Blair, Mohave County Recorder*

4 Daniel Jurkowitz

5 Ellen Brown

6 Javier Gherna

7 PIMA COUNTY ATTORNEY'S OFFICE

8 Daniel.Jurkowitz@pcao.pima.gov

9 Ellen.Brown@pcao.pima.gov

10 Javier.Gherna@pcao.pima.gov

11 *Attorneys for Defendants Gabriella Cazares-Kelly, Pima County Recorder*

12 Craig Cameron

13 Scott Johnson

14 Allen Quist

15 Jim Mitchell

16 PINAL COUNTY ATTORNEY'S OFFICE

17 craig.cameron@pinal.gov

18 scott.m.johnson@pinal.gov

19 allen.quist@pinal.gov

20 james.mitchell@pinal.gov

21 *Attorneys for Defendants Dana Lewis, Pinal County Recorder*

22 Kimberly Hunley

23 William Moran

24 SANTA CRUZ COUNTY ATTORNEY'S OFFICE

25 khunley@santacruzcountyaz.gov

26 wmoran@santacruzcountyaz.gov

27 *Attorneys for Suzanne Sainz, Santa Cruz County Recorder*

28 Collen Connor

29 Thomas Stoxen

30 YAVAPAI COUNTY ATTORNEY'S OFFICE

31 Colleen.Connor@yavapaiaz.gov

32 Thomas.Stoxen@yavapaiaz.gov

33 *Attorney for Defendants Michelle M. Burchill, Yavapai County Recorder*

34 Bill Kerekes

35 YUMA COUNTY ATTORNEY'S OFFICE

36 bill.kerekes@yumacountyaz.gov

37 *Attorney for Defendants Richard Colwell, Yuma County Recorder*

38 */s/ Joseph E. La Rue*