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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MOHAVE

JEANNE KENTCH, an individual; TED  
BOYD, an individual; ABRAHAM  
HAMADEH, an individual; and  
REPUBLICAN NATIONAL  
COMMITTEE, federal political party  
committee,

Plaintiffs/Contestants,

v.

KRIS MAYES,

Defendant/Contestee,

and

ADRIAN FONTES, *et al.*,

Defendants.

Case No. S8015CV202201468

ARIZONA SECRETARY OF STATE  
ADRIAN FONTES'  
RESPONSE TO NOTICE OF  
SUPPLEMENTAL AUTHORITY IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR A NEW TRIAL

(Expedited Challenge Matter)

(Assigned to Hon. Lee F. Jantzen)

Defendant Adrian Fontes, in his official capacity as the Arizona Secretary of State (the "Secretary"), joins the Maricopa County Defendants' Response to Plaintiffs' Notice of Supplemental Authority in full. The Secretary responds to one other assertion in Plaintiffs' Notice.

Plaintiffs assert "[t]he Order further supports [their] argument that, based on the narrow recount vote deficit that Secretary Hobbs revealed *after* the initial trial and fact-intensive arguments provided in Plaintiffs' pending motion, Plaintiffs' 'competent mathematical basis to conclude that the outcome would plausibly have been different' provides a basis for a new trial and relief in this Court." Notice at 2:14–19.

1 This convoluted assertion is a non sequitur. The Order’s reference to a  
2 “competent mathematical basis” quotes paragraph 11 of the court of appeals’ decision.  
3 Order at 3–4. In paragraph 11, the court of appeals rejects Kari Lake’s assertion that she  
4 did not need to prove official misconduct “did in fact affect the result” of the election.  
5 *Lake v. Hobbs*, No. 1 CA-CV 22-0779, 2023 WL 2052341, at \*2, ¶ 11 (Ariz. Ct. App.  
6 Feb. 16, 2023), available at <https://tinyurl.com/3wrk5rfj>. The court of appeals, affirmed  
7 by the supreme court on this point, ruled that an election is not “uncertain unless votes are  
8 affected ‘in sufficient number to alter the outcome of the election.’” *Id.* (citation omitted).  
9 And this can only be shown with “a competent mathematical basis to conclude that the  
10 outcome would plausibly have been different, ***not simply an untethered assertion of***  
11 ***uncertainty.***” *Id.* (emphasis added) (citations omitted); Order at 3–4.

12 The Order’s restatement of a legal standard does not mean Plaintiffs get a second  
13 trial to try and meet that standard. Nowhere does the Order state or imply that an election  
14 contestant may move for (let alone obtain) a second trial. Nowhere does the Order state or  
15 imply that an election contestant may seek more discovery (or obtain discovery previously  
16 requested that was properly denied) after a trial. Nowhere does the Order state or imply  
17 that an election contestant may effectively amend their statement of election contest to  
18 pursue new theories after losing a trial. And nowhere does the Order state or imply that  
19 the Secretary’s compliance with the recount statutes and the Recount Order means  
20 Plaintiffs get another bite of the apple.

21 Plaintiffs omitted the supreme court’s agreement with the court of appeals that  
22 “an untethered assertion of uncertainty[.]” is not enough to overturn an election. Notice at  
23 2:14–19. For the reasons explained in Defendants’ Responses, this is all Plaintiffs have to  
24 work with. The Order does not help them.

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RESPECTFULLY SUBMITTED: March 27, 2023.

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**CERTIFICATE OF SERVICE**

1 ORIGINAL electronically filed  
2 on March 27, 2023.

3 COPY of the foregoing emailed and e-delivered through ECF system  
4 on March 27, 2023:

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