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ARIZONA SUPERIOR COURT

MOHAVE COUNTY

TED BOYD, et al.,

Plaintiffs/Contestants,

v.

KRIS MAYES,

Defendant/Contestee,

and

ADRIAN FONTES, et al.,

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)

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

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

Nothing in the Order supports Contestants' Motion for a New Trial. In its Order (Ex. 1 at 3–4), the Arizona Supreme Court granted Kari Lake's Petition for Review on one of seven issues raised therein and remanded to the trial court to determine whether Ms. Lake "fails to state a claim" under Rule 12(b)(6) or "whether Petitioner can prove her claim as alleged . . . 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.'" [*Id.*]

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

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

Despite filing a "Notice of Supplemental Authority in Support of Plaintiffs' Motion for a New Trial," Contestants ask this Court for relief entirely absent from their new-trial motion: reversal of this Court's ruling dismissing Count V. This is not the proper vehicle to ask this Court to change a substantive ruling.[2] But even overlooking the procedural defects in

[1] 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.

[2] 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

Contestants' "Notice," their argument fails on the merits.

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

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

Contestants' own filings further confirm that they challenged only the legal validity of the EPM—not how it was applied. As Count V itself states, "To the extent the [EPM] 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." [Statement of Election Contest at 24 ¶ 99] Contestants' Response to the Motion to Dismiss (at 17), further, agreed that this is a

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granting the motion, and set forth the relief or order sought."). Nor should this Court "reopen 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).

"dispute implicating the validity or enforceability of an EPM rule."

In short, Contestants simply did not, as they assert (at 3), bring an "as-applied challenge" to the EPM, like the contestants in *Lake*. The Supreme Court's Order therefore not only confirms that this Court properly dismissed Count V, but also does not call that dismissal into question.[3]

CONCLUSION

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

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

[3] Contestants' own faith in this argument is belied by the fact that Mr. Hamadeh agreed 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)]

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