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IN THE SUPERIOR COURT FOR 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, a federal political party committee

Plaintiffs/Contestants,

v.

KRIS MAYES,

Defendant/Contestee,

and

ADRIAN FONTES, *et al.*,

Defendants.

No. S8015CV202201468

PLAINTIFFS' FOURTH NOTICE OF SUPPLEMENTAL AUTHORITY

(assigned to Hon. Lee F. Jantzen)

Plaintiffs hereby give notice of supplemental authority. The Arizona Supreme Court issued the attached ruling in *Lake v. Hobbs*, Arizona Supreme Court No. CV-23-0046-PR. In a portion of the ruling with relevance to the proceedings before this Court, the Arizona Supreme Court noted that candidates are free to institute election challenges, there is a strong public interest in the integrity of elections, and that the Court must ensure that legal sanctions are never wielded against candidates or their attorneys for asserting their legal rights in good faith.

RESPECTFULLY SUBMITTED this 9th day of May, 2023.

By: /s/ *Jennifer J. Wright*

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ORIGINAL efiled and served via electronic means
this 9th day of May, 2023, upon:

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/s/ *Timothy A. La Sota*

SUPREME COURT OF ARIZONA

KARI LAKE, Plaintiff/Appellant, v. KATIE HOBBS, et al., Defendants/Appellees.	Arizona Supreme Court No. CV-23-0046-PR Court of Appeals Division One No. 1 CA-CV 22-0779 1 CA-SA 22-0237 (Consolidated)
KARI LAKE, 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.	Maricopa County Superior Court No. CV2022-095403 **FILED 05/04/2023**

ORDER

In their responses to Petitioner Lake's Petition for Review, Respondents Secretary of State Fontes and Governor Hobbs moved for sanctions against Lake and her attorneys pursuant to Ariz. R. Civ. App. P. (ARCAP) 25 and A.R.S. § 12-349 (collectively, "Motions for Sanctions"). This Court entered its Order affirming the trial court

and Court of Appeals on most issues, but reversing those courts on their dismissal of the signature verification claim on the basis of laches and remanding that issue to the trial court.

On the issue of whether votes were improperly added by a third-party vendor, we stated that "[t]he record does not reflect that 35,563 unaccounted ballots were added to the total count." We instructed the parties to "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 [number] of ballots at a third party processing facility')." The parties filed briefs on this issue, and Lake filed a Motion for Leave to file a motion for reconsideration of the Court's denial of review on the chain-of-custody issue.

Candidates are free to timely challenge election procedures and results, and the public has a strong interest in ensuring the integrity of elections. Sometimes campaigns and their attendant hyperbole spill over into legal challenges. But once a contest enters the judicial arena, rules of attorney ethics apply. Although we must ensure that legal sanctions are never wielded against candidates or their attorneys for asserting their legal rights in good faith, we also must diligently enforce the rules of ethics on which public confidence in our judicial system depends and where the truth-seeking function of our adjudicative process is unjustifiably

hindered.

ARCAP 25 authorizes an appellate court to impose sanctions on an attorney if the court determines that an appeal or a motion is frivolous, and provides that "[a]n appellate court may impose sanctions that are appropriate in the circumstances of the case, and to discourage similar conduct in the future." Other rules similarly require candor in court proceedings. *See, e.g.*, Ariz. R. Civ. P. 11(b) (providing that "[b]y signing a pleading, motion, or other document," an attorney "certifies that to the best of the person's knowledge, information, and belief" that "the factual contentions have evidentiary support"); *see also* Ariz. R. Sup. Ct. 42, Ethical Rule ("ER") 3.3 ("A lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.").

Under A.R.S. § 12-349(A), claims are sanctionable if they are brought "without substantial justification." Further, "without substantial justification" means that the "claim or defense is groundless and is not made in good faith." § 12-349(F). Groundlessness is "determined objectively," and a claim is groundless "if the proponent can present no rational argument based upon the evidence or law in support of that claim." *Takieh v. O'Meara*, 252 Ariz. 51, 61 ¶ 37 (App. 2021), review denied (Apr. 7, 2022) (quoting *Rogone v. Correia*, 236 Ariz. 43, 50 ¶ 22 (App. 2014)).

ARCAP 25 gives an appellate court broad authority to impose sanctions "that are appropriate in the circumstances of the case" on an attorney or a party if it determines that an appeal or motion is frivolous. This includes "contempt, dismissal, or withholding or imposing costs." ARCAP 25.

In her Complaint, Lake set forth colorable claims, including ballot chain-of-custody claims, that were rejected following an evidentiary hearing in the trial court, and she duly but unsuccessfully (except for the laches issue) challenged those rulings on appeal. However, she has repeatedly asserted that it is an "undisputed" fact that 35,563 ballots were added or "injected" at Runbeck, the third-party vendor. Not only is that allegation strongly disputed by the other parties, this Court concluded and expressly stated that the assertion was unsupported by the record, and nothing in Lake's Motion for Leave to file a motion for reconsideration provides reason to revisit that issue. Thus, asserting that the alleged fact is "undisputed" is false; yet Lake continues to make that assertion in her Motion for Leave.

Lake's Petition for Review stated that it was an "undisputed fact that 35,563 unaccounted for ballots were added to the total number of ballots at a third party processing facility." In her Opposition to Motion for Sanctions and Motion for Leave, she repeats this contention, stating that "[t]he record indisputably reflects at least 35,563 Election Day early ballots, for which there is no record

of delivery to Runbeck, were added at Runbeck, ...” As the Court of Appeals observed, Lake’s argument was focused on one exhibit that included an estimate of the number of early ballot packets based on the number of trays and a different exhibit showing a precise count. Although Lake may have permissibly argued that an inference could be made that some ballots were added, there is no evidence that 35,563 ballots were and, more to the point here, this was certainly disputed by the Respondents. The representation that this was an “undisputed fact” is therefore unequivocally false.[1]

Because Lake’s attorney has made false factual statements to the Court, we conclude that the extraordinary remedy of a sanction under ARCAP 25 is appropriate.

The Governor and Secretary seek sanctions for attorney fees and in the Secretary’s reply he seeks additional sanctions. Because Lake prevailed in her argument that the trial court improperly found her signature verification argument barred by laches, an additional sanction is not warranted. Therefore,

IT IS ORDERED denying the Motion for Leave.

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[1] *See* ER 3.3 Comment 2: “This rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client’s case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate’s duty of candor to the tribunal. Consequently, . . . the lawyer must not mislead the tribunal by false statements of law or fact or evidence that the lawyer knows to be false.”

IT IS FURTHER ORDERED denying the Secretary's Motion to Strike.

IT IS FURTHER ORDERED granting the Motions for Sanctions filed by Governor Hobbs and Secretary Fontes pursuant to ARCAP 25 as to the statement in Lake's Petition for Review asserting "the undisputed fact that 35,563 unaccounted for ballots were added to the total number of ballots," and for repeating such false assertions in an additional filing in this proceeding.

IT IS FURTHER ORDERED counsel for Lake is directed to pay to the Clerk of the Supreme Court the sum of $2,000.00 as a sanction for this conduct, jointly and severally, such payment to be made not later than ten days from the date of this order. It is further ordered that failure to timely comply with this order may result in a termination of pro hac vice status and other sanctions as appropriate.

IT IS FURTHER ORDERED denying the requests for attorney fees as sanctions.

IT IS FURTHER ORDERED that the trial court shall forthwith conduct such proceedings as appropriate to resolve the unrelated question previously remanded.

IT IS FURTHER ORDERED directing the Clerk of Court to enter the mandate forthwith.

DATED this 4th day of May, 2023.

/s/
ROBERT BRUTINEL
Chief Justice

TO:
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Kurt Olsen
Alexis E Danneman
Abha Khanna
Lalitha D Madduri
Christina Ford
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