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10 ARIZONA SUPERIOR COURT

11 MOHAVE COUNTY

12 TED BOYD, et al.,

13 Plaintiffs/Contestants,

14 v.

15 KRIS MAYES,

16 Defendant/Contestee,

17 and

18 ADRIAN FONTES, et al.,

19 Defendants.

No. S8015CV202201468

**RESPONSE TO PLAINTIFFS'
FIFTH NOTICE OF
SUPPLEMENTAL AUTHORITY**

(Assigned to the Hon. Lee F. Jantzen)

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1 Plaintiffs have now filed a *fifth* notice of supplemental authority—an unpublished order
2 issued by the Maricopa County Superior Court in another case. *See* Order Under Advisement,
3 *Lake v. Hobbs*, No. CV 2022-095403 (Maricopa Cty. Super. Ct. May 15, 2023) (“Lake
4 Order”). The Lake Order addressed a Rule 60 motion following an appeal and an order
5 vacating and remanding the case back to the trial court based on legal error on a single claim. It
6 did not involve, as here, a Rule 59 motion for a new trial filed before the entry of judgment and
7 seeking, not just a new trial, but also to conduct an extensive, hand recount.¹

8 Plaintiffs argue that the Lake Order assists them in two respects. It does not. The order
9 is neither binding, nor persuasive.

10 First, Plaintiffs claim to submit the Lake Order to support their argument that “[t]o the
11 extent that the civil rules can apply *without contradiction* to an election challenge, they do
12 apply.” [Lake Order at 8 (emphasis added)] The Attorney General agrees. [*See* Resp. to New
13 Trial Mot. at 3] But here, Plaintiffs’ Rule 59 motion *does* conflict with the election contest
14 statute. [*See id.* at 2–3 (explaining conflict)] The Lake Order does not specifically address any
15 of the arguments as to why a motion for a new trial would conflict with the contest statutes.

16 Second, Plaintiffs argue that the Lake Order “addressed the court’s ability to grant relief
17 despite Governor Hobbs having been in office for five months.” The Lake Order glosses over
18 and does not expressly address the specific mootness argument the Attorney General raised
19 here, which is that an election contest becomes moot once an officer is sworn into office
20 because the relief available under the election contest statute does not include removal from
21 office. [*See* Mayes Resp. Mot. New Trial at 17]

22 Further, Plaintiffs’ argument based on *Campbell v. Hunt* in the notice is both

23 ¹ Last week, the Lake court conducted a limited trial on a single count. The trial court
24 has since ruled against the contestant, ended the contest, and confirmed the election of the
Governor.

1 inappropriate and misplaced. Again, the expedited timelines under the current election contest
2 statute did not exist in 1917, when that case was decided. *See* 1913 Civ. Code §§ 3061, 3063–
3 64 (1913).

4 Finally, Plaintiffs assert (at 2) that “Contestees have argued that . . . the recount
5 provisions foreclose further proceedings.” Plaintiffs misapprehend the law and the Attorney
6 General’s position. Again, Plaintiffs request a post-trial review of many thousands of ballots—
7 Plaintiffs’ own second recount. Recounts can only be conducted pursuant to statute. And “no
8 authority exists in Arizona for ordering the [additional] recount requested by appellant.”
9 *Barrera v. Superior Ct., In And For Graham Cnty.*, 117 Ariz. 528, 530 (App. 1977).

10
11 Dated: May 23, 2023

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By: *s/ Alexis Danneman*

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