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11 **SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF YAVAPAI**

13 ARIZONA FREE ENTERPRISE CLUB,
14 an Arizona nonprofit corporation, *et al.*,

15 Plaintiffs,

16 v.

17 ADRIAN FONTES, in his official
18 capacity as the Secretary of State of
Arizona, *et al.*,

19 Defendants.

No: S-1300-CV-202300202

**MOTION TO STRIKE PLAINTIFFS'
NOTICE OF SUPPLEMENTAL
AUTHORITY**

(Assigned to the Hon. John Napper)

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1 Secretary of State Adrian Fontes moves to strike Plaintiffs' Notice of
2 Supplemental Authority ("Notice"), pursuant to Rule 7(f)(1) of the Ariz. R. of Civ. P.
3 because it impermissibly raises a new argument which was not raised in its Consolidated
4 Response to the Motion to Dismiss ("Response"). Citing decades-old cases in the guise
5 of a "Notice" deprives the Defendants an opportunity to address the new, previously un-
6 argued points, raised here. For these reasons, Plaintiff's Notice should be struck.
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8 Plaintiffs do not cite a rule allowing the filing of the Notice in this Court, but it
9 appears to attempt to comply with the requirements provided in Ariz. R. Civ. App. P. 17.
10 Assuming *arguendo*¹ this filing is appropriate, Rule 17 permits the filing of supplemental
11 authority only when (1) "pertinent and significant legal authority"; (2) comes to the
12 attention of a party after the brief is filed, and (3) "the party may supplement *legal*
13 *authority* that the party *previously presented in the party's briefing.*" Ariz. R. Civ. App.
14 P. 17(a). It strains credulity that two forty-year old cases came to the Plaintiffs' attention
15 only after the Response was filed last month, but this Notice is nonetheless inappropriate
16 because these cases raise a new argument, rather than supplement previously-cited
17 authority.
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20 Plaintiffs' new cases do not supplement any authority on page 11 of their
21 Response. If anything, they refute Plaintiffs' admission that a change to the EPM "may
22 moot the Plaintiffs' claims." Resp. at 11. Furthermore, Plaintiffs' argument in the
23 Response is focused on laches and ripeness, not that their claims cannot be mooted by
24 changes to the EPM. Introducing new cases to support an argument which was not made
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¹ It is not clear this is permissible, as Rule 17 specifically notes that the party's Notice is
filed "with the appellate court." R. 17(a), Ariz. R. Civ. App. P.

1 in the original response is inappropriate. *See Rowe Intern., Inc. v. Ariz. Dep't of Revenue*,
2 165 Ariz. 122, 128 (App. 1990) (“We will not address arguments raised for the first time
3 under the guise of supplemental authority.”). Finally, the cases cited in the Notice
4 explain that a change in the *factual* circumstances of a matter may not moot a case, not
5 that a change in the law does not. *Compare Pointe Resorts, Inc. v. Culbertson*, 158 Ariz.
6 137, 141 (1988) (noting facts, that the completion of a lease-back contract and
7 construction of a golf course on city-owned property, *did not* moot the case) *with Rocky*
8 *Mtn. Farmers Union v. Corey*, 913 F.3d 940, 949-50 (9th Cir. 2019) (explaining that the
9 repeal of earlier versions of California’s Low Carbon Fuel Standards *did* moot the case
10 because “there is nothing left of a challenged law to enjoin or declare illegal”).² Of
11 course, this point could have elucidated and distinguished if it has been raised
12 appropriately—in motions practice, not a Notice.
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15 For these reasons, Plaintiffs’ Notice of Supplemental Authority should be struck
16 pursuant to Ariz. R. Civ. P. 7(f)(1). In the alternative, if the Court does not strike the
17 Notice, the Secretary joins with Intervenor-Defendant Mi Familia Vota’s Response to
18 Plaintiffs’ Notice of Supplemental Authority, in opposition to Plaintiffs’ Notice.
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20 Respectfully submitted this 14th day of July, 2023:

21 Kristin K. Mayes
22 Attorney General

23 /s/Kara Karlson

24 Kara Karlson
25 Kyle Cummings
Assistant Attorneys General
Attorneys for the Arizona Secretary of State
Adrian Fontes

26 ² *Pointe Resorts, Inc.*, 158 Ariz. 137, was in the Notice, whereas *Rocky Mtn. Farmers Union*, 913 F.3d 940 was appropriately cited in Plaintiffs’ Response.

1 **ORIGINAL** of the foregoing filed
2 this 14th day of July, 2023, with:

3 Yavapai County Superior Court Clerk
4 Yavapai County Superior Court
5 120 South Cortez Street
6 Prescott, AZ 86303

7 **COPIES** e-mailed this 14th day of
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17 *Attorneys for Proposed Intervenor-Defendant Mi Familia Vota*

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By: /s/ Monica Quinonez
Monica Quinonez, Legal Assistant