ARIZONA COURT OF APPEALS

DIVISION TWO

KARI LAKE, Plaintiff-Appellant, v. KATIE HOBBS, et al., Defendants-Appellees.	No. 2 CA-CV 23-0144 Maricopa County Superior Court No. CV2022-095403

MARICOPA COUNTY DEFENDANTS' ANSWERING BRIEF

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Introduction

Contestant-Appellant Kari Lake's Opening Brief is a discursive exercise in obfuscation. Rather than discussing the evidence offered at the two trials in this case—which conclusively demonstrates that Maricopa County conducted the 2022 General Election lawfully and without any notable error in the results—Lake misrepresents the factual record, ignores evidence contrary to her position, neglects to relate relevant portions of the case's procedural history, and argues plainly incorrect statements of the law. Lake also attempts to expand the proceedings beyond what the Arizona Supreme Court dictated. Lake boldly asserts that the Court should blindly accept her reality and should declare her the winner in the election without any consideration of the evidence from the trials. There is no legal or logical basis for what Lake requests, so her effort fails entirely.

This Court should closely review the factual record, and then affirm the trial court's rulings.

Statement of the Case and Facts

I. The trial court denied Defendants' motions to dismiss and Lake's Rule 60 Motion.

A. The first trial and remand

Lake filed her election contest in December 2022. (ROA 1.) The trial court permitted two claims in Lake's Complaint to proceed to trial: (1) part of Count II regarding ballot on demand ("BOD") printers and (2) Count IV regarding chain of

custody. (*See* ROA 150.) After a bench trial, the trial court rejected Lake's claims. (ROA 172.) In a published opinion, Division One of this Court affirmed. *Lake v. Hobbs*, 254 Ariz. 570, 525 P.3d 664 (App. 2023).

In May 2023, while otherwise affirming the Court of Appeals' opinion, the Arizona Supreme Court remanded this case to the superior court to reconsider the dismissal of Count III, stating:

> **IT IS FURTHER ORDERED** remanding to the trial court to determine whether the claim that Maricopa County failed to comply with A.R.S. § 16-550(A) fails to state a claim pursuant to Ariz. R. Civ. P. 12(b)(6) for reasons other than laches, or, whether Petitioner can prove her claim as alleged pursuant to A.R.S. § 16-672 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." (Opinion ¶ 11.)

(ROA 262 at 3–4.) The Arizona Supreme Court also sanctioned Lake for making an "unequivocally false" statement in connection with Lake's Petition for Review. (ROA 263.)

B. Motions filed after remand

Defendants filed motions to dismiss, which the trial court denied. (ROA 295 at 2–5.) In relevant part, the trial court stated: "Lake conceded that she is not challenging the process of signature review as to any specific ballot(s), whether any given signature matches a voter's record, or that the process was effective." (*Id.* at 4.) Instead, "[a]s Lake put it in her response, she 'brings a *Reyes* claim, not a

McEwen claim. She challenges Maricopa's failure to act, not its action on any particular ballot.' . . . Taking Lake's concession, she has stated a claim." (*Id.* at 4–5 (citation omitted).) As the trial court further explained in another order shortly before trial: "Read broadly, as the Court must, [Lake's Complaint] states a claim that no signature verification was conducted as to level 1 in addition to allegations that level 2 and 3 verifications did not occur." (ROA 305 at 2.)

Meanwhile, Lake filed a "Motion for Relief From Judgment" related to her claims that were previously dismissed or tried and upheld on appeal ("Rule 60 Motion"). (ROA 271.) The trial court denied the Rule 60 Motion. (ROA 295 at 5–8.)

II. The case proceeds to trial.

From May 17 through May 19, 2023, the trial court heard testimony and took evidence.

A. Onigkeit and Myers testify that signature verification occurred.

Lake's first witness, Jacqueline Onigkeit, testified about her work as a signature reviewer during the 2022 General Election. (*See* 05/17/2023 A.M. Tr. at 25–95.) Onigkeit testified about the multiple training sessions she was required to attend. (05/17/2023 A.M. Tr. at 37:7–40:20.) She testified that the purpose of the training was "[t]o make sure that we were following all of the laws and make sure that we were obviously doing our job[s]." (*Id.* at 37:7–10.) Onigkeit also testified in

detail about her work performing signature verification. (05/17/2023 A.M. Tr. at 41:10–44:6, 51:1–10, 74:24–78:10.) Describing the fruits of her work, Onigkeit testified:

> Once I verified the signature, if it was a signature that didn't match, then I would click the exception, which means rejection of that signature, which would then go to the level II managers for them to look at. If it was an approval, then I would press good, and that would go on, and my understanding was is that ballot would come -- run back for ballot processing to process.

(*Id.* at 43:2–8.) And when asked, "So did you perform your obligations as a level -- your duty as a level I signature [reviewer] to verify signatures?" Onigkeit responded: "Yes, I did." (05/17/2023 A.M. Tr. at 85:5–8.)

Lake also elicited testimony from Andrew Myers, who testified about his work as a signature reviewer during the 2022 General Election (*See* 05/17/2023 P.M. Tr. at 34–62.) Myers also testified about his training. (*Id.* at 35:23–38:21.) And Myers testified about his work performing signature verification. (*Id.* at 43:21–44:20, 56:19–58:24.) When asked, "You reviewed signatures of the general election; is that correct?" Myers answered: "Yes." (*Id.* at 60:17–19.)

B. Speckin opines that he believes signature verification occurred too quickly.

Lake presented opinion testimony from Erich Speckin. (05/18/2023 A.M. Tr. at 53–128; 05/18/2023 P.M. Tr. at 4–67.) Speckin has a background in handwriting analysis. (05/18/2023 A.M. Tr. at 54:22–72:19.) But Speckin has no experience

performing signature verification under Arizona law. (05/18/2023 P.M. Tr. at 46:1–3.) Speckin testified, based on "data" that he said came from Maricopa County, about the speed at which signature verification work occurred. (See 05/18/2023 A.M. Tr. at 82:12–127:13; 05/18/2023 P.M. Tr. at 4:19–13:16.) Specifically, Speckin opined that some of the signature verification occurred too quickly for the elections workers to properly "compare" the signatures. (*See* 05/18/2023 P.M. Tr. at 12:7–13:16, 63:4–67:4.) Speckin refused to testify "with 100 percent certainty that any of those workers did not conduct signature verification." (*See id.* at 51:15–24.) Nor would Speckin testify "with 100 certainty that no signature verification occurred in Maricopa County for the 2022 general election." (*Id.* at 52:5–9.)

C. Valenzuela explains that signature verification occurred to a standard beyond what is required by law.

Both Lake and Maricopa County elicited testimony from Rey Valenzuela, the Maricopa County Co-Director of Elections. (05/17/2023 P.M. Tr. at 71–135; 05/18/2023 A.M. Tr. at 13–49; 05/18/2023 P.M. Tr. at 86–129; 05/19/2023 A.M. Tr. at 6–124.) Valenzuela testified about the training that Maricopa County signature verification workers receive and the use of guides and training materials to perform their work. (*See* 05/17/2023 P.M. Tr. at 84:16–86:18, 124:25–125:18, 98:4–99:18, 104:24:–106:14.)

Valenzuela also testified that Maricopa County signature verification workers rely on "actual characteristics, broad and local, that are referenced when a signature

is -- is being examined that is in question." (*Id.* at 87:20–88:1.) Put another way, Valenzuela testified that the signature verification workers performed signature verification. (*E.g.*, 05/19/2023 A.M. Tr. at 36:12–41:5; 05/18/2023 P.M. Tr. at 89:25–92:24, 113:15–114:3.)

Regarding the speed at which signature verification can take place, Valenzuela testified that the length of time to verify a signature can vary and can occur quickly under some circumstances. (*See* 05/17/2023 P.M. Tr. at 110:6–111:11; 05/19/2023 A.M. Tr. at 14:18–23, 92:25–96:18, 97:19–98:3.) For example, Valenzuela testified that "[i]f the first lateral signature on file, vetted, verified signature, is an exact match -- we'll use that -- then that can take 1 to 2 seconds." (*Id.* at 93:2–13.) Similarly, a "no signature" "could be 1 second, as well." (*Id.* at 95:7–9.)

Valenzuela also testified about how the process has additional checks and balances through multiple layers of review. After a level I reviewer enters an "exception" (an inconsistent signature), a level II manager will review that disposition. (*See* 05/19/2023 A.M. Tr. at 10:19–11:22.) And "level III is basically, again, a 2 percent random audit . . . of all signatures, not just good, it's good, bad and otherwise." (05/18/2023 P.M. Tr. at 50:24–51:14.) This is a "daily review of all workers and their [signature] dispositions." (05/17/2023 P.M. Tr. at 130:15–21.) Level IV "is a daily audit review." (*See* 05/19/2023 A.M. Tr. at 52:2–20.)

Importantly, Valenzuela testified that the documents Speckin and Clay Parikh reviewed might not capture the length of time it took to review that signature based on these layers of review. (*See* 05/17/2023 P.M. Tr. at 130:4–131:9; 05/18/2023 P.M. Tr. at 123:11–124:15, 126:8–12; 05/19/2023 A.M. Tr. at 50:1–52:24.) For example, Valenzuela explained that some ballot affidavit envelopes (or "packets") must be "sent for curing" after a level I user determined, and a level II reviewer concurred, that the signature is not consistent. (05/18/2023 P.M. Tr. at 106:15–107:20.) As a result, after the "the voter is given the opportunity to cure, to authenticate their identity," a "cured" packet would only take one to two seconds to verify because "[t]his has been verified by the voter." (*Id.*)

III. The trial court rejects Lake's election contest, ruling that Lake failed to prove her signature verification claim (Count III)

On May 22, 2023, the trial court rejected Lake's election contest. (ROA 311 at 5.) The trial court specifically concluded that "[t]he evidence the Court received does not support [Lake's] remaining claim." (*Id.* at 2.) The court relied on the testimony of Onigkeit, Myers, and Valenzuela. (*Id.*) In particular, the trial court credited Valenzuela's testimony: "Mr. Valenzuela's testimony, elicited by both parties, is most helpful to the Court, and the most credible." (*Id.*) Based on the evidence, the trial court found "clear indicia that the comparative process was undertaken in compliance with the statute, putting us outside the scope of *Reyes*. 191 Ariz. at 92." (*Id.*) The court went on: "There is clear and convincing evidence that

the elections process for the November 8, 2022, General Election did comply with A.R.S. § 16-550 and that there was no misconduct in the process to support a claim under A.R.S. § 16-672." (*Id.*)

The trial court also rejected Lake's interpretation of § 16-550(A). (ROA 311 at 3.) In particular, the trial court refused to read into the statute additional requirements based on Speckin's testimony. (*Id.* at 5 ("Giving all due weight to Mr. Speckin's signature verification expertise, his analysis and preferred methodology is not law, and a violation of law is what [Lake] was required to demonstrate.").)

The court further found:

> [L]ooking at signatures that, by and large, have consistent characteristics will require only a cursory examination and thus take very little time. Mr. Valenzuela testified that a level one signature reviewer need not even scroll to look at other writing exemplars (beyond the most recent one provided) if the signatures are consistent in broad strokes.

(*Id.* at 4.) And the trial court explicitly found "that Mr. Valenzuela provided ample evidence that—objectively speaking—a comparison between voter records and signatures was conducted in every instance [Lake] asked the Court to evaluate." (Id. at 4.) Accordingly, Lake's election contest failed. (*Id.* at 5.)

On May 31, 2023, Lake appealed. (ROA 325.) This Court has jurisdiction to hear this appeal pursuant to § 12-120.21(A)(1).

Statement of the Issues

1. Did the trial court clearly err in its finding that Maricopa County correctly performed signature verification in the 2022 General Election when every witness connected with signature review in Maricopa County testified that they reviewed signatures properly and according to their training?

2. Did the trial court abuse its discretion when it rejected Lake's attempt to expand the proceedings and subvert the Court of Appeals' Opinion through a legally deficient Rule 60 Motion?

Argument

I. This Court should affirm the trial court's May 22, 2023 decision that Lake failed to prove her signature verification claim (Count III).

A. Standard of review

This Court "view[s] the facts on appeal from a bench trial in the light most favorable to upholding the judgment." *Town of Florence v. Florence Copper Inc.*, 251 Ariz. 464, 468, ¶ 20 (App. 2021). "This court will sustain factual findings unless they are clearly erroneous." *Kocher v. Dep't of Revenue of State of Ariz.*, 206 Ariz. 480, 482, ¶ 9 (App. 2003). "A finding of fact is not clearly erroneous if substantial evidence supports it, even if substantial conflicting evidence exists." *Id.* "Substantial evidence is evidence which would permit a reasonable person to reach the trial court's result." *In re Est. of Pouser*, 193 Ariz. 574, 579, ¶ 13 (1999).

"In applying the clearly erroneous standard to factual findings, [this Court] will defer to any factual findings explicitly or implicitly made, affirming them so long as they are supported by reasonable evidence." *Kocher*, 206 Ariz. at 482, ¶ 9. (quotation mark omitted). This Court "do[es] not reweigh conflicting evidence or redetermine the preponderance of the evidence. . . ." *Pouser*, 193 Ariz. at 579, ¶ 13.

B. The trial court properly concluded that Lake's *Reyes* claim failed.

Lake told the trial court that she intended to present a "*Reyes* claim" in the May 2023 trial. (ROA 281 at 9–13; (05/12/2023 Oral Argument Tr. at 36:23–24); *see also* ROA 311 at 2 ("As narrowed by [Lake] at argument and in her response to

the motion to dismiss, [Lake] brings a claim under *Reyes v. Cuming*, 191 Ariz. 91, 94 (App. 1997).").) This admission by Lake's attorney, Kurt Olsen, is binding on Lake, and it defines the scope of the claims presented at the second trial. *See Rogone v. Correia*, 236 Ariz. 43, 52, ¶ 32 (App. 2014) ("Attorneys serve as agents of their clients and bind them through actions they take within the scope of the representation.").

In *Reyes v. Cuming*, 191 Ariz. 91 (App. 1997), the undisputed record showed "the complete non-compliance with" § 16-550(A); the county recorder in *Reyes* admitted to performing no signature verification whatsoever because, he asserted, to do so would have been too high a burden. *Reyes*, 191 Ariz. at 93; *see also id.* ("The parties agree that the Recorder did not comply with section 16-550(A) and the absentee ballots changed the outcome of the election."). Thus, as the trial court stated, to prove her *Reyes* claim Lake "was obligated to prove that the process for submitting and processing ballots [under § 16-550(A)] did not occur." (ROA 311 at 2.)

After the three-day bench trial, the trial court correctly concluded that "[t]he evidence the Court received does not support" Lake's *Reyes* claim. (ROA 311 at 2.) The trial court found that two of Lake's fact witnesses—Onigkeit and Myers—testified that signature verification occurred. (*Id.*). This testimony, and the resulting finding, effectively torpedoed Lake's *Reyes* challenge, with her own witnesses

disproving her false claim that no signature verification had occurred.

The trial court also relied on Valenzuela's testimony, which it found to be both the "most helpful to the Court, and the most credible." (ROA 311 at 2.) This determination was based on Valenzuela's experience with signature review, both in the 2022 General Election and over his thirty-three years of election-related experience, which allowed him to provide "a hands-on view" of what happened in 2022 and a "broad overview of the entire process" of signature verification. (*Id*.) In particular, the trial court credited Valenzuela's testimony that "the human element of signature review" for the 2022 General Election "consisted of 153 level one reviewers, 43 level two reviewers, and two ongoing audits." (*Id.*)

Thus, on the *Reyes* claim, which was the only issue properly before it, the trial court concluded: "This evidence is, in its own right, clear indicia that the comparative process was undertaken in compliance with the statute, putting us outside the scope of *Reyes*." (ROA 311 at 2.) Accordingly, "[t]here is clear and convincing evidence that the elections process for the November 8, 2022, General Election did comply with A.R.S. § 16-550 and that there was no misconduct in the process to support a claim under A.R.S. § 16-672." (*Id.*)

On appeal, the only issue properly before this Court is whether the record supports the trial court's conclusion that Lake's *Reyes* claim failed. *See Kocher*, 206 Ariz. at 482, ¶ 9. A review of the transcripts shows that the trial court's ruling is

supported by the evidence in the record.[1] (*E.g.*, 05/17/2023 A.M. Tr. at 74:24–78:10, 85:5–8 (Onigkeit); 05/17/2023 P.M. Tr. at 56:19–58:24, 60:17–19 (Myers); 05/19/2023 A.M. Tr. at 36:12–41:5 (Valenzuela).)

Rather than engage with this analysis, Lake attempts to move the goalposts on her *Reyes* claim. (OB at 46–47.) Even though *Reyes* involved "the complete non-compliance with" § 16-550(A), *see* 191 Ariz. at 93, Lake argues that "nothing in *Reyes* limits its rule only to situations where non-compliance with signature-verification requirements is total, universally affecting all absentee [*sic*] ballots." (OB at 46.)

Lake's argument misses the point. That is not the claim that Lake presented in her Complaint—particularly as clarified in her response to the motions to dismiss.[2] Denying those motions, the trial court stated: "Lake conceded that she is not challenging the process of signature review as to any specific ballot(s), whether any

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[1] What follows is not, of course, an exhaustive list of trial testimony and exhibits that support the trial courts findings of fact—that is not an appellee's burden at this stage. *See Pouser*, 193 Ariz. at 579, ¶ 13. Instead, these examples illustrate the factual basis for the trial court's findings.

[2] Lake's response to the motions to dismiss stated she "does not seek to second-guess individual signature-verification determinations that an election official actually made" and "Lake brings a *Reyes* claim, not a *McEwen* claim. She challenges Maricopa [County]'s failure to act, not its action on any particular ballot." (ROA 281 at 9–13.) And at oral argument, Lake's counsel stated: "This case is precisely like *Reyes*, except it's *Reyes* on steroids. *Reyes* involved a few dozen ballots." (05/12/2023 Oral Argument Tr. at 36:23–24.) Again, these admissions are binding. *Rogone*, 236 Ariz. at 52.

given signature matches a voter's record, or that the process was effective." (ROA 295 at 4.) For this reason alone, the trial court allowed Lake to proceed to trial: "Taking Lake's concession, *she has stated a claim*." (*Id.* at 5 (emphasis added).)

To do otherwise—and to now allow Lake to modify her *Reyes* claim on appeal—would violate Arizona Rule of Civil Procedure 8's notice requirements. *See Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 8 (2008) ("Under Rule 8, Arizona follows a notice pleading standard, the purpose of which is to give the opponent fair notice of the nature and basis of the claim and indicate generally the type of litigation involved.") (internal quotation marks omitted). And a contestant in an election contest is not permitted to amend the complaint. *See Kitt v. Holbert*, 30 Ariz. 397, 406 (1926) ("[W]e are constrained both by reason and authority to hold that a statement of contest in an election contest may not be amended, after the time prescribed by law for filing such contest has expired"); *see also Burk v. Ducey*, No. CV-20-0349-AP/EL, 2021 WL 1380620, at *2 (Ariz. Jan. 6, 2021) (relying on *Kitt* to reject argument that "subsequent amendments [of complaint] cured any defect"),[3] *available at* https://casetext.com/case/burk-v-ducey-1.

In short, an election contestant cannot call her claim "*Reyes* on steroids" and then offer evidence at odds with *Reyes*' simple fact pattern. This Court should affirm

[3] Given the age of the *Kitt* decision, this unpublished decision order is cited for persuasive value only. *Cf.* Ariz. R. S. Ct. 111(c)(1)(C) (authorizing use of unpublished memorandum decisions "for persuasive value").

the trial court's ruling that Lake failed to prove her *Reyes* claim.

C. The trial court properly rejected Lake's modified *Reyes* claim.

Assuming *arguendo* that a *Reyes* claim could accommodate Lake's revised factual theory that "275,000+ ballot affidavit signatures were counted at humanly impossible speeds," (*see* OB at 46–47; *see also id.* at 21–29, 43, 47–48), and that her Complaint can be read consistent with Rule 8's notice pleading standard to encompass such a claim, the trial court properly concluded that Lake's modified *Reyes* claim failed.

1. The trial court correctly interpreted § 16-550(A).

As an initial matter, the trial court properly rejected Lake's effort to re-write § 16-550(A). (ROA 311 at 3.) This Court reviews the interpretation of a statute *de novo*. *S. Ariz. Home Builders Ass'n v. Town of Marana*, 254 Ariz. 281, ¶ 16, 522 P.3d 671, 674 (2023). In relevant part, § 16-550(A) states:

> [O]n receipt of the envelope containing the early ballot and the ballot affidavit, the county recorder or other officer in charge of elections shall *compare* the signatures thereon with the signature of the elector on the elector's registration record. If the signature is inconsistent with the elector's signature on the elector's registration record, the county recorder or other officer in charge of elections shall make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature. The county recorder or other officer in charge of elections shall allow signatures to be corrected not later than the fifth business day after a primary, general or special election that includes a federal office or the third business day after any other election. If the signature is missing, the county recorder or other officer in charge of elections shall make reasonable efforts to contact the elector, advise the elector

> of the missing signature and allow the elector to add the elector's signature not later than 7:00 p.m. on election day. *If satisfied that the signatures correspond, the recorder or other officer in charge of elections shall hold the envelope containing the early ballot and the completed affidavit unopened in accordance with the rules of the secretary of state*.

(Emphasis added); *see also* 2019 Election Procedure Manual, at 68–69.

Lake asks this Court to re-write § 16-550(A) to impose "substantive steps" for signature verification and to add a minimum length of time for each signature comparison. (*See* OB at 42–44; *see also* ROA 311 at 3 (describing Lake's argument and rejecting it).) Lake's approach is at odds with the basic tenets of statutory interpretation.

"Statutory interpretation requires [Arizona's courts] to determine the meaning of the words the legislature chose to use. [The courts] do so . . . according to the plain meaning of the words in their broader statutory context . . . ." *S. Ariz. Home Builders*, 522 P.3d at 676, ¶ 31. The "aim in statutory interpretation is to effectuate the legislature's intent." *Welch v. Cochise Cnty. Bd. Of Supervisors*, 251 Ariz. 519, 523, ¶ 11 (2021) (internal quotation marks omitted). "Absent ambiguity or absurdity, [a court's] inquiry begins and ends with the plain meaning of the legislature's chosen words, read within the overall statutory context." *Id.* (internal quotation marks omitted). "Where a statute is silent on an issue, [Arizona's courts] will not read into [it] something which is not within the express manifest intention of the Legislature as gathered from the statute itself, nor will [a court] inflate, expand, stretch or extend

the statute to matters not falling within its expressed provisions." *Ponderosa Fire Dist. v. Coconino Cnty.*, 235 Ariz. 597, 603, ¶ 30 (App. 2014).

Here, § 16-550(A) establishes that "the county recorder or other officer in charge of elections shall *compare* the signatures [on "the envelope containing the early ballot and the ballot affidavit"] with the signature of the elector on the elector's registration record." The statute further states that this comparison occurs, as the trial court put it, "to the satisfaction of the recorder, or his designee." (ROA 311 at 4); *see* § 16-550(A) ("If satisfied that the signatures correspond, the recorder or other officer in charge of elections shall hold the envelope containing the early ballot and the completed affidavit unopened in accordance with the rules of the secretary of state.").

Nothing in the plain text of § 16-550(A) specifies how the comparison occurs or establishes how long each comparison should take. Lake's Opening Brief concedes this point, stating: "Despite requiring counties to 'compare' signatures, neither the statute nor the [2019 Election Procedures Manual] defines the specific steps that must be completed to perform the mandatory act of comparison." (OB at 22.)

In place of the statutory text, Lake seeks to use a dictionary definition of the word "compare" as a springboard into the Secretary of State's Signature Verification Guide, Maricopa County's own practices, and her witness' testimony about

handwriting analysis in his line of work. (*See* OB at 23–27.) But if the Legislature had intended to establish substantive steps and set a minimum length of time for each signature comparison based on some other source, it would have said so. *See Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 526, 529 (1994) (explaining that fundamental to statutory interpretation "is the presumption that what the [l]egislature means, it will say") (internal citations and quotations omitted). Indeed, the Legislature knows how to refer to a source outside of the statutory scheme when it intends for elections officials to follow more specific instructions. *See, e.g.*, § 16-452 (establishing basis for the Secretary of State's Election Procedures Manual); § 16-542 (referring to "secretary of state's instructions and procedures manual adopted pursuant to § 16-452"); § 16-602(B) (same).

Instructively, the *Reyes* court rejected an effort to read additional requirements into § 16-550(A). 191 Ariz. at 93 ("We are not swayed by the Recorder's testimony that it would be difficult to retain handwriting experts to compare these signatures. While having a handwriting expert on hand for exceptional cases might be a sound practice, A.R.S. section 16-550(A) does not require any special expertise on the part of the person making the comparison. The statute merely requires the comparison be made."). This Court should reject Lake's argument and affirm the trial court's interpretation of § 16-550(A).

2. The trial court properly found that no violation of § 16-550(A) occurred.

The trial court properly found that "a comparison between voter records and signatures was conducted in every instance [Lake] asked the Court to evaluate" and it properly concluded that "[t]here is clear and convincing evidence that the elections process for the November 8, 2022, General Election did comply with A.R.S. § 16-550 and that there was no misconduct in the process to support a claim under A.R.S. § 16-672." (ROA 311 at 2, 4.) The record supports this ruling.

a. The record supports the trial court's ruling.

Lake's unsupported argument that "275,000+ ballot affidavit signatures were counted at humanly impossible speeds" is at odds with an appellate court's role following a bench trial. *See Lake v. Hobbs*, 254 Ariz. 570, ¶ 13, 525 P.3d 664, 668 (App. 2023) ("The superior court assesses witness credibility, weighs the evidence, and resolves conflicting facts and expert opinions, all factual determinations to which [this Court] defer[s]."). More importantly, it is at odds with the record.

To begin with, the trial court made explicit credibility determinations:

> Mr. Valenzuela's testimony, elicited by both parties, is most helpful to the Court, and the most credible. This is not merely for reasons of honesty (the Court makes no finding of dishonesty by any witness – and commends those signature reviewers who stepped forward to critique the process as they understood it). While Ms. Onigkeit and Mr. Myers have ground level experience with signature review, Mr. Valenzuela provided the Court with both a hands-on view based on the 1,600 signatures reviewed by him personally in November 2022 and a broad overview of the entire process based upon his 33 years of

experience.

(ROA 311 at 2); *see also id.* at 5 ("The Court having weighed all the evidence, argument, and legal memoranda and having assessed the credibility and demeanor of witnesses presenting testimony at trial, now enters the following Findings of Fact and Conclusions of Law.").

The trial court also made specific factual findings about the process of signature verification based on Valenzuela's testimony. "The Court finds that looking at signatures that, by and large, have consistent characteristics will require only a cursory examination and thus take very little time. Mr. Valenzuela testified that a level one signature reviewer need not even scroll to look at other writing exemplars (beyond the most recent one provided) if the signatures are consistent in broad strokes." (ROA 311 at 4.) The trial court went on: "the Court finds that Mr. Valenzuela provided ample evidence that—objectively speaking—a comparison between voter records and signatures was conducted in every instance Plaintiff asked the Court to evaluate." (*Id.* at 4) And the trial court found: "Mr. Valenzuela testified that the final canvass was accurate. No clear and convincing evidence, or even a preponderance of evidence, contradicts him." (*Id.* at 5.)

A review of the trial transcripts shows that substantial evidence supports the trial court's findings.[4] Regarding speed—the claim that animates Lake's appeal—

[4] As before, these examples illustrate the factual basis in the record for the trial

Valenzuela testified that the length of time to verify a signature can vary and verification can occur quickly. (*E.g.*, 05/17/2023 P.M. Tr. at 110:6–111:11; 05/18/2023 A.M. Tr. at 92:25–96:18, 97:19–98:3; 05/19/2023 A.M. Tr. at 14:18–23; *cf.* 05/18/2023 A.M. Tr. at 94:6–17 (Speckin testifying that "[t]he level of detail and amount of time would go proportionally down typically with the amount of signatures at issue if we're talking about the task and the consequences and the layout of the individual matter" while "what you would look for like the broad and local characteristics that were discussed yesterday, those don't change").)

Indeed, Valenzuela testified in detail about the signature verification process and how different factors impact the length of time it takes to verify any particular signature. (*E.g.*, 05/17/2023 P.M. Tr. at 130:4–131:9; 05/18/2023 P.M. Tr. at 123:11–124:15, 126:8–12; 05/19/2023 A.M. Tr. at 50:1–52:24.) And Valenzuela testified about the impact the curing process has on the speed of signature verification. (*E.g.*, 05/17/2023 P.M. Tr. at 106:15–107:20, 110:18–111:25, 122:13–25.)

In sum, the record supports the trial court's ruling, and this Court is not in the business of reweighing the evidence when substantial evidence supports the trial court's findings. This Court should affirm.

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court's ruling and need not be exhaustive. *See Pouser*, 193 Ariz. at 579, ¶ 13.

b. Lake's arguments on appeal fail.

On appeal, Lake fails to carry her heavy burden to show that the record does not support the trial court's ruling. *See Pouser*, 193 Ariz. at 579, ¶ 13; *Lake*, 525 P.3d at 668, ¶ 13; *Town of Florence*, 251 Ariz. at 468, ¶ 20; *Kocher*, 206 Ariz. at 482, ¶ 9.

1. Lake's attempt to undermine the trial court's findings of fact based on Valenzuela's testimony fails. Lake seeks to discredit Valenzuela's testimony by asserting that "Elections Director Valenzuela testified that verification workers actually 'don't need to look at any' of these [Signature Verification Guide] characteristics—unless 'you have a signature in front of you that you're questioning." (OB at 25–26; *see also id.* at 20, 45.) Lake's assertion fails because it cherry picks and misrepresents a few out-of-context words from Valenzuela's lengthy trial testimony.

The full context of this quote indicates that Valenzuela was testifying about the verification process "for no signature"—in other words, when early voters forget to sign their early ballot affidavit envelopes and there is no signature to review; Valenzuela was not speaking about what is necessary to review signatures when the voter signs the affidavit. (05/17/2023 P.M. Tr. at 87:2–19.) Indeed, the same portion of the trial transcript that Lake cites for this assertion explicitly refutes it: when asked by Lake's counsel, "[s]o nobody really needs to reference these standards to approve

signatures in Maricopa County? Is that what you're saying?," Valenzuela responded, "No. That's not what I said" and explained the use of "broad and local" characteristics. (05/17/2023 P.M. Tr. at 87:20–88:1; *see also* 05/19/2023 A.M. Tr. at 107:15–109:2 (explaining prior testimony).) This out-of-context quote does not establish that the trial court's findings of fact are somehow suspect.

Lake also argues that the trial court's factual findings are not supported by Valenzuela's testimony because "Valenzuela's own performance highlights the impossibility of the speeds and approval rates that Maricopa [County]'s verification workers achieved." (OB at 29; *see also id.* at 44–45.) Nothing in the portions of Valenzuela's testimony cited in Lake's Opening Brief addresses the speed at which Valenzuela performed his signature verification work—let alone undermined the trial court's findings based on Valenzuela's testimony. *See* ARCAP 13(a)(7)(A) (requiring argument in the opening brief to contain "appropriate references to the portions of the record on which the appellant relies").

2. Lake's reliance on Speckin's testimony is misplaced. (*See* OB at 26–29, 42–45.) Lake's Speckin-based arguments simply ask this Court to reweigh the evidence and re-assess the credibility of the witnesses—something this Court cannot do. *Pouser*, 193 Ariz. at 579, ¶ 13; *Kocher*, 206 Ariz. at 482, ¶ 9.

For example, the trial court did not, as Lake argues at page 43, "ignore[] the testimony of Mr. Speckin and [unnamed] others"—the trial court simply did not find

Speckin's opinion persuasive. As the trial court explicitly found:

> While Plaintiff did not demonstrate any lack of compliance with statute or [2019 Election Procedures Manual], she did bring in a signature verification expert who testified what he believed to be necessary for signature verification in his line of work. But there is no statutory or regulatory requirement that a specific amount of time be applied to review any given signature at any level of review. Giving all due weight to Mr. Speckin's signature verification expertise, his analysis and preferred methodology is not law, and a violation of law is what Plaintiff was required to demonstrate.

(*Id.* at 5.) The trial court had no obligation to credit Speckin's opinion—particularly because Speckin has no experience performing signature verification under Arizona law. (05/18/2023 P.M. Tr. at 46:1–3.)

Similarly, Lake's reliance on the demonstrative Exhibit 47 is unfounded. (OB at 27–29.) The trial court considered that demonstrative along with the rest of Speckin's testimony—and did not find it compelling. (ROA 311 at 5 ("Further, exhibit 47, the chart created by others for Mr. Speckin, depicts his interpretation of data derived from a public records request and was not admitted except as demonstrative to permit him to opine generally.").) Lake's argument at page 27 about the introduction of the underlying "data" does not move the needle on this Court's analysis when the trial court explicitly considered and rejected the witness' opinion. *Cf. BNCCORP, Inc. v. HUB Int'l Ltd.*, 243 Ariz. 1, 11, ¶¶ 44–46 (App. 2017) (upholding trial court's findings of fact even where "the court's ruling does not specifically mention [the] expert testimony" because "nothing in the record

before us suggests the trial court here did not consider [the] experts' opinions"). And Lake did not offer Speckin as a statistical expert, so his statistical opinions about the underlying "data" are irrelevant and inadmissible. (*See* 05/18/2023 A.M. Tr. at 103:1–17.)[5] In short, Lake's disagreement with the weight the trial court assigned to Speckin's testimony is not a valid basis for reversal.

3. Lake falsely asserts that "Maricopa [County] created the façade of signature verification." (OB at 19–21.) This strawman argument lacks support in the record and—more importantly for purposes of appeal—is utterly tangential to her modified *Reyes* claim that Maricopa County did not perform signature verification or did so inadequately in violation of § 16-550(A). What is more, the trial court, after having considered the testimony and evidence, concluded that "[t]here is clear and convincing evidence that the elections process for the November 8, 2022, General Election did comply with A.R.S. § 16-550." (ROA 311 at 2.)

4. Finally, Lake's assertion on appeal that signature verification workers followed "their own subjective judgment" rather than their training is wholly without support in the record. (*See, e.g.*, OB at 24, 26, 43–44.) Lake's own fact witnesses testified that they followed their training. (*E.g.*, 05/17/2023 A.M. Tr. at 74:24–78:10,

[5] To the extent that Lake's argument suggests that this Court should undertake its own analysis of the underlying data, this Court should reject it. (*See* 05/18/2023 A.M. Tr. at 121:22–23 (Speckin testifying that "It's huge. It's million -- 1.4 million lines of text with four columns per piece. It's big.").)

85:5–8; 05/17/2023 P.M. Tr. at 56:19–58:24, 60:17–19.) Not one person who conducted signature verification testified otherwise.

* * * * *

At bottom, Lake's argument about the "275,000+" signatures necessarily requires this Court to reweigh the evidence and to credit Speckin's testimony over Valenzuela's. Because Lake's argument is at odds with the basics of appellate review and the record, this Court must reject it.

II. The trial court did not abuse its discretion when it denied Lake's Rule 60 Motion.

A. Standard of review

This Court reviews the denial of Rule 60(c) motion for "a clear abuse of discretion." *Andrews v. Andrews*, 126 Ariz. 55, 57 (App. 1980). "A trial court enjoys broad discretion in deciding whether to set aside judgments." *Skydive Arizona, Inc. v. Hogue*, 238 Ariz. 357, 364, ¶ 24 (App. 2015). This Court may affirm if the trial court's ruling is correct for any reason apparent in the record. *Forszt v. Rodriguez*, 212 Ariz. 263, 265, ¶ 9 (App. 2006).

B. Lake did not present any valid basis for obtaining Rule 60 relief.

1. Lake did not present new evidence that would warrant Rule 60 relief.

a. Lake's supposed "new evidence" is not new evidence.

Lake's attempt to obtain relief under Arizona Rule of Civil Procedure 60 based on the discovery of new evidence was futile because her alleged "new

evidence" was not actually new evidence for the purposes of Rule 60. Underscoring the lack of seriousness in this appeal and the lack of new, material evidence, that section of Lake's Opening Brief does not even bother to list the new evidence upon which her Rule 60 Motion was based, leaving the Court and Defendants alike to speculate as to which bits of irrelevant material upon which Lake chooses to rely. (OB at 9–10 (referring to tabulator logs, the McGregor Report, and "other documents").)

The Maricopa County Defendants' reading of Lake's Opening Brief and her Rule 60 Motion lead them to believe that Lake's alleged "new evidence" boils down to four items: (1) the April 2023 McGregor Report; (2) some documents—including some Goldenrod reports and call logs—obtained pursuant to a post-judgment public records request by a non-party who provided Lake with the information; (3) some testimony from Scott Jarrett; and (4) a new declaration from Clay Parikh supposedly interpreting this new information.

None of these items constitutes new evidence that would warrant Rule 60 relief. First, the McGregor Report obviously cannot constitute "new evidence" under Rule 60 because it was released in April 2023, after the first trial in this matter. *See Birt v. Birt*, 208 Ariz. 546, 549, ¶ 11 (App. 2004) ("Newly discovered evidence within the meaning of Rule 60(c)(2) is evidence which existed at the time of trial.").

Second, the supposed evidence coming from some public records responses

does not constitute new evidence because Lake fails to explain what they are and further fails to demonstrate that these records could not have been obtained prior to trial or that she exercised reasonable diligence in attempting to obtain this information. *See Catalina Foothills Ass'n, Inc. v. White*, 132 Ariz. 427, 429 (App. 1982) ("Evidence that could have been discovered with reasonable diligence prior to trial is not entitled to be considered as 'newly discovered.'"); *see also Bailey v. United States*, 250 F.R.D. 446, 448 (D. Ariz. 2008) (noting "carelessness and ignorance on the part of the litigant or his attorney is not" sufficient grounds to obtain relief under Rule 60).

Here, Lake does nothing to establish that she pursued the identified information with diligence. Lake does not identify when the public records requests were made, who made them, or when the requester received a response. Instead, Lake generically asserts—without detail—that she received some documents pursuant to public records requests. (*See* OB at 9–11; ROA 271 at 7–8.) Lake admits that she received at least some of this information prior to the first trial, but then complains that she did not have time to analyze it. (*See* OB at 36.) Lake cannot claim that she diligently sought this information when she admits that some of these requests were submitted *after the judgment following the first trial*. (*Id.*)

Finally, the information from the declarations of Clay Parikh and Scott Jarrett are not "new evidence" because both witnesses were called to testify at trial and

were extensively questioned on the stand. Lake could have elicited their testimony on these subjects at trial, but chose not to. Moreover, to the extent that Parikh's declaration purports to interpret this supposed "new evidence," it is derivative of these documents and has no independent value in this analysis.

In short, none of Lake's supposed "new evidence" constitutes new evidence under Rule 60, so the trial court properly denied Rule 60 relief.

b. Lake's supposed "new evidence" is nothing more than speculation.

Lake attempts to draw several conclusions from her supposed "new evidence." (*See* OB at 9–11.) But these conclusions are nothing more than speculation that violates ARCAP 13(d). This Court should closely compare the factual representations made in Lake's Opening Brief with the factual record when considering the merits of this appeal.

1. Lake asserts that the Maricopa County Defendants did not perform logic and accuracy testing on "any of the tabulators" used on Election Day. For support, Lake cites only to the Parikh declaration—not any documentary evidence—which only contains the conclusory statement that this testing never happened. (ROA 271, Ex. A, ¶¶ 11–13.) This is blatantly false. The record contains the certificates and testimony demonstrating that the logic and accuracy testing occurred. The Arizona Secretary of State's office participated in the logic and accuracy testing, and issued a certificate stating that the tabulators passed the testing. (ROA 271, Ex. A,

Ex. 1.) This certificate was signed by the state Elections Director and Maricopa County elections officials; indeed, political party observers, including a Republican Party precinct committeeman and another Republican Party observer, signed a certificate professing that the testing occurred on October 11, 2022. (*Id.*)[6] Moreover, Scott Jarrett, Maricopa County's Co-Director of Elections, submitted a declaration explaining that the tabulators were put through logic and accuracy testing, that the test included tabulators used in vote centers on election day, and that the testing occurred on October 11, 2022. (ROA 280, Ex. A, ¶¶ 5–8, 12–13.)[7] The evidence is conclusive: the tabulators were put through the required logic and accuracy testing and passed.

2. Lake also asserts that Maricopa County engaged in an unlawful "unannounced" logic and accuracy testing of the tabulators starting on October 14, 2022, which she alleges the tabulators failed. Once again, Lake does not cite to any documentary evidence, but only to Parikh's Declaration which contains only

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[6] Parikh baldly claims these certificates are false, but provides no basis for this assertion nor the logs he purportedly reviewed in arriving at his fantastical conclusion. (ROA 271, Ex. A at ¶ 12.) *See also Riggs Nat. Corp. & Subsidiaries v. Comm'r*, 295 F.3d 16, 21 (D.C. Cir. 2002) (stating that official government documents are entitled to a presumption of validity which "may only be rebutted through clear or specific evidence" to the contrary).

[7] Lake attempts to discount this testimony by referring to Paragraph 7 of Jarrett's Declaration, asserting that Jarrett never testified that logic and accuracy testing occurred on October 11, 2022. (*See* OB at 13.) This assertion is spurious. Jarrett discusses the logic and accuracy test in Paragraphs 12 and 13 of the Declaration, not Paragraph 7.

conclusory statements. (*See* OB at 13.) Parikh, however, apparently misread whatever evidence he supposedly relied upon[8] because no logic and accuracy testing occurred on those days. To the contrary, on October 14, 17, and 18, 2022, Maricopa County installed new memory cards on its Election Day tabulators—each memory card containing the certified Election Program that had undergone the logic and accuracy testing on October 11. (ROA 280, Ex. A, ¶ 14.) The tabulators' logs would, therefore, have a start date based on the date of the memory card's installation between October 14 and 18. (*Id.*)

There is nothing secretive or mysterious about this installation, and the installations were captured on live video streams within Maricopa County's Ballot Tabulation Center. (*Id.*) After installing these memory cards, elections officials ran a small number of sample ballots through each tabulator to ensure that the installation was properly performed. (*Id.*, ¶ 15.) These test ballots included some ballots with overvotes, blank ballots, and accessible voting ballots that, when run through a tabulator, will produce the same type of "Ballot Misread" errors that also occurred on Election Day in connection with the BOD printer issue. (*Id.*) Although it appears that the documentary evidence Parikh supposedly relied upon is not in the

[8] It is difficult to identify the source Parikh relies upon for his outrageous claims because he repeatedly fails to show his work or support his baseless assertions with citations to documentary evidence. As a result, the Maricopa County Defendants cannot say whether Parikh misunderstood some report he read, or whether he cut this allegation out of whole cloth. Either way, the allegation is false.

record, and Parikh fails to cite the documentary evidence, the errors reported in his Declaration in connection with this testing are possibly the result of these test ballots. (*See* ROA 271, Ex. A, ¶¶ 20–22.) Even then, Parikh's method of determining that the tabulators supposedly "failed" the test is faulty because a tabulator misreading a ballot does not necessarily indicate that the tabulator is malfunctioning and reviewing the tabulator's logs will not accurately reveal whether the tabulator would fail logic and accuracy testing. (ROA 280, Ex. A at ¶ 17). These errors can be the result of mundane reasons, such as the ballot being inserted slightly askew or if some residue was left on the tabulator after cleaning. (*Id.*).

3. Lake next asserts that the McGregor Report contains information that supports Lake's assertion that the issue regarding ballots printed at the incorrect size on Election Day could only be the result of malware or administrative changes. (OB at 14.) This assertion seeks to re-hash Parikh's testimony at the first trial that was rejected by the trial court. (*See* ROA 172 at 6–7, 9.) On remand from the Supreme Court, Lake attempted to revive this argument by asserting that the McGregor Report supported her assertion that the "fit-to-page" printer issue was the result of intentional misconduct. (ROA 271 at 15:9–16:9.) This assertion is completely false. The McGregor Report, far from supporting Lake's position, concluded that the "fit to page" issue appeared to be random and none of the experts could identify the source of the problem. (*Id.*, Ex. E at 12.) The McGregor Report certainly *did not* find

that the "fit to page" issue was the result of intentional misconduct as Lake asserts. In fact, the trial court described Lake's characterization of the McGregor Report as "180 degrees from the truth," and it concluded that the McGregor Report actually supports Jarrett's testimony. (ROA 295 at 6; *see also id*. at 6–7 (discussing Betencourt's testimony).) Lake offers nothing that would change the trial court's assessment of this evidence.

4. Finally, Lake asserts that the "new evidence" shows that Jarrett gave false or misleading testimony. (OB at 15–18.) Although this discussion is wholly irrelevant to the resolution of this appeal—none of the claims have an element that requires Lake to show that Jarrett gave inaccurate testimony—the Maricopa County Defendants feel obligated to set the record straight.

To be clear: Lake has argued that Jarrett gave false testimony to every court since she lost her first trial in December. That argument has been rightly rejected by every court along the way, and for good reason.

First, Lake asserts that Jarrett gave false testimony regarding the size of the ballot images used to generate the ballots that the BOD printers use on Election Day. Lake raised this argument in her first appeal. (Lake's Opening Brief in Case No. CA-CV 22-0779, at 9–14.)[9] The argument was so ineffective that it did not warrant

[9] This Court can take judicial notice of the records in Lake's prior appeal. *See In re Sabino R.*, 198 Ariz. 424, 425, ¶ 4 (App. 2000).

mention in the Opinion. Despite Division One's implicit rejection of Lake's argument, Lake has continued to assert this point. As more fully explained in the Maricopa County Defendants' Answering Brief in the first appeal, (*see* Maricopa County Defendants' Answering Brief in Case No. CA-CV 22-0779, at 10-15),[10] Lake's argument is based entirely on her lack of knowledge—now willful ignorance given how many times this has been explained—of the functioning and precise terminology of election processes.

Second, Lake asserts that it was false for Jarrett to describe the Election Day BOD printer issue as a "hiccup" because a large number of ballots were rejected on Election Day. Even assuming that a characterization of degree such as "hiccup" can be proven false, Lake fails to prove that the problems on Election Day were actually anything more than a hiccup. As the trial court correctly noted, even Lake's "expert" Parikh admitted that the ballots subject to the BOD printer problem were duplicated and tabulated. (ROA 172 at 6.) Therefore, the Election Day issues may have caused some more work for Maricopa County employees, but it did not affect the results or timing of the election. Jarrett's characterization of the issues as a "hiccup" was accurate.

Third, Lake puzzlingly argues that Jarrett gave false testimony by not

[10] That more fulsome discussion of the evidence is incorporated here by reference. (*See also* ROA 279 at 7:9–10:4.)

admitting to the various speculative theories debunked in this section until the response to the Rule 60 Motion. The speculative theories Lake presents were not at issue in the December 2022 trial because they largely pertain to the April 2023 McGregor Report and to logic and accuracy testing of Maricopa County's tabulators. It is unclear when or how Jarrett could have anticipated these issues and preemptively given testimony on them.

Finally, Lake asserts that the McGregor Report contradicts Jarrett's testimony relating to the "fit-to-page" issue. As with Lake's other characterizations of the McGregor Report, this simply is not accurate. As discussed, the McGregor Report absolutely does not say that the BOD printers printed some smaller ballots due to any sort of misconduct, as Lake asserts. Rather, the McGregor Report indicates that some BOD printers randomly printed smaller ballots, and she and her investigators could not determine why. (ROA 271, Ex. E at 12; *see also* ROA 295 at 6 (characterizing Lake's description of the McGregor Report as "180 degrees from the truth").)

Ultimately, all of Lake's interpretations of the "new evidence" are nothing more than false, manufactured speculation which is disproven by the factual record. They provide no basis for granting Rule 60 relief.

2. Lake did not actually move for relief due to fraud or pursuant to the catch-all provision of Rule 60.

Lake's Rule 60 Motion, and her argument on appeal, attempts to manufacture

additional bases for Rule 60 relief when, in reality, the only basis Lake truly asserts is the supposed discovery of new evidence. (OB at 36–41.)

1. Starting with Lake's claim for relief under Rule 60(b)(3), Lake provides no basis for arguing that the Maricopa County Defendants, or any other Defendant, took any action to mislead or defraud the trial court. To obtain relief under Rule 60(b)(3), the movant must carry the onerous burden of proving by clear and convincing evidence that (1) the movant had a viable claim; (2) that they were prevent from fully presenting to the court before judgment; (3) as a direct result of the adverse party's fraud or misconduct. *Est. of Page v. Litzenburg*, 177 Ariz. 84, 93 (App. 1993); *Lake v. Bonham*, 148 Ariz. 599, 601 (App. 1986). Mere factual disputes or the non-disclosure of evidence (which did not happen here) is not sufficient to entitle the movant to Rule 60 relief. *McNeil v. Hoskyns*, 236 Ariz. 173, 178, ¶ 23 (App. 2014); *see United States v. Est. of Stonehill*, 660 F.3d 415, 444 (9th Cir. 2011).

Lake does not attempt to present evidence showing that the Maricopa County Defendants committed some kind of fraud in this matter. Instead, Lake vaguely references the various speculative theories debunked above and then asserts that the Maricopa County Defendants acted fraudulently by not admitting to these unfounded theories. (OB at 38–39.) Lake does not point to any individual action that the Maricopa County Defendants allegedly took to mislead or defraud the trial court on these issues. Nor can Lake rely on any alleged fraud associated with discovery

because there is no discovery in an election contest save ballot inspections. *See* § 16-677. Without such evidence, Lake cannot possibly hope to show fraud, let alone prove such fraud to a clear and convincing evidence standard.

2. Nor can Lake attempt to get relief under Rule 60(b)(6). Fundamentally, the catch-all provision within Rule 60(b) is intended to apply to those situations in which no other grounds to move for Rule 60 relief exist. It is mutually exclusive from the other bases for Rule 60 relief, and it cannot apply where another subsection would apply. *Gonzalez v. Nguyen*, 243 Ariz. 531, 535, ¶ 15 (2018). Generally, to obtain relief under Rule 60(b)(6), the movant must show that the facts "go beyond" any of the other five clauses *and* that extraordinary circumstances of hardship or injustice justify relief. *Webb v. Erickson*, 134 Ariz. 182, 187 (1982).

Here, it is apparent that the facts of this case do not warrant Rule 60(b)(6) relief. Lake attempts to shoehorn evidence that does not meet the standard for "new evidence" under Rule 60(b)(2) into the Rule 60(b)(6) analysis. The section of the Opening Brief advocating for this relief consists of two paragraphs. (OB at 40–41.) The first paragraph consists of a misstatement of the legal standard for obtaining for Rule 60(b)(6) relief, while the second paragraph is simply a regurgitation of the speculation Lake attempts to pass off as "new evidence." Lake's analysis is a non-starter. Relief under Rule 60(b)(6) is mutually exclusive from relief under Rule 60(b)(2), and Lake does not attempt to show that the judgment obtained was an

injustice or that any facts beyond the supposed "new evidence" warrants relief from judgment. Indeed, the fact that Lake's "new evidence" is not actually new evidence essentially forecloses its use as a ground for obtaining Rule 60(b)(6) relief.

The Court should reject Lake's attempts to muddy the legal analysis and rule that her "new evidence" fails to provide any basis for Rule 60 relief.

C. The trial court had no option but to deny Lake's Rule 60 Motion as a matter of law.

1. Granting the Rule 60 Motion would have exceeded the Supreme Court's mandate.

An appellate court's mandate is binding upon the trial court on remand. *Bogard v. Cannon & Wendt Elec. Co.*, 221 Ariz. 325, 334, ¶ 30 (App. 2009). Indeed, on remand the trial court lacks jurisdiction to do anything outside the terms of the mandate. *Tucson Gas & Elec. Co. v. Superior Ct.*, 9 Ariz. App. 210, 213 (1969). This principle is so well-established that Arizona's appellate courts enforce this jurisdictional limitation via special action. *See Cabanas v. Pineda*, 246 Ariz. 12, 17, ¶ 15 (App. 2018) ("Special action jurisdiction is appropriate when the superior court has acted contrary to this court's mandate.").

Here, the Arizona Supreme Court's Order relating to Lake's Petition for Review is clear that on remand the trial court only had jurisdiction to consider Count III, a claim about signature verification. As that court stated:

> **IT IS FURTHER ORDERED** remanding to the trial court to determine whether the claim that Maricopa County failed to comply

> with A.R.S. § 16-550(A) fails to state a claim pursuant to Ariz. R. Civ. P. 12(b)(6) for reasons other than laches, or, whether Petitioner can prove her claim as alleged pursuant to A.R.S. § 16-672 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." (Opinion ¶ 11.)

(ROA 262 at 3–4.) This Order was directly incorporated into the Mandate to the trial court. (ROA 261.) Therefore, the trial court's jurisdiction on remand was explicitly limited by the terms of the Order.

The trial court, as a matter of law, could not have granted Lake's Rule 60 Motion because the Motion sought to revive claims that went beyond the limits set by the Arizona Supreme Court. In particular, the Motion sought to revive claims relating to the BOD printer issues (Count II) and the derivative constitutional claims (Counts V and VI). None of these claims pertained to whether Maricopa County elections officials violated § 16-550(A). Therefore, the trial court lacked jurisdiction to reopen these claims, and the Rule 60 Motion failed as a matter of law. The trial court did not abuse its discretion in denying the motion, and this Court should affirm.

2. The election contest statutes do not provide the ability to move for relief under Rule 60.

Separately, the trial court could not grant the Rule 60 Motion because the election contest statutes foreclose a contestant/contestee's ability to move for relief under Rule 60. Election contests are creatures of statute and are constrained by the terms of the statutory scheme. *Fish v. Redeker*, 2 Ariz. App. 602, 605 (1966); *see*

also Pacion v. Thomas, 225 Ariz. 168, 170, ¶ 12 (2010). The election contest statutes contain jurisdictional time limits. *Hunsaker v. Deal*, 135 Ariz. 616, 617 (App. 1983). The "time elements in election statutes [must] be strictly construed." *Bohart v. Hanna*, 213 Ariz. 480, 482, ¶ 6 (2006). Where the procedural rules provide for timelines or extensions that do not comport with the timelines in the election contest statutes, those procedural rules will not apply. *Smith v. Bd. of Directors, Hosp. Dist. No. 1, Pinal Cnty.*, 148 Ariz. 598, 599 (App. 1985) (holding that time calculations under Rule 6(a) are inapplicable when they would extend deadlines beyond those contained in the election contest statutes); *cf. Albano v. Shea Homes Ltd. P'ship*, 227 Ariz. 121, 127, ¶ 26 (2011) ("[W]hen a constitutionally enacted substantive statute conflicts with a procedural rule, the statute prevails."). These rules were created to further the strong public policy in favor of the finality of elections which promote stability and the governance of the State. *See Donaghey v. Att'y Gen.*, 120 Ariz. 93, 95 (1978) ("The rationale for requiring strict compliance with the time provisions for initiating [an election] contest is the strong public policy favoring stability and finality of election results.").

Toward that end, the time limits in the election contest statutes are explicit: an election contest must be filed within five days of the completion of the canvass, § 16-673(A); the trial court must set the evidentiary hearing within ten days of the filing of the election contest, and this hearing cannot be continued for more than five days,

§ 16-676(A); and within five days of the conclusion of the evidentiary hearing, the trial court is obligated to file its findings and pronounce the result of the election contest, § 16-676(B). The purpose of these strict timelines is clear: "to ensure a resolution of the contest as soon as possible so that the winner can take the office to which he was rightfully elected." *Babnew v. Linneman*, 154 Ariz. 90, 92 (App. 1987).

Taken together, Rule 60 conflicts with the election contest statutes and therefore cannot apply in election contests. By necessity, an election contest will take up almost all of the time between the canvass, generally in late November, and when elected officials assume their positions in early January. There is simply no opportunity for Rule 60 procedures prior to the election winner assuming their elected office.

Lake's argument to the contrary relies primarily on *Moreno v. Jones*, 213 Ariz. 94, 97, ¶ 16 (2006), but that case does not help her cause. *Moreno* was not an election contest, but rather involved a challenge to a nomination petition. *See Moreno*, 213 Ariz. at 97, ¶ 4 (citing § 16–351, which provides limitations for challenges to nomination petitions). Additionally, while the *Moreno* court noted that the relevant statute "does not categorically preclude the filing of a Rule 60(c) motion," the motion at issue there was filed "just two days after the trial judge entered his initial order denying relief and well within [the] five-day deadline . . . to

appeal the decision" provided by statute. *Id.* (emphasis added). As a result, the court was able to "decid[e] the related appeals in advance of the [statutory] deadlines for preparing the ballot." *Id.* This is certainly not the case here, where Lake's Rule 60 Motion seeks to overturn an election 324 days after completion of the canvass, and 299 days after the statutory deadline.

D. Lake failed to prove that she was entitled to Rule 60 relief on Count II.

1. The law of the case prevents Lake from reviving most of her Count II claims.

To fully grasp Lake's argument about Count II, it is necessary to supplement Lake's inadequate and misleading recitation of the procedural history of this case. Count II originally stated a claim asserting that "[t]he BOD *printers* involved in the tabulator problems that certain Maricopa County vote center on election day are not certified and have vulnerabilities . . . ." (ROA 1, ¶ 141 (emphasis added).) The trial court granted in part and denied in part Defendants' motion to dismiss Count II. (ROA 150 at 4–7.) Specifically, the trial court ruled that the only aspect of Count II that survived was the claim that the Maricopa County Defendants violated § 16-671(A)(1) based on allegations that "a person employed by Maricopa County interfered with *BOD printers* in violation of Arizona law, resulting in some number of lost votes for [Lake]." (ROA 150 at 6 (emphasis added).)

That claim proceeded to trial. The trial court concluded that Lake failed to

prove (1) any misconduct in violation of § 16-671(A)(1); (2) that any such misconduct was committed by a Maricopa County employee covered by § 16-671(A)(1); (3) that any such misconduct was intended to affect the 2022 General Election; and (4) that any such misconduct actually affected the results of the election. (ROA 172 at 9.)

Lake appealed, and Division One of this Court affirmed the trial court, including the trial court's rulings on Count II. *Lake*, 254 Ariz. at 575, ¶¶ 14–18. Except for one issue relating to Count III discussed above, the Arizona Supreme Court denied Lake's Petition for Review, expressly endorsing Division One's reasoning in *Lake*. (ROA 262 at 2 ("The Court of Appeals aptly resolved those issues.").)

On remand, the law of the case barred Lake from attempting to retry those issues that had been conclusively resolved by the trial court and then affirmed on appeal. *See Kadish v. Ariz. State Land Dep't*, 177 Ariz. 322, 327 (App. 1993) ("'Law of the case' concerns the practice of refusing to reopen questions previously decided in the same case by the same court or a higher appellate court."). In particular, those aspects of Count II that were dismissed at the motion to dismiss stage and affirmed cannot be revived because they were resolved as a matter of law. Lake simply cannot use Rule 60 as a vehicle to revisit those rulings, and this Court should not overturn these prior rulings now. *Cf. Ariz. State Dep't of Econ. Sec. v. Mahoney*, 24 Ariz.

App. 534, 536 (1975) (Rule 60 "is not designed to be a substitute for appeal, nor is it designed to be a vehicle for relitigating issues") (citation omitted).

2. Lake's Rule 60 Motion was actually an attempt to amend Count II, which is not permitted in an election contest.

Much of the "new evidence" presented in Lake's Rule 60 Motion is extraneous, meaning that motion is a *de facto* motion to amend her Complaint to change the nature of Count II. As discussed, the only aspect of Count II that survived the motion to dismiss stage was the claim that the Maricopa County Defendants violated § 16-671(A)(1) based on allegations that "a person employed by Maricopa County interfered with *BOD printers* in violation of Arizona law, resulting in some number of lost votes for Plaintiff." (ROA 150 at 6 (emphasis added).) Most of Lake's supposed "new evidence" is completely unrelated to this claim. For example, Lake asserts that the "new evidence" shows that the tabulators used on Election Day did not undergo logic and accuracy testing and then contradictorily asserts the tabulators underwent illegal "unannounced" additional logic and accuracy testing. (*See* OB at 11–13.) This "evidence" is entirely irrelevant to the actual Count II, which only concerned whether a Maricopa County employee wrongfully interfered with the BOD *printers*, not whether the *tabulators* underwent logic and accuracy testing.

In seeking to present evidence that was completely extraneous to Count II, Lake was (and is) attempting to amend Count II to include an additional claim relating to tabulator issues and logic and accuracy testing. This procedure is not

permitted in election contests, where contestants are barred from amending their complaints after the time for filing election contests has expired, which by statute is five days after the canvass of the election. *See Kitt*, 30 Ariz. at 406 (1926) ("[W]e are constrained both by reason and authority to hold that a statement of contest in an election contest may not be amended, after the time prescribed by law for filing such contest has expired"). As the trial court correctly observed: "[t]his is not newly discovered evidence that goes to the claim as presented to the Court in December and reviewed on appeal, it is a wholly new claim, and therefore Count II remains unrevived." (ROA 295 at 6.)

3. Even suspending disbelief about Lake's so called "new evidence" does not entitle her to relief on Count II.

At the risk of taking seriously a counterfactual alternate universe utterly divorced from the reality of this case, even if Lake were able to (1) overcome the significant legal hurdles that doom her Rule 60 Motion, (2) rely on rank speculation rather than fact, and (3) amend Count II to include claims relating to the tabulators' logic and accuracy testing, Lake's Rule 60 Motion would still fail because the "new evidence" does not even *attempt* to demonstrate that Arizona's voters selected Lake as governor, let alone prove it.

To be successful, a Rule 60 Motion based on new evidence must demonstrate that the result of the trial would have been different had the new evidence been considered. *Ruesga v. Kindred Nursing Centers, L.L.C.*, 215 Ariz. 589, 595, ¶ 17

(App. 2007). To change the result of the trial on Count II, Lake's "new evidence" must have overcome all four evidentiary failures identified in the trial court's Ruling following the first trial. (ROA 172 at 9.) Moreover, because this is an election contest, the "new evidence" must have proven all four of these items to a clear and convincing evidence standard. *Lake*, 254 Ariz. at 574, ¶ 10.

Lake's Rule 60 Motion fails as a matter of law because her "new evidence" only concerns itself with potential problems in the election's administration—the "new evidence" does nothing to demonstrate that those supposed problems changed the result of the election. The trial court has already found that the Election Day issues did not disenfranchise voters to the extent required to change the election results, and it further found that every legally-cast ballot was counted. (*See* ROA 172 at 6, 7–8; ROA 295 at 7.) Stated another way, the "new evidence" only pertains to the alleged causes of the supposed Election Day issues; the "new evidence" is entirely silent to the effects of those issues. Lake's Rule 60 Motion does not challenge the trial court's explicit findings that any Election Day problems did not affect the result of the election. Therefore, the trial court did not abuse its discretion when it denied Lake's effort to revive Count II in her Rule 60 Motion.

E. Lake cannot revive Counts V and VI.

1. Lake waived her efforts to revive Counts V and VI.

Lake never meaningfully developed the argument that Counts V and VI

should be revived by supposed "new evidence," only raising this issue in a footnote. (ROA 271 at 1, n.1.) This argument is waived. *See State v. Henderson*, 210 Ariz. 561, 567 (2005); *MT Builders, L.L.C. v. Fisher Roofing, Inc.*, 219 Ariz. 297, 305, n.7 (App. 2008).

2. Lake's so-called "new evidence" cannot revive Counts V and VI because she lacks a cognizable legal theory.

Even if the argument were not waived, it would still fail because it lacks merit. Like Lake's efforts to revive the dismissed portions of Count II, her attempt to revive Counts V and VI are blocked by the law of the case. Counts V and VI attempted to state federal constitutional claims alleging equal protection and due process violations based on the alleged violations described in Lake's other counts; these claims were entirely parasitic on the success of those other claims. (*See* ROA 1 at 62–64.) The trial court also dismissed them, a result affirmed on appeal as a matter of law. (*See* ROA 150 at 9–10); *Lake*, 254 Ariz. at 578, ¶ 31.

By re-raising these issues in her Rule 60 Motion—to the very limited extent they can be considered "raised"—Lake asked the trial court to abuse Rule 60. *Welch v. McClure*, 123 Ariz. 161, 165 (1979) ("A rule 60(c) motion is not a device for weighing evidence or reviewing legal errors."). And this Court cannot now overturn the prior appellate courts' holdings. *See Kadish*, 177 Ariz. at 327.

Besides, Counts V and VI were dismissed as a matter of law before the trial court considered any evidence because these claims were not legally viable. *See*

Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990) (recognizing that a complaint may be properly dismissed for failure to state a claim "based on the lack of a cognizable legal theory"). As a matter of logic, Lake fails to explain how "new evidence" can remedy the lack of a cognizable legal theory. Under the circumstances, Lake cannot revive these claims.

III. Lake's other extraneous arguments do not support reversal.

Lake's Opening Brief makes several non-sequitur arguments that do not logically pertain to any of her claims. These are collected and dispensed with here.

A. Lake has not proven that Republicans who voted on Election Day suffered errors at a higher rate than Democrat voters.

In her Opening Brief, Lake repeatedly makes the remarkable claim that the BOD printer issues affected Election Day Republican voters at a rate 15 standard deviations higher than Democrat voters. (*See* OB at 30–31, 51, 55, 59.) This claim is a specific and frankly unbelievable factual assertion, so one would expect strong evidence to support it. That expectation goes unfulfilled.

Rather than cite any evidence for this claim, Lake repeatedly cites to a single paragraph in her Complaint. That paragraph starts "On information and belief" and does not cite any of the affidavits attached to the Complaint or any other source of factual support. (ROA 1, ¶ 165.) Nothing in the record supports Lake's assertion either.

Making matters worse for Lake, her claim about the BOD printers (Count II)

was tried in December 2022, meaning she had a full opportunity—and failed—to present evidence at trial that this issue affected Republicans more than Democrats. On appeal for the second time, Lake ignores the factual record and presents this Court with bald allegations dressed as "facts," apparently seeking to mislead the Court. *See Patton v. Paradise Hills Shopping Ctr., Inc.*, 4 Ariz. App. 11, 14 (1966) ("[T]he plaintiff may not rest upon the allegations of the complaint but must come forward with facts . . .").

As a final point, the premise of Lake's math is incorrect. Although it is difficult to determine because Lake seems to conjure these numbers from thin air, Lake appears to rely on a binomial distribution to explain her position. (OB at 59, n.24.) The problem is that the votes in the governor's race were not based on a binomial distribution because there were more than two outcomes—voters could have written in another candidate or not voted for governor at all. Thus, although Lake did not introduce competent evidence to double-check her math, it is foundationally incorrect. The Court should not put any weight on this fabrication.

B. There is no basis for Lake's proposed burden shifting; no presumption has "evaporated."

Recognizing her inability to prove her allegations, Lake makes a last ditch effort to shift the burden to the Defendants; essentially Lake argues that this Court must rule that the election was invalid unless the Defendants prove it was valid. (OB at 57-59.) This preposterous notion runs counter to over one hundred years of

Arizona case law establishing that the contestant bears the burden of proof in an election contest. *Oakes v. Finlay*, 5 Ariz. 390, 395 (1898); *Hunt v. Campbell*, 19 Ariz. 254, 269 (1917); *Donaghey*, 120 Ariz. at 96; *Lake*, 254 Ariz. at 574, ¶ 10.

1. Lake asserts that her showing that the Maricopa County Defendants acted illegally shifts the burden of proof to the Defendants. Yet Lake has not come within shouting distance of proving that the Maricopa County Defendants acted illegally, and Lake only generically cites to her speculative, unfounded theories as "evidence" on this point.

2. Beyond that, Lake's approach lacks legal support. Lake's reliance on *Averyt v. Williams*, 8 Ariz. 355, 359 (1904), is misplaced. Essentially, *Averyt* states that where the ballots were maintained in accordance with the statutory requirements, those ballots may be admitted as evidence; otherwise, the party that seeks their introduction into evidence must prove their validity before admission. *Id*. at 358–59. *Averyt* does not discuss the burden of proof in an election contest. *Id*. Lake's reliance on *McLoughlin v. City of Prescott*, 39 Ariz. 286, 296–97 (1931), fares no better. That case similarly only discusses the admissibility of ballots as evidence. *Id.*

3. Lake argues that her Equal Protection Clause claim permits burden shifting, but this throwaway argument fails. To repeat: Lake's Equal Protection claim was dismissed as a matter of law, and that dismissal was affirmed by Division

One of this Court and endorsed in the Arizona Supreme Court. Further, the only "evidence" supplied by Lake of supposed unequal treatment is the obviously bogus "15 standard deviations" argument debunked above. There is no basis to find a *prima facie* Equal Protections violation that would trigger burden shifting. More to the point: burden shifting can never apply here because election contests are purely statutory creatures, requiring the contestant to prove their case by clear and convincing evidence. *See Lake*, 254 Ariz. at 574, ¶ 10.

In short, Lake finds no support for her burden shifting argument in the record, the law, or the logic of this case.

C. This Court need not reach Lake's remedies argument, but in any event this Court cannot overturn the election on appeal.

Lake makes the extraordinary argument that this Court should directly enter judgment in her favor and either order a new election or declare Lake the winner. (OB at 59–61.) This Court need not reach this remedies issue given the flaws in Lake's appeal discussed above. But, to the extent that these arguments are considered, Lake is incorrect again. As a technical matter, the election contest statutes state that the trial court must announce the result of the election contest. *See* § 16-676. Therefore, if this Court finds some reason to reverse, it must remand the case to that court to dispose of the contest in accordance with this Court's decision and the statutory scheme.

Lake also insists that she is entitled to a proportionate reduction in "each

candidate's share of mail-in ballots" under *Grounds v. Lawe*, 67 Ariz. 176 (1948). (OB at 48–49.) As a threshold matter, this relief is not available in an election contest. *Grounds* was decided over 30 years before the current election contest statute was enacted, § 16-676 (effective Jan. 1, 1980), and expressly held that "[e]lection contests are purely statutory," *Grounds*, 67 Ariz. at 186.

Even if this relief were available, *Grounds* is plainly distinguishable—in that case, unlike the instant contest, there was no dispute as to the number of illegal ballots at issue. *See* 67 Ariz. at 184 ("In the case at bar the illegal voters as well as the legal voters were readily identifiable with reasonable certainty, and there is no complaint by either party as to the trial court's judgment in identifying the fifteen illegal voters."); *see also Lake*, 525 P.3d at 668, ¶ 11 (:This rule requires a competent mathematical basis to conclude that the outcome would plausibly have been different, not simply an untethered assertion of uncertainty.").

Here, the number of ballots Lake asserts are affected by the alleged wholesale violation of the law is a wide range between 70,000 or 275,000 ballots, and there is absolutely no basis for throwing out any individual one of these ballots—even if one believed Speckin's testimony—because the record shows that a large number of these are entirely valid ballot which were "cured" and likely registered little to no time at all spent reviewing them.

Conclusion

Lake's Opening Brief offers demonstrably false factual statements that go well beyond routine factual disputes. It repeatedly represents that evidence says one thing when the evidence actually says the opposite, as with the McGregor Report or Lake's characterization of Jarrett's testimony. Lake's Opening Brief presents bald allegations as established facts, boldly asserts that the Maricopa County Defendants are guilty of crimes and of intentionally fixing the election when the factual record demonstrates the opposite, and derives speculative theories from evidence that does not remotely support them.

These transgressions extend beyond factual misrepresentations. Lake's Opening Brief misrepresents the holdings of several cases—something that can occur by accident on occasion, but is too prevalent here to be a mistake. Lake makes multiple frivolous legal arguments, including: her attempt to move the goalposts on her *Reyes* claim; her attempts to revive claims that were dismissed as a matter of law and whose dismissals were affirmed on appeal; her attempt to argue for burden shifting based on cases that discuss the admissibility of evidence; and her attempt to misrepresent the claim stated in her Count II by neglecting to relate the relevant procedural history in an effort to obscure what that count states.

The arguments in Lake's Opening Brief also wrongfully expand these proceedings beyond the very limited scope of the case on remand from the Arizona

Supreme Court. She then attempts to assert that the Court can overturn the election on its own, without any factual findings against the Maricopa County Defendants and in plain contravention of the election contest statutes. It is frankly unconscionable that a litigant should derive any benefit from misdeeds such as these, particularly when the cost to our social fabric is so high. Lake's Opening Brief fuels the erosion of public confidence in our government and in our democracy in the name of personal benefit.

This Court should affirm the superior court's ruling rejecting Lake's election contest.

RESPECTFULLY SUBMITTED this 25th day of October.

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