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14 *Attorneys for Maricopa County Defendants*

15 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

16 **IN AND FOR THE COUNTY OF MARICOPA**

18 KARI LAKE, a married woman,

19 Plaintiffs,

20 vs.

21 STEPHEN RICHER, et al.,

22 Defendants.

No. CV2023-051480

**MARICOPA COUNTY DEFENDANTS'
RESPONSE TO LAKE'S MOTION IN
LIMINE RE:
PRIVACY/CONFIDENTIALITY**

(Honorable John Hannah)

1 Plaintiff Kari Lake (“Lake”) filed a motion *in limine* seeking to prevent the Maricopa
2 County Defendants from asserting a “privacy interest” defense to justify the Recorder’s
3 decision to withhold the records that Lake requested pursuant to her public records request
4 [Lake’s Motion *In Limine* re: Privacy/Confidentiality, September 13, 2023 (the “Motion”).]
5 As explained below, the Motion fails, and this Court should **deny** it.

6 First, the Maricopa County Defendants raised the privacy interest as an affirmative
7 defense in their Answer. [Answer, July 21, 2023, at 5 (Affirmative Defense No. 3.) Prior
8 to that, they raised the privacy interest in their Motion to Dismiss. [Motion to Dismiss, May
9 15, 2023, at 10 and 13.] Lake’s contention, that allowing the Maricopa County Defendants
10 to assert this defense at trial would “surprise” Lake and be prejudicial to her, [Motion at 2],
11 falls flat.

12 Second, the cases that Lake cites to support her contention, that the Recorder is
13 limited to his “initial grounds for decision-making” for denying Lake’s public records
14 request and cannot raise additional defenses now that Lake has filed her lawsuit, are
15 inapposite. [Motion at 2.] These cases are appeals from federal administrative agency
16 decisions applying administrative law, not denials of public records requests. So, *Sec. &*
17 *Exch. Comm’n v. Chenery Corp.*, 332 U.S. 194 (1947), concerned an order by the federal
18 Securities and Exchange Commission regulating how a company was to be reorganized and
19 how its new stock was to be issued. And *Nat. Res. Def. Council v. U.S. Env’t Prot. Agency*,
20 31 F.4th 1203 (9th Cir. 2022), concerned whether the federal Environmental Protection
21 Agency had acted unlawfully in cancelling the registration of a particular pesticide under the
22 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Those cases both concerned
23 administrative law decisions made by administrative agencies—not run of the mill denials
24 of public records requests, to which they have no application.

25 Third, even if the rule were that a custodian of public records cannot raise at trial any
26 defense that he did not raise when he denied the public records request, it would not matter
27 here. Lake admits that, when the Recorder denied her public records request, he cited the
28 “best interest of the state” exception to justify his denial. [Motion at 1.] That interest can

1 include an assertion of privacy interests, because it is in the “best interest of the state” to
2 protect its citizens’ privacy interests. As the Court of Appeals explained, “the ‘best interest
3 of the state’ standard is not confined to the narrow interest of either the official who holds
4 the record or the agency he or she serves.” Rather, “[it] includes the overall interests of the
5 government and the people.” *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 349, ¶ 18
6 (Ct. App. 2001).

7 Finally, there is no requirement in Arizona law that a custodian of public records
8 provide the reason when he or she denies a public records request. Nor is there a requirement
9 that the custodian cannot raise other legal defenses at trial.

10 **CONCLUSION**

11 For the foregoing reasons, this Court should **deny** the Motion, and should not
12 prohibit the Recorder from raising the “privacy interest” defense to justify his withholding
13 of public records sought by Lake.

14 RESPECTFULLY SUBMITTED this 18th day of September, 2023.

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26 this 18th day of September, 2023, with
27 AZTURBOCOURT, and copies e-served / emailed to:

28 HONORABLE JOHN HANNAH
MARICOPA COUNTY SUPERIOR COURT
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