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15 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

16 IN AND FOR THE COUNTY OF YAVAPAI

17 ARIZONA FREE ENTERPRISE CLUB, et al.,

18 Plaintiffs,

19 v.

20 ADRIAN FONTES,

21 Defendant.

22 ARIZONA ALLIANCE FOR RETIRED
23 AMERICANS; and MI FAMILIA VOTA,

24 Intervenor-Defendants.

No. S-1300-CV-202300202

**INTERVENOR-DEFENDANT MI
FAMILIA VOTA'S RESPONSE
TO PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY**

(Assigned to the Honorable John D.
Napper)

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1 The Court should deem any argument in Plaintiffs’ “notice of supplemental
2 authority” as untimely and waived. The notice amounts to an unwarranted surreply. *See*
3 *Atreus Cmtys. Group of Ariz. v. Stardust Dev., Inc.*, 229 Ariz. 503, 511 ¶ 34 (App. 2012)
4 (“The applicable civil procedure rule provides for a motion, a response, and a reply. Ariz.
5 R. Civ. P. 7.1(a). The rule makes no provision for a surreply.”). The cases of which Plaintiffs
6 just now “became aware” are from 1981 and 1988—hardly new or unavailable when
7 Plaintiffs responded to MFV’s motion to dismiss in 2023. Any newly realized arguments
8 about voluntary cessation that Plaintiffs could have raised before and only now assert are
9 waived. *See R&F Investors, LLC v. Ciolli*, No. 1 CA–CV 14–0157, 2015 WL 5826859, at
10 *3 ¶ 12 n.1 (Ariz. App. Oct. 6, 2015) (upholding trial court’s refusal to consider filing that
11 was “effectively a sur-reply.”).

12 In any case, Plaintiffs’ new argument is irrelevant to the only matter under
13 advisement—ripeness. The doctrine of voluntary cessation applies only to *mootness*.
14 Indeed, Plaintiffs’ cases note the doctrine only with respect to mootness. But mootness and
15 ripeness touch on different considerations, and a case can remain unripe even if it is not
16 moot. *See Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, 423 ¶ 23 (2022) (“[W]e
17 apply the doctrines of standing and ripeness as a matter of judicial restraint to ensure courts
18 refrain from issuing advisory opinions, that cases be ripe for decision *and* not moot, and
19 that issues be fully developed between true adversaries.” (emphasis added) (internal
20 quotation marks and citation omitted)); *see also City of Williams v. Dombeck*, 151 F. Supp.
21 2d 9, 13 n.1 (D.D.C. 2001) (“[M]ootness is distinct from ripeness,” and a conclusion “that
22 the issues presented on appeal are not moot does not automatically suggest that the appeal
23 is ripe for adjudication.” (quoting *Coal. for the Abolition of Marijuana Prohibition v. City*
24 *of Atlanta*, 219 F.3d 1301, 1315 (11th Cir. 2000)). And exceptions to mootness are not
25 exceptions to ripeness. *See Yarmoski v. Lloyd*, 531 A.2d 1169, 1172 (Pa. Cmwlth. 1987)
26 (observing that the related “exception for cases which are capable of repetition, yet evading
27 review, applies to the doctrine of mootness, not ripeness”).

28 The remaining issue before the Court is ripeness, not mootness. Indeed, no party has

1 even advanced a mootness argument with respect to the 2024 election. Despite Plaintiffs'
2 attempts to recharacterize MFV's argument, and their response to it, this case remains
3 unripe.

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7 Dated: July 13, 2023

Respectfully submitted,

8 /s/ Austin T. Marshall

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 13th day of July, 2023, I electronically transmitted a PDF
3 version of this document to the Office of the Clerk of the Superior Court, Yavapai County,
4 for filing using the AZTurboCourt System. I further certify that a copy of the foregoing was
5 sent via email this same date to:

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