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3 (FIRM STATE BAR NO. 00032000)

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9 (STATE BAR NUMBER 011474)

10 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

11 **IN THE MATTER OF:**

12 **PETITION TO AMEND RULE**  
13 **32.2(b), ARIZONA RULES OF**  
14 **CRIMINAL PROCEDURE.**

R-14-0031

MARICOPA COUNTY ATTORNEY'S  
RESPONSE TO PETITION TO AMEND RULE  
32.2(B), ARIZONA RULES OF CRIMINAL  
PROCEDURE

15 The Maricopa County Attorney respectfully petitions this Court to reject the  
16 proposed amendment to Rule 32.2(b), Arizona Rules of Criminal Procedure.

17 Respectfully submitted this 20<sup>th</sup> of May, 2015.

18 WILLIAM G. MONTGOMERY  
19 MARICOPA COUNTY ATTORNEY

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22 BY   
23 Mark C. Faull  
24 Chief Deputy  
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1 **I. Background.**

2 Rule 32.2(a) is a rule of preclusion that is “designed to limit review and  
3 prevent endless or nearly endless reviews of the same case in the same trial court.”  
4 *Steward v. Smith*, 202 Ariz. 446, 450, ¶ 10, 46 P.3d 1067, 1071 (2002). Under Rule  
5 32.2(a)(3), a convicted defendant is precluded from post-conviction relief based upon  
6 any ground “[t]hat has been *waived* at trial, on appeal, or in any previous collateral  
7 proceeding.” (Emphasis added.)  
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10 Under Rule 32.2(b), only certain claims are subject to preclusion; namely,  
11 constitutional claims, jurisdictional claims, and sentencing claims that a defendant  
12 failed to raise at trial, on appeal, or in any previous collateral proceeding.  
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14 **II. Proposed Amendment.**

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16 Petitioner seeks to amend Rule 32.2(b) so that claims involving subject matter  
17 jurisdiction arising under Rule 32.1(b) are not subject to preclusion.  
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19 **III. Arguments Against Amendment.**

20 The proposed amendment is unnecessary, will cause confusion, and waste  
21 judicial resources.  
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23 “[S]ubject matter jurisdiction’ refers to a court’s statutory or constitutional  
24 power to hear and determine a particular type of case.” *State v. Maldonado*, 223  
25 Ariz. 309, ¶¶ 14, 223 P.3d 653, 655 (2010). “The authority of courts derives from  
26 constitutional provisions or from statutory provisions adopted in the exercise of a  
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1 legislative authority, express or implied, to establish courts and to provide for their  
2 jurisdiction.” In other words, subject matter jurisdiction is “the power of a court to  
3 hear and determine a controversy.” *State v. Bryant*, 219 Ariz. 514, ¶ 14, 200 P.3d  
4 1011, 1014 (App.2008) (citation omitted). Because it involves a court’s power to  
5 hear a case, subject matter jurisdiction can never be forfeited or waived. *State v.*  
6 *Flores*, 218 Ariz. 407, 409–10, ¶ 6, 188 P.3d 706, 708–09 (App.2008); *see also U.S.*  
7 *v. Cotton*, 535 U.S. 625, 630 (2002) (holding that defects in subject-matter  
8 jurisdiction require correction regardless of whether the error was raised in the lower  
9 court.<sup>1</sup>

13 Subject matter jurisdiction can never be waived by operation of law and,  
14 therefore, it is axiomatic that it can never be waived by operation of Rule 32.2(a)(3).  
15 Thus, it is unnecessary—in fact, it would be redundant—to specifically include “Rule  
16 32.1(b) [claims] involving subject matter jurisdiction” in Rule 32.2(b)’s list of  
17 exceptions to preclusion. As such, the proposed amendment is unnecessary.

20 Moreover, the proposed amendment will cause confusion on the part of  
21 convicted defendants (especially those acting in *propria persona*) and lead to a waste  
22 of judicial resources. Convicted defendants will construe the change in terminology  
23 proposed in the amendment as a substantive change to Rule 32 which, as explained  
24 above, is not the case. As it currently stands, convicted defendants, among others, do  
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27 <sup>1</sup> In contrast to subject matter jurisdiction, an objection to the existence of personal jurisdiction may be waived by  
28 failing to timely object. *State v. Marks*, 186 Ariz. 139, 140, 920 P.2d 19, 20 (App. 1996).

1 not grasp the concept of “jurisdiction.” See *Taliaferro v. Taliaferro*, 186 Ariz. 221,  
2 223, 921 P.2d 21, 23 (1996) (“[T]he word ‘jurisdiction’ means different things in  
3 different contexts” and has been used “imprecise[ly]”); *Estes v. Superior Court*, 137  
4 Ariz. 515, 517, 672 P.2d 180, 182 (1983) (distinguishing the term jurisdiction from  
5 legal error); *Collins v. Superior Court*, 48 Ariz. 381, 393, 62 P.2d 131, 137 (1936)  
6 (explaining that “jurisdiction” is often incorrectly used to mean, “not the *power* to  
7 perform a certain act, but the *performing of it when it was prohibited*, a very different  
8 thing”) (emphasis in original); *State v. Espinoza*, 229 Ariz. 421, 425, ¶ 19276 P.3d  
9 55, 59 (App. 2012) (recognizing “that not all legal errors are jurisdictional errors and  
10 that Arizona courts have, on occasion, conflated the two”); *State ex rel. Dandoy v.*  
11 *City of Phoenix*, 133 Ariz. 334, 338-39, 651 P.2d 862, 866-67 (App. 1982) (noting  
12 that lack of jurisdiction is often confused with legal error).

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17 The proposed unnecessary change to Rule 32.2(b) will be misconstrued as a  
18 substantive change to the Rule and will encourage convicted defendants to file  
19 petitions for post-conviction relief alleging meritless claims of “lack of subject matter  
20 jurisdiction” that trial courts, in turn, will needlessly be forced to adjudicate.  
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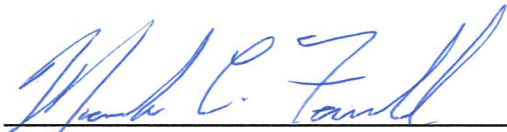
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1 **IV. Conclusion.**

2 For the foregoing reasons, the Maricopa County Attorney respectfully petitions  
3 this Court to reject the proposed amendment to Rule 32.2(b), Arizona Rules of  
4 Criminal Procedure.  
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6 Respectfully submitted this 20<sup>th</sup> of May, 2015.

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