

SUPREME COURT OF ARIZONA

SAVE OUR VOTE, OPPOSING) Arizona Supreme Court
C-03-2012, an unincorporated) No. CV-12-0301-AP/EL
Arizona political committee,)
SAFEGUARD ARIZONA'S FUTURE, an) Maricopa County
unincorporated Arizona political) Superior Court
committee, and LISA GRAY, a) No. CV2012-013094
qualified elector and taxpayer)
of the State of Arizona,)

Plaintiffs/Appellants,)

v.)

KEN BENNETT, in his official)
capacity as Secretary of State)
of the State of Arizona,)

Defendant,)

and)

OPEN GOVERNMENT COMMITTEE)
SUPPORTING C-03-2012, an)
unincorporated Arizona political)
committee,)

Real Party in Interest.)

DECISION ORDER

FILED 09/06/2012

12 SEP -6 PM 5:00

FILED
BY: *[Signature]*
MICHAEL R. JENNINGS, CLERK
DEPT

¶1 The Court, by a panel consisting of Chief Justice Berch, Vice Chief Justice Bales, and Justice Pelander, has considered the briefs of the parties and the record in this accelerated election appeal. After consideration, the Court rules as follows:

¶2 This appeal arises from a challenge by Plaintiffs/Appellants "Save Our Vote, Opposing C-03-2012,"

"Safeguard Arizona's Future," and Lisa Gray (collectively "SOV") to petition circulator affidavits on certain initiative petition sheets circulated by Real Party in Interest "Open Government Committee Supporting C-03-2012" (the "Committee"). The initiative proposes to amend Article 7 of Arizona's Constitution to create a single open "top two" primary election followed by a general election between the two candidates who receive the highest vote totals for each office; if adopted by the electors, that system would replace Arizona's current partisan primary and general elections in January 2014.

¶3 Following the Secretary of State's initial culling of initiative petition sheets pursuant to A.R.S. § 19-121.01, SOV discovered possible defects in some circulator affidavits. It filed this action on August 24, 2012, and requested an expedited hearing pursuant to A.R.S. § 19-122(C), which provides that such actions be "heard and decided by the court as soon as possible." The matter was set for a four-hour hearing on August 30 before Judge John Rea in Maricopa County Superior Court. The printing deadline to place initiative measures on the general election ballot was August 31, 2012; the deadline for removing items from the ballot is September 7, 2012.

¶4 At the hearing, without objection, the trial court allocated two hours to SOV and two hours to the Committee. After calling three witnesses and introducing some of the

petitions it had hoped to have admitted into evidence, SOV rested ten minutes short of its two hours, without then proffering additional exhibits for admission. The Committee rested well short of its two hours. When SOV asked if it could "admit some more exhibits" at that point, the trial court responded that "exhibits which are rebuttal to the defense case" would be permissible, but "something new" that is "beyond the scope of rebuttal" would not. SOV neither identified what additional exhibits it might seek to introduce nor made an offer or proof. SOV then stated there was no need for rebuttal and the parties made closing arguments.

¶15 The next day, August 31, the trial court ruled that although SOV had proved 2,056 signatures should be removed for fatally flawed affidavits, that number was insufficient to disqualify the measure in light of the court's ruling in the companion case, *Open Government Committee v. Purcell*, CV 2012-013089. In that matter, the Committee had successfully rehabilitated 577 signatures the Maricopa County Recorder had struck as invalid in its certification of the random sample pursuant to A.R.S. § 19-121.02. When the total number of valid signatures was recalculated, the ruling in *Purcell* resulted in the Committee having 6,372 more valid signatures than required; and even after deducting the 2,056 signatures invalidated in this case, the Committee had 4,316 more valid signatures than

required. The trial court therefore dismissed SOV's complaint with prejudice in a signed minute entry.

¶6 On appeal, SOV argues the trial court abused its discretion by "requiring [it] to introduce signature sheets individually by circulator," rather than admitting, en masse, four boxes containing some 6,000 signature sheets and by allowing SOV only two hours in which to present its evidence "and not granting [its] request for additional time." SOV also argues that the trial court erred by dismissing the complaint while the companion case was subject to appeal.

¶7 We affirm the trial court's rulings. The court did not require SOV to introduce signature sheets individually by circulator. When the Committee declined to stipulate that the contents of the four boxes were true and correct copies of the actual petitions, and SOV's witness testified that the documents were "not necessarily in the same form as how [the Secretary of State's office] provided them," the trial court indicated that SOV could lay further foundation, at which point a determination on admissibility could be made. The trial court did not abuse its discretion in refusing to admit the boxes when first offered. Although SOV laid additional foundation through its next witness, and successfully moved to admit certain signature sheets, it did not again move to admit the four boxes. When SOV asked during its case-in-chief if there was a simpler or faster

way to proceed, the trial court appropriately responded that each party should determine how to prove its case. The trial court did not unduly limit the manner in which evidence was presented.

¶8 Nor did the trial court abuse its discretion in limiting the time for presenting evidence. SOV did not object to the court's allocating four hours for the hearing or dividing the time equally, perhaps because experienced election counsel on each side understood that the printing schedule required the court to issue a ruling the next day. During the hearing itself, when SOV requested additional time to present more evidence, it neither made an offer of proof regarding the proposed evidence nor argued that adhering to the previously established schedule would be unfairly prejudicial. The trial court did not deny SOV due process under the circumstances of this expedited election litigation.

¶9 Finally, the trial court did not err in dismissing SOV's complaint while the companion case was subject to appeal. This issue is moot because the defendants in that case chose not to appeal and, in any event, SOV did not ask the trial court to defer entering judgment pending any appeal of the companion case.

CONCLUSION

¶10 SOV has not shown that the trial court abused its discretion with respect to any evidentiary rulings or in adhering to the previously established hearing schedule; nor did the trial court err in dismissing SOV's complaint. Because the issues raised by the Committee on cross-appeal will not affect our disposition of this case, we do not address them. We affirm the decision of the trial court denying the injunctive relief requested by SOV and dismissing its amended complaint with prejudice.

DATED this _____ day of September, 2012.

Scott Bales
Vice Chief Justice

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