



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



FLEISCHMAN v. PROTECT OUR CITY
Maricopa County Superior Court No. CV 2006-013116;
Supreme Court Number CV-06-0333-AP/EL

PARTIES AND COUNSEL:

Appellant: Protect Our City, represented by David L. Abney, Ahwatukee Legal Office.

Appellees: Chris Fleischman, Kathy Roediger and Alfredo Gutierrez, represented by Charles A. Blanchard, Rhonda L. Barnes and Colin P. Ahler, Perkins Coie Brown & Bain P.A. and Stephen P. Berzon and Danielle E. Leonard, Altshuler, Berzon, Nussbaum, Rubin & Demain (San Francisco; pro hac vice)

Amicus Curiae: City of Phoenix defendants City Clerk Mario Paniagua, Mayor Phil Gordon and Council Members Dave Siebert, Peggy Neely, Peggy Bilsten, Tom Simplot, Claude Mattox, Greg Stanton, Doug Lingner and Michael Johnson, represented by Phoenix City Attorney Gary Verburg and Assistant Phoenix City Attorney Larry F. Felix.

FACTS:

Protect Our City seeks to amend the City of Phoenix City Charter by an initiative that would require “full City cooperation with and support of” federal immigration law enforcement. It filed its initiative petitions on July 6, 2006 with 21,297 signatures. The City Clerk found it had only 14,160 of the 14,844 valid signatures required for the matter to appear on the ballot, and issued a certificate of insufficiency. Pursuant to City Charter and Code § 12-1102(a)(2), the City Clerk let Protect Our City use supplemental petitions filed within ten days to qualify for the November 2006 ballot. The supplemental petition contained 1,275 signatures, of which the City Clerk found 892 valid signatures. The Clerk certified the initiative for the ballot on August 16, 2006.

Appellees filed a timely challenge in superior court. After hearing the merits, Judge Barton found that the City initiative procedure is a matter of statewide concern. She also found that the charter provision authorizing supplemental filing of signatures to a petition after it has been certified insufficient for lack of signatures conflicts with state law, and is therefore invalid. In minute entry orders filed September 11 and 12, Judge Barton held there were insufficient valid signatures for the initiative to appear on the ballot.

Protect Our City filed a notice of appeal on September 18 and an amended notice of appeal from the then-signed superior court minute entry orders on October 9, 2006.

ISSUES:

Appeal: “City of Phoenix Charter and City Code § 12-1102(a)(2) gave Protect Our City the right to amend its initiative petition by filing supplemental petitions. does A.R.S. § 19-121(B) conflict with and therefore invalidate this city ordinance?”

Supplemental briefs: “Whether the court of appeals has concurrent jurisdiction in this matter.” (posed by the Court’s order of November 28, 2006)

DEFINITIONS:

amicus curiae: Latin term meaning “friend of the court.” An amicus typically does not have an interest in the outcome of the particular case, and offers the court its insight into how the case will affect non-parties.

certificate of insufficiency: Official recognition by the City Clerk that a circulated and filed petition does *not* contain enough signatures to appear on the ballot.

initiative: method of proposing a law by citizens, rather than elected officials. The right to initiate laws is reserved in the Arizona Constitution. For an initiative to be placed on the ballot to be voted on, the proponents must demonstrate sufficient support for it by collecting at least x number of valid signatures. The number x changes over time, and is determined by set factors election officials apply to calculate the number.

pro hac vice: temporary permission to appear in an Arizona court for the limited purpose of one case.

valid signatures: signatures (1) collected by a qualified petition circulator (2) on a form that substantially complies with Arizona statutes for petition signature collection (3) signed by Arizona voters (4) who are registered to vote in the political subdivision in which the election will take place.

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