



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**VOICE OF SURPRISE, et al. v. SKIP HALL, et al.
CV-23-0117-PR**

PARTIES:

Petitioner: Voice of Surprise and Quintus Schulzke

Respondent: Skip Hall in his official capacity of the Mayor of Surprise; Patrick Duffy, Chris Judd, Roland F. Winters, Jr., Aly Cline, Jack Hastings, and Ken Remley in their official capacity as Surprise Council Members; Sherry Aguilar, in her official capacity as the Surprise City Clerk; the City of Surprise; Truman Ranch 46 SWC LLC; and Dominion, Inc.

FACTS:

On August 16, 2022, the Surprise City Council adopted Ordinance 2022-18 (“Ordinance”), which approved a Preliminary Development Plan and established residential density for 46 acres of land known as Truman Ranch Marketplace.

On August 18, 2022, Voice of Surprise (“VOS”) contacted the Surprise City Clerk (“Clerk”) to begin a referendum of the Ordinance. The Clerk provided VOS with a copy of the signed Ordinance and an “Application for Serial Number Initiative or Referendum Petition A.R.S. § 19-111.” The upper lefthand corner of the application stated, “Attached hereto is the full text, in no less than eight-point type, of the measure intended to be initiated or referred at the next general election.”

On August 29, 2022, a VOS representative, in person, submitted the completed application and required statement of organization but did not to attach a copy of the Ordinance to the application. At the time of submission, the Clerk knew the application did not include a copy of the Ordinance, as required by A.R.S. § 19-111(A), and she even saw the copy of the Ordinance she previously provided to VOS in the notebook of the VOS representative submitting the application. The Clerk nevertheless issued VOS a serial number, permitting it to circulate its referendum petition.

On September 16, 2022, VOS delivered 409 petition sheets with 5,432 signatures. The Clerk commenced a review and verified that all the petition sheets had the Ordinance attached, as required by law. She also determined that the petition contained a sufficient number of signatures. However, because VOS’s application for the serial number did not strictly comply with § 19-111(A) for lacking an attached copy of the ordinance to be referred, the Clerk rejected all petition sheets and signatures, declined to proceed with a random sampling of signatures, and declined to place the referendum on the ballot.

On December 1, 2022, VOS filed a special action in the superior court seeking to compel the Clerk to proceed with random signature sampling. It argued the Clerk had no authority to reject

its petition based on a § 19-111(A) defect, and it otherwise relied on the issuance of the serial number. Following an evidentiary hearing, the trial court dismissed VOS's action because A.R.S. § 19-101.01 mandates strict compliance with all statutory requirements for the referendum process, and VOS failed to submit a copy of the signed ordinance in eight point type with its referendum application, as required by § 19-111(A). VOS timely appealed.

The court of appeals affirmed the trial court, holding that the Clerk had authority to disqualify VOS's referendum petition for a failure to strictly comply with § 19-111(A). The court noted that the ordinance attachment requirement of § 19-111(A) makes clear what is being challenged, as a referendum petition may seek to refer less than a whole measure. It further determined that the case did not involve restoring the presumption of validity of signatures when a party tried to timely cure a purported defect. Finally, the court of appeals held that the City was not estopped from disqualifying the petition based on the Clerk failing to inform VOS of its application defect and issuing it a serial number, and that the Clerk's actions otherwise could not excuse VOS's failure to strictly comply with § 19-111(A).

VOS petitioned the Court for review, which the Court granted as to the following rephrased issues.

ISSUES:

1. Where a proponent fails to strictly comply with a referendum statute, destroying the presumption of validity that attaches to referendum petition signatures, *see Harris v. City of Bisbee*, 219 Ariz. 36, 40 ¶ 14 (App. 2008) (citing *Direct Sellers Ass'n v. McBrayer*, 109 Ariz. 3, 5 (1972); *Forszt v. Rodriguez*, 212 Ariz. 263, 265–66 ¶¶ 11–12, 15 (App. 2006)), how and when can a proponent restore the presumption? Was it restored here?
2. Does the secretary of state or a municipal clerk have discretion to deny a facially invalid application for serial number under A.R.S. § 19-111(B)? If so, should Petitioner's reliance on the issuance of a serial number here excuse its failure to strictly comply with A.R.S. § 19-111(A)?

STATUTES:

A.R.S. § 19-101.01 provides:

The legislature recognizes that a referendum may overrule the results of determinations made by representatives of the people and therefore finds and determines that strict compliance with the constitutional and statutory requirements for the referendum process and in the application and enforcement of those requirements provides the surest method for safeguarding the integrity and accuracy of the referendum process. Therefore, the legislature finds and declares its intent that the constitutional and statutory requirements for the referendum be strictly construed and that persons using the referendum process strictly comply with those constitutional and statutory requirements.

A.R.S. § 19-111(A) and (B) provide:

A. A person or organization intending to propose a law or constitutional amendment by initiative petition or to file a referendum petition against a measure, item, section or part of a measure, before causing the petition to be printed and circulated, shall file with the secretary of state an application, on a form to be provided by the secretary of state, setting forth the person's name or, if an organization, its name and the names and titles of its officers, the person's or organization's address, the person's or organization's intention to circulate and file a petition, a description of not more than two hundred words of the principal provisions of the proposed law, constitutional amendment or measure and the text of the proposed law, constitutional amendment or measure to be initiated or referred in not less than eight point type, and applying for issuance of an official serial number. At the same time as the person or organization files its application, the person or organization shall file with the secretary of state its statement of organization. The secretary of state shall not accept an application for initiative or referendum without an accompanying statement of organization as prescribed by this subsection.

B. On receipt of the application, the secretary of state shall assign an official serial number to the petition, which number shall appear in the lower right-hand corner of each side of each copy thereof, and issue that number to the applicant. The secretary of state shall assign numbers to petitions in numerical sequence, and a record shall be maintained in the secretary of state's office of each application received and of the numbers assigned and issued to the applicant.

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