

ARIZONA SUPREME COURT

MAKE ELECTIONS FAIR,
an Arizona political action committee,

Plaintiff/Appellee,

v.

Representative BEN TOMA, Senator
WARREN PETERSEN, Senator
SHAWNA BOLICK, Senator SONNY
BORRELLI, Senator SINE KERR,
Representative TRAVIS
GRANTHAM, Representative
TERESA MARTINEZ, and
Representative QUANG NGUYEN, in
their official capacities,

Defendants/Appellants,

and

Senator MITZI EPSTEIN, Senator
BRIAN FERNANDEZ, Senator JUAN
MENDEZ, Representative LUPE
CONTRERAS, Representative
NANCY GUTIERREZ, Representative
STEPHANIE STAHL HAMILTON,
and Secretary of State ADRIAN
FONTES, in their official capacities,

Defendants/Appellees.

No.

Maricopa County Superior Court
No. CV2024-018789

**DEFENDANTS/APPELLANTS'
ARCAP 10 STATEMENT AND
REQUEST FOR SCHEDULING
CONFERENCE**

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Grantham, Martinez, and Nguyen in their Official Capacities*

Defendants/Appellants Speaker of the Arizona House of Representatives Ben Toma, President of the Arizona State Senate Warren Petersen, Senator Shawna Bolick, Senator Sonny Borrelli, Senator Sine Kerr, Representative Travis Grantham, Representative Teresa Martinez, and Representative Quang Nguyen in their official capacities hereby file the information required by Rule 10 of the Arizona Rules of Civil Appellate Procedure (ARCAP) and request a scheduling conference, or in the alternative entry of a briefing schedule under Rule 10(g).

I. Information Required by ARCAP 10(c)

Pursuant to Rule 10(c)(1), attached as Exhibit 1 to this statement is a copy of the notice of appeal that shows the Superior Court Clerk’s file-stamped date.

Pursuant to Rule 10(c)(2), this case is designated an “Expedited Election Matter.” The names and contact information of counsel for each party are as follows:

Party	Counsel Contact Information
Plaintiff/Appellee Make Elections Fair, an Arizona political action committee	Mary R. O’Grady Andrew G. Pappas Joshua Messer OSBORN MALEDON, P.A. 2929 North Central Avenue, Suite 2000 Phoenix, Arizona 85012 (602) 640-9000 mogradey@omlaw.com apappas@omlaw.com jmesser@omlaw.com // // // //

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<p>Defendants/Appellants Speaker Toma, President Petersen, Senator Bolick, Senator Borrelli, Senator Kerr, Representative Grantham, Representative Martinez, and Representative Nguyen</p>	<p>Brunn (Beau) W. Roysden III (028698) FUSION LAW, PLLC 7600 N. 15th St., Suite 150 Phoenix, Arizona 85020 (602) 315-7545 beau@fusion.law</p>
<p>Defendants/Appellees Senators Mitzi Epstein, Brian Fernandez, and Juan Mendez</p>	<p>Elizabeth Higgins Arizona State Senate 1700 West Washington Phoenix, Arizona 85007 (602) 926-4471 ehiggins@azleg.gov</p>
<p>Defendants/Appellees Representatives Lupe Contreras, Nancy Gutierrez, and Stephanie Stahl Hamilton</p>	<p>Rhonda L. Barnes Arizona House of Representatives 1700 West Washington Phoenix, Arizona 85007 (602) 926-5848 rbarnes@azleg.gov</p>
<p>Defendant/Appellee Secretary of State Adrian Fontes</p>	<p>Kara Karlson Karen J. Hartman-Tellez Kyle Cummings Office of the Arizona Attorney General 2005 N. Central Avenue Phoenix, AZ 85004 Kara.Karlson@azag.gov Karen.Hartman@azag.gov Kyle.Cummings@azag.gov // //</p>

Amicus Curiae Arizona Attorney General	Alexander W. Samuels Nathan T. Arrowsmith Joshua G. Nomkin Office of the Arizona Attorney General 2005 N. Central Avenue Phoenix, AZ 85004-1592 Alexander.Samuels@azag.gov Nathan.Arrowsmith@azag.gov Joshua.Nomkin@azag.gov ACL@azag.gov
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Pursuant to Rule 10(c)(3), attached as Exhibit 2 to this statement is a copy of the Superior Court’s judgment that Appellants are appealing.

II. Information Required by ARCAP 10(d)

Pursuant to Rule 10(d)(1), appeal to the Supreme Court is appropriate based on each of the factors listed in that paragraph. First, the Superior Court’s judgment involves a statewide initiative numbered I-14-2024 (a proposed constitutional amendment). Second, the issue on appeal—whether the Legislative Council’s analysis of I-14-2024 substantially complies with A.R.S. § 19-124(C)—is of substantial statewide importance. *E.g., Tobin v. Rea*, 231 Ariz. 189, 193, ¶ 8 (2013) (finding this issue to be of statewide importance). Third, the issue would otherwise become moot before Supreme Court review. The printing deadline for the publicity pamphlet is August 29, 2024, approximately two weeks away. To comply with an order to revise its analysis of Initiative No. I-14-2024, the Legislative Council staff will have to revise its analysis, notice a meeting of its members to consider that revised analysis, and hold the meeting. The Legislature is not currently in session,

so the 14 members of Legislative Council, who are located throughout the state, *see* A.R.S. § 41-1301, will have find a date that works for a quorum and then travel to the State Capitol. In addition, another appeal of a Legislative Council analysis is pending, *see Arizona for Abortion Access v. Toma*, No. CV-24-0167-AP/EL. Parties in that case indicated that the Court needs to issue its decision by August 21, 2024.¹ To avoid Legislative Council having to notice two different meetings, Legislative Council’s majority members contend that they need a decision by that date in this case as well.

III. Appellants’ Statement Regarding ARCAP 10(f)

The Superior Court decided this case below on cross-motions for summary judgment. The parties did not introduce any evidence at the oral argument on those cross-motions. Therefore, no transcripts are necessary for determination of this appeal.

IV. Request for Scheduling Conference Pursuant to ARCAP 10(g) Or, Alternatively, Request for Entry of Briefing Schedule

A. Defendants/Appellants’ Position

Defendants/Appellants understand that the publicity-pamphlet printing deadline is August 29, 2024. They reiterate that as a practical matter, receiving a decision from this Court on or before August 21, 2024 would permit them to go

¹ *See* Notice Regarding Printing Deadline, *Arizona for Abortion Access v. Toma*, No. CV-24-0167-AP/EL (filed August 5, 2024).

through the logistical steps to notice and hold a meeting of Legislative Council before the publicity-pamphlet printing deadline.

There is only one issue on appeal: whether the Legislative Council's analysis of I-14-2024 substantially complies with A.R.S. § 19-124(C). *See* Exhibit 3 (copy of Legislative Council's Analysis).

Accordingly, Defendants/Appellants propose a simultaneous-briefing deadline of Thursday, August 15, 2024 at 4:00 p.m., for any party who wishes to file a brief on appeal. Any amicus briefs would be due Friday, August 16, 2024, at 4:00 p.m. Briefs by parties shall not exceed 3,000 words; amicus briefs shall not exceed 1,500 words. No reply briefs shall be filed. Briefs do not need to include a table of contents, table of authorities, or be accompanied by an appendix. Oral argument is not necessary for this appeal. Defendants/Appellants request the Court issue its order by August 21, 2024, to allow Legislative Council time to meet if needed.

B. Appellees' Position(s)

The following positions have been communicated to counsel for Defendants/Appellants prior to the filing of this Rule 10 Statement.

Plaintiff/Appellee Make Elections Fair (the "Committee") agrees with the word limits proposed by the majority members of Legislative Council. The Committee also agrees that briefs do not need to include a table of contents, table of

authorities, or be accompanied by an appendix, and that oral argument is not necessary for this appeal.

However, the Committee respectfully disagrees with the due date Legislative Council's majority members propose for the Committee's brief. The Committee proposes the following alternative briefing schedule: Legislative Council Defendants (both Appellants and Appellees) briefs shall be due on Thursday, August 15 by 4 p.m. Any amicus briefs shall be due by Friday, August 16 at 4 p.m. The Committee's brief shall be due on Tuesday, August 20 by 4 p.m. No reply brief shall be filed. This alternative schedule would allow (a) the parties the time they need to brief this case, (b) the Court the time it needs to decide it, and (c) Legislative Council ample time to revise its analysis if necessary.

The Committee is also the real party in interest/appellee in case no. CV-24-0184-AP/EL. In that case, the appellants' briefs are due on Tuesday, August 13 by 11:59 p.m., and the Committee's brief is due on Saturday, August 17 by 11:59 p.m. If the Committee needed to file a brief in this case in between, on Thursday, August 15—as Legislative Council's majority members propose—that would substantially cut into the Committee's work on both cases.

The highly compressed schedule Legislative Council's majority members propose is unnecessary in any event. As indicated, the publicity-pamphlet printing deadline is August 29. The Council's majority members nonetheless say they need

a decision by August 21 “to allow Legislative Council time to meet if needed.” But the Council should not need eight days “to revise its analysis, notice a meeting of its members to consider that revised analysis,” and assemble a quorum of its members. Legislative Council could begin working now to draft an alternative analysis and find a time when its members could meet. As for notice, on the afternoon of July 3, 2024, Legislative Council noticed its meeting for July 8 at 9 am—with a holiday weekend in between. Simply put, Legislative Council should not need more time to comply with this Court’s order than the Court needs to consider the case.

Moreover, this case need not be on a faster track than case no. CV-24-0184-AP/EL, the other appeal the Committee is defending. The relevant deadline in that case is the ballot-printing deadline of August 22, yet briefing closes on August 19. There is no good reason why briefs in this case should be filed simultaneously on August 15, when the relevant deadline here—the publicity-pamphlet printing deadline of August 29—is a week later than the August 22 deadline in the other case.

Accordingly, the Court should enter the alternative briefing schedule the Committee proposes.

Defendant/Appellee Secretary of State Adrian Fontes takes a nominal position in this case.

Defendants/Appellees Legislative Democrats do not object to Plaintiff/Appellee's requested relief.

RESPECTFULLY SUBMITTED this 13th day of August, 2024.

FUSION LAW PLLC,

By: /s/ Brunn (Beau) W. Roysden III
Brunn (Beau) W. Roysden III

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