

IN THE SUPREME COURT

STATE OF ARIZONA

HEATHER TURLEY,

Plaintiff/ Appellant

v.

RICHARD COLWELL, et al.,

Defendants/ Appellees.

Arizona Supreme Court
No. CV-24-0197-AP/EL

Maricopa County
Superior Court
No. CV2024-022057

PIMA COUNTY RECORDER'S ANSWERING BRIEF

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I. Relief should be denied as to the Pima County Recorder.

The Superior Court correctly found that laches should apply to bar relief. This is especially true in the case of relief against the Pima County Recorder. As noted in the Superior Court's minute entry order, the Pima County Recorder was not present nor represented by counsel at trial. The reason for this was that Plaintiff/Appellant had not served the Pima County Recorder. Plaintiff/Appellant nevertheless went forward with the trial and requested relief against the Pima County Recorder, but did not advise the Superior Court that it lacked personal jurisdiction over the Pima County Recorder. Plaintiff/Appellant compounds this by failing in her Opening Brief to apprise this Court that the trial proceeded against the Pima County Recorder without personal jurisdiction over the Pima County Recorder. The Complaint was filed on August 15, 2024, but it was only the afternoon after trial, on August 21, 2024, that the Pima County Recorder was served with process. If this Court were to order relief against the Pima County Recorder, she would unquestionably be denied due process.

Laches applies to initiative petition challenges. *Harris v. Purcell*, 193 Ariz. 409 (1998). Even if actions are timely, they may still be dismissed where failure to diligently prosecute causes prejudice to the court or the parties. *Id.*

at ¶16. This Court has cautioned against courts having to steamroll through delicate legal issues based upon last minute challenges. *Id.* at ¶17. This caution also applies to parties being steamrolled by such challenges. The Pima County Recorder is clearly prejudiced from not being brought into this lawsuit well before trial and no relief should be permitted against her. Service of process under Ariz. R. Civ. P. 4 is not a hand-waive detail. It is mandatory. A trial court's jurisdiction over a person is established by “the fact of service and the resulting notice.” *Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 308, (1983). Where a defendant is not served, any resulting judgment against such defendant is void. *Ariz. Real Estate Inv. v. Schrader*, 226 Ariz. 128 (App. 2010).

II. The Court should read A.R.S. § 19-121.02(A)(8) as only applying to the random sample.

The Superior Court correctly found that A.R.S. § 19-121.02(A) applies only to the random sample provided by the Secretary of State to the county recorders. In the specific challenge of a duplicate signature under A.R.S. § 19-121.02(A)(8), this Court should hold that the statutory provision refers only to duplicate signatures contained within the random sample that a

county recorder is reviewing. It should not apply to other signatures outside of the random sample that a county recorder has not been provided.

Individual signatures outside of the random sample can be challenged under A.R.S. § 19-122(C). *Leach v. Reagan*, 245 Ariz. 430 (2018). However, there is no law that permits or requires that a county recorder redo a random sample based upon a challenge under A.R.S. § 19-121.03. Nor is there any law that permits or requires that a county recorder review signatures outside of the random sample. Practically, there would be insufficient time to do either. The county recorders have a tight deadline to complete their review provided in A.R.S. § 19-121.02(A) and do not have the resources to expand that review to all signatures within the global submission. The error rate based on the random sample is the applicable error rate subject only to adjustment by the court in a successful challenge. “Persons may sue the county recorders to challenge their certifications and, if successful, an adjusted invalidity rate is used to estimate the number of valid signatures.” *Mussi v. Hobbs*, 255 Ariz. 395, ¶ 56 (2023). This is purely a math exercise by the reviewing court, not additional signatures being added to create a new

version of a random sample for a county recorder to begin a new process under A.R.S. § 19-121.02.

The signatures in the random sample, for purposes of A.R.S. § 19-121.02, are a discreet universe. A county recorder does not have access to or compare them to signatures outside of that universe. Therefore, the only situation where A.R.S. § 19-121.02(A)(8) would be applicable is if there were multiple signatures from the same person contained within the random sample. The random sample error rate is just a shortcut to get a statistically valid projection to apply to the global submission. It is not intended to be entirely accurate as to the global submission. That would defeat the entire public policy purpose of a random sample. Duplicate signatures outside of the random sample can still be challenged under A.R.S. § 19-122(C), but that is a different question from the statutory error rate. If the Legislature had intended county recorders to consult signatures outside of the random sample, A.R.S. § 19-121.01(D) would require the Secretary of State to provide those signatures to the county recorders. That subsection manifestly does

not so provide. Again, this Court should make clear the scope of A.R.S. § 19-121.02.

RESPECTFULLY SUBMITTED this 22nd day of August, 2024.

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