STATECRAFT
LAW • GOVERNMENT • CRISIS MANAGEMENT
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003
(602) 382-4078

Kory Langhofer, Ariz. Bar No. 024722
kory@statecraftlaw.com
Thomas Basile, Ariz. Bar. No. 031150
tom@statecraftlaw.com

Attorneys for Plaintiffs/Appellants

IN THE SUPREME COURT

STATE OF ARIZONA

SCOT MUSSI, an individual; AIMEE YENTES, an individual; and ARIZONA FREE ENTERPRISE CLUB, a non-profit corporation,

Plaintiffs/Appellants/
Cross-Appellees,

v.

KATIE HOBBS, in her capacity as the Secretary of State of Arizona,

Defendant/Appellee,

and

ARIZONANS FOR FREE AND FAIR ELECTIONS (ADRC ACTION), a political committee,

Real Party in
Interest/Appellee/
Cross-Appellant.

No. _____

Maricopa County Superior Court
No. CV2022-009391

PLAINTIFFS/APPELLANTS' ARCAP 10 STATEMENT IN EXPEDITED ELECTION MATTER AND REQUEST FOR SCHEDULING CONFERENCE

Pursuant to Arizona Rule of Civil Appellate Procedure 10,

Plaintiff/Appellants hereby state as follows:

I. Designation as Expedited Election Matter

Appellants certify that this case is an "Expedited Election Matter" pursuant to A.R.S. § 19-122 and Arizona Rule of Civil Appellate Procedure 10(c)(2). Appellants further state, pursuant to Arizona Rule of Civil Appellate Procedure 10(d)(1), that this matter involves a statewide initiative measure, presents issues of substantial statewide importance, and, if not expedited, will become moot before Supreme Court review.

II. Notice of Appeal

Pursuant to Arizona Rule of Civil Appellate Procedure 10(c)(1), a conformed copy of the notice of appeal that was filed on August 19, 2022 with the Maricopa County Superior Court in this matter is attached hereto as Appendix 1.

III. Names and Contact Information of Counsel

Pursuant to Arizona Rule of Civil Appellate Procedure 10(c)(2), the names and contact information of counsel for each party are as follows:

Counsel for Plaintiff/Appellants
Kory Langhofer
Thomas Basile
STATECRAFT PLLC
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003
Tel.: (602) 382-4078
kory@statecraftlaw.com
tom@statecraftlaw.com

Counsel for Appellee Katie Hobbs
Amy Chan
Noah Gabrielsen
ARIZONA SECRETARY OF STATE'S OFFICE
1700 West Washington Street
Phoenix, Arizona 85007
Tel: (602) 542-8683
achan@azsos.gov
ngabrielsen@azsos.gov

Counsel for Appellee/Real Party in Interest/Cross-Appellant Arizonans for Free and Fair Elections (ADRC Action):
James Barton
Jacqueline Mendez Soto
BARTON MENDEZ SOTO PLLC
401 West Baseline Road, Suite 205
Tempe, Arizona 85283
Tel: (480) 550-5165
james@bartonmendezsoto.com
jacqueline@bartonmendezsoto.com

Joshua D. Bendor
Joshua J. Messer
Travis C. Hunt
Annabel Barraza
OSBORN MALEDON, P.A.
2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012
Tel: (602) 640-9000
jbendor@omlaw.com
jmesser@omlaw.com
thunt@omlaw.com
abarraza@omlaw.com

IV. Superior Court Judgment

Pursuant to Arizona Rule of Civil Appellate Procedure 10(c)(3), the final judgment of the Maricopa County Superior Court from which the appeal is taken is attached hereto as Appendix 2.

V. Designation of Transcript

Pursuant to Arizona Rule of Civil Appellate Procedure 10(f)(2)(B), Appellants do not designate any transcripts for inclusion in the record on appeal.

VI. Request for Scheduling Conference

Pursuant to Arizona Rule of Civil Appellate Procedure 10(g), Appellants request that the Court set an initial telephonic status conference to determine the schedule for the expedited proceedings in this matter.

RESPECTFULLY submitted this 19th day of August, 2022.

STATECRAFT PLLC

By: */s/Thomas Basile*
Kory Langhofer
Thomas Basile
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003

Attorneys for Appellants

Appendix 1

Clerk of the Superior Court
*** Electronically Filed ***
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LAW • GOVERNMENT • CRISIS MANAGEMENT

649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003
(602) 382-4078

Kory Langhofer, Ariz. Bar No. 024722
kory@statecraftlaw.com
Thomas Basile, Ariz. Bar. No. 031150
tom@statecraftlaw.com

Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

SCOT MUSSI, *et al.*, Plaintiffs, v. KATIE HOBBS, in her capacity as the Secretary of State of Arizona, Defendant, and ARIZONANS FOR FREE AND FAIR ELECTIONS (ADRC ACTION), a political committee, Real Party in Interest.	No. CV2022-009391 **NOTICE OF APPEAL** (Assigned to the Hon. Joseph P. Mikitish)

Notice is hereby given that Plaintiffs Scot Mussi, Aimee Yentes and Arizona Free Enterprise Club appeal to the Arizona Supreme Court from the portions of the judgment entered on the 18th day of August, 2022 adjudicating Plaintiffs' Objection No. 3 (circulator registration not accompanied by sworn affidavit), Objection No. 4(a)-(b) (circulator's

permanent or temporary address omitted applicable unit unit), and Objection No. 6(a) (circulator's service of process address omitted applicable unit number).

RESPECTFULLY SUBMITTED this 19th day of August, 2022.

STATECRAFT PLLC

By: */s/Thomas Basile*
Kory Langhofer
Thomas Basile
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003

Attorneys for Plaintiffs

ORIGINAL of the foregoing filed electronically via TurboCourt on the 19th day of August, 2022 with:

MARICOPA COUNTY SUPERIOR COURT
201 West Jefferson Street
Phoenix, Arizona 85003

COPY served electronically this same date on:

Amy Chan
Noah Gabrielsen
ARIZONA SECRETARY OF STATE'S OFFICE
1700 West Washington Street
Phoenix, Arizona 85007
achan@azsos.gov
ngabrielsen@azsos.gov
Attorneys for Defendant

James Barton
Jacqueline Mendez Soto
BARTON MENDEZ SOTO PLLC
401 West Baseline Road, Suite 205
Tempe, Arizona 85283
james@bartonmendezsoto.com
jacqueline@bartonmendezsoto.com

Joshua D. Bendor
Joshua J. Messer
Travis C. Hunt
Annabel Barraza
OSBORN MALEDON, P.A.
2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012
jbendor@omlaw.com
jmesser@omlaw.com
thunt@omlaw.com
abarraza@omlaw.com
Attorneys for the Real Party in Interest

By: /s/*Thomas Basile*
Thomas Basile

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Appendix 2

Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2022009391 08/18/2022

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT
E. Wolf
Deputy

SCOT MUSSI, et al. KORY A LANGHOFER

v.

KATIE HOBBS, et al. AMY BELL CHAN

JOSHUA D BENDOR
THOMAS J. BASILE
NOAH T GABRIELSEN
JAMES E BARTON II
JACQUELINE MENDEZ SOTO
JOSHUA J MESSER
TRAVIS C HUNT
LAWRENCE WINTHROP
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE MIKITISH

UNDER ADVISEMENT RULING

The Court has reviewed and considered all filings in the case, together with all legal authorities, evidence admitted at the evidentiary hearing on August 15-16, 2022, and arguments by counsel. The Court has also reviewed and considered the *Special Master Report* filed on August 15, 2022. Because the Court has left the record open in order to receive additional evidence concerning some issues, the Court directs entry of a final judgment as to the objections presented pursuant to Rule 54(b).

Background

On or around February 7, 2022, Arizonans for Free and Fair Elections (ADRC Action) (the "Committee") filed with the Secretary of State the title and text of its initiative measure, and received a serial number (I-16-2022) for the Initiative Petition. *See* Am. Compl. ¶ 14. The Act relates to voting rights, campaign finance, citizen measures, and lobbyist regulation.

On or around July 7, 2022, the Committee submitted to the Secretary 47,690 petition sheets that purportedly contained an estimated 475,290 signatures. *Id.* ¶ 15. Following her statutorily required initial review of the Initiative Petition and disqualification of specific sheets and signatures afflicted with various facial defects or errors, *see* A.R.S. § 19-121.01(A), the Secretary determined that 399,838 signatures were eligible for further review by the county recorders. Pursuant to A.R.S. § 19-121.01(B)-(D), the Secretary randomly selected five percent (*i.e.*, 19,992) of these signatures for transmittal to the county recorders, who currently are verifying the voter registration status of those purported signers, *see* A.R.S. § 19-121.02. The Secretary will discount the total number of signatures deemed eligible for verification (as adjusted to exclude signatures disqualified by the county recorders) by the aggregate validity rate computed by the county recorders to project the total number of valid signatures, *see id.* § 19-121.04, which must equal or exceed 237,645 to qualify the measure for placement on the statewide election ballot, *see* Ariz. Const. Art. IV, Pt. 1, § 1(2), (7).

On July 22, 2022, the Plaintiffs timely initiated this challenge to the legal sufficiency of certain circulator registrations and the Initiative Petition as a whole, pursuant to A.R.S. §§ 19-118(F) and 19-122(C). The initial complaint was timely amended on August 5, 2022.

Discussion

Initiative and referendum procedures are a fundamental part of Arizona's system of government. *Whitman v. Moore,* 59 Ariz. 211, 218–20 (1942). Although our constitution vests lawmaking authority "in a Legislature, ... the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature; and they also reserve ... the power to approve or reject at the polls any Act, or item, section, or part of any Act of the Legislature." Ariz. Const. Art. 4, Pt. 1, § 1. *Fairness and Accountability in Ins. Reform v. Green*, 180 Ariz. 582, 584-85 (1994). Our Courts have always respected, and endeavored to uphold, the power of the people of our state to enact or reject laws by popular vote. *Molera v. Reagan*, 245 Ariz. 291, 293 ¶ 1 (2018) ("We greatly respect the initiative process, including the civic activism required to collect the signatures necessary to qualify a ballot measure, and we do not lightly disturb the fruits of such efforts.")

The Arizona Constitution directs the Legislature to enact "registration and other laws to secure the purity of elections and guard against abuses of the elective franchise." Ariz. Const. Art. VII, §12. State law provides that "constitutional and statutory requirements for statewide initiative measures must be strictly construed and persons using the initiative process must strictly comply with those constitutional and statutory requirements." A.R.S. §19-102.01(A). Strict compliance "requires nearly perfect compliance with constitutional and statutory" mandates. *Arrett v. Bower*, 237 Ariz. 74, 81 (App. 2015). Strict compliance applies to "all constitutional and statutory provisions, no matter how minor." *Homebuilders Association of Central Arizona v. City of Scottsdale*, 186 Ariz. 642, 648 (App. 1996), even if its application results in what may seem to be "harsh consequences" resulting from as little as an "unfortunate mistake." *Arrett*, 237 Ariz. at 80, 83.

Once initiative petitions are circulated, signed, and filed, they are presumed valid. *Harris v. Purcell*, 193 Ariz. 409, 412 ¶ 15 (1998). Petitions and signatures disqualified by the Secretary of State are not entitled to that presumption, but the presumption may be reinstated on proof of the signature or petition's legal sufficiency. *Direct Sellers Association v. McBrayer*, 109 Ariz. 3, 5 (1972); *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 431 (1991); *Harris v. City of Bisbee*, 219 Ariz. 36, 42 ¶ 21 (App. 2008).

Here, the Plaintiffs raise concerns regarding the registrations of certain circulator's of the Initiative Petition that fall into four categories:

1. Registrations that were not accompanied by a sworn and notarized affidavit verifying the accuracy of information set forth in the circulator's registration for this Initiative Petition;

2. Registrations that do not designate the Committee's full and complete address as the statutorily required address for service of process;

3. Registrations that lack a full and complete address for the circulator because they do not specify in which unit of a multiunit structure the circulator resides; and

4. Registrations that contain inaccurate or false information concerning the circulator's residence location, telephone number, or email address.

The Plaintiffs raise 32 specific objections, with additional subparts. The Special Master Report addresses many of the objections and effectively resolves them by stipulation of the parties. Further, the parties agree on the law for many of the objections but disagree as to application of the law to the case. Finally, the parties disagree on the law on some objections and the law and facts on other objections. The Court will address the objections numerically as raised in the amended complaint.

General Issues Raised by the Parties

The Committee raises a general response to the Complaint arguing that the objections are not well suited to review by the Court and violate the principles for the bases for objections in Title 19. Arizona law provides, however, that "[a]ny person may challenge the lawful registration of circulators in the Superior Court of the county in which the circulator is registered." A.R.S. § 19-118(F). The Committee does not challenge that the objections were not brought in the proper Court or within the timeframe permitted by law. Therefore, the general Title 19 response must fail.

The Committee also raises a general response to the Complaint arguing that some of the objections are barred by the principle of laches. Because of the rulings noted below, the Court does not reach the laches argument.

Objections 1(a), (b) – Unregistered Circulator Listed "Paid" or "Out-Of-State" Status, and Objection 2 – Voter Signatures Predate Circulator's First Registration

This Parties stipulated as to the factual basis for the Objections 1 (a), (b), and Objection 2 and that offending circulator petition sheets must be stricken. *See* Special Master Report at 3-4.

The Special Master Report identifies the circulator petition sheets that correspond with Objections 1 and 2. See special Master report at 3-4. The Court adopts the Special Master Report findings and invalidates petition sheets and signatures related to Objections 1(a), (b), and Objection 2.

Objection 3 – Circulator Registrations Containing Affidavits from Previous Registrations

Arizona law requires that a valid circulator registration application must include the following:

1. The circulator's full name, residence address, telephone number and email address.

2. The initiative or referendum petition on which the circulator will gather signatures.

3. A statement that the circulator consents to the jurisdiction of the Courts of this state in resolving any disputes concerning the circulation of petitions by that circulator.

4. The address of the Committee in this state for which the circulator is gathering signatures and at which the circulator will accept service of process related to disputes concerning circulation of that circulator's petitions. Service of process is effected under this section by delivering a copy of the subpoena to that person individually, by leaving

a copy of the subpoena with a person of suitable age or by mailing a copy of the subpoena to the Committee by certified mail to the address provided.

5. An affidavit from the registered circulator that is signed by the circulator before a notary public and that includes the following declaration:

> I, (print name), under penalty of a class 1 misdemeanor, acknowledge that I am eligible to register as a circulator in the state of Arizona, that all of the information provided is correct to the best of my knowledge and that I have read and understand Arizona election laws applicable to the collection of signatures for a statewide initiative or referendum.

The Plaintiffs argue that some of the circulators for this Initiative relied on affidavits filed in previous circulator registration applications. They argue that the statutes requiring strict construction prohibit applicants from using past affidavits for the purpose of obtaining approval to carry petitions for this Initiative. They argue that a new affidavit related to a new application is required. Specifically, they assert:

> [An applicant for registration] is swearing to the accuracy of a ***particular*** representation, made in a ***particular*** time and place, before a ***particular*** notary public. For that reason, Arizona law flatly prohibits a notary from "perform[ing] a jurat on a document that is incomplete." A.R.S. § 41-328(A); *see also* Sec'y of State, ARIZONA NOTARY PUBLIC REFERENCE MANUAL (rev. July 2020) at 21 ("The notary cannot perform a notarial act on a document that is missing pages or that contains fields that should be filled in.").
>
> Plaintiffs' Prehearing Memorandum at 12.

Finally, the Plaintiffs argue that, although the Secretary of State has some discretion in constructing the mechanics of the circulator registration process, she cannot modify or abridge a statutory mandate.

The Committee argues that the law does not require a new affidavit for each registration. It argues that the affidavit language is provided by statute and was used by the circulators in this case. It notes that the Secretary of State does not require new affidavits in her system for registering paid and out-of-state circulators. In fact, the Committee argues that the Secretary of State's electronic circulator registration portal does not allow circulators to upload a separate affidavit for each petition they add to their registration. The Committee notes that the portal process is incorporated into the Elections Procedures Manual. It notes that provisions of the Elections Procedures Manual, which the secretary promulgated pursuant to a specific statutory directive,

have the force of law. *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63, ¶ 16 (2020). If the Court finds any ambiguity in the affidavit requirement, the Committee argues that the Court should defer to the Secretary's lawfully promulgated process. It argues that each step of the Secretary's registration process complies with the letter and spirit of A.R.S. § 19-118.

The Committee goes on to argue that a circulator may update registration information without submitting an affidavit for each new update. It posits that unlike other election requirements there is no time restriction when the registration affidavit must be completed.

The Committee continues in arguing that any requirement for a circulator to submit new affidavits for additional initiative measures must fail under the doctrine of latches. It argues that the initiative registration process was publicly available for over one year and that the Elections Procedures Manual was published in 2019. It argues that the Plaintiffs unreasonably delayed in challenging the procedures resulting in citizens relying on the procedures set forth to circulate initiatives like the Committee's.

Finally, the Committee argues that Objection 3 would impose a severe burden on the Committee's First Amendment rights.

As the Court noted in its recent decision in *Leibsohn v. Hobbs*, CV 2022-009709, Under Advisement Ruling, 08/16/2022, statutory language provides three requirements as to the contents of affidavits. They must acknowledge that the following information is true:

1. I am eligible to register as a circulator in the state of Arizona,

2. All of the information provided is correct to the best of my knowledge, and

3. I have read and understand Arizona election laws applicable to the collection of signatures for a statewide initiative or referendum.

Each of these items can change over time. For example, between the time of one initiative and another, a proposed circulator become ineligible to register. Likewise, "all of the information provided" can change from one application to the next. Finally, election laws may vary over time. Therefore, an inference may be made that a new affidavit is required each time a circulator wishes to carry a new petition.

Nevertheless, the strict construction of the statute does not support that the affidavit must specifically relate to each new initiative. Rather, the statute simply indicates that an affidavit must be included swearing to the listed items. The Legislature has imposed several temporal requirements for circulator affidavits. *See* A.R.S. §§ 19-112(D) (requiring affidavit swearing that

"at all times during [the circulator's] circulation of *this petition sheet*," the voter "printed the individual's own name and address and signed *this sheet* of the foregoing petition in [the circulator's] presence on the date indicated," and "at all times during circulation of *this signature sheet* a copy of the title and text was attached to the signature sheet") (emphasis added); 19-121.01(A)(1)(f) (directing Secretary to remove sheets "on which the signatures of the circulator or the notary are dated earlier than the dates on which the electors signed the face of the petition sheet"); (A)(3)(c) (directing the Secretary to remove signatures "if the date on which the petitioner signed the petition is after the date on which the affidavit was completed by the circulator and notarized"). In this case, the Legislature did not expressly include a temporal requirement for the circulator registration affidavits. It clearly could have done so as it had in other instances. Because the Legislature could have provided a temporal requirement but failed to do so, the Court concludes that the Legislature intended not to require new circulator affidavits for each new petition. Therefore, the Court concludes that no petition sheets are invalidated based on Objection 3.

Objection 4(a), (b) – Circulator Registration Did Not Include a Unit Number

As to Objections 4 (a), (b), a circulator registration must contain (among other items of information) "[t]he circulator's full name, residence address, telephone number and email address." A.R.S. § 19-118(B)(1). The Petitioners argue that strict compliance requires disclosing the circulator's residence address in full, including a unit number where applicable for apartments, dorms, or hotels. The petitioners note that our Courts have struck petitions that did not include complete dates. *See McKenna v. Soto*, 250 Ariz. 469, 472, ¶ 14 (2021). They also emphasize that our Courts have held that a circulator registration is not strictly compliant with A.R.S. § 19-118(B)(1) "if an apartment number, dorm number or hotel room number was not included on a residence address where such number was necessary to ensure that the individual could be contacted or questioned." *Leach v. Hobbs*, Maricopa County Superior Court No. CV2020-007961, Minute Entry (Aug. 14, 2020) at p. 14, *aff'd on other grounds*, 245 Ariz. 430 (2020).

The Committee argues that the statute merely requires a circulator's "residence address." It notes that the Plaintiffs are requesting the Court to amend the statutory language to include items not promulgated by the Legislature. *See Lawrence v. Jones*, 199 Ariz. 446, 452-53 (App. 2001) (concluding "that if the Legislature had wanted to include such a narrowly constructed definition of 'legal description,' it would have included it in Title 19 referendum provisions as it has done in other areas of the law"). The Committee argues that there is no statutory requirement for a minor infraction, such as the failure to include a unit number, is not a basis to find that the circulator is not "properly registered." The Committee notes that the Plaintiffs have offered no proof that the addresses provided were insufficient to ensure the circulators could be contacted. The Committee argues that as long as the addresses listed were locations where the circulators could be located, contacted, and questioned, the statute's purposes are met. *Lohr v. Bolick*, 249 Ariz. 428, 433 ¶ 22

(2020) ("[T]he purpose of the address requirement is to ensure that a circulator can be contacted and questioned about the validity of gathered signatures.").

As the Court noted in its recent decision in *Leibsohn v. Hobbs*, CV 2022-009709, Under Advisement Ruling, 08/16/2022, under Arizona's statutory framework and relevant precedents, the Court concludes that an apartment number, dorm number or hotel room number is required to be included on a residence address, but only if such number is necessary to ensure that the individual could be contacted or questioned. As such, a factual inquiry is required to determine whether the applicable unit number is necessary.

The Special Master Report noted that by a preponderance of the evidence and/or by agreement of counsel, certain challenged circulators live either permanently (subcategory (a)) or temporarily (subcategory (b)) in a multi-unit building that has individual unit numbers but failed to include a unit number on their registration forms.

In this case, no facts were presented and no findings were made by the Special Master as to whether an applicable unit number was necessary to ensure contact. Therefore, the challenges based on lack of a unit number under Objection 4 must fail.

Objection 5(a), (b) – Circulator Included Nonresidential Address on Registration Form

As to Objection 5 (a) and (b), the Plaintiffs argue that the permanent address (objection (a)) or temporary address (objection (b)) written on the registration form by some circulators is a nonresidential address. As noted in the Special Master Report, the parties stipulated to that fact. The Special Master Report also noted as follows: Some itinerant or homeless circulators have permissibly described the location where they can be found (*e.g.*, an intersection or a homeless shelter) even if it is not a traditional residential structure. Special Master Report at 5.

The Court concludes that for circulator registration forms that include non-residential addresses in place of residential addresses as either a permanent or a temporary address, unless it has been found by the Special Master to be a nontraditional residential location, the circulator registration forms are invalid.

Objection 5(c) – Circulator Registrations Relied on Incorrect Phone Number

The Plaintiffs argue that certain circulators provided a telephone number on their registration form that is inoperative or not his or her actual number. The Special Master Report noted that this issue was reserved for trial. See Special Master Report at 6. At trial, the Plaintiffs questioned the one circulator, Xia Nelson, who they believed fell into this category. Thereafter,

the Plaintiffs acknowledged that the circulator provided the correct phone number and withdrew that objection.

In closing arguments, the parties noted that, in the absence of a notarized affidavit and/or declaration in support of the accuracy of the phone number and email address on the circulator's affidavit filed with the Secretary of State, the Parties stipulate to the contact information as inaccurate at the time the affidavit was filed.

Objection 5(d) – Circulator Registrations Relied on Incorrect Email Address

The Plaintiffs argue that certain circulators provided an invalid email address on the registration form. The Special Master Report noted that the issue is reserved for trial. *See* Special Master Report at 6. The Plaintiffs did not present any evidence of invalid email addresses at trial. In closing arguments, the parties noted that, in the absence of a notarized affidavit and/or declaration in support of the accuracy of the phone number and email address on the circulator's affidavit filed with the Secretary of State, the Parties stipulate to the contact information as inaccurate at the time the affidavit was filed.

Objection 5(e) – Circulators Provided Residential Address on Registration Form Different from Address on Petition Sheets

The Plaintiffs argue that certain circulators provided a residential address on the registration form that is different from the residence address disclosed by the circulator on some or all of the petition sheets he or she circulated.

The Special Master Report noted as follows:

> By a preponderance of the evidence and/or agreement of counsel, certain circulators as identified in Exhibits 300 and 320 and omnibus Exhibit A provided different residential addresses on his/her registration form than as provided on the back of the petition sheets.

Special Master Report at 6.

In closing arguments, the Parties stipulated that of those circulators that listed differing addresses, some could not be confirmed as having moved during the relevant time frame.

The Court concludes that it must invalidate any petition sheets on which the circulator provided a different residential address than was provided on his or her registration form, and for which the parties do not stipulate that the circulator moved during the relevant time frame.

Objection 6(a) – Registration Service Address of Circulator Is Missing Unit Number

The Plaintiffs argue that some circulator registration forms designate a service of process address that did not include a suite number. Similar to the Court's recent decision in *Leibsohn v. Hobbs*, CV 2022-009709, Under Advisement Ruling, 08/16/2022, under Arizona's statutory framework and relevant precedents, the Court concludes that a unit number is required to be included on a residence address, but only if such number is necessary to ensure that the individual served with process. As such, a factual inquiry is required to determine whether the applicable unit number is necessary.

The Special Master Report notes as follows:

> By a preponderance of the evidence and/or agreement of counsel, certain circulators as identified in Exhibit 300 and omnibus Exhibit A failed to provide the Committee's unit number (e.g., "Suite 205") when writing the service address on the circulator registration form.

Special Master Report at 6.

The Special Master Report did not conclude that the unit number was necessary to serve the individual and no evidence of that fact was presented at trial. Therefore, the objection must fail.

Objection 6(b) – Registration Service Address Is Not the Committee Address

The Plaintiffs argue that disclosed on their registration forms and address for the Committee that was not the Committee's address.

The Special Master Report notes as follows:

> By a preponderance of the evidence and/or agreement of counsel, certain circulators identified in Exhibit 300 and omnibus Exhibit A did not list the Committee's address (*i.e.*, 401 West Baseline Road, Suite 205, Tempe, Arizona 85283) as the service address on the registration form.

Special Master Report at 6-7.

Because state law requires the Committee's address on the registration form, the Court concludes that the circulator's petitions must be stricken.

Objections 7(a), (b) – Circulator ID Number Errors

The Parties stipulate that petition sheets that failed to include accurate circulator identification numbers are invalid. The Special Master Report notes the petition sheets that have either incorrect or missing circulator ID numbers. *See* Special Master Report at 7. Because state law requires inclusion of accurate circulator identification numbers, the petition sheets identified by the Special Master must be stricken.

Objection 8 – Failure of Circulator to Indicate "Paid" or "Volunteer" Status on the Petition Sheet

The Parties stipulate that petition sheets that failed to indicate whether the circulator had a "paid" or "volunteer" status are invalid under Arizona law. The Special Master Report notes the petition sheets that failed to indicate the appropriate status. *See* Special Master Report at 7. Because state law requires the inclusion of the appropriate status, the petition sheets identified by the Special Master must be stricken.

Objection 9(a), (b) – Failure to Include Proper Circulator Name

The Parties stipulate that petition sheets must include a circulator name and that failure to do so renders the petitions invalid under Arizona law.

As to Objection 9(a), the Parties stipulate that certain petition sheets fail to include a proper circulator name. The Special Master Report identifies those sheets. *See* Special Master Report at 7.

As to Objection 9(b), the Plaintiffs argue that certain petition sheets failed to include a legible circulator name. The Special Master Report identifies those sheets and makes the following findings:

> By a preponderance of the evidence and/or the agreement of counsel, several circulators as identified in Exhibit 325 and omnibus Exhibit A printed names that are illegible.
>
> Special Master Report at 8.

The Committee argues that the Secretary of State has already determined that the circulator names are sufficiently legible for verification purposes and that any objection must be rejected. They argue that the statutes do not include a legibility requirement. They note that:

> Once the Secretary receives completed petitions sheets, she has 20 days to review and remove sheets for certain defects set out by statute. A.R.S. § 19-121.01. Among the reasons the Secretary must remove petition sheets is if the "circulator's affidavit . . . is not completed or signed." A.R.S. § 19-121.01(A)(1)(d). That is, upon her review, the Secretary removes all sheets that are accompanied by an unsigned or incomplete circulator's affidavit. As a corollary, if the signature on the affidavit is satisfactory, the sheet remains.
>
> Committee Trial Memorandum at 24.

The Committee goes on to argue that "the Plaintiffs have no grounds to challenge the legibility of the circulator's signature." *Id.* It further argues that a legibility requirement would serve no purpose.

In this case, the Plaintiffs are not challenging the legibility of the circulator's *signature*, but rather the circulator's *printed name*. As cited by the Committee, many Courts have noted that signatures by their very nature may be illegible. *In re Lee*, 2020 WL 710360, *5-6 (9th Cir. BAP 2020) (rejecting challenge to a loan agreement based on allegation that signature was illegible and thus "not properly signed"); *Hardy v. Comm'n of Social Sec.*, 2019 WL 3812450, *2 (D.N.J. 2019) ("While the signature at the bottom of the Report may be indeed illegible, that is simply not a valid basis to reject this evidence, since it is clear that it was a Report written by treating physician Dr. Kempf."); *In re: Iverson's Estate*, 273 P. 684, 687 (Wyo. 1929) ("Exactly what constitutes a signing has never been reduced to a judicial formula. The principle upon which these cases proceeded was, that whatever the testator was shown to have intended as his signature was a valid signing, no matter how imperfect, or unfinished, or fantastical, or illegible, or even false the separate characters or symbols he used might be, when critically judged.").

The Court concludes that a printed name is required in addition to the signature to assure the identity of the circulator. As such, the statutory purpose of including a printed name is defeated when the name is not legible on the petition sheet. The Court concludes that the statutes cited by the Committee do not support deference to the Secretary of State's regarding the details of the petition sheets.

Based on the factual conclusions of the Special Master, the Court concludes that any sheets without a legible circulator name must be rejected.

Objection 10 (a), (b) – Incorrect or Missing Circulator Addresses

The Parties stipulate that state law requires the circulator's residential address on the affidavit accompanying petition sheets, and that where the affidavit provides a P.O. Box or fails to provide any address, the signatures on those sheets must be invalidated.

The Special Master Report identifies certain circulators that provided a P.O. Box address or failed to write a residential address on the back of certain petition sheets. *See* Special Master Report at 8. The Court concludes that those sheets must be invalidated.

Objection 11 – Circulator Signature Missing

The Parties stipulate that Arizona law requires a circulator signature on petition sheets, and if a signature is missing, the sheets are invalid.

The Special Master Report identifies certain circulators who failed to provide a signature on certain petition sheets. *See* Special Master Report at 8. The Court concludes that those sheets must be invalidated.

Objection 12 – Petition County Entirely Missing

The Parties stipulate that Arizona law requires a petition to identify the applicable County on petition sheets and if a County is entirely missing, the sheets are invalid.

The Special Master Report identifies certain petition sheets that do not identify an Arizona County in the caption. The Court concludes that those sheets must be invalidated.

Objection 13 – 17 – Notarization Errors

Every petition sheet must be accompanied by an affidavit of the circulator that is executed in the presence of a notary public. *See* Ariz. Const. Art. IV, Pt. 1, § 1(9); A.R.S. § 19-112(D). The Plaintiffs challenge the affidavits accompanying some petition sheets on the basis that the affidavit is deficient in some regard, such as the following: missing the applicable County (Objection 13), failing to provide a legal and identifiable notarization date (Objections 14, 15), and failing to provide a legible and identifiable notary name (Objection 17).

The Committee argues that Arizona law requires the Secretary of State to remove petition sheets only for specific types of defects not included in Objections 13-17. *See* A.R.S. § 19-121.01(e), (f).

Regardless of the requirements for the Secretary of State, Arizona law provides that "Any petition that contains a partially completed affidavit or an affidavit that has been modified is invalid." A.R.S. § 19-112(F). Based on this statutory requirement, the Court concludes that any sheets accompanied by an affidavit that is partially completed or contains illegible information are invalid. The Special Master Report identifies certain petition sheets that contain errors noted in Objections 13-17. *See* Special Master Report at 19. The Court concludes that those sheets must be invalidated.

Objection 18 (a), (b), and (c) – Errors in Identifying County on Affidavit

Every circulator must in the affidavit identify a specific county in Arizona in which he or she would be eligible to register to vote, irrespective of the circulator's actual residency location. See ARS § 19-112 (D). The Plaintiffs argue that certain circulators either left the County field blank or disclosed a word or phrase that is not an Arizona County.

As to Objections (b), (c), the Committee largely agrees that errors in listing a county invalidates petition sheets.

As to Objection (a), the Committee argues that a circulator who has an out-of-state resident may write the County of his residency so long as the eligibility requirements between Arizona and the other state are the same.

The statutory language for the affidavit provides in pertinent part that "I, ____(print name)____, a person who is not required to be a resident of this state but who is otherwise qualified to register to vote in the county of _____, *in the state of Arizona* at all times during my circulation of this petition sheet, and under the penalty of a class 1 misdemeanor, depose and say..." A.R.S. § 19-112(D) (emphasis added). The statutory language clearly indicates that the County listed must be a county in Arizona. Out-of-state counties are insufficient.

The Special Master Report identifies petition sheets that contain affidavits that contain errors in listing an Arizona County on the affidavit. The Court concludes that those sheets must be invalidated.

Objection 19 – Illegible Serial Number

Arizona law requires both sides of each petition sheet to contain the serial number issued by the Secretary of State. *See* A.R.S. §§ 19-101(A), -102(A), -121(A)(2), -121.01(A)(1)(c).

The Plaintiffs argue that some of the petition sheets did not include legible serial numbers on both sides. The Committee argues that legible serial numbers are not required on the same

grounds that it argued legible printed names of circulators are not required. See discussion of Objection 9 above. The Court concludes that the statutory requirements evidence a legislative intent to inform the public of the serial number of the petition. An illegible serial number does not serve that purpose and sheets without legible serial numbers must be stricken.

The Special Master Report lists certain petition sheets that do not provide legible serial numbers on both sides. *See* Special Master Report at 10. The Court concludes that those sheets must be invalidated.

Objection 20 (a), (b) – Same Handwriting Style on Multiple Lines

Arizona law requires all signers of a ballot measure petition personally to write their full name, full residential address, and full date of signing on the petition sheet. *See* A.R.S. § 19-112(A). The circulator must affirm under oath in the accompanying affidavit that "each individual [signer] printed the individual's own name and address and signed this sheet of the foregoing petition in my presence." A.R.S. § 19-112(D). When someone other than the signer inscribes the signer's signature, printed name and/or address, "the circulator's affidavit was necessarily false . . . . [because] [i]t was apparent from the signature sheets that the elector did not print his or her own [information]—a fact the circulator must have known . . . ." *Parker v. City of Tucson*, 233 Ariz. 422, 438, ¶ 48 (App. 2013).

The Committee argues that the Plaintiffs cannot sustain their objection without expert testimony regarding hand styles. The Committee further argues that the requirement may disenfranchise voters with disabilities who need assistance in filling out the petition forms. It argues that the requirement that every piece of information must be completed by the signatory themselves would run into a risk of violating the Equal Protection Clause or the Americans with Disabilities Act.

The statute on its face clearly requires a signer to personally write all the information required on the form. No expert testimony is required to determine whether the same person filled out more than one line of information for more than one signer. The statute may have the effect of violating the Equal Protection Clause, Americans with Disabilities Act, or other applicable laws, if it serves to disenfranchise persons with disabilities from participating in the political process. There is no evidence, however, that persons with disabilities were affected as to the particular petition sheets related to Objection 20. A constitutional or other challenge to the validity of the statute, either on a facial or as-applied basis, must be more fully developed than presented in this case.

The Court concludes that any petition sheets with signatures, printed names, or addresses written by someone other than the voter must be stricken. The Special Master Report identifies the

sheets which contain such information. *See* Special Master Report at 10. The Court concludes that those sheets must be invalidated.

Objection 21(a), (b), and (c) – Voters Signature Date Errors

Every signer of the Initiative Petition must provide the date on which he or she affixed his or her signature. *See* Ariz. Const. Art. IV, Pt. 1, § 1(9); A.R.S. §§ 19-101(A), -102(A), -112(A), -121.01(A)(3)(c).

The Parties stipulate that certain errors in the voter's date of signing, as provided in Objection 21(a), (b), and (c), are a basis to invalidate the signatures. The Special Master Report identifies signatures that correspond with this objection. *See* Special Master Report at 11. The Court concludes that these signatures must be invalidated.

The Special Master Report notes that the Plaintiffs withdraw Objection 21(d).

Objection 22 – Voter's Signature Postdates Circulator Affidavit

Arizona law provides that signatures cannot be affixed to a petition sheet after the circulator affidavit on the back of the sheet is executed and notarized. *See* A.R.S. § 19-121.01(A)(3)(c).

The Parties stipulate that certain signatures postdate the circulator affidavit. The Special Master Report identifies signatures that correspond with this objection. *See* Special Master Report at 11. The Court concludes that these signatures must be invalidated.

Objection 23 – Signature Postdates Petition Filing

The Special Master notes that this objection has been withdrawn by the Plaintiffs. *See* Special Master Report at 12.

Objection 24(a), (b) – Missing Voter Street Address, Voter Street Address is a P.O. Box

Arizona law requires that every signer of the Initiative Petition must provide his or her "residence address, giving street name and number, and if he has no street address, a description of residence location." A.R.S. § 19-112(A); *see also* Ariz. Const. art. IV, pt. 1, § 1(9); A.R.S. §§ 19-101(A), -102(A), -121.01(A)(3)(b).

The Parties stipulate that certain signatures did not provide a numbered street address or equivalent or provided only a post office box and are therefore invalid. The Special Master Report

identifies signatures that correspond with this objection. *See* Special Master Report at 12. The Court concludes that these signatures must be invalidated.

Objection 25 – Missing Voter Printed Name

Arizona law requires that every signer of the Initiative Petition must both "sign his first and last names" and "print his first and last names." A.R.S. § 19-112(A); *see also id.* §§ 19-101(A), -102(A).

The Parties stipulate that certain signatures were not accompanied by a printed name and are therefore invalid. The Special Master Report identifies signatures that correspond with this objection. *See* Special Master Report at 12. The Court concludes that these signatures must be invalidated.

Objection 26 – Voter Resides Outside of Captioned County

Arizona law requires that the caption on the front of each petition sheet must identify the County in which the signers of the sheet are qualified electors. *See* A.R.S. §§ 19-101(A), -102(A). Further, under Arizona law, signatures affixed by individuals who reside in counties other than the county in which a majority of the sheet's signers are registered to vote are invalid. *See* A.R.S. § 19-112(C).

The Parties stipulate that certain signatures were of persons residing in a county other than the county in which the majority of the signers on the petitions sheet reside and are therefore invalid. The Special Master Report identifies signatures that correspond with this objection. *See* Special Master Report at 12. The Court concludes that these signatures must be invalidated.

Objections 27, 28, 29, and 30 – Voter Registration Issues

Objections 27 through 30 involve challenges to voter registration. The Plaintiffs have requested that the Court leave the record open to address these issues after the county recorders have completed their review of voter registration requirements. Therefore, the Court does not address these objections at this time, but rather leaves the record open to address these issues, at least potentially, at a later date.

Objection 31 – Duplicate Signatures

The Parties agree that if some signatures are duplicates of the same person, only one signature on the petition sheet is valid under A.R.S. § 19-121.02(A)(8). The Special Master Report

identifies signatures that correspond with this objection. *See* Special Master Report at 13. The Court concludes that the signatures must be invalidated.

Objection 32 – Authenticity Issues

The Parties stipulate that the petition sheets of circulator Sky Archuleta must be invalidated because she did not appear for trial pursuant to the trial subpoena. The Court concludes that the petition sheets of circulator Archuleta must be invalidated.

The Plaintiffs argue that the petition sheets of Genaro Cadilenia should be invalidated because of the high number of deceased voter signatures. The Plaintiffs argued that six or seven of the circulator's approximately 200-250 signatures were of persons who were deceased. The Committee argues that no evidence of actual wrongdoing by circulator Cadilenia was presented. The Committee argues that the Court should not presume wrongdoing in the absence of some specific evidence. The Court finds that 3% of the total signatures of the circulator being deceased persons is a high number on its face. Nevertheless, the Court cannot find that it is so high as to establish by a preponderance of the evidence that the circulator's actions were improper. Therefore, the petition sheets of circulator Cadilenia are not invalidated for authenticity purposes.

The Plaintiffs argue that the petition sheets of Mark Anthony Duckworth should be invalidated because he had a high-volume day of over 300 signatures but cannot provide a sufficient explanation of how he reached that number. The Committee argues that the Court should not presume wrongdoing in the absence of some specific evidence. Mr. Duckworth explained that the signatures were gathered over 4th of July weekend at multiple locations and events, although he could not recall which ones. THE COURT FINDS that while a lack of specificity causes some suspicions, it does not establish by a preponderance of the evidence that the circulator's actions were improper. Therefore, the petition sheets of circulator Duckworth are not invalidated for authenticity purposes.

Conclusion

For the reasons stated,

It is ordered granting the objections stated in the Amended Complaint in part and denying them in part.

Under A.R.S. § 19-118(F), a party must file a notice of appeal within five calendar days after entry of judgment. The Supreme Court may dismiss a belatedly prosecuted appeal, such as one filed on the last day of the statutory deadline. See McClung v. Bennett, 225 Ariz. 154, 235

P.3d 1037 (2010). Special procedural rules govern expedited appeals in election cases. Ariz. R. Civ. App. P. 10.

Pursuant to Rule 54(b), Ariz. R. Civ. P., and there being no just reason for delay, the Court directs entry of this Judgment as a final, appealable Order. The Court signs this minute entry as an enforceable Order of the Court effective immediately.

Date: August 18, 2022

HONORABLE JOSEPH P. MIKITISH
JUDGE OF THE MARICOPA COUNTY SUPERIOR COURT