

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

SCOT MUSSI, an individual; )  
 AIMEE YENTES, an )  
 individual; and ARIZONA )  
 FREE ENTERPRISE CLUB, a )  
 non-profit corporation, )  
 )  
 Plaintiffs, )  
 )  
 v. ) CV 2022-009391  
 )  
 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. )  
 \_\_\_\_\_ )

Phoenix, Arizona  
August 16, 2022

BEFORE THE HONORABLE JOSEPH P. MIKITISH

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING - DAY 2

**REPORTED BY:**

HOPE J. YEAGER, CR, RPR  
 Certified Court Reporter 50910  
 hope.yeager@jbazmc.maricopa.gov

A P P E A R A N C E S

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FOR PLAINTIFFS:

Kory Langhofer  
Thomas Basile

Statecraft PLLC

FOR THE PARTY IN INTEREST:

James Barton.

Barton Mendez Soto

\* \* \*

Phoenix, Arizona  
August 16, 2022

P R O C E E D I N G S

(Whereupon, the following proceedings  
commenced in open court:)

THE COURT: We are back on the record in the  
matter of Mussi vs. Hobbs, et al., CV2022-009391. Counsel  
for the plaintiffs are here, along with the counsel for  
the Real Party in Interest. No one is here on behalf of  
the Secretary. Her attendance and representation has been  
waived for today's proceedings. We had factual  
presentations yesterday.

I did receive a copy of the Special Master  
report. I believe it came in last night. I took a brief  
look at it this morning. And I believe we are ready to  
proceed from my end at this point.

What do we need to address before we get  
into closings? For the plaintiffs?

MR. LANGHOFER: I don't believe anything,  
Your Honor. We're ready.

THE COURT: For the Committee?

MR. BARTON: Nothing from the Committee,

1 Your Honor.

2 THE COURT: All right. As to the Special  
3 Master report, I don't know if you will want to walk  
4 through it and tell me how it relates to the status of  
5 each of the objections at this point, or -- again, I've  
6 just briefly reviewed it, having gotten it last night.  
7 And I know there are attachments that haven't come through  
8 yet. So if it is self explanatory and you just want to  
9 get into the legal arguments, just let me know that, and  
10 we can proceed from there.

11 With that, I'll turn it over to the  
12 plaintiffs for your closings.

13 MR. LANGHOFER: Thank you, Your Honor. Good  
14 morning, Your Honor. And thank you for the recess  
15 yesterday to organize our thoughts for the closing.

16 THE COURT: Of course.

17 MR. LANGHOFER: I think what I'd like to do  
18 is just walk through each of the categories with you and  
19 along the way, describe the relevant parts to the Special  
20 Master report.

21 THE COURT: Okay.

22 MR. LANGHOFER: I think we offered in  
23 another case to trade the podium for every issue category  
24 front. I think you probably chose for us just to go  
25 through it traditionally where I go start to finish, and

1 then Mr. Barton goes; is that still the case?

2 THE COURT: I think that makes the most  
3 sense. Just practically, we've got a lot of issues to  
4 deal with. So I think we can go through it. If there's a  
5 point where I feel like I need a response, I'll let you  
6 know that, but let's just plan to get through all the  
7 issues in a traditional manner.

8 MR. LANGHOFER: That's great. Well, for the  
9 first three objection categories, each of which is  
10 addressed in Special Master report, I think you have very  
11 light lifting. So that's 1-A, 1-B and 2. Those should be  
12 resolved because the Special Master has found the facts  
13 there that are relevant. And the law in those categories  
14 is undisputed.

15 So those issues are circulators who are paid  
16 but unregistered. Circulators who were out of state but  
17 unregistered, and the voter's signature was gathered  
18 before the circulator's first registration. So those are,  
19 I think, light lifting.

20 Objection 3 is the most important.  
21 Numerically, it's the largest category in the case. I'm  
22 not going to belabor this, because I know Your Honor is  
23 already familiar with the issue, but this is the question;  
24 when the circulator affidavits were filed relative to when  
25 they registered.

1                   And I will just give you one example here.  
2 We're looking at Exhibit 312. And let's start with the  
3 facts. First of all, the timeline of the filings is not  
4 in dispute. Those comes from the Secretary of State.

5                   So when Exhibit 312 indicates that an  
6 affidavit was filed next day, but the registration was  
7 filed, say, a year later or a month later, that's directly  
8 from the Secretary of State.

9                   The -- it's also clear that a number of  
10 circulators -- Nicholas Covington. This is on Page 20 of  
11 Exhibit 102 -- filed their affidavits long before they  
12 registered. So in this case, he filed his affidavit on  
13 October 23, 2019. It was the only affidavit he filed. It  
14 was, of course, notarized. Seems to have been entirely  
15 proper.

16                   He registered for another measure then back  
17 last election cycle. He did register for this measure  
18 until March 21st of this year. And you know, in the  
19 interim, he registered for looks like eight other  
20 measures. There was no notarized affidavit for his  
21 registration in this case.

22                   Another fact that seems to be well  
23 established is -- it's a stipulation from the Secretary of  
24 State, that their system will only allow you to upload a  
25 second affidavit if you first registered before

1 September 29, 2021.

2           So Mr. Covington could have done that. His  
3 first registration is before that date. A number of  
4 circulators though, even though they had the opportunity  
5 to upload a second affidavit, never did. No one can  
6 upload a third or fourth affidavit. Maximum of two.

7           The final factual issue to just be clear on,  
8 I guess this is joint law, in fact. The elections  
9 procedure manual does not say that one affidavit is enough  
10 for all time. As a matter of fact, it is not in the  
11 election procedure manual. It says you need an affidavit.  
12 It does not say one affidavit to rule them all. It's not  
13 there. It does say you need to upload an affidavit. It  
14 doesn't say one is enough for all purposes.

15           So let's turn now to the law. And five  
16 points here. First, as a matter of statutory law, you  
17 cannot notarize a document that is incomplete. The  
18 citation for that is 41-328(A), alpha.

19           Second, as a matter of statutory law, you  
20 cannot notarize a document that -- through a separate  
21 attachment unless the attachment describes the document  
22 you're notarizing. That's 41-313 Charlie.

23           THE COURT: Tell me the import of that  
24 second point.

25           MR. LANGHOFER: I mean, the of affidavits

1 don't say -- the language is, the information provided is  
2 accurate. It doesn't say -- what it probably should say  
3 is, the information provided in the attached registration  
4 for measure X is accurate, but it would be the right way  
5 of doing it, but we're not raising that issue here.

6           The language they used here does come to  
7 statute. So I think the statute saying, you know, use  
8 this language. It would make sense to not embellish that.  
9 So we're not arguing that as to his original affidavit, it  
10 is defective, right? It seems to have complied.

11           Now, the third point legally is that the  
12 registration statute, 19-118, has those five elements.  
13 And at least two of those five for registration are  
14 specific to an initiative. You have to name the  
15 initiative and serial number and your employer. Right?  
16 So the different signature gathering firms work for  
17 different measures.

18           And so then when you get to the fifth  
19 element it says you have to have a notarization. It must  
20 be specific. Then the fifth element with regard to  
21 notarization, if you work the inference there, right, the  
22 previous elements require information that's specific to  
23 the measure.

24           And the fifth element requires a  
25 notarization. Of course, your notarization must be

1 specific to the measure. You can't notarize a future  
2 fact. He wouldn't have known in 2019 that this measure  
3 existed. He hadn't been hired yet because there was no  
4 committee yet. You couldn't have notarized in 2019 your  
5 registration marked for 2022.

6           And the fifth point -- and I think this is  
7 significance because to goes to the defense's point. As a  
8 matter of law, you cannot rely on a form from the  
9 Secretary of State. It's been tried many times. It  
10 doesn't work. There are three cases on this point.  
11 They're all in the briefs so I won't give you then  
12 numbers. It's town of Marana, Robson Ranch and  
13 Daise(phonetic) and Duffy(phonetic). It's been tried.

14           In fact, one of the cases someone relied on  
15 the exact petition form provided by the Secretary of  
16 State. They characterized it as getting advice from the  
17 Secretary of State. It was the town clerk in that case,  
18 but I think it's -- conceptually, it's the same as the  
19 filing officer for the election.

20           You got a form. They use exactly the form  
21 they got from the Secretary or form the county -- town  
22 clerk. It was missing one of the required statutory  
23 elements. They filed. They ended up in court, of course.

24           They said how could this be wrong? They  
25 told us this was the form to use. We did exactly what

1 they said. And it's out. Because it wasn't strictly  
2 compliant. You can't rely on the advice from the position  
3 of the filing officer. It is ultimately up to you to make  
4 sure that your filing is correct.

5           One more point on this objection 3. I  
6 suppose two more points. The first is the idea that the  
7 plaintiffs should have sued the Secretary two years ago I  
8 think asks the point to achieve the impossible. They  
9 weren't trying to register. They probably wouldn't have  
10 had standing because they hadn't been injured yet. Until  
11 someone actually files signatures in reliance on this  
12 system, the opponents don't have an injury, right?

13           The proponents did. If they were being told  
14 that this was a suitable way of registering when it's  
15 inconsistent with the statutes, they could have sued.  
16 They had standing. They had notice of the injury, at  
17 least as far back as October of last year when another  
18 case like this came up. And there appears to have been no  
19 change. There's no evidence in the record of anything  
20 changing. If someone was required to sue earlier, it was  
21 the Committee, not the plaintiffs.

22           THE COURT: What about the Fontes case. It  
23 came out in 2020 where there was the improper circulator  
24 -- not the improper circulator information, but the  
25 improper mail-in ballot information that was being

1 circulated. Someone came forward, and the Court didn't  
2 seem to have a problem with standing in that case. Tell  
3 me why this is different.

4 MR. LANGHOFER: So the problem there was, in  
5 a way, the same problem here. What the recorder was  
6 trying to do was inconsistent with statutes, but I think  
7 they had the argument that it was reducing the security of  
8 the elections, if I recall correctly.

9 I'll confess to you, I haven't read that  
10 case in several months, but I think the argument was that  
11 they were going to be sending ballots to people who had  
12 never requested them. And it reduced the security of the  
13 election because you have literally millions of ballots in  
14 the mail to people who never requested them, might not be  
15 there to get them. And so they had some sort of injury  
16 because their right as a voter would be diluted through  
17 this unsecured voting process.

18 I don't read -- I certainly do remember  
19 this. I don't read Fontes as saying there's no standing  
20 requirement in Arizona any more. Because people cited the  
21 Fontes case after the 2020 election, and there was, you  
22 know, a raft of cases saying we think that the ballots  
23 were from North Korea, whatever the argument was. And the  
24 Court did not hear those. They were generally randomly  
25 rejected in the trial court. Because Fontes has not been

1 widely read as an abrogation of doctrine here entirely.

2           So I wanted to add the final point on this.  
3 The defense that it would have been impossible for them to  
4 file a second affidavit only applies to about a third of  
5 the signatures in this category. So even if the Court  
6 were to credit this idea that you can't require them to do  
7 what the Secretary system doesn't allow them to do, right?  
8 And to say they wouldn't have been required to get the  
9 affidavit and just keep it in a drawer or fax it in, or  
10 mail it in or email it in or drop it off.

11           If you were to say, I won't require them to  
12 do it unless they could have uploaded it. There's still  
13 about a third of the signatures in this category. We've  
14 subdivided it for you, Your Honor, in the Special Master  
15 report that's there. There's a separate column for this.

16           The people who don't have a factual  
17 impossibility defense there, they're just different,  
18 right? So even if we were to credit that defense, there's  
19 still a bit left. Questions on objection 3?

20           THE COURT: No other questions at this  
21 point. Thank you.

22           MR. LANGHOFER: The next is 4-A and 4-B.  
23 These are the missing units number objections. Factually,  
24 your task here is I think solved by the Special Master  
25 findings. A whole day of discussion about this and

1 objections 5 and 6.

2           What we've ended up doing was, as you'll  
3 recall from yesterday, stipulating that a number of --  
4 stipulating to who fits in which category. And for both  
5 4-A and 4-B, we've subdivided them into 4-A-1 and 4-A-2,  
6 and 4-B-1 and 2.

7           And the reason for that is that the  
8 Committee will be arguing to you that if they're missing  
9 the unit number at a hotel, that's okay, but if they're  
10 missing a unit number at an apartment, that's kind of in  
11 the general category.

12           Our view is, it doesn't matter either way.  
13 The statute require -- so let me pause within the facts.  
14 I think you've got our agreement and the Special Master's  
15 concurrence as to what belongs in 4-A-1, 2, 4-A, B, 1 and  
16 2.

17           So the facts are clean. On the law, the  
18 substantial compliance standard is that, you know, a sort  
19 of lay description of it. What I would say to my mom is,  
20 it's close enough that you can figure it out. It's not so  
21 confusing that you can't figure it out. That's a lay  
22 description of substantial compliance. That is not the  
23 standard for strict compliance, right?

24           If you staple the text of your measure, the  
25 text referendum to your petition rather than writing it in

1 the caption, you can certainly figure that out. That  
2 would be substantially compliant. It doesn't work under  
3 strict compliance. The Supreme Court has decided that  
4 case already.

5           And so to say that giving this street  
6 address for a hotel or a large apartment building -- you  
7 may have, you know, 200 or 500 rooms -- isn't confusing  
8 because you can sort it out. That misses the point. You  
9 cannot analogize here to the dates.

10           So in McKenna vs. Soto, the recent decision  
11 in the strict compliance context, the question was -- one  
12 of the questions was, the statute requires a date. What  
13 does that mean? It doesn't a month to a year, but the  
14 Supreme Court said, no, a date means a full date, month,  
15 year. It's implicit in the strict compliance standard, in  
16 the statutory text requiring a date.

17           It's the same analysis when you're dealing  
18 with an address. The statute requires an address. If you  
19 leave off the unit, it's incomplete. Sure, you can  
20 probably figure it out, right? You have other ways of  
21 contacting them. You can use commercial databases. You  
22 can use investigators. You can call them and ask them.  
23 You can ask the Committee. There are ways of figuring it  
24 out.

25           The statute requires an address for the

1 strict compliance land, and we are. That requires a full  
2 address including the unit number.

3 Now, even in the substantial compliance  
4 context though, a mailing address wouldn't be enough. The  
5 Supreme Court decided that in the Lohr vs. Bolick case  
6 where a candidate had written a PO box rather than her  
7 residential address. The Supreme Court found it wasn't  
8 even substantial complete.

9 So the argument that if you send mail to a  
10 hotel, it will make its way to the person. If you send  
11 mail to a large apartment building, the mailman can figure  
12 it out, because over time, they become familiar with the  
13 names. That's not even substantially compliant. It's  
14 certainly not strictly compliant.

15 THE COURT: I'm sorry. What was the name of  
16 that case?

17 MR. LANGHOFER: That is Lohr -- L-o-h-r --  
18 vs. Bolick -- B-o-l-i-c-k.

19 THE COURT: Thank you.

20 MR. LANGHOFER: The candidate ended up  
21 winning there for other reasons, but that is one of the  
22 findings in the case.

23 And one more case. This is not from the  
24 petition context, but it's from recently decision --  
25 recent decision from the court of appeals on what is a

1 complete address. And it says it has to include the unit  
2 number. I guess the short version of argument on this is  
3 that Judge Gates, we think, got that one right.

4 In this strict compliance land, a unit  
5 number is required for complaint address on your  
6 circulator registration.

7 Moving on now to 5-A and B. This is the  
8 nonresidential address. And, again, your task here, I  
9 think, is going to be greatly aided by the Special  
10 Master's findings. We've gone through these. And I think  
11 the briefing talks a bit about itinerant circulators or  
12 homeless circulators.

13 Some people put an address on South 12th  
14 Street. If you look at it on Google maps, there's no  
15 homes there, but there are a lot of tents, right? We  
16 agreed through the Special Master process those count.  
17 And one lady had an address at a church in Flagstaff, that  
18 she lives there. I guess that counts, right? There's  
19 some homeless shelters.

20 So I think the factual situation has just  
21 been cleaned up through the Special Master process. The  
22 question of whether these are residential or not, factual  
23 question to solve.

24 I'll show you, just by way of example here,  
25 Exhibit 59 here, which has already been admitted by

1 stipulation. This is Eagle Cook, Jr., and the address  
2 that he gave -- well, let's look at this. It says Box 248  
3 on West St. Mary's Road in Tucson. When you look at that,  
4 you can see that it's a UPS store mail box. It's not  
5 where he lives. It's a mailing address rather than a  
6 residential address.

7                   On the law, it's simple. The statute says  
8 we need a residential address. They provide -- the ones  
9 who are left, they provide something that is not a bona  
10 fide residence. All right.

11                   Now we're to category C and D.

12                   THE COURT: I just want to make sure that  
13 I'm clear. As to the homeless addresses, where it appears  
14 that people are living in nontraditional residential areas  
15 or locations, the plaintiffs are in agreement that as long  
16 as there is some factual showing that those are actual  
17 residences for those individuals, they're okay?

18                   MR. LANGHOFER: That's correct. Yeah.  
19 That's no longer a -- there's no longer factual disputes  
20 in this category.

21                   THE COURT: All right. Very good.

22                   MR. LANGHOFER: In some cases, I think they  
23 describe intersections, and it turns out they're on hard  
24 times. The point of the statute is not to exclude those  
25 sort of people from the political process.

1 THE COURT: All right.

2 MR. LANGHOFER: Now we're on Categories 5-C  
3 and D, Charlie and delta. In a way, these are separate  
4 but they're close enough. I think I'm going to cover them  
5 as one.

6 The way that you establish the facts here,  
7 the attachment to the Special Master report should  
8 include -- I think, there's no dispute about the facts as,  
9 you know, listed in the -- on this Exhibit 8, his report.  
10 And the reason for that is that over the past week or so,  
11 we've got a lot of affidavits from -- this is all  
12 discussed with the Special Master.

13 Although, I don't know that he -- in the  
14 report, it says the issue is ultimately reserved for trial  
15 because there was some testimony about this yesterday, but  
16 the attachment that we filed last night in the Special  
17 Master incorporates the testimony from yesterday.

18 So I think the factual findings in his  
19 report at this point are uncontested. The way we got to  
20 this point -- actually, let me zoom out for a moment, and  
21 we'll take Mr. Eagle Cook as an example.

22 THE COURT: Bear with me. Kay, can you get  
23 me set up so that I can see the exhibits on my screen? Do  
24 you know how to do that?

25 Mr. Langhofer, you may proceed.

1 MR. LANGHOFER: Thank you. The  
2 telemarketers can't manage my name. Although there's  
3 mercifully few of them now.

4 So on this circulator registration form,  
5 there is spaces for your email address and phone number.  
6 What had happened here -- this isn't in the record, but  
7 just for some context. I'll get to the record in a  
8 moment -- was, there were a number of volunteers for one  
9 of our clients who called these or emailed them and said,  
10 hey, are you Eagle Cook? And where those phone numbers  
11 and email addresses didn't work, we made the allegation.

12 And in our meetings with the Special Master,  
13 the discussion was, well, under Judge Gates's standard,  
14 the plaintiffs need to show not only they don't work now,  
15 but they didn't work when the registration was filed.

16 So the concern was, well, I think there were  
17 roughly 30 people in this category. We want to send out  
18 30 subpoenas to ask them, what was your phone number on  
19 this date?

20 And the solution we worked out was, but  
21 except where there's a witness who can authenticate the  
22 contact information on the date of registration or a  
23 notarized affidavit authenticating it, in those cases,  
24 we'll withdraw the objection; but for that, we will  
25 stipulate that the information is incorrect on the date of

1 registration.

2                   So what you have in the Special Master's  
3 report, as I understand, is no longer contested because it  
4 backs out all the objections that fit into that category.  
5 That's the way we -- we discussed this on the record some  
6 yesterday as well, though not in as much detail. So  
7 that's how we get to the facts for 5-C and D through  
8 basically the stipulation in this process we discussed  
9 with the Special Master.

10                   On the law, I think this is relatively  
11 straight forward. 19-118 requires these two fields  
12 specifically. The email address and the telephone number.  
13 And if it wasn't accurate at the time of filing, the  
14 registration is inaccurate. It's false and, therefore,  
15 invalid.

16                   Happy to move on to 5 Echo.

17                   THE COURT: Let me just back up and make  
18 sure that I'm understanding what you just described.

19                   There have been stipulations that are in the  
20 Special Master reports that withdraw objections if there  
21 is evidence provided that the residential information is  
22 accurate? I need you to go through there again.

23                   MR. LANGHOFER: Yes. I think that's  
24 important. What I described yesterday morning was for  
25 objections 4, 5, and 6, the process was that we would have

1 an exchange with opposing counsel. They would either  
2 provide, in some cases, photographs. In some cases a  
3 notarized affidavits so that we can confirm identity, or  
4 in some -- yesterday, in one case, live testimony, saying  
5 the allegation's incorrect.

6           You know, in some cases, they said it may  
7 look like a big building to you, but there are no unit  
8 numbers. Okay, then we'll withdraw those, or I actually  
9 live at this church, for example. Okay, we'll withdraw  
10 that. When we get to categories 5 Charlie and delta here,  
11 they would provide an affidavit saying my phone number may  
12 not work now, but it did then. You could have reached me  
13 at this email address back then. The emails are a very  
14 small category. Phone numbers are larger.

15           So we worked out with the Special Master  
16 which of the circulators objections in those categories  
17 would be withdrawn. And then yesterday, we had Xia  
18 Nelson. I think we had one question for her, and she  
19 answered it correctly. I assume it was correct, but she  
20 gave the phone number on her registration as being her  
21 phone number on the relevant date.

22           So after trial yesterday, we adjusted the  
23 column for -- columns for 5 Charlie and delta in the  
24 Special Master's report. Showed it to opposing counsel.  
25 They agreed there was no further changes.

1                   And so even though he didn't make findings  
2 on this as Judge Winthrop finished his work for trial  
3 yesterday, the stipulation was that in the absence of a  
4 notarized affidavit or a witness -- this is what I  
5 described yesterday but very briefly so it's  
6 understandable it wouldn't have been internalized. Unless  
7 there was a witness or notarized affidavit on that point,  
8 we would stipulate that the information was incorrect on  
9 the date of registration.

10                   THE COURT: Okay.

11                   MR. LANGHOFER: The shortest way of saying  
12 it is it's by stipulation at this point. Those are  
13 reflected in the Special Master's report.

14                   THE COURT: All right. So unless we have  
15 information otherwise, the parties have stipulated that  
16 they are invalid.

17                   MR. LANGHOFER: I don't know that they can  
18 see that it's invalid.

19                   THE COURT: Oh, okay.

20                   MR. LANGHOFER: But we do agree that it was  
21 inaccurate on the date of registration.

22                   THE COURT: Got it. It was inaccurate.  
23 That's a better way of saying it. All right. Thank you.

24                   MR. LANGHOFER: Our point on the  
25 un-stipulated portion, the law, is that the statute

1 requires these two categories. It has to be accurate at  
2 the time of filing under Judge Gates's ruling. So they  
3 are invalid as a legal matter as well.

4 Let me move on not to 5 echo. And the issue  
5 here is that -- I'll use Eagle Cook. Although, I don't  
6 think he actually has this issue, but it's a good example  
7 since it's already on the screen.

8 When you register, you need to provide your  
9 permanent and temporary residential address. And then  
10 when you sign the back of the petition sheet as a  
11 circulator, you also have to provide your residential  
12 address. And there were a number of circulators who  
13 provided different addresses on the back of the petition  
14 sheet and in the registration form.

15 So what I'm going to do is pull up  
16 Exhibit 320 just to illustrate this. And what we're  
17 looking at here is Aiden Chilner, who is a registered  
18 circulator. You can see his number here at the bottom.  
19 He puts an address in Hemet, California, but if you pull  
20 up Mr. Chilner's registration form -- this is Exhibit 300,  
21 and it's Page 246 -- you can see that he has no Hemet,  
22 California addresses on his registration form. So the  
23 address he wrote on the back of his sheets is different  
24 from the address on his registration form.

25 Now, this also came up in Judge Gates's

1 case. And what she said, I think correctly, is that  
2 people are allowed to move. The point is not to exclude  
3 folks who move and even folks who move frequently.

4 And so the same process for this category.  
5 This actually is part of the Special Master's findings.  
6 So you don't have to rely on the stipulations here.  
7 Although, he reached those findings through stipulation.

8 So, again, if they can provide an affidavit  
9 or testimony which didn't materialize yesterday, that he  
10 would find that there is a mismatch between their  
11 registration address and the address on the back of their  
12 forms, and that they hadn't moved. So that's part of it.  
13 It addresses the Judge Gates concern that maybe people had  
14 moved so nothing is ever technically false.

15 THE COURT: So how did he address the fact  
16 of whether they moved?

17 MR. LANGHOFER: By stipulation of the  
18 parties. So unless there was some countervailing evidence  
19 that they had moved, we would forego the subpoena to talk  
20 to them. And the subpoena incurs costs for us, cost for  
21 them, and risk for them, right? Because if someone  
22 doesn't show up, they lose all the signatures.

23 So it make more sense for the parties to  
24 say, if you can get ahold of this person, and get a -- we  
25 would even accept virtual notaries. Arizona recognizes

1 the online notary process now. Get something that  
2 confirms their identity and says they hadn't moved, then  
3 we would withdraw the objection if they could produce  
4 that.

5           If not, the finding of the Special Master  
6 through this stipulated process was that they had not  
7 moved. So that's how we get there factually. See all the  
8 fun you missed, Your Honor. It helps clean up the --  
9 really, I'm very grateful for the Special Master process  
10 because every one of these has its own little nuance, and  
11 we covered all that with him.

12           Now, there is one wrinkle here that came up  
13 through the Special Master process, and that is where the  
14 difference between the registration address and the  
15 address on the back of the petitions is just a  
16 trans-positional issue.

17           So there was one gentleman, I want to say  
18 his address was something like 4915 Indian School. And he  
19 wrote 4519. And so he switched two digits. They aren't  
20 next to each other, but you can see how this would happen.  
21 And so we subdivided that as well. And that's in the  
22 Special Master's report. There's a separate column.

23           And I think Mr. Barton will be arguing to  
24 you that's not the sort of error that should result in  
25 invalidation, but we do agree factually. Yes, the digits

1 are incorrect, and it's a trans-positional issue.  
2 Mr. Chilner here has a whole different city. It's not a  
3 trans-positional issue. He would be in the first  
4 category.

5                   On the law in that category, the statute,  
6 112-D, says you need to write your residence on the back  
7 of the petition sheet. It can't -- the requirement isn't  
8 that you write an address on the back of the petition  
9 sheet. It's that you write your address. So if we can  
10 agree that they hadn't moved -- when they filed the  
11 registration, it was correct. They hadn't moved. Any  
12 address is not acceptable. It has to be your registration  
13 address.

14                   The next category is 6. I'm going to cover  
15 6 alpha and bravo together. This is a service address.  
16 Service or process address. Also arising in these  
17 registration forms.

18                   And as you can see here, the --  
19 Mr. Schoner(phonetic) did this right. He put the  
20 Committee's official address, 401 West Baseline Road,  
21 Suite 205. And this Special Master report addresses this  
22 squarely. I think it's all just apparent on the face of  
23 documents, so there's not a -- there's no sort of nuance  
24 to this one, right? What else should they print?

25                   We also don't have factually the argument

1 that the Committee maintained multiple addresses. You  
2 know, they had addresses all throughout the state, for  
3 example. That's not the argument here. So factually,  
4 it's quite clean. A number of people just didn't include  
5 the right address here. The Committee's address.

6 Now, on the law, the statute -- this is  
7 118-B -- requires, quote, the address of the Committee,  
8 end quote. And oftentimes, what they wrote here was their  
9 hotel address or some address that's just unfamiliar to  
10 us. It does not -- there's no allegation that it's some  
11 other address of the Committee itself, but the argument  
12 is, I think, that it's some other address at which they  
13 would be willing to accept service.

14 6-A is different from 6-B, because in 6-B,  
15 they just wrote an address that's not even 401 West  
16 Baseline Road. It's a whole other address. 6-A is where  
17 they wrote 401 Baseline Road, full stop. They didn't  
18 include the suite number.

19 This is a variation, I think, of objection  
20 4, where we're missing unit numbers. And here, the record  
21 already shows that they did campaign finance filings. The  
22 401 West Baseline Road with the suite number 205 is the  
23 Committee's official address. There's no evidence in the  
24 record the Committee itself is maintaining some other  
25 location.

1 All right. And now we have some easy ones.  
2 7-A and B. 8-A through 9-A. So 7-A all the way  
3 through 9-A. These are Special Master has resolved the  
4 facts. The law is undisputed. Light lifting.

5 That leaves us though with 9-B. And the  
6 allegation here is that the circulator's printed name is  
7 illegible. And I want to just clarify something, some  
8 confusion that may have come up in the briefing.

9 The briefing from the Committee talks about  
10 how signatures need not be legible. We agree with that.  
11 My signature is certainly not legible. And it actually  
12 looks a lot like the signature here on screen, but the  
13 allegation is different here.

14 It's not about the signature. It's about  
15 the printed name. So here, in the affidavit, the  
16 circulator is required to print their name. And the  
17 Special Master actually spent some time going through each  
18 of these. There's only 29 sheets, but still, you've got  
19 to look at each one and try to make it out.

20 I'll show you the next one just so you can  
21 get a sense of -- get a sense of what the Special Master  
22 was looking at. There's another printed name. You know,  
23 you can't read that. If gun to my head, asked what his  
24 name was, I would say it's Rafael. Something Rafael,  
25 maybe Christian. I'll tell you, that's not the correct

1 answer.

2                   So the Special Master made findings on each  
3 of these. It was contested, but that's how you get to the  
4 facts. That's Exhibit 325. And I guess our position is  
5 that if it's like this -- if it looks like Christian  
6 Rafael, but, actually, I think he's trying to write --  
7 well, I won't tell you. I think you once you know, then  
8 you can kind of blur your eyes and see it.

9                   If it's like this, it is the functional  
10 equivalent of being blank. You cannot divine the name  
11 from this. And it's not that when it says print name, you  
12 can write a scribble or an X, or I think there was  
13 literally a case out of Wisconsin or Nevada -- I don't  
14 know if it was published -- where someone just wrote a,  
15 you know, curlicue. That was it. It's the same as being  
16 blank for all practical purposes. So this is not about  
17 the legibility of your signature, which can be illegible.  
18 This is about whether when you print your name, it must be  
19 discernible.

20                   All right. So that's, I think, the law. I  
21 think it's clear the statute definitely requires you to  
22 print your name. So that is legal authority from which  
23 the objection arises.

24                   Happy to answer questions about this 9-B.  
25 Otherwise, I'll move on to another couple easy categories.

1 THE COURT: Okay.

2 MR. LANGHOFER: So 10-A, 10-B, 11 and 12.  
3 This is an easy category. The Special Master's resolved  
4 the facts. The law is undisputed.

5 All right. That takes us to 13, which is  
6 the notarization county is blank. So I'm going to show  
7 you what we're talking about here. And factually, this is  
8 all resolved by the Special Master report. You don't have  
9 to review these exhibits. We've done that already, but  
10 the issue is that up here in the notarization county,  
11 there's just nothing written.

12 And the practical import of this, you may  
13 have noticed in Judge Gates's opinion last cycle, there  
14 were a number of notaries who claim to have been  
15 notarizing -- I think, one of them had notarized in like  
16 five different counties on the same day. And they weren't  
17 all next to each other. It was like Yuma, and Pima, and  
18 Navajo. Perhaps Mohave. I remember it was very far  
19 flung.

20 And the -- you can use that to call into  
21 question the authenticity of the notarization or the  
22 accuracy of it. You can't do that when there's nothing  
23 here. So it has some practical effect, but let me put the  
24 practicality aside and just address what the statutes say,  
25 the law on Category 13.

1           The county is required, 41-264. Got to  
2 write the county. And it's additionally -- that's the  
3 general notarization statute. It's specifically required  
4 though in Title 19 for initiatives and referenda. That's  
5 19-112(D)(F). So you've got to have the county. For this  
6 category, the Special Master found they did not.

7           All right. Three more notary issues here.  
8 This is categories 14, 15, and 16. I'm going to talk  
9 about these together because I think the analysis is the  
10 same. And let's look at Exhibit 331.

11           For all three of these categories, Your  
12 Honor, you've got findings from the Special Master. So  
13 you don't need to review the documents, but I'd like to  
14 explain what we're looking at here. We're going to look  
15 at 331. I'm going to show page 141.

16           So this category is the notarization date is  
17 blank. So you've got the notary stamp. You've got the  
18 notary signature. Just didn't notarize it. That's  
19 objection 14. Just didn't date it is what I was trying to  
20 say.

21           If we look now at Exhibit 332. I'll show  
22 you Page 9. In this category, they had written something  
23 in this box, but it is either illegible, or it's not a  
24 date. Special Master found this was illegible. In one  
25 they wrote Y first 202. So that's not a real date, right?

1 In a couple of these, he wrote Maricopa, but in any event,  
2 the Special Master found that for everything that's left  
3 in this category, the date is either illegible or not a  
4 date.

5           The final category here, 16. We're going to  
6 look at Exhibit 333. And what you have here are -- they  
7 wrote a notarization date. It is a complete date, but it  
8 is the wrong date. And we know that because it post dates  
9 the filing with the Secretary of State. When the  
10 Secretary received these forms, all of these were future  
11 dates.

12           So the Special Master has already found  
13 that, you know, these post date to filing, or at least --  
14 you probably pulled out a few of these, but the ones you  
15 need findings of some of them being after the filing. So  
16 factually, this is quite clean. It's resolved by the  
17 Special Master report.

18           Let me speak to the law though. As a matter  
19 of statutory law, the notarization must include the date.  
20 That's 41-261(A). And also as a matter of statutory law,  
21 this one from the Title 19, the notarization date has to  
22 be after the date of the signatures. You can't  
23 pre-notarize your forms, then go get signatures because  
24 the notarization speaks to how the signatures were  
25 gathered. And that's 19-121.01.

1           In fact, it comes up again. When the  
2 statutes define what the Secretary of State does when she  
3 gets the petitions, one thing she needs to do is compare  
4 the dates on the front of the sheet to make sure they're  
5 before the notarization date. If they're after, the  
6 signatures are to be struck.

7           And so you need this date to be accurate.  
8 It has to be written for everyone to confirm that the  
9 notarization is correct and that the signatures on the  
10 front are valid. And for all three of these categories  
11 where it's blank, illegible, not a date, or post dates  
12 July 7th, they're invalid as a matter of law.

13           All right. Let's turn to objection 17.

14           THE COURT: Is there a separate category --  
15 before we move past the dates. You mentioned an example  
16 where somebody signs the year as 202. Where it appears  
17 that they just forgot a digit. When it's 2022, 2-0-2-2,  
18 they forgot that extra two, is there a separate category  
19 for that, or are we lumping all of the you got -- you  
20 don't have a date or an invalid year where it's clearly  
21 not right.

22           MR. LANGHOFER: Yes. That goes in  
23 Category 15, objection 15. So that includes dates that  
24 are either illegible. The first one I showed you were  
25 dates that aren't a date. Like where they wrote Maricopa

1 or the year 202. I think the Byzantine Empire hadn't  
2 started yet. So that's not correct, right? So all of  
3 those are lumped into Category 15.

4 THE COURT: Okay. And there's not a  
5 separate category for almost right.

6 MR. LANGHOFER: That's right, yeah. No  
7 subdivision.

8 THE COURT: It's all the wrongs.

9 MR. LANGHOFER: In fact, I think this may be  
10 the only one that's, you know, real close. So it's one.

11 All right. So objection 17. This is a  
12 notary name is missing. After -- just for your  
13 orientation, Your Honor, our complaint was filed before  
14 the Secretary had finished their review. So we didn't  
15 know what they were going to invalidate. We had a bunch  
16 of objections in this category. The Secretary ended up  
17 catching almost everything in this category. So a few of  
18 these you'll see the number is really small. That's  
19 because the overlap between our complaint and the  
20 Secretary, which means, you know I think we were both  
21 correct.

22 So there's not a lot in this category, but  
23 it's here so let's talk about it. The Special Master has  
24 found, as a matter of fact, that the objections that are  
25 left in Category 17 are missing the notary's printed name.

1 This is usually because the notary didn't stamp the page.

2           And so I'm going to show you Exhibit 334,  
3 Page 15. And so you've got a signature here. You've got  
4 a date. You don't have the notary's printed name because  
5 that's part of the stamp, and it's not stamped. Small  
6 category but pretty straightforward.

7           The statutory basis for this is 41-264(A),  
8 alpha. That is that the notary identification information  
9 has to be provided. And on this category, it was not.

10           That takes us to 18 alpha. And so now we're  
11 moving on from notaries. Now, what we're talking about is  
12 the affidavit of the circulator. I'm going to show  
13 Exhibit 335 here. All right.

14           And the problem here is that in the  
15 circulator affidavit, some number of the circulators wrote  
16 the name of a county that's not in Arizona. We've ended  
17 up subdividing this, I think, into -- strike that. That's  
18 the next category.

19           Here they wrote something. It's just not a  
20 county in Arizona. New Castle County, St. Louis City,  
21 which I gather is also St. Louis County. New Castle and  
22 New Castle. Some people have Los Angeles, but none of  
23 these are Arizona counties. And the argument here is that  
24 the voter registration requirements in those other  
25 counties are the same as here, and so it works. That's

1 the defense position.

2           So the statute says that in this affidavit  
3 you have to say apart from the residence requirement in  
4 Arizona, I would be qualified to vote in fill in the blank  
5 county. And then it says in the state of Arizona. So  
6 specifically it's calling for an Arizona county. It  
7 doesn't matter which Arizona county you write there. You  
8 can write Maricopa or Yavapai. It doesn't matter because  
9 residence isn't the issue. It's just where would you be  
10 qualified to vote.

11           So where these people wrote an out-of-state  
12 county, the defense position is voting requirements in  
13 California, Delaware, and Missouri are the same as they  
14 are here, so it doesn't matter. We disagree with that  
15 just on the law. The reason for that is that most of this  
16 is in the defense brief, but there's one addition I'd add.

17           In California, if you -- their brief  
18 concedes, as long as you're not -- you can be a felon and  
19 vote. You just can't be incarcerated, but Arizona more  
20 broadly bans voting by felons unless your civil rights  
21 have been restored. So it's not true that if you're  
22 qualified to vote in Los Angeles County -- basically,  
23 you're not incarcerated -- you would also be qualified to  
24 vote here. That's incorrect.

25           Same situation in Missouri. There, you

1 can't vote if you're incarcerated or on parole or  
2 probation, but, again, we extend our felony prohibition to  
3 felons -- all felons unless their civil rights have been  
4 restored. So writing St. Louis City, for example, does  
5 not establish that you would be qualified to quote in  
6 Arizona.

7           The third one is Delaware. And this is  
8 where I had to do a little bit of extra research. Their  
9 brief says that as long as you're not a felon, you can  
10 vote in Delaware, plus age requirements, residency and so  
11 on, but just folks on the criminal aspect of it. So I had  
12 to research that.

13           And the statute actually has more  
14 requirements than what's in the brief. The same statute  
15 they cite there. They apply a felon prohibition -- a  
16 prohibition on voting if you're a felon in the first 10  
17 years after your conviction. So in your 11th year of  
18 being a felon in Delaware, you can vote. In the 11th year  
19 of being a felon in Arizona, you cannot. So writing New  
20 Castle County doesn't get the job done. They're out of  
21 Arizona counties. Legal requirements are different. It's  
22 not the equivalent of writing any Arizona county.

23           Okay. A cousin of that is 18 bravo. And  
24 here, we're going to look at Exhibit 336. So what the  
25 circulators did here was -- well, we subdivided this.

1 18-B 1 is where they wrote something that's not a county.  
2 Here, it looks like the voter signed it. Here, they gave  
3 a street address. Here, they write Mesa, for example.

4           And what we've subdivided are the few sheets  
5 like Mesa, for example -- that's in the subdivision --  
6 where you can infer from that which Arizona county they  
7 were trying to write. We agree it's not an Arizona  
8 county, but you can infer from it. And then we left in  
9 18-B 1 everything else. So 18-B 2 is the ones where it's  
10 so close you could infer an Arizona county from.

11           So I think 18-B 1 is resolved for you. The  
12 Special Master has found that some of these sheets have  
13 these characteristics. The law on that category is  
14 undisputed. 18-B 2, the defense argument is, if you can  
15 infer it, that's enough. Our position is, strict  
16 instruction. Strict compliance. 19-112 delta requires  
17 you to write an Arizona county, and they didn't.

18           The next category is in the easy bucket. 18  
19 Charlie. That's where they just wrote nothing here.  
20 Special Master found which sheets those are. The law is  
21 undisputed. That's 18 Charlie.

22           All right. Believe it or not, there are not  
23 many contested categories left, Judge. We've made good  
24 progress.

25           Now, we're turning on to Objection 19. And

1 for this, we're going to look at Exhibit 338. The issue  
2 here is that the serial number is illegible. And for  
3 every one of the allegations here, we have a factual  
4 finding by the Special Master. And they all involve --  
5 all but one involve what you're seeing here on the screen.  
6 The corner of the sheet was torn off. And so it's  
7 illegible, not because it was printed poorly, but because  
8 it's gone.

9           There's one of them, I believe, that has  
10 some ambiguous marking. Here we go, sheet 27315. This is  
11 not a tear off, but it's still not legible. So this is in  
12 the Special Master's findings that it is, in fact,  
13 illegible.

14           On the law -- so the facts, I think, are  
15 quite clean for you on the law. The statute 19-121.01(A),  
16 you've got to write the correct serial number in this  
17 corner. Every one -- you know, the machine prints it now,  
18 of course. The Secretary of State is required to confirm  
19 in her process that they've printed the correct serial  
20 number here. Look at this image. The Secretary could not  
21 have confirmed this contains a correct serial number  
22 because it's entirely gone. You can't see any of the  
23 digits. It's been torn off.

24           So the defense position is the Secretary has  
25 already supposed to reviewed for this. You shouldn't

1 second guess it. And our position is, the Secretary --  
2 everything the Secretary is the subject to second  
3 guessing. Just like what the Governor does, the subject  
4 to second guessing or what the legislature does. Courts  
5 look over the shoulder of elected officials all the time  
6 because they need to follow the law.

7 In this case, even if she looked at it,  
8 obviously, her conclusion that this was legible would have  
9 been incorrect and not strictly compliant. Judge Gates  
10 reached the same issue. She got it right in our view.

11 Okay. Let's look at 20-A and 20-B. We'll  
12 discuss these together because they're so closely related.  
13 And this is the same handwriting problem. For context,  
14 some years ago, there was a -- you just -- the voter had  
15 to write their own signature, but anyone could print the  
16 address in the field if they wanted to.

17 And there were some fraud allegations.  
18 Legislature was unhappy about how those come out. So they  
19 passed a law saying we're going to need the voter to write  
20 their own address. Voters got to write their -- print  
21 their full name. Print their address. I don't think it's  
22 extends to the date column, by the way. I think anyone  
23 can write the date. That's not the issue here.

24 So let's look at Exhibit 339. And these,  
25 I'll just tell you, are a little bit more difficult and

1 time consuming to go through. We spent quite a bit of  
2 time with the Special Master going through these. We made  
3 findings on each one. Some of them came out. Some of  
4 them stay in, but the Special Master has found, as the  
5 trier of fact here, that there is the same handwriting on  
6 multiple lines. This one appears to be the same person.

7                   What you generally see is that a husband and  
8 wife team appears to be writing each other's names. So  
9 this is a good example. The Duta (phonetic) family. It  
10 appears that someone wrote both the names and the address.  
11 And then the question isn't the authenticity of the  
12 signature. Those are different, but whether one person  
13 wrote both the name and the address.

14                   We're not saying which one of them wrote it.  
15 It's not about whether the voters misbehaved. It's  
16 whether the affidavit on the back of the petition sheet  
17 where -- by statute, the circulator has to say each voter  
18 wrote his name and address in my presence whether that  
19 affidavit is incorrect.

20                   So after going through this with the Special  
21 Master, there's not a whole lot of signatures here. I  
22 want to say there's 35 sheets, but then the objection  
23 applies to the entire sheet. Under the Parker case, it's  
24 the holding of Parker. If you've got one person writing  
25 the information for multiple people on the front, and the

1 circulator says on the back that everyone wrote their own,  
2 you throw the sheet out. That's the holding in Parker.

3           So I think this one is straightforward after  
4 you get over the hard part of deciding which of these had  
5 the same handwriting. That's part of the Special Master's  
6 report.

7           THE COURT: Did he make findings on that?

8           MR. LANGHOFER: He did.

9           THE COURT: Okay.

10           MR. LANGHOFER: Okay. So now we enter 21-A  
11 through 26. This is a total of one, two, three, four,  
12 five -- 10 categories. And these are also in the easy  
13 bucket. They've been resolved because Special Master made  
14 the findings, and the law is undisputed.

15           There were two small categories. 21 delta  
16 and 23. Rather than spending additional time on them. I  
17 think it was about 200 signatures total, but that's all  
18 part of the Special Master's report. I think there's  
19 nothing for Your Honor to do on this. Except, of course,  
20 adopt the report.

21           Now we have 27 through 30. And this is the  
22 category that we discussed at the end of yesterday  
23 hearing. What do we do with the voter registration issues  
24 because the -- we don't want to have double counting, but  
25 the counties aren't done with their review. So this is

1 the portion of the record that we're holding open. The  
2 Special Master did not reach these because we're all  
3 waiting for the counties to do their job.

4           Category 31. This is, on one hand,  
5 difficult, but now that we've gone through this Special  
6 Master process, I think it's no longer difficult for Your  
7 Honor. The question here is whether one person signed  
8 multiple times. So Exhibit 354 -- there's about 20,000  
9 signatures in this category. It generates images of the  
10 person's first and second signatures. You can see the  
11 voter's name in the voter file below it. Gone through  
12 those.

13           Defense counsel or, at least, the defense  
14 team has gone through these. Pulled out some for  
15 junior/senior situations, right? You know, if Joe Smith,  
16 Sr. signs and Joe Smith, Jr. signs, both at the same  
17 address, we pulled those out. We've got, at this point, a  
18 finding from the Special Master as to which ones are left.

19           There's also no legal dispute because if  
20 there are duplicates, it's invalid. So this is an easy  
21 category after -- you know, someone looked at 20,000 of  
22 them, and it won't be necessary to redo that.

23           All right. That takes me to the final  
24 category. This is really what most of the witnesses  
25 yesterday were talking about, the authenticity issues. I

1 think my reaction to that is probably similar to everyone  
2 who was watches. A lot of those witnesses had really good  
3 explanations.

4 Kevin Avili(phonetic), I was interested in  
5 seeing what he had to say. He said he had 326 signatures.  
6 How'd that happen? He explains it. He went to, you know,  
7 an abortion rally downtown. Everyone was registered.  
8 Thousands and thousands of people. It sounds like he was  
9 just a frenzy of signatures. Yeah, that's exactly how it  
10 happened. That's a very plausible -- I think it's  
11 credible.

12 I thought Sherry Tomlinson(phonetic) and  
13 Judy Schafer, those are the ladies who have -- I think  
14 Judy Schafer had three days for over 200 signatures, and  
15 Sherry Tomlinson had one. They were at large events. I  
16 thought their descriptions were really credible, like lots  
17 of details. They can describe the number of clipboards  
18 they had and assistance. Judy had that calculation about  
19 how many she could have gotten, and she was kind of  
20 disappointed it seemed to have gotten less. Very  
21 credible. So I don't think they are at issue any more.

22 The people who had received calls and  
23 apparently had initially said they didn't circulate,  
24 they've all answered those questions satisfactorily,  
25 obviously.

1 Sky Archuleta was in this category. She  
2 didn't show, so I don't think we need to say much about  
3 her. She's a registered circulator. She was subpoenaed.  
4 And she didn't show. So her signatures, only 133, are  
5 out.

6 Just so Your Honor knows -- I guess I can  
7 share this with you -- Exhibit 353, Sky Archuleta gathered  
8 133 signatures but eight of them were deceased. And the  
9 handwriting on those sheets -- I can show them if you'd  
10 like, Your Honor -- but she would have had a hard time  
11 answering questions yesterday. She didn't show up. I  
12 don't think we need to go further on that.

13 Another one that's similar who did testify  
14 yesterday thought is Genaro Cadilenia. He is the guy who  
15 circulated in Yuma. He had -- what we discussed with him  
16 on the phone was, I think we said a little bit more than  
17 200. Our count is 230 signatures, I want to say. Seven  
18 of those were from deceased voters. And just take a look  
19 at those here in Exhibit 353.

20 We've got Louie E. Munos, deceased. Natalie  
21 Reyes, she passed away in 2007, right? We've got Algora  
22 Silva -- he's got seven of them here out of 230. We asked  
23 him for an explanation. He said, I don't know.

24 I think it's strange to say that this guy  
25 had that percentage of people filing names for deceased

1 voters. We're talking about the same name, the same  
2 address, in most cases, long since deceased. And, you  
3 know, none of us were there in the field. We don't know  
4 what happened with those signatures, but I think it's fair  
5 to say it's more likely than not that they're not  
6 authentic.

7 I don't think he's offered an explanation  
8 for what would be an extremely statistical anomaly. Let's  
9 put it that way. One more. Mark Anthony Duckworth.

10 THE COURT: Before we move off of  
11 Mr. Cadilenia, if I'm remembering his pronunciation  
12 correctly. Calilenia, I believe. Are you saying that  
13 because of the high percentage of deceased voters that  
14 were on his signatures, that I should throw out all of his  
15 sheets because there's doubt as to whether any of them are  
16 accurate? The boy who cried wolf argument, that we can't  
17 believe him as to anything?

18 MR. LANGHOFER: That is the legal theory.  
19 Let me be precise about this though. The  
20 Whitmur(phonetic) case and Bruseau(phonetic) find that if  
21 circulators are engaging in dishonest practices -- I think  
22 the phrase is something like, dishonesty as to one is  
23 dishonesty as to all, something like that. It's from  
24 Bruseau. So that is the legal rule, but I want to be  
25 clear about this.

1                   We would -- Your Honor would have to find  
2 not just that he was the victim of some, you know, morbid  
3 joke, but that he was responsible for this, right? So if  
4 he had said, for example, my favorite spot is gathering  
5 signatures right outside of a cemetery because then people  
6 are emotionally vulnerable and they'll stop and talk to  
7 you.

8                   He didn't say it that way, but he said  
9 they'd be like, okay, that -- I could see how it would  
10 happen, right? Grandma is your mind. We've got nothing  
11 like that. And I just think the simplest explanation here  
12 is -- what's the common link between all the signatures on  
13 the sheet? It's him.

14                   Some of the others had -- I think, the first  
15 one we talked to, she had been gathering up at NAU. And  
16 it seems like she's got a pretty good explanation, you  
17 know, I guess our question was, why are all these people  
18 who no longer live in Maricopa County signing as Maricopa  
19 County voters? It doesn't make sense. And it does make  
20 sense because she says she's on NAU's campus. Oh, they're  
21 students who are probably writing their parent's home  
22 address. We've got nothing like that for Genaro.

23                   And they're not people who moved out of the  
24 county. They are deceased voters. It seems to me like  
25 without an explanation of that kind of concentration of

1 deceased voters it's inappropriate. It's -- they're  
2 illegal to be more precise.

3           There is one more circulator -- and of all  
4 the witnesses who talked to you yesterday, I think there's  
5 one more. That's mark Anthony Duckworth. He is the  
6 gentleman who gathered about 70 signatures a day, he said.  
7 Now, one day he got 221. That was July 1st.

8           So okay, Mr. Duckworth, how did that happen?  
9 He said, we were pounding the pavement. Going to a bunch  
10 of events. Which events? Didn't know. How many events?  
11 Didn't know a lot of them. I think he said fireworks  
12 stands. And, look, he didn't say something that any of us  
13 can point to and say, I know this is false, right?

14           Who is to say where he was that day, but his  
15 explanation is so different from Judy Schafer's and Devon  
16 Aviles and Chris -- Sherry Tomlinson, rather. Those  
17 people could very easily recall the days they just nailed  
18 it, right? They had these bounties those days. Really,  
19 really plentiful signatures. They could tell you exactly  
20 where they were, the number of people there.

21           Devon Aviles even was describing for us the  
22 demographics of the people, right? They were all very  
23 liberal. They're were all registered to vote. It was  
24 great, he said. That was his feeling. I don't know that  
25 he used the word great.

1                   And then you get to Mark Anthony Duckworth.  
2 You've got three -- I mean, more than 200 signatures a  
3 day. That was a big day. Three times his normal and just  
4 no specifics. And that seems implausible. How could you  
5 have such a huge day and not be able to describe how that  
6 happened with any specificity?

7                   So I think of the ones who talked to  
8 yesterday, those are the three that are worth looking at,  
9 but even Sky Archuleta, she's out because of the no show  
10 circulator rule.

11                   Your Honor, that's all the points I have for  
12 you. Each of the categories, I think, we've covered, but  
13 I'm happy to answer any questions.

14                   THE COURT: I think that's all for now.  
15 Thanks so much. All right. We've been going about an  
16 hour and a half. Let's take our break, give our court  
17 reporter a chance to cool off her hands. And we'll be  
18 back on the record in about 15 minutes.

19                   (Off the record.)

20                   THE COURT: We are back on the record.  
21 Counsel for each party is present. It is now the  
22 Committee's turn. Mr. Barton.

23                   MR. BARTON: Good morning, Your Honor.

24                   THE COURT: Good morning.

25                   MR. BARTON: I will address the

1 category-by-category analysis that Mr. Langhofer went  
2 over. I can tell you I expect it will take me half as  
3 much time because on many of those sections, I'll just  
4 acknowledge that he correctly presented what we came to.

5 I do, however, want to take a little bit of  
6 time to put the whole case in context. So if you'll  
7 indulge me, I'd like to start on that.

8 THE COURT: Sure.

9 MR. BARTON: In July of this year, the  
10 committee turned in 415,000 signatures -- actually, well  
11 over 415,000 signatures in support of this measure on  
12 47,690 sheets. And I raise that number, because that  
13 number is probably 20 percent of the number of votes this  
14 measure needs to get to pass and become law. And what the  
15 committee is trying to do here is not make it law with  
16 this petition, but just put it into the voters. So I want  
17 to emphasis the enormous number of signatures that were  
18 turned in in support of this measure.

19 And then it went through a process, a  
20 statutory process -- frankly, it's still doing that  
21 process -- to see if it qualifies. For example, the  
22 Secretary of State removed five percent of those sheets,  
23 2,375. And she removed those in a process that's laid out  
24 by statute. And that statute is 19-121.01. And after  
25 that, the Committee was left with 414,895 signatures. So

1 that was the first pass that the Secretary did of taking  
2 off all sheets.

3           Then the Secretary went through and looked  
4 at individual lines, and she removed lines that were  
5 facially invalid. And after she finished removing those  
6 lines, the Committee was left with 399,838 signatures.  
7 I'm going to call that 400,000 from now on.

8           From that, the Secretary of State, does not  
9 evaluate each signature, nor does anyone else evaluate  
10 each signature for whether the signer is registered to  
11 vote. Instead, they take a five percent sample that's  
12 randomly generated, and they send it out to the county  
13 recorders. And then the county recorders take those, in  
14 this case almost 12,000 signatures, and they evaluate  
15 them, for the most part, for whether they are registered  
16 to vote. And that process is laid out in 121.02.

17           In this case, the Committee turned in so  
18 many signatures that as long as 59.44 percent of those  
19 signatures in that random sample are valid, this measure  
20 stays on the ballot.

21           So that's the background of what is  
22 happening in this measure. If the Committee -- even  
23 60 percent of the signatures are valid by the county  
24 recorders, it will show that it has more than enough  
25 signatures to go to the voters. So the voters can decide

1 this measure.

2           We don't have all of the county's back. In  
3 fact, we have some big counties out, but I can aver to the  
4 Court, that it looks like we're going to have well over  
5 60 percent, probably higher than 70 percent validity when  
6 it's reviewed by the counties. That's not really at issue  
7 here today, but just as sort of a background, a background  
8 of what we're talking about.

9           So what is the Committee's opponent? What  
10 are the challengers asking for here to take a measure with  
11 so many signatures? How are they going to disqualify  
12 something north of 160,000 signatures to prevent the  
13 citizens of Arizona from voting on this?

14           And I want to point out that, first and  
15 foremost, it's a little unusual that Scot Mussi and  
16 Arizona Free Enterprise can get involved in this case,  
17 right? This is a group of citizens have gathered  
18 signatures, and they gave it the Secretary of State. Why  
19 don't the citizens just decide it?

20           Well, because the statute provides some very  
21 specific guidance that we don't have to now wonder about  
22 standing, because the statute itself gives language to  
23 give standing to literal any person. So any person can  
24 challenge this measure.

25           Okay, but there's two distinct ways that any

1 person can challenge this measure. Any person can  
2 challenge based on the actions of the Secretary of State.  
3 That's from 19-122(C). From the same statute, they can  
4 also challenge based on compliance with this -- compliance  
5 with this chapter.

6           Now, if they choose to do the first path,  
7 based on the actions of the Secretary of State, and then  
8 if you add -- there's another section that let's you  
9 challenge the county recorders. That's 121.03. There are  
10 very tight timelines for this sort of nitty gritty, line  
11 by line signature challenge. You have to constrain  
12 yourself to just the random sample when you're challenging  
13 the county recorders.

14           If you look at the Time case, which is Time  
15 v. Brewer -- that's 119 Arizona 207 -- it makes it clear  
16 that each separate process is its own process, and they  
17 each have to be challenged.

18           In the Time case, it was the proponents of  
19 the measure that went to court. And they said, we should  
20 be able to let the whole process finish, and then we  
21 should be able to challenge and say we should stay on the  
22 ballot. The Court said no. Threw it out and said, you  
23 should have challenged the Secretary of State when the  
24 Secretary of State made her determination. You should  
25 have challenged Greenlee County when Greenlee County made

1 their determination. You can't wait until the very end.

2 My point being is this line by line  
3 challenge has some very specific procedures that have to  
4 be followed, but that's not the only way you can  
5 challenge.

6 You can also challenge just for  
7 noncompliance with the statute. And what does that mean,  
8 noncompliance with the chapter? Well, in Kromko v.  
9 Maricopa, there was a challenge to the title of the  
10 measure as being invalid. And the Court said, okay, we'll  
11 listen to that. We'll let you argue that the title is  
12 invalid.

13 In Molera v. Reagan, there was a challenge  
14 that said the hundred word description is no good. It's  
15 not individual signatures by signatures. It's just the  
16 hundred word description is no good.

17 Leach v. Reagan, we saw a challenge that the  
18 Committee's name was dishonest. Now, some of those  
19 challenges were valid. Some of them weren't, but at the  
20 end of the day, those were sort of global challenge that  
21 fell outside of this process. And I think in this case,  
22 if we had anything that was like that, it would be  
23 objection Number 32.

24 Objection Number 32 is to the authenticity  
25 of the circulators that's sort of suggesting that -- I

1 think we're down to three now that have been challenged as  
2 being -- there's something vaguely dishonest in the way  
3 they circulated. It's not precisely clear to me what the  
4 allegation is, but those sort of fall under what I would  
5 say the idea for compliance with the Chapter 1.

6           So I will go ahead and address those because  
7 specifics came up. Sky Archuleta did not appear, so Sky  
8 signatures are out. So we do not contest those 133  
9 signatures.

10           For Genaro and Mark Anthony, Your Honor  
11 heard their testimony. I agree, the others who were  
12 challenged as there being something questioning the  
13 authenticity of their signatures were absolute super stars  
14 that knocked it out of the park. Obviously, they had done  
15 nothing wrong.

16           I think that the plaintiffs, however, have  
17 fallen well short of showing that either Mark Anthony or  
18 Genaro did not gather the signatures they gathered.

19           Now, if someone's registration was  
20 cancelled, of course, that signature won't count. If a  
21 person is deceased and that was challenged -- and I  
22 actually don't know where that falls in the chart, if it  
23 was challenged otherwise. Of course, those signatures  
24 should not count; but, Your Honor, I would urge you not to  
25 globally remove every signature collected by Mark Anthony

1 Duckworth or Genaro -- I didn't write his name down here  
2 by the second one, Judge.

3           There was no showing -- there was no proof  
4 that those were dishonest people. There was no showing  
5 that they were acting in fraud.

6           THE COURT: Mr. Barton, do you mind me just  
7 to interrupt you. We're going to try to get a camera on  
8 you. We've got one up here at the podium.

9           MR. BARTON: So we would ask the Court to  
10 find that with the exception of Sky Archuleta, Objection  
11 32 is not substantiated and to not reject any signatures  
12 based on it other than Sky's nonappearance.

13           So what is the rest of these objections that  
14 we're faced with? Well, beginning in 2018, we started to  
15 see plaintiffs attempt to challenge line by line on the  
16 signatures using this noncompliance with Chapter 1 clause.

17           So what we see now is, we start to see, like  
18 in this case, for example. The Secretary's certification  
19 has not been challenged. This case was actually filed  
20 before the Secretary's certification and hasn't been  
21 amended to add it. And our position would be, it would be  
22 untimely to amend it. The Secretary's certification is  
23 not being challenged, nor is any particular county  
24 recorder's validation.

25           Instead, we have objections that are coming

1 in by the signatures, but are coming in under this other  
2 clause of just challenging noncompliance with Chapter 1.  
3 The Court will remember that we objected to this at the  
4 top, and I believe maintained that objection during a  
5 status conference.

6           So as an example of a problem with that, we  
7 have Objections 27 through 30. Objections 27 through 30  
8 all rely on voter registration. And the truth is, we  
9 haven't seen any county recorders' voter registration  
10 materials provided in this case. No county recorder has  
11 testified.

12           Indeed, you heard from Mr. Alcyone yesterday  
13 that they don't use the county recorder database from the  
14 county recorder. They use the database from the Secretary  
15 of State, but if you look in 122(B), the person who is  
16 supposed to make evaluations about these are county  
17 recorders. Actually, it's not the Secretary of State's  
18 database. It's Signafide's database, which is derived  
19 from the Secretary of State, which is not the county  
20 recorder.

21           And the truth is, we could not have done  
22 that. We could not have taken -- we could not have done  
23 objections 27 through 30 in front of the Special Master.  
24 Objections 27 through 30 allege over 110,000 invalid  
25 signatures. There just would be no way to do that. This,

1 to me, is an example of where this process doesn't work.

2 I do want to point out also, you know, when  
3 the Court ordered us to work with the Special Master, of  
4 course, we did. And we've all said some nice things about  
5 this process, because I do think people have been -- as  
6 Diane Proffer (phonetic) said yesterday -- adults working a  
7 problem, and that's true; but I do need to point out that  
8 in addition to Objections 27 through 30, which we didn't  
9 get any evidence on, for Objections 2 and 26, you'll see  
10 in the Special Master's report that we ended up using a  
11 ratio.

12 Now, I want to be clear. We agreed to using  
13 that ratio process where we would go through about 10 or  
14 20 percent, and then we would just sort of ratio it up to  
15 figure out how many invalid signatures there would have  
16 been, but my point is -- and, frankly, in those two  
17 fields, 2 and 26, there aren't that many -- they're  
18 probably not -- they probably are not dispositive, but my  
19 point is, we had to make an accommodation of sort of doing  
20 that ratio in order to cover all of the material.

21 And, of course, you heard Mr. Alcyone talk  
22 about even yesterday, even for their, I believe he said  
23 hundreds of employees to do this work and preparing it,  
24 it's necessary to take the image from the Secretary of  
25 State, manipulate that to make it into a more convenient

1 viewing item, and then have them go through it all.

2 I believe that that -- all of these  
3 accommodations that we've had to make on this demonstrate  
4 that this process is not well-suited for reviewing the  
5 signatures. If we want to review signature by signature,  
6 it should be reserved for the process that is described in  
7 Title 19, which is where you challenge the Secretary's  
8 findings, and then you challenge the county recorder's  
9 findings.

10 And so I'm going to talk about specific  
11 objections, but we do ask the Court to make a finding of  
12 law that it is not feasible or functional to challenge  
13 signatures using noncompliance with Chapter 1.

14 As for signatures, you should have to use  
15 challenging the Secretary's actions, and then the county  
16 recorder's actions, which is a separate challenge.

17 Challenging noncompliance should be used for  
18 things other than signatures, like hundred word  
19 description, like the shape of the petition itself or  
20 things like that.

21 I do want to say as to Objections 27 through  
22 30, because we did not have any evidence to support them,  
23 and we certainly didn't have any kind of evidence that  
24 would be required by 122 (B), I ask the Court to hold that  
25 those are not substantiated.

1                   And what I'm saying is, by the way, I'm  
2 using not substantial, which I think is fair language from  
3 other reports just basically to say, we don't have a  
4 pending motion to dismiss. This is actually disposing of  
5 the case, and we're asking that the Court not -- the Court  
6 reject the challenges that come from Objections 27 through  
7 30.

8                   All right. Independent of my generic  
9 complaint about the number of concessions that need to be  
10 made to make this process work, I want to point out a  
11 specific concern I have with merging the noncompliance  
12 with Chapter 1 process with the challenging the actions of  
13 the official's process.

14                   You will notice if you look at Exhibit 312,  
15 which is kind of the main exhibit we've been using to  
16 guide our process here, that the column that has all the  
17 numbers is labeled, number of signatures not previously  
18 invalidated by the Secretary of State. And then there's a  
19 little parenthetical.

20                   You heard Mr. Alcyone say how they do that.  
21 They take the sheet and line number of the invalidation  
22 from Secretary of State, and they compare it to what was  
23 challenged using the Signafide process, and then they net  
24 out, if you will, the number of signatures that are  
25 challenged. Okay.

1                   So that's an important thing to dedupe, if  
2 you will, to get rid of the duplicates of what's been  
3 challenged so you don't remove them -- you don't challenge  
4 them twice. If you just peruse the number of signatures  
5 that are challenged here, you'll see that there are  
6 121,000 challenged, 122,000 are challenged for Objection  
7 3-A. 109,000 are challenged in Objection 27. You'll very  
8 quickly get to over the 430,000 signatures that were  
9 turned in.

10                   Why is that? Well, that's because also one  
11 signature can be challenged for multiple reasons. So  
12 that's another step in deduping, if you will, in getting  
13 rid of duplicate challenges. And this is all accounted  
14 for.

15                   The plaintiffs have accounted for this with  
16 the Signafide system, and the way we manage this data, but  
17 my point is that we also have to make sure that we don't  
18 strike John Smith for being, you know, signing too early  
19 and also being illegible and also not having a date. We  
20 only strike John Smith once for that. That's accommodated  
21 for, again, by tracking the sheet and line number.

22                   This process that I talked about at the top,  
23 where we send it off to the county recorders, those 12,000  
24 signatures, they check those. And then when they come  
25 back, if you look in 19-121.03 -- I'm sorry, .04. I'm

1 sorry, .04, you'll see that you don't just -- you do  
2 subtract those names off, sheet and line number, but you  
3 actually then have to ratio that up to account for the  
4 whole sample.

5           So because it's a five percent sample, which  
6 is 1/20th is five percent, you effectively -- for each  
7 signature which you pull out, you take out another 20  
8 signatures; but it's not really another 20 signatures.  
9 It's a like number of signatures. And if you look in 04,  
10 you'll see it's talking about doing math where you  
11 multiply the percentage of the air times the amount that's  
12 left, and then you subtract that number of signatures. No  
13 sheet and line number involved any more, because now it's  
14 being done with a ratio.

15           When I was asking Mr. Alcyone about this  
16 yesterday, he actually said something very telling. He  
17 said, we don't do math. We don't do sheets and how many  
18 numbers are on this sheet. Because he's right. They  
19 don't do math. They just say, this sheet, this line  
20 number is invalid for these reasons. And that way they  
21 don't have to worry about double counting. It's literally  
22 impossible to do that once we send this sample out to the  
23 counties.

24           So this really highlights this problem of  
25 using noncompliance with Chapter 1 as a way to challenge

1 signatures. Because here, now this isn't just a method or  
2 a procedure problem, which I want to say I feel very  
3 strongly about.

4 Full disclosure, I was on the side that lost  
5 in the Time case. And I felt that if it's good for the  
6 goose, it should be good for the gander. If we're going  
7 to say we've got to follow rules, let's follow the rules;  
8 but this problem that I'm raising is different than that.

9 This problem is a math problem. Because  
10 there's literally no way to make sure that that like  
11 number of signatures, right, those other signatures that  
12 are removed by the counties, which are not before us now,  
13 but guess what? They'll never be before anyone because  
14 it's not sheet and line number any more. It's a ratio of  
15 the invalidity rate as applied to what's left.

16 And that's fine to do when you're doing it  
17 the right way -- what I'm calling the right way -- when  
18 you're challenging the Secretary and then you challenge  
19 the recorders, that's fine. It's taken care of, but if  
20 we're over here and challenging noncompliance to one, and  
21 we're not challenging those things, those things are  
22 double counted. And the statute doesn't provide a  
23 mechanism for avoiding it.

24 I think Mr. Langhofer is going to suggest a  
25 way that maybe we could figure out how to avoid double

1 counting. And maybe there is some broad mass solution to  
2 it, but it's not in the statute. And I don't think that  
3 it's right -- I don't think the Court should engage that.

4           So I would ask that this Court find that the  
5 plaintiffs need to show the 162,000 whatever signatures  
6 are invalid based on the evidence that they show. And  
7 that they should not be permitted to take advantage of the  
8 county recorder's cert and sort of mix and match these two  
9 processes together. Because this double counting is a  
10 serious problem.

11           And it is evolved from using, in my opinion,  
12 the wrong avenue, but it also, it resolves an injustice  
13 too, because it really does have this very serious danger  
14 of double counting.

15           THE COURT: So tell me how it would work if  
16 the challenge were without the county recorder process.  
17 I'm not following how that -- how do you skip that step?

18           MR. BARTON: The -- because we can do the  
19 de-duplication for the Secretary of State, the Secretary  
20 of State says there's 399,858 signatures that are eligible  
21 for validation. From that point on, the analysis is using  
22 ratios and it's using percentages, and it has to be  
23 separately challenged.

24           If you want to do what they've done and come  
25 in and challenge individual lines by challenging their

1 affidavits, then you have to get that number, 399,858,  
2 below 237,645. With evidence that you present in trial.

3           And my point is, for one like this, you  
4 can't. Because -- well, I'm going to talk about other  
5 reasons why others of their objections should be found not  
6 substantiated anyway; but the 109,000 that there are voter  
7 registrations that they're challenging, there is not a way  
8 to do that in a court.

9           They certainly haven't done it by just  
10 pointing to their allegations on the Signafide  
11 spreadsheet, and they can't bring what's required under  
12 122(B) into the courtroom to do it.

13           So the answer is, you can only do so much in  
14 a court hearing that is this amount of time. And my  
15 position, Your Honor, is it's impossible to account for  
16 those not registered voters. And that why it's wrong.

17           So I guess what -- your question was, what  
18 can they do? I guess what they could do is if through  
19 challenging things like registrations and things like --  
20 you know, that they could show that there was a problem  
21 with, if they could get that number below 237,645, then I  
22 guess you're left with using even having a signature  
23 challenge being used by noncompliance; but my position,  
24 Your Honor, is that that's not the right way to go.

25           That the right way to go is to say, if you

1 want to challenge signatures, like you're trying to say  
2 they have less -- like literally knocking off individual  
3 signatures, then you need to challenge the Secretary of  
4 State, which didn't happen here and/or the county  
5 recorders, which could still happen because they haven't  
6 finished their work yet.

7           So that's my suggestion, Your Honor, is that  
8 they have to either knock it all off with what they've  
9 proven to you, or they have to do the process in the  
10 statutes and challenge the county recorders.

11           THE COURT: Thank you.

12           MR. BARTON: Okay. Turning to the  
13 individual signatures now. Objections. I agree about  
14 Objections 1, 2, and 3, that those objections are as  
15 described by Mr. Langhofer and are clear in the record.

16           Turning to Objection 3, which is the idea  
17 that -- which is the challenge to the Secretary of State's  
18 process. If you look at 19-118, it tells you what these  
19 circulators need to do before they circulate petitions.  
20 It says they need to register, and it tells what they need  
21 put down in their registration.

22           If you look at Title 19-118, nowhere does it  
23 say they need reregister. It doesn't say they need to  
24 reregister if they change their phone number. I think we  
25 talked about that in the other section, but it also

1 doesn't say they need to reregister if they circulate a  
2 new measure. No place does it say that they need to  
3 reregister.

4           However, however, it also says that the  
5 Secretary of State will establish a process for  
6 registration which will be approved by the governor and  
7 the attorney general. And that's what happened here. And  
8 what happened here was -- so just to be clear, there's no  
9 reregistration requirement anywhere in here. It's just  
10 not required.

11           The Secretary of State on the other hand,  
12 has required updating your registration if you start to  
13 work on a new petition. Your number stays the same.  
14 There's one petitioner number. You do not -- it says this  
15 explicitly. You don't get a new registration number. You  
16 don't do a new registration. You update your  
17 registration.

18           And I will point the Court to Page 5,  
19 Paragraph 13 of the Ms. Lorax(phonetic) declaration where  
20 she says exactly that. She talks about the circulator can  
21 subsequently update their registration by adding  
22 additional petitions that they will circulate. They can  
23 update it. The system doesn't require them to upload a  
24 new affidavit. The statute doesn't require them to update  
25 their registrations, but the Secretary of State is

1 empowered by the law to set the procedures. She has done  
2 that.

3           Again, this is not some casual advice from  
4 the Secretary of State. This is a procedure that she did  
5 as mandated by the statute as reviewed by the attorney  
6 general, as reviewed by the governor, and as approved in  
7 the elections procedures manual. So she did that.

8           So I think we do have to, in my mind, even  
9 though the statute doesn't require you to update your  
10 registration with new petitions. The Secretary of State  
11 does. And so the circulators have done that.

12           Every one of these circulators that are  
13 challenged under this, registered properly. They all did  
14 what the Secretary told them to do, which is when they  
15 added a new petition, they updated their existing  
16 registration. The Secretary did not tell them to upload a  
17 new affidavit. The law doesn't tell them to upload a new  
18 affidavit. There is no requirement that they upload a new  
19 affidavit.

20           The petitioners are asking you to invalidate  
21 120-some-thousand signatures based on the fact that these  
22 circulators complied with a process that was spelled out  
23 in statute and a process that was described in more detail  
24 by the Secretary of State, approved by the attorney  
25 general, approved by the Governor.

1           I think that it is -- that that has not been  
2 substantiated, that Objection 3, either part of it.  
3 Because these individuals were not -- they're not  
4 following some advice from somebody at a counter. They're  
5 looking at the statute. They're looking at the election  
6 procedure manual. And there's no place that says you have  
7 to upload new affidavits. There's no place that says you  
8 have to reregister.

9           So if you had to reregister, then I suppose  
10 you would go back and say, oh, I've got to do one, two,  
11 three, four, five; but it doesn't say that the statute.  
12 It doesn't say that in the elections procedures manual.

13           I do think there is a very serious laches  
14 issue here. And we cite in the brief other places where  
15 there's sort of complaints about registration  
16 requirements. And courts have found, no. You've got to  
17 challenge those registration require -- like voting  
18 registration. Like voting registration requirements or  
19 signature counts. We have them in the brief. You have to  
20 challenge when they go into effect. You can't wait until  
21 right before the election.

22           In this case, this elections procedures  
23 manual, which does not require reregistration and does not  
24 require you to upload a new affidavit when you add a  
25 petition. It doesn't say that. It says in the manual you

1 have to update your registration, but it doesn't say you  
2 have to upload a new affidavit.

3           That had to be challenged in 2019. Not now,  
4 after all of these 415,000 Arizonans have signed this  
5 petition. Okay. Millions of dollars have been spent.  
6 And now when there's nothing that anyone can do about it,  
7 plaintiffs come in and say, oh, we don't like the  
8 procedure that the Secretary of State and the attorney  
9 general and the Governor have agreed to.

10           The prejudice to the defendants is profound.  
11 The delay is very significant, and I think the laches  
12 applies. I will briefly -- because we have this in the  
13 briefing, and I don't necessarily want to belabor it, but  
14 if the requirement is that we be able to intuit unstated  
15 requirements and then comply to them, I think that also  
16 has a serious burden on free speech.

17           And I think you really have to do the  
18 Anderson verdict analysis if we're asking Committee  
19 circulators to seek requirements that are not written and  
20 to somehow intuit or infer a requirement to reregister  
21 where there is none. I think that's a serious issue as  
22 well. Yeah. And so I think that where we differ here is  
23 this idea about whether reregistration is required, and I  
24 think it is not. All right.

25           So that's three. I want to take four

1 through 6 together because they're somewhat similar to  
2 this.

3           When the plaintiffs do -- when the  
4 proponents, rather, do this work, they are required to  
5 strictly comply with the requirements in this statute.  
6 And 4 through 6 address the requirement that they be  
7 registered circulators. 118 says the Secretary of State  
8 shall disqualify all signatures collected by a circulator  
9 who fails to register pursuant to this section as provided  
10 for in 19-121.01(A). Okay. So they have to strictly  
11 comply with that requirement.

12           The plaintiffs have asked that you read  
13 strictly complying with the requirement to register as on  
14 your registration sheet everything be perfect. You have  
15 to include a unit number with the address. You have to --  
16 you know, you can't make a mistake on the phone number.  
17 Everything has to be perfect on it.

18           However, if you were to look at 121.01(A),  
19 which is what 118 says you're supposed to do. You're  
20 supposed to do it in accordance with 121.01(A). That  
21 requirement says, the sheets on which the circulator --  
22 these are what have to be removed -- is required to  
23 register. The sheets on which the circulator is required  
24 to register and not properly registered at the time the  
25 petitions were circulated. So 121(A) says they have to be

1 registered. If they're supposed to be registered and  
2 they're not registered, you take them out.

3 In our case, 1,292 sheets were removed for  
4 just that reason. The Secretary looked at it. They  
5 weren't registered. They should have been registered.  
6 She removed them.

7 So we're left to ponder here, does strict  
8 compliance with the requirement for registration mean  
9 every line on that registration has to be perfect, or does  
10 it mean it has to be -- you have to register as required  
11 under H here, under 121.01(H)?

12 Well, that answered for us with the Van  
13 Riper v. Threadgill case. In Van Riper v. Threadgill, the  
14 allegation was that the proponents of the measure should  
15 have all their valid signatures thrown out because they  
16 put 10 lines per page, but the statute says 15 lines per  
17 page. Well, the statute says 15 lines per page. Ten  
18 lines is not 15 lines.

19 Well, the Court didn't take that approach of  
20 like making it some kind of a game. This is a  
21 constitutional guaranteed check on the power of the  
22 legislature that the citizens can -- they took -- you  
23 know, if you're taking it seriously, you don't -- what's  
24 the purpose there?

25 Well, the legislature said, no, 10 lines is

1 complies. And by the way, that was a referendum so it was  
2 under strict compliance. So this isn't about substantial  
3 versus strict compliance.

4 And so the Court looked to what the  
5 Secretary of State does. And he says, well, the Secretary  
6 of State only removes more than 15 lines. So when we're  
7 reviewing compliance with this requirement, we're going to  
8 look at what the Secretary of State does.

9 In the case before you, they are required to  
10 be registered. They are all registered. They all have a  
11 registration ID. They all can be served process when they  
12 send the service of process to the Committee's address as  
13 happened for 31 of these -- 30 of these circulators.  
14 They're registered. They were registered circulators.  
15 They have a registration ID. They were not removed by the  
16 Secretary of State. And she did check for, and she  
17 removed, you know, 1,300 of them.

18 So out of the gate, Your Honor, I ask that  
19 the Court find Objections 4 through 6 not substantiated  
20 because they impose extra requirements on the idea of  
21 registration than what is required by statute. The  
22 statute is just to be registered. These people are  
23 registered.

24 Now, I want to talk specifically about the  
25 issues related to address. So now if we're looking at the

1 statute, it requires that the circulator's full name,  
2 residence address, telephone number, and email address.  
3 Full name, residence address, telephone number, and email  
4 address. It doesn't say full address, including the unit,  
5 if applicable. It doesn't say -- nothing in there about  
6 the unit address in B 1. If you look at the form, the  
7 form doesn't say unit address. Nothing says unit address.

8           Now, again, the issue here is disqualifying  
9 tens of thousands of signatures based on a requirement  
10 that is not found in this statute. Doesn't say unit  
11 address, nor on the form, nor in the election procedures  
12 manual. Where is this requirement coming from?

13           And that's true of -- we see three species  
14 of that. We see it on the permanent address. We see it  
15 on the residential address, and we see it on the service  
16 address, where in each case it was asked that there be a  
17 unit number have to be there.

18           I will point out that the Committee is  
19 compelled to accept service of process for the circulars.  
20 Again, that's another peculiar requirement, right? Can  
21 you imagine if you had some other context of law where you  
22 said, well, you sent to the guy's employer, so that means  
23 the guy has been served. Well, that's what it says in the  
24 law. That's how it is.

25           So that's true. And the Committee's address

1 is published, and there is no problem with finding the  
2 Committee's address. The Committee's address is  
3 everywhere, but it also says you have to write the  
4 Committee address on the form. It says you have to write  
5 a residence address, your permanent residence address on  
6 the form.

7           And then the Secretary of State has asked  
8 that you write your temporary address on the form. Again,  
9 none of those places ask for it to be the unit. And none  
10 of those places not including the unit prevent the person  
11 from being registered. In none of the places did it  
12 prevent the person from being served.

13           So if you look at what is required, it's an  
14 address. And in each case, they provided an address.

15           By the way, we also cite McKenna v. Soto  
16 case in the briefs for making pretty clear that an address  
17 -- unit number is not part of an address. That's in  
18 Paragraph 25 of the McKenna v. Soto case.

19           Also, I want to say within these subset here  
20 -- now, if you're analyzing on the address issues on 4  
21 through 6, the Lohr v. Bolick case was about a P.O. box  
22 and someone not living at P.O. box. That certainly cannot  
23 be used to suggest that unit is required for a street  
24 address. You have to provide a street address if it asks  
25 for a residential address. For many of these sub

1 categories, that's exactly what happened.

2 I want to say another thing about the sub  
3 category of the unit. So now even -- you don't need a  
4 unit for the reasons I said. First off, you don't -- all  
5 these objections I think are not good because they were  
6 registered. You don't need a unit for all the reasons I  
7 said, but when we're talking about a hotel, the room  
8 number is certainly not required for the address of a  
9 hotel. It's not just about mail.

10 If I went to a hotel, I would go to the  
11 front desk and say, I'm here to see Jim Barton and then --  
12 well, I guess that would be me seeing myself. Someone  
13 comes to see me, they would go to the hotel where I was  
14 saying and they'd say, we want to see Jim Barton. And  
15 they would call up the room or they would do whatever. I  
16 mean, you fully have contact at a hotel by the front desk.  
17 So the room number, that's not even -- the room number to  
18 me is definitely not a part of the -- even the temporary  
19 address.

20 I just want to say briefly, on the notaries,  
21 and we have this in the brief too. We have a similar  
22 issue with the notaries of like adding -- I'm sorry. I'm  
23 taking that out of order. I'm sorry about that. Let me  
24 go back. Okay.

25 So I think I've said everything. I do want

1 to say that it is correct that on the phone numbers, if  
2 there wasn't declaration, we stipulated that it was wrong  
3 at the time, at the time of the completing. So that was  
4 accurate.

5           And the same goes with the addresses where  
6 they don't match. You know, I will point out in case  
7 there was some question about why would we stipulate. So,  
8 for example, for the residential addresses not matching  
9 the -- not matching the -- what was on the form, there's  
10 no requirement to update the form, as I've said many  
11 times. Now I'm talking about Objection 5-E.

12           Why we would stipulate? Well, we stipulated  
13 because we believe that this is not required any way. We  
14 don't believe any of these address challenges are valid.  
15 And had we not stipulated, then we'd have to deal with the  
16 circulators not showing up. So it's a weird interest  
17 situation there. Just to fill in the gaps for the Court.

18           Okay. So that takes us through 6. On 7,  
19 through 12, I mean, for the most part, that's stipulated  
20 or it's finding of law by the Special Master.

21           For the illegibility of the circulator name,  
22 we'll just stand on the pleadings on that. It's not very  
23 many signatures.

24           All right. On the notary blocks, first off,  
25 I want to say that we have a similar issue here with just

1 the registration in general. 121.01(E) and (F), tell you  
2 what's a notary that's problematic so that she would  
3 strike -- that you'd strike the page.

4           So to the extent these go beyond that and  
5 add additional requirements other than what the Secretary  
6 looks for in 121(E) and (F), we don't think that's a  
7 requirement that you should apply when evaluating for  
8 strict compliance.

9           I also want to clarify a little bit of what  
10 happened -- well, never mind. Also, the number -- it's a  
11 relatively low number of circulators here so for the --  
12 otherwise, we'll stand on the pleadings. The same goes  
13 for the 18-A, which is the county's -- an out-of-state  
14 county. Also on 18-B. Also on 19. These are all --  
15 we'll either stand on the pleadings, or you have the  
16 Special Master's report. And frankly, in some cases, it's  
17 100 signatures.

18           On Objection 20, again, we will stand on  
19 what's in the pleadings. I will say, it's only 200  
20 signatures, so I don't think it's going to be dispositive.  
21 I think the Parker case was decided wrongly. I think  
22 assuming that because a person missed the fact that  
23 somebody else filled out the rest of the petition, that  
24 that -- to invalidate the whole petition is not good law,  
25 but I think we're at another situation here where the

1 Court of Appeals said what it said, and I think you're  
2 bound by that, so there's not much more to say on that.

3           21 through 26 is -- that's correct, that we  
4 -- that's handled by the Special Master's report. And  
5 then on 27 through 30, I've already -- and then 32, I've  
6 already explained. And then same for the duplicates.

7           I will just wrap up and say that I think  
8 this process would benefit from a sort of return to  
9 thinking about the significance of what's happening here.  
10 And we really are talking about invalidating qualified  
11 electors' voice, and we're silencing voters who are not  
12 enacting laws. They're referring laws to their fellow  
13 citizens. And I think we should be very slow to do that.

14           And if there's not a statute that says you  
15 do it, you absolutely should not silence the electors.  
16 And the Court should not stretch to infer implied  
17 requirements. I think it has to be letter of the law.  
18 And I think we've spelled that out pretty carefully in our  
19 briefs, and I think that it requires some caution when  
20 we're dealing with something of this magnitude.

21           415,000 people signed this petition.  
22 Actually, that's after we threw out five percent of the  
23 signatures. 415,000 people signed this, and they should  
24 have a right to have their voice heard and to have their  
25 fellow citizens pass on this measure that they've asked

1 them to.

2 THE COURT: All right, thank you,  
3 Mr. Barton.

4 Mr. Langhofer, your last words.

5 MR. LANGHOFER: Thank you, Your Honor. You  
6 say it that way, it very ominous.

7 THE COURT: Yeah, it does sound -- it came  
8 out more ominous than I was intending. Last words for  
9 this particular proceeding. Let's put it that way.

10 MR. LANGHOFER: Thank you. There's been a  
11 lot of briefing, and I had, you know, really had a sense  
12 of initial opening. So I don't want to repeat any of  
13 that. I assume that's all been internalized.

14 A couple of points. Perhaps most  
15 importantly on the idea of laches. Whether our client  
16 should have sued the Secretary of State.

17 In fact, two of our clients, the lead  
18 plaintiffs Scot Mussi and The Free Enterprise Club had  
19 sued the Secretary of State over precisely this circulator  
20 registration issue and the affidavit timing. And they had  
21 done it before the Committee filed this lawsuit.

22 There can't be -- that case was before Judge  
23 Cooper. It was resolved on other grounds, but we're all  
24 sophisticated here. Everyone knows about all the election  
25 lawsuits that are brought. There's no argument that the

1 other side didn't know about it. Certainly, the Secretary  
2 of State knew about it. So there can be no assertion that  
3 our client sat on the right somehow. That lawsuit was, in  
4 fact, filed and was very public. There was newspaper  
5 coverage of it and so on, but more importantly --

6 THE COURT: When you say it was resolved on  
7 other -- maybe I'm the only one in the room who doesn't  
8 know the result of that. When you say it was resolved on  
9 other grounds, what happened?

10 MR. LANGHOFER: That was a referendum. So  
11 also strict compliance. And the first issue that was  
12 taken up was whether the measure passed by the legislature  
13 was it all referable. So trial court ruled against us.  
14 Arizona Supreme Court ruled for us. And so it was removed  
15 from the ballot because it was referable at all.

16 Even the trial court didn't get to the issue  
17 of the affidavits, but it was filed, you know, obviously,  
18 totally public case. And there's overlap between the  
19 plaintiffs in that case and the plaintiffs in this case.

20 THE COURT: I guess my question is that was  
21 challenging a referendum?

22 MR. LANGHOFER: It was. There's standing  
23 for that.

24 THE COURT: Okay, but it wasn't challenging  
25 the Secretary of State's actions in general? And I guess

1 that's the question that I'm still wrestling with. And  
2 I'm going to have to do some deep diving on. Could this  
3 be a matter where we're seeking some type of mandamus  
4 relief, of course, through special action?

5 MR. LANGHOFER: I'll say one more word on  
6 that. I don't want to cut you off, Your Honor.

7 THE COURT: No, that's okay. And the Fontes  
8 case, my reading of it seems to imply that there might be  
9 standing, but your thoughts in regards to a direct action  
10 not related to a particular referendum.

11 MR. LANGHOFER: Even if it could have been  
12 brought, let's assume that Fontes says, you can sue for  
13 mandamus whenever you want. Let's say it says that. It  
14 doesn't mean you must.

15 The opponents of an issue are certainly not  
16 the lawyers for the proponents of the initiative, right?  
17 Who was concerned about this? Should have been them.  
18 It's on them to get their registration right. The cases  
19 are very clear. You can't rely on the Secretary's advice.

20 And to say -- to go from -- let's just  
21 assume for conversation sake, Fontes says you can sue at  
22 any time to you must sue at all times. They initiate a  
23 lawsuit, and you must run to court -- or they issue an  
24 initiative -- same word too many times -- you must run to  
25 court and stop it before they -- that's inverting the

1 rules of the parties here. That it was their duty get  
2 this right, not ours to make sure everything was being  
3 done properly.

4 THE COURT: I guess on the other side -- and  
5 I don't know how long we need to go back and forth, but on  
6 the other side, they agree with what the Secretary says  
7 the statute means. They don't seem to have the drive or  
8 the impetus to challenge something they agree with.  
9 You're disagreeing or someone is disagreeing who's coming  
10 to court.

11 Wouldn't it be on the person who disagrees  
12 with what the Secretary has done to bring that challenge  
13 forward before we get to a point where we're actually  
14 invalidating particular initiatives?

15 MR. LANGHOFER: I think if they agree with  
16 it and were willing to spend millions of dollars, as he  
17 says, gathering signatures, all starting after the initial  
18 lawsuit against the Secretary. This is very much an open  
19 question. Then they roll the dice.

20 If they're so confident, then there's no  
21 problem answering the case; but to say, we knew about this  
22 case because it was very public. We've spent millions and  
23 millions of dollars. Now that we've done that, the other  
24 side can't raise this legal issue. If you're so  
25 confident, you should have read that.

1                   We're all sophisticated here. We all have  
2 the same information. They made a decision to spend  
3 millions of dollars, and we're challenging now the  
4 process.

5                   THE COURT: Thank you.

6                   MR. LANGHOFER: Now, Mr. Barton had a lot to  
7 say about the process generally. And I want to address  
8 some of that. His concerns relate to, you know, when you  
9 would apply the invalidity from the county -- I'm going to  
10 speak to that in a moment -- that we're challenging  
11 circulator registrations, you know, after it's been quite  
12 some time, that doing line by line challenges and hundred  
13 word summary challenges are all sort of -- it's an unfair  
14 process, as I understand the complaint.

15                   Now, let's be really clear. This case is  
16 not about the substance of the initiative, but the  
17 substance of the initiative all deals with -- not all, but  
18 much of it deals with this.

19                   So the idea that you must immediately sue  
20 when someone is registered by the Secretary and you think  
21 they shouldn't have been. The statute or this initiative  
22 would change that. It would actually create, for the  
23 first time, a five-day statute of limitations to sue, to  
24 challenge someone's registration. And the reason it's  
25 under initiative is because it's not currently the law,

1 right?

2                   The idea that you can -- they don't like the  
3 line by line challenge process. It's messy and rushed.  
4 It is rushed. Trust me, it's very rushed. Their step --  
5 their initiative would change that because currently  
6 you're allowed to do it, but there's all sorts of the  
7 substantive provisions they have in their measure that he  
8 is now arguing should already be the law, but they're in  
9 their measure because it's not the law, right?

10                   So let's think about this. He talked about  
11 the Time case, which said you have to sue over the  
12 Secretary certification, I think, within five days.  
13 Kromko case came after that and said, if you're the  
14 opponents -- if you're not the proponents -- you can --  
15 you don't have the five-day deadline.

16                   So you can sue over -- literally, it says  
17 any person can sue. I think it used to say any citizen.  
18 They broadened it to say any person can sue. Maybe it  
19 wasn't citizen. Maybe it was any entity. It was  
20 something that was narrower. They expanded that to any  
21 person over any noncompliance.

22                   It is the most broad right of action I can  
23 think of. And it's because they want to make sure that if  
24 you are filing signatures and you're changing law in a  
25 quasi constitutional way, what a protection act makes it

1 that way, this is done correctly.

2 So the idea that we should have sued sooner  
3 rejected by Kromko. Judge Sanders actually considered and  
4 rejected the same argument in 2018 in the outlaw dirty  
5 money case. It was very similar. We brought a bunch of  
6 line by line challenges and circulator registration  
7 challenges.

8 Ms. Kim Demarche (phonetic), who was on the  
9 other side, said that we need to follow with five-day  
10 statute of limitations in Time. And Kromko says that's  
11 wrong. Judge Sanders ruled for us. And I think the issue  
12 is so clear that it wasn't even appealed to the Arizona  
13 Supreme Court. Kromko just says what I said. Any person,  
14 any issue. There's no expressed statute of limitation.  
15 It just has to be a reasonable period of time.

16 All right. One other process point.  
17 Objections 27 through 30. This was the voter registration  
18 issue. What we worked out yesterday, holding open a  
19 portion of the record that deals with those three  
20 categories solves the problem that Mr. Barton has  
21 identified. And it is a methodological issue.

22 So far, what we've been talking about are  
23 exact sheet and line numbers that we're invalidating for  
24 whatever reason. Sometimes it applies to an entire  
25 circulator, but that backs out to exact sheet and line

1 numbers because of the data we have.

2           When you get to a sample, a five percent  
3 sample, like Mr. Barton talked about at the counties,  
4 they're going to give you a validity rate of percentage.  
5 It's not tied to any sheet and line numbers. And then you  
6 apply that to the entire population.

7           And so when you're doing that, it has to be  
8 done last. You have to know what is the population you're  
9 applying it to. So you take out all the exact sheet and  
10 line numbers that are invalid. You apply the remaining  
11 invalidity rate into that.

12           Now, his point is, I think, that -- and  
13 we've got a method for making sure we're not taking out  
14 signatures twice. That's fair. His point seems to be  
15 that there may be some imprecision here. So if the five  
16 percent sample that the county gets from the Secretary  
17 included, you know, all 400,000 signatures, but then we  
18 take out some number of circulators because they  
19 registered wrong.

20           Now what the county is reviewing isn't a  
21 perfectly random selected sample of what's left. Okay.  
22 That's an issue.

23           First, as a matter of fact, there's no  
24 showing in this case that it would skew one way or  
25 another; but second, as a matter of law, the legislature

1 is aware of this and solved that problem. They amended  
2 19-118(G).

3           And the reason they solved was because  
4 there's a case that kept ping-ponging back and forth  
5 between the, I think, it was the city clerk and the county  
6 recorder. And they had invalidations of some  
7 registrations, and there was some fraud issues. And they  
8 had to do so many random samples, it got ridiculous. They  
9 kept saying, well, the population's changed. Let's do  
10 another sample.

11           And the legislature said, enough. We're not  
12 redoing the random sample, right? There may be some  
13 statistical point in here, but we're not redoing it.  
14 That's 19-118(G).

15           There's also an Arizona Supreme Court case  
16 on this. This is from 1990. It's the Mangum case. And t  
17 says, look, there may be some imprecision in this process,  
18 the sampling process, but it's statutory. That's just  
19 what we do. And, you know, if you're unhappy with the  
20 findings of the county recorders, of course, you can  
21 challenge all that.

22           Now, all of that said, I don't think it  
23 matters because what we worked out yesterday with the  
24 holding the record open for just the registration issues  
25 solves the problem. I just don't know how you argue with

1 that solution. I mean, if I'm unhappy with the result, I  
2 don't know how I would appeal from that. Because it just  
3 seems like methodologically the correct approach.

4           Okay. One point -- and I don't want to harp  
5 on this, but I have to say it because I think it's  
6 important. It is not correct that the AG or the Governor  
7 ever approved this one affidavit issue. What they  
8 approved was more generic, and it was never that precise.  
9 It is just factually incorrect. They approved the EPM  
10 which says you've got to upload an affidavit. That's what  
11 they approved because that's what the statute says.

12           They did not approve this implementation of  
13 it, which lacks notarizations for, let's say, Nicholas  
14 Covington's registration.

15           Four more points. The idea that the strict  
16 construction and strict compliance regime unduly burdens  
17 constitutional rights. It should not -- it should not  
18 confuse the burden of the penalty with the burden of  
19 compliance. The doctrinal question is, is the burden of  
20 compliance undue?

21           And, you know, to write your apartment  
22 number or to write your hotel room number or to get a  
23 notarization is not burdensome. Penalties are just  
24 definitionally burdensome. It's a penalty. It's designed  
25 to deter, right? It's supposed to be worse than whatever

1 they're trying to get you to do. That's the nature of a  
2 penalty, but that's not the undue burden analysis. The  
3 undue burden analysis is would it have been burdensome to  
4 comply?

5                   Mr. Barton talks in closing and in his brief  
6 about the Van Riper vs. Threadgill case as how there's  
7 some sort of forgiving or forgiveness in the strict  
8 compliance sense. I don't think that's correct.

9                   The statute there said you could have -- you  
10 could count a maximum of 15 lines on a sheet. The  
11 plaintiff was trying to say, the maximum is also the  
12 minimum. And the Court said no. It says maximum. It is  
13 a strict compliance case, but there was no noncompliance  
14 there. The statutory text said maximum, and they didn't  
15 exceed the maximum.

16                   Two more.

17                   Four hotels. There end of being a lot of  
18 signatures in the hotel category. And the analysis  
19 proposed by the Committee is, if you go to the front desk.  
20 You make a call. Then it's good enough. I'll just point  
21 out again, that is substantial compliance. If you can  
22 figure out on the ground, it's substantially compliant.  
23 We're just not under that standard of review because it's  
24 quasi constitutional, and we want to be strictly  
25 constructionist and strictly compliant.

1                   Final point. To say that the role of the  
2 Court is to not hear arguments on points that the  
3 Secretary doesn't look at -- to say the statutes define  
4 what the Secretary should look at, and that's all the  
5 Court should look at is incorrect.

6                   The statute says that the Secretary should  
7 look at a number of things, but it doesn't include, for  
8 example, duplicates. The Secretary doesn't find  
9 duplicates. The Secretary doesn't look at the hundred  
10 word summary. The Secretary doesn't look at the same  
11 handwriting issue. It's just not in their list of issues.

12                   Some of those get looked at by the counties,  
13 but the Secretary is not supposed to look at those. Those  
14 have been litigated for decades. It's not at all novel to  
15 say what the statute says. We can challenge any  
16 noncompliance even if the Secretary hasn't already looked  
17 at it.

18                   Those the arguments. I did want to make a  
19 proposal. This is no longer argument. And that is to  
20 offer to file with Your Honor some proposed findings of  
21 fact and conclusions of law. I've asked whether -- Mr.  
22 Barton whether he would agree to this.

23                   I guess in my mind what it would be is we  
24 would write something that says, here are the facts and  
25 how we get there. I think we can come up with that

1 together. Probably not with respect to the authenticity  
2 issues.

3           And then each of us would have an analysis  
4 section on each objection. Either it's uncontested, or we  
5 propose this. He proposes that. Give it to you as one  
6 document, and it may reduce your time in purgatory here;  
7 but if -- you may already be off to the races and running.  
8 In which case, it wouldn't be a good use of our time.

9           THE COURT: So because of time frames, my  
10 understanding was that ballots were being printed on  
11 August 25th?

12           MR. LANGHOFER: Correct.

13           THE COURT: But I thought the county reviews  
14 were only being completed by August 25th. So I wasn't  
15 sure how that was jiving, but my goal is still to get  
16 something out by Thursday, Friday at the latest, to allow  
17 the Supreme Court to do their thing.

18           I have your positions in your pretrial  
19 statements, which I'm using as much as I can to pull from.  
20 I'm not sure how -- and I've thought about this issue.  
21 I'm not sure how extra closings, A, would get me farther  
22 down the road; or B, be timely enough for me to do that.

23           MR. LANGHOFER: I don't want to talk you  
24 into it, Judge.

25           THE COURT: I would love for you to do the

1 writing to the extent that, you know, we're all kind of  
2 working towards that last document together, but I think  
3 the reality is, I have what I need to get to that final  
4 result, and I can take it from here.

5           So thank you. I have no more questions at  
6 this point. I've got a lot to digest, but I will be off  
7 to the races to get that done, so that the Supreme Court  
8 can do their thing.

9           All right. With that, thank you all. I  
10 know you've worked very hard. I can see it in the work.  
11 I can see it on your faces. It's been a long few weeks  
12 for everyone involved. I do appreciate that time and  
13 investment to put these issues as narrowly as we have here  
14 on the record to allow, hopefully, what is a clear and, at  
15 least, well thought out decision, whatever that comes out  
16 to be on each of these issues. Hopefully, the Supreme  
17 Court will have an understanding of what the basis is.

18           With that, thank you all. Have a good day  
19 now.

20

21                           (Proceedings concluded.)

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1 STATE OF ARIZONA )  
 )  
2 COUNTY OF MARICOPA )

3  
4 **C E R T I F I C A T E**

5 I, **HOPE J. YEAGER**, Registered Professional  
6 Reporter and Official Certified Reporter, Certificate No.  
7 50910, in and for the State of Arizona, do hereby certify  
8 that the foregoing pages constitute a full, true and  
9 accurate transcript of all proceedings had in the  
10 foregoing matter, all done to the best of my skill and  
11 ability.

12  
13 Dated in Phoenix, Arizona, this 19th day of  
14 August, 2022.

15  
16  
17 /s/ Hope J. Yeager

18 **HOPE J. YEAGER, CR, RPR**  
19 **Certified Reporter No. 50910**  
20 **Official Court Reporter**  
21 **Maricopa County Superior Court**  
22 **Phoenix, Arizona 85003**  
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