IN THE SUPREME COURT

STATE OF ARIZONA

SCOT MUSSI, *et al.*,

Plaintiffs/Appellants/ Cross-Appellees,

v.

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

Defendant/Appellee,

and

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

Real Party in Interest/Appellee/ Cross-Appellant.

No. CV-22-0207-AP/EL

Maricopa County Superior Court No. CV2022-009391

ANSWERING BRIEF OF PLAINTIFFS-APPELLANTS

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Plaintiffs/Appellants/Cross-Appellees (the "Challengers") respectfully submit this Answering Brief in response to Real Party in Interest/Cross-Appellant's (the "Committee") Opening Brief. For the reasons that follow, this Court should affirm the judgment of the trial court with respect to Objection Nos. 5(b), 5(c), 5(e), and 6(b).

I. Strict Compliance Does Not Permit "Minor Exceptions" to Statutory Requirements or Tolerate Facial Errors or Omissions in Circulator Registrations or Petition Affidavits

The Committee "must strictly comply with [all] constitutional and statutory requirements" governing the initiative process. A.R.S. § 19-102.01(A). To rescue facially defective circulator registrations and petition sheets from inevitable disqualification, the Committee sets to work reimagining the concept of strict compliance as a malleable rubric that contemplates "minor exceptions to statutory requirements," Comm. Br. at 5, and forgives facial inaccuracies and omissions, as long as the correct information might be inferred or gleaned from other sources.

This Court has, in fact, developed a framework resembling that advanced by the Committee here; it is denominated the "substantial compliance" test—and it is precisely what the Legislature ***repudiated*** when it enacted A.R.S. § 19-102.01 in 2017. The substantial compliance rule entails a wholistic inquiry into the challenged petition sheet or supporting document, examining its overall congruence with statutory requirements and the capacity of an error to engender confusion or misperceptions. *See Pedersen v. Bennett*, 230 Ariz. 556, 559, ¶ 14 (2012); *Ross v. Bennett*, 228 Ariz. 174, 180, ¶ 30 (2011);

Feldmeier v. Watson, 211 Ariz. 444, 447, ¶ 14 (2005); *Myers v. Bayless*, 192 Ariz. 376, 377, ¶ 9 (1998).

The strict compliance standard that controls this case, however, carries a very different complexion. Elevating rigorous textualism over inchoate purposivism, and subordinating functionalism to formalism, strict compliance insists on disciplined and "nearly perfect" adherence, *Sklar v. Town of Fountain Hills*, 220 Ariz. 449, 452, ¶ 9 (App. 2008) (cleaned up), to **all** applicable statutory mandates, "no matter how minor," *Homebuilders Ass'n of Central Ariz. v. City of Scottsdale*, 186 Ariz. 642, 648 (App. 1996). Because "the controlling language of the statute," *Sherrill v. City of Peoria*, 189 Ariz. 537, 540 (1997), is its lodestar, the strict compliance standard produces "bright-line rule[s]," *Pioneer Trust Co. v. Pima County*, 168 Ariz. 61, 66 (1991), that apply invariably and inexorably, regardless of whether a deviation "hindered electors' ability to comprehend the petition." *Comm. for Preservation of Established Neighborhoods v. Riffel*, 213 Ariz. 247, 250, ¶ 12 (App. 2006). While this stringent and unforgiving regime can impel what petition proponents may perceive as "harsh consequences," *Fid. Nat'l Title Co. v. Town of Marana*, 220 Ariz. 247, 250, ¶ 14 (App. 2009), the errors or missteps inducing the disqualification of petition sheets or signatures almost always could have been avoided had the sponsors or circulators simply used due care, and "[i]t is not 'nit-picking' to require compliance with the" law. *W. Devcor v. City of Scottsdale*, 168 Ariz. 426, 431 (1991); *see also Perini Land & Dev. Co. v. Pima County*, 170 Ariz. 380, 384 (1992) (that a requirement "may make

[petition] proponents' task more difficult does not provide a sufficient basis to excuse a failure to comply strictly"). While statutory safeguards must not "unreasonably hinder or restrict" the initiative process, *Stanwitz v. Reagan*, 245 Ariz. 344, 348, ¶ 14 (2018), this deferential maxim does not obligate the Legislature to employ the least restrictive or most accommodative means of advancing a legitimate legislative objective.

Evaluated within this framework, the Committee's theory of its appeal—which can be condensed to a gripe that the trial court applied the statutes as written too scrupulously and did not grant the Committee "certain minor exceptions" [Comm. Br. at 5] to the law[1]—falls flat. Similarly, the Committee's insinuation that the Challengers are somehow improperly invoking the strict compliance test as a "sword" [Comm. Br. at 7], misapprehends not only the case it cites, *Leach v. Hobbs*, 250 Ariz. 572, 578, ¶ 27 (2021), but also the purpose of ballot measure litigation more generally. *Leach* was specifically addressing A.R.S. § 19-118(E), which mandates the disqualification of all signatures collected by registered circulators who fail to comply with a properly served subpoena. While affirming the constitutionality of Section 19-118(E), the Court cautioned that the

[1] The cases the Committee cites for the curious proposition that petition proponents are entitled to "exceptions" do not sustain it. Judge Gates' conclusion that a circulator's change of address does not invalidate his registration did not embody a judicially crafted "exception" to A.R.S. § 19-118, but rather an interpretation of the statute as written. *See Leach v. Hobbs*, CV2020-007961, Order at 14 (Aug. 14, 2020). Similarly, this Court in *Molera v. Hobbs*, 250 Ariz. 13 (2020), sustained the ballot measure because it found the summary adequate, not because it chose to overlook some recognized deficiency.

subpoena power—like the entire civil discovery regime in general—must be wielded responsibly.

By contrast, simply detecting and challenging errors, omissions or other defects afflicting an initiative petition is not, as the Committee insinuates, some malignant act of abuse; it is vindicating a vital oversight function that the Legislature has entrusted to citizens. *See generally* A.R.S. §§ 19-122(C), 19-118(F); *Barth v. White*, 40 Ariz. 548, 553 (1932) ("We can see no reason why the interest of a citizen may not be as great in preventing an initiative petition not legally sufficient from being submitted to a vote as in compelling that one legally sufficient should be so submitted."). While it may impose unwanted accountability on the Committee, courts "cannot fault the [initiative] opponents for taking advantage of th[e] rules." *Grosvenor Holdings L.C. v. City of Peoria*, 195 Ariz. 137, 141, ¶ 15 (App. 1999).

II. The Committee's Constitutional Challenge to A.R.S. § 19-118 Lacks Merit Because the Committee Cannot Identify Any Constitutional Injury

There is nothing constitutionally noxious about requiring registered circulators to write a full and correct address or telephone number. In its gambit to prove otherwise, the Committee proffers three putative harms it says it would suffer were the Court to interpret A.R.S. § 19-118(B) in strict conformance with its plain language. None betrays an actual, cognizable constitutional injury.

First, the Committee complains that fidelity to the statutory text may "eliminate all signatures gathered by a circulator who registered *nearly* perfectly." Comm. Br. at 9 (emphasis added). But this reasoning fundamentally misunderstands the nature of a constitutionally significant burden. The "burden" inquiry pivots on the practical difficulty of following the statutory requirement, ***not*** the legal consequences of insufficient compliance. *See Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1189 (9th Cir. 2021) ("If the burden imposed by a challenged law were measured by the consequence of noncompliance, then every voting prerequisite would impose the same burden and therefore would be subject to the same degree of scrutiny (presumably strict if the burden is disenfranchisement). But this cannot be true . . . ."); *see also Arrett v. Bower*, 237 Ariz. 74, 80, ¶¶ 19–20 (App. 2015) (rejecting notion that it would be unconstitutional to disqualify all signatures because the proponents had neglected to print the correct serial number on each page).

Typing on the electronic registration form an actual (rather than fictious) address and telephone number, *see* A.R.S. § 19-118(B)(1), or designating the correct address for service of process, *id.* § 19-118(B)(4), is hardly a strenuous exercise. The Committee struggles to articulate why, exactly, it would have been oppressively burdensome to merely fill out the registration form correctly (as the majority of registered circulators did). Any failure to strictly comply with these simple tasks is a manifestation of the circulators' or the Committee's carelessness, not an incrimination of the underlying statute. *Cf. Arizonans*

for Second Chances, Rehabilitation & Public Safety v. Hobbs, 249 Ariz. 396, 415–16, ¶ 72 (2020) (requirement that initiative signatures be collected and witnessed in-person does not unduly burden initiative proponents' First Amendment rights, even in light of COVID-19 pandemic).

Second, the Committee conjures a specter of criminal prosecution for false or improper circulator registrations, citing *AZ Petition Partners LLC v. Thompson*, 253 Ariz. 223 (App. 2022). But this argument depends on a dissonant amalgamation of disparate statutory provisions and burden of proof regimes. Criminal culpability requires a "knowing[]" misrepresentation or omission from a circulator registration. A.R.S. § 19-118(H). No circulator has been threatened with criminal charges, and the Challengers here certainly have not alleged criminal wrongdoing. Criminal prosecutions are wholly disconnected—both procedurally and conceptually—from civil actions contesting the legal sufficiency of petition signatures. It is for precisely this reason that the Court of Appeals in *AZ Petition Partners* severed the misdemeanor penalty provision from the rest of A.R.S. § 19-118.01 (which prohibits compensating circulators based on the number of signatures they collect), leaving intact its signature disqualification sanction. *See* 253 Ariz. at ___, 511 P.3d 570, 583, ¶¶ 42–45. Thus, even if the Committee could adduce a plausible and constitutionally unjustified threat of prosecution emanating from the strict construction of A.R.S. § 19-118, the appropriate remedy would be merely to invalidate the criminal penalty in subsection (H).

Third, the Committee speculates that stringent enforcement of Section 19-118(B) "would limit the pool of prospective circulators who would fear criminal prosecution." Comm. Br. at 9. As noted above, any (real or imagined) risk of criminal prosecution derives entirely from subsection (H), and does not impugn the constitutional validity of the registration requirements themselves. More generally, while the loss of potential available circulators might be a constitutional injury, depending on the facts of a particular case, the Committee has offered no evidence whatsoever that A.R.S. § 19-118 deterred prospective circulators from joining its petition effort—or that requiring strictly compliant addresses and phone numbers on registrations would do so in the future. *See Prete v. Bradbury*, 438 F.3d 949, 964 (9th Cir. 2006) (constitutional challenge to compensation restrictions could not rely on "unsupported speculation" about the supply of circulators).

In short, the Committee has not mustered any constitutionally credible rationale for disregarding the Legislature's instruction to strictly construe and strictly apply the registration mandates in A.R.S. § 19-118(B).

III. A Circulator Who Has Not Strictly Complied With All Provisions of A.R.S. § 19-118(B) Is Not Validly Registered

In a final attempt to evade scrutiny of the deficient circulator registrations, the Committee announces that it is only "a failure to register in the first place that renders a circulator not 'properly registered.'" Comm. Br. at 11. The implication is that paid and non-resident circulators are free to withhold statutorily required information and can even

outright misrepresent their name, address or contact information; as long as they submit ***something*** to the Secretary of State—no matter how incomplete or inaccurate it might be—their registrations are immune from challenge.

That is, to say the least, an odd conception of strict compliance, and the statutory text quickly dispatches the Committee's theory. First and foremost, A.R.S. § 19-121.01(A)(1)(h) specifies that a circulator must have been "properly registered," which implies a qualitative sufficiency. Section 19-118(A) provides—as the Committee notes—that the Secretary must "disqualify all signatures collected by a circulator who fails to register pursuant to this subsection." And Subsection (B) explains that "[t]he circulator registration application required by subsection A of this section shall require" five explicitly enumerated items. In other words, a circulator "registration" is defined by the five elements prescribed in subsection (B). A circulator who has not timely filed a registration that strictly complies with subsection (B) has not validly (or "properly") registered ***at all***. *See generally Stambaugh v. Killian*, 242 Ariz. 508, 509, ¶ 7 (2017) ("In construing a specific provision, we look to the statute as a whole . . . to give effect to all of the provisions involved.").

IV. The Trial Court Properly Disqualified Signatures Collected by Circulators Who Filed False or Incomplete Registrations or Petition Affidavits

A circulator registration or petition sheet affidavit that omits or mispresents any item of information required by the statute is not strictly compliant. It follows that the associated

signatures are invalid as a matter of law. *See* A.R.S. §§ 19-118(A), 19-112(D), 19-121.01(A)(1)(h).

A. False Representations of Temporary Addresses Made Under Oath [Objection No. 5(b)]

It is factually undisputed that certain circulators misrepresented that they temporarily "resided" at a site that is not a residential location (such as a vacant lot or mailbox facility). The Committee attempts to resuscitate these registrations on the grounds that the "temporary" address field is not statutorily required. A.R.S. § 19-118(B)(1), however, mandates disclosure of the circulator's "residence address," which may—depending on the circulator's individual circumstances—entail both temporary and permanent components.

Further, even assuming that these circulators permissibly could have ***omitted*** their temporary address, their decision to affirmatively ***misrepresent*** that information under oath voids the registration. As recently as 2018, circulator registrations were not sworn, prompting this Court to conclude that inaccuracies in their contents did not render them "subject to challenge." *Leach v. Reagan*, 245 Ariz. 430, 439, ¶ 41 (2018). In response, the Legislature the next year amended the statute; all circulator registrations now must be supported with a notarized affidavit affirming that "all of the information provided [in the registration] is correct." A.R.S. § 19-118(B)(5), as amended by 2019 Ariz. Laws ch. 315, § 3.

Recognizing that "[t]he circulator is the only person in the process who is required to make a sworn statement and is, therefore, the person under the greatest compulsion to lend credibility to the process," *W. Devcor*, 168 Ariz. at 432, this Court has refused to tolerate even incidental mendacity by circulators. Drawing on its inherent equitable powers, the Court has for decades categorically disqualified all signatures associated with circulators found to have made a knowing misrepresentation in the course of their duties. *See Whitman v. Moore*, 59 Ariz. 211, 231 (1942) (adopting "the rule of falsus in uno, falsus in omnibus"); *Brousseau v. Fitzgerald*, 138 Ariz. 453, 455 (1984) ("Fraud in the certification destroys [legislative] safeguards unless there are strong sanctions for such conduct."). Importantly, a willful intent to deceive is unnecessary; it is sufficient that the circulator subjectively knew the averred information was not accurate. *See Moreno v. Jones*, 213 Ariz. 94, 96, ¶ 2 (2006) ("A nomination petition is void if verified by someone other than the person who actually obtained the signatures."); *Parker v. City of Tucson*, 233 Ariz. 422, 438, ¶ 48 (App. 2013) (voiding signatures where circulator affidavit inaccurately represented that each signer had personally written his own name and address, reasoning that "the circulator must have known" the statement was false).

In short, the circulators at issue swore under oath that they "resided" at a location that was not, in fact, a residence. By choosing to attest to a statement that "the circulator must have known," *id.*, was false, these individuals disqualified the signatures they collected.

B. Omission of Functioning Telephone Number [Objection No. 5(c)]

Certain circulators disclosed on their sworn registrations a telephone number that undisputedly was either inoperative or not actually associated with the circulator. The Committee contends that the Court should excuse this dereliction because it did not "hinder" either the Secretary of the Challengers. *See* Comm. Br. at 14. Here again, the Committee seeks to smuggle a substantial compliance test into the strict compliance realm. A circulator registration that omits an item of information expressly mandated by statute is not strictly compliant as a matter of law. *See Riffel*, 213 Ariz. at 250, ¶ 12 (proponents who stapled (rather than inserted) measure description to petition sheet disqualified the signatures, even though the error never "hindered electors' ability to comprehend the petition").

Even in the absence of a strict compliance framework, the registrations are not salvageable. This Court "must follow the [statutory] text as written." *Canon Sch. Dist. No. 50 v. W.E.S. Const. Co.*, 177 Ariz. 526, 529 (1994). In a formulation that admits of no ambiguity, the Legislature has directed that circulators must provide their "telephone number." A.R.S. § 19-118(B)(1). There is nothing taxing or onerous about jotting down such basic information, and mandating multiple modes of contact information was a reasonable "exercise of legislative authority to regulate the ballot measure process." *Stanwitz*, 245 Ariz. at 349, ¶ 15. The Committee bemoans the resulting loss of signatures,

but it was incumbent upon the Committee and its circulators to prevent such an easily avoidable "unfortunate mistake," *Arrett*, 237 Ariz. at 80, ¶ 20.

C. Misrepresentation of Circulator's Residence on Petition Affidavit [Objection No. 5(e)]

The Committee's argument with respect to Objection No. 5(e) compounds a legal error by obscuring the factual record. Circulators must disclose their "residence address" on both their registration, *see* A.R.S. § 19-118(B)(1), **and** on the affidavit accompanying every petition sheet they carry, *see id.* § 19-112(D). Certain circulators represented on at least one petition sheet affidavit that they reside at a location that is different from the address they disclosed as their residence on their registration form. The inconsistency is *prima facie* evidence that at least one of the averred addresses is not the circulator's actual residence, thereby disqualifying (at the very least) all signatures on sheets accompanied by affidavits that are at variance with the circulator's registration. *See Lohr v. Bolick*, 249 Ariz. 428, 433–34, ¶ 22 (2020) (even in substantial compliance context, circulator verifications lacking the circulator's actual residential address are invalid).

The Committee seeks to evade this outcome by positing that these circulators may have changed their residence location during the petition drive. But the Committee already stipulated that these circulators had **not** moved. Aware of the possibility of *bona fide* residence changes, the Challengers notified the Committee that they would subpoena these circulators to ascertain the underlying facts. To spare all parties the expense and burden of

compulsory process and the attendant risks to the Committee, *see* A.R.S. § 19-118(E) (signatures collected by circulators who do not respond to subpoenas are automatically disqualified), the Challengers offered to withdraw Objection 5(e) as to any circulators for whom the Committee could demonstrate a *bona fide* change of address. As to any remaining circulators, the Committee stipulated, as a factual matter, that the circulator had **not** moved.

The parties formalized the stipulation on the record at trial. Challengers' counsel explained to the trial court that if the Committee produced "something that confirms [the circulator's] identity and says they hadn't moved, then we would withdraw the objection if they could produce that. If not, the finding of the Special Master through this stipulated process was that they had not moved. So that's how we get there factually." Tr. 8/16/22 Hr'g. 25:1-7. Counsel for the Committee confirmed that the parties had stipulated to the factual inaccuracy of certain challenged telephone numbers on circulator registrations, and added that "the same goes with the addresses where they don't match," noting that "we stipulated because we believe that this is not required in any way. We don't believe that any of these address challenges are valid. And had we not stipulated, then we'd have to deal with the circulators not showing up." *Id.* 76:25-77:16. The resulting Minute Entry likewise memorializes that "As to Objection 5(e), in the absence of a notarized affidavit" affirming the circulator had moved, "the parties stipulate to the contact information as inaccurate at the time the affidavit was filed." Minute Entry entered Aug. 22, 2022

(attached as Exhibit A). Finally, the Committee's counsel confirmed on August 22 that the Challengers may represent to the Court that, in the absence of a notarized affidavit from the circulator verifying a change of residence, the Committee stipulated that the circulator did not move between the time of their registration and the time that they signed the affidavits on the backs of the petition sheets (although the Committee contests the signatures' disqualification as a matter of law).[2]

In short, the Committee knowingly and explicitly waived any factual defense that the relevant circulators had moved. Given the parties' stipulation that the residence addresses identified on the challenged circulator affidavits were factually inaccurate, the trial court properly disqualified the associated signatures. *See* A.R.S. § 19-112(D); *Lohr*, 249 Ariz. at 433–34, ¶ 22.

D. Incorrect Service of Process Address [Objection No. 6(b)]

The trial court correctly found that circulator registrations that designated a service of process address other than the Committee's address did not strictly comply with A.R.S. § 19-118(B)(4); *see also* 2019 ELECTIONS PROCEDURES MANUAL (rev. Dec. 2019) at p. 253 ("For circulators of statewide initiative and referendum petitions, this [service of process]

[2] Consistent with the stipulation, signatures collected by circulators who had provided an affidavit attesting to a change of residence were **not** included in the totals invalidated by the trial court pursuant to Objection No. 5(e).

address must be the address of the committee in this state for which the circulator is gathering signatures.”).

Prior to 2019, circulators were instructed to “designate ***an*** address in this state at which the circulator will accept service of process related to disputes concerning circulation of that circulator’s petitions.” A.R.S. § 19-118(B)(2) (2018) (emphasis added). The Legislature later modified this directive, however, to require that the circulator instead provide “***the*** address of the committee in this state for which the circulator is gathering signatures,” *id.* § 19-118(B)(4) (2022), as amended by 2019 Ariz. Laws ch. 315, § 3 (emphasis added). *See Smith v. Melson, Inc.*, 135 Ariz. 119, 121 (1983) (“Unlike the indefinite article ‘a,’ ‘the’ is a definite article used in reference to a particular thing.”).

As the amendment’s sponsor explained, the imposition of a single, unitary rubric for circulator service of process ensures that service can be effectuated “efficiently [and] quickly” in highly expedited litigation. *Hearing on S.B. 1451 Before the House Elections Comm.*, Fifty-Fourth Legislature, First Regular Session (Mar. 19, 2019) (testimony of Sen. Leach).[3] This operative language must be “strictly construed,” A.R.S. § 19-102.01, and the Court must ensure “strict compliance” with its unequivocal terms, *Cottonwood Dev. v. Foothills Area Coal. of Tucson*, 134 Ariz. 46, 49 (1982).

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[3] *Available at* https://www.azleg.gov/videoplayer/?eventID=2019031364&startStreamAt=4784 [at 1:29:20].

The Committee's defense that the Challengers "presented no evidence that they cannot serve each of the circulators at the Committee's address," Comm. Br. at 16, entirely inverts the strict compliance framework. The Challengers do not have the burden of proving anything, other than that the disputed registrations deviated from A.R.S. § 19-118(B)(4) on their face. It was the Committee's responsibility to ensure that its circulators' registrations disclosed every item of statutorily required information in its full and correct form. The presence or absence of any extrinsic prejudice to the Challengers or to anyone else is irrelevant. *See McKenna v. Soto*, 250 Ariz. 469, 472, 474, ¶¶ 14, 25 (2021) (incomplete dates and addresses are not *strictly* compliant, even if missing information could be inferred).

The Committee's address at all times relevant has been 401 West Baseline Road, Suite 205, Tempe, Arizona 85283. This exact address hence is the only address that strictly complies with A.R.S. § 19-118(B)(4).

ATTORNEYS' FEES AND COSTS

Challengers request an award of reasonable attorneys' fees and costs, pursuant to A.R.S. § 19-118(F).

CONCLUSION

The Court should affirm the judgment of the trial court with respect to Objection Nos. 5(b), 5(c), 5(e), and 6(b). The Challengers have provided the attached appendix, derived from facts and data in the record, to apprise the Court of the number of signatures

implicated by each issue in the appeal and cross-appeal. The appendix does **not**, however, eliminate double-counting issues that would arise if this Court reverses on more than one objection category; additional calculations would be necessary in that instance.

Challengers respectfully request a ruling **no later than 12:00 p.m. on August 25, 2022** so that arithmetic issues can be resolved between the parties before the 5:00 p.m. ballot-printing deadline on August 25. Alternatively, the parties can upon request stipulate and submit in advance of a ruling the number of signatures that would be (in)validated under any specified combination(s) of objections.

RESPECTFULLY SUBMITTED on this 22nd day of August, 2022.

STATECRAFT PLLC

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Phoenix, Arizona 85003

Attorneys for Plaintiffs/Appellants/Cross-Appellees

Exhibit A

Clerk of the Superior Court
*** Electronically Filed ***
08/22/2022 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-009391 08/16/2022

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT
E. Wolf
Deputy

SCOT MUSSI, et al. KORY A LANGHOFER

v.

KATIE HOBBS, et al. AMY BELL CHAN

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

TRIAL TO THE COURT – DAY 2

East Court Building – Courtroom 913

9:44 a.m. Trial to the Court continues from August 15, 2022. Plaintiffs Scot Mussi, Aimee Yentes, and Arizona Free Enterprise Club are represented by counsel of record, Kory A. Langhofer, and co-counsel, Thomas J. Basile. Real-Party-in-Interest Arizonans for Free and Fair Elections is represented by counsel, James E. Barton II, for counsel of record, Joshua D. Bendor. All participants also appear virtually via Court Connect.

LET THE RECORD REFLECT the virtual courtroom via Court Connect is designated as ECB913.

Court Reporter Hope Yeager is present. A record of the proceedings is also made digitally.

LET THE RECORD REFLECT that Defendant Katie Hobbs, *in her official capacity as Secretary of State of Arizona*, appearance is waived for today's proceedings, in accordance with the Court's prior order in the minute entry *Status Conference – Trial Reset* dated August 5, 2022.

The Court has received and received the Plaintiffs' *Notice of Filing*, filed August 15, 2022, with the *Special Master's Report* attached.

Closing arguments are presented.

As to Objection 5(c), (d), in the absence of a notarized affidavit and/or declaration in support of the accuracy of the phone number and email address on the circulator's affidavit filed with the Secretary of State, the Parties stipulate to the contact information as inaccurate at the time the affidavit was filed.

As to Objection 5(e), in the absence of a notarized affidavit and/or declaration in support of the accuracy of the address on the circulator's affidavit filed with the Secretary of State, and that the circulator moved since the time of the affidavit, the Parties stipulate to the contact information as inaccurate at the time the affidavit was filed.

10:52 a.m. Court stands at recess.

11:11 a.m. Court reconvenes with counsel and respective participants present.

Court Reporter Hope Yeager is present. A record of the proceedings is also made digitally.

Closing arguments are further presented.

In accordance with the Parties' stipulation, and by order of the Court, the factual record shall remain open as to the Plaintiffs' Objections 27 through 30 until receiving the counties reports on registered voters.

IT IS ORDERED taking this matter under advisement.

12:14 p.m. Matter concludes.

FILED: Trial/Hearing Worksheet

LATER:

Pursuant to the orders entered, and there being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of Court, and pursuant to the notice provided in minute entry *Status Conference – Trial Reset* dated August 5, 2022,

LET THE RECORD REFLECT that Plaintiffs' exhibits 297, 313, 314, 315, and 318 are disposed.

In accordance with the order in the minute entry *Trial to the Court – Day 1*, dated August 15, 2022,

IT IS ORDERED sealing Plaintiffs' exhibit 355 not to be opened until further order of the Court.

Appendix

Appendix — Calculation of Signatures at Issue on Appeal

	Plaintiffs' Appellate Issues					Committee's Appellate Issues			
	Objection No. 3(a): Outdated Affidavit (all)	Objection No. 3(b): Outdated Affidavit (only circulators without an impossibility defense arising from design of the SoS system)	Objection No. 4(a): Registration Address (Permanent) Missing Unit No.	Objection No. 4(b): Registration Address (Temporary) Missing Unit No.	Objection No. 6(a): Registration Service Address Is Missing Unit No.	Objection No. 5(b): Registration Relied on Non-Residential (Temporary) Address	Objection No. 5(c): Registration Relied on Incorrect Phone Number	Objection No. 5(e): Affidavit Address Does Not Match Registration Address	Objection No. 6(b): Registration Service Address Is Not the Committee Address
Challenged Signatures:[1]	121,908	44,347	12,318	46,248	13,157	13,646	19,137	8,512	29,643
Signatures Invalidated on Other Bases:[2]	29,945	13,457	4,730	10,898	3,427				
Signatures Invalidated for More Than One Reason:[3]						3,556	3,373	3,019	4,386
Net Signatures at Issue on Appeal:[4]	91,963	30,890	7,588	35,350	9,730	10,090	15,764	5,493	25,257

[1] *See* Special Master Report, Ombinus Exhibit A at 3651, 7502 (Aug. 15, 2022).

[2] Challenged signatures (as defined above) minus any signature that, in Omnibus Exhibit A to the Special Master Report, also appeared in an objection category ultimately sustained by Judge Mikitish's Under Advisement Ruling (Aug. 11, 2022).

[3] Challenged signatures (as defined above) minus any signature that, in Omnibus Exhibit A to the Special Master Report, appeared in two or more objection categories ultimately sustained by Judge Mikitish's Under Advisement Ruling (Aug. 11, 2022).

[4] Difference between challenged signatures and signatures invalidated on other bases (for the Plaintiffs), or challenged signatures and signatures invalidated for two or more reasons (for the Real Party in Interest).