IN THE SUPREME COURT
OF THE 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. Defendants-Appellees-Respondents.	**CV-22-0207-AP/EL** Maricopa County Superior Court No. CV2022-009391

BRIEF OF AMICUS CURIA ARIZONA CHAMBER OF COMMERCE AND INDUSTRY IN SUPPORT OF APPELLANTS

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I. INTRODUCTION AND STATEMENT OF INTEREST

The Arizona Chamber of Commerce and Industry ("the ACCI") is a non-profit organization advocating for free-market public policies and working to ensure economic growth and prosperity for all Arizonans. Equity and integrity in Arizona's constitutional initiative process is necessary for the preservation of these interests. The ACCI sees two major threats to a free and fair Arizona initiative process, and A.R.S. § 19-118 is a necessary defense to those threats.

First, though a near-universal good, the constant exponential growth in Arizona's population hampers our ability to conduct an orderly and trustworthy signature collection, review, and verification because the signature volume grows continuously with the population. An initiative effort in 1918 would have required only 5000 valid signatures to gain a place on the ballot. Our electorate has doubled every 20 years since and, in 2018, a successful initiative effort required the collection, review, and verification of more than 230,000 signatures, a 4400% increase. These growth-related procedural challenges are not novel; they have loomed long. In the 1950s, a successful initiative petition required a mere 10% of the signatures required today. But even then, concerns abounded for the threat

posed by fraudulent signature collection and special interest abuse. In 1972, this Court quoted the Twenty-First Legislature (1953-1954).

> In recent years small pressure groups, taking advantage of the substantial increase in the size of the electorate and the resultant great numbers of uninformed signers of initiative and referendum petitions, have attempted, through fraudulent and corrupt practices in connection with the circulation of petitions, to appropriate this fundamental right of the people to their own selfish purposes. These abuses have tended to bring the initiative and referendum processes into disrepute. It is the sense of this legislature that in order to prevent the recurrence of such abuses and to safeguard to the people their right of initiative and referendum in its original concept, legislation should be enacted further implementing the provisions of the Constitution governing the exercise of that right.

Direct Sellers Ass'n v. McBrayer, 109 Ariz. 3, 6 (1972)(quoting Legislature's Declaration of Purpose re A.R.S. § 19-112).

A more recent threat to our initiative integrity is the influence borne by out-of-state special interests and the stupefying sums of money those interests impose on Arizona ballot propositions. This influence was apparent in the 2018 and 2020 election cycles where ballot initiative efforts were supported in the aggregate by tens of millions of dollars, with most initiatives raising more than 90% of their funding from outside of Arizona. (*Restore*, Chamber Business News, 12/23/2020; *Pro-tax*, Chamber Business News, 10/28/2020). Part and parcel with the rise of these outside special interests and funders is an inundation of itinerant campaign workers. These workers have no ties to Arizona, are often paid by the special interests, and are intimately engaged in our initiative ballot qualification process.

Without question, these travelers have a constitutional right to work on campaigns in Arizona. But Arizona's electorate has a profound interest in verifying the integrity of these visitors, and reasonable regulations to ensure the trustworthiness of the visitors and of the initiative process are appropriate.

For the foregoing reasons, ACCI has supported legislation, including recent amendments to A.R.S. §19-118, directed at preventing "fraud, forgery, and identity theft" in the collection of initiative signatures and providing petition signers with "some level of confidence in the individuals collecting their information." (May 2019 Letter from ACCI CEO Glenn Hamer to Governor Ducey, urging the Governor to sign SB1451). Because the Superior Court rulings in this and contemporaneous initiative cases have defenestrated the protections of § 118, ACCI urges this Court to reverse those decisions.

II. A.R.S. § 19-118 - REGISTRATION TAKES TWO: A CIRCULATOR AND A COMMITTEE

This Court has considered and applied A.R.S. § 19-118 on multiple occasions. *Stanwitz v. Reagan*, 245 Ariz. 344 (2018); *Leach v. Reagan*, 245 Ariz. 430 (2018); *Leach v. Hobbs*, 250 Ariz. 572 (2021). But the Court has not yet directly addressed the registration requirements that underlie the core issue[1] in this

[1] Meaning the "core issue" from ACCI's perspective. ACCI agrees with Appellants Mussi, *et.al.*, that strict compliance should be applied to all aspects of the registration, including detailed accuracy in circulator and

case, i.e., whether a circulator's "registration" is an individual one-time act that endows upon the circulator an eternal "license" to collect signatures in Arizona, or, whether each "registration" is a two-party act that binds the circulator to a specific initiative and its committee. The text of the provision inexorably leads to the latter conclusion.

A.R.S. § 19-118 is intended 1) to exclude bad actors from becoming paid or nomadic petition circulators in Arizona; 2) to ensure the nomadic circulator's future accessibility and availability by binding the circulator to a committee for service of process and other contacts; and 3) to assign to each initiative committee direct responsibility for its circulators' compliance.

The provision achieves the first goal by barring the registration of circulators with a history of certain legal violations[2], and by establishing criminal liability for violations of the provision. [§118 (D) and (H)]. It achieves the second goal by requiring a sworn affidavit in which the circulator provides complete contact information, identifies the specific initiative for which the circulator is petitioning, provides the address of the specific initiative committee for which the circulator is petitioning, and agrees to accept service of process through the same committee.

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committee addresses. However, the ACCI is focused for the purposes of this brief on the broader issue of the initiative-specific registration requirement.

[2] Among other things, 118(D) bars the registration of any person with election law violations during the "preceding five years." This temporal limitation, which is discussed more fully below, is among the statutory provisions that would serve no purpose under a "one-time-forever" registration construction.

[§118 (B)(1), (2), and (4)]. It achieves the third goal by assigning to the committee the *de facto* role of registered agent for the circulator, and by distributing the registration duties severally to the circulator and to the committee. [§118 (A) and (B)(3)-(4)]. The Superior Court erred by reading these provisions binding a circulator registration to a specific committee and initiative to be meaningless, superfluous, or insignificant. *City of Phoenix v. Orbitz Worldwide, Inc.*, 247 Ariz. 234, (2019).

A complete reading of § 19-118 compels the conclusion that a new registration is required for each initiative in which a circulator collects signatures. For one thing, the required registration affidavit is initiative and committee-specific. ACCI concurs with arguments fleshed out in Appellants' briefing relating to the impact of the affidavit requirement on the question before the Court.

A second compelling factor precluding the "once for all" approach is the registration *process* contemplated in the statute, which requires that *two parties engage in each registration*. A compliant registration is a *joint act* requiring the complementary contributive performance of two parties – the circulator and the committee - with separate tasks assigned to each. The circulator is required to provide a completed and sworn "registration application" to the specific committee for which the circulator is petitioning. In counterpart, the committee is required to "collect" its circulators' applications and "submit" those applications to the

Secretary of State. [§ 118(A)]. The circulator can't bypass the committee's involvement in registration. The committee must play its part.

In a real sense then, this Court isn't deciding whether a circulator must submit a new affidavit to the Secretary of State for each initiative, because the circulator shouldn't "submit" anything at all to the Secretary of State. The committee's necessary role in the process compels the conclusion that a unique registration is required for every committee and initiative.

The Superior Court concluded not only that registration is an individual act on the part of the circulator, but that the registration isn't bound to any committee and initiative. Both findings are erroneous.

III. STRICT CONSTRUCTION AND TEMPORAL REQUIREMENTS

The Superior Court's ruling appears to be based on a faulty application of the "strict construction" mandate of A.R.S. § 19-101.01. The Superior Court recognized the § 19-118(B) affidavit's incorporation of initiative-specific and committee-specific avowals, but nonetheless found that "strict construction of the statute does not support that the affidavit must specifically relate to each new initiative." (Minute Entry dated 8/18/22, Maricopa County CV2022-009391). On that basis, notwithstanding the necessary committee-specific avowals, the court concluded that a single collector registration becomes the collector's forever license. This perplexing finding suggests the court viewed strict construction as a

requirement that a statute explicitly state its otherwise implicit and unambiguous requirements - "even though it says it, it doesn't *say* it," i.e., no literal expression. This same error likely led to the court's concern that the legislature did not include a "temporal requirement" on circulator registration.

Notably, § 19-118 has explicit and implicit temporal requirements. Pursuant to 118(A), the circulator must be registered "before circulating petitions pursuant to this title." Likewise, the "preceding five years" exclusion of 118(D), and its incorporation into the affidavit required in 118(B)(5), are explicit temporal requirements. As with the provisions rendering the registration initiative and committee-specific (118(A), (B)(2)(4)(5)), the "five years" provision would be insignificant if a single registration for one initiative and committee was effective for all time, and for all initiatives and committees. The court must give "meaning to each clause," and "avoid rendering anything….insignificant." *City of Phoenix*, 247 Ariz. at 244 (quoting *Devenir Assocs. v. Phoenix*, 169 Ariz. 500, 503 (1991)).

The registration also has an implicit "temporal ending" precisely because it is bound to a specific initiative and specific committee. The registration is therefore limited in substantive scope – to the specific initiative and the specific committee. It is also limited in temporal scope – it ends when the initiative's petitioning period ends.

This Court should consider the similarity of other election laws in reaching this same conclusion. *Stambaugh v. Killian*, 242 Ariz. 508 (2017)(viewing statutory language from its context within the statutory scheme). Elections law is thick with explicit deadlines for one thing or another; but implicit "temporal endings" are present throughout our elections law as well, everywhere a status is tied to a particular office, committee, or election cycle. Because status and event are inseparable, the legislature has no reason to draft an explicit "temporal end" to the status. For example, A.R.S. 16-311 provides that a candidate's Statement of Interest relates to a specific "office, district, or precinct" and to a specific election. There is nothing in §16-311 explicitly stating that an individual's Statement of Interest for nomination to the office of Treasurer in 2020 may not be used to run for Secretary of State in 2024. But we know that it may not because the inescapable implication of a Statement of Interest for Treasurer 2020 is that it bears no relation to Secretary 2024, even if there isn't a subsection that *says* that.

Strict construction does not require a checklist rendering every imaginable implication as expression. Instead, strict construction applies where there is an irresolvable ambiguity, and strict construction does not preclude application of the standard principles of statutory interpretation to first resolve potential ambiguities. *Wilderness World v. Department of Revenue*, 182 Ariz. 196 (1995) Here, there is no ambiguity – there is only one reasonable conclusion that gives meaning to all of

the statute's provisions. That interpretation should be applied. *Glazer v. State*, 237 Ariz. 160 (2015).

IV. SECRETARY OF STATE'S PORTAL

Finally, it appears that the Secretary of State's office has created a "Circulator Portal" that invites the submission of non-complying "registrations." The Portal allows circulators to register directly with the Secretary, rather than requiring the committee to register its circulators. In addition, the Portal allowed at least some circulators to register without submitting the required affidavit. Both thwart the core regulatory function of the statute.

Public bodies are not "empowered to deviate from" the law. *Fid. Nat'l Title Co. v. Town of Marana*, 220 Ariz. 247, 251 (App. 2009). Where public officials fail to enforce the law, whether by mistake or with preclusive or permissive intent, those under the law nonetheless retain a duty to follow the law, and ACCI concurs with Appellants' argument that the Appellee committee had a responsibility to fully comply with the law regardless of whether a non-compliant shortcut was on offer. This Court said it well - "[i]t is not 'nit-picking' to require compliance…" *W. Devcor v. Scottsdale*, 168 Ariz. 426, 432 (1991).

V. CONCLUSION

For all the foregoing reasons, ACCI respectfully urges this Court to reverse the ruling of the Superior Court and hold that initiative committees and circulators

must jointly comply with A.R.S. § 19-118 and submit circulator registrations in accord with its requirements.

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

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