ARIZONA SUPREME COURT

SCOTT MUSSI, et al., Plaintiffs/Appellants/ Cross- Appellees, v. KATIE HOBBS, in her official 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.	Arizona Supreme Court No. CV-22-0207-AP/EL Maricopa County Superior Court No. CV2022-009391

REAL PARTY IN INTEREST'S SIGNATURE DISPOSITION BRIEF

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There is no time to adequately consider the appeal. As such, the matter should remain on the ballot and be decided by the voters. *Save Our Pub. Lands Coal. v. Stover*, 135 Ariz. 461, 662 P.2d 136 (1983) (holding that when a review cannot be completed prior to printing the ballots doubts as to the validity will be resolved in favor of sustaining signatures and the initiative is placed on the ballot); *Renck v. Superior Ct. of Maricopa Cnty*., 66 Ariz. 320, 327, 187 P.2d 656, 661 (1947) ("Once the measure has been placed upon the ballot, voted upon and adopted by a majority of the electors, the matter becomes political and is not subject to further judicial inquiry as to the legal sufficiency of the petition originating it.").

The trial court's findings of fact related to ineligible signatures should be upheld by this Court. *Whittemore v. Amator*, 148 Ariz. 173, 175, 713 P.2d 1231, 1233 (1986) ("We will not disturb a judgment on pure questions of fact, unless clearly erroneous.") The trial court has reviewed the record in the case, had significant time to consider the briefing, trial testimony, and the special master's report. The trial court's finding of fact should remain undisturbed.

Plaintiffs originally brought this lawsuit as a challenge to the Committee's compliance with Title 19, Chapter 1. After the conclusion of trial, and appeal, when calculating the final disposition of the signatures they attempt to alter their strategy and to instead make it a challenge to the Secretary's actions under A.R.S.

§ 19-121.01 and the related A.R.S. § 121.04. They are too late to do so. *See Transportation Infrastructure Moving Arizona's Econ. v. Brewer*, 219 Ariz. 207, 212 ¶ 23 (2008) (disallowing those who should have challenged under Section 19-122 from transform their challenge into one under Section 19-121.04). Under the doctrine of laches it is too late to do this. *Kromko v. Superior Ct. In & For Cnty. of Maricopa*, 168 Ariz. 51, 57, 811 P.2d 12, 18 (1991) (holding § 19–122(C) actions are limited by laches).

Even if that is permitted, they do not prevail. But first, it is important to review what the trial court did below. The trial court ruled on all objections except Objections 27-30. In it Under Advisement Ruling the trial court explained,

> Objections 27 through3 30 involve challenges to voter registration. The Plaintiffs have requested that the Court leave the record open to address these issues after the county recorders have completed their review of voter registration requirements. Therefore, the Court does not address these objections at this time, but rather leaves the record open to address these issues, at least potentially, at a later date.

[UAR, CV 2022-009391, at 17 (Aug. 18, 2022)] The trial court did just this in one of two principled options for incorporating the county recorder reports into this case. It did so as follows.

The random sample consisted of 19,992 signatures in this case. Although many of those signatures were a part of signatures challenged by the Plaintiffs, it is immaterial to assessing the percentage of signatures that are invalid in various

areas. No second sample is ever required. *See* A.R.S. § 19-118(G). After removing 96,237 signatures as found by the trial court and modified by this Court, it is undisputed that the Committee had 303,621 valid signatures left. Thus, the invalidity rates in the various categories should be applied to that total.

Objection 28, voter signature pre-dates voter's registration, the counties found 82 signatures in that category. 82/19,992 x 303,621 = 1,245 signatures.

Objection 29, voter is Federal Only, the counties found 60 signatures in that category. 60/19,992 x 303,621 = 911 signatures.

Objection 27 & 30, voter not registered, and voter canceled registration, the county found 3,198 of those. 3198/19992 x 303,621 = 48,568. To give the challengers every benefit of the doubt, the trial court included signatures disqualified by the counties for signature mismatch as being included in the total used to determine how many signatures should be removed under Objections 27 and 30. The Committee shows 842 signatures were disqualified by the Counties for signature mismatch. Adding those disqualified signatures to the total as calculated by the Committee, produces 3,198 + 842 = 4,040. The Plaintiffs' number from the recent status conference was slightly higher: 3,198 + 854 = 4052. 4052/19992 x 303,621 = 61,538.

303,621 – 1,245 – 911 – 61,358 = **239,926** valid signatures.

A second principled option assumes that Plaintiffs may adjust their strategy

and challenge Secretary's certification. It would work as follows. A.R.S. § 19-118(E) provides

> If a registered circulator is properly served with a subpoena to provide evidence in an action regarding circulation of petitions and fails to appear or produce documents as provided for in the subpoena, all signatures collected by that circulator are deemed invalid. The party serving the subpoena may request an order from the court directing the secretary of state to remove any signatures collected by the circulator as provided for in section 19-121.01, subsection A.

Neither it nor any other law permits reducing the quantity eligible for verification by the number of duplicate signatures or missing address on individual signatures or any of the Plaintiffs' Objections 20 through 31. All of that is handled through the 5% random sample.

So, the trial court would first review for whether the challenger has reduced the valid signatures under 237,645 based on the sustained objections that the challenger has proven. Here, it has not. After the challenges upheld by this Court, the Committee had 303,621 valid signatures.

Next, the trial court would apply objections that are based on 19-118, that is Objections 1-19, and reduce the Secretary's base sample size and apply the full invalidity rate. In our case, the Committee calculates Objections 1-19 would remove 76,650 signatures leaving the committee with 323,208 eligible for verification. The Counties' invalidity rate is 24.27%. That means the Counties

invalidated 4848 signatures. Subtract those from the total and you have 318,360. *See* A.R.S. 19-121.04 (describing the reduction in invalid sample signatures ahead of applying the invalidity rate). Then apply the invalidity rate and remove another 318,360 x .2427 = 77,266 signatures. 318,360 – 77,266 = **241,094** valid signatures. Still above the threshold.

Importantly, however, in order to allow the Plaintiffs to amend the pleading so late in the process, additional findings of fact would be necessary to determine how many signatures fall under removals permitted by Section 19-118(E). For example, Plaintiffs successfully challenged thousands of signatures based on deficiencies in the circulator affidavit. None of these are related to registration of the circulator. Thus, it is unclear whether they would come out of the total. The same is true of several objections sustained by the process so far. No evaluation has been made by any finder of fact as to which of these are covered by A.R.S. § 19-118's allowance for the trial court to lower the signatures eligible for verification.

The trial court's findings of fact are not clearly erroneous and should not be disturbed so close to ballot printing. The Committee urges that the Court affirm the trial court.

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RESPECTFULLY SUBMITTED this 25th day of August, 2022.

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