

**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

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**SECOND SUPPLEMENTAL BRIEF OF PLAINTIFF-APPELLANTS**

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## **I. Introduction**

This appeal concerns the method for merging the parallel reviews of the Secretary of State and the fifteen county recorders (on one hand) and the judiciary (on the other). Such parallel reviews of statewide ballot measures are the necessary premise of both A.R.S. § 19-118(G) and -122(C); have been the practice in Arizona for decades, *see, e.g., Molera v. Hobbs*, 250 Ariz. 13, 474 P.3d 667 (2020); *Leach v. Reagan*, 245 Ariz. 430, 430 P.3d 1241 (2018); and are familiar to all election law practitioners in the state and this Court.

With its fuzzy math, the Committee asks this Court to make a false choice between ballot measure litigation and honoring the statutory process for county recorders to review and validate petition signatures. At bottom, their proposed calculation methods would count as valid signatures that were invalidated by either (a) the judiciary through these legal proceedings or (b) the county recorders through their certifications. But both sets of invalidations have been established through statutory processes and/or judicial rulings, and cannot be ignored now.

## **II. Issues Presented**

In applying A.R.S. § 19-121.04, may the Secretary of State treat as valid signatures that (a) were invalidated in the county recorder certifications prepared pursuant to A.R.S. § 121.02, (b) do not overlap with signatures invalidated in litigation, and (c) were not rehabilitated in an action against the county recorders pursuant to A.R.S. § 19-121.03?

### **III. Standard of Review**

This morning the parties filed a written stipulation to the relevant facts. *See* Stipulations Regarding Counts (Aug. 26, 2022) (“Calculation Stipulations”), attached as Exhibit A. Consequently, this appeal concerns a discrete issue of law subject to *de novo* review, *Leach v. Reagan*, 245 Ariz. 430, 438, ¶ 33 (2018); *Coleman v. City of Mesa*, 230 Ariz. 352, 355-56 ¶ 7 (2012): How must courts calculate the number valid signatures under A.R.S. § 19-121.04 at the conclusion of parallel reviews by the courts and elections officials, while accounting for overlapping invalidations?

### **IV. Overview**

The calculation of valid signatures for an initiative petition proceeds in four discrete steps:

1. Identify the number of signatures eligible for verification after the Secretary of State review. That number—399,838—is undisputed here. *See* Trial Exhibit 304 at 2.
2. Subtract the number of signatures invalidated through court rulings. That number—96,237—is also undisputed here. *See* Calculation Stipulations ¶ 1.
3. Calculate the adjusted validity rate from the county recorder certifications. This is the core of the parties’ remaining dispute, so it is the focus of this brief.
4. Use the method provided in A.R.S. § 19-121.04 to calculate the final number of valid signatures. That process is counterintuitive, but the parties agree on the

statutory requirements. *See* Committee’s Signature Disposition Brief at 6 (Aug. 25, 2022) (noting “the reduction in invalid sample signatures *ahead* of applying the invalidity rate” (emphasis added)).

**V. Facts and Methods Relevant to the Calculation**

**a. Contents of the County Recorder Certifications**

The county recorder certifications report the results of their review of 19,992 signatures. Collectively, they found that 15,140 of the sampled signatures were valid (a 75.73% validity rate). *See* Calculation Stipulations ¶ 2 (Aug. 26, 2022).

The Committee sued the Secretary and various county recorders to rehabilitate roughly 1,627 signatures in the county recorder certifications. *See Mabry v. Hobbs*, Verified Complaint (Aug. 22, 2022). Ultimately, they rehabilitated only 12 signatures.<sup>1</sup> Yesterday morning, after an expedited trial on the merits, Judge Blaney rejected the Committee’s challenge to the remaining signature invalidations, citing the insufficiency of evidence presented by the Committee. *See Mabry v. Hobbs*, Maricopa Docket No. CV2022-010956, Judgment (Aug. 25, 2022), attached as Exhibit B. The Committee has not appealed that decision.

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<sup>1</sup> Such rehabilitations have been incorporated into the parties’ stipulations regarding calculations and supporting Exhibit A. *See* Calculation Stipulations ¶ 2.

## **b. Offsetting Overlap**

In order to avoid the double-counting of invalid signatures in the objection categories sustained by the judiciary (on one hand) and the county recorder invalidations (on the other), it is necessary to identify and offset overlap between the two sets of signature invalidations. An index of the invalidations contained in the county recorder certifications, and the overlapping objections sustained in this case, has been stipulated. *See* Calculation Stipulations ¶ 10. It shows overlap in seven areas, involving nine objection categories sustained by the judiciary. *Id.*

Broadly speaking, there are two ways to eliminate overlapping invalidations. First, the court may adjust downward the number of signatures invalidated by the county recorders, effectively rehabilitating signatures invalidated in the random sample when they overlap with the objection categories sustained in this case. Alternatively, the Plaintiffs may withdraw an objection category that overlaps with the county recorder certifications. Under either method, overlap is eliminated so that the final tabulation of valid signatures is fair to the Committee.

The most significant area of overlap is duplicate signatures. The petition contains 20,014 duplicate signatures but, because the county recorders' review was statutorily limited to a 5% sample, their certifications identified only 76 duplicate signatures.<sup>2</sup> The

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<sup>2</sup> The following thought experiment illustrates why there is such a large disparity between the duplicates proven in litigation versus the county recorder certifications: The

trial court found that for duplicate signatures, the proper way to eliminate overlap is to invalidate the 20,014 signatures that the Special Master found to be duplicates, and rehabilitate (as an offset) the 76 duplicate signatures identified in the county recorder certifications. *See* Ruling at 8 (Aug. 25, 2022).

**c. Areas That Do Not Overlap**

Most of the signatures invalidated in the county recorder certifications do ***not*** overlap with the objection categories sustained in this case. The following chart, based on the parties’ stipulated summary, *see* Calculation Stipulations ¶ 10, highlights the non-overlapping categories invalidated in the county recorder certifications:

County	Page(s) in Appendix	Not Registered	Signature Comparison	Printed Signature	Missing, Incomplete, or Illegible Dates	Invalid Address <sup>1</sup>	Registered After Sign Date	Duplicate	Illegible	Federal Only Voter	Mailing Address	Not by Signer	Missing, Incomplete, or Illegible Address	Out of District	Underage	No Signature	All Other Issues
Apache	2	1					1							2			
Cochise	5-6	26	11		1			8									
Coconino	8-10	64			1		2	3	3	7	4		1				
Gila	12	1	1														
Graham	15	2	2					1						1			
Greenlee	16																
La Paz	18																
Maricopa	20	2,296	495	182	137	97	61	41	9	43	12	10	2		4	2	1
Mohave	128	3	2					1									
Navajo	131-62	31							2								
Pima	164	445	313		12	28	17	27	30				2				
Pinal	682-693	96	2	2			3	2	11					2			1
Santa Cruz	696-700	45	2		1			1	1	1							
Yavapai	703-10	21	5						1	1				3			
Yuma	714-28	164	10	1	5		1	1	6	8			5			1	1
		<b>3,195</b>	<b>843</b>	<b>185</b>		<b>157</b>	<b>85</b>	<b>76</b>	<b>72</b>	<b>60</b>	<b>16</b>	<b>10</b>	<b>10</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>3</b>
Overlapping Objection(s) Sustained by the Court					21(a)-(c) <sup>1</sup>		28	31		29	24(b)		24(a)	26			N/A <sup>2</sup>
Number of Signatures Invalidated Under Overlapping Objection(s)					1,888		895	20,014		315	288		215	1,135			

first signature reviewed cannot be a duplicate, because there is nothing else against which it can be compared. The second signature reviewed is extraordinarily unlikely to be a duplicate because there is only one other signature against which it can be compared. The 100,000th signature is much more likely to be a duplicate because there are 99,999 other signatures against which it can be compared. This is why the odds of identifying duplicates increases as the sample size increases. The rate is not linear, but increases as more signatures are reviewed. Perhaps more importantly for present purposes, the fact of 20,014 duplicate signatures has been established by a special master and the trial court, *see* Special Master Report at 13 (Aug. 15, 2022); Under Advisement Ruling (Aug. 18, 2022), and was not appealed.

For these categories, the county recorders have performed their statutory duty of reviewing the signatures, determined that the signatures were invalid—and those determinations were almost uniformly upheld after the Committee’s unsuccessful lawsuit to rehabilitate invalid signatures in the random sample. *See Mabry v. Hobbs*, Maricopa Docket No. CV2022-010956, Judgment (Aug. 25, 2022), attached as Exhibit B. There is no cause now to treat those signatures as valid; Judge Blaney found there was insufficient evidence to rehabilitate those signatures and, because they do not overlap with the objections sustained in this case, the county recorders’ invalidations must be given effect. **Ignoring** those invalidations now effectively reverses Judge Blaney’s ruling on the merits after trial (without the necessary evidentiary showing) and fails to comply with the statutes mandating the creation of county recorder certifications and their use in the final calculation of valid signatures. *See* A.R.S. §§ 19-121.02, .04.

## **VI. The Committee’s First Proposal**

The Committee’s first proposed calculation method, which the trial court adopted, picks and chooses which categories from the county recorder certifications to use—effecting an end-run around Judge Blaney’s judgment after a trial on the merits.

The problem with the Committee’s first proposal is that it recognizes only four categories invalidated by the county recorder certifications (highlighted in yellow below), but **ignores** 12 categories of signatures invalidated in the county recorder certifications. Five of those 12 categories overlap with the signatures invalidated by the judiciary

(highlighted in green below) but, critically, seven of the **ignored** categories (highlighted in orange below) do **not** overlap with the sustained objections categories in this case.

County	Page(s) in Appendix	Not Registered	Signature Comparison	Printed Signature	Missing, Incomplete, or Illegible Dates	Invalid Address <sup>1</sup>	Registered After Sign Date	Duplicate	Illegible	Federal Only Voter	Mailing Address	Not by Signer	Missing, Incomplete, or Illegible Address	Out of District	Underage	No Signature	All Other Issues
Apache	2	1					1							2			
Cochise	5-6	26	11		1				8								
Cococino	8-10	64			1		2	3	3	7	4		1				
Gila	12	1	1														
Graham	15	2	2						1					1			
Greenlee	16																
La Paz	18																
Maricopa	20	2,296	495	182	137	97	61	41	9	43	12	10	2		4	2	1
Mohave	128	3	2					1									
Navajo	131-62	31							2								
Pima	164	445	313		12	28	17	27	30				2				
Pinal	682-693	96	2	2			3	2	11					2			1
Santa Cruz	696-700	45	2		1			1	1	1							
Yavapai	703-10	21	5					1	1	1				3			
Yuma	714-28	164	10	1	5		1	1	6	8			5			1	1
		3,195	843	185	157	125	85	76	72	60	16	10	10	8	4	3	3
Overlapping Objection(s) Sustained by the Court					21(a)-(c) <sup>1</sup>		28	31		29	24(b)		24(a)	26			N/A <sup>2</sup>
Number of Signatures Invalidated Under Overlapping Objection(s)					1,888		895	20,014		315	288		215	1,135			

The 402 invalid signatures highlighted in orange are worth more than 2% of the petition’s overall signature validity ( $402 / 19,992 = 2.01\%$ ), or the equivalent of 6,102 valid signatures ( $2.01\% \times (399,838 - 96,237) = 6,102$ ). The Committee ignores those categories in its first proposed calculation—and the ultimate difference of 6,102 signatures is more than enough to take the Committee below the minimum number of valid signatures required to qualify for placement on the ballot.

Such arithmetic sleight of hand is obviously self-interested, but it does not have any basis in logic or law. The seven non-overlapping categories (highlighted in orange) with 402 invalid signatures were identified as part of the statutory review process, survived litigation on the merits, and cannot now be discarded in the final calculations or rehabilitated in the absence of sufficient evidence. *See generally City of Flagstaff v.*

*Mangum*, 164 Ariz. 395, 404 (1990) (insisting on adherence to the statutory process for the random sample review).

The Committee’s response is that the Plaintiff-Appellants did not sue to invalidate signatures in such categories—so far, so good; we agree—but then leaps to the conclusion that the judiciary should treat such signatures as valid in the absence of a lawsuit by the initiative opponents. The other side of the same coin is that *the Committee* sued to rehabilitate such signatures in the county recorder certifications and lost, and the Plaintiff-Appellants never *needed* to challenge the county recorder certifications because they are reliable and correct. *See id.* at 3 (“THE COURT FINDS specifically that there is no credible evidence in the record establishing that the remaining disputed signatures were improperly disqualified, that the putative signers were ‘qualified in all respects,’ or that county officials refused or failed to perform their duties.”). More broadly, the goal in this final stage of litigation is not to give effect *only* to the litigation, but to merge the parallel reviews of the judiciary and the county recorders. Certainly, the merging process should involve a calculated offset to avoid double-counting invalid objections and ensure that the final count is fair to the Committee—but there is no cause to ignore the non-overlapping invalidations in the county recorder certifications entirely, particularly after the Committee tried and failed to disprove such determinations. This is the moment for evenhandedly merging parallel reviews, not a time to pick one of the review tracks over the other.

## VII. The Committee's Second Proposal

The Committee proposes a second method for calculating the final number of signatures. It suggests **ignoring** major objection categories sustained by this Court that were never appealed—including most importantly the 20,014 duplicate signatures identified by the Special Master, *see* Special Master Report at 13; not contested as a legal matter at trial, *see* Committee's Trial Memorandum at 38 (Aug. 11, 2022); and ultimately invalidated by this Court without appeal, *see* Ruling at 8 (Aug. 25, 2022). As a substitute, the Committee offers up only the 76 duplicate signatures identified in the random sample.

This method directly conflicts with Judge Mikitish's ruling that the 20,014 duplicate signatures are invalid, and that the proper way to avoid double-counting is to rehabilitate the 76 duplicates identified in the county recorder certifications. *See* Ruling at 8 (Aug. 25, 2022). More importantly, the Committee's second proposal is an unconstitutional bonanza in double-voting. *See generally* Ariz. Const. art IV, pt. 1, § 1(10) (requiring signatures from "ten per centum of the qualified electors," and therefore not permitting the same elector's signature to count twice). The Committee's second proposal would be, in a word, illegal.

Even with the unserious calculations in the Committee's second proposal to ignore 20,014 duplicate signatures, the measure would barely qualify for the ballot—landing only 3,538 signatures above the minimum. So again, the result depends entirely on the Committee's arithmetic sleight of hand.

At bottom, the Committee’s two attempts to ignore some of the invalidated signatures re-litigates the same procedural objections that the trial court rejected after closing arguments, *see* Under Advisement Ruling at 4 (Aug. 18, 2022), and that were already briefed in the Arizona Supreme Court without effect, *see* Joint Report in Response to *Sua Sponte* Order (Aug. 23, 2022). It is unprincipled, inconsistent with the statutory process for county recorder reviews of petition signatures, and material to the outcome of this case.

**VIII. Lawful Option One: Adjust the Random Sample to Offset Overlap**

In the following chart, *see* Calculation Stipulations ¶ 10, the highlighted columns represent the county recorder invalidations that overlap with sustained objection categories:

County	Page(s) in Appendix	Not Registered	Signature Comparison	Printed Signature	Missing, Incomplete, or Illegible Dates	Invalid Address <sup>1</sup>	Registered After Sign Date	Duplicate	Illegible	Federal Only Voter	Mailing Address	Not by Signer	Missing, Incomplete, or Illegible Address	Out of District	Underage	No Signature	All Other Issues
Apache	2	1					1							2			
Cochise	5-6	26	11		1				8								
Coconino	8-10	64			1		2	3	3	7	4		1				
Gila	12	1	1														
Graham	15	2	2						1					1			
Greenlee	16																
La Paz	18																
Maricopa	20	2,296	495	182	137	97	61	41	9	43	12	10	2		4	2	1
Mohave	128	3	2					1									
Navajo	131-62	31							2								
Pima	164	445	313		12	28	17	27	30				2				
Pinal	682-693	96	2	2			3	2	11					2			1
Santa Cruz	696-700	45			1			1	1	1							
Yavapai	703-10	21	5					1	1					3			
Yuma	714-28	164	10	1	5		1	1	6	8			5			1	1
		<b>3,195</b>	<b>843</b>	<b>185</b>	<b>157</b>	<b>125</b>	<b>85</b>	<b>76</b>	<b>72</b>	<b>60</b>	<b>16</b>	<b>10</b>	<b>10</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>3</b>
Overlapping Objection(s) Sustained by the Court					21(a)-(c) <sup>1</sup>		28	31		29	24(b)		24(a)	26			N/A <sup>2</sup>
Number of Signatures Invalidated Under Overlapping Objection(s)					1,888		895	20,014		315	288		215	1,135			

Those objection categories include 412 signatures invalidated in the random sample. *See* Calculation Stipulations ¶ 3. To offset that overlap, the Court can move 412 signatures from the “invalid” into the “valid” categories in the random sample. That movement

increases the validity rate in the random sample from 75.73% (15,140 valid signatures / 19,992 sampled signatures) to 77.79% (15,552 valid signatures / 19,992 sampled signatures). *See id.* ¶ 5. This method eliminates overlap between the judicial findings and the county recorder certifications, while treating as invalid all the signatures that are, in fact, invalid—including (unlike the Committee’s first proposal) all categories invalidated by the county recorder certifications that do *not* overlap with the judicial findings in this case.

Under this method, the measure would have 232,721 valid signatures—a shortfall of 4,942 signatures. That calculation is as follows:

Eligible for validation after Secretary review <sup>3</sup>	399,838 <sup>4</sup>
<u>Invalidated through judicial rulings</u>	<u>- 96,237<sup>5</sup></u>
Remaining after judicial rulings	303,601
Total from previous line	303,601
Minus invalid random sample signatures <sup>6</sup>	- 4,852 <sup>7</sup>
<u>Plus overlapping invalid signatures in sample</u>	<u>+ 412<sup>8</sup></u>
Remaining after A.R.S. § 19-121.04(A)(2)	299,161
Total from previous line	299,161
<u>Multiplied by the adjusted validity rate<sup>9</sup></u>	<u>77.79%<sup>10</sup></u>
Final number of valid signatures	232,717
Total from previous line	232,717
<u>Minus minimum number of valid signatures</u>	<u>-237,645</u>
Shortfall	- 4,928

The foregoing calculation tracks the findings in the Amendment Judgment, with one exception. The trial court skipped over the second step above (*i.e.*, the deduction of signatures invalidated in the random sample *before* applying the invalidity rate). Although that order of operations is counterintuitive, it is both required by statute, *see* A.R.S. § 19-121.04(A)(2), and undisputed in this case, *see* Committee’s Signature

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<sup>3</sup> See A.R.S. § 19-121.04(A)(1).

<sup>4</sup> See Trial Exhibit 304 at 2.

<sup>5</sup> See Stipulation Regarding Counts ¶ 1.

<sup>6</sup> See A.R.S. § 19-121.04(A)(2).

<sup>7</sup> See Calculation Stipulations ¶ 2.

<sup>8</sup> See Calculation Stipulations ¶ 3.

<sup>9</sup> See A.R.S. § 19-121.04(A)(3).

<sup>10</sup> See Calculation Stipulations ¶ 5.

Disposition Brief at 6 (Aug. 25, 2022) (noting “the reduction in invalid sample signatures *ahead* of applying the invalidity rate” (emphasis added)).

**IX. Lawful Option Two: Withdraw Overlapping Objection Categories**

Under this Court’s ruling regarding the calculation of duplicate signatures, *see* Ruling at 8 (Aug. 25, 2022), some adjustment to the random sample is unavoidable. But for sustained objection categories *other* than duplicates, the overlap problem can be solved through the withdrawal of overlapping sustained objection categories. The table below highlights in yellow the duplicate signatures that must be adjusted in the random sample under this Court prior ruling, and highlights in green the overlapping sustained objection categories that the Plaintiffs may withdraw in order to avoid redundant invalidations:

County	Page(s) in Appendix	Not Registered	Signature Comparison	Printed Signature	Missing, Incomplete, or Illegible Dates	Invalid Address <sup>1</sup>	Registered After Sign Date	Duplicate	Illegible	Federal Only Voter	Mailing Address	Not by Signer	Missing, Incomplete, or Illegible Address	Out of District	Underage	No. Signature	All Other Issues
Apache	2	1					1							2			
Cochise	5-6	26	11		1				8								
Coconino	8-10	64			1		2	3	3	7	4		1				
Gila	12	1	1														
Graham	15	2	2						1					1			
Greenlee	16																
La Paz	18																
Maricopa	20	2,296	495	182	137	97	61	41	9	43	12	10	2	4	2	1	
Mohave	128	3	2					1									
Navajo	131-62	31							2								
Pima	164	445	313		12	28	17	27	30				2				
Pinal	682-693	96	2	2			3	2	11					2			1
Santa Cruz	696-700	45			1			1	1	1							
Yavapai	703-10	21	5					1	1					3			
Yuma	714-28	164	10	1	5		1	1	6	8			5			1	1
		<b>3,195</b>	<b>843</b>	<b>185</b>	<b>157</b>	<b>125</b>	<b>85</b>	<b>76</b>	<b>72</b>	<b>60</b>	<b>16</b>	<b>10</b>	<b>10</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>3</b>
Overlapping Objection(s) Sustained by the Court					21(a)-(c) <sup>1</sup>		28	31		29	24(b)		24(a)	26			N/A <sup>2</sup>
Number of Signatures Invalidated Under Overlapping Objection(s)					1,888		895	20,014		315	288		215	1,135			

This method reduces the number of signatures invalidated through judicial rulings from 96,237 to 93,646 (based on the withdrawal of the six sustained objection categories highlighted in green above), *see* Calculation Stipulations ¶ 9, but the 76 duplicates

identified in the county recorder certifications increase the random sample validity rate from 75.73% (15,140 valid signatures / 19,992 sampled signatures) to 76.11% (15,216 valid signatures / 19,992 sampled signatures).

Under this method, the measure would have 229,409 valid signatures—a shortfall of 8,236 signatures. That calculation is as follows:

Eligible for validation after Secretary review <sup>11</sup>	399,838 <sup>12</sup>
<u>Invalidated through judicial rulings</u>	<u>- 93,646<sup>13</sup></u>
Remaining after judicial rulings	306,192
Total from previous line	306,192
Minus invalid random sample signatures <sup>14</sup>	- 4,852 <sup>15</sup>
<u>Plus duplicate signatures in sample</u>	<u>+ 76</u>
Remaining after A.R.S. § 19-121.04(A)(2)	301,416
Total from previous line	301,416
<u>Multiplied by the adjusted validity rate</u>	<u>76.11%</u>
Final number of valid signatures	229,408
Total from previous line	229,408
<u>Minus minimum number of valid signatures</u>	<u>-237,645</u>
Shortfall	- 8,237

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<sup>11</sup> See A.R.S. § 19-121.04(A)(1).

<sup>12</sup> See Trial Exhibit 304 at 2.

<sup>13</sup> See Stipulation Regarding Counts ¶ 1.

<sup>14</sup> See A.R.S. § 19-121.04(A)(2).

<sup>15</sup> See Calculation Stipulations ¶ 2.

**X. Conclusion**

At this stage, the objective is to merge the parallel reviews of the judiciary and the elections officials, eliminating overlapping invalidations to produce a final tabulation that complies with the statutory process of county recorder certifications. Against that backdrop, the calculations proposed by the Committee are transparently intended to dodge responsibility for prior, statutorily authorized determinations of invalidity. Instead of merely eliminating overlapping invalidations, the Committee's methods make substantive changes to judicial findings and county recorder certifications.

Arithmetically, the Plaintiff-Appellants have won this case. This Court should affirm the judgment of the trial court and enjoin the printing of the measure on the November ballot. *See* A.R.S. § 19-122(C) (authorizing a private right of action to enjoin the printing of a non-compliant initiative on the statewide ballot).

RESPECTFULLY SUBMITTED on this 26th day of August, 2022.

STATECRAFT PLLC

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## **Exhibit A**

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13  
14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

15 IN AND FOR THE COUNTY OF MARICOPA

16 SCOT MUSSI, an individual;  
AIMEE YENTES, an individual; and  
17 ARIZONA FREE ENTERPRISE  
CLUB, a nonprofit corporation,

18 Plaintiffs,

19 v.

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

Case No.: CV2022-009391

**STIPULATIONS REGARDING  
COUNTS**

(Assigned to Honorable Joseph P.  
Mikitish)

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3  
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Defendant,  
  
And  
  
ARIZONANS FOR FREE AND  
FAIR ELECTIONS (ADRC  
ACTION), a political committee,  
  
Real Party in  
Interest.

To assist the Court in responding to the Arizona Supreme Court’s ordered issued on August 25, 2022, the parties stipulate to the following facts regarding signature counts:

1. The total number of signatures removed after review by the Arizona Supreme Court is 96,237 and the removal of signatures under Objection 5(c) was consistent with the Court’s ruling and party stipulations.
2. The County Recorders have found 4852 invalid and 15,140 valid signatures, creating cumulative invalidity and validity rates of 24.27% and 75.73%, respectively, to be used in the calculation in A.R.S. § 19-121.04 unless otherwise ordered. The foregoing numbers reflect all rehabilitations arising from earlier litigation.
3. The County Recorders invalidated 412 signatures that are duplicative of what was invalidated by the challengers through sustained objection categories.

- 1 4. If the Court credits those back to the Committee, the adjusted totals for use in  
2 A.R.S. § 19-121.04 is 4,440 invalid and 15,552 valid signatures.
- 3 5. Crediting those back to the Committee results in adjusted cumulative error rate of  
4 77.79%. Or, for purposes of use in the calculations of A.R.S. § 19-121.04, an  
5 invalidity rate of 22.21%.
- 6 6. The total number of signatures invalidated based on petitioners failing to appear is  
7 133.
- 8 7. The total number of signatures removed based on circulator registration  
9 challenges, objections 3 through 6, is 67,614.
- 10 8. The total number of signatures invalidated based on whole sheet challenges,  
11 objections 1 through 19, is 76,532.
- 12 9. If Objections 21(a)-(c), 24(a)-(b), 2628, 29, and 31 are withdrawn, the total  
13 number of signatures invalidated by the sustained objection categories is 93,646.
- 14 10. A table identifying the invalidations in the county recorder certifications, and their  
15 overlap with the sustained objection categories, is attached as Exhibit A.

16 DATED this 26th day of August 2022

17 STATECRAFT PLLC

BARTON MENDEZ SOTO

18 By: /s/ Kory Langhofer (with permission)  
19 Kory Langhofer  
Thomas Basile

By: /s/ James E. Barton II  
James E. Barton II  
Jacqueline Mendez Soto

20 *Attorneys for Plaintiffs*

*Attorneys for Real Party in Interest*

# EXHIBIT A

<u>County</u>	<u>Not Registered</u>	<u>Signature Comparison</u>	<u>Printed Signature</u>	<u>Missing, Incomplete, or Illegible Dates</u>	<u>Invalid Address</u>	<u>Registered After Sign Date</u>	<u>Duplicate</u>	<u>Illegible</u>	<u>Federal Only Voter</u>	<u>Mailing Address</u>	<u>Not by Signer</u>	<u>Missing, Incomplete, or Illegible Address</u>	<u>Out of District</u>	<u>Underage</u>	<u>No Signature</u>	<u>All Other Issues</u>	<u>Total</u>
Apache	1					1							2				4
Cochise	26	11		1				8									46
Coconino	64			1		2	3	3	7	4		1					85
Gila	1	1															2
Graham	2	2						1					1				6
Greenlee																	0
La Paz																	0
Maricopa	2,296	495	182	137	97	61	41	9	43	12	10	2		4	2	1	3,392
Mohave	3	2					1										6
Navajo	31							2									33
Pima	445	313		12	28	17	27	30				2					874
Pinal	96	2	2			3	2	11					2			1	119
Santa Cruz	45	2		1			1	1	1								51
Yavapai	21	5						1	1				3				31
Yuma	164	10	1	5		1	1	6	8			5			1	1	203
	<b>3,195</b>	<b>843</b>	<b>185</b>	<b>157</b>	<b>125</b>	<b>85</b>	<b>76</b>	<b>72</b>	<b>60</b>	<b>16</b>	<b>10</b>	<b>10</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>4,852</b>
Overlapping Objection(s) Sustained by the Court				21(a)-(c) <sup>1</sup>		28	31		29	24(b)		24(a)	26			N/A <sup>2</sup>	N/A <sup>2</sup>
Number of Signatures Invalidated Under Overlapping Objection(s)				1,888		895	20,014		315	288		215	1,135				

<sup>1</sup> Objection 21(d) formerly overlapped with this group of county invalidation codes, but the Plaintiff-Appellants withdrew the objection before trial in the interest of narrowing the issues. See Special Master Report at 11.

<sup>2</sup> Objection 23 formerly overlapped with one of the county invalidation codes in this group, but the Plaintiff-Appellants withdrew the objection before trial in the interest of narrowing the issues. See Special Master Report at 12.

## **Exhibit B**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2022-010956

08/25/2022

HONORABLE SCOTT BLANEY

CLERK OF THE COURT  
P. McKinley  
Deputy

MARIA TERESA MABRY, et al.

JAMES E BARTON II

v.

KATIE HOBBS, et al.

AMY BELL CHAN

JACQUELINE MENDEZ SOTO  
KORY A LANGHOFER  
THOMAS J. BASILE  
NOAH T GABRIELSEN  
CHRISTINE J ROBERTS  
PAUL CORREA  
JOSEPH J BRANCO  
KAREN HARTMAN-TELLEZ  
MARK D BYRNES  
COLLEEN CONNOR  
THOMAS M STOXEN  
JOSEPH EUGENE LA RUE  
JASON MOORE  
LAURA ROUBICEK  
COURT ADMIN-CIVIL-ARB DESK  
DOCKET-CIVIL-CCC  
JUDGE BLANEY

**JUDGMENT**

The Court has reviewed and considered Plaintiffs' *First Amended Verified Complaint* and the arguments and credible evidence received at the August 24, 2022 evidentiary hearing.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2022-010956

08/25/2022

**THE COURT FINDS AS FOLLOWS:**

Plaintiffs Maria Teresa Mabry and Arizonans for Free and Fair Elections filed a Verified First Amended Complaint challenging the certifications made by Maricopa, Coconino, Cochise, Yavapai, Navajo, and Santa Cruz County Recorders to the petition signatures of the statewide initiative filed with the Secretary of State under serial number I-16-2022. Intervenor Arizonans for Fair Elections objected to the relief Plaintiffs sought.

The Court held an expedited evidentiary hearing on August 24, 2022 and resolved disputes over certain signatures based upon stipulation. Those stipulations and corresponding orders are contained in the Court's August 24, 2022 Minute Entry.

Plaintiffs ask the Court to compare the remaining disqualified signatures with the corresponding voter registration records and determine whether they match. The Court did not receive credible evidence at the evidentiary hearing to support such a review by the Court. It is not enough to simply argue that the county election official erred in finding that a signature did not match or that a signer was not registered on the date of signature. If a county election official finds that a signature on a petition was not valid, that finding "destroy[s] the presumption of validity...." *Clark v. Pima County*, 128 Ariz. 193, 195, 624 P.2d 871, 873 (1981) (*citing Whitman v. Moore*, 59 Ariz. 211, 225, 125 P.2d 445, 453 (1942)). The burden then falls on the party seeking to sustain the signature of proving through competent evidence that the signer "was qualified in all respects," and met "all the requirements in regard to residence, date of signing, verification and the like...." *Id.* The Court received credible testimony that a county lists only one reason for invalidation on the county's report, such as "signature mismatch." But the signature could have also been invalid for multiple additional reasons not listed on the report, such as "invalid address." This is why the proponent of the signature – here, Plaintiffs – must provide competent evidence establishing that a particular signer met all the requirements. *Id.* Plaintiffs have failed to do so.

The Court recognizes that this standard places a heavy burden upon the proponent of the signatures, particularly given the compressed timeframe in which this challenge had to be brought. Plaintiffs could possibly have met this burden through the submission of affidavits from the signers pursuant to Rule 807, Arizona Rules of Evidence.

Defendant Maricopa County provided credible, uncontroverted testimony regarding the signature review process used by Maricopa County election officials. According to Janine Petty, the Senior Director for Voter Registration for Maricopa County, Maricopa County election officials and staff go through extensive training for signature review before every election cycle, including a class on forensic handwriting analysis from a forensic handwriting professional. For

SUPERIOR COURT OF ARIZONA  
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example, officials are trained to magnify the signature on the petition and the multiple signatures for the voter in the County's database to look for identifying marks. The signature on the petition is compared to multiple signatures in the database, which accounts for slight differences in a voter's signature at different ages and also differences that arise from signing in a controlled environment versus signing a petition on a clipboard in a parking lot. The witness provided further credible testimony regarding training and procedures to determine if a signer was a registered voter on the date that he or she signed, whether the voter was initially registered but later cancelled (e.g. deceased or later convicted of a felony), and how to determine if the address listed on the petition is a valid address.

The witness further provided uncontroverted testimony that after the review was completed, the County conducted a second review before issuing the certification report. The witness credibly testified that she reviewed the report again before the hearing and the disputed signatures would still be rejected, even after the filing of the current lawsuit. Absent credible expert or lay testimony to the contrary, the Court declines to conduct yet another review of the disputed signatures. Plaintiff "does not meet its burden by just asking the judge to redo the work of county recorders." Hon. Randy Warner, *Arizonans for Second Chances, Rehabilitation and Public Safety v. Bingham*, Maricopa County Superior Court No. CV2020-009428, Minute Entry dated Aug. 20, 2020 at pg. 2.

**THE COURT FINDS** specifically that there is no credible evidence in the record establishing that the remaining disputed signatures were improperly disqualified, that the putative signers were "qualified in all respects," or that county officials refused or failed to perform their duties. There are undoubtedly signatures that were improperly disqualified by the counties, but Plaintiffs have not met their burden. *See, e.g. W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 431, 814 P.2d 767, 772 (1991). There are also undoubtedly signatures that should have been disqualified that were not. This is the nature of the review process; a process that was conducted by trained, presumably unbiased election officials.

**IT IS THEREFORE ORDERED** denying any requested relief that was not granted or stipulated on the record during the August 25, 2022 evidentiary hearing. *See* hearing Minute Entry, dated August 24, 2022.

**IT IS FURTHER ORDERED** all parties shall bear their own attorneys' fees and costs.

This minute entry disposes of all outstanding claims and issues in this case. Because no further matters remain pending, the Court signs this minute entry as a final judgment entered pursuant to Ariz. R. Civ. P. 54(c).

SUPERIOR COURT OF ARIZONA  
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Under A.R.S. § 19-118(F), a party must file a notice of appeal within five calendar days after entry of Judgment. The Supreme Court may dismiss a belatedly prosecuted appeal, such as one filed on the last day of the statutory deadline. See *McClung v. Bennett*, 225 Ariz. 154, 235 P.3d 1037 (2010). Special procedural rules govern expedited appeals in election cases. Ariz. R. Civ. App. P. 10.

*/s/ HONORABLE SCOTT BLANEY*

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HONORABLE SCOTT BLANEY  
JUDICIAL OFFICER OF THE SUPERIOR COURT