

ARIZONA SUPREME COURT

MIREYA ARROYO, a qualified elector,

Plaintiff/Appellant,

v.

DEBORAH ANN BEGAY, a candidate
for office,

Real Party in Interest/Appellee,

and

STEPHEN RICHER, in his official
capacity as Maricopa County Recorder;
MARICOPA COUNTY BOARD OF
SUPERVISORS, in their official
capacity,

Defendants/Appellees.

No. CV-24-0083-AP/EL

Maricopa County

Superior Court

No. CV2024-008726

OPENING BRIEF OF PLAINTIFF/APPELLANT MIREYA ARROYO

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INTRODUCTION

A candidate for partisan nomination for office must include on her nomination petition the date on which the primary election is “to be held.” A.R.S. § 16-314(C). The candidate here failed to include *any* date on 22 of her petition sheets.

A petition sheet that includes at least *the year* of the primary may substantially comply with A.R.S. § 16-314(C). *See Moreno v. Jones*, 213 Ariz. 94, 102 ¶¶ 44–45 (2006). Electors presented with such a form “would ‘automatically know’ for which primary election they were signing,” if there was only one primary election “that year” for that office. *Id.* at 102 ¶ 45 (quoting *Marsh v. Haws*, 111 Ariz. 139, 140 (1974)). But *Moreno* left undecided “whether the omission of any date whatsoever would invalidate nominating petitions governed by A.R.S. § 16-614(C).” *Id.* at 102 ¶ 41 n.5. This case squarely presents that issue.

Here, electors would not “automatically know” whether they were nominating the candidate for the primary to be held in 2024 or some other year. And nothing prohibits a candidate from collecting signatures in 2024 for a primary in a later cycle. The petition sheets without *any* primary election date failed to substantially comply.

STATEMENT OF THE CASE AND FACTS

The relevant facts are uncontested. *See generally The Parties' Joint Stipulated Facts and Issue for Review.* Appellee Deborah Ann Begay seeks the Democratic nomination for the office of Justice of the Peace for the Moon Valley justice precinct in the primary election to be held on July 30, 2024. To qualify for the ballot, Begay needs at least 336 qualified signatures.

Begay timely submitted her nomination petition sheets to the Maricopa County Elections Department (MCED). MCED determined that Begay submitted a total of 416 signatures. But MCED excluded 22 signature sheets, containing 151 signatures, from Begay's total because the sheets lacked any primary date. Begay did not challenge MCED's determination not to include these signatures in her total.

Appellant Mireya Arroyo challenged Begay's nomination petition sheets and signatures on various grounds, including that signature sheets that lacked any primary election date were facially defective.

Following its review, the Maricopa County Recorder's Office sustained 91 of Arroyo's individual signature challenges. This reduced Begay's number of valid signatures to 325, or 11 below the minimum.

The Superior Court streamlined the legal issues before it by considering whether the 22 sheets lacking any primary date substantially complied with A.R.S. § 16-314(C). If the answer was yes, then the otherwise valid signatures from those sheets would be added to Begay's total and she would have enough signatures to be placed on the ballot. If the answer was no, Begay would remain below the minimum.

The Superior Court concluded that these sheets failed to substantially comply only as to the *first* signature on each sheet, reasoning that the first elector to sign a sheet with no election date “had no indication whatsoever of the primary election date” and that the absence of any date on the sheet would “confuse or mislead those electors signing the petition sheets.” *Judgment* at 4 ¶ 15, 5 ¶ 20.

But the court held that *subsequent* signers on the sheet “were on notice from the face of the petition sheet that other signatures on that sheet had been obtained in 2024,” and that these signers would not be confused or misled once the sheet bore “at least one reference to 2024” by virtue of the first elector's signature date. *Id.* at 4 ¶ 16, 5 ¶ 21. The court would thus invalidate only the first signature on the 22 sheets with no election date but would credit the remainder on those sheets. *Id.* at 5

¶ 22. This resulted in crediting Begay with 129 additional signatures, putting her above the minimum at 454. *Id.* at 5 ¶ 21.

ISSUE PRESENTED

A partisan nomination petition sheet must list the primary election’s date for which the candidate is running. A.R.S. § 16-314(C). Multiple sheets in Begay’s nomination petition failed to list any part of the primary date—they do not identify the day, the month, or the year. By lacking *any* indication of when the relevant primary election would be held, did these petition sheets fail to substantially comply with A.R.S. § 16-314(C)?

STANDARD OF REVIEW

Whether a petition form complies with statutory requirements is a pure question of law that this Court reviews de novo. *Moreno*, 213 Ariz. at 101–02 ¶ 40.

ARGUMENT

I. Candidate petition sheets that entirely lack the statutorily required primary date fail to substantially comply with A.R.S. § 16-314(C).

The Legislature requires candidates to supply certain information to voters at the top of their partisan nomination petition sheets, and each

piece of information serves a critical role. *See* A.R.S. § 16-314(C) (requiring, among other things, the petition to indicate that the candidate is seeking nomination “at the primary election to be held _____”). This information serves two purposes: to sufficiently inform the voter about the candidate *and* sufficiently inform the voter about the voter’s qualification to sign.

When a candidate’s nomination petition is challenged, this Court weighs whether the petition “substantially complies” with statutory requirements. *Bee v. Day*, 218 Ariz. 505, 507 ¶ 8 (2008). Whether a nomination petition substantially complies with form requirements depends on “whether the omission of information could confuse or mislead electors.” *Lohr v. Bolick*, 249 Ariz. 428, 431 ¶ 8 (2020) (citation omitted); *Moreno*, 213 Ariz. at 102 ¶ 42.

Here, Begay’s petition sheets lacking any part of the primary’s date could cause voter confusion that cannot be cured by the date of the first elector’s signature.

A. Failing to include any indication of when the relevant primary will occur causes voter confusion.

Some indication of the election cycle in which the candidate is running is necessary because there is no fixed window for when petition

signatures may be gathered for a particular election. While a candidate may not *file* a nomination petition any earlier than 150 days before the primary election, A.R.S. § 16-314(A), there is no limit to how early a candidate may begin *gathering* signatures for a future election. Rather, the petition-gathering window can open for *any* election in the future once a candidate files a statement of interest. A.R.S. § 16-311(H) (“Not later than the date of the first petition signature on a nomination petition, a person who may be a candidate for office pursuant to this section shall file a statement of interest with the appropriate filing officer for that office.”).

Thus, without some indication of when the primary is to be held, a candidate could be collecting signatures for the 2024 primary, the 2028 primary, the 2032 primary, *etc.*, and the voter signing would have no notice. In other words, though there is only one *primary election* this year, there are multiple *signature-gathering periods* that may concurrently overlap. Without such notice, a voter could sign a candidate’s petition to appear on the 2024 primary, and then when presented with another petition for the same office missing the primary date would be confused as to whether they could sign it, as for most offices a voter can sign only

one candidate's petition per office per election cycle. A.R.S. § 16-321(A). It makes sense then why the Legislature requires candidates to advise voters on the face of the petition sheet the election cycle to which this petition pertains by listing the primary date.

In *Moreno*, this Court recognized that an *incomplete* date listing only the primary's year substantially complies with A.R.S. § 16-314(C). In that case, a state legislative candidate included only "2006" in the petition sheet's date field. *Moreno*, 213 Ariz. at 101 ¶ 41. The year's presence was critical to the Court's holding because "electors would 'automatically know' for which primary election they were signing *because the petition specified the year* and there is only one primary that year for state legislative office." *Moreno*, 213 Ariz. at 102 ¶ 45 (emphasis added) (quoting *Marsh*, 111 Ariz. at 140).

This Court has adhered to the *Moreno* rationale, consistently requiring *some* date be listed to indicate to voters in which election cycle the candidate intends to run. In an unpublished decision order, this Court declined to disqualify petitions that listed "November 2016" as the primary date because, with that information, it was "otherwise made clear that [the candidate] was seeking to be nominated as the Republican

candidate in the primary election.” *Querard v. Kouns*, No. CV-16-0141-AP/EL, slip op. at 2 (Ariz. June 29, 2016) (decision order) (attached as Exhibit A). While this Court noted it “has held that omitting the date of the primary substantially complies with the statute,” it cited *Moreno* for this proposition, thus limiting any such holding to petitions which omit the day and month but *not* the year. *Id.*

Thus, this Court has affirmed that candidates must give to the voter *some* context for which election cycle and which primary the petition is circulated. Importantly, the trial court here *recognized this risk of voter confusion*, as it appropriately struck each defective sheet’s first signature. *Judgment* at 4 ¶ 15, 5 ¶ 20.

B. Information subsequently supplied by the petition signers cannot cure a petition sheet’s defect.

Though the Superior Court correctly recognized the risk of voter confusion as to the first signer, it then erred by holding no such voter confusion would exist for subsequent signers because they could look to the first signature’s date for election-cycle context. *Judgment* at 4 ¶ 16, 5 ¶ 19. This Court should reverse and invalidate the 129 signatures the Superior Court added back to Begay’s total.

The Superior Court’s reasoning produces an unworkable result in which voters are expected not only to look to the information the *petition* provides, but also to *other signers’* information. Take, for example, a candidate who fails to include the district or precinct in which the candidate is running. See *Kennedy v. Lodge*, 281 Ariz. 314, 137 ¶ 16 (2012) (failing to include the division for which a superior court candidate was running causes voter confusion); *Marsh*, 111 Ariz. at 140 (failing to include name of justice precinct causes voter confusion). Under the Superior Court’s reasoning, such a sheet would nonetheless substantially comply with § 16-314(C) because a voter could look to the address of other signers and determine if those addresses are within the district— notwithstanding that some of those prior signers may not in fact live in the proper district.

Importantly, even if voter information *could* cure a petition sheet’s facial defect, looking to the first signer’s date would not do so here. The only thing a voter’s signature’s date indicates is the date of the voter’s signature. To be sure, this date is important because it verifies that the signature was placed after a candidate filed their statement of interest. A.R.S. § 16-311(H) (signatures collected before statement of interest is

filed are invalid). But subsequent voters could not glean from the first signature's date alone which is the relevant election cycle because the initial signer would still correctly put the present date for both a petition for *this* year and a petition for the *next* election cycle. Accordingly, a subsequent signer would have no notice whether he is eligible to sign for the petition's undisclosed election cycle, thereby causing voter confusion.

This Court should clarify that voters cannot cure petition defects of the candidate's own creation. Nor should they be expected to. True, this Court evaluates the petition "as a whole" to weigh its compliance. *McKenna v. Soto*, 250 Ariz. 469, 473 ¶ 16 (2021) (evaluating compliance of *voter-supplied* signature date that only included the day and month). But when judging *candidate-supplied* information and omissions on the petition form, it should limit the analysis to the form as the candidate created it. *See Kennedy*, 230 Ariz. at 137 ¶ 15 ("The relevant inquiry thus is whether the nominating petition itself substantially complies with statutory requirements."). And even if voter-supplied information *could* cure a petition's facial defect, it would not have done so here.

C. Whether a petition sheet complies with statutory requirements is an objective inquiry.

Though the Superior Court agreed that Begay’s petition sheets did not substantially comply with A.R.S. § 16-314(C) as to the first signature, it implicitly rejected Appellant’s argument about multiple petition-gathering windows. It found “the evidence does not support a finding that any voter who signed the Candidate’s undated nominating petitions in 2024 was confused or believed she or he was signing the petition for the Candidate to run in a primary election occurring in any year besides 2024.” *Judgment* at 4–5, ¶ 17. Arroyo does not contest this finding as a factual matter, but it was legal error to rely on it because Arroyo does not need to present extrinsic evidence as to voter confusion in a facial challenge to a nomination petition’s sheet.

This Court has recognized that the substantial-compliance inquiry is an objective one. In *Kennedy*, the challenged judicial candidate attempted to rely on extrinsic evidence that no voter was confused by omitting information on his nomination petition. 230 Ariz. at 136–37 ¶ 14. This Court rejected that attempt, holding that the “relevant inquiry thus is whether the nominating petition *itself* substantially complies with statutory requirements.” *Id.* at 137 ¶ 15 (emphasis added). Requiring

extrinsic evidence of voter confusion “would eviscerate the statutory requirement that all essential information be made available to the elector on the petition form.” *Id.* (citing A.R.S. §§ 16-314(C), -331, -333).

The possibility of concurrent signature-gathering periods for different election cycles creates an objective risk of voter confusion. *See Lohr*, 249 Ariz. at 431 ¶ 8 (substantial compliance hinges on whether the defect “could” cause voter confusion, not whether evidence showed voters were in fact confused). It was error to dismiss it and “suspect[] that most people signing nomination petitions sheets believe that they are signing for the next primary election.” *Judgment* at 4, ¶ 17 This Court should reaffirm that the substantial-compliance analysis is an objective inquiry.

CONCLUSION

For the foregoing reasons, the Court should reverse the Superior Court’s judgment, rule that petition sheets lacking primary dates are invalid, reduce Begay’s signature total back to 325, and enjoin Begay’s placement on the July 30, 2024 primary ballot.

Respectfully submitted this 29th day of April, 2024.

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