

SUPREME COURT OF ARIZONA

MIREYA ARROYO, a qualified elector,

Plaintiff/Appellant,

v.

DEBORAH ANN BEGAY, a candidate for
office,

Real Party in Interest/Appellee,

STEPHEN RICHER, in his official
capacity as the 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

APPELLEE'S ANSWER BRIEF

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STATEMENT OF THE CASE

This case concerns Mireya Arroyo's challenge to nomination petitions filed by Deborah Ann Begay, a candidate for the Democratic Party's nomination for the Justice of the Peace for the Moon Valley Judicial Precinct. Arroyo appealed the judgment filed in the Maricopa County Superior Court on April 23, 2024, finding that Begay obtained enough valid signatures to qualify for placement on the primary election ballot. This Court has jurisdiction under A.R.S. § 16-351(A).

STATEMENT OF FACTS

1. The following relevant facts are uncontested. See *Parties' Joint Stipulated Facts and Issue for Review*.

2. Appellee Deborah Ann Begay is the sitting Justice of the Peace for the Moon Valley justice precinct and seeks the Democratic Party's nomination for the position in the primary election to be held on July 30, 2024.
3. Appellee filed her Statement of Interest with Maricopa County in February 2023, indicating she was running for Justice of the Peace for the Moon Valley justice precinct in the 2024 primary election.
4. Appellant Mireya Arroyo is also a candidate for Justice of the Peace for the Moon Valley justice precinct and seeks the Democratic Party's nomination in the 2024 primary election.
5. The Appellant filed her Statement of Interest with Maricopa County on January 23, 2024, indicating she was running for Justice of the Peace for the Moon Valley justice precinct in the 2024 primary election.
6. There is only one primary election for the Moon Valley justice precinct in 2024.

7. To be placed on the primary ballot, a Democratic candidate for Justice of the Peace for the Moon Valley precinct needed to collect and submit a minimum of 336 signatures on the Candidate's nomination petition.
8. On April 1, 2024, Appellee timely submitted her nomination petition to the Maricopa County Elections Department ("MCED") for the July 30, 2024, primary election and turned in a total of 81 nomination petition sheets, including 567 signatures (a total of 74 sheets submitted the morning of April 1, 2024, and 7 supplemental sheets filed the afternoon of the same day).
9. The 81 nomination petition sheets included 22 sheets containing 151 additional signatures that MCED did not count and excluded from Judge Begay's total because they were gathered on nominating petition sheets that did not have the date of the primary election filled in ("Excluded Signatures").
10. On April 1, 2024, Appellee received a Candidate Filing Receipt from MCED indicating that 371 signatures had been submitted,

and on April 2, 2024, MCED e-mailed a Supplemental Filing Receipt from MCED indicating she had filed a total of 416 signatures (the "Included Signatures").

11. Specifically, the line for the primary election date was left entirely blank on these nominating petition sheets.
12. The record is devoid of evidence that Judge Begay challenged MCED's determination not to count the Excluded Signatures before the Appellant filed her challenge.
13. Arroyo filed suit on April 15, 2024, to challenge Judge Begay's nomination petition.
14. Arroyo filed specific challenges to 127 of the 416 Included Signatures.
15. Arroyo did not file specific challenges regarding the 22 petition sheets in dispute ("Excluded Signatures").
16. The Appellant also sought a declaration that the Excluded Signatures should not be counted.

17. In response, the Appellee sought to have the Excluded Signatures counted along with the valid Included Signatures.
18. The Maricopa County Recorder's Office ("MCRO") reviewed the Included Signatures and concluded that 91 of the 416 were invalid, reducing the number of valid signatures from 416 to 325.
19. The Superior Court condensed the legal issues before it, and the parties briefed and argued one issue: whether the nomination petition sheets that lacked a primary date at the top of the form complied substantially with statutory requirements.
20. If the Superior Court decided in Arroyo's favor, the Excluded Signatures would not be added, and the Appellee would lack sufficient signatures to keep her name on the ballot.
21. If the Superior Court decided in Judge Begay's favor, the Excluded Signatures would be added, and Judge Begay would have more than the minimum needed for ballot access.
22. The only issue raised on appeal is whether the Excluded sheets are in substantial compliance with A.R.S. § 16-314(C).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Did the Superior Court err in finding that the nominating petition sheets that omitted the date of the primary election substantially comply with Arizona Law, such that it was an error for MCED to exclude the signatures on those Pages?

STANDARD OF REVIEW

The instant case involves a question of law of whether the nomination petition sheets substantially comply with A.R.S. § 16-314(C). The Court shall review questions of law de novo. A.R.S. Sup. Ct. Rules, Rule 59.

ARGUMENT

- I. The Trial Court did not err in determining that Begay's signatures substantially complied with A.R.S. § 16-314(C).

Boiled down to its essence, the Appellant here claims that because the date of the primary election is missing, there is a “significant danger” that an Elector signing Deborah Ann Begay’s petition sheet

would be “confused or misled” into thinking they were nominating her for a primary election in 2028 or even later. See *Appellants Brief*, page 6, ¶2.

A.R.S. § 16-314(C) sets forth the requirements for the form of nominating petitions and requires that a candidate's nominating petitions "be in substantially" that form. One of the statutory requirements is that the election date in question be identified. *Id.*

The Arizona Supreme Court has rejected a strict interpretation of nomination petition requirements and applied a "substantial compliance" analysis instead. *Adams v. Bolin*, 77 Ariz. 316, 319-22, 271 P.2d 472, 474-76 (1954).

Candidates are not removed "from the ballot for mere technical departures from the form," and instead, the Court "assess[es] whether nominating papers substantially comply with the statutory requirements." "[S]ubstantial compliance means that the petition as circulated fulfills the purpose of the relevant statutory or constitutional

requirements, despite a lack of strict or technical compliance."

Feldmeier v. Watson, 211 Ariz. 444, 447 ¶ 14 (2005).

In determining whether nominating petitions "substantially comply" with statutory requirements, the Arizona Supreme Court "has focused on whether the omission of information could confuse or mislead electors signing the petition." *Moreno v. Jones*, 139 P.3d 612, 213 Ariz. 94 ¶ 42 (Ariz. 2006); and 1078, 1081 (2008).

"[T]he same 'potential to confuse or mislead' standard equally applies to unauthorized additions to the form." *Clark v. Munoz*, 235 Ariz. 201, 202 ¶ 8 (2014) (citations and internal quotations omitted).

In *Marsh v. Haws*, 111 Ariz. 139, 140, 526 P.2d 161, 162 (1974), the candidate nomination sheets could confuse voters because they failed to identify the judicial precinct for which the candidate was running. In *Kennedy v. Lodge*, 230 Ariz. 134, 135 ¶ 7 (2012), the Court excluded the candidate's nomination petitions because they omitted the office and judicial division for which the candidate was running. In the *Clark* case, the Court disqualified the candidate's nomination sheets

because he added a picture of a constable badge when he was running for Justice of the Peace in the same district, and it could confuse voters. A picture is not required under A.R.S. § 16-314(C) nonetheless the Court found that the omissions or additions on nomination sheets would likely confuse the voters, thus not in substantial compliance.

However, in many other cases, the Court has found that nomination sheets containing defects or omissions are in substantial statutory compliance because such defects were not likely to confuse voters. For example, the Court upheld the validity of nomination papers when the Candidate did not use her name, *Dedolph v. McDermott*, 230 Ariz. 130, 281 P.3d 484, 639 Ariz. Adv. Rep. 5 (Ariz. 2012). Nomination petitions that omitted the party designation were found to be in statutory compliance. *Clifton v. Decillis*, 187 Ariz. 112, 116, 927 P.2d 772, 776 (1996). In recent years, the Court found that nomination sheets were in substantial statutory compliance even though they omitted the Candidate's address. *Lohr v. Bolick*, 249 Ariz. 428, 471 P.3d 639 (Ariz. 2020).

A. Omission of the primary election date on the top of the nomination sheet is not likely to confuse the voter.

The Arizona Supreme Court has reviewed various challenges where the defect on the nominating petitions involves wrong, incomplete, or missing dates.

In *Moreno v. Jones*, 213 Ariz. 94, 102 ¶ 44, 139 P.3d 612, 620 (2006), the Arizona Supreme Court considered a situation where a candidate listed only the year of the primary election. The Arizona Supreme Court concluded in *Moreno* that the omission of the day and month of the 2006 primary election did not create a significant danger of confusion or misleading voters. The Court specifically noted that "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 [the specific elected office in question]." 213 Ariz. at 102.

In *Bee v. Day*, 189 P.3d 1078, 218 Ariz. 505 (Ariz. 2008), the Arizona Supreme Court determined that nomination petition sheets

that were missing a date required under the stricter language of A.R.S. § 16-314(D), which uses the word "shall," were in substantial statutory compliance. The *Bee* holding was that the omission of the expiration date of the Candidate's unexpired vacant term was not fatal because only one seat for that office was open in that election.

In *McKenna v. Soto*, 250 Ariz. 469, 473-74 (2021), the Arizona Supreme Court recognized that the voter signatures dated with a month and day, but no year, substantially complied with the date of signing requirement because the petition could not have been signed before the date the form was printed.

The holdings in *Moreno*, *Bee*, and *McKenna* confirm that, under Arizona jurisprudence, nominating petitions that have incomplete, wrong, or omitted dates are viewed through the same lens. In other words, a wrong date or incomplete date carries no more weight than a date omitted altogether, as is the case here. The test applied in each case is whether, considering the totality of the circumstances, the defect in the date creates a “significant danger” of voter confusion. As a result,

the Court will consider each case as a whole when determining the validity of signatures and if signatures on nominating petitions with defects in the dates can still be valid if the election in question can be determined on the face of the petition.

A Justice of the Peace is a county officer. *Hellman v. Marquardt*, 111 Ariz. 95, 523 P.2d 792 (1974). Elections for County Officers occur every four years. Ariz. Constitution, Art. XII, Section 3. Justices of the Peace are nominated through a partisan primary election, *See* A.R.S. § 22-301; and elected by qualified electors in the general election, A.R.S. § 22-211; for a four-year term, A.R.S. § 22-102. In Arizona, a primary election shall be held on the first Tuesday in August in any year in which a general election or special election is held and at which candidates for public office are to be elected. A.R.S. § 16-201.

In this case, the nomination sheets in question were all filed in a timely manner by the Appellee and included all the statutorily required information except the date when the primary election is to be held, including language that clearly indicates the Appellee seeks the

Democratic Party's nomination for Justice of the Peace Moon Valley in the primary election.

A general election is scheduled for November 2024, and therefore, despite the missing date of the primary, a voter would know that the nomination form she or he was signing had to be the 2024 primary because there is only one primary election in 2024 preceding the general 2024 election, just like in *Moreno*, where the Court found that a voter would automatically know that she or he was signing for the primary election in the current election cycle relying on the statute which lays out the date of the primary election.

In *Bee*, where despite omitting the primary election date of the unexpired vacant seat from the nomination sheets, the Court found that the voter would not be confused because there was only one primary election for that office. Here, too, there is only one seat up for election in the Moon Valley Justice of the Peace Precinct in 2024 and only one primary election in 2024 for the office of Justice of the Peace in the Moon Valley Precinct.

II. It is unlikely that the missing date would confuse voters to sign not for the 2024 primary, but for primaries in 2028, 2032, etc.

A candidate may not file a nomination petition earlier than 150 days before the primary election. A.R.S. § 16-314(A). Also, a Candidate must file a statement of interest (SOI) with MCED, and signatures collected before the SOI filing date are invalid. A.R.S. § 16-311(H). The statement of interest includes, among other things, party affiliation and the year of the primary election for which the Candidate intends to run. The Maricopa County Recorder publishes the filed SOIs.¹

Appellee filed her statement of interest on 02/28/2023, indicating she was running for Justice of the Peace for the Moon Valley Judicial Precinct in the 2024 primary election, and the Appellant filed her statement indicating the same on 01/23/2024.

¹ <https://elections.maricopa.gov/asset/jcr:0f2fae49-18ff-41fd-9fb5-52ce8dc708d8/2024%20Primary%20Candidate%20Statements%20of%20Interest%202.20.2024.pdf>

The filing of the SOI sets the “start” of the signature-gathering process for the specific primary election year stated in the SOI. The last general election for the Moon Valley Justice of the Peace was in November 2020. So technically, a candidate interested in running in the 2024 primary could file the SOI and start collecting signatures in January 2021. For a voter to even consider the unlikely possibility that a Candidate be gathering signatures in 2024 for the 2028 or 2032 primary election, we must consider the practicalities involved in that notion. As applied to this case, a sitting Justice of the Peace seeking reelection, but collecting signatures for the 2028 primary, would have to (1) decide to give the seat in December 2024, (2) skip one election cycle altogether, and (3) present to MCED in 2028, signatures that are 4 years old at best, or 8 years old signatures at worst. This is an illogical and incongruous practice for a Candidate to follow, and because it does not happen, there is no reason a voter would even consider such a possibility.

Thus, the trial court correctly stated in its judgment that “it would be highly unusual. Indeed, it is possible, but unlikely, that a candidate had filed a statement of intent for a Justice of the Peace election in 2028 or 2032 and to be gathering signatures in 2024 for those attenuated primary elections.” *Judgment* at ¶ 17.

At trial, the Parties proceeded by stipulation and argued the issue of substantial compliance only, so the record is void of testimony. Common sense and logic indicate, however, that some degree of verbal exchange must occur between the circulator and the elector at the time of face-to-face interaction that addresses the “why,” “who,” “what,” and “when” of the primary election the voter is asking to support. Assuming, in the best light to Appellant’s argument, that the circulator approached the voter in complete silence, without an elevator speech, or any type of verbal exchange, and just extended the clipboard with the nomination sheet petition for signature, the voter has sufficient information on Begay’s nomination sheets to prevent confusion. The voter would know that he or she is supporting the nomination of

Deborah Ann Begay, a Democrat, for the primary election for the Moon Valley Justice Court in Maricopa County, Arizona. As in *McKenna*, the voter would be able to glean from the recentness of the dates written by other signers that this nomination petition is for the 2024 primary election.

Lastly, the *Adams* decision " established that a court should not interpret the statutes governing nomination petitions in a way that allows "purely technical departures from nominating form" to outweigh the electors' right to nominate legitimate candidates. *Adams v. Bolin*, 77 Ariz. 316, at 322, 271 P.2d 475. "The fundamental nature of elections provides an additional incentive not to inhibit access to the ballot." *Miller v. Board of Sup'rs of Pinal County*, 855 P.2d 1357, 175 Ariz. 296 (Ariz. 1993). "No right is more precious in a free country."; *Id.* (citing *State v. Miller*, 100 Ariz. 288, 296, 413 P.2d 757, 763 (1966))

If this Court reverses the trial court's decision, it will effectively exclude the signatures on Begay's 22 nomination sheets and remove her name from the 2024 primary election ballot. But most importantly it

would subvert the will of 155 voters and their right to nominate Begay for the 2024 primary election, which runs contrary to the statutory construction of A.R.S. § 16-413.

CONCLUSION

Defendant/Appellee Begay did not strictly comply with the A.R.S. § 16-314(C) requirements when she omitted the primary election date on her nomination petition sheets. However, her petition sheets were unlikely to cause confusion or mislead electors as to their purpose because they otherwise made clear that Begay sought the nomination as the Democratic Candidate in the 2024 primary election. The totality of the circumstances, in this case, is the same as in *Moreno*, in which the Arizona Supreme Court held that omitting the date of the primary election substantially complies with the statute, *Moreno v. Jones*, 213 Ariz. 94, 102 ¶ 44, 139 P.3d 612, 620 (2006).

Therefore, this Court must affirm the trial court's decision and order that Deborah Ann Begay/Appellee's name appear on the 2024 primary election ballot.

REQUEST FOR ATTORNEY'S FEES

Appellee requests an award of her attorney's fees and costs in this appeal pursuant to ARCAP Rule 21.