

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

REPLY BRIEF OF PLAINTIFF/APPELLANT MIREYA ARROYO

Roy Herrera (032901)
Daniel A. Arellano (032304)
Jillian L. Andrews (034611)
Jane W. Ahern (034865)
Austin T. Marshall (036582)

HERRERA ARELLANO LLP
1001 North Central Avenue
Suite 404
Phoenix, Arizona 85004
roy@ha-firm.com
daniel@ha-firm.com
jillian@ha-firm.com
jane@ha-firm.com
austin@ha-firm.com
Telephone: (602) 567-4820

Attorneys for Plaintiff/Appellant

This case is not about whether a candidate must strictly comply with A.R.S. § 16-314(C). It is about whether a candidate must comply *at all*. Here, Begay did not include any part of the primary election’s date as A.R.S. § 16-314(C) and this Court’s cases require. Failing to comply at least partially fails to give necessary notice to voters and causes the potential for voter confusion. The Superior Court correctly recognized this risk. *See Judgment* at 4 ¶ 15. But it then held that a potentially confused initial signer could cure the defect and give clarity to subsequent signers. This was error. *See Marsh v. Haws*, 111 Ariz. 139, 140 (1974) (petition information was “insufficient the time the petitions were circulated, and no change made by subsequent interlineation could operate to cure the defect.”).

ARGUMENT

I. Because candidates may collect signatures for future election cycles, the face of the petition must identify the cycle for which the voter is signing.

Begay does not dispute that candidates can collect nomination signatures now for future election cycles. The fact of multiple, concurrent signature-gathering periods creates voter confusion and prevents voters from knowing if they are eligible to sign. A.R.S. § 16-321(A) (voters can

only sign one candidate's petition per office per election cycle if only one person can win election). In *Marsh* the candidate failed to specify the precinct in which a Justice of the Peace candidate was running, thereby depriving the voter of necessary geographic context. *Marsh*, 111 Ariz. at 140. Here, by omitting the primary's date Begay has deprived the voter of necessary temporal context.

Begay instead handwaves away signature-gathering for future election cycles as “an illogical and incongruous practice” in which candidates can submit “signatures that are 4 years old at best, or 8 years old [sic] signatures at worst.” *Answering Br.* at 18. But so long as the signer is otherwise eligible, such signatures would be valid years later. Accordingly, the Legislature requiring candidates to give voters some indication of when the primary election will occur serves a specific function in its statutory scheme.

The petition form itself must provide all the required information: the substantial-compliance inquiry is an objective one that turns entirely on the face of the petition. *See Kennedy v. Lodge*, 230 Ariz. 134, 137 ¶ 15 (2012) (“The relevant inquiry thus is whether *the nominating petition itself* substantially complies with statutory requirements.” (emphasis

added)); *Bee v. Day*, 218 Ariz. 505, 507 ¶ 8 (2008) (“In reviewing non-compliance with any component of the form, the relevant inquiry is whether *the form* as a whole substantially complies with the statutory requirements.” (emphasis added)).

To that end, having extraneous conversations with voters and filing statements of interest are irrelevant. Both are the kinds of extrinsic evidence that can have no bearing on the objective question of substantial compliance. *See Kennedy*, 230 Ariz. at 137 ¶ 15 (“Allowing candidates to compensate for petition defects with extrinsic evidence that such defects did not result in voter confusion would eviscerate the statutory requirement that all essential information be made available to the elector on the petition form.”).

Further, statements of interest do not help inform the voter at the moment of signing. The Legislature does not require petition circulators to carry the candidate’s statement of interest and present it to voters. *Cf.* A.R.S. § 19-121(A)(3) (requiring that signature sheets for initiative or referendum petitions be attached to a copy of the title and text of the measure). And nothing in statute requires the statement of interest to identify the election cycle. *See* A.R.S. § 16-311(H) (“The statement of

interest shall contain the name of the person, the political party, if any, and the name of the office that may be sought.”). Filing a statement of interest as required under A.R.S. § 16-311(H) does not excuse failure to comply with A.R.S. § 16-314(C).

II. This Court’s prior cases belie Begay’s position.

Begay misconstrues the cases she cites. First, she says “[i]n *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.” *Answering Br.* at 14. The omitted date in *Bee* was not about the primary date, but rather the date for which an unexpired vacant term would end as required under A.R.S. § 16-314(D). 218 Ariz. at 507–08 ¶¶ 11–14.

Indeed, the Court recognized “[u]nder A.R.S. § 16-314(C), candidates generally must identify in their nominating petitions their name and county of residence, the office sought, and the date of the primary election.” *Id.* at 7 ¶ 12. The rest of the information on the petition, presumably correctly filled in though not at issue in the case,

provided sufficient notice of the office to which the petition pertained. That is not the case here.

Next, as for whether an initial voter's signature can cure a petition's form defect for other signers, Begay relies on *McKenna*. She says "[a]s 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." *Answering Br.* at 20. That is not what *McKenna* said. The issue in *McKenna* was whether an incomplete *voter* signature date complies with A.R.S. § 16-315(A)(4). *See McKenna v. Soto*, 250 Ariz. 469, 468–74 ¶¶ 11–21 (2021). The purpose of that statute is to determine whether the signer was a qualified elector at the time of signing and whether the signature was collected after the statement of interest was filed. *Id.* at 472 ¶ 13.

True, *McKenna* recognized that other information on the sheet, including the date of other voters' signatures, could inform when the challenged signature was made. *Id.* at 473 ¶ 17. But *McKenna* did not address whether information provided by a signer could cure a defect on the petition *form*. Nor could it. The purpose of the date requirement in A.R.S. § 16-315(A)(4), at issue in *McKenna*, is to identify when the voter

signed to assess eligibility. *Id.* at 473 ¶ 16. The form requirement in A.R.S. § 16-314(C) at issue here, by comparison, is to identify *for the signer* the election for which the candidate seeks nomination. Even if the first signer signed in 2024, a subsequent signer on the same sheet still would not know if the candidate sought nomination this year or in the future. Again, a voter may sign in 2024 for nomination in a future cycle.

Begay goes on. *Dedolph* was not, as she implies, about omitting the candidate's name on nomination papers. *Answering Br.* at 12. Rather it was about the ordering and hyphenation of a candidate's name and determining which name was the proper surname to list first. *Dedolph v. McDermott*, 230 Ariz. 130, 133–34 ¶¶ 14–19 (2012). *Lohr* was also not about a complete omission of the candidate's address on the petition sheet. *Answering Br.* at 12. Rather it was about listing a UPS box address that was nonetheless located in the proper district. *Lohr v. Bolick*, 249 Ariz. 428, 432–33 ¶¶ 14–19 (2020). And though *Clifton* said omitting a party designation substantially complies with form requirements in A.R.S. § 16-341(D), *Clifton* was about independent candidates. *Clifton v. Decilis*, 187 Ariz. 112, 113–16 (1996); *Kennedy*, 230 Ariz. at 491 ¶ 14 (because independent candidates “do not run in primary elections and,

by definition, have no party designation,” “party designation was not essential” and “its omission was not fatal to the petitions” (citing *Clifton*, 187 Ariz. at 115–16)). In contrast, no case has said the primary date is wholly immaterially to partisan candidates like Begay.

Ultimately, this case comes back to *Moreno*. Begay suggests that *Moreno* stands for the idea that omitting the primary date entirely is excusable because “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.” *Answering Br.* at 16. Begay ignores *Moreno*’s key reasoning, which hinged on the candidate listing a partial primary date. *Moreno v. Jones*, 213 Ariz. 94, 102 ¶ 45 (2006). This Court should reject her argument.

III. Attorney Fees are Improper in this Case.

Begay requests an award for her attorney fees and costs. She provides no legal basis for such an award. *See* ARCAP 21(a)(2) (“This Rule only establishes the procedure for claiming attorneys’ fees and does not create any substantive right to them.”). The parties have otherwise

litigated the issues in good faith. Even if Begay prevails, the Court should deny her request for fees and costs.

CONCLUSION

For the foregoing reasons, and the reasons stated in Arroyo's Opening Brief, this Court should reverse the Superior Court's judgment and enjoin Begay's placement on the July 30, 2024 primary ballot.

Respectfully submitted this 7th day of May, 2024.

HERRERA ARELLANO LLP

/s/ Austin T. Marshall

Roy Herrera
Daniel A. Arellano
Jillian L. Andrews
Jane W. Ahern
Austin T. Marshall

1001 North Central Avenue
Suite 404
Phoenix, Arizona 85004

Attorneys for Plaintiff/Appellant