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ARIZONA SUPREME COURT

LIANE BRECKLING, Plaintiff/Appellant, *v.* ARTURO HERNANDEZ, Real Party in Interest/Appellee, *and* ADRIAN FONTES, et al., Defendants/Appellees.	No. CV-24-0087-AP/EL Maricopa County Superior Court No. CV2024-008720 **APPELLANT'S BRIEF**

INTRODUCTION

The Legislature has provided in no uncertain terms that a non-resident circulator must register with the Secretary of State before collecting signatures for a candidate's nomination petition. *See* A.R.S. § 16-315(D). Signatures collected by unregistered non-residents are inherently—and undisputedly—invalid.

Allowing non-residents to circulate nomination petitions for candidates for whom they have not registered as circulators would undermine the very purpose of the registration requirement—to ensure non-residents provide sufficient information to be held to account in this state as to all the petitions they circulate. Indeed, a non-resident circulator's failure to register as a circulator for a candidate whose petitions they have circulated does not comply with state law under any standard of legal compliance announced by this Court. The Superior Court's decision to the contrary was erroneous.

This Court should reverse and find that signatures collected by Appellee Hernandez's unregistered non-resident circulators are invalid. Without those signatures, Hernandez has undisputedly failed to collect the requisite number of signatures to appear on the July primary ballot.

STATEMENT OF THE CASE AND THE FACTS

On April 15, 2024, Appellant filed a complaint challenging the validity of a nomination petition ("Nomination Petition") filed by Appellee Arturo Hernandez in his pursuit of the Arizona Green Party's nomination for the office of U.S. Senator. **Joint Stipulations, Ex. A** at 4 ("Order"). The Nomination Petition contained 2,355 signatures. *Id.* For Hernandez to qualify for the July 30 primary election ballot, at least 1,288 of those signatures must be valid. *See* **Joint Stipulations ¶3 ("Stip.")**.

Appellant challenged numerous signatures under signature-line and page-wide objections. Upon performing signature verifications pursuant to Section 16-351(E), County Recorders invalidated 947 of Hernandez's 2,355 signature lines. Order 5–6 (Trial Stips. ¶¶4–11). The parties stipulated to the Counties' findings and to additional signature rehabilitations and invalidations not at issue in this appeal. As a result, the parties agreed that 978 signatures were properly invalidated, leaving 1,377 remaining, Order 7 (Trial Stips. ¶21), with disputes about 609 of those to be addressed at trial. **Ex. A** (Pl.'s Trial Mem.) at App.8–App.9, App.11.

The Superior Court held trial on April 25 after which it issued an order finding 67 additional signatures invalid but that the Nomination Petition ultimately contained enough signatures for Hernandez to appear on the primary ballot. Order 15.[1] In that decision, the court rejected Appellant's challenge to the signatures collected by two non-resident circulators, Christopher Humphries and David Thompson. Order 8–10.

The relevant facts are not in dispute: The parties agreed that neither was registered to circulate for Hernandez. Order 7 (Trial Stips. ¶¶23–24). Thompson registered to circulate for one candidate, but not for Hernandez. **Ex. C**. Humphries registered to circulate for five candidates, none of whom were Hernandez, **Ex. D**—and he knew he was not registered to circulate for Hernandez when he collected signatures for the Nomination Petition, **Stip. ¶6**. In total, these non-resident circulators collected 75 signatures for Hernandez that were not otherwise invalidated. **Stip. ¶9**. Without these signatures, Hernandez cannot qualify for the primary ballot. ***Id***.

[1] The court's calculations contained mathematical errors—Hernandez has 1,310 remaining signatures as of this appeal. *See* **Stip. ¶4**.

The Superior Court acknowledged that Arizona law requires non-resident circulators to register with the Secretary before circulating petitions, but nevertheless concluded that the law does not require non-resident circulators to register for every candidate for whom they circulate. Order 9. Accordingly, because Humphries and Thompson had registered to circulate for *other* candidates, the court concluded that they "substantially complied with the registration mandate," and declined to invalidate the signatures they collected. *Id.* at 10.[2]

In another Superior Court decision issued on the very same day, a different court found that all signatures collected by Humphries were invalid precisely because he had altogether failed to register for the candidate whose petitions were challenged in that case. *See* **Ex. H** at

[2] The court also found that these non-resident circulators "each filed . . . accurate registrations with the Secretary of State in the 2024 election cycle . . . [and] Plaintiff located the registrations and the contact information" Order 10. In fact, Humphries' registration forms listed two different service of process addresses across his registrations, which were completed and received by the Secretary within a nine-day period. *See* **Ex. D**. And Appellant did not actually physically locate either non-resident circulator. It was *Hernandez* who called both circulators as witnesses and submitted their registrations for other candidates as trial exhibits. **Ex. F**. Only Humphries appeared to testify; Thompson was a no-show. **Stip. ¶¶5, 7**.

App.80–App.81 (*Backie v. George*, No. CV2024-8687 (Maricopa Cnty. Super. Ct. Apr. 25, 2024)).

Because the question of whether the signatures gathered by these non-resident circulators who never registered to circulate petitions for Hernandez is dispositive to whether Hernandez has qualified for the ballot under Arizona law, Appellant timely noticed this appeal. **Ex. G**.

STATEMENT OF THE ISSUE

Whether a nomination petition page, and the signatures collected thereon, is valid if it was circulated by an individual who is not a resident of Arizona and who accordingly "must be registered as [a] circulator[] with the secretary of state before circulating petitions," A.R.S. § 16-315(D), where the non-resident individual failed to register for the candidate for whom they circulated the petition.

ARGUMENT

"The circulator's role is important." *Lohr v. Bolick*, 249 Ariz. 428, 433 ¶21 (2020). Among other things, "the person circulating a nomination petition is required to verify the status of petition signers." *Id.* And "statutory circulation procedures are designed to reduce the number of erroneous signatures, guard against misrepresentations, and confirm that signatures were obtained according to law." *Brousseau v. Fitzgerald*, 138 Ariz. 453, 456 (1984). When a circulator does not comply with the relevant requirements, all signatures they collect are invalid. *See Lohr*, 249 Ariz. at 434 ¶23.

Arizona law requires that non-resident circulators register with the Secretary of State for the candidate for whom they circulate petitions. The purposes behind that requirement cannot be fulfilled by registering to circulate for a *different* candidate. Consequently, signatures collected by non-resident circulators who did not register to circulate petitions for Hernandez cannot properly be counted towards the threshold he must meet to appear on the primary ballot.

Where sufficiency of *the form or contents of a petition* is challenged, courts determine "whether [the] petition substantially complies with the

statutory requirements." *McKenna v. Soto*, 250 Ariz. 469, 471 ¶7 (2021) (cleaned up). The non-resident circulators' failure to register with the Secretary to circulate the Nomination Petition is not a problem with the sufficiency of the form or content of the petition, it is a complete failure to satisfy the mandatory registration requirement. As a result, both circulators were ineligible under Arizona law to circulate those petitions, and all signatures they collected are facially invalid.

But even if non-resident circulators' registration with the Secretary were considered part of the form or contents of the Nomination Petition such that the substantial compliance standard applied, failure to specify the candidate(s) for whom they will circulate petitions does not substantially comply with Arizona law. In applying the substantial compliance standard, courts "consider several factors, including the nature of the constitutional or statutory requirements, the extent to which the petitions differ from the requirements, and the purpose of the requirements." *Feldmeier v. Watson*, 211 Ariz. 444, 447 ¶14 (2005) (en banc). Here, allowing non-resident circulators to collect signatures for a candidate for whom they have not registered violates both the letter and purpose of the law.

This Court reviews both questions of statutory interpretation and whether a petition satisfies the substantial compliance standard *de novo*. *McKenna*, 250 Ariz. at 471 ¶7; *Jenkins v. Hale*, 218 Ariz. 561, 563 ¶10 (2008).

I. Arizona law required non-resident circulators to register with the Secretary to circulate for Hernandez.

No party disputes that a non-resident circulator who does not register with the Secretary at all fails to comply with statutory requirements, rendering all signatures collected by them invalid. *See* Order 7 (Trial Stips. ¶20); *id*. at 9 ("A.R.S. § 16-315(D) provides that non-resident circulators must register"); *Lohr*, 249 Ariz. at 433–34 ¶22. The question is whether in registering, a non-resident circulator must specify each candidate for whom they will circulate petitions. *Compare* **Ex. A** at App.11–App.14, *with* **Ex. B** (Def.'s Trial Mem.) at App.35–App.37; *see* Order 9–10. The statutory scheme, the Secretary's Election Procedure Manual ("EPM"), and a recent decision by this Court construing a parallel requirement in the initiative and referendum context all confirm that a non-resident circulator who fails to register with the Secretary to circulate for a candidate has not complied with Arizona law.

A. The statutory text requires non-resident circulators to register for every candidate for whom they circulate.

Chapter 3 of Title 16 of the Arizona Statutes provides the procedures for nomination petitions. The relevant provisions involving the collection and submission of nomination petitions generally discuss these procedures in the context of a single nomination petition for a single candidate. *See, e.g.*, A.R.S. §§ 16-311(A) (outlining requirements for an individual seeking "to become a candidate at a primary election for a political party and to have the person's name printed on the official ballot"), 16-314(B) (requiring individual to file "a nomination petition" "which is circulated by or on behalf of *the person* wishing to become *a candidate*" (emphases added)), 16-316(A) (requiring Secretary to provide a system that allows "only those qualified electors who are eligible to sign a petition for a particular candidate to sign the petition"). Section 16-315(B) mandates that the registration requirement for non-resident circulators appear on *each* nomination petition, while Section 16-321(D) specifies that "[t]he person before whom the signatures were written on the signature sheet" of a single nomination petition, "if not a resident of this state, shall register as a circulator with the secretary of state." Finally, Section 16-315(D) requires that:

> "Circulators who are not residents of this state must be registered as circulators with the secretary of state before circulating petitions. The secretary of state shall provide for a method of receiving service of process for those petition circulators who register pursuant to this subsection. The secretary of state shall establish in the instructions and procedures manual issued pursuant to § 16-452 a procedure for registering circulators and receiving service of process."

These statutes provide the required procedures for *a* candidate seeking to submit *a* nomination petition, and "they should be . . . construed together with other related statutes, as though they constituted one law." *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122 (1970).

"Words in statutes should be read in context in determining their meaning. In construing a specific provision, [courts] look to *the statute as a whole* and . . . may also consider statutes that are *in pari materia*—of the same subject or general purpose—for guidance and to give effect to all of the provisions involved." *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶7 (2017) (emphasis added) (cleaned up). Read *in pari materia* with the other provisions of Title 16—including the provisions immediately before and after it—Section 16-315(D)'s requirement that non-residents "must be registered as circulators with the secretary" is not a *general* registration requirement mysteriously folded into a statute that is otherwise focused on the procedures for each individual nomination

petition, but rather a discrete requirement for each statutorily compliant nomination petition. Thus, a circulator who only registers with the Secretary to circulate a petition for one candidate, but also circulates a petition for another candidate, has not complied with Section 16-315(D).

B. As implemented by the Secretary, Section 16-315(D) requires candidate-specific registration.

Section 16-315(D) expressly authorizes and directs the Secretary to establish, in the EPM, "issued pursuant to § 16-452[,] a procedure for registering circulators." The current EPM specifically requires "[c]irculators who are not residents of Arizona [to] register with the Secretary of State prior to circulating . . . *a candidate petition*. . . . Failure to do so invalidates the signatures collected by the circulator." EPM, Chapter 6, Section II.B (emphasis added).

The Superior Court misread the EPM in concluding that it "does not expressly instruct that separate, per-candidate registrations are a prerequisite to the associated signatures' substantive validity." Order 9. To the contrary, the EPM clearly states that: "Once a circulator is properly registered, the circulator ***must select*** in the Circulator Portal ***the petition(s) they will circulate*** (by serial number and/or ***candidate name***)." EPM, Chapter 6, Section II.C (emphases added). The Superior

Court seemed to conclude that this sentence disaggregates "registration" from the selection of candidate(s) for whom the non-resident plans to circulate, but that is illogical. The passage explicitly requires that a non-resident circulator complete a registration for *all petitions* they circulate. Specifying in the Circulator Portal only one petition for which they will circulate does not allow them to circulate other petitions and maintain the validity of the signatures collected on those other petitions. The Superior Court's conclusion accordingly contradicts not only the plain language of the statute but also the EPM's mandate.[3]

C. The non-resident registration requirement is parallel across the nomination petition and initiative contexts.

The Superior Court's reasoning that the "statute does not require that non-resident circulators register for a specific candidate . . . [but] the Legislature has required discrete registrations for specific petition issues," Order 9, was also wrong. The relevant text in both contexts is effectively the same: In the nomination petition context, Section 16-

[3] The EPM's recognition that registering for the candidate is a necessary component of a complete registration is consistent with the Legislature's purpose in enacting the requirement as a condition for non-residents to circulate petitions, in service of ensuring transparency and accountability of non-resident circulators. *See infra* Section III.B.

315(D) states that: "[c]irculators who are not residents of this state ***must be registered as circulators with the secretary of state*** before circulating petitions." (Emphasis added). In the initiative and referendum measures context, Section 19-118(A) is almost verbatim, stating that: "all circulators who are not residents of this state and all paid circulators ***must register as circulators with the secretary of state*** before circulating petitions." (Emphasis added).

This Court has interpreted the language in the latter statute to "require[] a sponsoring committee *for each proposed initiative measure* to file circulator registration applications with the Secretary." *Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶23 (2022) (emphasis added). It makes no sense to interpret the same language differently in Section 16-315(D) and find that it does not require candidate-specific registration. *See Wyatt v. Wehmueller*, 167 Ariz. 281, 284 (1991) (en banc) (courts "should interpret two sections of the same statute consistently, especially when they use identical language"). Moreover, the reasoning in *Leibsohn* similarly supports the same conclusion here. In that case, the Court recognized that "the eligibility of a circulator can change from one application to the next, making it impossible to attest to future eligibility" thus finding that

"because an affidavit attesting to the accuracy of the information in an application is unique to that application, the affidavit cannot apply to future applications." 254 Ariz. at 7 ¶21. The same is true in the nomination petition context, where a non-resident circulator "declare[s] under penalty of perjury that the information provided on *th[at] form* is true, complete, and correct, and that [they] have read and understand the laws of this State with respect to petition circulation." *See* **Exs. C**, **D** (emphasis added).[4]

Furthermore, in attempting to distinguish the statutory requirements in the nomination petition and initiative contexts, the Superior Court mistakenly relied on two cases in which this Court

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[4] The Court also reasoned that Section 19-118(A) "requires the sponsoring committee, not individual circulators," to submit registration applications, indicating "the legislature's intent that separate applications be submitted for each initiative measure." *Leibsohn*, 254 Ariz. at 6–7 ¶20. The registration requirement for nomination petitions and initiative/referendum petitions were introduced together, with identical language. *See* 2011 Ariz. Legis. Serv. Ch. 332, H.B. 2304. The additional provisions for initiative/referendum petitions, which specify contents of registration applications and that petitions circulated by unregistered non-residents are invalid, were added in 2014—while maintaining the core language of the requirement. *See* 2014 Ariz. Legis. Serv. Ch. 45, H.B. 2107. That a subsequent Legislature identified separate requirements in one context does not retroactively loosen an earlier registration requirement in another. *See Pima Cnty. by City of Tucson v. Maya Const. Co.*, 158 Ariz. 151, 155 (1988).

declined to graft statutory requirements from one context to fill an *absence of statutory authorization* in another. *See Morales v. Archibald*, 246 Ariz. 398, 400–01 ¶¶11–12 (2019); *Powers v. Carpenter*, 203 Ariz. 116, 118 ¶¶11–12 (2002). But here, there *is* a statute addressing the registration of non-resident circulators in the nomination petition context *and* its text parallels that same requirement in the initiative and referendum context. *Compare* A.R.S. § 16-315(D), *with* A.R.S. § 19-118(A). And where the reasoning of a decision in one context is pertinent to another, this Court has drawn upon and applied that reasoning. *See, e.g.*, *Jenkins*, 218 Ariz. at 564–65 ¶19 & n.4; *Pacuilla v. Cochise Cnty. Bd. of Supervisors*, 186 Ariz. 367, 368 (1996); *Clark v. Pima Cnty. Bd. of Sup'rs*, 128 Ariz. 193, 195 (1981). Similarly, *Leibsohn*'s interpretation of the registration requirement in the initiative and referendum context is instructive here: Non-resident circulators must register with the Secretary to circulate petitions for Hernandez before circulating petitions for him. A.R.S. § 16-315(D).

II. Petitions circulated by non-residents who did not register to circulate for Hernandez are facially invalid.

Because the non-resident registration requirement is an indispensable requirement that implicates the circulator's eligibility to

circulate for the candidate under state law, and not merely the form or content of the submitted papers, entirely failing to complete a registration for a candidate necessarily invalidates the petitions the circulator has circulated for the candidate and the signatures on them. *See Brousseau*, 138 Ariz. at 455–56; *see also Lohr*, 249 Ariz. at 433 ¶¶21–22; Order 7 (Trial Stips. ¶20).

The question is not, accordingly, one of "substantial compliance," because that inquiry asks specifically "whether *the nominating petition itself* substantially complies with statutory requirements." *Kennedy v. Lodge*, 230 Ariz. 134, 137 ¶15 (2012) (emphasis added). Indeed, another Superior Court decision, issued the same day as the order appealed here, properly held that all signatures collected by Humphries were invalid, precisely because he altogether failed to register for the candidate involved in that case, which is "require[d] for out-of-state circulators." **Ex. H** at App.80–App.81.[5]

[5] In that order, the court held that petitions circulated "before [non-resident circulators] formally identif[ied] [the candidate] as the candidate whose petitions they were circulating" substantially comply with the registration requirement if the non-resident circulators later completed that process. **Ex. H** at App.80. This Court need not address this issue here, where Humphries and Thompson *never* registered to circulate for Hernandez.

Simply put, Humphries and Thompson's failure to complete a registration to circulate for Hernandez's Nomination Petition renders them unqualified to circulate petitions for Hernandez *at all*—the "substantial compliance" test does not apply. *See, e.g.*, *Brousseau*, 138 Ariz. at 456 (observing that allowing "unqualified persons" to circulate petitions "without any sanction other than the inconvenience of showing that the signatures were in fact authentic would render the circulation requirement meaningless"); *accord* EPM, Chapter 6, Section II.B (failure to register "prior to circulating . . . a candidate petition . . . invalidates the signatures collected by the circulator"). Thus, all signatures collected by them in support of Hernandez's Nomination Petition are invalid as a matter of law.

III. Petitions circulated by non-residents registered to circulate for other candidates, but not Hernandez, cannot substantially comply with Section 16-315(D).

Even if the "substantial compliance" test applied, it is not met here. First, as a matter of law, it cannot be satisfied by looking to non-resident circulators' actions taken in connection with entirely different candidates' petitions. Second, allowing non-resident circulators to avoid registering for the specific nomination petitions they are circulating

would undermine the purposes of the registration requirement and sow confusion.

A. Substantial compliance must be determined by reference to the specific petition at issue.

As this Court has long made clear, "substantial compliance" applies to questions as to the sufficiency of *a single nomination petition*. *See, e.g.*, *Lohr*, 249 Ariz. at 431 ¶11 (the analysis "substantial compliance analysis 'considers *the nomination paper* as a whole'" (emphasis added) (quoting *Dedolph v. McDermott*, 230 Ariz. 130, 133 ¶17 (2012))); *accord Bee v. Day*, 218 Ariz. 505, 508 ¶12 (2006); *Marsh v. Haws*, 111 Ariz. 139, 140 (1974). As a result, even under the substantial compliance standard, noncompliance with the requirement cannot be salvaged—as Hernandez has argued—by looking to other registrations filed in connection with *entirely different candidates' nomination petitions*. *Cf. Kennedy*, 230 Ariz. at 137 ¶15.

B. The registration requirement was enacted to obtain assurances of accountability and transparency.

This Court has also been clear that an error or omission that does not allow the petition to "fulfill [the] purpose" of the relevant requirement does "not substantially comply." *Lohr*, 249 Ariz. at 433–34 ¶22. The

purpose of Section 16-315(D) is not only to address the practical need to locate non-resident circulators in the event of a challenge, but also to serve as a critical means of providing the state and public necessary information about non-resident circulators and the petitions they circulate. A non-resident's failure to complete a registration for each candidate cannot fulfill these purposes.

This conclusion is supported by the history of Section 16-315(D), which demonstrates that the Legislature enacted the measure to ensure that aspiring circulators who are not residents of Arizona would be subject to scrutiny regarding all the petitions that they circulate as a condition of being permitted to circulate them in the state. The Legislature first introduced legislation to govern non-resident circulators in 2011 only out of necessity, in response to federal court decisions holding that Arizona's limitation on circulator eligibility to in-state residents (which the state had enforced for years) was unconstitutional. *See Nader v. Brewer*, 531 F.3d 1028, 1037–38 (9th Cir. 2008). Against that backdrop, legislators reluctantly moved along a bill clarifying that out-of-state circulators could collect signatures in the state—but only on the condition that they *first* register with the Secretary, to ensure that

the circulator provides information sufficient to be identified and held to account for the petitions they circulate and subjected to the state's jurisdiction in any dispute involving those petitions. *See* 2011 Ariz. Legis. Serv. Ch. 332, H.B. 2304.[6]

Consistent with this objective, the statute expressly requires that non-resident circulators "must be registered . . . before circulating petitions." A.R.S. § 16-315(D). If the requirement served *only* the purpose of effectuating service upon nonresident circulators (as the Superior Court order appears to suggest, *see* Order 10), the Legislature could have permitted non-resident circulators to provide the necessary information at the time they turn in petitions, or simply relied on the requirement to include their address on petitions, as with in-state circulators, *see Lohr*, 249 Ariz. at 433 ¶22 (concluding that purpose of Section 16-315(B)'s separate requirement that all circulators "out-of-state or otherwise"

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[6] *See also Hearing on H.B. 2304*, Ariz. H. Judiciary Comm., at 10:05–11:45 (Feb. 10, 2011) (Secretary's representative explaining "the state has been fighting a battle in the courts to preserve the requirement that petition circulators be eligible to register to vote [in Arizona]" but "we can no longer win this fight . . . so in implementing this change in the statute we would like to ask that those folks who are not residents of Arizona register with our office so that they submit to our jurisdiction"), https://www.azleg.gov/videoplayer/?eventID=2011021340&startStreamAt=26.

provide their address on petitions "is to ensure there can be ready and accurate service of process in the event of a petition challenge").

Instead, the Legislature deemed it necessary to also obtain information to enable transparency, and assurances to enable accountability, *before* allowing non-residents to collect nomination petition signatures in Arizona. The only way to ensure that a "registration" serves these purposes as to *all* petitions a circulator circulates is to ensure they are registered for each petition. Until a circulator identifies and registers to circulate for a particular candidate, any existing registration cannot be understood by the state or the public to reflect the circulator's agreement to be held accountable for those petitions.

In other words, absent the requirement that the circulator be registered as to each candidate, the state has no indication or assurance that the circulator's acceptance of Arizona jurisdiction covers petitions for candidates the circulator has yet failed to identify. *Cf. Leibsohn*, 254 Ariz. at 7 ¶21. And if a circulator is *never* required to register for each candidate—per the Superior Court's reading of the law—the public would have no record that the circulator agreed to circulate those petitions,

absent a challenge in which they actually appear to confirm that they did in fact do so. This is entirely antithetical to the provision's purpose to ensure that such information and assurances are obtained as a condition of the non-resident circulator proceeding to collect signatures.

C. Failing to register to circulate for Hernandez does not fulfill the statutory purposes of Section 16-315(D) and sows confusion and discord.

In addition, because "statutory circulation procedures" are designed to guard against "erroneous signatures" and "misrepresentations," *Brousseau*, 138 Ariz. at 456, this Court's decisions employing the substantial compliance test often focus on whether the relevant failure "could confuse or mislead electors signing the petition," *Lohr*, 249 Ariz. at 431 ¶8. Here, the failure of a non-resident circulator to complete a registration for each candidate not only fails to fulfill the registration requirement's purposes as discussed, but it also further ensures that signers will be confused and misled by the petitions they circulate.

First, failure to register for a candidate can undermine the purpose of ensuring that the circulator can be effectively served process—especially in the compressed timeframes petition challenges demand. As this Court recognized in *Leibsohn*, a circulator's service address or

contact information may change or otherwise be inconsistent between registrations, making it difficult or even impossible to obtain timely compliance. 254 Ariz. at 7 ¶21. The facts here illustrate the point: Hernandez called both circulators to testify at trial. **Stip. ¶¶5, 7**. Thompson did not appear. **Stip. ¶7**. And although Humphries testified, **Stip. ¶5**, his registration forms for other candidates—which were provided as trial exhibits by Hernandez, **Ex. F**—contain *different service of process addresses*, despite having been submitted to the Secretary over a mere nine-day period. *See* **Ex. D**.[7]

Second, voter confusion is almost certain to occur. For example, if a signer signs a nomination petition circulated by a non-resident who has not registered for the candidate who appears on the petition, and the signer then looks up the non-resident circulator in the Secretary's Circulator Portal, there would be no record or indication that the circulator is circulating petitions for that candidate—even though there may be for other candidates. A reasonable signer would be justified in being confused as to whether they signed a valid petition (and, if not,

[7] Humphries was called as a witness by Hernandez and appeared at the virtual trial using a link he received via email. **Stip. ¶5**.

confused as to whether they may legally sign another one, *see* A.R.S. § 16-1020 (making it a crime to knowingly sign a nomination petition "more than once")). Despite listing five other candidates for whom Humphries was registered to circulate, the Portal does not reflect that he circulated petitions for Hernandez.[8] The Portal likewise does not reflect that Thompson circulated petitions for Hernandez. Arizonans would be justified in assuming the Portal provides them a complete record of non-residents' registrations, and they would be understandably confused to learn either circulator here collected signatures for Hernandez.

Finally, both the state and the public have legitimate interests in being able to ascertain the identity of all the *other* candidates for whom the circulator is circulating petitions. For one, knowing such information would assist voters in assessing the reasons for the non-resident circulator's support of the Arizona candidate. For another, if concerns arise about alleged misconduct among non-resident circulator(s) for a candidate during the circulation period, the inability to ascertain which circulators have registered for which candidates could frustrate the state

[8] *See Circulator Portal*, Ariz. Sec'y of State, https://apps.azsos.gov/apps/election/circulatorportal/Home/Search (last accessed May 1, 2024).

and public's ability to effectively scrutinize the circumstances surrounding those non-resident circulators.[9]

Concluding that petitions circulated by the non-residents who failed to register for Hernandez substantially complied would suggest that a circulator need only register once before circulating for as many candidates as they wish. On the other hand, any middle-ground position would require an arbitrary judicial determination of, for example, whether a certain greater number or proportion of non-resident registrations substantially comply, or whether registrations within a certain timeframe likewise comply.[10] Thus, any rule other than enforcing the candidate-specific registration requirement would either defeat the non-resident registration requirement or prove unworkable.

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[9] *See, e.g.*, Laura Gersony, *Voters question signatures on petitions for Arizona Libertarian congressional candidate*, Ariz. Repub. (Apr. 6, 2024), https://www.azcentral.com/story/news/politics/elections/2024/04/06/libertarian-candidate-michelle-martins-petition-signatures-flagged/73225183007/.

[10] Similarly, these hypotheticals beg the question whether non-resident circulators need only register during one election cycle before circulating for any number of candidates across any number of cycles. *But see Leibsohn*, 254 Ariz. at 7 ¶21 ("eligibility of a circulator can change").

CONCLUSION

Humphries and Thompson did not register as out-of-state circulators for Hernandez, and thus have not complied—strictly, substantially, or otherwise—with Arizona law. All signatures they collected are invalid, thereby resulting in 75 additional invalidations and only 1,235 signatures remaining on the Nomination Petition. Thus, Hernandez has fewer than the 1,288 signatures required to qualify for placement on the 2024 primary ballot. This Court should declare so and remand with instructions to enter an order prohibiting Defendants from printing primary ballots with Hernandez's name on them.

DATED: May 2, 2024 By: */s/ Roy Herrera*

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