IN THE SUPREME COURT

STATE OF ARIZONA

LIANE BRECKLING, Plaintiff-Appellant, v. ARTURO HERNANDEZ, *et al.*, Defendants-Appellees.	No. CV-24-0087-AP/EL Maricopa County Superior Court No. CV2024-008720

BRIEF OF DEFENDANT-APPELLEE ARTURO HERNANDEZ

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INTRODUCTION

Defendant-Appellee Arturo Hernandez respectfully submits this brief to urge affirmance of the trial court judgment finding that Mr. Hernandez's nomination petition (the "Nomination Petition") contains a sufficient number of valid signatures to qualify him for placement on the July 30, 2024 primary election ballot as a candidate for the Green Party nomination for the office of United States Senator.

Only one strand of Appellant's skein of objections to the Nomination Petition remains for this Court to address. According to the Appellant, all signatures collected by a circulator of the Nomination Petition, Christopher Humphries, must be disqualified because the registration he submitted to the Secretary of State did not expressly reference Mr. Hernandez.[1] As the trial court correctly determined, however, the Appellant's theory of candidate-specific registration mandates finds no sustenance in the controlling statutes or the provisions of the 2023 Elections Procedures Manual ("EPM") that purport to implement them.

STATEMENT OF THE ISSUES

Was the trial court correct in finding that Humphries substantially complied with applicable laws by submitting to the Secretary of State circulator registrations containing

[1] The same objection extends to the registration of a second circulator, David Thompson. But because Thompson's registration affects only 12 otherwise valid signatures, *see* Trial Ex. 2 at 343–344 (fourteen signatures gathered by Thompson); Trial Ex. 9 at 22–23 (invalidating two of the fourteen signatures gathered by Thompson), his registration is immaterial. This brief will therefore focus on the registration and signatures collected by Humphries.

his current identifying and contact information, albeit in connection with other candidates' nomination petitions, prior to collecting signatures for Mr. Hernandez?

STATEMENT OF FACTS

Arturo Hernandez is seeking the nomination of the Green Party for the office of United States Senator in the July 30, 2024 primary election. On or around April 1, 2024, he filed with the Secretary of State the Nomination Petition, which contains 2,355 signatures. *See* Joint Stip. ¶ 2. Candidates seeking the nomination of the Green Party for a statewide office must submit a petition containing at least 1,288 signatures of qualified signers. *See id.* ¶ 3. On April 15, 2024, the Appellant initiated this action, which posited thirteen categories of legal objections to certain petition sheets and signature lines contained within the Nomination Petition. Upon service of the Complaint, the county recorders reviewed the challenged signature lines associated with individuals residing within their jurisdiction to verify those individuals' voter registration status on the date of signing. *See* A.R.S. § 16-351(E). The county recorders' findings, supplemented by certain stipulations of the parties and rulings of the trial court, resulted in the disqualification of 1,045 signatures, leaving the Nomination Petition with 1,310 remaining valid signatures. *See* Joint Stip. ¶ 4.

The Appellant appeals only the trial court's finding that Humphries and Thompson substantially complied with the requirement that they, as non-resident circulators, register with the Secretary of State prior to circulating the Nomination Petition. *See id.* ¶ 8. If this

Court agrees with the trial court's disposition of that question as to at least Humphries,[2] Mr. Hernandez is eligible for placement on the July 30, 2024 primary election ballot; if it does not, Mr. Hernandez will be disqualified. *See id.* ¶ 9.

ARGUMENT

I. Overview of the Substantial Compliance Standard

"[N]ominating petitions that are 'circulated, signed and filed' are presumptively valid, and the challenger bears the burden to prove, by clear and convincing evidence," an alleged infirmity in the signatures. *Jenkins v. Hale*, 218 Ariz. 561, 562–63, ¶ 8 (2008) (citations omitted)); *see also McClung v. Bennett*, 225 Ariz. 154, 156, ¶ 7 (2010). In contrast to the rigorous "strict compliance" rubric that governs exercises of the initiative, referendum and recall processes, *see* A.R.S. §§ 19-101.01, 19-102.01, 19-201.01, "a nomination petition need only substantially comply with the statutory requirements." *McKenna v. Soto*, 250 Ariz. 469, 471, ¶ 7 (2021); *see also Clark v. Munoz*, 235 Ariz. 201, 202, ¶ 6 (2014); *Malnar v. Joice*, 236 Ariz. 170, 172, ¶ 9 (2014) ("Candidates will not be disqualified based on an error or omission in nomination documents that substantially comply with statutory requirements."); *Sims Printing Co. v. Frohmiller*, 47 Ariz. 561, 567 (1936) ("If the candidate's nomination petition and his nomination papers *substantially* comply with the provisions of the law in form and substance, and are timely presented to

[2] *See supra* n.1.

the [filing officer], such candidate is entitled to have his name . . . printed upon the official ballot.").

The substantial compliance rubric is pragmatic in its orientation and flexible in its application. In the nomination petition context, it is "the intent and purpose of the law, not the letter, that must control," and "purely technical departures from the nominating form" are not fatal. *Adams v. Bolin*, 77 Ariz. 316, 320, 322 (1954); *see also Bee v. Day*, 218 Ariz. 505, 507, ¶ 10 (2008). If "the purpose and intent underlying" a given statutory requirement is vindicated, substantial compliance has been attained. *See McKenna*, 250 Ariz. at 473, ¶ 16. The overarching imperative is simply to ensure that the petition includes sufficient signatures of qualified voters and does not contain facial representations or omissions that would "confuse or mislead electors signing the petition." *Kennedy v. Lodge*, 230 Ariz. 134, 135, ¶ 7 (2012); *see also Whitman v. Moore*, 59 Ariz. 211, 225 (1942), *overruled in part on other grounds in Renck v. Superior Court*, 66 Ariz. 320 (1947) (emphasizing that "[t]he ultimate substantive question obviously is whether the signer is in all respects a qualified elector").

II. No Statute Requires Non-Resident Nomination Petition Circulators to Register Separately for Each Candidate

Humphries substantially—if not strictly—complied with A.R.S. §§ 16-321(D) and 16-315(D) because, prior to circulating the Nomination Petition, he submitted to the Secretary of State a registration that accurately disclosed his current identifying and contact

information, as well as an Arizona address at which process could be served. *See* Joint Stip. ¶ 5. The notion on which the Appellant's claim pivots—namely, that Humphries was required to have filed separate registrations for ***each*** candidate he assisted—is entirely detached from the statutory text and the purposes that undergird it.

A. Humphries' Registration Complies Strictly with the Governing Statutes

To disqualify the signatures that Humphries collected, the Appellant first must identify a predicate statute with which he ostensibly failed to comply. This intuitive syllogism is obvious, but it is the analytical threshold that the Appellant's claim tellingly struggles to cross. Courts' "task in statutory construction is to effectuate the text if it is clear and unambiguous." *S. Ariz. Home Builders Ass'n v. Town of Marana*, 254 Ariz. 281, 284, ¶ 16 (2023) (citation omitted). "Under this plain meaning analysis, '[w]e look first to the language of the provision, for if the [statutory] language is clear, judicial construction is neither required nor proper.'" *Planned Parenthood Ariz., Inc. v. Mayes*, 545 P.3d 892, 897, ¶ 15 (Ariz. 2024) (quoting *Perini Land & Dev. Co. v. Pima Cnty.*, 170 Ariz. 380 (1992)).

The truism that out-of-state circulators of nomination petitions must register with the Secretary of State derives from two statutory provisions. First, A.R.S. § 16-321(D) states, in relevant part, that a nomination petition circulator "is not required to be a resident of this state but otherwise shall be qualified to register to vote in this state pursuant to section 16-101 and, if not a resident of this state, shall register as a circulator with the

secretary of state." Second, A.R.S. § 16-315(D) directs that "[c]irculators 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 [EPM] a procedure for registering circulators and receiving service of process."

No language in either statute even indirectly evinces the proposition that registrations must be confined to a single candidate or the corollary that a circulator must register ***repeatedly*** and ***separately*** for each candidate he or she assists. Stated another way, Humphries' existing registrations on file with the Secretary of State do not lack compliance with a candidate-specific registration mandate because no such statute exists. *See generally Leibsohn v. Hobbs*, 254 Ariz. 1, 5, ¶ 13 (2022) (circulators' failures to specify residence unit number in their registrations did not establish non-compliance because the statute "does not require a 'mailing address,' which would necessitate a unit number to direct and ensure delivery of mail to people in multi-unit housing"); *Pioneer Trust Co. of Ariz. v. Pima Cnty.*, 168 Ariz. 61, 67 (1991) (attachment of surplus material to referendum petition was not a legal error because no statute prohibited it); *Workers for Responsible Dev. v. City of Tempe*, 254 Ariz. 505, 512, ¶ 26 (App. 2023) (reasoning that "because the legislature did not prohibit modification of the [petition] 'form' or otherwise specify that information in the form must immediately follow or precede other information, we cannot conclude

that [the] referendum petition failed to comply strictly with the statutory requirements"); *Van Riper v. Threadgill*, 183 Ariz. 580, 584 (App. 1995) (no statute prohibited including fewer than 15 signature lines on referendum petition form).

The documents that Humphries previously submitted to the Secretary undisputedly are "registrations," within the meaning of A.R.S. §§ 16-315(D) and 16-321(D), and Appellant does not allege that they falsely or incorrectly represent Humphries' identity, address or contact information. *See* Joint Stip. ¶ 5. There may be sound policy reasons to demand iterative registrations for each candidate whom a circulator assists, and "[i]f the legislature desires to add such a requirement, it may do so, but it is not our place to rewrite the statute." *Ballesteros v. Am. Standard Ins. Co. of Wis.*, 226 Ariz. 345, 349, ¶ 17 (2011) (internal citation omitted); *see also Sherrill v. City of Peoria*, 189 Ariz. 537, 541 (1997) ("Courts must resist the temptation to 'improve upon' or try to 'fix' otherwise clear statutory language in an effort to make it more useful or meaningful.").

A holistic appraisal of the statutory regime governing ballot access petitions confirms that nomination petition circulators' registrations need not be tethered to a specific candidate. *See generally BSI Holdings, LLC v. Ariz. Dept. of Transp.*, 244 Ariz. 17, 21, ¶ 19 (2018) ("We must not interpret terms in isolation, but rather in their overall context."). The Legislature knows how to mandate individualized registrations for particular petition drives, and has done so expressly in the initiative and referendum context. *See* A.R.S. § 19-118(B)(2) (a circulator's registration must identify "[t]he

initiative or referendum petition on which the circulator will gather signatures"); *Leibsohn*, 254 Ariz. at 7, ¶ 20 (construing Section 19-118 to require "that separate applications be submitted for each initiative measure, including separate affidavits").

Not only can a petition-centric registration mandate not be imported from Title 19 into Title 16, *see Powers v. Carpenter*, 203 Ariz. 116, 118, ¶ 10 (2002) (refusing to apply statute governing ballot measure petitions to candidate nomination petitions); *Morales v. Archibald*, 246 Ariz. 398, 401, ¶ 12 (2019) (declining to "conflate[] the process for recalls with those for initiatives and referenda")—but the disparate regulatory approaches actually affirmatively confutes Appellant's attempt to engraft a petition-specific registration component onto A.R.S. §§ 16-315(D) and 16-321(D). *See Workers for Responsible Dev.*, 254 Ariz. at 511, ¶ 24 ("Because the legislature has shown that it knows how to prohibit changes to election forms, it is noteworthy that A.R.S. § 19-101(A) does not explicitly prohibit modification to the referendum 'form.'"); *U.S. Parking Sys. v. City of Phoenix*, 160 Ariz. 210, 211 (App. 1989) ("Where a term is used in one provision of a statute and omitted from another, that term should not be read into the section where it is omitted.").

In short, Appellant's theory that a nomination petition circulator's registration is limited solely to a specific identified candidate finds nothing to sustain it in the text of A.R.S. §§ 16-315(D) or 16-321(D). There accordingly is no basis for finding Humphries' registration anything other than strictly compliant with these controlling statutes.

B. Humphries' Registration Substantially Complied With the Relevant Statutes Because It Contained Accurate Identifying and Contact Information

Even assuming that the Appellant could excavate from the recesses of A.R.S. §§ 16-315(D) or 16-321(D) a provision that requires or allows circulator registrations to be candidate-specific, Humphries' registration "as a whole substantially complies with the statutory requirements." *Bee*, 218 Ariz. at 508, ¶ 12.

The lodestar of any substantial compliance inquiry is whether the "purpose and intent underlying" the relevant statutory mandate have been effectuated. *See McKenna*, 250 Ariz. at 473, ¶ 16. Discerning the objective of the circulator registration statutes demands little speculation or inference. For years, Arizona had confined circulation of nomination petitions only to residents of the state. While invalidating that constraint as inconsistent with the First and Fourteenth Amendments' guarantees of expressive and associational freedom, the Ninth Circuit recognized Arizona's important interest in "ensur[ing] that circulators are subject to the state's subpoena power, and that the state can locate them within the ten-day period allotted for petition challenges." *Nader v. Brewer*, 531 F.3d 1028, 1037 (9th Cir. 2008). Adopting a more narrowly tailored means of attaining that end, the Legislature supplanted the residency prerequisite with a mandate that out-of-state circulators register with the Secretary of State and that the registration process include "a method of receiving service of process." A.R.S. § 16-315(D). This conception of circulator registration—*i.e.*, as a vehicle for locating and facilitating contact with

circulators—is consonant with, and complements, other statutes that direct all circulators (whether Arizona residents or not) to provide accurate residential information when verifying signatures they collect. *See* A.R.S. § 16-315(B)(4); *Lohr v. Bolick*, 249 Ariz. 428, 433, ¶ 22 (2020) (recognizing overall statutory objective of "ensur[ing] that a circulator can be contacted and questioned about the validity of gathered signatures").

Appellant counters that identifying a circulator's registration record is cumbersome if the registration cannot be tied to a specific candidate. Preliminarily, this assertion is factually dubious; the Secretary maintains a comprehensive and easily accessible database for searching circulator registrations.[3] More fundamentally, the ease of candidate-specific database searches is not an independent, statutorily protected interest. And the mere fact that the information made available to a voter on a ballot access form is imperfect or incomplete in some way does not establish a lack substantial compliance. *See Lohr*, 249 Ariz. at 433, ¶ 19 (candidate's use of UPS facility address in lieu of actual residence was substantially compliant because signer could still ascertain candidate's district residency); *Moreno v. Jones*, 213 Ariz. 94, 102, ¶ 44 (2006) (petition sheet that failed to disclose day and month of primary election remained substantially compliant); *Clifton v. Decillis*, 187 Ariz. 112, 115–16 (1996) (unaffiliated candidate's failure to specify a political party

[3] *See* Ariz. Sec'y of State, *Circulator Registration*, *available at* https://apps.azsos.gov/apps/election/circulatorportal/Home/Search; *see also Arizonans for Second Chances, Rehabilitation, and Public Safety*, 249 Ariz. 396, 403, ¶ 12 n.1 (2020) ("We may take judicial notice of the Secretary's website.").

designation on petition was not fatal); *Marsh v. Haws*, 111 Ariz. 139, 140 (1974) (use of abbreviations on petition was sufficient).

Here, it is undisputed that Humphries' registration with the Secretary, which was filed before he collected any signatures on Mr. Hernandez's behalf, fully and accurately provided his name, residential address, telephone number, email address, and an Arizona address at which he could be served with process. *See* Joint Stip. ¶ 5; Trial Ex. 24. That information not only enabled contact with Humphries, but he in fact appeared to testify in these proceedings and answer questions about the signatures he obtained. *See* Joint Stip. ¶ 5. Even assuming *arguendo* that in not expressly identifying Mr. Hernandez as a candidate for whom he collected signatures, Humphries' registration failed to strictly comply with a controlling legal directive, his disclosure of accurate and current contact information "fulfill[ed] th[e] purpose," *Lohr*, 249 Ariz. at 434, ¶ 22, of these statutes—namely, to ensure that he could be reached, validly served with process, and compelled to appear in Arizona courts. His registration thus substantially complied with A.R.S. §§ 16-321(D) and 16-315(D).

III. The EPM Does Not and Could Not Disqualify Otherwise Valid Petition Signatures Because a Nomination Petition Circulator Did Not Submit Multiple, Candidate-Specific Registrations

Likely recognizing that its theory of multiple candidate-centric circulator registrations finds little traction in statute, the Appellant struggles to transplant it into the EPM. That effort, however, is afflicted with at least three flaws.

First, the EPM simply does condition the validity of a circulator's registration on the identification of a particular affiliated candidate. To the contrary, the EPM (at p. 118) states only that "[o]nce 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)." Thus, to the extent the EPM contemplates a registration's relation to a named candidate, it tellingly denotes it as a ***post-registration*** disclosure—and not as a constitutive component of the registration itself. If this perfunctory sentence was meant to decree a new precondition to a legally sufficient registration, that intent certainly was not reified in the words the Secretary chose. *Cf. Feldmeier v. Watson*, 211 Ariz. 444, 449, ¶ 22 (2005) (rejecting claim that initiative petition affidavit failed to include required verbiage, reasoning that "[w]hile it may have been the legislature's intent to require" such language, "that intent is not clear from the face of [the statute]"). Further, while the instructions on the registration form template previously advised that "[e]ach circulator may register for only one candidate or petition serial number per form . . . .," *see, e.g.*, Trial Ex. 16 at 4–17; Trial Ex. 17 at 3–9, that language was later excised; the form used in the 2024 election cycle by Mr. Humphries states only that "[e]ach circulator may register for only one petition serial number per form . . . ." Trial Ex. 18 at 1–5.[4] Simply put, the EPM by its own terms does not purport to require candidate-specific circulator registrations.

[4] Petition serial numbers are unique to initiative and referenda, *see* A.R.S. § 19-111(B); they are not issued for nomination petitions.

Second, even if the EPM did devise a per-candidate registration regime, such an edict could not divest otherwise valid signatures of their legal sufficiency. The predicate statutory delegation is discrete and delimited; the Secretary is authorized merely to develop "a procedure for registering circulators," A.R.S. § 16-315(D)—*i.e.*, a means and method of inputting and filing a registration. As this Court has cautioned on more than one occasion, such narrow statutory delegations do not empower the Secretary to legislate substantive prerequisites to the validity of associated petition signatures. *See, e.g.*, *Leach v. Hobbs*, 250 Ariz. 572, 576, ¶¶ 20–21 (2021) (EPM's process for "de-registering" ballot measure petition circulators had no effect on circulator's statutory obligations or validity of associated signatures); *Lohr*, 249 Ariz. at 434, ¶ 23 (although Secretary had statutory authority to create electronic nomination petition signature platform, "there is no statutory requirement that a candidate state her address" on a related certification, and hence a candidate's failure to provide her address was not a basis for disqualifying signatures); *see also Ariz. All. for Retired Ams. v. Crosby*, 256 Ariz. 297, ¶¶ 17–18 (App. 2023) (EPM provision that authorized expanded post-election hand-count audit of ballots exceeded statutory authorization).

To be clear, the inclusion of a candidate-specific field in the Secretary's circulation registration form is not intrinsically unlawful or objectionable. Rather, the point is that this device of administrative convenience cannot be conflated with or subsumed into a circulator's statutory obligations. The notion of candidate-centric registrations is not a

substantive statutory facet of a valid circulator registration, and hence is not a "procedure," A.R.S. § 16-315(D), for effectuating such a registration.

Third, as discussed at length above (*see supra* Section II.B), even if—by dint of either an applicable statute or an enforceable EPM provision—disclosure of the associated candidate is an element of a complete circulator registration, Humphries' registration "as a whole," *Lohr*, 249 Ariz. at 431, ¶ 11 (citation omitted), substantially complied with the overall registration mandate because it included accurate and current information sufficient to enable contact with Humphries and procure his testimony in this proceeding. The signatures he collected for the Nomination Petition accordingly are (unless previously disqualified on some other ground) legally sufficient.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of the trial court.

RESPECTFULLY SUBMITTED this 2nd day of May, 2024.

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