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**SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY**

Xenia Orona, a qualified elector

Case No.:CV2024-008652

Plaintiff,

**DEFENDANT MICHAEL D BUTTS  
NOTICE OF APPEAL**

v.

MICHAEL D. BUTTS, a candidate for  
Office; ADRIAN FONTES, in his official  
Capacity as Secretary of State; MARICOPA  
COUNTY BOARD OF SUPERVISORS;  
and STEPHEN RICHER, in his official  
capacity as Recorder of Maricopa County.

(Assigned to Hon. Katherine Cooper)

Defendants,

Defendant Michael D. Butts (“Defendant”) hereby provides his notice of appeal pursuant to Ariz.  
R. Civ. App. P. 10 as follows:

**I. Parties Taking Appeal**

Defendant Michael D. Butts takes this appeal.

**II. Judgment or Portion of Judgment from Which the Parties are Appealing.**

Defendant appeals the final judgment entered on April 24, 2024 (Exhibit A), granting all Plaintiff's requested relief, and enjoining the Arizona Secretary of State from placing Michael D. Butts on the Democratic Party primary ballot for State Representative in Legislative District 11.

**III** All other orders and rulings in this matter

**IV. Court to Which the Party is Appealing**

Defendant appeals to the Arizona Supreme Court according to Arizona Rules of Civil Appellate Procedure (ARCAP), Rule 10 Appeals in Expedited Election Matters.

DATED this 28th day of April 2024.

/s/Michael D. Butts

Michael D. Butts

Pro Per

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HONORABLE KATHERINE COOPER

CLERK OF THE COURT  
M. R. Diaz  
Deputy

XENIA ORONA

JAMES E BARTON II

v.

MICHAEL D BUTTS, et al.

A DAVID BRAUN

ANNA GRIFFIN CRITZ  
BRADLEY J STEVENS  
KIMBERLY DENISE CHAMBERLAIN  
STEPHANIE R LARGE  
DANIELLA FERNANDEZ-LERTZMAN  
JUDGE COOPER  
DOCKET CV TX

RULING RE ELECTION CASE/CANDIDATE CHALLENGE

Plaintiff Xenia Orona, a qualified elector, challenges the nominating petitions filed by Defendant Michael D. Butts (“Butts”) for the Democratic Party candidate for State Representative in Legislative District 11. The Court has jurisdiction pursuant to A.R.S. § 16–351(A).

Butts filed 78 nominating petitions (also called “petition sheets”) containing 795 signatures with Arizona Secretary of State. The required number of signatures for candidacy for the office he seeks is 452 valid signatures.

In Counts 1 through 5 of the Complaint, Plaintiff challenges individual signatures for out-of-party and other statutory deficiencies. On April 17, 2024, the Maricopa County Recorder

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issued a report certifying 556 of the 795 as valid. (Record's Report, Trial Exh.3) Based on that finding, Plaintiff withdraws Counts 1-5.

Count 6 challenges the legal validity of 667 signatures under A.R.S. § 16-321(D) on the grounds that Butts certified these signatures as circulator but did not, in fact, circulate the petitions bearing those signatures.

Nomination petitions must be signed by a circulator who is a qualified elector of this state. A.R.S. § 16-315(B). A.R.S. § 16-321(D) identifies the circulator as the person “before whom the signatures were written” and requires the circulator to verify that the petitions have been signed in the circulator’s presence and that the circulator believes that each signer is a qualified signer. Similarly, the petition sheets that Butts signed expressly state, immediately before his signature, “that each of the names on the petition were signed in my presence on the date indicated” and that he believes each signer’s address and party affiliation qualifies them to sign the sheet.

“[S]tatutory 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). The failure to follow these procedures due to a clerical or inadvertent error will not automatically invalidate the signatures on a defective petition. However, when lack of compliance is purposeful, the signatures are deemed invalid. *Id.* at 455-456. As stated in *Brousseau*,

To allow the integrity of the nominating petition process to be violated by the... certification of the petitions by persons other than the actual circulators without any sanction other than the inconvenience of showing that the signatures were in fact authentic would render the circulation requirement meaningless and possibly lead to additional falsehood and fraud by others. We believe that there is a real difference between mere omissions or irregularities and fraud. It does not seem unreasonable to hold a candidate for an office of public trust to a high standard of ethical conduct regarding the observance of election laws. The only way to protect the process from fraud and falsehood is to make such conduct unprofitable. We hold that petitions containing false certifications by circulators are void, and the signatures on such petitions may not be considered in determining the sufficiency of the number of signatures to qualify for placement on the ballot.

*Id.*

In this case, clear and convincing evidence establishes that Butts verified petition sheets as the circulator knowing that he had not obtained the signatures in his presence as required by A.R.S. § 16-321(D). Butts admits that he signed sheets circulated by paid circulator Keith

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Mitchell. Mr. Mitchell testified that he contracted with Butts to provide the circulators who collected 283 signatures for Butts at the South Mountain/Laveen Fry's parking lot on March 23-26, 2024. Mr. Mitchell testified that, per their agreement, he charged Butts \$15 per signature. He stated that he billed Butts for 283 signatures. He testified that Butts told Mitchell to have the circulators leave the certification blank despite Mitchell's warning against that practice. Mr. Butts does not dispute Mitchell's testimony that he instructed Mitchell to leave the certification blank on the sheets circulated by Mitchell's team.

While Butts admits he signed sheets that he did not circulate, he disputes that the sheets contained 283 signatures. He testified that Mitchell collected only 100 signatures. The Court finds Mr. Mitchell's testimony as to the 283 figure to be credible. It is supported by text messages between Mitchell and Butts documenting Butts' refusal to pay Mitchell for 283 signatures. (Trial Exh. 7) The figure is also consistent with Mitchell's testimony as an experienced circulator regarding the number of signatures that four paid circulators can collect in three-four days.

Alternatively, Butts argues that the signatures are valid because they were done "in his presence." Specifically, he testified that he was at the Frys on March 23-26, 2024, and observed each signer who signed a petition for a paid circulator. However, Butts also testified that he was actively meeting voters, talking to them about his candidacy, and obtaining signatures from people coming and going through the parking lot. It is not reasonable to believe that he could have observed all 283 signers while simultaneously campaigning and collecting signatures himself. Further, even if he could have observed 283 signers in addition to his own, his mere presence in the parking lot is not sufficient to certify those signatures. The statute requires the circulator to be the person "before whom the signatures were written." In this case, 283 individuals wrote their signatures before a paid circulator. Finally, Mitchell and one of his co-workers, Ms. Lawson, testified that Butts was not present the entire time that the paid circulators were working. Having had the opportunity to observe the witness' demeanor while testifying, the Court finds Mitchell and Lawson to be credible.

In sum, the evidence establishes that Butts signed as circulator the petition sheets bearing 283 signatures that he knew he had not obtained. These signatures are invalid, leaving Butts with only 273 valid signatures (556 minus 283) and, therefore, not qualified for the Democratic Party primary ballot.

**IT IS ORDERED** enjoining the Arizona Secretary of State from placing Butts on the Democratic Party primary ballot for State Representative in Legislative District 11.

**IT IS FURTHER ORDERED** that this is a final order and entered pursuant to Rule 54(c), as there are no issues or claims remaining.

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Under A.R.S. § 19-118(F), a party must file a notice of appeal within five calendar days after entry of judgment. The Supreme Court may dismiss a belatedly prosecuted appeal, such as one filed on the last day of the statutory deadline. See *McClung v. Bennett*, 225 Ariz. 154, 235 P.3d 1037 (2010). Special procedural rules govern expedited appeals in election cases. Ariz. R. Civ. App. P. 10.

DATED this 24 day of April, 2024

/s/ Katherine Cooper  
HONORABLE KATHERINE COOPER  
JUDICIAL OFFICER OF THE SUPERIOR COURT