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**SUPREME COURT
OF ARIZONA**

Xenia Orona, a qualified elector

Case No.: CV-24-0088

Plaintiff,

**DEFENDANT MICHAEL D BUTTS
OPENING BRIEF**

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.

Defendants,

Defendant Michael D. Butts (“Defendant”) hereby provides his opening brief as
follows:

I. Introduction

Defendant, Candidate Michael D. Butts, seek and request the Arizona Supreme Court assistance in overturning the ruling of the Arizona Superior Court of Maricopa County which granted relief to the Plaintiff and thus ordered enjoining the Arizona Secretary of State from placing Butts on the Democratic Party primary ballot for State Representative in Legislative District 11 as referenced in Appendix 1-4. Upon reviewing this case, the Arizona Supreme Court will discover that there are four grounds for reversing the lower court's decision.

II. Ground One - Honorable Katherine Cooper made a legal error.

Plaintiff Xenia Orona challenged the nominating petitions as referenced in Appendix 47-202, filed by Defendant Michael D. Butts citing 6 claims in the verified complaint as referenced in appendix 34-45. All six claims were statutorily required by A.R.S. 16-351(A) to include the petition number, line number and basis for the challenge. Claims 1 through 5 met the statutory requirement of A.R.S. 16-351(A) which allowed the signatures included in these claims to be verified by the Maricopa County Recorder's Office Report as referenced in appendix 7-21. The Recorder's office used records containing voter registration data within their databases. A rigorous verification process was conducted and 239 signatures were found to be

invalid for definitive reasons. These reasons include the facts that 2-were illegible, 29-were of a different party, 143-were not registered, 60-were registered out of district, 2-were statutory invalid dates, 2-were statutory printed signature and 1-signature did not match as referenced in Appendix 9. Claim 6 as referenced in Appendix 41 (line item 25 classified as 36) and Appendix 42 (line item 1 classified as 37) did not meet the statutory requirements as prescribed in A.R.S. 16-351(A) and failed to list the petition numbers, and line numbers for the challenge for each signature being challenged. Claim 6 did meet the requirement to list the basis for the challenge but failed to list the petition number and line numbers. Plaintiff's complaint in the opening paragraph on page one as referenced in Appendix 34 (line item 20) advises that, "This is a challenge, pursuant to Arizona Revised Statutes, 16-351..." Plaintiff is aware of the burden that must be met due to A.R.S. 16-351. Yet, under the subsection of SIXTH CLAIM FOR RELIEF that begins in Appendix 41 they make a fatal statutory legal error. Complaint alleges that the Candidate Michael D. Butts paid circulators as referenced in Appendix 41(line item 25 classified as 36) . Appendix 42 at line 1 classified as number 37 the complaint states, "These sheets contained 286 signatures," A.R.S. 16-351(A) requires the elector to specify the petition number and not merely generalize by referencing, "These sheets".

Furthermore, 286 signatures can fit on a total of 29 petition sheets since each sheet contains spaces for 10 signatures. An experienced paid circulator would have their own tracking system to prove which petition sheets were collected in his presence so that an invoice can be accurately submitted for payment. The complaint failed to specify which 29 petition sheets contained the 286 signatures in question, which is a direct violation of A.R.S.

16-351(A). The plaintiff did not want to run the risk of specifying the wrong petition sheet which could pose the unimaginable possibility of failing to enjoin Candidate Michael D. Butts from being placed on the primary ballot. The defendant filed a motion to dismiss the entire complaint or at the very least, dismiss claim number 6 as referenced in Appendix 22-25. The judge denied the motion to dismiss as referenced in Appendix 46, which was a legal error.

III. Ground Two - Evidence in the case does not support the verdict

Upon reviewing the list of exhibits(as referenced in the index), it is clear that the plaintiff did not have the evidence to support claim number 6 in the complaint. The ruling declared that a random number of 283 signatures were invalid giving the plaintiff relief to claim number 6 in the complaint as referenced in Appendix 3. The plaintiff failed to file supporting exhibits or designate during the trial which of the 29 out of the total 78 petition sheets bearing the 283 signatures were considered

to be invalid. The Maricopa County Recorder or other officer in charge of elections is required by A.R.S. 16-351(E) to perform petition signature verifications which is a very scientific and rigorous process. The ruling reflects that mere testimony was used as evidence to invalidate a random number of 283 signatures from unknown petition numbers which is a direct violation of A.R.S. 16-351 as referenced in Appendix 1-4. Furthermore, witness Keith Mitchell claimed during his testimony that he billed candidate Michael D. Butts an invoice but an invoice was never submitted into evidence by the plaintiff. Last, witness Ebo'nyi Lawson claimed during her testimony that she had pictures of the petitions she circulated but photos were never submitted into evidence by the plaintiff.

III. Ground Three - An Unfair Trial Ensued

Election challenges occur in an expedited fashion. The complaint was filed on April 15, 2024 and the trial occurred seven days later on April 23, 2024. An expedited matter should have safeguards in place to prevent harm to innocent defendants and voters. The safeguard that is in place is embedded in A.R.S. 16-351(A). This concern was raised by the defendant by filing a motion to dismiss regarding the violation of A.R.S. 16-351(A) on April 19, 2024 as referenced in Appendix 22-25. The defendant was not of the position that his signatures shouldn't be challenged after all, this process ensures election integrity. What should not occur is a trial by ambush or surprise. By not listing the specific petition

numbers in the complaint this allowed the plaintiff to have an unfair advantage and ultimately resulted in an unfair trial followed by an unfair verdict. The defendant deserves the right to know which 283 voter signatures are being challenged pursuant to A.R.S. 16-351(A). The defendant deserves the right to know which 283 voters will not be allowed to nominate their candidate of choice on the Democratic Party primary ballot in Legislative District 11. The voters deserve the right to know which of their signatures will not be allowed to nominate their candidate of choice on the Democratic Party primary ballot in Legislative District 11. A.R.S. 16-351(A) provides these deserved rights in an expedited election matter.

IV. Ground Four - Defendant's attorney was not able to provide effective counsel.

Plaintiff failed to meet the statutory requirements of a petition challenge as outlined in A.R.S. 16-351(A). This legal error compounded the effect on the counsel for the defendant, and his ability to call voters to testify as to who was circulating the petition at the time that they signed their name to nominate candidate Michael D. Butts. An ambush is powerful in perpetuating the purpose of preventing counsel to mount a sound and prepared defense. The right for the defendant to know which voters needed to be present for the trial was greatly hindered by the blatant disregard to follow the statutes within a valid petition challenge as required in A.R.S. 16.351(A). It wasn't until the trial where the

defendant learned that petitions numbers 4, 5 and 42 were identified by the plaintiff's witnesses, Keith Mitchell and Ebo'nyi Lawson. These three petition pages were the only ones that the plaintiff identified for claim number 6 of the complaint. Together, these three petitions included 24 signatures. These specific petition pages were available to the witnesses before the complaint was filed on April 15, 2024. This begs the question as to what was the true purpose of disregarding the statutory requirements of A.R.S. 16-351(A). The lack of specificity in the complaint as to claim 6 was intentional and with the sole purpose to prevent candidate Michael D. Butts from being on the ballot instead of a legitimate effort to enforce election integrity.

Conclusion

The four grounds stated above are presented to the Supreme Court of Arizona as it has the statutory authority to overturn a lower court's ruling as prescribed in A.R.S. 16-351(A). In fact, this is the only court that can ensure that innocent parties are not harmed and that registered voters are not prevented from participating in their civic duties and rights due to procedural errors such as the one that occurred in this original case of CV2024-008652. Candidate Michael D. Butts, moves the Arizona Supreme Court to see the misinterpretation of the A.R.S. 16-351(A) and reverse the Arizona Superior Court's decision thus allowing the sufficient number of registered voters needed and that was acquired to qualify

Candidate Michael D. Butts on the Democratic Party primary ballot for State
Representative in Legislative District 11.

DATED this 2nd day of May 2024.

/s/Michael D. Butts

Michael D. Butts

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