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**SUPREME COURT
OF ARIZONA**

Arizona Supreme Court

Xenia Orona, a qualified elector

Case No.: CV-24-0088-AP/EL

Plaintiff,

Maricopa County

Superior Court

No.: CV 2024-008652

v.

APPELLANT'S REPLY BRIEF

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.

(Expedited Election Matter)

Defendants,

INTRODUCTION

This reply is intended to inform the Arizona Supreme Court why the Appellee's arguments in their Answering Brief are incorrect.

STATEMENT OF FACTS

Appellee incorrectly asserts as true that Mr. Butts directed Mr. Mitchell to have his crew leave the certification blank on the back of the sheets that they collected. This was based on mere testimony of Mr. Keith Mitchell. As mentioned in the appellants' Motion to Dismiss (I#11) and appellants' testimony referenced in the ruling (I#20) that Mr. Butts certified and signed the backs of the petitions consisting of signatures from voters that he saw, and even spoke with while supervising, educating and working alongside the witness Keith Mitchell.

ISSUES PRESENTED FOR REVIEW

Parties agree and disagree on several key issues. The disagreements are presented as questions for judicial review by the Arizona Supreme Court.

1. Does A.R.S. 16-351(A) exclude petition challenges alleging fraud?
2. Should count 6 in the verified complaint be subjected to A.R.S. 16-351(A)?
3. Does the admitted evidence support the trial court's judgment?
4. When the Candidate and the circulator Keith Mitchell are standing next to each other, who should be deemed as the person eligible to sign the back of the petition?
5. How should the term "in his presence" on the back of the petition be interpreted?

6. Should the alleged 283 signatures in the judgment be cross referenced with the 239 signatures that were already deemed invalid per the Maricopa County Recorder's Office to prevent double, and unfair harm to the voters and Candidate Michael D. Butts?

ARGUMENTS

I. Appelle states that Mr. Butts falsified his circulator certifications.

Appelle incorrectly associates Candidate Russell Jones with Candidate Michael Butts. Candidate Jones certified petitions that were circulated in Yuma while Jones was proven to be in Phoenix and thus misled the court.

Appelle incorrectly associates Candidate Fitzgerald with Candidate Michael Butts. Candidate Fitzgerald had petitions circulated by minors. As a result these circulators were ineligible to be circulators and as a result Candidate Fitzgerald falsified the certification of those petitions as a cover up.

A. Appellee states that Mr. Butts failed to meet the standard to overturn findings of fact. This is incorrect.

1. Appelle states that ample evidence supports the Trial Court's findings of fact.

Although transcripts were unable to be obtained due to an expedited timeline process, the Arizona Superior court provided an

index with all of the documents that were submitted into evidence.

The Arizona Supreme Court will find that the plaintiff failed to produce evidence outside of mere testimony to support the Arizona Superior Court's verdict such as exact petition page numbers required in the verified complaint as referenced in A.R.S 16-351(A), and the photos of the petitions that Ms. Lawson said she saved within her mobile phone but did not submit it as evidence. The Arizona Supreme Court has the jurisdiction and authority to determine if the evidence did or did not support the verdict.

2. Appelle states that the Trial Court's credibility determination should not be disturbed.

Although appelle states that the trial court judge is sitting without a jury and is judge of the credibility of witnesses, the appeal process allows for a review of a judgment to ensure that the Trial Court did not make any legal errors, or if evidence supports the verdict, or in determining that a trial was unfair, or if defendants' counsel was blindsighted and unprepared to mount a defense for his client due to a trial by ambush. The trial court used "credibility" or hearsay in the absence of evidence. The ruling (I#20) states that the appellant turned in 283 signatures that were collected by a paid

circulator as evidenced by Trial Exhibit 7 (I#20). This exhibit is not listed on the electronic index for unknown reasons. Was this evidence admitted and if so why is it listed on the exhibit worksheet (I#21) and not the electronic index provided by the trial court. Mr. Butts testified that he certified the signatures that voters signed in his presence and before him, as described in the ruling (I#20). Parties agree that Mr. Butts was present but disagreed on how long he was present. Mr. Butts alleges that while present, he was in his right to certify the petitions containing the signatures of eligible voters that were signed before him. Appellee alleges that 283 signatures were certified falsely. Parties disagree on the facts. Evidence or the lack of evidence needs to be reviewed by a higher court who can make the final determination if the verdict was in fact rooted in evidence.

B. Appelle states that Mr. Butts admitted to disqualifying conduct.

Mr. Butts did not admit to falsifying petition certifications. Mr. Butts alleges that while present he was in his right to certify the petitions containing the signatures of eligible voters that were signed before him according to A.R.S. 16.321(D). Mr. Butts interacted with voters, shook their hands and thanked them for their support as described in the ruling (I#20).

Appelle again cites an inappropriate case known as *Moreno v. Jones* (2006). This case is about a Candidate who certified petitions that were circulated in a different city such as Yuma while the Candidate was physically in another city such as Phoenix. Yuma voters could not have signed the petition in the presence of Jones who was in the city of Phoenix on the date the signatures were recorded. The appelle also cites an inappropriate case known as *Brousseau v. Fitzgerald* (1984). This case is about circulators who were minors and thus are not eligible to circulate petitions which is why Candidate Fitzgerald needed to cover up this grave error. Candidate Michael Butts supervised, educated and stood alongside the paid eligible circulators while interacting with voters as referenced in (I#20).

II. Appelle states that Arizona Law supported the trial court denying the Motions to Dismiss.

The appelle states that the Verified Complaint (I#1) identified the sheets challenged in count 6. This is incorrect. The Verified Complaint (I#1) simply states “These Sheets” instead of the petition page numbers that include the 286 alleged signatures in question which is a violation of A.R.S. 16-351(A).

A. The appelle states that petitions challenged in Count 6 were identified.

The complaint (I#1) wants an action of throwing out or invalidating almost 690 signatures based on the allegation that 286 signatures were certified by Candidate Michael Butts falsely. To be in compliance with

A.R.S. 16-351(A) the complaint (I#1) would need to identify 286 signatures, their page and line numbers, the basis for challenge and then ask for the relief from the court to invalidate almost 690 signatures. The appelle attempts to circumvent the need to comply with A.R.S. 16-351(A) by inaccurately citing *Brousseau v. Fitzgerald* (1984) and claiming, because of alleged fraud then almost all of 690 signatures are invalid. The appelle has an interest in invalidating as many signatures as possible to disqualify Candidate Butts even if these said signatures are discredited once by the Petition Signature Worksheet (I#18) and then discredited a second time by alleged fraud. For example, a voter's signature should not be tossed out once because they forgot to update their voter registration after moving into the district and then tossed out a second time for alleged fraud. This is exactly what the trial court did in its ruling in the final judgment (I#20).

B. The appelle states that A.R.S. 16-351 does not require fraud allegations to name the sheet number and line number as it does for individual signature challenges.

The appelle incorrectly interprets that the statutory requirements to meet a petition challenged as outlined in A.R.S. 16-351(A) as more directive than mandatory. To the contrary, it is mandatory, to the extent that the consequences for being out of compliance states, "Failure to specify this

information shall result in the dismissal of the court action”. Complying with this statute allows the Candidate and their counsel to appropriately prepare a defense, contact petition signers and prepare for cross examination of the appelle witnesses. By being out of compliance, allowed the appelle to prepare for trial with witnesses and prepared testimony with false allegations and hand-crafted exhibits. By being out of compliance, the appelle was positioned to ambush the Candidate and his counsel during a 2 hour trial that swiftly and unfairly disqualified him from the ballot.

C. Appelle states that Mr. Butts cannot benefit from the product of his deception.

The appelle incorrectly asserts that Candidate Butts engaged in deception making it impossible for the appellee to disclose the petition pages and line numbers. The parties disagree not on Candidate Butts being present but on the length of his presence. Candidate Michael Butts sufficiently and legally collected 104 more signatures that were needed to qualify for the ballot as supported by the Petition Signature Worksheet listed as Exhibit 3 (I#18).

III. Appelle states that the Appeal of the Motion to Dismiss is Not Before This Court.

The notice of appeal (I#23) was filed regarding a final judgment (I#20) that states, “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. As a result, the Notice of Appeal from a final judgment need not list any intermediate orders issued by the Arizona Superior Court in the Notice of Appeal.

Furthermore the Motion to Dismiss (I#11) is included in the index as provided by the Arizona Superior Court. The Motion to Dismiss documents will show and reflect that the trial courts were alerted to complaints of non-compliance of A.R.S. 16-351(A) as it relates to count 6. The lower court's ruling on the motion to dismiss (I#16) will strengthen the reason for the appeal to the Arizona Supreme Court. Within this document the Arizona Supreme Court will be able to see how the lower court incorrectly interpreted and cited A.R.S. 16-321(D) as a basis for rejecting the motion instead of approving the motion.

CONCLUSION

For the stated reasons as listed in the appellants opening brief and the reply brief, Appellant urges the Court to reverse the Arizona Superior Court’s decision that enjoined the Arizona Secretary of State from placing Candidate Michael D. Butts on the 2024 Democratic Party primary ballot for State Representative in Legislative District 11.

DATED this 8th day of May 2024.

/s/Michael D. Butts

Michael D. Butts

Pro Se