

**IN THE SUPREME COURT
OF THE STATE OF ARIZONA**

ROBERT BACKIE, an individual and a
qualified elector of Congressional District
1,

Plaintiff/Appellant,

v.

KIM GEORGE, an individual; ADRIAN
FONTES, in his official capacity as
Arizona Secretary of State; MARICOPA
COUNTY BOARD OF
SUPERVISORS; JACK SELLERS, in
his official capacity as Maricopa County
Supervisor; THOMAS GALVIN, in his
official capacity as Maricopa County
Supervisor; BILL GATES, in his official
capacity as Maricopa County
Supervisor; CLINT HICKMAN, in his
official capacity as Maricopa County
Supervisor; STEVE GALLARDO, in his
official capacity as Maricopa County
Supervisor; STEPHEN RICHER, in his
official capacity as Maricopa County
Recorder;

Defendants/Appellees.

No. CV-24-0089

Maricopa County Superior Court
No. CV2024-008687

APPELLANT'S BRIEF

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Before collecting signatures on candidate nomination petitions, out-of-state circulators must register with the Secretary of State (the “Secretary”). To this end, the Secretary has wielded his binding regulatory authority to require that circulators register to circulate on behalf of a *specific* candidate before they can satisfy their registration obligations—not merely when the circulator creates an account within the Secretary’s Circulator Portal. Failure to comply is fatal, as any signatures collected prior to complete registration are invalid.

Despite these straightforward requirements, five out-of-state circulators who circulated petitions on behalf of Defendant Kim George (“George”) failed to timely register to circulate her petition, either by waiting to add her candidate petition to the circulator’s Portal account *after* they began collecting signatures or by declining to add George’s petition at all. In doing so, those circulators failed to timely provide a host of vital information required by the 2023 Elections Procedures Manual (“EPM”) necessary to effectuate registration. For that reason, all signatures collected by these circulators must be disqualified in accordance with the EPM.

Accordingly, because George falls short of the required number of valid petition signatures, Plaintiff/Appellant Robert Backie (“Plaintiff”) respectfully requests that this Court reverse the superior court’s order and enjoin George from appearing on the 2024 primary election ballot for the Republican Party nomination

for the office of U.S. Representative for Congressional District 1 (“CD1”).

STATEMENT OF FACTS AND CASE

I. Arizona’s Statutory and Regulatory Framework for Circulator Registration.

The statutory framework for candidate nomination procedures is in Title 16. Pursuant to A.R.S. § 16-315(D), out-of-state circulators of candidate nomination petitions “must be registered as circulators with the [Secretary] before circulating petitions.” *See also id.* § 16-321(D) (“The person before whom the signatures were written on the [candidate petition] signature sheet ... shall register as a circulator with the [Secretary].”).

Because the statute leaves open the question of when “registration” occurs, this determination is specifically delegated to the Secretary to promulgate through the EPM. *See id.* § 16-315(D) (“The [Secretary] shall establish in the instructions and procedures manual issued pursuant to section 16-452 a procedure for registering circulators and receiving service of process.”). Because “the EPM has the force of law,” any rule promulgated therein is legally binding. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63 ¶ 16 (2020).

Under the EPM, “[c]irculators who are not residents of Arizona must register with the Secretary [] prior to circulating ... a candidate petition in any Arizona jurisdiction,” and “[f]ailure to do so invalidates the signatures collected by the circulator prior to registration.” EPM at 117 (citing A.R.S. § 16-321(D)). To

that end, the Secretary has directed that “[c]irculator registration must be conducted *as prescribed by the Secretary of State through the electronic Circulator Portal.*”¹ *Id.* at 118 (emphasis added). Additionally, “[a] circulator registration is not complete until the Secretary of State confirms the registration in writing.” *Id.*

Circulators must also “satisfy the following requirements when registering” through the Circulator Portal:

- Provide name, residential address (or description), phone number, and email;
- Consent to the jurisdiction of Arizona courts in resolving any litigation;
- Provide an Arizona address at which the circulator will accept service of process related to litigation concerning that circulator’s petitions; and
- Indicate the circulating organization at which the circulator is employed (if applicable).

Id. “Once a circulator is properly registered, the circulator must select in the Circulator Portal the petition(s) they will circulate (by ... candidate name).” *Id.* Further, a “circulator may update or cancel their circulator registration for any or all measures directly through the Secretary of State’s Circulator Portal,” which includes candidate petitions. *Id.* at 119.

¹ This Circulator Portal is the Secretary’s password-protected website that guides a prospective circulator through all steps of the registration process. *See* Joint Stipulation of Facts (“Stip.”) ¶¶ 23–24.

Proceeding from these directives, the Secretary promulgated a Circulator Guide that offers specific instructions on how to implement the EPM and explains the mechanics of how circulators must register through the Circulator Portal. *See* Stip. ¶¶ 23–35.

First, prospective circulators must “Sign Up” for a Circulator Portal account. *Id.* ¶ 24. At this step, circulators provide their legal name, physical address, and temporary Arizona address, but do not indicate whether they are paid or out-of-state, consent to Arizona jurisdiction, or provide a service of process address. *Id.* Afterward, the Secretary sends a “Confirmation Email,” which states “[t]hank you for signing up,” contains a Circulator ID number, and contains a link to the Circulator Guide. *Id.* ¶¶ 24–25. Circulators also gain initial access to the Circulator Portal, which states that circulators “haven’t registered any petitions yet.” *Id.* ¶¶ 27–28.

Next, prospective out-of-state circulators must “Register” by designating in the Circulator Portal each individual candidate petition they wish to circulate and completing a “Circulation Registration Form.” *Id.* ¶¶ 26, 28–35. Unlike the “Confirmation Email” at account sign-up, the Circulator Registration Form requires circulators to indicate whether they are paid or out-of-state, consent to Arizona jurisdiction, provide the petition’s jurisdiction (federal, state, or local), a service of process address, and the candidate’s name. *Id.* ¶¶ 32, 34; APP-0125–34.

The Form also includes an express reference to A.R.S. § 16-321(D) and requires the circulator to certify (by checking a box) that “circulator registration is not complete until [the circulator has] submitted this form and [has] received a confirmation of receipt from the [Secretary’s] Office.” Stip. ¶ 35; APP-0125–34. Until circulators “complete this step,” they are “not registered to circulate that petition,” and “[a]ny signatures collected before the date on the petition registration may be subject to rejection.” Stip. ¶ 26.

After circulators submit the Circulator Registration Form, the Secretary sends a confirmation email to the circulator with a PDF link to the completed Form. *Id.* ¶ 30. At this point, the circulator will first appear in the Secretary’s “Circulator Registrations” search website, allowing the public to understand (before candidate petitions are filed) which circulators are working for which candidates and whether those circulators are paid or out-of-state. *Id.* ¶ 37.

II. Relevant Procedural History.

On or around April 1, 2024, George filed nomination petitions with the Secretary purporting to contain 2,807 signatures for the Republican Party nomination for the office of U.S. Representative for CD1. *Id.* ¶ 3. Under A.R.S. § 16-322(A)(2), the minimum number of valid nomination petition signatures required for her to qualify for the primary ballot is 1,742. *Id.* ¶ 5.

On April 15, 2024, Plaintiff filed his Verified Complaint for Special Action

and Declaratory and Injunctive Relief (the “Complaint”), challenging 1,423 signatures as invalid due to numerous deficiencies. APP-0010–53. Primarily, Plaintiff argued that 1,057 of George’s nomination petition signatures were invalid because they were collected by five out-of-state circulators who failed to timely register with the Secretary: John Lopez, Isabella Ramirez, Elijah Weltman, Caleb Okwaraji, and Christopher Humphries. APP-0014–15, 0094–96, 0125–134; Stip. ¶¶ 41–58. Plaintiff also challenged 398 additional signatures on a variety of other grounds. APP-0012–14.

On April 19, 2024, the Maricopa County Recorder’s Petition Verification Report (the “County Recorder Report”) disqualified 249 petition signatures. Stip. ¶ 7. The parties also submitted a Joint Pretrial Statement stipulating to the pertinent facts, APP-0054–88, as well as simultaneous pretrial memoranda on the legal issue addressed here, APP-0089–134, -0160–67.

On April 24, 2024, the superior court conducted a hearing on Plaintiff’s Complaint. Following his ruling from the bench, on April 26, 2024, the court issued a signed Judgment and Order denying Plaintiff’s requested injunctive relief. The court held that petitions circulated by out-of-state circulators who had registered to circulate George’s petitions *after the fact* were nonetheless valid. APP-0003–06. Specifically, the court reasoned that: (1) A.R.S. § 16-321(D) does not require out-of-state circulators to register before circulating petitions; (2) the

EPM’s registration directives merely require circulators to initially *sign up* through the electronic Circulator Portal, not actually add any candidate petitions; (3) nomination petitions need only substantially comply with the statutory requirements, and merely signing up for a Portal account constituted substantial compliance here; (4) the relevant provisions of the EPM are geared towards Title 19 requirements governing initiatives and referenda, which should not necessarily apply to candidate petitions under Title 16; and (5) the Circulator Guide is not incorporated into the EPM as binding law. APP-0003–05.

The superior court entered a Rule 54(c) judgment denying Plaintiff’s requested relief. On April 26, 2024, Plaintiff promptly filed his Notice of Appeal. APP-0007–09. This Court has jurisdiction under A.R.S. §§ 12-2101(A)(1), (5)(b), and 16-351(A).

STATEMENT OF THE ISSUES

1. Under Arizona law, when are out-of-state candidate petition circulators “registered” with the Secretary to circulate petitions on behalf of a candidate: (1) when circulators create a Circulator Portal account with the Secretary and obtain a generic circulator ID, or (2) when circulators add a specific candidate to their Circulator Portal account, designate themselves as out-of-state circulators, provide a service of process address, consent to the jurisdiction of Arizona courts, and receive written confirmation via a completed Circulator

Registration Form?

2. Are signatures collected by out-of-state circulators prior to the date of registration with the Secretary invalid as a matter of law?

3. Did George submit enough valid petition signatures to be placed on the ballot for the July 30, 2024, primary election?

STANDARD OF REVIEW

Questions of law involving candidate nomination petitions are reviewed de novo. *Jenkins v. Hale*, 218 Ariz. 561, 563 ¶ 10 (2008).

ARGUMENT

I. Signatures Collected by the Challenged Circulators Are Disqualified Because They Failed to Register Before Circulating Petitions on Behalf of George.

Under Arizona law and the rules promulgated in the EPM, out-of-state circulators must complete the Secretary’s registration process, which requires circulators to register for a specific candidate before circulating that candidate’s petitions. However, five of George’s circulators failed to complete their registrations with the Secretary prior to circulating. Their “[f]ailure to [register] invalidates the signatures collected by the circulator prior to registration.” EPM at 117 (citing A.R.S. § 16-321(D)).

A. The EPM Requires Circulators to Register with Specific Candidates Prior to Circulating Petitions.

The directives in Arizona law are clear: out-of-state candidate circulators

“must be registered as circulators with the [Secretary] *before circulating petitions.*” A.R.S. § 16-315(D) (emphasis added); *see also* § 16-321(D) (similar). In other words, registration precedes circulation as a statutory command. Although the statute leaves open at what point circulators are considered “registered,” at least five provisions in the 2023 EPM indicate that registration can only be considered “complete” *after* the circulator registers to circulate on behalf of a specific candidate. *See* A.R.S. § 16-315(D) (Secretary must “establish in the [EPM] a procedure for registering circulators and receiving service of process.”); *see also* *Ariz. Pub. Integrity All.*, 250 Ariz. at 63 ¶ 16.

First, the EPM leaves no doubt that “[c]irculators who are not residents of Arizona must register with the Secretary of State *prior to circulating* ... a candidate petition in any Arizona jurisdiction,” and that “[f]ailure to do so invalidates the signatures collected by the circulator prior to registration.” EPM at 117 (citing A.R.S. § 16-321(D)). This regulation operates as a natural extension of A.R.S. § 16-321(D) by providing an enforcement mechanism to invalidate signatures that do not comply with the registration mandate.

Second, to be considered registered under the EPM, circulators must satisfy several requirements “when registering with the Secretary” through the Circulator Portal. *Id.* at 118. For instance, they must: (1) consent to the jurisdiction of Arizona courts in resolving any litigation; (2) provide an Arizona address at which the

circulator will accept service of process; and (3) if applicable, disclose the circulating organization at which the circulator is employed. *Id.* Because this information can only be provided when the circulator adds a specific candidate's petition to their Circulator Portal account, it cannot be true that registration is complete if all the circulator has done is sign-up for an account.

Third, “[c]irculator registration must be conducted *as prescribed by the Secretary of State through the electronic Circulator Portal.*” *Id.* (emphasis added). In other words, the Secretary has prescribed that completion of the Circulator Portal's procedures is required to “register” as an out-of-state circulator. Like every other rule promulgated throughout the EPM, this requirement was expressly approved by the Attorney General and the Governor as the mechanism to “establish . . . a procedure for registering circulators and receiving service of process.” A.R.S. § 16-315(D).

Because the EPM by its terms requires compliance with the Circulator Portal processes, the Secretary has adopted specific instructions explaining how circulators must use the Portal to register. *See* Stip. ¶¶ 22–35. Although not technically incorporated into law, the Circulator Guide operates as a persuasive interpretation of the steps required under the EPM to complete that process. According to the Guide, registration requires two steps: (1) the “Sign Up” step, which simply requires circulators to enter certain biographical information—such

as their legal name, physical address, and (if applicable) temporary Arizona address—and (2) the “Registration” step, which requires registering for “each individual petition [they] wish to circulate” in the Circulator Portal. *Id.* ¶ 26.

Unlike the “Sign Up” process, “Registration” allows circulators to satisfy the EPM’s requirements (at 118) by filling out a Circulator Registration Form, which in turn captures whether the out-of-state circulator is paid or out-of-state, the applicable circulation jurisdiction, a service of process address, the circulator’s employer, and the specific candidate’s identity. *Id.* ¶¶ 32, 34. By completing the Form, the circulator certifies (by checking a box on that Form) that “circulator registration is not complete until [the circulator has] submitted this form and [has] received a confirmation of receipt from the [Secretary].” *Id.* ¶ 35. The Guide is clear: until circulators “complete this step,” they are “*not registered to circulate that petition*,” and “[a]ny signatures collected before the date on the petition registration may be subject to rejection.” *Id.* ¶ 26 (emphasis added); *see also id.* ¶¶ 27–28 (showing that before circulators add a petition, they “haven’t registered any petitions yet.”). In other words, circulators are placed on notice that they have not complied with the EPM’s Circulator Portal directives until this step is completed. But even without the Guide to explain this, the registration steps required by the EPM are self-evident by logging into the Portal.

Fourth, the EPM states that “circulator registration is not complete until the

Secretary of State confirms the registration in writing.” EPM at 118. As a matter of procedure, only the Circulator Registration Form can possibly satisfy this requirement. Unlike the “Confirmation Email” received at the initial “Sign Up” stage, which merely says, “[t]hank you for signing up,” and provides the circulator’s ID number, *id.* ¶ 24, the completed Circulator Registration Form includes several key pieces of information required by the EPM, such as a service of process address and jurisdictional consent, *id.* ¶ 34; *see also* APP-0125–34. It also includes an express reference to A.R.S. § 16-321(D), demonstrating that *this document* is what satisfies the requirement for out-of-state circulators to register. *See, e.g.*, APP-0125–34. In contrast, a “Confirmation Email” does not contain *any* reference to registration or the EPM’s requirements. Stip. ¶ 24.

Fifth, and finally, circulators may “update or cancel their circulator registration for any or all measures directly through the Secretary of State’s Circulator Portal.” EPM at 119; *see also* Stip. ¶ 28 (circulators “have the option to unregister for petitions for which [they] have previously registered.”). Because of the availability of this option, it would not make sense to conclude that out-of-state circulators are fully registered by virtue of their initial account creation, as any “deregistration” would have a meaningless effect.

In sum, it cannot be disputed that under the EPM, circulators must provide the Secretary with certain information necessary to effectuate service of process,

comply with the Circulator Portal’s procedures, and receive a final written confirmation before they are considered “registered” to circulate petitions. Because circulators Lopez, Ramirez, Weltman, and Okwaraji did not satisfy these requirements until *after* they began collecting, and Humphries never bothered to satisfy this step at all, *see id.* ¶¶ 41–58, all 1,057 signatures gathered by those circulators are invalid as a matter of law. The analysis should end there.

B. The Superior Court Incorrectly Declined to Strike Signatures Collected by the Challenged Circulators.

Although the challenged circulators undoubtedly failed to comply with the registration process promulgated by the Secretary, the superior court declined to strike the signatures of circulators Lopez, Ramirez, Weltman, and Okwaraji and, in doing so, found that George had enough signatures to qualify for the ballot. APP-0004–05.² This ruling is premised on several errors that should be overturned.

1. The Superior Court Misinterpreted Both Title 16 and the EPM.

As discussed above, it is manifestly clear that both Title 16 and the EPM—especially when read together—invalidate all signatures collected before the challenged circulators specifically registered to circulate on behalf of George. However, in explaining its decision, the superior court largely relied on a flawed

² Notwithstanding its other errors the superior court correctly invalidated the signatures collected by Humphries. APP-0005. But its rationale is contradictory. If Humphries’ signatures were invalid for failure to add George to Humphries’ Portal account, that means the final “Registration” process is indeed significant after all.

interpretation that defies the plain language of these provisions.

With respect to Title 16, the superior court curiously infers that the Legislature did not intend to mandate “registration before circulation” in this context because “section 16-321 does not require registration of out-of-state circulators to precede circulation,” while a similar statute governing independent candidates’ nomination procedures does so specifically. APP-0004 (citing A.R.S. § 16-341(H)). However, while this is certainly true of § **16-321**, the ruling ignores nearly identical language in § 16-315(D) containing this very “register before circulation” requirement. *Compare* A.R.S. § 16-315(D) (“Circulators who are not residents of this state must be registered as circulators with the secretary of state before circulating petitions.”) *with* § 16-341(H) (non-resident circulators “shall register as circulators with the [Secretary] prior to circulating petitions.”) (emphases added).

Turning to the EPM, the superior court relied on a single sentence—that “[o]nce a circulator is properly registered, the circulator must select in [the] Circulator Portal the petition(s) they will circulate,” EPM at 117—to conclude that circulators are completely registered “before he or she identifies the petition to be circulated,” APP-0004. But this use of “registered,” when considered in context, simply means generally registering for a Portal account—*not* fully registering to circulate candidate petitions. Otherwise, the other steps required by the EPM to

complete registration would become superfluous: there would be no service of process address, no consent to Arizona’s jurisdiction, and no “confirmation” in writing. *See PNC Bank, N.A. v. Coury in & for Cnty. of Maricopa*, 544 P.3d 88, 91 ¶ 8 (App. 2024) (“A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous.”) (citation omitted)).³ That narrow reading cannot be correct.

2. The Superior Court Incorrectly Applied the Substantial Compliance Doctrine.

After improperly interpreting the regulatory requirements, the superior court additionally erred by finding that circulator registrations need only “substantially comply with the statutory requirements,” and under that standard, the challenged circulators’ failure to register with the Secretary was “entirely technical.” *See APP-0004–05* (citing *Clark v. Munoz*, 235 Ariz. 201, 202 ¶ 6 (2014) (citation omitted)).

a. *Substantial Compliance Does Not Apply to Circulator Registration.*

The “substantial compliance” doctrine has never been held applicable to circulator registration. Rather, the purpose of this standard is to evaluate whether the omission of information from the *form* of the nomination petition “could

³ Again, if signing up for the Circulator Portal is truly sufficient, the superior court’s decision to eliminate signatures collected by Humphries—who never bothered to add George to his Circulator Portal account—conflicts with the trial court’s legal conclusion.

confuse or mislead electors signing the petition.” *Moreno v. Jones*, 213 Ariz. 94, 102 ¶¶ 41–42 (2006) (“Nomination petitions must include, in language ***substantially in the form of the statute***, certain information, including the elector’s county and party registration, the candidate’s name and address, the office in question, and when the election is ‘to be held.’”) (emphasis added); *see also Lohr v. Bolick*, 249 Ariz. 428, 431 ¶ 8 (2020) (“Under a ‘substantial compliance’ analysis, this Court does not remove candidates from the ballot ‘for mere technical departures from the ***form***.”) (emphasis added). Whether voters may be confused or misled has nothing to do with exogenous circulator registration.

Contrary to the superior court’s assumption, it is not true that substantial compliance applies in every situation because it involves a nomination petition challenge. Rather, if a challenge has nothing to do with the form of the petition, courts may simply apply the statute’s plain language. For instance, *Clayton v. West* involved a challenge to an independent presidential candidate’s qualifications on the basis that his electors failed to file statements of interest “[n]ot later than the date of the first petition signature on a nomination petition.” 251 Ariz. 226, 230 ¶ 14 (2021) (citing A.R.S. § 16-341(I)). This challenge involved a familiar error—failure to meet statutory prerequisites before circulating petitions. But rather than applying any specific compliance standard, the Arizona Supreme Court simply determined that the signatures were invalid as a matter of law because they were

collected before any statement of interest was filed. *Id.*⁴

Sims Printing Co. v. Frohmiller, 47 Ariz. 561, 567 (1936) is similarly instructive. There, the Court specifically noted that candidates are entitled to have their names placed on the official ballot under two conditions: (1) “[i]f the candidate’s nomination petition and his nomination papers substantially comply with the provisions of the law *in form and substance*,” and (2) the nomination petitions “are timely presented to the secretary of state” *Id.* (emphasis added). Again, only the former issue was subject to the lesser substantial compliance standard—the latter simply required compliance with the plain language. Accordingly, the superior court should have applied the statutory and regulatory requirements without considering substantial compliance.

2. *If Substantial Compliance Did Apply, the Challenged Circulators Did Not Satisfy this Standard.*

Even if substantial compliance were somehow relevant, the outcome is the same because the five circulators not only did not substantially comply—they did not comply *at all*. Specifically, although A.R.S. § 16-315(D) requires that out-of-state candidate circulators “must be registered as circulators with the [Secretary] before circulating petitions,” none of the challenged circulators did so prior to collecting George’s signatures at issue. Even if some circulators ultimately

⁴ A challenge to a candidate’s residency status or professional qualifications under A.R.S. § 16-351(B) is another example where the substantial compliance standard has never been applied and yet this Court has adjudicated those cases with ease.

added George’s petition after the fact, it would no longer be possible at that point to comply with the statute’s temporal requirement.⁵ And regardless, failing to register is nothing like the types of minor deviations, such as forgetting a suite number in the service of process address, that might typically be permitted under the substantial compliance standard. *Cf. Moreno*, 213 Ariz. at 102 ¶ 44 (omitting day and month of the primary on the form of the petition satisfied substantial compliance).

Nevertheless, the superior court explained that certain circulators substantially complied with the registration requirement because their *post hoc* actions satisfied the purpose of the registration requirement: to provide an address for service of process. APP-0004–05. This reasoning is incorrect for two reasons.

First, circulators do not provide a service of process address until they register to circulate on behalf of a specific candidate. Stip. ¶ 28. Until they complete this step, they would have provided only a permanent out-of-state residential address or a temporary in-state residential address, and never consented to Arizona jurisdiction. *Id.* ¶ 24. This is especially problematic because circulators are authorized to—and often do—provide a different service of process address

⁵ Consider Caleb Okwaraji, for instance, who purportedly created his account with the Secretary on August 31, 2020. Stip. ¶ 51. Although he ultimately did submit a Circulator Registration Form for George’s campaign in 2024, to say that he substantially complied by submitting his registration *four years later* would hardly be considered substantial compliance.

from that of their residence, such as the address for their employing organization.⁶ Thus, merely signing up for an account does not satisfy the service of process purpose.

Moreover, as a practical matter, circulators do not appear in the Secretary's public "Circulator Registrations" website until after they register to circulate on behalf of a specific candidate. *Id.* ¶ 37. It cannot be the standard that circulators can game the system and reduce the chance of effective service by signing up for an account with a temporary address, remain hidden from public view, then wait until the last minute to provide a service of process address after they have already circulated petitions.

Second, service of process is not the only purpose of the registration requirement. To the contrary, circulator registration also "represents a reasonable means of fostering transparency, facilitating the judicial fact-finding process, inducing compliance with valid compulsory process, and mitigating the threat of fraud or other wrongdoing infecting the petition process." *Stanwitz v. Reagan*, 245 Ariz. 344, 350 ¶ 21 (2018) (citation omitted); APP-0005 (recognizing the "registration requirement enables petition challengers to scrutinize circulators' qualifications ..."). This rationale is equally true for candidate petitions.

⁶ Here, circulators Lopez, Ramirez, and Weltman provided a commercial building as their service of process address differing from the residential address in which they lived when they obtained their accounts. Stip. ¶ 59.

Simply signing up for a Portal account does not satisfy these purposes. Again, circulators who stop at this initial step would not appear in the public search portal, nor would the public know whether the circulator intends to fully register because they are non-residents. Given the tight challenge timelines under A.R.S. § 16-351(A), as well as the difficulty in serving circulators in the first instance, it is vital to the integrity of the process that the public knows who is circulating on behalf of which candidate and has sufficient time to investigate out-of-state qualifications.

For example, prospective Plaintiffs like Backie must conduct background investigations on opponents' circulators well before the petition filing deadline. Disqualifying felony convictions are the most common skeleton found in the proverbial closet, but such records for out-of-state circulators are likely found in out-of-state courts. Obtaining those court records from other states can be time-consuming, and from a practical perspective, cannot be effectively accomplished between petition filing (April 1) and the litigation deadline (April 15). This aspect of bringing nomination petition challenges has nothing to do with a circulator's service of process address, but rather, is facilitated by the Secretary's public search portal that provides the requisite transparency *during* petition collection.

Under the superior court's reading, it would be practically impossible to obtain such vital circulator information until the circulator adds a specific

candidate to their Portal. Stip. ¶¶ 37–38.

3. Title 19 Is Irrelevant to the EPM’s Registration Rules Regarding Candidate Nomination Petitions.

Finally, the superior court found that the EPM does not require registration to circulate on behalf of specific candidates because those rules are likely meant to implement Title 19, which governs initiatives and referenda. APP-0005. But while Title 16 certainly does not contain the same level of detail as Title 19 concerning circulator conduct, the Secretary is *expressly* authorized to promulgate those types of regulations on the subject of candidate petition registration. *See* A.R.S. § 16-315(D). If the Secretary determined that aspects of Title 19 should also apply to Title 16 as a matter of procedure, he had the legal authority to do so. *See State v. Ariz. Mines Supply Co.*, 107 Ariz. 199, 205 (1971) (“The right is generally conceded to delegate to an administrative agency the power to adopt rules and regulations necessary to carry a law into effect.”) (citation omitted).

Rather than addressing this point, the superior court inferred that the Secretary’s decision to adopt specific procedures that apply equally to candidate nomination petitions and initiatives was merely done “as a matter of convenience.” APP-0005. But the Secretary clearly knows how to specify when procedures apply only to initiatives, and could easily have done so for other requirements if he wanted. *E.g.*, EPM at 118–19. Regardless, if the Secretary decided that certain procedures should apply to both Titles 16 and 19, his reasons for doing so are

ultimately irrelevant. *Ariz. Pub. Integrity All.*, 250 Ariz. at 63 ¶ 16.

It is also inaccurate to say, as the superior court did, that the Circulator Portal “graft[s]” the Title 19 rules onto Title 16. APP-0005. In addition to mandating that paid and out-of-state circulators register with the Secretary, Title 19 also requires “[a]n affidavit from the registered circulator that is signed by the circulator before a notary public.” A.R.S. § 19-118(B)(5). This stringent requirement, which requires a sworn statement under penalty of a class 1 misdemeanor, is different in kind from anything required for candidate petition registrations. EPM at 118. But even without that affidavit requirement, the Circulator Portal would still serve the same purpose of registering both out-of-state (Title 16) and paid (Title 19) circulators.

* * *

After overcoming the various infirmities in the superior court’s decision, the outcome is inevitable. Because the challenged circulators failed to comply with the statutory and regulatory requirements to register with the Secretary prior to circulating petitions on behalf of George, all of those signatures are invalid. As a result, George cannot qualify for the ballot because the 1,057 circular signatures at issue are outcome determinative.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court

reverse the superior court and grant the relief requested in Plaintiff's Complaint: George is off the ballot. Plaintiff also moves for costs and attorneys' fees pursuant to ARCAP 21, A.R.S. §§ 12-348, and 12-2030.

DATED this 2nd day of May, 2024.

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