

**IN THE SUPREME COURT
STATE OF ARIZONA**

SUE HECK,

Plaintiff-Appellant,

v.

HERB KAI, et al.;

Defendants-Appellees.

Arizona Supreme Court
No. CV-26-0122-AP/EL

Pima County
Superior Court
No.: C20262700

(Expedited Election Matter)

OPENING BRIEF

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Like Gilbert Town Council Candidate Bobbi Buchli, Marana Town Council Candidate Herb Kai failed to identify the election for which he gathered nomination petitions. Instead, he, like Buchli, noted the year in which the election would take place. Title 16 contains mandates: “Nomination petitions **shall** be captioned “partisan nomination petition” or “nonpartisan nomination petition”, followed by the language of the petition in substantially the following form.” [A.R.S. § 16-314\(C\)](#) (emphasis added). This case turns on whether when faced with complete noncompliance, this Court permits the candidacy to proceed. This Court has repeatedly reminded litigants that it will not substitute its judgment for that of the Legislature in setting policy. Ms. Heck urges this Court to stay true to this axiom and not apply the doctrine of substantial compliance as a euphemism for determining that the Legislative requirement to identify the election for which the candidate is collecting signatures is simply unnecessary or redundant. That policy choice should be left undisturbed and complete failure to comply with the statutory mandate should disqualify Candidate Kai.

FACTUAL BACKGROUND

On virtually every paper petition sheet, the Appellee Candidate provided, where he was to indicate the type of the election, “2026 election.” [Joint Stipulation of Facts, (“SOF”) ¶ 2.] An example image is provided here:

Nonpartisan Nomination Petition

I, the undersigned, a qualified elector of the county of Pima, state of Arizona, and of Town of Marana hereby nominate Herb Kai who resides at 11100 N Casa Grande Hwy, Marana AZ 85658 in the county of Pima for the office of Marana Town Council to be voted at the 2026 election to be held July 21, 2026, and I hereby declare that I am qualified to vote for this office and that I have not signed and will not sign any nomination petitions for more persons than the number of candidates necessary to fill such office at the next ensuing election. I further declare that if I choose to use a post office box address on this petition, my residence address has not changed since I last reported it to the county recorder for purposes of updating my voter registration file.

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[*Id.*] If all signatures contained on sheets that provide “2026” in the block ahead of the word “election,” as exemplified in the following image, are disqualified, the candidate has fewer than 1,000 valid signatures. [*Id.*] In 2026, Arizona voters, including qualified electors of the Town of Marana, will have a Primary Election and a General Election. Arizona Secretary of State, “Election Calendar & Upcoming Events,” available at <https://azsos.gov/elections/calendar-dates> (last visited 4/17/26).

On his E-Qual signatures, Candidate Kai properly identified the election as “2026 Primary Election.” [SOF ¶ 3.] Below is an image of a typical such sheet.

Nonpartisan Nomination Petition

I, the undersigned, a qualified elector of the county of Pima, state of Arizona, and of Town of Marana hereby nominate Herb Kai who resides at PO Box 550 Rillito AZ 85654 in the county of Pima for the office of Council Member to be voted at the 2026 Primary Election election to be held July 21, 2026, and I hereby declare that I am qualified to vote for this office and that I have not signed and will not sign any nomination petitions for more persons than the number of candidates necessary to fill such office at the next ensuing election. I further declare that if I choose to use a post office box address on this petition, my residence address has not changed since I last reported it to the county recorder for purposes of updating my voter registration file.

[*Id.*]

ARGUMENT

A. Substantial Compliance Requires Compliance

This Court enforces Section 16-314(C) using substantial compliance, that is it determines “whether the documents substantially complied with the statutory requirements before denying access to a ballot.” [Lohr v. Bolick, 249 Ariz. 428, 431 \(2020\)](#) (quoting [Bee v. Day, 218 Ariz. 505, 506 ¶ 8 \(2008\)](#) (quoting [Moreno v. Jones, 213 Ariz. 94, 101–02 ¶ 40 \(2006\)](#)) (internal quotations removed). The Court will not interfere with the voters’ efforts to nominate the candidate of their choosing “for mere technical departures from the form.” *Id.* (citing [Bee](#) ¶ 10). That balancing has been further explained, “the focus is ‘on whether the omission of information could confuse or mislead electors signing the petition.’” *Id.* (quoting [Moreno](#) ¶ 42).

The Court must, however, not second guess what information the Legislature has determined the voters need in order to effectively nominate a candidate. Regardless of whether in the Court’s judgment it is necessary for the voter to know whether the candidate is circulating for the Primary or General elections, the Legislature has determined that it is necessary and included it explicitly in A.R.S. § 16-314(C). The Court should not second guess that determination.

In [City of Phoenix v. Butler, 110 Ariz. 160, 162 \(1973\)](#), the Court considered the phrasing on a ballot, specifically whether “Vote for not more than six” was *better* language than “Vote for Six.” This Court reversed the lower court writing: “The

choice of the appropriate wording rests with the Legislature, and the court may not substitute its judgment for that of the Legislature.” *Id.*; see also [Arizona Minority Coal. for Fair Redistricting v. Arizona Indep. Redistricting Comm’n](#), 220 Ariz. 587, 595 (2009) (noting “[I]n the absence of any finding of a constitutional or statutory violation ..., a court must defer to the legislative judgments the plans reflect...” [Upham v. Seamon](#), 456 U.S. 37, 40–41 (1982)).

Thus, the question before the Court is: did Herb Kai, in omitting the identification of the election for which he was circulating petitions substantially comply with the requirement to include that information? It is not: is the requirement to identify the election really necessary?

B. “2026” Does Not Specify the Election.

The information that needs to be provided in order to identify the election for which the candidate is circulating petitions can be first and foremost understood by reviewing the statute itself.

Partisan Nomination Petition

I, the undersigned, a qualified elector of the county of _____, state of Arizona, and of (here name political division or district from which the nomination is sought) and a member of the _____ party or a person who is registered as no party preference or independent as the party preference or who is registered with a political party that is not qualified for representation on the ballot, hereby nominate _____ who resides at _____ in the county of _____ for the party nomination for the

office of _____ **to be voted at the primary
election to be held** _____

Nonpartisan Nomination Petition

I, the undersigned, a qualified elector of the county of _____, state of Arizona, and of (here name political division or district from which the nomination is sought) hereby nominate _____ who resides at _____ in the county of _____ for the office of _____ **to be voted at the
_____ election to be held**
_____,

[A.R.S. § 16-314\(C\)](#)(emphasis added).

The information provided by the Partisan Nomination Petitions makes crystal clear what is required for the block—the identity of the election. Either “primary,” as provided in that section, or an equivalent identifier, e.g., “general,” if applicable. Note, this also emphasizes the importance of getting this right, because nonpartisan nomination petitions can be targeted to either primary or general elections, which is the reason for the blank in the form.

Indeed, this is the information provided on the candidate E-Qual petitions. [SOF ¶ 3.] There the election is identified as the 2026 Primary Election. [*Id.*] The Town of Marana also provides guidance on how to identify an election on its candidate webpage. See the excerpt from the Running for Office – A Candidate Guide.

c. *Election Profile*

Run for Office

* Required Field

Election*

Required

If you intend to run as a member of a recognized political party, you must select the Primary Election. You will not be eligible to run in the General Election as a recognized political party candidate without participating in the Primary Election.

Office Type*

Required

Office*

Required

Candidate Type*

Required

A Write-In candidate will not have their name appear on the ballot. Votes for official Write-In candidates will be tabulated and included in the state canvass of the election.

Political Party*

Required

It is your responsibility to confirm your selections before proceeding. Please contact our office if you have any questions about the use of this online registration system.

Town of Marana Elections, “Candidate Information,” *available at* <https://www.maranaaz.gov/Departments/Town-Clerk/Elections/Candidate-Information> (follow “Running for Public Office - A Candidate Guide(PDF, 6MB)” hyperlink). The guide confirms what is obvious: the blank ahead of “election” can be completed with “primary” or “general.”

Perhaps there are other ways to identify the election. In some municipal elections, officials use the terminology of a general election and a runoff election. It does not appear that Marana is such a jurisdiction based on its election guide and the information provided on the E-Qual signature sheet. Nonetheless, it is possible that one might choose between “general” and “run off” election; although, one would not circulate petitions for a “run-off” election. None of these hypothetical alternatives

were used for the election identification. The year, “2026” was entered into the box instead. And, “2026” does not tell the qualified elector for what election—primary, general, run-off, or otherwise—they are signing the petition. It is deficient.

C. Failing to Identify the Election Does Not Substantially Comply with the Requirement to Identify the Election.

In [*Bee v. Day*, 218 Ariz. 505, 507 ¶ 10 \(2008\)](#), [*Moreno v. Jones*, 213 Ariz. 94, 101-02 ¶¶ 40, 42 \(2006\)](#), and [*Adams v. Bolin*, 77 Ariz. 316, 321-22 \(1954\)](#) the Court determined that technical deviation from mandatory requirements did not prevent substantial compliance. Importantly, each of these cases dealt with whether the qualified elector would be confused or misled *with regard to the mandatory information*. As argued above, the substantial compliance standard is not license for the courts to decide whether the required information is important. Here, the Legislature has mandated the candidate to tell the qualified elector to which election this petition relates. Candidate Kai failed to do so on his paper petitions.

[*Moreno*, 213 Ariz. at 102, 139 P.3d at 620](#), is instructive; that case excused the omission of the date because “[t]here is *only one primary election* for state legislative office.” (emphasis added). There is not *only one 2026 election*. The use of the phrase “2026 election” entirely omits the mandatory information, and one cannot determine for which election this petition relates. The same is true of the decision orders issued by the court since that have tolerated errors or omissions in

the date of the correctly identified election, but not failure to provide the identity of the election.

This omission is aggravated by two factors present this year for this race. First, the date provides confusion not clarity. This is because the Legislature changed the date of the primary election during the collection process. This is not the fault of the Candidate, and the existence of different dates is not deficient. This specific circumstance, nonetheless, reduces the ability of the date to clarify. Qualified electors would have seen two separate dates on petitions—one of which is not actually the date of the 2026 Primary Election.

Compare these circumstances to the Court’s decision order in 2018 in *Baldwin v. Martinez*, CV-18-0159-AP/EL (Ariz. Dec. Order issued 7/2/18). In that case the office sought on the candidate’s petitions indicated “Senator,” without specifying State Senator. In that case, while the district was indicated as LD 30, it remained true that there were two races for Senate that would be voted on in LD 30, State Senate and U.S. Senate. Obviously, it was not the candidate’s *fault* that there was a U.S. Senate race that year. Nonetheless, it established conditions that made his entry of “Senator” fail to substantially comply with the requirement to indicate the office sought. Likewise, this year the two promulgated primary election dates create conditions wherein including the date without the election identification cannot salvage the omission from its failure to substantially comply with the law.

Next, Candidate Kai is running for a nonpartisan office. Elections for nonpartisan offices often go directly to the statewide general election. If the Court refers to the candidate guide provided by Marana, it can be seen that *partisan* candidates cannot select the General Election, but must identify the Primary Election. Some *nonpartisan* candidates do file petition for the General Election.

This is provided by state statute as follows:

Any person desiring to become a candidate at a primary election for a political party and to have the person's name printed on the official ballot shall be a qualified elector of the party and, not less than one hundred twenty nor more than one hundred fifty days before the primary election

....

Any person desiring to become a candidate at any nonpartisan election and to have the person's name printed on the official ballot shall be at the time of filing a qualified elector of the county, city, town or district and, not less than one hundred twenty nor more than one hundred fifty days before the election.”

[A.R.S. § 16-311](#)(A), (B). And while subsection (C) of the same statute permits municipalities like Town of Marana to sync their elections with Subsection A, the potential confusion for a voter who might understand nonpartisan candidates to submit petition for the general election remains.

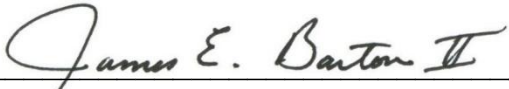
For this nonpartisan race, in a year when the primary election date has moved, failing to identify the election as the primary election—which like the jurisdiction is properly identified on the E-Qual sheets—fails to substantially comply with A.R.S. § 16-314 and the signatures on those petitions must be disqualified.

CONCLUSION

For the foregoing reasons, this Court should REVERSE the trial court's order, DECLARE that the candidate lacks sufficient valid signatures to be placed on the 2026 Primary Election ballot, and ENJOIN the government Defendants/Appellees from doing so.

DATED this 21st day of April 2026.

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