

**ARIZONA SUPREME COURT**

SUE BECK,

Plaintiff-Appellant,

vs.

HERB KAI, *et al.*,

Defendants-Appellees.

No. CV-26-0122-AP/EL

Pima County  
Superior Court Case No.  
C20262700

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**ANSWERING BRIEF OF DEFENDANT-APPELLEE KAI**

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## **INTRODUCTION**

At the heart of this appeal is an attempt to manufacture a legal requirement that a candidate use the specific word “primary”—and only that word—in the box on the petition sheet caption where a candidate is required to describe the election for which the candidate seeks to be placed on the ballot.

This argument has two flaws. The first is there is no requirement to use the specific word “primary” in the caption of a nonpartisan petition sheet such as the one that Defendant Herb Kai was required to use to run for the nonpartisan position of Town Councilmember. The second is that even if the Legislature did specify that a candidate put the word “primary”, what Kai did in describing the election in his petition sheets as “the 2026 election to be held July 21, 2026” would substantially comply because that does describe the “primary” or first election, and everyone knows that.

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## LEGAL ARGUMENT

### I. **THERE IS NO STATUTORY REQUIREMENT THAT KAI PUT THE SPECIFIC WORD “PRIMARY” IN THE PETITION SHEET CAPTION**

The actual full text of the part of the caption that Plaintiff’s argument is based on, involving the election for which the nomination pertains, is “the 2026 election to be held July 21, 2026”, as the screenshot shows:

**Nonpartisan Nomination Petition**

I, the undersigned, a qualified elector of the county of , state of Arizona, and of  hereby nominate  who resides at  in the county of  for the office of  to be voted at the  election to be held  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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The July 21, 2026 election *is*<sup>1</sup> the primary election. So the petition sheets do indicate that the person is signing for the primary election, they simply do not use a specific word. As the trial court succinctly put it: “[b]y referring to the date of the primary election, Kai identified the election<sup>1</sup>.”

There are no magic word requirements on the petition, as the Arizona Supreme Court has found:

Here, petition 20 states that it concerns “the primary election to be held

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<sup>1</sup> Minute Entry Ruling.

\_\_\_\_\_, 2006 ” without specifying the day or month of the election.

...

We do not believe that petition 20, by omitting the particular day and month of the 2006 primary, created a significant danger that electors would be confused or misled. Moreno, citing A.R.S. § 16–204(B), notes that under Arizona election laws, governmental entities could hold primary elections on four different dates in 2006. This statute, however, concerns elections for certain *local* offices. Petition 20 specifies that Jones is seeking nomination to run for the Arizona State Senate. There is only one primary election for state legislative office—the eighth Tuesday prior to the general election for state office, A.R.S. § 16–201 (1996), which is held on the first Tuesday after the first Monday in November, A.R.S. § 16–211 (1996).

In contrast to *Marsh*, electors would “automatically know” for which primary election they were signing because the petition specified the year and there is only one primary that year for state legislative office.

*Moreno v. Jones*, 213 Ariz. 94, 102 (2006).

Just as in *Moreno*, in Marana there is only one primary election for Town Council—the one in July or August of even numbered years. November. *See* Sec. 2-2-1, Marana Town Code. Obviously, people sign petition sheets to place someone on the ballot for the primary election, in July or August.

The general election ballot is made up of the successful candidates at the primary election—ballot access is not achieved by collecting signatures. In

fact, the general election may not even occur: “Any candidate who receives at the primary election a majority of all the votes cast, as determined by the calculation set forth in A.R.S. § 9-821.01, shall be declared elected to the office for which he or she is a candidate effective as of the date of the general election, and no further election shall be held as to that candidate, provided that if more candidates receive a majority of the votes than there are offices to be filled, then those equal in number to the offices to be filled receiving the highest number of votes shall be declared elected.” *Id.*

In another unreported Supreme Court decision, the candidate listed the date of the primary as actually the wrong date, “November 2016.” *Querard v. Kouns*, CV-16-0141-AP/EL, 6/29/16 (decision order attached). Nonetheless, the Court declined to remove Mr. Kouns from the ballot, stating that “his petition sheets were unlikely to cause confusion or to mislead electors as to their purpose because they otherwise made clear that Kouns was seeking to be nominated as the Republican candidate in the primary election.” *Id.*

Here, the same is true—it is clear for what office and what election Kai is being nominated for.

One additional point is that A.R.S. § 16-314(C) states the actual relevant statutory language: “to be voted at the \_\_\_\_\_ election to be held \_\_\_\_\_

...” As this Court noted in *Adams*, “there are no express restrictive instructions as to what is to be put or may not be put, in the blank spaces.” 77 Ariz. at 318. It is not even clear what should be put in the blank space to constitute perfect compliance, but here the petition sheets at least substantially comply. *Id.*, see also Op. Atty. Gen. No. I07-010, [2007 WL 2816222](#) (opining that because there is only one primary election in September 2008, a petition that specifies the date as September 9, 2008, instead of as September 2, 2008, would not mislead the electors signing the petition.)

There is actually a good argument to be made that filling out the petition sheet as Plaintiff claims it should be filled out carries more risk of confusion than simply identifying the election by date. Municipal elections are still viewed by some as the first election being the “general” election and the second, if necessary and if it occurs at all election, being the “run-off.” That is reflected over and over again, both in the law and in the language that people use:

1. In A.R.S. § 16-544(S):

For the purposes of this section, "election cycle" means the two-year period beginning on January 1 in the year after a statewide general election or, for cities and towns, the two-year period beginning on the first day of the calendar quarter after the calendar quarter in which **the city's or town's second, runoff or general election** is scheduled and ending on the last day of the

calendar quarter in which the city's or town's immediately following **second, runoff or general election** is scheduled, however that election is designated by the city or town.

(Emphasis added).

2. In A.R.S. 16-204(E):

...

2. The first Tuesday after the first Monday in November. If the political subdivision holds a **general election or a runoff election, the second election** held shall be held on this date. If the political subdivision holds only a single election and **no preliminary or primary or other election is ever held for the purpose of reducing the number of candidates....**

(Emphasis added).

3. In case law, *City of Tucson v. State*, 235 Ariz. 434, 435–36 (App. 2014):

In 2012, the Arizona Legislature amended § 16–204<sup>2</sup> to require charter cities to hold **their first (primary or general) and second (general or runoff)** candidate elections on the same two days that the state holds its primary and general elections for county, state, and federal offices.

(Emphasis added).

4. In the vernacular. Even *The Arizona Republic* story on a similar case called the Town Council election as the “run-off election!” “Judge rules Gilbert council member candidate can stay on ballot,” 4/10/26,

<https://www.azcentral.com/story/news/local/gilbert/2026/04/10/judge-keeps-gilbert-councilmember-bobbi-buchli-on-ballot/89517720007/>

5. In municipal charters, to wit, Section 16(A) and (B), Phoenix City Charter (referring to the first election the “Mayor and Council Election” and stating that “If under the provisions of Section 15 the office of Mayor [or councilmember] remains unfilled after the Mayor and Council Election, a **Runoff Election** shall be held later to fill the office....”) (emphasis added).

All of the above demonstrate the difficulties with mandating the use of the word “primary”, as Plaintiff contends. And that, and the fact that the Legislature has had to use different words and phrases to make it clear that it is referring to the first and second election in time, is probably why the Legislature never mandated that specific word.

Of course, even if the statute did explicitly require the use of the word “primary” here, it would not matter because the use of the phrase July 21, 2026 election makes clear that it is the primary. That is, “the omission of information” could not conceivably “confuse or mislead electors signing the petition.” *Moreno*, 213 Ariz. at 102.

## II. CONCLUSION

For the foregoing reasons, this Court should affirm.

### **III. REQUEST FOR ATTORNEY’S FEES AND COSTS**

Kai requests an award of attorney’s fees pursuant to A.R.S. § 12-349. This lawsuit was predicated on a made-up requirement to begin with. And even if the requirement did exist, omitting the magic word “primary” would clearly not be enough to remove Kai from the ballot under this Court’s jurisprudence because the election that signers are nominating Kai for is obvious from the petition sheet as a whole.

**RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of April, 2026.

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