

**IN THE SUPREME COURT
STATE OF ARIZONA**

JESSICA CHALBERG, a qualified
elector,

Plaintiff/Appellant,

v.

CONSUELO HERNANDEZ, et al.,

Defendants/Appellees.

Arizona Supreme Court
No. CV-26-0126-AP/EL

Pima County
Superior Court
No.: C20262701

(Expedited Election Matter)

OPENING BRIEF

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This case, like the related matter concerning Alma Hernandez, turns on enforcing statutes that the Legislature enacted to curb the practice of candidates for office ignoring large fines owed on past due campaign finance reports.¹ In 2012, Senate Bill 1137 (“SB1137”) amended Title 16 to provide criteria for filing officers to reject nomination papers under certain criteria and a means for candidacy to be challenged under slightly different criteria. In *Reyes v. Del Palacio*, CV-18-0157-AP/EL (Ariz. Decision Order 06/27/18), this Court ruled on the applicability to the former in a case seeking to compel the Secretary’s actions under A.R.S. § 16-311, as amended by SB1137. This action seeks enforcement under A.R.S. § 16-351. The trial court erred in applying *Reyes*, which nowhere mentions A.R.S. § 16-351, to this case. Appellant urges the Court to recognize the Legislature’s effort to provide broad language concerning what would be grounds for challenge under A.R.S. § 16-351, and to deny candidates who have failed to “fully pay fines, penalties or judgments as prescribed in sections 16-311, 16-312 and 16-341, if applicable” access to the 2026 Primary Election ballot.

¹ The briefing provided in this matter is nearly identical to that provided in the Alma Hernandez matter because the two cases were litigated below by the same lawyers and before the same trial court.

FACTUAL BACKGROUND

At the time Defendant Consuelo Hernandez filed her nomination papers for the 2026 Primary Election, the Secretary of State's "See the Money" website indicated that the candidate committee Consuelo Hernandez for State Representative - District 21 (Filer ID No. 100940) owed over \$1,000.00 in connection with late-filed campaign finance reports. [Joint Appendix and Stipulation of Facts ("SOF") ¶ 1.] Lisa Marra, the State Election Director administers the Secretary of State's campaign finance reporting and fines system pursuant to A.R.S. § 16-938 and offered a declaration in support of the Alma Hernandez case, which the parties have stipulated to as admissible and pertinent to this case. [SOF Ex. B at J.App'x006, ¶ 1.] In her declaration, Ms. Marra refers to the "seethemoney.az.gov" website noting that "specific dollar amounts and certain number of days late in red in the status column" show outstanding fines. [*Id.* ¶¶ 3,4.] She declares that "[t]he dollar value in red indicates that a fine has been assessed or is accruing against the candidate in accordance with Arizona campaign finance law, A.R.S. §§ 16-937, -938, and that the fine remains unpaid." [*Id.* ¶6.]

Consuelo Hernandez owed, at the time of filing her nomination paper, \$19,840.00 in fines, [SOF Ex. A, Ex.1 at J.App'x004], based on multiple campaign finance reports filed hundreds of days late, Arizona Secretary of State, "See The

Money,” (Filer ID: 100940), *available at* <https://tinyurl.com/9z7jmk7v> (last visited 4/22/26).

In 2012, the Arizona Legislature amended Title 16 addressing sanctions against “a person who has failed to fully pay certain fines, penalties or judgments related to violations to the campaign contributions and expenses statute, with a specified exemption.” Arizona State Senate, “Fact Sheet for S.B. 1137,” *available at* <https://tinyurl.com/ybe9cb2v> (last visited 4/22/26). The Fact Sheet explains that in addition to prohibiting the filing officer from accepting nomination papers in certain conditions, the change to Title 16, “[p]ermits an elector to challenge the nomination of a candidate for failure to fully pay fines, penalties or judgments for violations to the campaign contributions and expenses statute.” *Id.*

SB1137 added the following to Sections 16-311, -312, and -341.

Except in cases where the liability is being appealed, the filing officer shall not accept the nomination paper of a candidate for state or local office if the person is liable for an aggregation of one thousand dollars or more in fines, penalties, late fees or administrative or civil judgments, including any interest or costs, in any combination, that have not been fully satisfied at the time of the attempted filing of the nomination paper and the liability arose from failure to comply with or enforcement of chapter 6 of this title.

[NOMINATING PROCEDURES, 2012 Ariz. Legis. Serv. Ch. 289 \(SB1137\) §§ 1-3 \(2012\)](#). To the candidate challenge statute, A.R.S. § 16-351, it added to the list of

reasons available to challenge a candidate “or failure to fully pay fines, penalties or judgments as prescribed in sections 16–311, 16–312 and 16–341.” *Id.* § 4.

At the time of filing her nomination petitions, the conditions described in A.R.S. § 16-311 and interpreted by the *Reyes* case had not been satisfied. [Marra Decl., J.App’x014 ¶¶ 7-8.] The conditions described in A.R.S. § 16-351(B) were satisfied. [SOF ¶ 1, Marra Decl. ¶¶ 3, 6.]

ARGUMENT

The Legislature used the broadest possible language in describing what would subject a candidate to a challenge. It is not surprising or unworkable that there would be a higher standard for the filing officer to reject nomination papers, than for an elector to succeed in a candidate challenge. The Court should not undermine the Legislature’s efforts to rein in scofflaws.

A. Section 16-351 Casts a Broad Net

SB1137 used the phrase “failure to fully pay fines, penalties or judgments.” [SB1137 § 4](#). The three words have different meanings. For example, in an old case considering a statute that stated a guilty person was liable for an additional penalty, this Court wrote:

‘Penalty’ and ‘fine’ are not the same in law. A penalty is always recoverable in a civil action. A fine never is. A penalty, when recovered, goes to the party suing; a fine, to the people. A fine is defined in law to be a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime or misdemeanor. This definition is

wholly inapplicable to a judgment in a civil suit.

Frazier v. Terrill, 65 Ariz. 131, 136 (1946). In another criminal case, the Court of Appeals explained, “A fine is always a penalty, but a penalty is not always a fine since a penalty may be incurred by acts or omissions involving no criminality.” *State v. Sheaves*, 155 Ariz. 538, 541 (App. 1987). Finally, “[t]he word ‘judgment’ itself is commonly understood to mean the act of a court which fixes clearly the rights and liabilities of the respective parties to litigation and determines the controversy at hand.” *State v. Birmingham*, 96 Ariz. 109, 112 (1964).

Black’s Law Dictionary similar recognizes “penalty,” to be the broadest term, “Punishment imposed on a wrong doer, usu. in the form of imprisonment or fine; esp., a sum of money exacted as punishment for either a wrong to the state or a civil wrong (as distinguished from compensation for the injured party’s loss.)” *Penalty*, *Black’s Law Dictionary* (11th ed. 2019). Whereas, “fine,” is “[a] pecuniary criminal punishment or civil penalty payable to the public treasury.” *Id.* (*Fine* definition 5). And, of course, “judgment” refers to “[a] court’s final determination of rights and obligations of the parties in a case.” *Id.* (*Judgment* definition 2).

The use of this triplet in the statute makes it clear that the Legislature intended to address unpaid debts that sprung from campaign finance violations, without regard to technical limitation or classifications. Furthermore, the present case epitomizes the kind of conduct the Legislature was addressing: ongoing, blatant

disregard for outstanding obligations.

B. Section 16-351's Criteria Are Distinct from Section 16-311's.

SB1137 set up two means for preventing candidates who ignore their fines from running for office. It empowered the filing officer to reject filings, but only if liability had been firmly adjudicated. The sections concerning actions by the filing officer rely on establishing *liability*, and provide exceptions when a formal appeal is in place. [SB1137 §§ 1-3](#).

The additions to A.R.S. § 16-351(B) do not contain these limitations. [Id. § 4](#). Such limitations are not necessary because the trial proceeding itself offers the opportunity for the candidate to challenge the validity of the fines. In this case, the candidate did not challenge whether she owed the fines that were assessed against her in accordance with A.R.S. §§ 16-937, -938, or whether they had been paid. [*See* Marra Decl. ¶ 6 (“a fine has been assessed or is accruing against the candidate in accordance with Arizona campaign finance law, A.R.S. §§ 16-937, -938, and that fine remains unpaid.”).] Because these allegations were properly raised against her within the restrictive time limits of A.R.S. § 16-351, she was provided due process and an opportunity to challenge them. [Mandraes v. Hungerford, 127 Ariz. 585, 588 \(1981\)](#) (“the trial court may not deprive a party of their opportunity to present their evidence.”); *cf.* [McClung v. Bennett, 225 Ariz. 154, 156 ¶ 9 \(2010\)](#) (denying challengers effort to assert new grounds for a challenge based on due process

concerns where the candidate was not given notice).

The Court should also note that the candidate cannot deny that the \$19,840.00 in unpaid campaign finance fines is hers. The fines assessed against a candidate's campaign committee are fines assessed against the candidate as described in SB1137. Title 16 provides: "Candidate committee" includes the candidate. [A.R.S. § 16-901\(8\)](#). Further, as an unincorporated association, the members, including the candidate, are liable for the debts of the committee. *See, e.g., Karl Rove & Co. v. Thornburgh*, 39 F.3d 1273, 1291 (5th Cir. 1994). Finally, SB1137 is completely meaningless if "unpaid fines, penalties or judgments" against the committee somehow did not count because they were not against the candidate.

The Appellant asks that this Court apply the plain language of A.R.S. § 16-351(B) to this case, as it applied the plain language of A.R.S. § 16-311 to *Reyes*, and make clear that the Arizona Legislature's action makes those who do not pay outstanding fines, penalties or judgments vulnerable to exclusion from the ballot.

CONCLUSION

For the foregoing reasons, Appellant urges the Court to reverse the Trial Court's judgment, declare that the Candidate is ineligible to appear on the 2026 Primary Election Ballot and enjoin the government Appellees from including her on that ballot.

DATED this 22nd day of April 2026.

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