

**IN THE SUPREME COURT
STATE OF ARIZONA**

JESSICA CHALBERG, a qualified
elector,

Plaintiff/Appellant,

v.

CONSUELO HERNANDEZ, et al.

Defendants/Appellees.

No. CV-26-0126-AP/EL

Pima County
Superior Court
No. C20262701

ANSWERING BRIEF OF CONSUELO HERNANDEZ

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Appellant Jessica Chalberg asks this Court to declare that Appellee Consuelo Hernandez is disqualified from appearing on the ballot by ignoring what the statutes explicitly say. A.R.S. § 16-351(B) provides that an elector may challenge a candidate for “failure to pay fines, penalties or judgments *as prescribed in* §§ 16-311.” (Emphasis added). Section 16-311, in turn, provides that the filing officer (here, the Secretary of State) must reject a candidate’s nomination papers if “the person is *liable*” for over \$1,000 in campaign-finance related fines, penalties, late fees, or administrative or civil judgments and such liability is no being under appeal. Such liability can arise only if the Attorney General issues an appealable notice of penalty after receiving a referral from the Secretary of State and providing an opportunity to cure. *See* A.R.S. § 16-938(G)(2). Appellant’s theory, which maintains that § 16-351(B) supplies grounds for disqualification independent of § 16-311(J), would read “as prescribed in §§ 16-311” out of A.R.S. § 16-351(B) entirely.

The Superior Court properly held that a candidate cannot be disqualified unless they are “liable” for \$1,000 or more in fines, penalties, or late fees, or judgments arising from campaign finance violations, as provided under § 16-311(J). Short of an appealable notice of penalty from the Attorney General to the candidate, unpaid fees alone are not a *liability* and therefore cannot form the basis of an election challenge. There is no such liability here, as the Attorney General *never* issued such

a notice to Ms. Hernandez. Joint Appendix and Stipulation of Facts (“SOF”) ¶ 3. Lacking the ability to establish that Ms. Hernandez failed to meet the candidacy requirements under the applicable § 16-311(J), Appellant instead attempts to convince this Court to disqualify Ms. Hernandez based on an inapplicable standard that contorts Arizona’s statutory requirements for candidate qualification, and which would unfairly prejudice Ms. Hernandez.

Statement of Facts

Appellant challenged Ms. Hernandez’s eligibility, claiming that “[a]t the time [she] 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)” showed “over \$1,000.00 in connection with late-filed campaign finance reports.” Opening Br. at 2. On April 7, 2026, Ms. Hernandez paid \$19,840.00 to the Secretary of State’s Office to “resolve all outstanding potential campaign finance late fees in connection with [her] campaign committee, “Hernandez” (Filer ID number 100940). J.App’x002 (Decl. of Consuelo Hernandez).

In light of these facts, the Superior Court found that “Ms. Hernandez has never received a notice of penalty from the Attorney General’s office, nor is she aware of any referral ever having been made by the Secretary of State to the Attorney General in connection with campaign finance reporting or any other matter that concerns her

campaign or campaign committee. .” *Chalberg v. Hernandez*, No. C20262701, at *1 (Ariz. Super. Ct. Pima Cnty. Apr. 16, 2026) (final order).¹ And while See The Money reflects “an automatic statutory calculation of presumptive late fees,” it “[does] not reflect any administrative or civil order or judgment, and they have not been reduced to an order or judgment by any enforcement or judicial officer.” Order at 2.

Based on these facts, the Superior Court concluded that Ms. Hernandez remains eligible because a candidate may be disqualified *only* if, under A.R.S. § 16-311(J), “the candidate is ‘liable’ for an aggregate of \$1,000 or more in fines, penalties, late fees, or administrative or civil judgments arising from violations of Arizona’s campaign finance code, *and* such liability is not being appealed.” Order at 3 (emphasis added). Further, relying on this Court’s previous ruling in *Reyes v. Del Palacio*, CV-18-0157-AP/EL (Ariz. June 27, 2018), the Superior Court concluded that such “liability” under A.R.S. §§ 16-937 and 16-938 “does not arise *unless and until* the Attorney General issues an appealable notice of penalty that actually imposes a penalty.” *Id.* (emphasis added). As such, Ms. Hernandez “is not ‘liable’ for campaign finance penalties for purposes of A.R.S. § 16-311(J),” and may appear on the ballot. This appeal followed.

¹ The parties stipulated to this fact. SOF ¶ 3; J.App’x002.

Argument

I. Standard of Review

This Court applies a clearly erroneous standard of review to a trial court's findings of fact, while reviewing questions of statutory interpretation de novo. *Moreno v. Jones*, 213 Ariz. 94, 98 (2006).

II. **A.R.S. § 16-351(B) is a procedural vehicle that does not provide an independent basis to disqualify candidates based upon unpaid fines that are not reduced to a liability under A.R.S. § 16-311(J).**

The most generous reading of Appellant's theory is that Title 16 offers two distinct paths for disqualifying a candidate based on unpaid fines. Opening Br. at 6. Appellant concedes that a filing officer acting under A.R.S. § 16-311 may refuse to accept a candidate's filing *only* if there is formal liability establishing those fines. *Id.* at 4, 6 ("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."). But under Appellant's illusory standard for a second path to disqualification, if the filing officer allows the candidate to proceed because there is no judgment establishing liability for fines, an elector may take a second bite at the apple by later challenging that same candidate under A.R.S. § 16-351. *Id.* (claiming that at the time of filing her nomination petitions "[t]he conditions described in A.R.S. § 16-351(B) were satisfied.").

Put differently, Appellant reads the statutory scheme to impose a higher evidentiary bar on the State *at the filing stage* and a lower one on

private challengers at the *post-filing* stage, just days later, allowing § 16-351 to operate independently of § 16-311 for the purposes of establishing grounds for a candidate's disqualification.

But that interpretation does not work. It would allow a candidate to clear the State's front-end review only to be disqualified a few days later on a lesser showing than the State itself requires. That kind of moving target threatens to create inconsistent standards and unpredictable, inconsistent results. Nothing in the statutory text or structure supports that moving target, and this Court should reject it.

Appellant fundamentally misrelies on A.R.S. § 16-351(B) to provide the basis to disqualify a candidate. Opening Br. at 6. This statute merely provides the *mechanism* by which a candidate's qualification can be challenged, i.e., vis-à-vis an election challenge. But A.R.S. § 16-351(B) does not set out the qualifications or bases for disqualification. The relevant portion of the statute provides that “[a]ny elector may challenge a candidate for . . . failure to fully pay fines, penalties or judgments as prescribed in §§ 16-311, 16-312 and 16-341, if applicable.” A.R.S. § 16-351(B). In cross-referencing § 16-311 specifically, § 16-351(B) makes clear that it does not create independent grounds for disqualification; it merely identifies the bases on which an elector may challenge a candidate.

To illustrate, unlike § 16-311, which provides the standard for disqualification where a candidate exceeds \$1,000 in liabilities, § 16-351(B) contains no such threshold. Under Appellant's reading, any

candidate who has ever had late fees over \$1 would be subject to a challenge, no matter whether the Attorney General attempted to collect that amount and no matter whether the candidate took steps to resolve the \$1 late fee during the cure period. Section 16-351(B) is a procedural vehicle, not a freestanding source of substantive authority. Reading § 16-351(B) in isolation, untethered from § 16-311, ignores that structure.

For the same reason, Appellant’s focus on the definitional differences between “fines,” “penalties,” and “judgments” misses the point. Opening Br. at 4–5. Section 16-351(B) does not hinge on those labels. Rather, it expressly points back to A.R.S. § 16-311 as the source of the governing authority.

The Superior Court properly construed § 16-311(J) as the basis for resolving this election challenge. Order at 2 (concluding that “[u]nder A.R.S. §§ 16-937 and 16-938, appealable campaign finance “liability” does not arise unless and until the Attorney General issues an appealable notice of penalty that actually imposes a penalty. *See Reyes v. Del Palacio*, CV-18-0157-AP/EL (Ariz. June 27, 2018)”). Section 16-311(J) is straightforward, it provides that:

“[e]xcept 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 \$1,000 or more in fines, penalties, late fees or administrative or civil judgments, [etc.] 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 [Title 16,] chapter 6

[(governing campaign contributions and expenses)] of this title.”

(Emphasis added.) That language ties a candidate’s disqualification to an established, enforceable *liability* for noncompliance with Arizona’s law for campaign finance and expenses (A.R.S. §§ 16–901 to 16–961), not mere unadjudicated allegations of unpaid fines.

And § 16-311(J) makes the inquiry straightforward. It asks: is the candidate *liable* for more than \$1,000 arising from Title 16, Chapter 6 enforcement? The statute focuses on the existence of qualifying liability—not how the obligation is categorized. Liability under § 16-311(J), therefore, means an appealable order for such fees. The mere accrual of late fees does not constitute appealable liability and cannot bar a candidate from the ballot.

Such was this Court’s ruling in *Reyes*, where the Court held that a plaintiff could not challenge candidacy based solely on unpaid campaign-finance fines under A.R.S. § 16-311(J), then codified at subsection (I). 2018 WL 11622746, at *1 The *Reyes* Court specifically required more: “absent the imposition and enforcement of those penalties under §§ 16-937 and -938,” the candidate “was not ‘liable’ for any penalties at the time he filed his nomination papers.” *Id.* Rejecting a candidate’s nomination paper for anything less would exceed the Secretary’s powers and would violate the candidate’s due process rights. *See* Ariz. Const. art. V, § 9; Ariz. Const. art. II, § 4.

The Superior Court here properly relied on *Reyes* in holding that Ms. Hernandez “is not ‘liable’ for campaign finance penalties for purpose of [an election challenge under] A.R.S. § 16-311(J)” because she was never issued “an appealable notice of penalty and has never imposed a penalty in connection with any of her candidate committees.” Order at 2. And Appellant fails to articulate a reason to depart from *Reyes* in this case.

By grounding the requirement in “liability” arising from campaign-finance enforcement, the statute requires a determination that is final enough to be enforceable and/or subject to an appeal, not an unadjudicated claim, as the Appellant posits. Appellant concedes that she cannot meet the higher standard under §16-311 or *Reyes* but claims that “[t]he conditions described in A.R.S. § 16-351(B), were satisfied [at the time of filing.” Opening Br. at 4. But, as explained above, §16-351(B) is not a basis for disqualification on its own. This Court should reject Appellant’s invitation to read § 16-311(J) as satisfied by anything less than an appealable campaign-finance liability in this case.

III. Ms. Hernandez is not liable under A.R.S. § 16-311(J) for campaign finance penalties.

The facts here, which are largely undisputed, establish that Ms. Hernandez is not liable for any campaign finance penalties under A.R.S. § 16-311(J). As discussed above, for a candidate to become ineligible under § 16-311(J), the candidate must have qualifying liability arising from campaign finance violations, and such liability must be

appealable—otherwise the exemption for “cases where the liability is being appealed” would make no sense. The mere accrual of late fees does not constitute appealable liability and cannot bar a candidate from the ballot. Order at 2–3.

In fact, at no point has the Secretary of State or the Arizona Attorney General’s Office issued a reasonable cause notice of a campaign-finance liability or notice of penalty to Ms. Hernandez’s associated committee. Order 2-3. The parties stipulated to this fact, as such it cannot be said that Superior Court’s findings on this point are clearly erroneous. SOF ¶ 3; *see also Moreno*, 213 Ariz. at 98 (explaining that “clearly erroneous” requires findings that are either unsupported by reasonable evidence or based on a reasonable conflict of evidence” (internal quotation marks and citation omitted)).

IV. Even if the Attorney General’s Office had given Ms. Hernandez’s candidate committee a notice of campaign-finance liability, it would be the committee’s, not the candidate’s, responsibility to repay it.

Appellant’s reliance on *Karl Rove & Co. v. Thornburgh*, 39 F.3d 1273, 1291 (5th Cir. 1994), is also misplaced because that case arose from common-law principles governing unincorporated associations. The *Thornburgh* court applied principal-agency principles to decide whether an individual (the candidate) could be bound by a committee’s contracts based on that individual’s conduct. There, the individual was the candidate, and the Fifth Circuit considered whether he qualified as a

“member” of the unincorporated association but ultimately concluded that label did not matter. *Id.* at 1288–91. What mattered was that the candidate exercised supervision, direction, and control over the committee’s activities, including approving expenditures and contracts, which was enough to establish liability under traditional principal–agent principles. *Id.* at 1290–91.

This case arises under Arizona’s statutory ballot-access and campaign-finance framework, where liability is defined—and limited—by statute, not expanded through common-law agency concepts. Specifically, A.R.S. § 16-311(J) bars a candidate from the ballot only if “the person” is liable for any financial penalties. *Reyes*, 2018 WL 11622746, at *1. Even if Ms. Hernandez’s candidate committee had received notice of liability for a campaign finance violation, Ms. Hernandez would not be personally liable to repay it. Unlike other states, which extend liability of a committee’s campaign finance violations to the candidate in an individual capacity, Arizona does not have such a statute. *Compare* Cal. Gov. Code § 84104 (“It shall be the duty of each candidate, treasurer, principal officer, and elected officer” to comply with California campaign finance laws), *and* Cal. Fair Political Practice Comm’n, *Campaign Disclosure Manual 1*, ch.2.10 (Aug. 2023) (“[T]he individuals listed on the most recently filed [statement of organization] are liable for the committee’s activity.”), *with* A.R.S. § 16-901(8) (defining “candidate

committee” to “include[] the candidate,” but not otherwise imputing the committee’s liabilities to the candidate).

Conclusion

For the foregoing reasons, the Court should affirm the Superior Court’s Order denying Appellant’s election challenge under A.R.S. § 16-351(B) and hold that Ms. Hernandez is qualified to appear on the ballot.

Respectfully submitted this 24th day of April, 2026.

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