IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ARIZONA CHAPTER OF THE ASSOCIATED GENERAL

CONTRACTORS OF AMERICA, et al., *Petitioners/Appellants*,

v.

CITY OF PHOENIX, et al., *Respondents/Appellees*.

BUILDING A BETTER PHOENIX, a Political committee,

Real Party in Interest/Appellee.

No. 1 CA-CV 19-0257 EL
FILED 6-6-2019

Appeal from the Superior Court in Maricopa County
No. CV 2019-000604
The Honorable Sherry K. Stephens, Judge

AFFIRMED

COUNSEL

Ballard Spahr LLP, Phoenix
By Joseph A. Kanefield, Roy Herrera, Mark Kokanovich, Daniel A. Arellano
Counsel for Petitioners/Appellants

Perkins Coie LLP, Phoenix
By Jean-Jacques Cabou, Matthew R. Koerner
Co-Counsel for Respondents/Appellees

Phoenix City Attorney's Office, Phoenix
By Deryck Lavelle, Cris A. Meyer
Co-Counsel for Respondents/Appellees

Statecraft PLLC, Phoenix
By Kory A. Langhofer, Thomas J. Basile
Co-Counsel for Real Party in Interest/Appellee, Building A Better Phoenix

Goldman & Zwillinger PLLC, Scottsdale
By Mark D. Goldman, Jeremy Phillips
Co-Counsel for Real Party in Interest/Appellee, Building A Better Phoenix

---

MEMORANDUM DECISION

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Maria Elena Cruz and Judge Paul J. McMurdie joined.

C A M P B E L L, Judge:

¶1 In this expedited election appeal, the Arizona Chapter of the Associated General Contractors of America ("Contractors"), challenge the superior court's denial of injunctive and declaratory relief, asking the court to keep the Building a Better Phoenix initiative off the special election ballot for the City of Phoenix ("City"). Contractors argue (1) the initiative summary is insufficient, unclear, and would cause voter confusion with misinformation, and (2) because the circulators were paid per signature in violation of Arizona Revised Statutes ("A.R.S.") § 19-118.01, the signatures are void, resulting in the number of valid signatures being insufficient to qualify the initiative for placement on the ballot. Because Contractors' claims fail, we affirm.

BACKGROUND

¶2 In September 2018, political action committee Building a Better Phoenix (the "Committee") applied for a petition serial number to the Phoenix City Clerk seeking to add an initiative to the ballot, titled "Building a Better Phoenix Act." The summary of the proposed petition accompanying the application reads as follows:

> This initiative measure amends the City Charter to terminate construction of all future light rail extensions and redirect the

> funds toward infrastructure improvements. Revenues from terminating light rail extensions other than the South Phoenix extension will fund infrastructure improvements throughout the City. Revenues from terminating the South Phoenix light rail extension will fund infrastructure improvements in South Phoenix (defined as South Mountain Village plus the area between Seventh Street, Seventh Avenue, Jefferson Street and the Salt River). A Citizens Transportation Committee will solicit public input, make recommendations to the City Council regarding infrastructure improvements, and review transportation expenditures.

Contractors filed a complaint pursuant to A.R.S. § 19-122(C), challenging the validity of the initiative petition on two grounds. First, Contractors argued that the proposed initiative summary created voter confusion and should be stricken. Second, they argued that any signatures collected by circulators who were paid by the signature were void and must not be counted. *See* A.R.S. § 19-118.01. If Contractors prevailed on either challenge, they asked the trial court to enjoin the placement of the proposed initiative on the ballot.

¶3 The court held an evidentiary hearing and later issued a well-reasoned minute entry finding "the 98 word summary contains the principal provisions of the proposed initiative and complies with the law." The court explained that A.R.S. § 19-118.01 does not apply to ballot measures regarding cities and towns and does not prohibit payment to circulators per signature, unlike the restriction on statewide initiatives. Because the court did not accept either of the arguments offered by the Contractors, it denied the request for declaratory and injunctive relief and Contractors appealed.

DISCUSSION

¶4 This court reviews the superior court's ruling on a request for injunctive relief for abuse of discretion. *Arrett v. Bower*, 237 Ariz. 74, 77, ¶ 7 (App. 2015). This appeal raises questions regarding the interpretation and application of election statutes, which as questions of law, this court reviews de novo. *Pendersen v. Bennett*, 230 Ariz. 556, 558, ¶ 6 (2012). Specifically, Contractors claim that the 98-word summary submitted to accompany the initiative bears a significant danger of confusion or unfairness. *See Save our Vote, Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 152, ¶ 26 (2013). We begin with the presumption that an initiative petition

that has been circulated, signed, and filed is valid. *Harris v. Purcell*, 193 Ariz. 409, 412, ¶ 15 (1998).

I. The summary does not create a danger of confusion or unfairness.

¶5 We begin by looking at the plain language of the summary to determine if the summary is in substantial compliance with the statutory requirements. *See Save Our Vote*, 231 Ariz. at 152, ¶ 26. As our Supreme Court recently explained in *Molera v. Raegan*, "the statutory provision pertinent to our analysis is § 19-102(A), which requires an initiative's sponsors to provide on the petition 'a description of no more than one hundred words of the principal provisions of the proposed measure or constitutional amendment.'" 245 Ariz. 291, 295, ¶ 13 (2018). The description, or summary, need not be impartial, *see Save Our Vote*, 231 Ariz. at 152, ¶ 28, nor must every provision be detailed in the description, as the statutorily required disclaimer acknowledges, A.R.S. § 19-102(A). However, we must invalidate the petition if the summary "is fraudulent or creates a significant danger of confusion or unfairness." *Molera*, 245 Ariz. at 295, ¶ 13 (citing *Save Our Vote*, 231 Ariz. at 152, ¶ 26). The summary itself must be adequate in its description of the principal provisions to avoid confusion. *Id.* at 298-99, ¶ 32.

¶6 Upon review of the summary provided, the principal provisions of the proposed initiative are present. Should this initiative be approved by the voters, all city funding for light rail extension projects would be terminated and the funds would be redirected to other infrastructure improvements. Additionally, a committee would be created to make infrastructure recommendations to the city and review transportation budget spending. The summary is followed by the required disclaimer alerting voters that the entire text is available and that the summary may not include all provisions of the initiative. Contractors point to three issues to substantiate their claim that the summary provided is confusing and unfair. Specifically, Contractors challenge the summary's (1) use of the word "revenue" to indicate the generation of income; (2) failure to identify the "revenues" to be redirected and the lost regional and federal funding for light rail projects; and (3) failure to identify the effect the moratorium on light rail extensions would have on all rail services, including commuter train service.

¶7 First, while we agree with Contractors that there are omissions in the summary, we disagree that those omissions create a significant danger of confusion or unfairness. *See Wilhelm v. Brewer*, 219 Ariz. 45, 48-49, ¶¶ 14-15 (2008) (explaining that a summary description that

omits certain aspects of the proposed initiative survives judicial review if the description does not misrepresent or conceal the thrust of the measure). The summary here makes clear that the crux of the proposed initiative aims to "terminate construction of all future light rail extensions and redirect the funds" toward other yet-to-be-determined transportation expenditures. A summary is just that—an effort in 100 words or less to describe to the voters the primary purpose of the initiative. *See Molera*, 245 Ariz. at 297, ¶ 27. It would be impossible for a summary to lay out all potential impacts that flow from the adoption of the initiative. That is the purpose of placement on the ballot. Both sides have the opportunity to educate voters about the pros and cons of the measure should it be adopted—it is a political discussion. *See Tilson v. Mofford*, 153 Ariz. 468, 473 (1987) ("[T]he proper place to argue about the potential impact of an initiative is the political arena, in speeches, newspaper articles, advertisements and other forums.").

¶8 Second, Contractors argue that signers were misled to believe that the measure would generate revenue, and the use of the term "revenues" is misleading because light rail extension projects do not generate revenue. The use of the term "revenues" does not render the description misleading. The description informs signers that revenues from terminating light rail extensions will fund infrastructure improvement. Monies derived from taxes are referred to as revenue. *Revenue*, Black's Law Dictionary (11th ed. 2019) (defining revenue as "[t]he total current income of a government, however derived; esp., taxes"). There is a direct relationship between discontinuing the extension of light rail projects and the tax revenues that would become available for other infrastructure projects. Moreover, the description does not suggest that new funds would be generated, simply that the "revenues" currently dedicated to the extension of the light rail would be redirected to other infrastructure projects. "The description need not encompass minor provisions and may be presented in a biased manner, but it may not create a substantial danger of confusion or unfairness." *Molera*, 245 Ariz. at 299, ¶ 32. We do not find the use of the word "revenue" to be confusing in the given context.

¶9 Contractors next argue the use of the terms "funds" and "revenues" in the summary suggest that "all funds that would have otherwise been spent on light rail extensions . . . can and will be redirected toward other projects in the city." We disagree. A plain reading of the initiative indicates that only funds and revenue provided by the City from the termination of light rail extensions will be redirected. Contractors also point out that the summary fails to mention the loss of possible federal or regional funding for light rail projects. While federal funding is available, Arizona had not yet received a commitment for the funds. Thus, the effect

of the initiative on funding sources not referenced in the initiative is not a principal provision that must be described. *See* A.R.S. § 19-102(A). Our courts have differentiated between the terms of the proposed measure itself and the proposed measure's potential effects on other areas. For example, our Supreme Court in *Tilson* found that an initiative publicity pamphlet that failed to mention it could affect two existing provisions of the Arizona Constitution was not deceptive and misleading because the statute controlling initiative publicity pamphlets did not require the initiative to indicate other provisions affected by the amendment. 153 Ariz. at 472. We apply the same principle here and conclude that the potential effect of outside federal funding not mentioned in the initiative itself is not a principal provision that must be included in the description. As a result, its omission from the description does not create a substantial danger of confusion or unfairness.

¶10 Finally, Contractors argue that the summary's failure to mention that "infrastructure improvements" to which funds will be redirected is expressly defined to exclude the light rail renders it misleading. Again, we reject the Contractors' argument. The text of the summary makes clear that the initiative would end the extensions of the light rail and divert revenues from that termination to other infrastructure improvements. This omission is not contrary to the measure and therefore is not misleading. *See Wilhelm*, 219 Ariz. at 48-49, ¶¶ 13-15 (concluding a summary was not misleading despite its omission because the omitted provision was "consistent with" other provisions in the summary). Reading the summary as a whole, we conclude it contains the principal provisions of the proposed initiative and does not create a significant danger of confusion or unfairness.

II. A.R.S. § 19-118.01(A) does not apply to signature gathering for initiative petitions in the City of Phoenix.

¶11 Section 19-118.01(A) prohibits payment to petition circulators "based on the number of signatures collected on a statewide initiative or referendum petition." The statute further provides that signatures "obtained by a paid circulator who violates this section are void and shall not be counted in determining the legal sufficiency of the petition." A.R.S. § 19-118.01(A). Section 19-141(A) states that Title 19 "applies to the legislation of cities, towns and counties, except as specifically provided to the contrary in this article." It is undisputed that the Committee's petition circulators were paid by the signature. Contractors argue that under A.R.S. § 19-141(A), the ban on paying initiative petition circulators by the signature in A.R.S. § 19-118.01(A) applies to City initiatives and the

signature gathering efforts in this case. If Contractors' argument were valid, any signatures collected by circulators who were paid per signature would be void and could not be counted. As a result, the Committee would have failed to file the required number of signatures to put the proposed initiative on the special election ballot. Therefore, we must determine whether A.R.S. § 19-118.01 applies to local initiatives by virtue of A.R.S. § 19-141(A).

¶12 "[T]he best and most reliable index of a statute's meaning is its language and, when the language is clear and unequivocal, it is determinative of the statute's construction." *State v. Hansen*, 215 Ariz. 287, 289, ¶ 7 (2007) (citation omitted). "In giving effect to every word or phrase, the court must assign to the language its 'usual and commonly understood meaning unless the legislature clearly intended a different meaning.'" *Bilke v. State*, 206 Ariz. 462, 464-65, ¶ 11 (2002) (citation omitted). Only where the statutory text is ambiguous and susceptible to more than one plausible interpretation does the court use secondary tools of statutory construction, looking to "the statute's context; its language, subject matter, and historical background; its effects and consequences; and its spirit and purpose." *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 268 (1994).

¶13 Contractors claim that because other statutes in Title 19 contain more restrictive language to limit their application to statewide initiative and referendum petitions, the legislature cannot have meant for A.R.S. § 19-118.01 to apply only to statewide initiative and referendum petitions. For example, Contractors cite to A.R.S. § 19-118(A), which states, "[a]ll circulators who are not residents of this state and, for statewide ballot measures *only*, all paid circulators must register as circulators with the secretary of state before circulating petitions pursuant to this title." (Emphasis added.) Likewise, § 19-111(D) states, "[t]he secretary of state shall make available to each person or organization circulating a statewide initiative, referendum or recall petition a copy of circulator training materials created by the secretary of state." It further states, "[n]otwithstanding § 19-141, this subsection does not apply to initiative, referendum or recall petitions for cities, towns and counties." A.R.S. § 19-111(D); *see also* A.R.S. § 19-141(A) ("The provisions of § 19-124 with respect to the legislative council analysis do not apply in connection with initiatives and referenda in cities, towns and counties.").

¶14 We are unpersuaded by Contractors' argument that reading § 19-118.01 to only apply to statewide petitions, as clearly stated in the text of the statute, renders the differing language in these other statutes unnecessary and redundant. A plain reading of A.R.S. § 19-118.01 illustrates

that the ban on payments to initiative or referendum petition circulators does not apply to cities, towns, and counties, as contemplated by § 19-141. "Each word, phrase, and sentence [of a statute] must be given meaning so that no part will be [void], inert, redundant, or trivial." *City of Phoenix v. Yates*, 69 Ariz. 68, 72 (1949).

¶15 As Contractors point out, there are several ways in which the legislature can specifically designate that a statute regarding initiatives or referendum petitions applies only to statewide petitions. By its plain language, where the legislature uses the term "statewide," the statute does not apply to local initiative or referendum petitions. *See First Credit Union v. Courtney*, 233 Ariz. 105, 108, ¶ 9 (App. 2013) ("When the statutory language 'is clear and unambiguous,' we look no further and 'assum[e] the legislature has said what it means.'" (citation omitted)).

¶16 Contractors next argue that this reading of § 19-118.01 would render § 19-141 meaningless. This argument similarly fails. Section 19-141, in addition to affirmatively applying Title 19 to "the legislation of cities, towns and counties, except as specifically provided to the contrary," also performs the function of translating the person or entity responsible for certain duties from one where the initiative or referendum petition is statewide to one where it is local. The legislature can expressly exclude specific statutes from the purview of others, and that is exactly what it has done here. Section 19-141 contemplates the legislature exercising this power with the language "except as specifically provided to the contrary," and in this case, the legislature provided that § 19-118.01 applies only to statewide initiative and referendum petitions.

¶17 Finally, Contractors argue that *Fleischman v. Protect Our City*, 214 Ariz. 406 (2007), supports its interpretation because the statute at issue there, A.R.S. § 19-121(B), used a term of statewide application—"secretary of state"—and the court held it still applied to local measures under § 19-141. However, *Fleischman* does not guide our analysis here. The court correctly interpreted § 19-141 to apply to § 19-121(B) because, by its terms, § 19-141 provides a method for local officers to take on the duties of the secretary of state or attorney general when the initiative or referendum petition is for local legislation. *See* A.R.S. § 19-141(A). Moreover, unlike § 19-118.01, the statute at issue in *Fleischman* was not limited by the term "statewide."

¶18 Because the text of § 19-118.01 is clear and unambiguous, we will not engage in other methods of statutory interpretation. *See City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 179, ¶ 13 (App. 2008).

This court holds that by its terms, § 19-118.01 applies only to statewide initiative and referendum petitions and does not bar circulators of local initiative and referendum petitions from being paid per signature. Accordingly, signatures collected by the Committee's petition circulators who were paid per signature may be counted toward the required number to get on the ballot under A.R.S. § 19-118.01.

¶19 The Arizona Constitution allows cities, towns, and counties to prescribe the manner of exercising initiative powers within the restrictions of state law. Ariz. Const. art. 4, pt. 1, § 1(8); *see also Maxwell v. Fleming*, 64 Ariz. 125, 128 (1946) (explaining that powers of initiative under the city charter must be exercised within the limitations imposed by the constitution and general laws). Having determined that A.R.S. § 19-118.01 does not prohibit circulators from being paid per signature in local elections, we must examine the Phoenix City Charter (the "Charter") and Phoenix City Code (the "City Code") to determine whether the City adopted the ban on circulators being paid per signature when circulating initiative petitions. *See id.*

¶20 In Chapter XV, § 2 of the Charter, the City adopted "the applicable provisions of Title 19, Chapter 1, Articles 1, 2, 3, and 4, Arizona Revised Statutes, as now constituted and hereafter amended, relating to the powers of initiative . . . as provisions of [the] Charter governing the manner of exercising the initiative powers" reserved to the City. Section 12-301 of the City Code states "[a]pplicable State laws relating to Municipal Elections that do not conflict with the City Charter or this chapter shall apply to all City elections."

¶21 However, the City also adopted its own process—not present in the Charter or applicable statutes—for circulation and signature gathering on initiative petitions in the City Code. Phoenix City Code § 12-1101. So long as a city's ordinance does not directly conflict with state law or infringe on the constitutionally permitted initiative process, cities may enact ordinances regulating the procedure for local initiative petitions. *Cf. City of Tucson v. Consumers for Retail Choice Sponsored by Walmart*, 197 Ariz. 600, 605, ¶ 15 (App. 2000) (holding cities may enact procedures for local referendum petitions as long as the procedures do not conflict with state law). The qualifications and requirements for circulators of City initiative petitions require circulators to (1) certify the circulator is qualified to register to vote in the State of Arizona; (2) if the circulator is not a resident of Arizona, register as an out of state circulator with the Secretary of State; (3) certify the names on the petition were signed in the circulator's presence; (4) certify the circulator believed each signer was a qualified elector who

resides at the address given as the signer's residence on the date indicated; (5) sign the petition and type or print the circulator's name next to or below the circulator's signature; and (6) type or print the circulator's actual residence or description of the residence location. Phoenix City Code § 12-1101(h)(1)–(6). This is an exhaustive list of requirements for circulators and excludes any other potential restrictions or requirements. In adopting this section, the City made a policy decision that it would not prohibit paid circulators. Had the City wished to preclude this activity, it was free to do so here.

¶22 The City's procedures do not directly conflict with state law or infringe on the initiative process. The absence of the prohibition on circulators receiving payment per signature in the City's ordinances that are present in A.R.S. § 19-118.01—which does not apply to city, county, or town initiative petitions—is a permissible exercise of the constitutionally and statutorily prescribed power of cities to enact their own procedures for initiative petitions. Ariz. Const. art. 4, pt. 1, § 1(8) (permitting city initiative ordinances to govern "within the restrictions of general laws"); A.R.S. § 19-141(D) ("The procedure with respect to municipal and county legislation shall be as nearly as practicable the same as the procedure relating to initiative and referendum provided for the state at large."); *see also Consumers for Retail Choice*, 197 Ariz. at 603, ¶ 10 (explaining Tucson's additional referendum requirements "do not conflict with or attempt to overrule any state requirements and are able to peacefully coexist with the state requirements").

¶23 The City Code adopts only "[a]pplicable State laws *relating to Municipal Elections* that do not conflict with the City Charter" or City Code to apply to city elections. Phoenix City Code § 12-301 (emphasis added). Thus, because A.R.S. § 19-118.01 does not relate to municipal elections—only statewide elections—we conclude that the City Code does not prohibit initiative petition circulators to be paid per signature.

¶24 Because no state or local law prohibits circulators to be paid per signature for circulating initiative petitions in the City elections, the signatures collected by the Committee's petition circulators who were paid per signature may be counted toward the required number for the proposed initiative to appear on the ballot.

CONCLUSION

¶25 Based upon the foregoing, we affirm.

AMY M. WOOD • Clerk of the Court
FILED: JT