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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-009919 08/27/2018

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
C. Mai
Deputy

VINCE LEACH, et al. ANDREW SNIEGOWSKI

v.

MICHELE REAGAN, et al. J E LA RUE

JAMES E BARTON II
THOMAS J. BASILE
CRAIG C CAMERON
COLLEEN CONNOR
JEFFERSON R DALTON
RYAN ESPLIN
BRITT W HANSON
BRETT W JOHNSON
DANIEL JURKOWITZ
WILLIAM J KEREKES
CHARLENE A LAPLANTE
JASON MOORE
JOSEPH RUEDA
JESSICA SABO
LINDSAY SHORT
ROSE WINKELER
KARA MARIE KARLSON
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-009919 08/27/2018

CHRISTOPHER C KELLER
SAMAN J GOLESTAN
WILLIAM P RING
COLIN PATRICK AHLER
BRIANNA LONG
R GLENN BUCKELEW
COURT ADMIN-CIVIL-CCC
DOCKET-CIVIL-CCC
JUDGE KILEY

UNDER ADVISEMENT RULING

Findings of Fact and Conclusions of Law

I. Conclusions of Law

1) "Once circulated, signed, and filed, [initiative] petitions are presumed valid." *Kromko v. Superior Court*, 168 Ariz. 51, 58, 811 P.2d 12, 19 (1991).

2) A petition challenger bears "the burden of proving by clear and convincing evidence that a signature" on a petition "was not that of a qualified elector." *McClung v. Bennett*, 225 Ariz. 154, 156, 235 P.3d 1037, 1039 (2010).

3) "Evidence is clear and convincing if it makes the thing to be proved highly probable or reasonably certain." *Parker v. City of Tucson*, 233 Ariz. 422, 436, 314 P.3d 100, 114 (App. 2013) (citation, internal quotations, and internal punctuation omitted).

4) A.R.S. § 19-102.01(A) provides in part that "[c]onstitutional and statutory requirements for statewide initiative measures must be strictly construed and persons using the initiative process must strictly comply with those constitutional and statutory requirements." Prior to the enactment of A.R.S. § 19-102.01(A), Arizona courts applied a "substantial compliance" standard to initiative matters. *See, e.g., State ex rel. Bullard v. Osborn*, 16 Ariz. 247, 248-49, 143 P. 117, 117-18 (1914). This Court has already considered and rejected the Committee's constitutional challenge to A.R.S. § 19-102.01(A). Minute Entry of August 16, 2018 at pp. 10-15.

5) Satisfying the "strict compliance" standard "requires nearly perfect compliance with constitutional and statutory" mandates. *Arrett v. Bower*, 237 Ariz. 74, 81, 345 P.3d 129, 136 (App. 2015) (citation and internal quotations omitted). "Strict compliance" applies to "all constitutional and statutory provisions, no matter how minor," *Homebuilders Ass'n of Cent. Ariz. v. City of Scottsdale*, 186 Ariz. 642, 648, 925 P.2d 1359, 1365 (App. 1996), even if its application results in what may seem to be "harsh consequences" caused by nothing more than an "unfortunate mistake." *Arrett*, 237 Ariz. at 80, 83, 345 P.3d at 135, 138 (citation and internal quotations omitted).

6) If a circulator knowingly signs a false affidavit on the back of a petition sheet, all of the signatures on the petition sheet are void and cannot be counted in determining whether the measure has sufficient signatures for placement on the ballot. *Brousseau v. Fitzgerald*, 138 Ariz. 453, 456, 675 P.2d 713, 716 (1984) ("We hold that petitions containing false certifications by circulators are void, and the signatures on such petitions may not be considered in determining the sufficiency of the number of signatures to qualify for placement on the ballot.").

7) Each signer of a petition must be a registered voter and, in addition to signing his or her own name, must print his or her first and last names, residence address, and the date on which he or she signed the petition. A.R.S. § 19-112(A).

8) "The primary justification for requiring a petition signer to provide information with respect to identity and residence is to safeguard the integrity of the petition process by allowing the Secretary to initially determine whether a particular petition signer is a qualified registered elector and to permit anyone interested in protesting the petition likewise to confirm or disprove the voting eligibility of the petition signer." *McClellan v. Meyer*, 900 P.2d 24, 32 (Colo. 1995).

9) If it is apparent from a petition sheet that a particular signer did not print his or her own name and address, the circulator's affidavit is false and the petition sheet is, consequently, void. *Brousseau*, 138 Ariz. at 456, 675 P.2d at 716. *See also Parker*, 233 Ariz. at 438, 314 P.3d at 116 ("It was apparent from the signature sheets that the elector did not print his or her own address - - a fact the circulator must have known if the affidavit's statement that each elector filled out the signature sheet 'in my presence on the date indicated' were true. The false affidavits rendered the signature sheets void.").

10) The circulator of the petition is required to swear before a notary public that "each of the names on the sheet was signed[,] and the name and address were printed by" the signer on the date indicated, and that the circulator believes each signer to be "a qualified elector of a certain county of the state." A.R.S. § 19-112(C).

11) The mere fact that a petition sheet signer is not qualified to vote does not establish that the circulator's affidavit on the sheet attesting to the circulator's contrary belief is fraudulent, nor does it require the invalidation of the entire petition sheet. *Ross v. Bennett*, 228 Ariz. 174, 181, 265 P.3d 356, 363 (2011) (holding that while "[t]he signature sheets may contain some signatures from electors who are not qualified to vote," the challenger "provided no evidence that the circulators…knew that the signatures were invalid," and therefore failed to show "that the circulator's affidavit was itself fraudulent").

12) A convicted felon whose civil rights have not been restored is ineligible to register to vote in Arizona, and so is not permitted to circulate petitions on behalf of an initiative measure. *See* A.R.S. § 16-101(A)(5) ("Every resident of the state is qualified to register to vote if he…has not been convicted of treason or a felony, unless restored to civil rights."); A.R.S. § 19-114(A) ("[N]o person other than a person who is qualified to register to vote…may circulate an initiative…petition and all signatures verified by any such person shall be void and shall not be counted in determining the legal sufficiency of the petition.").

13) A class 6 undesignated felony is "treated as a felony for all purposes" unless and until the trial court enters an order designating the offense a misdemeanor. A.R.S. § 13-604(A).

14) Other than the right to possess weapons, the civil rights of a person convicted of a felony in Arizona are "automatically…restored" if the convicted person has no other felony conviction, pays all fines and restitution imposed, and completes his or her term of probation or receives an absolute discharge from prison. A.R.S. § 13-912(A).

15) Once a petition challenger has established that a circulator has a felony conviction, the burden shifts to the proponent of the initiative measure to come forward with evidence establishing that the circulator's civil rights have been restored. *See Parker*, 233 Ariz. at 432 n. 9, 314 P.3d at 110 n. 9 ("[T]he Committee plainly had superior access to information about the restoration of the circulators' civil rights and chose to produce no such evidence," and "[t]here is support for the notion that a party with superior knowledge about and access to evidence regarding certain facts should bear the burden of producing that evidence, rather than charging the adverse party with the task of proving a negative). *See also Woerth v. City of Flagstaff*, 167 Ariz. 412, 419, 808 P.2d 297, 304 (App. 1990) ("When proof of a negative assertion lies peculiarly within the knowledge of the adverse party, the burden of coming forward with evidence shifts to that party.").

16) A.R.S. § 19-118(C) provides,

> If a registered circulator is properly served with a subpoena to provide evidence in an action regarding circulation of petitions and fails to appear or produce documents as provided for in the subpoena, all signatures collected by that circulator are deemed invalid. The party serving the subpoena may request an order from the court directing the secretary of state to remove any signatures collected by the circulator as provided for in section 19-121.01, subsection A.

17) Pursuant to A.R.S. § 41-321(B), "[a] notary public may possess only one official seal…" Possession by a notary of more than one official seal is a class 3 misdemeanor. A.R.S. § 41-321(C).

18) If a notary's official seal is lost or compromised, the notary must so notify the Secretary of State in writing. A.R.S. § 41-323(B).

II. Findings of Fact

1) On February 20, 2018, Real Party in Interest/Cross-Claimant Clean Energy for a Healthy Arizona (the "Committee") filed an application for an initiative measure entitled the "Clean Energy for a Healthy Arizona Amendment" (the "Initiative") and was assigned serial number C-04-2018 by Defendant/Cross-Defendant Arizona Secretary of State Michele Reagan (the "Secretary of State"). Second Amended Complaint for Special Action and Injunctive, Declaratory, and Mandamus Relief ("SAC") at ¶ 1.

2) The Committee was required to gather a total of 225,963 valid signatures for the Initiative to qualify for placement on the ballot. SAC at ¶ 69.

3) Between February 21, 2018 and July 5, 2018, the Committee's contractor, FieldWorks, LLC, ("FieldWorks") registered 1,652 circulators to collect signatures on behalf of the Initiative. SAC at ¶ 108. At Trial, FieldWorks co-owner Christopher Gallaway ("Gallaway") testified that FieldWorks registered such a large number of circulators because of the large number of signatures required for the Initiative and because circulators tend to have a high turnover rate. Gallaway testified that some of the circulators that FieldWorks registered quit their jobs before they had gathered a single signature, and many others quit within days of being hired and after having gathered only a small number of signatures.

4) According to Gallaway, FieldWorks maintains validity rate data for the signatures gathered by each circulator for two reasons. First, such data serves as an oversight and management tool. FieldWorks may determine, for example, that a particular circulator needs

additional training - - or, alternatively, should be fired - - if that circulator's validity rate is significantly below that of other circulators.

5) Gallaway testified that FieldWorks also provides its validity rate data to clients as a conservative estimate of the validity of the signatures it has gathered. He testified that FieldWorks provides each client with this conservative estimate of the validity of signatures it gathered in order to provide a guarantee (or, at least, a reliable assurance) of the number of valid signatures it has gathered on the client's behalf.

6) As an example of FieldWorks's conservative approach to validity data, Gallaway testified that if the address a particular signer printed on a petition sheet does not match the address on that person's voter registration information, FieldWorks will treat that signature as invalid even though county election officials may well find that signature to be valid after reviewing the signer's voter registration data. FieldWorks does not make that comparison, he testified, because it does not have the same access to voter registration data that county election officials do.

7) The Committee's internal data showed a validity rate of 47.28%. Transcript of August 14, 2018 Deposition of Jessica Kathleen Grennan ("Grennan Deposition") at p. 26. When asked, at her deposition, whether she had "any reason to believe that this [47.28%] validity rate is wrong," Jessica Grennan ("Grennan"), the Committee's campaign manager, answered, "No." *Id*. at pp. 5, 27.

8) On July 5, 2018, the Committee submitted, to the Secretary of State, over 50,000 petition sheets containing a total of 480,707 signatures. Exhibit 5689.[1]

9) Also on July 5, 2018, the Committee sent a letter to the Secretary of State purporting to revoke the registrations of nearly all of the circulators it had registered. Exhibit H to SAC.

10) After completing her review of the Committee's petition sheets pursuant to A.R.S. § 19-121.01(A), the Secretary of State rejected a total of 27,688 signatures and determined that the remaining 454,451 signatures were "eligible signatures pursuant to A.R.S. § 19-121.01(A)(6)." Exhibit 3. She then selected a random 5% signature sample and transmitted 22,722 signatures to the various counties. *Id*.

11) Plaintiffs Vince Leach, *et al*. (the "Plaintiffs') filed the Complaint in this matter on July 19, 2018 asserting claims against the Secretary of State, the Committee, and the Recorders

[1] A slightly lower figure, 480,401, was discussed at Grennan's deposition. Grennan Deposition at pp. 23-24. At Trial, however, the parties did not dispute that 480,707 signatures were submitted.

and all members of the Boards of Supervisors of every county in Arizona. After briefing and argument, the Court dismissed the claims against the Recorders and Supervisors of each county. *See* Minute Entry of July 31, 2018 at p. 8. The Arizona Supreme Court affirmed this ruling by order dated August 20, 2018.

12) After completing their 5% sample review, the recorders of the various counties disqualified 6,277 of these signatures and validated the remaining 16,445 signatures, thereby establishing a validity rate of 72.37%. The Secretary of State concluded that "the estimated total number of valid signatures is 328,908, which exceeds the 225,963 minimum" number of signatures required to qualify for placement on the ballot. Exhibit 6056.

13) On August 6, 2018, the Plaintiffs filed a complaint against the Recorders of Cochise, Gila, Navajo and Yavapai Counties in *Vince Leach, et al. v. David W. Stevens, et al*., Maricopa County Superior Court Case No. CV2018-010116, asserting that, during their 5% sample review, they improperly accepted a number of invalid signatures. Complaint in CV2018-010116 at ¶ 4.

14) On August 10, 2018, the Plaintiffs filed a complaint against the Recorders of Mohave, Pima, Pinal and Santa Cruz Counties in *Vince Leach, et al. v. Kristi Blair, et al*., Maricopa County Superior Court Case No. CV2018-010658, asserting that, during their 5% sample review, they improperly accepted a number of invalid signatures. Complaint in CV2018-010658 at ¶ 4.

15) On August 16, 2018, CV2018-010116 and CV2018-010658 were consolidated with this case pursuant to A.R.S. § 19-122(C). *See* Minute Entry of August 16, 2018 at p. 6.

16) On August 17, 2018, the Plaintiffs filed a complaint against the Recorders of Coconino, Maricopa, and Yuma Counties in *Vince Leach, et al. v. Patty Hansen, et al*., Maricopa County Superior Court Case No. CV2018-010807, asserting that, during their 5% sample review, they improperly accepted a number of invalid signatures. Complaint in CV2018-010807 at ¶ 4.

17) On August 17, 2018, CV2018-010807 was consolidated with this case pursuant to A.R.S. § 19-122(C). *See* Minute Entry of August 17, 2018 at p. 3. The recorders whom the Plaintiffs sued based on their 5% sample review will be referred to herein as the "Defendant County Recorders."

18) Following Oral Argument on certain motions on August 17, 2018, the Court commenced a five-day trial on August 20th at which over 5,500 exhibits were admitted in evidence and over 50 witnesses testified.

19) The Plaintiffs subpoenaed over 1,180 witnesses, almost all of whom were petition circulators, to testify at Trial. Additionally, several circulators appeared at the courthouse to testify without having been subpoenaed by any party.

20) Eight of the circulators who were subpoenaed by the Plaintiffs filed motions to quash or modify their subpoenas before trial and were excused from appearing when the Court granted those requests.

21) 913 of the circulators who were subpoenaed by the Plaintiffs appeared at the courthouse on the morning of the first day of trial on August 20, 2018, while 235 subpoenaed circulators failed to appear. Exhibit 5688. The Court ordered all petitions circulated by those 235 subpoenaed circulators stricken pursuant to A.R.S. § 19-118(C) due to their failure to comply with their subpoenas. An additional 11 subpoenaed circulators who arrived at the courthouse on the morning of August 20th left over the lunch break and never returned. *See* Exhibit 5688. Because these witnesses, too, failed to comply with their subpoenas - - having left the courthouse before they were called to testify and without having been released from their subpoenas - - the Court ordered all petitions circulated by those 11 subpoenaed circulators stricken pursuant to A.R.S. § 19-118(C).

22) 665 of the subpoenaed circulators who appeared at the courthouse on the morning of August 20th but who did not testify that day were directed by counsel for the Plaintiffs to return later that week. The Plaintiffs released the remaining subpoenaed witnesses from their subpoenas, and they were never required to return. Of the 665 subpoenaed circulators who were directed to return after August 20th, 233 were directed to return on Tuesday, August 21st; another 220 on Wednesday, August 22nd; and the remaining 212 on Thursday, August 23rd. Exhibit 5688. As a result, each subpoenaed circulator was required to appear at the courthouse for only one or, at most, two days of the five-day Trial in this matter.

23) 35 of the 665 subpoenaed witnesses who appeared on August 20th and were required to return during one of the next three days failed to do so. Exhibit 5688. These 35 witnesses either never returned to the courthouse at all after August 20th, or they arrived in the morning of the day they were required to return but then left mid-day without having testified and without having been released from their subpoenas. *Id*. The Court ordered that all petitions circulated by these 35 additional witnesses stricken pursuant to A.R.S. § 19-118(C).

24) The evidence presented at Trial established that at least 35 subpoenaed circulators are convicted felons whose civil rights have not been restored (or, more accurately, who failed to come forward with evidence showing that their civil rights had been restored). Four of these circulators admitted in their testimony that they were on felony probation at the time they

were gathering signatures for the Initiative. The Court found all petition sheets circulated by these 35 circulators to be invalid pursuant to A.R.S. § 19-114(A).

25) At Trial, the Court also held invalid petitions gathered by several subpoenaed circulators who appeared and testified at trial, but who nonetheless failed to fully comply with the subpoena because they failed to produce subpoenaed documents that they admitted having in their possession (*e.g.*, subpoenaed documents that the circulators admitted having at home, but which they did not bring with them to the courthouse). *See* A.R.S. § 19-118(C) ("If a registered circulator is properly served with a subpoena to produce evidence…and fails to…produce documents as provided for in the subpoena, all signatures collected by that circulator are deemed invalid.").[2]

26) Likewise, the Court held invalid certain petition sheets if the circulators of those sheets admitted, in their trial testimony, that the signer's name and/or address was printed by someone other than the signer in violation of A.R.S. § 19-112(A), unless the circulator's testimony established that someone other than the signer printed information on the petition sheet on the signer's behalf due to the signer's physical infirmity, which is permitted by A.R.S. § 19-115(B).

27) In certain instances the Court found petition sheets to be invalid when it was apparent, despite the circulators' unconvincing denials, that someone other than the signer had printed the signer's name and address on the signature line. *See Parker*, 233 Ariz. at 438, 314 P.3d at 116 ("Because the petition circulators avowed that each signer wrote his or her own address, and the evidence demonstrated that avowal was false, the signature sheets are void…").[3]

A. The Plaintiffs' "Separate Amendment Rule" Challenge

[2] The Court did not, however, invalidate the petitions gathered by Circulator AZ59672 because, although he did not bring the subpoenaed documents with him when he came to court to testify, after completing his testimony he left the courthouse, retrieved the subpoenaed documents, and returned, bringing the subpoenaed documents with him into the courtroom to provide to the parties. The Court found that Circulator AZ59672 satisfied his obligations under A.R.S. § 19-118(C), albeit belatedly, when he returned to the courthouse to produce the subpoenaed documents.

[3] For example, the Court found invalid Petition 08-00362, which was circulated by Circulator AZ62265, because it is obvious that one person (who may or may not have been Circulator AZ62265 himself) had filled in the names and addresses of multiple purported signers on this petition sheet, and because multiple signatures on this sheet are virtually identical, indicating that one person signed the names of multiple people. *See* Exhibit 1, Petition 00362.

The Separate Amendment Rule provides in part that "[a]ny amendment or amendments to this constitution may be proposed…by initiative petition," and that, "[i]f more than one proposed amendment shall be submitted at any election, such proposed amendments shall be submitted in such manner that the electors may vote for or against such proposed amendments separately." Ariz.Const., art. 21, § 1. The Plaintiffs contend that the Initiative violates the Separate Amendment Rule because it "contains two separate regulatory schemes." Second Supplement to Plaintiffs' Application for Preliminary and Permanent Injunction at p. 1.

A challenge under the Separate Amendment Rule requires the Court to "examine whether provisions of a proposed amendment are sufficiently related to a common purpose or principle that the proposal can be said to constitute a consistent and workable whole on the general topic embraced that, logically speaking, should stand or fall as a whole." *McLaughlin v. Bennett*, 225 Ariz. 351, 354, 238 P.3d 619, 622 (2010) (citations, internal quotations, and internal punctuation omitted). A proposed enactment satisfies the Separate Amendment Rule if its provisions are "topically related" and "sufficiently interrelated so as to form a consistent and workable proposition." *Save Our Vote, Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 149-50, 291 P.3d 342, 346-47 (2013) (citation and internal quotations omitted).

Here, the Initiative requires affected utilities to obtain at least 50% of their annual retail sales of electricity from renewable energy, and mandates that distributed renewable energy sources, like rooftop solar, must provide energy equal to at least 10% of the affected utilities' annual retail sales of electricity. The provisions of the Initiative regarding large-scale renewable energy requirements and distributed generation are topically related. The two subjects are addressed together in the Arizona Administrative Code, *see* A.A.C. R-14-2-1801, *et seq*., and are both within the regulatory jurisdiction of the Arizona Corporation Commission. *See Miller v. Ariz. Corp. Comm'n*, 227 Ariz. 21, 30, 251 P.3d 400, 409 (App. 2011) (holding that rule imposing distributed renewable energy requirements "falls within the Commission's plenary power over ratemaking"). The two subjects are included within the Initiative in furtherance of its goal of increasing the overall amount of renewable energy generated, used, and sold in the state. The two subjects are, therefore, sufficiently interrelated to form a consistent and workable whole. The Court therefore finds that the Initiative does not violate the Separate Amendment Rule.

At Oral Argument on August 17th, the Plaintiffs argued that, under the Separate Amendment Rule, if issues addressed in a single initiative measure *can* be separated into multiple initiatives, those issues *must* be separated into multiple initiatives. Such a construction is necessary, the Plaintiffs contend, if the Separate Amendment Rule is to serve its intended purpose of preventing "logrolling." *See Korte v. Bayless*, 199 Ariz. 173, 177, 16 P.3d 200, 204 (2001) ("Log-rolling allows constitutional amendments that garner only minority support to become the law of the land by association, rather than through the endorsement of a majority required by our system of democratic governance.").

The Plaintiffs' position is not supported by case law, which rejects "a strict rule that all components of a provision be logically dependent on another." *Korte*, 199 Ariz. at 176, 16 P.3d at 203. For example, in *Save Our Vote, Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 152, 291 P.3d 342, 349 (2013), the Court considered a "Separate Amendment Rule" challenge to an initiative entitled Proposition 121 that had two principal provisions. The first provision would have replaced partisan primary elections with a "top two primary" system in which all candidates appear on the same ballot, with the top two vote-getters, regardless of their party affiliation, advancing to the general election. The second principal provision barred the use of public funds to support the activities of political parties, a provision whose effect would have included prohibiting state-funded elections of party precinct committeemen. The trial court concluded that Proposition 121 violated the Separate Amendment Rule, finding that "there is no good reason that a vote for or against [the ban on public funding] should be bundled with a vote on an open primary." 231 Ariz. at 149, 291 P.3d at 346. On appeal, the Supreme Court reversed. In so holding, the *Save Our Vote* court held that the two provisions of Proposition 121 were "topically related" in that they both "concern whether political parties and their candidates should be afforded favored treatment." *Id*. at 149-50, 291 P.3d at 346-47. The Court further held that the two provisions were "sufficiently interrelated to comply with" the Separate Amendment Rule, in part because the initiative's goals of "mandating a level playing field regardless of party" and "barring public funding for specified political party activities" were "qualitatively similar." *Id*. at 150, 151, 291 P.3d at 347, 348. The *Save Our Vote* court expressly rejected the trial court's conclusion that, because it found "no good reason" why the two provisions should be "bundled," Proposition 121 ran afoul of the Separate Amendment Rule. The *Save Our Vote* court held, instead, that the Separate Amendment Rule "does not require that a constitutional amendment identify the most narrowly tailored means for achieving identified goals, only that [its] provisions have a sufficient common purpose or principle." *Id*. at 151, 291 P.3d at 348. *Save Our Vote* thus refutes the Plaintiffs' contention that the mere fact that the Initiative's provisions regarding large-scale renewable energy requirements and distributed generation could have been separated into different ballot measures establishes a violation of the Separate Amendment Rule. Instead, the Court finds that the Initiative's provisions regarding large-scale renewable energy requirements and distributed generation to be topically related and sufficiently interrelated so as to form a consistent and workable proposition, *Save Our Vote*, 231 Ariz. at 149-50, 291 P.3d at 346-47, and, therefore, that the Initiative is not violative of the Separate Amendment Rule.

B. The Plaintiffs' Challenge to the Initiative's Title, Text, and 100-Word Summary

The Initiative begins as follows:

Official Title

A CONSTITUTIONAL AMENDMENT
AMENDING ARTICLE XV OF THE CONSTITUTION OF ARIZONA TO REQUIRE ELECTRICITY PROVIDERS TO GENERATE AT LEAST 50% OF THEIR ANNUAL SALES OF ELECTRICITY FROM RENEWABLE ENERGY SOURCES

Text of Proposed Amendment

Be it enacted by the People of the State of Arizona:

Section 1. Title.

This Constitutional Amendment shall be known as the "Clean Energy for a Healthy Arizona Amendment."

Exhibit 2 at p. EX0002-002. The text then proceeds to set forth the language being proposed to amend Article XV of the Arizona Constitution by adding a new Section 20. *Id*.

The Plaintiffs contend that the title of the Initiative is misleading because it "claim[s] that it would 'require *electricity providers*' to meet specific requirements" but does not, in fact, "apply to *all* 'electricity providers' in the state." Application for Preliminary and Permanent Injunction and Order to Show Cause ("Application") at p. 10 (emphasis in original). Instead, the Initiative only applies to the "subset" of electricity providers, *i.e*., "public service corporation[s] serving retail electric load in Arizona." *Id*. Most notably, the Plaintiffs argue, the Initiative "does not apply to the Salt River Agricultural Improvement and Power District ('SRP')," which is "Arizona's second largest electricity provider" and which "many people signing the Initiative's petition sheets" would have incorrectly concluded, from a reading of the Initiative's title, to be included within the Initiative's scope. *Id*. at pp. 10, 11.

Article IV, part 1, § 1(9) of the Arizona Constitution ("Section 1(9)") provides in part that initiative petitions "shall be attached to a full and correct copy of the title and text of the measure so proposed." Section 1(9). It sets forth, however, no specific requirements about the form or content of the title or the text of an initiative measure. As the Arizona Supreme Court long ago held and recently reaffirmed, Section 1(9) "requires only that a proposed measure have some title and some text." *Ariz. Chamber of Commerce & Industry v. Kiley*, 242 Ariz. 533, 541, 399 P.3d 80, 88 (2017), *citing Barth v. White*, 40 Ariz. 548, 556, 14 P.2d 743, 751 (1932). A.R.S. § 19-112 requires that "[t]he title" as well as the text, "be in at least eight-point type." A.R.S. § 19-112(B). An initiative measure that bears a title clearly denominated as such in a section separate from the text, and which complies with A.R.S. § 19-112(B)'s typeface requirements satisfies constitutional and statutory "title" requirements. *See Wilhelm v. Brewer*, 219 Ariz. 45,

47, 192 P.3d 404, 406 (2008) (holding that title of initiative petition "complie[d] with the requirements of [Section 1(9)] and A.R.S. § 19-112(B)" because title "was clearly denominated as such" and was "contained in its own section").

Here, the Initiative contains a title that is clearly denominated as such and is set forth in its own section. *See* Exhibit 2 at p. EX0002-002. The Plaintiffs do not dispute that the title is printed in "at least eight-point type" as required by A.R.S. § 19-112(B). The title of the Initiative therefore complies with statutory and constitutional requirements.

In support of their position, the Plaintiffs cite *Kromko v. Superior Court*, 168 Ariz. 51, 58, 811 P.2d 12, 19 (1991). In *Kromko*, the Arizona Supreme Court rejected a challenge to an initiative measure based on the purportedly misleading nature of the titles that appeared on the petition sheet. In rejecting the challenge to the initiative measure, the *Kromko* court nonetheless noted its agreement with the holdings of cases from other jurisdictions condemning "the use of short titles containing either untrue representations designed to defraud potential signatories, or highly inflammatory language calculated to incite partisan rage." 168 Ariz. at 59, 811 P.2d at 20. The *Kromko* court expressly held, however, that "a title's failure to describe every aspect of a proposed measure" does not "always create[] the degree of fraud, confusion, and unfairness sufficient to invalidate the petition…" *Kromko*, 168 Ariz. at 60, 811 P.2d at 21.

The Court finds that the title of the Initiative, like the titles at issue in *Kromko*, is not "affirmatively false or fraudulent." *Kromko*, 168 Ariz. at 60, 811 P.2d at 21. Although the title does not describe every aspect of the proposed measure - - including the fact that the measure, if passed, will not apply to SRP - - a title is not required to describe every aspect of the measure. Arizona courts have long recognized that "it is not necessary that the title" of an initiative measure "be a synopsis or a complex index of the legislation that is to follow." *Dennis v. Jordan*, 71 Ariz. 430, 439, 229 P.2d 696, 697-98 (1951). Instead, a measure's title need only be "sufficiently full and comprehensive as to indicate, in a general way at least, what is to follow in the way of legislation," without being "so meagre [*sic*] as to mislead or tend to avert inquiry as to the context thereof." *Id*.

> [T]he title is sufficient if it is not productive of surprise and fraud, and is not calculated to mislead the legislature or the people, but is of such character as to fairly apprise…the public in general, of the subject matter of the legislation, and of the interests that are or may be affected thereby, and to put anyone having an interest in the subject matter on inquiry.

Id. (citation and internal quotations omitted). The Court finds that the title of the Initiative satisfies these standards. Further, the Court finds applicable here *Kromko*'s observation that "if

electors had questions as to the entire nature and scope of the measure, they easily could have referred to" the copies of the measure attached to the petition sheets. *Kromko,* 168 Ariz. at 60, 811 P.2d at 21. The Court therefore rejects the Plaintiffs' challenge to the title of the Initiative.

The Plaintiffs go on to contend that "[t]he text of the Initiative is highly deceptive and misleading." Application at p. 11. In support of their position, they point to the Initiative's "repeated use of the term 'clean energy'," a term which, the Plaintiffs assert, is "highly misleading" because the Initiative "specifically excludes nuclear power from the forms of energy the Initiative promotes" even though, the Plaintiffs contend, nuclear power is a form of "clean energy." *Id*. at pp. 11, 12.

The Court fails to see how the Initiative could fairly be described as "misleading" with respect to its exclusion of nuclear power as a potential energy source that could be used to satisfy the Initiative's requirements. The fact that the Initiative excludes nuclear power is made clear from the Initiative's title (which refers to "renewable energy," a term that does not include nuclear power), its 100-word summary (which expressly states that the measure "exclud[es] nuclear or fossil fuel), and the Initiative's text (which defines "renewable energy resource" as excluding "nuclear or fossil fuel"). No reasonable person reading the measure's title, text or 100-word summary would be left confused about whether nuclear power is excluded as a potential energy source. In any event, the Court has no authority to opine on the substance of an initiative measure. *Kromko*, 168 Ariz. at 57, 811 P.2d at 18 ("[O]ur authority to intervene and enjoin an initiative measure is limited to those instances in which a petition is legally insufficient in form, prescribed procedure, or the number of qualified electors."). The Court therefore has no authority to adjudicate the parties' differing views about whether the term "clean energy" necessarily includes nuclear power. *Compare* Opposition to Application for Permanent and Preliminary Injunction at p. 14 ("[T]here is…nothing the least bit misleading about calling renewable energy 'clean energy'.") *with* Plaintiffs' Reply in Support of Application for Preliminary and Permanent Injunction at p. 6 ("The Committee does not even attempt to address the vast range of authorities which confirm that nuclear energy is 'clean energy'.").

The Plaintiffs also contend that the text of the Initiative is confusing as to whether the Initiative is intended to appear on the ballot once, in November 2018, or twice, "in November 2018, and again in November 2020." Application at p. 12. Because the Court does not believe the text could reasonably be read to indicate that the Initiative will appear on the ballot in two different election years, the Court rejects this contention.

A.R.S. § 19-102 provides in part that initiative petitions must include "a description of no more than one hundred words of the principal provisions of the proposed measure or constitutional amendment." A.R.S. § 19-102(A). Here, the Initiative's 100-word summary reads as follows:

> The Clean Energy for a Healthy Arizona Amendment requires affected electric utilities to provide at least 50% of their annual retail sales of electricity from renewable energy sources by 2030. The Amendment defines renewable energy sources to include solar, wind, small-scale hydropower, and other sources that are replaced rapidly by a natural, ongoing process (excluding nuclear or fossil fuel). Distributed renewable energy sources, like rooftop solar, must comprise at least 10% of utilities' annual retail sales of electricity by 2030. The Amendment allows electric utilities to earn and trade credits to meet these requirements.

Exhibit 2 at p. EX0002-001. The Plaintiffs contend that this 100-word summary "misleads voters as to the true impact of the proposed amendment" by "mak[ing] it appear as though" it applies to "*all* Arizona utilities," and that its reference to "affected electric utilities" does not put the reader on notice that "major electricity providers…such as SRP" are "excluded." Application at p. 13 (emphasis in original). The Plaintiffs further contend that the 100-word summary's exclusion of nuclear power as a power source that affected utilities could use to meet the Initiative's requirements "perpetuates the dishonest message that nuclear power is not a…form of clean energy." *Id*.

A.R.S. § 19-102(A) requires "only a description of the principal provisions, not a complete description." *Save Our Vote*, 231 Ariz. at 152, 291 P.3d at 349. Moreover, the 100-word summary need not be "impartial," and will not invalidate petitions unless it "create[s] a substantial danger of fraud, confusion, or unfairness sufficient to invalidate the petition signature sheets." *Id*. at 152-53, 291 P.3d at 349-50.

Here, the 100-word summary states that the Initiative will apply to "affected electric utilities," thus making clear that it does not apply to all such utilities. Further, it expressly informs the reader that the renewable energy targets established by the Initiative cannot be met through the use of nuclear power. The Court finds nothing in the 100-word summary that could be said to create a risk of fraud, confusion, or unfairness sufficient to invalidate the petition sheets.

C. The Committee's Challenges to A.R.S. § 19-118(C)

At Trial, hundreds of petition sheets containing a total of over 40,000 signatures were held to be invalid because the circulators of those sheets failed to "appear" to testify despite having been "properly served with a subpoena" and/or because those circulators failed to "produce documents as provided for in the subpoena." A.R.S. § 19-118(C). The Committee

challenges the Court's invalidation of signatures pursuant to A.R.S. § 19-118(C), for several reasons.

First, the Committee contends that A.R.S. § 19-118(C) applies only to circulators who were required by A.R.S. § 19-118(A) to register, and does not encompass those who registered voluntarily. The Court sees no basis for this contention. By its plain terms, A.R.S. § 19-118(C) applies if "a registered circulator" fails to comply with a properly-served subpoena. The statute draws no distinction between circulators who registered voluntarily and those who were required to do so.

Second, the Committee argues that the remedy set forth in A.R.S. § 19-118(C) for a circulator's "failure to appea[r] or produce documents in the subpoena" - - *i.e.*, that "all signatures collected by that circulator are deemed invalid" - - is discretionary, rather than mandatory. Motion for Partial Summary Judgment filed August 7, 2018 ("Committee's Motion for Partial Summary Judgment") at p. 6. In so arguing, the Committee notes the use of the word "may" in the second sentence of A.R.S. § 19-118(C). *Id*. at pp. 6-7. The Court disagrees, finding nothing "discretionary" in the statutory language that "all signatures" gathered by a circulator who "fails to appear or produce documents" in response to a properly-served subpoena "*are deemed invalid*." A.R.S. § 19-118(C) (emphasis added).

Third, the Committee argues that disqualifying signatures based on the circulator's failure to comply with a subpoena is a "draconian remedy" that imposes an unconstitutional "restriction on the right to initiative." Committee's Motion for Partial Summary Judgment at pp. 8, 11.

When considering the Committee's constitutional challenge to A.R.S. § 19-118(C), the Court begins, as it must, "with a strong presumption" that the statute is constitutional. *Martin v. Reinstein*, 195 Ariz. 293, 301, 987 P.2d 779, 787 (App. 1999). The Committee's burden to overcome that presumption is a "heavy" one. *Id*. Moreover, legislation regulating or affecting the initiative and referendum process will be upheld if it serves an "important" purpose and "facilitat[es] and protect[s]," rather than "burdening," that process. *Arrett*, 237 Ariz. at 83, 345 P.3d at 138 (in upholding constitutionality of statutory requirement that each petition sheet bear petition's serial number, the Court held that it "serves the permissible and important purpose of facilitating and protecting, not burdening, the referendum process").

In support of its constitutional challenge to A.R.S. § 19-118(C), the Committee cites the logistical burden and expense it incurred as a result of the Plaintiffs' decision to subpoena over one thousand circulators for Trial even though, the Committee complains, the Plaintiffs were well aware that there would not be enough time for more than a fraction of those subpoenaed witnesses to actually testify at a Trial scheduled for only five days.

There can be no doubt about the logistical burden and expenses borne by the litigants in this case as a result of the large number of circulators who were subpoenaed by the Plaintiffs. As the Plaintiffs correctly point out, however, the large number of witnesses in this case was the result of the Committee's decision to employ over a thousand circulators to gather signatures on behalf of the Initiative. Additionally, as the Plaintiffs point out, the service of subpoenas on 1,000 witnesses imposed no obligation at all *on the Committee*. The Plaintiffs' subpoenas did not, after all, force the Committee to pay travel and other costs on behalf of its circulators; the Committee voluntarily chose to assume these expenses.[4] The Committee can hardly complain of an unreasonable burden created by a financial obligation it voluntarily assumed.

In considering whether A.R.S. § 19-118(C) imposes an excessive or unconstitutional burden, the Court must consider only the burden imposed on each individual circulator who was subpoenaed. A handful of those circulators filed motions to quash or modify their subpoenas prior to Trial to excuse them from personally appearing and to allow them to testify telephonically instead. The Court granted all such motions that were filed before Trial. No circulator who appeared and testified at Trial claimed that his or her compliance with the subpoena proved to be unreasonably burdensome. No circulator was required to appear at the courthouse for more than two of the five days of the Trial. The Court finds that no evidence was presented to support a finding that any subpoena served by the Plaintiffs on any circulator imposed an unreasonable burden on that circulator.

In any event, requiring registered circulators to testify about the signatures they gathered is critical to assuring the integrity of the initiative and referendum process. *See, e.g.*, *Brousseau*, 138 Ariz. at 456, 675 P.2d at 716 ("[S]tatutory circulation procedures are designed to reduce the number of erroneous signatures, guard against misrepresentations, and confirm that signatures were obtained according to law."). *See also Williams v. Dist. of Columbia Bd. of Elections and Ethics*, 804 A.2d 316, 318 (D.C. App. 2002) ("[T]he circulator's role in gathering signatures for a nominating petition is critical to ensuring the integrity of the collection process."); *Maine Taxpayers Action Network v. Secretary of State*, 795 A.2d 75, 80 (Me. 2002) ("[T]he circulator's role in a citizens' initiative is pivotal. Indeed, the integrity of the initiative and referendum process in many ways hinges on the trustworthiness and veracity of the circulator."). Knowing that he or she may someday have to answer questions about his or her actions on the witness stand in a courtroom helps to impress upon a person who is circulating petitions the importance of scrupulously adhering to all statutory requirements. Moreover, enabling challengers to require petition circulators to answer questions under oath provides a means - - in many cases, the only

[4] The Committee's decision to pay travel and other expenses for its subpoenaed circulators no doubt resulted, at least in part, from the Committee's desire to do all it could to assure the appearance of those witnesses at Trial to avoid the disqualification of petition sheets mandated by A.R.S. § 19-118(C) if those witnesses failed to appear.

means - - of uncovering fraud in the signature gathering process. *See Zaiser v. Jaeger*, 822 N.W.2d 472, 483 (N.D. 2012) (holding that election officials correctly refused to consider petition sheets that included signatures that the petition circulators later admitted had been forged). Indeed, at Trial several circulators admitted in their testimony that they had, at least on occasions, failed to require signers to print their own names and addresses as required by A.R.S. § 19-112(A); their admissions, in turn, required the invalidation of some of the petition sheets they had gathered. *See Parker*, 233 Ariz. at 438, 314 P.3d at 116 ("Because the petition circulators avowed that each signer wrote his or her own address, and the evidence demonstrated that avowal was false, the signature sheets are void…"). The Plaintiffs were able to meet their burden of establishing the invalidity of these petition sheets because A.R.S. § 19-118(C) entitled them to require the circulators to appear and answer questions about the signatures they gathered.

The Arizona Constitution requires the Legislature to enact "laws to secure the purity of elections and guard against abuses of the elective franchise." Ariz.Const., Art. 7, § 12. The Court finds that A.R.S. § 19-118(C) - - which provides an essential means of exposing signature fraud, thereby promoting integrity in the initiative and referendum process - - is precisely the kind of statute that the Constitution's framers envisioned when they directed the enactment of "laws to secure the purity of elections and guard against abuses of the elective franchise." The Court therefore finds that the Committee has failed to meet its "heavy" burden to overcome the "strong presumption" that A.R.S. § 19-118(C) is constitutional. *Martin*, 195 Ariz. at 301, 987 P.2d at 787.

D. The Committees' Challenge to the Secretary of State's Removal of Signatures During Her Review of Petition Sheets Pursuant to A.R.S. § 19-121.01

The Committee contends that, during her A.R.S. § 19-121.01 review of petition sheets, the Secretary of State improperly removed petitions sheets on which the "paid circulator" box was checked if the Secretary of State's registration records showed that the circulator was not registered. The Committee argues that, pursuant to statute, "the Secretary [of State's] authority to remove signature sheets is limited to those sheets on which the circulator *is required to be registered*…" Committee's Motion for Partial Summary Judgment at p. 5 (emphasis in original, citation, internal quotations, and internal punctuation omitted). In a prior ruling, the Court agreed with the Committee that, although A.R.S. § 19-121.01(A)(1) authorizes the Secretary of State to remove petitions sheets of unregistered circulators if the circulator was required to register, the Secretary of State lacked authority to remove petitions sheets of unregistered circulators who were not required to register, even if those unregistered circulators had checked the "paid circulator" box on the petition sheets they circulated. Minute Entry of August 16, 2018 at p. 7.[5]

[5] As required by A.R.S. § 19-102(C), each petition sheet circulated on behalf of the Initiative contains two boxes in the upper right hand corner, "paid circulator" and "volunteer." *See generally* Exhibit 1.

The Court also held, however, that factual disputes existed surrounding whether the Initiative circulators were in fact "paid circulators" as that term was defined in then-governing statute. Minute Entry of August 16, 2018 at pp. 7-8.

A.R.S. § 19-118(F) as it was written when the Initiative petitions were being circulated defined the term "paid circulator" as "a natural person who receives money or other compensation that is based on the number of signatures obtained on a petition or on the number of petitions circulated that contain signatures." Former A.R.S. § 19-118(F).[6] The Plaintiffs and the Committee dispute whether the Initiative's circulators were "paid circulators" as defined in former A.R.S. § 19-118(F). The Plaintiffs contend that they were "paid circulators" as defined in that statute, and therefore signatures must be invalidated if they were gathered by a circulator who failed to register, or who failed to fill out the Circulator Registration Form fully and correctly. The Committee contends that the Initiative's circulators were not "paid circulators" as defined in former A.R.S. § 19-118(F), and therefore that a circulator's failure to register, or failure to complete the Circulator Registration Form fully and correctly, cannot invalidate that circulator's petition sheets because that circulator was not required to register or fill out a Circulator Registration Form at all.

After considering the evidence presented, the Court finds that the circulators were not "paid circulators" as the term was defined in former A.R.S. § 19-118(F), and therefore that a circulator's failure to register, or failure to complete the Circulator Registration Form fully and correctly, cannot invalidate that circulator's petition sheets.

In making this finding, the Court notes, first, that there is no evidence that any circulator received compensation on a per-signature basis. On the contrary, the evidence showed that they were each paid on an hourly basis. Some circulators testified that they started at $13 per hour and received an increase in their hourly compensation when they were promoted to positions with additional supervisory or managerial responsibilities. Other circulators testified that they

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A.R.S. § 19-102(D) requires a petition circulator to check one of those two boxes. As the Court has previously held, under the statutory definition of "paid circulator" in effect at the Initiative petitions were being circulated, a particular circulator could have been compensated on an hourly basis, and was therefore not a "volunteer," without being a "paid circulator" either. Minute Entry of August 16, 2018 at p. 5.The fact that a particular circulator checked the "paid circulator" box on a petition sheet in an effort to comply with A.R.S. § 19-102(D) does not establish that that circulator was a "paid circulator" within the meaning of former A.R.S. § 19-118(F), and therefore does not establish that the circulator was required by A.R.S. § 19-118(A) to register with the Secretary of State. *Id*. at pp. 5-6.

[6] A.R.S. § 19-118(F) has since been amended, and now defines "paid circulator" as "a natural person who receives monetary or other compensation for obtaining signatures on a petition or for circulating petitions for signatures." A.R.S. § 19-118(F).

received bonuses for working weekend shifts, or working consecutive shifts over a period of days. There is no evidence, however, that any circulator received a bonus, or that any circulator's pay was cut, based on the number of signatures collected.

The Plaintiffs assert that "the Committee's paid circulators were subject to 'performance standards'" that was tantamount to a "quota system" based on the number of petition sheets they filled. Plaintiffs' Trial Memorandum at p. 6. The Plaintiffs further assert that those circulators who failed to meet their quota were terminated. Citing *Mattison v. Johnston*, 152 Ariz. 109, 730 P.2d 286 (App. 1986), the Plaintiffs assert that "continued employment is…a 'thing of value'" within the meaning of A.R.S. § 19-118.01(A), and that continuing to employ circulators only as long as they met their quota amounts to the improper provision of a "thing of value" based on "the number of signatures collected" within the meaning of A.R.S. § 19-118.01(A). Plaintiffs' Trial Memorandum at p. 6. *See also Mattison*, 152 Ariz. at 111, 113, 730 P.2d at 288, 290 (finding, under circumstances presented, that "the implied promise of employment and continued employment were sufficient consideration for" the restrictive covenant "executed by the employee more than two years after commencement of employment").

In his testimony, Gallaway denied that FieldWorks established signature "quotas" for its circulators. He acknowledged that circulators were assigned "goals" for the number of signatures they were expected to obtain per shift, but denied that a circulator's compensation was tied to whether or not that circulator met his or her goal. He further denied that a circulator would be fired or otherwise penalized for failing to meet his or her goal. *See also* Transcript of August 15, 2018 Deposition of Christopher Scott Gallaway at pp. 14-15.

Gallaway's testimony on this point was corroborated by the testimony of numerous circulators. Circulator AZ13133 testified that, while FieldWorks supervisors urged circulators to get a minimum of 60 signatures per day, they never threatened to terminate, cut the pay of, or otherwise punish those who failed to do so. She further testified that some of her fellow circulators were not terminated even when they failed to obtain *any* signatures over the course of a shift. Similarly, Circulator AZ18047 testified that she "never made that goal" [*i.e.*, 60 signatures per shift], and that she was not fired, nor was her pay cut, as a result. Circulator AZ54614 likewise testified that she was not fired, nor was her pay cut, as a result of days on which she fell short of her goal, and, indeed, she was ultimately promoted to team leader.

Several circulators, including Circulator AZ46539 and Circulator AZ59672, testified that they would have expected to be fired if they had consistently failed to meet their signature collection goals. Two circulators, Circulator AZ51235 and Circulator AZ15785, testified that they were, in fact, fired by FieldWorks; each testified that the reason he was given for his termination was his consistent failure to collect enough signatures. Circulator AZ51235 testified that he failed to meet his daily goal of 62 signatures "more than half the time" over the course of

his two months of employment at FieldWorks, while Circulator AZ15785 admitted he averaged only 20 signatures per shift during the course of his "three" to "three and a half weeks" with FieldWorks.

The Plaintiffs presented evidence that several circulators who consistently underperformed were given "ultimatums" that they would be fired if they did not return a certain number of signatures. Notes in FieldWorks' records reflect, for example, that on May 18, 2018 one circulator was told by her supervisor, "30 or bust." Exhibit 5471. Notes of a conversation that another circulator had with his supervisor on February 27th state that the circulator "knows to hit 65 today." *Id*. Notes of a conversation that a different circulator had with his supervisor on March 10th state, "I told him 65 is not a light suggestion" and that the circulator "has another day." *Id*. The Plaintiffs cite this evidence to show that these circulators' continued employment was, in fact, contingent upon the number of signatures they gathered.

The fact that FieldWorks terminated circulators for poor performance over a period of time does not, in the Court's view, establish that the circulators "receive[d] money or other compensation…based on the number of signatures obtained on a petition or on the number of petitions circulated that contain signatures" within the meaning of former A.R.S. § 19-118(F). Few employers keep employees on if they consistently fail to perform their essential job duties, and an employer's termination of a circulator who underperforms over a period of time does not establish that FieldWorks maintained an impermissible "per signature" compensation system. To hold otherwise would be to expect FieldWorks to have kept all circulators on the payroll once they were hired, even those circulators who were simply bad at the job. The Court does not believe that former A.R.S. § 19-118(F) requires this result.

Although Circulator Leslie Anne Joseph (who did not provide her Circulator ID number) initially testified that she was fired for failing to obtain 60 signatures per day, she later admitted that, although she had consistently failed to meet her signature goal for a period of two weeks, "that wasn't predominantly the issue." She explained that the main reason she was fired is that her supervisor believed, wrongly, that she took excessively long breaks during the course of her shifts. The Court does not find that this circulator's testimony supports the Plaintiffs' contention that the Initiative's circulators were impermissibly paid on a per-signature basis.

Only one circulator, Circulator AZ97994, unequivocally testified that FieldWorks employed a per-signature quota system. She testified that she was paid on an hourly basis, but that she was told by her supervisor that she needed to gather at least 65 signatures per shift. She testified that it was her understanding that she would "be fired on the spot" if she failed to meet her daily quota (although she acknowledged that no one ever expressly told her that). She further testified that she witnessed the firing of other circulators for failure to meet the 65 signatures-per-shift quota.

Circulator AZ97994's testimony was clearly influenced by her evident antipathy toward her former employer. She testified that FieldWorks still owes her money for hours she worked, and that she was unfairly fired by FieldWorks over an incident that she did not describe in any detail but which she referred to as "a 'he said/she said' with no proof." Her credibility is further undermined by the fact that she gave inconsistent explanations for her termination. On direct examination, she expressly denied having been fired for failing to gather sufficient signatures, stating instead that she was fired due to the unexplained "he said/she said" incident. On redirect examination, however, she claimed that, after consistently meeting or exceeding her quota for "almost four months," she was fired immediately once she failed to meet her quota one day. For these reasons, and because no other circulator's testimony was consistent with Circulator AZ97994's, the Court finds that Circulator AZ97994's testimony to be insufficient to establish that FieldWorks paid its circulators on a per-signature basis in violation of former A.R.S. § 19-118(F).

In support of their position, the Plaintiffs cite *Independence Inst. v. Gessler*, 936 F.Supp.2d 1256, 1259 (D.Colo. 2013). In *Gessler*, the Court held that a Colorado statute's "limitation on per-signature compensation for petition circulators" was unconstitutional because it imposed "an undue restriction" on "First Amendment rights" by "mak[ing] it more likely that a signature-gathering campaign will be unsuccessful." *Id*. at 1258, 1264, 1279. In so holding, the Court found that payment on a per-signature basis was no more likely to induce circulators to forge signatures and engage in other fraudulent conduct than paying circulators on an hourly basis. The Court explained that the threat of "[l]osing one's job" for failure "to meet daily or weekly quotas" is "a greater incentive to commit fraud" than "the marginal return" that a circulator would receive for "forging a signature under a pay-per-signature system." *Id*. at 1272, 1273.

Gessler is inapposite for a number of reasons, not the least of which is that it does not hold (as the Plaintiffs seem to suggest it does) that there is no meaningful difference between a per-signature compensation systems and an hourly compensation system for circulators. On the contrary, *Gessler* makes clear that the two are distinct, and discussed the extent to which each system may incentivize fraud. The issue before this Court is not, however, which system is more likely to incentivize fraud; that issue is one for the Legislature. The issue before this Court is whether the pay-per-hour system used by the Committee in this case violates former A.R.S. § 19-118.01(A)'s prohibition on per-signature compensation. Nothing in *Gessler* supports the Plaintiffs' contention that there is no meaningful difference between pay-per-hour and pay-per-signature compensation systems.

The Plaintiffs presented evidence, including the testimony of Bud Hart and Claudia Paulsen, that the Plaintiffs were unable to effect service on numerous circulators of Initiative

petitions because these circulators either failed to register with the Secretary of State, or filled out the Circulator Registration Form incompletely and without providing a full and complete address at which service could be effected. *See* Exhibits 72, 76. They ask that the petition sheets circulated by these circulators, and the 116,098 signatures they contain, *see* Exhibit 1, be stricken due to the circulators' failure to properly register. The Court finds that, because, for the reasons stated above, these circulators were not "paid circulators" as the term was defined in former A.R.S. § 19-118(F), they were not required by A.R.S. § 19-118(A) to register. Therefore, their failure to register, or their failure to fill out a Circulator Registration Form fully and completely, does not require the invalidation of the signatures they collected. *See* A.R.S. § 19-118(A) ("The secretary of state shall disqualify all signatures collected by a circulator *who fails to register pursuant to this subsection*…") (emphasis added).

E. The Plaintiffs' Challenge to the 480,707 Signatures Submitted by the Committee Based on the Committee's Internal "Validity Rate"

Noting that the Committee's internal data shows a signature validity rate of "only 47.28%," the Plaintiffs contend that the Committee's validity rate amounts to an "admission" which, "standing alone, is sufficient for the Court to rule in [the] Plaintiffs' favor." Plaintiffs' Trial Memorandum at pp. 1, 4. The Committee's "own internal review" showing that fewer than half of the signatures they gathered are valid is, the Plaintiffs contend, "controlling and dispositive of this case." *Id*. at p. 10. The Court disagrees, for several reasons.

First, the evidence establishes that the Committee's 47.28% validity rate is intended as a conservative, "worst case scenario"-type estimate, rather than an estimate of the number of signatures the Committee actually believes to be valid. As Galloway testified, the Committee's validity rate assumes the invalidity of any signature for which the address printed on the petition sheet fails to match the address on the signer's voter registration records. This is an unrealistically pessimistic assumption. The evidence at Trial showed that the Defendant County Recorders were able to validate many signatures despite the fact that the address printed on the petition sheet failed to match the address on the signer's voter registration records.

Second, as the Committee correctly argues, the relevant issue is whether the signatures submitted by the Committee are valid. What the Committee's personnel (or any other party or employee of a party, for that matter) *thinks* or *believes* about the validity of those signatures is irrelevant.

Third, even if the Court accepted the Committee's 47.28% validity rate as a binding admission, that would still leave the Initiative with more than the 225,963 valid signatures needed to qualify for placement on the ballot (480,707 x .4728 = 227,278.26).

The Court therefore rejects the Plaintiffs' contention that the Committee's internal data reflecting a 47.28% validity rate for signatures gathered is "dispositive" of this case.

F. The Plaintiffs' 27 Objections to the 480,707 Signatures Submitted by the Committee

In their complaint, the Plaintiffs asserted 27 specific objections to the petition sheets and/or signatures on those sheets. *See* SAC at ¶¶ 104-217. At or before Trial, the Plaintiffs withdrew their eighth, ninth, and seventeenth objections.[7]

The Plaintiffs' 26th objection is that 754 signatures appear on petition sheets "that fail[] to designate the county in which they were circulated." SAC at ¶ 210. Their 27th objection is that some of the petition sheets fail to "include the registered circulators' circulator ID number." SAC at ¶ 216. At Trial, the Court overruled both of these objections, holding that it would not invalidate any petition sheets or signatures on either of those grounds. In so holding, the Court noted that the county designation box, which is located on upper right hand of the petition sheet form below the "paid circulator" and "volunteer" boxes, is not required by statute. On the contrary, as State Elections Director Eric Spencer testified, the Secretary of State's office added the county designation box to the petition sheet form as a means of facilitating its employees' review of petition sheets pursuant to A.R.S. § 19-121.01. Because this box is not mandated by statute, a circulator's failure to fill in this box on a petition sheet cannot result in the invalidation of that petition sheet. Likewise, no statute requires the circulator's ID number to appear on a petition sheet, and so a circulator's failure to include this information on a petition sheet cannot result in the invalidation of that petition sheet.

The Plaintiffs' sixth objection is that some of the petition sheets submitted by the Committee include "absent or deficient notarizations." SAC at ¶¶ 140-45. The deficiencies alleged by the Plaintiffs include that "[s]everal of the petition signature sheets fail to include the notary signature or notary seal" and that "[s]everal" others "fail to include the date the affidavit was completed and notarized." *Id*. at ¶ 141. Other purported "deficiencies" include that the notary violated Arizona statute by possessing two different notary seals at the same time or by failing to notify the Secretary of State when a notary seal was broken and replaced. *Id*. at ¶¶ 142-45.

At Trial, the Court held that, because Arizona statute requires that a circulator's signature on a petition sheet be notarized, *see* A.R.S. §§ 19-112(C), any petition sheet with an absent or incomplete notarization of the circulator's signature is invalid. At the same time, the Court held

[7] The Plaintiffs' eighth and ninth objections relate to purported inaccuracies in the serial number on some of the petition sheets, while their seventeenth objection challenged certain signatures for reasons that are captured in other objections asserted by the Plaintiffs. SAC at ¶¶ 155, 182-85.

that it would not invalidate petition sheets based on a violation by the notary public of any provision of A.R.S. §§ 41-311 *et seq*. Specifically, the Court overruled the Plaintiffs' objection to petition sheets that were notarized by a notary public who possessed two notary seals in violation of A.R.S. § 41-321(B), or who replaced a lost or broken notary seal without notifying the Secretary of State pursuant to A.R.S. § 41-323(B).[8] The Court held that, just as a petition sheet is not invalid if, unbeknownst to the circulator, a person who signed that sheet is not a qualified voter, *Ross*, 228 Ariz. at 181, 265 P.3d at 363, a petition sheet should not be invalid merely because, unbeknownst to the circulator, the person who notarized the circulator's signature owned an extra notary seal in violation of A.R.S. § 41-321(B), or violated A.R.S. § 41-323(B) by failing to notify the Secretary of State after having replaced a lost or broken notary seal.

The Committee did not dispute the validity of the Plaintiffs' third objection, *i.e*., that the circulators of certain petition sheets improperly failed to check a box on the petition sheet indicating whether the circulator was a "paid circulator" or a "volunteer" as required by statute. *See* SAC at ¶¶ 126-27. *See also* A.R.S § 19-102(D) ("A circulator of an initiative petition shall state whether he is a paid circulator or a volunteer by checking the appropriate line on the petition form…"); A.R.S § 19-102(E) ("Signatures obtained on initiative petitions in violation of subsection D of this section are void and shall not be counted…"). As a result of the Committee's decision not to contest the Plaintiffs' third objection, the Court found these petition sheets, and the 902 signatures they contain, to be invalid.

Likewise, the validity of the Plaintiffs' fourteenth objection - - that multiple individuals improperly signed more than one petition sheet, *see* SAC at ¶¶ 171-174 - - was conceded by the Committee at Trial.[9] As a result, 22,259 signatures, representing all but the first signature of each person who signed multiple petition sheets, are invalid.

At Trial, the Court found 40,274 signatures to be invalid pursuant to A.R.S. § 19-118(C) because they appear on petition sheets whose circulators were subpoenaed and failed to appear or otherwise comply with their subpoenas. Another 14,856 signatures were invalidated at Trial for various other reasons, including signatures that had obviously been forged (*i.e.*, they were identical to other signatures on the same petition sheet), signatures on petition sheets that had

[8] Arguing that "[t]here is no legitimate reason for a notary to possess more than one seal, particularly when a notary has not notified the [S]ecretary of [S]tate that a seal has been compromised," Trial Memorandum Regarding Notarizations at p. 4, the Plaintiffs asked the Court "to disqualify signature sheets allegedly notarized by notaries who illegally possessed two notary seals." Supplement to Trial Memorandum Regarding Notarizations at p. 2.

[9] The evidence established, for example, that one individual signed seven different petition sheets in support of the Initiative.

been circulated by convicted felons who failed to present evidence that their civil rights had been restored, and signatures on petition sheets bearing false circulator affidavits (*i.e.*, the circulator obtained signatures in violation of A.R.S. § 19-112(A) and then signed the petition sheet's affidavit falsely attesting that each individual printed his or her own name and address and signed and dated the petition in the circulator's presence).

Another 961 signatures were found invalid by various County Recorders for reasons that were not challenged by any party. *See* Exhibit 5689 (identifying 961 signatures that are invalid with the notation, "line by line county invalidation data was not available").

After deducting the invalidated signatures from the 480,707 signatures originally submitted by the Committee, 401,455 signatures are left (480,707 – 902 – 22,259 – 40,274 – 14,856 – 961 = 401,455). *See* Exhibit 5689. Of these 401,455 signatures, the Plaintiffs challenge 116,237 of them on the basis of their twelfth objection, *i.e.*, that they are the signatures of "individuals who are not registered to vote in Arizona." SAC at ¶ 165.

At Trial, the Plaintiffs made clear that their twelfth objection challenges not only signatures of individuals who have never been registered to vote in Arizona, but also signatures of individuals who provided, on the petition sheet, an address that does not match their addresses as listed in voter registration records. Counsel for the Plaintiffs acknowledged at Trial that the Plaintiffs' objection to these 116,237 signatures does not differentiate between signature of those who have never been registered to vote as opposed to signatures by individuals who are registered to vote, but at an address that is different from the address listed on the petition sheet.

Of course, a signature on a petition sheet is invalid if the signer is not registered to vote at all. *See* A.R.S. § 19-112(A). The mere fact that a petition signer's address in voter registration records differs from the address the signer provided on the petition sheet does not, however, invalidate that person's signature, at least if the two addresses are located within the same county. A difference between the address a particular signer prints on a petition sheet and the address on file for that same person in voter registration records can be easily explained by the signer's having moved to a new address at some point after registering to vote at his or her former address. Simply moving to a new address within the same county does not cost an otherwise "qualified elector" his or her voter registration. *See* A.R.S. § 16-135(A) ("An elector who moves from the address at which he is registered to another address within the same county and who fails to" update his or her address in voter registration records "shall be permitted to correct the voter registration records" on "the date of the next election" at "the appropriate polling place for the voter's new address," and "shall be permitted to vote a provisional ballot"). *See also Pacuilla v. Cochise County Bd. of Supervisors*, 186 Ariz. 367, 369, 923 P.2d 833, 835 (1996) (rejecting challenge to candidate nomination petitions that was based on challengers' contention that petition signers who "moved their residences within the county but have failed to

re-registered at their new addresses" were no longer "qualified electors"; in rejecting this contention, the Court held that "a voter who moves to a new address within the same county but has failed to re-register using his new address remains a qualified elector, because such person is still entitled to vote."). Evidence that a petition signer's address on the petition sheet differs from the signer's address in voter registration records does not, therefore, establish the requisite clear and convincing evidence that the signature is invalid.

Alternatively, as shown by the evidence presented at Trial, differences between a registered voter's address as listed on a petition sheet and that same voter's address in voter registration records may result from the fact that the voter lives in a community whose residences lack street addresses. For example, the Plaintiffs challenge the validity of the signature found on line 2 of Petition 049515 on several grounds, including that the signer is "not registered to vote." Exhibit 54 at p. EX0054-9520; Exhibit 55 at pp. EX0055-007, EX0055-1631. Navajo County Recorder Doris Clark testified that the person who signed line 2 of Petition 049515 is, in fact, registered to vote in Navajo County, and in fact resides at the same location he listed when signing the petition sheet. She explained that, while the description of the residence the signer printed on line 2 of Petition 049515 - - "11 miles Northwest of Dilkon" in Winslow - - differ from his address in Navajo County voter registration records- - "Highway 87, milepost 372" - - she is aware, based on her own familiarity with the area, that those two descriptions refer to the same location. The Court sees no basis on which to invalidate a signature based on the fact that the signer, whose residence lacks a street address, may have provided two different descriptions at different times to refer to the same residence.

In support of their position, the Plaintiffs cite A.R.S. § 19-122(B), which provides as follows:

> The most current version of the general county register statewide voter registration database at the time of filing a court action challenging an initiative or referendum petition shall constitute the official record to be used to determine on a prima facie basis by the challenger that the signer of a petition was not registered to vote at the address given on the date of signing the petition. If the address of the signer given on the date of signing the petition is different from that on the most current version of the general county register, the county recorder shall examine the version of the general county register that was current on the date the signer signed the petition to determine the validity of the signature and to determine whether the person was eligible to sign the petition at the time of signing. This subsection does not preclude introducing into evidence a certified copy of the affidavit of registration of any signer dated before the signing of the petition if the affidavit is

> in the possession of the county recorder but has not yet been filed in the general county register.

A.R.S. § 19-122(B). The Plaintiffs read this statute to require the invalidation of any signature on a petition sheet if the signer provided an address that does not match that person's address in voter registration records.

That is not, however, what A.R.S. § 19-122(B) says. Although the statute provides in part that, in a case involving a petition challenge, "the general county register statewide voter registration database…shall constitute the official record to be used to determine on a prima facie basis…that the signer of a petition was not registered to vote at the address given on the date of signing the petition," the statute does not provide that a signature must be invalidated if the address the signer printed on the petition sheet does not match the address listed in "the general county register statewide voter registration database." Instead, A.R.S. § 19-122(B) directs county election officials to take further specified action to determine the validity of the signature. The Court finds that A.R.S. § 19-122(B) does not mandate the disqualification of a signature on a petition sheet merely because the address on the petition sheet differs from the signer's address in voter registration records.

The Plaintiffs challenge the validity of the signature found on line 1 of Petition 049624 on the basis that the signer is not registered to vote. Exhibit 55 at pp. EX0055-007-EX0055-008, EX0055-1653. The person who signed line 1 of Petition 049624 printed her address as "8 ½ miles NE Dilcon Chapter" in Winslow. *See* Exhibit 1. In challenging this signature, the Plaintiffs' expert's notes state,

> Address is uncommone [*sic*]. "8.5 miles north of…" County has it listed differently.

Exhibit 55 at p. EX0055-1653. The expert's assertion that this person's address as it appears on the petition sheet is "listed differently" in Navajo County voter registration records, *id.*, even if true, falls far short of the requisite clear and convincing evidence that this signature is invalid.

In the absence of evidence to establish how many of the 116,237 challenged signatures are those of individuals who are not registered to vote at all - - as opposed to being signatures of those who moved to a different address after registering to vote at their former address, and so remain eligible to vote pursuant to A.R.S. § 16-135(A) - - the Court finds that the Plaintiffs have failed to meet their burden of proving, by clear and convincing evidence, that 116,237 signatures should be disqualified on the basis of their twelfth objection.

The Plaintiffs contend that an additional 72,014 signatures should be disqualified for the various other reasons that are set forth in their remaining unresolved objections. *See* Exhibit 5689. For example, the Plaintiffs object to the signatures on lines 6 through 8 of Petition 00478 based on their nineteenth objection, *i.e.*, that information on those lines was "at least partially completed by an individual other than the elector." SAC at ¶ 191. *See* Exhibit 54 at p. EX0054-0085. A review of Petition 00478 shows that this challenge is well-taken; it is apparent from the handwriting on these three lines that the names, addresses and dates that appear on these lines were all printed by the same person. Exhibit 1. As a result, this entire petition, and all five of the signatures that appear on it, are invalid. *Parker*, 233 Ariz. at 438, 314 P.3d at 116 (stating that "[i]t was apparent from the signature sheets that the elector did not print his or her own address," and that "[t]he circulator's false affidavits rendered the signature sheets void")

Similarly, the Plaintiffs challenge the signatures that appear on lines 1, 2, 4, and 5 of Petition 49359. Exhibit 54 at p. EX0054-9511. A review of those lines shows that each of those four signers provided a P.O. Box instead of a residence address. Exhibit 1. A.R.S. § 19-112(A) requires an initiative petition signer to provide a "residence address." The Court finds that, because those four signers provided a P.O. Box instead of a residence address, and in the absence of any evidence to confirm that those four signers are in fact qualified electors, the Court finds that those four signatures are invalid. *See Jenkins v. Hale*, 218 Ariz. 561, 565, 190 P.3d 175, 179 (2008) ("If an elector challenges the signatures of those petition signers who failed to provide a residence address or a description of the residence location, the presumption of validity of those signatures disappears and the absence of the information provides a *prima facie* showing that the signers are not qualified electors.").

To give another example, the Plaintiffs challenge the signatures on lines 1 through 11 of Petition 31162 on several bases, including its "absent or deficient notarization." Exhibit 54 at p. EX0054-7031. A review of the back of Petition 31162 shows not only that this petition is not notarized, it is not even signed by the circulator. Exhibit 1. Petition 31162, and the eleven signatures that appear on it, are therefore invalid. *See* A.R.S. § 19-112(C).

In many other cases, however, the Court finds no basis for the Plaintiffs' challenges. For example, the Plaintiffs challenge the signatures that appear on line 9 of Petition 00432, line 11 of Petition 00770, and line 1 of Petition 016486 solely on the basis of their sixteenth objection, *i.e.*, that the electors' signatures are "missing or incomplete." SAC at ¶¶ 178-81. *See* Exhibit 54 at pp. EX0054-0075, EX0054-0133, EX0054-3734. A review of the challenged lines on these petition sheets disproves the Plaintiffs' contention. *See* Exhibit 1. Signatures appear in the "signature" box on line 9 of Petition 00432, line 11 of Petition 08-00770, and line 1 of Petition 016486. *Id*. Although those signatures are illegible, the printed names, addresses and dates that appear on those same signature lines are legible. *Id*. The Court sees no basis on which to invalidate these signatures.

The Plaintiffs challenge the validity of the signature that appears on line 1 of Petition 049308 on several grounds, including on the basis of a purported error or deficiency in the signer's address. Exhibit 54 at p. EX0054-9508. A review of line 1 of Petition 49308 shows that the address is complete and legible. Although it is not entirely clear, the Plaintiffs' objection to this signature may be based on the fact that the signer listed her street address on the petition sheet as "3325 Old Rte 66" while, as County Recorder Doris Clark testified, that voter's street address appears in Navajo County voter registration records as "3325 Old Rt. 66." Because "rte." and "rt." are both commonly accepted abbreviations for "route," the Court does not believe that the use of one abbreviation as opposed to the other on a petition sheet establishes a basis to find the signature invalid.

The Plaintiffs challenge the signatures that appear on lines 1 through 12 of Petition 20295 on the basis of their nineteenth objection, *i.e.*, that the required information was written by someone other than the signer. SAC at ¶¶ 189-92. *See also* Exhibit 54 at pp. EX0054-4652 - EX0054-4653. After reviewing lines 1 through 12 of Petition 20295, the Court finds that the Plaintiffs have failed to meet their burden of establishing that one person printed information on more than one of those signature lines. *See* Exhibit 1.[10]

The Court need not review each of the challenged 72,014 signatures on a line-by-line basis because it is clear that, even if all 72,014 signatures were found to be invalid and were deducted from the Committee's remaining 401,455 signatures, the Committee would still have more than enough valid signatures left over to qualify for placement on the ballot (401,455 – 72,014 = 329,441). The Court therefore finds it unnecessary to resolve, on a line-by-line basis, the Plaintiffs' remaining objections.

In the subsequently-filed cases that were consolidate with this case, the Plaintiffs allege that the Defendant County Recorders erroneously certified invalid signatures when conducting their 5% sample review pursuant to A.R.S. § 19-121.02. In support of their position, the Plaintiffs rely the same objections that are discussed above, and contend that:

- the Cochise County Recorder incorrectly found only 28 of the 148 signatures transmitted by the Secretary of State to be invalid even though, the Plaintiffs contend, 105 of those 148 signatures are invalid;

[10] To be sure, the handwriting that appears on line 3 of Petition 20295 appears similar to the handwriting that appears on line 4. Exhibit 1. There are sufficient differences, however, in the way that certain numbers and letters are formed to persuade the Court that the Plaintiffs have failed to establish by clear and convincing evidence that lines 3 and 4 of Petition 20295 were filled in by the same person.

- the Coconino County Recorder incorrectly found only 250 of the 1,159 signatures transmitted by the Secretary of State to be invalid even though, the Plaintiffs contend, 991 of those 1,159 signatures are invalid;

- the Gila County Recorder incorrectly found only three of the 22 signatures transmitted by the Secretary of State to be invalid even though, the Plaintiffs contend, 16 of those 22 signatures are invalid;

- the Maricopa County Recorder incorrectly found only 4,713 of the 15,950 signatures transmitted by the Secretary of State to be invalid even though, the Plaintiffs contend, 11,841 of those 15,950 signatures are invalid;

- the Mohave County Recorder incorrectly found only six of the 21 signatures transmitted by the Secretary of State to be invalid even though, the Plaintiffs contend, 16 of those 21 signatures are invalid;

- the Navajo County Recorder incorrectly found only 14 of the 74 signatures transmitted by the Secretary of State to be invalid even though, the Plaintiffs contend, 55 of those 74 signatures are invalid;

- the Pima County Recorder incorrectly found only 961 of the 4,062 signatures transmitted by the Secretary of State to be invalid even though, the Plaintiffs contend, 2,372 of those 4,062 signatures are invalid;

- the Pinal County Recorder incorrectly found only 66 of the 329 signatures transmitted by the Secretary of State to be invalid even though, the Plaintiffs contend, 180 of those 329 signatures are invalid;

- the Santa Cruz County Recorder incorrectly found only 14 of the 66 signatures transmitted by the Secretary of State to be invalid even though, the Plaintiffs contend, 39 of those 66 signatures are invalid;

- the Yavapai County Recorder incorrectly found only 87 of the 430 signatures transmitted by the Secretary of State to be invalid even though, the Plaintiffs contend, 308 of those 430 signatures are invalid; and

- the Yuma County Recorder incorrectly found only 119 of the 418 signatures transmitted by the Secretary of State to be invalid even though, the Plaintiffs contend, 338 of those 418 signatures are invalid.

Complaint for Special Action and Injunctive, Declaratory and Mandamus Relief in *Vince Leach, et al. v. David W. Stevens, et al.*, Maricopa County Case No. CV2018-010116 at ¶¶ 50-62, 63-129; Complaint for Special Action and Injunctive, Declaratory and Mandamus Relief in *Vince Leach, et al. v. Patty Hansen, et al.*, Maricopa County Case No. CV2018-010807 at ¶¶ 50-58, 59-150; Complaint for Special Action and Injunctive, Declaratory and Mandamus Relief in *Vince Leach, et al. v. Kristi Blair, et al.*, Maricopa County Case No. CV2018-010658 at ¶¶ 51-62, 63-148.

The Plaintiffs' challenges based on the Defendant County Recorders' purported failure to invalidate (1) petition sheets circulated by unregistered circulators; (2) petition sheets bearing purportedly invalid, incomplete or modified circulator affidavits and/or purportedly missing or incomplete notarizations; (3) purportedly suspicious circulator signatures; and (4) petition sheets bearing signatures dated after the date the circulator affidavit was signed and notarized are all unavailing because all of that information - - *i.e.*, the circulator's name, address and notarized signature, and the date on which the circulator affidavit was signed and notarized - - appears on the *back* of signature petitions. County recorders do not receive the back of signature petitions from the Secretary of State as part of their random sample, and so have no means of determining who the circulators are or whether the circulator affidavits are deficient in any respect. A.R.S. § 19-121.01(D) ("After the selection of the random sample…the secretary of state shall transmit a copy of *the front of each signature sheet* on which a signature included in the random sample appears.") (emphasis added). Although the Plaintiffs contend that the Defendant County Recorders could, and should, obtain a two-sided copy of each signature sheet via a public records request, nothing in A.R.S. § 19-121.01(D) or any other statute requires, or even authorizes, them to do so.

The Plaintiffs' other objections are likewise based on the Plaintiffs' contention that the Defendant County Recorders acted improperly by failing to take action that they simply have no authority to take. For example, the Plaintiffs fault the Defendant County Recorders for failing to invalidate signatures that are "dated out of sequence (*e.g.*, the signature line is dated earlier than preceding signature lines on the same sheet, or later than signatures on following lines on the same sheet." Complaint for Special Action and Injunctive, Declaratory and Mandamus Relief in *Vince Leach, et al. v. David W. Stevens, et al.*, Maricopa County Case No. CV2018-010116 at ¶ 119(b). This objection is baseless. No statute requires or authorizes election officials to invalidate signatures if they are dated out of sequence. *See* A.R.S. § 19-121.01(A)(3)(c) (requiring Secretary of State to remove signatures "[i]f the date is missing" or "if the date" of the signature "is before the date that the serial number was assigned…or…after the date on which the affidavit was completed by the circulator and notarized," without authorizing removal of signatures that are dated out of sequence); A.R.S. § 19-121.02(A)(2) (requiring County

Recorders to disqualify signatures if "[n]o date of signing is provided," without authorizing removal of signatures that are dated out of sequence).

The Plaintiffs fault the Defendant County Recorders for failing to "follow the 'strict compliance' standard" when conducting their 5% random sample review, Plaintiffs' Response to County Recorders for Maricopa, Yavapai, and Gila Counties' Partial Motion to Dismiss at p. 4. In conducting their 5% sample review, county election officials "adhere to the guidance in the Secretary of State's *Initiative and Referendum Handbook*." County Recorders for Maricopa, Yavapai, and Gila Counties Partial Motion to Dismiss at p. 3. Nothing in this handbook gives county election officials discretion to apply either a "strict compliance" or a "substantial compliance" standard when performing their statutory review of the 5% random sample. Indeed, the 2018 draft of the State of Arizona Elections Procedures Manual (which has not yet been officially adopted) expressly states that the "random sample" review procedures "are to be objectively applied without reference to any 'substantial' versus 'strict' compliance standard." Exhibit 39 at p. EX0039-322, n. 1296.

The Defendant County Recorders assert that their obligation under A.R.S. § 19-121.02 "is limited to an objective review of the 5% sampling" received from the Secretary of State "to determine whether signatures can be disqualified for any of the reasons set forth in A.R.S. § 19-121.02." Defendant Navajo County Recorder's Trial Memorandum at pp. 2-3. A.R.S. § 19-121.02 "provides a list of items for a county recorder to check" when reviewing the 5% random sample, and "requires the recorder to disqualify signatures for any of eleven enumerated reasons" that leave "precious little" room for "discretion or judgment by the County Recorder." *Id*. at p. 4. The testimony of Elections Director Eric Spencer was consistent with the Defendant County Recorders' position on this point; he testified that conducting a review of petition sheets for the errors and deficiencies delineated in A.R.S. § 19-121.01(A) presents the reviewer with a series of "objective, binary choices" that involve no exercise of discretion. The Court agrees, and so rejects the Plaintiffs' contention that the Defendant County Recorders somehow erred by failing to apply a "strict compliance" standard when conducting their A.R.S. § 19-121.02 review.

The Court finds that the Plaintiffs have failed to establish either that any of the Defendant County Recorders conducted their A.R.S. § 19-121.02 review improperly or that injunctive or other relief should issue to require them to de-certify the results of their reviews, and therefore denies all of the Plaintiffs' requested relief.

The Court would be remiss if it failed to commend counsel for all parties for conducting themselves at all times with the highest degree of professionalism, integrity, and skill despite the extraordinary challenges posed by the exceptionally large number of witnesses and exhibits in this case and the accelerated schedule at which the case was required to be litigated. All of the

parties in this case - - the Plaintiffs, the Initiative's sponsor, the Secretary of State, and the County Recorder Defendants - - can be assured that they were well-represented by their counsel.

In accordance with the foregoing Findings of Fact and Conclusions of Law,

IT IS ORDERED denying the Application for Preliminary and Permanent Injunction filed by the Plaintiffs.

IT IS FURTHER ORDERED granting the Committee's Motion for Partial Summary Judgment to the extent it challenges the Secretary of State's removal, during her A.R.S. § 19-121.01 review, of petition sheets circulated by unregistered circulators.

IT IS FURTHER ORDERED granting the County Recorders for Maricopa, Yavapai and Gila Counties' Partial Motion to Dismiss.

IT IS FURTHER ORDERED granting the Pima County Recorder's Partial Motion to Dismiss, the Yavapai County Recorder's Joinder in Pima County Recorder's Partial Motion to Dismiss, and the Yuma County Recorder's Joinder in Pima County Recorder's Partial Motion to Dismiss.

The Court determines that there is no just reason for delay and hereby directs, pursuant to Ariz.R.Civ.P. 54(b), the entry of final judgment as to the rulings set forth above.

August 27, 2018 /s/ HONORABLE DANIEL J. KILEY

Daniel J. Kiley
Judge of the Superior Court