

IN THE SUPREME COURT

STATE OF ARIZONA

SETH LEIBSOHN, an individual; CENTER FOR ARIZONA POLICY ACTION, a nonprofit corporation; ARIZONA FREE ENTERPRISE CLUB, a nonprofit corporation; GOLDWATER INSTITUTE FOR PUBLIC POLICY AND RESEARCH, a nonprofit corporation; and AMERICANS FOR PROSPERITY, a nonprofit corporation,

Plaintiffs/Appellants,

KATIE HOBBS, in her capacity as the Secretary of State of Arizona,

Defendant/Appellee,

VOTERS' RIGHT TO KNOW, a political committee,

Real Party in Interest/Appellee.

Supreme Court No.
CV-22-0204-
AP/EL

Maricopa County
Superior Court No.
CV2022-009709

AMICUS CURIAE BRIEF OF DIRECT CONTACT, LLC

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I. STATEMENT OF INTEREST AND INTRODUCTION

Direct Contact, LLC is a petition gathering firm with its headquarters in Arizona. Direct Contact is highly active. In this most recent election cycle it circulated petition sheets for the Arizona Right to Reproductive Freedom Initiative (ballot measure to provide a state constitutional right to abortion) and various candidates. Direct Contact, its principle Derrick Lee, and its predecessor companies have worked on approximately 30 statewide initiatives in Arizona, from 1993 to the present day.

The legal requirements applicable to ballot measures do not represent merely academic or theoretical matters for Direct Contact. Instead, these are requirements that Direct Contact, and its circulators, must follow, or its petition sheets will be disqualified. Direct Contact agrees that there must be limitations on the types of requirements the Legislature can impose on ballot measure proponents, lest the critical right to referendum and initiative be lost in a maze of complicated statutory requirements.

While it supports the above principles, and its livelihood depends on a robust right to initiative and referendum, Direct Contact can represent to this Court that the registration requirements for circulators, as urged by the proponents of this suit, present a common sense reading of the statute, and do not impose any more than a

minimal burden on petition signature collecting. And they instill confidence in the public about the petition gathering process in general, which is good overall.

Direct Contact places a high value on the right to go directly to the people via a ballot measure. It does not want to see those rights diminished. But there is also something to be said for integrity in the process as well as a level playing field. If the Court does not enforce the requirements as they are easily understood by those in the industry, then the unscrupulous collector can come in after the fact and ask for forgiveness, thereby undercutting those that follow the law. This is exactly the outcome, with its attending lack of confidence in the integrity of the system, that should be avoided.

Direct Contact is the sole sponsor of this brief.

II. A.R.S. § 19-118(B) IS CLEAR AND UNAMBIGUOUS AS TO ITS REQUIREMENTS

There are a number of issues in regard to this appeal but Direct Contact only wishes to address one of them. And that is the issue of whether an affidavit is required for a registered circulator for each measure that a circulator collects on. Direct Contact believes this question must be answered in the affirmative. In point of fact, until being apprised of this legal matter, Direct Contact operated that way, and instructed its circulators that way, because this statutory requirement is clear. And it is easy to comply with.

The provision at issue is A.R.S. § 19-118(B), which provides as follows, in pertinent part:

The circulator registration application required by subsection A of this section shall require the following:

1. The circulator's full name, residence address, telephone number and email address.
2. The initiative or referendum petition on which the circulator will gather signatures.
3. A statement that the circulator consents to the jurisdiction of the courts of this state in resolving any disputes concerning the circulation of petitions by that circulator.
4. The address of the committee in this state for which the circulator is gathering signatures and at which the circulator will accept service of process related to disputes concerning circulation of that circulator's petitions. Service of process is effected under this section by delivering a copy of the subpoena to that person individually, by leaving a copy of the subpoena with a person of suitable age or by mailing a copy of the subpoena to the committee by certified mail to the address provided.
5. An affidavit from the registered circulator that is signed by the circulator before a notary public and that includes the following declaration:

I, (print name) , under penalty of a class 1 misdemeanor, acknowledge that I **am** eligible to register as a circulator in the state of Arizona, that all of the information provided is correct to the best of my knowledge and that I have read and understand Arizona election laws applicable to the collection of signatures for a statewide initiative or referendum.

(Emphasis added).

The trial court ruling essentially ignores, wholesale, subsections (2) and (4) and how they inform the statutory scheme as a whole. But that issue is dealt with comprehensively in the briefs so *Amicus* will not dwell on that argument. *Amicus* believes the actual affidavit required also compels a reading of the statute consistent with that urged by the Plaintiff.

There are no time limits to how long the Real Party in Interest thinks an affidavit could be good for. It could be years or even decades. But to credit that argument misreads the statutory requirement, as it is not possible for a person to swear or affirm that the person will be an eligible circulator at some time in the future.

There are any number of reasons a person who is a qualified circulator today may not be one next election cycle. A person could be convicted of a felony, or be adjudged incompetent. Or the person could die in the interim. One cannot know one's status at some future date today. Under the reading proffered by the Real Party in Interest, the "I am" becomes, in perpetuity, "I was at the time I submitted this affidavit".

The Real Party in Interest is asking the Court to read the clear requirement out of the statute. Effectively, they seem to make the argument that if it turns out the averment is true, that should suffice. This is not so, because the circulator cannot

swear to some future event that the circulator ultimately has no control over. *See Schaefer v. Brown, Maricopa County Superior Court, CV 2016-014378 08/30/2016*, attached (rejecting candidate petition signatures where the circulator used a photocopied verification signature, reasoning that “[o]ne cannot verify that a petition was signed in his presence before the petition was signed” even though “the matters stated in the verification turned out to be true.”)

The Real Party in Interest also misunderstands the purpose of the averment, and an argument similar to that of Real Party in Interest’s was rejected by this Court in *Western Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426 (1991). In *Western Devcor*, the circulator affidavit was insufficient because it did not include a verification that the signer was a City of Scottsdale elector, as a City of Scottsdale ballot measure was at issue. There, the circulators of the ballot measure urged the Court to ignore the flawed circulator affidavit because the random sample done by the City Clerk ensured that a sufficient number of City of Scottsdale electors had signed the petition sheets and that “cured” the defect, as it accomplished the same objective as the circulator affidavit. *Id.* This Court squarely rejected that argument:

We do not believe that satisfying the statutory requirement [of having sufficient signatures after the signature check by the City Clerk] cures the failure to satisfy the constitutional [circulator verification] requirement. Both are important checks on the validity of petition signatures...

Western Devcor, 168 Ariz. at 431–32 (1991).

As in *Western Devcor*, just because something turns out to be true, that a circulator submitting an affidavit in the past happens to remain an eligible circulator, that does not relieve the circulator of the original obligation of averring that the person “**is**” eligible. And an averment that a person cannot possibly truthfully make (because it involves future events beyond the person’s control) is no averment at all. Relying on whether something turns out to be true reads out the requirement of A.R.S. § 19-118(B)(5). And like the requirement in *Western Devcor*, this affidavit is an “important check on the validity of petition signatures” as one has to be eligible to register to vote in Arizona in order to circulate valid petition sheets. This requirement to make a present tense avowal should not be read out in favor of the “indefinite” avowal the Real Party in Interest urges.

Requiring a circulator to submit an affidavit for each ballot measure that the person circulates on is clearly what is required by the statutory scheme.

III. CONCLUSION

Amicus Direct Contact’s lifeblood as a business is collecting signatures for ballot measures. If the requirement at issue were ambiguous or onerous, there is no way Direct Contact would be defending it, and Direct Contact agrees that because the right to initiative and referendum is found in the Arizona Constitution, there are clearly limits to what requirements the Legislature can impose.

As it is, the requirement at issue is unambiguous, easy to comply with, and lends credibility to the ballot measure process. In contrast, the Real Party in Interest's attempt to water down this requirement in favor a meaningless "lifetime" averment of eligible circulator status lends no credibility and does violence to the statute. It turns the averment requirement into a nullity because an averment that one cannot possibly truthfully make is useless.

Direct Contact urges this Court to reverse the trial court on the point of law covered in this brief. Direct Contact has no idea whether, if the trial court is reversed, the Real Party in Interest will have enough signatures or not. And that is not Direct Contact's concern. Rather, Direct Contact's first concern is that statutory requirements that lend credibility and integrity to the process, and that are not onerous, be upheld. Direct Contact's other concern is that the Court not reward statutory corner-cutters with a ruling that relieves them of their statutory obligations.

RESPECTFULLY SUBMITTED this 20th day of August, 2022.

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