SUPREME COURT OF ARIZONA

SETH LEIBSOHN, et al.,

Plaintiffs /Appellants,

v.

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

Defendant / Appellee,

And

VOTERS' RIGHT TO KNOW, a political committee,

Real Party in Interest/Appellee.

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

Maricopa County
Superior Court
No. CV2022-009709

ANSWERING BRIEF OF VOTERS' RIGHT TO KNOW

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INTRODUCTION

Democracy requires an informed electorate. To that end, the Voters' Right to Know committee (the "Committee") used Arizona's cherished right to initiative to place the Voters' Right to Know Act (the "Act") on the 2022 general election ballot. The Act "secures for every Arizona voter the right to know who is trying to influence an Arizona election using paid, public communications." Trial Ex. 201 at 1.

Now, Appellants seek to frustrate the will of the 355,726 Arizonans who signed the petition sheets and deny Arizona voters the chance to vote for the Act. They do not allege any fraud or that the Committee's summary of the Act was misleading. Instead, they allege that the Committee's circulators made hyper-technical (and harmless) mistakes when they registered with the Secretary of State. But these "mistakes" are manufactured by Appellants and find no support in the statute they cite. The trial court rightly rejected Appellants' arguments. This Court should affirm.

STATEMENT OF FACTS AND CASE*

I. Factual Background

The Committee's paid circulators were required to register with the Secretary under A.R.S. § 19-118. They did. When registering, the circulators followed the process created and administered by the Secretary. That process requires each circulator to create an account in the Secretary's Circulator Portal. [Decl. of Kori Lorick ¶ 4 (APP014).] When a circulator creates an account, they must provide "their name, residential address, phone number, and email address." [*Id.* (APP014).] The Circulator Portal requests a "temporary address" if the circulator's residential address is outside of Arizona, but "Arizona law does not require that the circulator provide a temporary residential address inside Arizona" and the Secretary has never used that address. [*Id.* ¶ 4 n.1 (APP014).]

After the circulators created their accounts, they uploaded a notarized affidavit of eligibility and either then or subsequently added the Act as a petition they wished to circulate. [*Id.* ¶ 6 (APP015).] The circulators' initial registration was then complete. [*Id.* ¶ 12 (APP017).] A circulator could later

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* Selected record items cited are included in the Appendix filed with this brief, cited by page numbers (e.g., APP001).

register to circulate additional petitions or update other registration information, such as their address. For such updates, the Secretary's system (like A.R.S. § 19-118) did not require, and except in limited cases did not permit, a circulator to upload another affidavit. [*Id.* ¶ 13 (APP017); Stip. ¶ 2 (APP020).]

In short, the Committee's circulators followed the procedures created by the Secretary to begin circulating petitions.

II. Procedural history

On July 29, Appellants filed this action challenging the registration of the Committee's circulators and the validity of the collected signatures. Appellants raised four "objections" to the signatures collected by the Committee,[1] only two of which they continue to assert on appeal:

Objection 1 relates to A.R.S. § 19-118(B)(5), which requires that registered circulators submit a notarized affidavit affirming that the circulator is eligible to register, the information they provided is correct, and they have read and understand relevant Arizona laws. Appellants argued

[1] Appellants declined to appeal the trial court's decision in the Committee's favor on a service address issue, and the Committee declined to appeal the trial court's decision that a handful of circulators listed non-residential addresses on their registration forms.

that circulators must submit a new affidavit every time they add a new petition to their registration or otherwise update their registration. Nothing in the statute supports this contention.

The superior court ruled for the Committee, holding that "the Legislature intended not to require new circulator affidavits for each new petition." [8/18/2022 Min. Entry at 6 (APP008).]

Objection 3 relates to the statutory requirement that circulators list their "residence address" when they register. A.R.S. § 19-118(B)(1). Appellants asserted that circulators violated the statute if they did not include an apartment or unit number, even if there is no evidence that such a number would be needed to contact the circulator in question. Appellants tried to extend this argument to temporary addresses as well.

The superior court rejected Appellants' argument, holding that strict compliance with A.R.S. § 19-118(B)(1) requires circulators to list unit numbers on registration forms "only if such number is necessary to ensure that the individual could be contacted or questioned." [8/18/2022 Min. Entry at 8 (APP010).] The superior court found that Appellants failed to meet their burden to show the unit number was necessary.

STATEMENT OF THE ISSUES

1. For Appellants' Objection 1: Did the superior court correctly hold that A.R.S. § 19-118(B)(5) does not require a new affidavit to be submitted for each initiative?

2. For Appellants' Objection 3: (1) Are circulators required to list unit numbers with their address even though no such requirement is found in statute; (2) did the superior court correctly find that Appellants presented no evidence to show such unit numbers were necessary to locate the circulators in this case; and (3) does the statute require a circulator to list any aspect of a temporary address, which is not mentioned in the statute?

STANDARD OF REVIEW

This Court reviews questions of law de novo. Factual findings are overturned only if clearly erroneous. *Stanwitz v. Reagan*, 245 Ariz. 344, 348 ¶ 13 (2018).

ARGUMENT

I. The trial court correctly applied the strict compliance standard in rejecting Appellants' objections.

In rejecting each of Appellants' arguments below, the trial court applied every aspect of the strict compliance standard in A.R.S. § 19-102.01(A) as this Court has long interpreted that standard, including that

there must be "nearly perfect compliance with constitutional and statutory" mandates, "no matter how minor," even when "harsh consequences" may result from an "unfortunate mistake." [8/18/2022 Min. Entry (APP005) (collecting and applying cases).]

Appellants do not ask this Court to strictly apply A.R.S. §19-118— instead they ask this Court to add new requirements to that statute, requirements that are nowhere in the text. But courts cannot "amplif[y]" the scope of the relevant statute. *Sherrill v. City of Peoria*, 189 Ariz. 537, 539 (1997). Instead, the Court's role in statutory interpretation is "to effectuate the legislature's intent," with the "best indicator of that intent [being] the statute's plain language." *SolarCity Corp. v. Ariz. Dep't of Revenue*, 243 Ariz. 477, 480 ¶ 8 (2018). Strict construction means above all to "hold[] tight to the fair meaning of the law." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 355 (2012). It does not mean that a statute should be "construed without reference to the general rules of statutory construction." *Homebuilders Ass'n of Cent. Ariz. v. City of Scottsdale*, 186 Ariz. 642, 649 (App. 1996).

Straightforward application of the text is especially necessary in cases where adding extra-textual requirements would implicate the Arizona and

U.S. Constitutions. *See Sherrill*, 189 Ariz. at 539; *Molera v. Reagan*, CV2018-010209, Min. Entry at 7-8 (Maricopa County Super. Ct. Aug. 15, 2018) (adding non-textual requirements to initiative regulations would violate the Arizona Constitution). To do otherwise would frustrate, not uphold, "the right of the people to offer legislation through the initiative." *League of Ariz. Cities & Towns v. Brewer*, 213 Ariz. 557, 559 ¶ 9 (2006) (citations and quotations omitted). The Court must also keep in mind that "the legislature may only enact laws that supplement or promote the constitutional right of initiative; it may not unreasonably burden or restrict that right." *Healthy Ariz. Initiative PAC v. Groscost*, 199 Ariz. 75, 78, ¶ 9 (2000); *see also Meyer v. Grant*, 486 U.S. 414, 421-22 (1988) (applying the *Anderson-Burdick* test to determine whether election laws create unconstitutional barriers).

II. The circulators submitted the affidavit as required by statute.

A. It is undisputed that the challenged circulators submitted an affidavit containing the declaration required by statute.

Under A.R.S. § 19-118(B)(5), a circulator's registration application must include "[a]n 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.

It is undisputed that each of the challenged circulators submitted "[a]n affidavit," *id.*; that each affidavit was signed, notarized, and contained the full declaration printed in the statute; and that the Secretary accepted each circulator's registration application and assigned them a circulator registration number. The circulators therefore complied with the statute.

B. The circulators complied with the Secretary's process, which has the force of law.

Section 19-118(A) directs the Secretary to "establish in the instructions and procedures manual issued pursuant to § 16-452 a procedure for registering circulators, including circulator registration applications." The Secretary did so in the Elections Procedures Manual ("EPM"), which provides that "circulator registration must be conducted as prescribed by the Secretary of State through the electronic Circulator Portal." [2019 Elections Procedures Manual at 252 (APP024); Lorick Decl. ¶ 3 (APP014).] The system promulgated under A.R.S. § 19-118(A) requires circulators "to upload an affidavit at initial registration." [Lorick Decl. ¶ 13 (APP017).] After initial

registration, the Secretary's system "does not allow circulators to upload a separate affidavit for each petition they add to their registration." [*Id.* ¶ 13 (APP017).][2]

The EPM "must follow a specific procedure in promulgating election rules" and, once completed, "has the force of law." *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63 ¶ 16 (2020). Because the Secretary is directed by statute to promulgate rules for circulator registration, the Secretary's actions in doing so "are presumed to be correct and legal in absence of clear and convincing evidence to the contrary." *Verdugo v. Ariz. Indus. Comm'n*, 108 Ariz. 44, 48 (1972). In other words, the process chosen by the Secretary to implement § 19-118 is presumed to comply with that statute and satisfy its substantive requirements. By extension, the circulators are presumed to have complied with the substantive requirements of § 19-118 by completing

[2] Appellants allege (at 5) that some circulators "attached" to their registration forms for this initiative "an affidavit that they had executed in connection with a different registration." Appellants do not include any record citation to support this accusation, which is both false and contrary to how the registration application process works. [*See* Lorick Decl. ¶¶ 6-11 (APP015-17.)]

the process created by the Secretary. It is undisputed that the circulators complied with all of the Secretary's requirements.

C. The trial court correctly concluded that the circulators fulfilled the affidavit requirement.

Based on this strict application of § 19-118 and the process promulgated by the Secretary, the trial court correctly decided that § 19-118 requires only that a circulator complete and submit an affidavit with their initial registration application. As the trial court put it "the strict construction of the statute does not support that the affidavit must specifically relate to each new initiative. Rather, the statute merely indicates that an affidavit must be included in swearing to the listed items." [8/18/2022 Min. Entry at 6 (APP008).] In other circumstances, the Legislature has "imposed several temporal requirements for circulator affidavits," but it did not "expressly include a temporal requirement for the circulator registration affidavits." [*Id.* at 5-6 (APP007-08).] "Because the Legislature could have provided a temporal requirement but failed to do so, the Court concludes that the Legislature intended not to require new circulator affidavits for each petition." [*Id.* at 6 (APP008).]

The other trial court to hear initiative cases this cycle reached the same conclusion, holding that § 19-118 "simply calls for an affidavit as a requirement of the circulator registration application." *Protect Our Ariz. v. Hobbs*, CV 2022-009335 at 6 (Ariz. Super. Ct Aug. 17, 2022), *appeal pending*, (quotation marks and alteration omitted). The court recognized that "[i]f the Legislature intended that all non-Arizona residents and all paid circulators must register more than one time and submit registration applications and affidavits each time, it could have said so expressly in the statute, but it did not do so." *Id.*

Thus, two separate courts have independently concluded, applying strict construction, that § 19-118(B)(5) only requires an affidavit with a circulator's initial registration application. Appellants give no reason based in the text of § 19-118 for this Court to conclude differently.

D. There is no requirement that a circulator submit a new affidavit every time they update their registration information.

Appellants contend (at 6-8) that, because § 19-118(B) requires a circulator to provide certain information specific to each initiative, the circulator submit a full-blown registration application (affidavit included) any time they add *any* information to their registration on file with the

Secretary. But the statutory text neither states nor implies this conclusion, which is contrary to common sense.

The best evidence is the text and structure of § 19-118. Section A states that paid and out-of-state circulators "must register *as circulators* . . . before circulating petitions." (Emphasis added.) Section B specifies the contents of the "registration application," which includes "[a]n affidavit." Section C then provides that after a circulator submits a "complete and correct circulator registration application," the Secretary "shall register and assign a circulator registration number to the circulator." The Secretary assigns one "circulator registration number" per circulator. Thus, § 19-118 outlines a process for a circulator to submit one registration application, with one affidavit, to receive one circulator registration number. Once the Secretary accepts a circulator registration application, the individual becomes a registered circulator, and may "circulat[e] petitions," including by associating other petitions with their registration number. A.R.S. § 19-118(A). Any update to the circulator's registration information does not require the circulator to repeat the entire registration application process,

just as it does not require the Secretary to issue the circulator a new registration number. [3]

Appellants also contend (at 8-10) that the affidavit cannot logically attest to the accuracy of future updates to a circulator's registration. That is true but irrelevant, because the statute does not require a sworn affidavit for each minor update. Appellants might like the statute to include such a requirement, but that complaint should be directed to the Legislature, not this Court. After all, it is undisputed that each of the circulators at issue swore an affidavit using the exact language contained in the statute.

Section 19-118 "easily could have" included an express requirement that circulators submit multiple affidavits. *Kromko v. Super. Ct.*, 168 Ariz. 51, 57 (1991). Other statutes do contain that kind of express requirement—for example, voters are required to "return a new registration" after changing their residence within their county. A.R.S. § 16-165(A)(8). Similarly, telemarketers are required to register with the Secretary; once registered, if

[3] Appellants wrongly suggest (at 7) that the Committee's position would result in a circulator being subpoenaed in this litigation by serving another committee. Not so. When a circulator associates a new petition with her existing registration via the Secretary's registration form, she agrees to accept service related to that new petition at the new Committee's address.

"there is a change in any of the information" required by statute, they must "within ten days of the change . . . file a supplemental statement with the secretary of state." A.R.S. § 44-12-72(B).

Indeed, as both trial courts noted, the Legislature has imposed several temporal requirements for the circulator affidavits contained on the back of petition sheets. *See* A.R.S. §§ 19-112(D) (requiring affidavit covering "all times during circulation"); 19-121.01(A)(1)(f) (removing petition sheets based on date of circulator signature); (A)(3)(c) (removing signatures based on date of circulator signature). But § 19-118(B) imposes no such temporal requirement related to the registration affidavit; it merely says that the "registration application . . . shall require . . . [a]n affidavit." Indeed, except in limited circumstances, a circulator *cannot* upload a second or subsequent affidavit, even if they so desired. [Stip. ¶ 2 (APP020).]

Moreover, Appellants' position would have puzzling (and troubling) consequences. For example, circulator Yusuff Olowoeshin submitted his affidavit and registered to circulate petitions for the Voters' Right to Know Act on the same day—June 11, 2021. [Trial Ex. 147 at 78.] Yet Appellants seek to invalidate hundreds of the signatures he gathered, apparently because he subsequently updated his address without uploading a new affidavit.

Appellants' challenges to many other circulators are similar. These challenges defy both the statute and common sense. The trial court correctly rejected them.

III. The circulators included a residence address as required by statute.

A. The statute does not require a unit number.

The circulator registration statute requires only that circulators provide a "residence address." A.R.S. § 19-118(B)(1). The statute does not require a unit number, and the Court should not add a requirement to the statute.

If the Legislature wanted to require circulators to list unit numbers, it could have done so, as it has done in at least one other statute. *See* A.R.S. § 12-991(I) (a notice of nuisance must list a residence's "address and unit number if applicable"). Because the text of § 19-118(B)(1) does not explicitly require a unit number, nor define "residence address" to include a unit number, there is no statutory requirement for a circulator to list such a number.

In the one case the Committee has found in which a court has addressed a similarly undefined statutory reference to "residence address," the court held that "an apartment number is not a required component of a

residence address." *Hennessy v. Bd. of Elections*, 175 A.D.3d 1777, 1779 (N.Y. App. Div. 2019); N.Y. Elec. Law § 6-130 ("The sheets of a designating petition must set forth in every instance the name of the signer, his or her residence address . . . ."). Similarly, when addressing the phrase "actual residence address" in a different context, this Court described the required address as "a street address and a city or town, or a street address and a zip code" with no reference to a unit number. *McKenna v. Soto*, 250 Ariz. 469, 474, ¶ 25 (2021).

Instead of acknowledging the specific phrase the Legislature used here, Appellants rely on a case that construed a different phrase, "mailing address for a specific place," and that required a unit number because of due process notice requirements in the context of a default judgment. (Op. Br. at 16 (citing *Ruiz v. Lopez*, 225 Ariz. 217 (App. 2010)). Yet even if the Court were to equate a "residence address" (the term in § 19-118(B)(1)) with a "mailing address," as Appellants suggest, there is no universal consensus that a "mailing address" necessarily requires a unit number, especially since "[i]t is a point beyond dispute that the United States Postal Service delivers to addresses regardless of whether an apartment or suite number is included." *People v. Godoy*, 698 N.Y.S.2d 390, 392 (N.Y. Crim. Ct. 1999). As a matter of

law, the "residence address" listed in § 19-118(B)(1) does not require a unit number.

At most, as the trial court found, any requirement to list a unit number derives from the purpose of § 19-118(B)(1) and is implicated "only if such number is necessary to ensure that the individual could be contacted or questioned." [8/18/2022 Min. Entry at 8 (APP010).]; *see Leach v. Hobbs*, 250 Ariz. 572, 576 (2021) (the purpose of § 19-118 is to ensure circulators are "available for court proceedings if the signatures they gather are challenged"); *see also* A.R.S. § 19-118(B)(4) (providing that the Committee address, not the circulator's address, shall be the location for service of process). The question of whether "such number is necessary" is inherently a factual issue, on which the plaintiffs had the burden of proof. [8/18/2022 Min. Entry at 8 (APP010).] And as the trial court found, Appellants presented no evidence to show that any "unit number was necessary to ensure contact." (*Id.*) In contrast, the Committee provided significant evidence—in the form of trial testimony, circulator affidavits, and a hotel policy—showing that circulators could be contacted and receive mail at multi-unit locations without using their unit numbers. [*Id.* (APP010); Tr. 113:20-114:13 (APP026-27); FAQ (APP031); Aff. Richard Milliner ¶ 3 (APP028); Aff. Skyler Monteith

¶ 3 (APP030).] Appellants cannot show the trial court clearly erred in these factual findings.

B. The statute does not require a temporary address or a unit number for one.

Most of the signatures at issue in Objection 3 relate to circulators who did not list unit numbers in their temporary addresses (as opposed to their permanent addresses). But the statute does not require circulators to provide temporary addresses *at all*. *See* A.R.S. § 19-118(B)(1) (requiring only a "residence address"). As a result, a circulator who lists a temporary address without a unit number cannot have violated the statute. *Cf. Leach v. Reagan*, 245 Ariz. 430, 439 ¶¶ 40-41 (2018) (rejecting challenges to circulator registrations based on flaws in information circulators provided to the Secretary that was not required by statute).

Appellants make no effort to suggest that the statute requires circulators to provide a temporary address. Instead, Appellants make a passing reference (at 15-16) to the fact that the "the registration contains separate fields for the circulator's permanent residential address and any temporary address that he or she may have in Arizona." Appellants do not bother explaining how the inclusion of a field on a registration form creates

a statutory requirement. And Appellants' reliance on the Secretary's registration form to define statutory requirements is ironic, given their contention in Objection 1 that the Secretary's decision not to require second or subsequent affidavits is legally meaningless. It is also incorrect, because the Secretary herself recognizes that "Arizona law does not require that the circulator provide a temporary residential address." [Lorick Decl. ¶ 4 n.1 (APP014).] Instead, the Secretary's office merely "requests this information in case there is a reason to mail correspondence to the circulator (e.g., if we are unable reach them via email or phone)." [*Id.* (APP014).] The Secretary does not exclude petitions of circulators who do not list a temporary address.

Moreover, a temporary address does nothing to further the statute's purpose because it does not provide a circulator's location or place of contact *at the time* signatures are challenged. It only gives the circulator's location *during the signature-gathering period*, which typically ends before any challenge is filed. *See* A.R.S. § 19-122(C). After a challenge is filed, the temporary address used during signature gathering is meaningless, because the circulator will have moved back to his permanent address and can be contacted there or via the Committee's service of process address pursuant to § 19-118(B)(4). This is confirmed by the Secretary, who has stated that her

office "has not needed to contact a circulator at their temporary address." [Lorick Decl. ¶ 4 n.1 (APP014).]

Because the statute does not require a temporary address in whole or in part, a circulator has not violated the registration statute if he lists a temporary address without a unit number.

IV. The Court should disregard Appellants' Appendix 1, which is not properly in the record.

Appellants attached to their brief a spreadsheet that was never presented to the trial court and from which Appellants ask this Court to count signatures, depending on the Court's ruling. The Court should reject this improper invasion into the trial court's fact-finding role and, if needed, remand to the trial court on any such issues. *Schaefer v. Murphey*, 131 Ariz. 295, 299 (1982) ("As an appellate court, we are confined to reviewing only those matters contained in the record.")

REQUEST FOR ATTORNEY'S FEES

Pursuant to ARCAP 21 and A.R.S. § 19-118(F), the Committee requests an award of attorney's fees.

CONCLUSION

The Court should affirm.

RESPECTFULLY SUBMITTED this 20th day of August, 2022.

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