

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Jessica Miracle, et al., Plaintiffs, v. Katie Hobbs, Defendant.	No. CV-19-04694-PHX-SRB ORDER
---	---

Pending before the Court is Plaintiffs’ Emergency Motion for Injunction Pending Appeal.¹ Included as an attachment to the motion are two declarations that were not considered by the Court in its Order denying a Preliminary Injunction. While the evidence that was before the Court in considering the Preliminary Injunction motion focused on the difficulty in obtaining circulators in light of the Strikeout Law, ARS §19-118(E), these declarations focus on the difficulty in obtaining funding for initiatives because of the possibility of “wildly inflated costs” if there is a repeat of the mass subpoenaing of circulators that occurred in connection with the Clean Energy Initiative in 2018. While the Court accepts as true that raising

¹ Plaintiffs filed their Emergency Motion for Injunction Pending Appeal on December 18, 2019. The Court set a briefing schedule for the Response and Reply on December 29, 2019 and January 2, 2020 respectively. The Response and Reply were timely filed but courtesy copies of the 49-page Response and 20-page Reply were not delivered as required by this Court’s Electronic Case Filing Administrative Policies and Procedures Manual. The courtesy copies were finally delivered on January 8 at 3:30 pm and then only after this Court’s Judicial Assistant sent emails to the parties advising that the courtesy copies had not been delivered.

1 funds to support initiative efforts may now be more difficult because of the Strikeout
2 Law, an injunction pending the expedited appeal of the Preliminary Injunction denial
3 will likely not solve that problem. Plaintiffs’ appeal of this Court’s denial of a
4 Preliminary Injunction will probably be decided within this election cycle. Any
5 injunction pending appeal will be dissolved and either this Court’s denial of a
6 Preliminary Injunction will be affirmed or the Court of Appeals will decide that a
7 Preliminary Injunction should issue. The uncertainty for funders of initiative
8 petitions remains until the Court of Appeal rules.

9 This Court continues to be persuaded by the Arizona Supreme Court’s
10 decision in *Stanwitz v Reagan*, 245 Ariz. 344, 429 P.3d 1138 (2018). Although the
11 case was decided based on the Arizona Constitution’s guarantee of the right to the
12 initiative process and not the First Amendment, in the facial challenge to the
13 Strikeout Law, the Arizona Supreme Court outlined the reasons the law did not
14 unreasonably hinder or restrict the right to initiative. The Arizona Supreme Court
15 concluded that the Strikeout Law “‘represents a reasonable means of fostering
16 transparency, facilitating the judicial fact-finding process, inducing compliance with
17 valid compulsory process, and mitigating the threat of fraud or other wrongdoing
18 infecting the petition process.’” *Id* at 350. The Supreme Court held that the Strikeout
19 Law was “constitutionally valid on its face because it furthers the constitutional
20 purpose of the initiative process by ensuring the integrity of signature gathering by
21 reasonable means, and [Appellants] fail[ed] to demonstrate that there [was] ‘no set
22 of circumstances’ under which the statute’s application would be valid.” *Id.* ²

23 The holding of the Arizona Supreme Court in *Stanwitz* finding that the
24 Strikeout Law was a reasonable regulation of the initiative process is a convincing
25 reason for this Court to conclude that the Strikeout Law is not an unconstitutional


26
27 ² In rejecting the as applied challenge, the *Stanwitz* Court noted that the petitioners
28 had raised serious questions about the circulators’ qualifications and that only a
small percentage (0.6%) of circulators were subpoenaed. This Court will not act on
the assumption that the egregious number of subpoenas served in the Clean Energy
Initiative challenge represents the norm for future challenges.

1 regulation or restriction on political speech.

2 Because the Court is still of the view that Plaintiffs have failed to demonstrate
3 a likelihood of success on the merits and because the Court cannot find that an
4 injunction pending appeal will alleviate the further harm outlined in the new
5 declarations attached to Plaintiffs' motion, an injunction pending appeal will be
6 denied. The Court also finds that the balance of the equities does not lean in favor
7 of a mandatory injunction of a 2014 law and that the public interest is not served by
8 enjoining a duly enacted Arizona law already found constitutional by the Arizona
9 Supreme Court.

10 IT IS ORDERED denying Plaintiffs' Emergency Motion for Injunction
11 Pending Appeal. (Doc. 41)

12
13 Dated this 10th day of January, 2020.

14
15
16
17 
18 Susan R. Bolton
United States District Judge