Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-009709 08/16/2022

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT
E. Wolf
Deputy

SETH LEIBSOHN, et al. KORY A LANGHOFER

v.

KATIE HOBBS, et al. AMY BELL CHAN

THOMAS J. BASILE
JOSHUA D BENDOR
NOAH T GABRIELSEN
JOSHUA J MESSER
TRAVIS C HUNT
ANNABEL BARRAZA
JACQUELINE MENDEZ SOTO
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE MIKITISH

UNDER ADVISEMENT RULING

The Court has reviewed and considered all filings in the case, together with all legal authorities, evidence admitted at the evidentiary hearing on August 12, 2022, and arguments by counsel. For the reasons stated below, the objections outlined in the complaint and presented at trial are denied. Because it is unclear whether additional findings or conclusions may be necessary, the Court directs entry of a final judgment as to the objections presented pursuant to Rule 54(b).

Background

On or around May 4, 2021, Voters' Right to Know ("the Committee") filed with the Secretary of State the title and text of its initiative measure, and received a serial number (I-04-2022) for the Initiative Petition. *See* Am. Compl. ¶ 16. As required by A.R.S. § 19-111(A), the serial number application disclosed the Committee's address, which it represented to be "514 West Roosevelt, Phoenix, AZ 85003." *Id.* ¶ 36, Ex. B. The Committee's statement of organization on file with the Secretary of State has at all times relevant likewise identified the Committee's address as 514 West Roosevelt Street. *Id.* ¶ 37.

For more than a year after the filing of the Initiative, thousands of people circulated petitions to place the Voters' Right to Know Act (the "Act") on the ballot. Hundreds of thousands of Arizona voters signed the petitions.

On or around July 7, 2022, the Committee submitted to the Secretary 38,799 petition sheets that purportedly contained an estimated 393,000 signatures. Following her statutorily required initial review of the Initiative Petition, and disqualification of specific sheets and signatures with various facial defects or errors, *see* A.R.S. § 19-121.01(A), the Secretary determined that 355,726 signatures were eligible for further review by the county recorders. Pursuant to A.R.S. § 19-121.01(B)-(D), the Secretary randomly selected five percent (*i.e.*, 17,787) of these signatures for transmittal to the county recorders, who currently are verifying the voter registration status of those purported signers, *see* A.R.S. § 19-121.02. The Secretary will discount the total number of signatures deemed eligible for verification (as adjusted to exclude signatures disqualified by the county recorders) by the aggregate validity rate computed by the county recorders to project the total number of valid signatures, *see id.* § 19-121.04, which must equal or exceed 237,645 to qualify the measure for placement on the statewide election ballot, *see* Ariz. Const. Art. IV, Pt. 1, § 1(2), (7).

On July 29, 2022 Plaintiffs timely initiated this challenge to the legal sufficiency of certain circulator registrations and the Initiative Petition as a whole, pursuant to A.R.S. §§ 19-118(F) and 19-122(C). The initial complaint was timely amended on August 3, 2022.

Discussion

Initiative and referendum procedures are a fundamental part of Arizona's system of government. *Whitman v. Moore,* 59 Ariz. 211, 218–20 (1942). Although our constitution vests lawmaking authority "in a Legislature, ... the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature; and they also reserve ... the power to approve or reject at the

polls any Act, or item, section, or part of any Act of the Legislature." Ariz. Const. Art. 4, Pt. 1, § 1. *Fairness and Accountability in Ins. Reform v. Green*, 180 Ariz. 582, 584-85 (1994). Our courts have always respected, and endeavored to uphold, the power of the people of our state to enact or reject laws by popular vote. *Molera v. Reagan*, 245 Ariz. 291, 293 ¶ 1 (2018) ("We greatly respect the initiative process, including the civic activism required to collect the signatures necessary to qualify a ballot measure, and we do not lightly disturb the fruits of such efforts.")

The Arizona Constitution directs the Legislature to enact "registration and other laws to secure the purity of elections and guard against abuses of the elective franchise." Ariz. Const. Art. VII, § 12. State law provides that "constitutional 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." A.R.S. § 19-102.01(A). Strict compliance "requires nearly perfect compliance with constitutional and statutory" mandates. *Arrett v. Bower*, 237 Ariz. 74, 81 (App. 2015). Strict compliance applies to "all constitutional and statutory provisions, no matter how minor." *Homebuilders Association of Central Arizona v. City of Scottsdale*, 186 Ariz. 642, 648 (App. 1996), even if its application results in what may seem to be "harsh consequences" resulting from as little as an "unfortunate mistake." *Arrett*, 237 Ariz. at 80, 83.

Once initiative petitions are circulated, signed, and filed, they are presumed valid. *Harris v. Purcell*, 193 Ariz. 409, 412 ¶ 15 (1998). Petitions and signatures disqualified by the Secretary of State are not entitled to that presumption, but the presumption may be reinstated on proof of the signature or petition's legal sufficiency. *Direct Sellers Association v. McBrayer*, 109 Ariz. 3, 5 (1972); *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 431 (1991); *Harris v. City of Bisbee*, 219 Ariz. 36, 42 ¶ 21 (App. 2008).

Here, the Petitioners seek to disqualify petition sheets and individual signatures. The Court addresses the Petitioners' claims as follows:

1. Must each circulator provide a new notarized affidavit specific to each initiative for which he or she carries petitions?

Arizona law requires that a valid circulator registration application must include 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.

The Plaintiffs argue that some of the circulators for this Initiative relied on affidavits filed in previous circulator registration applications. They argue that the statutes requiring strict construction prohibit applicants from using past affidavits for the purpose of obtaining approval to carry petitions for this Initiative. They argue that a new affidavit related to a new application is required. Specifically, they assert:

> [An applicant for registration] is swearing to the accuracy of a ***particular*** representation, made in a ***particular*** time and place, before a ***particular*** notary public. For that reason, Arizona law flatly prohibits a notary from "perform[ing] a jurat on a document that is incomplete." A.R.S. § 41-328(A); *see also* Sec'y of State, ARIZONA NOTARY PUBLIC REFERENCE MANUAL (rev. July 2020) at 21 ("The notary cannot perform a notarial act on a document that is missing pages or that contains fields that should be filled in.").

Plaintiffs' Prehearing Memorandum at 11.

Finally, the Plaintiffs argue that, although the Secretary of State has some discretion in constructing the mechanics of the circulator registration process, she cannot modify or abridge a statutory mandate.

The Committee argues that the law does not require a new affidavit for each registration. It argues that the affidavit language is provided by statute and was used by the circulators in this case. It notes that the Secretary of State does not require new affidavits. In fact, it argues that the Secretary of State's electronic circulator registration portal does not allow circulators to upload a separate affidavit for each petition they add to their registration. The Committee notes that the portal process is incorporated into the Elections Procedures Manual. It notes that provisions of the Elections Procedures Manual, which the secretary promulgated pursuant to a specific statutory directive, have the force of law. *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63, ¶ 16 (2020). If the Court finds any ambiguity in the affidavit requirement, the Committee argues that the Court should defer to the Secretary's lawfully promulgated process. It argues that each step of the Secretary's registration process complies with the letter and spirit of A.R.S. § 19-118.

The Committee goes on to argue that a circulator may update registration information without submitting an affidavit for each new update. Lastly, it argues that unlike other election requirements there is no time restriction when the registration affidavit must be completed.

The statutory language provides three requirements as to the contents of affidavits. They must acknowledge that the following information is true:

1. I am eligible to register as a circulator in the state of Arizona,

2. All of the information provided is correct to the best of my knowledge, and

3. I have read and understand Arizona election laws applicable to the collection of signatures for a statewide initiative or referendum.

Each of these items can change over time. For example, between the time of one initiative and another, a proposed circulator become ineligible to register. Likewise, "all of the information provided" can change from one application to the next. Finally, election laws may vary over time. Therefore, an inference may be made that a new affidavit is required each time a circulator wishes to carry a new petition.

Nevertheless, the strict construction of the statute does not support that the affidavit must specifically relate to each new initiative. Rather, the statute simply indicates that an affidavit must be included swearing to the listed items. The Legislature has imposed several temporal requirements for circulator affidavits. *See* A.R.S. §§ 19-112(D) (requiring affidavit swearing that "at all times during [the circulator's] circulation of *this petition sheet*," the voter "printed the individual's own name and address and signed *this sheet* of the foregoing petition in [the circulator's] presence on the date indicated," and "at all times during circulation of *this signature sheet* a copy of the title and text was attached to the signature sheet") (emphasis added); 19-

121.01(A)(1)(f) (directing Secretary to remove sheets "on which the signatures of the circulator or the notary are dated earlier than the dates on which the electors signed the face of the petition sheet"); (A)(3)(c) (directing the Secretary to remove signatures "if the date on which the petitioner signed the petition is after the date on which the affidavit was completed by the circulator and notarized"). In this case, the Legislature did not expressly include a temporal requirement for the circulator registration affidavits. It clearly could have done so as it had in other instances. 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 new petition.

2. Are circulator registrations that designated an address other than 514 W. Roosevelt St. for service of process invalid?

The Petitioners argue that paid or out-of-state circulator registrations must designate an address for service of process. They argue that only one address may be permissibly designated: "the address of the committee in this state for which the circulators gathering signatures and at which the circulator will accept service of process." A.R.S. § 19-118(B)(4); *see also* EPM at p. 253. The Petitioners argue that the Committee's address at all relevant times has been 514 W. Roosevelt, Phoenix, AZ 85003 because the Committee provided that address on its serial number application for the Initiative. The Petitioners argue that almost every circulator who registered for this initiative petition, however, disclosed a service address of 502 W. Roosevelt and are therefore invalid.

The Petitioners cite to the legislative history to argue that the Legislature modified the statutory text to provide for a single address and ensure that service of subpoenas can be effectuated "efficiently [and] quickly" to fulfill the needs of highly expedited litigation. They argue that this legislative purpose to provide a bright line rule requires that a committee can only have one address.

The Petitioners also argue that the 514 and 502 W. Roosevelt sites are two different locations because they are separate parcels, each with its own postal delivery address, featuring a freestanding building that is not interconnected with the other.

They further argue that if the Committee changed its address, prior inaccurate circulator registrations would be invalid. They argue that the information contained in the circular registrations must be sworn and notarized, and, therefore, the information they contain must be true and accurate at the moment of submission.

The Committee argues that, under the statute, an initiative committee may have multiple addresses. Therefore, according to the Committee, the fact that the address on the serial number application differs with the circulators' disclosed address for service of process is inconsequential.

The Committee may use other addresses, so long as the circulators' address is proper for service of process.

The Committee further argues that the Committee co-chairperson is the 100% owner of the entity that owns both 502 W. Roosevelt and the adjacent parcel 514 W. Roosevelt, and that the parcels share a driveway, parking, fencing, and security cameras. It argues that the 502 parcel is more conducive to accepting service of process because it is the location of the co-chairperson's law firm. The 514 parcel serves as a coordination location more conducive to active petition gathering than service of process.

The Committee notes that the 502 parcel has been used in numerous filings with the Secretary of State, as well as the application for serial number for the Act. It notes that the Committee receives mail and bank statements, at the 502 parcel, and that parcel is listed on official checks, the online PayPal account, electronic Federal tax payment systems.

The Committee argues that nothing in the statute requires the addresses listed on the application form required under A.R.S. § 19-1112 match the address required in the affidavits under A.R.S. § 19-118(B)(4). They argue that the one circulator subpoena issued in this case was served without challenge.

The Court concludes that nothing in the statutes require the Committee to have only one address. For purposes of this objection, the only requirement is that circulators provide an address that may be used for service of process. THE COURT FINDS that the circulators have provided an address for service of process in this case. No evidence was presented that the address used was not proper for service of process.

In addition, the statutes do not define an "address." A plain usage of the term is "a place where a person or organization may be communicated with." Address Definition & Meaning - Merriam-Webster Online Dictionary, www.Merriam-Webster.com/dictionary/address. Under the facts of this case, THE COURT FURTHER FINDS that even if only one address were permitted under the statute, the common ownership, adjacent location, configuration, and usage of the two parcels in this case make clear that the parcels served as one address for purposes of this initiative.

3. Must a Valid Registration Disclose the Circulator's Full Residential Address, Including (If Applicable), a Unit Number?

A circulator registration must contain (among other items of information) "[t]he circulator's full name, residence address, telephone number and email address." A.R.S. § 19-118(B)(1). The Petitioners argue that strict compliance requires disclosing the circulator's residence address in full, including a unit number where applicable for apartments, dorms, or

hotels. The Petitioners note that our courts have struck petitions that did not include complete dates. *See McKenna v. Soto*, 250 Ariz. 469, 472, ¶ 14 (2021). They also emphasize that our courts have held that a circulator registration is not strictly compliant with A.R.S. § 19-118(B)(1) "if an apartment number, dorm number or hotel room number was not included on a residence address where such number was necessary to ensure that the individual could be contacted or questioned." *Leach v. Hobbs*, Maricopa County Superior Court No. CV2020-007961, Minute Entry (Aug. 14, 2020) at p. 14, *aff'd on other grounds*, 245 Ariz. 430 (2020).

The Committee argues that the statute merely requires a circulator's "residence address." It notes that the Plaintiffs are requesting the Court to amend the statutory language to include items not promulgated by the Legislature. *See Lawrence v. Jones*, 199 Ariz. 446, 452-53 (App. 2001) (concluding "that if the legislature had wanted to include such a narrowly constructed definition of 'legal description,' it would have included it in Title 19 referendum provisions as it has done in other areas of the law"). The Committee notes that the Plaintiffs have offered no proof, that the addresses provided were insufficient to ensure the circulators could be contacted. The Committee argues that as long as the addresses listed were locations where the circulators could be located, contacted, and questioned, the statute's purposes are met. *Lohr v. Bolick*, 249 Ariz. 428, 433 ¶ 22 (2020) ("[T]he purpose of the address requirement is to ensure that a circulator can be contacted and questioned about the validity of gathered signatures.").

Under Arizona's statutory framework and relevant precedents, the Court concludes that an apartment number, dorm number or hotel room number is required to be included on a residence address, but only if such number is necessary to ensure that the individual could be contacted or questioned. As such, a factual inquiry is required to determine whether the applicable unit number is necessary.

In this case, no facts were presented as to whether an applicable unit number was necessary to ensure contact. In fact, evidence was presented that individuals who listed hotel rooms could be contacted without specific hotel room numbers. Therefore, the challenges based on lack of a unit number must fail.

4. Must valid registration include a residential address?

The Petitioners argue that evidence at trial would demonstrate that certain circulators provided on their registration forms and address that did not correspond to a residence, for example a vacant lot or mailbox facility. The Court agrees that a residence address is required, although for certain individuals, a vacant lot may serve as a residence. The Petitioners set forth no evidence of residential addresses that did not correspond to a residence. They argue in closing that some circulators omitted digits or missed unit numbers. As with objection number three, a factual inquiry

is required to determine whether the applicable address is sufficient. Since no evidence was presented of invalid residences, this objection must fail.

Conclusion

For the foregoing reasons,

IT IS ORDERED denying Objections 1 through 4.

Under A.R.S. § 19-118(F), a party must file a notice of appeal within five calendar days after entry of judgment. The Supreme Court may dismiss a belatedly prosecuted appeal, such as one filed on the last day of the statutory deadline. *See McClung v. Bennett*, 225 Ariz. 154, 235 P.3d 1037 (2010). Special procedural rules govern expedited appeals in election cases. Ariz. R. Civ. App. P. 10.

Pursuant to Rule 54(b), Ariz. R. Civ. P., and there being no just reason for delay, the Court directs entry of this Judgment as a final, appealable Order. The Court signs this minute entry as an enforceable Order of the Court effective immediately.

Date: August 17, 2022

/ s / JOSEPH P. MIKITISH

HONORABLE JOSEPH P. MIKITISH
JUDGE OF THE MARICOPA COUNTY SUPERIOR COURT