

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

6-22-18 5:22p.m.

CV2018-008775

06/22/2018

HONORABLE CHRISTOPHER COURY

CLERK OF THE COURT
S. Ortega
Deputy

ROBERT MCGEE

KORY A LANGHOFER
MARK S KOKANOVICH
JOSEPH KANEFIELD
THOMAS J. BASILE

v.

MARK SYMS

JEREMY PHILLIPS
MARK D GOLDMAN
COLLEEN CONNOR
KARA MARIE KARLSON
TALIA OFFORD
JOSEPH E LA RUE
DEANIE J REH

DOCKET-CIVIL-CCC
EXHIBITS-SCT

MINUTE ENTRY

Courtroom: ECB - 914

1:03 p.m. This is the time set for hearing re: election contest. Plaintiff, Robert McGee, is present and represented by counsel, Kory Langhofer, Thomas Basile, Mark Kokanovich, and Joseph Kanefield. Defendant, Mark Syms, and Intervenors, Joanne Carpenter and Ted Carpenter, are represented by counsel, Mark Goldman and Jeremy Phillips. Defendant, Michele Reagan, is represented by counsel, Deanie Reh and Joseph La Rue. Defendant, Adrian Fontes, is present and represented by counsel, M. Colleen Connor and Talia Offord, who also represent Maricopa County Board of Supervisors.

A record of the proceedings is made digitally in lieu of a court reporter.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2018008775

06/22/2018

Plaintiff's exhibits 1 through 16 are marked for identification.

The Court discloses to counsel and the parties that a member of the Maricopa County Board of Supervisors is a relative of his. The Court also states that he can be fair and impartial.

Discussion is held regarding Defendant Mark Syms' June 21, 2018 Answer to Complaint and First Amended Complaint. The Defendant denies the allegations in Plaintiff's Complaint.

Plaintiff's exhibits 1, 2, 4 and 5 are received in evidence.

Discussion is held regarding the pending motion to allow certain witnesses to testify telephonically. Plaintiff objects to the motion.

Hearing schedule is discussed.

The Court addresses Defendant's pending Motion to Intervene on behalf of Joanne and Ted Carpenter.

For the reasons set forth on the record,

IT IS ORDERED denying Defendant Mark Syms and Intervenors Joanne Carpenter and Ted Carpenters' Motion to Intervene as Qualified Electors filed on June 21, 2018.

Defense counsel invokes the rule of exclusion of witnesses.

Plaintiff's case:

Adrian Fontes is sworn and testifies.

The Court receives a copy of the Defendant's supplemental filings.

Plaintiff's exhibit 15 is received in evidence.

The witness is excused.

Kristi Passarelli is sworn and testifies.

Plaintiff's exhibit 16 is received in evidence.

The witness is excused.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2018008775

06/22/2018

On motion of Plaintiff,

IT IS FURTHER ORDERED sealing Plaintiff's exhibit 16 not to be opened until further order of the Court.

Anthony Garcia is sworn and testifies.

The witness is excused.

Dr. Mark Syms is sworn and testifies.

2:32 p.m. The Court stands at recess.

2:46 p.m. The Court reconvenes. Plaintiff, Robert McGee, is present and represented by counsel, Kory Langhofer, Thomas Basile, Mark Kokanovich, and Joseph Kanefield. Defendant, Mark Syms, and Intervenors, Joanne Carpenter and Ted Carpenter, are represented by counsel, Mark Goldman. Defendant, Michele Reagan, is represented by counsel, Deanie Reh and Joseph E. La Rue. Defendants, Adrian Fontes and Maricopa County, are represented by counsel, M. Colleen Connor.

A record of the proceedings is made digitally in lieu of a court reporter.

2:47 p.m. Counsel, Jeremy Phillips, appears in the courtroom.

Dr. Mark Syms continues to testify.

2:48 p.m. Counsel, Talia Offord, appears in the courtroom.

The parties stipulate that the signature of Attorney General Mark Brnovich's mother is a forgery.

The witness is excused.

Plaintiff rests.

Defendant Mark Syms case:

Shane Williamson is sworn and testifies.

The witness is excused.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2018008775

06/22/2018

Carson Dobric is sworn and testifies.

The witness is excused.

Rosemarie Urbanski is sworn and testifies.

LET THE RECORD REFLECT that this witness is recognized as an expert and proceeds with opinioned testimony.

The witness is excused.

Defendant rests.

Closing arguments.

For the reasons set forth on the record,

IT IS FURTHER ORDERED taking this matter under advisement.

3:57 p.m. Hearing concludes.

LATER:

UNDER ADVISEMENT RULING

The Court has reviewed and considered the written filings in this case, together with the evidence and arguments presented to the Court at the hearing held on June 22, 2018.

Plaintiff Robert McGee seeks to enjoin Defendant Mark Sims from appearing on the November 6, 2018, general election ballot as an independent candidate for State Senator in Legislative District 28. Plaintiff contends that Defendant has failed to gather the requisite 1,250 valid signatures to be placed on the ballot.

As a general rule, nominating petitions that are circulated, signed and filed are presumptively valid, and the challenger bears the burden to prove, by clear and convincing evidence, that a signer is not a qualified elector. *Jenkins v. Hale*, 218 Ariz. 561 (2008).

THE COURT FINDS as follows:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2018008775

06/22/2018

1. For the office of State Senator, an independent candidate is required to submit 1,250 signatures to qualify to appear on the ballot. Defendant timely filed signature sheets containing 2,158 signatures.
2. Plaintiff challenged the validity of 1,930 signatures.
3. The Maricopa County Recorder's Office (MCRO) reviewed the challenged signatures. The MCRO analysis concluded that 1,675 of the 1,930 signatures (over 85%) were invalid for one reason or another. Of the 1,675 invalid signatures, 1,176 signatures alone were deemed to be invalid because the signatures did not match – rephrased, over 1 in 2 signatures submitted did not match the signatures on file with MCRO.
4. Because of time constraints, MCRO was only able to do a “first check” of the challenged signatures; ordinarily MCRO does additional checks, where appropriate, to validate its results. Given the time constraints, the decision by MCRO to not conduct additional checks is rational and not arbitrary (as asserted by Defendant) because so many of Defendant's signatures were invalid, and because Defendant was so far away from the number of signatures needed to appear on the ballot. Additionally, contrary to Defendant's assertion, this was not the only case that MCRO decided to not conduct anything beyond a “first check;” the Court takes judicial notice that, in another matter argued before this judicial officer today, MCRO conducted only a “first check.”
5. The conclusion that signatures did not match voter records is corroborated by other evidence which strongly suggests that the signature collectors forged or somehow otherwise engaged in fraudulent practices while gathering signatures, including:
 - a. One signature collector, a person listing himself a “Anthony Garcia,” was identified as having gathered 245 signatures for Defendant. Mr. Garcia, however, credibly testified that he did not gather any signatures at all for Defendant;
 - b. The parties stipulated that a forged signature of the mother of Arizona Attorney General was submitted with Defendant's signatures;
 - c. The signature gatherers, on some days, listed remarkable numbers of signatures gathered – some in the ballpark of 200 signature in a single day. One signature gatherer listed that he obtained over 300 signatures in a single day.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2018008775

06/22/2018

7. Based on the evidence, Plaintiff has overcome the presumption of validity for 1,675 challenged signatures.
8. That is not the end of the analysis, however. Defendant has introduced evidence rehabilitating, and proving, the validity of 10 signatures. Defendant has not rehabilitated the remaining signatures determined to be invalid. Consequently, the total number of invalid signatures is 1,665.
9. After Defendant's 2,158 signatures are reduced by 1,665 invalid signatures, Defendant has submitted a total of 493 valid signatures. This is 757 signatures less than the 1,250 signatures required by law to appear on the ballot.
10. The Court considered Defendant's complaints that MCRO's review process was flawed. There has been no showing by Defendant that any further review would have made a material difference – one sufficient to validate anywhere close to 757 signatures. The Court also rejects the standard suggested by Defendant's expert review. If the two hours it takes Defendant's expert to compare a signature against an exemplar to determine if it was valid was the standard required, one questions whether these evaluations could be completed in the statutory time periods, and at what cost to the taxpayers.
11. With respect to Defendant's impossibility argument, the Court notes that Defendant has failed to articulate any prejudice from any ten day violation. Moreover, by not objecting in court and verbally asserting this argument at the outset of the proceedings, and by waiting until such time as all evidence had been received, Defendant has waived the argument.
12. Because it is unnecessary for the Court to make additional findings in order for the Court to rule on this matter, the Court declines to address other arguments raised. However, the limited record presented in Court does not identify Defendant's active, personal participation in, or actual knowledge of, the pattern of fraudulent signature gathering. To the contrary, the Court would be inclined to find that Defendant's team of signature gatherers, and not Defendant, were the ones engaged in the fraudulent practices.

Based on the foregoing and good cause appearing,

IT IS ORDERED declaring that Plaintiff has proven by clear and convincing evidence that Defendant Mark Syms has submitted a total of 493 valid signatures. This is less than the 1,250 valid signatures required by law. Without a sufficient number of valid signatures,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2018008775

06/22/2018

Defendant is not eligible for placement on the ballot for the general election to be held on November 6, 2018.

IT IS FURTHER ORDERED granting Plaintiff's requested relief for an injunction prohibiting Defendant Mark Syms' name from appearing on the ballot as a candidate for State Senator in Legislative District 28 for the election to be held on November 6, 2018, and entering declaratory judgment in favor of Plaintiff and against Defendant. Defendant is enjoined from appearing on this ballot.

IT IS FURTHER ORDERED that Defendant's name shall not be printed on the ballot as a candidate for State Senator in Legislative District 28 for the November 6, 2018 general election.

IT IS FURTHER ORDERED denying Defendant's motion for rigid enforcement of A.R.S. § 16-351(A) time limits.

IT IS FURTHER ORDERED signing this minute entry as a final written Order of the Court.

Dated this 22nd day of June, 2018.

The parties are notified that, under A.R.S. § 16-351(A), any notice of appeal must be filed within five calendar days after the superior court's decision in a challenge to the nomination of a candidate. See *Bohart v. Hanna*, 213 Ariz. 480, 143 P.3d 1021 (2006). An appeal that is belatedly prosecuted, such as one filed on the last day of the statutory deadline, may be dismissed on the grounds of laches even if timely filed. 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.



Honorable Christopher A. Coury
Superior Court Judge.