SUPREME COURT OF ARIZONA

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| APRIL SMITH, et al., | ) | Arizona Supreme Court |
| | ) | No. CV-24-0199-SA |
| Petitioner, | ) | |
| | ) | Maricopa County |
| v. | ) | Superior Court |
| | ) | Nos. CV2024-019846 |
| ADRIAN FONTES, | ) | CV2024-019880 |
| | ) | |
| Respondent, | ) | |
| | ) | |
| MAKE ELECTIONS FAIR PAC, | ) | |
| | ) | |
| Real Party in Interest. | ) | |
| | ) | |
| _____ | ) | **FILED 08/23/2024** |

**DECISION ORDER**

This matter pertains to the Make Elections Fair Arizona Act, serial number I-14-2024, a ballot initiative to adopt an amendment to the Arizona Constitution to reform primary and general elections (the "Initiative"). Plaintiffs challenge placement of the Initiative on the ballot, arguing it lacks a sufficient number of qualified signatures.

The Plaintiffs are required to "prove by clear and convincing evidence that" the total number of actually invalid signatures is sufficient to move the Initiative below the constitutional threshold. *See Leach v. Reagan*, 245 Ariz. 430, 437 ¶ 30 (2018) (rejecting plaintiffs' claim that its political consultants' documents identifying signature deficiencies required the court to shift the burden of proof). To that end, they attempted to introduce summary exhibits at trial that

purportedly showed more than 38,000 duplicative signatures on the Initiative's petition sheets. The trial court excluded this evidence as inadmissible under Rule 1006 of the Arizona Rules of Evidence and alternately ruled that, even if admissible, the exhibits did not satisfy Plaintiffs' burden of proof.

On August 21, in an expedited appeal, this Court disagreed with the trial court and concluded that Plaintiffs' exhibits were admissible. Because the trial court had not examined the allegedly duplicative signatures in Plaintiffs' exhibits, we further concluded it erred by finding that the exhibits "categorically failed to approve any duplicate signatures by clear and convincing evidence." We therefore remanded the case to the trial court and directed it to "determine whether the exhibits prove any duplicate signatures by clear and convincing evidence."

The next morning, August 22, the trial court scheduled proceedings to address the Court's remand. Plaintiffs requested a final ruling by the end of the day in their favor. The trial court denied the motion, citing the practical impossibility of determining whether and to what extent the exhibits proved duplicate signatures. *See Smith v. Fontes*, CV 2024-019846, Order at *3 (Aug. 22, 2024) (noting Plaintiffs' counsel "conceded that it could take anywhere between 11 hours

. . . and 300 hours . . . to complete the examination" before considering other documents not yet available).

Late in the day on August 22, Plaintiffs filed a special action proceeding here asking for a ruling before the end of the day on August 22 "finding as a matter of law that the Committee lacks a sufficient number of signatures" and striking the measure from the ballot. Plaintiffs contend that the trial court abused its discretion when it denied their request to rule on August 22 before the earliest county deadline to finalize the ballot for printing. They argue the court erred because the Committee had previously stipulated "that Plaintiffs have met their burden by clear and convincing evidence and that the initiative fails to qualify for the ballot."

To be clear, this Court's earlier order in the expedited appeal ruled simply that Plaintiffs' summary exhibits were admissible. We did not and could not determine whether the exhibits satisfy Plaintiffs' burden. That is a matter for the trial court to determine in the first instance as a factual matter, and we directed the trial court to undertake that review. Also, the Committee is entitled to hold Plaintiffs to their proof and contest the terms and conditions of any purported stipulation.

There is no statutory directive that a court resolve an

election challenge like this one before the ballot printing deadline. Regardless, this Court, and indeed the trial court, has consistently endeavored to resolve initiative challenges before the ballot printing deadline, notwithstanding the burden such expedited proceedings place on the parties, attorneys, and court personnel. We also recognize the desire for certainty. But the courts' role is to dispense justice. Courts cannot be forced to rule rashly to meet a ballot printing deadline or provide the parties with certainty.

As of this moment, the Initiative has not been enjoined and will appear on the ballot, assuming the ballots are indeed printed in the early morning hours of August 23. But this does not end the matter. The trial court must continue with determining whether the Initiative is supported by a sufficient number of qualified signatures. This determination should be made as expeditiously as possible to provide the parties and the public certainty. If the court rejects Plaintiffs' challenge, the voters will decide whether the Initiative should be enacted into law. If the court disqualifies the Initiative, the court should issue an injunction precluding any votes for the measure from being counted. Under these condensed circumstances, this result is the most appropriate way to enable the parties to present their evidence for a proper adjudication in an expedited manner.

Having issued its remand to the trial court, and the matter of determining whether there are sufficient signatures to qualify the Initiative for the ballot yet to be decided, the Court declines Plaintiffs' request to further limit or dictate the proceedings.

Therefore, upon consideration en banc,

**IT IS ORDERED** accepting special action jurisdiction but denying relief.

DATED this 23rd day of August, 2024.

_____/s/_____
ANN A. SCOTT TIMMER
Chief Justice

TO:
Roy Herrera
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