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ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. JAMES E MARNER

CASE NO. C20134029

DATE: August 16, 2013

YOLANDA PARKER, ET AL.  
Plaintiff(s)

VS.

CITY OF TUCSON, ET AL.  
Defendant(s)

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**R U L I N G**

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**IN CHAMBERS UNDER ADVISEMENT RULING RE PLAINTIFFS' COMPLAINT FOR  
INJUNCTIVE AND MANDAMUS RELIEF**

On August 2, 2013 and August 6, 2013, this Court heard evidence on Plaintiffs' request for injunctive and mandamus relief. The Court admitted numerous exhibits and heard testimony from witnesses Don Vogel, Carol Zimmerman, Sandra Lines, Roger Randolph and Andrew Cruz. The Court has considered the above evidence, adjudged the credibility of witnesses and has disregarded any evidence that is otherwise admissible.

The Court finds and concludes as follows:

**I. FINDINGS OF FACT**

1. In late May, 2013, the Committee for Sustainable Retirement in Support of Initiative Petition 2013-1004 (hereinafter the "Committee") applied for an initiative petition number and began circulating petitions and collecting signatures for an initiative that would amend the Tucson City Charter to convert the current Tucson city employee retirement plan to one resembling a 401(k) plan.

2. Upon receipt of a petition number, the Committee used paid circulators to collect voter signatures. The petitions had descriptive language along the top under which there were 5 columns. The columns were labeled "SIGNATURE", "NAME (First and Last Name Printed)", "ACTUAL ADDRESS (Street & Number: If no street address, describe residence location)", "WARD NO." and "DATE SIGNED". Each page had room for 15 voters to sign and provide the requested information.

3. On the back page of every petition was a preprinted affidavit that the circulator of the petition was required to sign which read:

I, (*name of circulator*), a person who is not required to be a resident of the state but who is otherwise qualified to register to vote in the County of (*circulator's residence*), in

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the State of Arizona at all times during my circulation of this petition sheet, and under the penalty of a class 1 misdemeanor, depose and say that subject to section 19-115, Arizona Revised Statutes, each individual printed the individual's own name and address and signed this sheet of the foregoing petition in my presence on the date indicated and I believe that each signer's name and residence address or post office address are correctly stated and that each signer is a qualified elector of the City of Tucson and that at all times during the circulation of this signature sheet a copy of the title and text was attached to the signature sheet (Ariz. Const. Art. IV, Pt. 1, § 1, ¶ 9; A.R.S. §§ 19-112(B), (C), (D), 19-114(A); Tucson Charter, Chapter XIX, § 2). The signatures appearing on this petition sheet are the genuine signatures of the persons whose names they bear (Tucson Charter, Chapter XIX, § 2). I retained direct custody and control of this signature sheet, and personally observed each signer of this signature sheet actually sign it (Tucson Code § 12-54(e), (f)). I crossed out and initialed blank signature lines on this signature sheet prior to or at the time my signature on this affidavit was notarized (Tucson Code § 12-54(g)).

4. The circulator of the petition was required to sign at the bottom of the affidavit. Each petition also required the signature and stamp of a notary public.

5. Marc Blodgett was hired as a circulator to collect signatures for the Committee's initiative. Plaintiffs have withdrawn their claim that Mr. Blodgett was not qualified to be a circulator due to a 1993 possession of drug paraphernalia conviction in the State of Arizona.

6. Mark Klepacki was hired as a circulator to collect signatures for the Committee's initiative. The parties have stipulated that Mr. Klepacki is convicted felon and his civil rights have not been restored. As a circulator, Mr. Klepacki collected 297 signatures on 29 petition sheets.

7. Thomas Coombs was hired as a circulator to collect signatures for the Committee's initiative. Mr. Coombs was convicted by way of guilty plea for two drug-related felonies in Orange County, California on July 25, 2000. He was sentenced to 16 months in State prison. The Orange County Superior Court docket indicates that the case closed, at the latest, on March 9, 2008. Mr. Coombs's subsequent convictions for drug-related offenses in Orange County Superior Court in 2009 were misdemeanor convictions.

8. There is no record of Mr. Coombs applying for restoration of his civil rights following his drug-related felony convictions in 2000. There is no record of the Orange County Superior Court entering an order restoring Mr. Coombs's civil rights following his drug-related felony convictions in 2000.

9. As a circulator, Mr. Coombs collected 1934 signatures on 196 petition sheets.

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10. Josephine Leonardi was hired as a circulator to collect signatures for the Committee's initiative. Ms. Leonardi was convicted of a drug-related felony in May, 2001 in Carroll County Superior Court in Illinois. She was sentenced to 24 months of probation with special conditions and 120 days in jail.

11. There is no record of Ms. Leonardi applying for restoration of her civil rights following her drug-related felony conviction in 2001. There is no record of the Carroll County Superior Court entering an order restoring Ms. Leonardi's civil rights following her drug-related felony conviction in 2001.

12. As a circulator, Ms. Leonardi collected 476 signatures on 40 petition sheets.

13. Daryl Oberg was hired as a circulator to collect signatures for the Committee's initiative. Mr. Oberg pled guilty to one count of Grand Theft in Cuyahoga County, Ohio in 1994. Mr. Oberg was sentenced to serve one year in the Lorain Correctional Institution. His prison sentence was suspended upon the condition that he complete 2 years probation and pay restitution in full.

14. There is no record of Mr. Oberg applying for restoration of his civil rights following his Grand Theft conviction in 1994. There is no record of the Cuyahoga County Court Of Common Pleas entering an order restoring Mr. Oberg's civil rights following his Grand Theft conviction in 1994.

15. As a circulator, Mr. Oberg collected 1044 signatures on 103 petition sheets.

16. Gary Robinson was hired as a circulator to collect signatures for the Committee's initiative. Mr. Robinson pled guilty to one count of Theft in the First Degree in Multnomah County, Oregon in 1998. He was sentenced to serve 18 months on probation. One of the special conditions of probation was that this felony conviction would be given "misdemeanor treatment" upon his successful completion of probation.

17. There is no record of Mr. Robinson applying for restoration of his civil rights following his Theft in the First Degree conviction in Multnomah County, Oregon. There is no record of the Multnomah County Superior Court entering an order restoring Mr. Robinson's civil rights after his Theft in the First Degree conviction.

18. As a circulator, Mr. Robinson collected 937 signatures on approximately 60 petition sheets.

19. James Greer was hired as a circulator to collect signatures for the Committee's initiative. Mr. Greer pled no contest to several drug-related felony charges and was found guilty of said charges on November 10, 1997 and March 31, 2008 in Volusia County, Florida. He was sentenced to probation and time served for the 1997 convictions and sentenced to 180 days confinement on the 2008 conviction.

20. There is no record of Mr. Greer applying for restoration of his civil rights following his multiple drug-related felony convictions in Volusia County, Florida.

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21. As circulator, Mr. Greer collected 899 signatures on 67 petition sheets.

22. Louise Breneiser was hired as a circulator to collect signatures for the Committee's initiative. On April 15, 2013 Ms. Breneiser filled out and signed a "Non-Resident Petition Circulator Registration Form" requesting clearance to work as a circulator on Petition C-03-2014. On the form, Ms. Breneiser indicated that her residential address was 209 Rodeo Rd., Glendora, CA 91741. The form, which was notarized and filed with the Office of the Arizona Secretary of State, required Ms. Breneiser to swear or affirm under the penalty of perjury that the residential address she provided on the form was accurate.

23. Ms. Breneiser began collecting signatures as early as June 2, 2013 and continued to collect signatures for the remainder of the month. There is no evidence indicating that between April 15, 2013 and June, 2013 Ms. Breneiser moved to Arizona or otherwise changed her nonresident status. The last record indicating that Ms. Breneiser was an Arizona resident was an Arizona driver's license issued in 2010.

24. Ms. Breneiser did not submit a "Non-Resident Petition Circulator Registration Form" for initiative petition 2013-I004.

25. As a circulator, Ms. Breneiser collected 2165 signatures on 173 petition sheets.

26. Stephen Laws was hired as a circulator to collect signatures for the Committee's initiative. Mr. Laws provided two different addresses as his place of residence in Arizona. One address was 4850 N. Central, Phoenix, Arizona. There is no residence or structure at that address. The second address was 4750 N. Central, Phoenix, Arizona. There is a high-rise apartment complex at this address. Investigator Don Vogel interviewed the complex manager. The complex manager indicated that she had never heard of Mr. Laws and that she sorted the mail for the complex and had never seen any mail bearing Mr. Laws's name. The apartment complex manager checked a computer database which listed the names of the residents of the complex and there was no listing for Mr. Laws. Mr. Vogel indicated that he confirmed this by positioning himself next to the complex manager and looking at the computer screen.

27. Witness Andrew Chavez testified that he has been involved in providing petition circulation services in Arizona for several years. In this capacity, he has met and actually hired Mr. Laws in the past. Based on his interaction with Mr. Laws, Mr. Cruz testified that he believed Mr. Laws traveled from such state to state to work as a circulator and would have described his state of residence as either Ohio or California. Mr. Cruz also testified that immediately prior to the circulation of initiative 2013-I004, Mr. Laws drove from California with

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circulator Renee Gordon and that his travel expenses were paid by a person who works for the Committee. Mr. Cruz further testified that Mr. Laws left Arizona the day after the signature sheets were submitted.<sup>1</sup>

28. Mr. Laws did not submit a "Non-Resident Petition Circulator Registration Form" for initiative petition 2013-I004.

29. When filling out the certification/ affidavit of registration to vote (Exhibit 54), Mr. Laws indicated that his telephone number began with a 702 prefix. The Court takes judicial notice that this prefix is not an Arizona prefix.

30. As a circulator, Mr. Laws collected 682 signatures on 59 petition sheets.

31. Renee Gordon was hired as a circulator to collect signatures for the Committee's initiative. Ms. Gordon listed 4750 N. Central in Phoenix as her place of residence. The Court did not hear any testimony from Mr. Vogel about whether the complex manager had any information regarding Ms. Gordon. However, the Court did hear testimony from Andrew Cruz indicating that Ms. Gordon traveled from California with Mr. Laws on the day before the petition drive started and she left the day after the drive ended.<sup>2</sup>

32. Ms. Gordon did not submit a "Non-Resident Petition Circulator Registration Form" for initiative petition 2013-I004.

33. As a circulator, Ms. Gordon collected 805 signatures on 69 petition sheets.

34. Sandra Ramsey Lines has significant expertise as a forensic document examiner. Ms. Lines received copies of the petition sheets for petition 2013-I004 on July 30, 2013 and was asked to review the documents for irregularities. Ms. Lines found numerous examples where the individual who provided a signature did not write in the other information (address, printed name, date). Ms. Lines also found numerous examples of uniformity of writing style on different signature lines of petition sheets that she would never expect to see in a situation where different people were filling in the information. Ms. Lines did not attribute any particular writing to any particular circulator although she did note some strong indications that circulator Marc Blodgett might have filled in some of the blocks on some petitions.

35. Ms. Lines prepared a report of her findings which was admitted into evidence as Exhibit 19. Ms. Lines's findings were not rebutted or discredited. Her findings were as follows:

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<sup>1</sup> There was no objection to this testimony at trial. The Court found Mr. Cruz's testimony on the subject to be very credible based on his demeanor, frankness and his experience interacting with Mr. Laws in the past.

<sup>2</sup> See footnote number 1.



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a) 45 petition sheets submitted by circulator Mark Blodgett had numerous written entries that reflected a high probability that one writer filled in spaces on petitions where the qualified elector was supposed to write his/her printed name, address and date, or a partial combination thereof.

b) One petition sheet submitted by circulator Gary Robinson had three written entries that reflected a high probability that one writer filled in spaces on petitions where the qualified elector was supposed write his/her address and/or date.

c) 33 petition sheets submitted by circulator Louise Breneiser had numerous written entries that reflected a high probability that one writer filled in spaces on the petitions where the qualified elector was supposed to fill in the date. On two of these petitions (1523 and 1607) Ms. Lines noted a high probability that that same writer had filled in the address block. On one of these petitions (473) Ms. Lines noted a high probability that the same writer had written in a partial name.

d) 17 petition sheets submitted by circulator Daryl Olberg had numerous written entries that reflected a high probability that one writer filled in spaces on the petitions where the qualified elector was supposed to fill in the date. One of these petitions (973) reflected a high probability that the same writer had filled in the printed name and address block.

e) 16 petition sheets submitted by other circulators had numerous written entries that reflected a high probability that one writer filled in spaces on petitions where the qualified elector was supposed to write his/her printed name address and date, or a partial combination thereof.

36. Tucson City Clerk Roger Randolph testified that he and his staff conducted a line by line verification on the petitions that were submitted in this matter. Mr. Randolph testified that per Rule 9.3 of the Initiative and Referendum Rules and Regulations of the Office of the Tucson City Clerk, he and his staff examine, among other things, the notary seal to ensure compliance with the rule. Mr. Randolph indicated that nothing about the appearance of any notary stamps on the petitions submitted by the Committee warranted rejection because if there was a faded or blurred stamp, he and his office staff were able to confirm the validity of the notary stamp by comparing it with other petitions stamped by the same notary.

37. Plaintiffs identified the following signature deficiencies in their complaint (petition number/line number):

a) Incomplete or incorrect date - 1492/12, 620/12, 90/10, 469/5, 921/10, 921/11, 921/12, 921/13, 921/15.

b) Initials/incomplete printed name – 1256/7, 610/9, 114/2, 1449/2, 1064/2, 1764/3, 776/10, 172/8, 1631/1, 1569/9, 328/11, 1782/11, 950/6, 761/1, 41/15, 837/14, 758/14.

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- c) Illegible name – 1039/12.
- d) No address – 98/4.
- e) P.O. Box given his address – 198/13.
- f) No signature of elector – 1140/10.

### II. CONCLUSIONS OF LAW

1. The petition sheets at issue were circulated, signed and filed and, as a consequence, are presumed to be valid. *Harris v. Purcell*, 193 Ariz. 49, 412, 973 P.2d 1166, 1169 (1998).

2. When challenging the validity of any petition sheets, the burden is on the Plaintiffs to prove by clear and convincing evidence that they are legally insufficient. *Blaine v. McSpadden*, 111 Ariz. 147, 149, 526 P.2d 390, 392 (1974).

3. Because this matter involves an initiative (as opposed to a referendum), the petition sheets must substantially comply with the applicable constitutional and statutory provisions governing. *Ross v. Bennett*, 228 Arizona 174, 177–78, 265 P.3d 356, 359 – 60 (2011).

4. A.R.S. § 19–114 and A.R.S. § 16–101(A)(5) require that before a convicted felon can qualify to circulate petitions, he or she must have his/her civil rights restored so he/she can register to vote. Petition sheets that have been circulated by convicted felons whose right to register to vote has not been restored are invalid. A.R.S. § 19–114, A.R.S. § 16–101(A)(5), *Rocking K Holdings, LTD. v. Pima County*, 170 Ariz. 134, 136 – 37, 822 P.2d 487, 489 – 90 (1991).

5. Petition sheets bearing false or fraudulent circulator affidavits are void on the condition that there is sufficient evidence of fraudulent intent on the part of circulator. *Ross v. Bennett*, 228 Ariz. at 180–81, *Harris v. City of Bisbee*, 219 Ariz.36, 43, 192 P.2d 162, 169 (App. 2008).

6. Oregon Revised Statute §137.275 provides:

“Except as otherwise provided by law, a person convicted of a felony does not suffer civil death or disability, or sustain loss of civil rights or forfeiture of estate or property, but retains all of the rights of the person, political, civil and otherwise, including, but not limited to, the right to vote, to hold, receive and transfer property, to enter into contracts, including contracts of marriage, and to maintain and defend civil actions, suits or proceedings.”

7. Circulator James Robinson, although a convicted felon, did not lose his civil rights as a result of his felony conviction in Oregon. He was not precluded from circulating petitions because he met the requirements

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for circulators as defined by A.R.S. § 19-114 and A.R.S. § 16-101(A)(5). As consequence, his petition sheets are not deemed invalid because of his felony conviction.

8. Ohio revised Code § 2961.01 provides, in pertinent part:

### Civil rights of convicted felons

(A)(1) A person who pleads guilty to a felony under the laws of this or any other state or the United States and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony under any law of that type is returned, unless the plea, verdict, or finding is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit.

(2) When any person who under division (A)(1) of this section is incompetent to be an elector or juror or to hold an office of honor, trust, or profit is granted parole, judicial release, or a conditional pardon or is released under a non-jail community control sanction or a post-release control sanction, the person is competent to be an elector during the period of community control, parole, post-release control, or release or until the conditions of the pardon have been performed or have transpired and is competent to be an elector thereafter following final discharge. The full pardon of a person who under division (A)(1) of this section is incompetent to be an elector or juror or to hold an office of honor, trust, or profit restores the rights and privileges so forfeited under division (A)(1) of this section, but a pardon shall not release the person from the costs of a conviction in this state, unless so specified.

9. Circulator Darryl Oberg, as a convicted felon in Ohio, was ineligible to register to vote or actually vote while incarcerated and while on probation/parole for his 1994 felony conviction. However, pursuant to Ohio Revised Code §2961.01 (A)(2), his ability to register as a voter was restored after completion of the above terms. Given the significant passage of time since Mr. Oberg's conviction and the lack of any evidence to suggest that his file remains open, this Court concludes that Mr. Oberg's right to register to vote and actually vote was restored prior to him circulating petitions on the Committee's initiative. As consequence, his petition sheets are not deemed invalid because of his felony conviction.<sup>3</sup>

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<sup>3</sup> The Court notes that Ohio revised Code § 2961.01 (B) provides:

"A person who pleads guilty to a felony under laws of this state or any other state or the United States and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony under any law of that type is returned is incompetent to circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition. "

The Arizona legislature has not imposed a similar prohibition for circulators of petitions. Instead, per A.R.S. § 19-114(A), Arizona law simply requires that a circulator be "qualified to register to vote pursuant to §16-101".

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10. Circulator Thomas Coombs, as a convicted felon in California, was ineligible to register to vote or actually vote while imprisoned and while on parole for his felony convictions in 2000. However, pursuant to Article 2, § 4 of the Constitution of the state of California his right to vote was restored upon completion of the above terms. Article 2, § 4 is a self-executing constitutional provision that only temporarily disenfranchises the right to vote while the person is serving a prison sentence or on parole. *Flood v. Riggs*, 80 Cal. App. 3d 138, 155 (App. 1978). Given the significant passage of time since Mr. Coombs's convictions and a lack of any evidence to suggest his file remains open (much less that he was on parole at the time he circulated petitions for the Committee) this Court concludes that Mr. Coombs's right to register to vote and actually vote was restored prior to him circulating petitions on the Committee's initiative. As consequence, his petition sheets are not deemed invalid because of his felony convictions.

11. Josephine Leonardi, as a convicted felon in Illinois, was ineligible to register to vote or actually vote while incarcerated for her 2001 felony conviction per Illinois Compiled Statutes (hereinafter "ILCS") Article 5, §3-5. However, upon release from confinement Ms. Leonardi's right to vote was automatically restored.<sup>4</sup> Because it would have been physically impossible for Ms. Leonardi to be incarcerated in Illinois and be in Tucson collecting signatures at the same time, this Court concludes that Ms. Leonardi's right to register to vote and actually vote was restored prior to her circulating petitions for the Committee's initiative. As consequence, her petition sheets are not deemed invalid because of her felony convictions.

12. James Greer, as a convicted felon in Florida, is ineligible to register to vote or actually vote absent an executive order from the Florida Clemency Board. Fla. Stat. Ann. § 97.041. No evidence was presented to this Court that would allow it to conclude, or even infer, that an executive order had been granted restoring Mr. Greer's civil rights, including his right to register to vote and actually to vote. The Committee's suggestion that "[i]n most cases, the Clemency Board will restore a person civil rights without hearing so long as the person is not arrested for any offense for 5 years after completing his sentence" is unpersuasive. Per Exhibit 41, Mr. Greer was sentenced to serve 180 days on March 31, 2008. Even factoring in the three days credit for time served he received, the five-year time period will not expire until late September, 2013. Mr. Greer collected signatures and submitted petitions in June, 2013. The Court finds that clear and convincing evidence supports

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<sup>4</sup> Illinois law appears to strictly limit the loss of the right to vote to situations involving actual incarceration. Consequently, a person who is incarcerated for a misdemeanor cannot vote but a person who is convicted of a felony and is not actually confined but serving a sentence of periodic imprisonment or is on conditional discharge or on probation or parole can vote. 1976 Ill.Op.Atty.Gen. No. S-1056.

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Plaintiffs' claim that Mr. Greer, due to his felony convictions, was not qualified to circulate petitions. As a consequence, the 899 signatures Mr. Greer collected are invalid.<sup>5</sup>

13. Based on the stipulation of the parties, the Court finds the 297 signatures collected by Marc Klapecki are invalid.

14. The Court finds that clear and convincing evidence supports Plaintiffs' claim that Louise Breneiser was not a resident of the State of Arizona in June, 2013 when she collected signatures for initiative petition 2013-I004. Further, it is undisputed that Ms. Breneiser did not submit a "Non-Resident Petition Circulator Registration Form" for initiative petition 2013 - I004. As a consequence, the 2165 signatures collected by Ms. Breneiser are invalid.

15. The Court finds that clear and convincing evidence supports Plaintiffs' claim that Stephen Laws was not a resident of the State of Arizona in June, 2013 when he collected signatures for initiative petition 2013-I004. Further, it is undisputed that Mr. Laws did not submit a "Non-Resident Petition Circulator Registration Form" for initiative petition 2013-I004. As a consequence, the 682 signatures collected by Mr. Laws are invalid.

16. The Court finds that clear and convincing evidence supports Plaintiffs' claim that Renee Gordon was not a resident of the State of Arizona in June, 2013 when she collected signatures for initiative petition 2013-I004. In reaching this conclusion, the Court relied almost exclusively on the testimony of witness Andrew Cruz who was called to testify in the Committee's case-in-chief. Mr. Cruz's demeanor on the stand, his past dealings with Mr. Laws and Ms. Gordon and the candor he displayed when providing answers (which, at times, amounted to admissions of past missteps he had made when working with petition circulators) made him a particularly credible and reliable witness. Further, it is undisputed that Ms. Gordon did not submit a "Non-Resident Petition Circulator Registration Form" for initiative petition 2013 - I004. As a consequence, the 805 signatures collected by Ms. Gordon are invalid.<sup>6</sup>

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<sup>5</sup> Regarding the Committee's claim that Plaintiffs failed to properly plead their claims against Mr. Greer in the complaint, the Court, for reasons stated during the evidentiary hearing held in this matter, found the complaint provided adequate notice to the Committee that Plaintiffs were seeking to invalidate the signatures collected by Mr. Greer. The Court reiterates this finding with this reference.

<sup>6</sup> Regarding the Committee's objection to the Court allowing Plaintiffs to amend their complaint to include allegations involving Ms. Gordon, the Court, for reasons stated during the evidentiary hearing held in this matter, overruled the objection and permitted Plaintiffs to amend their complaint per Rule 15 of the Arizona Rules of Civil Procedure. Regarding the Committee's exception to the Court's ruling based on a claim that because fraud was being alleged, more stringent pleading requirements were required, the Court concludes that Plaintiffs' claim is based solely on A.R.S. § 19-122(C). As a consequence, notice pleading is all that is required and given the well-established rule that amendments are to be liberally allowed, the Court declines to revisit this issue.

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17. The Court concludes, based on the testimony of forensic document examiner Sandra Ramsey Lines that there is clear and convincing evidence to support Plaintiffs' claims that when circulators were gathering signatures for initiative petition 2013-I004, there were numerous instances where the "PRINTED NAME", "ADDRESS" and "DATE" boxes following the signature line were not filled out by the voter who signed the petition. These numerous instances were documented by Ms. Lines in her report which was admitted as Exhibit 19. While Ms. Lines did not specifically identify the individual(s) who wrote in the information, this Court concludes that there is adequate circumstantial evidence to conclude that the individual circulators most likely filled in this information, given the fact that the circulators maintained control over the documents and had a financial incentive to obtain as many signatures as possible.

18. When signing the affidavit on the back of every petition sheet, the circulators swore under oath or the penalty of perjury that "each individual printed the individual's own name and address". In light of this, the Court finds there is clear and convincing evidence of fraudulent intent on the part of several circulators when they signed the petitions that were referenced in exhibit number 19 where Ms. Lines concluded that the "PRINTED NAME" and/or "ADDRESS" boxes were filled in by somebody other than the person signing the petition. The Court specifically finds that this is not a case of "omissions or irregularities" that would prevent the entire petition sheet to be invalidated. As a consequence, the following petition sheets are invalidated:

- a) Circulator Marc Blodgett - petitions 512, 514, 518, 520, 522, 524, 526, 528, 530, 532, 536, 538, 542, 546, 550, 556, 562, 564, 570, 580, 584, 586, 588, 590, 594, 600, 602, 606, 610, 614, 618, 620, 626, 632, 634, 636, 638, 640, 642, 644, 658, 660, 670
- b) Circulator Gary Robinson - petition 724
- c) Circulator Darryl Oberg - petition 973
- d) Other circulators - petitions 1621, 1629, 1633, 1649, 1667, 1677, 1687, 1699, 1701, 1709, 1731, 1741, 1743, 1751, 1995

19. The circulator affidavit did not require the circulator to swear or affirm that the individual signing the petition filled in the "DATE" box. However, A.R.S. § 19-112(A) provides, in pertinent part, that "[t]he elector so signing [the petition] shall write, in the appropriate spaces following the electors address, the date on which the elector signed the petition." The Arizona legislature amended A.R.S. § 19-112(A) and 2009, specifically deleting text which allowed either the elector or the petition circulator to fill in the "PRINTED NAME", "ADDRESS", and "DATE" on the petition.

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20. Although the testimony of forensic document examiner Sandra Lines provides clear and convincing support to the Plaintiffs' claim that numerous "DATE" boxes were filled out on many petitions by a person other than the individual signing the petition, this Court concludes that deviation from the "DATE" box requirement of A.R.S. § 19-112(A) does not mandate an automatic disqualification of the petitions sheets/signatures where this practice is reflected because nothing in the statute mandates disqualification. *Harris v. City of Bibsee*, 219 Ariz. 36, 42, 192 P.3d 162, 168 (App. 2008). This evidence does destroy the presumption of validity of the signatures. However, the petitions themselves restore the presumption because many of the petition sheets which have improper entries in the "DATE" box have the same date written in other "DATE" boxes which are not suspect. Additionally, the circulator affidavit on the rear of these petition sheets indicates that the sheets were submitted for notary within a few days after the improper "DATE" entries were made. As a consequence, unless otherwise previously deemed invalid, the signature petition sheets which are referenced in Exhibit 19 as only having improper "DATE" box entries are not invalidated.<sup>7</sup> This does not preclude Tucson City Clerk or the Pima County Recorder from finding them invalid for any other legitimate reason.

21. Regarding the signature deficiencies referenced by Plaintiffs in their complaint and noted by this Court in Finding of Fact 37, above, the signature on petition 98, line 4 where the signer did not provide an address is invalid. The entry on petition 1140, line 10 where no signature was provided is invalid. The remaining signatures referenced in Finding of Fact 37 substantially comply with applicable legal requirements and are valid.

Accordingly,

**IT IS ORDERED** that the following petition sheets submitted on initiative petition 2013-I004 are void and ineligible to be included in the signature verification process for this initiative:

- a) Petition sheet numbers 512, 514, 518, 520, 522, 524, 526, 528, 530, 532, 536, 538, 542, 546, 550, 556, 562, 564, 570, 580, 584, 586, 588, 590, 594, 600, 602, 606, 610, 614, 618, 620, 626, 632, 634, 636, 638, 640, 642, 644, 658, 660, 670, 724, 973, 1621, 1629, 1633, 1649, 1667, 1677, 1687, 1699, 1701, 1709, 1731, 1741, 1743, 1751, 1995;
- b) All petition sheets submitted by circulator Stephen Laws;
- c) All petition sheets submitted by circulator James Greer;
- d) All petition sheets submitted by circulator Renee Gordon;

<sup>7</sup> This does not affect the petition sheets that were submitted by Ms. Breneiser that had the "DATE" boxes filled in improperly because the Court has concluded that all of her petitions are invalid due to a failure to satisfy the residency requirement.

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- e) All petition sheets submitted by circulator Louise Breneiser.
- f) All petition sheets submitted by circulator Mark Klepacki.
- g) Signature on petition 98, line 4.
- h) Signature on petition 1140, line 10.

**IT IS FURTHER ORDERED** that upon removal of the above petition sheets, the Tucson City Clerk will recalculate the number of signatures eligible for verification and submit the appropriate number of signatures in the form of random sample to the Pima County Recorder's Office for determination of an error rate as mandated by A.R.S. § 19-121.01. The Tucson City Clerk shall accomplish this by no later than August 23, 2013. Upon receipt of the newly calculated error rate, the Tucson City Clerk will recalculate the projected number of valid signatures as mandated by A.R.S. § 19-121.01 and certify the initiative as either qualified or disqualified to appear on the ballot. Counsel for the Tucson City Clerk will timely provide this information to counsel for the Committee, counsel for Plaintiffs and to the Court by filing a Notice to the Court. Defendants are enjoined from including initiative petition 2013-I004 on a ballot until they have complied with this order.

**IT IS FURTHER ORDERED** that the parties shall, if they so desire, file additional briefing on the issue of awarding costs and attorneys' fees in this matter. The pleadings shall be limited to ten pages and shall be filed no later than August 30, 2013. The parties may file responses which shall be limited to five pages no later than September 9, 2013. No replies or supplements shall be filed absent a request from the Court.

  
HON. JAMES E MARNER

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