

Stanwitz v. Reagan

Full Citation: Stanwitz v. Reagan, 429 P.3d 1138 (Ariz. 2018).

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Opinion's Author: Justice Lopez

Joined By: Chief Justice Bales, Vice Chief Justice Brutinel, Justices Pelander, Timmer, Bolick, and Gould.

Practitioners: For quick reference, please see the "Issue" and "Holding" sections.

Facts: The Arizona Constitution allows citizens to initiate constitutional amendments and statutes by submitting their proposals to voters on the official ballots.¹ To qualify an initiative for the ballot, the group supporting the initiative must collect enough signatures on a petition from qualified electors in support of the proposal, submit them as prescribed by law, and for statewide initiatives, have them approved by the Arizona Secretary of State. Upon review, the Secretary of State must remove any signatures that do not comply with statutory requirements and only count the remaining ballots. For statewide initiatives, 15% of qualified electors must sign the petition.

In June 2018, the Outlaw Dirty Money political committee (the "Committee") submitted signatures to the Secretary of State in support of the initiative "Stop Political Dirty Money Amendment." This statewide initiative aimed to amend the Constitution by ensuring that the public had full knowledge of the source of campaign contributions. When the Committee submitted the signatures, the count exceeded the minimum requirement.

In response, the Petitioners filed a complaint challenging the validity of the signatures obtained by circulators for a variety of reasons, including that the circulators registrations were defective and that they were ineligible to circulate petitions. At this time, the Secretary of State determined that 263,000 signatures still required verifications.

Prior to trial, Petitioners served fifteen circulators, approximately 0.6% of the total number of circulators, at their statutory address. Additionally, the Petitioners informed opposing counsel that they had served the circulators.

None of the circulators who had been subpoenaed appeared at the hearing and the Petitioners moved the trial court to disqualify the non-appearing circulators' signatures, more than 8,800 signatures, pursuant to section 19-118(C) of the Arizona Revised Statutes, which requires invalidation of any signatures obtained by a circulator who fails to appear for trial in response to a properly served subpoena. In response, the Committee challenged the constitutionality, in relevant part, of section 19-118(C).

The day before the ruling, the Secretary of State issued her review which found that the total number of signatures, without the signatures obtained from the subpoenaed circulators, was below the 15% threshold.

¹ ARIZ. CONST. art 4 pt. 1 § 1(1) – (2).

Procedural History: The case is currently before the Arizona Supreme Court. The trial court upheld the constitutionality of section 19-118(C). In upholding the constitutionality of the statute, the court held that section 19-118(C) (the circulator subpoena provision) was constitutional both on its face and as applied because it “reasonably supplements and does not unreasonably hinder the Committee’s constitutional right of initiative.”² It voided the 8,824 signatures produced by the subpoenaed circulators.³ Therefore, the initiative was declared ineligible for the November 2018 ballot.⁴

Issue: A statute regulating a provision of the Arizona Constitution is permissible if it “does not unreasonably hinder or restrict the constitutional provision and if the [statute] reasonably supplements the constitutional purpose’ of the provision.”⁵

1. Is a statute, which requires that all the signatures collected by a properly subpoenaed circulator who fails to appear in court be invalidated, *facially* unconstitutional because it disqualifies otherwise valid signatures?
2. Is a statute, which requires that all the signatures collected by a properly subpoenaed circulator who fails to appear in court be invalidated, unconstitutional *as applied* because it disqualifies otherwise valid signatures?

Holding: No, the statute is constitutional.

1. It is not unconstitutional on its face because the purpose of the statute is to deter fraud and ensure the integrity of the initiative process. Additionally, it does so through reasonable means.
2. It is not unconstitutional as applied because the information that the subpoenaed circulators would have supplied if they had appeared were necessary to a proper determination of the issues regarding their eligibility.

Disposition: The trial courts finding that section 19-118(C) is constitutional is affirmed and its decision to invalidate the signatures is upheld.

Rule:

1. To be successful on a facial challenge, the challenger must show that there are no circumstances where the statute would be valid.⁶
2. To be successful on an as applied challenge, the challenger must show that the circulator’s testimony was not factually or legally necessary to determine the issue.

² Stanwitz v. Reagan, 429 P.3d 1138, 1141 (Ariz. 2018).

³ *Id.* at 1142.

⁴ *Id.*

⁵ *Id.* (quoting Direct Sellers Ass’n v. McBrayer, 503 P.2d 951, 953 (Ariz. 1972)).

⁶ State v. Wein, 417 P.3d 787, 795 (Ariz. 2018).

Reasoning:

- **Section 19-118 is an exercise of legislative authority to regulate the ballot measure process.** The court first determined that the statute interprets a constitutional provision and is thus subject to constitutional review to determine if it unreasonably restricts the constitutional provision. While the Arizona Constitution authorizes citizen initiatives, they are subject to reasonable regulations.⁷ The statute contains requirements for circulators to validly collect signatures, including the requirement that they consent to the jurisdiction of Arizona courts and register before gathering signatures.⁸ Thus, the statute interprets the constitutional provision allowing the people to bring an initiative to the ballot.⁹
- **The Arizona Constitution specifically contemplates signature verification requirements.** While the Committee attempted to argue that the statute impedes the initiative process,¹⁰ the Arizona Supreme Court has previously held that a circulator plays a particularly important role in the initiative process. Because they are entrusted with collecting signatures, certain statutory procedures are necessary to ensure the integrity of the system and confirm that the signatures were collected in accordance with the law.¹¹
- **The statute is not facially unconstitutional because it is valid under at least one set of circumstances.** The court found that the provision reasonably ensures the constitutional purpose of the initiative process because it protects the integrity of the petition and signature gathering process by holding circulators accountable to the subpoena process.¹² Therefore, it does not unreasonably hinder the initiative process. Additionally, the Committee admitted that the circulator's testimony after receiving a subpoena *could* protect the integrity of the initiative process if there was a valid objection.¹³ Since the Committee acknowledges that there is at least one constitutional application, the claim that it is facially unconstitutional fails.
- **The statute is not unconstitutional as applied because the trial court found it materially prejudiced the fact-finding process.** Since the subpoenaed circulators did not appear, questions concerning the compensation of the circulators, the existence or nature of felony convictions, and other defects in their registration forms could not be answered.¹⁴ The court found no basis to disturb the trial court's findings.¹⁵ Additionally, the claim that it was unduly burdensome was rejected

⁷ *Id.* at 1142.

⁸ A.R.S. § 19-118 (2018).

⁹ Stanwitz, 429 P.3d at 1142.

¹⁰ *Id.* at 1143.

¹¹ *Id.* at 1143 (quoting *W. Devcor, Inc. v. City of Scottsdale*, 814 P.2d 767, 773 (Ariz. 1991)).

¹² *Id.* at 1144.

¹³ *Id.* at 1143-44.

¹⁴ *Id.* at 1144.

¹⁵ *Id.*

because they subpoenaed less than 1% of the petitioners and gave the Committee eleven days' notice before the hearing.¹⁶

¹⁶ *Id.*