

## ***Leach v. Reagan/Clean Energy for a Healthy Arizona***

**Full Citation:** Leach v. Reagan, 430 P.3d 1241 (Ariz. 2018).

**Date Filed:** December 6, 2018

**Opinion's Author:** Justice Timmer

**Joined By:** Chief Justice Bales, Vice Chief Justice Brutinel, and Justice Pelander. Chief Justice Bales, joined by Justice Pelander, filed a concurring opinion. Justice Pelander filed a concurring opinion.

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

**Facts:** Clean Energy for a Healthy Arizona (the "Committee") is the political action committee ("PAC") who placed Proposition 127, Renewable Energy Standards Initiative, on the November 2018 ballot. The Committee formed on February 9, 2018 by filing a "statement of organization" with the Secretary of State. The Secretary issued an identification number to the Committee. On February 20, 2018, the Committee filed an application for an initiative that would constitutionally require electricity providers to generate at least 50% of their annual sales from renewable energy sources ("the Initiative").

On February 22, 2018, a California entity called NextGen Climate Action began making substantial contributions to the Committee, including contracting with FieldWorks, LLC to hire, register and pay more than 1500 employees to collect signatures to place the Initiative on the ballot.

FieldWorks hired more than 1500 circulators to collect the requisite signatures to place the Initiative on the November ballot. On July 5, the Committee delivered around 480,000 signatures to the Secretary. The Secretary reviewed the signatures and determined that 454,451 were eligible for verification. Then, the Secretary selected a random 5% sample for verification by county recorders. They determined a validity rate of 72.37%.

The validity rate was applied to the 454,451 signatures, indicating 328,908 signatures were valid. This number exceeds the minimum number of required signatures (225,963) for the Initiative to be placed on the ballot.

Plaintiffs are a group of qualified electors that are challenging the signatures and the statement of organization of the Committee. They are seeking to enjoin the Committee from placing the Initiative on the ballot.

Though the Initiative was defeated at the election, the Court still decides the issues presented by the litigants.

**Procedural History:** The case is currently before the Arizona Supreme Court. The Plaintiffs initially filed a complaint on July 19, before the signature verification process was complete. In an interlocutory judgement, the trial court dismissed a claim alleging the statement of organization was deficient. The trial court determined that the Plaintiff's claims against

county recorders and board members were unripe, so those claims were dismissed as well. On an expedited appeal and cross-appeal, the Arizona Supreme Court affirmed.

After the Initiative was determined to exceed the required signature threshold, Plaintiffs filed new complaints, alleging eleven county recorded accepted invalid signatures. The trial court consolidated these claims with the initial case. The resulting bench trial lasted five days and more than 5,500 exhibits were admitted into evidence.

Plaintiff subpoenaed more than 1180 witnesses (mostly petition circulators). The trial court struck the signatures collected by circulators who did not comply with the subpoenas or statutory requirements while collecting signatures.

After the trial, the trial court determined the Committee gathered enough signatures to place the Initiative on the ballot. Plaintiff's request for injunctive relief was denied. On August 29, 2018, the Arizona Supreme Court affirmed that decision on an expedited appeal.

**Issue:** To properly place an initiative on the ballot in Arizona, the sponsoring committee must file a statement of organization with the Secretary of State and follow regulations under Title 16 and Title 19 governing how to name the initiative, register and pay circulators, and collect and validate voter signatures. Did the Clean Energy for a Healthy Arizona political action committee correctly form, and did the Committee collect a sufficient number of valid petition signatures for Proposition 127 to be placed on the November 2018 ballot?

**Holding:** Yes, the Clean Energy Committee fulfilled the obligations under Titles 16 and 19 to properly form and collected enough voter signatures to properly place the Initiative on the November 2018 ballot.

**Disposition:** The trial court's denial of injunctive relief to Plaintiffs was proper.

**Rule:** Title 16 governs formation and registration of political action committees with the Secretary of State, and provides remedies for non-compliance. Title 19 sets forth requirements for filing an application for petition with the Secretary of State. Title 19 also lays out procedure for collecting, validating, and challenging signatures on the petition.

**Reasoning:**

- **Title 16 alone creates a cause of action for challenging a statement of organization.** Title 16, and not Title 19, creates "exclusive procedures" for challenging a statement of organization.<sup>1</sup> Because the procedures outlined in Title 19 necessarily contemplate that the statement of organization for the committee has already been filed under Title 16, the cause of action arises from Title 16.<sup>2</sup> Compliance with Title 16 is indicated by an identification number issued by the Secretary of State, which signifies that the PAC is "formed and may engage in lawful activity, such as

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<sup>1</sup> Leach v. Reagan, 430 P.3d 1241, 1247 (Ariz. 2018).

<sup>2</sup> *Id.* at 1246.

filing an initiative application.”<sup>3</sup> Nothing in Title 19 gives the Secretary authority to investigate or assess a statement of organization’s compliance with the guidelines set out in Title 16.<sup>4</sup> This overturns the court of appeal’s reasoning in *Israel v. Town of Cave Creek*.<sup>5</sup> Thus, the trial court properly dismissed Plaintiff’s claim because Title 19 does not provide a cause of action.<sup>6</sup>

- **The Initiative’s title was legally sufficient under Art. IV.** Though a “full and correct copy of the Title and text of the measure”<sup>7</sup> must be appended to petition sheets, the Arizona Supreme Court has created a low bar for initiative titles, maintaining their validity as long as they are not deceptive.<sup>8</sup> Here, though the Initiative’s title does not specifically state that the proposed law applies only to public service corporations, the title is not deceptive or misleading.<sup>9</sup> The title instead serves the purpose of placing voters “on notice to read the Initiative’s text for details.”<sup>10</sup>
- **Improper registration does not invalidate the petition signatures of circulators who are paid by the hour.** A.R.S. section 19-118(F) contains an “anomaly” where circulators cannot be paid by the signature, but if they are paid by the signature, they must register with the Secretary.<sup>11</sup> Though the legislature cured this defect with legislation taking effect in August of 2018, at the time of the events in this suit, the paid-by-the-hour circulators did not need to register.<sup>12</sup> Therefore, voluntary registration did not force the circulators to provide service-of-process addresses, so their registrations are not subject to challenge on those grounds under section 19-118(D).<sup>13</sup>
- **Even voluntarily-registered circulators must appear when served with a subpoena.** Section 19-118(C) applies to any registered circulator.<sup>14</sup> Section (c) states that if a registered circulator fails to appear after being properly served, all signatures collected by that circulator are deemed invalid.<sup>15</sup>
- **The burden of proof in election cases remains on the challenger.** Though Plaintiffs argue that the Committee had more time to analyze the validity of the petition signatures, Plaintiffs do not point to information within the Committee’s control that the Plaintiffs could not access. Thus, the trial court did not err in denying’s

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<sup>3</sup> *Id.* (referencing ARIZ. REV. STAT. ANN. §§ 16-906(G), 19-111(A)).

<sup>4</sup> *Id.* at 1247.

<sup>5</sup> *Id.* (overturning *Israel v. Town of Cave Creek*, 993 P.2d 1114, 1119 n.7 (Ariz. Ct. App. 1999)).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1248 (citing ARIZ. CONST. art. IV, § 1(9); *see also* §§ 19-112(B), -121(A)(3)).

<sup>8</sup> *Id.* (synthesizing *Ariz. Chamber of Commerce & Indus. v. Kiley*, 399 P.3d 80 (Ariz. 2017) and *Kromko v. Superior Court*, 811 P.2d 12 (Ariz. 1991)).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 1249–50.

<sup>12</sup> *Id.* at 1250.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (explaining ARIZ. REV. STAT. ANN. § 19-118(c)).

Plaintiff's motion to shift the burden of proof to the Committee.<sup>16</sup> Further, the record does not show that Plaintiff satisfactorily shifted the burden of proof on their challenges to the validity of 72,014 signatures.<sup>17</sup>

- **Though Plaintiffs can challenge signatures outside of the Secretary's random sample, the trial court did not err in calculating the number of valid signatures.** Under A.R.S. section 19-121.02(A) and (B), the county recorders inspect a five percent random sample of signatures for valid registration.<sup>18</sup> Though this sampling is the process by which the Secretary and county recorders measure validity, the statute does not limit challengers to the five percent sample.<sup>19</sup> Instead, Plaintiffs can challenge all signatures in a private action under section 19-122(c).<sup>20</sup> At trial, Plaintiffs objected to a number of signatures, which was reduced throughout the day for invalidation on other grounds. At the end of the day, the Plaintiffs updated their chart to show their validity objection 12 applied to 116,237 signatures. The trial court's finding that objection 12 applied to 116,237 signatures "was not clearly erroneous" even though Plaintiffs argue it was, which Plaintiffs "do not explain."<sup>21</sup>

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<sup>16</sup> *Id.* at 1251.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 1252 (citing ARIZ. REV. STAT. ANN. § 19-121.02(A)-(B)).

<sup>19</sup> *Id.* at 1252-53.

<sup>20</sup> *Id.* at 1253.

<sup>21</sup> *Id.*