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A. Valenzuela

DEPUTY CLERK

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Attorneys for Plaintiff

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CV2024-008743

JAMES ASHURST, a qualified elector,

Plaintiff,

V.

AUSTIN SMITH, a candidate for office; ADRIAN FONTES, in his capacity as Arizona Secretary of state; STEPHEN RICHER, in his capacity as Maricopa County Recorder; MARICOPA COUNTY BOARD OF SUPERVISORS, in their official capacity,

Defendants.

No.

SPECIAL ACTION COMPLAINT

(Nomination Petition Challenge Pursuant to A.R.S. § 16-351)

Plaintiff alleges as follows:

INTRODUCTION

1. Austin Smith seeks the nomination of the Republican Party for the office of State Representative for Legislative District 29 in the primary election to be held on July 30, 2024.

- 2. This action challenges Smith's qualification to run for office based on petition forgery and ineligible signatures.
- 3. "[C]andidates suffer automatic disqualification and a ban of five or more years if they sign another person's name on their nomination petitions, or if they knowingly cause another person to do the same." Shooter v. Farmer, 235 Ariz. 199, 200 ¶ 2 (2014).
- 4. Declaratory and injunctive relief is required to ensure that the Defendants fully and effectively discharge the duties imposed upon them by applicable law to protect the integrity of the candidate petition and nomination process.

JURISDICTION AND VENUE

- 5. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the Arizona Constitution, Arizona Rules for Special Actions 4(a), and A.R.S. §§ 12-123, 12-1801, 12-1831, and 16-351.
- 6. Venue for this action lies in Maricopa County pursuant to A.R.S. § 12-401(7) and (16) because at least one of the Defendants resides and/or holds office in that county.

PARTIES

- 7. Plaintiff James Ashurst is a qualified elector residing in Legislative District 29.
- 8. Defendant Austin Smith is seeking placement on the ballot as a Republican candidate for the office of State Representative for Legislative District 29 in the July 30, 2024 primary election.
- 9. Defendant Adrian Fontes is the Arizona Secretary of State and is named in this action in his official capacity only. The Arizona Secretary of State is the public officer with whom the nomination petition was required to be filed.
- 10. Defendant Stephen Richer is the county recorder for Maricopa County. He is named in this action in his official capacity only. The county recorder is the public officer responsible for preparing the ballots that contain candidates' names in the July 30, 2024 primary election.
 - 11. Defendant the Maricopa County Board of Supervisors are named in their

official capacities only. The County Board of Supervisors is the governing body charged by law with conducting elections within its jurisdictional boundaries, including preparing ballots that contain candidates' name.

GENERAL ALLEGATIONS

12. Several of Smith's petition sheets bear purported voter signatures that appear to have been written by the same person. Many of those signatures bear a striking resemblance to Smith's. Several illustrative examples appear below:

	I, the undersigned, and a member of t	e qualified elector of the county of Manage. The Republican party or a person when the county of th	, state of Arizone, and of Legislative District 26 no is registered as no party preference or independent as the party preference of	r who is registere	
	with a political part	ty that is not qualified for representation on the ballot, hereby nominate Audit Smith			
	7	A67 W Centerbury Dr Surprise AZ 85379		In the county of Markope for the party nomination for the office of	
	persons then the r	perty, and I hereby declare that I am qualified to number of candidates necessary to fill such office	be voted at the primary election to be held Ady 308, 2004 I vote for this office and that I have not eigned, and will not sign, any nomination at the next ensuing election. I further declare that if I choose to use a post office bit to the county recorder for purposes of updating my voter registration file.		
	Signature	Printed name	Actual residence address, description of place of residence or Arizona post office box address, city or town	Date of signing	
1	Dava 6	David Cohn	SUPPLISA AF FSTA	3-16-6	
2	Got Am	Lori Mccornal	14735W Penhio St Sugarse, AZ 155371	3/16/2	
3	lu Foto	Linda Kyle	14741 W Pership St SUPPOSITE 12 8557	3/6/2	
4	(Lat Aloh	Ray Joseph Mohamus	14747 W Pership St Surprise, AZ 85379	3-16-	
5	Dawa Hansie	Daniel Hernandaz	SUPPLY, At 85174	3/16/0	
6	Me Jan	Tarob Jones	13687 N 144th In Surgeria, At 85377	3/16/2	
7	Angola Lomo	Angela Lim	13698 N 1444 LA Sugrisa, AZ 65379	3/16/0	
8	Coo Klonge	Christic Kline	137-14 N 144th Ln SURCIE, A7 85374	3-16-2	
9	asley Robbins	Ashla Robbins	SUPPLE AZ PS379	3-16-2	
		Lada Mornes	14427 L Gagia Pr	7.11	

1	0 Valid Lines Bates # 56					
2	Maricopa Instructions for Circulators 1. All petitions shall be signed by circulator. 2. Circulator is not required to be a resident of this state but otherwise must be qualified to register to vote in this state and, if not a					
3	2. Occupator's non-required of one in resource for this scale out converse must be quantied to register to vote in this state, and, it not a resident of this state, shall register as a circulation with the secretary of state. 3. Circulator's name shall be typed or printed under the circulator's signature. 4. Circulator's actual residence address or, if no streat address, a description of residence location shall be included on the petition.					
	PRINT NAME Augus South					
4	parson who is not required to be a resident of this state but who is otherwise quastied to register to COUNTY In the state of Arizone. hereby verify that each of the names on the partition was signed in my presence on the date indicated and that in my					
5	belief each signer was a qualified declor who resides at the address given as their residence on the date indicated. I further verify that each signer is a member of the puny from which the candidate is seeking normation, or the signer is a member of a political party that is not entitled to continued representation on the belief, or the signer is regulated as independent or no party preferred.					
6	La San					
7	Signature of Circulator					
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	Typed or Printed Name of Circulator					
9	157427 W Cantrby Or Circulator's Actual Residence Address (If no street address, a description of residence location shall be included					
10	Sugnise, AZ 85379					
11	City or Town and Zip Code					
12	Revised 07/31/2018, Secretary of State Petitioner/circulator remains solely responsible for ensuring this form complies with Articons lev.					
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15	10 Valid Lines Bales # 27 Maricopa Partisan rounination Fedition					
	It the undersigned, a quasified elector of the country of femons	ho is registered				
16		representing the				
17	principles of such party, and I hereby decide the II am qualified to vote for this office and that I have not signed, and will not sign, any nomination pat persons than the number of candidates necessaries as it the next enough election. I further deciare that if I choose to use a post office box i passion, my residence address has not changed since I list reported it to the county recorder for purposes of updating my voter registration. No.					
		address on this				
18	Signature Printed name Actual residence address, description of place of residence or Artzona post office box address, city or town	Date of signing				
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	Instructions for Circulators 1. All petitions shall be signed by circulator. 2. Circulator is not required to be a resident of this state but otherwise must be qualified to register to vote in this state and, if not a resident of this state, shall register as a circulator with the secretary of state. 3. Circulator's name shall be typed or printed under the circulator's signature. 4. Circulator's actual residence address or, if no street address, a description of residence location shall be included on the petition.					
PRINT NA	Smith		a person who is not required to be a resident of this state but who is otherwise qualified to regist			
vote in the county	COUNTY	In the state of Arizona, hereby veri	ly that each of the names on the potition was signed in my presence on the data indicated and that in			
			Signature of Circulator			
			C 1:			
			Arstn Sm. M			
			Typed or Printed Name of Circulator			
			Typed or Printed Name of Circulator			
			Typed or Printed Name of Circulator ISUGE W Carterbus Or Circulator's Actual Residence Address (If no street address, a description of residence location shall be included			

- 13. Bruce Bell, whose purported signature appears on line 1 on petition sheet number 28, never signed Smith's petition. A declaration that he never signed the petitions is included herein as Exhibit A.
- 14. Daniel Hernandez, whose purported signature appears on line 5 on petition sheet number 56, never signed Smith's petition. A declaration that he never signed the petitions is included herein as Exhibit B.
- 15. In total, petition sheet pages 5, 26, 27, 28, 29, 52, 54 55, and 56 all appear to contain forged signatures for lines 1 through 10. Smith signed as the circulator for each of these sheets.
- 16. Petition sheets 24, lines 1 to 3, 32, lines 5 to 10, and 33, lines 6 to 10, also appear forged and were circulated by Smith.
- 17. Handwriting appearing on purported voter signatures on these petition sheets appear to match the handwriting on Smith's circulator affidavits.
- 18. Smith timely filed his nomination petition with Secretary Fontes for the July 30, 2024 primary election.

19. Secretary Fontes accepted the nomination petition and issued a receipt stating that the nomination petition contained a sufficient amount of purported signatures.

COUNT I

Petition Forgery

Declaratory Judgment and Injunctive Relief (A.R.S. §§ 12-1831, et seq., 16-351)

- 20. Plaintiff hereby incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.
- 21. An actual and justiciable controversy exists regarding the legal sufficiency of the Nomination Petition, and a judgment of this Court will end the controversy.
- 22. Under Arizona law, "the proper method of challenging nomination petitions is an action for injunction." *Mandraes v. Hungerford*, 127 Ariz. 585, 587 (1981); see also Escamilla v. Cuello, 230 Ariz. 202, 204 ¶ 6 (2012); A.R.S. § 16-351.
- 23. Under A.R.S. § 16-351(G), "all petitions that have been submitted by a candidate who is found guilty of petition forgery shall be disqualified and that candidate shall not be eligible to seek election to a public office for a period of not less than five years."
- 24. As shown by his circulator affidavit, Smith personally circulated multiple petition sheets bearing what appear to be forged voter signatures.
- 25. At least two voters whose names appear on petition sheets Smith circulated avow that they never signed the petition.
- 26. On information and belief, additional voters whose signatures appear on the sheets also never signed the petition.
- 27. Smith is guilty of petition forgery and, as a result, *all* his petitions—not just those he personally collected—are disqualified under A.R.S. § 16-351(G).
- 28. Accordingly, Plaintiff seeks declaratory and injunctive relief (1) disqualifying Smith's entire nomination petition, (2) disqualifying Smith from seeking office, and (3) ordering that Smith's name not be placed on the ballot for the July 30, 2024 primary election.

COUNT II

Ineligible Signatures

Declaratory and Injunctive Relief (A.R.S. §§ 12-1831, et seq. 16-351)

- 29. Plaintiff hereby incorporates by reference the allegations in the foregoing paragraphs as if fully set forth herein.
- 30. In addition to the grounds for disqualification listed above, Smith submitted signatures by signers who were ineligible to sign his nomination petition either because of duplicate signatures, registration out of district, registration with an ineligible party, or no registration.
- 31. A list of signers by page and line number, as well as the reason for the signer's ineligibility, is attached hereto as Exhibit C.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff demands relief as follows:

- A. A declaration pursuant to A.R.S. § 12-1831 that Smith's nomination petition is disqualified and that Smith is not eligible to be a candidate for office;
- B. An injunction pursuant to A.R.S. § 16-351 and other applicable law prohibiting Smith's name from being printed on the ballot for the primary election to be held on July 30, 2024;
- C. An award of reasonable attorney's fees and costs pursuant to A.R.S. §§ 12-348, 12-2030, the private attorney general doctrine, and other applicable law; and
 - D. Such other relief as the Court deems necessary, equitable, proper, and just.

1	Dated: April 15, 2024	Respectfully submitted,
2		1 de la
3		Roy Herrera Daniel A. Arellano
4		Jillian L. Andrews
5		Austin T. Marshall HERRERA ARELLANO LLP
6		1001 North Central Avenue, Suite 404
7		Phoenix, AZ 85004
8		August Com Planta CC
9		Attorneys for Plaintiff
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