

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-004881

04/30/2020

HONORABLE TIMOTHY J. THOMASON

CLERK OF THE COURT  
N. Johnson  
Deputy

ROBERT BRANCH

TIMOTHY A LASOTA

v.

KIM OWENS, et al.

JOHN DOUGLAS WILENCHIK

JAMES E BARTON II  
MATTHEW BLACK  
NANCY M BONNELL  
MARK D BYRNES  
JEFFERSON R DALTON  
RYAN N DOOLEY  
RYAN ESPLIN  
BRITT W HANSON  
KIMBERLY HUNLEY  
SCOTT M JOHNSON  
DANIEL JURKOWITZ  
WILLIAM J KEREKES  
JOSEPH EUGENE LA RUE  
JASON MOORE  
JACQUELINE MENDEZ SOTO  
CHRISTINE J ROBERTS  
CHRISTOPHER L STRAUB  
COURT ADMIN-CIVIL-ARB DESK  
COURT ADMIN-CIVIL-CCC  
DOCKET-CIVIL-CCC  
JUDGE THOMASON

**MINUTE ENTRY**

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East Court Building – Courtroom 912

Prior to the commencement of trial, Defendant Kim Owens' exhibits 1 through 24, Plaintiff Mary Halford's exhibits 25 through 69, and Apache County Defendants' exhibits 70 and 71 are marked for identification.

2:03 p.m. This is the time set for video-conference/telephonic Election Trial regarding Plaintiff Robert Branch's Verified Complaint for Special Action/Injunctive Relief, filed April 20, 2020, pursuant to the Court's Order to Appear for Trial, filed April 21, 2020, consolidated with Plaintiff Mary Halford's Special Action Complaint, filed April 20, 2020.

The following parties/counsel are present virtually through GoToMeeting and/or telephonically:

- Plaintiff, Robert Branch, is represented by counsel, Timothy A. La Sota.
- Plaintiff, Mary Halford, is represented by counsel, Jacqueline Mendez Soto.
- Defendant, Kim Owens, is present and is represented by counsel, John D. Wilenchik.
- Defendants, Edison J. Wauneka (in his official capacity as the Apache County Recorder), Apache County Board of Supervisors (individually and collectively), Adrian Fontes (in his official capacity as the Maricopa County Recorder), and Maricopa County Board of Supervisors (individually and collectively), are represented by counsel, Joseph E. La Rue. Geneva Jackson, Apache County Voter Registration Supervisor, is also present.
- Defendant, Katie Hobbs (in her official capacity as Arizona Secretary of State), is represented by counsel, Nancy Bonnell.

A record of the proceedings is made digitally in lieu of a court reporter.

Mr. La Sota informs the Court that he will not be presenting evidence due to the shortage of signatures for candidate Robert Branch.

Discussion is held regarding exhibits.

Plaintiff Mary Halford's exhibits 25 through 69 are received in evidence.

Court and counsel discuss the signatures on the petition sheets and the Maricopa County Recorder's Report.

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Defendant Kim Owens' case:

Defendant Kim Owens' exhibit 11 is received in evidence.

Defendant Kim Owens' exhibits 18, 20 and 21 are received in evidence.

On motion of Defendant Kim Owens,

**IT IS ORDERED** sealing Defendant Kim Owens' exhibits 18, 20, and 21 not to be opened until further order of the Court.

Defendant Kim Owens' exhibit 72 is marked for identification and received in evidence.

On motion of Defendant Kim Owens,

**IT IS ORDERED** sealing Defendant Kim Owens' exhibit 72 not to be opened until further order of the Court.

Defendant Kim Owens' exhibit 73 is marked for identification and received in evidence.

Defendant Kim Owens' exhibits 23 and 24 are received in evidence.

Defendant Kim Owens' exhibit 83 is marked for identification and received in evidence.

Defendant Kim Owens' exhibit 82 is marked for identification and received in evidence.

Tyler Fitzsimons is sworn and testifies via GoToMeeting.

Defendant Kim Owens' exhibit 74 is marked for identification and received in evidence.

Defendant Kim Owens' exhibit 76 is marked for identification and received in evidence.

Kim Owens is sworn and testifies via GoToMeeting.

Defendant Kim Owens' exhibit 79 is marked for identification and received in evidence.

Defendant Kim Owens rests.

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Plaintiff Mary Halford's case:

Discussion continues to be held regarding exhibits.

The Court encourages counsel to confer regarding placing voluminous exhibits on a flash drive and delivering it to the Court.

By stipulation of the parties, Defendant Kim Owens' exhibit 84, a flash drive, will be marked for identification and received in evidence upon receipt.

Tyler Fitzsimons testifies further via GoToMeeting.

Tyler Fitzsimons is excused.

Plaintiff Mary Halford rests.

Court and counsel review the county record reports that have been filed and the signatures in dispute.

Closing arguments.

Discussion continues to be held regarding exhibits.

For the reasons stated on the record,

**IT IS ORDERED** taking this matter under advisement.

Pursuant to the orders entered, and there being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of Court,

LET THE RECORD REFLECT that counsel waive signature on the Exhibit Release Form and requests the Clerk destroy any exhibits not received in evidence.

4:24 p.m. Matter concludes.

**LATER:**

Kim Owens is a candidate for the Republican nomination for the office of Arizona Corporation Commission Commissioner, with the primary election scheduled on August 4, 2020. Plaintiffs contend that the Nominating Petition does not contain sufficient valid signatures to

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qualify for the primary. Owens needs 6,663 valid signatures. The Petition contains 7,360 signatures. 1,343 are allegedly invalid. Plaintiffs must establish that 698 signatures are invalid.

The burden is on the person filing a nomination petition to prove that there is an insufficient number of signatures by clear and convincing evidence. *Blaine v. McSpadden*, 111 Ariz. 147 (1974). Signatures are presumed to be valid.

**ROBERT BRANCH COMPLAINT**

Plaintiff contends that Petition contains signatures where the signer is not registered to vote in the County identified on the Petition. A.R.S. §16-121.314(C), 321(B) and (E).

Next, plaintiff alleges that signatures include persons who were not of the Republican Party or independent or not of a party affiliation or registered with a party that did not qualify for the ballot. §16-314(C).

Third, plaintiff claims that some persons signed the Petition more than once.

Fourth, plaintiff challenges signatures where the signature does not match the signature on file with County officials. Plaintiff argues that those signatures are not valid because you cannot tell that the person purporting to sign actually signed.

Next, some signers allegedly did not properly date the Petition in violation of A.R.S. §16-315(A)(4)(d).

Counsel for Mr. Branch stated at the hearing that Branch was not able to invalidate sufficient signatures. As such, the relief requested in his Complaint is denied and the Complaint is dismissed.

**MARY HALFORD COMPLAINT**

**No. 1.**

Certain signatures allegedly were submitted on sheets with verifications lacking legible required circulator information. A.R.S. §16-315(B)(1)-(4), -321(D).

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**No. 2.**

Certain signers were not registered to vote in the County specified in the declaration on the Petition sheets or were not registered to vote at the residential address provided in the Petitioner. Sec. 16-314(c), -321(B), (E), (F), -322(A)(1), -101, -121, -135.

**No. 3**

Some signatures allegedly contain partial or incomplete names, residence addresses or dates of signing. §§16-315(A)(4)(1)-(d), -321, -322(A)(1).

**No. 4.**

Some signatures are allegedly invalid because required information is illegible and cannot be verified. This information includes identities, dates and voter registration status.

**No. 5**

Some signers are allegedly members of the Democratic Party or Libertarian Party. A.R.S. §16-321(F), -322(A)(1).

**No. 6.**

There are allegedly duplicate signatures.

**No. 7**

Some people allegedly signed more than three nomination petitions in violation of A.R.S. §16-321(A). Since there are three open spots on the Corporation Commission to be filled, signers can only sign three petitions. If there are more than three petitions signed by any voter, the validity is determined by the date signed, with the earliest three being valid. However, if petitions are signed on the same date and result in there being more than three petitions signed, all signatures on that day are invalid.

**No. 8.**

Some signatures are allegedly invalid because the dates on the Petition cannot possibly be correct.

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The county recorders have invalidated the following amounts of signatures<sup>1</sup>:

1. Cochicse-4
2. Gila-1
3. Mohave-28
4. Navajo-3
5. Pima-17
6. Apache-4
7. Santa Cruz-0
8. Yuma-3
9. Maricopa-728
10. Coconino-3
11. Graham—4
12. Yavaipai-23

Maricopa County invalidated 728 signatures. Ms. Owens complains that she just received the final report on the day of the hearing. The “draft” report that she was provided on April 29 only invalidated 638 signatures. Certainly, Ms. Owens has a legitimate complaint. There is some element of unfairness in informing a candidate “at the last minute” that a significant amount of signatures are being invalidated. It is certainly the case that the statutory framework for these cases places incredible strain on the county recorders offices. Maricopa County officials worked incredibly hard to finish extensive reports as quickly as possible. Ms. Owens did have a draft report that advised her of most of the recorder’s findings. She did have an opportunity to review and comment on the final report. As such, the Court does not find that consideration of the final report in Exhibit 76 violated the candidate’s due process rights. Therefore, the Court finds that 728 signatures have been invalidated from Maricopa County.

Based on the reports from the county recorders, the Court finds and concludes that 818 signatures have been invalidated.

Plaintiff presented evidence that 45 additional signatures should be invalidated because the signers signed more than three candidates’ petitions. There was some testimony that the Maricopa County recorder does examine that issue. Most, if not all, of the additional signatures that plaintiff

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<sup>1</sup> The information below is based on recorders reports that have been filed with the Court or based on the review of the reports discussed at the end of the hearing. The parties agreed on the record to most of the numbers set forth below. During the hearing plaintiff referred to a report from Greenlee County that invalidated three signatures. Following the hearing, the Court could not locate that report and it does not appear as if that report was filed with the Court; therefore, it is not included here.

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seeks to invalidate were Maricopa County signatures. The Court has, however, cross checked the additional names sought to be invalidated (Exhs. 25-69) against the names listed at the end of the Maricopa County report (Exh. 76) and it does not appear as if those signatures were invalidated by the County.<sup>2</sup> Most of those signatures should be invalidated because the signer signed petitions for more than three candidates on or before the date of the signature in question. The Court invalidates an additional 44 signatures.<sup>3</sup> Therefore, a total of 862 signatures have been invalidated.

Ms. Owens presented testimony that a total of 172 signatures should be resurrected. (Exh. 179) Ms. Owens' testimony was very credible and convincing. Ms. Owens did a careful review of signatures that were disqualified. She claimed that only signatures that she believed were clearly proper should be included. If there was a gray area, she kept that signature as disqualified. By way of example, she examined signatures that were disqualified for being illegible and she felt that a few of these signatures were very legible. Her testimony was convincing. She also addressed an issue that is common in these cases—where the year is left off the signature. There are signatures where the year was left off where it is patently obvious that the signature was placed in the year 2020. The rules of reason and common sense should apply in election cases. When the signatures above and below the signature in question are dated in the year 2020, it is patently obvious that the signature in question was signed in 2020. Those signatures should not be disqualified. Ms. Owens also demonstrated convincingly that many disqualified voters were registered to vote somewhere in the state, which is sufficient for this state wide election. The Court finds and concludes that, at a minimum, 172 signatures should be resurrected and are valid.<sup>4</sup>

Therefore, a total of 690 signatures have been invalidated. This falls short of the 698 signatures needed.

The Court finds that candidate Kim Owens had 6,670 valid signatures. Plaintiff has not shown by clear and convincing evidence that Ms. Owens did not have sufficient signatures. As

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<sup>2</sup> The Court seriously questioned whether these additional signatures should be invalidated, given that Maricopa County does ostensibly examine this issue. The Court did, however, examine as much of the relevant exhibits as it could, given the time constraints. It did appear to the Court that most of these additional signatures should be disqualified. It also appeared as if the County did not already disqualify these signatures.

<sup>3</sup> It appeared to the Court as if the signature of Dave Giles was valid. Giles signed the Owens Petition on Oct. 19, 2019 and it appears as if he signed petitions for only two other candidates prior to that time. (Exh. 36)

<sup>4</sup> Ms. Owens was criticized for not having documentary back up for some of her findings, such as voter registration cards. This criticism is not well founded. Ms. Owens did a very diligent job of reviewing this information under incredibly tight time frames. She simply did not have time to gather supporting documentary evidence. Based upon the Court's review of Exh. 79, it appears as if there could be more than 172 signatures resurrected. Ms. Owens testified, however, that there were 172 signatures that she concluded should be included. The Court agrees. Moreover, in light of Ms. Owens' testimony that signatures that were in a gray area were not included in her count of resurrected signatures, there very well might be more signatures that could be validly resurrected.



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such, Ms. Owens is entitled to be on the ballot. The relief requested in the Complaint is denied and the Complaint is dismissed.

**IT IS FURTHER ORDERED** signing this minute entry as a formal written Order of the Court, this **1st day of May, 2020. This is a final judgment under Rule 54(c) as all claims involving all parties have been resolved. There are no further pending matters before the Court.**

The parties are notified that, under A.R.S. § 16-351(A), any notice of appeal must be filed within five calendar days after the superior court's decision in a challenge to the nomination of a candidate. See *Bohart v. Hanna*, 213 Ariz. 480, 143 P.3d 1021 (2006). An appeal that is belatedly prosecuted, such as one filed on the last day of the statutory deadline, may be dismissed on grounds of laches even if timely filed. See *McClung v. Bennett*, 225 Ariz. 154, 235 P.3d 1037 (2010). Special procedural rules govern expedited appeals in election cases. Ariz. R. Civ. App. P. 10.

/s/ HON. TIMOTHY THOMASON

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HONORABLE TIMOTHY THOMASON  
JUDICIAL OFFICER OF THE SUPERIOR COURT