

IN THE SUPREME COURT OF THE STATE OF ARIZONA

<p>VOICE OF SURPRISE, a political action committee formed and registered pursuant to A.R.S. § 16-905, and QUINTUS SCHULZKE, individually and as Chairman of Voice of Surprise</p> <p>Plaintiffs/Appellants/Petitioners,</p> <p>v.</p> <p>SKIP HALL, in his official capacity as Surprise Mayor; PATRICK DUFFY, in his official capacity as Surprise Councilman; CHRIS JUDD, in his official capacity as Surprise Councilman; ROLAND F. WINTERS, JR., in his official capacity as Surprise Councilman; ALY CLINE in her official capacity as Surprise Councilwoman; JACK HASTINGS, in his official capacity as Surprise Councilwoman; KEN REMLEY, in his official capacity as Surprise Councilman; SHERRY AGUILAR, in her official capacity as Surprise City Clerk; CITY OF SURPRISE, ARIZONA, a public entity; TRUMAN RANCH 46 SWC LLC, an Arizona limited liability company; and DOMINIUM, INC., a Minnesota corporation,</p> <p>Defendants/Appellees/Respondents.</p>	<p>Supreme Court No. CV-23-0117-PR</p> <p>Court of Appeals No. 1 CA-CV 22-0696</p> <p>MARICOPA COUNTY Superior Court Case No. CV2022-013360</p>
---	---

BRIEF OF AMICUS CURIAE LEAGUE OF ARIZONA CITIES AND TOWNS IN SUPPORT OF RESPONDENTS
(Filed with written consent of the parties)

Nancy L. Davidson, Esq. (029991)
General Counsel
League of Arizona Cities and Towns
1820 W. Washington Street

Phoenix, AZ 85007
(602) 258-5786
ndavidson@azleague.org
Attorney for Amicus Curiae
League of Arizona Cities and Towns

Table of Contents

TABLE OF AUTHORITIES.....iv

INTEREST OF AMICUS CURIAE1

INTRODUCTION.....2

ARGUMENT3

I. Clerks Need Clear and Stable Rules to Perform Their Duties.3

II. Petitioner Cannot Avoid its Strict Compliance Obligation by Blaming the Clerk.3

III. Meddling with the Strict Compliance Mandate Would Wreak Havoc on Election Administration Throughout the State.....6

CONCLUSION.....8

CERTIFICATE OF COMPLIANCE.....10

TABLE OF AUTHORITIES

Cases

<i>Arrett v. Bower</i> , 237 Ariz. 74, 345 P.3d 129 (1982)	7
<i>Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs</i> , 249 Ariz. 396, 471 P.3d 607 (2020)	5
<i>Cottonwood Development v. Foothills Area Coalition of Tucson, Inc.</i> , 134 Ariz. 46, 653 P.2d 694 (1982)	6
<i>Direct Sellers Ass’n v. McBrayer</i> , 109 Ariz. 3, 503 P.2d 951 (1972)	7
<i>Fidelity Nat. Title Co., Inc. v. Town of Marana</i> , 220 Ariz. 247 (App. 2009)	4
<i>Griffin v. Buzard</i> , 86 Ariz. 166, 342 P.2d 201 (1959)	4
<i>Homebuilders Association of Central Arizona v. City of Scottsdale</i> , 186 Ariz. 642, 925 P.2d 1359 (App., Div. I, 1996)	7
<i>Leibsohn v. Hobbs</i> , 254 Ariz. 1, 8 ¶ 29, 517 P.3d 45 (2022)	4
<i>McDowell Mountain Ranch Land Coalition v. Vizcaino</i> , 190 Ariz. 1, 945 P.2d 312 (1997)	6, 7
<i>Ross v. Bennett</i> , 228 Ariz. 174, 265 P.3d 356 (2011)	4
<i>Sherrill v. City of Peoria</i> , 189 Ariz. 537, 943 P.2d 1215 (1997)	6
<i>Valencia Energy Co. v. Ariz. Dep’t of Ariz.</i> , 191 Ariz. 565, 959 P.2d 1256 (1988)	5

<i>Western Devcor, Inc. v. City of Scottsdale</i> , 168 Ariz. 426, 814 P.2d 767 (1991)	4, 5, 6, 7
---	------------

Statutes

A.R.S. § 19-101.01	passim
A.R.S. § 19-111(A)	passim
A.R.S. § 19-142(A)	5

RULES

RULE 14, ARIZ. R. CIV. APP. P.	10
RULE 16, ARIZ. R. CIV. APP. P.	1

OTHER

2015 Ariz. Sess. Laws Ch. 285	3
ARIZ. CONST. ART. VII, § 12	3
Ordinance 2022-18, City of Surprise	2, 5
Summary of H.B. 2407 (Apr. 1, 2015), Ariz. 52 nd Leg., 1 st Reg. Sess. (2015).....	3

INTEREST OF AMICUS CURIAE

This brief is submitted by the League of Arizona Cities and Towns (“League”) pursuant to Rule 16 of the Arizona Rules of Civil Appellate Procedure, in support of Respondents.¹ All parties have consented in writing by email to the League’s filing of this brief as amicus curiae.

The League is a voluntary association of all the incorporated cities and towns in the State of Arizona. It includes 91 member municipalities representing approximately 79% of Arizona’s total population. The League provides collective advocacy, education, training, technical assistance, and information-sharing for and among the cities and towns of Arizona. The League also files amicus briefs in cases with potential statewide impacts on Arizona’s cities and towns.

As relevant to this case, the League also serves as a resource to local election officials. The League tracks legislation that may impact municipal elections and provides regular legislative updates to municipal clerks during the legislative session. The League also provides election training at the Arizona Municipal

¹ The League is neither a party to the appeal nor controlled by any party to the appeal. No person or entity other than the League provided financial resources for the preparation or submission of this brief. The League incorporates by reference the Material Facts in the Response to Petition for Review by Respondents City of Surprise, Mayor Skip Hall, Councilmembers Patrick Duffy, Chris Judd, Roland Winters Jr., Aly Cline, Jack Hastings, and Ken Rembly, and City Clerk Sherry Aguilar (collectively “City”). (City Resp. to Pet. for Rev. at 1-6).

Clerks Association summer conference and publishes a municipal election manual that specifically addresses the administration of municipal elections. Accordingly, the League's perspective both complements the position of the City and helps broaden the Court's analysis to include the potential adverse impacts on other cities and towns in Arizona.

The League respectfully submits this brief because the outcome of this appeal could adversely impact the ability of municipal clerks throughout Arizona to administer local elections properly and uniformly.

INTRODUCTION

Municipal clerks serve a vital role in protecting the integrity of the election process in Arizona. As the chief election officers of their municipalities, they must be able to rely on *clear* rules to perform their election duties accurately and consistently.

Current state law provides clear direction to a referendum proponent and to municipal clerks that the text of the referral measure must be attached to every Applications for Serial Number. A.R.S. § 19-111(A); *see also* A.R.S. § 19-101(A).² State law specifically mandates strict compliance – it is uniform and there is no discretion or need for interpretation. A.R.S. § 19-101.01.

2

It is undisputed that Voice of Surprise and Quintus Schulzke (collectively, “Petitioner”) failed to attach a copy of Ordinance 2022-18 to its Application for Serial Number [IR61], as expressly mandated by the plain text of § 19-111(A). Accordingly, the Court of Appeals and the Maricopa County Superior Court correctly concluded the Petitioner’s error was fatal to its referendum effort, and the City Clerk properly rejected (as they were required to) the referendum petition sheets due to Petitioner’s failure to strictly comply with § 19-111(A), as mandated by § 19-101.01. [Ct. App. Op. at ¶¶ 9, 13, Apr. 27, 2023]. The Court of Appeals also correctly declined to apply equitable estoppel theory asserted by Petitioner. [Ct. App. Op. at ¶¶ 22-25, Apr. 27, 2023].

The League urges this Court to deny review. Fulfilling election duties under strict time constraints is difficult enough for municipal clerks without the additional hurdle of having to figure out how to interpret or apply the law. Any ruling that would allow clerks (or courts) the discretion to “waive” (or not) a referendum requirement would render § 19-101.01 meaningless. It would create legal and practical challenges for clerks, sow confusion, encourage litigation, and ultimately threaten the integrity of municipal elections in Arizona. There is no good reason for such a result, especially when the attachment requirement in § 19-111(A) is straightforward and easy to satisfy.

Moreover, the requirement in § 19-111(A) that a person or organization filing a referendum petition against a “measure, item, section or part of a measure” attach “the text of the proposed law, constitutional amendment or measure to be initiated or referred in not less than eight point type” serves the important purpose of identifying exactly the language the proponents are objecting to. As noted by the Court of Appeals, doing so “makes clear what is being challenged.” [Ct. App. Op. at ¶ 20, Apr. 27, 2023].

ARGUMENT

I. Clerks Need Clear and Stable Rules to Perform Their Duties.

The Arizona Constitution directs the Legislature to enact “registration and other laws to secure the purity of elections and guard against abuses of the elective franchise.” Ariz. Const. art. VII, § 12. To that end, the Legislature adopted H.B. 2047 in 2015 to expressly mandate strict compliance with *all* the rules that govern the referendum process, including § 19-111(A). Initiative and Referendum, 2015 Ariz. Sess. Laws Ch. 285 (H.B. 2407) (adopting § 19-101.01 and amending § 19-111(A)); *see also* Summary of H.B. 2407 as Transmitted to Governor (Apr. 1, 2015), Ariz. 52nd Leg., 1st Reg. Sess. (2015) (“requires courts to strictly construe, and the petition proponents to strictly comply” with the referendum provisions, including § 19-111(A) as amended by H.B. 2047).

The Legislature’s intent was very clear – to require strict compliance from the “persons using the referendum process” (the proponent), as well as courts and clerks applying or enforcing the referendum requirements. A.R.S. § 19-101.01 (referring to strict compliance “in the application and enforcement” of the constitutional and statutory requirements).

As the chief election officials for their municipalities, municipal clerks are tasked with applying and enforcing this strict compliance mandate in § 19-101.01. Here, the Surprise City Clerk applied § 19-101.01 to effectuate its plain language and unmistakable meaning: the Petitioner’s failure to attach the full text of Ordinance 2022-18 to its Application for Serial Number [IR61] as plainly required by in § 19-111(A) was fatal to its referendum effort. There is no exception in state law.

Petitioner argues its failure to attach Ordinance 2022-18 did not give the Surprise City Clerk any “duty or unfettered power” to reject the referendum petition. [Pet. at 4.]. Petitioner does not provide any statute or case to support this argument. No such statute or case exists. Clerk do not have the statutory authority or discretion to ignore the mandate in § 19-101.01, waive any requirement in § 19-111(A), or refuse to issue a serial number if there are defects in the Application for Serial Number. Had the Legislature wanted clerks to have such discretion, it

would have done so. It did not – to the contrary, the Legislature specifically found that that requiring: “[S]trict compliance with the constitutional and statutory requirements for the referendum process and in the application and enforcement of those requirements *provides the surest method for safeguarding the integrity and accuracy of the referendum process.*” A.R.S. § 19-101.01 (Emphasis added). Inserting discretion, waiver, or other “wobble room” into a mandated and clear process will undermine the integrity of the entire process, and subject elections, and the clerks who are statutorily required to administer them, to even more undermining attacks than they are already enduring.

II. Petitioner Cannot Avoid its Strict Compliance Obligation by Blaming the Clerk.

It is irrelevant that Petitioner may have relied on the issuance of a serial number. What governs are the requirements of the statute. Section 19-111(A) places the obligation to submit an accurate and complete application squarely and solely on the petitioner, not the municipal clerk: “*A person or organization intending to propose a law or constitutional amendment by initiative petition or to file a referendum petition against a measure, item, section or part of a measure, before causing the petition to be printed and circulated, shall file . . .*”

A.R.S. § 19-111(A) (citation omitted). The municipal clerk does not prepare the application, determine its validity, nor provide legal advice to the

Petitioner. Like a filing clerk at a courthouse, a municipal clerk simply receives the application and issues an official serial number.

Arizona law recognizes that reality and estoppel cannot be asserted to accomplish a result contrary to the statutory requirements. *See Leibsohn v. Hobbs*, 254 Ariz. 1, 8 ¶ 29, 517 P.3d 45, 52 (2022) (noting that “bad advice by the Secretary’s Office” would not have excused “noncompliance” by political action committee in collecting initiative petitions); *Western Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 431, 814 P.2d 767, 772 (1991) (“[The defendant] cannot rely on the Secretary of State’s sample form any more than they can rely on a statute that conflicts with the constitution.”); *Ross v. Bennett*, 228 Ariz. 174, 180 n.7, 265 P.3d 356, 362 (2011) (“[C]ompliance . . . with a government-supplied sample form does not guarantee validity”); *Griffin v. Buzard*, 86 Ariz. 166, 173, 342 P.2d 201, 205 (1959) (rejecting argument that challenge to ineligible primary election candidate was “brought too late,” and holding that, “[w]ere this contention correct then the statutory provisions governing primary election contests would be nugatory”); *Fidelity Nat. Title Co., Inc. v. Town of Marana*, 220 Ariz. 247, 250 ¶ 14 (App. 2009) (erroneous advice from the town clerk does not excuse noncompliance by the challenger).

It is also well-established that estoppel, as an equitable doctrine, does “not apply to the detriment of the public interest,” *Valencia Energy Co. v. Ariz. Dep’t of Ariz.*, 191 Ariz. 565, 576, 959 P.2d 1256, 1267 (1988), and surely the public has a compelling interest in ensuring that referenda are initiated only by those entitled to do so. Applying estoppel against the City, whose Clerk merely processed the Application for Serial Number [IR61], because Petitioner unreasonably believed this processing was an assurance of strict compliance would also create a dangerously broad precedent. In sum, estoppel cannot override the clear dictates of §§ 19-101.01 and 19-111(A) as they apply to this case.

The requirements in § 19-111(A) are straightforward. Petitioner could have easily corrected its mistake during the statutory 30-day time-period in § 19-142(A) by filing a new Application for Serial Number [IR61] that included a copy of Ordinance 2022-18. Petitioner would have received a new serial number to restart the process of collecting signatures. Petitioner did not attempt to fix its mistake. The Court should avoid creating an exception to the strict compliance mandate simply because some may find it too inconvenient. *See, e.g., Western Devcor*, 168 Ariz. at 432, 814 P.2d at 773 (“If our state constitution contains provisions considered too inconvenient for present-day operation, the remedy is to amend it—not to ignore it.”); *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*,

249 Ariz. 396, 403, 471 P.3d 607, 614 (2020). Nothing in the Constitution or state law would support an exception.

The League asks this Court to deny review because the Surprise City Clerk properly rejected the referendum petition sheets due to Petitioner’s failure to strictly comply with § 19-111(A), as mandated by § 19-101.01, and over four decades of settled case law. [Ct. App. Op. at ¶¶ 9, 13, Apr. 27, 2023]. *See e.g., Western Devcor*, 168 Ariz. at 428, 814 P.2d at 769 (requiring strict compliance in the referendum context).

III. Meddling With The Strict Compliance Mandate Would Wreak Havoc On Election Administration Throughout The State.

Legal uncertainty has no place in election administration. Strict compliance is required by § 19-101.01 because a referendum “may overrule the results of determinations made by representatives of the people” and strict compliance provides the “surest method for safeguarding the integrity and accuracy of the referendum process.” A.R.S. § 19-101.01.

Even before the adoption of § 19-101.01, Arizona courts consistently required strict compliance. *See, e.g., McDowell Mountain Ranch Land Coalition v. Vizcaino*, 190 Ariz. 1, 4-5, 945 P.2d 312, 315-316 (1997); *Sherrill v. City of Peoria*, 189 Ariz. 537, 540, 943 P.2d 1215, 1218 (1997); *Western Devcor*, 168 Ariz. at 429, 814 P.2d at 770; *Cottonwood Development v. Foothills Area*

Coalition of Tucson, Inc., 134 Ariz. 46, 653 P.2d 694 (1982); *Direct Sellers Ass’n v. McBrayer*, 109 Ariz. 3, 5-6, 503 P.2d 951, 953-954 (1972). Strict compliance applies to all rules, no matter how minor. *Homebuilders Association of Central Arizona v. City of Scottsdale*, 186 Ariz. 642, 648, 925 P.2d 1359, 1365 (App. 1996); *Arrett v. Bower*, 237 Ariz. 74, 83, 345 P.3d 129, 138 (App. 2015) (strict compliance applies even if it is an “unfortunate mistake” that results in what may seem as “harsh consequences”). This Court has recognized that requiring strict compliance for every statutory requirement makes sense because it provides safeguards to prevent the irregular or fraudulent exercise of the power of referendum. *See, e.g., McDowell Mountain Ranch Land Coalition*, 190 Ariz. at 4-5, 945 P.2d at 315-316; *Direct Sellers Ass’n*, 109 Ariz. at 5-6, 503 P.2d at 953-954. It also helps ensure the referendum right is not abused or improperly expanded. *Western Devcor*, 168 Ariz. at 429, 814 P.2d at 770.

The Court should reject Petitioner’s request to mess with the strict compliance mandate because it would create legal uncertainty and invite inconsistent and competing interpretations and applications of the law. Clerks throughout the state would be forced to make case-by-case legal determinations of whether a statutory requirement can and then should be waived. How would a clerk decide what kinds of errors are legally waivable or significant and what kinds are not? In the end, the resulting legal uncertainty would be used as a weapon

against clerks who do not have a vested interest in the outcome of a referendum and are simply trying to perform their duties in accordance with the law. The legal uncertainty would also expose the referendum process to risks of delays, political mischief, and litigation. In the end, it would dampen confidence in the integrity and fairness of elections to the detriment of the citizen-lawmaking process.

Any ruling that renders meaningless the strict compliance requirement could also open a vast range of other laws that require strict compliance (constitutional, statutory, and municipal). Every disagreement over the meaning or application of a requirement, no matter how obscure, would instantly become fodder for a potential court challenge at the taxpayers' expense. Administration of election matters would be increasingly difficult, fraught with risk, and subject to partisan manipulation. The League urges the Court to avoid this result.

CONCLUSION

The League respectfully asks this Court to deny review because § 19-101.01 must be interpreted and applied to effectuate its plain language and unmistakable meaning: a referendum proponent's failure to attach the full text of a the measure to an Application for Serial Number as required by § 19-111(A) is fatal to its referendum effort.

RESPECTFULLY SUBMITTED this 15th day of June 2023 by:

/s/ Nancy L. Davidson
Nancy L. Davidson, Esq. (029991)

General Counsel
League of Arizona Cities and Towns
1820 W. Washington Street, Phoenix, AZ 85007
(602) 258-5786
ndavidson@azleague.org
Attorney for Amicus Curiae

CERTIFICATE OF COMPLIANCE

This certificate of compliance concerns an Amicus Curiae Brief and is submitted under Rules 14 of Arizona Rules of Civil Appellate Procedure.

I certify that the Amicus Curiae Brief to which this Certificate is attached uses Times New Roman of at least 14 points, is double-spaced, contains 2,448 words, and does not exceed the word and page limit that is set by Rule 14.

DATED this 15th day of June 2023

/s/ Nancy L. Davidson
Nancy L. Davidson, Esq. (029991)
General Counsel
League of Arizona Cities and Towns
1820 W. Washington Street, Phoenix, AZ 85007
(602) 258-5786
ndavidson@azleague.org
Attorney for Amicus Curiae