SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-007407 08/08/2017

HON. SHERRY K. STEPHENS

CLERK OF THE COURT
T. DeRaddo
Deputy

MATHEW G MADONNA, et al. ROOPALI HARDIN DESAI

v.

STATE OF ARIZONA DAVID R COLE

DAVID J CANTELME

RULING

The Court has considered the Verified Complaint filed May 11, 2017, the Application for Order to Show Cause filed May 11, 2017, the Application for Order to Show Cause filed May 11, 2017, the Application for Preliminary Injunction filed May 11, 2017, the Notice of Intervention of Right Pursuant to A.R.S. § 12-1841 of the Speaker of the Arizona House of Representative and President of the Arizona Senate filed May 18, 2017, the First Amended Complaint filed May 23, 2017, the Stipulation to Consolidation on the Merits filed June 5, 2017, the Answer to First Amended Complaint filed June 7, 2017, Defendant's Request for Findings of Fact and Conclusions of Law filed June 13, 2017, Plaintiff's Joinder in Defendant's Request for Findings of Fact and Conclusions of Law filed June 14, 2017, Defendant's Response, Opposing Plaintiffs' Application for Injunctive Relief and Motion to Dismiss for Failure to State a Claim filed June 20, 2017, Plaintiff's Response to Defendants' Motion *in Limine* to Exclude Witness Testimony Not Based on Personal Knowledge or Based on Hearsay filed June 26, 2017, Amicus Brief Submitted By Arizonans for Clean Elections and Louis Hoffman file June 27, 2017, Plaintiffs' Reply in Support of Application for Preliminary Injunction and Opposition to Motion to Dismiss for Failure to State a Claim filed July 7, 2017, Defendants' Reply Memorandum Supporting Their Motion to Dismiss for Failure to State a Claim filed July 11, 2017, the testimony, exhibits and arguments presented at the trial on July 12, 2017 and July 13, 2017, Plaintiff's Supplemental Filing Re Article IV Issue filed July 24, 2017, Defendant's Supplemental Brief Relating to Plaintiffs' Plaintiffs' Article IV Claim filed July 24, 2017, Plaintiff's Proposed Findings of Fact and Conclusions of Law filed July 28, 2017, Defendant's

Proposed Findings of Fact and Conclusions of Law and Judgment filed July 28, 2017 and Plaintiffs' Notice Regarding Referendum Effort and House Bill 2244 filed August 8, 2017.

Procedural Background

Plaintiffs filed a declaratory judgment and injunctive relief complaint challenging the constitutionality of HB 2244. HB 2244 was passed by the Arizona legislature on April 13, 2017 and signed by the governor on April 14, 2017. HB 2244 will become law in Arizona on August 9, 2017.

HB 2244 provides that constitutional and statutory requirements for statewide initiative measure must be strictly construed and persons using the initiative process must strictly comply with those constitutional and statutory requirements. HB 2244 further provides the Secretary of State shall make available a sample initiative petition that strictly complies with the requirements of A.R.S. §19-121. Any committee that uses the sample initiative petition provided by the Secretary to State shall be presumed to have strictly complied with the requirements of A.R.S. §19-121. Under HB 2244, the Secretary of State is also required to prepare and publish an initiative, referendum and recall handbook that provides guidance on interpreting, administering, applying and enforcing the laws relating to initiative, referendum and recall. This handbook shall be available to the public on the Secretary of State's website.

Section 3 of HB 2244 describes the purpose of the legislation. It states, in part:

> A. The legislature finds that:
>
> 1. The Constitution of Arizona provides voters with the ability to propose news laws or constitutional amendments through the initiative process.
>
> 2. Courts have required strict compliance where a legislative tool is considered an "'extraordinary power . . . that permits a "minority to hold up . . . legislation [that] may well represent the wishes of the majority.'" (citations omitted)
>
> 3. Arizona's Voter Protection Act, enacted in 1998 as Proposition 105, requires a three-fourths vote to amend any voter-approved initiative.
>
> 4. The Voter Protection Act greatly impairs the ability of the legislature, representing the will of the people, to implement changes to or corrective measures for voter-approved initiatives.
>
> 5. The initiative process has evolved into an extraordinary power, effectively holding up and binding the will of the legislature and future majorities of the people by preventing the enactment of new laws and amendments that may well represent the wishes of the current majority of the people. (citations omitted)
>
> 6. Strict compliance with the constitutional and statutory requirements for the initiative process and in the application and enforcement of those requirements

provides the surest method for safeguarding the integrity and accuracy of the initiative process, while still recognizing the historical importance of initiatives in this state. (citations omitted)

B. Based on the findings provided in subsection A of this section, the legislature's purpose in adopting this act includes the following:

1. Requiring that statewide initiative measures strictly comply with constitutional and statutory requirements.

2. Requiring that persons circulating and submitting initiative petitions be held to the same standard of constitutional and statutory compliance as those persons circulating and submitting referendum petitions.

The President of the Arizona State Senate and the Speaker of the Arizona House of Representatives intervened as a matter of right after Plaintiffs served a Notice of Claim of Unconstitutionality. See A.R.S. §12-1841(D).

An amicus brief was submitted by Arizonans for Clean Elections and Louis Hoffman in support of the Plaintiffs' Application for Preliminary Injunction.

Defendants opposed the application for injunctive relief and filed a Motion to Dismiss for Failure to State a Claim.

The parties stipulated to advance the trial on the merits and to consolidate it with the preliminary injunction hearing. The trial on the merits was conducted on July 12, 2017 and July 13, 2017. At trial, Plaintiff moved to conform the pleadings to the evidence pursuant to Rule 15 (c), Ariz. R.Civ.P. Over Defendant's objection, the Court granted Plaintiff's request. During the trial, Defendants requested the Court enter judgment as a matter of law under Rule 52(c), Ariz.R.Civ.P. The Court took that request under advisement as authorized by that rule. That motion remains under advisement.

All parties have requested the Court make findings of fact and conclusions of law. See Rule 52(a), Ariz.R.Civ.P.

This Court has jurisdiction over this matter pursuant to Article VI, § 14 of the Arizona Constitution and A.R.S. §§ 12-123, 12-1801 and 12-1831. Venue is proper pursuant to A.R.S. § 12-401.

FINDINGS OF FACT

1. Plaintiffs are Matthew Madonna, Sandra L. Bahr, Animal Defense League of Arizona ("ADLA"), Friends of ASBA, Inc. ("FOA"), Arizona Advocacy Network ("AZAN"), and Planned Parenthood Advocates of Arizona ("PPAA").

2. Defendant State of Arizona is a body politic.

3. Intervenor Defendants are Steve Yarbrough and J.D. Mesnard in their official capacities, respectively, as President of the Arizona Senate and Speaker of the Arizona House of Representatives.

4. Plaintiff Matthew Madonna is the former President and CEO of the American Cancer Society Southwest Division, Inc. He served in that capacity for approximately 14 years before retiring in 2003. [Madonna Dep. 4:9-22]
Over the past 24 years, Mr. Madonna has been involved in at least three statewide initiatives, and numerous county and municipal initiatives. [Id. at 5:21-8:24] At present, Mr. Madonna is seriously contemplating being involved with an initiative drive to place a measure on the November 2018 ballot. [Id. at 14:12-15:4]

Based on his experience with initiative campaigns, Mr. Madonna believes that HB 2244 will make it more difficult to qualify that measure for the ballot. Initially, Mr. Madonna believes that HB 2244 may change the way in which the Secretary of State and county recorders conduct their duties in processing initiative petition sheets and signatures. [Id. at 25:15-28:8; 29:13-30:16; 32:12-33:3] In addition, Mr. Madonna believes that he will incur additional expenses for legal advice if HB 2244 goes into effect particularly because he does not know "how the new law is going to be interpreted and enforced," which is "part of the uncertainty" under which he finds himself now. [Id.; at 40:3-41:7; 46:5-13]

Mr. Madonna rejects the premise that HB 2244's requirement that the Secretary of State prescribe a sample petition form "ensure[s] compliance for the form" because "just using the form does not guarantee compliance in the signature gathering process." [Id. at 42:20-43:9] Mr. Madonna also believes that as a direct result of HB 2244, "there will be significant additional expenses in the gathering of signatures and the recruitment and the training of volunteers, and the determination of, whether in fact, volunteers can legitimately . . . be used in this process." [Id. at 44:2-15]

Mr. Madonna also identified additional costs attributed to HB 2244; specifically, "time, effort, energy, and logistical challenges that are involved that are not just dollars, but they are people's blood, sweat, and tears." [Id. at 47:10-20]

5. Plaintiff Stephanie Nichols-Young provided testimony by deposition on behalf of ADLA. She is ADLA's current President, and has served in that capacity for more than ten years. [Nichols-Young Dep. 5:10-6:1] ADLA is an Arizona non-profit corporation, the mission of which is to protect Arizona's animals. One of its primary goals is to protect the right of Arizona's citizens to legislate by initiative because the initiative has been one of the most important tools for animal protection in the State. [Id. at 10:5-12] ADLA has been involved in several statewide initiative campaigns, most recently the humane farming initiative that was on the ballot in 2006. [Id. at 6:6-22] ADLA is currently in serious discussions with potential partners about an initiative drive that would seek to place a measure on the November 2018 ballot. At least one campaign consultant is already involved in those discussions. [Id. at 7:12-8:22]

Based on ADLA's past experience with statewide initiative campaigns, it believes that it will be harmed by HB 2244 in a number of ways.

As Ms. Nichols-Young explained, "it's a very arduous task to go out and gather signatures," and HB 2224's imposition of a strict compliance standard will remove the "little bit of comfort" that initiative proponents had knowing that minor errors by petition signers "would be accepted under substantial compliance." [Id. at 13:2-16] This translates into, at the very least, additional time preparing petitions, additional legal advice up front, and more resources devoted to reviewing the petition form itself. [Id. at 13:17-14:8; 20:20-21:5]
For example, to the extent Ms. Nichols-Young may have felt comfortable providing some legal advice to past statewide initiative efforts, she would be "less comfortable" doing so if HB 2244 goes into effect due to the heightened standard it purports to impose. [Id. at 17:5-13]

ADLA rejects the premise that HB 2244's requirement that the Secretary of State prescribe a sample petition form will provide it with any additional comfort because, as Ms. Nichols-Young queries, "[w]hat if the Secretary of State's draft is defective?" [24:14-25:9] As Ms. Nichols-Young further observed, the presumption created by HB 2244 is rebuttable. [Id. at 24:19-24]

If HB 2244 goes into effect, ADLA will be forced to gather additional signatures in order to ensure that its initiative makes the ballot. [Id. at 33:2-12] ADLA must presume that the Secretary of State and county recorders will apply the higher standard as HB 2244 purports to require. [Id. at 39:11-40:3; 40:20-42:05] Ms. Nichols-Young testified, "there's so much stress in getting it right under substantial [compliance], and there's going to be so much more under strict [compliance], because all the risks of legal challenges, of losing signatures, of all kinds of things just make it a much, much higher alert and a much more stressful environment where you have to . . . get it right." [Id. at 44:11-45:1]

6. Plaintiff Sandra Bahr is the Chapter Director for the Grand Canyon Chapter of the Sierra Club. [Trial Day 1 PM at 21:23-4] The Grand Canyon Chapter is a state affiliate of the Sierra Club, a nationwide nonprofit organization dedicated to protection of the environment. [Id. at 22:2-5] The Grand Canyon Chapter has 65,000 members and supporters throughout Arizona. [Id. at 22:8-9] Ms. Bahr became involved with the Grand Canyon Chapter in 1992, and has been the Chapter Director since 1998. [Id. at 23:10-16] Ms. Bahr has been actively involved with both initiatives and referendum efforts since the early 1990s. With regard to initiatives, she was active in an initiative to ban steel jaw traps on public lands. In 1997, she worked on a growth management initiative that appeared on the ballot in 2000. She was also active in the Clean Elections initiative in 1998. She also participated in a state trust land measure for the 2008 ballot. She has also been active but less involved with other initiative efforts including the establishment of the Independent Redistricting Commission, and a ban on gestation crates. [Id. at 23:17-25:10]

Ms. Bahr's involvement in these initiative efforts has included a broad range of activities. On some of them, she interacted primarily with volunteers and helped to train volunteers on collecting signatures and notarizing petitions. She has provided training for volunteers on various initiative efforts. On some initiatives like the Citizens Growth Management initiative, she was significantly involved in developing language for the initiative and the collection of signatures. She also assisted with contracting for paid petition circulators. Finally, she also gathered signatures herself for initiative petitions. [Id. at 25:3 - 26:3] Ms. Bahr is currently involved in two initiative efforts that may culminate in measures being placed on the 2018 general election ballot. [Id. at 32:10-32:13] The first is a potential initiative that would limit trophy hunting. [Id. at 32:15-16] The second is a potential initiative measure related to voting rights. [Id. at 32:16] For one of these initiatives, she is part of a group that has been convened to strategize, plan, budget, draft language, circulate petitions, gather signatures and campaign for voter approval.

Because of her experience with the initiative process over the last twenty plus years, Ms. Bahr is familiar with the substantial compliance standard that has been applied to initiative petitions. [Id. at 27:22-25] She is also familiar with the strict compliance standard that is applied to referendum petitions under Arizona law. [Id.]

Ms. Bahr believes HB 2244 makes it more difficult for Arizona citizens to exercise their right of initiative under the Arizona Constitution. [Id. at 30:19-24] Most fundamentally, the heightened standard of review will materially increase the likelihood that initiative efforts are not successful. [Id. at 33:19-22] In addition, it will make the initiative process more time consuming and expensive, even those efforts that are ultimately successful. [Id.] She testified that there are several ways in which that will occur.

First, a strict compliance standard under HB 2244 for initiative petitions increases the number of signatures that need to be submitted to the Secretary of State's Office in order to insure that a sufficient number of signatures qualify for the ballot. [Id. at 34:2-5] Up until now, a general rule of thumb for signature collection on initiatives has been that it is necessary to have at least 30% more than the number required to qualify for the ballot. [Id. at 34:17-24] That is because experience tells us that a certain number of signatures will be invalidated through the review process by the Secretary of State and County Recorders and potentially through a litigation challenge. The cushion is actually a bit higher now because there have been more challenges to signatures in the last few election cycles. [Id. at 44:14-20]

An even higher signature cushion is required under HB 2244 because strict compliance will be applied to the initiative petitions. There is no question that more signatures will be invalidated under a strict compliance standard than under a substantial compliance standard. The legibility of signatures, the attachment of the measure to the petition and the reversal of city and zip code on the petition sheets are just a few examples of the ways in which application of a strict compliance standard could increase the number of invalidated signatures. [Id. at 37:2-17] As a result, Ms. Bahr believes that the necessary cushion for signatures for an initiative under a strict compliance standard would approach 50%. [Id. at 37:18-21] Because the vast majority of signatures will be gathered by paid circulators, that also significantly increases the cost of qualifying an initiative measure for the ballot. [Id. at 38:6-16]

Ms. Bahr's opinion about the necessary cushion does not necessarily depend on the standard of review applied by the Secretary of State in reviewing initiative petitions. While Ms. Bahr believes that HB 2244 requires the Secretary of State and County Recorders to apply a strict compliance standard to initiative petitions, her opinion about the cushion necessary for an initiative measure under HB 2244 is the same regardless of the standard applied by the Secretary of State and County Recorders. [Id. at 39:14-19-60:10-24] That is because a strict compliance standard will invite more litigation challenging initiative petition signatures. [Id. at 39:24-40:3]

According to Ms. Bahr, a second impact of HB 2244 is that a strict compliance standard requires more time in terms of training and reviewing initiative petitions. [Id. at 40:8-12] She has worked on referendum petitions that have operated under a strict compliance standard, and her experience is that extra care is required in those situations. [Id. at 40:13-16] It would be necessary to look more closely at signatures, addresses, dates and other elements associated with signatures on the initiative petitions. [Id.] In the past, Ms. Bahr has either performed or supervised a spot or sample review to insure that that the validity rate for signatures is as high as possible. [Id. at 41:13-22] Under a strict compliance standard, Ms. Bahr believes it will be necessary to review many more of the petitions and that will take additional time. [Id. at 41:17-22] Training volunteers under a strict compliance standard will also be more intensive and require additional time. [Id. at 40:8-9] Ms. Bahr further testified that a third way in which HB

2244 will make initiatives more difficult is generating necessary funds. [Id. at 42:1-2] Because of the uncertainty created by HB 2244, and the diminished likelihood of success under the strict compliance standard, it will be more difficult to secure funds from foundations, donors and other contributors to support the effort. [Id. at 42:3-10] According to Ms. Bahr, the increased amount of funds needed, coupled with the difficulty in raising funds due to the uncertainty surrounding the application of HB 2244, will make it more difficult for nonprofit organizations like the Sierra Club to secure the funding necessary to sustain an initiative effort. [Id. at 42:3-10]

7. Plaintiff Christopher Thomas, general counsel to FOA, testified as the representative for FOA. [Trial Day 1 (pm) 64:2-4] He has served as general counsel since FOA was incorporated in 2011. [Id. at 64:9-10] He has also served as general counsel to the Arizona School Boards Association ("ASBA") for more than 17 years. [Id. at 64:6-8] FOA is a private, nonprofit organization committed to filling the need for trusted information on state-level K-12 education issues. It is dedicated to providing access to information and resources on high-priority, high-impact policy issues related to education and the success of public school students in Arizona, and is an affiliated 501(c)(4) organization to ASBA. [Id. at 64-20-65:5; 65:9-10] FOA has been involved in a statewide initiative in the past; specifically, Proposition 204 in 2012. FOA contributed funds to the committee formed to run that initiative, and was involved in the committee's decision-making structure. [Id. at 66:2-22] At present, FOA is seriously contemplating sponsoring a statewide initiative related to education (the "FOA Initiative") that would appear on the ballot in November 2018. [Id. at 67:4-6] FOA joined this litigation as a Plaintiff because it wishes to preserve its constitutional right to have the FOA Initiative evaluated under a substantial compliance standard, a right that it will lose if HB 2244 goes into effect. [Id. at 72:21-25]

On April 17, 2017, Mr. Thomas met with Chuck Coughlin, Paul Bentz, and Patrick Cunningham of HighGround Public Affairs Consultants ("HighGround") to discuss potential electoral strategies, including the FOA Initiative. [Id. at 68:8-17] FOA is familiar with HighGround's experience and expertise with respect to initiatives, and believes that the advice it received during that meeting is correct. [Id. at 68:18-69:2] Based on the meeting with HighGround and advice it has received from others with experience and expertise with respect to initiatives and referenda, Mr. Thomas advised FOA to become a plaintiff in this case to ensure that its contemplated initiative is evaluated under the substantial compliance standard. [Id. at 79:5-20]

8. Plaintiff Joel Edman provided testimony on behalf of AZAN. Mr. Edman is AZAN's executive director, a position he has held since January 1, 2017. [Trial Day 2, 112:21-24] AZAN is a non-profit, non-partisan organization devoted to defending and deepening Arizona's commitment to democracy. It believes the cornerstones of such a democracy are meaningful voting rights and access to the ballot, political decisions driven by voters instead of

money, and a fair and independent judiciary. [Id. at 113:22-114:4] AZAN has been involved in initiative efforts in Arizona in the past. Most recently, AZAN was heavily involved in the Arizona Clean and Accountable Elections Act, a coalition effort chaired by AZAN's former executive director. [Id. at 114:7-115:3] During the most recent legislative session, AZAN carefully tracked several bills related to the initiative process, including HB 2244. [Id. at 115:14-16] Mr. Edman testified on behalf of AZAN in the Senate Appropriations Committee against the passage of HB 2244. [Id. at 117:9-12] AZAN opposed this bill both because of its philosophical objection to restrictions on the right to legislate by initiative, and because it knows that the initiative process is the primary vehicle through which it can achieve reforms in the future consistent with its mission. [Id. at 115:19-23]

With respect to HB 2244, AZAN provided information to members of the Legislature while it was being considered setting forth, among other things, the organization's position. [Id. at 117:9-12]

At present, AZAN is working with several other organizations to place a statewide initiative related to direct democracy/voting rights on the ballot in November 2018 (the "AZAN Initiative"). [Id. at 118:1-25] AZAN would be involved in leading and organizing the efforts to qualify the AZAN Initiative for the ballot.

AZAN joined this litigation as a Plaintiff in order to protect its constitutional right to have the AZAN Initiative evaluated under the "substantial compliance" standard, a right that HB 2244 will take away. As the proponent of the AZAN Initiative, it would be AZAN's goal to comply with relevant statutory and constitutional requirements at all times in the process of gaining access to the ballot. But if the governing standard is "substantial compliance," there is a higher likelihood that inadvertent errors of this nature will not result in the disqualification of petition sheets or individual signatures. [Id. at 135:10-23]

As part of AZAN's ongoing discussions with potential partners and funders for the AZAN Initiative, HB 2244 has come up on multiple occasions. Mr. Edman testified that AZAN is already being injured by HB 2244 because the looming prospect of the effective date is affecting its fundraising efforts. [Id. at 123:16-124:4] Specifically, and based on decisions from Arizona courts in which the standard of "substantial compliance" has saved proponents of initiatives from disqualification, AZAN believes efforts to qualify the AZAN Initiative will be adversely affected by the "strict compliance" standard under HB 2244. Those adverse effects begin with the loss of AZAN's constitutional right to have its initiative effort evaluated under the existing "substantial compliance" standard. [Id. at 134:14-25]

One such injury is the increased likelihood that the initiative will not qualify for the ballot under the strict compliance measure of review. Another such injury is the potential increased

difficulty in raising funds and overcoming the concerns of potential donors and partners, who are aware of the difficulties created by the heightened "strict compliance" standard. [Id. at 138:9-24]

AZAN's belief that it will incur these costs is based not only on Mr. Edman's independent research into the risks associated with proceeding under a "strict compliance" standard (vs. a "substantial compliance" standard), but also on conversations Mr. Edman had with others at AZAN and elsewhere who have worked on ballot measure campaigns, elections attorneys, and national organizations that have worked in various states and under various legal regimes. This includes Sara Michaelson of Arizona Wins, a "table" of progressive organizations in which AZAN participates. [Id. at 119:1-120:5] In addition, Mr. Edman conducted independent legal research into reported Arizona decisions applying "strict compliance" and "substantial compliance," and concluded that a "strict compliance" regime will make qualifying the AZAN Initiative for the ballot more difficult. [Id. at 130:13-22]

Beyond that, and with respect to petition signatures, Mr. Edman already had a conversation with Andrew Chavez of AZ Petition Partners, LLC, who informed Mr. Edman about the impacts of HB 2244. [Id. at 119:6-8]

If AZAN and its partners are unable to secure the additional funding needed to ensure that the AZAN Initiative qualifies for the ballot under the "strict compliance" standard, AZAN may have to decide that it cannot be involved any more, and thus that it will not exercise the constitutional right to legislate by initiative. As Mr. Edman testified, this would be wholly inconsistent with AZAN's mission. [Id. at 124:13-125:4]

9. HB 2244 does nothing to alter the application for obtaining an initiative serial number. Trial Day 1 PM, (Eric Spencer testimony) at 132:4-133:7.

10. HB 2244 does nothing to alter the legal format requirements for drafting a proper initiative petition. HB 2244 requires the Secretary of State to publish a sample initiative petition on her website and to provide a safe harbor for the use of such sample initiative petition. This could simplify the process and reduce the occasion for errors. Trial Day 1 PM, (Eric Spencer testimony) at 133:8-135:9; Trial Day 2, (Kory Langhofer testimony) at 175:19-176:8.

11. HB 2244 does nothing to alter the legal qualifications for circulators of initiative petitions. Trial Day 2, (Eric Spencer testimony) at 32:17-33:6, 33:15-24, 34:25-36:10, 37:5-22, 39:14-21.

12. HB 2244 does nothing to alter the process of hiring, or to alter the expected scope of engagement, of legal counsel retained to advise the initiators during the application, petition drafting, circulator qualifications, and signature gathering phases of the process for putting a

measure onto the statewide general election ballot. Trial Day 1 PM, (John Charles Coughlin testimony) at 109:25-111:18; Trial Day 2, (Kory Langhofer testimony) at 200:17-201:19.

13. HB 2244 does not alter the process or increase the cost of hiring, nor alter the expected scope of engagement, of a circulator company to gather signatures. Trial Day 1 PM, (Sandra Bahr testimony) at 58:14-59:1; Trial Day 2, (Kory Langhofer testimony) at 194:2-195:4.

14. HB 2244 does nothing to alter the Secretary of State's scope of review of initiative petitions turned into her office. The criteria for her review are set forth in A.R.S. § 19-121.01, and HB 2244 does not require her to do anything different to apply such criteria. Trial Day 1 PM, (Andrew Chavez testimony) at 8:23-10:4; Trial Day 1 PM, (John Charles Coughlin testimony) at 117:12-20; Trial Day 1 PM, (Eric Spencer testimony) at 141:16-23.

15. HB 2244 does nothing to alter the scope of review of signatures submitted to the fifteen County Recorders' by the Secretary of State. The criteria for their review are set forth in A.R.S. § 19-121.02, and HB 2244 does not require them to do anything different to apply such criteria. Trial Day 1 PM, (Andrew Chavez testimony) at 6:16-23, 10:16-19; Trial Day 1 PM, (John Charles Coughlin testimony) at 118:2-13; Trial Day 2, (Eric Spencer testimony) at 44:2-19; Trial Day 2, (Reynaldo Valenzuela testimony) at 67:2-21, 68:8-19, 73:1-9, 75:6-76:17; Trial Day 2, (Patricia Hansen testimony) at 92. HB 2244 does nothing to alter the prudent 30% cushion or overage of required valid signatures. Trial Day 1 PM, (John Charles Coughlin testimony) at 102:4-109:2.

16. Prudent initiators will vet their signatures against the voter registration information available at the county recorders' offices or county elections offices to make sure that the signatures they submit to the Secretary of State are valid signatures. Trial Day 1 PM, (Sandra Bahr testimony) at 27:4-17; TT Day 1 PM, (John Charles Coughlin testimony) at 93:14-22.

17. Andrew Chavez is the CEO and owner of AZ Petition Partners, which has been providing petition collection services in Arizona for 17 years. [Trial Day 1 at 66:6-11] Over the last 10 years, his firm has collected signatures for approximately 19 statewide initiative measures that have appeared on the ballot. [*Id*. at 66:24-67:1; 70:24-71:5] His firm has collected petitions in connection with approximately 10 referenda matters, including local and statewide measures, in the last 10 years. [*Id*. 71:9-12; *see also* Tr. Ex. 10 (listing initiative and referenda measures worked on)] Mr. Chavez has testified more than two dozen times in litigation concerning the validity of Arizona ballot measures, and has significant practical experience with the Court's application of the strict compliance and substantial compliance standards. [*Id*. at 68:07] In Mr. Chavez's experience, the strict compliance standard applied to referenda makes it more difficult to qualify referenda matters for the ballot than initiative matters. [*Id*. at 72:19-24] Because of the

strict compliance standard, "there is a distinct difference between pricing on referendums [sic] versus initiative . . . just based on the compliance level at the courts." [*Id*. at 71:18-72:03]

Petition gathering costs are higher for ballot measures that are reviewed under the strict compliance standard because "the buffer of signatures we have to collect goes up quite a bit." [*Id*. at 73:22-74:07; *see also* 72:25-73:10] The baseline "buffer" or "cushion" for the number of signatures needed in a referendum matter is 20-30% higher than what is needed for an initiative matter due to application of the strict compliance standard. [*Id.* at 74:11-75:08] In addition to a larger buffer, the strict compliance standard increases the costs for legal compliance (apart from litigation expenses). [*Id*. 75:14-76:01 ("inevitably, in strict compliance setting, we have far more legal bills with our clients.")] It also increases costs due to the random sampling and quality control measures that are employed during the petition collection process. [*Id*. at 76:17-77:24]

In addition to a larger buffer, the strict compliance standard increases the costs for legal compliance (apart from litigation expenses). [*Id*. 75:14-76:01 ("inevitably, in strict compliance setting, we have far more legal bills with our clients.")] It also increases costs due to the random sampling and quality control measures that are employed during the petition collection process. [*Id*. at 76:17-77:24] In addition, Mr. Chavez was asked by a client for which he ran a 2016 statewide initiative to estimate the impact that HB 2244 would have for running a similar statewide initiative. He concluded that the cost of running a similar initiative for that client would increase from $700,000 in 2016 to $1.2 million in 2018 or 2020, due to the impact of HB 2244 and HB 2404 (which relates to petition circulator regulation). [*Id*. at 80:21-81:20]

HB 2244, standing alone, will raise petition gathering expenses (not including legal expenses) by approximately 25-30%. [*Id*. at 82:09-13]

Mr. Chavez also testified that there would be a "significant" increase in legal expenses caused by HB 2244. [*Id*. at 82:06-08]

Mr. Chavez disagreed with the Defendants' assertion that the presumption of validity created by HB 2244 with respect to the Secretary of State's petition form would have any practical consequence. Mr. Chavez testified that parties already use the forms created by the Secretary of State, and that litigation challenges are typically made regarding the information placed on that form by petition circulators and signers, rather than to the form itself. [*Id*. at 85:14-87-11] Specifically, Mr. Chavez testified that the petition form, with the exception of font size, "rarely becomes a litigation issue" but "there is a lot of information that needs to be dropped in here that wouldn't be protected by" the presumption created by HB 2244. [*Id*. at July 12, 2017 Tr. (pm) at 15:14-16:15]

Mr. Chavez identified specific instances in which legal challenges were made to signatures and/or petitions in statewide initiative matters to which the substantial compliance standard was applied. [*Id.* at 91:01-9494:22 (referencing litigation to the 2012 Open Elections - Government Act and the 2008 Medical Choice for Arizona initiative)] The legal challenges in

those instances related to illegible signatures, signatures that did not match the voter registration, transposed dates, transposed address information, writing outside of the box, and notary issues. [*Id*. at 92:01-15; 94:01-10]

In both of those litigated matters, the signatures were successfully rehabilitated under the substantial compliance standard, such that the initiative qualified for the ballot, but could not have been successfully rehabilitated under the strict compliance standard. [*Id*. at 92:16-93:05; 95:15-22]

Mr. Chavez also testified that there have been far fewer statewide referenda than initiatives because it is more difficult to qualify referenda matters due to the higher level of scrutiny that comes with strict compliance. [Trial Day 1 PM at 18:01-12]

18. Chuck Coughlin testified that it was his practice to collect 130% of the required signatures on referenda, which are currently subject to strict compliance standard. Trial Day 1 PM, (John Charles Coughlin testimony) at 93:14-94:3. No prudent initiators under existing law would deliberately cut corners or do anything other than comply strictly with the applicable requirements of law and would not count on a court overlooking a legal defect or deficiency under the substantial compliance doctrine. Trial Day 1 PM, (Sandra Bahr testimony) at 51:4-18, 54:4-17; TT Day 2, (Joel Edman testimony) at 136:6-15. Mr. Coughlin has over thirty years of experience in Arizona public affairs, lobbying, politics and strategic messaging. He is the founder and President of HighGround, Inc. [Trial Day 1 (pm) at 80:17-21]

Mr. Coughlin's experience leaves no doubt in his mind opponents of initiative efforts will use this heightened standard to prevent initiative measures that have significant public support from gaining access to the ballot. [*Id*. at 99:12-19] Ever since *Citizens United* was decided by the U.S. Supreme Court in 2010, the amount of money and resources available to fight initiative petitions have increased dramatically. [*Id*. at 95:12-17] *Citizens United*, at least from a political standpoint, has basically allowed the unlimited use of so-called "dark money" in connection with initiative efforts in Arizona and elsewhere. [*Id*.]

HB 2244 provides initiative opponents with a new tool to fight initiative efforts that they oppose. If initiative efforts become subject to strict compliance review by the courts, Mr. Coughlin has no doubt that initiative opponents will spend vast sums of money to litigate any conceivable defect in order to prevent the initiative from gaining ballot access by alleging a failure to fully comply with a nearly perfect standard applied to the various technical requirements associated with petition format and signature collection and validation. [*Id*. at 96:2-10] In April 2017, before HB 2244 was enacted, Mr. Coughlin was approached by a group of education advocates for advice about the impact that HB 2244 would have on attempting to run a statewide initiative measure. [*Id*. at 90:3-9] He was asked to assume that the ballot measure

under consideration would be subjected to the "strict compliance" standard and to provide an estimate of costs and the likelihood of success for such an initiative with that assumption.

Based on his knowledge, experience and expertise, Mr. Coughlin advised the group that upon taking effect, HB 2244 would require the client to increase the number of signatures collected (and the associated expense) by approximately 25 to 30%. [*Id*. at 91:15-18] That is because if strict compliance is applied to petitions and signatures, there will be an increased number of petitions and signatures potentially invalidated by the Secretary of State and County Recorders but also, and more significantly, challenged in litigation by opponents of the initiative. [*Id*. at 94:16-23] Mr. Coughlin also advised the group that it would need to increase its legal budget by as much as 50%. [*Id*. at 91:10-14] An increase in the legal budget is necessary because of the greater likelihood of legal challenges during collection and after submission of petitions and signatures because of strict compliance requirements. [*Id*.]

20. To date, no Plaintiff has filed an application with the Secretary of State or obtained a serial number from that office for the purpose of circulating petitions to place an initiative measure on the ballot in 2018. Trial Day 1 PM, (Sandra Bahr testimony) at 45:25-46:11; Trial Day 2, (Joel Edman testimony) at 133:1-134:5; Matthew Madonna Deposition Transcript at 14:12-24; Christopher Thomas Deposition Transcript at 18:21-23; Stephanie Nichols-Young Deposition Transcript at 7:12-18; Jodi Liggett Deposition Transcript at 16:21-17:10.

CONCLUSIONS OF LAW

Standing and Ripeness

As a matter of sound judicial policy, a litigant seeking relief in the Arizona courts must first establish standing to sue. The requirement that a plaintiff establish standing is prudential, constitutes an exercise of judicial restraint, and ensures the courts refrain from issuing advisory opinions. In addition, it ensures cases are ripe for decision and not moot, and that issues are fully developed between true adversaries. To establish standing, a plaintiff must show a particularized injury to themselves; a distinct and palpable injury. See *Biggs v. Cooper ex rel County of Maricopa*, 236 Ariz. 415, 341 P.3d 457 (2014), *Sears v. Hull,* 192 Ariz. 65, 69, 961 P.2d 1013, 1017 (1998), and *Bennett v. Brownlow*, 211 Ariz. 193, 119 P.3d 460 (2005). Courts are reluctant to become the referee in a political dispute. Attempts to invoke the Court's jurisdiction on such grounds will be viewed with great circumspection. *Bennett v. Napolitano*, 81 P.3d 311 (2003) (citing *Rios v. Symington*, 172 Ariz. 3, 5, 833 P.2d at 20 (1992)). Also see *Sears v. Hull*, 192 Ariz. 65, 961 P.2d 1013 (1998) (plaintiff's remote and generalized claim showed no distinct and palpable injury to plaintiff themselves and did not allege harm of the nature required to achieve standing.) and Forty-Seventh Legislature v. Napolitano, 213 Ariz. 482, 143 P.3d 1023 (2006) (plaintiff legislators need not exhaust all alternative political remedies before filing suit).

Plaintiff need only have plausibly alleged a particularized injury. See *Brewer v. Burns*, 222 Ariz. 234, 237 (2009).

Although not bound by it, the Arizona Supreme Court has previously found federal case law on standing instructive. See *Bennett v. Napolitano*, 81 P.3d 311 (2003). The federal standing doctrine requires a court refrain from addressing a case on its merits unless the parties assert facts giving rise to an actual case or controversy. To establish federal standing, a party must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct that is likely to be redressed by the requested relief. See *Allen v. Wright*, 468 U.S. 737, 751, 104 S.Ct. 3315 (1984).

Standing inquiries have been especially rigorous when reaching the merits of a dispute that would require a decision on whether an action taken by one of the other two branches of the federal government is unconstitutional. See *Raines v. Byrd*, 521 U.S. 811, 819, 117 S.Ct. 2312 (1997). Under Raines, the standing inquiry focuses on whether the plaintiff is the proper party to bring the suit. Specifically, the plaintiff must show a particularized injury to a private right or to themselves personally. In *Mendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012), the Court considered whether the plaintiff had standing to pursue an injunction on Fourth Amendment grounds. That Court determined that to assert a claim for prospective injunctive relief, a plaintiff must demonstrate that he is realistically threatened by a repetition of a constitutional violation. Standing is not appropriate in situations where a plaintiff can avoid injury by avoiding illegal conduct. In the *Mendres* case, the threated constitutional injury was likely to occur again, and thus the Ninth Circuit Court of Appeals found no error in the trial court's determination that plaintiffs had standing to pursue equitable relief on Fourth Amendment claims.

In this case, Plaintiffs argue that if HB 2244 becomes law, they will suffer a particularized, irreparable injury: an impairment of their ability to exercise their constitutional right to make law through the initiative process. Specifically, the evidence at trial established that Plaintiffs and others previously involved with initiative matters (Sandy Bahr, Christopher Thomas, Joel Edman, Andrew Chavez, and Charles Coughlin) believe HB 2244 will make initiative efforts in the future substantially more costly because: (1) a larger number of signatures must be obtained to assure the petitions survive a strict compliance review by the courts; and (2) more training of volunteers and petition circulators will be required to assure compliance with all statutory and constitutional requirements. As a result, it will be more difficult to raise funds for an initiative effort. In addition, there will be more challenges to initiative efforts and thus greater attorney fees will be incurred. Plaintiffs also argue that HB 2244 causes injury by forcing them to proceed under a cloud of illegal certainty as to whether their contemplated ballot measure will ultimately be judged under a substantial compliance or strict compliance standard and that uncertainty will have a chilling effect on their use of the initiative process. As a result, Plaintiffs contend the proponents of an initiative will be

unreasonably hindered or restricted and thus suffer an infringement of their constitutional rights under Arizona law to pursue law making through the initiative process.

Defendants argue Plaintiffs have not suffered a discrete and palpable injury from the enactment of HB 2244. Any harm Plaintiffs may suffer is theoretical and speculative in nature. Defendants also contend that it is impossible for these plaintiffs to suffer an injury until an actual lawsuit is filed challenging an initiative measure with which they are involved and a court must resolve that challenge. Otherwise, Defendants assert any harm is a generalized harm shared by a large class of citizens and is not sufficient to confer standing, citing to *Sears v. Hull*, 192 Ariz. at 69.

Ripeness is analogous to standing because the doctrine prevents a court from rendering a premature judgment or opinion on a situation that may never occur. *Town of Gilbert v. Maricopa County*, 213 Ariz. 241, 141 P.3d 416 (App. 2006). An administrative decision is ripe for judicial review when the agency has formalized the decision and the challenging party has been affected by it in a concrete manner. *Abbott Labs. v. Gardner*, 387 U.S. 136, 148–149, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967), abrogated on other grounds by *Califano v. Sanders*, 430 U.S. 99, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977). The courts determine ripeness by evaluating "both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." Id. at 149, 87 S.Ct. 1507. *Phelps Dodge Cor. V. Arizona Elec. Power Co-op, Inc.*, 207 Ariz. 95, 83 P.3d 573 (App. 2004) (the challenged decisions are final and not dependent on future events).

Plaintiffs argue ripeness does not require actual enforcement of a provision: the mere threat of enforcement is sufficient, citing *In re Estate of Stewart*, 231 Ariz. 480, 484 (App. 2012). However, that case involved an estate matter in which a will and living trust amended a prior trust. The will and trust contained a clause that provided if a beneficiary contested any portion of the will or trust, that beneficiary would forfeit his or her beneficial interest. A beneficiary filed a motion to invalidate that clause. The trial granted a motion to invalidate the clause. Another party argued the superior court erred in determining the viability of that clause because it was not ripe for adjudication. The Arizona Court of Appeals disagreed and found that the clause served to deter beneficiaries from cooperating with discovery efforts and it was not necessary for the party to enforce the clause to make it ripe. That court concluded the fact that discovery had commenced was sufficient to create an actual controversy. Those facts are far different from this situation. Here, there is no pending matter that will be impacted by HB 2244.

Defendants argue a challenge is not ripe against HB 2244 until a plaintiff files an initiative petition with the Secretary of State, a lawsuit results and a court must decide the level of review to apply to that lawsuit. Further, Defendants also claim the matter is not ripe because there is a pending referendum application to put HB 2244 on the ballot in 2018. However, the

Court received a notice from Plaintiffs filed on August 8, 2017 stating the committee seeking to refer HB 2244 has not gathered a sufficient number of signatures to delay the effective date of HB 2244 or require its placement on the ballot in 2018.

There is no dispute that HB 2244 will become law on August 9, 2017.

The Court finds this matter is not ripe for judicial review. No plaintiff has a pending initiative measure. HB 2244 is not yet law and has not been applied to any matter related to any pending initiative measure. No party has been affected by HB 2244 in a concrete manner. Plaintiffs believe HB 2244 will affect their future initiative efforts but this Court finds that expectation is not sufficient to make this matter ripe for judicial review of the constitutionality of HB 2244.

For the reasons stated herein,

IT IS ORDERED granting the defendants' Motion to Dismiss for Failure to State a Claim, granting the motion for judgment as a matter of law under Rule 52(c), Ariz.R.Civ.P., and denying the relief requested in the First Amended Complaint.