

Arizona Supreme Court

Civil Election Appeal

CV-24-0088-AP/EL

XENIA ORONA v MICHAEL D BUTTS et al

Appellate Case Information

Case Filed: 29-Apr-2024 Archive on: 10-May-2034 (planned)
Case Closed: 10-May-2024

Dept/Composition

Side 1. XENIA ORONA, a qualified elector, Plaintiff/Appellee

(Litigant Group) XENIA ORONA, a qualified elector

- Xenia Orona

Attorneys for: Plaintiff/Appellee

James E Barton, II, Esq. (AZ Bar No. 23888)

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Daniella Anais Fernandez Lertzman, Esq. (AZ Bar No. 037943)

Side 2. MICHAEL D. BUTTS, a candidate for Office; ADRIAN FONTES, in his official Capacity as Secretary of State; MARICOPA COUNTY BOARD OF SUPERVISORS; and STEPHEN RICHER, in his official capacity as Recorder of Maricopa County, Defendant/Appellant

(Litigant Group) MICHAEL D. BUTTS, a candidate for Office

- Michael D. Butts

PRO SE

(Litigant Group) ADRIAN FONTES, in his official Capacity as Secretary of State

- Adrian P Fontes, Arizona Secretary of State

Attorneys for: Defendant/Appellant

Bradley J Stevens, Esq. (AZ Bar No. 6723)

(Litigant Group) MARICOPA COUNTY BOARD OF SUPERVISORS; STEPHEN RICHER, in his official capacity as Recorder of Maricopa County

- Maricopa County Board of Supervisors
- Stephen I Richer, Maricopa County Recorder's Office

Attorneys for: Defendant/Appellant

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CASE STATUS

May 10, 2024....Case Closed

May 10, 2024....Decision Rendered

PREDECESSOR CASE(S)

MAR CV2024-008652

Cause/Charge/Class

Judgment/Sentence

Judge, Role <Comments>

Katherine Cooper, Judge
on PC

Trial

Dispo

CASE DECISION

10-May-2024 DECISION ORDER

* Pending before the Court is an expedited election appeal brought by Appellant Michael D. Butts ("Butts"), who seeks to be included as a candidate on the Democratic Party primary ballot for State Representative in Legislative District 11.

The Court

Robert Brutinel

Filed: 10-May-2024

Mandate: 10-May-2024

Decision Disposition

Affirmed

15 PROCEEDING ENTRIES

1. 29-Apr-2024 FILED: Defendant Michael D Butts Notice of Appeal; Certificate of Service (Appellant Butts, Pro Se)

Arizona Supreme Court**Civil Election Appeal****CV-24-0088-AP/EL****XENIA ORONA v MICHAEL D BUTTS et al****15 PROCEEDING ENTRIES**

2. 29-Apr-2024 FILED: Defendant Michael D. Butts Designation Statement (Appellant Butts)
3. 30-Apr-2024 FILED: Record
4. 30-Apr-2024 Defendant/Appellant/Candidate Butts, pro se, filed a Notice of Appeal in this expedited election matter on April 29, 2024, pursuant to Rule 10(g), Arizona Rules of Civil Appellate Procedure.

In lieu of a telephonic scheduling conference, Court staff has consulted with Appellant and counsel for Plaintiff/Appellee Orona and Maricopa County. Counsel for Maricopa County has advised that the deadline to resolve this matter is May 13, 2024 and has or will file a pleading to that effect forthwith.

IT IS ORDERED if either party wishes to use transcripts, such party shall file authorized transcripts as soon as possible. If no authorized transcript can be prepared and filed timely, the parties are encouraged to stipulate to the pertinent facts or testimony or provide pertinent segments of unauthorized transcripts in a joint appendix as soon as possible.

IT IS FURTHER ORDERED Appellant shall file the opening brief no later than noon on Thursday, May 2, 2024. The opening brief shall be no more than 5000 words.

IT IS FURTHER ORDERED Appellee may file an answering brief no later than 4:00 p.m. on Monday, May 6, 2024. The answering brief shall be no more than 5000 words.

IT IS FURTHER ORDERED Appellant may file a reply brief no later than noon on Wednesday, May 8, 2024. The reply brief shall be no more than 2500 words.

IT IS FURTHER ORDERED that briefs will be in a legible 14-point font, double-spaced, and will include all arguments the parties wish to present to the Court. They may be filed in memorandum format (no tables of contents or authorities).

IT IS FURTHER ORDERED that copies of all filings must be delivered as required under Rule 10(h).

IT IS FURTHER ORDERED that in addition to filing briefs with the Clerk of the Supreme Court (with filing and service through AZTurboCourt) all filings are also to be sent by email to all the parties and court staff and to SACrDocs@courts.az.gov when filed.

This matter will be decided without oral argument. (Hon. John R. Lopez IV)
5. 1-May-2024 This Court's April 30, 2024 scheduling order directed any party wishing to use transcripts to file authorized transcripts as soon of possible, or, if no authorized transcript can be prepared and filed timely, the parties were encouraged to stipulate to the pertinent facts or testimony or provide pertinent segments of unauthorized transcripts in a joint appendix as soon as possible.

The Court having been advised that it may not be possible for the parties to file authorized transcripts and that the parties may wish to submit audio recordings,

IT IS ORDERED any party who wishes to submit an audio file must contact the Clerk's Office to make arrangements to do so and must produce it on CD or DVD. In accordance with ARCAP 11(f), the filing party is responsible for ordering and paying for the recording and copies, and must serve all other parties with a copy of the recording. The filing party should endeavor to obtain a stipulation that the audio recording is an authentic reproduction from the trial.

IT IS FURTHER ORDERED if no authorized transcript is filed, and if either party wishes to refer to portions of the testimony or proceedings in their briefing, in addition to submitting an audio file they should include in their appendix typed transcribed excerpts from the recording that identify the time of the testimony or proceeding. (Hon. John R. Lopez)
6. 1-May-2024 FILED: Maricopa County Defendants- Appellees' Notice of Decision-Deadline for Ballot Printing; Certificate of Service (Appellee Maricopa County)
7. 2-May-2024 FILED: Defendant Michael D Butts Opening Brief; Certificate of Service; Certificate of Compliance (Appellant Butts, Pro Se)
8. 2-May-2024 FILED: Joint Appendix; Certificate of Service; Ruling Re Election Case/Candidate Challenge (MCSC) Filed 4/25/24; Partisan Nomination Petition (Appellee Orona/Appellant Butts, Pro Se)
9. 3-May-2024 RECEIPT No.: 2024-00099 ; \$280.00, Authorization: 8563618231715377, Applied to: MICHAEL D. BUTTS, a candidate for Office - Class A Filing Fee (\$280.00) Paid for: MICHAEL D. BUTTS, a candidate for Office - By nCourt LLC
10. 6-May-2024 FILED: Answering Brief; Certificate of Service; Certificate of Compliance (Appellee Orona)
11. 8-May-2024 FILED: Appellant's Reply Brief; Certificate of Service; Certificate of Compliance (Appellee Orona/Appellant Butts, Pro Se)
12. 9-May-2024 RECEIPT No.: 2024-00112 ; \$140.00, Authorization: 8651630214753492, Applied to: XENIA ORONA, a qualified elector - Class B Filing Fee (\$140.00) Paid for: XENIA ORONA, a qualified elector - By nCourt LLC

Arizona Supreme Court

Civil Election Appeal

CV-24-0088-AP/EL

XENIA ORONA v MICHAEL D BUTTS et al

15 PROCEEDING ENTRIES

13. 10-May-2024 DECISION ORDER Pending before the Court is an expedited election appeal brought by Appellant Michael D. Butts ("Butts"), who seeks to be included as a candidate on the Democratic Party primary ballot for State Representative in Legislative District 11.

The Court, by a panel consisting of Chief Justice Brutinel, Vice Chief Justice Timmer, Justice Lopez, and Justice Beene, has considered the parties' briefs, the record in the trial court, the trial court's rulings, and the relevant statutes and case law in this expedited election matter.

Candidates seeking placement on a partisan primary election ballot must gather a sufficient number of signatures in nomination petitions from "qualified signers." A.R.S. § 16-322(A). The circulator of each nomination petition "shall verify that each of the names on the petition was signed in his presence on the date indicated, and that in his belief each signer was a qualified elector who resides at the address given as the signer's residence on the date indicated and, if for a partisan election, that each signer is a qualified signer." A.R.S. § 16-321(D). "A nomination petition is void if verified by someone other than the person who actually obtained the signatures." *Moreno v. Jones*, 213 Ariz. 94, 96 ¶ 2 (2006).

Appellee Orona challenged the legal sufficiency of Appellant's nomination petitions and signatures. As a candidate, Appellant was required to have 452 valid signatures to be placed on the ballot. He submitted petition sheets with 795 signatures. Appellee initially challenged the validity of a number of individual signatures based on whether the signatures were by qualified signers; Appellee withdrew challenges to these signatures after the Maricopa County Recorder certified 556 of the 795 collected signatures as valid.

In addition to challenging individual signatures, Appellee also alleged that Appellant violated A.R.S. § 16-321(D) by fraudulently signing petition sheets that he did not circulate, that those petition sheets are therefore void, and that those petition sheets included 286 signatures.

Following an evidentiary hearing, the trial court determined that "clear and convincing evidence establishes that Butts verified petition sheets as the circulator knowing that he had not obtained the signatures in his presence as required by A.R.S. § 16-321(D)." The court observed that Appellant "admits that he signed sheets circulated" by a different paid circulator. And although Appellant contended that the paid circulator collected only 100 signatures, the court found the circulator's testimony that he collected 283 signatures "to be credible." The court concluded that Appellant signed as circulator petition sheets bearing 283 signatures that he knew he had not obtained and that those petition sheets and signatures were therefore invalid. After subtracting the 283 signatures from the 556 certified signatures, the trial court determined that Butts only secured 273 valid signatures and that he therefore failed to qualify for the Democratic Party primary ballot for State Representative in Legislative District 11.

Before this Court, Appellant asserts that the Verified Complaint was required to specifically identify the petition number and line number for each signature being challenged. A.R.S. § 16-351 states, in relevant part, that an elector challenging a candidate's nomination "shall specify in the action the petition number, line number and basis for the challenge for each signature being challenged. Failure to specify this information shall result in the dismissal of the court action." (Emphasis added.) By its terms, the statute applies when individual signatures are being challenged. Here, however, entire petition sheets are being challenged based on Appellant's violation of A.R.S. § 16-321(D). Therefore, Appellee was not required to provide the individual petition and signature line numbers of the challenged petition sheets.

Appellant also asserts that he complied with A.R.S. § 16-321(D) because he was present when circulators were collecting signatures. Appellant states that, during this time, he was interacting with voters, shaking their hands, and thanking them for their support. In his reply brief to this Court, he also states that "while present, he was in his right to certify the petitions containing the signatures of eligible voters that were signed before him." A.R.S. § 16-321(D), however, requires that the circulator "shall verify that each of the names on the petition was signed in his presence on the date indicated, and that in his belief each signer was a qualified elector who resides at the address given as the signer's residence on the date indicated and, if for a partisan election, that each signer is a qualified signer." The trial court concluded that Appellant's "mere presence in the parking lot" was not sufficient to certify the signatures as the statute "requires the circulator to be the person 'before whom the signatures were written.'" Finally, the trial court found that credible testimony from paid circulators established that Appellant "was not present the entire time that the paid circulators were working." The Court agrees with the trial court's conclusion that it is not reasonable to believe that Appellant personally observed all 283 signers while simultaneously campaigning and collecting signatures himself. Further, his mere presence is not sufficient to certify the signatures because the statute requires that the circulator verify that the names were signed in his presence and his belief that each signer was a qualified elector.

Last, Appellant challenges the sufficiency of the evidence regarding the number of signatures on petition sheets that he signed without personally circulating the petition sheet. This Court "uphold[s] a trial court's findings of fact unless clearly erroneous as not either 'supported by reasonable evidence or based on a reasonable conflict of evidence.'" *Moreno v. Jones*, 213 Ariz. 94, 98 (2006). The trial court considered the evidence and the testimony and determined that clear and convincing evidence supported a finding that the sheets at issue contained 283 signatures. Based on the record provided to this Court, this finding is not clearly erroneous, and therefore the Court will uphold the finding.

Accordingly, after consideration,

IT IS ORDERED affirming the trial court decision.

IT IS FURTHER ORDERED enjoining the Arizona Secretary of State from placing Appellant Butts on the Democratic Party primary ballot for State Representative in Legislative District 11.

IT IS FURTHER ORDERED directing the Clerk to issue the mandate forthwith. (Hon. Robert Brutinel)

Arizona Supreme Court

Civil Election Appeal

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14. 10-May-2024 MANDATE ISSUED TO SUPERIOR COURT
Issued Mandate to Superior Court with Copy of Decision

15. 10-May-2024 ---CASE STATISTICALLY TERMINATED---