

## No Relief from the Ballot-Petition Signature Requirements for Arizona Initiatives During a Pandemic

*Arizonans for Fair Elections v. Hobbs*  
(*Dominic W. Lanza, D. Ariz. 2:20-cv-658*)

A district judge declined to order Arizona to accept electronic signatures to get initiatives on the November ballot during social distancing made necessary by a global infectious pandemic. The judge was not confident that the proposed remedy would not conflict with Arizona's constitution, which the plaintiffs had not challenged. Moreover, the judge was not convinced that the pandemic would persist or that the plaintiffs could not have qualified their initiatives for the ballot had they collected the signatures required before the pandemic.

*Subject:* Ballot measures. *Topics:* Ballot measure; getting on the ballot; Covid-19; intervention; matters for state courts; laches.

Two organizations formed to promote two ballot initiatives and a voter filed in the District of Arizona a federal complaint against state and county election officials on the afternoon of April 2, 2020, seeking relief from ballot-petition signature requirements for initiatives in light of social distancing necessary because of the global Covid-19 infectious pandemic.<sup>1</sup> In particular, the plaintiffs sought an injunction requiring the defendants to accept electronic signatures.<sup>2</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>3</sup>

On the next day, Judge Dominic W. Lanza set the case for hearing on April 14.<sup>4</sup> On April 10, he issued a docket-text order providing the news media and other members of the public with instructions on how to listen to the telephonic hearing, cautioning that audiotaping the proceeding would be prohibited.<sup>5</sup> There were approximately sixty persons on the call, although only a few needed to speak, and the telephonic hearing went well.<sup>6</sup> Judge Lanza began with an allusion to the ground rules:

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1. Complaint, *Arizonans for Fair Elections v. Hobbs*, No. 2:20-cv-658 (D. Ariz. Apr. 2, 2020), D.E. 1; Scheduling Order, *id.* (Apr. 3, 2020), D.E. 9; *Arizonans for Fair Elections v. Hobbs*, 454 F. Supp. 3d 910, 916 (D. Ariz. 2020).

2. Complaint, *supra* note 1, at 13–14, 21.

3. Motion, *Arizonans for Fair Elections*, No. 2:20-cv-658 (D. Ariz. Apr. 2, 2020), D.E. 29; *Arizonans for Fair Elections*, 454 F. Supp. 3d at 916.

4. Scheduling Order, *supra* note 1; *Arizonans for Fair Elections*, 454 F. Supp. 3d at 917; *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 261, 265 (D. Ariz. 2020); see Transcript, *Arizonans for Fair Elections*, No. 2:20-cv-658 (D. Ariz. Apr. 14, 2020, filed Apr. 15, 2020), D.E. 102.

Tim Reagan interviewed Judge Lanza for this report by telephone on August 17, 2020.

5. Docket Sheet, *Arizonans for Fair Elections*, No. 2:20-cv-658 (D. Ariz. Apr. 2, 2020) (D.E. 68); see *Arizonans for Fair Elections*, 454 F. Supp. 3d at 917.

6. Interview with Hon. Dominic W. Lanza, Aug. 17, 2020 (noting appreciation for the

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I know that before we came on board the courtroom deputy spoke to you about the ground rules so that we can all understand each other. But please keep your phone on mute unless you are speaking. And I will let each party know when it's their turn to speak so that there's no confusion.<sup>7</sup>

On April 9, Judge Lanza granted Arizona's April 6 motion to intervene.<sup>8</sup> "Although the Court understands Plaintiffs' objection to the State's intervention request from a tactical standpoint, the issues raised here are too important to be resolved through a one-sided process where all parties agree with each other."<sup>9</sup> On April 10, Judge Lanza denied an April 8 motion to intervene by the leaders of Arizona's legislature, because the legislature's interests were already adequately represented by the state.<sup>10</sup>

Judge Lanza dismissed the action on April 17.<sup>11</sup> Although the plaintiffs argued that their proposed remedies would substantially comply with Arizona's constitution, Judge Lanza could not be certain that they were right, and the plaintiffs did not seek an injunction against constitutional provisions in their complaint.<sup>12</sup> In addition, "although it is impossible to predict how the pandemic will play out in the coming weeks and months, it is possible that conditions will abate to the point that in-person signature gathering again becomes viable before the July 2020 submission deadline for signatures."<sup>13</sup> Judge Lanza also noted that the plaintiff organizations could have collected the required number of signatures before the pandemic hit.<sup>14</sup>

After Arizona's supreme court also declined to order Arizona to accept electronic signatures,<sup>15</sup> the federal plaintiffs dismissed an appeal voluntarily.<sup>16</sup>

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authorization to invite public auditing of the hearing).

7. Transcript, *supra* note 4, at 6.

8. *Arizonans for Fair Elections*, 335 F.R.D. 261; Intervention Motion, *Arizonans for Fair Elections*, No. 2:20-cv-658 (D. Ariz. Apr. 6, 2020), D.E. 46; *see* *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 269, 273 (D. Ariz. 2020).

9. *Arizonans for Fair Elections*, 335 F.R.D. at 269.

10. *Arizonans for Fair Elections*, 335 F.R.D. 269; Intervention Motion, *Arizonans for Fair Elections*, No. 2:20-cv-658 (D. Ariz. Apr. 8, 2020), D.E. 60.

11. *Arizonans for Fair Elections v. Hobbs*, 454 F. Supp. 3d 910, 910 (D. Ariz. 2020); *see* Howard Fischer, *Judge Throws Out Petition Groups' Request to Collect Signatures Online*, *Ariz. Daily Star*, Apr. 18, 2020, at B1.

12. *Arizonans for Fair Elections*, 454 F. Supp. 3d at 917–20.

13. *Id.* at 915.

14. *Id.* at 925–26.

15. Opinion, *Arizonans for Second Chances v. Hobbs*, No. CV-20-98-SA (Ariz. Sept. 4, 2020); *see id.* at 4 (noting a May 13, 2020, decision); *see also* Andrew Oxford, *Arizona Supreme Court Rejects Bid for Gathering Signatures Online*, *Ariz. Republic*, May 14, 2020, at A10.

16. Order, *Arizonans for Fair Elections v. Hobbs*, No. 20-15719 (9th Cir. May 19, 2020).