SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-007964 07/31/2020

HONORABLE CHRISTOPHER COURY

CLERK OF THE COURT
L. Stogsdill
Deputy

JAIME A MOLERA, et al.

DOMINIC E DRAYE
BRETT W JOHNSON

v.

KATIE HOBBS, et al.

KARA MARIE KARLSON

ROOPALI HARDIN DESAI
DAVID ANDREW GAONA

VERDICT

The Court has reviewed and considered all filings in the case, together with all legal authorities, evidence admitted at trial, and arguments. After taking this matter under advisement, the Court now issues its verdict.

FACTS AND PROCEDURAL HISTORY

Defendant Invest in Education ("IIE") has proposed to place on the 2020 General Election Ballot the Invest in Education Act, I-31-2020 (the "Initiative"). Plaintiffs argue that it is legally improper for the Initiative to appear on the ballot for the 2020 General Election for two reasons: (i) because the 100-word description of principal provisions of the Initiative was fraudulent or substantially confusing to reasonable Arizona voters, and therefore did not comply with A.R.S. § 19-102(A); and (2) because compensation paid to petition circulators did not comply with A.R.S. § 19-118.01.

A. GENERAL.

THE COURT FINDS as follows:

1. Count I of Plaintiffs' Complaint seeks declaratory relief. Arizona's Declaratory Judgment Act is codified at A.R.S. § 12-1831, *et seq.* An actual and justiciable controversy exists, and such judgment or decree will terminate the uncertainty and controversy giving rise to this proceeding. A.R.S. § 12-1836.

2. Count II of Plaintiffs' Complaint seeks injunctive relief. Injunctive relief is properly entered where the party applying for the injunction is entitled to the relief demanded and that such relief requires the restraint of a prejudicial act, or when it appears that a party is about to act in violation of rights of the applicant so as to render the judgment ineffectual, or when the applicant is entitled to an injunction under the principles of equity. A.R.S. § 12-1801

3. Count III of Plaintiffs' Complaint seeks a writ of mandamus. A.R.S. § 12-2021 establishes that this Court may issue writs of mandamus, and specifically provides: "A writ of mandamus may be issued by the supreme or superior court to any person, inferior tribunal, corporation or board, though the governor or other state officer is a member thereof, on the verified complaint of the party beneficially interested, to compel, when there is not a plain, adequate and speedy remedy at law, performance of an act which the law specially imposes as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person." Relief previously obtained through a writ of mandamus must now be obtained in a Special Action. Rule 1(a), *Arizona Special Action Rules of Procedure*. A special action is appropriately taken where, as here, no equally "plain, speedy and adequate remedy by appeal exists." *Id.*; *Andrews v. Willrich*, 200 Ariz. 533, 535 (App. 2002).

4. This Court has jurisdiction and venue is proper.

5. Plaintiffs have standing. Under Arizona law, "[a]ny person may contest the validity of an initiative . . . [and] may seek to enjoin the secretary of state or other officer from certifying or printing the official ballot for the election that will include the proposed initiative or referendum and to enjoin the certification or printing of the ballot." A.R.S. § 19-122.

B. THE INITIATIVE'S 100-WORD SUMMARY.

A.R.S. § 19-102(A) requires proponents of an initiative to insert on the petition sheets ". . . a description of no more than one hundred words of the principal provisions of the proposed measure . . . ." The Arizona Supreme Court, when interpreting and applying this statute in 2018, instructed as follows:

> The description need not be impartial. *See Save Our Vote, Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 152 ¶ 28, 291 P.3d 342, 349 (2013). Nor must the description detail every provision, as the statutorily required disclaimer acknowledges. [A.R.S.] § 19-102(A). However, the description will require us to invalidate the petition if "it is fraudulent or creates a significant danger of confusion or unfairness." *Save Our Vote*, 231 Ariz. at 152 ¶ 26, 291 P.3d at 349 (citation omitted).

Molera v. Reagan, 245 Ariz. 291, 295 ¶13 (2018). Consequently, for Plaintiffs to prevail, the Court must conclude that the 100-word description of the Initiative's principal provisions is either fraudulent or creates a significant danger of confusion or unfairness for a reasonable Arizona voter. When doing so, the Court must "consider the meaning a reasonable person would ascribe" to the 100-word description in context. *Ariz. Chapter of the Associated Gen. Contractors of America v. City of Phoenix*, 247 Ariz. 45, 48 (2019). The legal standard enumerated in *Molera* is an objective, fact-intensive standard. Although the legal standard focuses on whether a description would create a significant danger of confusion or unfairness to ***a reasonable Arizona voter***, it does not require proof that a description would create a significant danger of confusion or unfairness to ***all reasonable Arizona voters.***

THE COURT FINDS as follows:

6. The 100-word description of the Initiative states:

> The Invest in Education Act provides additional funding for public education by establishing a 3.5% surcharge on taxable income above $250,000 annually for single persons or married persons filing separately, and on taxable income above $500,000 annually for married persons filing jointly or head of household filers;

dedicates additional revenue to (a) hire and increase salaries for teachers, classroom support personnel and student support services personnel, (b) mentoring and retention programs for new classroom teachers, (c) career training and post-secondary preparation programs, (d) Arizona Teachers Academy; amends the Arizona Teachers Academy statute; requires annual accounting of additional revenue.

7. The following five provisions (collectively, the "Omitted Provisions") of the Initiative were not included in the 100-word description:

   a. The percentages of revenues to be distributed to the enumerated groups pursuant to the Initiative (the "Distribution");

   b. The amount of the increase in the marginal rate of taxation created by the "surcharge" on those who are subject to the "surcharge" (the "Marginal Surcharge Increase");

   c. The fact that the "surcharge" would apply to business income that was passed along to single and joint tax filers whose taxable income exceed the threshold (the "Business Income Treatment");

   d. The fact that the Initiative curtails the authority of the Legislature by preventing it from supplanting the revenues raised by the "surcharge" (the "No Supplant Clause");[1] and

   e. The fact that the Initiative attempts to circumvent the local revenue spending limits of Article IX, § 21 of the Arizona Constitution (the "Local Revenue Clause").[2]

[1] Proposed A.R.S. § 15-1284(E) [Exh. 1 at 01-006].

[2] Proposed A.R.S. 15-1285(1) [Exh. 1 at 01-007].

8. The Arizona Supreme Court has defined a "principal provision" to mean "'most important, consequential or influential,' 'chief,' and 'a matter or thing of primary importance.'" *Molera*, 245 Ariz. at 297 ¶ 24 (quoting *Sklar v. Town of Fountain Hills*, 220 Ariz. at 453). The Arizona Supreme Court further elaborated that the "purpose of the petition description is to inform prospective signers of the measure's principal provisions so they may determine whether to endorse it for the ballot." *Id.* at 297 ¶ 27. The Arizona Supreme Court went on to explain in *Molera* how enforcement of the 100-word description protects Arizona voters: "Our failure to determine whether the description omits a principal provision before the measure appears on the ballot would reward sloppy or even deceptive drafting, and would render the statutory transparency requirement meaningless because it would allow a measure to proceed even if voters signing the petition were not made aware of principal provisions." *Id*. at 298 ¶ 27.

9. Each of the Omitted Provisions is a principal provision.

    a. The Distribution of the funds generated by the Initiative is a principal provision. How the money was going to be disbursed – and to whom it would be paid – are consequential matters of importance. The 100-word description, however, omits the fact that 50% of the funds were to be paid to "teachers, classroom support personnel and student support services personnel." To some reasonable voters, devoting 50% of the money generated by the Initiative directly to teacher salaries may have sounded too rich; to other reasonable voters, devoting 50% of the money raised directly to teacher salaries may have sounded too modest.[3] The failure to disclose the Distribution in the 100-word description constitutes the omission of a principal provision.

    b. The Marginal Surcharge Increase is a principal provision of the Initiative. The Arizona Supreme Court directly addressed this in *Molera* when it

[3] The Court notes that, when recruiting other circulators for the Initiative, Colby Jensen (a professional circulator brought to Arizona from Oregon to gather signatures for the Initiative and other ballot measures), advertised on Craigslist: "Arizona's teachers earn less than they do in 45 other states. They need our help!" [Exh. 7] That a non-resident was advertising the need to increase salaries for teachers evidences the materiality of the Distribution.

noted: "The petition's description of the magnitude of the tax increase on wealthy taxpayers 'creates a significant danger of confusion.' (citation omitted) The petition description stated that the measure would increase taxes on wealthy Arizonans by 3.46% and 4.46%, which on its face seems modest. However, the affected tax rates would actually increase by seventy-six and ninety-eight percent, respectively. This difference is so significant that it could materially affect whether a person would sign the petition, as it is one thing to increase someone's taxes between three and four percent and another to nearly double them." 245 Ariz. at 298 ¶ 29. IIE, however, disregarded *Molera* and tried again to couch this significant marginal tax increase in terms of "modest" percentages ("a 3.5% surcharge on taxable income"). Here, as in *Molera*, the 100-word description does not inform signers that the "surcharge" would increase the marginal tax rate on those subject to the "surcharge" by 77.7%. The failure to disclose the Marginal Surcharge Increase constitutes an omission of a principal provision.[4]

c. The Business Income Treatment is a principal provision of the Initiative. Under applicable tax law, income generated by businesses – sole proprietorships, limited liability companies, S-corporations, and partnerships – that is not paid at the business level "passes-through" to individuals and is captured as taxable income of the business owners. This "pass-through" business income is taxed at the individual level. The 100-word description does not alert signers that this "pass-through" "business" income would be subject to the "surcharge" if it was part of an individual or married couple's taxable income exceeding the

[4] The Court notes that Defendant IIE's expert, Dr. Jon. Krosnick, when directly questioned by the Court, admitted that failing to include a marginal tax rate above a threshold was one factor making a statement confusing to people. Dr. Krosnick's testimony was focused on a survey of registered Arizona voters. It is a distinction without a difference that the confusion about which Dr. Krosnick testified involved Arizona voters completing a survey about a ballot measure, as opposed to signing a petition to support a ballot measure.

applicable threshold. For this Initiative – one creating a "surcharge" – the income subject to the "surcharge" is a principal provision.[5]

d. The "No Supplant Clause[6]" is a principal provision of the Initiative. Although Arizona's Voter Protection Act would protect monies raised from the "surcharge" from being swept by the Arizona Legislature to other areas of government, IIE drafted the Initiative to ensure that the Legislature could not reduce, or supplant, ***other*** money for public education because of the funds raised pursuant to the "surcharge." The No Supplant Clause, therefore, limits the power and authority of the Arizona Legislature. Curtailing the discretion, authority, and operations of the Legislature as it relates to funding public education – a function of the Legislature pursuant to Article IV, § 9 of the Arizona Constitution – is a principal provision. The failure to refer to the No Supplant Clause in the 100-word description constitutes an omission of a principal provision.

e. The Local Revenue Clause is a principal provision of the Initiative. Article IX, § 21 of the Arizona Constitution establishes aggregate expenditure limits for school districts. These limits, based on cost-of-living adjustments and student population changes, apply to "receipts of any kind whatsoever received by or for the account of a school district." Arizona Constitution, Art. IX, Sec. 21(4)(c).[7] Again, the Initiative's mandate to raise and spend funds, notwithstanding the Article IX, § 21 limits, is principal provisions. The complete failure to mention Article IX, § 21 limits, or local revenues, in the 100-word description constitutes an omission of a principal provision.

[5] Although the factual testimony of Plaintiff's expert, Jim Rounds, was considered, the Court did not need to, and therefore did not, consider the expert opinions of Mr. Rounds when making this decision. Defendant IIE's Rule 702 motion to strike, therefore, is denied as moot.

[6] Under the Initiative, the Legislature "may not supplant, replace or cause a reduction in other funding sources." Proposed A.R.S. § 15-1284(E) [Exh. 1 at 01-006]

[7] The Initiative's proponents submitted the Initiative to Legislative Council, and were informed of the possible unconstitutionality of the terms inconsistent with Art. IX, Sec. 21. [Exh. 2]

10. Each of the Omitted Provisions, standing alone, fails to comply with A.R.S. § 19-102(A).

11. The failure to include each Omitted Provision, standing alone, in the 100-word description created a significant danger of confusion or unfairness to a reasonable Arizona voter. Omitting the Distribution created a substantial danger of confusion to a reasonable Arizona voter who may believe that more or less than 50% of the funds raised would be used to increase teacher salaries (for example, that substantially all money raised by this Initiative would fund increased teacher salaries). Omitting any reference to the Marginal Surcharge Increase created a substantial danger of confusion to reasonable Arizona voter about how profoundly taxes are being increased for those paying the "surcharge." Omitting any reference to Business Income Treatment created the substantial danger that a reasonable Arizona voter failed to appreciate that business "pass-through" income would be subject to this new tax. Omitting any reference to the No Supplant Clause created the substantial danger of confusion for a reasonable Arizona voter, who would not be put on notice that the Initiative limited Legislative discretion and authority when funding education. And, omitting any reference to the Local Revenue Clause created the substantial danger of confusion for a reasonable Arizona voter, who might not appreciate the limits imposed by the Local Revenue Clause in the Arizona Constitution, and/or appreciate that the Initiative was an attempt to change and/or circumvent Constitutional spending limits.

12. Failing to include all the Omitted Provisions, in the aggregate, creates a significant danger of confusion or unfairness to a reasonable Arizona voter.

13. The 100-word description is misleading by its omission of principal provisions.

14. In addition to omissions, the use of the term "surcharge" in the 100-word description created a substantial likelihood of confusion for a reasonable Arizona voter. In 2018, IIE was afforded a luxury few litigants receive: an Arizona Supreme Court decision discussing how to phrase the proposed tax increase. *Molera*, 245 Ariz. at 298, ¶ 29. Instead of using the phrasing that had been blessed by the Arizona Supreme Court, IIE chose to use different language,

as was its right. Rather than calling this a tax increase, IIE used the phrase "surcharge" – an undefined term that has been used in only two other tax laws in Arizona. Under Arizona law, "[w]here the description lends itself to two sharply divergent interpretations with very different and significant ramifications, the danger of confusion is sufficiently great that it undermines any assurance that the voters received adequate notice of what they were signing." *Id.* at ¶ 31. Although the use of the term "3.5% surcharge on taxable income" may be perfectly understood by some Arizona voters to be permanently adding 3.5 percentage points to the taxation rate – an increase 77.7% in the tax rate on taxable income above the threshhold – others reasonable Arizona voters may understand a "surcharge" to mean a temporary tax, or to mean a modest 3.5% increase of the existing tax rate. The use of the term "surcharge" creates a substantial likelihood of confusion for a reasonable Arizona voter.

15. In an attempt to salvage the 100-word description, Defendant IIE argues that people signing the petition for the Initiative simply could have read the actual language of the full text. This argument is unpersuasive for two reasons:

    a. The Arizona Supreme Court has rejected this argument expressly in *Molera*, noting: "To hold that such a confusing description is permissible because the truth may be discovered in the many pages of the initiative, or that the proponents actually intended something different from what the words they chose to use indicate, is to eviscerate the description requirement and its important purposes of transparency, fairness and disclosure." 245 Ariz. at 299 ¶ 32.

    b. If a reasonable Arizona voter was inclined to read all 9 pages of the Initiative, review of the proposed Initiative likely would begin on page 1, with the "Findings and declaration of purpose" section. [8] Reviewing this

[8] This section provides as follows:

"The People of the State of Arizona find and declare as follows: (1) All Arizona students deserve a certified, qualified teacher in their classrooms and to learn in the safest possible environment, (2) Years of underfunding by the Arizona Legislature have led to crisis-level teacher shortages and woefully inadequate

> section magnifies the significant risk of confusion resulting from the failure to mention the Omitted Provisions in the 100-word description – most notably with respect to the omission of the Distribution and No Supplant Clause of the Initiative. Review of the "Findings and declaration of purpose" section at the beginning of the Initiative gives the distinct impression that money is being raised for teachers – who are mentioned in each of the three numbered paragraphs. Nothing in the "Findings and declaration of purpose" section offers any indication to a reasonable Arizona voter that no more than 50% of the revenues being raised would be used for classroom teacher[9] salaries, nor is there any indication of a change to the structure of Legislative authority and discretion as it relates to school funding.

16. The 100-word description fails to comply with A.R.S. § 19-102(A). Plaintiff's objection to the Initiative's 100-word description has been proven.

C. COMPENSATION OF PETITION CIRCULATORS.

A.R.S. § 19-118.01(A) provides in pertinent part: "A person shall not pay or receive money or any other thing of value ***based on the number of signatures collected*** on a statewide initiative or referendum petition." (Emphasis added.) This statute is not ambiguous. The Court affirms its prior ruling that the plain language of the statute will be applied in this case.

THE COURT FINDS as follows:

17. Hourly baseline salaries for petition circulators do not violate A.R.S. § 19-118.01(A). Paying a circulator by the hour or by the day is consistent with this

> support services. (3) Additional permanent funding is needed to develop, recruit and retain qualified teachers, hire counselors, close the achievement gap, improve career and vocational education for Arizona students, prepare Arizona students for good jobs and careers and meet Arizona employers' need for a skilled workforce."

[9] Given the definition of "teacher" in the Initiative, it is highly likely that less than 50% of the money raised by this proposed "surcharge" would end up in the salaries of actual classroom teachers as they are commonly understood in the common vernacular.

standard. Similarly, it is legitimate to increase, ***in advance***, the compensation paid to a petition circulator. Like any other employer, if an employee (a petition circulator) previously has performed job responsibilities well and in accordance with company policy, an employer is within its right to exercise discretion and increase future hourly compensation. Plaintiffs have failed to prove that pay raises were automatic and not discretionary. Likewise, it is absolutely appropriate to decrease the compensation (or terminate employment) for employees who have failed to perform their job responsibilities. Nothing about these standard employment decisions offends A.R.S. § 19-118.01(A).

18. Plaintiffs have not proven that the "spin the wheel" program conducted at the "signature turn-in" events held every Monday in June 2020 violated A.R.S. § 19-118.01(A). There was no correlation to actual number of signatures turned in and a circulator's ability to "spin the wheel." This program appeared to be used to enhance morale among petition circulators, and Plaintiffs have not proven that it was used to compensate for signatures. Similarly, Plaintiffs have not proven that retention and recruitment / referral bonuses were in any way correlated to the number of signatures obtained by a circulator.

19. Plaintiffs have proven that several bonus programs utilized by Petition Partners violated A.R.S. § 19-118.01(A) because, under these bonus programs, petition circulators were compensated, in part, based on the number of signatures collected. IIE's agent, Petition Partners, advertised to circulators that eligibility for these bonuses hinged on the number of "sets" – signatures for multiple initiative petitions – that the circulator obtained. Although Petition Partners provided testimony that actual performance was not considered, this testimony is not particularly credible, given the contradictory testimony of the owner of Petition Partners, Andrew Chavez, and his focus on the importance of productivity.

20. Petition circulators for the Initiative had the opportunity to earn something of value, above and beyond their hourly salary, based in part on the number of

signatures gathered, by participating in the following programs that violate A.R.S. § 19-118.01(A) (the "Offending Programs"):[10]

i. "Dual for the dollars" / "clash for the cash": This bonus program was a "competition where two circulators dual head to head and see who can collect more signatures during the week." The circulators competed for a cash prize. [Exh. 10 at 10-010 through 10-013]

ii. Productivity bonuses. [Exh. 10 at 10-019 through 10-021]

iii. The "2020 …. show me the MONEY" giveaway program. [Exh. 28]

iv. Weekend warriors. [Exh. 29; Exh. 10 at 10-007]

21. Pursuant to A.R.S. § 19-118.01(A), "[s]ignatures that are obtained by a paid circulator who violates this section are void and shall not be counted in determining the legal sufficiency of the petition."

22. Plaintiffs argue that ***all signatures*** obtained by Petition Partners are void unless IIE can prove that paid circulators were not involved in bonus programs. The Court disagrees. The Legislature enacted A.R.S. § 19-118.01(A) to invalidate only the signatures of a "paid circulator"[11] and not all signatures of ***the person paying*** the circulator.[12] The plain language of the statute will be applied. Plaintiffs' burden is to prove which circulators were improperly paid.

[10] The Court's determination that violations occurred are made using the applicable civil burden of proof. The elevated burden of proof for criminal cases – beyond a reasonable doubt – has not been applied in this case when making findings relating to compliance with A.R.S. § 19-118.01.

[11] A "paid circulator" means "a natural person who receives monetary or other compensation for obtaining signatures on a statewide initiative or referendum petition or for circulating statewide initiative or referendum petitions for signatures." A.R.S. § 19-118(A).

[12] If the desire exists to invalidate all signatures gathered by a person or company paying improper bonuses, such as those paid in the Offending Programs, legislation is required. The plain language of A.R.S. § 19-118.01 does not compel or permit such widespread invalidation, as written.

23. All signatures are presumptively valid. *Kromko v. Superior Court*, 168 Ariz. 51, 58 (1991). Plaintiffs have the burden to prove which signatures are invalid because paid circulators had their compensation linked to the number of signatures obtained. This is not the burden of the Defendants.

24. Plaintiffs have overcome the presumption of validity with respect to all paid circulators who received bonus money from participating in the Offending Programs. Because paycheck stubs do not identify whether bonuses paid by Petition Partners resulted from Offending Programs, or other programs which paid acceptable bonuses to circulators, the Court is left to consider Petition Partners' "Payroll Prep Sheets."

25. Petition Partners compensated circulators weekly. Consequently, because Plaintiffs have overcome the presumption of validity, all signatures gathered by a circulator during the week the circulator received an improper bonus are presumptively void. However, if no improper bonus was paid during the following week(s) to that circulator, the taint of the prior improper payment is purged and the signatures gathered in the following week(s) are presumptively valid.[13]

26. Defendant IIE's argues that payment for "sets" does not amount to compensation for signatures. This argument is not credible. "Sets" means a set of signatures for multiple ballot proposals. Whether compensation is paid for signatures on one ballot measure or multiple ballot measures, payment and receipt of anything

[13] Arizona election law provides little guidance about the actual standard to be used. Because of the plain language of the statutes, and because the Legislature did not say that "all" signatures ever obtained by a circulator receiving an improper benefit for signatures (or by agents of a person who pays improper bonuses) were void, the Court is applying the long-standing "fruit of the poisonous tree" jurisprudence, commonly used with respect to the Exclusionary Rule in criminal cases. All signatures (i.e. "fruit") obtained by a circulator during a week in which the circulator received an improper bonus payment (the "poisonous tree") are void. However, signatures gathered by the circulator during the next pay period in which no improper bonus was paid (i.e. evidence attenuated in time so as to purge the taint of the primary illegality) are presumptively valid once again. *See generally, Wong Sun v. United States*, 371 U.S. 471 (1963).

of value to compensate a paid circulator based on signatures gathered violates A.R.S. § 19-118.01.

27. As stated, the best evidence of bonuses paid from Offending Programs comes from a detailed review of Exhibit 67 – the "Payroll Prep Sheets." After reviewing Exhibit 67, Plaintiffs have proven that the weekly compensation of 146 circulators included improper payments for signatures through an Offending Program. This is broken down as follows:

Week	**Number of circulators receiving improper bonuses during the week in question**
February 19	0
February 26	0
March 4	1
March 11	7
March 18	2
March 25	1
April 1	1
April 8	1
April 15	1
April 22	0
April 29	0
May 6	1

May 13	1
May 20	1
May 27	2
June 2	9
June 10	10
June 17	8
June 24	54
June 29-30	23
July 8	21
July 15	2
TOTAL	**146 instances where an employee's weekly pay included an improper bonus pursuant to A.R.S. § 19-118.01**

28. Defendant IIE has failed to credibly rebut Plaintiffs' evidence that the weekly compensation of Petition Partners' employees does not violate A.R.S. § 19-118.01 during these 146 instances.

29. Plaintiffs have requested that the Court temporarily enjoin the Initiative from being placed on the ballot so that they can discover exactly how many signatures were obtained by the circulators during weeks in which improper bonuses from Offending Programs were paid. The record is devoid of evidence identifying how many signatures were gathered during each of the 146 instances identified by the Court. Plaintiffs make a persuasive policy argument that failing to issue

an injunction will encourage companies like Petition Partners from keeping adequate records in the future.

30. The Court, however, declines to issue a temporary injunction to permit Plaintiffs' requested discovery – not because Plaintiffs have not demonstrated the payment of improper bonuses, but instead because Plaintiffs have failed to demonstrate evidence supporting the issuance of a temporary injunction. Under Arizona law, a temporary injunction can be issued when a party demonstrates, among other things, a strong likelihood of success on the merits. Plaintiffs have failed to make a sufficient showing in this regard in that they have not demonstrated that injunctive relief is likely to result in the invalidation of a sufficient number of signatures to make a difference with respect to Plaintiff's second objection.

31. Based on the evidence presented at trial, the most productive circulators would obtain a maximum of 12 sets of signatures per hour. Although some circulators worked more than 40 hours per week, many circulators worked less than 40 hours per week. If each circulator worked full time (a 40 hour week), and obtained the maximum number of signatures every hour (12 per hour), a full-time circulator working with maximum productivity would be expected to obtain approximately 480 signatures in a week. Using these maximum weekly productivity figures, the 146 weeks during which circulators received an improper bonus pursuant to A.R.S. § 19-118.01 from an Offending Program would have yielded 70,080 void signatures. (40 hours per week x 12 signatures per hour = 480 signatures per week x 146 circulator-weeks of void signatures = 70,080 void signatures). The Court believes that these approximations likely would invalidate more signatures than would be invalidated had Plaintiffs introduced actual records in evidence.

32. To appear on the General Election ballot, the proponents of the Initiative needed to obtain 237,645 signatures. After review, the Secretary of State approved 377,456 signatures in support of the Initiative. Assuming *arguendo* that not one of the signatures approved by the Secretary of State was obtained during the 146 weeks that a circulator was paid an improper bonus, the disqualification of approximately 70,080 signatures still would leave the Initiative with over

300,000 valid signatures – which is well in excess of the legal requirement. Consequently, a temporary injunction is unlikely to change the result with respect to Plaintiffs' second objection. Therefore, because Plaintiffs have failed to demonstrate a reasonable likelihood of successfully invalidating a sufficient number of signatures pursuant to A.R.S. § 19-118.01, Plaintiffs' request for a temporary injunction is denied.

33. In sum, Plaintiffs have failed to prove their second claim of illegality – namely, that there were an insufficient number of valid signatures filed in support of the Initiative.

D. CONCLUSIONS AND ORDERS.

Two observations are evident at the conclusion of this trial. First, the voluminous briefing and spirited trial presentations manifest that the issue of public school funding has two sides, each firmly dedicated to its own vision of how education should be funded. Second, teachers – and their salaries – appear to be getting caught in the middle of this proverbial tug-of-war.

Defendant Invest in Education elected to lean into the public sentiment from 2018 and drafted this Initiative for Arizona voters, ostensibly advocating for an increase in teacher salaries. This Initiative, however, was about much more than merely raising teacher salaries. IIE chose to couple funding for a teacher salary increase with other material terms – creating other funding for schools, imposing limits on the Arizona Legislature, and attempting to circumvent spending limits in the Arizona Constitution. The Court does not doubt that IIE had noble intentions, and the Court notes that IIE, as the proponent of the Initiative, was well within its rights to fashion the Initiative as it wished.

Where Defendant Invest in Education legally failed was in its obligation to provide transparency to Arizona's voters. IIE's 100-word description failed to identify all of the principal things this broad Initiative actually would do. Because of this lack of transparency, several questions remain, including:

- Would a sufficient number of signatures have been obtained had the description identified the measure for what it was – a new and permanent tax?

- Would a sufficient number of signatures have been obtained if the description revealed that no more than 50% of the revenues raised would be used to increase teacher salaries?

- Would a sufficient number of signatures have been obtained if the description mentioned that, at a certain level, pass-through income from several types of businesses would have been subject to the tax?

- Would a sufficient number of signatures have been obtained if the description identified that the marginal tax rate increased by 77.7% on individuals and married couples who were subject to the tax?

- Would a sufficient number of signatures have been obtained if the description mentioned that the Initiative prohibited the Legislature from ever supplanting the funds,[14] even if the funds collected pursuant to the tax could not be spent under the Arizona Constitution?

The answers to these questions are unknown because IIE omitted principal provisions of the Initiative from its 100-word description.

The unfortunate victims in this case are Arizona's teachers and students. The Court commends Arizona's teachers for their hard-work, dedication and care for Arizona's students, who are the future of our state. Defendant Invest in Education, quite simply, let Arizona's teachers down for the second time since 2018. Although IIE was free to make the Initiative as broad as it wanted – and the Court casts no aspersions on the intentions underlying the proposed legislation – IIE nonetheless was required to be transparent when obtaining signatures. Instead of identifying all principal provisions in the Initiative's description, Defendant Invest in Education circulated an opaque "trojan horse" of a 100-word description, concealing principal provisions of the Initiative. No matter how well-

[14] This question is particularly germane for a ballot measure being circulated in 2020. Indeed, given the current pandemic and public health emergency, reasonable Arizona voters may be particularly sensitive to the benefits of the Legislature having flexibility and authority to apply funds to address the exigent needs of Arizona's citizens. In the current environment, reasonable Arizona voters may be less likely to sign a petition for a ballot measure with a No Supplant Clause.

intentioned IIE's Initiative was, its non-transparent description violates Arizona law. Consequently, this self-inflicted shortcoming will prevent voters from considering this Initiative – a result that understandably will disappoint[15] and trouble teachers, administrators, some education advocates, and many Arizona voters.

Good cause appearing,

IT IS ORDERED finding in favor of Plaintiffs and against Defendant Invest in Education as to Count I. The Court hereby declares that Plaintiffs are entitled to declaratory relief because the Initiative Petition is legally insufficient. The 100-word description does not accurately describe the Initiative's principal provisions without the substantial risk of confusion for a reasonable Arizona voter. Therefore, the Initiative shall not be certified for placement of the statewide General Election ballot for the November 2020 General Election.

IT IS FURTHER ORDERED finding in favor of Plaintiffs and against Defendants as to Count II. Injunctive relief is warranted pursuant to A.R.S. § 19-122(C). Plaintiffs have proven that they are entitled to injunctive relief for multiple reasons. Restraint of the prejudicial act of certifying the Initiative for the general election ballot is needed. Delaying injunctive relief to allow such certification to occur would violate the rights of Plaintiffs, cause irreparable injury, and render future judgment ineffectual. Furthermore, principles of equity compel the issuance of an injunction to protect the initiative process and to prevent the legally-insufficient Initiative from appearing on the general election ballot. The balance of equities and considerations of public policy strongly support the issuance of injunctive relief. Consequently, a permanent injunction is issued enjoining and prohibiting

[15] The disappointing aspect of this case is that IIE ignored the lessons provided by the Arizona Supreme Court in *Molera* in 2018. When a teacher specifically instructs a student exactly how to complete a math problem, and when the student disregards the instruction and does the math problem incorrectly on a future test, should the student receive a passing grade? The simple answer is no. However, it is not unfair for a feeling of disappointment to arise based on the student's performance because the student disregarded the teacher's specific instruction. IIE can be described much like the student in this example. Two years ago, the Arizona Supreme Court in *Molera* identified *exactly* how IIE could accomplish precisely what IIE seeks to accomplish. (IIE was a party in *Molera*.) Despite this extremely rare occurrence in Arizona jurisprudence, IIE disregarded this instruction and elected to craft the Initiative its own way, using terminology from states such as Massachusetts and Maine that Arizona, by and large, does not use. Like an honest teacher, the Court cannot "look the other way," pretend that IIE has done what is required, and allow IIE to pass.

the Arizona Secretary of State from certifying and placing the Initiative on the November 2020 General Election ballot.

IT IS FURTHER ORDERED finding in favor of Plaintiffs and against the Arizona Secretary of State in her official capacity only as to Count III. The Court issues mandamus relief directing the Secretary of State to fully and effectively discharge her non-discretionary duty to reject the Initiative as legally insufficient.

IT IS FURTHER ORDERED, in the exercise of the Court's discretion, that all parties shall bear their own attorneys' fees, costs and expenses in connection with this matter.

IT IS FURTHER ORDERED that, because no further matters remain pending in this case, this Order shall constitute a final Judgment pursuant to Rule 6, *Arizona Special Action Rules of Procedure,* and Rule 54(c), *Arizona Rules of Civil Procedure.*

The parties are notified that Arizona law requires a notice of appeal to be filed within five calendar days after the superior court's decision. *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 the 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 law cases. Ariz. R. Civ. App. P.10.

DATED: July 31, 2020

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Christopher A. Coury
Superior Court Judge