

BEN TOMA
MAJORITY LEADER
1700 WEST WASHINGTON, SUITE H
PHOENIX, ARIZONA 85007-2844
CAPITOL PHONE: (602) 928-3298
TOLL FREE: 1-800-352-8404
btoma@azleg.gov



COMMITTEES:
RULES

DISTRICT 22

Arizona House of Representatives Phoenix, Arizona 85007

September 28, 2022

Katie Hobbs, Arizona Secretary of State
1700 West Washington, Seventh Floor
Phoenix, Arizona 85007-2844

Re: Inadequacy of Referendum Petition No. R-01-2022

Secretary Hobbs:

As you know by now, the proponents of the referendum bearing serial number R-01-2022, which seeks to refer provisions of H.B. 2853 to the statewide ballot, failed to file the minimum number of signatures required for ballot access and suspension of H.B. 2853. Although the Arizona Constitution required Save Our Schools Arizona PAC (the “Committee”) to gather and submit 118,823 signatures, *see* Ariz. Const. art. 4, pt. 1, § 1(3), each of the following four facts shows that its filing lacks the necessary signatures:

1. The Committee filed only 8,175 petition sheets. If every sheet contained the maximum number of permissible signatures (*i.e.*, 15, *see* A.R.S. § 19-121.01(A)(3)(d)), the measure would have only 122,625 signatures. But even a cursory review shows that a very significant portion of the petition sheets filed by the referendum proponents are incomplete. Assuming the Committee gathered 11 signatures per sheet (*i.e.*, the approximate average for statewide ballot measure petitions over the last several election cycles), the measure would have only 89,925 signatures.
2. A petition review team working for the Goldwater Institute and the Center for Arizona Policy has counted all the signatures on each petition sheet using both machine learning technology and doubly redundant human reviews. They found the Committee submitted only 88,866 signatures.
3. Your office relies on petition review software to count the number of signatures on petition sheets. That system has likely already confirmed the petition’s shortfall.
4. The Committee itself “conceded Monday that [its campaign has] likely has fallen short.” *See* Mary Jo Pitzl, ARIZ. REPUBLIC, *Efforts To Let Voters Decide Fate of School Voucher Expansion Likely To Fail, Backers Say* (Sept. 26, 2022).

In short, there is no colorable, good faith basis for believing that the Committee filed 118,823 or more signatures.

You previously issued rules stating that if, “[a]t the time of filing, the purported # of signatures is lower than the constitutional requirement,” your office must “reject [the] entire filing.” See Arizona Secretary of State Katie Hobbs, *2022 Initiative and Referendum Guide* at 12 available at https://azsos.gov/sites/default/files/2022_initiative_and_referendum_guide.pdf. In this instance, however, the Committee falsely inflated its sheet and signature counts, reporting 125% and 160% of the true number of sheets and signatures, respectively. See Letter from State Elections Director Kori Lorick to the Committee, Sept. 23, 2022. The Committee’s false statement to your office was material because it avoided the automatic rejection of the petition under your published rules, caused your office and the referendum opponents alike to incur very significant costs in processing and reviewing the petition, and, as discussed below, interfered with the effective date of the law. Based on the extraordinarily large discrepancies between the truth and the Committee’s representations at the time of filing, some have questioned whether the Committee’s false statements were made knowingly or willfully.

As you know, the Committee had an incentive to falsely report the number of signatures on the petition: The Arizona Constitution provides that a referred law “shall become law when approved by a majority of the votes cast thereon [at the next general election] and upon proclamation of the governor, and not otherwise.” See Ariz. Const. art. 4, pt. 1, § 1(5). In other words, the Committee’s false statement had the effect of throwing sand into the gears of government and improperly delaying the effective date of H.B. 2853. Indeed, since the Committee filed the petition and made its false statements, the Arizona Department of Education (led by a political ally of the Committee) has announced that it has put on hold the processing of all applications for Empowerment Scholarship Accounts authorized by the referred law. See Arizona Department of Education, *Eligibility Requirements & Application: Important Updated Concerning H.B. 2853*, <https://www.azed.gov/esa/eligibility-requirements> (updated Sept. 26, 2022). This is particularly troubling because the deadline for applying for Q1 funding is this Friday, September 30, 2022. *Id.* The Committee’s falsity therefore will soon deny hard-working Arizona families who live in failing school districts the opportunity to secure a better education (and ultimately, better job opportunities) for their children.

Your office is by now aware of all the relevant facts, but so far has not rejected the referendum petition as inadequate. Candidly, we are concerned that the delay may be designed to please your political allies and further a dishonest scheme to interfere with the proper administration of state government. We urge you not to be complicit in the Committee’s potential unscrupulousness, and instead promptly to reject the petition for lacking the minimum number of signatures.

We expect that your office will have formally rejected the referendum petition as legally insufficient no later than the opening of business on Friday morning (*i.e.*, in time for Arizona families to apply for the Empowerment Scholarship Accounts made available by H.B. 2853). If the full and effective implementation of H.B. 2853 continues to be obstructed, the Arizona House of Representatives will exercise its constitutional oversight function in order to find facts and ultimately to determine what, if any, legislation may be required to prohibit, deter, and penalize such dishonesty in future campaigns and administrations, and to ensure that the statutory procedures for filing and processing ballot measure petitions cannot be manipulated to enable such misconduct. We cannot permit activists’ potential lies or government officials’ complicity

therewith to interfere with the operation of state government or the timely implementation of legislative enactments.

We hope you will choose honesty and impartiality over false statements and partisan disorder. If not, the Arizona House of Representatives will get to the bottom of it and pass all appropriate legislation in due course.

Respectfully,

A handwritten signature in black ink, appearing to read "Ben Toma". The signature is stylized with a large initial "B" and a long, sweeping horizontal stroke that ends in a small upward hook.

Ben Toma
Majority Leader
Arizona State House of Representatives