

# ARIZONA SUPREME COURT

JUDITH K. LOHR,  
Plaintiff/Appellant,

v.

SHAWNNA BOLICK, a Republican primary candidate for Arizona House of Representatives in Legislative District 20; KATIE HOBBS, in her official capacity as Secretary of State; ADRIAN FONTES, in his official capacity as Maricopa County Recorder; and MARICOPA COUNTY BOARD OF SUPERVISORS; CLINT HICKMAN, Maricopa County Supervisor; JACK SELLERS, Maricopa County Supervisor; BILL GATES, Maricopa County Supervisor; STEVE GALLARDO, Maricopa County Supervisor,

Defendants/Appellees.

Arizona Supreme Court  
No. CV-20-0129-AP/EL

Maricopa County Superior Court  
No. CV2020-004868

## BRIEF OF *AMICUS CURIAE* ARIZONA ATTORNEY GENERAL IN SUPPORT OF DEFENDANTS/APPELLEES

MARK BRNOVICH  
Attorney General  
State Bar No. 14000

Joseph A. Kanefield (No. 15838)  
*Chief Deputy & Chief of Staff*

Brunn (Beau) W. Roysden III  
(No. 28698)  
*Division Chief*

Jennifer J. Wright (No. 27145)  
*Assistant Attorney General  
Counsel of Record*  
2005 N. Central Avenue  
Phoenix, Arizona 85004  
Telephone: (602) 542-3333  
Facsimile: (602) 542-8308  
Email: Jennifer.Wright@azag.gov

*Attorneys for Amicus Curiae Mark Brnovich, Arizona Attorney General*

## INTEREST OF AMICUS CURIAE

Attorney General Mark Brnovich files this brief in support of Appellees pursuant to Ariz. R. Civ. App. P. 16(b)(1)(B) and with the consent of the parties. As Arizona's chief law enforcement officer, the Attorney General has a duty to protect the rights of Arizonans who serve and protect, as well as the victims who need protection.<sup>1</sup> A.R.S. § 16-153 affords legal protections for law enforcement personnel and victims of domestic violence who, through judicial process, are entitled to shield their residential address from public disclosure ("Secured Registrants"). Fundamentally, Appellant's legal position regarding the interaction of the legal protections in § 16-153 and the requirements for candidates for election would jeopardize the personal safety of Secured Registrants who seek public office. Accordingly, this Court should reject Appellant's contentions and affirm the Superior Court.

## STATUTORY BACKGROUND

More than two decades ago, the Arizona Legislature enacted laws to protect the residential addresses of our judiciary and peace officers from public disclosure.

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<sup>1</sup> "[A]s the chief law enforcement officer of the state, [the Attorney General is] to be heard on matters affecting the state and its citizens." *DeVries v. State*, 219 Ariz. 314, 321 ¶19 (App. 2008). The Attorney General's Office through its Office of Victims Services has responsibilities for overall statewide implementation of the Victims' Bill of Rights and Victims' Rights Implementation Act, Ariz. Const. art. II, § 2.1; A.R.S. §§ 13-4401 et seq.

H.B. 2370, 42<sup>nd</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ariz. 1995). While initially the law protected those who arrested criminals and imposed sentences of guilt, the law was quickly expanded to protect domestic violence victims as well.<sup>2</sup> H.B. 2001, 43<sup>rd</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ariz. 1997). Responding to calls from the Arizona Prosecuting Attorneys' Advisory Council to address threats prosecutors were receiving at their residence, in 2001 the legislature again expanded the law, this time to prosecuting attorneys. *Ariz. Fact Sheet*, H.B. 2083, 45<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Mar. 23, 2001). Over the years, that law has been expanded further to include a comprehensive list of eligible individuals employed in the judiciary and law enforcement.<sup>3</sup>

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<sup>2</sup> In 2018, over 6,000 victims of domestic violence sought emergency shelter in Arizona, with hundreds needing transitional housing and housing intervention. Arizona Department of Economic Security Domestic Violence Services Fund Report SFY 2018 (A.R.S. § 36-3007), [https://des.az.gov/sites/default/files/media/DVSF\\_Report\\_2018.pdf](https://des.az.gov/sites/default/files/media/DVSF_Report_2018.pdf). Once those victims are able to re-establish themselves away from their attacker, A.R.S. § 16-153 enables to those victims to shield their residential address while maintaining their fundamental right to vote.

<sup>3</sup> A.R.S. § 16-153(K) defines “eligible persons” as “former public official, peace officer, spouse of a peace officer, spouse or minor child of a deceased peace officer, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, employee of the department of child safety or employee of adult protective services who has direct contact with families in the course of employment, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment or firefighter who is assigned to the Arizona counter terrorism information center in the department of public safety.”

The unfortunate reality is that Secured Registrants risk their lives daily, either as a result of their selfless desire to serve and protect, or because of a dangerous former domestic partner or associate. And none of these individuals are waived into a protected status lightly. Before a voting record is sealed, the individual must file an affidavit in the appropriate superior court. A.R.S. § 16-153(C). The affidavit requests “the general public be prohibited from accessing the eligible person’s identifying information” and must include “the reasons for reasonably believing that the person’s life or safety” is in danger. A.R.S. § 16-153(A),(B)(3). The presiding judge must review the request and determine whether the request should be granted.<sup>4</sup> A.R.S. § 16-153(E). Once a judge issues an order to seal the Secured Registrant’s records, “[t]he information in the registration shall not be disclosed and is not a public record.” A.R.S. § 16-153(A),(G).

And while A.R.S. § 16-153 (“Secured Registrant Law”) was established to protect judges by sealing their “voter registration record”, judges are constitutionally subject to direct elections and/or retention elections (depending on

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<sup>4</sup> However, domestic violence victims, or others protected under an order of protection or injunction against harassment do not need to separately file an action in the superior court to seal the voter registration records. Instead, the protected person, and household members of the protected person, may present a copy of an order of protection or injunction against harassment with the county recorder to have their record sealed.

population of the county being served). Ariz. Const. art. VI, §§ 12, 35, 38, 40. As elected officials, judicial candidates are required to file nominating paperwork and petitions. A.R.S. §§ 16-311(F), -322(A)(4),(7), -331, -333. Further, law enforcement officers wishing to run for county sheriff, as well as former prosecutors who desire to become county attorney must similarly run for office, and file the appropriate nominating paperwork and petitions. Ariz. Const. art. XII, § 3; A.R.S. § 16-311(F), -314, -322(A)(4).

“Candidate Nominating Laws” which require nominating paperwork and petitions are expressed in A.R.S. §§ 16-311, 16-314, and 16-315.<sup>5</sup> All candidates for office must file a nomination paper “giving the person's actual residence address or description of place of residence and post office address.” A.R.S. § 16-311(A). Candidates must also obtain signatures on nominating petitions with a header that states where the candidate resides. A.R.S. § 16-314(C). Nominating petitions must be signed by the petition circulator, including the “[c]irculator's actual residence address or, if no street address, a description of residence

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<sup>5</sup> According to the trial record, in addition to petitions circulated pursuant to A.R.S. § 16-315, Appellee Bolick also submitted 179 signatures gathered through the Secretary of State’s (“SOS”) “E-Qual” system pursuant to A.R.S. § 16-316. APP044-46, APP116-141. While the SOS has promulgated procedures requiring candidates submitting E-Qual petitions to sign a “Circulator Cover Sheet,” A.R.S. § 16-316 does not so require. Accordingly, there is no statutory basis to exclude signatures gathered through E-Qual based on the use of a post office address on the SOS’s Circulator Cover Sheet; therefore this brief does not address harmonization or substantial compliance with a non-existent statutory requirement.

location.” A.R.S. § 16-315(B). Both A.R.S. § 16-311 and § 16-314 have existed with the residential address requirements since at least 1979 when Arizona relocated and made substantial amendments to Arizona’s election laws. H.B. 2028, 34<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (1979), Chapter 209 § 3. A.R.S. § 16-315 has required a residential address with the circulator affidavit since 1993, before the enactment of A.R.S. § 16-153. S.B. 1046, 41<sup>st</sup> Leg., 1<sup>st</sup> Reg. Sess. (1993), Chapter 98 § 22.

## **ARGUMENT**

### **I. When Harmonized, The Secured Registrant Law And Candidate Nominating Laws Permit Use Of Post Office Address In Lieu Of A Residential Address**

It is no secret that judges, prosecutors, and victims of domestic violence live in constant threat of retaliation from violent criminals. Arizona’s Secured Registrant Law protects those individuals by shielding their private residences from the public domain, allowing the Secured Registrants and their family to be secure in their homes. It defies reason that when the legislature enacted the Secured Registrant Law they intended to leave open a gaping loophole which demands this private information be publicly disclosed through the Candidate Nominating Laws. Accordingly, harmonizing the Secured Registrant Law with the Candidate Nominating Laws plainly permits Secured Registrants to use a post

office address in lieu of their residential address on all types of nominating paperwork.

When interpreting statutes, courts first look to the text itself. *State v. Green*, 248 Ariz. 133, ¶8 (2020) (citing *State v. Burbey*, 243 Ariz. 145, 147 (2017)). Statutes which relate to the same subject matter and thus *in pari materia*, are interpreted to be “harmonious and consistent” even when the statutes are drafted “decades apart without reference to each other.” *Pima Cty. by City of Tucson v. Maya Const. Co.*, 158 Ariz. 151, 155 (1988). When possible, the court will harmonize “apparently conflicting statutes.” *Ariz. Chapter of the Associated Gen. Contractors of Am. v. City of Phx*, 247 Ariz. 45, 47 ¶10 (2019) (citation omitted).

When harmonizing statutes, courts review the history to determine the intent of the legislature and construe statutes to further that intent. *State v. Thomason*, 162 Ariz. 363, 366 (App. 1989). While courts typically look at the plain text, statutes will not be interpreted to frustrate the legislative intent such that it creates an absurd result that is “so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion.” *State v. Estrada*, 201 Ariz. 247, 251 ¶17 (2001).

The Secured Registrant Law was plainly enacted to protect the safety of judges and peace officers. And while the legislature did not expressly amend the Candidate Nominating Laws to reflect these protections, it would undoubtedly

frustrate the legislative intent and create an absurd result to require Secured Registrants to publicly disclose their residential addresses on nominating paperwork and petitions, which would be widely circulated and viewed. If such requirement was demanded, once an individual became a Secured Registrant, they would be foreclosed from running for election or retention without jeopardizing their personal safety.

Judges were among the very first protected by the Secured Registrant Law, yet they are constitutionally required to be elected or retained. It would be completely irrational to think the legislature intended for judges who become Secured Registrants reveal their residential addresses as soon as they were up for retention or re-election. Such a result eviscerates the Secured Registrant Law, giving it no effect.

Instead of this absurd result, the Secured Registrant Law and Candidate Nominating Laws must be harmonized to give each their full effect. If, as in this case, a Secured Registrant seeks election, retention, or re-election, it is rational, natural, and convenient to read the statutes to allow the use of post office address located within the district of the office sought on the nominating paperwork and petitions. Accordingly, when harmonized, the Secured Registrant Law and Candidate Nominating Laws must permit the use of an appropriately located post



office address in order effectuate the legislative intent of protecting the safety and security of Secured Registrants.

## **II. Using A Post Office Address Substantially Complies with Candidate Nominating Laws**

Even if this court disagrees that harmonizing the Secured Registrant Law with the Candidate Nominating Laws demands acceptance of a post office address in lieu of a residential address on publicly disclosed nominating paperwork and petitions, using a post office address substantially complies with Candidate Nominating Laws.

This court has repeatedly held that nominating paperwork and petitions need only substantially comply with the Candidate Nominating Laws. *Sims Printing v. Frohmiller*, 47 Ariz. 561, 567 (1936); *Adams v. Bolin*, 77 Ariz. 316, 321 (1954); *Moreno v. Jones*, 213 Ariz. 94, 102 (2006). This court does not “remove candidates from the ballot for mere technical departures” from the statutory requirements. *Dedolph v. McDermott*, 230 Ariz. 130, 131 ¶3 (2012) (quoting *Bee v. Day*, 218 Ariz. 505, 507 (2008)). To determine if there has been substantial compliance, this court looks to whether the information (or lack thereof) would “confuse or mislead electors.” *Malnar v. Joice*, 236 Ariz. 170, 172 ¶9 (2014) (quoting *Dedolph*, 230 Ariz. at 133 ¶17) (citation omitted); *see also Clark v. Muñoz*, 235 Ariz. 201, 202 (2014); *Kennedy v. Lodge*, 230 Ariz. 134 (2012).

Without question, the fundamental purpose for providing a residential address on nominating paperwork and petitions is to ensure candidates are qualified electors residing within the political division being represented. Ariz. Const. art. VII, § 15; *see also* Op. Atty. Gen. No. 62-77-L. When a candidate submits nominating paperwork, it serves as public affirmation that the candidate meets the constitutional requirements to serve in that position. Further, when an elector signs a candidate's petition, the residential address confirms to the signing elector that the candidate lives in the elector's political subdivision. If a candidate submitted nominating paperwork or petitions intending to misrepresent residency in an effort to circumvent constitutional residency requirements, the candidate should be excluded from the ballot. Clearly, such intentional misrepresentations would defraud electors. Substantial compliance could not be found where such deception necessarily confuses and misleads electors.

In this instant case, however, all parties agree the candidate meets the constitutional residency requirements. APP108. All parties similarly agree that the post office address used in her nominating paperwork and petitions is squarely located within that same legislative district in which she resides. *Id.* Further, all parties agree that her address is protected pursuant to the Secured Registrant Law. *Id.*

The preliminary question before the court is: does the use of a post office address, located within the political subdivision of the office sought, mislead or confuse electors. This court has already disposed of this precise issue, by stating “providing accurate information as to the city, county, state, and zip code” matching the candidate’s actual physical residence was not likely to “cause confusion or to mislead electors.” *Baker v. Saban*, No. CV-16-0140-AP/EL, Ariz. Sup. Ct., Decision Order dated June 29, 2016.<sup>6</sup>

But a more precise question of statewide concern is revealed in this case which was absent in *Saban*. Namely, does a Secured Registrant substantially comply with Candidate Nominating Laws by providing an appropriately located post office address throughout nominating paperwork and petitions? Arizona’s legislature specifically intended to protect residential addresses from public disclosure through the Secured Registrant Law. *Supra*. Public policy considerations coupled with fact that this court already has held that use of an appropriately located post office address does not confuse or mislead electors supports a holding which clarifies that the Secured Registrant Law extends throughout title 16 where a residential address would be a part of the public record.

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<sup>6</sup> Pursuant to Ariz. R. Sup. Ct. 111(c), a copy of the decision order can be found in the record at APP074.

To be clear, such a holding would not imply an individual may use the Secured Registrant Law to circumvent constitutional residency requirements. In fact, a Secured Registrant who shields their residential address on nominating paperwork and petitions through use of a post office address can still be challenged as to qualifications pertaining to residency. A.R.S. § 16-351(B). Arizona courts are more than adept at securely verifying the residency of the candidate through judicial proceedings. Further, such a holding need not extend throughout title 16 in circumstances where candidates failed to avail themselves of the Secured Registrant Law. In *Saban*, the candidate had not obtained a judicial order to protect his address through the Secured Registrant Law. Accordingly, while use of a post office address may be acceptable on petitions generally, this court could find that other nominating documents, such as nominating papers, must still include a residential address, unless the candidate has availed themselves of the Secured Registrant Law. Such a narrow holding would uphold the legitimacy of the nominating process while protecting Secured Registrants.

### **CONCLUSION**

This case has two reasonable and legitimate ways to find in favor of the Appellee. First, when harmonized, the Secured Registrant Law and the Candidate Nominating Laws permit use of a post office address on nominating paperwork and petitions. Second, use of a post office address by a Secured Registrant

substantially complies with the Candidate Nominating Laws. Holding otherwise risks putting lives in jeopardy and nullifying the legal protections afforded by the Secured Registrant Law by requiring public disclosure of a protected residential address. This Court should use this case to clarify that the protections afforded by the Secured Registrant Law extend to all instances in Title 16 where a residential address would become a public record.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of May, 2020.

MARK BRNOVICH  
Attorney General  
(Firm State Bar No. 14000)

Joseph A. Kanefield (No. 15838)  
*Chief Deputy & Chief of Staff*  
Brunn (Beau) W. Roysden III  
(No. 28698)  
*Division Chief*

Jennifer J. Wright (No. 27145)  
*Assistant Attorney General*  
*Counsel of Record*  
2005 N. Central Avenue  
Phoenix, Arizona 85004  
Telephone: (602) 542-3333  
Jennifer.Wright@azag.gov  
ACL@azag.gov

*Attorneys for Amicus Curiae Mark Brnovich, Arizona Attorney General*