

Arizona Supreme Court

Civil Election Appeal

CV-24-0153-AP/EL

LUCHA/PODER v ADRIAN FONTES, et al.

Appellate Case Information

Case Filed: 15-Jul-2024 Archive on: 28-Aug-2034 (planned)
 Case Closed: 19-Aug-2024

Dept/Composition

Side 1. LIVING UNITED FOR CHANGE IN ARIZONA, et al., Plaintiff/Appellant

(Litigant Group) LIVING UNITED FOR CHANGE IN ARIZONA, et al.

- Living United for Change in Arizona (LUCHA)
- Victory P A C
- Alejandra Gomez
- Oscar De Los Santos

Attorneys for: Plaintiff/Appellant

James E Barton, II, Esq. (AZ Bar No. 23888)
 Jacqueline Mendez Soto, Esq. (AZ Bar No. 22597)
 Daniella Anais Fernandez Lertzman, Esq. (AZ Bar No. 037943)

Side 2. ADRIAN FONTES, et al., Defendant/Appellee

(Litigant Group) ADRIAN FONTES, et al.

- Adrian P Fontes
 AZ Bar No. 22162
 [Current Member]

Attorneys for: Defendant/Appellee

Karen J Hartman-Tellez, Esq. (AZ Bar No. 21121)
 Kara Karlson, Esq. (AZ Bar No. 29407)
 Kyle R Cummings, Esq. (AZ Bar No. 32228)

Side 4. PODER IN ACTION, INC. et al., Plaintiff/Appellant

(Litigant Group) PODER IN ACTION, INC. et al.

- Poder in Action
- Phoenix Legal Action Network
- Florence Immigrant & Refugee Rights Project Inc

Attorneys for: Plaintiff/Appellant

D Andrew Gaona, Esq. (AZ Bar No. 28414)
 Austin C Yost, Esq. (AZ Bar No. 34602)
 Jared G Keenan, Esq. (AZ Bar No. 27068)

Side 5. STATE OF ARIZONA, et al., Defendant/Appellee

(Litigant Group) STATE OF ARIZONA, et al.

- State of Arizona

Attorneys for: Defendant/Appellee

Clinton N Garrett, Esq. (AZ Bar No. 22457)
 Alexander W Samuels, Esq. (AZ Bar No. 28926)
 Lauren Watford, Esq. (AZ Bar No. 37346)

Side 6. ARIZONA ASIAN AMERICAN NATIVE HAWAIIAN AND PACIFIC ISLANDER FOR EQUITY, Amicus Curiae

(Litigant Group) ARIZONA ASIAN AMERICAN NATIVE HAWAIIAN AND PACIFIC ISLANDER FOR EQUITY

- Arizona Asian American Native Hawaiian and Pacific Islander

Attorneys for: Amicus Curiae

Erin Norris Bass, Esq. (AZ Bar No. 30104)
 Niyati Shah, Esq. (DC Bar No. niyatishah)
 Noah Baron, Esq. (AZ Bar No. noahbaron)

Side 6. BEN TOMA, et al., Intervenor/Appellee

(Litigant Group) BEN TOMA, et al.

- Ben Toma
- Warren Petersen

Attorneys for: Intervenor/Appellee

Thomas J Basile, Esq. (AZ Bar No. 31150)
 Kory A Langhofer, Esq. (AZ Bar No. 24722)
 Brunn W Roysden, III, Esq. (AZ Bar No. 28698)

CASE STATUS

Aug 19, 2024....Case Closed

Aug 13, 2024....Decision Rendered

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR CV2024-014129			Scott Sebastian Minder, Trial		
MAR CV2024-014340					

Arizona Supreme Court

Civil Election Appeal

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LUCHA/PODER v ADRIAN FONTES, et al.

CASE DECISION

28-Aug-2024 DECISION ORDER

* The Court, en banc, has considered the briefs, the record, the superior court's order, and the relevant authorities and case law in this expedited election appeal concerning House Concurrent Resolution 2060 ("HCR 2060"), a proposed measure for the Novem

Filed: 13-Aug-2024

Mandate: 28-Aug-2024

Ann Timmer

25 PROCEEDING ENTRIES

1. 15-Jul-2024 FILED: Poder Appellants' ARCAP 10 Statement in Expedited Election Matter and Request for Scheduling Conference; Certificate of Service (Appellants Poder in Action, et al.)
2. 15-Jul-2024 FILED: Statement Identifying Appeal as Expedited Election Matter and Request for Intitial Telephonic Scheduling Conference; Certificate of Service (Appellants LUCHA, et al.)
3. 16-Jul-2024 FILED: Record
4. 16-Jul-2024 FILED: Record
5. 17-Jul-2024 On July 15, 2024, Appellants Poder in Action, Inc., Phoenix Legal Action Network, and Florence Immigrant & Refugee Rights Project ("Poder Appellants") and Living United for Change in Arizona, Victory PAC, Alejandra Gomez, and Oscar De Los Santos ("LUCHA Appellants") filed separate Notices of Appeal designating this case as an expedited consolidated election matter pursuant to Rule 10(g), Arizona Rules of Civil Appellate Procedure. Poder Appellants and LUCHA Appellants are collectively referred to as "Appellants."

In lieu of a telephonic scheduling conference, Court staff has consulted with counsel for Appellants who have coordinated with Intervenor/Appellees Speaker of the Arizona House of Representatives Ben Toma and President of the Arizona State Senate Warren Petersen and with the State of Arizona and Secretary of State Adrian Fontes. Counsel for the Secretary of State has advised that the deadline to resolve this matter is August 22, 2024. Upon consideration and agreement of the parties,

IT IS ORDERED if any party wishes to use transcripts, such party shall file authorized transcripts as soon as possible.

IT IS FURTHER ORDERED Appellants will file their opening briefs (no more than 3,500 words each) no later than 4:00 p.m. on Friday, July 19, 2024.

IT IS FURTHER ORDERED Intervenor/Appellees will file a combined answering brief (no more than 7,000 words) no later than 4:00 p.m. on Friday, July 26, 2024.

IT IS FURTHER ORDERED Appellants will file their reply briefs (no more than 2,000 words each) no later than 4:00 p.m. on Wednesday, July 31, 2024.

The parties have indicated that they give blanket consent to the filing of amici briefs.

IT IS FURTHER ORDERED that any amicus curiae brief is due no later than 4:00 p.m. on Monday, July 22, 2024 and will not exceed 2,500 words. The parties have agreed to address any responses to amici briefs in their filings and not file separate responses.

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 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 as required by ARCAP Rule 10(h) and to SACrDocs@courts.az.gov and Court staff when filed. (Hon. Kathryn H. King)
6. 19-Jul-2024 FILED: Poder Appellants' Opening Brief; Certificate of Service; Certificate of Compliance (Appellants Poder in Action, et al.)
7. 19-Jul-2024 FILED: Separate Appendix to Opening Brief; Certificate of Service (Appellants Poder in Action, et al.)
8. 19-Jul-2024 FILED: LUCHA Appellants' Opening Brief; Certificate of Service; Certificate of Compliance (Appellants LUCHA, et al.)
9. 19-Jul-2024 FILED: Appendix; Certificate of Service (Appellants LUCHA, et al.)
10. 22-Jul-2024 FILED: Brief of Arizona Asian American Native Hawaiian and Pacific Islander for Equity as Amicus Curiae Supporting Appellants; Certificate of Service; Certificate of Compliance (Amicus AZ AANHPI for Equity)

Arizona Supreme Court

Civil Election Appeal

CV-24-0153-AP/EL

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25 PROCEEDING ENTRIES

- 11. 22-Jul-2024 FILED: Order (Filed 7/17/24 in ASC) (Amicus AZ AANHPI for Equity)
- 12. 24-Jul-2024 RECEIPT No.: 2024-00169 ; \$280.00, Authorization: 8124340063901759, Applied to: PODER IN ACTION, INC. et al. - Class A Filing Fee (\$280.00) Paid for: PODER IN ACTION, INC. et al. - By nCourt LLC
- 13. 24-Jul-2024 RECEIPT No.: 2024-00171 ; \$280.00, Authorization: 8300282850134952, Applied to: LIVING UNITED FOR CHANGE IN ARIZONA, et al. - Class A Filing Fee (\$280.00) Paid for: LIVING UNITED FOR CHANGE IN ARIZONA, et al. - By nCourt LLC
- 14. 24-Jul-2024 FILED: State's Notice of No Position; Certificate of Service; Certificate of Compliance (Appellee State of Arizona)
- 15. 24-Jul-2024 FILED: (Duplicate) State's Notice of No Position; (Duplicate) Certificate of Service; (Duplicate) Certificate of Compliance (Appellee State of Arizona)
- 16. 25-Jul-2024 FILED: Intervenor/Appellees' Combined Answering Brief; Certificate of Service; Certificate of Compliance (Intervenors Toma, et al.)
- 17. 29-Jul-2024 FILED: Poder Appellants' Reply Brief; Certificate of Service; Certificate of Compliance (Appellants Poder in Action, et al.)
- 18. 31-Jul-2024 FILED: LUCHA Appellants' Reply Brief; Certificate of Service; Certificate of Compliance (Appellants LUCHA, et al.)
- 19. 1-Aug-2024 RECEIPT No.: 2024-00176 ; \$280.00, Authorization: 8828048128073725, Applied to: PODER IN ACTION, INC. et al. - Class A Filing Fee (\$280.00) Paid for: PODER IN ACTION, INC. et al. - By nCourt LLC
- 20. 1-Aug-2024 RECEIPT No.: 2024-00178 ; \$280.00, Authorization: 8124340063901759, Applied to: PODER IN ACTION, INC. et al. - Class A Filing Fee (\$280.00) Paid for: PODER IN ACTION, INC. et al. - By nCourt LLC
- 21. 1-Aug-2024 VOID RECEIPT No.: 2024-00169 - \$-280.00, Authorization: 8124340063901759, - Applied to: PODER IN ACTION, INC. et al. - Class A Filing Fee (\$-280.00) Paid for: PODER IN ACTION, INC. et al. - By: nCourt LLC VOID Reason: Incorrect authorization number. Replaced by 2024-00169. (tkl)
- 22. 1-Aug-2024 VOID RECEIPT No.: 2024-00178 - \$-280.00, Authorization: 8124340063901759, - Applied to: PODER IN ACTION, INC. et al. - Class A Filing Fee (\$-280.00) Paid for: PODER IN ACTION, INC. et al. - By: nCourt LLC VOID Reason: Incorrect name in the "paid for" section. Replaced by 2024-00179. (tkl)
- 23. 13-Aug-2024

The Court, en banc, has considered the briefs, the record, the superior court's order, and the relevant authorities and case law in this expedited election appeal concerning House Concurrent Resolution 2060 ("HCR 2060"), a proposed measure for the November 2024 General Election. HCR 2060 seeks to amend various Arizona statutes to provide "responses to harms relating to an unsecured border."

Appellants challenged the legal sufficiency of HCR 2060 on grounds that it violated the single subject rule. See Ariz. Const. art. 4, pt. 2, § 13 ("Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title . . ."). In particular, Appellants argued that provisions in HCR 2060 contain multiple subjects. Accordingly, Appellants filed applications for preliminary injunctions that would bar the State and its agents from placing HCR 2060 on the November 2024 ballot.

After a non-evidentiary trial on the merits, the superior court denied Appellants' requests for injunctive relief. The court concluded that HCR 2060 satisfies the single subject rule, and it denied all relief sought in Appellants' verified complaints. Appellants timely appealed. The sole issue raised is whether HCR 2060 complies with the single subject rule. We were not asked to address, nor could we address, the constitutionality of any individual provision in HCR 2060. See League of Arizona Cities and Towns v. Brewer, 213 Ariz. 557, 559 60 ¶¶ 10 (2006) (explaining that courts will review the validity of legislation or initiated measures only after enactment to avoid interfering with the legislative or initiative process).

The Court unanimously agrees with the superior court that Appellants have not met their burden to overcome the strong presumption that HCR 2060 is constitutional. Specifically, the Court concludes that HCR 2060 satisfies the single subject rule. HCR 2060's subject is "responses to harms relating to an unsecured border," and all components of the proposed law are "reasonably related" to that subject. See Hoffman v. Reagan, 245 Ariz. 313, 316 ¶¶ 16 (2018). It is not necessary that the components have a free-standing relationship to each other. See id.

Having rejected Appellants' arguments, HCR 2060 will appear on the ballot. Therefore,
IT IS ORDERED affirming the superior court's judgment.
IT IS FURTHER ORDERED denying Appellants' request for attorneys' fees and costs. (Hon. Ann A. Scott Timmer)
- 24. 19-Aug-2024 ----CASE STATISTICALLY TERMINATED----
- 25. 28-Aug-2024 MANDATE TO THE SUPERIOR COURT

Issued Mandate and Copy of Decision Order to Trial Court.
