

Arizona Supreme Court

Civil Election Appeal

CV-24-0190-AP/EL

SMITH et al v FONTES/MAKE ELECTIONS FAIR

Appellate Case Information

Case Filed: 15-Aug-2024

Case Closed:

Dept/Composition

Side 1. APRIL SMITH, et al., Plaintiff/Appellant

(Litigant Group) APRIL SMITH, et al.

- April Smith
- Nira Lee
- Joshua Davidian

Attorneys for: Plaintiff/Appellant

Roy Herrera, Esq. (AZ Bar No. 32901)  
 Daniel A Arellano, Esq. (AZ Bar No. 32304)  
 Jane Ahern, Esq. (AZ Bar No. 34865)  
 Austin T Marshall, Esq. (AZ Bar No. 36582)

Side 2. ADRIAN FONTES, Defendant/Appellee

(Litigant Group) ADRIAN FONTES

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

Attorneys for: Defendant/Appellee

Kara Karlson, Esq. (AZ Bar No. 29407)  
 Karen J Hartman-Tellez, Esq. (AZ Bar No. 21121)  
 Kyle R Cummings, Esq. (AZ Bar No. 32228)  
 Kristin K Mayes, Esq. (AZ Bar No. 22584)

Side 3. MAKE ELECTIONS FAIR PAC, Real Party in Interest

(Litigant Group) MAKE ELECTIONS FAIR PAC

- Make Elections Fair Pac

Attorneys for: Real Party in Interest

Mary R O'Grady, Esq. (AZ Bar No. 11434)  
 Travis Charles Hunt, Esq. (AZ Bar No. 35491)  
 Emma Cone-Roddy, Esq. (AZ Bar No. 34285)  
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 Joshua J. Messer, Esq. (AZ Bar No. 35101)

Side 4. SENATOR DENNIS DECONCINI (RETIRED), Amicus Curiae

(Litigant Group) SENATOR DENNIS DECONCINI (RETIRED)

- Mr Dennis DeConcini  
AZ Bar No. 1612  
[Current Member]  
SOLE PRACTITIONER  
Admitted 4/25/64

Attorneys for: Amicus Curiae

Mark D Rubin, Esq. (AZ Bar No. 7092)

Side 5. PETITON PARTNERS, LLC, Amicus Curiae

(Litigant Group) PETITON PARTNERS, LLC

- Petition Partners LLC

Attorneys for: Amicus Curiae

Timothy A LaSota, Esq. (AZ Bar No. 20539)

Side 6. VOTER REFERENCE FOUNDATION AND GINA SWOBODA (EXECUTIVE DIRECTOR), Amicus Curiae

(Litigant Group) VOTER REFERENCE FOUNDATION AND GINA SWOBODA (EXECUTIVE DIRECTOR)

- Voter Reference Foundation
- Gina Swoboda, Voter Reference Foundation

Attorneys for: Amicus Curiae

Timothy A LaSota, Esq. (AZ Bar No. 20539)  
 Michael A. Columbo, Esq. (CA Bar No. michaelcolumbo)

CASE STATUS

Aug 21, 2024....Decision Rendered

Aug 15, 2024....Pending

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR CV2024-019846			Frank W Moskowitz, Judge on PC		
MAR CV2024-019880			Frank W Moskowitz, Judge on PC		

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CASE DECISION

22-Aug-2024 ORDER

\* The Court en banc has considered the briefs and authorities from the parties and amici, the trial court's ruling, and the record in this expedited election appeal concerning the "Make Elections Fair Arizona Act" (the "Act"), serial number I-14-2024, a b

Filed: 21-Aug-2024

Mandate:

Ann Timmer

22 PROCEEDING ENTRIES

1. 15-Aug-2024 FILED: ARCAP 10(c) Statement Designating the Case as an Expedited Election Matter; Certificate of Service; Exhibit A; Exhibit B (Appellants Smith, et al.)
2. 16-Aug-2024 On August 15, 2024, Plaintiffs/Appellants April Smith, et al., filed their "ARCAP 10 Statement Designating the Case as an Expedited Election Matter." In lieu of a telephonic scheduling conference, Court staff has consulted with counsel for Appellants and Appellee/Real Party in Interest Make Elections Fair PAC, a political action committee. Court staff has been informally advised that the ballot printing deadline is August 22, 2024, and that the parties are working on transcripts. IT IS ORDERED any transcripts shall be filed as soon as possible. IT IS FURTHER ORDERED the Secretary of State shall file a statement forthwith advising the Court of the last day to decide this matter. Upon consideration of this matter and agreement of the parties, IT IS ORDERED Appellants will file their opening brief (no more than 5,000 words) no later than 12:00 p.m. on Saturday, August 17, 2024. IT IS FURTHER ORDERED Appellee/Real Party in Interest will file its answering brief (no more than 5,000 words) no later than 9:00 a.m. on Monday, August 19, 2024. No further responses or replies will be filed. IT IS FURTHER ORDERED that any amicus brief (no more than 2,000 words) will be filed no later than 9:00 a.m. on Monday, August 19, 2024. The parties give blanket consent to the filing of amicus briefs. Any amicus brief not meeting the requirements of ARCAP 16(b)(1)(C) will be summarily stricken by the Court. No responses to the amicus briefs will be filed. Due to the expedited nature of these proceedings, the parties are encouraged to utilize shorter briefs and file their pleadings before their deadlines if possible. IT IS FURTHER ORDERED 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 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 SACrtdocs@courts.az.gov and Court staff when filed. This matter will be considered without oral argument. (Hon. James P. Beene)
3. 16-Aug-2024 FILED: Notice Regarding Printing Deadline; Certificate of Service (Appellee Fontes)
4. 17-Aug-2024 FILED: Plaintiffs/Appellants' Opening Brief; Certificate of Service; Certificate of Compliance (Appellants Smith, et al.)
5. 18-Aug-2024 FILED: Amicus Brief; Certificate of Service; Certificate of Compliance (Amicus Senator DeConcini (Ret.))
6. 18-Aug-2024 FILED: (Copy of) Order (ASC) Filed 8/16/24 (Amicus Senator DeConcini (Ret.))
7. 18-Aug-2024 FILED: Amicus Curiae Brief of Petition Partners, LLC; Certificate of Service; Certificate of Compliance (Amicus Petition Partners)
8. 18-Aug-2024 FILED: (Copy of) Order (ASC) Filed 8/16/24 (Amicus Petition Partners)
9. 18-Aug-2024 FILED: Brief of Amicus Curiae Voter Ref Foundation and its Executive Director, Gina Swoboda; Certificate of Service; Certificate of Compliance (Amicus Voter Reference, et al.)
10. 18-Aug-2024 FILED: (Copy of) Order (ASC) Filed 8/16/24 (Amicus Voter Reference, et al.)
11. 19-Aug-2024 FILED: Make Elections Fair PAC's Answering Brief; Certificate of Service; Certificate of Compliance (Real Party Make Elections Fair PAC)
12. 19-Aug-2024 On the Court's own motion, IT IS ORDERED that Plaintiffs/Appellants may file a reply addressing the constitutional argument set forth on page 27 of Real Party in Interest's Answering Brief. The reply is due no later than Tuesday, August 20, 2024, at 2:00 p.m. and may not exceed five pages in length. (Hon. William G. Montgomery)

Arizona Supreme Court

Civil Election Appeal

CV-24-0190-AP/EL

SMITH et al v FONTES/MAKE ELECTIONS FAIR

22 PROCEEDING ENTRIES

13. 19-Aug-2024 FILED: Plaintiffs/Appellants' Reply Brief; Certificate of Service; Certificate of Compliance; Exhibits A-C (Yavapai, Greenlee. Santa Cruz Reports) (Appellants Smith, et al.)
14. 19-Aug-2024 FILED: Transcript of Proceedings- 8/12/24 Trial to the Court Day1 [Natalie Firmi]; Certificate of Service (Appellant)
15. 19-Aug-2024 FILED: Transcript of Proceedings- 8/13/24 Trial to the Court Day2 [Natalie Firmi]; Certificate of Service (Appellant)
16. 19-Aug-2024 FILED: Transcript of Proceedings- 8/14/24 Trial to the Court Day1 [Natalie Firmi]; Certificate of Service
17. 20-Aug-2024 FILED: Letter to [Timothy La Sota] (Verification of Pro Hac Vice Status for Michael Columbo)
18. 21-Aug-2024 RECEIPT No.: 2024-00226 ; \$280.00, Authorization: 8564386827564828, Applied to: APRIL SMITH, et al. - Class A Filing Fee (\$280.00) Paid for: APRIL SMITH, et al. - By nCourt LLC
19. 21-Aug-2024 FILED: Record
20. 21-Aug-2024 The Court en banc has considered the briefs and authorities from the parties and amici, the trial court's ruling, and the record in this expedited election appeal concerning the "Make Elections Fair Arizona Act" (the "Act"), serial number I-14-2024, a ballot initiative to adopt an amendment to the Arizona Constitution to reform primary and general elections and sponsored by the Make Elections Fair PAC, (the "Committee").  
The Court unanimously concludes that the trial court erred in declining to admit Plaintiffs' exhibits concerning Objection 21 under Arizona Rule of Evidence 1006 because excerpts from voluminous records included added blue text and/or because Plaintiffs exercised discretion in deciding which signature line excerpts to include in the summary duplicate exhibits. The Court further concludes that the trial court erred in finding that the duplicate evidence categorically failed to prove any duplicate signatures by clear and convincing evidence. The court could not make this determination without first examining the allegedly duplicative signatures. Accordingly,  
IT IS ORDERED that this matter is remanded to the trial court to examine the Objection 21 exhibits and determine whether the exhibits prove any duplicate signatures by clear and convincing evidence. The court should then proceed accordingly. The other expedited election matter before the Court that is connected to this case, CV-24-0184-AP/EL, remains under consideration. (Hon. Ann A. Scott Timmer)
21. 23-Aug-2024 RECEIPT No.: 2024-00231 ; \$140.00, Authorization: 83379160958857303, Applied to: MAKE ELECTIONS FAIR PAC - Class B Filing Fee (\$140.00) Paid for: MAKE ELECTIONS FAIR PAC - By nCourt LLC
22. 21-Aug-2024 FILED: Record