NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
***See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24**

DIVISION ONE
FILED: 08/24/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SAVE GLENDALE NOW, a political committee organized under Titles 16 & 19 Arizona Revised Statutes; ROD WILLIAMS, as a taxpayer and citizen of the City of Glendale and Chairman of Save Glendale Now; CONNIE WILHELM, as Treasurer of Save Glendale Now, Plaintiffs/Appellants v. CITY OF GLENDALE, a municipal corporation; and PAM HANNA, in her capacity as City Clerk of the City of Glendale, Defendants/Appellees.	1 CA-CV 12-0520 EL DEPARTMENT E Maricopa County Superior Court No. CV2012-010693 **DECISION ORDER**

¶1 This accelerated election appeal arises out of the rejection of initiative petitions by the City of Glendale and Pam Hanna, in her capacity as City Clerk for the City (collectively, "Clerk"), submitted by a political committee, Save Glendale Now ("SGN"). The initiative proposed an amendment to the City Charter which would have returned the City's transaction privilege (sales) tax rates for most types of transactions to those in effect before August 1, 2012, the effective date of an ordinance adopted by the Glendale City

Council in June 2012 which increased those rates by seven-tenths of one percent. The initiative also proposed that "no such tax shall be levied at a rate in excess of the rates" specified in the measure unless first approved by the voters. The superior court agreed with the Clerk that the description of the proposed measure contained in the petitions was misleading and, thus, denied SGN relief.

¶2 We disagree with the superior court and hold the summary was not misleading. *See infra* ¶¶ 6-11. We also hold SGN substantially complied with other statutory requirements, *see infra* ¶¶ 12-13, and timely filed the petitions with the Clerk. *See infra* ¶¶ 14-19. We thus direct the Clerk to file and process the petitions in accordance with applicable statutes, reverse the superior court's denial of relief, and remand for further proceedings consistent with this order.

Summary Description

¶3 By statute, an initiative petition must include a description of no more than 100 words of the principal provisions of the proposed measure ("summary description"). *See* Ariz. Rev. Stat. ("A.R.S.") §§ 19-102(A) (2002), -111(A) (Supp. 2011). Accordingly, in its initiative petitions, SGN included the following summary description:

> On June 12, 2012 the Glendale City Council voted to increase the transaction privilege

> (sales) tax rate by seven-tenths percent for all types of transactions except residential rental, mining, and transient lodging. This initiative would reverse the sales tax increase by amending the City Charter to set the sales tax rates for all transaction categories at the rates in effect prior to the increase and require the Council to receive approval from a majority of the qualified electors voting on the question at an election prior to any future sales tax increase.

¶4 In rejecting the initiative petitions, the Clerk advised SGN that its summary description was inaccurate and misleading because the proposed initiative did not "by its express language and under existing Arizona law" "reverse the sales tax increase by amending the City Charter to set the sales tax rates for all transaction categories at the rates in effect prior to the increase" ("the reverse clause"), nor "require the Council to receive approval from a majority of the qualified electors voting on the question at an election prior to any future sales tax increase" ("the approval clause"). Accordingly, the Clerk concluded SGN had failed to comply with A.R.S. §§ 19-102(A) and 19-111(A).

¶5 The superior court agreed with the Clerk that the reverse clause was "inaccurate and [] capable of misleading the electorate who were asked to sign the Initiative Petitions." In so holding, the court also determined the Clerk had the legal authority to reject the petitions "per A.R.S. § 19-122(A)."

That statute requires a city clerk who refuses to accept and file an initiative petition to provide the person who submitted the petition "with a written statement of the reason for the refusal." A.R.S. § 19-122(A) (Supp. 2011); *see* A.R.S. § 19-141(A) (2002) (duties required of the secretary of state "as to state legislation shall be performed in connection with such legislation by the city or town clerk").

¶6 On appeal, SGN joined by amicus, argues forcefully that filing officers, such as the Clerk here, are not authorized by the statutes governing initiatives to reject initiative petitions based on their subjective determination that an initiative's summary description is inaccurate or misleading. Although we too question whether our statutes allow filing officers to act as "the gatekeeper for the accuracy" of an initiative's summary description, as one amicus puts it, this is not an issue we need to decide under the circumstances of this case. This is because, as a matter of law, SGN's summary description was neither misleading nor inaccurate. *Wilhelm v. Brewer*, 219 Ariz. 45, 46, ¶ 2, 192 P.3d 404, 405 (2008) (courts apply substantial compliance rule in considering challenges to form of initiative petitions); *League of Ariz. Cities and Towns v. Brewer*, 213 Ariz. 557, 559, ¶ 7, 146 P.3d 58, 60 (2006) (whether initiative petition legally sufficient, thereby

allowing pre-election review and removal from the ballot presents question of law appellate court reviews de novo).

¶7 As discussed, the initiative proposed returning Glendale's sales tax rates to those in effect before August 1, 2012. Contrary to the City's argument both in the superior court and on appeal, the reverse clause accurately describes this aspect of the proposed initiative. SGN's use of the word "reverse" in that clause does no more than inform petition signers the proposed initiative would reverse, that is, return or reinstate, the prior tax rates. SGN's use of the word "reverse," does not, as the City argues, suggest that if enacted, the initiative would somehow act retroactively instead of prospectively. Indeed, this argument ignores the reverse clause viewed as a whole: "This initiative would reverse the sales tax increase by amending the City Charter *to set* the sales tax rates for all transaction categories at the rates in effect prior to the increase." (Emphasis added.) *See Wilhelm*, 219 Ariz. at 46, ¶ 2, 192 P.3d at 405 (substantial compliance rule applicable to initiatives recognizes that before errors in petition formalities will bar measure from ballot, court must determine whether petition "considered as a whole" fulfills purpose of statutory or constitutional requirements, despite lack of strict or technical compliance). We thus disagree with

the superior court that the word "reverse" as used in the summary description is inaccurate and capable of misleading the electorate.

¶8 Although the superior court did not address the approval clause, it too is not inaccurate or misleading. As discussed, if passed, the proposed initiative would require voter approval if the City subsequently sought to increase the tax rates over those specified in the initiative. The approval clause accurately captures this point.

¶9 The City argues the approval clause is nevertheless misleading because the City would actually be unable to submit future tax increases to the voters because the Arizona Constitution limits the authority of city governing bodies to submit certain matters to the vote of the people. *See generally City of Scottsdale v. Superior Court*, 103 Ariz. 204, 206, 439 P.2d 290, 292 (1968); *City of Tempe v. Del E. Webb Corp.*, 13 Ariz. App. 597, 600-01, 480 P.2d 18, 21-22 (1971).

¶10 That the proposed initiative may, if approved, conflict with the Arizona Constitution or state law -- questions we express no opinion on -- does not mean the approval clause fails to characterize accurately the proposed initiative. Simply put, the City's argument confuses accuracy of the approval clause with whether the proposed initiative, if passed,

will pass constitutional or statutory muster. But, as our supreme court has long recognized, under the separation of powers doctrine embodied in Article 3 of the Arizona Constitution, Arizona citizens are not precluded "from legislating on any issue, even though the legislation might conflict with the Arizona Constitution or state law. The constitutionality of such a measure will only be tested *after* it becomes law." *Winkle v. City of Tucson*, 190 Ariz. 413, 415, 949 P.2d 502, 504 (1997) (internal citations omitted; emphasis in original). Accordingly, even if the proposed initiative may conflict with the Arizona Constitution or state law, that possible conflict does not render the approval clause inaccurate or misleading.

¶11 Therefore, we agree with SGN the Clerk was not authorized to reject the petitions based on her belief the summary description was inaccurate or misleading. We thus reverse the superior court's ruling to the contrary.

The City's Alternative Arguments

¶12 The City argues, that, nevertheless, we should affirm the superior court's judgment in its favor on alternative grounds. First, it argues, as it did in the superior court, that SGN did not comply with A.R.S. § 16-902.01(F) (Supp. 2011) because the statement of organization it filed with the Clerk

did not include the official serial number of the initiative petition in its name. As relevant here, A.R.S. § 16-902.01(F) states a political committee's statement of organization "shall include in the name of the political committee the official serial number for the petition, if assigned."[1] As noted, initiative measures only require substantial compliance with statutory requirements. *Wilhelm*, 219 Ariz. at 47, ¶¶ 5-7, 192 P.3d at 406; *Western Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 428, 814 P.2d 767, 769 (1991). In deciding whether there is substantial compliance, a court should consider several factors, including the nature of the constitutional or statutory requirement, the extent to which the petition differs from the requirement, and the purpose of the requirement. *Feldmeier v. Watson*, 211 Ariz. 444, 447, ¶ 14, 123 P.3d 180, 183 (2005).

¶13 Here, two factors cause us to conclude SGN substantially complied with A.R.S. § 16-902.01(F). First, the serial number was recorded on one portion of SGN's statement of organization, as amended, although SGN did not include it in the name block on the statement. Arizona courts have found

[1]The City also asserts the petition was fatally defective because SGN's name did not contain a statement of its position for or against the measure. However, the Clerk did not rely on this ground in her written statement of the reason for refusal and as a result we do not address this issue in our decision. *See* A.R.S. 19-122(A) (requiring the clerk to provide the person who submitted the petition with a written statement of the reason for refusal).

substantial compliance for petitions with misplaced text. *See Wilhelm*, 219 Ariz. at 47, ¶¶ 5-7, 192 P.3d at 406 (finding petition contained title in compliance with Arizona law even though title was not centered nor did it precede the text). Second, despite the absence of the serial number in SGN's name, its statement of organization fulfilled the purpose of the statute, which is to identify the specific initiative being proposed. SGN's statement of organization identified the initiative by serial number. Further, there is nothing in the record before us that suggests there could be any confusion regarding SGN's initiative since it circulated only one proposed initiative measure. Accordingly, SGN substantially complied with A.R.S. § 16-902.01(F).

¶14 Second, the City argues SGN's initiative petitions were untimely because they were not filed four months before the "next ensuing election" as that phrase is used in A.R.S. § 19-143(B) (2002). That statute provides as follows:

> If an ordinance, charter or amendment to the charter of a city or town is proposed by initiative petition, it shall be filed with the city or town clerk, who shall submit to the voters of the city or town at the next ensuing election.

A.R.S. § 19-143(B).

¶15 As we understand the City's argument, SGN was required to submit the initiative petitions four months before the City's

"next ensuing election" which, the record reflects, is the City's primary election scheduled for August 28, 2012. Accordingly, the City argues SGN was required to submit the initiative petitions to the clerk by April 29, 2012. The superior court rejected this argument, and so do we.

¶16 In *City of Flagstaff v. Mangum*, 164 Ariz. 395, 793 P.2d 548 (1990), our supreme court addressed what is the "next ensuing election" under A.R.S. § 19-143 when, as here, a municipality does not have a charter or ordinance provision that prescribes requirements for initiative petitions. After initially holding A.R.S. § 19-143 did not establish a filing deadline[2], the court then determined what was the applicable deadline for the election at issue in that case –- a local general election scheduled for March 6, 1990. Relying on A.R.S. § 19-141(C) (currently A.R.S. § 19-141(D)), which provides that the procedures for municipal initiatives shall be "as nearly as practicable the same" as the procedures for statewide

[2]The applicable provision of A.R.S. § 19-143 discussed in *Mangum*, read as follows: "if an . . . amendment to the charter of a city or town is proposed by initiative petition, it shall be filed with the city or town clerk, who shall submit it to the voters of the city or town at the next ensuing election held therein not less than ninety days after it was first presented to the city or town council." In 1991, the legislature amended this provision to require the clerk to submit the initiative petition to the voters at the "next ensuing election," deleting the ninety day condition. 1991 Ariz. Sess. Laws, 3rd Special Sess., Ch. 1, § 23.

initiatives, and the provision of the Arizona Constitution that establishes a four month filing deadline for such initiatives, Ariz. Const. art. 4, pt. 1, § 1(4), the court concluded the initiative petition at issue was untimely because it had not been filed four months before the March 6 general election.

¶17 The court then decided an issue we believe resolves the City's timing argument here. This issue was whether, even if the initiative was untimely for the March 6 general election, the initiative could be submitted to the voters at a later election. To answer this question the court had to determine whether the initiative could be submitted four months in advance of any election, primary, general or special. The court answered this question "no," and held that A.R.S. § 19-121(D) (2002) governed local initiatives, absent a conflicting local ordinance (which, as noted, is the case here). *Mangum*, 164 Ariz. at 400, 793 P.2d at 553. That statute then, as now, provides:

> Initiative petitions which have not been filed with secretary of state as of 5:00 p.m. on the day required by the constitution prior to the ensuing general election after their issuance shall be null and void, but in no event shall the secretary of state accept an initiative petition which was issued for circulation more than twenty-four months prior to the general election at which the measure is to be included on the ballot.

A.R.S. § 19-121(D). The court went on to state:

> Under A.R.S. § 19-121(D), initiative petitions are null and void if not filed by 5:00 p.m. on the day required prior to "*the* ensuing general election after their issuance."

Mangum, 164 Ariz. at 400, 793 P.2d at 553 (emphasis in original).

¶18 Applying *Mangum* here, the initiative petitions in this case were issued on June 20, 2012 and filed on July 5, 2012, more than four months before the ensuing general election after their issuance. Thus, SGN timely filed the initiative petitions with the Clerk.[3]

¶19 We acknowledge the City's reliance on *Cuvelier v. Schmitz*, 193 Ariz. 479, 974 P.2d 995 (1999). In our view, that case is distinguishable. Unlike the situation before us, the town code there specifically provided that initiatives could be voted on at the next ensuing primary, general or special election. As recognized in *Mangum*, a municipality may describe the manner of exercising initiatives within the restrictions of

[3]The City also argues A.R.S. § 19-143(B) and its "next ensuing election" language must control the timing issue presented in this appeal because A.R.S. § 19-141(A) essentially states that the statutes pertaining to local initiatives shall take precedence over any inconsistent provisions in the other statutes applicable to initiatives. We see no inconsistency here as A.R.S. § 19-143(B) does not establish a filing deadline.

general laws. Glendale, unlike the municipality in *Cuvelier*, has not done so.

Conclusion

¶20 For the foregoing reasons, we direct the Clerk to file and process SGN's initiative petitions in accordance with applicable statutes, reverse the superior court's denial of relief, and remand to the superior court for further proceedings consistent with this order. As the prevailing party and pursuant to its request, SGN is entitled to an award of fees and other expenses under A.R.S. § 12-2030 (2003). On remand, the superior court shall determine the amount of such fees and other expenses to award to SGN for proceedings in that court and in this court.

/s/
PATRICIA K. NORRIS, Judge

CONCURRING:

/s/
ANDREW W. GOULD, Presiding Judge

/s/
RANDALL M. HOWE, Judge