DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STILO DEVELOPMENT GROUP USA, LP, an Arizona limited liability partnership; JEFFREY COOK, a qualified elector in Coconino County, Plaintiffs/Appellees, v. CITIZENS FOR SUSTAINABLE GROWTH IN SUPPORT OF 2011-12-01-01, a political committee; CITIZENS FOR SUSTAINABLE GROWTH IN SUPPORT OF 2011-12-01-02, a political committee; CITIZENS FOR SUSTAINABLE GROWTH IN SUPPORT OF 2011-12-01-03, a political committee; CITIZENS FOR SUSTAINABLE GROWTH IN SUPPORT OF 2011-12-01-04, a political committee; CITIZENS FOR SUSTAINABLE GROWTH IN SUPPORT OF 2011-12-01-05, a political committee, Defendants/Appellants.	1 CA-CV 12-0151 EL DEPARTMENT C **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Coconino County

Cause No. CV2012-00080

The Honorable Joseph J. Lodge, Judge

AFFIRMED

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W I N T H R O P, Chief Judge

¶1 This is an expedited election appeal.[1] Defendants/Appellants, a group of citizens ("the Referenda Proponents") who have formed political committees seeking to overturn certain land use measures enacted by the Tusayan Town Council, appeal the superior court's order granting a preliminary injunction in favor of Plaintiffs/Appellees, Stilo Development Group, USA, L.P. ("the developer") and Jeffrey Cook (collectively, "Plaintiffs"). The order enjoins the Town of Tusayan ("Tusayan" or "the Town") from holding an election to approve or reject the Town Council's actions. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Tusayan is a small community located near the south entrance to Grand Canyon National Park. On November 2, 2011,

[1] *See* ARCAP 8.1; Ariz. Rev. Stat. ("A.R.S.") § 19-122(C) (West 2012). We cite the current Westlaw version of the statutes referenced herein because no changes material to our decision have since occurred.

Tusayan's Town Council approved a Pre-Annexation and Development Agreement ("PADA") between the Town and the developer, and passed a series of ordinances relating to the annexation, zoning, and development of property.[2]

¶3 On approximately December 1, 2011, the Referenda Proponents took out five referendum petitions against the PADA and four of the ordinances passed by the Town Council in an effort to overturn the actions of the Town Council. At the same time, the Referenda Proponents filed five "political committee statement of organization" forms and five "application for referendum petition serial number" forms with the Town Clerk. The political committees' statements of organization state in the title of their name that they are "[i]n support of" the referendum petitions, as do all of the applications for petition serial numbers. In actuality, although the political committees formed by the Referenda Proponents are in support of qualifying each referendum measure for placement on the ballot, they are opposed to the passage of each ballot measure.

[2] The Town Council and the developer entered the PADA for the purpose of developing residential housing and commercial properties in the Town. The PADA is a prerequisite to development in Tusayan and sets forth various responsibilities and requirements associated with the annexation of property known as Ten-X Ranch and surrounding property, rezoning requests for Ten-X Ranch and properties known as Kotzin Ranch and Camper Village, and the development of those properties.

¶4 The Referenda Proponents circulated the referendum petitions and obtained twenty-three signatures for each measure - a sufficient number for placing the referendum measures on the ballot as propositions. The County Recorder certified the petitions, and on January 4, 2012, the Town scheduled a referendum measure election for May 15, 2012.

¶5 On February 7, 2012, Plaintiffs filed a "Verified Complaint for Declaratory Judgment and Injunctive Relief," and moved for a preliminary injunction to enjoin the Town from holding the May 15 election. The complaint alleged that the five referendum measures to be placed on the ballot for the May 15 election were "legally insufficient" because the Referenda Proponents had not properly registered the political committees as required by A.R.S. § 16-902.01, and because the descriptions on the circulated referendum petitions were purportedly inadequate. *See* A.R.S. § 19-101(A) (requiring that referendum petitions contain "a description of no more than one hundred words of the principal provisions of the measure sought to be referred").

¶6 At the hearing on Plaintiffs' motion for a preliminary injunction, the superior court concluded that, although the filings were not intentionally misleading, they did not comply with the statutes. Consequently, the court granted the motion,

thereby enjoining the Town from submitting the referendum measures to the voters at the May 15 election.

¶7 We have jurisdiction over the Referenda Proponents' timely appeal. *See* ARCAP 8.1(h); A.R.S. §§ 12-120.21(A)(1), 19-122(C).

ANALYSIS

¶8 In granting the preliminary injunction, the superior court concluded in part as follows:

> 23. In this case, even though the referenda petitions stated that the Referendum Proponents were in favor of putting to a vote of the Citizens of Tusayan the measures that were the subject of the referendum petitions, and even though the referendum petitions were pre-ballot measures and no ballot measure or proposition number actually existed at the time [] the referendum petitions were taken out, the Referenda Proponents were still required to state that they were "opposed" to the ballot measures. A.R.S. § 16-902.01(F). Also, A.R.S. § 19-114(B) is the penalty for the technical defect and the signature[s] certified on the referendum petitions must not be counted. A.R.S. § 19-114(B).

¶9 The Referenda Proponents argue that (1) the superior court erred in applying A.R.S. § 16-902.01(F) to "pre-ballot" referendum qualification efforts, (2) even if A.R.S. § 16-902.01(F) applies to pre-ballot measures, they complied with the statute's requirements, and (3) even if they failed to comply with the requirements of A.R.S. § 16-902.01(F), the penalty set forth in A.R.S. § 19-114(B) should not apply to their failure. We disagree with their arguments.

¶10 We review *de novo* issues of statutory interpretation and the superior court's application of the law. *See Open Primary Elections Now v. Bayless*, 193 Ariz. 43, 46, ¶ 9, 969 P.2d 649, 652 (1998); *State Comp. Fund v. Yellow Cab Co.*, 197 Ariz. 120, 122, ¶ 5, 3 P.3d 1040, 1042 (App. 1999); *State Comp. Fund v. Superior Court (EnerGCorp, Inc.)*, 190 Ariz. 371, 374-75, 948 P.2d 499, 502-03 (App. 1997). "Our primary goal in construing a statute is to determine and give effect to legislative intent." *State v. Flynt*, 199 Ariz. 92, 94, ¶ 5, 13 P.3d 1209, 1211 (App. 2000) (citation omitted). In construing a statute, we look first to the statute's plain language as the most reliable indicator of its meaning, and we strive to interpret the language in a way that gives it a fair and sensible connotation. *Comm. for Pres. of Established Neighborhoods v. Riffel*, 213 Ariz. 247, 249, ¶ 8, 141 P.3d 422, 424 (App. 2006) (citations omitted); *In re Wilputte S.*, 209 Ariz. 318, 320, ¶ 10, 100 P.3d 929, 931 (App. 2004). "We will give effect to each sentence and word so that provisions are not rendered meaningless," *Riffel*, 213 Ariz. at 249, ¶ 8, 141 P.3d at 424 (citations omitted), and if reasonably practical, will interpret a statute in conjunction with other statutes to the end that they may be harmonious and consistent. *Wilputte S.*, 209 Ariz. at 320, ¶ 10, 100 P.3d at 931 (citation omitted).

¶11 Although we "broadly construe the definition of [a] requirement in determining whether compliance was achieved," *Lawrence v. Jones*, 199 Ariz. 446, 450, ¶ 9, 18 P.3d 1245, 1249 (App. 2001), referendum petitions nonetheless must strictly comply with applicable constitutional and statutory provisions. *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 429, 814 P.2d 767, 770 (1991); *Cottonwood Dev. v. Foothills Area Coal. of Tucson, Inc.*, 134 Ariz. 46, 49, 653 P.2d 694, 697 (1982); *Sklar v. Town of Fountain Hills*, 220 Ariz. 449, 452, ¶ 9, 207 P.3d 702, 705 (App. 2008). The strict standard "requires nearly perfect compliance with constitutional and statutory referendum requirements." *Riffel*, 213 Ariz. at 249, ¶ 6, 141 P.3d at 424 (citation omitted).

¶12 Section 16-902.01 sets forth requirements for the registration of political committees. In particular, subsection (F) of A.R.S. § 16-902.01 provides in part as follows:

> For a political committee that makes expenditures in an attempt to influence the results of a ballot proposition election, the statement of organization shall include in the name of the political committee the official serial number for the petition, if assigned, and a statement as to whether the political committee supports or opposes the passage of the ballot measure.

Thus, if A.R.S. § 16-902.01(F) applied to the Referenda Proponents when they filed their statements of organization, the Referenda Proponents were required to include in the name of

each political committee an accurate statement indicating whether the committee supported or opposed passage of the ballot measure they sought to introduce.

¶13 The Referenda Proponents argue, however, that the superior court erred in applying A.R.S. § 16-902.01(F) to them because, at the time they formed the political committees, no "ballot proposition election" yet existed for the political committees to influence. They maintain that A.R.S. § 16-902.01(F) could not apply until there was a ballot proposition election in existence, and until then, there were no existing ballot measures to support or oppose.

¶14 The Referenda Proponents' argument, however, is contrary to the plain language of the statute and public policy requiring full and prompt disclosure in elections. *See, e.g.*, A.R.S. §§ 16-902.01 (requiring disclosure in committee literature or advertisements); -913 (requiring regular campaign finance reports); -914.01 (requiring disclosure of contributions and expenditures). Their proposed construction of the statute interjects additional elements – that a ballot proposition election already "exist" (i.e., be scheduled) and ballot measures exist (i.e., be in place) – for the requirements of the statute to apply. Nothing in the plain language of the statute, however, contemplates a "pre-ballot" stage of the referendum process or differentiates in any way between qualifying "pre-

ballot" measures and existing "post-ballot" measures; instead, the statute only addresses "ballot measure[s]" and requires that a political committee state, at its inception, whether it supports or opposes passage of the ballot measure at issue. *See also* A.R.S. § 16-902.01(A) ("Each political committee that intends to accept contributions or make expenditures of more than five hundred dollars shall file a statement of organization . . . before . . . circulating petitions."). Were we to interpret the statute in the manner suggested by the Referenda Proponents, we would be adding language to the statute and thereby creating a judicial exception to the explicit language laid out by our legislature, something we will not cavalierly do. *See generally Crowe v. Hickman's Egg Ranch, Inc.*, 202 Ariz. 113, 116-17, ¶ 17, 41 P.3d 651, 654-55 (App. 2002). If the Referenda Proponents wish to change the language of the statute to delineate between pre-ballot and post-ballot measures, that is a matter they must broach with the legislature. We conclude that the political committees the Referenda Proponents sought to form were required to include in their names whether they supported or opposed passage of the ballot measures because, by its plain language, A.R.S. § 16-902.01(F) applies to political committees involved in ballot measures.[3]

[3] *See also* Ariz. Secretary of State Election Procedures Manual (2012 ed.), *available at*

¶15 The Referenda Proponents argue that, even if they were required to comply with § 16-902.01(F), they sufficiently complied because it is axiomatic that if they support the referendum effort, they must oppose passage of the ballot measure. Although it may appear obvious from their efforts that the Referenda Proponents are in favor of the referendum effort in general (and, consequently, in favor of overturning the actions of the Town Council), they were nonetheless required to strictly comply with the statute by stating clearly and accurately whether they support or oppose each specific measure. *See W. Devcor*, 168 Ariz. at 429, 814 P.2d at 770; *Cottonwood Dev.*, 134 Ariz. at 49, 653 P.2d at 697; *Sklar*, 220 Ariz. at 452, ¶ 9, 207 P.3d at 705.[4]

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http://www.azsos.gov/election/Electronic_Voting_System/manual.pdf. Chapter 8 of the Manual, which sets forth the registration and campaign finance reporting requirements for political committees, indicates that a *ballot measure committee* must include in the name of the political committee at the time of filing the statement of organization "the official serial number for the petition" and "a statement as to whether the political committee supports or opposes passage of the political measure." *Id*. at 75.

[4] We also note that A.R.S. § 19-125(D) provides in part as follows: "In the case of a referendum, a 'yes' vote shall have the effect of approving the legislative enactment that is being referred." Consequently, we reject any contention that, at the time the Referenda Proponents filed the statements of organization, they could not include in the names of the political committees whether they supported or opposed passage of each ballot measure because they did not then know the language of the future ballot measure.

¶16 Because the Referenda Proponents failed to strictly comply with the requirements of A.R.S. § 16-902.01(F), they never properly registered and formed political committees, their applications for petitions should have been denied,[5] and the signatures they collected are invalid under A.R.S. § 19-114(B).[6] We reach this conclusion because, by failing to strictly comply with the registration requirements governing political committees as provided in A.R.S. § 16-902.01, the Referenda Proponents filed defective statements of organization and rendered their applications a nullity. *See Israel v. Town of Cave Creek*, 196 Ariz. 150, 155 n.7, ¶ 24, 993 P.2d 1114, 1119

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[5] *See* A.R.S. § 19-111(A). Subsection (A) provides in part as follows:

> At the same time as the person or organization files its application [for a referendum petition], the person or organization shall file with the secretary of state its statement of organization or its signed exemption statement as prescribed by § 16-902.01. The secretary of state shall not accept an application for initiative or referendum without an accompanying statement of organization or signed exemption statement as prescribed by this subsection.

[6] Subsection (B) of A.R.S. § 19-114 provides as follows:

> Signatures obtained on initiative and referendum petitions by a political committee proposing the initiative or referendum or any of its officers, agents, employees or members prior to the filing of the committee's statement of organization or prior to the filing of the five hundred dollar threshold exemption statement pursuant to § 16-902.01 are void and shall not be counted in determining the legal sufficiency of the petition.

n.7 (App. 1999) ("We note that a failure to make a required organizational listing does not, strictly speaking, invalidate an application under A.R.S. § 19-111(A). Instead, pursuant to A.R.S. § 19-114(B), it invalidates any signatures obtained on referendum petitions circulated pursuant to an insufficient application. The effect, however, is the same, for it renders an insufficient application a futility."). And, if a political committee obtains signatures on a referendum petition before the committee has filed a proper statement of organization, the signatures obtained are void and must not be counted in determining the legal sufficiency of the petition. *See Pacion v. Thomas*, 225 Ariz. 168, 169-70, ¶ 11, 236 P.3d 395, 396-97 (2010) (citing A.R.S. § 19-114(B)). Because the Referenda Proponents failed to properly form and register their political committees, A.R.S. § 19-114(B) requires that the petition signatures be invalidated. Accordingly, the superior court did not err in granting Plaintiffs' motion for a preliminary injunction on the basis that the Referenda Proponents failed to comply with A.R.S. § 16-902.01(F).[7]

[7] Because we affirm the superior court's preliminary injunction order on this basis, we need not consider the Referenda Proponents' argument that the court erred in determining the 100-word summaries set forth in the petitions were legally insufficient under A.R.S. § 19-101(A). We also reject the Referenda Proponents' suggestion that we apply the doctrine of laches as a basis for overturning the superior

CONCLUSION

¶17 The superior court's order granting Plaintiffs' motion for a preliminary injunction is affirmed. Neither side has requested attorneys' fees on appeal. We award Plaintiffs their costs on appeal upon their compliance with Rule 21, ARCAP.

_____/S/_____
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

_____/S/_____
MARGARET H. DOWNIE, Presiding Judge

G E M M I L L, Judge, dissenting,

¶18 I agree with my colleagues that the Statements of Organization filed by the Referenda Proponents with the Town of Tusayan contained technical errors in the names of the political committees and in the checking of the "support" box instead of the "oppose" box provided on the forms. I respectfully dissent, however, because I conclude that the remedy created in A.R.S. § 19-114(B) is not applicable under these facts.

¶19 The errors in the Statements of Organization are understandable. These pre-printed forms provided by the Town of

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court's order. Finally, we deny Plaintiffs' motion to strike portions of the Referenda Proponents' opening brief.

Tusayan are somewhat ambiguous. The political committees "support" the referenda in the sense of wanting the challenged ordinances to be placed on the ballot. To fully comply with A.R.S. § 16-902.01(F), however, and in light of other pertinent Arizona statutes, the Statements of Organization should have listed committee names in opposition to challenged ordinances and should have indicated that the committees were opposing the anticipated ballot measures.

¶20 Like the trial court, my colleagues in the majority turn to A.R.S. § 19-114(B) to find a remedy for these technical defects:

> B. Signatures obtained on . . . referendum petitions by a political committee proposing the . . . referendum . . . prior to the filing of the committee's statement of organization or prior to the filing of the five hundred dollar threshold exemption statement pursuant to § 16-902.01 are void and shall not be counted in determining the legal sufficiency of the petition.

A.R.S. § 19-114(B).

¶21 If applicable, § 19-114(B) renders the signatures obtained void and prohibits such signatures from being counted. Based on the language of the statute, this significant penalty applies under either of two situations: when signatures have been obtained (1) "prior to the filing of the committee's statement of organization" or (2) "prior to the filing of the five hundred dollar threshold exemption statement pursuant to §

16-902.01." Neither of these events has occurred here. Although § 19-114(B) prescribes the consequence for these two specific errors, the statute does not address the remedy for the filing of a statement of organization that might be technically defective. Based on a plain reading of its language, § 19-114(B) is not applicable under the facts of this dispute. The plain language of a statute is "the most reliable indicator of its meaning." *Advanced Prop. Tax Liens, Inc. v. Sherman*, 227 Ariz. 528, 531, ¶ 14, 260 P.3d 1093, 1096 (App. 2011); *New Sun Bus. Park, LLC v. Yuma County*, 221 Ariz. 43, 46, ¶ 12, 209 P.3d 179, 182 (App. 2009).

¶22 In support of applying § 19-114(B), the majority relies on a footnote in *Israel v. Town of Cave Creek*, 196 Ariz. 150, 993 P.2d 1114 (App. 1999). *See supra* ¶ 16. The *Israel* court in footnote 7 stated — in what may be dicta — that:

> a failure to make a required organizational listing does not, strictly speaking, invalidate an application under A.R.S. § 19-111(A). Instead, pursuant to A.R.S. § 19-114(B), it invalidates any signatures obtained on referendum petitions circulated pursuant to an insufficient application. The effect, however, is the same, for it renders an insufficient application a futility.

Id. at 155 n.7, ¶ 24, 993 P.2d at 1119 n.7. I disagree with applying the *Israel* footnote to these facts. Under the clear language of § 19-114(B), the remedy of invalidating the

signatures simply does not apply here. *See Sherrill v. City of Peoria*, 189 Ariz. 537, 541, 943 P.2d 1215, 1219 (1997) ("Courts must resist the temptation to 'improve upon' or try to 'fix' otherwise clear statutory language in an effort to make it more useful or meaningful."). Also, no evidence has been presented in this dispute that the signers of the petitions were misled or deceived. The political committees made the required disclosures of the people and organizations involved, and the petitions included title and text of each measure being challenged.

¶23 The Arizona Supreme Court reached an analogous conclusion in *Pacion v. Thomas*, 225 Ariz. 168, 236 P.3d 395 (2010). In *Pacion*, two candidates for election had begun circulating nominating petitions before forming campaign committees. *Id.* at ¶ 2. The supreme court assumed, without deciding, that violations of A.R.S. § 16-903(A) had occurred and then focused on the applicable remedy or penalty. *Id.* at 169, ¶ 9, 236 P.3d at 396. The court concluded that the applicable statute was A.R.S. § 16-924 (Supp. 2011), which the court described as "the basic penalty applicable to all violations of Chapter 6, Article 1." *Id.* at 170, ¶ 13, 236 P.3d at 397. At issue in this appeal are technical violations of A.R.S. § 16-902.01(F), which is part of Title 16, Chapter 6, Article 1. Because no statute specifically sets forth a penalty for such

violations, § 16-924 is the applicable provision, not § 19–114(B).

¶24 The supreme court in *Pacion* emphasized its point by drawing a distinction between § 19–114(B) and § 16–903(A):

> The legislature expressly chose in § 19–114(B) to disqualify signatures on initiative and referendum petitions obtained before formation of a political committee, yet provided only a civil penalty [set forth in § 16-924] for violations of the campaign finance statutes governing candidates, including § 16–903(A). *We decline to infer a statutory remedy into the campaign finance statutes that the legislature eschewed*.

225 Ariz. at 170, ¶ 12, 236 P.3d at 397 (emphasis added). For these reasons, the penalty for a violation of A.R.S. § 16-902.01(F) — like the penalty for a violation of § 16-903(A) — is provided by A.R.S. § 16-924. We should not infer a remedy that the legislature did not create.

¶25 Additionally, our legislature has directed that signatures should not be presumed invalid unless the pertinent statute "expressly and explicitly" imposes that consequence:

> If there is doubt about requirements of ordinances, charters, statutes or the constitution concerning only the form and manner in which the power of an initiative or referendum should be exercised, these requirements shall be broadly construed, and *the effect of a failure to comply with these requirements shall not destroy the presumption of validity of citizens' signatures*, petitions or the initiated or referred measure, unless the ordinance, charter, statute or constitution *expressly*

> *and explicitly* makes any fatal departure from the terms of the law.

1989 Ariz. Sess. Laws, ch. 10, § 1 (1st Reg. Sess.) (emphasis added). *See Sherrill*, 189 Ariz. at 540-41, 943 P.2d at 1218-19 (quoting this "express direction" from the legislature). Section 16-902.01(F) does not provide for invalidating signatures obtained to qualify referenda measures for the ballot, and § 19–114(B) imposes such a consequence only under two circumstances that do not exist here.

¶26 There is a further point demonstrating why § 19-114(B) does not apply to violations of § 16-902.01(F). Subsection (F) of § 16-902.01 was added in 2002 *by the same legislation* that amended subsection (B) of § 19-114 to add the second category of violations that will render "void" the signatures: when the signatures are obtained "prior to the filing of the five hundred dollar threshold exemption statement pursuant to § 16-902.01." *See* 2002 Ariz. Sess. Laws, ch. 322, §§ 7, 8 (2nd Reg. Sess.). Although the legislature simultaneously amended both § 16-902.01 and § 19-114 in 2002, it did not choose to further amend § 19-114(B) to include therein any consequences resulting from violations of § 16-902.01(F).

¶27 Accordingly, based on the plain language of A.R.S § 19-111(B) and the statutory remedy created in A.R.S. § 16-924

for technical errors, I conclude that the Referenda Proponents' signatures are valid, not void.

¶28 The trial court also found that the 100-word descriptions of the proposed ballot measures were legally insufficient under A.R.S. § 19-101(A). I disagree. The 100-word summaries described the "principal provisions" of the measures sought to be referred — primarily the changes in zoning classification. *See id.* (requiring a referendum petition to include a 100-word description of the "principal provisions" of the measure). The wording of the summaries was not ideal, but it was legally sufficient.

¶29 For these reasons, I would reverse the ruling of the trial court, dissolve the preliminary injunction, and allow the election to proceed. I therefore respectfully dissent.

/S/
JOHN C. GEMMILL, Judge