



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



AZ PETITION PARTNERS, LLC

v.

HON. THOMPSON (STATE)

CR-22-0154-PR

PARTIES

Petitioner: AZ Petition Partners, LLC d/b/a Petition Partners (*Defendant*)

Respondent: Honorable Peter A. Thompson, Maricopa County Superior Court

Real Party in Interest: State of Arizona

Amicus Curiae: American Civil Liberties Union of Arizona (*in Support of Petitioner*)

Amicus Curiae: Arizona Center for Law in the Public Interests (*in Support of Petitioner*)

Amicus Curiae: Arizona Center for Criminal Justice (*in Support of Petitioner*)

FACTS

In 2017, the legislature enacted A.R.S. § 19-118.01, which prohibits initiative petition circulators from being paid based on the number of signatures they collect. Under § 19-118.01(B) any violation of § 19-118.01(A) is a misdemeanor.

Petitioner AZ Petition Partners, LLC is a signature-gathering business that hires circulators to collect signatures on statewide initiative campaigns. In 2020, a political action committee and initiative proponent hired Petitioner to collect signatures for the Invest in Education Act initiative (the "Initiative"). Petitioner paid its petition circulators based on a pay scale system with three levels that included an hourly rate and an expected average number-range of signatures. Circulators could move between the pay scales depending on their productivity for the prior week, the number of hours worked, and the circulator's conduct. Petitioner also offered incentive bonus programs, including the two at issue in this matter—"Weekend Warriors" and "Duel for the Dollars."

In July 2020, opponents of the Initiative filed a declaratory judgment complaint in the superior court seeking to disqualify the Initiative from the ballot. The complaint raised various challenges and alleged that Petitioner's hourly rates and bonus incentive programs violated § 19-118.01(A). After conducting a bench trial, the superior court held that the hourly rates and a "spin-the-wheel" bonus program did not violate § 19-118.01(A), although it enjoined the Initiative from the ballot for other reasons. The superior court also concluded that "four other incentive programs did violate § 19-118.01(A)," including the two incentive bonus programs at issue here. The proponents of the Initiative filed an expedited appeal and the opponents filed a cross-appeal.

This Court, in *Molera v. Hobbs*, 250 Ariz. 13 (2020), reversed in part and affirmed in part the superior court's judgment and ordered that the Initiative be placed on the ballot. The Court did not specifically analyze whether the four bonus programs, including the two at issue in this matter, violate § 19-118.01(A).

Shortly after this Court issued its opinion in *Molera*, the State filed a fifty-count Information alleging that Petitioner violated § 19-118.01(A) by paying circulators “based on the number of signatures collected” through its “Weekend Warriors” and “Duel for the Dollars” bonus incentive programs. Each of the fifty-counts also charges a violation of § 19-118.01(B), which makes violation of § 19-118.01(A) a class 1 misdemeanor.

Petitioner filed a motion to dismiss the charges asserting that under its reading of this Court’s opinion in *Molera*, § 19-118.01(A) bans only *per-signature* payments (i.e., a fixed rate for each signature) and therefore payments to circulators under Petitioner’s two bonus programs do not violate the statute. The State countered, arguing that the bonus programs violate § 19-118.01(A) because circulators were compensated, in part, based on the number of signatures collected. The court denied Petitioner’s motion to dismiss finding that it lacked a sufficient evidentiary record.

Petitioner then filed a second motion to dismiss asserting that § 19-118.01 violates the First Amendment and is unconstitutionally vague and overbroad. Petitioner also argued, in the alternative, that the statute is constitutional only if narrowly construed to prohibit only per-signature payments (i.e., a fixed rate for each signature). The superior court denied the second motion to dismiss. Petitioner filed a petition for special action review of the superior court’s denial of both motions to dismiss.

On special action review, the Court of Appeals held that “the two bonus programs at issue here allegedly violate § 19-118.01(A) because they purportedly paid circulators ‘in whole or in part’ based on the number of signatures collected.” *Id.* (quoting *Molera*, 250 Ariz. at 24 ¶ 35). Therefore, the superior court did not abuse its discretion in denying Petitioner’s first motion to dismiss.

On Petitioner’s argument that § 19-118.01 implicates First Amendment rights and must be narrowly interpreted, the court reviewed § 19-118.01 under the *Anderson/Burdick* framework, wherein courts balance the burden a statute imposes on the challenger’s First Amendment rights against the state’s interests offered to justify that burden. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 432–34 (1992). Courts are also to weigh the “severity of the burden on a plaintiff’s First and Fourteenth Amendment rights to determine the level of scrutiny to apply.” *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 408–09 ¶¶ 41–42 (2020). The court determined that § 19-118.01 is subject to exacting review under the *Anderson/Burdick* framework because it severely burdens the initiative process.

Upon applying exacting review, the Court of Appeals held that the State’s interest in the criminal penalties authorized by § 19-118.01(B) is not narrowly tailored and therefore the misdemeanor provision of § 19-118.01(B) is unenforceable because it violates the First Amendment. The court remanded for dismissal.

The State filed a timely petition for review.

RELEVANT STATUTES

A.R.S. § 19-118.01, provides:

A. A person shall not pay or receive money or any other thing of value based on the number of signatures collected on a statewide initiative or referendum petition. Signatures that are obtained by a paid circulator who violates this section are void and shall not be counted in determining the legal sufficiency of the petition.

B. A violation of this section is a class 1 misdemeanor.

ISSUES

The Court granted review as to this issue:

Whether A.R.S. § 19-118.01(B) is facially unconstitutional under the First Amendment merely because it prescribes a criminal penalty for a violation of § 19-118.01(A).

The Court also directed the parties to address whether A.R.S. § 19-118.01 is facially unconstitutional because it is vague in violation of the Fourteenth Amendment and the due process protection of the Arizona Constitution or because it is overbroad in violation of the First Amendment and the free speech protections of the Arizona Constitution.

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.