

**PEDERSEN V. BENNETT, 230 ARIZ. 556, 288
P.3D 760 (2012)**

Daniel Arellano

Declining to depart from substantial compliance test for review of initiatives, Arizona Supreme Court explains its decision to allow challenged proposition on the 2012 ballot.

The Supreme Court recently held that a clerical error in the submission of an initiative to the Secretary of State's office does not cause the initiative to fail to substantially comply with Arizona's statutory requirement to submit to the Secretary "a full and correct copy of the text" of the initiative.

The ballot initiative before the Court was an initiative to dedicate a permanent, one-cent sales tax to funding education and other public projects in Arizona, which was supported by Ann-Eve Pedersen and the Quality Education and Jobs Supporting I-16-2012 Committee ("the Committee"). In preparing to circulate petitions for the initiative to appear on the November 2012 ballot, the Committee inadvertently filed differing versions of the initiative with the Secretary of State's office: A full version on a CD and a paper version that omitted fifteen lines of text on the twelfth page of the fifteen-page initiative. The Committee circulated the full version with its petition sheets, while the Secretary of State's Office posted a scanned copy of the paper version on its website. 278 people viewed the scanned copy of the paper version on the Secretary's website, while 290,000 voters signed the Committee's petition sheets that contained the full version of the initiative.

In its December 5, 2012 opinion explaining its order, the Supreme Court stated Arizona has a strong policy of supporting the people's right to propose laws through an initiative process. The Court noted that courts do "not interfere with the people's right to initiate laws unless the Constitution expressly and explicitly makes any departure from initiative filing requirements fatal." (internal quotation marks and alterations omitted). When the Committee submitted the signatures to the Secretary, he deemed the signature sheets invalid because the text of the initiative on the petition sheets did not match the paper version submitted to his office. The Committee filed a writ of mandamus in the Superior Court to compel the Secretary to include the initiative in the ballot. The Superior Court, finding that the Secretary acted arbitrarily in rejecting the initiative, granted the Committee's writ. The Arizona Supreme Court affirmed the order on August 14, 2012.

The Court first noted that the Committee satisfied the Arizona Constitution's requirement that "a full and correct copy of the title and text" of the initiative be attached to "[e]ach sheet containing petitioners' signatures."

The Court then considered whether the Committee satisfied its statutory requirement to file with the Secretary "the text of the proposed . . . measure to be initiated." Despite the Secretary's request to depart from the "substantial compliance" standard for reviewing initiatives, the Court noted that the substantial compliance test "strikes the appropriate balance between protecting our citizens' right to initiate laws and the integrity of the election process."

Under this standard, the Court held that the initiative substantially complied with the statutory requirement at issue. The Court noted that the Committee's error was a clerical one "done without any intent to defraud or deceive." The Court deemed the risk of voter confusion or deceit to be insignificant because the Committee included the correct version of the initiative on its petition sheets, the Secretary had the correct version of the circulated initiative, and the omitted text was insignificant and hard to find. Additionally, the Secretary had over one month to remedy the error before his deadline to craft the official ballot language and produce the publicity pamphlet. As a result, the Court allowed the Committee's initiative to go forward.