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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

VINCE LEACH, an individual and qualified elector; GLENN HAMER, an individual and qualified elector; JUSTINE ROBLES, an individual and qualified elector; JOHN KAVANAGH, an individual and qualified elector; JENN DANIELS, an individual and qualified elector; JACKIE MECK, an individual and qualified elector; ASHLEY RAGAN, an individual and qualified elector; and JOHN GILES, an individual and qualified elector,

Plaintiffs,

v.

MICHELE REAGAN, in her official capacity as Arizona Secretary of State; APACHE COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE APACHE COUNTY BOARD OF SUPERVISORS, in their official

No. CV 2018-009919

APPLICATION FOR PRELIMINARY AND PERMANENT INJUNCTION AND ORDER TO SHOW CAUSE

(REQUEST FOR EXPEDITED HEARING PURSUANT TO A.R.S. §§ 19-118(D), 19- 122(C))

(Oral Argument Requested)

capacities; EDISON J. WAUNEKA, in his official capacity as Apache County Recorder; COCHISE COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE COCHISE COUNTY BOARD OF SUPERVISORS, in their official capacities; DAVID W. STEVENS, in his official capacity as Cochise County Recorder; COCONINO COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE COCONINO COUNTY BOARD OF SUPERVISORS, in their official capacities; PATTY HANSEN, in her official capacity as Coconino County Recorder; GILA COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE GILA COUNTY BOARD OF SUPERVISORS, in their official capacities; SADIE JO BINGHAM, in her official capacity as Gila County Recorder; GRAHAM COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE GRAHAM COUNTY BOARD OF SUPERVISORS, in their official capacities; WENDY JOHN, in her official capacity as Graham County Recorder; GREENLEE COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE GREENLEE COUNTY BOARD OF SUPERVISORS, in their official capacities; BERTA MANUZ, in her official capacity as Greenlee County Recorder; LA PAZ COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE LA PAZ COUNTY BOARD OF SUPERVISORS, in their official capacities; SHELLY BAKER, in her official capacity as La Paz County Recorder; MARICOPA COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE MARICOPA COUNTY BOARD OF SUPERVISORS, in their official capacities; ADRIAN FONTES, in his official capacity as

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Maricopa County Recorder; MOHAVE COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE MOHAVE COUNTY BOARD OF SUPERVISORS, in their official capacities; KRISTI BLAIR, in her official capacity as Mohave County Recorder; NAVAJO COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE NAVAJO COUNTY BOARD OF SUPERVISORS, in their official capacities; DORIS CLARK, in her official capacity as Navajo County Recorder; PIMA COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE PIMA COUNTY BOARD OF SUPERVISORS, in their official capacities; F. ANN RODRIGUEZ, in her official capacity as Pima County Recorder; PINAL COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE PINAL COUNTY BOARD OF SUPERVISORS, in their official capacities; VIRGINIA ROSS, in her official capacity as Pinal County Recorder; SANTA CRUZ COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE SANTA CRUZ COUNTY BOARD OF SUPERVISORS, in their official capacities; SUZANNE SAINZ, in her official capacity as Santa Cruz County Recorder; YAVAPAI COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE YAVAPAI COUNTY BOARD OF SUPERVISORS, in their official capacities; LESLIE M. HOFFMAN, in her official capacity as Yavapai County Recorder; YUMA COUNTY BOARD OF SUPERVISORS; MEMBERS OF THE YUMA COUNTY BOARD OF SUPERVISORS, in their official capacities; ROBYN STALLWORTH POUQUETTE, in her official capacity as Yuma County Recorder,

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Defendants,

and

CLEAN ENERGY FOR A HEALTHY ARIZONA, an Arizona political action committee,

Real Party in Interest.

I. INTRODUCTION

In accordance with A.R.S. § 19-122(C), Plaintiffs move for a preliminary and permanent injunction enjoining Defendant Arizona Secretary of State Michele Reagan (the "Secretary of State"), in her official capacity, from placing The Clean Energy for a Healthy Arizona Amendment (the "Initiative") on the ballot for the November 2018 election. The "[c]onstitutional and statutory requirements for statewide initiative measures must be *strictly* construed and persons using the initiative process must *strictly comply* with those constitutional and statutory requirements." A.R.S. § 19-102.01 (emphasis added). Failure to meet this demanding standard precludes a proposed initiative from appearing on the ballot. *See generally Parker v. City of Tucson*, 233 Ariz. 422 (App. 2013).

This Initiative fails to come anywhere close to satisfying the strict compliance standard, for at least the following reasons:

- *First*, Clean Energy for a Healthy Arizona (the "Committee"), which is the political action committee ("PAC") that applied for the Initiative, failed to identify the actual financial backer and administrative director of the Initiative as required by Arizona law. *See* A.R.S. §§ 16-906, 19-111(A) and 19-114.
- *Second*, the Committee improperly terminated petition circulators that did not meet a signature quota requirement, which incentivized circulator fraud. This violated A.R.S. § 19-118.01(A), which strictly prohibits circulators

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from being provided "a thing of value" based on the number of signatures they collect.

- *Third*, the Committee failed to gather the 225,963 valid signatures that was required to qualify the Initiative for placement on the ballot because the petition sheets that the Committee submitted were plagued by various deficiencies.
- *Fourth*, the Committee gave the Initiative a highly misleading title that obscured the actual impact of the proposed constitutional amendment, in violation of the Article 4, part 1, § 1(9) of the Arizona Constitution.
- *Fifth*, the Initiative's text creates a significant danger of voter confusion.
- *Sixth*, the Committee provided petition signers with a highly misleading Initiative summary, in violation of A.R.S. § 19-102(A).

In addition to the strong merits of Plaintiffs' claims, all other factors bearing on the grant of injunctive relief are present. Plaintiffs and the Arizona electorate will be irreparably injured if the Initiative is placed on the ballot, the balance of hardships weighs in Plaintiffs' favor, and public policy and fairness to the electorate favor injunctive relief, given the Initiative's numerous legal infirmities and constitutional violations. *See Smith v. Arizona Citizens Clean Election Comm'n*, 212 Ariz. 407, 410-11 (2006). This Motion should be granted and the Initiative should be enjoined from being placed on the ballot for the November 2018 election.

II. FACTUAL BACKGROUND

On February 9, 2018, the Committee was ostensibly formed and registered with the Arizona Secretary of State's Office. *See* Compl. ¶ 78. In its statement of organization, the Committee identified Clean Energy for a Healthy Arizona, LLC ("CEHA LLC") as its sponsoring organization. *Id.* However, CEHA LLC was not actually formed until more than two weeks later—on February 27, 2018. Compl. ¶ 80. In addition, CEHA LLC has not provided any contributions to the Committee. Compl. ¶ 82. Rather, nearly all of the Committee's contributions have been received from NextGen Climate Action

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("NextGen"), a California entity. Compl. ¶ 83.

Nonetheless, on February 20, 2018, the Committee submitted its initiative application with the Secretary of State. *See* Compl. ¶ 6. The Secretary of State accepted the application and issued serial number C-04-2018 to the Initiative Petition. *See* Compl. Ex. A.

In its attempt to gather the necessary petition signatures, the Committee began hiring and registering paid petition circulators. Upon information and belief, the circulators were paid by the hour but were subject to a signature quota within a certain period of time. Compl. ¶¶ 7, 89-94. Any circulator who failed to meet the quota was summarily fired. Compl. ¶ 91.

For the Initiative to qualify for the ballot, the Committee was required to submit 225,963 valid petition signatures to the Secretary of State on or before July 5, 2018. *Id.* On July 5, 2018, the Committee submitted approximately 50,065 petition signature sheets (the "Submitted Petitions") purporting to contain 480,464 valid signatures. Compl. ¶ 95. However, as detailed in Plaintiffs' Verified Complaint, which is incorporated herein by reference, the Initiative does not have sufficient signatures to qualify for the ballot. *See* Compl. ¶ 99; *see also* A.R.S. § 19-121.01(A).

The official title of the Initiative is "A Constitutional Amendment Amending Article XV of the Constitution of Arizona to Require *Electricity Providers* to Generate at Least 50% of Their Annual Sales of Electricity from Renewable Energy Sources." Compl. ¶ 221 (emphasis added). In reality, however, the Initiative applies only to a *subset* of electricity providers in Arizona. It would have no impact, for example, on Salt River Project ("SRP"), the second largest electricity provider in Arizona. Compl. ¶ 224.

The Initiative also included a highly misleading summary that was provided to petition signers, which stated:

> The Clean Energy for a Healthy Arizona Amendment requires affected electric utilities to provide at least 50% of their annual electricity from renewable energy sources by 2030. The Amendment defines renewable energy sources to include solar, wind, small-scale hydropower, and other

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> sources that are replaced rapidly by a natural, ongoing process (excluding nuclear and fossil fuel). Distributed renewable energy sources, like rooftop solar, must comprise at least 10% of utilities' annual retail sales of electricity by 2030. The Amendment allows electric utilities to earn and trade credits to meet these requirements. [Compl. Ex. A]

The reality is far different. By equating "Clean Energy" to "renewable energy," the summary obscures that nuclear power is one of the most common forms of clean energy today.

III. LEGAL STANDARD

Under A.R.S. § 19-122(C), "[a]ny person may contest the validity of an initiative . . . [and] may seek to enjoin the secretary of state or other officer from certifying or printing the official ballot for the election that will include the proposed initiative . . ." A preliminary injunction requires "a strong likelihood of success on the merits, a possibility of irreparable injury if the injunction is not granted, a balance of hardships weighing in [his] favor, and public policy favoring the requested relief." *TP Racing, L.L.L.P. v. Simms*, 232 Ariz. 489, 495 ¶ 21 (App. 2013). Courts apply a sliding scale to assess these factors. *Smith*, 212 Ariz. at 410-11 ¶ 10. This scale requires "either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and the balance of hardships tips sharply in [his] favor." *Simms*, 232 Ariz. at 495 ¶ 21 (internal quotation marks omitted).[1]

The "standard for issuing a permanent injunction is substantially the same as that applied to a request for preliminary injunctive relief, except that the plaintiff must prove actual success on the merits rather than the likelihood of success on the merits." 42 Am.Jur.2d *Injunctions* § 11. Plaintiffs will prove success on the merits through trial, which, in the interest of judicial economy, should be combined with the hearing on this

[1] Plaintiffs must also show that Defendant Secretary of State is likely to engage in the harmful conduct. *Id.* Here, the Secretary of State's placement of the Initiative on the ballot, despite the Committee's failure to obtain the required number of valid signatures and to strictly comply with constitutional and statutory would constitute the harmful conduct supporting injunctive relief.

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motion. *See* A.R.C.P. 65(2)(A). Here, all of the applicable factors favor the granting of an injunction.

A. Plaintiffs are likely to succeed on the merits.

The Court must review the Initiative for strict compliance with statutory and constitutional requirements. A.R.S. § 19-102.01(A). As shown below, the Initiative fails to meet the strict compliance standard for at least six separate reasons.

1. The Committee failed to properly identify its sponsoring organization.

The Initiative should not be placed on the ballot because the Committee has completely failed to accurately identify the Initiative's sponsor. This identification is mandated by A.R.S. § 19-111(A), which directs that a PAC's statement of organization be filed before or at the same time that the PAC applies for an initiative serial number.

The statement of organization must identify, among other things, the name or nickname of the PAC's sponsor, which must be incorporated into the PAC's proposed name. A.R.S. § 16-906(B)(1)(b).[2] The Secretary of State's *Initiative and Referendum Guide* explains how this requirement is intended to provide fair notice to voters of the actual backer of an initiative: "For example, if the PAC is established and funded by the National Rifle Association or the Sierra Club, the terms 'NRA' or 'Sierra Club' must appear in the PAC's title." Initiative and Referendum Guide § 1.2.1.1.2.1, available at https://azsos.gov/sites/default/files/2018%200502%20Initiative%20and%20Referendum%20Guide.pdf; *see also Van Riper v. Threadgill*, 183 Ariz. 580, 583 (App. 1995) ("[I]t is important for interested parties to know exactly who is backing" an initiative.).

The Committee failed to comply with these requirements in at least two ways. *First*, the Committee listed a non-existent organization as its sponsor in its February 9, 2018, statement of organization. The identified sponsor—CEHA LLC—did not submit its

[2] "Sponsor means any person that establishes, administers or contributes financial support to the administration of a political action committee or that has common or overlapping membership or officers with that political action committee." A.R.S. § 16-901(47).

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articles of organization to the Corporation Commission until February 27, 2018—more than two weeks later. *See* Compl. ¶ 80. Because CEHA LLC had no legal existence when it filed the statement of organization, it could not possibly serve as a valid sponsor for the Committee, thus rendering the Committee's statement of organization invalid. Consequently, the signatures obtained by the Committee are void and should not be counted. *See* A.R.S. § 19-114(B) ("Signatures obtained on initiative or referendum petitions by a political committee . . . prior to the filing of the committee's statement of organization are void and shall not be counted in determining the legal sufficiency of the petition.").

Second, the Committee improperly used CEHA LLC as a "shell" company in order to hide from Arizona voters the actual backer of the Initiative. This is not only demonstrated by the fact that CEHA LLC did not even come into existence until after the submission of the Committee's statement of organization and initiative application, but also by the Committee's financial disclosures. These disclosures show that CEHA LLC has never provided *any* monetary or in-kind contributions to the Committee. *See* Compl. ¶ 82.[3] Instead, nearly *all* of the Committee's funding and in-kind contributions (i.e., administrative staff) has been provided by NextGen. *See* Compl. ¶ 83.

Because NextGen has provided all the financial support to the Committee, the Committee's name needed to have some reference to NextGen. *See* A.R.S. § 16-906(B)(1)(b); Initiative and Referendum Guide § 1.2.1.1.2.1. Otherwise, Arizona's sponsor identification requirement for initiatives would be rendered meaningless. The examples provided by the Secretary of State's *Initiative and Referendum Guide* on this requirement (at Section § 1.2.1.1.2.1) are illustrative. If the Committee's tactics are countenanced, the NRA or the Sierra Club could provide 100% of the financial support for an initiative in Arizona, yet completely hide this fact from Arizona voters by setting up

[3] In addition, the Committee and CEHA LLC have different membership and officers. The members of CEHA LLC are Darryl Tattrie and Jessica Grennan. *See* Compl. at Ex. F. By contrast, the chairman of the Committee is Alejandra Gomez. *See* Compl. at Ex. B. Darryl Tattrie is merely the Committee's treasurer.

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a different entity with a different name that makes no mention of the NRA or the Sierra Club. This is directly contrary to the recognized importance of allowing "interested parties to know exactly who is backing" an initiative. *Van Riper*, 183 Ariz. at 583.[4]

Simply, the Committee did not provide the fair notice to the Arizona Secretary of State and petition signers required by Arizona law. This is especially the case given the strict compliance standard for initiatives. A.R.S. § 19-102.01. Consequently, all of the signatures gathered by the Committee are void, and the Initiative should be enjoined from placement on the ballot. *See* A.R.S. § 19-114(B).

2. The Committee Improperly Conditioned Circulator Employment on a Signature Quota Requirement.

Because the Committee terminated any circulators that did not meet a signature quota requirement, all of the signatures gathered by those circulators are invalid as a matter of law. Under A.R.S. § 19-118.01(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." *Id.* (emphasis added). "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." *Id.*

[4] This is further supported by federal guidance, which may be viewed as persuasive in in areas of campaign finance ambiguity. *See generally* A.R.S. § 16-916(C)(5). According to the Federal Elections Commission ("FEC"), a sponsored political action committee must include the full name of the connected organization in the committee's name, or a "clearly recognizable acronym form of the connected organization's name." FEC Corporations and Labor Organizations Campaign Guide (Jan. 2018) at 4-5; *see also* 11 C.F.R. § 102.13(c). That only "*commonly known*" nicknames are permitted underscores the importance of ensuring that the committee's true sponsor is made clear. In fact, the FEC has issued advisory opinions that certain abbreviations were not permissible because the abbreviation did not clearly identify the sponsoring organization. *See* FEC Corporations and Labor Organizations Campaign Guide (2018) at 5 (FEC Adv. Op. 1980-23 found that "Mid-Am PAC" was not a permissible abbreviation for Mid-American Dairymen, Inc. because it did not "recognizably identify the sponsoring organization."). Likewise, under Arizona law, the sponsoring organization should be apparent from the Committee's name. Here, there is no indication that NextGen is essentially Clean Energy for a Healthy Arizona's sole financial backer.

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Continued employment is plainly a "thing of value." *See Mattison v. Johnson*, 152 Ariz. 109, 113 (App. 1986) (holding that employment and continued employment are adequate consideration to form a contract between employer and employee). This was recognized in *Independence Institute v. Gessler*, 936 F. Supp. 2d 1256, 1259 (D. Colo. 2013), where the court explained that threat of losing one's job provides an even *greater* incentive to commit circulator fraud than a payment per-signature arrangement:

> Under a pay-per-hour system, the marginal return of forging a signature can be, by meeting a quota, retaining one's employment, whereas the marginal return of forging a signature under a pay-per-signature system is what is paid for a signature. *Losing one's job is a greater incentive to commit fraud when compared to the prospect of earning an additional dollar.*

Id. (emphasis added); *see also Voting for Am., Inc. v. Andrade*, 488 F. App'x 890, 900 (5th Cir. 2012) ("The incentives for fraud in a quota system are obvious.").

The Committee's signature quota requirement similarly incentivized circulator fraud, which is precisely what A.R.S. § 19-118.01(A) is intended to prevent. *See Initiatives; circulators; signature collection; contests: Hearing on H.B. 2404 Before the H. Gov't Comm.*, 2017 53d Leg., 1st Sess. (statements of Rep. Vince Leach concerning anti-fraud motivation for bill). Because continued employment is a thing of value, the Committee was legally prohibited from conditioning circulator employment "based on the number of signatures collected" through a quota system. A.R.S. § 19-118.01(A). Every signature collected by circulators subject to this quota system is invalid and should not be counted. *See* A.R.S. § 19-118.01.

3. The Committee failed to obtain a sufficient number of valid petition signatures.

Even if signatures were not invalidated on the ground that the Committee hid the Initiative's actual sponsor and used an illegal quota system, the Committee still failed to obtain the requisite 225,963 valid signatures to qualify the Initiative for the ballot. The Arizona Constitution makes clear that a proposed constitutional amendment should only

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be advanced to the voters if it has demonstrated a minimal level of support through the gathering of a sufficient number of valid petition signatures. *See* Ariz. Const. art. XXI, § 1. "As a general rule," petition signature sheets that have been "circulated, signed and filed are presumptively valid, and the challenger bears the burden to prove, by clear and convincing evidence, that a signer is not a qualified elector." *Jenkins v. Hale*, 218 Ariz. 561, 562 – 63 (2008) (discussing candidate nomination petitions). Such clear and convincing evidence may be established through testimony. *See Blaine v. McSpadden*, 111 Ariz. 147, 149 (1974) (upholding trial court's finding of clear and convincing evidence that specific petition signers were not registered to vote "even though some of the crucial evidence was produced through the lips of an interested person.").

The specific defects with the petition sheets and signatures are detailed in the Verified Complaint. *See* Compl. at Ex. C. Examples of the most common problems with those sheets and signatures include: (1) petitions being circulated by individuals who were not lawfully registered with the Secretary of State, which renders the signatures on those petitions invalid as a matter of law, *see* A.R.S. §§ 19-114(A); 19-118; and (2) petitions signed by individuals who were not registered to vote in Arizona at the time of signing. *See* A.R.S. §§ 19-112(A), 19-121.02(A)(5); Compl. ¶¶ 164-66. With these and other invalid signatures removed from consideration, as explained in the Complaint, the Committee fell well short of collecting the 225,963 petition signatures that were required. As a result, the Initiative has not qualified for placement on the ballot.

4. The Committee provided petition signers with a highly misleading Initiative title.

The Initiative further violates the Title and Text Rule in Arizona's Constitution, which provides that "[e]ach sheet containing petitioners' signatures shall be attached to a full and correct copy of the title and text of the measure so proposed to be initiative or referred to the people." Ariz. Const. art. 4, pt. 1, § 1(9); *see also* A.R.S. § 19-121(A)(3). The title of an initiative must indicate "what is to follow in the way of legislation" and cannot "be so meager as to mislead or tend to avert inquiry into the context thereof."

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Dennis v. Jordan, 71 Ariz. 430, 439 (1951). "[T]he question should not be how palatable something can be made to appear, but how accurately it is put before the people." *Tilson v. Mofford*, 153 Ariz. 468, 474 (1987) (Feldman, J. concurring).

Thus, as part of their duty to protect the electorate from fraud, courts must guard against bait-and-switch voter initiatives, where one constitutional amendment is promised by the initiative's title but a much different regime would actually take effect if the initiative is passed. *See Griffin v. Buzard*, 86 Ariz. 166, 173 (1959). This Initiative is such a bait-and-switch scheme.

In particular, the Initiative's title makes the misleading claim that it would "require *electricity providers*" to meet specific requirements. Compl. ¶¶ 2, 221-25. Reasonable voters will assume this means that the Initiative's requirements apply to *all* "electricity providers" in the state. But that is not what the Initiative would actually accomplish. Only if a voter goes beyond the prominently-displayed Initiative title, and digs into the definitions found in smaller text, will he or she discover that the Initiative applies only to "affected utilities," which are defined in the Initiative's text to include "a public service corporation serving retail electric load in Arizona." Compl. ¶¶ 223-24. The Initiative perpetuates the confusion by not providing any definition for "public service corporation." A voter would need to look to the Arizona Constitution to discover that public service corporation only includes a non-municipal corporation providing utility services in the State. Ariz. Const. art. 15, § 2. Thus, the Initiative does not apply to "electricity providers"—such a thing does not exist. And the plain meaning of the phrase "electricity provider" suggests that it encompasses any entity that provides electricity. But that is not the case. Instead, the Initiative applies to only a subset of "electricity providers."

To illustrate, the Initiative does not apply to the Salt River Agricultural Improvement and Power District ("SRP"), Arizona's second largest electricity provider, serving most of the greater Phoenix area. *See* Facts About SRP, www.srpnet.com/about/facts.aspx, last accessed July 18, 2018 ("Today, SRP is one of the nation's largest public power utilities. We provide electricity to approximately 1 million

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retail customers in a 2,900-square mile service area that spans three Arizona counties, including most of the Phoenix metropolitan area."). SRP is not a public service corporation, and is not regulated by the Arizona Corporation Commission. *See Rubenstein v. Salt River Project Agricultural Improvement and Irrigation District*, 76 Ariz. 402, 403 (1953). Nothing in the Initiative's title (or anywhere else in the Initiative) explains that SRP or other utilities similarly situated are exempted. It is likely that many people signing the Initiative's petition sheets in the greater Phoenix area receive electricity services from SRP and falsely believed that the Initiative would apply to their own "electricity provider."

In short, the Committee used what it believed would be palatable language, rather than a truthful description of the Initiative, in the title. To prevent further deception of Arizona's voters, the Court should grant this motion and enjoin the Initiative from placement on the ballot.

5. The text of the Initiative is highly deceptive and confusing.

The actual text of the Initiative is also misleading to the point of fraud and creates a significant danger of electorate confusion and unfairness. There are at least two significant defects with the Initiative's text.

First, the Initiative's repeated use of the term "clean energy" is highly misleading. The use of this term leads voters to believe that they are supporting clean energy, when in reality the Initiative promotes only "renewable energy" to the specific detriment of certain forms of clean energy. *See* Compl. ¶ 224; *see also generally Health Ariz. Initiative PAC v. Groscost*, 199 Ariz. 75 (2000) (A.R.S. § 19-124 requires that the legislative analysis of an initiative may not mislead voters).

The terms "clean energy" and "renewable energy" are not synonymous. "Today, nuclear energy generates roughly 20 percent of America's electricity while emitting zero greenhouse gases, making it by far the largest source of clean energy in the country." U.S.

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Dep't of Energy, "Nuclear Energy: Clean, Constant, and Cool," June 28, 2017.[5] Indeed, the Arizona Legislature has specifically found that "the Palo Verde Generating Station [which provides nuclear energy] is the nation's largest source of *clean energy*." 2018 Arizona Senate Concurrent Memorial No. 1003, Arizona Fifty-Third Legislature – Second Regular Session (2018) (emphasis added). Thus, clean energy is nearly synonymous with nuclear power. But the Initiative calls itself the "Clean Energy for a Healthy Arizona Amendment," even though it specifically excludes nuclear power from the forms of energy the Initiative promotes. *See* Compl. ¶ 244. *See Sklar v. Town of Fountain Hills*, 220 Ariz. 449, 454 (App. 2008) (purpose of 100-word summary is to "ensure that petition signers are informed about the document they are signing . . .").

Second, Sections 4 and 5 of the Initiative contain contradictory language that will confuse voters. Section 4 states: "The Secretary of State shall submit this Constitutional Amendment to the voters at the next general election as provided by Article XXI, Section 1, Constitution of Arizona." Compl. ¶ 233. But Section 4 only takes effect if the voters are presented with the Initiative on the November 2018 ballot and approve it. Section 4 thus indicates that voters could potentially vote on the same Initiative *twice*—once in November 2018, and again in November 2020, which would be the date of "the next general election" if Section 4 takes effect. *Id.* Creating further confusion, Section 5 of the Initiative states that "[i]f approved by the voters, the Constitutional amendment shall take effect on January 1, 2019." *Id.* But if the amendment has already taken effect in 2019, as Section 5 states, it is not clear why the measure would again be put to a vote in 2020, as required by Section 4. By including this internal contradiction, the Initiative does not constitute valid legislation. *See Saggio v. Connelly*, 147 Ariz. 240, 241 (1985) (proposed measure calling for an election did not constitute valid legislation). Moreover, the contradiction makes it impossible for voters to determine what they are supporting.

Whether these defects are considered individually or collectively, the Initiative's

[5] *Available at* https://www.energy.gov/articles/nuclear-energy-clean-constant-and-cool.

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text is too confusing and misleading to be placed on the ballot. An injunction should, therefore, be granted to avoid such placement.

6. The Committee provided signers with a highly misleading Initiative summary.

The Committee also provided Arizona voters with a misleading summary of the Initiative on the petition signature sheets, rendering all of those sheets invalid. *See Save Our Vote v. Bennett*, 231 Ariz. 145, 152 (2013). Under A.R.S. § 19-102(A), initiative petitions must include "a description of not more than one hundred words of the principal provisions of the proposed measure." This summary must not be "fraudulent or create[] a significant danger of confusion or unfairness." *Save Our Vote*, 231 Ariz. at 152. A petition signature sheet is invalid, therefore, if it obscures the real impact of the initiative. *See id*; *Sklar*, 220 Ariz. at 454 – 55.

Here, the Initiative's summary misleads voters as to the true impact of the proposed amendment. Compl. ¶¶ 237-40. Similar to the defective title and text of the Initiative, the summary makes it appear as though *all* Arizona electrical utilities will be required to produce at least half of their retail electricity sales from what the Initiative misleadingly characterizes as "clean energy" sources. *Id.* Although the summary makes reference to "affected electric utilities," it does not define this term or otherwise disclose how major electricity providers are excluded, such as SRP. Furthermore, the Initiative summary perpetuates the dishonest message that nuclear power is not a common form of clean energy. Because all of the petition sheets contained this misleading summary, all of the signatures on those sheets are invalid. *See Save Our Vote*, 231 Ariz. at 152.

B. Plaintiffs will suffer irreparable injury without an injunction.

Plaintiffs, as well as the rest of the Arizona electorate, will suffer irreparable harm in the absence of an injunction. Irreparable injury occurs when the harm is "not remediable by damages" and there is no other adequate legal remedy. *See IB Prop. Holdings, LLC v. Rancho Del Mar Apartments, Ltd.*, 228 Ariz. 61, 65 (App. 2011).

Here, if Plaintiffs' injunction is not granted, Arizona voters would be forced to vote

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on an unqualified, unconstitutional, and illegal initiative. The initiative requirements exist for a reason: they ensure that Arizona voters only need to vote on a proposed measure if a sufficient number of Arizona voters decide to sign a petition that provides fair disclosure of the initiative's backer and the true impact of initiative approval. Moreover, due to the constitutional nature of the Initiative, and the Voter Protection Act, the Legislature will be powerless to modify or amend the Initiative, if approved. *See Cave Creek Unified Sch. Dist.*, 233 Ariz. at 4 (citing Ariz. Const. art. 4, pt. 1, § 1(6)) (Voter Protection Act precludes the Legislature from repealing voter initiatives and from modifying them unless the proposed legislation "furthers the purpose" of the initiative).

As a result, Arizona could be left with an energy scheme that is not what voters wanted or expected. No amount of monetary damages would remedy this problem, and there is no other appropriate remedy at law to resolve these concerns. Therefore, without an injunction, Plaintiffs will suffer irreparable injury.

C. The balance of hardships tips sharply in Plaintiffs' favor.

Plaintiffs have a strong likelihood of success on the merits and irreparable harm absent injunctive relief. These two factors are sufficient to establish that the balance of hardships favor Plaintiffs. *See The Power P.E.O., Inc. v. Emps. Ins. Of Wausau*, 201 Ariz. 559, 562 ¶ 16 (App. 2002). Even if the Court reaches the other factors, however, Plaintiffs are still entitled to a preliminary injunction, as the balance of equities tips decidedly in favor of preliminary relief. *See IB Prop. Holdings*, 228 Ariz. at 65 ¶ 9 (preliminary injunction proper when the plaintiff's harm absent an injunction outweighs the defendant's harm from the injunction).

In sharp contrast to the extensive harm to Plaintiffs without an injunction, the Initiative and its proponents would not be seriously harmed by an injunction. The injunction would simply mean that the Initiative would not be presented to voters in the current election cycle—it may be put forward again in any future election cycle, should it strictly comply with Arizona law. In fact, the injunction would give the Initiative's proponents an opportunity to revise the Initiative's flaws, comply with Arizona law, and

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try again to gather a sufficient number of valid signatures.

These tasks were the responsibility of the Committee in the first instance. Indeed, the Committee has had access to its petition signature sheets since it began collecting signatures. The Committee, therefore, has had ample opportunity to ensure the validity of its signatures and complete control over those paid circulators collecting petition signatures. *See Campbell v. Pico*, Maricopa County Sup. Ct. Case No. CV2018-009940, at *5 (Jun. 22, 2018).[6] As shown in Exhibit C to Plaintiffs' Complaint, this clearly was not done. As a result, the Committee will not experience any hardship in having its deficient, insufficiently supported initiative kept off of the Arizona ballot.

The long-term consequences to the citizens and the Legislature of allowing a legally defective initiative to move forward in the election process far outweigh any concerns about delaying a sweeping modification of Arizona's existing energy scheme Thus, the balance of hardships tips strongly in Plaintiffs' favor.

D. Public policy favors the injunction.

Finally, Plaintiffs are entitled to an injunction because it is in the public's interest. *See IB Prop. Holdings*, 228 Ariz. at 64-65 ¶ 9. The Arizona public has little interest in the promotion of an initiative that is facially unconstitutional, contrary to law, and fraudulently misleading. Placing the Initiative on the ballot despite its failure to obtain the required number of valid signatures would directly violate the Arizona Constitution. *See* Ariz. Const. art. XXI, § 1. In addition, the Initiative will only confuse voters due to the fraudulently misleading petition summary and incoherent and inconsistent text, both of which obscure the Initiative's true impact. For these reasons, public policy demands that the Initiative be kept off of 2018 general election ballot.

[6] This trial court order is cited for its persuasive value. *See* Arizona State Bar *Ethics Op.* 87-14. A copy of the order is available here: http://www.courtminutes.maricopa.gov/docs/Civil/062018/m8346277.pdf.

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E. Miscellaneous Issues.

1. No bond should be required.

Because there is a *de minimis* risk of harm to the Initiative from entry of an order that merely requires compliance with constitutional and statutory requirements for ballot initiatives, the Court should not order Plaintiffs to post bond under Rule 65(e), Ariz. R. Civ. P. However, if the Court concludes that a bond is appropriate, the bond amount should be minimal.

2. The injunction hearing and trial should be combined.

Pursuant to Rule 65(2)(A), Arizona Rules of Civil Procedure, Plaintiffs requests that the hearing on this Motion be combined with the trial on the merits. Doing so would allow the Court to efficiently decide this matter on the merits so that the ballot preparation and election process may proceed without undue delay.

IV. CONCLUSION

Plaintiffs respectfully request that the Court issue an order for preliminary and permanent injunctive relief as described in the attached proposed order.

DATED this 19th day of July, 2018.

Respectfully submitted,

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