



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL December 9, 2009	No. I09-011 (R09-020) Re: Applicability of Rationale in <i>Jenkins v. Hale</i> to All Circulated Petitions
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To: The Honorable Ken Bennett
Arizona Secretary of State

Questions Presented

1. Does the opinion in *Jenkins v. Hale*, 218 Ariz. 561, 190 P.3d 175 (2008), apply to all circulated petitions, including initiative petitions and new party recognition petitions?
2. For petitions to which *Jenkins* applies, how should counties process those signatures?
3. For petitions to which *Jenkins* does not apply, how should counties process those signatures?

Summary Answers

1. In addition to nomination petitions, which were specifically addressed in *Jenkins*, petitions for new party recognition are encompassed by the holding and analysis of *Jenkins*. That case rejected a *per se* rule that signatures containing a post office box address, as opposed

to an actual residence address, are invalid. The holding of *Jenkins*, however, likely does not apply in the context of referendum, initiative and recall petitions.

2. Under *Jenkins*, with regard to nomination petitions, when a signature is challenged pursuant to Arizona Revised Statutes (“A.R.S.”) § 16-351(A) on the basis that the signer included only a post office box address, such a signature loses the presumption of validity to which it otherwise may have been entitled. In such case, the burden shifts to the proponent of the signature to persuade the trier of fact that the signature is that of a qualified elector.

With regard to new party recognition petitions, Arizona law requires county election officials to verify and count the signatures of qualified electors. Although, under *Jenkins*, signatures that are accompanied by solely a post office box address lose any presumption of validity, if election officials can verify that such signatures are those of qualified electors, then they should count those signatures.

3. The process for referendum, initiative and recall petitions is set forth in Title 19, A.R.S. §§ 19-121.01, -121.04, -208.01, -208.02, and Ariz. Const. art. 4, pt. 1 § 1(9). Under the applicable provisions, election officials should invalidate signatures on such petitions for which only a post office box address is provided.

Background

Arizona statutes provide for the use of petitions in several aspects of the State’s electoral processes. For example, A.R.S. §§ 16-314 and -341 provide for nomination petitions with regard to candidates for public office. In addition, A.R.S. § 16-801 provides for petitions for individuals attempting to gain state or other governmental recognition of a new political party. With regard to individuals attempting directly to legislate through the ballot or to recall an

elected official from office, A.R.S. §§ 19-101, -102, and -204 provide for referendum, initiative and recall petitions, respectively.

Although there are similarities in the requirements and purposes of the above-referenced petitions, the requirements pertaining to those petitions are differentiated and addressed distinctly in the statutes. For example, for nomination petitions, the statutes set forth the form and signature requirements of the petitions and the requirements for certification of such petitions. A.R.S. §§ 16-311(H), -314, -315, -321, -322. The specific form requirements for nomination petitions are set forth in A.R.S. § 16-315. That statute requires, among other things, that such petitions be “in substantially the following form: . . . [t]he signature portion of the petition shall be divided into columns headed by the titles: signature; printed name; *actual residence address or description of place of residence, city, town or post office*; and date of signing.” A.R.S. § 16-315(A) (emphasis added).

The statutes further set forth a procedure for electors to challenge the nomination of a candidate. Such actions may challenge, among other things, the validity of petitions or the signatures thereon. A.R.S. § 16-351(A). Although nomination petitions may be challenged, they are “presumptively valid” once they have been circulated, signed, and filed. *Jenkins*, 218 Ariz. at 562-63, 190 P.3d at 176-77 (citing *Miller v. Bd. of Supervisors of Pinal County*, 175 Ariz. 296, 301, 855 P.2d 1357, 1362 (1993)). In a challenge to the validity of nomination petition signatures, the challenger bears the burden of proving by clear and convincing evidence that the individual who signed a petition is not a qualified elector. *Id.*

In the case of petitions for new party recognition, the statutes set forth the minimum number of signatures needed and require that the petitions be “in substantially the form prescribed by § 16-315,” which is described above. A.R.S. § 16-801. With regard to petitions

for new party recognition, the county recorders “shall verify and count all signatures of qualified electors within thirty days after submission.” A.R.S. § 16-803(C). Unlike the provisions pertaining to nomination petitions, the new party recognition provisions do not set forth a specific procedure for challenging the validity of new party recognition petitions or signatures thereon.

With regard to referendum, initiative and recall petitions, statutes in Title 19 set forth specific requirements for the form of such petitions, signature requirements, and certification by petition circulators. A.R.S. §§ 19-101, -102, -112, -121. In addition, Title 19 sets forth specific duties of election officials with regard to processing referendum, initiative and recall petitions. A.R.S. §§ 19-121.01, -121.02, -121.04, -208.02. Title 19 also provides for the legal procedures for challenging election officials’ certification of such petitions. A.R.S. §§ 19-121.03, -122, & -208.04; *see also Time Infrastructure Moving Arizona’s Economy v. Brewer*, 219 Ariz. 207, 211, 196 P.3d 229, 233 (2008) (identifying the Title 19 provisions for review of county and state election officials’ actions regarding initiative and referendum petitions).

In *Jenkins*, the Court addressed the question of whether an elector’s signature on a nomination petition “is invalid as a matter of law if the elector provides a post office box address in the address portion of the signature line.” 218 Ariz. at 562, 190 P.3d at 176. The question stemmed from the statutory requirement described above that nomination petitions be in a form that includes a column for “actual residence address or description of place of residence, city, town or post office.” A.R.S. § 16-315(A).

In that case, a legislative candidate filed petitions containing signatures of individuals who provided only a post office box address under the “actual residence address” portion of the petition. *Jenkins*, 218 Ariz. at 562, 190 P.3d at 176. The challenger sued and argued that such

signatures were invalid. Without the challenged signatures the candidate lacked the requisite number of signatures to support his candidacy. *Id.* at 562-63, 190 P.3d at 176-77.

In the superior court, the candidate introduced evidence (in the form of review by the county recorder) to show that, although a post office box had been provided in lieu of a residence address, the signatures of the challenged entries were in fact those of qualified electors. *Id.* at 565-66, 190 P.3d at 179-80. Following the evidentiary hearing, the superior court found that the candidate had shown that a sufficient number of the challenged signatures were in fact those of qualified electors, and that the candidate thus had obtained a sufficient number of signatures to support his candidacy. *Id.* at 562, 190 P.3d at 176.

The Court affirmed the trial court's ruling and in so doing set out several legal principles regarding nomination petitions. *Id.* at 564-65, 190 P.3d at 178-79. First, the Court held that based upon its construction of A.R.S. § 16-315(A)(4) and other relevant statutory provisions, the Legislature intended to require on such petitions "the signer's actual residence address or some description of its location, whether by reference to a place, or to the relevant city, town or post office." *Id.* at 564, 190 P.3d at 178 (internal quotation marks and alteration omitted). Second, the Court held that, in a nomination petition challenge proceeding, signatures that do not contain such information lose the presumption of validity to which they otherwise are entitled. *Id.* at 565, 190 P.3d at 179. The Court further held, however, that the proponent of such signatures may come forward with evidence to "demonstrate to the trier of fact that the challenged signatures are those of qualified electors." *Id.* Thus, the Court rejected the notion that such signatures were invalid as a matter of law.

Analysis

I. Nomination Petitions.

The reasoning and holding of *Jenkins* expressly applies to nomination petitions, which include petitions of candidates seeking election through either the primary process or otherwise.¹

II. New Party Recognition Petitions.

Courts most likely would apply the reasoning of *Jenkins* to petitions for new party recognition. As an initial matter, petitions for new party recognition must be “in substantially the form prescribed” for nomination petitions in A.R.S. § 16-315. A.R.S. § 16-801(3). As noted above, A.R.S. § 16-315 contains the “actual residence address” language requirement for the form of petition that was interpreted in *Jenkins*. Because, as *Jenkins* found, the language of § 16-315(A) reflected a legislative intent to require an actual residence address, as opposed to merely a post office box address, on nomination petitions, the Legislature likely intended that petitions for new party recognition include the signer’s residence address or a description of residence location. *Cf. Obregon v. Indus. Comm’n of Ariz.*, 217 Ariz. 612, 616, 177 P.3d 873, 877 (App. 2008) (noting that courts interpret the same words used in different parts of the same act to have the same meaning).

Moreover, the same rationale for the residence address requirement in the case of nomination petitions applies with equal force to such requirement for new party petitions. As the Court in *Jenkins* noted, the purpose of the address requirement “is to determine whether the signer is a qualified elector.” *Jenkins*, 218 Ariz. at 564, 190 P.3d at 178. An address requirement for new party recognition petitions, which similarly require that signers be qualified electors, would serve the same purpose of ensuring that only qualified individuals sign petitions

¹ This opinion does not analyze the law with regard to nomination petitions for candidates for the office of delegate to a convention for ratifying amendments to the federal constitution. *See* A.R.S. § 16-703.

for recognition of a new political party. Thus, under the reasoning and holdings of *Jenkins*, to be valid, signatures on petitions for new party recognition should contain the signer's actual residence address or some description of residence location, which may refer to a place, or to the relevant city, town or post office. *Id.* at 564, 190 P.3d at 178.

The obligations of election officials with regard to new party recognition petitions, however, are different from those pertaining to nomination petitions. As noted above, nomination petitions that are circulated, signed and filed with the appropriate filing officer are "presumptively valid" and remain so unless challenged by court action by an elector. *Id.* at 562-63, 190 P.3d at 176-77; *see also* A.R.S. § 16-351(A). Neither the statutory provisions nor the cases, however, suggest that any similar presumption is conferred on petitions for new party recognition, for which there is no specific statutory mechanism for court challenge. To the contrary, the requirement set out in A.R.S. § 16-803(C) that the county recorder "verify and count all signatures" on new party recognition petitions suggests that signatures on such petitions are *not* afforded any presumption of validity upon their filing with the appropriate filing officer.

Under *Jenkins*, the absence of the residence address information on new party recognition petitions arguably "provides a prima facie showing that the signers are not qualified electors." *See Jenkins*, 218 Ariz. at 565, 190 P.3d at 179 (stating that if an elector challenges signatures on nomination petitions based on the absence of a residence address or description of residence location, the presumption of such signatures' validity "disappears"). As noted above, however, the Court in *Jenkins* did not hold that such signatures necessarily *must* be invalidated where the evidence established that the signatures were those of qualified electors.

In the case of new party recognition petitions, county election officials "shall verify and count all signatures of qualified electors." A.R.S. § 16-803(C). Thus, although a signature on a

filed new party recognition petition may not be entitled to any presumption of validity because the signature is not accompanied by a residence address, election officials nonetheless must verify such signature in accordance with A.R.S. § 16-803(C). If the election officials can verify such a signature as belonging to a qualified elector, then the signature should be counted. If the election officials are unable to verify such a signature as belonging to a qualified elector, then the signature should be invalidated. The absence of a residence address by itself, however, does not mandate the disqualification of the signature on a new party recognition petition if the county election officials are able to verify such signature.

III. Referendum, Initiative and Recall Petitions.

Title 19 governs petitions for referenda, initiative measures and recall. Unlike the Title 16 provisions that govern the types of petitions discussed above, Title 19 expressly sets forth specific information that must be included by signers of referendum, initiative and recall petitions. *E.g.*, A.R.S. §§ 19-112(A) (setting forth the information that must be included for the signer of a petition for initiative measure or referendum); 19-205(A) (setting forth the information that must be included for the signer of a recall petition); *see also Jenkins*, 218 Ariz. at 177, 190 P.3d at 563 (discussing A.R.S. § 16-315(A) and explaining that the statutory guidance of that provision “differs from the procedure for initiative, referendum, and recall elections, for which specific statutes dictate the information signers must provide on the petition forms”).

The Court in *Jenkins* expressly stated that its analysis pertained only to nomination petitions. *Id.* at 178 n.3, 190 P.3d at 564 n.3. In so stating, the Court noted that “[i]nitiative, referendum, or recall petitions are governed by different statutes, which require the Secretary of State to disqualify signatures [‘i]f the residence address or the description of residence location is

missing.” *Id.* (quoting A.R.S. §§ 19-121.01(A)(3)(b) and -208.01 (2002)) (emphasis added); *see also* A.R.S. § 19-121.02(A)(1) (providing that signatures on initiative, referendum, or recall petitions for which no “residence address or description of residence location is provided” “shall be disqualified” by the county recorder). Accordingly, *Jenkins* does not apply to referendum, initiative or recall petitions.

Signatures on petitions governed by Title 19 should be processed in accordance with that title. Specifically, signatures on such petitions that include only a post office address, as opposed to an actual residence address or description of residence location, must be disqualified. *See* A.R.S. § 19-121.02(A) (providing that the county recorder shall disqualify signatures if “[n]o residence address or description of residence location is provided”).

Conclusion

Upon court challenge by an elector, signatures on nomination petitions that include only a post office address, and not a residence address or description of residence location, lose the presumption of validity that may otherwise attach to them. If the proponent of such signatures persuades the trier of fact that the signatures are those of qualified electors, then such signatures should be deemed valid.

Signatures on new party recognition petitions that include only a post office address, and not a residence address or description of residence location, are not afforded any presumption of validity. Election officials must verify and count all signatures of qualified electors, however, notwithstanding that the signature is accompanied by a post office box address and not an actual residence address. If such a signature can be verified, then the county election officials should count that signature.

Signatures on petitions for referendum, initiative or recall that include only a post office address, and not a residence address or description of residence location, must be disqualified.

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