SUPREME COURT OF ARIZONA

GINA SWOBODA, as Chair of the Republican Party of Arizona, an Arizona non-profit company; BELINDA RODRIGUEZ, a qualified Arizona elector; KRISTIN BAUMGARTNER, a qualified Arizona elector, Petitioners, v. KATIE HOBBS, in her official capacity as Governor of the State of Arizona, Respondent.	Arizona Supreme Court No. CV-24-0198-SA **FILED 9/12/2024**

DECISION ORDER

On August 21, 2024, Petitioners Gina Swoboda, as Chair of the Republican Party of Arizona, Belinda Rodriguez, a qualified elector, and Kristin Baumgartner, a qualified elector ("Petitioners"), filed a petition for special action relief seeking a declaratory judgment, injunctive relief, and writ of quo warranto against Governor Katie Hobbs in relation to Executive Order 2023-23 ("EO 23") and Executive Order 2023-25 ("EO 25").

Petitioners allege that the Governor does not have the statutory or constitutional authority to enter these executive orders, and they request that the Court enjoin the Governor from enforcing them. Petitioners further allege that, in August 2024, they requested that County Attorney Rachel Mitchell file this same action in superior

court. Both EO 23 and EO 25 were entered in November 2023, and they have remained in effect since that time. Petitioners seek an award of attorney fees and costs under the private attorney general doctrine and/or pursuant to Rule 4(g) of the Rules of Procedure for Special Actions.

On August 30, 2024, Respondent Governor Hobbs responded to the petition. On the same day, One Arizona filed an amicus brief. Both Governor Hobbs and One Arizona ask this Court to decline special action jurisdiction or deny the relief sought. Governor Hobbs requests that this Court award her costs pursuant to A.R.S. §§ 12-341 and 12-342. She additionally requests that the Court enter, as a sanction against both Petitioners and their counsel, an award of reasonable attorney fees pursuant to Rule 25, Arizona Rules of Civil Appellate Procedure, and A.R.S. § 12-349.

On September 6, 2024, League of Women Voters of Arizona filed an amicus brief in opposition to the petition.

On September 9, 2024, Petitioners filed a Motion for a Procedural Order for Leave to File a Reply Brief. That same day, Respondents responded in opposition to Petitioners' motion.

Pursuant to Rule 7(b), Rules of Procedure for Special Actions, "[i]f a special action is brought in any appellate court, and if such an action might lawfully have been initiated in a lower court in the first instance, the petition shall also set forth the circumstances which in the opinion of the petitioner render it proper that the

petition should be brought in the particular appellate court to which it is presented. If the appellate court finds such circumstances insufficient, the court will on that ground dismiss the petition." The Court concludes that Petitioners have not presented adequate justification for the action to commence in this Court rather than the superior court. The issues raised in the special action petition will not be mooted by the November 2024 election. We further note that Petitioners have not addressed why neither EO was challenged until this point in time. An earlier challenge would have permitted the Petitioners to secure a final ruling well before the upcoming election.

Upon consideration,

IT IS ORDERED that the petition is dismissed under Rule 7(b) without prejudice to Petitioners bringing a proper proceeding in a lower court. In dismissing the petition without prejudice under Rule 7(b), the Court expresses no view on the merits of the parties' claims or defenses.

IT IS FURTHER ORDERED that Petitioners' and Governor Hobbs' respective requests for attorney fees and costs are denied without prejudice.

IT IS FURTHER ORDERED that Petitioners' Motion for a Procedural Order for Leave to File a Reply Brief is denied as moot.

DATED this 12th day of September, 2024.

_____/s/_____
ANN A. SCOTT TIMMER
Chief Justice

TO:
Andrew W. Gould
Dallin B Holt
Daniel Tilleman
Sambo Dul
D Andrew Gaona
Austin C Yost
Noah Gabrielsen
James E Barton II
Jacqueline Mendez Soto
Daniella Fernandez Lertzman
Aria C Branch
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