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March 24, 2021

Via email to:

The Honorable Tom Morrissey, Mayor
The Honorable Chris Higgins, Vice-Mayor
The Honorable Jim Ferris
The Honorable Scott Nossek
The Honorable Jolynn Schinstock
The Honorable Suzy Tubbs-Avakian
The Honorable Barbara Underwood
Town of Payson
303 N Beeline Highway
Payson, Arizona 85541

Re: Proposed Ordinance 927 (Agenda Items F.1. and F.2., March 25 Council Agenda)

Dear Mayor and Town Council:

This law firm represents Transparent Payson. Transparent Payson is the political committee that sponsored Propositions 401 and 402. The Town Council is considering repealing these voter-passed initiatives, action that would be illegal. I am referring to proposed Ordinance 927, items F.1. and F.2. on the March 25 Agenda. These items would either repeal or suspend Propositions 401 and 402, passed in August of 2018.

As voter passed initiatives, Propositions 401 and 402 are protected from repeal by elected officials such as yourself by the Arizona Constitution, to wit the Voter Protection Act of the Arizona Constitution, Art. IV, Pt. 1 § 6(B) prohibits a Town from repealing a voter-passed measure, and § 6(C) allows amendment only if the amendment “furthers the purposes” of the voter passed measure and only then with a three-fourths council vote.

Honorable Mayor and Town Council
March 24, 2021

It is true that both §§ 6(A) and 6(B) use the term “Legislature.” However, § 8 incorporates the same powers and rights that state voters enjoy into municipal initiative matters:

Local, city, town or county matters. The powers of the initiative and the referendum are hereby further reserved to the qualified electors of every incorporated city, town, and county as to all local, city, town, or county matters on which such incorporated cities, towns, and counties are or shall be empowered by general laws to legislate.

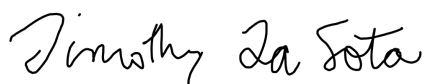
This is unambiguous, but to the extent there are any doubts, the Payson Town Code, § 30.65, puts these to rest, stating: “[t]here is reserved to the qualified electors of the town the power of the initiative and the referendum as prescribed by the State Constitution.” (Emphasis added).

If the Council persists in either repealing or suspending Propositions 401 or 402, Transparent Payson and its members will file suit against the Town seeking to enjoin the Council’s action. We will also seek attorney’s fees, and if we win, we will certainly be granted them. See A.R.S. §§ 12-348(A)(4), 12-2030.

I hope you will consider my arguments. The last time I asked the Town to do so it declined and I had to file suit, winning in both Superior Court and the Arizona Supreme Court. I hope that is not necessary this time.

Very truly yours,

TIMOTHY A. LA SOTA PLC



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