

Timothy A. La Sota, PLLC
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April 21, 2023

Via email to:

The Honorable Chris Higgins, Mayor
The Honorable Barbara Underwood, Vice-Mayor
The Honorable Brett Flaherty
The Honorable Joel Mona
The Honorable Scott Nossek
The Honorable Jolynn Schinstock
The Honorable Suzy Tubbs-Avakian
Town of Payson
303 N Beeline Highway
Payson, Arizona 85541

Re: Purported Repeal of Propositions 401 and 402

Dear Mayor and Town Council:

This law firm represents Transparent Payson. Transparent Payson is the political committee that sponsored Propositions 401 and 402. In March of 2021, when this Council previously considered repealing these propositions, I wrote to this Council warning that I would file suit on my client if the propositions were repealed. (Letter attached). The Council at that time wisely chose not to take that illegal action.

Now, unfortunately, this Council has taken the action it chose not to in March of 2021 and purported to repeal these propositions, at the April 12, 2023 Council meeting.

In addition to the violation of the Voter Protection Act that I outlined in my March 2021 letter, the Council decided to try to pass the repealing measure with an emergency clause. This emergency clause is invalid and another ground to void the Council's actions. As the Arizona Court of Appeals has explained: "The purpose of [a legislative body's emergency clause powers under] art. 4, pt. 1 [of the Arizona Constitution] is to reserve the power to the people to refer a legislative enactment to a popular vote...Its purpose is not to extend municipalities the unconstrained use of emergency declarations to insulate their

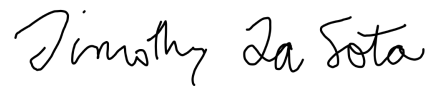
Honorable Mayor and Town Council
April 21, 2023

ordinances from popular vote.” *Israel v. Town of Cave Creek*, 196 Ariz. 150, 154–55 (App. 1999).

If Council does not reverse its action of April 12, 2023 within 10 calendar days of this letter, I will file suit challenging the Town Council’s illegal actions.

Very truly yours,

TIMOTHY A. LA SOTA PLC

A handwritten signature in black ink that reads "Timothy La Sota". The signature is written in a cursive, slightly slanted style.

Timothy A. La Sota

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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.

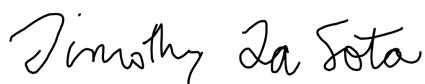
This is unambiguous, but to the extent there are any doubts, the Payson Town Code, § 30.65, puts these to rest, stating: “[t]here is reserved to the qualified electors of the town the power of the initiative and the referendum as prescribed by the State Constitution.” (Emphasis added).

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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