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4 Phoenix, Arizona 85016
5 Telephone: (602) 515-2649
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7 *Attorney for Plaintiff*

8 **SUPERIOR COURT OF ARIZONA**
9 **GILA COUNTY**

10 TRANSPARENT PAYSON, a political committee
11 registered pursuant to Arizona Revised Statutes
12 Section 16-905, JEFFREY AAL individually as a
13 citizen of the Town of Payson, and in his capacity as
14 Chairman of Transparent Payson, KIMBERLY ANN
15 NICHOLS, individually,

16 Plaintiffs,

17 vs.

18 TOWN OF PAYSON, ARIZONA, a public entity,
19 and TRACIE BAILEY, in her official capacity as
20 Payson Town Clerk,

21 Defendants.

No.

**VERIFIED
COMPLAINT FOR
SPECIAL
ACTION/INJUNCTIVE
RELIEF**

22 TRANSPARENT PAYSON, JEFFREY AAL and KIMBERLY ANN
23 NICHOLS (“Plaintiffs”), by and through attorney undersigned, for their Verified
24 Complaint for Special Action state and allege as follows:

25 **PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff TRANSPARENT PAYSON is a political committee legally
formed pursuant to Arizona Revised Statutes § 16-905 and registered with the Town
Clerk of the Town of Payson, pursuant to law.

1 2. Plaintiff JEFFREY AAL is a resident of Gila County, Arizona and a
2 resident and qualified elector of the Town of Payson, Arizona. Aal also serves as
3 Chairman of Transparent Payson.

4 3. Plaintiff KIMBERLY ANN NICHOLS is a resident of Gila County,
5 Arizona and a qualified elector of the Town of Payson, Arizona.

6 4. Defendant TOWN OF PAYSON, ARIZONA (“the Town”) is a
7 municipal corporation in the State of Arizona, and ultimately responsible for
8 enforcing and administering the laws of the Town.
9

10 5. This Court has jurisdiction over this action under A.R.S. § 12-123, the
11 Arizona Constitution, Article VI, § 14, and Rule 3 of the Arizona Rules of Procedure
12 for Special Actions.
13

14 6. Defendants have caused events to occur in Gila County, Arizona out
15 of which Plaintiff’s claims arise.
16

17 7. Venue is proper in this Court under A.R.S. § 12-401.

18 **GENERAL ALLEGATIONS**

19 8. In the case of special actions such as this one, the Rules of Procedure
20 for Special Actions themselves are not simply procedural rules but are grounded in
21 rights under the Arizona Constitution, to wit, the right to seek writs of prohibition,
22 mandamus and certiorari. Arizona Constitution, Art. VI, Sec. 18 (“The superior
23 court or any judge thereof may issue writs of mandamus, quo warranto, review,
24 certiorari, prohibition...”)
25

1 9. Arizona courts have held repeatedly that these rights have essentially
2 been codified and implemented through the Rules of Procedure for Special Actions:
3 “The common law writs of certiorari, mandamus, and prohibition are now obtained
4 by ‘special action.’” *Hull v. Albrecht*, 960 P.2d 634, 636, 192 Ariz. 34, 36
5 (1998)(quoting Rule 1, Ariz. R.P. Spec. Act., 17B Arizona Revised Statutes
6 (“A.R.S.”) (1997).

8 10. That these constitutional rights originated as a common law rights,
9 and cannot be infringed by the Legislature, is confirmed by *Batty v. Arizona State*
10 *Dental Bd.*, 112 P.2d 870, 875, 57 Ariz. 239, 250 (Ariz. 1941): “The right to issue
11 the writ of certiorari conferred upon superior courts by section 6, article 6, of our
12 Constitution is obviously the common-law right, and the legislature, therefore, may
13 not limit or circumscribe such power...” Section 6, Article 6 of the Arizona
14 Constitution is now found at Article VI, Section 18 of the Arizona Constitution.
15

17 11. The Plaintiffs have a right under the Arizona Constitution to seek a
18 writ of mandamus or prohibition.

19 12. In August of 2018, the electors of the Town of Payson passed
20 Propositions 401 and 402 (“the Propositions”), requiring a general vote for leasing
21 public lands exceeding three years and a vote if the financing mechanism for a
22 facility had a “backstop” feature that functioned as a general obligation bond.
23 Transparent Payson sponsored the Propositions, circulating petition sheets to have
24 these measures placed on the ballot, and urging the electorate to pass the
25 Propositions.

1 13. These propositions went into effect as provided by law, and have
2 remained in effect ever since, notwithstanding the Payson Town Council’s ultra
3 vires efforts to repeal the Propositions.

4 14. In March of 2021, an ordinance was proposed to be considered by
5 the Town Council. Proposed Ordinance 927 would have effected a purported repeal
6 of the Propositions.

7 15. In response to this development, Transparent Payson’s counsel sent
8 the Payson Town Council a letter threatening legal action if the Council passed
9 Ordinance 927. (Exhibit 1). Council took no action on Ordinance 927.
10

11 16. On April 12, 2023, the Council adopted an ordinance purporting to
12 repeal the Ordinances. This measure was also passed with a purported emergency
13 clause (“Emergency Clause”). Counsel for Transparent Payson sent the Town
14 Council a letter threatening legal action if the Town Council did not vote to rescind
15 their purported repeal of the Propositions within 10 days. (Exhibit 2). That time
16 period has come and gone without action by the Town Council.
17

18 17. On or about April 18, 2023, Plaintiff Nichols applied for an official
19 petition serial number seeking to refer the ordinance passed by Council purporting
20 to repeal the Propositions. On or about April 20, 2023, Defendant Bailey refused to
21 issue a petition serial number to Nichols.
22

23 18. As voter passed initiatives, the Propositions are protected from
24 repeal by elected officials by the Arizona Constitution, to wit the Voter Protection
25 Act of the Arizona Constitution, Art. IV, Pt. 1 § 6(B) prohibits a Town from

1 repealing a voter-passed measure, and § 6(C) allows amendment only if the
2 amendment “furthers the purposes” of the voter passed measure and only then with
3 a three-fourths council vote.

4 19. Both §§ 6(A) and 6(B) of Ariz. Const, Art. IV, Pt. 1 use the term
5 “Legislature.” However, § 8 of Art. IV., Pt. 1 incorporates the same powers and
6 rights that state voters enjoy into municipal initiative matters:
7

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

12 20. This is unambiguous, but to the extent there are any doubts, the
13 Payson Town Code, § 30.65, puts these to rest, stating: “[t]here is reserved to the
14 qualified electors of the town the power of the initiative and the referendum as
15 prescribed by the State Constitution.” (Emphasis added).
16

17 21. The Emergency Clause is invalid and another ground to void the
18 Council’s actions. As the Arizona Court of Appeals has explained: “The purpose
19 of [a legislative body’s emergency clause powers under] art. 4, pt. 1 [of the Arizona
20 Constitution] is to reserve the power to the people to refer a legislative enactment
21 to a popular vote...Its purpose is not to extend municipalities the unconstrained use
22 of emergency declarations to insulate their ordinances from popular vote.” *Israel v.*
23 *Town of Cave Creek*, 196 Ariz. 150, 154–55 (App. 1999).
24
25

1 **COUNT ONE-INJUNCTIVE, MANDAMUS AND DECLARATORY**
2 **RELIEF: THE TOWN COUNCIL’S ACTIONS PURPORTING TO**
3 **REPEAL THE PROPOSITIONS IS ULTRA VIRES, VOID AND OF**
4 **NO EFFECT**

5 22. Plaintiffs incorporate by reference the foregoing paragraphs as if fully
6 stated herein.

7 23. The Voter Protection Act, Ariz. Const. Art. IV, Pt. 1, prohibits the
8 Town Council from taking any action to repeal the Propositions.

9 24. Section 30.65 of the Payson Town Council also incorporates the Voter
10 Protection Act and prohibits the Town Council from taking any action to repeal the
11 Propositions.

12 25. The actions taken by the Town Council in purporting to repeal the
13 Propositions are ultra vires, void and of no effect.

14 26. Plaintiffs are entitle to relief in the form of mandamus, injunctive and
15 declaratory relief.

16 **COUNT ONE-INJUNCTIVE AND DECLARATORY RELIEF: THE**
17 **TOWN COUNCIL’S ACTIONS PURPORTING TO REPEAL THE**
18 **PROPOSITIONS IS ULTRA VIRES, VOID AND OF NO EFFECT**

19 27. Plaintiffs incorporate by reference the foregoing paragraphs as if fully
20 stated herein.

21 28. Under A.R.S. § 19-111(B), “[o]n receipt of the application” for an
22 official petition serial number, the Town Clerk “shall assign an official serial
23 number to the petition, which number shall appear in the lower right-hand corner of
24 number to the petition, which number shall appear in the lower right-hand corner of
25 each side of each copy thereof, and issue that number to the applicant.”

1 RESPECTFULLY SUBMITTED this 8th day of May, 2023.

2 TIMOTHY A. LA SOTA, PLC

3 By: /s/ Timothy A. La Sota

4 Timothy A. La Sota

5 2198 East Camelback Road, Suite 305

6 Phoenix, Arizona 85016

7 *Attorney for Plaintiffs*

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Rule 80 Declaration

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I declare under penalty of perjury of the laws of the State of Arizona that the foregoing Verified Complaint For Special Action is true and correct to the best of my knowledge and belief and that this Declaration is executed by me on the 8th day of May, 2023, in Gila County, Arizona.



JEFFREY AAL

EXHIBIT 1

Timothy A. La Sota, PLLC
2198 East Camelback, Suite 305
Phoenix, Arizona 85016
P 602-515-2649
tim@timlasota.com

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.

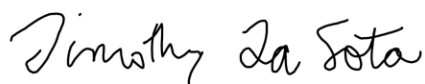
This is unambiguous, but to the extent there are any doubts, the Payson Town Code, § 30.65, puts these to rest, stating: “[t]here is reserved to the qualified electors of the town the power of the initiative and the referendum as prescribed by the State Constitution.” (Emphasis added).

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



Timothy A. La Sota

EXHIBIT 2

Timothy A. La Sota, PLLC
2198 East Camelback, Suite 305
Phoenix, Arizona 85016
P 602-515-2649
tim@timlasota.com

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

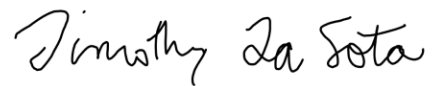
Honorable Mayor and Town Council
April 21, 2023

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, flowing style.

Timothy A. La Sota

Timothy A. La Sota, PLLC
2198 East Camelback, Suite 305
Phoenix, Arizona 85016
P 602-515-2649
tim@timlasota.com

March 24, 2021

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March 24, 2021

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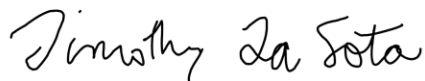
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