1 2	TIMOTHY A LA SOTA PLC		
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4	Telephone: (602) 515-2649		
5	Email: tim@timlasota.com Attorney for Plaintiffs		
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7	SUPERIOR COURT OF ARIZONA		
8	GILA COUNTY		
	TD ANGDADENT DANGON 111 111	No. CV2023-00118	
9	registered pursuant to Arizona Revised Statutes		
10		STIPULATION TO	
11	citizen of the Town of Payson, and in his capacity as Chairman of Transparent Payson, KIMBERLY ANN	ALLOW AMENDED COMPLAINT	
12			
13	Plaintiffs,		
14	VS.		
15			
16	TOWN OF PAYSON, ARIZONA, a public entity, and TRACIE BAILEY, in her official capacity as		
17			
18	Defendants.		
19			
20	The parties hereby stipulate, pursuant to Rule 15(a)(2), Ariz. R. Civ. P., that		
21	Plaintiffs may file the attached Amended Complaint.		
22	RESPECTFULLY SUBMITTED this 23 rd day	of August 2022	
23		of August, 2023.	
24	PIERCE COLEMAN TIME	OTHY A. LA SOTA, PLC	
25	11 *	s/ Timothy A. La Sota thy A. La Sota, Attorney for tiffs	

1	I hereby certify that on August 23, 2023 I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System
11	for filing and transmittal of a Notice of Electronic Filing to the following
3	CM/ECF registrants, with automatic email to the Judge.
4	I hereby certify that on August 23, 2023 I emailed copies of the foregoing
5	documents to the following:
6	Jon M. Paladini
7	Justin Pierce Pierce Coleman
8	7730 E Greenway Rd Suite 105
9	Scottsdale, AZ 85260 602-772-5506
10	justin@piercecoleman.com
	Attorneys for Defendants
11	
12	/s/ Timothy A. La Sota
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1	Timothy A. La Sota, SBN 020539	
2	TIMOTHY A. LA SOTA, PLC	
	2198 East Camelback Road, Suite 305	
3	Phoenix, Arizona 85016	
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5	Email: tim@timlasota.com	
3	Attorney for Plaintiff	
6	CUREDIOD COURT OF A DI	70NA
7	SUPERIOR COURT OF ARI	ZUNA
8	GILA COUNTY	
9	TRANSPARENT PAYSON, a political committee	No.
	registered pursuant to Arizona Revised Statutes	
10	Section 16-905, and JEFFREY AAL individually as	FIRST AMENDED
11	a citizen of the Town of Payson, and in his capacity as Chairman of Transparent Payson,	VERIFIED COMPLAINT FOR SPECIAL
12	D1 : .:.cc	ACTION/INJUNCTIVE
13	Plaintiffs,	RELIEF
14	vs.	
15	TOWN OF PAYSON, ARIZONA, a public entity,	
16	Defendant.	
17	TRANSPARENT PAYSON and JEFFREY	AAI ("Dlaintiffe") by and
18	TRANSPARENT TATSON and JEFFRET	AAL (Tamums), by and
19	through attorney undersigned, for their Verified Comp	plaint for Special Action state
20	and allege as follows:	
21	PARTIES, JURISDICTION, AND	D VENUE
22		
	1. Plaintiff TRANSPARENT PAYSON is	a political committee legally
23 24	formed pursuant to Arizona Revised Statutes § 16-905	and registered with the Town
25	Clerk of the Town of Payson, pursuant to law.	
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- 2. Plaintiff JEFFREY AAL is a resident of Gila County, Arizona and a resident and qualified elector of the Town of Payson, Arizona. Aal also serves as Chairman of Transparent Payson.
- 3. Defendant TOWN OF PAYSON, ARIZONA ("the Town") is a municipal corporation in the State of Arizona, and ultimately responsible for enforcing and administering the laws of the Town.
- 4. This Court has jurisdiction over this action under A.R.S. § 12-123, the Arizona Constitution, Article VI, § 14, and Rule 3 of the Arizona Rules of Procedure for Special Actions.
- 5. Defendants have caused events to occur in Gila County, Arizona out of which Plaintiff's claims arise.
 - 6. Venue is proper in this Court under A.R.S. § 12-401.

GENERAL ALLEGATIONS

- 7. In the case of special actions such as this one, the Rules of Procedure for Special Actions themselves are not simply procedural rules but are grounded in rights under the Arizona Constitution, to wit, the right to seek writs of prohibition, mandamus and certiorari. Arizona Constitution, Art. VI, Sec. 18 ("The superior court or any judge thereof may issue writs of mandamus, quo warranto, review, certiorari, prohibition...")
- 8. Arizona courts have held repeatedly that these rights have essentially been codified and implemented through the Rules of Procedure for Special Actions: "The common law writs of certiorari, mandamus, and prohibition are now obtained

by 'special action'." *Hull v. Albrech*t, 960 P.2d 634, 636, 192 Ariz. 34, 36 (1998)(quoting Rule 1, Ariz. R.P. Spec. Act., 17B Arizona Revised Statutes ("A.R.S.") (1997).

- 9. That these constitutional rights originated as a common law rights, and cannot be infringed by the Legislature, is confirmed by *Batty v. Arizona State Dental Bd.*, 112 P.2d 870, 875, 57 Ariz. 239, 250 (Ariz. 1941): "The right to issue the writ of certiorari conferred upon superior courts by section 6, article 6, of our Constitution is obviously the common-law right, and the legislature, therefore, may not limit or circumscribe such power..." Section 6, Article 6 of the Arizona Constitution is now found at Article VI, Section 18 of the Arizona Constitution.
- 10. The Plaintiffs have a right under the Arizona Constitution to seek a writ of mandamus or prohibition.
- 11. In August of 2018, the electors of the Town of Payson passed Propositions 401 and 402 ("the Propositions"), requiring a general vote for leasing public lands exceeding three years and a vote if the financing mechanism for a facility had a "backstop" feature that functioned as a general obligation bond. Transparent Payson sponsored the Propositions, circulating petition sheets to have these measures placed on the ballot, and urging the electorate to pass the Propositions.
- 12. These propositions went into effect as provided by law, and have remained in effect ever since, notwithstanding the Payson Town Council's ultra vires efforts to repeal the Propositions.

- 13. In March of 2021, an ordinance was proposed to be considered by the Town Council. Proposed Ordinance 927 would have effected a purported repeal of the Propositions.
- 14. In response to this development, Transparent Payson's counsel sent the Payson Town Council a letter threatening legal action if the Council passed Ordinance 927. (Exhibit 1). Council took no action on Ordinance 927.
- 15. On April 12, 2023, the Council adopted an ordinance purporting to repeal the Ordinances. This measure was also passed with a purported emergency clause ("Emergency Clause"). Counsel for Transparent Payson sent the Town Council a letter threatening legal action if the Town Council did not vote to rescind their purported repeal of the Propositions within 10 days. (Exhibit 2). That time period has come and gone without action by the Town Council.
- 16. As voter passed initiatives, the Propositions are protected from repeal by elected officials 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.
- 17. Both §§ 6(A) and 6(B) of Ariz. Const, Art. IV, Pt. 1 use the term "Legislature." However, § 8 of Art. IV., Pt. 1 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

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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.

20. 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 <u>as</u> <u>prescribed by the State Constitution</u>." (Emphasis added).

COUNT TWO-INJUNCTIVE, MANDAMUS AND DECLARATORY RELIEF: THE TOWN COUNCIL'S ACTIONS PURPORTING TO REPEAL THE PROPOSITIONS IS ULTRA VIRES, VOID AND OF NO EFFECT

- 22. Plaintiffs incorporate by reference the foregoing paragraphs as if fully stated herein.
- 23. The Voter Protection Act, Ariz. Const. Art. IV, Pt. 1, prohibits the Town Council from taking any action to repeal the Propositions.
- 24. Section 30.65 of the Payson Town Council also incorporates the Voter Protection Act and prohibits the Town Council from taking any action to repeal the Propositions.
- 25. The actions taken by the Town Council in purporting to repeal the Propositions are ultra vires, void and of no effect.
- 26. Plaintiffs are entitle to relief in the form of mandamus, injunctive and declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

- A. For a declaration from this Court that the actions taken by the Town Council in purporting to repeal the Propositions is ultra vires, void and of no effect for the reasons stated herein.
- B. For mandamus relief in the form of an order enjoining Defendant from taking any action inconsistent with the full and faithful operation and enforcement of the Propositions.

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- C. For mandamus relief in the form of an order requiring the Town Council to rescind its action purporting to repeal the Propositions, and an order requiring the Town of Payson to enforce and adhere to the Propositions.
 - D. For an award of taxable costs under A.R.S. § 12-341.
- E. For an award of attorney's fees under A.R.S. §§ 12-348(A)(4) and 12-2030.
 - F. For any other such relief as this Court deems fair and just.
 - G. For Findings of Fact and Conclusions of law.

1	RESPECTFULLY SUBMITTED this 22nd day of August, 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 Phoenix, Arizona 85016
6	Attorney for Plaintiffs
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Rule 80 Declaration 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 22nd day of August, 2023, in Gila County, Arizona. JEFFREY AAL