

1 Timothy A. La Sota, SBN 020539
2 **TIMOTHY A. LA SOTA, PLC**
3 2198 East Camelback Road, Suite 305
4 Phoenix, Arizona 85016
5 Telephone: (602) 515-2649
6 Email: tim@timlasota.com
7 *Attorney for Plaintiffs*

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. CV2023-00118

**STIPULATION TO
ALLOW AMENDED
COMPLAINT**

22 The parties hereby stipulate, pursuant to Rule 15(a)(2), Ariz. R. Civ. P., that
23 Plaintiffs may file the attached Amended Complaint.

24 RESPECTFULLY SUBMITTED this 23rd day of August, 2023.

25 **PIERCE COLEMAN**

By/s/ Jon M. Paladini
Jon M. Paladini, Attorney for Defendants

TIMOTHY A. LA SOTA, PLC

By: /s/ Timothy A. La Sota
Timothy A. La Sota, Attorney for
Plaintiffs

1 I hereby certify that on August 23, 2023 I caused the foregoing document
2 to be electronically transmitted to the Clerk's Office using the CM/ECF System
3 for filing and transmittal of a Notice of Electronic Filing to the following
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
8 **Pierce Coleman**
9 7730 E Greenway Rd Suite 105
10 Scottsdale, AZ 85260
11 602-772-5506
12 justin@piercecoleman.com
13 *Attorneys for Defendants*

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/s/ Timothy A. La Sota

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4 Phoenix, Arizona 85016
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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, and JEFFREY AAL individually as
13 a citizen of the Town of Payson, and in his capacity
14 as Chairman of Transparent Payson,

15 Plaintiffs,

16 vs.

17 TOWN OF PAYSON, ARIZONA, a public entity,

18 Defendant.

No.

19 **FIRST AMENDED**
20 **VERIFIED**
21 **COMPLAINT FOR**
22 **SPECIAL**
23 **ACTION/INJUNCTIVE**
24 **RELIEF**

25 TRANSPARENT PAYSON and JEFFREY AAL (“Plaintiffs”), by and
through attorney undersigned, for their Verified Complaint for Special Action state
and allege as follows:

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 by ‘special action.’” *Hull v. Albrecht*, 960 P.2d 634, 636, 192 Ariz. 34, 36
2 (1998)(quoting Rule 1, Ariz. R.P. Spec. Act., 17B Arizona Revised Statutes
3 (“A.R.S.”) (1997).

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

12 10. The Plaintiffs have a right under the Arizona Constitution to seek a
13 writ of mandamus or prohibition.
14

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

23 12. These propositions went into effect as provided by law, and have
24 remained in effect ever since, notwithstanding the Payson Town Council’s ultra
25 vires efforts to repeal the Propositions.

1 13. In March of 2021, an ordinance was proposed to be considered by
2 the Town Council. Proposed Ordinance 927 would have effected a purported repeal
3 of the Propositions.

4 14. In response to this development, Transparent Payson’s counsel sent
5 the Payson Town Council a letter threatening legal action if the Council passed
6 Ordinance 927. (Exhibit 1). Council took no action on Ordinance 927.

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

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

22 17. Both §§ 6(A) and 6(B) of Ariz. Const, Art. IV, Pt. 1 use the term
23 “Legislature.” However, § 8 of Art. IV., Pt. 1 incorporates the same powers and
24 rights that state voters enjoy into municipal initiative matters:
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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 as prescribed by the State Constitution.” (Emphasis added).

1 C. For mandamus relief in the form of an order requiring the Town
2 Council to rescind its action purporting to repeal the Propositions, and an order
3 requiring the Town of Payson to enforce and adhere to the Propositions.

4 D. For an award of taxable costs under A.R.S. § 12-341.

5 E. For an award of attorney's fees under A.R.S. §§ 12-348(A)(4) and 12-
6 2030.

7 F. For any other such relief as this Court deems fair and just.

8 G. For Findings of Fact and Conclusions of law.
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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

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 22nd day of August, 2023, in Gila County, Arizona.

JEFFREY AAL