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6  
7 **SUPERIOR COURT OF ARIZONA**  
8 **GILA COUNTY**

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

12  
13 Plaintiffs,

14 vs.

15 TOWN OF PAYSON, ARIZONA, a public entity, ,  
16  
17 Defendant.

No. CV2023-00118

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

(assigned to the Honorable  
Michael Latham)

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

21 **PARTIES, JURISDICTION, AND VENUE**

22 1. Plaintiff TRANSPARENT PAYSON is a political committee legally  
23 formed pursuant to Arizona Revised Statutes § 16-905 and registered with the Town  
24 Clerk of the Town of Payson, pursuant to law.  
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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.       Defendant TOWN OF PAYSON, ARIZONA (“the Town”) is a  
5 municipal corporation in the State of Arizona, and ultimately responsible for  
6 enforcing and administering the laws of the Town.

7           4.       This Court has jurisdiction over this action under A.R.S. § 12-123, the  
8 Arizona Constitution, Article VI, § 14, and Rule 3 of the Arizona Rules of Procedure  
9 for Special Actions.  
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11           5.       Defendants have caused events to occur in Gila County, Arizona out  
12 of which Plaintiff’s claims arise.  
13

14           6.       Venue is proper in this Court under A.R.S. § 12-401.  
15

16                               **GENERAL ALLEGATIONS**

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

24           8.       Arizona courts have held repeatedly that these rights have essentially  
25 been codified and implemented through the Rules of Procedure for Special Actions:  
“The common law writs of certiorari, mandamus, and prohibition are now obtained

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.  
14

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.  
21

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                                    **COUNT TWO-INJUNCTIVE, MANDAMUS AND**  
2                                    **DECLARATORY RELIEF: THE TOWN COUNCIL’S ACTIONS**  
3                                    **PURPORTING TO REPEAL THE PROPOSITIONS IS ULTRA**  
4                                    **VIRES, VOID AND OF 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.  
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17                                    **PRAYER FOR RELIEF**

18                   WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:  
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20                   A.     For a declaration from this Court that the actions taken by the Town  
21                   Council in purporting to repeal the Propositions is ultra vires, void and of no effect  
22                   for the reasons stated herein.

23                   B.     For mandamus relief in the form of an order enjoining Defendant from  
24                   taking any action inconsistent with the full and faithful operation and enforcement  
25                   of the Propositions.

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***



**Rule 80 Declaration**

I declare under penalty of perjury of the laws of the State of Arizona that the foregoing First Amended 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 29th day of August, 2023, in Gila County, Arizona.

\_\_\_\_\_  
JEFFREY AAL

# EXHIBIT 1

# EXHIBIT 2