

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF GILA
MICHAEL LATHAM, VISITING JUDGE

Michael Latham, Visiting Judge

By: Brittany R. McNeil, Judicial Administrative Assistant

<p>TRANSPARENT PAYSON, et. al., Plaintiffs, vs TOWN OF PAYSON, ARIZONA, et al., Defendants.</p>	<p>Case No. S0400CV202300118</p> <p>Date: October 16, 2023</p>
<p>TOWN OF PAYSON, ARIZONA, et al., Defendant/Counterclaimant, vs TRANSPARENT PAYSON, et. al., Plaintiff's/Counter-Defendants.</p>	

ORDER

Before the Court is Plaintiff's Application for an Order to Show Cause and for Preliminary and Permanent Injunctive Relief ("**Plaintiff's Application**"). On September 22, 2023, a hearing was held regarding Plaintiff's Application. The Court has reviewed Plaintiff's Application, Defendant's Response in Opposition to Plaintiff's Application, Plaintiff's Reply, as well as various cases and statutory provisions cited by the parties in their pleadings.

Based upon the information above, the Court finds that Plaintiff has failed to establish the necessary elements of a preliminary injunction. Specifically, the Court finds that there is insufficient legal authority to support a finding that Plaintiff is "likely to succeed in the trial on the merits". Although the September 22, 2023, hearing was a preliminary hearing and additional legal motions may be filed on the issue, for the purposes of preliminary injunctive analysis, the Court finds the lack of any case law applying the Voter Protection Act to general law/non-chartered towns to be significant. It is undisputed that the Town of Payson is a general law/non-chartered town. Title 9 of the Arizona Revised Statutes enumerates the powers of an incorporated town. Pursuant to A.R.S. §9-231(A) the "corporate powers of a town incorporated under § 9-101 shall be vested in a common

council.” The roles and responsibilities of a “common council” of a town are different than that of the Arizona State Legislature. Therefore, at this phase of the proceedings, the Court finds insufficient legal authority that Plaintiff is likely to succeed at trial on the merits.

With respect to the “public policy” argument, the Court found the testimony of the Payson Town Manager persuasive. The Payson Town Manager testified that application of Propositions 401 and 402 (Town Code §§ 34.01 and 157.01; repealed by Ordinances 953 and 954) would significantly impede the Town of Payson from efficiently and effectively performing the roles and responsibilities mandated by Title 9 of the Arizona Revised Statutes. Something as simple as leasing an office space to the local chamber of commerce for more than three years would require voter approval. Attempting to secure needed emergency equipment in a timely manner would be impaired by the logistical realities of what would be required to have the voters approve routine expenditures. The Court finds that Propositions 401 and 402, if applied as written, undermine the roles and responsibilities of the Payson Town Council as set forth in Title 9 and hamper the efficient administration of the Town.

Therefore, based on the foregoing, the Court denies Plaintiff's Application.

Date: _____

10/10/23



Honorable Michael Latham
Presiding Judge
Apache County Superior Court

Copies to:

Timothy A. La Sota [em]

Jon Paladini [em]

Larry Crown [em]

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