

**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

TRANSPARENT PAYSON, et. al., Plaintiffs, vs TOWN OF PAYSON, ARIZONA, et al., Defendants.	Case No. S0400CV202300118 Date: May 1, 2024
TOWN OF PAYSON, ARIZONA, et al., Defendant/Counterclaimant, vs TRANSPARENT PAYSON, et. al., Plaintiff's/Counter-Defendants.	

UNDER ADVISEMENT - FINAL ORDER

A bench trial was held April 19, 2024 at the Gila County Courthouse to address Plaintiff's request for declaratory and mandamus relief regarding Propositions 401 and 402 (Payson Town Code §§ 157.01 and 35.04) that were repealed by the Payson Town Council on April 12, 2023, and Defendant's counterclaim seeking declaratory judgment that Propositions 401 and 402 are without authority and outside the delegated powers of the Payson Town Council (i.e. unenforceable, invalid, null and void, and of no legal force and effect.) The transcript of the September 26, 2023 hearing was admitted as an exhibit to the bench trial.

Plaintiff's case heavily relies on whether the Voter Protection Act ("VPA") applies to a general law town like the Town of Payson. The parties stipulate that there is no case law applying the VPA to a general law town; provided, however, they also acknowledge there is no known case expressly stating the VPA does not or cannot apply to a general law town. This Court, however, finds insufficient legal basis to justify applying the VPA in this case. The language of the VPA and the cases applying it all relate to the Arizona State Legislature. Although Plaintiff's counsel made persuasive points for why a similar protection should apply to referendums passed by voters in a town, the Court does not find sufficient legal basis to apply the VPA to a general law town. The Court finds that attempting to apply the VPA in light of the roles and responsibilities of the "common council" set forth in Title 9 of the Arizona Revised Statutes would significantly impede the

efficient administration of the Town of Payson. Therefore, the Court denies Plaintiff's request for declaratory and mandamus relief.

The issue of whether the Propositions 401 and 402 could address legislative issues vs. administrative issues was also addressed at trial. Based on a review of the cases cited, and the arguments and line of questioning at trial, the Court finds that the issues addressed in Proposition 401 (leases, licenses, or easements for a term of three or more years) and Proposition 402 (financing or debt with an original amount of \$1 million or more) are not legislative in character. Admittedly, however, given the multiple capacities municipal and town councils must act within (legislative, executive, administrative, and quasi-judicial), the lines are not clear. "The sound rationale for limiting the referendum to legislative actions is that to permit referenda on executive and administrative actions would hamper the efficient administration of local governments." Wennerstrom v. City of Mesa, 169 Ariz. 485, 488, 821 P.2d 146, 149 (1991). Based on the evidence at trial, the Court finds that applying this "sound rationale" to the facts of this case supports Defendant's position that the matters described in the Propositions are administrative. The sole witness at trial was Troy Smith, the Payson Town Manager. The Court found his testimony persuasive in attempting to explain the legislative acts of the Town (general plan, zoning modifications, etc.) compared to administrative acts such as those covered in Proposition 401 and 402.

His testimony demonstrated that Propositions 401 and 402 as written would hamper the Town of Payson from efficiently and effectively performing the roles and responsibilities mandated by Title 9 (leasing office space, securing competitively priced emergency equipment, benefitting from low-income housing grant opportunities, etc.).

Finally, the Court finds that the Town of Payson is restricted to the general laws of the State Legislature. The Court finds no authority under the general laws for the Town of Payson to refer the matters addressed in Proposition 401 and 402 to the voters. The Court finds that since such matters fall outside the delegated powers of the Town Council of Payson, the voters likewise lack authority to initiate such ordinances.

Therefore, the Court grants Defendant's Counterclaim seeking declaratory judgment that Propositions 401 and 402 are unenforceable, invalid, of no legal force and effect and the Payson Town Council was within their legal authority to repeal them through Ordinances 953 and 954 on April 12, 2023.

All matters are now resolved, this Order constitutes a final appealable order pursuant to Rule 54(c) of the Arizona Rules of Civil Procedure.

Date: _____

5/1/24



Honorable Michael Latham
Visiting Judge

Copies to:

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