



Town of Payson, Arizona - Public Statement on Lawsuit Filed Against the Town (09/12/2024)

Payson Realtor Deborah Rose, represented by the Goldwater Institute, has filed a lawsuit seeking to block Payson's sale of a \$70-million bond issue.

On August, 21, 2024 the Town of Payson Council adopted resolution 3409 authorizing the sale of excise tax back bonds to build critical infrastructure and necessary community facilities. The lawsuit targets the town's use of an "emergency clause" within the authorizing resolution that made the resolution effective immediately.

Use of the emergency clause is allowed to protect the health, safety, and general welfare of the community. During the Council meeting on August 21, 2024 several explanations for the use of the emergency clause were given, including a statement from Councilmember Mona, who provided his rationale for the use of the clause by stating,

"Taylor Pool closed in 2019 and has drastically limited the ability for children to get swimming lessons. Drowning is the No.1 cause of death for children ages one to four, second leading cause of death for children ages five to fourteen. Obviously learning how to swim reduces that risk of death and to me and that checks the box for safety.

Aquatic activity lowers the risk of heart disease, diabetes and respiratory illness. It even helps people with PTSD, addiction, anxiety disorder and sleep trouble. People with arthritis, osteoporosis, injuries, disabilities that make high impact exercise difficult or impossible benefit from aquatic exercise. That clearly checks the box for health. Preservation of peace, health or safety."

The Town of Payson intends to vigorously defend against the suit, as the law clearly provides that courts cannot interfere with a legislative body's decision to adopt a measure with an emergency clause. It is a common practice for elected bodies across the State of Arizona to adopt excise tax backed bond sales with the use of the emergency clause. We are not aware of any previous litigation in the State of Arizona challenging the use of an emergency clause, when used in combination with the approval of the sale of bonds. Conversely there is a good deal of case law that clearly gives legislative bodies wide discretion when making legislative decisions, including the use of the emergency clause. Because the lawsuit is in direct conflict with previous court rulings the Town finds the action to be suspicious and predicts that it will be quickly dismissed.

Unfortunately, the lawsuit has necessitated its inclusion in the Town's financial statements and disclosures about risk. It is possible that the filing of this suit will increase cost of the sale of the bonds. These potential cost increases could amount to significant damages. The Town Council has a fiduciary responsibility to protect the taxpayer's funds, and we will evaluate the potential for a counterclaim against the Plaintiff as this action proceeds.