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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF GILA**

8 DEBORAH ROSE,

9 Plaintiff,

10 vs.

11 TOWN OF PAYSON; CHRIS HIGGINS, in
12 his official capacity as Mayor of the Town of
13 Payson; BARBARA UNDERWOOD, in her
14 official capacity as Vice-Mayor of the Town
15 of Payson; BRETT FLAHERTY, in his
16 official capacity as a Council Member of the
17 Town of Payson; JOEL MONA, in his
18 official capacity as a Council Member of the
19 Town of Payson; SCOTT NOSSEK, in his
20 official capacity as a Council Member of the
21 Town of Payson; JOLYNN SCHINSTOCK,
22 in her official capacity as a Council Member
23 of the Town of Payson; SUZY TUBBS-
24 AVAKIAN, in her official capacity as a
25 Council Member of the Town of Payson; and
26 TROY SMITH, in his official capacity as the
27 Town Manager of the Town of Payson,

28 Defendants.

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

23 This lawsuit challenges the Town of Payson’s improper use of an “emergency
24 clause” to deny residents’ constitutional right of referendum for a \$70 million municipal
25 bond measure. The Town’s desire to time the bond market based on its own speculation
26 about economic trends is not an emergency, and it does not justify bypassing the
27 democratic accountability required by the Arizona Constitution and state statute.

28 1. Plaintiff Deborah Rose is a resident of Gila County, Arizona.

1 *secure the best, available economic terms therefor, and an*
2 *emergency is hereby declared to exist, and this Resolution will*
3 *be in full force and effect from and after its passage by the*
4 *Council and it is hereby excepted from the referendum*
5 *provisions of the Constitution and laws of the State of*
6 *Arizona. After any of the Obligations are delivered by the*
7 *Trustee to the Underwriter and upon receipt of payment*
8 *therefor, this Resolution shall be and remain irrevocable until*
9 *the Obligations and the interest and premium, if any, thereon*
10 *shall have been fully paid, cancelled and discharged.*

11 Exhibit 1 at 5 § 11 (emphasis added).

12 16. In a presentation on the proposed bond measure, the Town’s bond
13 underwriters speculated that adopting Resolution No. 3409 “with an *emergency*
14 *clause* would allow the Town to take advantage of favorable interest rates or rallies
15 in the market and to get ahead of the expected influx of competing issuances in late
16 September/October as other issuers look to lock-in rates before the uncertainty
17 related to the November Election.” Town of Payson Council Meeting (Aug. 21,
18 2024)¹ at 25:15–25:45; PowerPoint Presentation at 3.²

19 17. The underwriter acknowledged, however, that he had “no ability to
20 predict interest rates,” and that these predictions were uncertain. *Id.* at 25:55.

21 18. The underwriter also stated: “By passing an emergency clause, it
22 simply gives us a little more flexibility to see into the market and within the
23 timeframe that we have, look for opportunistic times to go out and price the bond
24 issues in the market.” 26:50–26:57.

25 19. Another member of the Town’s bond underwriting firm indicated
26 during the same presentation that the bond market has been consistently favorable
27 throughout the past year. *Id.* at 31:25–30 (“For most bond issues sold in Arizona
28 this year, demand has exceeded supply.”).

 20. This presenter also showed a chart of “tax exempt interest rate
 movement” in which rates for comparable bonds have fluctuated by less than 0.8
 percentage points over the past year. *Id.*; Powerpoint Presentation at 7.

¹ https://payson.granicus.com/player/clip/2744?view_id=17&redirect=true.

² <https://tinyurl.com/2j6eyp9n>.

1 21. The presentation also included claims and data indicating that bond rates
2 increased by 0.6–0.8 percentage points in two recent presidential elections, and that rates
3 did not meaningfully increase in two other recent presidential elections. *Id.* at 35:15 (“The
4 Obama/Romney and Biden/Trump elections saw generally stable rates before election day
5 and modest declines after election day.”).

6 22. No statements during the August 21, 2024 Town Council meeting or in the
7 text of Resolution 3409 provide any other justification for the emergency clause besides
8 the desire to obtain slightly more favorable bond terms based on speculation that interest
9 rates might slightly increase in the coming months.

10 23. Several Town Council members indicated during the August 21, 2024
11 meeting that they wanted the Resolution enacted before the upcoming change in the Town
12 Council’s composition as a result of a close primary election. *See, e.g., id.* at 2:35:45–
13 2:26:00 (Councilmember Schinstock) (“I did not hear any vision from the incoming
14 council. They focused on criticizing our decision, and I really have no idea how they plan
15 to move Payson forward.”); *id.* at 2:40:57 (“It may take years to recover the momentum if
16 we don’t pull the trigger.”).

17 24. Several Town Council members also indicated during the August 21, 2024
18 meeting that the bond measure and associated municipal projects have been foreseen and
19 contemplated for several years, and they are not the result of sudden or emergent
20 circumstances. *See, e.g., id.* at 2:24:22–2:24:35 (Councilmember Nossek) (noting the
21 decision followed “over three years of open meetings, countless hours of study,
22 discussion, and a great deal of citizen input. This decision is not being rushed into by any
23 stretch of the imagination.”); *id.* at 2:49:50–2:50:05 (Councilmember Flaherty) (“What
24 we’re discussing is nothing new. It’s not rushed. It’s been out there on the table for a long
25 time, and a battle to get to this point.”).

26 25. Town Council members also noted that there have been several other efforts
27 to undertake bond-financed municipal projects in recent years that failed as a result of the
28 political process. *See, e.g., id.* at 2:27:10–2:27:30 (Councilmember Schinstock) (“Now

1 we're making a third attempt to bring this community an indoor pool, and once again, the
2 election results have put this project in jeopardy.”).

3 26. Prior to and since adopting the Resolution, the Town has provided no
4 findings or information regarding how including the emergency clause in the Resolution is
5 necessary for the immediate preservation of the peace, health or safety of the town.

6 27. Plaintiff is opposed to Resolution 3409 and wishes to organize a referendum
7 to overturn the measure.

8 28. Plaintiff is a qualified elector who could lawfully organize, support, and
9 vote in a referendum to overturn Resolution 3409, and in fact would do so, but for the fact
10 that Resolution 3409's emergency clause exempts the resolution from referendum.

11 29. During the August 21, 2024 Town Council meeting, the Town's bond
12 underwriters stated that “[a]ssuming passage of the Resolution this evening, [they] would
13 be anticipating entering the market, subject to market conditions, early in the month of
14 September, either the week of September 2 or the week of September 9. *Id.* at 19:53–
15 20:30.

16 30. The underwriters also stated that they would “anticipate closing the bond
17 issue, at which time proceeds of the bonds would be available for construction, at the end
18 of September,” specifically, “the week of September 30.”

19 31. Once the Town closes on the bond issue, the effects of Resolution 3409 will
20 be irrevocable and irreversible as a matter of law. *See* Exhibit 1 at 5 § 11 (“After any of
21 the Obligations are delivered by the Trustee to the Underwriter and upon receipt of
22 payment therefor, this Resolution shall be and remain irrevocable until the Obligations
23 and the interest and premium, if any, thereon shall have been fully paid, cancelled and
24 discharged.”).

25 32. Once the Town closes on the bond issue, the effects of Resolution 3409 will
26 also be irrevocable and irreversible as a practical matter, as the Town will then be
27 responsible for the bond.
28

1 33. Any financial obligations related to bonds authorized under Resolution 3409
2 will affect all the Town’s residents and taxpayers, because, inter alia, such obligations
3 would be secured by the Town’s “pledge” of “Excise Tax Revenues and State Shared
4 Revenues.” Exhibit 1 at 1; *see also id.* at 4 § 6 (“The covenants and agreements contained
5 in the Purchase Agreement as to the pledge of and the lien on Excise Tax Revenues and
6 State Shared Revenues and the restriction on the issuance of further parity obligations
7 secured by Excise Tax Revenues and State Shared Revenues are approved and
8 confirmed.”)

9 34. There is no “emergency” that justifies bypassing the referendum process
10 enshrined in Article 4, part 1, section 1 of the Arizona Constitution, and A.R.S. § 19-142.

11 35. In particular, the Town’s desire to obtain better bond terms, based on the
12 Town’s own speculation about future trends in the bond market, does not constitute such
13 an “emergency,” because it is not “necessary for the immediate preservation of the peace,
14 health or safety of” the Town or its residents. A.R.S. § 19-142(B).

15 36. The Town of Payson is not a Charter City.

16 37. The Town cannot enact ordinances or resolutions that conflict with state
17 statute.

18 38. The Town must comply with the requirements of state law, including A.R.S.
19 § 19-142, when enacting ordinances and resolutions, including the Resolution.

20 39. Resolution 3409 is void in its entirety because the emergency clause
21 concerns essential details of the proposed bond transaction, including timing,
22 irrevocability, and other terms.

23 40. Given, inter alia, the weight the Town has placed on the timing and
24 irrevocability of the proposed bond transaction, the emergency clause and any other “valid
25 portions” of the Resolution are “so intimately connected as to raise the presumption the
26 [Town] would not have enacted one without the other,” *Randolph v. Groscost*, 195 Ariz.
27 423, 427 ¶ 14 (1999) (citation omitted), and the remainder of Resolution 3409 cannot
28

1 “stand without the invalid language,” *City of Tempe v. Outdoor Sys., Inc.*, 201 Ariz. 106,
2 110 ¶ 12 (App. 2001).

3 **COUNT ONE: VIOLATION OF A.R.S. § 19-142(B)**

4 41. The Arizona Constitution recognizes the right of referendum, which
5 includes the right of Arizonans “to circulate petitions and refer to a popular vote
6 legislation which has been enacted by their elected representatives” at the municipal level.
7 *Wennerstrom v. City of Mesa*, 169 Ariz. 485, 488 (1991) (citing Ariz. Const. art. 4, pt. 1,
8 § 1).

9 42. To ensure that voters have the opportunity to exercise their constitutional
10 right of referendum, “[a] city or town ordinance, resolution or franchise shall not become
11 operative until thirty days after its passage by the council and approval by the mayor.”
12 A.R.S. § 19-142(B).

13 43. A city or town may exempt a legislative enactment from the right of
14 referendum only if that enactment is an “emergency measure[] necessary for the
15 immediate preservation of the peace, health or safety of the city or town.” *Id.*

16 44. Resolution 3409 is not an “emergency measure,” nor is it “necessary for the
17 immediate preservation of the peace, health or safety of the [Town of Payson].” *Id.*

18 45. By exempting Resolution 3409 from referendum, the Town has denied
19 Plaintiff her constitutional and statutory rights to circulate, campaign for, and vote on a
20 referendum against that measure.

21 46. This action harms Plaintiff by depriving her of her constitutional and
22 statutory rights.

23 47. This action additionally harms Plaintiff by subjecting her and her fellow
24 Payson residents to up to \$70 million, plus any applicable fees and interest, in debt
25 obligations, along with the tax burden of servicing and paying off those obligations.

26 48. Municipal actions that conflict with state law and the Constitution are void.

27 49. Resolution 3409 conflicts with Article 4, part 1, section 1 of the Arizona
28 Constitution and with A.R.S. § 19-142.

VERIFICATION

I, Deborah Rose, being duly sworn upon my oath, state that I am familiar with the allegations in the foregoing complaint and verify that the allegations contained therein are true and correct, except for those counts alleged upon information and belief, which I reasonably believe to be true.

Dated this 10th day of September 2024,

By: Deborah Rose

RESOLUTION NO. 3409

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, GILA COUNTY, ARIZONA, (1) APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST PURCHASE AGREEMENT, A FIRST TRUST AGREEMENT, A CONTINUING DISCLOSURE UNDERTAKING, AN OBLIGATION PURCHASE AGREEMENT AND OTHER NECESSARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS; (2) APPROVING THE SALE AND EXECUTION AND DELIVERY OF PLEDGED REVENUE OBLIGATIONS, SERIES 2024, EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN THE PURCHASE AGREEMENT; (3) DELEGATING AUTHORITY TO THE MAYOR, THE TOWN MANAGER AND THE DEPUTY TOWN MANAGER OF THE TOWN TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; (4) ADOPTING WRITTEN POLICIES AND PROCEDURES FOR TAX-ADVANTAGED OBLIGATIONS AND PROCEDURES FOR COMPLIANCE WITH CONTINUING DISCLOSURE UNDERTAKINGS; (5) AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND (6) DECLARING AN EMERGENCY

WHEREAS, the Mayor and Council (the “Council”) of the Town of Payson, Arizona (the “Town”), have determined to finance the construction of public safety facilities, streets improvements, paths and trails improvements, drainage improvements, parks and recreation facilities, an event center, an aquatic and recreation center, and additional related municipal facilities and capital improvement projects, including interests in real property, pertaining to the foregoing (collectively, the “Project”), by entering into a First Purchase Agreement, to be dated as of the first day of the month of the dated date of the hereinafter described Obligations as provided herein (the “Purchase Agreement”), with U.S. Bank Trust Company, National Association, a national banking association authorized to exercise corporate trust powers in the State of Arizona appointed as provided herein, as trustee (the “Trustee”); and

WHEREAS, in connection with the Purchase Agreement, the Council have deemed it necessary and desirable to provide for the sale and execution and delivery of pledged revenue obligations, as provided for by this Resolution (the “Obligations”), evidencing proportionate interests of the owners of the Obligations in payments to be made by the Town to the Trustee pursuant to the First Trust Agreement, to be dated as of the first day of the month of the dated date of the Obligations (the “Trust Agreement”), between the Trustee and the Town, such payments to be made pursuant to the Purchase Agreement; and

WHEREAS, the payments represented by the Obligations will be secured by amounts received under the Purchase Agreement pursuant to which the Town will pledge Excise Tax Revenues and State Shared Revenues (as such terms are defined in the Trust Agreement); and

WHEREAS, the Council will receive a proposal from Stifel, Nicolaus & Company, Incorporated, serving in the capacity of and designated as the underwriter (the “Underwriter”), and not acting as a municipal advisor as defined in the Registration of Municipal Advisors Rule of the Securities and Exchange Commission, and has determined that the Obligations should be sold through negotiation to the Underwriter on such terms as may hereafter be approved by the Authorized Representatives (as defined herein); and

WHEREAS, pursuant to the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (the “Regulations”), issuers of obligations, the interest on which is intended to be excludable from the gross income of the owners thereof for federal income tax purposes (“Tax-Exempt Obligations”), are required to establish policies and procedures to ensure compliance with the applicable provisions of the Code and the Regulations; and

WHEREAS, it is determined that procedures should be adopted in order to ensure that Tax-Exempt Obligations issued by the Town comply with the provisions of the Code and the Regulations (the “Tax Compliance Procedures”); and

WHEREAS, pursuant to Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the “Rule”), Participating Underwriters (as defined in the Rule) are required to reasonably determine that issuers have entered into written undertakings to make ongoing disclosure in connection with offerings of obligations to investors subject to the Rule; and

WHEREAS, it is determined that procedures should be adopted in order to document practices and describe various procedures for preparing and disseminating such ongoing disclosure for the benefit of the holders of the Town’s obligations and to assist the Participating Underwriters in complying with the Rule and such written undertakings (together with the Tax Compliance Procedures, the “Procedures”); and

WHEREAS, there have been presented to the Council at the meeting at which this Resolution is being adopted the proposed forms of: (1) the Purchase Agreement; (2) the Trust Agreement; (3) a Continuing Disclosure Undertaking, to be dated the date of delivery of the Obligations (the “Undertaking”), from the Town necessary for purposes of Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Rule”); (4) an Obligation Purchase Agreement, to be dated the date of the sale of the Obligations (the “Purchase Contract”), by and between the Town and the Underwriter, for the purchase of the Obligations; and (5) the Preliminary Official Statement, to be dated the date of the dissemination thereof (the “Preliminary Official Statement”), relating to the Obligations, which, as to be revised after the sale of the Obligations, shall constitute the Official Statement, to be dated the date of sale of the Obligations (the “Official Statement”), relating to the Obligations; and

WHEREAS, financing the costs of the Project pursuant to the Purchase Agreement is in furtherance of the purposes of the Town and is in the public interest;

NOW, THEREFORE, THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PAYSON, GILA COUNTY, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. Authorization and Terms.

(a) The execution and delivery of the Obligations by the Trustee is approved.

(b) The Mayor, the Town Manager, the Deputy Town Manager of the Town or the designees of any of them (collectively, the "Authorized Representatives") are authorized to determine on behalf of the Town: (1) the date the Obligations are to be sold to the Underwriter; (2) the total aggregate principal amount of the Obligations which are to be executed and delivered but not to exceed the aggregate principal amount of \$70,000,000; (3) the date the Obligations are to be dated; (4) the dates on which interest on the Obligations is to be payable and the interest rates per annum the Obligations are to bear; (5) the dates the Obligations are to mature (but not later than 25 years after the initial execution and delivery of the Obligations), the principal amounts to mature on such dates and the provisions for redemption thereof in advance of such dates; (6) whether the Obligations are to be sold in one or more series, and whether all or a portion of the Obligations will be sold on a taxable basis; (7) whether any portion of the proceeds of the Obligations shall be capitalized interest; and (8) the terms upon which the Obligations are to be sold to the Underwriter (including determinations of price, original issue discount and premium and underwriting compensation); provided, however, that the foregoing determinations shall not result in the yield on the Obligations, as calculated in accordance with Section 148 of the Code, exceeding six and one-half percent (6.50%).

(c) The Authorized Representatives are further authorized to determine on behalf of the Town whether the purchase of an insurance policy securing payment of the Obligations would be advantageous to the Town or the terms of the financing represented by the Obligations. The Authorized Representatives are authorized to negotiate with and secure, with proceeds of the Obligations or otherwise, such an insurance policy, from one or more institutions, the claims-paying ability of which are then assigned one of the two highest rating categories by a nationally recognized credit rating agency. The Authorized Representatives are authorized to execute and deliver any instruments or documents necessary in connection with the purchase of any such insurance policy, including those making provision for the repayment of amounts advanced by the institutions issuing such insurance policy.

(d) The form and other terms of the Obligations, including the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Trust Agreement and are approved.

Section 2. Sale of Obligations. The Obligations are to be sold to the Underwriter pursuant to the terms of the Purchase Contract as such terms are to be determined as provided hereinabove.

Section 3. Approval of Documents. The forms, terms and provisions of the Purchase Agreement, the Trust Agreement, the Purchase Contract and the Undertaking, in substantially the forms of such documents (including the Obligations and other exhibits thereto) presented at the meeting of the Council at which this Resolution is being adopted are hereby approved, with such

final provisions, insertions, deletions and changes as determined as provided hereinabove, and shall be approved by the Mayor of the Town, any other member of the Council, and, in the case of the Purchase Contract, the Authorized Representatives, the execution of each such document being conclusive evidence of such approval. The Mayor of the Town or any other member of the Council and, in the case of the Purchase Contract, the Authorized Representatives, or the Clerk of the Town, where applicable, are hereby authorized and directed, for and on behalf of the Town, to execute and deliver and attest or approve the Purchase Agreement, the Trust Agreement, the Purchase Contract and the Undertaking, in each case as necessary and as applicable, and to take all action to carry out and comply with the terms of such documents.

Section 4. Official Statement. The distribution of the Preliminary Official Statement by the Underwriter is ratified, confirmed and approved, and the Official Statement in substantially the form of the Preliminary Official Statement, with such changes or revisions therein from the form of the Preliminary Official Statement as may be approved by the Authorized Representatives, is approved, and the Authorized Representatives are authorized, empowered and directed, in the name and on behalf of the Town, to execute and deliver the same to the Underwriter. The execution and delivery by an authorized representative of the Town of instruments confirming that the Preliminary Official Statement was “deemed final” in accordance with the Rule is hereby ratified, confirmed and approved.

Section 5. Trustee Authorization. The Trustee is requested to take any and all action necessary in connection with the execution and delivery of the Purchase Agreement and the Trust Agreement, the sale and execution and delivery of the Obligations and is further authorized and directed to take such action as may be reasonable for the administration of the trusts so held by it.

Section 6. Pledge of Revenues; Parity Obligations. The covenants and agreements contained in the Purchase Agreement as to the pledge of and the lien on Excise Tax Revenues and State Shared Revenues and the restriction on the issuance of further parity obligations secured by Excise Tax Revenues and State Shared Revenues are approved and confirmed.

Section 7. Authorized Representative Authorization. The Authorized Representatives and other officers of the Town, on behalf of the Town, are authorized and directed, without further order of the Council, to do all such acts and things and to execute and deliver all such certificates, proceedings, agreements and other documents as may be necessary or convenient to be executed and delivered on behalf of the Town to evidence compliance with, or further the purposes of, all the terms and conditions of this Resolution and the consummation of the transactions contemplated hereby and as may be necessary to carry out the terms and intent of this Resolution.

Section 8. Adoption of Procedures. The Procedures are hereby adopted to establish policies and procedures related to the purposes set forth in the Recitals hereto. The right to use discretion as necessary and appropriate to make exceptions or request additional provisions with respect to the Procedures as may be determined is hereby reserved. The right to change the Procedures from time to time, without notice, is also reserved.

Section 9. Ratification of Related Actions. All actions of the officers and agents of the Town which conform to the purposes and intent of this Resolution and which further the sale and

execution and delivery of the Obligations as contemplated by this Resolution, whether heretofore or hereafter taken, are ratified, confirmed and approved.

Section 10. Severability. If any section, paragraph, clause or phrase of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Resolution. All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

Section 11. Emergency. The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety, particularly to immediately sell the Obligations to secure the best, available economic terms therefor, and an emergency is hereby declared to exist, and this Resolution will be in full force and effect from and after its passage by the Council and it is hereby excepted from the referendum provisions of the Constitution and laws of the State of Arizona. After any of the Obligations are delivered by the Trustee to the Underwriter and upon receipt of payment therefor, this Resolution shall be and remain irrevocable until the Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

[Remainder of page left blank intentionally.]

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Payson, Arizona, this 21st day of August 2024.

APPROVED:

Chris Higgins
Mayor

ATTEST:

Tracie Bailey
Town Clerk

APPROVED AS TO FORM:

Jon Paladini
Town Attorney

CERTIFICATION

I hereby certify that the foregoing Resolution No. _____ was duly passed and adopted by the Mayor and Town Council of the Town of Payson, Arizona, at a regular meeting held on the 21st day of August 2024, and the vote was _____ ayes and _____ nays and that the Mayor and ____ Councilmembers were present thereat.

Tracie Bailey
Town Clerk