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BY DEPUTY **RP**

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8 **SUPERIOR COURT OF ARIZONA**

9 **PINAL COUNTY**

10 MARICOPA CITIZENS PROTECTING
11 TAXPAYERS, a political action committee
12 formed and registered pursuant to A.R.S. § 16-
13 905, ROBERT REBICH, individually and as
14 Chairman of Maricopa Citizens Protecting
15 Taxpayers; DAVID PROM, individually and as
16 Treasurer of Maricopa Citizens Protecting
17 Taxpayers,

18 Plaintiffs,

19 vs.

20 CHRISTIAN PRICE, in his official capacity as
21 Maricopa Mayor; MARVIN L. BROWN, in his
22 official capacity as Maricopa Councilman;
23 PEGGY CHAPADOS, in her official capacity as
24 Maricopa Councilwoman; VINCENT
25 MANFREDI, in his official capacity as Maricopa
26 Councilman; NANCY SMITH in her official
27 capacity as Maricopa Councilman; JULIA R.
28 GUSSE, in her official capacity as Maricopa
Councilwoman; HENRY WADE, in his official
capacity as Maricopa Councilman; VANESSA
BUERAS, in her official capacity as Maricopa
City Clerk; CITY OF MARICOPA, ARIZONA,
a public entity, and PRIVATE MOTORSPORTS
GROUP, LLC, an Arizona limited liability
company,

Defendants.

No. **CV201701220**

**APPLICATION FOR
ORDER TO SHOW CAUSE**

(challenge under A.R.S. § 19-
122 to City Clerk's refusal to
submit referendum petition
sheets to the County Recorder)

STEPHEN F. MCCARVILLE

1 **I. APPLICATION**

2 Pursuant to Rules 6(d) and 65 of the Arizona Rules of Civil Procedure, Plaintiffs
3 respectfully move this Court for an Order (i) directing the Defendants to show cause why
4 Plaintiff should not be granted the relief sought in their Complaint for Special Action and
5 this Application, and (ii) setting a hearing on this matter as soon as possible. Plaintiff
6 requests the hearing be set as soon as possible to ensure the legally proper processing of a
7 referendum petition submitted in the City of Maricopa and fairness to the citizens who
8 signed it.
9

10 The following memorandum of points and authorities supports this Application
11 and Motion.
12

13 **II. THE GROUNDS FOR AN ORDER TO SHOW CAUSE**

14 **A. The basis of this suit**

15 A.R.S. § 19-122(A) provides that “if the secretary of state refuses to transmit the
16 facsimiles of a signature sheet or sheets or affidavits of circulators to the county recorders
17 for certification under section 19-121.01, the secretary of state shall provide the person
18 who submitted the petition, proposal, signature sheet or affidavit with a written statement
19 of the reason for the refusal. Within five calendar days after the refusal any citizen may
20 apply to the superior court for a writ of mandamus to compel the secretary of state to file
21 the petition or proposal or transmit the facsimiles.” (Emphasis added).
22

23 Because this pertains to a City election, the City Clerk performs the duties
24 identified in the statute above. A.R.S. § 19-141 (“The duties required of the secretary of
25 state as to state legislation shall be performed in connection with such legislation by the
26 city or town clerk.”)
27
28

1 Claiming that the challenged City action was an administrative act, the Maricopa
2 City Clerk has refused to transmit the petition sheets for verification by the County
3 Recorder. But the reality is that to the extent the City's actions are legal, they constitute a
4 rezoning of the property in question, not merely the granting of a Conditional Use Permit.
5 As such, there is no question that the City's actions are referable. *See Fritz v. City of*
6 *Kingman*, 191 Ariz. 432, 433, 957 P.2d 337, 338 (1998)("In multiple decisions over a
7 lengthy period, this court has consistently held that zoning decisions are legislative acts
8 subject to referendum.")
9

10
11 **B. In invalidating individual signatures, the City has usurped the powers**
12 **of another office, the Pinal County Recorder**

13 Twelve signatures have been invalidated by the City for additional illegitimate
14 reasons. Specifically, the City has disqualified twelve signatures for failing to provide
15 the City or zip code on the petition sheet line, even though elsewhere on the petition sheet
16 each signer states that their residence is in the City of Maricopa.
17

18 The law provides that when processing petition sheets, the City is assigned some
19 tasks, and the County is assigned other tasks. Essentially, the City conducts a "facial"
20 review under Arizona Revised Statutes § 19-121.01 in which it looks for obvious flaws.
21 If a signature is not disqualified by the City it is deemed "eligible" for certification by the
22 County. But that does not mean it will be deemed a valid signature. Some "eligible"
23 signatures will be deemed invalid by the County Recorder for reasons such as the signer
24 is not registered.
25

26
27 After the City has performed its duties, the County Recorder delves deeper into the
28 sample sent by the City. The County Recorder reviews whether the signature is that of a

1 qualified elector as opposed to simply facially reviewing the document. For example,
2 while the City has the power to invalidate a signature if the “signature” or “residence
3 address” is “missing”, the County Recorder has the power to invalidate where “[t]he
4 signature is illegible and the signer is otherwise unidentifiable”, or where “[t]he address
5 provided is illegible or nonexistent” or where “[t]he individual was not a qualified
6 elector”. (Compare A.R.S. § 19-121.01 to A.R.S. § 19-121.02, as those statutes contain
7 the respective powers of the City and County).
8

9 Despite this clear demarcation of power, the City invalidated signatures on the
10 basis that the City or zip code was missing. But in contrast to addresses that are
11 “missing”, there is no statutory basis for the City to invalidate signatures because the City
12 believes the address is incomplete. The County often will be able to find voters and
13 validate signatures even with little information. And that is the County’s job under
14 A.R.S. § 19-121.02, not the City’s. Apart from the authority granted by A.R.S. § 19-
15 121.01, the City has no lawful authority to invalidate signatures or deem them ineligible
16 for submission to the County Recorder for certification, and the twelve signatures must
17 be deemed eligible signatures.
18

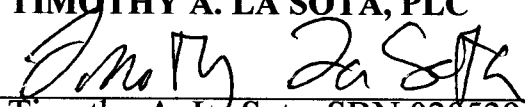
19 **III. CONCLUSION AND REQUESTED RELIEF**

20 The basis of this suit is spelled out in greater detail in the Verified Complaint. But
21 to summarize, under A.R.S. § 19-122, Plaintiffs are entitled to a writ of mandamus to
22 compel the City Clerk to transmit the petition sheets. The challenged action is a referable
23 rezoning, to the extent it is even legal, and the City Clerk is required by A.R.S. § 19-122
24 to transmit the petition sheets. This statute also requires that this action be advanced on
25 the Court’s calendar and heard and decided as soon as possible. Plaintiffs request that
26
27
28

1 this Court enter the requested show cause order and set a hearing on this matter as
2 promptly as possible.

3
4 RESPECTFULLY SUBMITTED this 26th day of June, 2017.

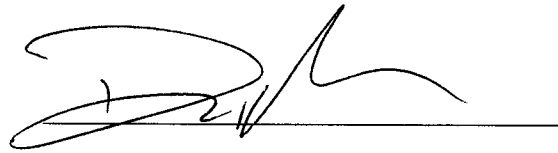
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6 **TIMOTHY A. LA SOTA, PLC**

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Rule 80(i) Declaration

I declare under penalty of perjury of the laws of the State of Arizona that the foregoing Application for an Order to Show Cause and for Preliminary and Permanent Injunctive Relief is true and correct to the best of my knowledge and belief and that this Declaration is executed by me on the 26 day of June, 2017, in Maricopa County, Arizona.

A handwritten signature in black ink, appearing to be 'D. H.', written over a horizontal line.