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JEFF FINE
Clerk of the Superior Court
By Maria Patterson, Deputy
Date 01/08/2019 Time 13:55:37
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CIVIL NEW COMPLAINT 333.00

TOTAL AMOUNT 333.00

Receipt# 26980217

#### IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

ROSA MARIA MORALES, an individual,

Petitioner,

Petitioner,

DENISE ARCHIBALD, in her capacity as the Clerk of the City of Phoenix; and ADRIAN FONTES, in his capacity as the Recorder of Maricopa County,

Respondents,

and

V.

URBAN PHOENIX PROJECT PAC, a political committee,

Real Party in Interest.

VERIFIED SPECIAL ACTION COMPLAINT

(Challenge to Legal Sufficiency of Recall Petition Pursuant to A.R.S. § 19-208.04)

Petitioner brings this action for declaratory, injunctive and mandamus relief, and hereby alleges as follows:

#### **SUMMARY OF THE CASE**

- 1. This action challenges the legal sufficiency of the recall petition bearing the City of Phoenix serial number RC-2-18 (the "Recall Petition"), which seeks an election to recall Michael Nowakowksi, the District 7 representative on the Phoenix City Council.
- 2. The Recall Petition and its constituent petition sheets and signatures do not strictly (or substantially) comply with all applicable provisions of law. Specifically:
  - a. The official text of the recall, which consists of the date-and-time stamped copy of the petition serial number application, was not attached to the Recall Petition signatures sheets while in circulation, in violation of A.R.S. §§ 19-202.01(D) and -203(D).
  - b. A copy of the petition form was not submitted to the City Clerk at the time the serial number application was filed, in violation of A.R.S. § 19-202.01(B)-(C).
  - c. The signers of the Recall Petition failed to aver in the body of the petition that they are qualified electors of the "electoral district" that Councilor Nowakowski represents, *i.e.*, District 7 of the City of Phoenix, in violation of A.R.S. § 19-204(A).
- 3. Declaratory, injunctive and/or mandamus remedies are necessary to prevent irreparable injury to the Petitioner and to ensure that the Respondents fully and effectively discharge the duties imposed upon them by state law.

## **JURISDICTION**

- 4. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the Arizona Constitution, Arizona Rules for Special Actions 4(a), and A.R.S. §§ 12-1801, 12-2021, and 19-208.04.
- 5. Venue for this action lies in Maricopa County pursuant to A.R.S. § 12-401(16) and A.R.S. § 19-208.04(C) because the Respondents hold office in that county.

#### **PARTIES**

- 6. Petitioner Rosa Maria Morales is a citizen of the United States of America, and a resident and qualified elector of District 7 of the City of Phoenix, Maricopa County and the State of Arizona.
- 7. Respondent Denise Archibald is the Clerk of the City of Phoenix and is named in this action in her official capacity only. The City Clerk serves as the filing officer for all petitions seeking the recall of elected officers in the City of Phoenix, and is responsible for issuing recall petition serial numbers, reviewing filed recall petition sheets and signatures for facial errors and deficiencies, and certifying the final disposition of recall petitions. *See* A.R.S. §§ 19-202.01(C), -203(A)(3), -208.01, -208.03, -121.01; Phoenix City Charter ch. XVII, § 3(B).
- 8. Respondent Adrian Fontes is the Recorder of Maricopa County and is named in this action in his official capacity only. The Maricopa County Recorder is the public officer responsible for verifying the voter registration status in Maricopa County of individuals who sign recall petitions. See A.R.S. § 19-208.02.
- 9. Real Party in Interest Urban Phoenix Project PAC (the "<u>Committee</u>") is an Arizona political committee that was designated as the sponsor of the Recall Petition on the petition serial number applications filed with the City Clerk.

## **GENERAL ALLEGATIONS**

- 10. On or around August 29, 2018, the Committee filed with the City Clerk an Application for Recall Petition seeking the recall of Councilor Nowakowski. Upon information and belief, a copy of the recall petition form was not attached to the completed application at the time it was submitted to the City Clerk. The City Clerk thereupon issued the serial number RC-1-18 to the Committee.
- 11. Later in the day on August 29, 2018, the Committee filed with the City Clerk an amended Application for Recall Petition seeking the recall of Councilor Nowakowski. Upon information and belief, a copy of the recall petition form was not attached to the

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completed amended application at the time it was submitted to the City Clerk. The City Clerk thereupon issued the serial number RC-2-18 to the Committee.

- 12. A true and correct copy of the amended application bearing the date and time stamp affixed by the City Clerk is attached hereto as Exhibit A.
- 13. On or around December 5, 2018 the Committee filed with the City Clerk the Recall Petition, which purportedly contained 2,361 signatures on 239 petition sheets.
- 14. On January 3, 2019 the City Clerk issued a certification stating that the Recall contained a number of valid signatures that equaled or exceeded the 1,337 valid signatures of qualified electors in District 7 of the City of Phoenix required to permit an election to recall Councilor Nowakowski. See ARIZ. CONST. art. VIII, § 1; A.R.S. § 19-201(A).
- The Arizona Legislature has directed that "[c]onstitutional and statutory requirements for recall be strictly construed and that persons using the recall process strictly comply with those constitutional and statutory requirements." A.R.S. § 19-201.01.
- 16. The "standard of strict compliance requires nearly perfect compliance with constitutional and statutory . . . requirements," Arrett v. Bower, 237 Ariz. 74, 81, ¶ 23 (App. 2015), and means that "harsh consequences...can occur when the statutory framework is not followed." Fidelity Nat. Title Co., Inc. v. Town of Marana, 220 Ariz. 247, 250, ¶ 14 (App. 2009).

### Objection No. 1: Failure to Attach Text of Recall to Petition Sheets

- 17. Since statehood, proponents of initiative or referendum measures have been required to attach to each petition sheet a copy of the full "title and text" of the law they are seeking to initiate or refer. See ARIZ. CONST. art. IV, pt. 1, § 1(9); A.R.S. §§ 19-121(A)(3), -121.01(A)(1)(a).
- 18. In 2015, the Legislature extended a similar mandate to recall petitions, prescribing that "the time-and-date-marked [serial number] application . . . constitutes the official copy of the text of the recall and shall be used in all instances as the text of the recall." A.R.S. § 19-202.01(D).
  - In addition, A.R.S. § 19-203(D) states: 19.

The filing officer's time-and-date-marked copy of the application, including the general statement of the grounds for recall, constitutes the full and correct copy of the recall text and is the only valid copy for circulation for signatures. Signatures that are collected with any copy of the recall text that is not a facsimile of the time-and-date-marked copy with the complete text that is identical to the time-and-date-marked copy issued by the filing officer are invalid.

- 20. Upon the filing of a recall petition, the City Clerk is required to "perform the steps prescribed in § 19-121.01, subsection A." A.R.S. § 19-208.01(A). Section 19-121.01(A)(1)(a) mandates the disqualification of all petition "sheets not attached to a copy of the complete title and text of the measure."
- 21. All signatures contained on petition sheets that were not attached to a copy of the time-and-date stamped serial number application while in circulation are void as a matter of law, and are not eligible for verification or certification by the County Recorder. See A.R.S. §§ 19-121.01(A)(1)(a), -203(D), -208.01(A).
- 22. Upon information and belief, none of the petition sheets comprising the Recall Petition were attached to a copy of the time-and-date stamped serial number application while in circulation or at the time they were filed with the City Clerk.
- 23. Accordingly, the Recall Petition and the signatures contained therein are legally insufficient, and a recall of Councilor Nowakowski is not eligible for placement on the election ballot.

# Objection No. 2: <u>Failure to Attach Copy of Petition Sheet to Petition Serial Number Application</u>

- 24. Prior to circulating a recall petition, the political committee sponsoring the recall must obtain a petition serial number from the filing officer. See A.R.S. § 19-202.01.
- 25. For a serial number to be properly issued, the completed serial number "application and petition shall be submitted as a single document to" the filing officer.

  A.R.S. § 19-202.01(B) [emphasis added]. "On receipt of the application and petition, the

receiving officer shall assign a number to the petition." *Id.* § 19-202.01(C) [emphasis added].

- 26. Any petition signatures collected before a serial number has been properly and validly issued by the filing officer are void as a matter of law, and are not eligible for verification or certification by the County Recorder. See A.R.S. §§ 19-202.01(C), -204(B), -208.01(A), -121.01(A)(3)(c).
- 27. Upon information and belief, the Committee did not provide a copy of its petition form to the City Clerk at the time of filing either of its serial number applications.
- 28. Because the Committee never obtained a valid and properly issued petition serial number, the Recall Petition and the signatures contained therein are legally insufficient, and a recall of Councilor Nowakowski is not eligible for placement on the election ballot.

# Objection No. 3: <u>Failure of Signers to Aver that They Are Qualified Electors of the</u> <u>"Electoral District" Councilor Nowakowksi Represents</u>

- 29. The caption of every sheet of a recall petition must contain an averment by the signers that they are "qualified electors of the electoral district from which" the public officer whose recall is sought was elected. A.R.S. § 19-204(A).
- 30. The "electoral district" from which Councilor Nowakowski was elected is District 7 of the City of Phoenix.
- 31. The caption on every sheet of the Recall Petition states that the signers are "qualified electors of the City of Phoenix" but nowhere avers that the signers are qualified electors of the "electoral district" from which Councilor Nowakowksi was elected, *i.e.*, District 7.
- 32. All signatures contained on petitions sheets that do not include all required recitations, statements, or averments are void as a matter of law, and are not eligible for verification or certification by the County Recorder. See A.R.S. § 19-204(A); W. Devcor, Inc. v. City of Scottsdale, 168 Ariz. 426 (1991).

33. Accordingly, the Recall Petition and the signatures contained therein are legally insufficient, and a recall of Councilman Nowakowski is not eligible for placement on the election ballot.

#### **COUNT I**

#### Declaratory and Injunctive Relief (A.R.S. §§ 12-1831, et seq.; 12-1803; 19-208.04)

- 34. Petitioner incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.
- 35. An actual and justiciable controversy exists regarding the legal sufficiency of the Recall Petition, and a judgment of this Court will end the controversy.
- 36. The Recall Petition is not substantially or strictly compliant with applicable law because (a) the date-and-time stamped copy of the petition serial number application was not attached to the Recall Petition signatures sheets at the time of their circulation, in violation of A.R.S. §§ 19-202.01(D) and -203(D); (b) a copy of the petition form was not submitted to the City Clerk at the time the serial number application was filed, in violation of A.R.S. § 19-202.01(B)-(C); and (c) the signers of the Recall Petition failed to aver in the body of the petition that they are qualified electors of the "electoral district" that Councilor Nowakowski represents, *i.e.*, District 7 of the City of Phoenix, in violation of A.R.S. § 19-204(A).
- 37. As a result, the Recall Petition contains fewer than the minimum number of valid signatures required to qualify a recall of Councilor Nowakowski for placement on the election ballot.
- 38. The certification of the Recall Petition on the basis of legally deficient petition sheets and signatures will irreparably injure the Petitioner and all qualified electors of the City of Phoenix.
- 39. The balance of equities and considerations of public policy support the entry of injunctive relief.

40. Accordingly, the Petitioner seeks declaratory and injunctive relief providing that the Recall Petition is not legally sufficient and that a recall of Councilor Nowakowksi may not be certified for placement on the election ballot.

#### **COUNT II**

#### Mandamus Relief (A.R.S. §§ 12-2021, et seq.; 19-208.04)

- 41. Petitioner incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.
- 42. The City Clerk and County Recorder have a non-discretionary legal duty to reject petition sheets and signatures included in the Recall Petition if they fail to strictly comply with one or more applicable provisions of the Arizona Constitution or the Arizona Revised Statutes.
- 43. The Recall Petition is not substantially or strictly compliant with applicable law because (a) the date-and-time stamped copy of the petition serial number application was not attached to the Recall Petition signatures sheets at the time of their circulation, in violation of A.R.S. §§ 19-202.01(D) and -203(D); (b) a copy of the petition form was not submitted to the City Clerk at the time the serial number application was filed, in violation of A.R.S. § 19-202.01(B)-(C); and (c) the signers of the Recall Petition failed to aver in the body of the petition that they are qualified electors of the "electoral district" that Councilor Nowakowski represents, *i.e.*, District 7 of the City of Phoenix, in violation of A.R.S. § 19-204(A).
- 44. As a result, the Recall Petition contains fewer than the minimum number of valid signatures required to qualify a recall of Councilor Nowakowksi for placement on the election ballot.
- 45. Petitioner lacks a plain, speedy and adequate remedy at law to compel the Respondents to perform the non-discretionary duties imposed upon them by statute.
- 46. Accordingly, the Petitioner seeks mandamus relief requiring the City Clerk and/or Maricopa County Recorder to disqualify all petition sheets and signatures that do not strictly comply with governing laws and to reject the Recall Petition as legally insufficient.

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#### **DEMAND FOR RELIEF**

WHEREFORE, the Petitioner demands relief in the following forms:

- A. A declaration that the Recall Petition is legally insufficient and that a recall of Councilor Nowakowski may not be certified for placement on the election ballot;
- B. An injunction pursuant to A.R.S. §§ 12-1801, 19-208.04 and/or Ariz.
  R. Civ. P. 65 that (a) requires the Respondents to issue an amended certification reflecting that the Recall Petition is legally insufficient, and (b) prohibits the Respondents from certifying or printing any election ballot that includes a measure to recall Councilor Nowakowski;
- C. A writ of mandamus compelling the Respondents to fully and effectively discharge their non-discretionary legal duty to reject as legally insufficient the Recall Petition and its constituent signatures;
- D. An award of reasonable attorneys' fees and costs pursuant to A.R.S.
   §§ 12-348, 12-2030, the private attorney general doctrine, and other applicable law; and
- E. Such other relief as the Court deems necessary, equitable, proper, or just.

DATED this 8th day of January, 2019.

STATECRAFT PLLC

By:

Kory Langhofer

Thomas Basile

649 North Fourth Avenue, First Floor

Phoenix, Arizona 85003

Attorneys for Petitioner

1	Verification			
2				
3	State of Arizona )			
4	) ss. County of Maricopa )			
5				
6	I, Rosa Maria Morales, being first duly sworn upon her oath, deposes and says:			
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8	I have read the foregoing Verified Special Action Complaint and know the contents thereof by personal knowledge. I know the allegations of the Verified Special Action Complaint to be true, except the matters stated therein on information and belief, which I believe to be true.			
9				
10				
11	Rosa maria marales			
12	TRACIA TIVIANUA TIVIANUALO			
13				
14	Subscribed and sworn to before me this graph day of January, 2019.			
15	Subscribed and sworn to before me this $8t^{\perp}$ day of January, 2019.			
16	h			
17				
18	Notary Public			
19	My Commission Expires:			
20	4-23-22			
21	GARRETT WIDNER Notary ID # 203334912			
22	Notary Public - State of Arizona County of Maricopa			
23	My Comm. Expires 04-23-2022			
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# Exhibit A



CITY CLERK DEPT ELECTION CASION

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## City of Phoenix APPLICATION FOR RECALL PETITION

The undersigned intends to circulate and file a recall petition demanding the recall of:

Michael Nowakowski	District 7 Councilman		
(Name)	(Title of Office Held)		
The grounds of the recall are as follows: (State in Michael Nowakowski has neglected the needs of the comparticipating in a lucrative downtown land deal that involving future by putting our vital South Central light rail project a expressing hateful comments about the LGBT community have been under investigation of corruption. The people based on Michael Nowakowski's unethical behavior and election to remove Nowakowski from office and elect a better the investigation for the issuance of an right-hand corner on each side of each signature is	stituents in District 7, abused his City Cou red his private employer, and has voted a st risk. Furthermore, he has been caught y and keeps close associations with lobby of Phoenix and District 7 deserve much to serious dereliction of duty, we hereby put elter councilperson to represent our commo official petition number to be prin	uncil office by gainst Phoenix's on video rists who are or better. Therefore, forth this recall nunity.	
Conform)	Urban Phoenix Project PAC		
Signature of Applicant Sean-Sweat	Name of Organization (if any) 100 E. Fillmore St. #230		
Printed Name of Applicant 100 E. Fillmore St. #230	Address Phoenix AZ	85004	
Address Phoenix AZ 85004	City State 817-223-4842	Zip	
City State Zip 817-223-4842	Telephone Number Sean Sweat, chair		
Telephone Number	Name of Officer and Title 100 E. Fillmore St. #230		
	Address Phoenix AZ	85004	
Date of Application 8-29-2018	City State 817-223-4842	Zip	
Petition Number Issued <u>RC - 2 - 18</u> Valid Signatures Required 1, 337	Telephone Number Arthur A. Vigil III, treasurer		
Valid Signatures Required	Name of Officer and Title 2026 N. 10th St.	0	
	Address Phoenix AZ	85006	
FOR OFFICE USE ONLY	City State 602-326-3387	Zip	
	Telephone Number		
Received and filed this	enset	, 20 <u>18</u>	
Trootion and mod the day of	000	, 20	

c: Deputy City Manager Assistant City Attorney Deputy City Clerk Elections Section