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Attorneys for Petitioner

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CV 2019-000793

ROSA MARIA MORALES, an individual,

No. _____

Petitioner,

**VERIFIED SPECIAL ACTION
COMPLAINT**

v.

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,

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

Respondents,

and

URBAN PHOENIX PROJECT PAC, a
political committee,

Real Party in Interest.

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

JEFF FINE
Clerk of the Superior Court
By Maria Patterson, Deputy
Date 01/08/2019 Time 13:55:37
Description Amount
----- CASE# CV2019-000793 -----
CIVIL NEW COMPLAINT 333.00
TOTAL AMOUNT 333.00
Receipt# 26980217

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

3 12. A true and correct copy of the amended application bearing the date and time
 4 stamp affixed by the City Clerk is attached hereto as Exhibit A.

5 13. On or around December 5, 2018 the Committee filed with the City Clerk the
 6 Recall Petition, which purportedly contained 2,361 signatures on 239 petition sheets.

7 14. On January 3, 2019 the City Clerk issued a certification stating that the Recall
 8 contained a number of valid signatures that equaled or exceeded the 1,337 valid signatures
 9 of qualified electors in District 7 of the City of Phoenix required to permit an election to
 10 recall Councilor Nowakowski. *See* ARIZ. CONST. art. VIII, § 1; A.R.S. § 19-201(A).

11 15. The Arizona Legislature has directed that “[c]onstitutional and statutory
 12 requirements for recall be strictly construed and that persons using the recall process strictly
 13 comply with those constitutional and statutory requirements.” A.R.S. § 19-201.01.

14 16. The “standard of strict compliance requires nearly perfect compliance with
 15 constitutional and statutory . . . requirements,” *Arrett v. Bower*, 237 Ariz. 74, 81, ¶ 23 (App.
 16 2015), and means that “harsh consequences...can occur when the statutory framework is
 17 not followed.” *Fidelity Nat. Title Co., Inc. v. Town of Marana*, 220 Ariz. 247, 250, ¶ 14
 18 (App. 2009).

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

20 17. Since statehood, proponents of initiative or referendum measures have been
 21 required to attach to each petition sheet a copy of the full “title and text” of the law they are
 22 seeking to initiate or refer. *See* ARIZ. CONST. art. IV, pt. 1, § 1(9); A.R.S. §§ 19-121(A)(3),
 23 -121.01(A)(1)(a).

24 18. In 2015, the Legislature extended a similar mandate to recall petitions,
 25 prescribing that “the time-and-date-marked [serial number] application . . . constitutes the
 26 official copy of the text of the recall and shall be used in all instances as the text of the
 27 recall.” A.R.S. § 19-202.01(D).

28 19. In addition, A.R.S. § 19-203(D) states:

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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: Failure to Attach Copy of Petition Sheet to Petition Serial Number Application

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

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

3 26. Any petition signatures collected before a serial number has been properly
4 and validly issued by the filing officer are void as a matter of law, and are not eligible for
5 verification or certification by the County Recorder. *See* A.R.S. §§ 19-202.01(C), -204(B),
6 -208.01(A), -121.01(A)(3)(c).

7 27. Upon information and belief, the Committee did not provide a copy of its
8 petition form to the City Clerk at the time of filing either of its serial number applications.

9 28. Because the Committee never obtained a valid and properly issued petition
10 serial number, the Recall Petition and the signatures contained therein are legally
11 insufficient, and a recall of Councilor Nowakowski is not eligible for placement on the
12 election ballot.

13 **Objection No. 3: Failure of Signers to Aver that They Are Qualified Electors of the**
14 **“Electoral District” Councilor Nowakowski Represents**

15 29. The caption of every sheet of a recall petition must contain an averment by
16 the signers that they are “qualified electors of the electoral district from which” the public
17 officer whose recall is sought was elected. A.R.S. § 19-204(A).

18 30. The “electoral district” from which Councilor Nowakowski was elected is
19 District 7 of the City of Phoenix.

20 31. The caption on every sheet of the Recall Petition states that the signers are
21 “qualified electors of the City of Phoenix” but nowhere avers that the signers are qualified
22 electors of the “electoral district” from which Councilor Nowakowski was elected, *i.e.*,
23 District 7.

24 32. All signatures contained on petitions sheets that do not include all required
25 recitations, statements, or averments are void as a matter of law, and are not eligible for
26 verification or certification by the County Recorder. *See* A.R.S. § 19-204(A); *W. Devcor,*
27 *Inc. v. City of Scottsdale*, 168 Ariz. 426 (1991).


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

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Verification

State of Arizona)
) ss.
County of Maricopa)

I, Rosa Maria Morales, being first duly sworn upon her oath, deposes and says:

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.

Rosa Maria Morales

Subscribed and sworn to before me this 8th day of January, 2019.

[Signature]
Notary Public

My Commission Expires:

4-23-22

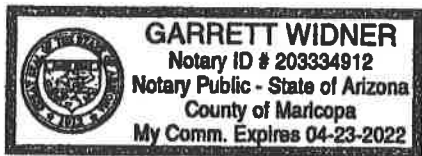


Exhibit A



18 AUG 29 AM 10:53

City of Phoenix
APPLICATION FOR RECALL PETITION

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


Michael Nowakowski
(Name)

District 7 Councilman
(Title of Office Held)

The grounds of the recall are as follows: (State in not more than 200 words the grounds of the demand.)

Michael Nowakowski has neglected the needs of the constituents in District 7, abused his City Council office by participating in a lucrative downtown land deal that involved his private employer, and has voted against Phoenix's future by putting our vital South Central light rail project at risk. Furthermore, he has been caught on video expressing hateful comments about the LGBT community and keeps close associations with lobbyists who are or have been under investigation of corruption. The people of Phoenix and District 7 deserve much better. Therefore, based on Michael Nowakowski's unethical behavior and serious dereliction of duty, we hereby put forth this recall election to remove Nowakowski from office and elect a better councilperson to represent our community.

I hereby make application for the issuance of an official petition number to be printed in the lower right-hand corner on each side of each signature sheet of the petition.


Signature of Applicant
Sean Sweat
Printed Name of Applicant
100 E. Fillmore St. #230
Address
Phoenix AZ 85004
City State Zip
817-223-4842
Telephone Number

Urban Phoenix Project PAC
Name of Organization (if any)
100 E. Fillmore St. #230
Address
Phoenix AZ 85004
City State Zip
817-223-4842
Telephone Number
Sean Sweat, chair
Name of Officer and Title
100 E. Fillmore St. #230
Address
Phoenix AZ 85004
City State Zip
817-223-4842
Telephone Number
Arthur A. Vigil III, treasurer
Name of Officer and Title
2026 N. 10th St.
Address
Phoenix AZ 85006
City State Zip
602-326-3387
Telephone Number

Date of Application 8-29-2018
Petition Number Issued RC-2-18
Valid Signatures Required 1,337

FOR OFFICE USE ONLY

Received and filed this 29 day of August, 2018


CRIS A. MEYER, CITY CLERK
Acting City Clerk

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