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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCONINO

VALERIE WYATT  
2017 JUL 21 PM 3:30  
FILED

GRAND CANYON, NOT GRAND HIGH  
RISES, *et al.*,

No. CV2017-00299

Petitioners,

v.

PATTY HANSEN, *et al.*,

STIPULATED  
JUDGMENT

Respondents.

13 The parties have stipulated to the entry of this Stipulated Judgment to resolve all  
14 matters in dispute in this action.

15 IT IS HEREBY ORDERED:

16 FINDINGS OF FACT

17 The following findings of fact are based upon the parties' stipulation:

18 1. On or around May 17, 2017 Petitioner Grand Canyon, Not Grand High  
19 Rises (the "Committee") filed with the Town Clerk of Tusayan, Arizona a Statement of  
20 Organization as well as an Application for Initiative or Referendum Petition Number to  
21 refer Town of Tusayan Ordinance 2017-01 to a vote of the electorate. The Town Clerk  
22 issued the serial number 2017-01 to the Committee on the same date.

23 2. On May 18, 2017 the Committee filed referendum petition number 2017-01  
24 (the "Referendum Petition") with the Town Clerk. The Referendum Petition consisted of  
25 two (2) petition sheets containing an aggregate total of twenty-seven (27) signatures.

26 3. In reviewing the Referendum Petition for facial deficiencies in the form of  
27 the petition sheets and in individual signature lines pursuant to A.R.S. § 19-121.01, the  
28 Town Clerk disqualified the signature of Marty Harris on the grounds that the date written

1 next to Mr. Harris' signature (*i.e.*, "5/19/17") was subsequent to the date on which the  
2 accompanying circulator affidavit had been executed (*i.e.*, May 18, 2017).

3 4. Mr. Harris in fact signed the Referendum Petition on May 18, 2017, not on  
4 May 19, 2017. His inscription of the May 19, 2017 date on the Referendum Petition was  
5 an error.

6 5. After disqualifying Mr. Harris' signature, the Town Clerk generated a  
7 randomly selected sample of five percent of the remaining 26 signatures for review and  
8 verification by the Coconino County Recorder. The random sampling yielded a total of  
9 two (2) signatures, which were transmitted to the Coconino County Recorder.

10 6. The two signatures in the sample were those of Jennifer Thoman Thurston  
11 and Michael W. Cockrum.

12 7. The County Recorder verified that Mr. Cockrum was a registered voter on  
13 the date he signed the Referendum Petition and deemed his signature valid.

14 8. The County Recorder determined that the signature affixed by Jennifer  
15 Thoman Thurston was invalid on the grounds that Ms. Thurston's signature as it appeared  
16 on the Referendum Petition did not match the signature on file with the County Recorder  
17 in Ms. Thurston's voter registration record at the time of the County Recorder's review.

18 9. Subsequent to executing her initial voter registration record, Ms. Thurston  
19 changed the form of her signature.

20 10. On or around May 26, 2017 Ms. Thurston's driver's license was reissued by  
21 the Arizona Motor Vehicles Division. The reissued driver's license contains Ms.  
22 Thurston's current form of signature.

23 11. At the time the County Recorder's Office reviewed Ms. Thurston's  
24 signature as it appears on the Referendum Petition, it had not yet obtained the updated  
25 form of Ms. Thurston's signature from the Arizona Motor Vehicles Division.

26 12. As a result of the disqualification of Ms. Thurston's signature, the Town  
27 Clerk determined that only one of the two signatures transmitted to her was valid, which  
28 produced a signature invalidity rate of 50%.

1 13. After applying the 50% invalidity rate to the remaining 25 signatures on the  
2 Referendum Petition, the Town Clerk certified that the Referendum Petition contained  
3 only 12 valid signatures, and thus did not qualify for placement on the ballot.

4 14. Subsequent to the Petitioners' initiation of this action, the Coconino County  
5 Recorder's Office received from the Motor Vehicles Division the updated form of Ms.  
6 Thurston's signature.

7 15. After reviewing the updated form of Ms. Thurston's signature, the County  
8 Recorder determined that the Jennifer Thurston who signed the Referendum Petition was  
9 a duly registered voter in the Town of Tusayan at the time she affixed her signature.

10 16. Based on voter registration records on file with the Coconino County  
11 Recorder, at least 18 of the individuals who signed the Referendum Petition, including  
12 Ms. Thurston, were qualified electors of the Town of Tusayan on the date of signing.

13 17. Subsequent to the filing of Verified Special Action Complaint, Respondent  
14 Melissa Drake, who was named in this action in her official capacity only, resigned her  
15 position as the Town Clerk of Tusayan.

#### 16 CONCLUSIONS OF LAW

17 1. The Referendum Petition must contain at least eighteen (18) valid signatures  
18 by registered voters residing in Tusayan to qualify the measure for placement on the  
19 election ballot. *See Ariz. Const. art. IV, pt. 1, § 1(8); A.R.S. § 19-142(A).*

20 2. After a ballot measure petition is submitted, the filing officer must review  
21 the individual petition sheets and signatures and presumptively disqualify those containing  
22 various facial defects enumerated by statute. *See A.R.S. §§ 19-121.01(A); 19-141(A).*

23 3. The filing officer then must generate for transmission to the County  
24 Recorder a random sample of five percent of the remaining signatures. *See A.R.S. § 19-  
25 121.01(B).*

26 4. Pursuant to A.R.S. § 19-121.02, the County Recorder must ascertain  
27 whether each signer in the random sample was a registered voter in Coconino County on  
28 the date he or she signed the petition, and then calculate the percentage of signatures in

1 the sample that are invalid. Following the County Recorder's review, the Town Clerk  
2 then discounts the total number of remaining signatures by the invalidity rate to arrive at  
3 the final tally of valid signatures. See A.R.S. § 19-121.04.

4 5. In reviewing a filed ballot measure petition for facial deficiencies in a  
5 petition sheet or individual signatures, the Town Clerk must disqualify a signature "if the  
6 date on which the petitioner signed the petition is after the date on which the affidavit was  
7 completed by the circulator and notarized." See A.R.S. §§ 19-121.01(A)(3)(c); 19-  
8 141(A). In evaluating such signatures, the Town Clerk "shall presume that the date noted  
9 on the petition for a petitioner's signature is the date on which the petitioner signed the  
10 petition, and any person seeking to establish a different date for the signature bears the  
11 burden of proof in overcoming the presumption." A.R.S. § 19-121.01(E).

12 6. Because the date written next to the signature of Marty Harris, *i.e.*,  
13 "5/19/17," was subsequent to the date on which the accompanying circulator affidavit was  
14 executed, *i.e.*, May 18, 2017, the Town Clerk's initial determination that Mr. Harris'  
15 signature was presumptively invalid was not contrary to law. The Town Clerk's  
16 determination invalidating Mr. Harris' signature did not, nor did it or would it have,  
17 prevented the Town Clerk from certifying that the petition sheets contained the requisite  
18 number of signatures to allow a referendum election to proceed.

19 7. However, any person seeking to establish a different date for the signature  
20 of Mr. Harris bears the burden of proof in overcoming the Town Clerk's presumption of  
21 invalidity. See A.R.S. § 19-121.01(E); see also *Direct Sellers Assn'n v. McBrayer*, 109  
22 Ariz. 3, 5, 503 P.2d 951, 953 (1972); *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426,  
23 431, 814 P.2d 767, 772 (1991); *Harris v. City of Bisbee*, 219 Ariz. 36, 40, ¶ 14, 192 P.3d  
24 162, 166 (App. 2008); *Forszt v. Rodriguez*, 212 Ariz. 263, 268-69, ¶ 22, 130 P.3d 538,  
25 543-44 (App. 2006).

26 8. In this case, the plaintiffs would have presented evidence that the face of the  
27 petition sheet as well as extrinsic evidence—in particular, (a) the fact that every signature  
28 on the petition sheet following Mr. Harris' is dated May 18, 2017; and (b) the fact that the

1 Referendum Petition was filed on May 18, 2017; and (c) the sworn representation of  
2 Clarinda Vail, who collected Mr. Harris' signature, *see* Verified Compl. ¶ 16—establish  
3 that Mr. Harris in fact signed the Referendum Petition on May 18, 2017, prior to the  
4 execution of the circulator affidavit.

5 9. Any "qualified elector" of a city or town is entitled to sign a petition to refer  
6 a legislative enactment of the municipal government to the vote of the electorate. *See*  
7 *Ariz. Const. art. IV, pt. 1, § 1(8); see also A.R.S. § 16-121(A); see also Sims Printing Co.*  
8 *v. Frohmiller*, 47 Ariz. 561, 569, 58 P.2d 518, 522 (1936).

9 10. The Jennifer Thurston who signed the Referendum Petition was a qualified  
10 elector of the Town of Tusayan on the date she affixed her signature.

11 11. Because Ms. Thurston is a qualified elector, the actual invalidity rate  
12 yielded by the random sample of two signatures examined by the County Recorder is 0%.

13 12. Accordingly, the Referendum Petition contains valid signatures of at least  
14 18 qualified electors of the Town of Tusayan and is legally sufficient.

#### 15 RELIEF

16 1. Respondents shall place a measure referring Town of Tusayan Ordinance  
17 No. 2017-01 to a vote of the Town electorate on the municipal ballot at the next ensuing  
18 general election, or on the municipal ballot at the next available consolidated election date  
19 if the Town Council calls a special election for this purpose.

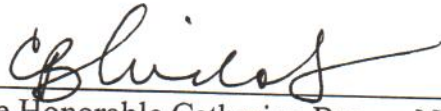
20 2. Respondents shall issue any additional or amended certifications necessary  
21 to effectuate the relief ordered herein.

22 3. Any actions required or permitted of Respondent Melissa Drake by this  
23 Order shall be performed instead by (a) the current Town Clerk of Tusayan, (b) if the  
24 office of Town Clerk is vacant, any Tuaysan official authorized by state or local law to  
25 exercise the powers of the office of the Town Clerk.

26 4. Each party shall bear its own costs and attorneys' fees.  
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1 No further matters remain pending and judgment is hereby entered under Arizona  
2 Rule of Civil Procedure 54(c).

3  
4 DATED this 21<sup>ST</sup> day of July, 2017.

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6   
7 The Honorable Catherine Brown Nichols

8 \* Vacating the Status Conference set  
9 on August 14, 2017 at 3:00pm in this  
10 division

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