FILED
JAMES W. GIACOMINO
CLERK, SUPERIOR COURT
5/1/2026 2:58:00 PM

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. SCOTT MCDONALD

CASE NO. C20261567
C20261773

DATE: May 01, 2026

C20261567
MARANA CITIZENS FOR ETHICAL AND
TRANSPARENT GOVERNMENT,
JACKIE MCGUIRE,
MATTHEW ROHEN-TRAPP,
SUASAN RITZ, and
FREMONT PEAK PROPERTIES LLC
Plaintiffs

VS.

TOWN OF MARANA,
JILL MCCLEARY, and
ARIZONANS FOR RESPONSIBLE DEVELOPMENT
Defendants

C20261773
FREMONT PEAK PROPERTIES LLC
Plaintiff

VS.

TOWN OF MARANA,
MARANA TOWN CLERK JILL MCCLEARY,
ARIZONANS FOR RESPONSIBLE
DEVELOPMENT,
SPONSORED BY WORKER POWER, and
MARANA POLITICAL ACTION COMMITTEE
NO COM2026-01
Defendants

RULING

Y. Torres
Judicial Administrative Assistant

UNDER ADVISMENT RULING

Defendant Town Clerk for the Town of Marana's refused to transmit the facsimiles of signature sheets for two referendum petitions to the Pima County Recorder's Office. *See* A.R.S. § 19-122(A). Plaintiffs Marana Citizens for Ethical and Transparent Government, Jackie McGuire, Matthew Rohen-Trapp, and Susan Ritz (collectively "MCETG Plaintiffs") filed a special action seeking to compel the Town Clerk to transmit the signature sheets. *See* § 19-122(A).

Plaintiff Fremont Peak Properties, LLC ("Fremont") then filed suit seeking special action relief and a declaratory judgment that the Town Clerk had a duty to stop processing the two referendum petitions after the applicant sent a letter to the Town Clerk stating it no longer wished to have "these measures" on the ballot.

MCETG Plaintiffs, the Town, and Fremont moved for summary judgment. Having considered the motions and arguments, the Court finds the Town Clerk (1) properly refused to allow the withdrawal of the applications for a referendum petition, and (2) correctly found the signature sheets did not strictly comply with A.R.S. § 19-121.

I. Background

On January 6, 2026, the Town Council passed two ordinances rezoning parcels of land, Ordinance Nos. 2026-02 and 2026-03. Fremont is under contract to purchase the properties.

On January 8, 2026, Arizonans for Responsible Development, Sponsored by Worker Power, Marana Political Action Committee No. COM2026-01 (the "Committee") submitted applications under A.R.S. § 19-111 to file a referendum petition against the ordinances. Under A.R.S. § 19-142(C), the Town Clerk was required to give the Committee "a full and correct copy of the ordinance or resolution in the form as finally adopted." The Town Clerk gave the Committee copies of the ordinances, but omitted "Exhibit A", which contained legal descriptions for the properties. For instance, "Exhibit A" to Ordinance No. 2026-02 reads as follows:

> ALL OF SECTION 1, TOWNSHIP 11 SOUTH, RANGE 10 EAST, GILA AND SALT RIVER BASE AND MERIDIAN PIMA COUNTY, ARIZONA;
>
> EXCEPT ALL SUBTERRANEAN PERCOLATING WATERS CONTAINED WITHIN, UNDERLYING AND WHICH MAY BE PRODUCED AS CONVEYED TO CORTARO-WATER USER'S ASSOCIATION BY DEED RECORDED IN BOOK 314 OF DEEDS, PAGE 445.

The Committee applied for and circulated the referendum petition sheets using the ordinances provided

by the Town Clerk, which again did not contain "Exhibit A". On February 4, 2026, the Committee submitted the petition signature sheets containing about 2,800 signatures to the Town Clerk.

On February 17, 2026, the Committee sent a letter to the Town Clerk requesting to "rescind[] and withdraw[]" the referendum petition. The Committee stated it "retracts the petitions signatures it supported" and "no longer supports placing these measures on the ballot." One day later, the Town Clerk said it lacks authority to permit the petitions to be withdrawn after the applications have been submitted. The same day, the Town Clerk stated she would not deliver the signature sheets to the Pima County Recorder's Office for certification because they were not accompanied by "the complete title and text of the measure", specifically the "legal description" of the properties.

II. The Town Clerk correctly refused to allow the Committee to withdraw the applications for a referendum petition after it had been filed.

Fremont alleges both a declaratory relief and mandamus action arguing the Town Clerk improperly refused to allow the Committee to withdraw the applications for a referendum petition. For the reasons below, the Court disagrees.

Before the Court addresses Fremont's arguments, MCETG Plaintiffs contends Fremont lacks standing. In their complaint, Fremont alleges both declaratory relief, A.R.S. § 12-1831, and mandamus, A.R.S. § 12–2021. Under A.R.S. § 12-1832, "[a]ny person interested under a deed, will, written contract or other writings constituting a contract . . . may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder." To seek a mandamus action, a party must be "beneficially interested". A.R.S. § 12–2021. "The phrase 'party beneficially interested' is 'applied liberally to promote the ends of justice.'" *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62, ¶11 (2020), quoting *Barry v. Phx. Union High School*, 67 Ariz. 384, 387 (1948).

Here, Fremont alleges sufficient facts to establish standing. In a verified complaint, Fremont states it "executed purchase contracts" for the parcels that were rezoned. Verified Complaint ¶ 1. A party to an agreement regarding the purchase of property has a beneficial interest in a rezoning that would affect specific uses of the property, which could affect both the property's value and party's intended use of the property. Furthermore, generally parties to a purchase contract spend considerable due diligence and resources to determine whether to purchase a property, particularly given the size of the properties at issue.

In their complaint and motion for summary judgment, Fremont argues "Arizona law imposes a non-

discretionary duty on the Clerk to recognize the Committee's withdrawal of the Applications and Petitions".

The parties cite *Voice of Surprise v. Hall*, 255 Ariz. 510 (2023), which the Court finds instructive. In *Voice of Surprise*, the clerk accepted an application for a serial number for a referendum petition even though the application completely lacked the text of the measure. The court found, in part, the clerk was not authorized to reject the application "because no statute permits the Clerk to reject an application on other bases, she must strictly apply and enforce the election statutes by accepting an application, even if it violates § 19-111(A)'s other requirements." *Id.* ¶ 29.

Applying *Voice of Surprise*, the Town Clerk required "explicit statutory grants of authority" to withdraw the Committee's application after the referendum petition and signatures had been submitted.

In Arizona, the duties of a town clerk are heavily prescribed, beginning from when a party applies for a referendum petition and ending when a random sample of signatures is sent to the county recorder. Upon receipt of an application for referendum petition, the clerk "shall assign an official serial number to the petition". A.R.S. § 19-111(B).[1] After signature sheets are submitted, the town clerk "shall" remove flawed sheets, including "sheets not attached to a copy of the complete title and text of the measure as prescribed in this chapter." A.R.S. § 19-121.01(A)(1). The clerk "shall", "[a]fter the removal of petition sheets and signatures, count the number of signatures for verification on the remaining petition sheets and note that number on the face of each petition sheet." § 19-121.01(A)(4). If the total number of signatures exceeds the constitutional minimum, the clerk "shall select, at random, five percent of the total signatures eligible for verification". § 19-121.01(B). "After the selection of the random sample and the marking of the signatures . . ., the [clerk] shall transmit a copy of the front of each signature sheet on which a signature included in the random sample appears" to the county recorder. § 19-121.01(D).

At no point after the referendum petition is filed under § 19-121.01 do the statutes expressly permit an applicant to withdraw an application. Significantly, A.R.S. § 19-113 permits a person who signed a petition to withdraw their signature. A person must request to have their signature withdrawn "not later than 5:00 p.m. on the date the petition containing the person's signature is actually submitted for verification", and must either "[v]erify the withdrawal by signing a simple statement of intent", "[m]ail a signed, notarized statement of intent to withdraw", or "[d]raw a line through the signature". Had the Legislature wished to allow an applicant to

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[1] "The manner of conducting and voting at elections of a city or town . . . and all acts relating to the election, shall conform to the provisions of law relating to the general election of county officers as nearly as possible, except that the returns shall be made to the clerk of the city or town. . . ." A.R.S. § 9-821.

withdraw the referendum petition after it is filed, it could have enacted a provision similar to § 19-113. Tellingly, it did not.

Fremont argues the Arizona Constitution authorizes a clerk to accept an applicant's withdrawal of the application for a referendum. Specifically, Fremont cites Article 4, Section 4, which states as follows:

> The legislative authority of the state shall be vested in the legislature . . . but the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any act, of the legislature.

The Court does not read this to authorize a clerk to permit an applicant to withdraw the application for referendum once the signature sheets are submitted. The constitution refers to the power of the "people" and "qualified electors" to propose any measure. *Id.* §§ 1, 2, & 3.

Only a "qualified elector" can sign a petition. A.R.S. § 19-112. A "qualified elector" is a "person who is qualified to register to vote pursuant to § 16-101 and who is properly registered to vote, if the person is at least eighteen years of age on or before the date of the election and has provided satisfactory evidence of citizenship". A.R.S. § 16-121(A).

The Court interprets these statutes and Article 4, Section 4 as whole to authorize a person or organization to file an application for a referendum petition. The constitutional power "to enact or reject such laws" under Article 4, Section 4 belongs to qualified electors. Once the applicant submits the referendum petition to the clerk, only a qualified elector can withdraw their signature under § 16-113. To permit the applicant to withdraw the application after signatures have been submitted would deprive qualified electors of their constitutional referendum power. And once the signatures have been submitted, a town clerk "**shall**" perform the numerous duties prescribed under § 19-121.01.

Accordingly, the Town Clerk did not err when she refused to accept the Committee's withdrawal of the referendum petition after it had been filed.

III. The signature sheets were not attached to a full and correct copy of the title and text of the ordinances.

MCETG Plaintiffs argue the Town Clerk erred in refusing to deliver the signature sheets to the Recorder's Office because the signature sheets and application were attached to full and correct copies of the ordinances. The Court disagrees.

Under Arizona law, the "constitutional and statutory requirements for the referendum [are] strictly

construed", and the Committee was required to "strictly comply with those constitutional and statutory requirements." A.R.S. § 19-101.01; *see also Voice of Surprise*, 255 Ariz. at 513, ¶8 (applicant must "strictly comply with the statutory requirements directing the referendum process").

Section 19-121(A)(3), A.R.S., requires that signature sheets "[b]e attached to a full and correct copy of the title and text of the measure, or amendment to the constitution, proposed or referred by the petition." *See also* A.R.S. § 19-112(B). An application for a referendum petition must similarly be accompanied by "the text of the proposed law, constitutional amendment or measure to be initiated or referred in not less than eight point type". A.R.S. § 19-111(A). "The requirement that a full and correct copy of the ordinance be attached to the application and signature sheets ensures that 'prospective signatories have immediate access to the exact wording of the public action which is to be suspended, and possibly reversed .'" *Hause v. City of Tucson*, 199 Ariz. 499, 502, ¶ 8 (App. 2001), quoting *Cottonwood Dev. v. Foothills Area Coalition of Tucson, Inc.*, 134 Ariz. 46, 49 (1982). "[T]he measure to be attached to the petition" is defined as the "adopted ordinance or resolution signed by the mayor . . . and signed by the" Town Clerk. § 19-112(E).

Here, the ordinances generally described the properties and expressly referred to and incorporated "Exhibit A". For instance, Ordinance No. 2026-02 reads as follows:

> **MARANA ORDINANCE NO. 2026.002**
>
> RELATING TO DEVELOPMENT; APPROVING A REZONING OF APPROXIMATELY 300.5 ACRES OF LAND LOCATED WEST OF INTERSTATE 10 ALONG NORTH LUCKETT ROAD AND JUST SOUTH OF THE PINAL COUNTY LINE IN A PORTION OF SECTION 1, TOWNSHIP 11, RANGE 10E, FROM R-144 (RESIDENTIAL) TO SP (SPECIFIC PLAN), CREATING THE LUCKETT ROAD NORTH SPECIFIC PLAN; AND APPROVING A MINOR AMENDMENT TO THE GENERAL PLAN AMENDING THE LAND USE CATEGORY FROM EMPLOYMENT TO MASTER PLANNED AREA
>
> WHEREAS the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-Day Saints (collectively the "Property Owners") own 300.5 acres of land located west of Interstate 10 along North Luckett Road and just south of the Pinal County line in Section 1, Township 11 South, Range 10 East, described on Exhibit "A" attached to and incorporated in this ordinance by this reference (the "Rezoning Area"); and

MCETG Plaintiffs argue the ordinances were the full and correct copies of the ordinances. The Court disagrees. The ordinances expressly referred to "Exhibit A" and incorporated "Exhibit A" into the documents themselves. Strictly applying § 19-112(B), the Committee failed to attach the full and correct copy of the ordinances.

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This case is distinguishable from *Sherrill v. City of Peoria*, 189 Ariz. 537 (1997), where the ordinance stated the rezoning was "conditioned and subject to" the "Standards and Guidelines Report dated November 21, 1994". *Id.* at 538. The challengers argued the ordinance did not include a "full and correct copy of the title and text of the measure" because it was not attached to the Standards and Guidelines referenced in the ordinance. The court stated § 19-121(E) requires a referendum petition must be attached to "(1) the adopted ordinance or resolution; (2) a legal description of the property; and (3) amendments, if any, made to the ordinance." The court found the Standards and Guidelines were not one of those three items and therefore was sufficient under § 19–121(E).

Here, "Exhibit A" is referred to and incorporated by the references. "Exhibit A" legally describes the properties' location and help signers understand the location of the rezonings and proposed referendum. Accordingly, the Town Clerk properly refused to transmit the signature sheets to the County Recorder's office under § 19-122(A).

IV. The signature sheets were not attached to a full and correct copy of the title and text of the ordinances.

The Town of Marana also argues the signature sheets were not transmitted because the ordinances did not "include a legal description of the property and any amendments made to the ordinance by the legislative body" as required by § 19–121(E). The Court agrees with the Town.

MCETG Plaintiffs concede that "Exhibit A" was not attached to the application and signature sheets. Instead, they argue the text in the body of the ordinances satisfied § 19–121(E) and rely on *Lawrence v. Jones*, 199 Ariz. 446, 449, ¶ 7 (App. 2001), which states that in defining "legal description of the property" courts "must broadly construe the definition of that requirement in determining whether compliance was achieved."

This case is distinguishable from *Lawrence*. In *Lawrence*, the rezoning ordinance did not include a legal description, only a "copy of the 'Official Supplementary Zoning Map Amending the City of Mesa Zoning Map'". The map and ordinance were attached to the petition. *Id.* ¶ 2. Plaintiffs filed suit arguing "the attachment of the zoning map to the petition was insufficient to meet the requirement of a 'legal description' of the property." The court disagreed and found the map was sufficient under § 19–121(E).

> [W]e find nothing inherent in the context of A.R.S. section 19–121(E) that requires, "legal description" to be interpreted to mean a hypertechnical recitation of property boundaries that would have no meaning or relevance to the citizens considering the petition. Rather, we believe that if the legislature had wanted to include such a narrowly constructed definition of "legal description," it would have included it in referendum provisions as it has done in other areas of

the law.

Id. ¶ 15.

But in *Lawrence*, the map was "considered by the City to be a legally binding document as well as 'the official legal description' for the zoning of the subject parcel." *Id.* ¶ 13. Further, the map was "official" under the Mesa City Code and "establishe[d] the location and boundaries of the property for zoning purposes." *Id.* ¶ 16. Here, the ordinances described the properties in "Exhibit A". Although the body of the ordinances did contain some description of the properties that *may* allow a qualified elector to understand where the property is located, that is not the test before this Court. The test again is whether the Committee strictly complied with §§ 19-11(A) and 19–121(E), and the Court does not find the text in the body of the ordinance strictly complies. The Town Clerk therefore did not err in refusing to transmit the signature sheets to the County Recorder's office under § 19-122(A) on this basis.

V. The Town is not estopped.

MCETG Plaintiffs argues the Town was estopped from refusing to transmit the signature sheets because it provided the ordinances (without "Exhibit A") to the Committee. This argument fails.

As the Town correctly points out, "it is the challenger's responsibility to comply with the statutory requirements for filing a referendum petition, and the receipt of erroneous advice, even from governmental officials responsible for administering the referendum process, does not excuse that responsibility." *Fid. Nat. Title Co. v. Town of Marana*, 220 Ariz. 247, 250, ¶ 14 (App. 2009). And even if there was a basis for an estoppel argument, that defense does not extend to MCETG Plaintiffs because they did not rely on the Town to provide a full and complete copy of the ordinances. *See LyphoMed, Inc. v. Superior Ct. In & For Cnty. of Maricopa*, 172 Ariz. 423, 430 (App. 1992) (estoppel requires, in part, that one in good faith relies upon conduct of another). This Court need not decide whether the Committee can assert estoppel because they are not seeking to challenge the Town Clerk's decision to reject the signature sheets.

VI. Disposition

It is ordered granting the Town's motion for summary judgment and affirming the Town Clerk's decision not to transmit the facsimiles of signature sheets for two referendum petitions to the Pima County Recorder's Office. Although the Town requests attorney's fees in its motion for summary judgment, it does not cite a legal basis, and the Court will therefore deny the request.

It is further ordered judgment is granted in the Town's favor.

It is further ordered denying MCETG Plaintiffs' motion for summary judgment and request for attorney's

fees.

It is further ordered denying Fremont's motion for summary judgment.

It is further ordered that no matters remain pending, and this order is final and entered pursuant to Rule 54(c), Ariz. R. Civ. P.

(ID: 16d1b69c-52d9-47ec-a297-bb74e2c97e6f)

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