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12 **SUPERIOR COURT OF ARIZONA**

13 **MARICOPA COUNTY**

14 JAMES WISE, a citizen and  
15 qualified elector of Maricopa  
16 County,

17 JEFF LICHTER, a citizen and  
18 qualified elector of Maricopa  
19 County,

20 CITIZENS TO PROTECT FAIR  
21 ELECTION RESULTS, a Limited  
22 Liability Company organized in the  
23 state of Arizona,

24 Plaintiffs,

25 v.

26 KEN BENNETT, in his official capacity  
27 as the secretary of State for the State of  
28 Arizona, THE BOARD OF  
SUPERVISORS OF MARICOPA  
COUNTY; HELLEN PURCELL, in her  
official capacity as Maricopa County  
Recorder, KAREN OSBORNE, in her  
official capacity as Maricopa County  
Elections Director, Respect Arizona, an  
Arizona Political Committee, William  
James Fischer, Robert Unferth, Mary  
Lou Boettcher,

Defendants.

No.

VERIFIED COMPLAINT FOR  
SPECIAL ACTION AND WRIT OF  
MANDAMUS AND APPLICATION  
FOR PRELIMINARY AND  
PERMANENT INJUNCTION



1 7. Defendant Maricopa County Board of Supervisors is the governing body of Maricopa  
2 County and is a body politic existing under the laws of Arizona.

3  
4 8. Defendant Helen Purcell is the Maricopa County Recorder and is named in this action  
5 in her official capacity only.

6 9. Defendant Karen Osborne is the Maricopa County Elections Director and is named in  
7 this action in her official capacity only.

8  
9 10. Upon information and belief, Respect Arizona is a political committee organized  
10 under the laws of the State of Arizona, the sponsor of recall petition REC-2013-01  
11 (seeking the recall of Sheriff Joseph M. "Joe" Arpaio) and the real party in interest.

12  
13 11. Defendant William James Fischer is the chairman of Respect Arizona and has  
14 initiated and signed the recall petition at issue.

15 12. Defendant Robert Unferth is the treasurer of Respect Arizona and has initiated and  
16 signed the recall petition at issue.

17  
18 13. Defendant Mary Lou Boettcher is a member of Respect Arizona and has initiated and  
19 signed the recall petition at issue.

20  
21 Background

22 14. Sheriff Joseph M. "Joe" Arpaio was on the ballot for re-election as Sheriff of  
23 Maricopa County, Arizona in the November 2012 Arizona General Election and was  
24 re-elected for another term of four years in office.

25  
26 15. Sheriff Arpaio handily won his election by more than six percentage points of the  
27 total number of votes proving that the Arizona electors approved of the policies and  
28 procedures that Sheriff Arpaio and carried out in his previous terms of office.

1 16. Sheriff Arpaio's term of office began when he was sworn in for his sixth term of  
2 office on January 7, 2013.

3  
4 17. The Maricopa County Sheriff's Department, under Sheriff Arpaio's leadership,  
5 continued the same policies and procedures as before the 2012 General Election.

6 18. Within days after Sheriff Arpaio was sworn into office an organization named  
7 "Respect Arizona" was formulated with the express intention to recall Sheriff Arpaio.  
8

9 19. On or about January 31, 2013 Respect Arizona filed paperwork to begin the recall  
10 election procedure, and began obtaining the 335,317 signatures needed to initiate the  
11 recall.  
12

13 20. Respect Arizona began soliciting donations from in-state and out-of -state donors  
14 using the recall election as the way of enticing donations from those who do not agree  
15 with Sheriff Arpaio's policies. They created and published a website with the address  
16 www.recallarpaio.com that solicits donations specifically to fund the recall election.  
17

18 21. Article 8, part 1, section 5 of the Arizona Constitution states "No Recall petition shall  
19 be circulated against any officer until he have held his office for a period of six  
20 months, except that it may be filed against a member of the legislature at any time  
21 after five days from the beginning of the first session after his election."  
22

23 22. "The constitution of this state, second only to the constitution of the United States, is  
24 the supreme law of Arizona." *Miller v. Heller*, 68 Ariz. 352, 357, 206 P.2d 569, 573  
25 (1949).  
26

27 23. Article 21 of the Arizona Constitution provides the three only means in which the  
28 Arizona Constitution can be amended. The methods for amending are 1) Ballot

1 initiated constitutional amendment, 2) Legislatively-referred constitutional  
2 amendments that are placed on the ballot by the Arizona legislature, and 3) A  
3 constitutional convention imitated by a statewide vote of the people.  
4

5 24. Arizona Revised Statutes Section 19-202 provides in pertinent part that "The  
6 commencement of a subsequent term in the same office does not renew the six month  
7 provision."  
8

9 25. Arizona Revised Statutes Section 19-202 was not approved as a constitutional  
10 amendment consistent with the methods for amending for the Arizona Constitution as  
11 provided in Article 21 of the Arizona Constitution and summarized in paragraph 23 of  
12 this Complaint.  
13

14 26. Any portion of the Arizona Revised Statutes that conflicts with the Arizona  
15 Constitution is unconstitutional and thus null and void.  
16

17 **Count One**  
18 **(Violation of Arizona Constitution Concerning Recalls)**

19 27. Plaintiffs reallege and incorporate paragraphs 1 through 26 of this Complaint.

20 28. Article 8, part 1, section 5 of the Arizona Constitution specifically provides that no  
21 recall election shall be initiated before that person has held the office for at least six  
22 months, except for those in the legislature who may be recalled after a mere five days.  
23

24 29. The Arizona legislature enacted A.R.S. Section 19-202 which provides that the six  
25 month provision does not apply to those who are in subsequent terms.  
26

27 30. A.R.S. 19-202 directly conflicts with Article 8, part 1, section 5 of the Arizona  
28 Constitution and must be declared unconstitutional.

1 31. Since the recall petition was originated within the first six months of Sheriff Joe's  
2 term of office in violation of the Arizona Constitution, the entire recall petition and  
3 any and all signatures gathered must be declared null and void and inapplicable to this  
4 or any subsequent recall effort.  
5

6 **Count Two**  
7 **(Abuse of Process)**

8 32. Plaintiffs reallege and incorporate paragraphs 1 through 33 of this Complaint.

9 33. "The gist of the tort of abuse of process is misusing process justified in itself for an  
10 end other than that which it was designed to accomplish." *Rondelli v. County of Pima*,  
11 120 Ariz. 483, 489 (Ariz. Ct. App. 1978). "The essential elements of the tort are first,  
12 an ulterior purpose, and second, a willful act in the use of the process not in the  
13 regular conduct of the proceeding." *Id.* citing Prosser, *The Law of Torts*, § 121.  
14

15 34. Defendants Respect Arizona and its officers willfully and illegally utilized the legal  
16 process and procedure of a recall election in order to harass, coerce, and to prevent  
17 Joseph Arpaio from carrying out his duties as Sheriff of Maricopa County and for  
18 other reasons not designed for use by Arizona's recall statutes.  
19

20 35. Defendants Respect Arizona and its officers caused harm and injury to Plaintiffs.  
21 Plaintiffs lawfully cast their ballots for Sheriff Arpaio in November of 2012 and are  
22 now at risk of having their votes nullified by an illegal recall election.  
23

24 **Count Three**  
25 **(Violation of Substantive Due Process Clause of the Arizona and U.S. Constitutions)**

26 36. Plaintiffs reallege and incorporate paragraphs 1 through 35 of this Complaint.

27 37. Plaintiffs James Wise and Jeff Lichter and the constituents of Plaintiff CPFER are  
28

1 taxpayers and electors of the State of Arizona who have a clear right to vote in this  
2 state and in Maricopa County.

3  
4 38. Plaintiffs lawfully cast their votes for Sheriff Arpaio in the November 2012 General  
5 Election.

6 39. The illegal recall election brought by Defendants seeks to nullify the right to vote of  
7 Plaintiffs and all the others who voted for Sheriff Arpaio in November.

8  
9 40. The recall election is thus in violation of the Due Process Clause of the Arizona and  
10 U.S. Constitutions.

11  
12 **Count Four**  
13 **(Violation of Equal Protection Clause of the Arizona and U.S. Constitutions)**

14 41. Plaintiffs reallege and incorporate paragraphs 1 through 40 of this Complaint.

15 42. By seeking to have the 2012 General Election results thrown out, and to have a recall  
16 election go forward, Respect Arizona seeks to disenfranchise and nullify the votes  
17 lawfully cast by all the citizens of Maricopa County, Arizona in November of 2012.

18  
19 43. The recall election is thus in violation of the Equal Protection Clause of the Arizona  
20 and U.S. Constitutions.

21 **REQUEST FOR RELIEF:**

22  
23 **WHEREFORE, Plaintiffs pray for the following relief:**

24 **A. That this Court issue a declaration that A.R.S. Section 19-202 is in direct conflict**  
25 **with Article 8, part 1, section 5 the Arizona Constitution and is thus**

26 **unconstitutional;**

27  
28 **B. That this Court issue a declaration that recall petition REC-2013-01 is not in**

1 compliance with or is in violation of the constitutional requirements for recall  
2 petitions and is therefore null and void;

3  
4 C. That this Court issue preliminary and permanent injunctive relief and a writ of  
5 mandamus preventing the Arizona Secretary of State Ken Bennett, the Maricopa  
6 County Recorder Helen Purcell, and the Maricopa County Elections Director  
7 Karen Osborne or other applicable election official from allowing the subject  
8 illegal recall from proceeding any further and accepting any such petition;

9  
10 D. That this Court should issue preliminary and permanent injunctions preventing the  
11 Arizona Secretary of State Ken Bennett, the Maricopa County Recorder Helen  
12 Purcell, and the Maricopa County Elections Director Karen Osborne or other  
13 applicable election official from accepting the petition when it is submitted for  
14 verification of signatures pursuant to A.R.S. 19-203(A);

15  
16 E. That this Court should issue preliminary and permanent injunctions preventing  
17 Defendants Respect Arizona and its organizers from further collecting donations  
18 with the intent of utilizing them toward the Sheriff Arpaio recall effort, thereby  
19 wasting taxpayer resources as well;

20  
21  
22 F. That this Court should issue a writ of mandamus compelling the Arizona Secretary  
23 of State Ken Bennett, the Maricopa County Recorder Helen Purcell, and the  
24 Maricopa County Elections Director Karen Osborne or other applicable election  
25 official to revoke the recall serial number that was issued to the committee in  
26 violation of the Arizona Constitution;

27  
28 G. That this Court issue a declaration that this purported recall election violates the



1 due process laws of every citizen whose vote in the November 2012 election will  
2 be nullified by the recall election;

3  
4 H. Restitution for the taxpayers of Maricopa County, Arizona in an amount in excess  
5 of \$5,000,000 for the cost of the illegal recall election if necessary;

6 I. That this Court issue its finding of fact and conclusions of law pursuant to  
7 Rule52(a), Ariz. R. Civ. Pr.; and  
8

9 J. An order awarding Plaintiffs attorneys fees and costs such other and further relief  
10 as may be appropriate.  
11

12  
13 Dated: March 21, 2013

14 Respectfully submitted,  
15

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18 \_\_\_\_\_  
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