

1 David Burnell Smith
2 AZ Bar No. 7746
3 4310 N 75th St.
4 Scottsdale, AZ 85251

5 Larry Klayman
6 Pro Hac Vice Pending
7 2020 Pennsylvania Ave., NW, Suite 800
8 Washington, D.C. 20006
9 Telephone: (310) 595-0800
10 Email: leklayman@gmail.com

11 Attorneys for Plaintiffs

12 **SUPERIOR COURT OF ARIZONA**

13 **MARICOPA COUNTY**

14 JAMES WISE, a citizen and
15 qualified elector of Maricopa
16 County, JEFF LICHTER, a citizen
17 and qualified elector of Maricopa
18 County, CITIZENS TO PROTECT
19 FAIR ELECTION RESULTS, a
20 Limited Liability Company
21 organized in the state of Arizona,

22 Plaintiffs,

23 v.

24 KEN BENNETT, et al,
25 Defendants.

No. LC2013-000137-001DT

**MOTION FOR DECLARATORY
JUDGMENT AND FOR
PRELIMINARY INJUNCTION**

26 Plaintiffs James Wise, Jim Lichter, and Citizens to Protect Fair Election Results
27 ("CPFER"), respectfully move for declaratory judgment and a preliminary injunction
28 pursuant to Ariz. R. Civ. P. 7.1(a) and 65(a). This motion is supported by a
memorandum of points and authorities below.

1 before six months from when Sheriff Arpaio took office in January 2013. Respect
2 Arizona had no basis for this recall other than the fact that they were angered by the
3 election results and wanted to use the recall as a pretext to raise money, despite the fact
4 that Sheriff Arpaio won reelection by a comfortable margin. In fact, despite initiating this
5 untimely and invalid recall, Respect Arizona has failed to provide any plausible,
6 supported claim of malfeasance on the part of Sheriff Arpaio. Rather, the Respect
7 Arizona Defendants are blatantly misusing the recall process to try, without legal
8 authority, to overturn a fair election that was won by a candidate who policies they do not
9 like, as well as to fill it coffers with donations based on false pretenses.

10
11
12
13 This recall is nothing more than an attempt by Respect Arizona to nullify the
14 constitutional right to vote of every citizen who helped reelect Sheriff Arpaio. As a result,
15 this recall is not only jeopardizing the integrity of the election process but also creating a
16 substantial injustice for the citizens of Arizona and Sheriff Arpaio. Specifically, this
17 recall has already cost taxpayers millions of dollars and such costs will undoubtedly rise
18 exponentially if this recall is allowed to move forward. Additionally, because of the
19 Respect Arizona Defendants' misconduct, Sheriff Arpaio and his supporters, including
20 Plaintiffs, potentially will have to face the challenges and high costs of rerunning, simply
21 because defendants were unsatisfied with the election results in November. In light the
22 Respect Arizona Defendants' violation of citizens' right to vote, misuse of the recall
23 process for fundraising purposes based on false pretenses, and to obstruct Sheriff's
24 Arpaio's authority to enforce the laws of Arizona, and disregard for election results, a
25 declaratory judgment should issue declaring this extra-legal recall untimely and thus null
26
27
28

1 and void and the state government Defendants should be preliminarily enjoined from
2 recognizing as legal and allowing the Respect Arizona Defendants to proceed any further
3
4 with this meritless recall petition. In this way, irreparable harm can be avoided.

5 THE LAW

6 Declaratory Judgment

7 The Uniform Declaratory Judgment Act provides, in part, as follows:

8
9 Courts of record within their respective jurisdictions shall have power to declare
10 rights, status, and other legal relations whether or not further relief is or could be
11 claimed. No action or proceeding shall be open to objection on the ground that a
12 declaratory judgment or decree is prayed for. The declaration may be either
affirmative or negative in form and effect; and such declarations shall have the
force and effect of a final judgment or decree.

13
14 A.R.S. 12-1831. Pursuant to the Uniform Declaratory Judgment Act, Plaintiffs seek
15 declaratory relief to have this Court declare, as shown below, that A.R.S. Section 19-202 directly
16 conflicts with the Arizona Constitution and is therefore null and void.

17 Preliminary Injunction

18
19 A party seeking a preliminary injunction must simply establish: (1) a strong likelihood of
20 success on the merits, (2) the possibility of irreparable injury if the requested relief is not
21 granted, (3) a balance of hardships favoring that party, and (4) public policy favoring a grant of
22 the injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990). A court
23 applying this standard may apply a "sliding scale." *Smith v. Ariz. Citizens Clean Elections*
24 *Comm'n*, 212 Ariz. 407, 410, P 10, 132 P.3d 1187, 1190 (2006). In other words, "the moving
25 party may establish either 1) probable success on the merits and the possibility of irreparable
26 injury; or 2) the presence of serious questions and [that] 'the balance of hardships tip[s] sharply'
27 in favor of the moving party." *Id.*

1 consequently invalid and null and void.

2 Additionally, while Ariz. Const. Art. VIII, part 1, § 0167 of the Arizona Constitution
3 allows for the enacting of laws to *facilitate the operation* of the election laws, the legislature
4 cannot enact laws that are inconsistent with the Arizona Constitution. They can only enact those
5 laws that would aid in the carrying out of its operation.
6

7 Section 19-202 does not facilitate the Arizona Constitution but instead directly conflicts
8 with it. Rather than facilitate the operation of election laws, Section 19-202 clearly impedes on
9 the election process. Specifically, Section 19-202 allows for organizations, such as Respect
10 Arizona, to hastily file frivolous, harassing and obstructionist recall petitions immediately after
11 election results, and furthers their misuse of the process to overturn a fair election that was won
12 by a candidate whose policies they do not like, or for ulterior means such as fundraising. In
13 addition to violating the constitutional right to vote of Arizona citizens, such abusive recalls are
14 costing Arizona taxpayers millions of dollars, as they raise funds for illicit groups such as
15 Respect Arizona.
16
17

18 Since Section 19-202 was not properly passed pursuant to Ariz. Const. Art. VIII, part 1,
19 §0167, is in direct violation of the Arizona Constitution, and does not facilitate the operation of
20 election laws, but rather impedes on the election process, Section 19-202 is unconstitutional and
21 invalid. As such, no recall petition may be circulated against any official until he has held his
22 offices for a period of *six months*, pursuant to Article VIII, part 1, Section 3 of the Arizona
23 Constitution.
24

25 Sheriff Arpaio's term of office began on January 7, 2013. Defendant Respect Arizona
26 began circulating its illegal recall petition merely days after Sheriff Arpaio was sworn in for the
27 beginning of his new term, rather than waiting the requisite six months. Thus, Defendants are in
28

1 direct violation of the Arizona Constitution. More specifically, Sheriff Arpaio had only held the
2 office for less than a month before the Respect Arizona Defendants began their illegal recall
3 petition. The government Defendants from Maricopa County thus violated the Arizona
4 Constitution when they assigned recall petition REC-2013-01 to the Respect Arizona Defendants
5 and allowed for the collection of recall petitions to go forward.
6

7
8 Plaintiff Will Suffer Irreparable Harm Absent Preliminary Injunctive Relief

9 The violation of a constitutional right is a per se irreparable harm. *Elrod v. Burns*, 427
10 U.S. 347, 373 (1976). Here, the Respect Arizona Defendants are attempting to have the votes of
11 Arizona citizens thrown out a mere months after a proper election has taken place, and with no
12 justification other than they are unhappy with Sheriff Arpaio's reelection. In addition, a court
13 may find irreparable harm justifying a preliminary injunction when the harm is imminent and an
14 award of money damages would not adequately compensate for the harm. *Berry v. Foster*, 180
15 Ariz. 333, 883 P.2d 470 (App. 1994). Here, Plaintiffs and other voters of the county have the
16 imminent harm of having their right to vote negated by a group of disgruntled sore losers, and
17 opportunistic fundraisers who are raising boatloads of money based on false pretenses, whose
18 candidate for Sheriff of Maricopa County handily and decisively lost the election a mere three
19 months prior to their illegal recall effort. No money damages can compensate Plaintiffs for the
20 negation of their fundamental right to vote.
21
22

23
24 Additionally, the Respect Arizona Defendants are implementing aggressive, abusive, and
25 misleading tactics in order to obtain the requisite number of signatures by the impending
26 deadline of May 30, 2013. Thus, if these Defendants are permitted to proceed in engaging in
27 such conduct in their effort to obtain signatures, irreparable harm and injustice would inevitably
28

1 result for numerous reasons. First, Respect Arizona's recall attempt and further abuse of process
2 would nullify the constitutional right to vote of every citizen that helped elect Sheriff Arpaio.
3 Second, this attempt to recall Sheriff Arpaio's reelection has already cost taxpayers millions of
4 dollars. Allowing the Respect Arizona Defendants to proceed any further with their illegal recall
5 petition would cause taxpayers and the state of Arizona to incur additional, substantial costs.
6 Third, irreparable harm would result to Sheriff Arpaio and his supporters as Sheriff Arpaio
7 would have to face the challenges and costs of rerunning for office, despite winning by a
8 comfortable margin, simply because the Respect Arizona Defendants were allowed to proceed
9 with an illegal recall election merely because they were unhappy with election results and want
10 to use this as a pretext to raise money to fill their coffers based on false pretenses, which are
11 effectively defrauding donors. Such a policy would inevitably send Arizona's electoral process
12 into chaos, perpetuating the number of frivolous recall attempts, exponentially increasing costs to
13 taxpayers, and disrupting the finality of election results. As such, irreparable harm would clearly
14 result if the government Defendants are not enjoined from allowing this illicit recall to proceed
15 any further and the Respect Arizona Defendants from collecting additional signatures and, thus,
16 a preliminary injunction is justified and necessary under the law.
17
18
19
20

21 The Balance Of Hardship Tips In Favor Of Issuing A Preliminary Injunction.

22
23 Plaintiffs and the other taxpayers of Maricopa County will have to suffer the burden of
24 funding an illegal recall election a mere months after a decisive victory for Sheriff Arpaio. The
25 Respect Arizona Defendants, who upon information and belief only began this recall effort in an
26 attempt to harass Sheriff Arpaio and impede his duties as Sheriff of Maricopa County, can only
27 cite their own unhappiness as a reason why this recall election should not go forward. They are
28

1 illegally circulating a recall petition in violation of the Arizona Constitution that must be stopped
2 – solely for the purpose of obstructing Sheriff Arpaio in carrying out his official duties and to
3 raise money for their various causes based upon false pretenses, effectively defrauding their
4 donors as there is no legal right to raise money for this illicit recall.
5

6
7 The Preliminary Injunction Is In The Public Interest.

8 It "is always in the public interest to prevent the violation of a party's constitutional
9 rights.' " *Reed v. Purcell*, 2010 WL 4394289, *4 (D. Ariz. Nov. 1,2010) (quoting *G & V Lounge,*
10 *Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir.1994)). "While the public has
11 an interest in the will of the voters being carried out the public has a more profound and long-
12 term interest in upholding an individual's constitutional rights." *Id.* In this lawsuit, not only will
13 the will of the voters be carried out with the issuance of a preliminary injunction, but the
14 Plaintiffs' constitutional right to vote for their candidate will also be upheld. There is no reason
15 or legal basis for the recall election petition to go forward at this point.
16
17

18 More significantly, the Respect Arizona Defendants have failed to allege any plausible
19 serious claim of malfeasance on the part of Sheriff Arpaio, who continues to be the popular
20 elected representative, winning the reelection by a comfortable margin. The Respect Arizona
21 Defendants have refused to honor the voting process and attempted to circumvent the valid
22 election results. Instead, they have resorted to aggressive and misleading tactics to obtain the
23 requisite number of signatures to proceed with the recall election in order to achieve their own
24 political motives, and to raise money based on false pretenses to fill their coffers, effectively
25 defrauding donors.
26

27 Such abuse of election process is clearly contrary to strong public policy, favoring the
28 sanctity of the voting process. The Respect Arizona Defendants tactics are threatening the

1 integrity of the Arizona electoral system, using the recall elections as a means to change election
2 results in order to accomplish their own political goals, as well as to raise money based on false
3 premises to fill their coffers. Such abuse would result in more recalls inevitably being announce,
4 would throw Arizona's electoral system into chaos. As attempt to recall multiply, no election
5 result would ever be final. Moreover, frivolous recalls that are aggressive pursued without any
6 basis or valid claim of malfeasance against the elected public official are essentially attempts to
7 circumvent and nullify the constitutional rights of every citizen to vote. Moreover, the Respect
8 Arizona Defendants' meritless attempt to recall the election and their blatant abuse of election
9 process poses a substantial injustice, forcing Sheriff Arpaio to potentially face the challenges and
10 costs of rerunning all over again. Such abuse is clearly contrary to public policy and is a direct
11 threat to the citizen's fundamental right to vote. Thus, public policy is in favor of granting the
12 preliminary injunction to enjoin the government Defendants from allowing this illicit recall to go
13 any further, and the Respect Arizona Defendants from gathering additional signatures,
14 particularly in light of their abusive, misleading, and illicit if not fraudulent tactics.
15
16
17
18

19 CONCLUSION

20 Plaintiffs request that this Court grant this motion for declaratory judgment and for
21 preliminary injunction and issue the following:
22

- 23 A. A declaratory judgment that Section 19-202 directly conflicts with the Arizona
24 Constitution and is thus null and void;
- 25 B. A declaratory judgment that any signatures gathered as a result of recall petition REC-
26 2013-01 are invalid and null and void as they are in violation of the Arizona
27 Constitution's prohibition on petitions within the first six months of an officer's term of
28

1 office;

2 C. A preliminary injunction preventing the Arizona Secretary of State Ken Bennett, the
3 Maricopa County Recorder Helen Purcell, and the Maricopa County Elections Director
4 Karen Osborne or other applicable election official from allowing the subject illegal
5 recall from proceeding any further and accepting any such petition;
6

7 D. A preliminary injunction preventing the Arizona Secretary of State Ken Bennett, the
8 Maricopa County Recorder Helen Purcell, and the Maricopa County Elections Director
9 Karen Osborne or other applicable election official from accepting the petition when it is
10 submitted for verification of signatures pursuant to A.R.S. 19-203(A);
11

12 E. A preliminary injunction preventing the Respect Arizona Defendants from further
13 collecting donations on false pretenses with the intent of utilizing them toward the Sheriff
14 Arpaio recall effort or their other radical activist causes, thereby wasting taxpayer
15 resources as well.
16

17
18 Dated: May 9, 2013

19 Respectfully submitted,

20 

21 David Burnell Smith
22 AZ Bar No. 7746
23 4310 N 75th St.
24 Scottsdale, AZ 85251

25 Larry Klayman
26 Pro Hac Vice Pending
27 2020 Pennsylvania Ave., NW, Suite 800
28 Washington, D.C. 20006

Attorneys for Plaintiffs

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1
2 CERTIFICATE OF SERVICE

3 I hereby certify that the original of the forgoing was filed this 9th day of May, 2013
4 with:

5 Maricopa County Superior Court
6 201 W. Jefferson
7 Phoenix, AZ 85003

8 Copy of the foregoing was hand delivered this 9th day of May, 2013 upon the following:

9 Honorable Michael Herrod
10 Maricopa County Superior Court
11 201 W. Jefferson
12 Phoenix, AZ 85003

13 Copy of the foregoing was mailed to the following this 9th day of May, 2013 upon the
14 following:

15 Chris Ford, Esq.
16 Law Office of Chris Ford
17 7000 N. 16th street, Suite 120-170
18 Phoenix, AZ 85020

19 Attorney for the Respect Arizona Defendants
20
21
22
23
24
25
26
27
28

Group tries again for Arpaio recall

A group trying to oust Maricopa County Sheriff Joe Arpaio is again paying professionals to gather signatures from voters in a bid to force a recall election against the lawman.

Sheriff Joe Arpaio recall group has paid signature gatherers again

Posted: 05/09/2013

Last Updated: 18 hours and 52 minutes ago



By: Associated Press

PHOENIX - A group trying to oust Maricopa County Sheriff Joe Arpaio is again paying professionals to gather signatures from voters in a bid to force a recall election against the lawman.

Fundraising difficulties had prompted the group to stop using paid signature gatherers nearly two months ago and instead rely on only volunteers.

But recall organizer Lilia Alvarez says the paid signature gatherers resumed their work for her group Wednesday after contributors followed through on pledges to donate money.

The recall group must turn in more than 335,000 valid voter signatures by May 30 to force a recall election against Arpaio.

Alvarez declined to say how many signatures her group has currently gathered.

Two weeks ago, Alvarez had said the group had gathered 200,000 signatures.

Copyright 2013 The Associated Press. All rights reserved. This material may not be published, broadcast, rewritten or redistributed.

• PRINT

Share This Comments

Login or signup

You must be logged in to comment

Post

Live



DonnieWing

Rule of Law

Live in the Land follow the laws.

User ID:<http://facebook.com/100000436192711>

12 Hours Ago

· Reply



TommyWilliams

De claims to be an Independent. He and the other girls should be the ones flagged for their ridiculous posts. There is no doubt they are on the side of the brain damaged liberals, and they are assisting them in their destruction of this once great Nation. De, and your other ugly girl liberals that post on here, get a real job and get out of your house now and again. Stop mooching off of those of us that work, earn and pay taxes.

Donate your food stamps to charities and stop you liberal rhetoric. Just facts

here.. no BS..

User ID:<http://facebook.com/100002823857918>

14 Hours Ago

· Reply



DonnieWing

I support this failing attempt

5 times re-elected live with it if you happen to be here illegally GO HOME.



TommyWilliams likes this.

User ID:<http://facebook.com/100000436192711>

15 Hours Ago

· Reply



TommyWilliams

De and the other liberal girls are just typical liberals..Just a fact..



HelenSmith likes this.

User ID:<http://facebook.com/100002823857918>

15 Hours Ago

· Reply



DeLikeme

I am an Independent. Tommy,not Brainwashed by the Tea!

User ID:<http://facebook.com/100000672658718>

15 Hours Ago

· Reply



TommyWilliams

If I were younger and had time off from my business, I would be happy to be part of the Tea Party. It's so obvious you are the one that is brainwashed by MSNBC, Comedy Channel and other liberal sick minded scum. Just a fact about you girly...



User ID:<http://facebook.com/100002823857918>

14 Hours Ago



MikeTiger

And Hope this group fails again. Sheriff Joe does an EXCELLENT JOB in maintaining law and order in this county. For a city of this size (of Phoenix), it is mainly due to Sheriff's efforts that the criminals are staying away and keeping their bad deeds confined to other other rural areas not under his purview. What these 'liberal' groups don't realize is that they are shooting themselves in the foot by asking for his ousting. Then of course there are always the "*****ez"es that

want his head because he does such a great job in making sure legally authorized people are allowed to stay. IN AMERICA.



HelenSmith likes this.

User ID:<http://facebook.com/100003106482942>

16 Hours Ago

· Reply



DeLikeme

You are Right Mike, he has Deported as Many Citizens as illegals that is 0,that is Not His Job!

User ID:<http://facebook.com/100000672658718>

16 Hours Ago

· Reply



TommyWilliams

Our Sheriff is doing a much better job at enforcing the law, than any sissy liberal. You see folks Sheriff Joe enforces all of the laws of the State and County and the criminal liberals hate that. If the liberals had their way criminal would receive special status and be elevated to a race and then we all could feel pity for them and give them a check every month. Liberals don't know what earning a living consists of, and they don't have a brain that functions enough to let them see that the demorats use their sick minds for their evil agendas...Just a fact... God Bless America!



HelenSmith likes this.

User ID:<http://facebook.com/100002823857918>

16 Hours Ago

· Reply



JadePearce

Yeah, right on Joe, enforcing ALL the laws of the State....well, except the laws about child molesters, or the laws regarding following the procurement code, or the laws about government agencies being required to keep records, or the laws about audit requirements, or the laws about jail conditions, or the laws about campaign finances.....

User ID:<http://facebook.com/1509266021>

16 Hours Ago

· Reply



DeLikeme

Tommy is So Old Jade ,he can Call Joey Sonny!That's Old LOL



JadePearce likes this.

User ID:<http://facebook.com/100000672658718>

16 Hours Ago

· Reply



MaPa

Jade, out of anyone you should be glad Joe does not enforce all the laws, otherwise your child molesting husband would be behind bars and your son who killed innocent women and children would be hanging from a tree.

User ID:<http://facebook.com/100000095104538>

16 Hours Ago

· Reply



TommyWilliams

MaPa, I'm beginning to believe you may be posting the truth about the low life liberals.. You think? 🤔

User ID:<http://facebook.com/100002823857918>

15 Hours Ago

More
social networking by