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20 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

21 **IN AND FOR THE COUNTY OF PIMA**

22 **DEBRA ARRETT and SHIRLEY**
23 **LAMONNA,**

24 Plaintiffs,

25 vs.

JULIE K. BOWER, Oro Valley Town
Clerk,

Defendant.

CASE NO. C20150346

MOTION TO DISMISS PURSUANT TO RULE
12(b)(6) AND/OR RULE 56(a)

ORAL ARGUMENTS REQUESTED

(Assigned to the Honorable Gus Aragon)

21 Defendant Julie K. Bower, the Oro Valley Town Clerk (“Clerk”), by and through undersigned
22 counsel, respectfully brings this motion for failure to state a claim pursuant to Ariz. R. Civ. P.
23 12(b)(6) and/or for summary judgment pursuant to Rule 56(a). This motion is supported by the
24 Memorandum of Points and Authorities below, as well as documents in the public record, which are
25 appended to the supporting Affidavit of Julie Bower (“Bower Aff.”).

1 The Clerk is entitled to dismissal of this action because Plaintiffs Debra Arrett and Shirley
2 Lamonna (collectively “Plaintiffs”) failed to state a claim for mandamus relief, having alleged no
3 breach of a legal duty by the Clerk. In particular, Plaintiffs concede that they failed to comply with
4 the statutory requirements for a referendum petition while the Clerk fulfilled her legal obligation to
5 reject the petitions because of this non-compliance. Even if Plaintiffs’ allegations suffice to state a
6 claim, there is no genuine dispute as to any material fact, and the Clerk acted in compliance with the
7 law. In short, the Court should issue an order dismissing this case because Plaintiffs are not entitled
8 to any relief.

9 **STATEMENT OF UNDISPUTED FACTS**

10 On December 17, 2014, a majority of the Oro Valley Town Council voted in favor of
11 Resolution 14-66 (“(R)14-66”), authorizing the Town of Oro Valley (the “Town”) to purchase
12 approximately 324 acres of land from El Conquistador Country Club for conversion into a community
13 and recreation center. (Cplt. ¶ 4; Bower Aff. ¶ 9, Ex. E.) Even before Council considered (R)14-66,
14 members of the community began to organize in opposition to the possible purchase. On December
15 9, 2014, Plaintiff Lamonna contacted the Clerk by email to inquire about the Town’s requirements,
16 format for petitions, number of signatures required and time period for securing signatures. (Bower
17 Aff. ¶¶ 4-5, Ex. A.) The Clerk responded by providing a link to the Arizona Secretary of State’s
18 handbook concerning Initiatives, Referendum, and Recall (the “Handbook”), which referred
19 numerous times to the requirement that the petitions’ serial number be indicated on the lower right-
20 hand corner of the front and back of each petition page. (Bower Aff. ¶¶ 5-7, Exs. A and B.) The
21 next day the Clerk provided answers regarding the time within which to file a referendum petition, the
22 requirement to file a statement of organization or exemption statement, and how the number of
23 required signatures are calculated, citing relevant statutes and the Arizona Constitution. (Bower Aff.
24 ¶ 7.) The email also enclosed pertinent applications for commencing the referendum petition process.
25 (Ex. C.) Lamonna again made inquiries of the Clerk on December 14, to which the Clerk responded

1 on December 16, but noted “I am not allowed to give you legal advice” and “[y]ou may wish to see
2 your own legal counsel.” (Bower Aff. ¶ 8, Ex. D; *see also* Aff. ¶ 12, Ex. G.)

3 On December 18, Plaintiff Lamonna submitted an application for a referendum petition serial
4 number on behalf of T.O.O.T.H. in OV, receiving serial number OVREF 14-01. (Cplt. ¶ 5; Bower
5 Aff. ¶ 10, Ex. F.) The first paragraph of the application stated that Lamonna “makes the application
6 for the issuance of an official serial number to be printed in the lower right-hand corner of each side
7 of each signature sheet of such petition.” (*Id.*) Lamonna returned approximately 249 petition sheets
8 to the Clerk on January 15, 2015. (Bower Aff. ¶ 13, Ex. J.) Lamonna completed and signed a receipt
9 for the petition sheets. (Bower Aff. ¶ 13, Ex. H.) Lamonna also signed an affidavit indicating that
10 she did not rely on Town staff for legal advice in preparing the petition, that she was advised to
11 consult with private legal counsel prior to preparing the petitions, and that she understood the
12 petitions “must be strictly construed under Arizona case law for any flaws, which may result in such
13 petitions or signatures being disallowed.” (Bower Aff. ¶ 14, Ex. I.)¹

14 After T.O.O.T.H. in OV realized that OVREF 14-01 was defective (*see, e.g.*, Bower Aff. ¶
15

16
17 ¹ To the extent Plaintiffs seek to rely on advice they received or were denied by the Clerk, this
18 is insufficient to support a claim for relief. As in *W. Devcor*, where the Arizona Supreme Court found
19 that intervenors could not rely on advice from the Secretary of State to excuse the infirmity in their
20 petition, nor may Plaintiffs claim that any statement by the Clerk is an excuse for the omission of the
21 serial number from each page of their petition. *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426,
22 431, 814 P.2d 767, 772 (1991). *See also Fid. Nat. Title Co. v. Town of Marana*, 220 Ariz. 247, 250,
23 204 P.3d 1096, 1099 (Ct. App. 2009) (“It is the challenger's responsibility to comply with the
24 statutory requirements for filing a referendum petition, and the receipt of erroneous advice, even from
25 governmental officials responsible for administering the referendum process, does not excuse that
responsibility”); *Robson Ranch Mtns., L.L.C. v. Pinal County*, 203 Ariz. 120, ¶ 38, 51 P.3d 342, 352
(App. 2002) (reliance on inaccurate advice does not extend the time or excuse noncompliance with
statutory requirements); *accord Perini Land and Dev. Co. v. Pima County*, 170 Ariz. 380, 381, 384,
825 P.2d 1, 2, 5 (1992) (although issue not addressed directly, erroneous advice from county elections
director about referendum signatures did not excuse noncompliance). Notwithstanding the foregoing,
the record demonstrates that Plaintiffs were given correct and complete information about the
requirements concerning the petition serial number, both from the Secretary of State Handbook (Ex.
B) and from the Clerk’s emails providing specific references to A.R.S. § 19-111. (Ex. C.)

1 14), Plaintiff Arrett met with the Clerk and applied for a referendum petition serial number shortly
2 before noon on January 16. (Bower Aff. ¶ 18, Ex. L.) Arrett also corresponded with the Clerk about
3 the referendum petition process. (Bower Aff. ¶ 19, Ex. M.) Being the thirtieth and last day to submit
4 a referendum petition on (R)14-66, shortly before 5:00 p.m. on January 16 Arrett returned the signed
5 petitions, estimating that 1,070 signatures were collected. (Bower Aff. ¶ 20, Ex. N.) As with
6 Lamonna, Arrett received receipts for the submitted petition pages and affirmed that she had been
7 advised to consult with private legal counsel and understood that the petitions were subject to strict
8 construction. (Bower Aff. ¶¶ 20-21, Exs. N and O.)

9 On January 20, the Clerk issued referendum receipts rejecting both petition OVREF 14-01 and
10 OVREF 15-01 (the latter had not gathered enough signatures). (Cplt. ¶ 7; Bower Aff. ¶¶ 16, 22, Exs.
11 K and P.) The receipt rejected OVREF 14-01 in its entirety because, among other things, the petition
12 failed to comply with the requirements of A.R.S. § 19-111(B) in that none of the pages had the
13 assigned serial number of the petition on the lower right-hand corner of each side. (Cplt. ¶¶ 7, 11, 13,
14 14; Ex. K.) Having properly determined that T.O.O.T.H. of OV failed to comply with the
15 requirements for the form of petition or the number of signatures, the Clerk acted appropriately in
16 declining to transmit the petitions to the County Recorder. (Bower Aff. ¶¶ 17, 23.)

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. Plaintiffs Fail to State a Claim for Mandamus**

19 The Complaint concedes that the submitted pages of petition OVREF 14-01 were in “violation
20 of statutory procedures of form” because each page of the petition omitted the petition number on
21 both sides in the lower right-hand corner. (Cplt. ¶¶ 11, 13, 14.) Furthermore, the Complaint
22 acknowledges that the Clerk’s rejection of OVREF 14-01 complied with the statutory requirements
23 that the serial number of the petition be on the lower right-hand corner, front and back, of each
24 petition page. (Cplt. ¶¶ 11, 14.) With these admissions, Plaintiffs have failed to state a claim for
25

1 mandamus relief.²

2 A writ of mandamus is an extraordinary remedy to compel a public official to perform a non-
3 discretionary duty specifically imposed by law. *Stagecoach Trails MHC, LLC v. City of Benson*, 231
4 Ariz. 366, 370, 295 P.3d 943, 947 (2013); *Reeves v. Barlow*, 227 Ariz. 38, 42, 251 P.3d 417, 420 (Ct.
5 App. 2011) (finding that mandamus was not proper where the statute did not require the action
6 sought) (citing *Yes on Prop 202 v. Napolitano*, 215 Ariz. 458, 160 P.3d 1216 ¶ 9 (Ct. App. 2007)).
7 To state a claim for mandamus, the public officer must specifically be required by law to perform the
8 act in question. *Donaghey v. Attorney Gen.*, 120 Ariz. 93, 94-95, 584 P.2d 557, 558-59 (1978)
9 (dismissing mandamus action pursuant to 12(b)(6)); *Bd. of Ed. of Scottsdale High Sch. Dist. No. 212*
10 *v. Scottsdale Ed. Ass'n*, 109 Ariz. 342, 344, 509 P.2d 612, 614 (1973) (dismissing action because no
11 duty required by law).

12 Here, the Complaint and public records demonstrate that the Clerk performed each act
13 required of her by the law. For example, she provided referendum serial numbers, reviewed returned
14 petitions according to the standards set forth in the Arizona Constitution and statutes, correctly
15 determined that the petitions' omitted the serial number from the lower right-hand corner of each side
16 of each page, and therefore rejected the petitions. The Clerk had no discretion with respect to
17 interpreting the statutes in light of the Arizona Constitution, but instead fulfilled her obligation to
18 strictly and literally apply the requirements set forth in both. The Complaint concedes that the
19 rejection of the petitions was based in statute. (Cplt. ¶ 11, 14.) Because there is no plausible
20 allegation that the Clerk failed to perform any act required by law, Plaintiffs have not stated a claim

21
22 ² This Court may decide this motion pursuant to Rule 12(b)(6) without considering the Affidavit
23 of the Clerk. However, the following Exhibits are public records and may be considered without
24 requiring that the 12(b)(6) motion be converted to a motion for summary judgment pursuant to Rule
25 56(a), which the Clerk also brings in the alternative. “[P]ublic records regarding matters referenced in
a complaint, are not “outside the pleading,” and courts may consider such documents without
converting a Rule 12(b)(6) motion into a summary judgment motion.” *Coleman v. City of Mesa*, 230
Ariz. 352, 356, 284 P.3d 863, 867 (2012) (citing *Strategic Dev. & Constr., Inc. v. 7th & Roosevelt*
Partners, LLC, 224 Ariz. 60, 63 ¶ 10, 64 ¶ 13, 226 P.3d 1046, 1049–50 (App. 2010)).

1 for mandamus and this action must be dismissed with prejudice.

2 **II. The Arizona Legislature Stated the Serial Number “*Shall*” Appear on the Petition**

3 The form of a petition for a referendum is set forth in A.R.S. §§ 19-101 and 19-111(B). They
4 provide: “Each petition sheet *shall* have printed on the top of each sheet the following: ‘*It is*
5 *unlawful to sign this petition before it has a serial number.*’” (A.R.S. § 19-101(B)) and “On receipt
6 of the [referendum petition] application, the [Town Clerk] shall assign an official serial number to the
7 petition, *which number shall appear in the lower right-hand corner of each side of each copy*
8 *thereof*, and issue that number to the applicant.” (A.R.S. § 19-111(B)).

9 The legislature is presumed to mean what it says. *Hughes v. Jorgenson*, 203 Ariz. 71, 73, ¶
10 11, 50 P.3d 821, 823 (2002); *Homebuilders Ass'n of Cent. Arizona v. City of Scottsdale*, 186 Ariz.
11 642, 649, 925 P.2d 1359, 1366 (Ct. App. 1996), as modified (Mar. 7, 1996); *see also State v. Johnson*,
12 171 Ariz. 39, 41, 827 P.2d 1134, 1136 (App.1992) (legislature is presumed to express itself in “as
13 clear a manner as possible” and that “it accorded words their natural and obvious meanings unless
14 stated otherwise”). Thus, the appropriate method to interpret the provisions of A.R.S. § 19-101(B)
15 and A.R.S. § 111(B) is based on the plain meaning of the language in each statute and by giving effect
16 to each word. *Comm. for Pres. of Established Neighborhoods v. Riffel*, 213 Ariz. 247, 249-50, ¶ 8
17 (Ct. App. 2006) (finding that A.R.S. § 19–101(A) requires placement of a referendum description
18 directly into the text of petition so petition with stapled description not valid). Here, the applicable
19 statutes say that the serial number *shall* appear on the petition, and that word must be given its full
20 meaning. Any petition that lacks the required serial number does not comply with A.R.S. § 19–
21 101(B) and A.R.S. § 19-111(B).

22 The undisputed facts in this case are that the petition circulated for signatures did not have the
23 petition serial number in the lower right-hand corner of each side of each copy. Because the petition
24 did not comply with the plainly stated requirements of A.R.S. § 19-101(B) and A.R.S. § 19-111(B),
25 the Clerk properly rejected the petition and Plaintiffs have no right to any relief as a matter of law.

1 Indeed, Arizona courts have long required literal compliance with the statutory requirements
2 for referendum petitions. *W. Devcor, Inc. v. City of Scottsdale*, 168 Ariz. 426, 428-29, 814 P.2d 767,
3 769-70 (1991) (“while recognizing the historical importance of the referendum to our state, we have
4 required strict compliance to ensure that the constitutional right is not abused or improperly
5 expanded” and requiring strict compliance with requirement that petition circulators indicate belief
6 that each signer was a qualified elector and finding referendum petitions invalid for this deficiency);
7 *Fid. Nat. Title Co. v. Town of Marana*, 220 Ariz. 247, 248-49, 204 P.3d 1096, 1097-98 (Ct. App.
8 2009) (“referendum proponents must strictly comply with all constitutional and statutory
9 requirements”). The referendum power is subject to exacting standards because it is an extraordinary
10 power of a minority to temporarily suspend the actions of representatives chosen by the majority.
11 *Feldmeier v. Watson*, 211 Ariz. 444, 447, 123 P.3d 180, 183 (2005) (distinguishing between
12 substantial compliance permitted of initiatives and strict compliance required of referendum) (citing
13 *W. Devcor*, 168 Ariz. at 429, 814 P.2d at 770 and *Cottonwood Dev. v. Foothills Area Coal. of Tucson,*
14 *Inc.*, 134 Ariz. 46, 49, 653 P.2d 694, 697 (1982)). “Where a power so great as the suspension of an
15 ordinance or of a law is vested in a minority, the safeguards provided by law against its irregular or
16 fraudulent exercise should be carefully maintained.” *Direct Sellers Ass'n v. McBrayer*, 109 Ariz. 3, 5-
17 6, 503 P.2d 951, 953-54 (1972) (quoting *AAD Temple Bldg. Ass'n v. Duluth*, 135 Minn. 221, 226–27,
18 160 N.W. 682, 684–85 (1916)). “To vest roving political circulators with the extraordinary power to
19 delay the effective date of properly enacted legislation would violate both the letter and the spirit of
20 our law.” *McDowell Mountain Ranch Land Coal. v. Vizcaino*, 190 Ariz. 1, 4-5, 945 P.2d 312, 315-16
21 (1997). Because of this brief and exceptional power, courts find that literal reading of the
22 requirements for a referendum is justified. *Cottonwood Dev.*, 134 Ariz. at 49-50, 653 P.2d at 697-98
23 (petition that did not include copy of measure being referred was invalid).

24 This case most closely resembles *Committee for Preservation of Established Neighborhoods v.*
25 *Riffel*, 213 Ariz. 247, 141 P.3d 422 (Ct. App. 2006) (“*Riffel*”). As in *Riffel*, the issue is not the

1 signatures or their number, but whether the petition, as circulated, complied with the requirements of
2 Title 19. In *Riffel*, the Court of Appeals found that the plain meaning of A.R.S. § 19-101(A) required
3 that a description of the referendum be inserted onto the text of circulating petitions pages and failure
4 to adhere to that requirement invalidated the petition. *Id.* at 250-51, ¶¶ 9-11, 14, 141 P.3d at 425-26.
5 Where the form and content of the petition fails to adhere to the constitutional and statutory
6 requirements, those deficiencies **cannot** be cured. *See, e.g., W. Devcor*, 168 Ariz. at 432, 814 P.2d at
7 773; *Cottonwood Dev.*, 134 Ariz. 46, 653 P.2d at 694 (where referendum petitions did not have copy
8 of resolution to be referred attached, the petitions were invalid).

9 Several recent cases dealing with referendum petitions recognize that the presumption of the
10 validity of signatures – distinct from the content and form of the petition, the critical issue in this case
11 – is destroyed where the petition does not strictly comply with statutory requirements and there can be
12 an opportunity to restore the presumption. *See, e.g., Direct Sellers*, 109 Ariz. At 5, 503 P.2d at 953;
13 *Forszt*, 212 Ariz. 263, ¶ 19, 130 P.3d at 542; *but see Harris v. City of Bisbee*, 219 Ariz. 36, 41-42, 192
14 P.3d 162, 167-68 (Ct. App. 2008) (recognizing that Title 19 specifies the content legally required in
15 petitions and failure to include such content is fatal to the petition). In this case, the violation of § 19-
16 111(B) irredeemably destroys the validity of the petition and the signatures, and makes a mockery of
17 the conditions the Arizona Legislature created to fulfill the purposes of a referendum. Sections 19-
18 101 and 19-111, read together, demonstrate that the purpose of including the petition serial number on
19 each side of each page of the petition is to (1) avoid falsification of the petition and (2) to have the
20 addition of the serial number to the petition in a specified location a necessary condition. The
21 petitions’ pages were invalid from the moment they were first offered for signature, and that omission
22 is not “non-substantive statutory window dressing” (Cplt. ¶ 11), but critical to protecting the integrity
23 of the petition process, as the Legislature made clear by embodying that requirement in the governing
24 statutes. Just as in *W. Devcor*, where a certification of signatures by a city clerk cannot supplant the
25 requirement that petition circulators makes sworn statements about the validity of gathered signatures,

1 neither can a petition page with a resolution number suffice where the petition serial number is
2 required. *W. Devcor*, 168 Ariz. at 432, 814 P.2d at 773 (statutory defects in petition rendered them
3 insufficient to require a referendum election).

4 Even if the defect in the form and content of the petition could be cured, Plaintiffs failed to do
5 so within the thirty-day deadline for filing a petition for a referendum. As repeatedly recognized,
6 “proponents of a referendum cannot obstruct the passage of legislation by amending a defective
7 petition outside the deadline for its filing.” *Forszt v. Rodriguez*, 212 Ariz. 263, 130 P.3d 538 (Ct.
8 App. 2006) (citing *Direct Sellers*, 109 Ariz. at 5, 503 P.2d at 953).

9 To hold otherwise would allow a small minority of voters to present a protest to the
10 passage of a law . . . have that protest found insufficient, file amendments, have those
11 found insufficient, and in this obstructive manner prevent a law from going into effect
for any number of years after its enactment.

12 *Direct Sellers Ass'n v. McBrayer*, 109 Ariz. 3, 6, 503 P.2d 951, 954 (1972).

13 Here, Plaintiffs admit that the petitions did not include the serial number in the lower right-
14 hand corner on the front and back of each page of the petition. As such, the petitions did not adhere
15 with the statutory requirements and the Clerk properly rejected them. For these reasons, the action
16 must be dismissed.

17 **III. A.R.S. § 19-111(B) Complies with Arizona Constitution, art. IV, part 1, § 1.³**

18 Plaintiffs allege that the rejected referendum petition complied with the constitutional
19 requirements of form and content (Cplt. ¶ 9), but concede that they failed to comply with the
20 requirements embodied in state statutes. (Cplt. ¶¶ 10-11.) Plaintiffs claim that the constitutional
21 compliance alone is sufficient for approval of the petition. (Cplt. ¶¶ 12 and 13.) As set forth below,
22 the Court should reject this position as contrary to law and precedent.

23 ³ The Complaint does not expressly seek a declaration that A.R.S. § 19-111(B) is
24 unconstitutional, but in Complaint paragraphs 8-14, the allegations are that the statutory requirements
25 are unconstitutional. Such a ruling is beyond the purview of this case, and the appropriate defendant
for such a claim is the Attorney General of the State of Arizona, not the Oro Valley Town Clerk.
Furthermore, such an action should not be a mandamus, but a declaratory judgment.

1 Arizona Constitution, art. IV, part 1, § 1, delineates the powers of referendum and initiatives.
2 Part 1, § 1(16), indicates that this Part is self-executing. However, Part 1, § 1(8) also provides that
3 general laws passed by the Arizona Legislature may restrict the manner of exercising the referendum
4 power with respect to those referenda and initiatives concerning local, city, town or county matters,
5 such as the one at issue in this litigation. Although Plaintiffs allege that the grounds relied upon by
6 the Clerk in rejecting the petition were “non-substantive statutory window dressing” (Cplt. ¶ 11), the
7 Arizona Supreme Court has specifically upheld the validity of the statutes (A.R.S. §§ 19-101, *et seq.*)
8 that supplement Article IV, part 1:

9 We hold that the fact that a constitutional provision is self-executing does not forever
10 bar legislation on the subject. If such legislation does not unreasonably hinder or
11 restrict the constitutional provision and if the legislation reasonably supplements the
12 constitutional purpose, then the legislation may stand.

13 *Direct Sellers Ass'n v. McBrayer*, 109 Ariz. 3, 5, 503 P.2d 951, 953 (1972) (citing *Fry v. Mayor and*
14 *City Council of Sierra Vista*, 11 Ariz. App. 490, 466 P.2d 41 (1970)); *see also Roberts v. Spray*, 71
15 Ariz. 60, 69, 223 P.2d 808, 818 (1950). In keeping with this principle, each of the following cases
16 note that referendum petitions must strictly comply with **both** constitutional **and** statutory provisions.
17 *See W. Devcor*, 168 Ariz. at 429, 814 P.2d at 770; *Cottonwood Dev.*, 134 Ariz. at 49, 653 P.2d at 697;
18 *Sherrill v. City of Peoria*, 189 Ariz. 537, 540, 943 P.2d 1215, 1218 (1997); *Van Riper v. Threadgill*,
19 183 Ariz. 580, 582, 905 P.2d 589, 591 (Ct. App. 1995); *Riffel*, 213 Ariz. at ¶ 6, 249, 141 P.3d at 424;
20 *Sklar v. Town of Fountain Hills*, 220 Ariz. 449, 207 P.3d 702 (Ct. App. 2008).

21 Neither logic nor precedent supports a suggestion that requiring a serial number on the petition
22 pages unreasonably limits the right to bring a referendum. *See Turley v. Bolin*, 27 Ariz. App. 345,
23 554 P.2d 1288 (Ct. App. 1976) (holding that a statute requiring filing of initiative petitions no later
24 than five months prior to general election was invalid because it conflicted with constitutional
25 provision requiring petitions be filed not less than four months before election). Here there is neither
a burden nor a conflict between the requirements of the constitution and the statutes. For these

1 reasons, the requirement in A.R.S. § 19-111(B) that the serial number be on each page of the petition
2 does not violate the Arizona Constitution and Plaintiffs cannot be excused from their failure to
3 comply with A.R.S. § 19-111(B).

4 **IV. Public Policy Requires that the Court Find the Clerk Properly Rejected the Petition**

5 Plaintiffs claim to be among approximately 3,158 signers to a petition to refer (R)14-66 to the
6 voters. (Cplt. ¶¶ 2, 6.) They are a small portion of the 40,000 residents of the Town of Oro Valley,
7 which is represented by seven duly elected Councilmembers, each of whom was present and
8 participated in the over five-hour meeting on December 17 at which they discussed and a majority
9 voted in favor of (R)14-66. The resolution was placed on the December 17 agenda after three
10 previous executive sessions and a presentation at the December 9 almost four-hour meeting of the
11 Parks and Recreation Advisory Board.

12 After the representative government of the Town acted, the right of referendum was
13 immediately available, as guaranteed in the Arizona Constitution and statutes. Subsequently, both
14 Plaintiffs signed applications for referendum petition serial numbers, which clearly stated the “official
15 serial number [was] to be printed in the lower right-hand corner of each side of each signature sheet of
16 such petition.” (Exs. F and L.) In returning the petitions, both Plaintiffs acknowledged that the
17 statutory requirements were strictly construed. (Exs. I and O.) However, neither Plaintiff complied
18 with the clear instructions of the Handbook, A.R.S. § 19-111(B), or the referendum serial number
19 application, and they failed to place the referendum petition serial number in the lower right-hand
20 corner of each page. Rather than accept responsibility for their own failure to follow these
21 instructions, Plaintiffs now ask the judiciary to interfere with the proper functioning of the separate
22 legislative powers of the Oro Valley Town Council.

23 There is no issue that a majority of the members of Council – themselves elected by a clear
24 majority of the votes cast – approved (R)14-66. There is no issue that the time to bring – or cure – a
25 petition for a referendum on (R)14-66 has passed. Instead the issue is whether the extraordinary

1 rights of this minority can do precisely what *Direct Sellers* advised against – tie up the legislative
2 process indefinitely with this baseless challenge. 109 Ariz. at 6, 503 P.2d at 954. Strict compliance
3 with the exact requirements for the form and content of referendum petitions does not unduly burden
4 the limited constitutional right to bring a referendum such that there is “no right at all.” *See Riffel*,
5 213 Ariz. at ¶ 12, 250, 141 P.3d at 425. Instead, strict compliance ensures that the rights of the
6 minority cannot run rough shod over the majority in the representative governing and legislative
7 process. For example, the requirements minimize the risk of fraud by ensuring that petitions are only
8 circulated and signed after they are properly certified by the Clerk, as demonstrated by the issuance of
9 the serial number and its inclusion on each side of every petition page. In addition, there are well-
10 defined requirements for the size of the font for petition contents, the size of margins, the maximum
11 number of signatures permitted per page, the nature of the information that must be included as text,
12 and the types of documents that must be attached to a petition. A.R.S. §§ 19-101, *et seq.*, creates
13 well-defined boundaries and processes to “ensure that the constitutional right of the referendum is not
14 abused or improperly expanded,” for it is an extraordinary power of the “minority to hold up the
15 effective date of legislation which may well represent the wishes of the majority.” *W. Devcor*, 168
16 Ariz. at 428-29, 814 P.2d at 769-70 (citations omitted).

17 To permit Plaintiffs to continue with this baseless litigation permits the very tyranny of the
18 minority that the democratic process, representative government, and strict adherence to the detailed
19 requirements of A.R.S. §§ 19-101, *et seq.*, are designed to prevent. There is a risk of real harm to the
20 community of Oro Valley if the Court deviates from law and precedent here because the seller of the
21 property the Council authorized the Town to purchase with (R)14-66 may withdraw from
22 negotiations. Indeed, the Town is entirely dependent on the seller’s good graces until this Special
23 Action is resolved. Two signers of a petition should not be permitted to hold this land deal hostage.

24
25

1 In light of the tremendous importance of this public policy and the robust precedent requiring
2 strict compliance with the statutory requirements for referendum petitions, the Court should
3 immediately reject Plaintiffs' claim and dismiss this action in its entirety.

4 **CONCLUSION**

5 For the reasons set forth herein, the Court should grant the motion to dismiss for failure to
6 state a claim and reject the application for an Order to Show Cause or, in the alternative, grant the
7 Clerk's motion for summary judgment.

8 DATED this 2nd day of February, 2015.

9 CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.

10 By: /s/ Patricia E. Ronan
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15 Tobin Sidles
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18 Oro Valley, Arizona 85737
19 *Attorneys for Julie K. Bower*

20 I certify that on February 2, 2015, I
21 electronically transmitted the attached
22 to the Pima County Superior
23 Court using AZ TurboCourt.

24 A copy of the foregoing electronically
25 transmitted and emailed to:

The Honorable Gus Aragon

/ / /
/
/ / /

1 Copy of the foregoing emailed and
mailed this 2nd day of February, 2015 to:

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