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7 Properties, LLC*

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

9 IN AND FOR THE COUNTY OF PIMA

10  
11 FREMONT PEAK PROPERTIES,  
LLC,

12 Plaintiff,

13 v.

14 TOWN OF MARANA; MARANA  
15 TOWN CLERK JILL MCCLEARY;  
and ARIZONANS FOR  
16 RESPONSIBLE DEVELOPMENT,  
SPONSORED BY WORKER POWER,  
17 MARANA POLITICAL ACTION  
COMMITTEE NO. COM2026-01,

18 Defendants.  
19

No.

C20261773

APPLICATION FOR ORDER TO  
SHOW CAUSE

SCOTT MCDONALD

FILED  
JAMES W. GIACOMINO  
CLERK, SUPERIOR COURT

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MAR 04 2026

BY  DEPUTY

Pamela Johnson

SNELL  
& WILMER

20 Arizona's Constitution ensures that certain powers are left in the hands of its  
21 citizens through the ballot initiative and referendum process. Indeed, such power is  
22 reserved for "the people" and it is available "for use *at their own option*" in order to  
23 check or curtail a legislative body. Ariz. Const. Art. IV, Pt. 1, § 1(1)-(3) (emphasis  
24 added). In this case, Defendant Arizonans for Responsible Development, Sponsored  
25 by Worker Power, Marana Political Action Committee No. COM2026-01 (the  
26 "Committee"), acting on behalf of the people, submitted applications to begin the  
27 referendum process (the "Applications") and began circulating two referendum  
28 petitions (collectively, the "Petitions"). However, the Committee then acted, based

1 its “own option,” to withdraw its Petitions filed with the Town of Marana  
2 (“Marana”).

3 Contrary to the mandates of the Arizona Constitution and enabling statutes,  
4 the Marana Town Clerk (the “Clerk”) has refused to recognize the Committee’s  
5 withdrawal, and instead, kept jurisdiction over Petitions that no longer represent the  
6 interests of their proponent. The Clerk has denied Arizonans their ability to utilize  
7 the referendum process at their own option.

8 Accordingly, pursuant to Rules 7.3(a), Arizona Rules of Civil Procedure, and  
9 Rule 7(c), Arizona Rules of Procedure for Special Actions, Plaintiff Fremont Peak  
10 Properties, LLC (“FPP”) applies for an Order to Show Cause why the relief sought  
11 in *Plaintiff’s Verified Complaint for Special Action Relief and Declaratory Judgment*  
12 should not be granted.

13 As detailed in this memorandum of points and authorities, mandamus relief  
14 is appropriate because the Clerk had a non-discretionary duty to cancel the  
15 Applications and return the Petitions to the referendum proponent as directed, and  
16 has otherwise acted arbitrarily and capriciously, and abused her discretion, in  
17 refusing to recognize the Committee’s withdrawal.

18 **FACTUAL BACKGROUND**

19 **I. Background of the Referenda.**

20 On January 8, 2026, the Committee submitted two applications for serial  
21 numbers to the Marana Clerk’s Office. [Verified Compl. ¶ 15.] The Applications  
22 generally concerned the development of two adjacent land parcels under contract by  
23 FPP, located in Marana (collectively, the “Property”). [*Id.* at ¶¶ 15-16.] The parcels  
24 were rezoned by Marana Ordinance No. 2026.002 and Marana Ordinance No.  
25 2026.003, and the Applications related to those ordinances. [*Id.*] In turn, the  
26 Applications resulted in two corresponding serial numbers being assigned by the  
27 Clerk, REF2026-02, and REF2026-03—one for each parcel. [*Id.* at ¶ 15.]

1 Following through with the referendum process, the Committee circulated  
2 referendum petitions in Marana in January 2026, for both REF2026-02 and  
3 REF2026-03. [*Id.* at ¶17.] And in turn, the Committee submitted the resulting  
4 Petitions with the Clerk on February 4, 2026. [*Id.* at ¶18.] The Committee reportedly  
5 collected 2,876 signatures for REF2026-02 and 2,875 signatures for REF2026-03.  
6 [*Id.*]

7 As directed by A.R.S. §§ 19-121.01(A) and 19-141(A) the Clerk had until  
8 March 5, 2026, to review the Petitions for legal deficiencies. [*Id.* at ¶19.] If enough  
9 potentially valid signatures remained eligible for further verification following the  
10 Clerk’s preliminary review, the Clerk would then have been required to conduct a  
11 5% random sample of the remaining eligible signatures and transmit those sampled  
12 signatures to the Pima County Recorder. *See* A.R.S. § 19-121.01(B). The Pima  
13 County Recorder would then have until March 26, 2026, to review the sampled  
14 signatures, A.R.S. § 19-121.02, before transmitting her findings to the Clerk. Then  
15 lastly, the Clerk would determine whether the Petitions comprise enough valid  
16 signatures to qualify for the Town ballot. A.R.S. § 19-121.04.

17 In this case however, the Clerk did not even get through the first step. [*Id.* at  
18 ¶ 20.] On or before February 18, 2026—roughly halfway through the period to  
19 conduct her preliminary review—the Clerk determined that the Petitions did not  
20 contain a sufficient legal description of the Property as required by A.R.S. § 19-  
21 121(E). [*Id.*] Thus, the Clerk prepared to invalidate the Petitions on this basis alone—  
22 before transmitting any petition sheets and signatures to the Pima County Recorder,  
23 or otherwise engaging in the arduous review process. [*Id.*]

## 24 II. Withdrawal of the Referenda.

25 But, before the Clerk issued her finding, the Committee withdrew the  
26 Applications and Petitions via letter to the Clerk on February 17, 2026. [*Id.* at ¶ 21.]  
27 In its letter, the Committee cited the “axiomatic” proposition that the Committee  
28 could withdraw the Applications and Petitions and further discussed how “the

1 political committee bears the burden for failing to have [a] properly circulated  
2 petition.” [Id. at ¶¶ 21-23.] The Clerk received this letter prior to a Marana Town  
3 Council meeting held later that night, at which the Town Council would convene to  
4 discuss the Petitions. [Id. at ¶ 24.]

5 The Clerk responded the next day, February 18, 2026, and concluded that the  
6 Committee had no right to withdraw its Applications and Petitions. [Id. at ¶ 25.]  
7 Simultaneously, the Clerk concluded in a second set of letters that the Petitions  
8 should be rejected based on a deficient legal description. [Id.] This latter decision by  
9 the Clerk opened the petition process to a challenge by “any citizen” and allowed for  
10 litigation to ensue under A.R.S. § 19-122(A). And that is exactly what happened. [Id.  
11 at ¶ 26.]

12 Following the Clerk’s February 18 decisions, a citizen group filed suit in  
13 *Marana Citizens for Ethical and Transparent Government v. Town of Marana*, No.  
14 C2026-1567 (“*Marana Citizens*”). [Id.] While a lawsuit of that nature would  
15 normally be expected, in this situation the other challenge could potentially result in  
16 the measure appearing on the ballot despite having been withdrawn by its proponent.  
17 [Id.]

18 In short, a citizen referendum is normally representative of “the people”  
19 exercising a right “at their own option”; but in this case, that “option” is now being  
20 exercised solely by the Clerk.

### 21 ARGUMENT

22 In any special action, a court may “order or prohibit specified action by the  
23 defendant.” Ariz. R. P. Spec. Actions 10(a)(3). This relief is appropriate where an  
24 “officer” has “proceeded, or [is] threatening to proceed, without, or in excess of,  
25 jurisdiction or legal authority.” Ariz. R. P. Spec. Actions 4(b). Moreover, and  
26 similarly, A.R.S. § 12-2021 allows a writ of mandamus to be ordered following the  
27 filing of a verified complaint with this Court.

28 In such a case, the traditional factors for evaluating injunctive relief do not

1 need to be met. *Arizona Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 64, ¶ 26 (2020)  
2 (hereinafter “AZPIA”) (“Because Plaintiffs have shown that the Recorder has acted  
3 unlawfully and exceeded his constitutional and statutory authority, they need not  
4 satisfy the standard for injunctive relief.”) Thus, while the court in AZPIA did not  
5 need to analyze the public official’s actions under the traditional test for injunctions,  
6 it found that the Plaintiff nonetheless met the standard. *Id.* at 65 ¶ 27. The same is  
7 true here.

8 In this case, a writ of mandamus is proper because (1) Plaintiff is beneficially  
9 interested in the writ; (2) the Clerk has failed to exercise a non-discretionary duty;  
10 and (3) the Clerk has acted arbitrarily and capriciously, or abused her discretion, in  
11 failing to recognize the withdrawal.

12 **I. FPP is Beneficially Interested in This Action.**

13 Preliminary to a writ of mandamus, Arizona law only allows a party that is  
14 “beneficially interested’ in an action to compel a public official to perform an act  
15 imposed by law.” AZPIA, 250 Ariz. at 62, ¶ 11 (citing A.R.S. § 12-2021). “The  
16 phrase ‘party beneficially interested’ is ‘applied liberally to promote the ends of  
17 justice.’” *Id.* (quoting *Barry v. Phx. Union High School*, 67 Ariz. 384, 387 (1948)).  
18 Thus, AZPIA, and Arizona courts generally, conclude that the Legislature has a  
19 desire to “broadly afford standing to members of the public to bring lawsuits to  
20 compel officials to perform their public duties.” *Id.* (quoting *Ariz. Dep’t of Water*  
21 *Resources v. McClennen*, 238 Ariz. 371, 377 ¶ 32 (2015)).

22 This low standard is met here. For FPP, it is under contract to purchase the  
23 Property at issue, and has a clear interest in what referenda concerning the Property  
24 will pass or fail. *Beck v. Neville*, 256 Ariz. 415, 423 (2024) (“[T]he ownership of  
25 property is a natural right of significant interest which we have a duty to protect.”);  
26 Ariz. Const. art. 2, § 4. Should the Clerk be able to disregard the Constitutionally-  
27 mandated referendum process—thereby removing control from the original  
28

1 proponent—the “ends of justice” will not be promoted as intended by the Legislature  
2 under the mandamus statute.

3 **II. The Clerk is Refusing to Perform a Non-Discretionary Duty.**

4 The Clerk has a non-discretionary duty to recognize the Committee's  
5 withdrawal of the Applications and Petitions. A.R.S. § 12-2021 provides that a writ  
6 of mandamus may be issued to compel performance by a public official. Mandamus  
7 is an “extraordinary remedy issued by a court to compel a public officer to perform  
8 an act which the law specifically imposes as a duty.” *Sears v. Hull*, 192 Ariz. 65, 68  
9 (1998).

10 **a. The Arizona Constitution Places the Referendum Process into**  
11 **the Hands of Arizonans.**

12 The requested remedy is rooted in firm constitutional principles that  
13 Arizonans control the referendum process. *See* Ariz. Const. Art. IV, Pt. 1. The  
14 Arizona Constitution places in the forefront that “*the people* reserve the power to  
15 propose laws and amendments to the constitution and to enact or reject such laws  
16 and amendments at the polls.” Ariz. Const. Art. IV, Pt. 1, § 1(1) (emphasis added).  
17 This right is preserved “for use *at their own option*.” *Id.* (emphasis added).

18 In detailing the ballot referendum process, the Arizona Constitution grants  
19 that “*qualified electors* shall have the right” to propose such ballot measures. Ariz.  
20 Const. Art. IV, Pt. 1, § 1(2) (emphasis added). And in turn, the Constitution flows  
21 this principle down to Arizona’s towns, recognizing that the “powers of the initiative  
22 and the referendum are hereby further reserved *to the qualified electors of every*  
23 *incorporated city, town and county* as to all local, city, town or county matters on  
24 which such incorporated cities, towns and counties are or shall be empowered by  
25 general laws to legislate.” Ariz. Const. Art. IV, Pt. 1, § 1(8) (emphasis added).

26 The courts have firmly upheld this process, requiring that any actions taken  
27 by a public official in regard to a ballot referendum must be in furtherance of  
28 Arizonan’s right to exercise their initiative and referendum power—rather than as a

1 hinderance to it. *Leibsohn v. Hobbs*, 254 Ariz. 1, 3 (2022) (an action is only valid if  
2 it “does not unreasonably hinder or restrict’ the constitutionally granted right to the  
3 initiative process but instead ‘reasonably supplements’ its purpose.”) (internal  
4 citation omitted). The courts have therefore “respect[ed] the citizens’ constitutional  
5 right to challenge a government’s legislative actions by referring a duly enacted  
6 measure to the ballot for a vote.” *Sklar v. Town of Fountain Hills*, 220 Ariz. 449, ¶  
7 8 (App. 2008).

8 The Legislature has supplemented the right to *propose* a ballot measure with  
9 the right to *control* litigation involving that ballot measure, A.R.S. § 12-921, and the  
10 right to *advocate* for the ballot measure as the prime speaker in the publicity  
11 pamphlet mailed to all voters. A.R.S. § 19-124(D). If the Committee has the right to  
12 commence, control, and advocate for its measure as it marches toward a public vote,  
13 the Committee likewise possesses the right to abandon those efforts.

14 Thus, the Arizona Constitution and resulting legal authority points to this  
15 “axiomatic” conclusion: the proponents of the referendum control its destiny. The  
16 Clerk’s duties are secondary to this Constitutional grant of authority, and her actions  
17 reflect ministerial acts designed to carry through the process at the people’s directive.

18 **b. The Statutory Procedures for the Referendum Process Do Not**  
19 **Allow the Clerk to Ignore a Withdrawal.**

20 Despite a clear constitutional mandate, the Clerk has tried to rely on statutory  
21 provisions to shield her from recognizing the withdrawal. The statutes do not provide  
22 such protection. Indeed, the Clerk mistakenly claims that once the Petitions were  
23 filed with her office, she was “legally obligated to complete the verification process  
24 set forth in A.R.S. § [19]-121.01.” [Verified Compl. ¶ 29.] Arizona law does not  
25 impose any such requirement, as this would inevitably interfere with the citizens’  
26 right to pursue—or abandon—an initiative or referendum. *See City of Phoenix v.*  
27 *Donofrio*, 99 Ariz. 130, 133 (1965) (“[A] court will not inflate, expand, stretch or  
28 extend a statute to matters not falling within its expressed provisions.”).

1 The Clerk is further mistaken when she relies on *Voice of Surprise v. Hall*,  
2 255 Ariz. 510 (2023); [Verified Compl. ¶ 34.] The court there did not require that  
3 the Clerk find express statutory authority to recognize a withdrawal, but rather, held  
4 that if a public official had questions about the scope of its duties and needed judicial  
5 guidance accordingly, “[she] must file suit to do so” under Title 19. *Id.* at 517, ¶ 29.  
6 *See also Pedersen v. Bennett*, 230 Ariz. 556, 560, ¶¶ 19-20 (2012) (recognizing that  
7 when the Secretary of State faced uncertainty about how to process an initiative  
8 petition, “[t]he Secretary proceeded properly in . . . verifying the signatures while  
9 awaiting guidance from the courts” and “proceeded properly in bringing this issue  
10 to the court.”).

11 The Clerk was required to exercise the implied authority to recognize the  
12 Committee’s withdrawal. *See Horne v. Hobbs*, 576 P.3d 108, 112 ¶ 13 (Ariz. App.  
13 2025) (implied powers exist when they may be fairly implied from, and are necessary  
14 for, the complete exercise of the express powers.”) (citation modified and internal  
15 citation omitted). Public entities, such as the Clerk, may “take such action which  
16 may be reasonably implied from a consideration of the statutory scheme as a whole.”  
17 *Ariz. Cannabis Nurses Ass’n v. Ariz. Dep’t of Health Servs.*, 242 Ariz. 62, 67-68  
18 (App. 2017) (citation modified and internal citation omitted); *see also Mahoney v.*  
19 *County of Maricopa*, 49 Ariz. 479, 492 (1937) (“[a] necessary implication means not  
20 natural necessity, but so strong a probability of an intention that one contrary to that  
21 which is imputed to the party using the language cannot be supposed.”)

22 In rejecting the withdrawal notification, the Clerk has actually departed from  
23 prior practice. For example, before the enactment of A.R.S. § 16-320 in 2025, filing  
24 officers (such as the Clerk) routinely granted candidate withdrawal requests despite  
25 the lack of express statutory authority. A 2025 bill (HB 2190) merely codified the  
26 pre-existing practice contemplated by Arizona’s Constitution. There is no material  
27 difference here, as a ballot referendum is subject to many of the same requirements  
28 as a candidate petition. In both instances, the Clerk has no inherent interest (whether

1 on behalf of herself, the petition signers, or the electorate at large) to continue with  
 2 the machinery of election administration when the original proponent of that effort  
 3 has abandoned it.

4 As detailed above, the statutes in this area merely lay out the process by which  
 5 the Clerk processes an existing referendum petition. This includes reviewing for  
 6 legal deficiencies (§§ 19-121.01(A), -141(A)), conducting a random sampling of the  
 7 remaining eligible signers and transmitting those to the Pima County Recorder (§  
 8 19-121.01(B)), and then determining whether the petitions contained enough  
 9 signatures to qualify for the ballot (§ 19-121.04). But the process does not require  
 10 the Clerk to robotically continue forward when the proponent pulls the plug.

11 In this case though, none of these steps even had the chance to fully transpire  
 12 before the Committee withdrew its Applications and Petitions. The Clerk apparently  
 13 had not completed her initial signature-by-signature review for deficiencies; the  
 14 Clerk had not conducted a random sampling; and the Clerk had not engaged the Pima  
 15 County Recorder. Simply put, the Petitions were early in the statutory process when  
 16 the proponents sought to effectuate their withdrawal. When the Petitions were  
 17 abandoned, the Clerk was required to put pencils down.

18 \* \* \*

19 Because the Clerk had a non-discretionary duty to cancel the Applications  
 20 and return the Petitions to the referendum proponent, as directed by the Arizona  
 21 Constitution, a writ of mandamus is proper.

22 **III. The Clerk Acted Arbitrarily and Capriciously, and Abused Her**  
 23 **Discretion, by Refusing to Recognize the Committee's**  
 24 **Withdrawal.**

25 Under Arizona law, even when a public official has discretion (which the  
 26 Clerk here did not), mandamus is proper when the public official arbitrarily or  
 27 capriciously abused that discretion. *Ariz. State Highway Comm'n v. Superior Court*,  
 28 81 Ariz. 74, 79 (1956) (remedy by mandamus is available to compel highway

1 commission to exercise its discretion if its refusal to do so is clearly arbitrary and  
2 capricious); *Yes on Proposition 200 v. Napolitano*, 215 Ariz. 458, 465, ¶ 12 (App.  
3 2007) (“When an official has discretion about how to perform a function, mandamus  
4 is available to require him to act properly[] . . . if the official abuses that discretion.”)  
5 (internal quotation omitted) (citing *Bd. of Cnty. Supervisors v. Rio Rico Volunteer*  
6 *Fire Dist.*, 119 Ariz. 361, 364 (App. 1978)).

7 The Clerk’s refusal to recognize the withdrawal was a clear abuse of  
8 discretion as she has essentially forced a ship to complete a voyage after the captain  
9 has abandoned ship. This cannot be the law. Specifically, and as discussed above,  
10 the Arizona Constitution expressly provides that the initiative and referendum  
11 process is reserved to the people “for use at their own option.” Ariz. Const. Art. IV,  
12 Pt. 1, § 1(1). The Clerk has deprived the Committee (and those it represents) of that  
13 option.

14 Based on this fundamental principle, the courts have similarly recognized that  
15 any governmental action relating to ballot referenda must not “unreasonably hinder  
16 or restrict” the constitutionally granted right to the referendum process but must  
17 instead “reasonably supplement” its purpose. *Leibsohn v. Hobbs*, 254 Ariz. 1, 3  
18 (2022). By refusing to honor the Committee’s withdrawal and instead forcing the  
19 continuation of a petition process the proponent has abandoned, the Clerk has  
20 unreasonably hindered and restricted the people’s constitutional right to control their  
21 own participation in the ballot referendum process.

22 What’s more, the Clerk has committed to her course of action when there is  
23 no dispute about the authenticity of the Committee’s demand [Verified Compl. ¶¶  
24 22, 47.] and no prejudice would occur to the Committee or election officials. Rather,  
25 the Clerk’s decision to reject the Petitions on the merits has commenced a costly  
26 venture of prolonged satellite litigation, undermining her and Marana’s duty to avoid  
27 unnecessary expenditure of limited government resources. *Vegodsky v. Tucson*, 1  
28 Ariz. App. 102, 107 (1965) (“It is common knowledge that public funds are

1 limited...”); *Madlener v. Finley*, 128 Ill. 2d 147 (1989) (recognizing that officials  
2 hold funds in trust for taxpayers as equitable owners).

3 Because the Clerk’s refusal to recognize the withdrawal is arbitrary and  
4 capricious, she has abused any discretion afforded to her (if she has any), and this  
5 Court should enter a writ of mandamus requiring her to recognize the withdrawal.

#### 6 **IV. Plaintiff Suffers Irreparable Harm Due to the Clerk’s Actions.**

7 The Clerk is acting unlawfully in refusing to recognize the Committee’s  
8 withdrawal, and therefore, Plaintiff need not show irreparable harm. *AZPIA*, 250  
9 Ariz. at 64 ¶ 26. In any event, the Clerk’s decision infringes on the constitutional  
10 rights of the Committee and Arizonans who are afforded the right to control the  
11 referendum process. “It is well established that the deprivation of constitutional  
12 rights unquestionably constitutes irreparable injury.” *Washington v. Trump*, 847 F.3d  
13 1151, 1169 (9th Cir. 2017) (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.  
14 2012), which quotes *Elrod v. Burns*, 427 U.S. 347, 373 (1976)) (citation modified);  
15 *see generally Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990) (explaining that  
16 “irreparable” injuries are those harms that are “not remediable by damages”).

#### 17 **V. Equitable and Public Policy Considerations Support Mandamus.**

18 As was the case with the prior section, the Clerk’s refusal to recognize the  
19 Committee’s withdrawal “does not comply with Arizona law,” a writ of mandamus  
20 serves the public interest in vindicating the rights of Arizonans. *AZPIA*, 250 Ariz. at  
21 64 ¶ 27.

### 22 **CONCLUSION**

23 The Arizona Constitution is notably transparent in its grant of power to  
24 Arizonans who wish to engage in direct democracy. The Constitution allows  
25 Arizonans to engage in the lawmaking process of their own volition and “at their  
26 own option,” as to ensure the process is controlled by the people—not by a public  
27 official. And yet, the Clerk here has essentially undermined that core constitutional  
28 principle. The right to speak inherently includes the right to stay silent, and here the

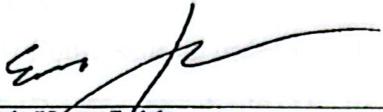
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1 Proponent has conclusively determined it no longer wishes to speak by way of these  
2 ballot measures.

3 This Court should therefore issue a writ of mandamus requiring the Clerk to  
4 recognize the Committee's withdrawal and enter a declaration judgment  
5 accordingly.

6 DATED this 4th day of March, 2026

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