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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 In the matter of the contest of TOWN OF
11 GILBERT, QUESTION NO. 1—PURPOSE:
12 STREETS, TRANSPORTATION AND
13 INFRASTRUCTURE RELATED
14 IMPROVEMENT BONDS.

Case No. _____

CV2021-017974

**VERIFIED COMPLAINT
FOR SPECIAL
ACTION/STATEMENT OF
ELECTION CONTEST**

(contest of election pursuant to
A.R.S. § 16-672 *et. seq.*)

18 JIM TORGESON; an individual,

19
20 Plaintiff,

21 vs.

22 TOWN OF GILBERT, a municipal corporation,
23 BRIGETTE PETERSON, in her official capacity
24 as Mayor of the Town of Gilbert, SCOTT
25 ANDERSON, in his official capacity as Gilbert
26 Town Councilmember, LAURIN HENDRIX, in
27 his official capacity as Gilbert Town
28 Councilmember, YUNG KOPROWSKI, her
official capacity as Gilbert Town Councilmember,
SCOTT SEPTEMBER, in his official capacity as
Gilbert Town Councilmember, KATHY TILQUE,
in her official capacity as Gilbert Town
Councilmember, AIMEE YENTES, in her official
capacity as Gilbert Town Councilmember,

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Defendants.

For his verified complaint against defendants and statement of election contest, plaintiff Jim Torgeson alleges:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff JIM TORGESON is a qualified elector of the Town of Gilbert, County of Maricopa, State of Arizona. Torgeson resides at 2420 S. Birch Street, Gilbert, Arizona 85295, an address within Maricopa County.

2. Defendant TOWN OF GILBERT is a municipal corporation.

3. Defendant BRIGETTE PETERSON is the Mayor of the Town of Gilbert. She is sued in her official capacity.

4. Defendant SCOTT ANDERSON is a member of the Town Council of Gilbert. He is sued in his official capacity as a Town Councilmember.

5. Defendant LAURIN HENDRIX is a member of the Town Council of Gilbert. He is sued in his official capacity as a Town Councilmember.

6. Defendant YUNG KOPROWSKI is a member of the Town Council of Gilbert. She is sued in his official capacity as a Town Councilmember.

7. Defendant SCOTT SEPTEMBER is a member of the Town Council of Gilbert. He is sued in his official capacity as a Town Councilmember.

8. Defendant KATHY TILQUE is a member of the Town Council of Gilbert. She is sued in his official capacity as a Town Councilmember.

1 9. Defendant AIMEE YENTES is a member of the Town Council of Gilbert.
2 She is sued in his official capacity as a Town Councilmember.

3 10. This is an election challenge to the purported passage of Question 1 at the
4 Town of Gilbert election held on November 2, 2021, with the title given to this measure
5 on the official ballot as QUESTION NO. 1—PURPOSE: STREETS,
6 TRANSPORTATION AND INFRASTRUCTURE RELATED IMPROVEMENT
7 BONDS (“The Gilbert Bond Question”), canvassed by the Town of Gilbert on November
8 16, 2021. This matter is filed pursuant to A.R.S. § 16-672 *et. seq.*
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10 11. This Court has jurisdiction over this action under A.R.S. § 16-672 *et. seq.*,
11 A.R.S. § 12-123, the Uniform Declaratory Judgments Act, A.R.S § 12-1831 *et seq.*, the
12 Arizona Constitution, Article VI, §§ 14, VI, §18 (“[t]he superior court or any judge
13 thereof may issue writs of mandamus, quo warranto, review, certiorari, [or]
14 prohibition...”), and Rules 3(b) and 4(a), Arizona Rules of Procedure for Special Action.
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17 12. Defendants have caused events to occur in Maricopa County, Arizona out
18 of which Plaintiffs’ claims arise.

19 13. Venue is proper in this Court under A.R.S. § 12-401.
20

21 14. This case is a Tier 2 case under Rule 26.2 of the Arizona Rules of Civil
22 Procedure.

23 **GENERAL ALLEGATIONS**

24 15. On June 1, 2021, the Town of Gilbert placed a proposal on the Town of
25 Gilbert election ballot, to be voted on at the November 2, 2021 election, asking Gilbert
26 electors is they wanted to approve authorization for the Town to issue \$515 million worth
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1 of general obligation bonds to fund various capital improvements (“The Gilbert Bond
2 Question”).

3 16. Five members of the Gilbert Town Council publicly supported the Gilbert
4 Bond Question—Mayor Peterson as well as Councilmembers Anderson, Koprowski,
5 September and Tilque. Councilmembers Koprowski and Tilque served as the co-chairs
6 of the pro-Bond Question political action committee. Exhibit A.

8 17. Plaintiff Jim Torgeson engaged in certain activities designed to encourage
9 Gilbert electors to reject the Gilbert Bond Question. These activities were protected by
10 the free speech provisions of the United States and Arizona Constitutions. U.S. Const.,
11 First Amendment, Ariz. Const. Art. II, § 6, and Arizona Revised Statutes § 16-1019.
12

13 18. On or about September 15, 2021, Torgeson began placing signs around the
14 Town of Gilbert in places where the signs were likely to be noticed by Town of Gilbert
15 electors, including in Town of Gilbert rights of ways. These signs requested voters reject
16 the Gilbert Bond Question. Photographs of some of these signs are attached as Exhibit B.
17

18 19. The signs contained the following information regarding who had placed the
19 signs there: “PAID FOR BY A PRIVATE CITIZEN IN ACCORDANCE WITH STATE
20 LAW. DO NOT REMOVE UNDER PENALTY OF LAW ARS 16-1019. FOR SIGN
21 ISSUES CALL 602.327.4835.” Exhibit C.
22

23 20. The Town of Gilbert, and specifically its management and certain elected
24 officials, objected to the particular message shared by Torgeson because the message
25 encouraged Town of Gilbert electors to reject the Gilbert Bond Question.
26

27 21. After the signs were placed by Torgeson, in September of 2021, the Town
28 contacted Torgeson and told him that they were taking his signs down because they

1 violated the Gilbert Land Development Code Section 5.6.3(o), which broadly prohibits all
2 signs in the Town's right of way, and did not fall into the protections of A.R.S. § 16-1019,
3 which prohibits municipalities from moving or confiscating political signs in certain
4 circumstances.

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6 22. The Town's stated reason for removing the signs was that Torgeson's
7 actions did not fall into the protections of A.R.S. § 16-1019 because Torgeson's signs
8 "did not contain the name of a contact person", which the Town claims was required by
9 A.R.S. § 16-1019. Exhibit D.

10
11 23. A.R.S. § 16-1019 prohibits a municipality from removing a political sign if
12 the sign adheres to the conditions set in that statute. Specifically, the Town claimed that
13 Torgeson had not followed Subsection (C)(5) of that statute, which states that "[t]he sign
14 contains the name and telephone number or website address of the candidate or
15 campaign committee contact person."

16
17 24. In this instance, Torgeson, acting as an individual, was not required to form
18 a political action committee under A.R.S. § 16-901 *et seq.* This is buttressed by the fact
19 that the Town, nor anyone else to Plaintiff's knowledge, has never alleged that
20 Torgeson's political activities required that he register a political committee with the
21 Town.

22
23 25. In this instance, there was no "candidate", nor was there a "campaign
24 committee contact person" that was required to be listed under section (C)(5). As it was,
25 Torgeson did include a valid telephone number on the signs, and there was no valid
26 reason to move his signs or even contact him at all with regard to his signs.
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1 26. Even as the Town removed at least 57 of Torgeson's signs, the Town
2 ignored other signs that were placed within the Town right of way that did not contain
3 what the Town viewed as an undesirable political message. Exhibit E. These signs
4 advertised such items as payments for diabetes strips, houses, youth football,
5 employment opportunities, political messages, and a variety of other items, but the Town
6 did not target the speech of the individuals or entities who placed these signs in these
7 locations. When he later voted against the canvass declaring that the Gilbert Bond
8 Question had passed, Councilman Laurin Hendrix noted, at length, the Town's double
9 standard in not removing these other signs.
10

11 27. After Torgeson learned that his signs were being taken down, Torgeson
12 engaged counsel. Counsel sent a letter to the Town of Gilbert attorney stating, in a
13 September 23, 2021 letter that the Town was engaging in unconstitutional content and
14 viewpoint driven action against Torgeson as "other persons and entities regularly place
15 signs in rights of way without a person's name and number affixed and these signs are
16 not removed by the Town." Exhibit F. The letter further stated that "[i]f the Town
17 removes another one of Mr. Torgeson's signs, it will face a lawsuit that accuses the
18 Town of violations of the Arizona and United States Constitution and Arizona statutory
19 law." *Id.*
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23 28. The Town eventually responded, on Wednesday, September 29, 2021. The
24 response from the Town was an unconditional and complete reversal, as the Town
25 agreed to not remove additional signs. Exhibit G. The Town did indicate that it was
26 doing so even though it disagreed with Torgeson's legal position. It did not say what
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1 was wrong about this position, and it did not place the signs back where it originally
2 found them.

3 29. On September 30, 2021, Torgeson submitted a public records request to the
4 Town for “copies of any and all communications regarding any and all political signs as
5 well as any sort of yard sign in the right of way within the last month including today.
6 Please do not limit this to just signs with my name or a no on bond message...” Exhibit
7 H.
8

9 30. The Town produced hundreds or thousands of pages of documents in
10 response to this request.
11

12 31. The documents produced in response to the Public Records Request show
13 that the Town of Gilbert organized a wide-ranging effort to deprive Torgeson of his free
14 speech rights by removing these signs. The sheer volume of documents alone demonstrate
15 the effort devoted to ridding Gilbert of Torgeson’s signs, and ensuring that as few people
16 as possible would see an anti-Gilbert Bond Question message.
17

18 32. Town Code Compliance Administrator Lorrie DeOrio sent an email at 9:21
19 a.m. on Wednesday, September 22, 2021 to seven other Town employees regarding
20 removal of Torgeson’s supposedly offending signs. Ms. DeOrio indicated in her email
21 that “I may be looking for volunteers to potentially work Friday or this weekend if
22 requested, so please let me know if you will be available” in a rush to take the signs down
23 as quickly as possible. Exhibit I. The Town of Gilbert is closed on Fridays, as the Town
24 is on a 4-10 work schedule, so any employees working on Friday or on a weekend would
25 be paid at the federally mandated overtime rate of time plus one-half.
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1 33. This request to work overtime was taken seriously by the Town employees,
2 as Code Inspector Christian Luevano responded to this email: “[u]nfortunately I will not
3 be available this weekend.” Exhibit J.

4 34. The Mayor’s aide was also involved in the efforts to suppress Torgeson’s
5 free speech rights. In an email from the Mayor’s aide, Chris Kelly, to Town Clerk Chaveli
6 R. Herrera on September 20, 2021 at 9:48 a.m., Mr. Kelly stated that “A reporter just sent
7 over these images of signs. I do not see a disclaimer and wanted to get clarification on if
8 they are legal...” Exhibit K.

9 35. Town Clear Herrera responded to this September 20, 2021 email as follows:
10
11 “Thanks Chris! I do not see any disclaimers either but I am copying Lorrie on this so her
12 and her team can take a look and see if they need to be removed due to any violation.” *Id.*

13
14 36. Herrera then proceeded to forward the email to Code Compliance
15 Administrator DeOrio. Exhibit K. DeOrio inquired as to the legality of these signs and
16 whether A.R.S. § 16-1019 applied to signs for or opposed to ballot measures, including
17 bond questions. Herrera responded that the statute did apply. Apparently because she
18 believed it provided her license to remove the signs, DeOrio responded:
19 “[w]onderful...and all bond issue signage has the same requirement for contact
20 information as any political sign correct?” *Id.*

21
22 37. It appears that Mr. Kelly did not really receive the images attached to Exhibit
23 K from a reporter at all. The Public Records Request turned up no email from a reporter
24 to Chris Kelly of any kind related to the signs. And Exhibit K shows that Mr. Kelly did
25 not simply forward the email from the reporter to Town Clerk Chaveli, which would seem
26 to be the manner in which Mr. Kelly would proceed if he truly did receive the images from
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1 a reporter. Further, there are no actual images attached to the original email from Mr.
2 Kelly (despite the email's assertion that it contained "images").

3 38. Plaintiff has searched the Public Records Request for any sign of these, and
4 the Town has confirmed in a November 18, 2021 email that there is no email in its
5 possession from a reporter to Mr. Kelly with these images, which would mean the only
6 possible way these images could have been received from a reporter is if the reporter
7 actually had them physically delivered to the Town. Exhibit L. The email from the Town
8 also indicated that Mr. Kelly is no longer employed by the Town. *Id.*

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10 39. Town Engineer David Fabiano was another employee who received the
11 message from the Town's management and political leaders clearly. On or about
12 September 22, 2021 he left a voice mail with Lorrie DeOrio, and claiming to have
13 "noticed", as he was "driving by", the lack of what he thought might be the required
14 disclosure on Torgeson's signs, and asking for further instructions on how to proceed.
15 This voice mail was produced in audio form by the Town and is documented by an email.
16 Exhibit M. There is no indication that Mr. Fabiano ever inquired as to any other signs in
17 the Town right of way other than Torgeson's.

18
19 40. On September 27, 2021 Code Inspector Christina Luevano sent an email to
20 DeOrio containing a long list of all the "political signs removed". Exhibit N. DeOrio
21 responded to this email shortly thereafter, and stated "[t]hanks for all your hard work on
22 this issue." *Id.*

23
24 41. Gilbert proceeded without a clear understanding of A.R.S. § 16-1019. On
25 September 20 and 21, 2021, Town Clerk Herrera engaged in an email exchange with the
26 Clerk of the City of Maricopa with regard to this statute. The email exchange contained
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1 several misstatements of law, but the Maricopa City Clerk ultimately told Herrera that
2 “[i]ndividuals are exempt for putting ‘paid for by’” on an individual’s political signs.
3 Exhibit O. Despite this statement someone the Town had actually turned to for advice,
4 the Town removed the signs anyway.

5
6 42. It is also clear that the Town proceeded to target Torgeson’s constitutional
7 free speech rights after seeking advice from counsel. On September 21, 2021, Luevano
8 emailed DeOrio about a political sign “at the SWC of Higley & Baseline” and inquired as
9 to whether to remove the sign. Exhibit P. DeOrio responded that “we are currently
10 reaching out to Legal for clarification.” *Id.*

11
12 43. All told, the Public Records Request alone reveals that the following fifteen
13 Town employees had some level of involvement in the effort to get rid of Torgeson’s
14 signs:

15
16 Lorrie DeOrio
17 Kyle Mieras
18 Betty Eisenhart
19 David Fabiano
20 Christina Luevano
21 Mayor Brigitte Peterson
22 Bettina Gage
23 Frank Albino
24 Robert Estrada
25 Raymond Estrada
26 Bettina Canham
27 Judy Martinez
28 Town Clerk Chaveli Herrera
Chris Kelly
Town Attorney Chris Payne.

29
30 44. Various other documents attest to how extensive the Town’s efforts were
31 with regard to ridding the Town of Torgeson’s signs, and Torgeson’s signs alone.
32 Exhibit Q contains a small sampling of these.

1 45. The Public Records Request also requested any documents indicating that
2 the Town had removed or confiscated any other signs that were allegedly in violation of
3 the Gilbert Land Development Code. Exhibit H. There is not a single document in the
4 thousands of pages of materials produced pursuant to the Public Records Request
5 indicating that the Town had targeted any other signs other than Torgeson's, even
6 though these signs, even according to the Town's erroneous view of the law, would have
7 been every bit as illegal as Torgeson's signs under the Gilbert Land Development Code
8 Section 5.6.3(o) because they were in the right of way.

9 46. The Town's actions violated A.R.S. § 16-1019. But even if the Town's
10 actions did not violate this statute, it is unconstitutional for the Town to suppress speech
11 simply because it disagrees with the viewpoint expressed or the content of that speech.
12 By targeting only Torgeson's speech (and not those of other persons or entities
13 advertising such things as offering payment for diabetes strips) also violated the First
14 Amendment to the United States Constitution under longstanding precedent prohibiting
15 governmental entities from engaging in content and viewpoint-based speech restrictions.
16 *Reed v. Town of Gilbert. Ariz., 576 U.S. 155 (2015).*

17 47. The Town's efforts to suppress free speech here were the antithesis of
18 "time, place or manner" restrictions.
19

20 48. A.R.S. § 16-1019 was passed to protect those engaged in free speech from
21 overzealous regulatory efforts by municipalities, efforts that history has shown have not
22 been applied evenly, and application has varied depending on the message conveyed in
23 the sign. Mr. Torgeson falls within this statute and the Town's actions not only offend
24 the Arizona and United States Constitutions, but also violate this statute.

25 49. Even though the Town did not remove any additional signs after the
26 September 29, 2021 letter to Torgeson's counsel, it did not put the signs back up either.
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1 Instead, Torgeson was forced to put some signs up himself and pay to have others put
2 up.

3 50. After picking up the signs that had been confiscated by the Town, Torgeson
4 put some of the signs up again himself, and paid others to put more of these signs up.
5 Due to the fact that Torgeson owns and runs his own business, and the limitations on
6 being able to hire people for the strenuous task of placing the signs back up, the signs
7 were replaced at a pace of about five signs per day.

8 51. Torgeson picked up the signs from the Town on or about September 29,
9 2021. The 57 signs that were confiscated by the Town were not completely replaced
10 until approximately October 8, 2021.

11 52. Voting on this matter commenced on October 4, 2021, and concluded on
12 November 2, 2021.

13 53. The Gilbert Bond Question did not have any organized opposition to it. In
14 contrast, the side in favor of the Gilbert Bond Question formed a political action
15 committee and raised over \$50,000 to support a favorable vote through October 15,
16 2021. Exhibit R.

17 54. The Gilbert Bond Question passed by the extraordinarily narrow margin of
18 164 votes out of a total of 41,395 votes cast on this Question. An additional 917 voters
19 cast a ballot in the Gilbert Town Election but declined to cast a vote on the Gilbert Bond
20 Question.
21

22 55. On November 16, 2021, the Gilbert Town Council voted 5-2 in favor of the
23 canvass showing that the Gilbert Bond Question had passed. Councilmembers Hendrix
24 and Yentes voted against approving the canvass.

25 56. At the November 16, 2021 Gilbert Town Council meeting, Councilman
26 Laurin Hendrix noted, in detail, how the Town had made no effort to confiscate or
27 remove the myriad of other signs in the Town that did not contain an anti-bond message,
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1 and indicated that he was voting against the canvass because he thought the Town had
2 improperly interfered with the election.

3 57. Sometime after the November 16, 2021 Town Council meeting, the Town
4 started to pick up other signs that did not contain an anti-bond message. Such action is
5 either an admission that they should have treated all signs equally in the first instance, or
6 it is an attempt to try to obscure the Town's wrongdoing in initially targeting only those
7 signs that contained a political message that the Town did not agree with.

8 58. The Town of Gilbert has additional history of not removing political signs
9 when it agrees with the political message on the signs, even though the signs clearly did
10 not meet the safe harbor provisions of A.R.S. § 16-1019 and even though these signs
11 were apparently placed in violation of other campaign finance laws in A.R.S. § 16-901
12 *et. seq.*

13 59. In the November of 2020 mayoral election, Matt Nielsen ran against
14 Brigitte Peterson, who was ultimately elected Mayor. A group posted signs in the Town
15 of Gilbert right of way attacking Matt Nielsen. Exhibit S. These signs contained
16 messages such as "Matt Nielsen will Defund the Police!" and "Matt Nielsen=bad roads
17 & fewer parks!" *Id.*

18 60. These signs contained no name for the person, candidate, or political
19 committee sponsoring the signs, and no contact information of any sort, in contrast to
20 Torgeson's signs, which contained a valid telephone number. *Id.*

21 61. Because the Town did not find the anti-Nielsen political messages
22 conveyed to be undesirable, the Town did not confiscate these political signs. There was
23 no effort to have employees work overtime, or any discernible effort at all by the Town
24 to remove these signs. A private citizen removed the signs from the Town's right of
25 way on Election Day, November 3, 2020.
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1 62. The Town received a campaign finance complaint on the anti-Nielsen signs
2 and sent it to the City of Phoenix for an investigation. Exhibit T. The City of Phoenix
3 found reasonable cause to believe that a violation of the campaign finance laws had
4 occurred, but the attorney the Town hired to enforce this finding declined to seek
5 enforcement against the civil perpetrators. *Id.*

6 63. The Town of Gilbert also engaged in impermissible advocacy in the
7 Town's preparation and distribution, at public expense, of the Publicity Pamphlet for the
8 Gilbert Bond Question. Exhibit U.

9 64. The publicity pamphlet assured the voters that passage of the Gilbert Bond
10 Question was needed. Without it, Gilbert residents were warned, "Gilbert's long-term
11 sustainability and quality of life for its residents" would be at risk. The publicity
12 pamphlet further argued that passage was needed to address "[f]ailing streets and
13 signals."

14 65. The publicity pamphlet also contained certain answers to questions that
15 were crafted from the standpoint of one advocating for the Gilbert Bond Question,
16 including: "Why do we need these projects?" "How does this bond package improve my
17 commute?" "How does this bond package improve safety?"

18 66. The answers to these supposedly frequently asked questions touted the
19 Gilbert Bond Question, instead of simply describing, in a factual and neutral manner,
20 what the bonds would pay for.
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23 **COUNT ONE, STATUTORY ELECTION CHALLENGE—THIS COURT MUST**
24 **ANNUL AND VOID THE ELECTION AND THE ELECTION RESULTS DUE TO**
25 **MISCONDUCT ON THE PART OF THE TOWN AND ITS OFFICERS AND FOR**
26 **OFFENSES AGAINST THE ELECTORAL FRANCHISE**

27 67. Plaintiff realleges paragraphs 1-66 as if fully stated herein.
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1 68. A.R.S. § 16-672 provides for contests of state elections, but A.R.S. § 16-
2 674(A) makes these challenges applicable to municipal elections as well.

3 69. Arizona law provides the following grounds for an election challenge that
4 are applicable here: “[f]or misconduct on the part of...any officer making or participating
5 in a canvass”, and for “offense[s] against the elective franchise.” A.R.S. § 16-672(A)(1)
6 and (A)(3); *Moore v. City of Page*, 148 Ariz. 151, 155 (App. 1986).

7 70. Under *Moore v. City of Page*, in the instance of a municipal bond election,
8 “the inclusion of misleading or irrelevant material...in the notices of the election,
9 constitute a sufficient allegation of offenses against the elective franchise to come within
10 the statute.” *Id.*

11 71. The Town of Gilbert staff and elected officials collectively administering
12 and approving of the canvass have engaged in misconduct related to an election and have
13 also engaged in offenses against the elective franchise.

14 72. Under 16-676(B), after a hearing on an election contest, the Court can
15 “confirm or annul and set aside the election.”

16 73. While “honest mistakes or mere omissions on the part of election officers”
17 are generally not enough to void an election, if the irregularities are fraudulent, or render
18 the result “uncertain”, the Court may grant relief by voiding the election. *Findley v.*
19 *Sorenson*, 35 Ariz. 265, 269 (1929).

20 74. The actions here were not “mistakes” and, based on the way the Town
21 targeted Torgeson, this was not an “honest” misstep.

22 75. To wit, the Town’s misconduct and violations against the elective franchise
23 include violations of Torgeson’s free speech rights under the United States and Arizona
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1 Constitutions, and violation of his statutory rights under A.R.S. § 16-1019. The Town
2 also deprived its citizens of a full discussion of the pros and cons of the bond measure.

3 76. The Town's actions also violated A.R.S. § 9-500.14(A), which states: "A
4 city or town shall not spend or use its resources, including the use or expenditure of
5 monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer
6 hardware and software, web pages, personnel, equipment, materials, buildings or any
7 other thing of value of the city or town, for the purpose of influencing the outcomes of
8 elections."
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10 77. The Town's use of public resources to selectively eradicate speech that
11 opposed passage of the Gilbert Bond Question was an effort to influence the results of the
12 Gilbert Bond Election.
13

14 78. In addition to its prohibition against use of public resources to influence an
15 election, A.R.S. § 9-500.14(A) states that "a city or town may distribute informational
16 pamphlets on a proposed bond election as provided in section 35-454 if those
17 informational pamphlets present factual information in a neutral manner."
18

19 79. The Town's publicity pamphlet did not present information in a "factual"
20 and "neutral" matter. Instead, the Town indicated to voters that without passage of the
21 Gilbert Bond Question, Gilbert's "long-term sustainability" would be at risk as would the
22 "quality of life for its residents".
23

24 80. The Town's publicity pamphlet also contained a series of "frequently asked
25 questions" that were thinly, poorly and unsuccessfully disguised advocacy. These
26 "frequently asked questions" were written from the standpoint of the Town—as an
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1 advocate for the Gilbert Bond Question, not as a presenter of neutral and factual
2 information.

3 81. Given the large number of votes cast, the small margin, and the number of
4 undervotes, the Town's actions in violating Torgeson's free speech rights and engaging
5 in misconduct and offenses against the elective franchise may well have affected the
6 result, hence rendering the results "uncertain."
7

8 **COUNT TWO: DECLARATORY JUDGMENT— THIS COURT DECLARE THE**
9 **ELECTION RESULTS AND THE ELECTION NULL AND VOID DUE TO**
10 **MISCONDUCT ON THE PART OF THE TOWN AND ITS OFFICERS AND FOR**
11 **OFFENSES AGAINST THE ELECTORAL FRANCHISE**

12 82. Plaintiff realleges paragraphs 1-81 as if fully stated herein.

13 83. Under the Uniform Declaratory Judgments Act, A.R.S § 12-1831 *et seq.*,
14 "Any person interested under a deed, will, written contract or other writings constituting
15 a contract, or whose rights, status or other legal relations are affected by a statute,
16 municipal ordinance, contract or franchise, may have determined any question of
17 construction or validity arising under the instrument, statute, ordinance, contract, or
18 franchise and obtain a declaration of rights, status or other legal relations thereunder."
19 A.R.S § 12-1832.
20

21 84. The Plaintiff is entitled to a declaratory judgment from this Court that the
22 Town has violated Torgeson's free speech rights under the Arizona and United States
23 Constitutions and engaged in election misconduct and offenses against the elective
24 franchise, and its actions render the election results "uncertain."
25

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:
28

1 A. For a declaration from this Court that the own has violated Torgeson’s free
2 speech rights under the Arizona and United States Constitutions, and Arizona statutory
3 law, and engaged in election misconduct and offenses against the elective franchise, and
4 its actions render the election results “uncertain”, and as a result the Gilbert Bond
5 Question election results and canvass is annulled and is null and void.

6
7 B. For an Injunction from this Court barring the Town of Gilbert and its
8 employees, elected officials and other agents from taking any steps to effectuate the
9 Gilbert Bond Question.

10 C. If permitted by law, for an award of attorney’s fees and other eligible
11 expenses under A.R.S. § 12-348(A)(2)(requiring an award of attorney’s fees where a
12 private party prevails in court proceeding where a statute authorizes “judicial review of
13 agency, city, town or county decisions”) and A.R.S. § 12-2030 (requiring awards in
14 mandamus actions).

15
16 D. For an award of taxable costs under A.R.S. § 12-341.

17 E. For any other such relief as this Court deems fair and just.

18 F. For Findings of Fact and Conclusions of law.
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21 RESPECTFULLY SUBMITTED this 22nd day of November, 2021.

22 **TIMOTHY A. LA SOTA, PLC**

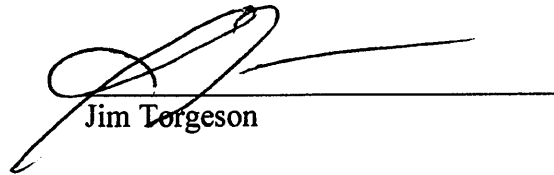
23
24 **By: /s/ Timothy A. La Sota**

25 TIMOTHY A. LA SOTA
26 2198 E. CAMELBACK RD., SUITE 305
27 PHOENIX, ARIZONA 85016
28 Attorney for Plaintiff

Rule 80 Declaration

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I declare under penalty of perjury of the laws of the State of Arizona that the foregoing Verified Complaint For Special Action and Statement of Election Contest is true and correct and that this Declaration is executed by me on the 22nd day of November, 2021, in Maricopa County, Arizona.



Jim Torgeson