

[cover letter]

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July 25,, 2001

VIA HAND DELIVERY

Anne C. Graham-Bergin, Esquire
RAVEN & AWERKAMP
One South Church, Suite 1600
Tucson, Arizona 85701,

Re: Willow Springs

Dear Anne:

Enclosed is a Complaint which we have filed today on behalf of ANAM, Inc. and Elaine Helzer, challenging the validity of the Referendum Petitions filed with Pinal County on the Willow Springs rezoning ordinances. Please note that we have not named PCSC as a party, but we will not oppose a Motion to Intervene, should your clients choose to become involved in the lawsuit.

Based upon the information provided to us, we have assumed that you will be representing PCSC in connection with the lawsuit. If this assumption is in error, please provide us with the name of PCSC's litigation attorney and we will forward all materials to that attorney as well.

Should you have any questions, please do not hesitate to ca..

Sincerely,
[signed]
Jeffrey Willis

JW: mgm
Enclosure
cc: ANAM, Inc (various officers)
Ms. Elaine Helzer

[complaint]

Marc G. Simon, Esq.
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Attorneys' for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

ANAM, Inc.; an Arizona Corporation, and
ELAINE HELZER, a citizen and qualified
elector of Pinal County,
Plaintiffs

v.

PINAL COUNTY, a body politic;
GILBERT HOYOS, in his official capacity
as Pinal County Director of Elections;
LAURA DEAN LYTLE, in her official
capacity as Pinal County Recorder,
Defendants

No.
COMPLAINT AND APPLICATION
FOR PRELIMINARY INJUNCTIVE AND
DECLARATORY RELIEF
(Declaratory Judgment, Special Action and
Injunctive Relief)

Plaintiffs ANAM, Inc., an Arizona Corporation, and ELAINE HELZER, a citizen and qualified elector of Pinal County, and through counsel undersigned, for their Complaint herein, allege as follows:

1. Plaintiff Anam, Inc. (Hereinafter "Anam") is the owner of real property located in Pinal County, which real property was rezoned pursuant to ordinances which are the subject of the proposed referendum petitions at issue herein. Plaintiff Elaine Helzer is a citizen, resident and qualified elector of Pinal County, Arizona.

2. Defendant Pinal County is a political subdivision of the State of Arizona. Defendant Gilbert Hoyos, Pinal County Director of Elections ("Elections Director") and Defendant Laura Dean-Lytle, Pinal County Recorder ("County Recorder") are each employed by Pinal County respectively and are being sued in their official capacities only,

3. This action arises out of a proposed referendum involving the rezoning of Plaintiff Anam's real property located in Pinal County.
4. This Court has venue and jurisdiction over this action pursuant to A.R.S. § 12-1801, et. seq., A.R.S. §18-1831 et. seq., §19-122(C), §19-121.02(B), §12-2021, Rule 1, Arizona Rules of Procedure for Special Actions, Rule 57 of the Arizona Rules of Civil Procedure.
5. On or about May 16, 2001, the Pinal County Board of Supervisors ("Board") unanimously approved resolutions PZ-006-01 and PZ-PD-006-01 evidencing official action approving the rezoning of Anam's property, and immediately thereafter unanimously adopted zoning ordinances PZ-006-01 and PZ-PD-006-01, which ordinances comprise the official action causing Anam's property to be rezoned, together with a planned area development overlay (hereinafter, the "Ordinances").
6. On or about May 16, 2001, and immediately following the meeting in which the ordinances and were adopted and approved, each of the members of the Pinal County Board of Supervisors and the clerk of the Board of Supervisors (for the deputy clerk) placed their signatures on the official written forms of the resolutions and the ordinances.
7. Pursuant to t to A.R.S. § 19-111, any group intending to file a referendum against a county zoning ordinance must submit to the county's election office an "Application for Initiative or Referendum Petition Serial Number" and obtain an official number for inclusion upon petitions for circulation. At the same time as the application is made, the election office is to furnish the applicant with "Statement of Organization" form (disclosing the group and persons proposing the initiative or referendum) and a notice stating "This statement must be filed before valid signatures can be collected."
8. Pursuant to A.R.S §19-114, signatures obtained on referendum petitions prior to the filing of the statement of organization "are void and shall not be counted in determining the legal sufficiency of the petition."
9. On or about May 16, 2001, Mr. Darrell Klesch, on behalf of an association calling itself Pinal Citizens for Sustainable Communities ("PCSC") submitted to the Pinal County Elections Director (the "Elections Director") an "Application for Initiative or Referendum Petition Serial Number" in relation to the rezoning of Anam's property.
10. On the same day, May 16, 2001, one or more persons on behalf of PCSC requested that the Elections Director furnish PCSC with a copy of the Board's minutes of the May 16, 2001 meeting.
11. At the time PCSC requested an Application for a Initiative or Referendum Petition Serial Number, PCSC specifically did not request that the Elections Director, or anyone in the office of the Elections Director, provide copies of the enacted Ordinances.
- 12 At the time PCSC requested an Application for a Initiative or Referendum Petition Serial Number, PCSC specifically did not request that the Clerk of the Pinal County Board of Supervisors, or anyone in the office of the Clerk of the Board of Supervisors, provide copies of the enacted Ordinances.
13. The Elections Director is not the official of Pinal County who maintains official records of enacted zoning ordinances of Pinal County.
14. The request of PCSC of the Election Director on or about May 16, 2001, was, insofar as the rezoning was concerned, limited to a request for final approved minutes of the May 16, 2001, Board of Supervisors meeting.

15. The requests directed to the Elections Director were not general requests using the term “referendum materials” or “materials for circulation” but, rather, were specific requests for the approved minutes.

16. The Elections Director was unable to provide PCSC with the Board of Supervisor’s May 16, 2001 minutes, as the minutes had yet to be approved by the Board of Supervisors and were not approved until the end of the month, although copies of the written and fully executed Ordinances were available on May 16, 2001.

17. Pursuant to A.R.S. § 19-142, and assuming its applicability, PCSC had thirty days “after passage of the ordinance, resolution or franchise” in which to file its referendum petitions. If an ordinance is not available the same day that a referendum petition application is submitted, then the thirty day period “begins on the day that the rezoning ordinance or approved minutes or portion of the approved minutes are available,” whichever is earlier.

18. The final, fully executed and dated Ordinances were available on May 16, 2001, upon adoption and execution thereof by the Board of Supervisors. The Ordinances, as well as resolutions relating thereto, were further attested by the deputy clerk of the Board of Supervisors.

19. On about May 17, 2001, the County Recorder recorded the resolutions evidencing the adoption of the Ordinances.

20. Between May 16, 2001 and May 31, 2001, PCSC failed to request a copy of the Ordinances, even though the Ordinances were available at all times after adoption and execution by the Board of Supervisors.

21. Between May 16, 2001 and May 31, 2001, PCSC at least twice requested by telephone that the Elections Director furnish a copy of the Board’s May 16, 2001 minutes. During such telephone requests, PCSC did not request or mention the Ordinances.

22. On or about May 30, 2001, the Board approved the May 16, 2001 minutes, and on or about May 31, 2001, the Elections Director provided PCSC a copy of such approved minutes,

23. On or about May 31, 2001 when PCSC arrived at the office of the Elections Director, PCSC produced a copy of the “Application for Initiative or Referendum Serial Petition Number” that had been issued on May 16, 2001. That application form contained a blank space labeled “For Office Use Only” in bold and all-capital letter whereby the elections officials might note the required returned date of signed petitions.

24. The “blank” in the “Application for Initiative or Referendum Serial Petition Number” form labeled “For Office Use Only” had no date filled in until May 31, 2001, two weeks after the Ordinances had been adopted and fully executed.

25. On or about May 31, 2001, PCSC asked the Elections Director to write in a date of July 2, 2001 showing an additional thirty (30) day period for the return of the referendum petition. This request, made approximately two full weeks after the ordinances had been fully adopted and executed, had not previously been posed to the Elections Director by PCSC.

26. Prior to May 31, 2001, the Elections Director had made no representation whatsoever to PCSC concerning a July 2, 2001 filing deadline.

27. In response to the May 31, 2001 request by PCSC, the Elections Director that day wrote “July 2, 2001” in the same space that bore the disclaimer: “For Office Use Only”.

28. On about June 1, 2001, PCSC began gathering signatures for Referendum Petition 110601-REF2.
29. On or about June 19, 2001, PCSC submitted its statement of organization for Referendum Petition 110601-REF2 to the Elections Director.
30. On or about June 19, 2001, when PCSC submitted its statement of organization for Referendum Petition 110601-REF2 to the Elections Director, the Ordinances had already become effective and not subject to Referendum.
31. On or about July 2, 2001, PCSC submitted executed Referendum Petitions 110601-REF2 to the Elections Director.
32. The Elections Director exceeded his legal authority by accepting Referendum Petitions 110601-REF2, as the Petitions were submitted two weeks after the mandatory filing due date established under A.R.S. § 19-142.
33. Because Referendum Petitions 110601-REF2 were filed two weeks after the statutorily-mandated deadline, the petitions are a nullity and are void.
34. Because PCSC Referendum Petitions 110601-REF2 were untimely filed, the Elections Director would exceed his legal authority if he were to certify PCSC's referendum petitions or place the matter on the ballot.
35. Because Referendum Petitions 110601-REF2 were untimely filed, the petitions are insufficient as a matter of law.
36. Between July 2, 2001 and July 12, 2001, the Elections Director processed Referendum Petitions 110601-REF2 pursuant to A.R.S. §19-121.01. Upon information and belief, the Election Director failed to disqualify those signatures gathered on or before PCSC filed its statement of organization on June 19, 2001, and by doing so, exceeded his legal authority.
37. On or about July 12, 2001, the Elections Director delivered Referendum Petitions 110601-REF2 to the County Recorder for verification pursuant to A.R.S. §19-121.02. Upon information and belief, Referendum Petitions 110601-REF2 included thousands of signatures that were collected before PCSC filed its statement of organization. The Elections Director exceeded his legal authority by delivering to the County Recorder any signature collected on or before June 19, 2001, as such signatures are ineligible and illegal.
38. On or about July 12, 2001, the County Recorder received Referendum Petitions 110601-REF2 from the Elections Director. July 12, 2001 and July 17, 2001, the County Recorder processed Referendum Petitions 110601-REF2 pursuant to A.R.S. § 19-121.02. On or about July 17, 2001, the County Recorder verified to the Elections Director that sixty-two (62) of the two-hundred ninety-three (293) randomly-selected signatures were found to be unqualified electors at the time of signing the petition and therefore ineligible. Upon information and belief, the County Recorder verified ineligible signatures collected on or before June 19, 2001 and, by so doing, exceeded his legal authority,
39. PCSC was not a legal corporate entity on November 7, 2000.
40. PCSC, as a corporate legal entity incorporated November 8, 2000, is not the same legal entity that filed a statement of organization on November 7, 2000.

41. PCSC, as an unincorporated entity, filed a statement of organization on November 7, 2000, and the chairman was shown to be a "Mr. Huntington."

42. The statement of organization filed by PCSC on November 7, 2000 was made and submitted to Pinal County in relation to an election matter which is unrelated to the proposed referendum measure at issue in this case. Specifically, the November 7, 2000 statement of organization was filed in relation to referendum number 11 06 00-REF, a proposed referendum of another Pinal County zoning ordinance and one in which Plaintiff Anam has no interest.

43. PCSC, as an incorporated legal entity, filed a statement of organization on June 19, 2001, after petition signatures had been obtained, showing the chairman to be a "Ms. Valade."

44. At no time prior to June 19 did any statement of organization on file with the Elections Director, whether for incorporated or unincorporated PCSC, disclose that Ms. Valade was the chairman.

45. At no time prior to June 19, 2001 (the date of the certified mail receipt, per statute), did the Elections Director or any agency or Pinal County have on file a statement of organization for PCSC, whether or not incorporated, bearing the referendum petition number "110601-REF2" issued to PCSC.

46. Referendum petition number "110601-REF2" issued to PCSC appears on the lower right hand corner of the referendum petitions circulated by PCSC in this matter, but does not appear in any statement of organization on file with Pinal County until June 19, 2001.

47. Because PCSC submitted Referendum Petitions 110601-REF2 containing ineligible signatures obtained before it filed its statement of organization, the Elections Director would exceed his legal authority if he were to certify PCSC's referendum petitions and place the matter on the ballot.

48. Notwithstanding all other facts and allegations set forth herein, even if the referendum petitions in this matter were required to be filed thirty (30) days after May 31, 2001 as Plaintiffs believe will be asserted by those supporting the petition (Plaintiffs categorically deny that such date is relevant), the filing made on July 2, 2001 is more than thirty (30) days after May 31, 2001, and the referendum petitions would be void for that reason alone.

49. Upon information and belief, other illegalities and infirmities exist with respect to the petitions filed in this manner, including but not limited to the wrongful inclusion of more than one measure in the referendum petitions, there being two ordinances at issue, and other procedural errors and irregularities to be determined and proven at the time of hearing or trial. Plaintiffs reserve the right to assert any and all such claims and actions, and they are not waived hereby.

50. Plaintiffs are entitled to injunctive, special action, and declaratory relief under A.R.S. § 19-122(C) § 019-121.02(B), and pursuant to A.R.S. §12-1831, et seq.

51. Plaintiffs are entitled to attorneys fees and costs.

WHEREFORE , Plaintiffs respectfully request the following injunctive, special action, and declaratory relief:

1. An order, finding and declaratory ruling from the Court that the Ordinances became effective thirty days after adoption, on June 15, 2001, and that the referendum petitions in this matter are void.

2. A preliminary injunction, or other temporary relief, such as by restraining order, should such relief be necessary, barring the Elections Director from certifying Referendum Petitions 110601- REF2;
3. A preliminary injunction or other temporary relief, such as by restraining order, should such relief be necessary barring the Elections Director from placing Referendum Petitions 110601-REF2 on the ballot;
4. Special action and mandatory relief directing the Elections Director to refrain from certifying Referendum Petitions 110601-REF2;
5. Special action and mandatory relief directing the Elections Director to refrain from placing Referendum Petitions 110601-REF2 on the ballot;
6. A Judgment declaring Referendum Petition 110601-REF2 untimely, null and void, and without legal force and effect;
7. A judgment declaring any signature obtained on or before June 19, 2001 null and void and without legal force and effect;
8. An award of costs, including reasonable attorneys fees, incurred in bringing this action; and
9. Such further relief as the Court deems just and proper in the premises.

DATED, this 24th day of July, 2001

SCHNELL AND WILMER L.L.P.

By Marc G. Simon
Jeffrey Willis
Wade R. Swanson
One South Church Avenue
Suite 1500
Tucson, AZ 85701-1630

[notarized statements]

STATE OF ARIZONA
COUNTY OF PIMA

Alex Argueta, being duly sworn, upon oath deposes and says:

That he is an authorized agent acting on behalf of Anam, Inc., and that he is familiar with the rezoning case for Willow Springs Ranch, as set forth in the Ordinances, as defined in the complaint, and that he is authorized to and does make this affidavit on behalf of said Plaintiffs; that he has read the foregoing Complaint and Application for Preliminary Injunction; that he has reviewed the papers and filings believed relevant to this matter, and that he believes the same correctly set forth the facts and are true in substance and in fact, all to the best of his knowledge and belief.

[signed]

Alex Argueta, Plaintiff, etc.

SUBSCRIBED AND SWORN TO before me this 24th day of July, 2001, by Alex Argueta.

[signed]

Notary Public Sharon Hansen, etc.

STATE OF ARIZONA

COUNTY OF PIMA

Elaine Helzer, being duly sworn, upon oath deposes and says:

That she is familiar with the rezoning case for Willow Springs Ranch, as set forth in the Ordinances, as defined in the complaint, and that she is authorized to and does make this affidavit on behalf of said Plaintiffs; that she has read the foregoing Complaint and Application for Preliminary Injunction; that she has reviewed the papers and filings believed relevant to this matter, and that she believes the same correctly set forth the facts and are true in substance and in fact, all to the best of her knowledge and belief.

[signed]

Elaine Helzer, Plaintiff, etc.

SUBSCRIBED AND SWORN TO before me this 24th day of July, 2001, by Elaine Helzer.

[signed]

Notary Public Sharon Hansen, etc.

End of document