

## **Rose v. Town of Payson et al. – Backgrounder**

### **Executive Summary**

The Town of Payson just authorized the sale of \$70 million in municipal bonds as an “emergency” measure, denying residents the opportunity to exercise their constitutional right to organize a referendum and vote on the measure. That’s illegal, and the Goldwater Institute is seeking immediate relief in the form of a temporary restraining order and preliminary injunction before the bond sale closes and it’s too late.

The Arizona Constitution and statute guarantee the popular right of referendum: that is, voters’ rights to refer a bill, ordinance, or resolution to the ballot and vote on it.<sup>1</sup> While there is a narrow exception to the right of referendum for true emergencies—situations where immediate government action is necessary to preserve peace, health, or safety—no such emergency exists here, and the Town cannot bypass democratic accountability and impose \$70 million of debt on Payson taxpayers without giving them a say.

### **Background**

On August 21, 2024, the Payson Town Council passed Resolution 3409, authorizing the sale of \$70 million in municipal bonds.<sup>2</sup> Such measures are normally subject to referendum petition by residents, and for this reason, Arizona law provides that they cannot go into effect until 30 days after passage, “except emergency measures necessary for the immediate preservation of the peace, health or safety of the city or town.”<sup>3</sup>

Resolution 3409 includes an “emergency clause” which states: “The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety,” and “this Resolution will be in full force and effect from and after its passage by the Council and is hereby excepted from the referendum provisions of the Constitution and laws of the State of Arizona.”<sup>4</sup> But the purported “emergency” is a sham: the only “emergency” is the Council’s desire “to immediately sell the Obligations to secure the best, available [sic] economic terms therefor.”<sup>5</sup> That is not an emergency,

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<sup>1</sup> Ariz. Const. art. IV, pt. 1, § 1; A.R.S. § 19-142(B).

<sup>2</sup> Resolution 3409, [https://transparentpayson.org/wp-content/uploads/2024/08/Res\\_3409\\_Series\\_2024\\_Bond\\_Sales.pdf](https://transparentpayson.org/wp-content/uploads/2024/08/Res_3409_Series_2024_Bond_Sales.pdf).

<sup>3</sup> A.R.S. § 19-142(B).

<sup>4</sup> Resolution 3409 at 5 § 11, [https://transparentpayson.org/wp-content/uploads/2024/08/Res\\_3409\\_Series\\_2024\\_Bond\\_Sales.pdf](https://transparentpayson.org/wp-content/uploads/2024/08/Res_3409_Series_2024_Bond_Sales.pdf).

<sup>5</sup> *Id.*

and it certainly doesn't justify denying Payson residents the right to hold a referendum and vote on the Resolution.

In fact, even the Town's own staff admitted during a presentation on the bond measure that they have "no ability to predict interest rates," that the bond market has been consistently favorable throughout the past year, and that recent presidential elections (the supposed reason for anticipated rate increases) have seen bond rates increase, if at all, by at most 0.6–0.8 percentage points.<sup>6</sup>

Deborah Rose is a Payson resident who opposes Resolution 3409 and wants to organize a referendum to overturn it. She cannot do so, however, because the Resolution's emergency clause exempts it from popular referendum.

### Legal Analysis

"The Arizona Constitution reserves the powers of initiative and referendum to the people."<sup>7</sup> "The constitutional referendum power" includes the right of Arizonans "to circulate petitions and refer to a popular vote legislation which has been enacted by their elected representatives."<sup>8</sup>

To ensure that voters have the opportunity to exercise their constitutional right of referendum, "[a] city or town ordinance, resolution or franchise shall not become operative until thirty days after its passage by the council and approval by the mayor."<sup>9</sup> There's a narrow exception for "emergency measures necessary for the immediate preservation of the peace, health or safety of the city or town." *Id.* Emergency measures become operative immediately, without the thirty-day window for residents to exercise their right of referendum.

The "emergency" exception, however, is meant to be used only for genuine emergencies: situations where immediate government action is truly necessary to protect "peace, health or safety." It is not simply a tool for municipalities to avoid democratic accountability and "insulate their ordinances from popular vote" whenever they please.<sup>10</sup>

Resolution 3409 is illegal because it bypasses the referendum process—thereby denying Payson residents the right to vote—simply because Town officials speculate that interest

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<sup>6</sup> Town of Payson Council Meeting (Aug. 21, 2024), [https://payson.granicus.com/player/clip/2744?view\\_id=17&redirect=true](https://payson.granicus.com/player/clip/2744?view_id=17&redirect=true), at 35:15-35:30.

<sup>7</sup> *Wennerstrom v. City of Mesa*, 169 Ariz. 485, 488 (1991) (citing Ariz. Const. art. 4, pt. 1, § 1).

<sup>8</sup> *Id.*

<sup>9</sup> A.R.S. § 19-142(B).

<sup>10</sup> *Israel v. Town of Cave Creek*, 196 Ariz. 150, 154–55 ¶ 22 (App. 1999).

rates might slightly increase in the coming months and they want to “secure the best, available [sic] economic terms” for their bonds.<sup>11</sup>

Trying to time the bond market based on sheer speculation about future trends is not an “emergency,” and it’s certainly not so essential to “the immediate preservation of the peace, health or safety” of Payson as to justify the denial of residents’ constitutional voting rights. Town staff even admitted during a presentation on the bond measure that they have “no ability to predict interest rates,” and that the historical data their predictions were based on (i.e, overall market trends and rate fluctuations around recent presidential elections) were inconclusive.<sup>12</sup>

Resolution 3409 leaves Payson residents on the hook for up to \$70 million. They have the constitutional right to refer this measure to the ballot and vote on it, and the Town cannot use an emergency clause to bypass that right.

### Case Logistics

The Goldwater Institute is representing Ms. Rose in a lawsuit against the Town of Payson and several public officials responsible for Resolution 3409, who have been named in the lawsuit in their official capacities only.

The case is *Rose v. Town of Payson et al.* The complaint was filed September 10, 2024, in Gila County Superior Court, seeking injunctive and declaratory relief against the unlawful bond measure. It also requests that the court enter a temporary restraining order against the Town and schedule a hearing as soon as possible in light of the Town’s plan to close on the bonds by the end of September 2024.

### The Legal Team

Deborah Rose is represented by lawyers at the Goldwater Institute’s Sharf-Norton Center for Constitutional Litigation.

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<sup>11</sup> Resolution 3409 at 5 § 11, [https://transparentpayson.org/wp-content/uploads/2024/08/Res\\_3409\\_Series\\_2024\\_Bond\\_Sales.pdf](https://transparentpayson.org/wp-content/uploads/2024/08/Res_3409_Series_2024_Bond_Sales.pdf).

<sup>12</sup> Town of Payson Council Meeting (Aug. 21, 2024), [https://payson.granicus.com/player/clip/2744?view\\_id=17&redirect=true](https://payson.granicus.com/player/clip/2744?view_id=17&redirect=true), at 25:15-35:15.

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