

COPY

**In the Superior Court of the State of Arizona
In and For the County of Maricopa**


Case Number CV2014-093052

CIVIL COVER SHEET- NEW FILING ONLY
(Please Type or Print)

Plaintiff's Attorney _____

Attorney's Bar Number _____

APR 21 2014



MICHAEL K. JEANES, CLERK
V. MARTINEZ
DEPUTY CLERK

Is Interpreter Needed? Yes No
If yes, language type: _____
Attorney/Pro Per Signature David C. Russell
To the best of my knowledge, all information is true and correct.

Plaintiff's Name(s): (List all)
David C. Russell, pro per

Plaintiff's Address:
461 West Holmes Avenue, Unit 158
Mesa, AZ 85210

(List additional plaintiffs on page two and/or attach a separate sheet).

Defendant's Name(s): (List All)
State of Arizona, c/o Attorney General Tom Horne

Law Building, 1275 West Washington Street
Phoenix, AZ 85007-2926

(List additional defendants on page two and/or attach a separate sheet).

EMERGENCY ORDER SOUGHT: Temporary Restraining Order Provisional Remedy OSC
 Election Challenge Employer Sanction Other _____

RULE 8(i) COMPLEX LITIGATION DOES NOT APPLY. (Mark appropriate box under Nature of Action).

RULE 8(i) COMPLEX LITIGATION APPLIES Rule 8(i) of the Rules of Civil Procedure defines a "Complex Case" as civil actions that require continuous judicial management. A typical case involves a large number of witnesses, a substantial amount of documentary evidence, and a large number of separately represented parties. (Mark appropriate box on page two as to complexity, in addition to the Nature of Action case category).

NATURE OF ACTION

(Place an "X" next to the one case category that most accurately describes your primary case.)

100 TORT MOTOR VEHICLE:

- 101 Non-Death/Personal Injury
- 102 Property Damage
- 103 Wrongful Death

110 TORT NON-MOTOR VEHICLE:

- 111 Negligence
- 112 Product Liability – Asbestos
- 112 Product Liability – Tobacco
- 112 Product Liability – Toxic/Other
- 113 Intentional Tort
- 114 Property Damage
- 115 Legal Malpractice
- 115 Malpractice – Other professional
- 117 Premises Liability
- 118 Slander/Libel/Defamation

116 Other (Specify) _____

120 MEDICAL MALPRACTICE:

- 121 Physician M.D. 123 Hospital
- 122 Physician D.O. 124 Other

130 CONTRACTS:

- 131 Account (Open or Stated)
- 132 Promissory Note
- 133 Foreclosure
- 138 Buyer-Plaintiff
- 139 Fraud
- 134 Other Contract (i.e. Breach of Contract)
- 135 Excess Proceeds - Sale
- Construction Defects (Residential/Commercial)
 - 136 Six to Nineteen Structures
 - 137 Twenty or More Structures

150-199 OTHER CIVIL CASE TYPES:

- 156 Eminent Domain/Condemnation
- 151 Forcible Detainer
- 152 Change of Name
- 153 Transcript of Judgment
- 154 Foreign Judgment
- 158 Quiet Title
- 160 Forfeiture
- 175 Election Challenge
- 179 Employer Sanction Action (A.R.S. §23-212)
- 180 Injunction against Workplace Harassment
- 181 Injunction against Harassment
- 182 Civil Penalty
- 186 Water Rights (Not General Stream Adjudication)
- 187 Real Property
- Sexually Violent Persons (A.R.S. §36-3704)
(Except Maricopa County)
- Minor Abortion (See Juvenile in Maricopa County)
- Special Action Against Lower Courts
(See lower court appeal cover sheet in Maricopa)
- 194 Immigration Enforcement Challenge (§§1-501, 1-502, 11-1051)

150-199 UNCLASSIFIED CIVIL CASE TYPES:

- Administrative Review
(See lower court appeal cover sheet in Maricopa)
- 150 Tax Appeal (All other tax matters must be filed in the AZ Tax Court)

- 155 Declaratory Judgment
- 157 Habeas Corpus
- 184 Landlord Tenant Dispute - Other
- 159 Restoration of Civil Rights (Federal)
- 159 Clearance of Records (A.R.S. §13-4051)
- 190 Declaration of Factual Innocence(A.R.S. §12-771)
- 191 Declaration of Factual Improper Party Status
- 193 Vulnerable Adult (A.R.S. §46-451)
- 165 Tribal Judgment
- 167 Structured Settlement (A.R.S. §12-2901)
- 169 Attorney Conservatorships (State Bar)
- 170 Unauthorized Practice of Law (State Bar)
- 171 Out-of-State Deposition for Foreign Jurisdiction
- 172 Secure Attendance of Prisoner
- 173 Assurance of Discontinuance
- 174 In-State Deposition for Foreign Jurisdiction
- 176 Eminent Domain–Light Rail Only
- 177 Interpleader– Automobile Only
- 178 Delayed Birth Certificate (A.R.S. §36-333.03)
- 183 Employment Dispute - Discrimination
- 185 Employment Dispute - Other
- 195(a) Amendment for Marriage License
- 195(b) Amendment for Birth Certificate
- 163 Other _____

(Specify)

COMPLEXITY OF THE CASE

If you marked the box on page one indicating that Complex Litigation applies, place an “X” in the box of no less than one of the following:

- Antitrust/Trade Regulation
- Construction Defect with many parties or structures
- Mass Tort
- Securities Litigation with many parties
- Environmental Toxic Tort with many parties
- Class Action Claims
- Insurance Coverage Claims arising from the above-listed case types
- A Complex Case as defined by Rule 8(i) ARCP

Additional Plaintiff(s)

Additional Defendant(s)

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APR 21 2014

MICHAEL K. JEANES, CLERK
V. MARTINEZ
DEPUTY CLERK



NAME: David C. Russell
ADDRESS: 461 W. Holmes Ave, Unit 158
CITY, STATE, ZIP: Mesa, AZ 85210

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

David C. Russell, Pro Per

PLAINTIFF,

VS.

State of Arizona, c/o Attorney General Tom Horne

DEFENDANT.

NO. CV2014-093052

**CERTIFICATE OF
COMPULSORY
ARBITRATION**

The undersigned certifies that the largest award sought by the complainant, including punitive damages, but excluding interest, attorneys' fees, and costs ~~does~~ **does not** exceed limits set by Local Rule for compulsory arbitration. This case ~~is~~ **is not** subject to the Uniform Rules of Procedure for Arbitration.

SUBMITTED this 21st day of April, 2014.

BY *David C. Russell*

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David C. Russell
461 West Holmes Ave, Unit 158
Mesa, Arizona 85210
(480) 310-3642

APR 21 2014



MICHAEL K. JEANES, CLERK
V. MARTINEZ
DEPUTY CLERK

ARIZONA SUPERIOR COURT

MARICOPA COUNTY

David C. Russell,

Plaintiff, Pro Per

vs.
STATE OF ARIZONA,

Defendant

No. CV2014-093052

**COMPLAINT FOR
DECLARATORY JUDGEMENT**

Comes Now Plaintiff, David C. Russell, for his complaint against the Defendant, hereby allege as follows:

NATURE OF THE ACTION

1) This action seeks a Declaratory Judgment that Senate Bill 1482 enacted by the Fifty-first, Second Regular Session 2014 (SB 1482) is unconstitutional because it violates Article 4, pt. 2 § 13, Article 2 §13 and Article 2 §3 of the Arizona State Constitution and superseded Article 1 §10 of the United States Constitution.

PARTIES

- 2) David C. Russell is a citizen of the State of Arizona. Mr. Russell is a HOA Manager and activist on behalf of homeowners. Mr. Russell also advocates for city-run crime prevention programs, and advocates on legislative issues affecting crime prevention in multi-dwelling complexes.
- 3) Mr. Russell is a homeowner, and a member in good standing of the Circle Tree Owners Association. Mr. Russell is also the community manager of the Circle Tree Owners Association which is a paid position since 2010.
- 4) Mr. Russell's Community received the Mesa Police Chief's Award in 2013 for Exemplary Crime Prevention in the city-sponsored TRI-STAR crime prevention program. In September of 2013, Mr. Russell also received from the Mesa Police Chief, a Certificate of Appreciation for his crime prevention efforts and partnership with the Mesa Police.

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- 5) Mr. Russell has marshaled against such legislation as SB 1454 (the redux of SB 1482) and in 2013, participated in a KPHO Investigative Report <http://raycomnbc.worldnow.com/story/22848798/new-law-opens-rental-markets-for-convicted-felons>
- 6) Mr. Russell also marshaled against SB 1482 via a media interview with ABC News 15 Phoenix. <http://www.abcl5.com/news/region-southeast-valley/ mesa/ mesa-community-manager-concerned-about-two-bills-presented-in-arizona-legislature>

JURSDICTION AND VENUE

- 7) This action arises under state law and the Arizona Constitution. This court has jurisdiction pursuant to A.R.S. §§12-123 and 12-1831 et, seq.
- 8) Venue is proper in Maricopa County pursuant to A.R.S. §12-401

STATEMENT OF FACTS

- 9) In January 2014, the Fifty-first Legislature for the State of Arizona was sworn in and convened in its second regular session.
- 10) First, SB 1482 AN ACT was introduced by Senator Griffin and amended and passed unanimously by the Senate.

AN ACT

REPEALING SECTION 9-461.15, ARIZONA REVISED STATUTES; AMENDING TITLE 9, CHAPTER 4, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 9-461.15; REPEALING SECTION 11-810, ARIZONA REVISED STATUTES; AMENDING TITLE 11, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 11-810; AMENDING SECTION 12-991, ARIZONA REVISED STATUTES; REPEALING SECTION 22-512, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2013, CHAPTER 254, SECTION 15; AMENDING SECTION 22-512, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 1980, CHAPTER 134, SECTION 1; REPEALING SECTION 33-1250, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2013, CHAPTER 254, SECTION 16; AMENDING SECTION 33-1250, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 132, SECTION 8 AND CHAPTER 269, SECTION 2; REPEALING SECTION 33-1260.01, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A

1 NEW SECTION 33-1260.01; REPEALING SECTION 33-1261, ARIZONA
2 REVISED STATUTES, AS AMENDED BY LAWS 2013, CHAPTER 254, SECTION
3 18; AMENDING SECTION 33-1261, ARIZONA REVISED STATUTES, AS
4 AMENDED BY LAWS 2012, CHAPTER 242, SECTION 1; REPEALING SECTION
5 33-1806.01, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER
6 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW
7 SECTION 33-1806.01; REPEALING SECTION 33-1812, ARIZONA REVISED
8 STATUTES, AS AMENDED BY LAWS 2013, CHAPTER 254, SECTION 20;
9 AMENDING SECTION 33-1812, ARIZONA REVISED STATUTES, AS ADDED
10 BY LAWS 2005, CHAPTER 269, SECTION 8; REPEALING SECTION 41-2198.01,
11 ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2013, CHAPTER
12 254, SECTION 21; AMENDING SECTION 41-2198.01, ARIZONA REVISED
13 STATUTES, AS AMENDED BY LAWS 2006, CHAPTER 324, SECTION 7;
14 RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

- 15
16 11) SB 1482 sat in the House for an unheard of 7 week period. It passed the deadline for
17 being heard in a committee of the House, per the rules, and was presumed dead.
18
19 12) Second, HB 2695 was introduced by Rep. Ugenti the “omnibus HOA bill.” It was also
20 amended and made identical to SB1482. It passed the House Committee of the Whole
21 (COW) for over 4 weeks, but was not put on the final vote agenda giving the illusion
22 that it was dead. It passed the deadline to be heard in the Senate. Neither bill could be
23 heard in the other branch, according to the usual rules.
24
25 13) Finally, after the 2015 budget negotiations were resolved, a few bills were attended to
26 that included the presumed dead HB 2695. SB 1482 was substituted HB 2695, in
27 compliance with the legislative rules, because it had already passed out of the Senate
28 and there was no need to go back to be voted on all over again.
29
30 14) All in time to withstand a possible Governor’s veto as the session will not end before
31 any veto. This allowed the legislature to override the veto because it has more than a
32 2/3 approval of both houses. The bill (SB 1482) was passed 49-6 with 5 NV.
33 However, the bill was signed by the Honorable Governor Janice K. Brewer on April
34 17, 2014.

35 **FIRST CLAIM FOR RELIEF**
36 **(Violation of Single-Subject Rule)**
37

- 38 15) Article 4, pt. 2 §13 of the Arizona Constitution provides that:
39 Every act shall embrace but one subject and matters properly connected therewith,
40 which subject shall be expressed in the title; but if any subject shall be embraced in the

1 Act which shall not be embraced in the title, such Act shall be void only as to so much
2 thereof shall not be embraced in the title.

3
4 16) The purpose of this provision is to prevent surprise surreptitious legislation by
5 requiring the title of an Act to generally inform the public of the acts content.

6
7 17) SB 1482 contains the following plethora of subjects:

- 8 • Prohibiting a planning agency to not require a developer to establish an Association.
- 9 • Planning and Zoning requirements.
- 10 • Nuisance applicability for owners to abate tenants involved in illegal activities.
- 11 • Allowing untrained and unlicensed HOA managers to self represent in small claims
12 actions.
- 13 • Allowing Association employees to record and file liens.
- 14 • Requiring Associations to change voting rules and regulations.
- 15 • Limiting the amount information an Association can or cannot receive on a tenant.
- 16 • Displays of for sale, for rent or lease signs.
- 17 • Flag displays in HOA Communities.
- 18 • Campaign signs placement and restrictions.
- 19 • What a homeowner can and cannot do regarding renting their property within an
20 Association.
- 21 • Requiring Associations to not enforce specific rules on tenants other than an owner
22 occupied unit.
- 23 • Allowing Associations to charge fees to process tenant paperwork.
- 24 • Hearing rights and procedures pursuant to title 33. Chapter 11.
- 25 • Rental Property owner agent information.
- 26 • Political activities.
- 27 • Repeal of invalid statutes from the Fifty-first Legislative session 2013.

28
29 18) Although, some of the subjects contained in SB 1482, have a common thread relating
30 to HOAs, there were far too many subjects for the average person to be alerted to all of
31 the contents of the bill reflected in its vague title.

32
33 19) Notwithstanding, the leeway the legislative body receives; the seventeen or more
34 subjects contained in SB 1482, are a blatant violation of the Single-Subject Rule.

35
36 WHEREFORE, Plaintiff requests that this court:

- 37
- 38 a. Declare that SB 1482 violates Article 4, part 2 §13 of the Arizona State Constitution
39 because its title does not embrace all of the subjects addressed in the bill;

40

- 1 b. Declare that all provisions in SB 1482 are void;
2
3 c. Grant further relief as the court deems appropriate.
4

5 **SECOND CLAIM FOR RELIEF**
6 **(Violation of Article 2 §13 Equal privileges and immunities)**
7

8 20) Article 2 §13 of the Arizona Constitution provides that:

9 No law shall be enacted that granting to any citizen, class of citizens, or corporations
10 other than municipal, privileges or immunities that which, upon the same terms, shall
11 not equally belong to all citizens or corporations.
12

13 21) SB 1482 violates Article 2 §13 by allowing untrained HOA managers or employees of
14 an association to self represent in small claims court. Not even certified legal preparers
15 are afforded this privilege.
16

17 WHEREFORE, Plaintiff requests that this court:

- 18
19 a. Declare that the section, Parties; representation contained in SB 1482 violates
20 Article 4 §13 of the Arizona State Constitution;
21
22 b. Declare that the section, Parties; representation contained in SB 1482 is
23 unconstitutional and void;
24
25 c. Grant further relief as the court deems appropriate.
26

27 **THIRD CLAIM FOR RELIEF**
28 **(Violation of Article 2 §3)**
29

30 22) Article 2 §3 of the Arizona Constitution provides that:

31 The Constitution of the United States is the supreme law of the land.
32

33 23) Article 1, Section 10, of the U.S. Constitution provides that:

34 “No State shall ... pass any ... Law impairing the Obligation of Contracts.” This
35 contract clause prohibits any state government from passing a law that would interfere
36 with contracts made by citizens, either by weakening the obligations assumed by
37 parties to a contract or by making a contract difficult to enforce.
38

- 39 1. Homeowners enter into a legal and binding contract with their association, by virtue
40 of their ownership of real property within an association. Those agreements include

1 Covenants, Conditions and Restrictions, bylaws, and the association's rules and
2 regulations. These contracts are occasionally revised by the association's board of
3 directors or by a majority of homeowners' votes. The Arizona State Legislature has
4 no legislative authority to interfere in these contracts.

5
6 2. Further, Lenders and financial institutions also have contractual agreements between
7 homeowners who purchase within associations. In those contractual agreements are
8 a commonly placed document called a condominium or HOA riders. Therefore, the
9 homeowner has agreed with the lender, to abide with the contractual agreements as
10 set forth in the associations governing documents. These contractual agreements
11 are recorded by the applicable county recorders office, along with deeds of trust,
12 warranty deeds and other such deeds. The Arizona State Legislature has no
13 legislative authority to interfere in these contracts.

14
15 24) Some associations have adopted or have in place crime prevention programs for the
16 safety and security of all residents within an association. This is a contract between
17 homeowners, the association and local law enforcement agencies. The Arizona State
18 Legislature has no legislative authority to interfere in these contracts.

19
20 25) The provisions contained in SB 1482, limiting any standing rental restrictions, what
21 information and documents an association can or cannot receive on a tenant will
22 interfere with crime prevention contractual agreements and will make some
23 associations ineligible to maintain their crime prevention certifications. The Arizona
24 State Legislature has no legislative authority to interfere in these contracts.

25
26 1. By enacting SB 1482, the Arizona State Legislature has thus interfered with
27 standing contractual agreements between homeowners, their associations, and their
28 respective crime prevention programs, in which the State of Arizona had no
29 constitutional or legislative authority to do so.

30
31 WHEREFORE, Plaintiff requests that this court:

32
33 a. Declare that the Arizona State Legislature enacted a set of laws (SB 1482) that
34 superseded the US Constitution. And declare that the Arizona State Legislature
35 failed to adhere to Article 2 §3 of the Arizona Constitution;

36
37 b. Declare that the following section(s) of SB 1482 are hereby deemed
38 unconstitutional and void;

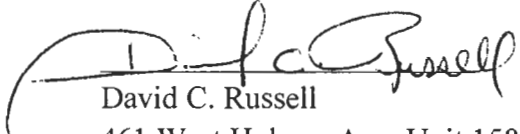
- 39 • Nuisance: applicability; residential property used for crime; action to abate and
40 prevent; notice; definitions

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- Parties; representation
- Voting; proxies; absentee ballots; applicability; definition
- Rental property; unit owner and agent information; fee; disclosure
- Flag display; for sale, rent or lease signs; political signs and activities; applicability
- Rental property; member and agent information; fee; disclosure
- Proxies; absentee ballots; definition
- Hearing; rights and procedures
- Severability

- c. Declare valid and let stand the repeal of all invalid statutes that were contained in SB 1454 in 2013 via a Declaratory Judgment;
- d. Grant further relief as the court deems appropriate.

Dated this 21st day of April, 2014.


David C. Russell
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Mesa, AZ 85210
(480) 310-3642