

1 ARIZONA CENTER FOR LAW
2 IN THE PUBLIC INTEREST
202 E. McDowell Rd., Suite 153
3 Phoenix, Arizona 85004
(602)258-8850
4 (620)258-8757 (fax)

5 Attorneys for Center for Plaintiffs
6 Timothy M. Hogan (004567)
Joy E. Herr-Cardillo (009718)

COPY

JUL 16 2013



MICHAEL K. JEANES, CLERK
D. CONCHOLAR
DEPUTY CLERK

7
8 ARIZONA SUPERIOR COURT

9 MARICOPA COUNTY

10
11 GEORGE K. STAROPOLI and
12 WILLIAM M. BROWN,

13 Plaintiffs,

14 vs.

15 STATE OF ARIZONA,
16

17 Defendant.

No. CV2013-009991

COMPLAINT FOR
DECLARATORY
JUDGMENT

18
19
20 Plaintiffs, by and through their attorneys, for their complaint against Defendant,
21 hereby allege as follows:

22 **NATURE OF THE ACTION**

23 1. This action seeks a Declaratory Judgment that Senate Bill 1454 enacted by
24 the Fifty-first Legislature, First Regular Session 2013 ("SB 1454") is unconstitutional
25 because it violates Article 4, pt. 2 §13 of the Arizona Constitution.

26 **PARTIES**

27 2. Plaintiff George K. Staropoli is a citizen of the State of Arizona. Mr.
28 Staropoli is an activist who advocates on behalf of homeowners on issues and legislation
involving homeowner associations (HOAs). Mr. Staropoli has created and maintains a

1 website dedicated to HOA issues (<http://pvtgov.wordpress.com/>) and regularly writes and
2 speaks on the subject. He has testified before legislative committees in Arizona and is
3 also in frequent contact with state and local elected officials whenever HOA-related
4 legislation is being considered.

5 3. In 2000, Mr. Staropoli founded the nonprofit Citizens for Constitutional
6 Local Government, Inc. ("Citizens"). He is president of Citizens, which is also dedicated
7 to informing legislators and the public about common interest property issues and the
8 abuses of HOAs.

9 4. Mr. Staropoli has authored several e-Books including "Understanding the
10 New America of HOA-Lands" (2010), "Establishing the New America of Independent
11 HOA Principalities" (2008) and "The Case Against State Protection of Homeowner
12 Associations" (2003).

13 5. Mr. Staropoli has produced a 42 minute DVD, "Somewhere Over the
14 Rainbow" (2004), that documents the loss of homestead protections and the right of the
15 HOA to foreclose because of the actions of the Arizona Legislature.

16 6. Mr. Staropoli has also produced a two volume, four disk DVD series,
17 "Homeowner Rights Advocacy 2006" (2006), which documents homeowner rights
18 advocates at legislative sessions in Arizona and Texas.

19 7. As an advocate for homeowners, Mr. Staropoli was harmed both when SB
20 1454 was amended to include provisions relating to HOAs and planned communities and
21 when the title failed to provide notice that it included provisions relating to HOAs and
22 planned communities.

23 8. Mr. Staropoli is also a homeowner and member of Los Colinas
24 Homeowners Association and will be harmed as a homeowner if SB 1454 goes into
25 effect.

26 9. Plaintiff William M. Brown is a citizen of the State of Arizona. He owns a
27 home in the planned community development Terravitta, an 823 acre, 1380 home private
28 gated golf and country club community located in North Scottsdale. Mr. Brown is a

1 mandatory member of two Terravita Arizona non-profit corporations, Terravita
2 Community Association, Inc. (HOA) and Terravita Country Club, Inc. (IRC 501(c)(7) tax
3 exempt nonprofit corporation).

4 10. Mr. Brown has been very active regarding legislation relating to planned
5 communities at the Arizona legislature and executive branch. He has helped draft
6 legislation relating to planned communities and has advocated both in favor and against
7 bills affecting planned communities that have come before the Arizona legislature.

8 11. Mr. Brown has been involved in numerous litigation matters with his
9 homeowner and country club associations, both as plaintiff and defendant, and is
10 currently litigating a matter filed in small claims court against the Terravita Country
11 Club, Inc. That matter is now pending in the Desert Ridge Justice Court (Case No.
12 CC2013-051050).

13 12. Mr. Brown was harmed both when SB 1454 was amended to include
14 provisions relating to HOAs and planned communities and when the title failed to
15 provide notice that it included provisions relating to HOAs and planned communities.

16 13. Mr. Brown will be harmed as a homeowner if the law is allowed to go into
17 effect.

18 14. The State of Arizona is a body politic.

19 JURISDICTION AND VENUE

20 15. This action arises under state law and the Arizona Constitution. This Court
21 has jurisdiction pursuant to A.R.S. §§12-123 and 12-1831 *et. seq.*

22 16. Venue is proper in Maricopa County pursuant to A.R.S. §12-401.

23 STATEMENT OF FACTS

24 17. In January 2013, the Fifty-first Legislature for the State of Arizona was
25
26 sworn in and convened its first regular session.
27
28

1 HB 2371

2 18. On February 18, 2013, HB 2371, a bill titled "AN ACT AMENDING
3 SECTION 34-243, ARIZONA REVISED STATUTES; RELATING TO ELIGIBILITY
4 AND PREFERENCE OF CONTRACTORS AND SUBCONTRACTORS" and
5 sponsored by Arizona State Representative Michelle Ugenti ("Rep. Ugenti") was first
6 read in the Arizona House of Representatives.
7
8

9 19. HB 2371 was assigned to the Government Committee which is chaired by
10 Rep. Ugenti, and where, on February 19, 2013, it was amended with a strike everything
11 amendment that proposed making numerous changes to the HOA statutes. According to
12 the minutes of that Committee Meeting, Rep. Ugenti stated that "this is an omnibus bill to
13 combine all of the HOA bills into one." Committee on Government, Minutes of Meeting,
14 Tuesday, February 19, 2013, p. 5.
15
16

17 20. Numerous individuals representing themselves and organizations expressed
18 support, opposition, or neutrality to the Committee regarding the proposed amendment.
19
20 *Id.* at 5-6.

21 21. The strike everything amendment was adopted and the amended bill was
22 passed by the Committee.
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

22. The title of the amended bill was:

AN ACT

AMENDING TITLE 9, CHAPTER 4, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-461.15; AMENDING TITLE 11, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-810; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1242.01; AMENDING SECTION 33-1250, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3,

ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1260.01; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1806.01; AMENDING SECTION 33-1812, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1818; AMENDING SECTION 41-2198.01, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

23. On March 7, 2013, HB 2371 passed the Arizona House of Representatives and, on March 8, 2013, was transmitted to the Senate.

24. After watching the committee hearing on February 19, 2013, Mr. Staropoli began marshalling opposition to HB 2371. He sent numerous emails to other homeowner advocates and Arizona state senators, wrote several posts on his website (<http://pvtgov.wordpress.com/>) outlining his objections to the bill and urging citizens to contact their legislators, sent an email to Rep. Ugenti outlining his objections to the bill and posted a video on YouTube critical of the bill and the legislative process that produced it.

1 25. After the bill was placed on the consent agenda, Mr. Staropoli emailed state
2 senators asking that one of them object so that the bill could be debated in the Committee
3 of the Whole.
4

5 26. Mr. Brown also objected to HB 2371 and contacted his state legislators, the
6 legislative leadership, and committee chairs to express his opposition to the bill.
7

8 27. HB 2371 was objected to and held in the Senate. Thus, it was not enacted
9 into law.
10

11 28. After the objection to HB 2371 on the Consent Calendar, Mr. Staropoli
12 continued to monitor the activities of the legislature because he was concerned that there
13 might be an attempt to revive the bill. He regularly checked the “strike everything” page
14 of the Arizona Legislature’s website and watched the floor calendars on the legislative
15 tracking system (A.L.I.S.) for any revival of HB 2371. Neither site provided any notice
16 that the legislature was considering a bill that included any HOA-related provisions.
17

18 SB 1454

19 29. On February 5, 2013, SB 1454, a bill titled “AN ACT AMENDING
20 SECTIONS 16-901, 16-912, 16-948 AND 16-1019, ARIZONA REVISED STATUTES;
21 RELATING TO ELECTIONS” and sponsored by Arizona State Senators Yee, Barto,
22 Meza and Reagan was first read in the Arizona Senate.
23
24

25 30. Because SB 1454 sought to amend a statute that had been enacted by the
26 Arizona voters through their power of initiative, the Arizona Constitution required that
27 the bill receive a three-fourth’s majority vote to pass.
28

1 31. On March 4, 2013, SB 1454 passed the Arizona Senate and on March 5,
2 2013 was transmitted to the Arizona House of Representatives.

3
4 32. The purpose of the Senate Version of SB 1454 was to modify the definition
5 of “in-kind contribution” in relation to campaign contributions and expenses. See
6 Amended Senate Fact Sheet dated March 5, 2013 (available at
7 http://www.azleg.gov/legtext/51leg/1r/summary/s.1454elec_aspassed.pdf).
8

9 33. SB 1454 was first read in the Arizona House of Representatives on March
10 7, 2013.

11 34. On June 13, 2013, SB 1454 reached the Committee of the Whole where
12 several floor amendments were offered and passed.

13
14 35. Two amendments were offered by Representatives Chad Campbell and
15 Debbie Lesko, respectively, and were relatively minor amendments relating to elections.
16

17 36. Rep. Ugenti offered two floor amendments: a sixty-five page amendment to
18 the Senate engrossed bill and a second amendment to the sixty-five page amendment
19 (“Ugenti Floor Amendments”). According to the Senate Fact Sheet, when SB 1454 was
20 returned to the Senate, in addition to the previously stated purpose, the bill’s purpose now
21 included “[m]ak[ing] omnibus changes related to planned communities and home owners
22 associations (HOAs).” Memorandum dated June 14, 2013 to Senator Kimberly Yee
23 from Cherie Stone, Legislative Research Analyst (available at
24 http://www.azleg.gov/legtext/51leg/1r/summary/s.1454elec_housechanges.pdf).
25
26

27 37. As a result of the Ugenti Floor Amendments, House Engrossed Senate Bill
28 SB 1454 contained provisions that were substantially similar and/or identical to

1 provisions that were included in the failed HB 2371.

2 38. The title to House Engrossed Senate Bill SB 1454 was:

4 AN ACT

5 AMENDING SECTION 9-231, ARIZONA REVISED STATUTES;
6 AMENDING TITLE 9, CHAPTER 4, ARTICLE 6, ARIZONA
7 REVISED STATUTES, BY ADDING SECTION 9-461.15;
8 AMENDING TITLE 11, CHAPTER 6, ARTICLE 1, ARIZONA
9 REVISED STATUTES, BY ADDING SECTION 11-810;
10 AMENDING SECTION 16-411, ARIZONA REVISED
11 STATUTES; AMENDING TITLE 16, CHAPTER 4, ARIZONA
12 REVISED STATUTES, BY ADDING ARTICLE 8.2; AMENDING

13 SECTIONS 16-901, 16-905, 16-912, 16-912.01, 16-920, 16-921, 16-
14 948, 16-950, 16-1019, 22-512 AND 33-1250, ARIZONA REVISED
15 STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3,
16 ARIZONA REVISED STATUTES, BY ADDING SECTION 33-
17 1260.01; AMENDING SECTION 33-1261, ARIZONA REVISED
18 STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1,
19 ARIZONA REVISED STATUTES, BY ADDING SECTION 33-
20 1806.01; AMENDING SECTIONS 33-1812 AND 41-2198.01,
21 ARIZONA REVISED STATUTES; PROVIDING FOR THE
22 DELAYED REPEAL OF SECTION 16-559, ARIZONA REVISED
23 STATUTES, AS ADDED BY THIS ACT; RELATING TO
24 ELECTIONS

25 39. The title to House Engrossed Senate Bill SB 1454 did not include any
26 reference to “planned communities and condominiums” when it was transmitted back to
27 the Arizona Senate on June 13, 2013.

28 40. The Senate passed House Engrossed Senate Bill SB 1454 without any
changes to the bill or the title on June 14, 2013 and it was transmitted to the Governor on
June 17, 2013.

41. The Governor signed House Engrossed Senate Bill SB 1454 on June 20,
2013.

1 log-rolled together, it embraces more than one subject and violates Article 4, pt. 2 §13 of
2 the Arizona Constitution.

3
4 49. Because it violates the single subject requirement, the entire bill is
5 unconstitutional and void.

6 50. Plaintiffs are entitled to recover their attorneys' fees pursuant to the private
7 attorney general doctrine.
8

9
10 WHEREFORE Plaintiffs request that this Court:

11 a. Declare that SB 1454 violates Article 4, pt. 2 §13 of the Arizona
12 Constitution because it includes more than one subject and thus is void in its
13 entirety;
14

15 b. Grant further relief as the Court deems appropriate;
16

17 d. Grant plaintiffs their attorneys' fees.
18

19 **SECOND CLAIM FOR RELIEF**

20 **(Violation of Title Requirement)**

21 51. Plaintiffs incorporate by reference paragraphs 1 through 50 above as though
22 fully set forth herein.

23 52. As set forth in paragraph 45 above, Article 4, pt. 2 §13 of the Arizona
24 Constitution expressly requires that the subject of a bill be expressed in the title.
25

26 53. Because the title of SB 1454 failed to include any reference to planned
27 communities, condominiums or HOAs, the title does not properly embrace the provisions
28 of the bill that were added by the Ugenti Floor Amendments and House Engrossed Senate

1 Bill SB 1454 violates Article 4, pt. 2 §13 of the Arizona Constitution.

2 54. Pursuant to Article 4, pt. 2 §13 of the Arizona Constitution, because those
3 provisions that were added by the Ugenti Floor Amendments were not expressed in the
4 title of the bill, they are unconstitutional and void.
5

6 55. Plaintiffs are entitled to recover their attorneys' fees pursuant to the private
7 attorney general doctrine.
8

9
10 WHEREFORE Plaintiffs request that this Court:

11 a. Declare that SB 1454 violates Article 4, pt. 2 §13 of the Arizona
12 Constitution because its title does not embrace all of the subjects addressed in the
13 bill;
14

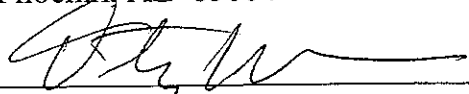
15 b. Declare that the provisions in SB 1454 that do not address elections
16 are void;
17

18 c. Grant further relief as the Court deems appropriate;

19 d. Grant plaintiffs their attorneys' fees.
20

21 Dated this 16th day of July, 2013.
22

23 Arizona Center for Law
24 In the Public Interest
25 202 E. McDowell Rd. Ste. 153
26 Phoenix, AZ 85004

27 
28 Timothy M. Hogan
Joy E. Herr-Cardillo