

COPY

1 Lisa T. Hauser #006985
2 lhauser@gblaw.com
3 **GAMMAGE & BURNHAM**
4 A PROFESSIONAL LIMITED LIABILITY COMPANY
5 ATTORNEYS AT LAW
6 TWO NORTH CENTRAL AVENUE
7 15TH FLOOR
8 PHOENIX, AZ 85004
9 TELEPHONE (602) 256-0566



JUL 18 2011
Smith
MICHAEL K. JEANES, CLERK
DEPUTY CLERK

Attorneys for Petitioner

7 SUPERIOR COURT OF ARIZONA
8 MARICOPA COUNTY

9 FRANKLIN BRUCE ROSS, a citizen and
10 qualified elector of Arizona State Legislative
11 District 18,

11 Petitioner,

12 vs.

13 KEN BENNETT, in his official capacity as
14 Secretary of State for the State of Arizona; THE
15 BOARD OF SUPERVISORS OF MARICOPA
16 COUNTY; HELEN PURCELL, in her official
17 capacity as Maricopa County Recorder; and
18 KAREN OSBORNE, in her official capacity as
19 Maricopa County Elections Director,

18 Defendants,

19 and

20 CITIZENS FOR A BETTER ARIZONA IN
21 SUPPORT OF RC-04-2011, an Arizona
22 Political Committee,

22 Real Party in Interest.

NO. CV2011-011864

**VERIFIED COMPLAINT FOR
SPECIAL ACTION AND
APPLICATION FOR
PRELIMINARY AND
PERMANENT INJUNCTION**

Priority Election Case

(A.R.S. § 19-208.04(B) Action
Challenging Certification of Recall
Petition Signatures)

24
25 Petitioner Bruce Ross, for his complaint for special action, pursuant to the *Arizona*
26 *Rules of Procedure for Special Actions*, alleges as follows:

1 Board of Supervisors provides ballots and conducts elections for precincts within its
2 boundaries, including for elections in Legislative District 18.

3 6. Respondent Helen Purcell is the Maricopa County Recorder and is named in
4 this action in her official capacity only. The office of County Recorder exists pursuant to
5 Article 12, Section 3, Constitution of Arizona, and has powers and duties relating to voter
6 registration pursuant to A.R.S. §§16-120, *et seq.*, 16-131, *et seq.*, and 16-161, *et seq.*
7 Pursuant to A.R.S. §19-208.02, Respondent Purcell has the duty to certify the number of
8 signatures to be disqualified from recall petitions circulated within Maricopa County,
9 including Legislative District 18.

10 7. Respondent Karen Osborne is the Maricopa County Elections Director and
11 is named in this action in her official capacity only. In that capacity, she carries out the
12 duties of the Maricopa County Board of Supervisors with respect to the conduct of
13 elections and oversees the certification of the number of valid signatures on recall
14 petitions received by the Maricopa County Recorder pursuant to A.R.S. § 19-208.02.

15 8. Upon information and belief, Citizens For a Better Arizona in Support of
16 RC-04-2011 (“Committee”) is a political committee organized under the laws of the State
17 of Arizona, the sponsor of recall petition RC-04-2011 (seeking the recall of State Senator
18 Russell Pearce, LD-18) and the real party in interest.

19 **Background**

20 9. On January 31, 2011, the Committee filed an application for a recall petition
21 serial number with the Secretary of State, including a purported general statement of not
22 more than two hundred words stating the grounds of the demand for recall. The Secretary
23 of State assigned recall petition serial number RC-04-2011.

24 10. Pursuant to Ariz. Const. art 8, Pt. 1, § 1, and A.R.S. § 19-201(A), the
25 number of qualified electors necessary to subject the Legislative District 18 State Senator
26 to a recall election is 7,756.

1 11. On May 31, 2011, the Committee submitted RC-04-2011, containing a
2 purported 18,315 signatures on 1,705 petition sheets, to the Secretary of State for
3 verification. Upon further review, the Secretary of State of State determined that the
4 submitted recall petition actually consisted of 1,705 sheets containing 18,076 signatures.

5 12. After performing the steps set forth in A.R.S. § 19-208.01, the Secretary of
6 State determined the number of signatures submitted on recall petition RC-04-2011 that
7 were eligible for verification and transmitted those 16,934 signatures to the Maricopa
8 County Recorder.

9 13. On July 7, 2011, the Maricopa County Recorder certified that 6,569 signers
10 were found not to be qualified electors or the signatures were disqualified for other
11 reasons pursuant to A.R.S. §§ 19-121.02(A) and 19-208.02. The Maricopa County
12 Recorder then transmitted the certification to the Secretary of State on or about July 8,
13 2011.

14 14. On July 8, 2011, the Secretary of State determined that—despite a failure
15 rate of 38.79%—the total number of valid signatures remaining was 10,365, which
16 number was in excess of the minimum of 7,756 signatures currently required to recall a
17 Legislative District 18 State Senator.

18 15. On information and belief, the Secretary of State officially filed recall
19 petition RC-04-2011 on July 8, 2011, pursuant to A.R.S. § 19-208.03(A)(1).

20 16. On July 8, 2011, the Secretary of State notified the Governor that RC-04-
21 2011 met the signature requirements for placement of the recall on the ballot at the next
22 consolidated election date, pursuant to A.R.S. § 16-204, that is ninety days or more after
23 the order calling the recall election.

24 17. On July 12, 2011, Governor Brewer issued an order calling the special recall
25 election for RC-04-2011 to be held on November 8, 2011.

26

1 25. Pursuant to Ariz. Const. art. 8, Pt. 1, § 2, the circulator of each recall
2 petition signature sheet “must make and subscribe an oath on said sheet, that the
3 signatures thereon are genuine.”

4 26. In contrast, Ariz. Const. art. 4, Pt. 1, § 1(9) requires that the affidavit of the
5 circulator of an initiative or referendum petition sheet shall “set[] forth that each of the
6 names on said sheet was signed in the presence of the affiant.” This requirement is
7 repeated in A.R.S. § 19-112(D), which sets forth the form of the affidavit for circulators
8 of initiative and referendum petitions and requires, in pertinent part, that each circulator
9 state “that each individual signed this sheet of the foregoing petition in my presence on
10 the date indicated and I believe that each signer's name and residence address or post
11 office address are correctly stated and that each signer is a qualified elector of the state of
12 Arizona (or in the case of a city, town or county measure, of the city, town or county
13 affected by the measure proposed to be initiated or referred to the people).”

14 27. A.R.S. § 19-205(B) provides that “[t]he person before whom the signatures
15 were written on the signature sheet shall in an affidavit subscribed and sworn to by him
16 before a notary public verify that each of the names on the sheet was signed in his
17 presence on the date indicated, and that in his belief each signer was a qualified elector of
18 the election district on the date indicated in which such recall election will be conducted.”

19 28. A.R.S. § 19-205(C) further requires that a recall petition circulator’s
20 “affidavit shall be in the form prescribed for initiative and referendum” and “shall also
21 require a statement by the circulator that the circulator believes that . . . all signers thereof
22 are qualified to vote in the recall election.”

23 29. In the affidavit on each sheet of recall petition RC-04-2011, the circulator
24 states “that each individual signed this sheet of the foregoing petition in my presence on
25 the date indicated, and I believe that each signer’s name and residence address are
26 correctly stated and that each signer is a qualified elector of the state of Arizona (or in the

1 case of a city, town or county measure, of the city town or county affected by the recall)
2 and that . . . all signers of this petition are qualified to vote in the recall election.”

3 30. The circulator’s affidavit on each of the RC-04-2011 recall petition
4 signature sheets fails to comply with the Ariz. Const. art. 8, Pt. 1, § 2 mandate that the
5 circulator “make and subscribe an oath on said sheet, that the signatures thereon *are*
6 *genuine*.”

7 31. To the extent the RC-04-2011 recall petition employs the form of affidavit
8 used for initiative and referendum petition circulators—which fails to state that the
9 signatures on the petition sheet are genuine—it violates the Arizona Constitution’s
10 requirements for recall.

11 32. Recall petition RC-04-2011 is not legally sufficient on the grounds that it
12 fails to comply with the Arizona Constitution’s requirements for recall.

13 33. All recall petition sheets, and all signatures thereon, supported by an invalid
14 affidavit of circulator are also invalid and must be disqualified.

15 34. Recall petition RC-04-2011 cannot continue to be certified for the ballot and
16 no special recall election can be held because the recall petition’s affidavit of circulator
17 fails to comply with or violates the constitutional requirements for recall.

18 **Count Two**

19 (Circulator Affidavit; Statutory Violation)

20 35. Paragraphs 1 through 34 are incorporated as though fully set forth herein.

21 36. The circulator’s affidavit on each of the RC-04-2011 recall petition
22 signature sheets fails to comply with the A.R.S. § 19-205(B) requirement that “[t]he
23 person before whom the signatures were written on the signature sheet shall in an affidavit
24 subscribed and sworn to by him before a notary public verify that . . . in his belief each
25 signer was a qualified elector *of the election district* on the date indicated in which such
26 recall election will be conducted.” (Emphasis added.)

1 *publicly withdraw our support for Russell Pearce and what he*
2 *represents.*

3 (Emphasis added.)

4 44. Although there are no restrictions on what may constitute proper grounds
5 for recall, Ariz. Const. art. 8, Pt. 1, § 2 and A.R.S. § 19-203 limit the statement to no more
6 than two hundred words setting forth grounds for demanding the officer's recall.

7 45. The last sentence of the RC-04-2011 statement did not state any grounds for
8 recall. Rather, it purported to advise prospective signers that, by signing the petition, they
9 would simply be publicly withdrawing their support from Senator Pearce.

10 46. Although the RC-04-2011 recall petition stated that it was making a demand
11 for recall, each recall petition signature sheet neither explained, nor was required to
12 explain, that a successful recall petition would result in an election. But without this
13 information it is misleading for any statement on a recall petition to suggest that signing
14 the petition will result in something other than an election. In this case, the last sentence
15 of the statement falsely suggests that signing the petition will simply serve as a means of
16 publicly withdrawing support from Senator Pearce.

17 47. Because the RC-04-2011 statement of the grounds of the demand for recall
18 includes this unauthorized sentence that could only have misled prospective signers as to
19 the effect of signing the petition, the statement created a sufficient degree of fraud,
20 confusion and unfairness that each petition sheet on which it rests must be invalidated.

21 48. Each petition sheet containing this defective statement of the grounds of the
22 demand for recall, and all signatures thereon, must be disqualified from RC-04-2011 for
23 failure to comply with the requirements of Ariz. Const. art. 8, Pt. 1, § 2 and A.R.S. § 19-
24 203.

1 has no street address, a description of his residence location, and the date on which he
2 signed the petition.”

3 56. During the signature verification process, the County Recorder disqualified
4 signatures for which it was determined that someone other than the elector printed the
5 elector’s first and last name but did not disqualify signatures even if it was determined
6 that the elector did not write in his residence address or the date on which he signed the
7 petition.

8 57. If an elector’s residence address or the date on which he signed the petition
9 is placed on the petition by someone else in violation of A.R.S. § 19-205(A), the signature
10 must be disqualified.

11 58. On information and belief based on handwriting comparisons, where the
12 residence address or date information for certain signatures was not, in fact, written by the
13 petition signer, each such signature must be disqualified from RC-04-2011.

14 **Count Six**

15 (Information Not Provided By Signer; False Circulator Affidavits)

16 59. Paragraphs 1 through 58 are incorporated as though fully set forth herein.

17 60. If an elector’s residence address or the date on which he signed the petition
18 is placed on the petition by someone else in violation of A.R.S. § 19-205(A), the
19 circulator has no basis for stating his belief that “each signer’s name and residence address
20 are correctly stated” in the circulator’s affidavit. When an affidavit of the circulator is
21 false, that entire sheet and all signatures thereon must be stricken.

22 61. On information and belief based on handwriting comparisons, where the
23 residence address or date information for certain signatures was not, in fact, written by the
24 petition signer, each RC-04-2011 petition sheet containing such signatures must be
25 disqualified in its entirety.
26

Count Seven

(Signers Not Registered in District 18; Invalid Signatures)

62. Paragraphs 1 through 61 are incorporated as though fully set forth herein.

63. The only individuals eligible to sign recall petition RC-04-2011 are those who are qualified electors of Legislative District 18.

64. During the signature verification process, pursuant to A.R.S. §§ 19-121.02(A)(5) and 19-208.02(A), the County Recorder was required to disqualify the signatures of those individuals who were not qualified electors of Legislative District 18 on the date of signing the petition.

65. On information and belief, the County Recorder did not disqualify the signatures of those signers registered at an address outside of Legislative District 18 if the address provided on the petition sheet was within Legislative District 18.

66. A voter who has moved to a new address within Maricopa County and has not notified already notified the County Recorder of the change of address, may not exercise his rights as an elector of his new precinct without presenting a form of identification that includes the voter's given name and surname and the voter's complete residence address within the new precinct.

67. Persons who are registered to vote at a residence address that is outside of Legislative District 18 did not become qualified electors of District 18 simply by placing a Legislative District 18 residence address on recall petition RC-04-2011.

68. On information and belief, there are 731 individuals who signed the recall petition using an address within Legislative District 18 and whose signatures were validated by the County Recorder despite the fact that the registration addresses for each of these voters is outside of Legislative District 18. All such signatures must be disqualified from RC-04-2011.

1 requirements for recall petitions, including the requirements for the affidavit of circulator
2 and the statement of the grounds for demanding recall;

3 D. That, after a hearing, this Court issue a declaration that recall petition RC-
4 04-2011 lacks the minimum number of signatures necessary to qualify for placement of
5 the recall on any election ballot;

6 E. That, after a hearing, the Secretary of State, County Boards of Supervisors
7 and their agents be preliminarily and permanently enjoined from continuing to recognize
8 the validity of RC-04-2011; from conducting the November 8, 2011 special recall election
9 for the office of Arizona State Senator for Legislative District 18; and from printing the
10 early, regular and sample ballots for the November 8, 2011 special recall election;

11 F. An order awarding Petitioner's attorneys' fees incurred in this action under
12 the private attorney general doctrine as established in *Arnold v. Ariz. Dep't of Health*
13 *Servs.*, 160 Ariz. 593, 775 P.2d 521 (1989);

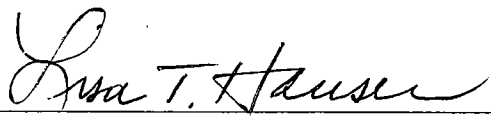
14 G. An order awarding Petitioner's costs;

15 H. That the Court issue its findings of fact and conclusions of law pursuant to
16 Rule 52(a), Ariz. R. Civ. Pr.; and

17 I. An order awarding Petitioner such other and further relief as may be
18 appropriate.

19 DATED this 18th day of July, 2011.

20 GAMMAGE & BURNHAM P.L.C.

21
22 By 
23 Lisa T. Hauser
24 Two North Central Avenue, 15th Floor
25 Phoenix, Arizona 85004
26 Attorneys for Petitioner

