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7 IN THE SUPERIOR COURT OF ARIZONA

8 IN AND FOR THE COUNTY OF MARICOPA

9 THOMAS J. GUSICH, an individual,

10 Plaintiff,

11 vs.

12  
13 SUN CITY GRAND COMMUNITY  
ASSOCIATION, INC., an Arizona  
14 corporation,

15 Defendant.

Case No. CV2025-002634

**PLAINTIFF'S BENCH BRIEF**

(Assigned to the Hon. Jennifer Ryan-Touhill)

16  
17 Under Arizona law, to hold a recall election of Tom Gusich, the Board needed  
18 to “receive” a “petition” that is “signed” by at least 982 nonduplicate homeowners.<sup>1</sup>  
19 A.R.S. § 33-1813(A)(4)(b). With respect to the recall of Tom Gusich, the Association  
20 claims emails purportedly received by an anonymous email account it did not own or  
21 maintain, [recalltomgusich@gmail.com](mailto:recalltomgusich@gmail.com), should be included as “signatures” on a  
22 “petition.” Although the Association produced 1,153 emails relating to the “petition,”  
23 hundreds are duplicates, follow-ups with the same owner, or simply do not manifest  
24 a clear intent of their purpose and, in many cases, who was even sending it. Arizona

25  
26 <sup>1</sup> The votes in the Association are assigned as one vote to each residential home.  
Thus, a couple co-owning a home could cast only a single vote.

1 law does not recognize such emails as signatures. Whether or not someone signed a  
2 petition or not should not be left to conjecture, assumption, or discretion to decide.  
3 The evidence shows only one petition, bearing 350 non-unique owner signatures,  
4 which on its face was insufficient to trigger a recall election.

5 **A. The Statute Requires a “Petition” and “Signatures.”**

6 A.R.S. §§ 33-1813(A)(4)(a) & (b) require the Board to schedule a recall election  
7 of a board member upon receipt of a “petition” that is “signed” by one thousand or  
8 ten percent of the membership. In this case, the recall petition had to include 982  
9 signatures. The Court will only hear evidence of a petition consisting of 350  
10 signatures.

11 When interpreting statutes, courts “make effort to give effect to the intent of  
12 the legislature.” *Mejak v. Granville*, 212 Ariz. 555, 557 ¶8 (2006). “The best indicator  
13 of that intent is the statutory language. When the language of the statute is clear  
14 and unambiguous, this Court need go no further to ascertain the legislative intent.”  
15 *Id.* When construing the legislative intent of a statute, a court will look to the plain  
16 meaning of the words the legislature chose to adopt. *S. Ariz. Home Builders Ass’n v.*  
17 *Town of Marana*, 522 P.3d 671, 676 ¶31 (2023); *Canon Sch. Dist. No. 50 v. W.E.S.*  
18 *Constr. Co.*, 177 Ariz. 526, 529 (1994) (“where the language is plain and  
19 unambiguous, courts generally must follow the text as written”). Courts presume the  
20 Legislature chose its words deliberately. *Palmcroft Dev. Co. v. City of Phoenix*, 46  
21 Ariz. 200, 211 (1935) (“If the language used by [the Legislature] is plain and  
22 unambiguous and leads to no absurd result, the courts are not justified in  
23 substituting their opinion of what was intended for the intent of the Legislature so  
24 expressed.”).

25 “Petition” is not defined in the statute, but the use and context suggest it is a  
26 single document (“a petition”) and not what the Board members, who are actively in

1 favor of a recall, or its agents want to cobble together. “Absent a statutory definition,  
2 courts generally give words their ordinary meaning and may look to dictionary  
3 definitions.” *In re Drummond*, 257 Ariz. 15, 19 ¶7 (2024). The dictionary defines  
4 “petition” as “a written request or call for change signed by many people in support  
5 of a shared cause or concern.” “*Petition*”, Merriam-Webster 1(b).<sup>2</sup> Thus, it refers to  
6 an actual document, or instrument, not an amalgamation of emails. While a petition  
7 may be virtual, and there are multiple online platforms for doing so, there still must  
8 be some objective criteria where it should not be up for debate whether the sender  
9 (i) is who they say they are and (ii) conveys a clear, specific intent to sign the record.

10 Statutes also must be construed consistent with their purpose. A.R.S. § 33-  
11 1813 is a statute intended to allow homeowners to remove board members. Allowing  
12 board members, who are advocating for the recall, or their preferred agent make the  
13 decision which emails constitute “signatures” and which do not, based on subjective  
14 interpretations and criteria, is inconsistent with the intent of the statute.

15 **B. Emails Do Not Constitute “Signatures” to a “Petition.” It Cannot be**  
16 **Left to the Discretion of Those Favoring Recall to Decide Which**  
**Emails Count and Why.**

17 Arizona’s electronic signature statutes require a “record adopted or executed  
18 with the intent to sign the record.” In this matter, that “record” necessarily must be  
19 a recall petition. For an email to qualify as an electronic signature, the “surrounding  
20 circumstances” must be examined to demonstrate the sender “executed or adopted []  
21 with the intent to sign the record.” A.R.S. §§ 44-7002(8); -7009(B).

22 Arizona law is clear on the limitations of electronic signatures. Although not  
23 directly applicable to quasi-governmental entities, like homeowners’ associations,  
24 A.R.S. § 18-106 addresses the use of electronic and digital signatures by “all state  
25

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26 <sup>2</sup> <https://www.merriam-webster.com/dictionary/petition>.

1 agencies, boards and commissions for documents filed with and by all state agencies,  
2 boards and commissions.” The statute provides:

3 B. An electronic signature that complies with this section may be  
4 used to sign a writing on a document that is filed with or by a state  
5 agency, board or commission, and the electronic signature has the  
6 same force and effect as a written signature.

7 C. An electronic signature shall be unique to the person using it, shall  
8 be capable of reliable verification and shall be linked to a record in  
9 a manner so that if the record is changed the electronic signature  
10 is invalidated.

11 *Id.* A.R.S. § 18-106(F)(3) defines “electronic signature” as “an electronic or digital  
12 method of identification that complies with the requirements of this section and that  
13 is executed or adopted by a person with the intent to be bound by or to authenticate  
14 a record.”

15 The statutes addressing the emerging issue of electronic signatures confirm  
16 what should be obvious: whether one was signing a document or not is not something  
17 that should be subject to differing interpretations of what the sender was thinking  
18 or trying to convey when clicking a link. When someone signs an actual petition, the  
19 purpose and intent of that is clear. The evidence will show not everyone who clicked  
20 the [recalltomgusich@gmail.com](mailto:recalltomgusich@gmail.com) email link or sent an email manifested an intent to  
21 ask for a recall election for Gusich. Without a clear expression of intent in the email  
22 to sign a virtual recall, it is improper to say every email received was in favor of  
23 scheduling a recall. *See Haywood Securities, Inc. Ehrlich*, 214 Ariz. 114, 116 ¶8 (a  
24 signature is sufficient to authenticate a document, whether “by writing, printing,  
25 lithographing, or other such mode, *provided the same is done with the intention of*  
26 *signing*”) (quoting *Bishop v. Norell*, 88 Ariz. 148, 151 (1960)); *Parma Tile Mosaic &*  
*Marble Co. v. Estate of Fred*, 663 N.E.2d 633, 635 (NY Ct. App. 1996) (a simple  
imprint of a sender’s name was insufficient as a signature, for it failed to  
demonstrate an intent to sign a specific writing). There was, in other words, no

1 “intent to be bound” or “intent to sign.” *Accord* A.R.S. §§ 18-106(F)(3), 7009(B).

2 Many of the solicitations for the emails are unclear as to what was even being  
3 asked of an owner sending an email to [recalltomgusich@gmail.com](mailto:recalltomgusich@gmail.com). Many required  
4 follow-up emails asking for addresses, but in only a handful of those follow-up emails  
5 did the anonymous person behind [recalltomgusich@gmail.com](mailto:recalltomgusich@gmail.com) ask the sender to  
6 confirm intent. Hundreds of emails that it is anticipated the Association will hold up  
7 as signatures to a petition are vague and do not expressly manifest an intent to sign  
8 a petition to ask for the recall election of Gusich. Intent requires circumstances that  
9 evidence an intent to sign a specific record for a particular purpose. Here, the email  
10 address used was posted in numerous publications, and witnesses will inform the  
11 court that they sent emails without intending to sign but received an automated  
12 response claiming their signature.

13 There are hundreds of emails to the [recalltomgusich@gmail.com](mailto:recalltomgusich@gmail.com) address. But  
14 this Court will hear that the email address was not restricted to a publication  
15 advising people that sending an email constituted a signature to petition for a recall  
16 election. Rather, where that email address was published, and with what message  
17 or instructions (or not), remains a mystery. The record demonstrates that the email  
18 address was included in social media posts, now gone, and people solicited others to  
19 spread the email address. An electronic signature requires circumstances  
20 demonstrating that the electronic mark represented an intent to sign. *See, e.g.,*  
21 *Cunningham v. Zurich Am. Ins. Co.*, 352 S.W.3d 519, 530 (Tex. App. 2011) (“We  
22 decline to hold that the mere sending of an e-mail containing a signature block  
23 satisfies the signature requirement when no evidence suggests that the information  
24 was type purposefully rather than generated automatically, that [the sender]  
25 intended the typing of her name to be her signature, or that the parties had  
26 previously agreed that this action would constitute a signature.”); A.R.S. §§ 44-

1 7002(8); -7009(B). What prompted many of these emails is a mystery. Compare that  
2 with the paper petition, which expressly informs the signers that they are advocating  
3 for a recall election by signing their names.

4 Thus, the emails to that address cannot be examined for the circumstances of  
5 why the specific sender sent the email. Did they do so in response to a social media  
6 post? Did that post warn that sending an email was treated as a signature to a  
7 petition for a recall election? Did the sender do so in response to another email? Did  
8 that publication state that emailing was the equivalent of signing a petition? Did the  
9 sender send an email out of curiosity? Several were expecting to receive information?  
10 No one can identify the source that generated the email sender to send an email, or  
11 the intent behind hundreds of those emails, as only some stated an intent to sign a  
12 petition for recall. The statute requires examination of the circumstances to find an  
13 intent to sign a record. Here, the circumstances are and will forever remain  
14 unknown. No email simply sent to an address under such circumstances can qualify  
15 as an electronic signature to an unattached record.

16 The emails the Association produced implicate the credibility of the signature  
17 count suggested by Defendant. Numerous omit CAM numbers, the mechanism  
18 through which the Association allegedly verifies them. Several were sent from  
19 generic email addresses such as [no-reply@accounts.google.com](mailto:no-reply@accounts.google.com). Hundreds are emails  
20 from the same sender. Senders omitted addresses, and some all identifying  
21 information altogether, and they include emails sent on behalf of friends or relatives.  
22 These are not emails manifesting a specific intent to sign a petition for a recall  
23 election.

24 It should not be a mystery who the Association claims signed a Petition that  
25 would authorize a recall vote for Gusich. That is the purpose behind the statutory  
26 requirement of a petition signed by the requisite number of homeowners. What is

1 not a mystery is a petition signed by 350 non-unique individuals is far less than 982,  
2 the requisite number to trigger a recall election and the Association does not get to  
3 cull from various emails solicited through unknown means, and with unknown  
4 instructions, to add to that number.

5 **C. An Invalid Petition Taints the Recall.**

6 It is anticipated the Association will point to the outcome of the recall election  
7 as somehow mooted the petition. However, Arizona law states that the *only* way for  
8 the Board to notice the recall election is first to receive a petition signed by the  
9 requisite number of owners. If the Board was allowed to dispense with this threshold  
10 requirement, Board members could theoretically receive a petition signed by a single  
11 owner. So long as more owners voted to recall than retain, the recall could never be  
12 challenged. Such reasoning would render the statutory petition requirement  
13 meaningless. Due process and fundamental fairness, and Arizona law dictate  
14 otherwise.

15 DATED this 16th day of May 2025.

16 DESSAULES LAW GROUP

17  
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1 COURTESY COPY of the foregoing emailed  
2 this 16<sup>th</sup> day of May 20225 to:

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6 COPY of the foregoing document eserved and  
7 emailed this 16th day of May 2025 to:

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15 /s/ Hilary Narveson  
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