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Attorney for Plaintiff

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

SAM F. ALMY, an individual and
qualified elector,

Plaintiff,

vs.

PAT DARCY, Real Party in
Interest; ROGER RANDOLPH
in his official capacity as Clerk
of the City of Tucson; City of Tucson,
a municipal corporation; F. ANN
RODRIGUEZ, in her official capacity
as Pima County Recorder,

Defendants.

No: C 20114391

**VERIFIED STATUTORY ACTION
FOR INJUNCTION**

COMPLAINT

(Election Challenge)

Preference: A.R.S. §16-351(A)

(Assigned to: Unassigned)

Plaintiff hereby alleges as follows:

1. The Superior Court of the State of Arizona in and for the County of Pima has original jurisdiction of this matter pursuant to A.R.S. Section 16-351, *et seq.*; A.R.S. Section 16-311 and the Arizona Constitution, Article 6, Section 14.
2. The Plaintiff, SAM F. ALMY, is a duly qualified elector who resides within the City of Tucson.
3. The Defendants Roger Randolph, the Clerk of the City of Tucson, and F. Ann Rodriguez, Pima County Recorder, are named solely in their official capacities and who, in such official capacities, have the statutory and administrative duties for

determining those legally qualified candidates to be placed upon the official election ballot.

4. The individual Defendant and Real Party in Interest Pat Darcy is a resident of Pima County and the City of Tucson, who has filed nominating petitions as a nomination other than primary candidate for election to the position of Mayor of the City of Tucson in the November 8, 2011, general election.

5. A.R.S. §16-341(E) sets forth the number of petition signatures required of a person submitting nomination petitions who is not a registered member of a political party as “three percent of the persons who are registered to vote of the . . . subdivision or district for which the candidate was nominated who are not members of a political party that is qualified to be represented on an official party ballot at the next ensuing primary election and accorded representation on the general election ballot.”

6. A.R.S. § 16-321(B) states that “for the purposes of petitions filed pursuant to §§16-312, 16-313, 16-341, each signer of a nomination petition shall be a voter who, at the time of signing, is a registered voter in the electoral district of the office the candidate is seeking.

7. In the case of a person seeking to run for Mayor “who is not a registered member of a political party,” A.R.S. § 16-341(C) provides that “the Petition shall be signed only by voters who have not signed the nomination petitions of a candidate for the office to be voted for at that primary election.”¹

8. The Tucson City Clerk has determined that the minimum number of signatures required for “nomination other than by primary signature requirements” for Mayor of the City of Tucson is 2,596 valid signatures. *See exhibit 1.*

9. Individual Defendant and Real Party in Interest Pat Darcy filed a

¹ In addition, A.R.S. § 16-321(C) states that: “if an elector signs more nomination petitions than permitted by subsection (A) of this section, the earlier signatures of the elector are deemed valid, as determined by the date of signature as shown on the petitions. If the signatures by the elector are dated on the same day, all signatures by that elector on that same day are deemed invalid. Any signature by the elector on a nomination petition on or after the date of the last otherwise valid signature is deemed invalid and shall not be counted .

1 Statement of Organization as a Candidate on May 13, 2011, and on June 1, 2011, filed
2 Petitions containing 3,104 signatures for the office of Mayor of City of Tucson. See
3 *Exhibit 2*.

4 10. This action is to challenge the validity of some of the petitions and
5 nominating signatures filed by Defendant Pat Darcy. Those nomination petitions are
6 attached hereto as Exhibit 3 to this Complaint.

7 11. Pursuant to A.R.S. § 16-351(A), Exhibits 4 and 5 attached hereto
8 contain a listing of the petition page number, line number and basis for the challenge to
9 each signature being individually challenged. It is incorporated by reference.

10 12. In summary, Plaintiff challenges Petition signatures on the lines and pages
11 set forth in Exhibits 4 and 5 for the following reasons:

- 12 A. Two hundred and thirty three (233) signatures are of persons who do
13 not live in the City of Tucson and are not registered in the City of
14 Tucson, *A.R.S. §16-321(B)*;
 - 15 B. Two hundred and seventy nine (279) additional signatures are
16 people who are not registered in the City of Tucson, even if the
17 address appears to be within the City of Tucson, *A.R.S. §16-321(B)*;
 - 18 C. Two hundred and fifty three (253) signatures represent persons
19 whose listed address on the petitions is not the address at which
20 they are registered to vote. It is unclear whether these voters are
21 indeed registered to vote within the City of Tucson and are eligible
22 electors to sign petitions within the City of Tucson, *A.R.S. §16-*
23 *351(E)*
 - 24 D. One hundred and forty five (145) signatures are persons who have
25 previously signed the petition of another mayoral candidate, *A.R.S.*
26 *§16-321(C) and 341(C)*; see also *Exhibits 6 -9*; and,
 - 27 E. One signature contains an invalid date.
- 28

1 13. Defendant Roger Randolph, Clerk of the City of Tucson, in his
2 capacity as City Clerk, is responsible for accepting the nominating petitions of the
3 Candidates, or is responsible for the printing of the official ballot containing the challenged
4 Candidate's name, or the agent to receive service of process for this action.

5 14. Defendant Pat Darcy has failed to file the required number of
6 valid nominating signatures to seek the office of Mayor of the City of Tucson. As a result,
7 Defendant Pat Darcy is not qualified to be a candidate for that office, and he is not
8 qualified to be placed on the official ballot for that office.

9 15. Unless this Court issues a preliminary injunction and sets a time
10 for a hearing to issue an injunction to permanently enjoin Defendants, their attorneys,
11 officers, agents, servants, employees, and any and all persons in concert or participation
12 with them from printing or placing Defendant Pat Darcy's name on any of the official
13 voting ballots for the elected office of Mayor of City of Tucson, immediate and irreparable
14 injury, loss and damage will result since Pat Darcy is not qualified to be a candidate for
15 that office.

16 16. Plaintiff has no adequate remedy at law unless this injunction is
17 immediately issued.

18 17. A preliminary injunction should issue and/or immediate trial should be held.

19 WHEREFORE, Plaintiff requests the Court to issue the following relief:

20 A. Issuance of an order declaring that Defendant Pat Darcy
21 has failed to qualify as a candidate for the office of Mayor of the City of
22 Tucson by failing to file the required number of nominating signatures and
23 therefore ordering his name to be stricken from the official voting ballot for
24 Mayor of the City of Tucson.

25 B. To issue a preliminary injunction order preventing Defendant Roger
26 Randolph, Clerk of the City of Tucson, from printing the official ballot
27 containing the name of Pat Darcy for the office of Mayor of the City of
28 Tucson.

1 C. To issue a permanent injunction, after hearing, permanently
2 preventing Defendant Roger Randolph, Clerk of the City of Tucson, from
3 printing the official ballot for the November 8, 2011, general election
4 containing the name of Pat Darcy for the office of Mayor of the City of
5 Tucson.

6 DATED this 15th day of June, 2011.

7 WILLIAM G. WALKER, P.C.

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William G. Walker
Attorney for Plaintiff
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VERIFICATION

STATE OF ARIZONA }
COUNTY OF PIMA } ss.

SAM ALMY, being first duly sworn upon his oath, states as follows:

He is the Plaintiff in the above-captioned matter and has read the foregoing Verified Statutory Action for Injunction Complaint; he knows the contents thereof and they are true to the best of his knowledge, except for those matters alleged upon information and belief, and as for those he believes they are true also.

Further affiant sayeth naught.

SAM ALMY

SUBSCRIBED AND SWORN to before me this _____ day of June, 2011,
by SAM ALMY.

Notary Public

My Commission Expires:
July 22, 2014