James E. Barton II (#023888) 1 Jacqueline Mendez Soto (#022597) 2 Torres Law Group, PLLC 239 West Baseline Road 3 Tempe, Arizona 85283 4 (480) 588-6120 James@TheTorresFirm.com 5 Jacqueline@TheTorresFirm.com 6 Attorneys for Plaintiffs 7 8 ARIZONA SUPERIOR COURT MARICOPA COUNTY 9 10 11 CHARLENE R. FERNANDEZ, Minority Leader Case No.: CV 2020-095696 of the Arizona House of Representatives, in her 12 official capacity; and DAVID T. BRADLEY, 13 FIRST AMENDED VERIFIED Minority Leader of the Arizona Senate, in his COMPLAINT FOR SPECIAL official capacity, 14 **ACTION** 15 Plaintiffs, 16 v. 17 APPELLATE COMMISSION ON **COURT** 18 APPOINTMENTS, 19 Defendant. 20 21 22 INTRODUCTION 23 Charlene R. Fernandez, Minority Leader of the Arizona House of Representatives, 24 and David T. Bradley, Minority Leader of the Arizona Senate (collectively "Plaintiffs"), 25 26 hereby file this First Amended Special Action Complaint for violations of Article IV, Part 27 2, Section 1 of the Arizona Constitution related to the Commission on Appellate Court

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27 28 to the Arizona Independent Redistricting Commission ("AIRC"). The Commission on Appellate Court Appointments ("CACA") is named as defendant for its failure to execute its duty to nominate qualified persons to the pool of qualified candidates.

Appointments' obligation to establish a pool of persons who are qualified for appointment

#### THE PARTIES

- 1. Plaintiff Charlene R. Fernandez is the representative of Arizona District 4 and the Minority Leader of the Arizona House of Representatives. As Minority Leader, she has the right to appoint one nominee to the AIRC from the pool of qualified candidates that is to be established by Defendants.
- 2. Plaintiff David T. Bradley is the senator of Arizona District 10 and Minority Leader of the Arizona Senate. As Minority Leader, he has the right to appoint one nominee to the AIRC from the pool of qualified candidates that is to be established by Defendants.
- 3. The CACA is a judicial nominating commission under Section 36 of Article VI of the Arizona Constitution. The CACA is also responsible for nominating candidates for appointment to the AIRC. *Id.* at art. IV, pt. 2, § 1.

# JURISDICTIONAL STATEMENT

4. This Court has jurisdiction under Section 14 of Article VI of the Arizona Constitution and under A.R.S. § 12-123. This Court has jurisdiction over mandamus actions pursuant to A.R.S. § 12-2021. Special action is appropriate in this matter because Defendants have failed to perform a duty they are required by law to perform without discretion. Ariz. R. Spec. Act. 3(a).

5. Venue is proper in the Court pursuant to A.R.S. 12-401.

### **STATEMENT OF FACTS**

#### **AIRC Application Background**

- 6. On April 3, 2020, the Supreme Court issued an order amending the rules entitled "Procedures for Nominations for the Independent Redistricting Commission."
- 7. The Commission's recruiting efforts were limited to, on July 13, 2020, issuing a press release seeking applicants to apply for the IRC. Website <a href="https://www.azcourts.gov/Portals/75/IRC/News%20and%20Meetings/NewsRelease-ApplicationsBeingAccepted.pdf?ver=2020-07-13-082921-707">https://www.azcourts.gov/Portals/75/IRC/News%20and%20Meetings/NewsRelease-ApplicationsBeingAccepted.pdf?ver=2020-07-13-082921-707</a> last accessed on 11/02/2020.
- 8. The staff for the CACA distributed an application form for individuals interested in serving on the AIRC. Applications were accepted until August 20, 2020. Comm. on App. Ct. Appts. Website <a href="https://www.azcourts.gov/jnc/IRC-Nominations/Application-Information">https://www.azcourts.gov/jnc/IRC-Nominations/Application-Information</a>, last accessed on 10/22/2020.
- 9. One-hundred thirty-eight individuals submitted applications to the CACA and the CACA's staff issued a news release soliciting public comment on the applicants on August 21, 2020. *State Seeks Comment on Applicants for Arizona's Independent Redistricting Commission*, (August 21, 2020) <a href="https://www.azcourts.gov/Portals/75/IRC/News%20and%20Meetings/NewsRelease-ApplicantsforRedistrictingCommission.pdf?ver=2020-08-21-114159-953">https://www.azcourts.gov/Portals/75/IRC/News%20and%20Meetings/NewsRelease-ApplicantsforRedistrictingCommission.pdf?ver=2020-08-21-114159-953</a>, last accessed on 10/22/2020.

- 10. Of the 138 applications received, 38 individuals were registered as Independent. *Id*.
- 11. On September 17, 2020, 11 Independent applicants were selected for interviews at a screening meeting. See <a href="https://www.azcourts.gov/Portals/75/IRC/Documents/NewsRelease-">https://www.azcourts.gov/Portals/75/IRC/Documents/NewsRelease-</a>

<u>CandidatesforRedistrictingCommission.pdf?ver=2020-09-29-122739-677</u>, last accessed on 10/22/2020.

#### **The Nomination Process**

- 12. The CACA nominates qualified individuals to a pool of qualified candidates which is presented to legislative leadership who in turn exercise a privilege to appoint candidates to the AIRC from the pool of qualified candidate.
- 13. "The pool of candidates shall consist of twenty-five nominees, with ten nominees from each of the two largest political parties in Arizona based on party registration, and five who are not registered with either of the two largest political parties in Arizona." *See* Ariz. Const. art. IV, Pt. 2 § 1.
- 14. The amended complaint concerns the nomination of two individuals who are not registered with either of the two largest political parties, in other words, the Independent-registered applicants.

## The Application of Thomas Loquvam

15. The constitution sets forth the criteria for qualifications of candidates to the AIRC. Ariz. Const. art IV, pt. 2,  $\S$  1,  $\P$  3.

- 16. A person is not qualified to serve on the AIRC if she or he served as a registered paid lobbyist within three years previous to the appointment. *Id*.
- 17. Mr. Thomas Loquvam ("Loquvam") is among 38 applicants who applied to serve on the AIRC as an Independent. *See* application of Thomas Loquvam, <a href="https://www.azcourts.gov/LinkClick.aspx?fileticket=My6qs9ypbto%3d&portalid=75">https://www.azcourts.gov/LinkClick.aspx?fileticket=My6qs9ypbto%3d&portalid=75</a>, last accessed on 10/22/2020.
- 18. In his application, Loquvam indicated that he is not a paid lobbyist because he is not "compensated for the primary purpose of lobbying on behalf of a principal."
- 19. However, Loquvam is indeed registered as an active lobbyist with the Arizona Corporations Commission, Lobbyist 163; Registration Date October 25, 2019. *See* <a href="https://efiling.azcc.gov/public-records/lobbyist/detail;id=4f00d132-19d0-42e8-b749-9d4bf2612d58;firstName=Thomas;lastName=Loquvam">https://efiling.azcc.gov/public-records/lobbyist/detail;id=4f00d132-19d0-42e8-b749-9d4bf2612d58;firstName=Thomas;lastName=Loquvam</a>, last accessed on 10/22/2020.
- 20. On information and belief, the Commission disqualified other candidates because they are a paid registered lobbyist in violation of the candidate qualifications. Ariz. Const. art IV, pt. 2, § 1.
- 21. Defendants nonetheless nominated him as a qualified candidate and advanced his nomination to legislative leadership for potential selection to the AIRC.

# The Application of Robert Wilson

22. Again, the pool of candidates must consist of 10 nominees from each of the two largest political parties in Arizona, in other words, 10 democratic nominees and 10 republican nominees. *See* Ariz. Const. art. IV, Pt. 2 § 1.

- 23. Mr. Robert Wilson ("Wilson") is also among the 38 applicants who applied to serve on the AIRC as an Independent. *See* application of Robert Wilson, <a href="https://www.azcourts.gov/LinkClick.aspx?fileticket=wwjfIlyrSLI%3d&portalid=75">https://www.azcourts.gov/LinkClick.aspx?fileticket=wwjfIlyrSLI%3d&portalid=75</a>, last accessed on 10/22/2020.
  - 24. In his application Wilson claims to be registered as an Independent voter.
- 25. Although, Wilson is and has been registered as an Independent since 2005, his voting history and political activities clearly show he is not an unbiased independent voter with no party affiliation.
- 26. On information and belief, Wilson has voted Republican in 2010, 2014, and again in 2018.
- 27. On information and belief, Wilson donated to the Republican Party for Senator John McCain on June 1, 2010 in the amount of \$500.
- 28. Wilson is a member and owner of Timberline Firearms, LLC. *See* <a href="https://ecorp.azcc.gov/BusinessSearch/BusinessInfo?entityNumber=L20658420">https://ecorp.azcc.gov/BusinessSearch/BusinessInfo?entityNumber=L20658420</a>, last accessed on 10/22/2020.
- 29. On information and belief, Mr. Wilson hosted a Meet and Greet event with Republican candidates Walt Blackman, who was elected to the Arizona House of Representatives and Jon Saline, the GOP candidate for the legislature in October, 2019.
- 30. On information and belief, Mr. Wilson has appeared as a guest several times on the Jeff Oravits show promoting conservative candidates and promoting the Trump administration on August 20, 2020, September 1, 2020 and again on September 24, 2020. *See* https://jefforavits.wordpress.com/.

- 31. On information and belief, the day before the 2018 election Mr. Wilson hosted a Meet and Greet event at Timberline Firearms with Governor Doug Ducey and Republican candidates Walt Blackman and Wendy Rogers, then a candidate for Congress.
- 32. On information and belief, on Thursday, August 20, 2020, Timberline Firearms and Mr. Wilson hosted a political rally for the Republican Presidential Candidate, Donald J. Trump.
- 33. On information and belief, Mr. Wilson hosted a "shooting day" event for the Trump campaign at Timberline Firearms on September 1, 2020.
- 34. On information and belief, the Commission disqualified other Independent candidates based on similar past political affiliation but with the Democratic party.

#### **FIRST CLAIM FOR RELIEF**

#### **Violations of Art. IV, Pt. 2, § 1 (Thomas Loquvam Nomination)**

- 35. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this amended complaint as if fully set forth herein.
- 36. The CACA must establish a pool of persons who are qualified for appointment to the AIRC by January 8, 2021. Ariz. const., art. IV, pt. 2, § 1, ¶ 5.
- 37. The CACA must nominate a total of 25 applicants to serve on the AIRC, consisting of 10 nominees from each of the two largest political parties in Arizona and five nominees who are not registered with either party (i.e. registered independents or minor political parties). Id.
- 38. A person who has served as a registered paid lobbyist within three years previous to appointment is not qualified for appointment. Id. at ¶ 3.

- 39. On October 8, 2020, the CACA issued its nominations, which included Loquvam as one of the five non-party registered nominees.
- 40. Loquvam served as a registered paid lobbyist within three years of his placement, thus he was an unqualified applicant.
- 41. The CACA violated the constitutional prohibition of nominating a person who has served as a registered paid lobbyist within three years prior to their appointment.
- 42. By the CACA's actions, Plaintiffs have been deprived of making a selection to the AIRC based on a complete list of qualified individuals.

#### SECOND CLAIM FOR RELIEF

#### Violations of Art. IV, Pt. 2, § 1 (Robert Wilson Nomination)

- 43. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this amended complaint as if fully set forth herein.
- 44. The CACA cannot advance more than 10 nominees from each of the two largest political parties (i.e. the democratic and republic parties), in addition to five nominees who are not registered with either party (i.e. a registered Independent voter or a voter from a minor political party). Id. at ¶ 5.
- 45. The CACA nominated Wilson as a person not registered with either party (i.e. a registered Independent).
- 46. Wilson's voter record and political activities establish that he is closely aligned with the republican party.

- 47. Thus, the CACA's nomination of Wilson as an Independent voter violates the spirit and the intent of Paragraph 5 of the constitutional nomination criteria.
- 48. By the CACA's actions, Plaintiffs have been deprived of making a selection to the AIRC based on a complete list of qualified individuals.

#### THIRD CLAIM FOR RELIEF

#### **Declaratory Judgment**

- 49. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this amended complaint as if fully set forth herein.
- 50. The CACA must establish a pool of persons who are qualified for appointment to the AIRC based on the criteria set forth above. Ariz. const., art. IV, pt. 2,  $\S 1, \P 5$ .
- 51. The CACA has failed to establish such a pool of qualified candidates by including in the nominee pool an individual, Loquvam, who served as a registered paid lobbyist for three years previous to his potential appointment.
- 52. The CACA has failed to establish such a pool of qualified candidates by nominating Wilson as an Independent, whose nomination violates the spirit and intent of the constitutional criteria for an independent redistricting committee, as his voter record and political activity establish him as a member of the republican party.
- 53. Plaintiffs are entitled to and request this court to declare this candidate pool unconstitutional.

# FOURTH CLAIM FOR RELIEF

#### Mandamus Pursuant to A.R.S. § 12-2021

- 54. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this amended complaint as if fully set forth herein.
- 55. The CACA has a duty to establish a pool of nominees who are qualified for appointment to the AIRC based on the criteria set forth above. Ariz. const., art. IV, pt. 2,  $\S 1, \P 5$ .
- 56. The CACA failed to execute its duty of establishing a pool of qualified persons.
- 57. As a result, Plaintiffs have been deprived of their right to select persons to serve on the AIRC based on a qualified list of nominees.
- 58. Because redistricting is a process that takes place just once every ten years and is mandated by the Arizona Constitution, this case presents a question of obvious statewide importance. *Brewer v. Burns*, 222 Ariz. 234, 237 (2009).
- 59. Plaintiffs have no plain, adequate, and speedy remedy at law to compel Defendants to comply with the constitutional requirements.
- 60. Plaintiffs are entitled to and request this Court to issue a Writ of Mandamus to require Defendants to reconvene and transmit a candidate pool of qualified candidates.

## FIFTH CLAIM FOR RELIEF

# **Injunction Pursuant to A.R.S. § 12-1801**

61. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this amended complaint as if fully set forth herein.

- 62. Plaintiffs are entitled to a qualified list of nominees to appoint to the AAIRC.
- 63. Plaintiffs have no plain, adequate and speedy remedy at law to compel Defendants to comply with their constitutional duties.
- 64. Plaintiffs are entitled to and request this Court to enjoin Defendants from nominating the two unqualified persons, Loquvam and Wilson, to the AIRC.

#### WHEREFORE, Plaintiffs pray for:

- A. A declaration that Defendants have violated the Arizona Constitution by their nomination of Loquvam and Wilson as qualified candidates to serve on the AIRC.
- B. A Writ of Mandamus ordering Defendant to withdraw the nominations of Loquvam and Wilson and submit nominations who are qualified to serve on the AIRC pursuant to constitutional criteria and submit a pool of 25 qualified applicants as required by the Arizona Constitution, at Article IV, pt. 2,  $\S$  1,  $\P$  5.
- C. A Declaration that the pool of applicants transmitted to the Legislature by the Defendant was unconstitutionally constituted and the nominations made from that pool are invalid as a result thereof. .
- D. An order awarding Plaintiffs' attorneys' fees incurred in this action under A.R.S. § 12-2030 and the Private Attorney General Doctrine as established in *Arnold v. Arizona Dep't of Health Servs.*, 160 Ariz. 593, 775 P. 2d 521 (1989).

1	E. An order awarding Plaintiffs' costs.
2	F. An order awarding any such other and further relief as the Court
3	deems just and proper.
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5	DONE this 20th day of November, 2020.
6	TORRES LAW GROUP, PLLC
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8	James E. Barton II
9	James E. Barton II Jacqueline Mendez Soto
10	Attorneys for Plaintiffs
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19	ORIGINAL E-filed with the Clerk of the Court this 20th day of November, 2020.
20	
21	COPY e-mailed on the same day to:
22	Judge Janice Crawford
23	Maricopa County Superior Court-Southeast Facility 222 East Javelina Avenue
24	Mesa, Arizona 85210 valenzuelav@superiorcourt.maricopa.gov
25	
<ul><li>26</li><li>27</li></ul>	Joseph A. Kanefield Brunn W. Roysden III
28	Michael S. Catlett Kate B. Sawyer

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