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8 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
9 IN AND FOR THE COUNTY OF YAVAPAI

10 The State of Arizona, by and through
Yavapai County Attorney, Sheila Polk,

Case No.

11 Plaintiff,

12 v.

COMPLAINT

13 Kirk Leopold, individually, and in his official
14 capacity, if any, as a member of the board of
directors of the Inscription Canyon Ranch
Sanitary District; Robert Hilb in his official
15 capacity as a member of the board of
directors of the Inscription Canyon Ranch
16 Sanitary District; and the Inscription Canyon
Ranch Sanitary District, a political
17 subdivision of the State of Arizona; JOHN
DOES 1-5; JANE DOES 1-5; ABC
18 CORPORATIONS 1-5; and XYZ
COMPANIES 1-5,

(Non-classified: Action in Quo Warranto)

19 Defendants.
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1 Bob Summers, in his official capacity as a
2 member of the board of directors of the
3 Inscription Canyon Ranch Sanitary District,

Real Party in Interest.

4 Plaintiff, State of Arizona, by and through the Yavapai County Attorney Sheila
5 Polk and her undersigned deputies, (“the State”), brings this action in *quo warranto* to
6 obtain relief against Kirk Leopold (“Leopold”), individually, and in his official capacity,
7 if any, as a member of the board of directors of the Inscription Canyon Ranch Sanitary
8 District (“ICRSD”); Robert “Bob” Hilb (“Hilb”), in his official capacity as a member of
9 the ICRSD Board of Directors (“ICRSD Board”); the ICRSD, a political subdivision of
10 the State of Arizona; JOHN DOES 1-5; JANE DOES 1-5; ABC CORPORATIONS 1-5;
11 and XYZ COMPANIES 1-5, and for its Complaint alleges as follows:

12 I. RELIEF SOUGHT AND INTRODUCTION

13 1. This Complaint relates to an action in *quo warranto* whereby Bob Summers
14 (“Summers”) has been unlawfully prevented and usurped from exercising his powers and
15 duties as a lawfully appointed board member of ICRSD. Additionally, Leopold has
16 unlawfully usurped, intruded into or held or exercised the position of board member of
17 the ICRSD as he was unlawfully appointed to the ICRSD Board.

18 2. In or about October of 2018, the membership of the ICRSD Board consisted
19 of David Barreira (“Barreira”), Alan Poskanzer (“Poskanzer”), and Bill Dickrell
20 (“Dickrell”).
21

1 3. On or about November 27, 2018, at a lawfully held public meeting, a
2 majority of the ICRSD Board took legal action to remove Poskanzer as a member of the
3 ICRSD Board and declared a vacancy on the ICRSD Board.

4 4. At no time since on or about November 27, 2018, has the ICRSD Board's
5 action declaring Poskanzer's seat vacant been reversed by any court or by operation of
6 any statute.

7 5. At no time since on or about November 27, 2018, has Poskanzer been
8 lawfully appointed to the ICRSD Board pursuant to A.R.S. § 48-2010(F).

9 6. The ICRSD Board has not lawfully reversed its own action to remove
10 Poskanzer from the ICRSD Board.

11 7. On or about December 21, 2018, at a lawfully held public meeting, a
12 majority of the ICRSD Board took legal action pursuant to A.R.S. § 48-2010(F) to
13 lawfully appoint Summers to fill the board seat vacated by Poskanzer.
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15 8. In or about December 2018 or January 2019, Dickrell was no longer a
16 member of the ICRSD Board, Hilb became a member of the ICRSD Board and
17 membership of the ICRSD Board consisted of Barreira, Hilb, and Summers.

18 9. On or about June 5, 2019, Barreira resigned and was no longer a member of
19 the ICRSD Board.

20 10. On or about June 7, 2019, Hilb and Poskanzer held a meeting that purported
21 to be an ICRSD Board meeting.

1 11. On or about June 7, 2019, Hilb and Poskanzer unlawfully appointed
2 Leopold to the ICRSD Board.

3 12. Since at least June 7, 2019, Hilb and Leopold purportedly acting as the
4 ICRSD Board have refused to allow Summers to exercise his powers and duties as a
5 lawfully appointed member of the ICRSD Board.

6 13. Therefore, pursuant to A.R.S. §§ 12-2041, et seq., the State of Arizona now
7 brings this action seeking restoration of Summers to his seat on the ICRSD Board and
8 removal of the unlawfully appointed Leopold from the ICRSD Board.

9
10 **II. JURISDICTION, VENUE AND PARTIES**

11 14. This Complaint is filed under A.R.S. §§ 12-2041 *et seq.*, which authorizes
12 the Yavapai County Attorney to bring this action in the name of the State.

13 15. Jurisdiction is proper under A.R.S. § 12-2042.

14 16. Venue in Yavapai County is proper for all claims.

15 17. Defendant Leopold resides in Yavapai County, Arizona.

16 18. Defendant Hilb resides in Yavapai County, Arizona.

17 19. Defendant ICRSD is a political subdivision of the State of Arizona located
18 in Yavapai County, Arizona.

19 20. Defendants John Does 1-5, Jane Does 1-5, ABC Corporations 1-5, and XYZ
20 Companies 1-5 are either residents of Arizona, or are entities that are now, or were at all
21 times relevant to this action, doing business in Arizona. The names of these Defendants

1 are fictitious as the true names are unknown to Plaintiff. Upon receipt of the proper name,
2 Plaintiff will request leave of the Court to amend this Complaint pursuant to Ariz. R. Civ.
3 P. 10(d).

4 **III. FACTUAL ALLEGATIONS**

5 21. The allegations set forth in the previous paragraphs are realleged and
6 incorporated by reference as though fully set forth herein.

7 22. The ICRSD is a political subdivision of the State of Arizona and is governed
8 by a three-person board of directors.

9 23. Pursuant to A.R.S. § 38-291(5), an office is deemed vacant from and after
10 the time a person holding the office ceases to be a resident of the district for which the
11 person was elected.

12 24. Pursuant to A.R.S. § 16-101(B), an individual has only one residence for
13 the purpose of voter registration.

14 25. In or about October 2018, Poskanzer physically moved to and changed his
15 voter registration to an address in Prescott Valley, Arizona, which was and is outside of
16 the boundaries of the ICRSD, and thereafter Poskanzer voted with an early ballot using
17 his new voter registration address in Prescott Valley.

18 26. On or about November 27, 2018, at a lawfully held public meeting, a
19 majority of the ICRSD Board took legal action to remove Poskanzer from the ICRSD
20 Board because Poskanzer's actions caused him to cease being a resident of the ICRSD.

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1 27. On or about November 27, 2018, at a lawfully held public meeting, the
2 ICRSD Board declared a vacancy in its membership.

3 28. On or about December 21, 2018, pursuant to A.R.S. § 48-2010(F), the
4 ICRSD Board appointed Summers to the position on the ICRSD Board vacated by
5 Poskanzer.

6 29. Between on or about December 21, 2018, and the date of this complaint, no
7 court order has been issued removing Summers from the ICRSD Board nor has any
8 statutory power been exercised to remove Summers from the ICRSD Board.

9 30. After the appointment of Summers on or about December 21, 2018, the
10 ICRSD Board members were Hilb, Barreira, and Summers.

11 31. As of the date of this Complaint, no lawsuit, quo warranto action,
12 referendum, or court order has been made by or on behalf of Poskanzer to overturn the
13 ICRSD Board's determination that Poskanzer vacated his ICRSD Board seat and no court
14 has issued any ruling affecting that determination.

15 32. On or about January 8, 2019, the Yavapai County Attorney's Office sent a
16 letter declining a request by the ICRSD's counsel to institute a quo warranto action
17 against Poskanzer because, in part, the ICRSD had already declared Poskanzer's seat
18 vacant on or about November 27, 2018.

19 33. On or about May 24, 2019, the Arizona Attorney General's Office issued
20 a letter declining a request by ICRSD's counsel to institute a quo warranto action against
21 Poskanzer on the basis that Poskanzer vacated his position.

1 34. Neither the Arizona Attorney General nor the Yavapai County Attorney has
2 the legal authority under the Quo Warranto statutes, A.R.S. §§ 12-2041 *et seq.*, to cause
3 a person to hold or to be removed as a public officer, including a member of ICRSD
4 Board, without obtaining a court order to do so.

5 35. As of the date of this Complaint, the Arizona Attorney General has not
6 initiated any court action related to Poskanzer's removal or claim of membership on the
7 ICRSD Board.

8 36. When the Arizona Attorney General declined to institute a quo warranto
9 court action in its letter on or about May 24, 2019, the membership of the ICRSD Board
10 consisted of Hilb, Barreira, and Summers.

11 37. As a matter of law, a letter from the Arizona Attorney General declining to
12 file a quo warranto action cannot change the membership of the ICRSD Board.

13 38. On or about June 5, 2019, Barreira resigned from the ICRSD Board.

14 39. On or about June 5, 2019, after Barreira's resignation, only Hilb and
15 Summers remained on the ICRSD Board.

16 40. On or about June 7, 2019:

17 a. No action had been taken by the ICRSD Board to repeal or rescind the
18 ICRSD Board's decision on or about November 27, 2018, removing
19 Poskanzer and declaring a vacancy on the ICRSD Board.

20 b. No action had been taken by the ICRSD Board to appoint Poskanzer to
21 a seat on the ICRSD Board.

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- c. Hilb and Poskanzer held a meeting purportedly on behalf of the ICRSD Board with Poskanzer acting as a “board member.”
- d. Hilb and Poskanzer held a meeting purportedly on behalf of the ICRSD Board and excluded Summers from the meeting.
- e. Hilb moved to “acknowledge the AG conclusions about Al Poskanzer’s status as a lawful member of the ICRSD Board at a duly noticed meeting.” (quote from “minutes” on the ICRSD website). This motion was seconded by Poskanzer and then Hilb and Poskanzer voted to approve the motion.
- f. Poskanzer, who had not lawfully been restored to the ICRSD Board by any court order or by operation of any statute, did not have the authority to vote as a member of the ICRSD Board.
- g. Poskanzer, a non-ICRSD Board member, voted to place himself back on the ICRSD Board.
- h. There was neither a quorum nor a sufficient number of legal ICRSD Board members to take any legal action at the meeting held by Hilb and Poskanzer.
- i. Hilb and Poskanzer “passed a motion” that “Bob Summers is an unlawful appointment and that he is not a member of the [ICRSD] Board.” (quote from “minutes” on the ICRSD website).

1 48. Summers was lawfully appointed to the ICRSD Board pursuant to A.R.S. §
2 48-2010(F) and has not been lawfully removed by any court action or by operation of
3 any statute.

4 49. Pursuant to A.R.S. §§ 12-2041, *et seq.*, the State is entitled to a judgment
5 declaring Summers is a lawful member of the ICRSD Board as of December 21, 2018.

6 **COUNT II - REMOVAL OF LEOPOLD FROM THE ICRSD BOARD**

7 50. The allegations set forth in the previous paragraphs are realleged and
8 incorporated by reference as though fully set forth herein.

9 51. On or about July 2, 2019, Leopold was unlawfully appointed by Hilb and
10 Poskanzer as a member of the ICRSD Board.

11 52. At the time of Leopold's purported appointment, Poskanzer was improperly
12 acting as a member of the ICRSD Board.

13 53. At the time of Leopold's appointment, Poskanzer was not a member of the
14 ICRSD Board because he had already been legally removed from the ICRSD Board on
15 or about November 27, 2018, an action which had not been overturned by court order or
16 by operation of any statute. Therefore, after on or about November 27, 2018, Poskanzer
17 inappropriately voted as a "member" of the ICRSD Board.

18 54. Because Poskanzer's removal from the ICRSD Board had not been lawfully
19 reversed or altered and because Poskanzer's purported reinstatement to the ICRSD Board
20 was done without a court order or by operation of any statute, Hilb was the only lawful
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1 ICRSD Board member present at the meeting held by Hilb and Poskanzer on or about
2 July 2, 2019, when there was an attempt to appoint Leopold to the ICRSD Board.

3 55. There was neither a quorum nor a sufficient number of legal ICRSD Board
4 members to take any legal action at the meeting held by Hilb and Poskanzer on or about
5 July 2, 2019.

6 56. Pursuant to A.R.S. §§ 12-2041, *et seq.*, the State is entitled to a judgment
7 declaring Leopold has usurped, intruded into or unlawfully held or exercised the office
8 of an ICRSD Board member.

9 **PRAYER FOR RELIEF**

10 WHEREFORE the State respectfully requests that the Court enter Judgment
11 against the Defendants as follows:

12 57. Order that Bob Summers is lawfully a member of the ICRSD Board as of
13 December 21, 2018.

14 58. Order that Kirk Leopold has usurped, intruded into or unlawfully held or
15 exercised the office of an ICRSD Board member.

16 59. Order such other and further relief as the Court deems just and proper.

17 RESPECTFULLY SUBMITTED this 19th day of September, 2019.

18 SHEILA POLK
19 YAVAPAI COUNTY ATTORNEY

20 By: /s/Thomas Stoxen
21 Thomas Stoxen
Chief Civil Deputy County Attorney