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2 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

3 **IN AND FOR THE COUNTY OF YAVAPAI**

4 CITY OF SEDONA, an Arizona municipal
5 corporation; THE MAYOR AND CITY
6 COUNCIL FOR THE CITY OF SEDONA;
7 and JOANNA COOK, City Clerk for the
City of Sedona,

8 **Plaintiffs,**

9 vs.

10 AUBREY SONDEREGGER, in her official
11 capacity as Coconino County Recorder;
12 COCONINO COUNTY BOARD OF
13 SUPERVISORS, in their official capacities;
14 MICHELLE BURCHILL, in her official
15 capacity as Yavapai County Recorder;
YAVAPAI COUNTY BOARD OF
SUPERVISORS, in their official capacities,

16 **Defendants,**

17 and

18 SAVE SEDONA COMMITTEE, a political
19 committee,

20 **Real Party in Interest.**

Case No. S-1300-CV-202680133

**FINDINGS OF FACTS AND
CONCLUSIONS OF LAW**

(Assigned to the Honorable John Napper)

21 **REAL PARTY IN INTEREST'S PROPOSED FINDINGS OF FACT**

22 1. In 1995, the City of Sedona (the "City") passed Ordinance 95-13, rezoning an
23 approximately 50 acre parcel which it referred to as "Sedona Cultural Park" from RS-70,
24 which is a single-family residential designation, to a PD Planned Development Zoning
25 District. *See Real Party in Interest ("RPI") Exhibit 1 (Ordinance 95-13).*

26 2. The request for rezoning described the project as the "proposed Sedona
27 Cultural Park[, which] includes a 5530 seat outdoor amphitheater and associated stage
28

1 building, festival grounds, indoor performing arts complex and an arts village.” See **RPI**
2 **Exhibit 2** (June 27, 1995, Request for Rezoning).

3 3. The City’s May 2, 1995 Staff Report to the Planning and Zoning Commission
4 discussed low level lighting that was “planned throughout the park’s parking areas and trail
5 systems.” See **RPI Exhibit 3** at 6 (May 2, 1995, Planning and Zoning Commission Staff
6 Report).

7 4. The same Staff Report references the City’s request that one of the parking
8 areas “function as a trailhead, accessing trails to the north” because there was a “vital link
9 through the Cultural Park property to the Forest Service lands [and trailhead] to the north.”
10 *Id.* at 8.

11 5. Under Sedona’s zoning code, applicants must submit a PD plan in connection
12 with any Planned Development. L.D.C. § 8.6(B)(3)(b); Andy Dickey Hearing Testimony,
13 April 30, 2026.

14 6. That PD Plan, which here is evidenced by the master plan and site plan
15 documents submitted in connection with the 1995 zoning application, is what identifies the
16 allowable uses. Indeed, the “approved PD zoning and the approved PD plan along with all
17 exhibits are inseparable, and a PD shall not be established without the approval of the related
18 PD plan.” L.D.C. § 8.6(B)(3)(f)(3); **RPI Exhibit 12** (April 23, 1998 Covenants, Conditions,
19 Resolutions, & Restrictions for Sedona Cultural Park) at 2; Andy Dickey Hearing
20 Testimony, April 30, 2026.

21 7. Architectural renditions of the Cultural Park in its Master Plan submitted as
22 part of its rezoning application depict an outdoor amphitheater, festival grounds, arts
23 village, future performing center, parking areas, and several natural areas. See **RPI Exhibit**
24 **4** (Master Plan Architectural Rendition); see also **RPI Exhibit 5** at 1-2 (Master Plan Site
25 Elements).

26 8. The Master Plan also provided that the festival grounds were specifically
27 designed to allow for “picnic facilities, shade structures, restrooms, and temporary
28 concession facilities.” **RPI Exhibit 5** at 3.

1 9. In 1995, the Planning and Zoning Commission approved the “zone
2 change/site plan.” **RPI Exhibit 2**. The plan included proposed uses such as an amphitheater,
3 festival grounds, an indoor performing arts complex with two theaters, an arts village with
4 a visitor center, administrative offices, and park offices. It also included an arts village with
5 cafes, multi-use facilities, and other temporary facilities. **RPI Exhibit 3** at 2. And it
6 incorporated the City’s requirements of parking areas and access to nearby trailheads. **RPI**
7 **Exhibit 1** at 9; Kurt Harris Hearing Testimony, April 30, 2026.

8 10. In 1996, the people referred Ordinance 95-13 to the ballot as Proposition 400.
9 *See* **RPI Exhibit 6** (City of Sedona, May 21, 1996, General Election Publicity Pamphlet)
10 at 2.

11 11. In the publicity pamphlet for Proposition 400, Sedona Cultural Park submitted
12 an argument for the proposition, stating that a “yes” vote would mean, among other things:
13 “A COMMUNITY PARK for area residents and visitors” that included “PICNIC AREAS,
14 NATURE TRAILS, and TRAILHEADS to the Sedona TRAIL SYSTEM,” “adequate,
15 appropriate and carefully managed OPEN AIR and INDOOR facilities for
16 THEATER/MUSICAL/DANCE productions and CONCERTS,” and that a NO vote would
17 mean “Loss forever of invaluable OPEN LAND for PUBLIC USE in SEDONA.” *Id.*

18 12. Also in 1996, the Sedona City Council sought and was awarded a \$586,600
19 grant of State Parks Heritage Fund from the State Parks Board to put toward the “Sedona
20 Cultural Park.” The state grant was explicitly authorized for the following purpose:
21 “Facilities developed with grant assistance shall be available to the general public for
22 outdoor recreation use for a period of 25 years.” **Plaintiffs’ Exhibit 16** at 1-2; *see also* **RPI**
23 **Exhibit 9** at 9-13 (June 13, 1995, City Council Meeting Minutes re Cultural Grant).

24 13. The State Heritage Fund program was created by statewide initiative in 1990,
25 and funding under the program was only available for the following uses: (1) “local,
26 regional and state trails,” (2) “local, regional or state parks for outdoor recreation and open
27 space,” (3) “acquisition of natural areas,” (4) “operation and management of natural areas
28 operated by the state parks board,” (5) “historic preservation projects,” (6) “state park

1 acquisition or development,” and (7) “environmental education.” A.R.S. § 41-503 (1990),
2 repealed by 2010 Ariz. Sess. Laws, Ch. 12, Sec. 1 (7th Spec. Sess.) (H.B. 2012); **RPI**
3 **Exhibit 8** (1990 Publicity Pamphlet for Proposition 200) at 62-63.

4 14. The Covenants, Conditions, Resolutions, & Restrictions for Sedona Cultural
5 Park dated April 23, 1998, defines the “Common Areas” of the property, which includes
6 “parking lots . . . , picnic areas, nature trails, trailheads, walkways, roads/areas of natural
7 vegetation” **RPI Exhibit 12** at 2.

8 15. The same Covenants, Conditions, Resolutions, & Restrictions document
9 discusses the uses of the Sedona Cultural Park, stating [a]ll land within the Sedona Cultural
10 Park shall be used for purposes included in its Master Plan, as approved by the City of
11 Sedona.” *Id.*

12 16. In 2002, the City approved Ordinance 2002-04, which added conditions to the
13 Planned Development designation of the Sedona Cultural Park, expressly allowing for
14 symphony concerts, concerts/community celebrations, theater and chamber music events,
15 musical/dance-type concerts, and “Flagship” events, which it did not define. Ordinance
16 2002-04 retained the existing zoning designation of Planned Development. *See RPI*
17 **Exhibit 10** (Ordinance 2002-04).

18 17. In 2003, the non-profit that had operated the Sedona Cultural Park sold the
19 land to a private individual, but the Park’s zoning designation was left unchanged. Andy
20 Dickey Hearing Testimony, April 30, 2026.

21 18. In 2022, the City acquired 41 acres of the land previously designated as the
22 Sedona Cultural Park. *See Plaintiffs’ Exhibit 1* at 63; Andy Dickey Hearing Testimony,
23 April 30, 2026.

24 19. After purchasing the Sedona Cultural Park parcel, the City began engaging in
25 planning processes regarding its proposed uses, which included exploring whether to utilize
26 portions of the land for residential housing, among other options. *See generally Plaintiffs’*
27 **Exhibit 2**.

28

1 20. The Sedona Community Plan “is not a City code, land development code,
2 zoning, or ordinance,” and “is not a City budget or commitment for expenditures of public
3 funds.” **Plaintiffs’ Exhibit 1** at 10.

4 21. The Community Plan states that such plans are only “*aspirational guides* or
5 statements of policies and preferences.” “[I]n order to realize a general plan’s abstract
6 policies and preferences, a city must undertake further specific actions such as adoption of
7 zoning ordinances that apply specific uses and densities to specific properties.” *Id.* at 2.

8 22. The land remains zoned as Planned Development in accordance with the
9 rezoning in 1995 pursuant to Ordinance 95-13 and the 2002 zoning amendments. Plaintiffs’
10 Complaint for Declaratory and Injunctive Relief (“Complaint”) § 30; Andy Dickey Hearing
11 Testimony, April 30, 2026.

12 23. In 2023, the City placed signs in various places within the Cultural Park that
13 refer to the property as the “Cultural Park Recreational Facility,” provide hours of public
14 use from 5:00 a.m. to 10:00 p.m., and cite to Sedona City Code section 12.30.20, which
15 governs the hours of operation of city parks and recreation facilities. **RPI Exhibit 13**
16 (Declaration of William D. Noonan) at ¶¶ 2-4; **RPI Exhibits 16-19 & 23**; Kurt Harris
17 Hearing Testimony, April 30, 2026; William Noonan Hearing Testimony, April 30, 2026.

18 24. City staff placed these signs in the Cultural Park, in part, to clarify that
19 overnight sleeping and camping were prohibited in that area. Kurt Harris Hearing
20 Testimony, April 30, 2026; Andy Dickey Hearing Testimony, April 30, 2026.

21 25. Kurt Harris, Director of Public Works for the City of Sedona, testified that
22 part of the reason for placing the signs was that it is city policy to post park hours. Mr.
23 Harris also referred to the Cultural Park area by saying “It’s considered a park.” Kurt Harris
24 Hearing Testimony, April 30, 2026.

25 26. There are currently at least five areas in the Cultural Park that contain the
26 signs described in paragraph twenty-three. **RPI Exhibit 13** at ¶ 4; **RPI Exhibits 16-19 &**
27 **23**; Kurt Harris Hearing Testimony, April 30, 2026; William Noonan Hearing Testimony,
28 April 30, 2026.

1 27. Signs containing the information described in paragraph twenty-three have
2 been posted in the Cultural Park since at least 2023. **RPI Exhibit 13** at ¶ 5; Kurt Harris
3 Hearing Testimony, April 30, 2026; William Noonan Hearing Testimony, April 30, 2026.

4 28. The City Manager’s Office made the decision to post these signs within the
5 park without first providing notice and public hearing, and without making any zoning
6 changes. **RPI Exhibit 14** (Email from City Attorney Kurt Christiansen to Tim Perry dated
7 November 28, 2023); Kurt Harris Hearing Testimony, April 30, 2026.

8 29. The Cultural Park contains picnic tables located in the northeast parking lot.
9 People frequently use the area for having lunches or picnicking. **RPI Exhibit 13** at ¶ 7;
10 William Noonan Hearing Testimony, April 30, 2026.

11 30. The northeast section of the Cultural Park, which surrounds an extension of
12 Cultural Park Place Road, contains a parking area that is filled on most days with cars and
13 people on bicycles headed to the Cultural Park Trailhead. Hikers also walk through various
14 parts of the northeast section of the Cultural Park on the way to the trailhead, and use the
15 area for hiking, biking, and picnicking. People also occasionally walk along the walking
16 paths towards the interior of the Cultural Park property. **RPI Exhibit 13** at ¶¶ 6, 13; William
17 Noonan Hearing Testimony, April 30, 2026.

18 31. There is at least one area within the Cultural Park containing a sign posting
19 hours of public use that is outside of the trailhead area. That sign sits across from Yavapai
20 College, and is near the walking trail that leads to the amphitheater. That area is depicted as
21 number 5 on **RPI Exhibit 15**; **RPI Exhibit 13** at ¶ 10; William Noonan Hearing Testimony,
22 April 30, 2026.

23 32. In other parts of the Cultural Park property, the City has placed signs or
24 barriers prohibiting public use either for safety reasons or to prohibit vehicular and four-
25 wheeler access to certain walking paths within the property. One such barrier is depicted in
26 **RPI Exhibit 24**, and as number 7 on **RPI Exhibit 15**. Kurt Harris Hearing Testimony, April
27 30, 2026.

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1 33. City staff placed those signs and barriers within the Cultural Park property
2 without first providing notice and public hearing, and without making any zoning changes.
3 Kurt Harris Hearing Testimony, April 30, 2026.

4 34. City Staff have placed barriers or prohibited public access to specific areas
5 within other public parks. The City typically does this without first providing public notice
6 or public hearing. Kurt Harris Hearing Testimony, April 30, 2026; *see also* S.C.C.
7 § 12.30.170.

8 35. On Saturday, April 18, 2026, Arabella Sedona hosted a trail running event.
9 The starting point for the event was near Yavapai Community College in the Cultural Park
10 Trailhead area and parking lot and required travelling through the Cultural Park both at the
11 beginning and the end of the event. **RPI Exhibit 13** at ¶ 14.

12 36. Residential housing and development are not permitted within the Cultural
13 Park property under its current zoning designation and site plan, and proposed city plans to
14 add such uses would require rezoning. **Plaintiffs' Exhibit 2** at 43; Kurt Harris Hearing
15 Testimony, April 30, 2026.

16 37. On May 22, 2025, the Committee filed an application for an initiative serial
17 number for the Sedona Cultural Park Preservation Act (the "Initiative"), relating to the 41-
18 acres of City-owned land which it had purchased in 2022. *See RPI Exhibit 11* (Initiative
19 Petition Application for Serial Number).

20 38. The City Clerk accepted the application and issued serial number I2025-01.
21 *Id.* at 2.

22 39. The Initiative would amend Title 12, Division II, of the Sedona City Code by
23 adding Section 12.30.230. *Id.*

24 40. The Initiative includes a findings and declaration of purpose section which
25 provides, inter alia, that "the People of the City of Sedona find and declare that the Sedona
26 Cultural Park is one of the last great scenic open spaces in the City of Sedona. It has cultural
27 and historical significance and should be preserved as a park and open space for the benefit
28 and enjoyment of the residents of Sedona and those who visit this City" *Id.*

1 41. The Initiative designates the “Sedona Cultural Park,” which it specifies by
2 land parcel, as a “city parks and recreation facility.” *Id.*

3 42. City staff are familiar with the term “parks and recreation facility,” which
4 appears as the title of Chapter 12.30 of the Sedona City Code. Kurt Harris Hearing
5 Testimony, April 30, 2026.

6 43. The Initiative does not purport to change the existing zoning designation of
7 the Cultural Park as Planned Development. Instead, it simply designates the property as a
8 “park and recreation facility” for the purposes of Chapter 12.30 of the Sedona City Code,
9 which covers “parks and recreation facilities.” **RPI Exhibit 11** at 2.

10 44. The Initiative requires the City to maintain the Sedona Cultural Park,
11 “including the maintenance of its flora, fauna, geological features and its structural
12 improvements.” **RPI Exhibit 11** at 2.

13 45. The requirement for the City to maintain pre-existing city property does not
14 effect a change in land use that would require rezoning, public notice, or hearing. *Id.*

15 46. The Initiative requires the City to “ensure the Sedona Cultural Park remains
16 open to the public for recreational activities including hiking, picnicking and biking.” *Id.*

17 47. The requirement to ensure the property remains open for hiking, biking, and
18 picnicking does not represent a change in land use. Portions of the park are already being
19 used for these purposes, including for access to public trailheads. The current zoning
20 designation allows for these uses. **RPI Exhibits 1-6 & 11-12; Plaintiffs’ Exhibit 16** at 1-
21 2; Kurt Harris Hearing Testimony, April 30, 2026; William Noonan Hearing Testimony,
22 April 30, 2026.

23 48. The Initiative also requires the City to “ensure the Sedona Cultural Park
24 remains open to the public for . . . cultural activities and venues including film festivals and
25 theaters, musical and theatrical performances, building and structures to house such
26 activities and restaurants and food and drink concessions to serve them.” *Id.*

27 49. The requirement to ensure the Cultural Park property remains open to the
28 public for the performances outlined in paragraph 47 does not represent a change in land

1 use. The original zoning designation, which remains in place, allowed for an amphitheater
2 to host such events and for such supporting facilities. *See RPI Exhibits 1-6 & 11-12;*
3 **Plaintiffs’ Exhibit 16** at 1-2.

4 50. The Initiative “prohibit[s] residential development of any kind or overnight
5 camping or sleeping within the Sedona Cultural Park.” **RPI Exhibit 11** at 2.

6 51. The prohibition on residential development and overnight camping and
7 sleeping is not a change in the permitted land uses of the property. Residential development,
8 overnight camping, and overnight sleeping are all currently prohibited by the existing
9 zoning and by city policy within the property. Kurt Harris Hearing Testimony, April 30,
10 2026.

11 52. The Initiative states it does not require “that any cultural activities or venues
12 be operated, built or improved in the Sedona Cultural Park,” and does not require the City
13 “to operate the cultural activities or build or improve the venues” described therein. *Id.*

14 53. Nevertheless, the Initiative states “the City may operate the cultural activities
15 and build or improve the venues described [therein] or may enter into agreements with other
16 to do so.” *Id.*

17 54. The Initiative also includes a severability provision. *Id.*

18 55. The Phoenix City Charter protects the Phoenix Mountain Preserves as public,
19 open space, and provides various regulations regarding the disposition and uses of those
20 areas. Those protections were enacted by Proposition 115 in 1985 and amended by another
21 initiative just a few years later. *See Phx. City Charter Chapter XXVI (“City of Phoenix*
22 *Mountain Preserves”); Point Resorts, Inc. v. Culbertson*, 158 Ariz. 137, 138-40 (1988).

23 56. In 2025, the City of Prescott passed Proposition 484, which amended the
24 Prescott City Charter by protecting in perpetuity specific, pre-existing public lands and
25 requiring them to remain as open, recreational space. **RPI Exhibit 7**.

26 57. On March 19, 2026, the Committee timely filed its petition sheets and
27 constituent signatures. Complaint § 30.

28

1 58. The City Clerk determined the Committee had, at least facially, filed more
2 than the minimum number of signatures needed for the Initiative to be placed on the city
3 ballot and accepted the Initiative Petition. *Id.* § 31.

4 59. On May 31, 2026, Plaintiffs filed a Complaint for Declaratory and Injunctive
5 Relief, alleging that the Initiative violates article IV, part 1, section 1(8) of the Arizona
6 Constitution. *Id.*

7 60. On April 17, 2026, the parties filed Motions for Summary Judgment and
8 Supporting Statements of Facts.

9 61. On April 24, 2026, the parties filed Responses to the Motions for Summary
10 Judgment, and Real Party in Interest filed a supporting Controverting Statement of Facts to
11 its Response.

12 62. On April 30, 2026, the Yavapai County superior court held an evidentiary
13 hearing and oral argument, which included the presentation of witness testimony, regarding
14 the parties’ Motions for Summary Judgment.

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22 **REAL PARTY IN INTEREST’S PROPOSED CONCLUSIONS OF LAW**

23 1. Arizonans enjoy a fundamental constitutional right to legislate by initiative in
24 local elections. Ariz. Const. art. IV, pt. 1, § 1(8); *League of Ariz. Cities and Towns v.*
25 *Brewer*, 213 Ariz. 557, 559 ¶ 9 (2006).

26 2. The power of initiative concerning city matters derives from article IV, part
27 1, section 1(8) of the Arizona Constitution, which reserves the right “as to all matters” on
28 which cities “are or shall be empowered by general laws to legislate.”

1 3. “[T]he citizens’ power to legislate is broad; indeed, they may exercise their
2 initiative power on any matters over which their elected representatives are or shall be
3 empowered by general laws to legislate.” *Roundtree v. City of Page*, 573 P.3d 65, 69 ¶ 16
4 (2025) (internal quotation marks omitted).

5 4. However, “local governments typically possess powers beyond their
6 legislative authority, specifically executive, administrative, and quasi-judicial (e.g., zoning
7 determinations),” and the local initiative power does not extend to “such other governance
8 powers.” *Id.* at 69 ¶¶ 13-14 (citations omitted).

9 5. In *Roundtree*, the Arizona Supreme Court set forth the test to determine
10 whether an initiative violates complies with article IV, part 1, section 1(8) of the Arizona
11 Constitution: “whether the Initiative exercises the people’s legislative power, or instead is
12 merely an administrative action that lies solely within the City’s domain.” *See id.* at 69-70
13 ¶ 16; *see also id.* at 71 ¶ 22 (“The sole determinant of compliance with section 1(8) is
14 whether the initiative proposes legislation.”).

15 6. In applying that test, courts look to whether an act “declares a public purpose
16 and provides for the ways and means of its accomplishment”; if it does, it is legislative and
17 thus a constitutionally proper matter for initiative. *Id.* at 70 ¶ 19.

18 7. The Initiative satisfies both prongs of the *Roundtree* test. It is a “definite,
19 specific act” that (1) “expressly creates public policy”—by preserving the pre-existing
20 public uses of the Sedona Cultural Park property—and (2) provides for the “means of
21 accomplishing that policy”—by protecting the area as a park and recreational facility and
22 prohibiting its conversion for residential development. *See id.* at 71 ¶¶ 24, 27. “No further
23 action is necessary to effectuate it,” and “like all legislation, it *controls* administrative
24 implementation.” *Id.* at 71-72, ¶¶ 27, 29 (emphasis in original).

25 8. Indeed, Plaintiffs do not dispute that the Initiative satisfies the *Roundtree* test.
26 Accordingly, the Initiative falls within the scope of the allowable legislative uses of
27 initiatives under article IV, part 1, section 1(8) of the Arizona Constitution.
28

1 9. Even if the *Roundtree* test were not dispositive, the Initiative does not
2 constitute zoning by initiative as articulated by *City of Scottsdale v. Superior Court*, 103
3 Ariz. 204 (1968), *Transamerica Title Ins. Co. v. City of Tucson*, 157 Ariz. 346 (1988), and
4 *Winkle v. City of Tucson*, 190 Ariz. 413 (1997).

5 10. Cases prohibiting zoning by initiative do so only because it would
6 “circumvent[] the constitutionally required notice and hearing.” *Winkle*, 190 Ariz. at 417
7 (citing *City of Scottsdale*, 103 Ariz. at 208; *Transamerica*, 157 Ariz. at 349).

8 11. “The State Zoning Enabling Act expressly delegates zoning powers to other
9 levels of government, including the governing body of an incorporated city.” *Winkle*, 190
10 Ariz. at 417.

11 12. In delegating zoning power to cities, the State expressly provided that the
12 notice and hearing requirements of the zoning process apply only when “[a] zoning
13 ordinance that changes any property from one zone to another, that imposes any regulation
14 not previously imposed or that removes or modifies any such regulation previously
15 imposed.” A.R.S. § 9-462.03(B).

16 13. The Initiative does not change any property from one zone to another, impose
17 any regulation not previously imposed, or remove or modify previously imposed
18 regulations.

19 14. Each of the allowable uses for the Cultural Park provided in the Initiative are
20 already permitted uses under the pre-existing zoning designation of Planned Development
21 for this property. Those uses are outlined both within the zoning ordinances and the
22 PD/Master Plan submitted in conjunction with the zoning application, because under
23 Sedona’s zoning code, applicants must submit a PD plan in connection with any Planned
24 Development and the “approved PD zoning and the approved PD plan along with all
25 exhibits are inseparable, and a PD shall not be established without the approval of the related
26 PD plan.” L.D.C. §§ 8.6(B)(3)(b), 8.6(B)(3)(f)(3); PFOF ¶¶ 1-15, 23-31.

1 15. Likewise, the Initiative’s prohibitions regarding residential development,
2 overnight camping, and overnight sleeping are already prohibited under the existing zoning
3 designation and by express city policy. PFOF ¶¶ 24, 36, 50-51.

4 16. The Initiative expressly provides that it does not require “that any cultural
5 activities or venues be operated, built or improved in the Sedona Cultural Park,” and does
6 not require the City “to operate the cultural activities or build or improve the venues.”
7 Accordingly, even though the Initiative requires the city to maintain the Cultural Park’s
8 structural improvements, it does not impose any requirement to build out pre-existing
9 venues or to make any improvements to their current condition. PFOF ¶¶ 44-45, 52-53.

10 17. The Initiative does not supplant or modify any of the event restrictions, such
11 noise limitations, quantity of events, and capacity restrictions, as provided in the 1995
12 zoning ordinance, the 2002 amendments to the zoning ordinance, or the supporting uses
13 articulated in the PD plan.

14 18. Finally, the Initiative does not purport to change the property’s zoning
15 designation. Instead, it retains the existing Planned Development designation and protects
16 the types of land uses that have already been approved for this specific property under that
17 zoning designation. To the extent it designates the property as a “parks and recreation
18 facility,” it does so only for purposes of Chapter 12.30 of the Sedona City Code, which
19 governs “Parks and Recreation Facilities.” Indeed, the City already uses the property as a
20 park and recreation facility. PFOF ¶¶ 23-31, 41-43.

21 19. It does not matter that currently only certain areas of the park are available
22 for public recreation. As city officials explained, they have administrative authority to open
23 or close certain areas of public parks and recreation facilities. The bottom line is that the
24 Initiative’s proposed uses are all encompassed by the existing zoning designation, which
25 applies equally across the entire property. PFOF ¶¶ 23, 28, 32-34; S.C.C. § 12.30.170 (“The
26 city manager, or his/her designee, has the authority to close a park or recreation facility or
27 portion thereof, at his/her discretion. . . . Reasons include, but are not limited to, vandalism,
28 weather, repairs, etc.”).

1 20. The Initiative does not propose the types of zoning changes that were found
2 to be unconstitutional in *Transamerica*. There, a proposed initiative sought to impose an
3 entirely new zoning designation on lands that included private property—namely “buffer
4 zones”—that did not appear anywhere within the zoning code. 157 Ariz. at 349. The
5 proposed initiative also changed the zoning process for those areas by requiring that any
6 rezoning of those buffer zones must be approved through a referendum. *Id.* In combination,
7 those changes constituted zoning because they “directly affect[ed] the use of [private]
8 property by adding new requirements to the rezoning process” that were “not authorized by
9 the controlling state statutes.” *Id.*

10 21. Here, the Initiative does not create a new zoning designation; rather, it retains
11 the pre-existing zoning designation and refers to the property as a “parks and recreation
12 facility” only for purposes of Chapter 12.30 of the Sedona City Code. In theory, the City
13 could potentially rezone the property to another designation, such as a “Community
14 Facility,” so long as it retained the allowable uses of the property as provided by the
15 Initiative. The Initiative also does not require that any changes to the property be approved
16 by a public referendum, thereby changing the zoning processes themselves.

17 22. Moreover, unlike *Transamerica* which affected private property rights, this
18 Initiative applies to public lands. Cities have been delegated explicit police powers outside
19 of the zoning code that allow them to “establish and maintain public parks.” A.R.S. § 9-
20 494(A) (emphasis added).

21 23. The Initiative remains constitutionally proper regardless of whether it effects
22 a permanent change in law by virtue of its enactment in the city code. In *Roundtree*, the
23 Arizona Supreme Court upheld an initiative that sought to “maintain the size and lanes” of
24 Lake Powell Boulevard in Page, Arizona. *Id.* at 67 ¶ 3. Like the Initiative at issue here, the
25 initiative in *Roundtree* also proposed a regulation of land use that would be enacted within
26 the city code. *Id.* But that had no bearing on whether it violated article IV, part 1, section
27 1(8) of the Arizona Constitution. *Id.* at 71-72 ¶¶ 26-30.

28

1 24. Nor is this Initiative “permanent” in the manner Plaintiffs argue. Arizona’s
2 Voter Protection Act does not apply to local initiatives and referenda. *Transparent Payson*
3 *v. Town of Payson*, 574 P.3d 253, 256 ¶ 13 (App. 2025). Thus, the City Council has the
4 power to repeal local initiatives enacted into the Sedona City Code, including this Initiative.
5 *Id.*

6 25. Nor is it relevant, as Plaintiffs argue, that the Initiative is use-specific and not
7 a generally applicable law, because “the fact that this Initiative is use-specific and narrow
8 in scope does not alter its legislative character.” *Roundtree*, 573 P.3d at 71 ¶ 25; *see also*
9 *Fritz v. City of Kingman*, 191 Ariz. 432, 434-35 ¶¶ 15-16 (1998) (allowing use-specific
10 zoning decisions to be referred to the ballot).

11 26. The policy goals of the Sedona Community Plan are not relevant to the
12 constitutional analysis. “It does not matter whether the purpose of the initiative is to
13 supplant or revoke a policy. For instance, it does not matter whether the City adopted a
14 policy and assigned its implementation to city engineers.” *Roundtree*, 573 P.3d at 70 ¶ 22
15 (citation omitted).

16 27. The City’s authority to legislate on this matter derives from state statute,
17 which authorizes cities to “establish and maintain public parks.” *Compare* A.R.S. § 9-
18 494(A) *with Roundtree*, 573 P.3d at 69 ¶ 16 (citing A.R.S. § 9-240(B)(3)(a) as the authority
19 for legislation governing streets). Importantly, that statute exists outside of the statutory
20 provisions governing and delegating cities’ zoning power. *Cf.* A.R.S. §§ 9-461 et seq., 9-
21 462 et seq.

22 28. There is a longstanding tradition of the people using local initiatives to protect
23 public lands, often in more *permanent* manners than that proposed by this Initiative. For
24 instance, Proposition 115—a citizen-led initiative in the City of Phoenix—was passed in
25 1985. *See Point Resorts, Inc. v. Culbertson*, 158 Ariz. 137, 138-40 (1988). That Proposition
26 codified in the city charter protections and regulations regarding the Phoenix Mountain
27 Preserves. *See Phx. City Charter Chapter XXVI* (“City of Phoenix Mountain Preserves”).
28 It was followed by Proposition 100, another citizen-led initiative, that amended those

1 provisions of the Phoenix City Charter to require voter approval for attempts to dispose of
2 that land. *Point Resorts*, 158 Ariz. at 138-40. And in 2025, the City of Prescott passed
3 Proposition 484, a citizen-led initiative that legislatively amended the city charter to require
4 the city to protect hundreds of acres of “city owned open space in perpetuity” for use as
5 open space and recreation space, in conformance with pre-existing uses. PFOF ¶¶ 55-56.

6 29. Cities commonly use their general police powers to impose regulations on
7 land use through legislation, and not through zoning processes. For instance, Chapter 12.30
8 of the Sedona City Code contains numerous use restrictions and regulations regarding parks
9 passed as legislation, including prohibitions on overnight camping and sleeping in public
10 parks. *See* S.C.C. § 12.30.050. Sedona also prohibits unlicensed commercial activities in its
11 city parks and recreation facilities (S.C.C. § 12.30.160); requires permits to operate short
12 term rentals (S.C.C. § 5.25.030) and for on-site grading work prior to approval of a grading
13 plan (S.C.C. §§ 15.60 et seq.); and can impose restrictions on parking in public places
14 (S.C.C. § 10.30.030). And the City of Prescott devotes an entire Chapter of its city code to
15 regulations regarding “Property Maintenance,” none of which were enacted using the notice
16 and hearing processes involved in zoning. *See* Prescott City Code, Chapter 7-5, available at
17 <https://www.codepublishing.com/AZ/Prescott/#!/Prescott07/Prescott075.html#7-5-1>.

18 30. Accordingly, the Initiative constitutes legislation that falls within the scope
19 of the power to legislate under article IV, part 1, section 1(8) of the Arizona Constitution,
20 and does not constitute a zoning measure.

21 31. Because Plaintiffs have failed to demonstrate the Initiative violates article IV,
22 part 1, section 1(8) of the Arizona Constitution, Plaintiffs are not entitled to injunctive or
23 declaratory relief.



eSigned by NAPPER, JOHN 05/06/2026 12:02:39 IBkTA6Sr

Honorable John Napper

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