

MEMORANDUM

DATE: February 6, 2007  
TO: SONIA SANCHEZ, CITY CLERK  
FROM: GLENN GIMBUT, CITY ATTORNEY  
RE: AFFIDAVITS WITHDRAWING SIGNATURES

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Recently a large number of affidavits have been presented to you for filing withdrawing signatures from the recall petitions that were presented to you for signature verification. You have asked for an opinion on what to do with them. A.R.S. §1-261 provides:

**“A.R.S. §1-261. Withdrawal of petition signature; payment of remuneration; violation; classification**

**A.** A person who has signed a petition prescribed by statute for any candidate nomination, initiative, referendum or formation or modification of a county, municipality or district may withdraw the person's signature from the petition not later than 5:00 p.m. on the date the petition containing the person's signature is actually filed. *A person who has signed a recall petition may withdraw the person's signature from the petition not later than 5:00 p.m. on the date the petition containing the person's signature is actually submitted for verification pursuant to § 19-203.*

**B.** To withdraw a petition signature, a person may do any of the following:

1. Verify the withdrawal by signing a simple statement of intent to withdraw at the office of the receiving officer.
2. Mail a signed, notarized statement of intent to withdraw to the receiving officer.
3. Draw a line through the signature and printed name on the petition.

**C.** A signature withdrawn pursuant to subsection B of this section and received by the receiving officer within the time provided for in subsection A of this section shall not be counted in determining the legal sufficiency of the petition.

**D.** A person who knowingly gives or receives money or any other thing of value for signing a statement of signature withdrawal pursuant to

subsection B of this section is guilty of a class 1 misdemeanor.”  
[Emphasis added]

This statute refers specifically to A.R.S. §19-203. This statute provides:

**“§ 19-203. Recall petition; contents; submission for verification; nonacceptance**

**A.** A recall petition shall contain a general statement of not more than two hundred words stating the grounds of the demand for the recall. *The petition shall be submitted for verification of signatures to the office of the secretary of state if for a state officer, including a member of the legislature or a member of Congress, with the county officer in charge of elections if for a county or district officer or superior court judge, with the city or town clerk if for a city or town officer and with the county school superintendent if for a governing board member of a school district.* No recall petition is considered filed for purposes of this chapter until the verification process is complete and the petition is filed pursuant to § 19-208.03, subsection A, paragraph 1.

**B.** A recall petition shall not be accepted for such verification if more than one hundred twenty days have passed since the date of submission of the application for recall petition, as prescribed by § 19-202.01.”

The recall process is that first one applies for a recall petition number. A.R.S. §19-202.01. It is up to the applicant to prepare the petitions and circulate them. A.R.S. §19-203. For recalls involving cities or towns, the petitions are then brought back to the city or town clerk for verification of signatures. A.R.S. §19-203.

The process for withdrawal of signatures is set out in A.R.S. 1-261 as aforesated. It allows for withdrawal to occur by filing a notarized statement of intent “...*not later than 5:00 p.m. on the date the petition containing the person's signature is actually submitted for verification pursuant to § 19-203.*” [Emphasis added]. This means the notarized statements of intent need to be filed on or before 5:00 p.m. the actual day the circulators first bring the petitions to the office of the city clerk. This particular portion of A.R.S. §1-261 was added by Laws 2003 Chapter 233. In the annotations to this statute Westlaw states:

“The 2003 amendment by Ch. 233, rewrote subsec. A, which had read:

’**A.** A person who has signed a petition prescribed by statute for any initiative, referendum or formation or modification of a county, municipality or district may withdraw his signature from the petition not later than 5:00 p.m. On the date set by law for filing of the petition, or if no date is set by law, 5:00 p.m. on the date the petition containing the person's signature is actually filed. A person who has signed a recall

petition may withdraw his signature from the petition not later than 5:00 p.m. on the date the petition containing the person's signature is actually submitted for verification pursuant to § 19-203.”

There are Attorney General's Opinions on withdrawal of signatures, namely I86-061; I86-102; and I87-140. However, each of these opinions do not deal with the language of what is meant by the words: "...not later than 5:00 p.m. on the date the petition containing the person's signature is actually submitted for verification pursuant to § 19-203.” The only case involving withdrawal of signatures is *Johnson v. Maehling*, (1979) 123 Ariz. 15, 597 P.2d 1. At the time of the recall which was the subject of this case, the statutory time to withdraw signatures was different than it is today.

It is the opinion of this office that the time to withdraw signatures passed on 5:00 p.m. the day the petitions were presented to you by the political committee that circulated them. I will be forwarding this opinion to David Merkel, General Counsel to the League of Arizona Cities and Towns to be sure that I did not miss anything. I will let you know his response. In the meantime, accept the forms of notarized statements of intent and keep them on file. However, it would appear that since they have been presented beyond the time provided by law, there is nothing that you can do with them.