



Arizona House of Representatives
Phoenix, Arizona 85007

REPORT OF THE HOUSE AD HOC COMMITTEE ON EXECUTIVE OVERSIGHT

May 28, 2024

MR. SPEAKER:

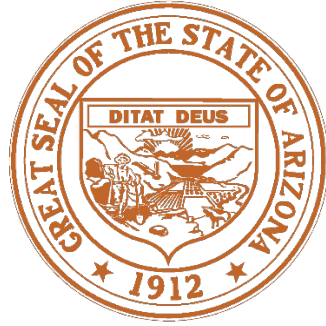
Your House Ad Hoc Committee on Executive Oversight (“Committee”) has investigated the conduct of Arizona Attorney General Kris Mayes.

The enclosed Report summarizes the Committee’s investigation and factual findings. The Committee concludes that Attorney General Mayes has committed impeachable offenses. The Committee recommends the House adopt a resolution impeaching Attorney General Mayes and appointing a board of managers to prosecute her at a Senate trial. Moreover, the House should carefully scrutinize all appropriations made to the Attorney General’s Office, continue to exercise oversight over Attorney General Mayes’ abuses of office, and consider legislation in the next legislative session to strengthen and clarify Arizona laws aimed at preventing further weaponization of the Attorney General’s Office. The people of Arizona deserve better from the chief legal officer of this state.

Accordingly, in order for the House to consider its duties under the Arizona Constitution, *see* Ariz. Const. art. VIII, pt. 2, § 1, the Committee respectfully requests that this Report be referred to the whole House.

Respectfully,

Jacqueline Parker
Chair, Committee on Executive Oversight



Investigation of the Attorney General of the State of Arizona

Report by the House Ad Hoc Committee on
Executive Oversight

Arizona House of Representatives
Fifty-Sixth Legislature

May 28, 2024

EXECUTIVE SUMMARY

The House Ad Hoc Committee on Executive Oversight has investigated Attorney General Kris Mayes for misconduct in office. The Committee finds that Attorney General Mayes has abused her power, neglected her duty, and committed malfeasance in office.

1. Attorney General Mayes threatened the Mohave County Board of Supervisors in November 2023 with personal criminal and civil penalties if they voted contrary to her unsolicited legal opinion. Attorney General Mayes' threat affected at least one vote in the Board's 3-2 decision. The Attorney General does not have authority to declare existing law or to threaten public officials with criminal or civil penalties if they vote against her wishes. The Committee finds that Attorney General Mayes abused her power and committed malfeasance in office.

2. Attorney General Mayes used the legal system to attack her political opponents by suing Cochise County and its Board of Supervisors and making irrelevant and inflammatory accusations against them. The Committee obtained some evidence relating to this lawsuit, but Attorney General Mayes has not fully produced records that the Committee requested more than eight weeks ago. The Committee finds that Attorney General Mayes abused her power.

3. Attorney General Mayes issued a consumer alert filled with deception, fraud, and misrepresentations about Arizona organizations providing health care services to women. Attorney General Mayes failed to produce any Arizona evidence supporting the statements in her alert. The Committee finds that Attorney General Mayes abused her power by issuing an alert that runs contrary to the Consumer Fraud Act.

4. Attorney General Mayes hosted town halls, threatened public nuisance lawsuits, and advocated for ballot measures relating to groundwater use. Arizona law protects farmers from such litigation and prohibits electioneering with public funds. The Committee finds that Attorney General Mayes abused her power by using public resources to attempt to influence an election and proposing action—filing a lawsuit or referring a measure to the ballot—the Attorney General does not have authority to take.

5. Attorney General Mayes refused to defend the Save Women's Sports Act when challenged in court by disqualifying her office, and she refused to explain her decision to the Committee. Attorney General Mayes also has refused to defend other state laws. The Committee finds that Attorney General Mayes neglected her duty by failing to defend state laws.

6. Attorney General Mayes hindered the Committee's work by failing to timely respond to information and records requests and by refusing to testify. The Committee finds that Attorney General Mayes neglected her duty by failing to adequately respond to the Committee.

For these reasons, the Committee finds that Attorney General Mayes has committed impeachable offenses. The Committee recommends the House adopt a resolution impeaching Attorney General Mayes and appointing a board of managers to prosecute her at a Senate trial.

FACTUAL BACKGROUND

The Arizona House of Representatives is charged by state law and the Arizona Constitution to exercise oversight over the governor and state and judicial officers. *See, e.g.*, A.R.S. § 38-311; *Mecham v. Gordon*, 156 Ariz. 297, 299 (1988). Speaker Ben Toma created the House Ad Hoc Committee on Executive Oversight on March 26, 2024. *New House Ad Hoc Committee on Executive Oversight Formed to Uphold Rule of Law, Deter Partisan Abuse and Weaponization of Public Offices*, Arizona House of Representatives (Mar. 26, 2024).¹ Speaker Toma charged the Committee with evaluating the conduct of Attorney General Mayes:

To (1) examine the scope and sufficiency of Arizona laws that establish the duties, powers, and proper role of the Arizona Attorney General and other state officers; (2) investigate allegations against state officers, including Arizona Attorney General Kris Mayes, that relate to abuse of statutory authority, refusal to perform duties required by law, and/or malfeasance in office; (3) identify, evaluate, and propose recommendations to the Arizona House of Representatives, including but not limited to: (a) potential legislation to promote the rule of law and deter partisan abuse and weaponization of the office of Arizona Attorney General or other state offices; and/or (b) any other appropriate remedial action authorized by the Arizona Constitution.

House Ad Hoc Committee on Executive Oversight.²

The Committee is composed of eight members of the House of Representatives: Rep. Neal Carter; Rep. John Gillette; Rep. Nancy Gutierrez; Rep. David Marshall, Sr.; Rep. Analise Ortiz; Rep. Jacqueline Parker (Chair); Rep. Austin Smith (Vice Chair); and Rep. Betty J. Villegas. Rep. Gutierrez, Rep. Ortiz, and Rep. Villegas did not participate in the Committee's work.

The Committee held hearings to receive testimony as part of its investigation. The Committee received testimony from former Arizona Supreme Court Justice Andrew Gould about the duties, powers, and limitations of the Arizona Attorney General. The Committee also received testimony from witnesses about the Attorney General's threatening letter to the Mohave County Board of Supervisors; the Attorney General's consumer alert targeting pregnancy centers; and the Attorney General's refusal to defend Arizona's Save Women's Sports Act. The Committee also submitted requests to Attorney General Mayes for records, explanations, or action.

¹ Available at

<https://www.azleg.gov/press/house/56LEG/2R/240326TOMAEOCOMMITTEE.pdf>.

² Available at

<https://www.azleg.gov/icommittee/House%20Ad%20Hoc%20Committee%20on%20Executive%20Oversight.pdf>.

LEGAL FRAMEWORK

The Arizona Constitution empowers the Legislature to hold executive branch officials accountable through the appropriations power, legislative power, and impeachment power.

The Legislature “commands the power of the purse.” *Rios v. Symington*, 172 Ariz. 3, 5 (1992). “Under our system of government, all power to appropriate money for public purposes or to incur any indebtedness therefor, unless given by the Constitution to some other body politic, or individual, rests in the Legislature.” *Le Febvre v. Callaghan*, 33 Ariz. 197, 204 (1928). “The Legislature, in the exercise of its lawmaking power, establishes state policies and priorities and, through the appropriation power, gives those policies and priorities effect.” *Rios*, 172 Ariz. at 6.

The Legislature also has legislative power. “The Legislature is vested with the whole of the legislative power of the state, and may deal with any subject within the scope of civil government unless it is restrained by the provisions of the Constitution, and the presumption that the Legislature is acting within the Constitution holds good until it is made to appear in what particular it is violating constitutional limitations.” *Earhart v. Frohmler*, 65 Ariz. 221, 224 (1947) (internal citation omitted). Thus, “[a] majority of the members of the legislature can pass legislation, Ariz. Const. art. 4, pt. 2, § 15, subject to the governor’s veto power.” *Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 487 (2006).

Finally, the Legislature has impeachment power. The House of Representatives “shall have the sole power of impeachment.” Ariz. Const. art. VIII, pt. 2, § 1. “The object of the removal of a public officer for official misconduct is not to punish the officer, but to improve the public service.” *State ex rel. De Concini v. Sullivan*, 66 Ariz. 348, 359 (1948). “The wording of our Constitution and statute, the purpose of impeachment, and common sense all indicate that the effort of both the legislature and the framers of the Constitution was to provide complete and adequate safeguard to the public against those who breach its trust.” *Id.* at 358-59.

The House may impeach an official “for high crimes, misdemeanors, or malfeasance in office.” Ariz. Const. art. VIII, pt. 2, § 2. The Legislature has the sole authority to determine what constitutes “high crimes, misdemeanors or malfeasance” because “the impeachment process is designed as a legislative ‘inquest into the conduct’” of public officials. *Mecham v. Arizona House of Representatives*, 162 Ariz. 267, 268 (1989) (quoting THE FEDERALIST, No. 65). According to the Arizona Supreme Court, “there is almost unanimous agreement that offenses are impeachable when they ‘involve serious abuse of official power.’” *Id.* (internal citation omitted). “Such offenses include ‘misapplication of funds, abuse of official power, neglect of duty, encroachment on or contempt of legislative prerogatives, and corruption.’” *Id.* Malfeasance has been defined as “doing that which officer has no authority to do, and is positively wrong or unlawful.” See *Holmes v. Osborn*, 57 Ariz. 522, 540 (1941).

The House impeaches an official through the concurrence of a majority of all its members. Ariz. Const. art. VIII, pt. 2, § 1. The Senate then holds a trial to determine whether to remove the impeached official. *Id.*

INVESTIGATIVE REPORT

I. Attorney General Mayes abused her power by threatening the Mohave County Board of Supervisors.

In November 2023, Attorney General Mayes threatened the Mohave County Board of Supervisors with criminal and civil penalties if they voted contrary to her legal opinion. Letter from Attorney General Kris Mayes to the Mohave County Board of Supervisors, Nov. 19, 2023, attached as Exhibit 1.³ Attorney General Mayes warned the Board that “the legal consequences would be serious” if her advice was not followed. The Committee investigated whether Attorney General Mayes abused her power by threatening the Board before a vote.

At its November 20, 2023 meeting, the Mohave County Board of Supervisors planned to vote on, as the Attorney General described it, “whether to direct the Mohave County Elections Department to count the ballots for the 2024 elections by hand, rather than automatic tabulating equipment.” *Id.* at 1. The day before the vote, Attorney General Mayes provided the Board with an unsolicited legal opinion. Attorney General Mayes opined that a “‘yes’ vote would direct your Elections Department to violate the law.” *Id.*

But Attorney General Mayes did not simply provide her unsolicited legal opinion. She threatened the Board with legal action, including criminal and civil action against Board members personally. *Id.* at 3. Attorney General Mayes ominously warned, “you should be aware that an illegally expanded hand count may result in various felony and misdemeanor penalties. We hope you will choose not to violate the law and thus that it will not be necessary for us to consider whether criminal prosecution is warranted for conducting an illegal hand count.” *Id.* Attorney General Mayes also pressured Board members with individual civil liability: “The court may also hold members of the Board who voted for an illegal action liable for misconduct, *see* A.R.S. § 11-223, and subject them to personal liability for any public funds used for this illegal purpose, *see* A.R.S. § 35-212(C).” *Id.* She concluded her letter by promising “to pursue to the fullest extent of the law all possible remedies” *Id.*

After receiving the Attorney General’s unsolicited letter, the Mohave County Board of Supervisors voted 3-2 to not count the 2024 election ballots by hand. Mohave County Supervisor Ron Gould testified to the Committee that the deciding vote by the Board Chair “was influenced by the letter that was written by the Attorney General threatening to arrest us for doing something that was perfectly legal.” *House Ad Hoc Committee on Executive Oversight Hearing on April 17, 2024*, 56th Leg. 2nd Reg. Sess. (Ariz. 2024).⁴ Supervisor Gould explained that “it makes no sense for [Board Chair Lingenfelter] to put that back on the agenda if he was not then in support of it. You don’t score any points. If you’ve dug yourself a hole by voting against something that was popular with the base, you don’t score yourself any points by putting it back up on the agenda and

³ Available at https://www.azag.gov/sites/default/files/2023-11/2023-11-19%20-%20Letter%20to%20Mohave%20County%20Board%20of%20Supervisors%20re%20counting%20ballots%20manually_0.pdf.

⁴ Available at <https://www.azleg.gov/videoplayer/?eventID=2024041053>

voting against it again.” *Id.* Supervisor Gould testified that Attorney General Mayes “used the power of the State to affect the legislative process.” *Id.*⁵

The Constitution defines the Attorney General’s powers and duties as those “prescribed by law.” ARIZ. CONST. art. 5, § 9. The Attorney General “has no common law powers; ‘whatever powers he [or she] possesses must be found in the Arizona Constitution or the Arizona statutes.’” *State ex rel. Woods v. Block*, 189 Ariz. 269, 272 (1997) (internal citation omitted). The Attorney General’s powers and duties are generally found in A.R.S. § 41-192 and § 41-193.

The Committee has not identified any constitutional or statutory authority for the Attorney General Mayes to threaten the Board of Supervisors with individual criminal and civil liability in order to influence their votes. Quite the contrary. In Arizona, “the Attorney General is not the proper person to decide the course of action which should be pursued by another public officer.” *Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 467 (Ct. App. 2007).

The Attorney General also does not have general authority to declare existing law. “The power to define existing law, including common law, and to apply it to facts rests exclusively within the judicial branch.” *San Carlos Apache Tribe v. Superior Ct. ex rel. Cnty. of Maricopa*, 193 Ariz. 195, 211 (1999). “In contrast, it is the responsibility of the Attorney General to advise state government concerning the law *when requested to do so.*” *Yes on Prop 200*, 215 Ariz. at 465 (emphasis added). The Attorney General’s opinion power is thus only available when sought by a designated requester. *See* A.R.S. § 41-193(7). The Committee has no evidence that Attorney General Mayes’ letter was an Attorney General Opinion. Attorney General Mayes’ letter does not identify itself as an Attorney General Opinion, and it is not listed on the Attorney General’s website for Attorney General Opinions.⁶ In addition, the Committee is not aware of any opinion request by a designated requester.

Arizona’s election laws impose criminal penalties for threatening voters in the same manner that Attorney General Mayes threatened the Board of Supervisors. *See, e.g.*, A.R.S. § 16-1006(A)(1) (“It is unlawful for a person knowingly by force, threats, menaces, bribery or any corrupt means, either directly or indirectly: To attempt to influence an elector in casting his vote or to deter him from casting his vote.”) (class 5 felony); A.R.S. § 16-1008 (“An officer of an election who, while acting as such, knowingly induces an elector, either by menace, reward or promise thereof, to vote differently than the elector intended or desired to vote, is guilty of a class 2 misdemeanor.”); A.R.S. § 16-1012(A)(2) (“It is unlawful for an employer knowingly: Within ninety days of an election provided by law, to put up or otherwise exhibit in any place where his

⁵ Supervisor Gould has asked a court to determine whether he or Attorney General Mayes is correct on the ability under Arizona law to hand-count all ballots cast in an election. *See Gould v. Mayes*, No. CV2024-000815 (Ariz. Super. Ct. Maricopa County). That case remains pending. While the Committee believes the legal arguments favor Supervisor Gould, resolution of the legal dispute is not necessary to evaluate whether Attorney General Mayes abused her power in how she threatened individual Board members. Of course, Supervisor Gould prevailing in his lawsuit would provide additional evidence that Attorney General Mayes abused her power by threatening Board members with a legally inaccurate opinion.

⁶ Available at <https://www.azag.gov/opinions/2023>.

employees are working or are present in the course of employment a handbill, notice or placard containing a threat, notice or information that if any particular ticket or candidate is elected or defeated work in his place or establishment will cease in whole or in part, or his establishment will be closed, or the wages of his workmen will be reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees.”) (class 1 misdemeanor). These laws protect voters by preventing unlawful threats from influencing their votes.

The Committee received undisputed testimony that Attorney General Mayes’ threatening letter influenced the vote of at least one member of the Board of Supervisors. The measure failed by a single vote. Thus, Attorney General Mayes’ threats of criminal and civil liability against individual Board members influenced the outcome of the Board’s vote.

If Attorney General Mayes threatened a voter with individual criminal and civil liability to influence that voter’s vote, Attorney General Mayes could be charged with felonies and misdemeanors. The Committee believes that local public officials should receive the same protection from a statewide official who possesses prosecutorial power.

The Committee finds that Attorney General Mayes abused her power by threatening the Mohave County Board of Supervisors with individual criminal and civil liability in an unsolicited legal opinion. The Committee also finds that Attorney General Mayes committed malfeasance in office because she had no authority to threaten the Mohave County Board of Supervisors with individual criminal and civil liability in an unsolicited legal opinion, and doing so was positively wrong or unlawful.

II. Attorney General Mayes abused her power by using the legal system to attack her political opponents.

In March 2023, Attorney General Mayes filed a lawsuit against Cochise County and the Cochise County Board of Supervisors. Compl., C20231630 (Ariz. Super. Ct. Cochise County Mar. 7, 2023), attached as Exhibit 2.⁷ The Court denied Attorney General Mayes' motion for a preliminary injunction. Letter from Rep. Jacqueline Parker and Rep. Austin Smith to Attorney General Mayes, *Records Request #1 – State v. Cochise County, Pima County Superior Court No. C20231630 (Delegation of Authority to County Recorder Lawsuit)*, Apr. 1, 2024, at 3 (attaching Minute Entry, C20231630 (Ariz. Super. Ct. Cochise County Apr. 18, 2023)), attached as Exhibit 3.⁸ It is the Committee's understanding that Attorney General Mayes declined to appeal the judge's ruling. The Committee investigated whether Attorney General Mayes filed this lawsuit to attack political opponents.

In denying Attorney General Mayes' motion for a preliminary injunction, the judge found that her court filings contained "irrelevant" allegations. Attorney General Mayes' irrelevant allegations included, for example, the Board's other actions "in connection with the 2022 general election," *id.* at 5 (29:17-24)—which are now the centerpiece of Attorney General Mayes' ongoing political prosecution of Cochise County Supervisors Tom Crosby and Peggy Judd. As the judge explained, the Board's "prior actions in connection with the 2022 election have no bearing on" whether the Board's Agreement with the Cochise County Recorder was contrary to law, *id.* at 6 (30:1-4), as Attorney General Mayes alleged in the lawsuit.

Attorney General Mayes' court filings also personally attacked Cochise County Recorder David Stevens. As the judge stated, Attorney General Mayes' "allegations seek to paint a picture of Mr. Stevens as someone who cannot be trusted with these election responsibilities." *Id.* at 6 (30:16-18). The judge found those allegations irrelevant as well, emphasizing that "[t]he legality of a contract depends on whether its terms comply with the law, not in the particular identities of the officials who signed it." *Id.* at 7 (31:3-5). The judge added that if he had to reach the merits of Attorney General Mayes' claims, he would "strike those allegations from the Complaint" because they are "immaterial and impertinent." *Id.* at 7 (31:6-13).

The judge ultimately decided that the Agreement between the Board and the Cochise County Recorder was lawful, rejecting Attorney General Mayes' assertion that the Agreement "crossed the line." It is the Committee's understanding that this type of Agreement between the Board and the Cochise County Recorder is relatively common. However, Attorney General Mayes did not file any similar lawsuits against any other county board of supervisors.

On April 1, 2024, the Committee Chair and Vice-Chair requested relevant documents from Attorney General Mayes. *See id.* at 2. Despite the passage of more than eight weeks, Attorney General Mayes has only produced some, but not all, records that are responsive to the request. The

⁷ Available at <https://www.azag.gov/sites/default/files/2023-03/2023-3-7%20Complaint%20and%20Exhibits.pdf>.

⁸ Available at <https://www.azleg.gov/press/house/56LEG/2R/240401LETTERTOAGMAYES.pdf>.

Committee Chair and Vice-Chair also requested an index of records that have been withheld and the reasons the records or categories of records have been withheld. A.R.S. § 39-121.01(D)(2). Attorney General Mayes has not provided the requested index.

Finally, the Committee Chair and Vice-Chair provided an open invitation to Attorney General Mayes to testify about this subject. Attorney General Mayes did not respond to the invitation.

Based on the Committee's investigation, Attorney General Mayes improperly employed taxpayer-funded resources and the State of Arizona's name in a legal action for political gain. The Committee reaches this conclusion based on Attorney General Mayes suing Cochise County for an agreement that is relatively common and making irrelevant and inflammatory allegations against individuals in a lawsuit that failed almost immediately. Taking legal action to damage, harass, or intimidate a political opponent, or to deter an individual from exercising legal rights, is commonly known as "lawfare." Lawfare by Arizona's chief legal officer is improper and an unlawful abuse of power.

The Committee finds that Attorney General Mayes abused her power by suing Cochise County and the Cochise County Board of Supervisors in order to attack her political opponents. The Committee also finds that Attorney General Mayes neglected her duty to respond in a timely fashion to open records requests from the Committee Chair and Vice-Chair.

III. Attorney General Mayes abused her power by issuing a consumer alert maligning women’s health care centers that was not supported by Arizona evidence.

In March 2024, Attorney General Mayes issued a “consumer alert” maligning women’s health care centers in Arizona. The alert authored by the Attorney General’s “Reproductive Rights Unit”⁹ made numerous allegations that witnesses disputed in testimony before the Committee. These witnesses provided disturbing about Attorney General Mayes’ possible abuse of Arizona’s Consumer Fraud Act. The Committee investigated Attorney General Mayes’ release of a consumer alert containing deception, fraud, and misrepresentations.

Arizona’s Consumer Fraud Act is designed to ensure that Arizonans receive truthful information about products and services. *See* A.R.S. § 44-1521 *et seq.* The Attorney General is entrusted to protect Arizonans from deception, fraud, or misrepresentations about products or services. *Id.* at §§ 44-1522, 44-1524, 44-1531. As the Attorney General’s website proudly proclaims, “The Consumer Protection and Advocacy Section at the Attorney General’s Office protects people – including Arizona’s most vulnerable residents – from fraudsters and scammers, and from all types of deceptive and harmful business practices by enforcing Arizona’s consumer protection laws and other state and federal laws.” Arizona Attorney General, *About Consumer Protection*.¹⁰

In March 2024, Attorney General Mayes “issued a consumer alert warning Arizonans seeking reproductive healthcare services about a potential obstacle hiding in plain sight: so-called Crisis Pregnancy Centers or ‘CPCs.’” Arizona Attorney General, *Attorney General Mayes Warns Patients About Crisis Pregnancy Centers*, Mar. 13, 2024, attached as Exhibit 4.¹¹ Attorney General Mayes claimed, without evidence, that “CPCs may make misleading statements about the services they provide, or otherwise attempt to deceive patients in medically vulnerable situations.” *Id.*

Without citing any evidence, Attorney General Mayes’ consumer alert contained allegations about advertising and operational practices. *See* Arizona Attorney General, *Consumer Alert: Understanding the difference between ‘crisis pregnancy centers’ and licensed facilities that provide reproductive health care*, Mar. 2024, attached as Exhibit 5.¹² For example:

- “CPCs often advertise a full range of reproductive health care services, but do not provide abortion care or abortion referrals, and usually do not provide birth control or other contraceptives.” *Id.* at p. 2.
- CPCs often use tactics meant to mislead and deceive patients.” *Id.* at p. 3.

⁹ Attorney General Mayes informed the Committee in a May 3, 2024 letter that the “Reproductive Rights Unit” does not have any full-time employees, or, it appears, any employees whose work is primarily related to reproductive rights. The characterization of this group as a “Unit” is thus misleading.

¹⁰ Available at <https://www.azag.gov/consumer/about>.

¹¹ Available at <https://www.azag.gov/press-release/attorney-general-mayes-warns-patients-about-crisis-pregnancy-centers>.

¹² Available at <https://www.azag.gov/sites/default/files/2024-03/Consumer%20Alert%20Crisis%20Pregnancy%20Centers.pdf>.

- “For example, CPCs may: . . . [o]perate with volunteers who sometimes wear white coats, so they look like medical professionals, but the volunteers usually have no medical background or training.” *Id.*
- “CPCs often spread fabricated information and debunked or misleading science about fetal development and abortion safety to discourage patients from considering abortion care.” *Id.* at p. 4.
- “CPCs often use delay tactics to make getting an abortion more difficult, more expensive, or potentially unavailable under a state’s law.” *Id.*
- “Under the guise of ‘counseling,’ CPCs sometimes use manipulation and pressure to persuade people out of seeking abortion care.” *Id.* at p. 5.
- “CPCs frequently ‘medicalize’ the appearance of their facilities and operations to seem like full-service medical clinics.” *Id.*

Statements alleging specific activity and frequency—“often,” “frequently,” “sometimes”—indicate that Attorney General Mayes possessed specific knowledge and information on each issue.

These serious charges against Arizona health care providers are not supported by any evidence. Attorney General Mayes did not identify any supporting evidence in the consumer alert. Due to this lack of evidence, the Committee Chair and Vice-Chair demanded Attorney General Mayes produce the evidence supporting her statements. *See* Letter from Rep. Jacqueline Parker and Rep. Neal Carter, *Records Request #3 – Evidentiary Support for Consumer Alert on Women’s Health Care Centers*, Apr. 26, 2024, attached as Exhibit 6.¹³

In response, Attorney General Mayes did not identify any Arizona-specific evidence. *See* Letter from Attorney General Mayes to Rep. Jacqueline Parker and Rep. Neal Carter, *Letter requesting records pertaining to Consumer Alert on ‘Crisis Pregnancy Centers’ (CPCs)*, May 3, 2024, attached as Exhibit 7. Instead, Attorney General Mayes cited journal articles and media reports that were up to six years old; all but one cited source was published before Attorney General Mayes even took office. *See id.* at 2-3. Attorney General Mayes asserted she has enforcement authority whenever a person “is about to engage in” any practice or transaction, *id.* at 1 (citing A.R.S. § 44-1524(A)), but she provided no evidence that any Arizona health care provider was “about to engage in” any of the activity identified in the consumer alert.

At its April 17, 2024 hearing, the Committee received testimony disputing Attorney General Mayes’ allegations. Garrett Riley of the Arizona Life Coalition called the alert “flat out false.” *House Ad Hoc Committee on Executive Oversight Hearing on April 17, 2024*, 56th Leg. 2nd Reg. Sess. (Ariz. 2024). Based on his experience with more than 40 pregnancy centers, Mr. Riley testified that “none of the pregnancy centers that I know use misleading information or manipulative tactics, and clearly pregnancy care centers lack any kind of financial motive to dissuade or prevent an abortion.”¹⁴ *Id.* Mr. Riley described Attorney General Mayes’ consumer

¹³ Available at

<https://www.azleg.gov/press/house/56LEG/2R/240426PARKERCARTERCEOLTRWEB.pdf>.

¹⁴ Mr. Riley also noted that “[c]onversely, organizations like Planned Parenthood are substantially financially motivated to push and sell abortions. That’s what they do.” *Id.*

alert as “threatening, chilling, [and] intimidating.” *Id.* In his opinion, Attorney General Mayes’ alert had caused harassment of pregnancy centers. *Id.*

Other witnesses provided specific testimony undermining Attorney General Mayes’ allegations about medical care. Debbie Vanderboom of Choices Pregnancy Center testified that her staff includes “eleven medical professionals” who have all the necessary licensing for the medical treatment they provide. *Id.* Ms. Vanderboom reported that since September 2023, her medical staff had detected six ectopic pregnancies and referred the patients for appropriate care. *Id.* Sheila Riely of Life Choices Women’s Clinic testified that her staff “detected breast cancer five times in the last four years, allowing for referrals to ecology for early treatment.” *Id.* Darlene Jackson of Life More Abundantly told the Committee how at her organization “we save lives, we help lives, we pray for lives to be saved.” *Id.*

The Attorney General is supposed to protect Arizonans from deception, fraud, and misrepresentations about products and services. Instead, Attorney General Mayes issued a consumer alert filled with deception, fraud, and misrepresentations about Arizona organizations providing health care services to women. *Cf. Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 779 (2018) (Kennedy, J., concurring) (“a paradigmatic example of the serious threat presented when government seeks to impose its own message in the place of individual speech, thought, and expression ... is requir[ing] primarily pro-life pregnancy centers to promote the State’s own preferred message advertising abortions”).

In their April 26, 2024 letter, the Committee Chair and Vice-Chair requested any consumer complaints and emails relating to Attorney General Mayes’ consumer alert. Ex. 6, at 3-4. The Committee Chair and Vice-Chair requested a response no later than May 6, 2024. Attorney General Mayes has not yet provided any documents, nor has she provided a date by which documents will be provided.

The Committee Chair and Vice-Chair also requested an index of records that have been withheld and the reasons the records or categories of records have been withheld. A.R.S. § 39-121.01(D)(2). Attorney General Mayes has neither provided the requested index nor committed to providing it by a date certain.

Finally, the Committee Chair and Vice-Chair provided an open invitation to Attorney General Mayes to testify about this subject. Attorney General Mayes did not respond to the invitation.

The Committee finds that Attorney General Mayes abused her power by issuing an alert that runs contrary to the Consumer Fraud Act because it contains deception, fraud, and misrepresentations and was not in response to any Arizona health care provider “about to engage in” any of the activity identified in the consumer alert. The Committee also finds that Attorney General Mayes neglected her duty to respond to open records requests from the Committee Chair and Vice-Chair.

IV. Attorney General Mayes abused her power by using public resources in an attempt to influence an election and to propose action the Attorney General does not have the power to take.

In February and March 2024, Attorney General Mayes hosted “town halls” relating to water policy. At these town halls, Attorney General Mayes expressed her interest in filing public nuisance lawsuits against farmers operating in rural Arizona based on their water usage. Brandon Loomis, *Attorney general seeking evidence of groundwater overpumping in rural Arizona, may sue*, ARIZONA REPUBLIC (Mar. 29, 2024).¹⁵ The Committee investigated Attorney General Mayes’ use of public resources for these town halls and her office’s lack of authority to regulate groundwater use.

A. Potential legal action against farmers relating to groundwater

Farming is a vital part of our state’s economy. Arizona is home to almost 17,000 farms. United States Department of Agriculture, *State Summary Highlights: 2022*.¹⁶ The University of Arizona reported that approximately 95% of Arizona’s farms are family farms, and Arizona has the largest percentage of female farmers (48.7%) of any state in the country. Valorie Rice, *Arizona Agriculture: Not Your Average Farmers*.¹⁷ Arizona farmers generate more than \$23 billion and employ 162,000 workers. Arizona Department of Agriculture, *Guide to Arizona Agriculture*.¹⁸

Arizona law appears to foreclose any legal action by Attorney General Mayes against farmers. Arizona’s groundwater law empowers the Legislature to craft water policy for the state. *See* A.R.S. § 45-401(A) (declaring “it is in the best interest of the general economy and welfare of this state and its citizens that the legislature evoke its police power” to regulate groundwater). Even the Governor agrees that Attorney General Mayes lacks authority to regulate groundwater. Brahm Resnik, *Saudi farm confusion: Gov. Hobbs says AG Mayes has no authority to take action against controversial groundwater pumper*, 12 NEWS (Feb. 28, 2023) (noting Governor Hobbs’ position on Attorney General’s lack of authority to take action against Saudi-owned farm and Attorney General’s potential conflict of interest).¹⁹ Any lawsuit by Attorney General Mayes that attempts to regulate groundwater would appear to encroach on, or demonstrate contempt of, legislative prerogatives.

¹⁵ Available at <https://www.azcentral.com/story/news/local/arizona-environment/2024/03/29/arizona-attorney-general-may-sue-corporate-farms-overpumping-groundwater/73143798007/>.

¹⁶ Available at https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_2_US_State_Level/st99_2_001_001.pdf, 1.

¹⁷ Available at <https://www.azecconomy.org/2019/09/economy/arizona-agriculture-not-your-average-farmers/>.

¹⁸ Available at https://agriculture.az.gov/sites/default/files/AZDA_GuideToAZAg_2018.pdf, 8.

¹⁹ Available at <https://www.12news.com/article/news/politics/its-very-complex-gov-hobbs-says-ag-kris-mayes-doesnt-have-the-power-to-block-saudi-water-deal/75-1179f6ae-e9ff-43de-b324-af1874156179>.

Arizona law also provides protections to farmers that would appear to block Attorney General Mayes' proposed action. Under Arizona's Agricultural Protection Act (also known as Arizona's "Right to Farm" statutes), "[a]gricultural operations conducted on farmland that are consistent with good agricultural practices and established before surrounding nonagricultural uses are presumed to be reasonable and do not constitute a nuisance unless the agricultural operation has a substantial adverse effect on the public health and safety." A.R.S. § 3-112(A). In addition, "[a]gricultural operations undertaken in conformity with federal, state and local laws and regulations are presumed to be good agricultural practices and not adversely affecting the public health and safety." A.R.S. § 3-112(B).

B. Apparent use of public resources

Putting aside whether Attorney General Mayes' novel lawsuit can be reconciled with state law, the Committee is concerned by Attorney General Mayes' use of public resources to advance her agenda. Attorney General Mayes appears to have used public resources to attend and host these "town hall" meetings to "gather evidence" targeting the agricultural industry and manufacturing a public nuisance lawsuit that could very well result in taxpayers footing the bill. *See* A.R.S. § 3-112(C)(2).

While using these public resources, Attorney General Mayes also advocated for a potential ballot measure. Attorney General Mayes reportedly stated, "If we have to take this issue to the ballot and let all 7 million Arizonans decide this matter or all of the folks who vote in the next election then that's what I'm prepared to do." Madison Thomas, *Attorney General Kris Mayes visits Cochise County to discuss groundwater supply*, KGUN9 (Feb. 24, 2024).²⁰ At one town hall in Cochise County, Attorney General Mayes accused the Legislature of "fail[ing] us" and stated, "it has gotten so bad that the Attorney General of the state of Arizona has to be the one to address this. ... If that Legislature doesn't get its act together this session, I'll tell you what, I'll be the one to lead the ballot initiative. To put this on the ballot so all of you can vote on it ... and that is a promise[.]"

State law, however, provides the Attorney General with no authority to refer any measure to voters for their approval. Moreover, Arizona law prohibits using public resources (including personnel, monies, materials, buildings, vehicles, etc.) to influence an election. *See* A.R.S. § 16-192.

On April 3, 2024, the Committee Chair and Vice-Chair requested records from Attorney General Mayes relating to the use of public resources for the town halls and potential litigation. Letter from Rep. Jacqueline Parker and Rep. Austin Smith to Attorney General Mayes, *Records Request #2 – Recordings of Town Hall Meetings, External Emails Relating to Groundwater & Public Nuisance Issues, and Employee Reimbursement Records*, Apr. 3, 2024, attached as Exhibit

²⁰ Available at <https://www.kgun9.com/news/community-inspired-journalism/cochise-county/attorney-general-kris-mayes-visits-cochise-county-to-discuss-groundwater-supply>

8.²¹ The Committee Chair and Vice-Chair requested a response no later than April 16, 2024. Attorney General Mayes did not provide any documents by the date requested. Attorney General Mayes provided a small production on May 1, 2024. However, she has not provided a date by which all documents will be produced.

The Committee Chair and Vice-Chair also requested an index of records that have been withheld and the reasons the records or categories of records have been withheld. A.R.S. § 39-121.01(D)(2). Attorney General Mayes has neither provided the requested index nor committed to providing it by a date certain.

Finally, the Committee Chair and Vice-Chair provided an open invitation to Attorney General Mayes to testify about this subject. Attorney General Mayes has not responded to the invitation.

The Committee finds that Attorney General Mayes abused her power by using public resources to attempt to influence an election and proposing action—filing a lawsuit or referring a measure to the ballot—the Attorney General does not have authority to take. The Committee also finds that Attorney General Mayes neglected her duty to respond to open records requests from the Committee Chair and Vice-Chair.

²¹ *Available at* <https://www.azleg.gov/press/house/56LEG/2R/240403PARKERSMITHLETTERTOAGMAYES.pdf>.

V. Attorney General Mayes neglected her duty to defend state law.

Attorney General Mayes has failed to defend state laws, such as the Save Women’s Sports Act. The Committee investigated Attorney General Mayes’ decisions to not defend state laws in state and federal courts.

As the Arizona Attorney General handbook explains, the Attorney General “serves as the chief legal officer of the State and the various departments and agencies of the State.” *Ariz. Atty Gen. Handbook*, § 1.3.1 (citing A.R.S. § 41-192(A)). “[T]he Attorney General is required to prosecute and defend in the Arizona Supreme Court ‘all proceedings in which the state or an officer thereof in his official capacity is a party.’” *Ariz. Atty Gen. Handbook*, § 1.3.4 (quoting A.R.S. § 41-193(A)(1)). In addition, the Attorney General has “the duty to ‘[r]epresent the state in any action in a federal court.’” *Id.* (quoting A.R.S. § 41-193(A)(3)).

Attorney General Mayes refused to defend Arizona’s Save Women’s Sports Act in federal court. *See* Doc. 19-1, *Doe v. Horne*, No. 4:23-cv-00185-JGZ (D. Ariz. May 1, 2023), attached as Exhibit 9. The Arizona Legislature passed this Act in 2022 to protect athletic opportunities for women and girls by ensuring they are not unfairly forced to compete against men playing on women’s sports teams. All young Arizona athletes are entitled to participate in extracurricular activities that enable them to grow and thrive, and to be eligible for hard-earned opportunities, including titles, standings, and scholarships. Mothers testified to the Committee about how important this legislation is for their daughters to participate in sports, and how disappointed they are in Attorney General Mayes’ failure to defend it. As one mother summarized: “the fact that men are invading their sport and then also that your state attorney general, that your taxpayer dollars are paying for, won’t defend your daughters—it’s heartbreaking.” *House Ad Hoc Committee on Executive Oversight Hearing on April 17, 2024*, 56th Leg. 2nd Reg. Sess. (Ariz. 2024).

The Committee asked Attorney General Mayes to explain by April 17, 2024 why she disqualified herself from defending the Save Women’s Sports Act. Letter from Rep. Jacqueline Parker and Rep. Austin Smith to Attorney General Mayes, *Refusal to Defend State Laws; Disqualification of Attorney General’s Office*, Apr. 12, 2024, attached as Exhibit 5.²² Attorney General Mayes did not respond to the Committee. No witness who testified before the Committee had received an explanation, or any communication for that matter, from Attorney General Mayes about her decision to not defend this important Act.

Attorney General Mayes’ disqualification left Superintendent Horne with no choice but to hire outside legal counsel and incur litigation costs at taxpayer expense. In addition—without Arizona’s chief legal officer defending the Act’s constitutionality—Speaker Toma and President Petersen were compelled to intervene to do the job Attorney General Mayes refused to do.

The Save Women’s Sports Act is not the only occasion in which Attorney General Mayes has failed to defend state law. In February 2023, Attorney General Mayes unilaterally concluded that Arizona’s law protecting unborn children from discriminatory abortions based on the child’s genetic abnormality, such as Down Syndrome (A.R.S. § 13-3603.02(A)), is “unconstitutional.”

²² Available at <https://www.azleg.gov/press/house/56LEG/2R/240412JPARKERAGLTR.pdf>.

Doc. 160, *Isaacson v. Mayes*, 2:21-cv-01417-DLR (D. Ariz. Feb. 17, 2023), 2, attached as Exhibit 11. Accordingly, Attorney General Mayes told the Court that she “will not defend the constitutionality of those laws going forward.” *Id.* Once again, Speaker Toma and President Petersen had to invoke their statutory authority, pursuant to A.R.S. § 12-1841, to intervene to do Attorney General Mayes’ job.

The Committee Chair and Vice-Chair invited Attorney General Mayes to testify about this subject at its hearing on April 17, 2024. Attorney General Mayes did not respond to the invitation.

The Committee finds that Attorney General Mayes neglected her duty by failing to defend state laws. The Committee further finds that Attorney General Mayes neglected her duty to respond to information requests from the Committee Chair and Vice-Chair.

VI. Other concerns relating to Attorney General Mayes' conduct in office.

After the Committee held hearings, sought documents and testimony from Attorney General Mayes, reviewed the few documents Attorney General Mayes produced, and began preparing this report, the Committee continued to receive additional allegations relating to Attorney General Mayes. The Committee is concerned by these allegations, which are summarized below.

Days after taking office, Attorney General Mayes announced that she had asked the Arizona Supreme Court to withdraw the State's request for a warrant of execution. Arizona Attorney General, *Arizona Attorney General's Office Files Motion to Withdraw Execution of Aaron Brian Gunches*, Jan. 20, 2023, attached as Exhibit 12.²³ Attorney General Mayes argued that the execution should not move forward because the prisoner changed his mind and because a single incident occurred in a 2014 execution, although Attorney General Mayes noted three successful executions had been carried out in 2022. *See* The State of Arizona's Motion to Withdraw Motion for Warrant of Execution, *State v. Gunches*, No. CR 13-0282-AP (Ariz. Jan. 20, 2023), attached as Exhibit 13.²⁴

Attorney General Mayes possesses the sole power to ask the Arizona Supreme Court to issue warrants of execution. *See* A.R.S. § 13-759(A) ("The supreme court shall grant subsequent warrants of execution *on a motion by the state.*") (emphasis added). However, Attorney General Mayes has not requested a single warrant of execution.

Recently, Attorney General Mayes informed the county attorney for Arizona's largest county that she "intend[s] to begin seeking warrants no later than the first quarter of 2025, so long as [Arizona Department of Corrections, Rehabilitation & Reentry] is capable of carrying out a lawful execution at that time." Letter from Attorney General Kris Mayes to the Maricopa County Attorney Rachel Mitchell, May 16, 2024, 1, attached as Exhibit 14.²⁵ As Attorney General Mayes acknowledged, "family members of victims continue to await closure in these (often decades-old) cases." *Id.*

In response, Maricopa County Attorney Mitchell rightly recognized that Attorney General Mayes' "complicity in failing to seek a warrant of execution, ignores the rights of the survivors of the murder victims and disregards victim's rights." Letter from Maricopa County Attorney Rachel Mitchell to Attorney General Kris Mayes, May 17, 2024, 1, attached as Exhibit 15.²⁶ Maricopa County Attorney Mitchell also correctly observed that "[b]y going along with these delay tactics, [Attorney General Mayes is] supporting a false narrative of 'botched' executions." *Id.*

²³ Available at <https://www.azag.gov/press-release/arizona-attorney-generals-office-files-motion-withdraw-execution-aaron-brian-gunches>.

²⁴ Available at https://mcusercontent.com/cc1fad182b6d6f8b1e352e206/files/31f7c492-65ef-61e1-6567-b85ed48a6cc0/Motion_to_Withdraw_Motion_for_Warrant_of_Execution.pdf.

²⁵ Available at <https://s3.documentcloud.org/documents/24665861/2024-05-16-attorney-general-k-mayes-letter-to-maricopa-county-attorney-r-mitchell.pdf>.

²⁶ Available at <https://s3.documentcloud.org/documents/24665864/letter-to-ag-mayes-051724.pdf>.

Attorney General Mayes has failed to seek warrants of execution and enabled Governor Hobbs to unlawfully “suspend the death penalty” in Arizona. *See id.* The Committee is troubled by Attorney General Mayes’ disregard for her job duties and disrespect to crime victims.

At the same time that Attorney General Mayes is choosing to not act on executions, multiple Arizona health care providers have approached the Committee with allegations that Attorney General Mayes and the Arizona Health Care Cost Containment System under Governor Hobbs have suspended them from receiving state reimbursements. These providers claim that Attorney General Mayes and the State have denied them due process, and that their suspensions will harm the patients for whom they care.

These allegations are concerning to the Committee and bolster the Committee’s findings and recommendations set forth below.

CONCLUSION AND RECOMMENDATIONS

Based on its thorough investigation, the Committee finds that Attorney General Kris Mayes has abused her power, neglected her duty, and committed malfeasance in office. Attorney General Mayes has done so in at least six ways:

1. Attorney General Mayes abused her power and committed malfeasance in office by threatening the Mohave County Board of Supervisors with individual criminal and civil liability in an unsolicited legal opinion.
2. Attorney General Mayes abused her power by suing Cochise County and the Cochise County Board of Supervisors in order to attack her political opponents.
3. Attorney General Mayes abused her power by issuing an alert that runs contrary to the Consumer Fraud Act because it contains deception, fraud, and misrepresentations and was not in response to any Arizona health care provider “about to engage in” any of the activity identified in the consumer alert.
4. Attorney General Mayes abused her power by using public resources to attempt to influence an election and proposing action—filing a lawsuit or referring a measure to the ballot—the Attorney General does not have authority to take.
5. Attorney General Mayes neglected her duty by failing to defend state laws.
6. Attorney General Mayes neglected her duty by failing to adequately respond to information and records requests from the Committee.

Based on Attorney General Mayes’ abuse of power, neglect of duty, and malfeasance in office, the Committee finds that Attorney General Mayes has committed impeachable offenses. The Committee therefore recommends the House adopt a resolution impeaching Attorney General Kris Mayes and appointing a board of managers to prosecute her at a Senate trial.

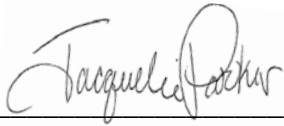
The Committee also recommends that the Legislature consider legislative changes to address any future instances when the Attorney General refuses to defend the constitutionality of a state law. For example, it may be appropriate to use the Attorney General’s budget to fund the Legislature’s defense of a state law. When the next budget is prepared, the Legislature could deduct from the Attorney General’s budget the amount the Legislature spent defending any state law the Attorney General refused to defend.

In addition, the Legislature could reduce the Attorney General’s budget to defund units not authorized by the Legislature, such as the Reproductive Rights Unit. Attorney General Mayes’ response to the Committee did not disclose how many employees she has assigned to the Reproductive Rights Unit. Ex. 7, at 5. However, her response identifies four different office sections that are represented in the Unit, which the Committee understands to mean that at least

four employees are assigned to the Unit. The Legislature could thus reduce the Attorney General's budget by at least four full-time equivalents.

Finally, the Committee has continued to receive concerning allegations about Attorney General Mayes. Attorney General Mayes' abuse of power, neglect of duty, and other failures have left a wide wake, and it appears that investigating all of Attorney General Mayes' malfeasance could continue indefinitely. However, the Committee's investigation to this point has gathered more than sufficient evidence to warrant impeachment.

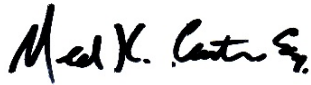
Respectfully submitted this 28th day of May, 2024.



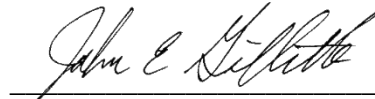
Rep. Jacqueline Parker, Chair



Rep. Austin Smith, Vice Chair



Rep. Neal Carter



Rep. John Gillette



Rep. David Marshall

INDEX OF EXHIBITS

1. November 19, 2023 letter from Attorney General Kris Mayes to the Mohave County Board of Supervisors re: Counting ballots manually instead of by automatic tabulating equipment
2. March 7, 2023 Complaint filed by Attorney General Mayes in *State of Arizona ex rel. Kristin K. Mayes v. Cochise County, et al.*
3. April 1, 2023 letter from Chair Jacqueline Parker and Vice-Chair Austin Smith to Attorney General Mayes re: Records Request #1 – *State v. Cochise County*, Pima County Superior Court No. C20231630 (Delegation of Authority to County Recorder Lawsuit)
4. March 13, 2024 press release from Attorney General Mayes re: *Attorney General Mayes Warns Patients About Crisis Pregnancy Centers*
5. March 13, 2024 publication, “Consumer Alert: Understanding the difference between ‘crisis pregnancy centers’ and licensed facilities that provide reproductive health care,” Reproductive Rights Unit, Office of the Solicitor General, Arizona Attorney General Kris Mayes
6. April 26, 2024 letter from Chair Parker and Rep. Neal Carter to Attorney General Mayes re: Records Request #3 – Evidentiary Support for Consumer Alert on Women’s Health Care Centers
7. May 3, 2024 letter from Attorney General Mayes to Chair Parker and Rep. Parker re: Letter requesting records pertaining to Consumer Alert on “Crisis Pregnancy Centers” (CPCs)
8. April 3, 2024 letter from Chair Parker and Vice-Chair Smith to Attorney General Mayes re: Records Request #2 – Recordings of Town Hall Meetings, External Emails Relating to Groundwater & Public Nuisance Issues, and Employee Reimbursement Records
9. April 21, 2023 letter from Attorney General Mayes’ office to State Superintendent Tom Horne re: Disqualification of AGO in the *Jane Doe, et. al., v. Horne, et. al.* Transgender Girls Sports Lawsuit
10. April 12, 2024 letter from Chair Parker and Vice-Chair Smith to Attorney General Mayes re: Refusal to Defend State Laws; Disqualification of Attorney General’s Office
11. February 17, 2023 Response to Motion to Intervene filed by Attorney General Mayes in *Isaacson, et al. v. Mayes, et al.*
12. January 20, 2023 press release from Attorney General Mayes re: *Arizona Attorney General’s Office Files Motion to Withdraw Execution of Aaron Brian Gunches*
13. January 20, 2023 Motion to Withdraw Motion for Warrant of Execution filed by Attorney General Mayes in *State v. Gunches*

14. May 16, 2024 letter from Attorney General Mayes to Maricopa County Attorney Rachel Mitchell re: Death penalty

15. May 17, 2024 letter from Maricopa County Attorney Mitchell to Attorney General Mayes



KRIS MAYES
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE OF ARIZONA

November 19, 2023

SENT VIA EMAIL TO

Mohave County Board of Supervisors
Chairman Travis Lingenfelter
Supervisor Hildy Angius
Supervisor Buster Johnson
Supervisor Jean Bishop
Supervisor Ron Gould

Re: Counting ballots manually instead of by automatic tabulating equipment

Dear Supervisors:

I understand that you will be voting tomorrow on whether to direct the Mohave County Elections Department to count the ballots for the 2024 elections by hand, rather than automatic tabulating equipment. Before you take that vote, I want to make sure you know that a “yes” vote would direct your Elections Department to violate the law. As Arizona’s chief law enforcement officer, I have an obligation to warn you that the legal consequences would be serious.

Equally important, I am concerned that this Board has received incorrect legal advice from bad-faith actors who are attempting to sow doubt in Arizona’s elections and ultimately undermine Arizona’s democratic process. Full hand counts are impracticable to perform within the time permitted to certify election results, less accurate than tabulating machines, and more importantly are illegal under Arizona law. The resulting delays, inaccurate results, and illegal procedures from hand counts will then be used to call into doubt valid election results. The Board should not endorse this attack on the democratic process.

I. Directing the Elections Department to hand count all ballots would violate the law.

It is well settled in Arizona that counties have only the authority “expressly, or by necessary implication, delegated to them by constitution or by the legislature.” *Vangilder v. Ariz. Dep’t of Revenue*, 252 Ariz. 481, 488 ¶ 24 (2022). Likewise, county officers “may exercise no powers except those specifically granted by statute and in the manner fixed by statute.” *Hancock v. McCarroll*, 188 Ariz. 492, 498 (App. 1996) (citation omitted). The powers of counties and county officers are “strictly construed,” and any doubt “as to the power sought to be exercised must be resolved against” them. *Vangilder*, 252 Ariz. at 492 ¶ 45 (citation omitted).

Arizona law does not allow counties to make a blanket decision to count ballots by hand.

Instead, the relevant statutes repeatedly provide that ballots shall be counted by automatic tabulating equipment. *See, e.g.*, A.R.S. §§ 16-449, 16-468, 16-602, 16-621, 16-622. In particular, section 16-622(A) of the Arizona Revised Statutes provides that “[t]he result printed by the vote tabulating equipment, to which have been added write-in and early votes, shall, when certified by the board of supervisors or other officer in charge, constitute the official canvass of each precinct or election district.” Except when expressly allowed by statute, votes counted by hand do not constitute part of the official canvass. Thus, the proposed measure could end up disenfranchising your constituents.

The officer in charge of elections may direct that ballots “be counted manually” only if “it becomes impracticable to count all or a part of the ballots with tabulating equipment.” A.R.S. § 16-621(C). No evidence supports a general finding that counting ballots with tabulating equipment is impracticable. Rather, as the recent analysis from the Mohave County Elections Department shows, manually counting all ballots would be impracticable in several ways. *See Mohave County, Ballot Hand Tally Analysis*, <https://portal.mohavecounty.us/bos/0/doc/2038269/Page1.aspx> (explaining that a full manual count may compromise confidentiality, hurt the timeliness and accuracy of results, and significantly increase costs). Outside of a specific scenario in which counting ballots with tabulating equipment is impracticable, the Legislature has not provided counties with authority to count ballots by hand instead of via tabulating equipment, and counties may not independently choose to do so. *See State v. Stapley*, 227 Ariz. 61, 64–65, ¶ 15 (App. 2011) (“[T]he Board can exercise only those powers specifically granted to it by the legislature.”)

The Elections Procedures Manual similarly makes clear that ballots shall be counted by machine. For example, Chapter 11 provides for a “limited” hand count audit, the purpose of which “is to compare the result of the machine count to the hand count to assure that the machines are working properly and accurately counting votes.” Elections Procedures Manual at 213. The manual goes on to provide a four-stage process for hand counts: (1) precinct hand count; (2) second precinct hand count; (3) expanded precinct hand count; and (4) full precinct hand count. It authorizes a full precinct hand count audit only when certain error thresholds were met in stages 1, 2, and 3.

In 2022, Cochise County engaged in a misguided and illegal effort to do a full hand-count audit of all ballots cast in the 2022 general election. The superior court concluded that this was unlawful. The Court of Appeals agreed. *See Arizona All. for Retired Americans, Inc. v. Crosby*, --- P.3d ---, 2023 WL 6854102 (Ariz. Ct. App. Oct. 18, 2023). “[A] complete hand-count audit is permitted only after a multi-step process that includes conducting the preliminary and expanded audits described in § 16-602(C)-(D). Interpreting § 16-602(B)-(E) to allow a county to begin with a full hand-count audit of all precincts would render the statute's multi-step process superfluous. We will not interpret a statute in a manner that renders a provision superfluous.” *Id.*

A court would reach the same conclusion here. Indeed, the letter from Brian Blehm in your packet does not cite *any* legal authority for his unsupported theory that a county can hand count all ballots. That should tell you all you need to know.

II. The Board should not direct the Elections Department to violate the law.

We all took an oath to support “the laws of the State of Arizona” and to “bear true faith and allegiance” to them. A.R.S. § 38-231. To uphold that oath, the Board should not direct the Elections Department to act illegally. If it does, we will promptly sue and obtain a court order. The court may also hold members of the Board who voted for an illegal action liable for misconduct, *see* A.R.S. § 11-223, and subject them to personal liability for any public funds used for this illegal purpose, *see* A.R.S. § 35-212(C).

Those encouraging you to hand count elections results are encouraging you to violate the law. In addition to the above civil remedies, you should be aware that an illegally expanded hand count may result in various felony and misdemeanor criminal penalties. We hope you will choose not to violate the law and thus that it will not be necessary for us to consider whether criminal prosecution is warranted for conducting an illegal hand count.

III. Conclusion

I urge you to fulfill your oath by declining to direct the Elections Department to violate the law and by not risking that you violate the law yourselves. My office is committed to upholding the sanctity of Arizona’s elections and democratic process. It will pursue to the fullest extent of the law all possible remedies to ensure the sanctity of Arizona’s elections.

Sincerely,



KRIS MAYES
Arizona Attorney General

cc: Matthew J. Smith, Mohave County Attorney

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17 *Attorneys for Plaintiff State of Arizona ex rel.*
18 *Attorney General Kristin K. Mayes*

19 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
20 **IN AND FOR THE COUNTY OF COCHISE**

21 THE STATE OF ARIZONA, *ex rel.*
22 KRISTIN K. MAYES, Attorney General

23 Plaintiff,

24 vs.

25 COCHISE COUNTY, TOM CROSBY in his
26 official capacity as Cochise County District 1
Board Supervisor, ANN ENGLISH, in her
official capacity as Cochise County District 2
Board Supervisor, PEGGY JUDD, in her
official capacity as Cochise County District 3
Board Supervisor and DAVID W.
STEVENS, in his official capacity as Cochise
County Recorder

Defendants.

No: _____

COMPLAINT

EXHIBIT

2

1 The State of Arizona, through Attorney General Kristin K. Mayes, alleges as follows:

2 **INTRODUCTION**

3 1. Defendants recently have made and executed an illegal agreement (the
4 “Agreement”) which—in barely three pages—purports to give to the Cochise County Recorder
5 almost all of the elections powers and duties conferred by statute upon the Cochise County
6 Board of Supervisors (the “Board”). *See* Ex. A (Agreement, 2/28/2023).

7 2. Through the Agreement, the Recorder has unlawfully aggrandized his power, and
8 the Board has unlawfully and almost completely offloaded its statutory duties over elections.

9 3. This is not the first time that Defendants have disregarded the law governing
10 elections. The Board and Recorder repeatedly flouted the law with respect to the November
11 2022 general election, first by attempting to engage in an illegal hand count of ballots and then
12 by the Board violating its duty to canvass the election within the statutory time frame. In both
13 cases, the Board and Recorder ceased their unlawful conduct only after a court ordered them to
14 do so.

15 4. Once again, the judiciary is called upon to ensure that elections in Cochise County
16 are conducted in accordance with the law. And here, the Agreement not only threatens the
17 lawful administration and operation of elections. It also may threaten Cochise County residents’
18 right to know how and when their government is making consequential decisions that affect
19 their right to vote. In shifting all election duties to the Recorder—a distinct constitutional
20 county officer—the Agreement says not a word about how or whether the public may still have
21 access to deliberations on matters that the Board would normally consider in open meetings.

22 5. The Agreement is contrary to law, and this Court should prohibit Defendants from
23 implementing it.

24 **JURISDICTION AND VENUE**

25 6. This Court has jurisdiction over quo warranto actions pursuant to article VI, § 18
26 of the Arizona Constitution and A.R.S. §§ 12-123 and 12-2041.

27 7. This Court has jurisdiction over actions seeking declaratory and injunctive relief
28 under article VI, § 14 of the Arizona Constitution and A.R.S. §§ 12-123, 12-1801, and 12-1831.

1 17. Likewise, a county body or officer can agree to cooperate on election matters with
2 another county body or officer—on equal footing and without exchanging powers and duties
3 specifically and solely assigned to each—to make elections more efficient and effective, as other
4 counties have done with respect to certain election matters.

5 18. But, without legislative authorization, a county body or officer may not give away
6 its statutory powers or duties to another constitutionally established county body or officer, nor
7 may it obtain the duties of another public body or officer or “assume power not conferred by
8 statute.” *Nutt v. Priser*, 50 Ariz. 71, 75 (1937); *see also Bd. of Supervisors of Maricopa Cnty. v.*
9 *Woodall*, 120 Ariz. 379, 382 (1978).

10 19. A county officer may exercise only the legal authority of their office, not some
11 other office that they do not hold.

12 20. For example, a county sheriff cannot give his powers and duties related to law
13 enforcement and jail supervision to the county assessor, just as the assessor may not give her
14 powers and duties related to assessment to the sheriff.

15 21. The same is true of the statutory powers and duties related to elections. Without
16 legislative authorization, a board of supervisors may not give its powers and duties over
17 elections to the sheriff, assessor, or anyone else—including the recorder.

18 22. County boards of supervisors have statutory authority over several critical election
19 functions, including establishing election precincts, *see* A.R.S. §§ 11-251(3), 16-411(A); the
20 appointment of election judges, inspectors, marshals, and boards, *see* A.R.S. §§ 11-251(3), 16-
21 531, 16-535, 16-551(A); the preparation of ballots, voter instructions and notices, and election
22 equipment, *see* A.R.S. §§ 16-404, 16-405, 16-447, 16-503, 16-513, 16-514, 16-515; and the
23 canvassing of election returns, declaration of results, and issuing of certifications thereof, *see*
24 A.R.S. §§ 11-251(3), 16-642, 16-645, 16-646(C), 16-647.

25 23. This authority is granted by statute to the boards of supervisors, and not to any
26 other county officers.

1 24. County recorders have statutory authority over other aspects of elections, such as
2 those related to voter registration, early voting, and petitions. This does not allow them to
3 assume or exercise statutory authority not provided to them by law.

4 FACTUAL ALLEGATIONS

5 A. The Board’s Approval

6 25. On Sunday, February 26, 2023, the Board publicly noticed a meeting for Tuesday
7 morning, February 28, 2023, during which it would consider a draft Agreement to give almost
8 all of the Board’s statutory powers and duties over elections to the Recorder. *See Ex. B (Draft*
9 *Agreement).*

10 26. On February 27, 2023, the Office of the Attorney General sent a letter to the
11 Cochise County Attorney, with a copy to the Board, expressing “serious questions about the
12 legality of the Board’s intended course of action.”

13 27. The letter explained the legal principles recounted above and noted that the draft
14 Agreement did not cite any basis for giving the Board’s statutory authority and duties over
15 elections to the Recorder. In closing, the letter stated: “If you are aware of legal authority for
16 the draft Agreement, please promptly provide it to us.”

17 28. Cochise County did not provide any legal authority in response.

18 29. Instead, the Cochise County Attorney’s Office stated that they agreed with the
19 analysis contained in the Attorney General’s letter.

20 30. Nonetheless, at the meeting on February 28, 2023, the Board approved the
21 Agreement by a 2-1 vote, with Supervisor Judd acknowledging the advice received from
22 counsel, but stating that the Board could “negotiate” with the Attorney General after executing
23 the Agreement.

24 31. Explaining her lone nay vote, Supervisor English stated that the Board was acting
25 in an inappropriate and unadvised fashion.

26

1 32. Although the County Attorney’s Office had previously approved the draft
2 Agreement as to form (*see* Ex. B at 3), the County Attorney did not approve the executed
3 Agreement as to form (*see* Ex. A at 3).

4 33. Rather, in light of the Attorney General’s letter of February 27, 2023, the County
5 Attorney concluded the Agreement was *void ab initio*.²

6 **B. The Agreement**

7 34. The barely three-page Agreement purports to give to the Recorder nearly all of the
8 Board’s statutory powers and duties over elections, with no clear or specific limitations on the
9 exercise and extent of that power.

10 35. Under Section 2 of the Agreement, “[t]he responsibility for the operation and
11 administration of elections” is “delegated to the Recorder.”

12 36. Section 2 of the Agreement further provides that the Recorder:

- 13 a. “shall manage the personnel and budget for all election[s] and all functions
14 related to Special Districts”;
- 15 b. is “designated ... the election officer who shall receive nomination papers and
16 petitions of candidates for public office”;
- 17 c. “shall prepare and provide to the Clerk of the Board Certificates of Nomination
18 and Certificates of Election”;
- 19 d. “shall be responsible for distributing the official canvass of County and Special
20 District elections”;
- 21 e. and apart from certain limited powers related to the canvass, “**shall be**
22 **responsible for all other election functions**, including A.R.S. Title 19 duties
23 charged to the Board of Supervisors or other County officer in charge of
24 elections” (emphasis added).

25
26
² Plaintiff is informed that Supervisor English’s signature on the Agreement (*see* Ex. A at 3) does not reflect disagreement with the County Attorney’s conclusion; it simply reflects that the Board voted affirmatively for the Agreement, even though she did not.

1 37. Even with respect to the canvass and certificates of nomination and election, the
2 Agreement purports to give the Recorder some of the Board’s statutory powers.

3 38. Section 3 gives the Recorder “authority to contract to provide election services to
4 other political subdivisions.” Any provision in Section 3 that purports to require Board approval
5 is, evidently, a rubber stamp. At the February 28, 2023, meeting, when discussing an
6 amendment to Section 3 of the draft Agreement—to change “shall be approved by the Board” to
7 “shall be subject to final approval by the Board”—Supervisor Crosby stated the amendment was
8 simply clarification because “we will always approve it.”

9 39. Section 4 of the Agreement provides for “formal Board approval” of certain
10 matters, but this too is a mere formality. Section 4’s provision that the Recorder “shall advise
11 the Board from time-to-time on election matters” is hollow because—among other issues—it
12 leaves the Board no power to make decisions over the matters on which the Recorder
13 “advise[s],” nor to supervise the implementation of election powers and duties conferred upon
14 the Board by statute.

15 40. Both the Board and the Recorder “acknowledge that neither ... may abdicate its
16 statutory responsibilities to the other” (Ex. A at 1)—but that’s exactly what they have agreed to
17 do. Among the Agreement’s other plain terms, Section 5 gives the game away: it provides that
18 elections employees “shall report to and act under the supervision of the Recorder [to advise him
19 on] all election and Special Districts related matters that **are within the statutory**
20 **responsibility of the Board**” (emphasis added).

21 41. Although Section 6 includes “[n]on-delegation of authority” language, that
22 boilerplate term is flatly inconsistent with the rest of the Agreement. The Board has no clear or
23 defined supervisory authority over the Recorder and may even (apparently) lack authority to
24 disapprove the matters presented to it by the Recorder.

25 42. Section 7 promises that the Board will “appropriate, to the extent funds are
26 available, funding sufficient for necessary expenses of conducting elections,” with no
qualification about who determines necessity, nor how.

1 43. The Agreement is contrary to law.

2 44. If Defendants are allowed to implement the Agreement, then elections in Cochise
3 County will be conducted in a manner that is contrary to law.

4 45. Further, if Defendants are allowed to implement the Agreement, the residents of
5 Cochise County may be deprived of the full transparency to which they are entitled regarding
6 public officials' deliberations about systemic changes to the conduct of elections.

7 **COUNT ONE**

8 **(Quo Warranto – Assumption and Exercise of Authority**
9 **Beyond Constitutional and Statutory Limits)**

10 46. Plaintiff incorporates the preceding paragraphs by reference.

11 47. A writ of quo warranto—translated as “by what authority” or “by what warrant”—
12 is an ancient common law writ that “allowed only the king to bring a public proceeding to
13 correct the wrong caused by someone unlawfully holding or misusing the king’s power.”
14 *Jennings v. Woods*, 194 Ariz. 314, 318 ¶ 15 (1999); *see* 65 Am. Jur. 2d Quo Warranto § 1.

15 48. In Arizona, that writ has been codified in A.R.S. § 12-2041, which authorizes and
16 directs the Attorney General to bring a quo warranto action “against any person who usurps,
17 intrudes into or unlawfully holds or exercises any public office or any franchise within this
18 state.” *See also State v. Ariz. Bd. of Regents*, 507 P.3d 500, 504-05 (Ariz. 2022).

19 49. Quo warranto actions seek to “prevent[] a continued exercise of authority
20 unlawfully asserted.” *State ex rel. Woods v. Block*, 189 Ariz. 269, 272 (1997).

21 50. Here—in violation of article XII, § 4 of the Arizona Constitution, the statutory
22 provisions listed above, and any similar statutory provisions delegating election authority and
23 duties to the Board alone—Defendants have agreed to give to the Recorder election duties and
24 powers that the legislature has solely assigned to the Board of Supervisors.

25 51. Thus, Defendant Stevens has entered into the Agreement to assume and exercise
26 power beyond his lawful franchise and without constitutional or statutory authority.

- 1 B. Enjoin Defendants from making unlawful payments of public funds pursuant to
2 the Agreement.
- 3 C. Enjoin Defendants from otherwise implementing the Agreement.
- 4 D. Declare the Agreement contrary to law and therefore void.
- 5 E. Grant recovery of any public monies that were or will be illegally paid pursuant
6 to the Agreement, plus twenty percent and interest and costs.
- 7 F. Award Plaintiff its reasonable attorneys' fees and costs.
- 8 G. Award such other relief as the Court deems proper.

9 RESPECTFULLY SUBMITTED: March 7, 2023.

10 KRISTIN K. MAYES
11 ATTORNEY GENERAL

12 By: /s/ Joshua D. Bendor
13 Joshua D. Bendor (No. 031908)
14 Alexander W. Samuels (No. 028926)
15 Hayleigh S. Crawford (No. 032326)
16 Luci D. Davis (No. 035347)
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26 *Attorneys for Plaintiff*
State of Arizona ex rel.
Attorney General Kristin K. Mayes

EXHIBIT A

AGREEMENT
between the
COCHISE COUNTY BOARD OF SUPERVISORS
and the
COCHISE COUNTY RECORDER
for
ELECTION SERVICES

This Agreement is entered into on the 28th day of February, 2023, and is effective upon recording with the Cochise County Recorder.

WHEREAS, the Cochise County Board of Supervisors ("Board") or other officer in charge of an election is charged by A.R.S. § 11-251(3) and Title 16, Chapters 1 through 4 with various election responsibilities, including designating polling places and conducting elections within Cochise County in compliance with state and federal requirements governing national, state, and local elections; and,

WHEREAS, by Resolution 88-41, the Board created the Elections/Special District Office under the Board; and,

WHEREAS, the Cochise County Recorder ("Recorder") or other officer in charge of an election is charged by A.R.S. Title 16, Chapters 1 through 4 with the responsibility of voter registration and early voting; and,

WHEREAS, the Board and the Recorder agree that combining all election-related functions under one department promotes economy, efficiency, and public confidence; and

WHEREAS, the Board and the Recorder acknowledge that neither entity may abdicate its statutory responsibilities to the other.

NOW, THEREFORE, it is agreed by and between the Board and the Recorder as follows:

- 1. Term.** The term of this Agreement shall commence upon the filing of a fully executed original in the official records of the Cochise County Recorder and shall terminate on December 31, 2024, unless terminated earlier pursuant to paragraph 9.
- 2. Delegation of administrative responsibility.** The responsibility for the operation and administration of elections and A.R.S. Title 48 special taxing districts ("Special Districts") are hereby delegated to the Recorder. The Recorder shall manage the personnel and budget for all election and all functions related to Special Districts. For the purposes of filing nomination papers, the Recorder is designated to be the election officer who shall receive nomination papers and petitions of candidates for public office pursuant to A.R.S. Title 16, Chapter 3. The Board shall meet and publicly canvass election results as prepared and provided by the Recorder. The Recorder shall prepare and provide to the Clerk of the Board Certificates of Nomination and Certificates of Election, for the Clerk of the Board to execute. The Recorder shall issue the signed Certificates of Nomination and Certificates of Election. The Recorder shall be responsible for all other election functions, including A.R.S. Title 19 duties charged to the Board of Supervisors or other County officer in charge of elections. The Recorder shall be responsible for distributing the official canvass of County and

Agreement between the Cochise County Board of Supervisors and the Cochise County Recorder for Election Services

Special Districts elections. The Recorder shall be Interim Elections Director and shall appoint, subject to approval by the Board, an Elections Director.

3. Contracting authority. The Board delegates to the Recorder authority to contract to provide election services to other political subdivisions, pursuant to Resolution 19-10. All service contracts for services acquired by the Recorder shall be subject to final approval by the Board. Procurement of services, goods, and equipment shall comply with the County of Cochise Procurement Policy.

4. Board reporting and approvals. The Recorder shall advise the Board from time-to-time on election matters, and the Recorder shall prepare and present at a Regular Board of Supervisors Meeting, for formal Board approval, the following:

- a. Election Day vote center and emergency voting locations.
- b. Any statutorily required Board action to call an election.
- c. Any other election-related matter statutorily requiring formal Board approval.
- d. Any Special District item statutorily requiring formal Board action or approval, including but not limited to formations or modifications of existing boundaries.

5. Supervisory authority of the Recorder. County employees designated by the Recorder to conduct elections and administer special districts on behalf of the Board shall report to and act under the supervision of the Recorder, and in so doing, shall keep the Recorder advised of all election and Special Districts related matters that are within the statutory responsibility of the Board. It is understood and agreed that, unless otherwise specified by contract, regular and temporary employees hired by the Recorder to fulfill the obligations under this agreement are County employees subject to the Cochise County Human Resources Policies and Merit Rules.

6. Non-delegation of authority. Nothing in this agreement is intended to grant policy-making or budgetary approval authority to the Recorder for election matters within the statutory responsibility of the Board or the Clerk of the Board.

7. Funding. It is anticipated that funding for election-related functions will continue at least at the current level, but in any event, the Board agrees to appropriate, to the extent funds are available, funding sufficient for necessary expenses of conducting elections without impairing the ability of the Recorder to carry out the statutory responsibilities of the office of the Recorder.

8. Modification. This agreement may be modified by mutual agreement in writing, as necessary, or terminated as provided below.

Agreement between the Cochise County Board of Supervisors and the Cochise County Recorder for Election Services

9. Termination. This agreement may be terminated by either party without cause upon a ninety-day notice given by a majority vote of the Board at a public meeting or in writing by the Recorder to the Board.

Dated this 28th day of February, 2023.

COCHISE COUNTY:


Ann English 2-28-23
Chairman, Board of Supervisors

COCHISE COUNTY RECORDER


David W. Stevens
Cochise County Recorder

ATTEST:


Tim Mattix, Clerk of the Board

APPROVED AS TO FORM:

Christine J. Roberts, Esq.
Chief Civil Deputy County Attorney

EXHIBIT B

AGREEMENT
between the
COCHISE COUNTY BOARD OF SUPERVISORS
and the
COCHISE COUNTY RECORDER
for
ELECTION SERVICES

This Agreement is entered into on the _____ day of _____, 2023, and is effective upon recording with the Cochise County Recorder.

WHEREAS, the Cochise County Board of Supervisors (“Board”) or other officer in charge of an election is charged by A.R.S. § 11-251(3) and Title 16, Chapters 1 through 4 with various election responsibilities, including designating polling places and conducting elections within Cochise County in compliance with state and federal requirements governing national, state, and local elections; and,

WHEREAS, by Resolution 88-41, the Board created the Elections/Special District Office under the Board; and,

WHEREAS, the Cochise County Recorder (“Recorder”) or other officer in charge of an election is charged by A.R.S. Title 16, Chapters 1 through 4 with the responsibility of voter registration and early voting; and,

WHEREAS, the Board and the Recorder agree that combining all election-related functions under one department promotes economy, efficiency, and public confidence; and

WHEREAS, the Board and the Recorder acknowledge that neither entity may abdicate its statutory responsibilities to the other.

NOW, THEREFORE, it is agreed by and between the Board and the Recorder as follows:

- 1. Term.** The term of this Agreement shall commence upon the filing of a fully executed original in the official records of the Cochise County Recorder and shall terminate on December 31, 2024, unless terminated earlier pursuant to paragraph 9.
- 2. Delegation of administrative responsibility.** The responsibility for the operation and administration of elections and A.R.S. Title 48 special taxing districts (“Special Districts”) are hereby delegated to the Recorder. The Recorder shall manage the personnel and budget for all election and all functions related to Special Districts. For the purposes of filing nomination papers, the Recorder is designated to be the election officer who shall receive nomination papers and petitions of candidates for public office pursuant to A.R.S. Title 16, Chapter 3. The Board shall meet and publicly canvass election results as prepared and provided by the Recorder. The Recorder shall prepare and provide to the Clerk of the Board Certificates of Nomination and Certificates of Election, for the Clerk of the Board to execute. The Recorder shall issue the signed Certificates of Nomination and Certificates of Election. The Recorder shall be responsible for all other election functions, including A.R.S. Title 19 duties charged to the Board of Supervisors or other County officer in charge of

elections. The Recorder shall be responsible for distributing the official canvass of County and Special Districts elections. The Recorder shall appoint, subject to approval by the Board, an Elections Director.

3. Contracting authority. The Board delegates to the Recorder authority to contract to provide election services to other political subdivisions, pursuant to Resolution 19-10. All service contracts for services acquired by the Recorder shall be approved by the Board. Procurement of services, goods, and equipment shall comply with the County of Cochise Procurement Policy.

4. Board reporting and approvals. The Recorder shall advise the Board from time-to-time on election matters, and the Recorder shall prepare and present at a Regular Board of Supervisors Meeting, for formal Board approval, the following:

- a. Election Day vote center and emergency voting locations.
- b. Any statutorily required Board action to call an election.
- c. Any other election-related matter statutorily requiring formal Board approval.
- d. Any Special District item statutorily requiring formal Board action or approval, including but not limited to formations or modifications of existing boundaries.

5. Supervisory authority of the Recorder. County employees designated by the Recorder to conduct elections and administer special districts on behalf of the Board shall report to and act under the supervision of the Recorder, and in so doing, shall keep the Recorder advised of all election and Special Districts related matters that are within the statutory responsibility of the Board. It is understood and agreed that, unless otherwise specified by contract, regular and temporary employees hired by the Recorder to fulfill the obligations under this agreement are County employees subject to the Cochise County Human Resources Policies and Merit Rules.

6. Non-delegation of authority. Nothing in this agreement is intended to grant policy-making or budgetary approval authority to the Recorder for election matters within the statutory responsibility of the Board or the Clerk of the Board.

7. Funding. It is anticipated that funding for election-related functions will continue at least at the current level, but in any event, the Board agrees to appropriate, to the extent funds are available, funding sufficient for necessary expenses of conducting elections without impairing the ability of the Recorder to carry out the statutory responsibilities of the office of the Recorder.

8. Modification. This agreement may be modified by mutual agreement in writing, as necessary, or terminated as provided below.

Agreement between the Cochise County Board of Supervisors and the Cochise County Recorder for Election Services

9. Termination. This agreement may be terminated by either party without cause upon forty-five days written notice to the other.

Dated this _____ day of _____, 2023.

COCHISE COUNTY:

COCHISE COUNTY RECORDER

Ann English
Chairman, Board of Supervisors

David W. Stevens
Cochise County Recorder

ATTEST:

Tim Mattix, Clerk of the Board

APPROVED AS TO FORM:

Christine J. Roberts 2/22/2023

Christine J. Roberts, Esq.
Chief Civil Deputy County Attorney

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DISTRICT 29

Arizona House of Representatives
Phoenix, Arizona 85007

April 1, 2024

Via Email and U.S. Mail

Hon. Kris Mayes
Arizona Attorney General
2005 N. Central Ave.
Phoenix, Arizona 85004

**Re: Records Request #1 – *State v. Cochise County*, Pima County Superior Court
No. C20231630 (Delegation of Authority to County Recorder Lawsuit)**

Dear Attorney General Mayes:

The Arizona House of Representatives has a special role under the Arizona Constitution and state law to exercise appropriate oversight over the governor and state and judicial officers. *See, e.g.*, A.R.S. § 38-311; *Mecham v. Gordon*, 156 Ariz. 297, 299 (1988). To that end, the Ad Hoc Committee on Executive Oversight was recently established to examine Arizona laws that establish the duties, powers, and proper role of the Arizona Attorney General in our state constitutional framework and to undertake legislative investigations relating to alleged abuses of statutory authority, refusals to perform duties required by law, and/or malfeasance in office.

We write to you today in our official capacity, as the Chair and Vice Chair of this Committee, to express serious concerns about the lawsuit you filed last spring against the Cochise County Board of Supervisors (“Board”). (See enclosed 4/18/2023 ruling and transcript excerpts.) In denying your motion for a preliminary injunction, the judge found that your court filings contained “irrelevant” allegations, for example, the Board’s other actions “in connection with the 2022 general election”—which are now the centerpiece of your ongoing political prosecution of Cochise County Supervisors Crosby and Judd. As the judge explained, the Board’s “prior actions in connection with the 2022 election have no bearing on” whether the Board’s Agreement with the Cochise County Recorder was contrary to law, as you alleged in the lawsuit.

Your court filings also personally attacked the Cochise County Recorder, David Stevens. As the judge stated, your “allegations seek to paint a picture of Mr. Stevens as someone who cannot be trusted with these election responsibilities.” The judge found those allegations irrelevant as well, emphasizing that “[t]he legality of a contract depends on whether its terms comply with the law, not in the particular identities of the officials who signed it.” The judge added that if he had to reach the merits of your claims, he would have “strike[n] those allegations from the Complaint” because they are “immaterial and impertinent.” The judge ultimately decided that the Agreement between the Board and the Cochise County Recorder was lawful, rejecting your assertion that the Agreement “crossed the line.”

It is our understanding that you declined to appeal the judge’s ruling and that this type of Agreement between the Board and the Cochise County Recorder is relatively common, but you did not file any similar lawsuits against any other county board of supervisors.

It is improper for anyone—particularly Arizona’s chief legal officer, using taxpayer-funded resources and acting on behalf of the State of Arizona—to use legal systems for political gain, to damage, harass or intimidate a political opponent, or to deter an individual from exercising legal rights (i.e., engage in what is commonly known as “lawfare”). We would like to better understand your motivation for targeting Cochise County and including such inflammatory and irrelevant material in your court filings.

Accordingly, pursuant to this legislative investigation, and alternatively under the Arizona Public Records Act, A.R.S. § 39-121, *et seq.*, please provide us with the following records no later than **April 15, 2024**:

1. Copies of all communications in whatever form or medium, including emails, sent from or received by you or any attorney on your senior staff or any attorney appearing on the pleadings in *State v. Cochise County*, Pima County Superior Court No. C20231630, between January 1, 2023, and May 1, 2023, that contain any of the following terms: “Cochise County”, “Cochise County Board of Supervisors”, “Crosby”, “Judd”, or “Stevens.”
2. Copies of all communications in whatever form or medium, including emails, in which you or any employee of your office sent a draft of any pleading, document, or court filing in *State v. Cochise County*, Pima County Superior Court No. C20231630, to any email address domain other than @azag.gov.

We further request an index of records that have been withheld and the reasons the records or categories of records have been withheld. *See* A.R.S. § 39-121.01(D)(2). Feel free to include any other relevant information that you believe would address our concerns.¹

At this time, we are not requesting your testimony on this subject, but if you wish to testify, please let us know and we will work with your schedule to arrange a Committee hearing.

Respectfully,



Jacqueline Parker
Chair, Committee on Executive Oversight



Austin Smith
Vice-Chair, Committee on Executive Oversight

¹ For additional information regarding the House’s standard investigative protocols, please visit: <https://www.azhouse.gov/alispdfs/AZHouseInvestigativeProtocols.pdf>.

APR 24 2023

April 21, 2023
GARY L. HARRISON, Clerk

M Whitehead

Deputy

ARIZONA SUPERIOR COURT, IN THE COUNTY OF PIMA, FOR THE COUNTY OF COCHISE

HON. THOMAS FINK

CASE NO. C20231630

COURT REPORTER: Barbara Short
Courtroom - 683

DATE: April 18, 2023

STATE OF ARIZONA
Plaintiff

Joshua D Bendor, Esq. counsel for Plaintiff

VS.

COCHISE COUNTY,
TOM CROSBY,
ANN ENGLISH,
PEGGY JUDD, and
DAVID W STEVENS
Defendants

Timothy A La Sota, Esq. counsel for Defendants

MINUTE ENTRY

STATE'S MOTION FOR PRELIMINARY INJUNCTION

County Administrator Richard Karwaczka and Supervisor Tom Crosby are present.

Counsel argue to the Court.

IT IS ORDERED that the motion is denied.

The Court incorporates the transcript of this hearing into the minute entry as orders of the Court.

Forwarded for

HON. THOMAS FINK

- cc: Hon. Thomas Fink
- Alexander W Samuels, Esq.
- Hayleigh S Crawford, Esq.
- Joshua D Bendor, Esq.
- Luci D Davis, Esq.
- Timothy A La Sota, Esq.

M. Whitehead
Deputy Clerk

1 The Cochise County Board of Supervisors was
2 without an Election Director because the county's Election
3 Director had resigned.

4 On February 28th, 2023, the Board approved an
5 Agreement signing supervisory authority over elections to
6 the Cochise County Recorder. That Agreement is in the
7 record, and its terms speak for themselves.

8 The State's complaint in its motions for
9 preliminary injunction contain certain factual allegations
10 that this Court will not consider, and I need to note those
11 for the record so any reviewing court knows that they have
12 been considered and rejected -- or that they will not be
13 considered.

14 First, the Court's moving papers contain factual
15 allegations that this Court would characterize this, here we
16 go again with Cochise County and elections.

17 Those allegations relate to the Board's action in
18 connection with the 2022 general election. In that
19 circumstance, the Cochise County Board ordered the Recorder
20 to count 100 percent of the votes by hand. This action was
21 later determined by the courts to be unlawful. The State
22 also references the Cochise County Board's refusal to
23 canvass the 2022 election until it was ordered to do so.

24 Those allegations are irrelevant because the only
25 issue here, the only issue here is whether the February 28th

1 Agreement by its terms is or is not contrary to law. The
2 Cochise County Board of Supervisor's prior actions in
3 connection with the 2022 election have no bearing on that
4 issue.

5 For instance, hypothetically if the entire Cochise
6 County Board of Supervisors were to resign tomorrow and were
7 to be replaced by a new Board, for whatever reason, with
8 views different from the prior Board, the question would
9 remain the same. That is, whether or not the February 28th
10 Agreement is or is not lawful. For that the Court needs to
11 look only to the Agreement and to the law.

12 The State's pleadings also contain allegations
13 regarding the individual who currently serves as County
14 Recorder and to whom the County Board has assigned certain
15 election responsibilities. That individual is Mr. David
16 Stevens. Those allegations seek to paint a picture of Mr.
17 Stevens as someone who cannot be trusted with these election
18 responsibilities.

19 The identity of the person presently serving as
20 the Cochise County Recorder has no affect, has no affect on
21 the determination as to whether or not the February 28th
22 Agreement is or is not lawful. Again, hypothetically, if
23 the current County Recorder, Mr. Stevens, were for whatever
24 reason to resign tomorrow and to be replaced as Recorder by
25 somebody new, the question would remain the same, and that

1 is whether or not the February 28th Agreement is or is not
2 lawful.

3 The legality of a contract depends on whether its
4 terms comply with the law, not in the particular identities
5 of the officials who signed it. Accordingly, those
6 allegations are irrelevant. They do not influence the
7 Court's decision on the motion for preliminary injunction,
8 and, frankly, if the matter were to proceed on merits, the
9 Court would exercise its discretion to strike those
10 allegations from the Complaint under the Court's authority
11 pursuant to Rule 12(f) of the Arizona Rules of Civil
12 Procedure because they are immaterial and impertinent, which
13 are the words used in 12(f) as grounds for striking them.

14 There are no other factual determinations
15 pertinent to this motion.

16 The Court has reviewed the legal authorities cited
17 in both party's pleadings. There is no controlling case law
18 or statutory authority directly on point on this issue. No
19 statute or case law directly addresses the issue of whether
20 or to what extent a County Board can assign election duties
21 to a County Recorder that are not specifically otherwise
22 authorized by law. The Court believes that this is a matter
23 of first impression.

24 The State does rely on the case of *Arizona Public*
25 *Integrity Alliance versus Fontes*, 250 Ariz 58. That's the

Attorney General Mayes Warns Patients About Crisis Pregnancy Centers

Wednesday, March 13, 2024

PHOENIX — Attorney General Kris Mayes today issued a consumer alert warning Arizonans seeking reproductive healthcare services about a potential obstacle hiding in plain sight: so-called Crisis Pregnancy Centers or “CPCs.”

CPCs are facilities that represent themselves as legitimate healthcare clinics providing reproductive healthcare but actually aim to persuade these patients not to have abortions.

“Every Arizonan has the right to receive clear and accurate information to guide their private medical decisions. Full stop,” said Attorney General Mayes. “Arizonans should be aware that CPCs may make misleading statements about the services they provide, or otherwise attempt to deceive patients in medically vulnerable situations. It’s important for patients to do their research and consult legitimate healthcare providers when seeking abortion care.”

As has been documented around the country, many patients enter CPCs without knowing that CPCs do not perform abortions. CPCs are not always forthcoming about their philosophy and services, and a patient may not realize the CPC will not provide abortion care until it’s too late under state law. That delay can be devastating because many patients cannot afford to travel out of state.

“My office will also be monitoring for complaints about threats against patients, doctors, healthcare staff, and others regarding abortion care,” added Attorney General Mayes. “Arizonans have the right to make deeply personal decisions that are best for them and their families without interference. I will not stand for those who would use deception to disrupt people’s choices and lives.”

The Arizona Attorney General’s Office recommends that individuals seeking an abortion or other reproductive healthcare services conduct research to choose the type of care that is best for them.

Arizonans who feel they may have been the victim of fraudulent or deceptive practices when seeking an abortion or other reproductive healthcare services may file a consumer complaint with the Attorney General’s Office at www.azag.gov/consumer (<http://www.azag.gov/consumer>).

Arizonans can also stay up to date on Arizona laws related to reproductive healthcare and ongoing litigation and get answers to frequently asked questions by visiting www.azag.gov/issues/reproductive-rights (<http://www.azag.gov/issues/reproductive-rights>).

A copy of the consumer alert is available below.



Consumer Alert Crisis Pregnancy Centers.pdf (<https://www.azag.gov/sites/default/files/2024-03/Consumer%20Alert%20Crisis%20Pregnancy%20Centers.pdf>)

715.56 KB

EXHIBIT

4

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PRESS RELEASE ARCHIVE

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[2005 \(/press-releases/archive/2005\)](#) (162)
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[2003 \(/press-releases/archive/2003\)](#) (83)

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CONSUMER ALERT

Understanding the difference between “crisis pregnancy centers” and licensed facilities that provide reproductive health care

MARCH 2024

REPRODUCTIVE RIGHTS UNIT
OFFICE OF THE SOLICITOR GENERAL
ARIZONA ATTORNEY GENERAL KRIS MAYES

EXHIBIT

5

Consumer Alert:

Understanding the difference between “crisis pregnancy centers” and licensed facilities that provide reproductive health care

For patients considering or seeking abortion care, crisis pregnancy centers (CPCs) can be an obstacle hiding in plain sight. CPCs are facilities that may look like licensed health centers and often hold themselves out as full-service medical clinics that can provide comprehensive reproductive health care. But really, CPCs are rarely licensed medical facilities. In general, the main goal of CPCs is to persuade patients not to have abortions.

WARNING: CPCS DO NOT PROVIDE ABORTION CARE OR COMPREHENSIVE REPRODUCTIVE HEALTH CARE

- CPCs are nonprofit organizations that aim to discourage people from seeking abortion care and to persuade those seeking abortions not to access care.
- Although CPCs often portray themselves as medical clinics, most CPCs are not licensed medical facilities and may not be staffed by trained health care providers.
- CPCs often advertise a full range of reproductive health care services, but do not provide abortion care or abortion referrals, and usually do not provide birth control or other contraceptives.
- Because most CPCs are not licensed health care providers, CPCs may not be required to comply with HIPAA, may not protect your identity, and may sell your data to third parties.



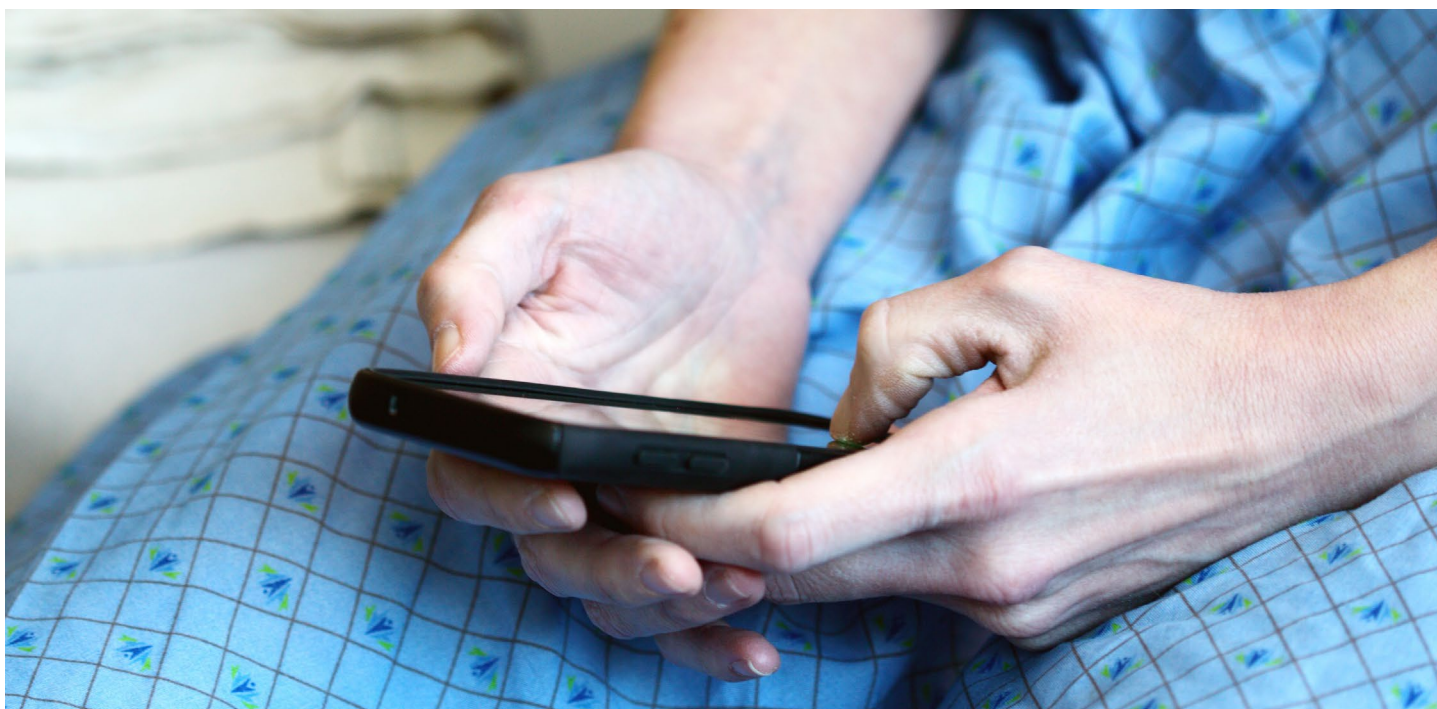


CPCs often use tactics meant to mislead and deceive patients

CPCs have been known to use a number of deceptive and misleading tactics to get patients in the door and delay the pursuit of abortion care.

For example, CPCs may:

- Advertise free pregnancy tests, ultrasounds, and options counseling, leading patients to believe the CPC is a full-service clinic
- Deliberately locate near comprehensive health clinics that provide abortion care, leading to patients mistakenly enter the CPC instead of the licensed clinic
- Style their facilities and websites to look like full-service medical clinics, when in fact they generally are not licensed medical facilities and thus cannot provide medical services
- Operate with volunteers who sometimes wear white coats, so they look like medical professionals, but the volunteers usually have no medical background or training
- Advertise that they have medically trained staff, but that does not mean the CPC is a licensed medical facility that provides full-service reproductive health care





Know the red flags

As is generally the trend around the country, there are more CPCs than licensed abortion clinics in Arizona, so it's important to know what to look out for when you're seeking care. Keep the following in mind:

CPCS DON'T ADVERTISE THEMSELVES AS "CRISIS PREGNANCY CENTERS."

They sometimes call themselves "pregnancy resource centers," "pregnancy care centers," or "family centers" and "women's centers." They may also have the word "choice" in their names.

But that's not always true, so you cannot rely on the name of the clinic alone. Do not let your guard down just because a facility's name doesn't include "crisis center" language.

CPCS ALMOST NEVER SAY ON THEIR WEBSITES THAT THEY DO NOT PROVIDE ABORTION CARE OR REFERRALS.

If a facility does not clearly indicate on its website that it provides abortion care and referrals, or if staff will not clearly answer your questions about the services they provide, consider going somewhere else.

BE ON THE LOOKOUT FOR MISINFORMATION.

CPCs often spread fabricated information and debunked or misleading science about fetal development and abortion safety to discourage patients from considering abortion care.

If a facility tells you that abortions are dangerous and have many side effects, or they show you graphic imagery related to abortion care, consider going somewhere else.

IF YOU ARE CONSIDERING OR SEEKING ABORTION CARE, TIMING IS VERY IMPORTANT.

CPCs often use delay tactics to make getting an abortion more difficult, more expensive, or potentially unavailable under a state's law.

If a facility tries to delay or reschedule your appointments, tells you there is plenty of time to make a decision about your pregnancy, or is slow to respond, consider going somewhere else.



UNDER THE GUISE OF “COUNSELING,” CPCs SOMETIMES USE MANIPULATION AND PRESSURE TO PERSUADE PEOPLE OUT OF SEEKING ABORTION CARE.

If a facility is aggressive in pushing you towards adoption and away from abortion, or if you feel shame, judgment, or discomfort from your interactions with the facility’s staff, consider going somewhere else.

CPCs FREQUENTLY “MEDICALIZE” THE APPEARANCE OF THEIR FACILITIES AND OPERATIONS TO SEEM LIKE FULL-SERVICE MEDICAL CLINICS.

They may provide free ultrasounds without disclosing that the ultrasounds are non-diagnostic or limited in scope. CPC staff may read ultrasounds, but if they are not trained and licensed, they cannot accurately determine if a person is pregnant, the gestational age of the fetus, or whether there are real medical concerns for the pregnancy.

If a facility does not explain why an ultrasound is medically necessary or important, or does not provide clear and specific diagnostic information about the ultrasound, consider going somewhere else.

TO AVOID HAVING TO GET A LICENSE, A CPC MAY SOMETIMES TOE THE LINE OF WHETHER IT IS ARE TECHNICALLY PROVIDING SUCH SERVICES.

If CPCs provide medical services, health screening services, behavioral health services, or other health-related services (as those terms are defined by law), then they are legally required to obtain a license to do so. CPCs may do strange and confusing things trying to avoid licensing requirements and legal implications. For example, if a facility asks you to read your own pregnancy test, or asks you to self-administer your pregnancy test without their staff ever touching the test, consider going somewhere else.



Do your research and ask the right questions

If you are considering your options for reproductive health care, it's important to do your research and know what questions to ask to ensure you will receive accurate information and prompt care.

RESEARCH

Look up clinics online. Online reviews can sometimes provide helpful information about past patient experiences. Online reviews also can help you confirm whether a facility is a full-service clinic that will provide abortion care or a CPC.

CALL

Consider calling a clinic before making an appointment to make sure you are scheduling with a licensed clinic that provides comprehensive care.

CONFIRM

When you arrive for an appointment, confirm immediately that you are at the correct full-service, licensed clinic to make sure you have not mistakenly entered a nearby CPC.

QUESTION

As you research clinics, here are some questions to consider asking:

- ? Is the facility licensed? If so, what type of license?
- ? Will I be seen by a licensed provider? And if so, what type of provider (doctor, nurse, etc.)?
- ? Does the facility perform abortions or refer patients for abortions? What types of abortions are available (medication, surgical)?
- ? How much does the visit cost? Does the clinic accept insurance?
- ? Will the clinic keep my information confidential and not disclose my visit to anyone?

VALIDATE

The Arizona Department of Health Services is the body that regulates medical facilities in Arizona. If a facility claims to be licensed, it should be able to show you a copy of its license from the department.

- Search for a facility's licensing status and history [HERE](#).
- Search through a database of licensed medical facilities [HERE](#).
- Use AZ Care Check to search for licensed medical clinics and find out whether a clinic is licensed to provide medical, nursing, or health services [HERE](#).



Bottom line

You have the right to make deeply personal health care decisions that are right for you, without interference, coercion, deception or shame.

There are many resources online that can help you locate clinics and providers that offer comprehensive reproductive health care, including abortion care.

Be your own advocate and stand up for yourself to get the information you need.

If you suspect you are at a CPC, or if you feel uncomfortable or intimidated at any point—at any facility—you should leave. You are not obligated to continue the conversation.

File a complaint

You can file a complaint about a licensed or unlicensed facility with the Arizona Department of Health Services [HERE](#).

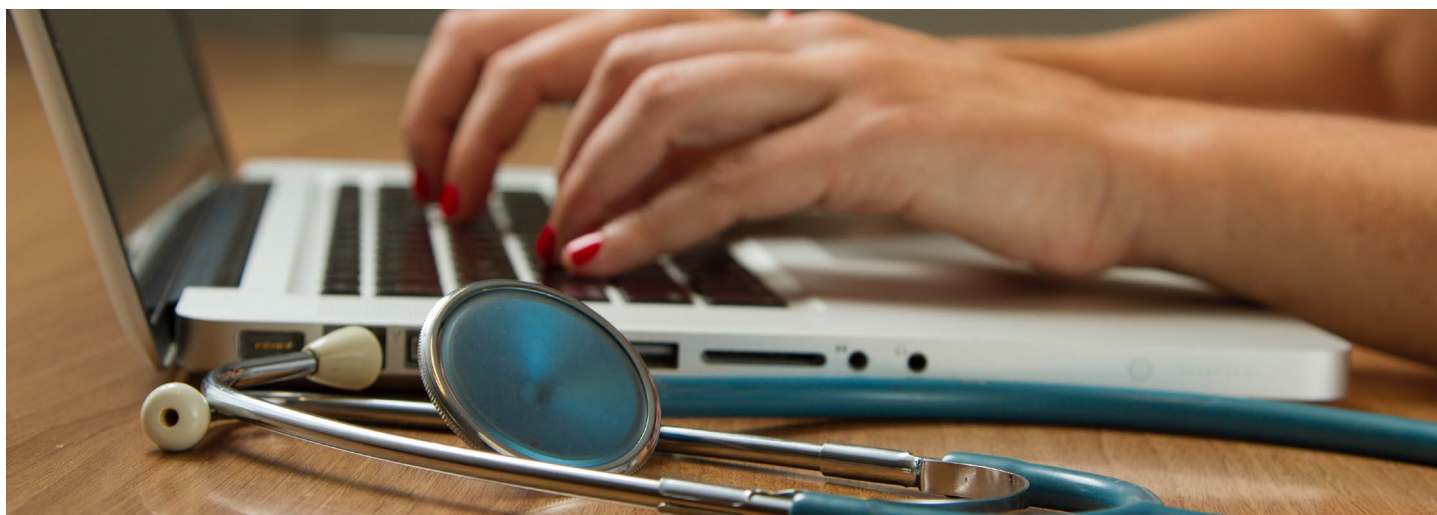
If you believe you've been the victim of fraudulent or deceptive practices when seeking an abortion or other reproductive health care services, you can file a complaint at: www.azag.gov/consumer.

If you need a complaint form sent to you, contact the Attorney General's Office. Bilingual consumer protection staff is available to assist and answer any questions.

Phoenix
(602) 542-5763

Tucson
(520) 628-6648

Toll Free
(800) 352-8431



KRIS  MAYES

REPRODUCTIVE RIGHTS UNIT
OFFICE OF THE SOLICITOR GENERAL
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MARCH 2024

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Arizona House of Representatives
Phoenix, Arizona 85007

April 26, 2024

Via Email and U.S. Mail

Hon. Kris Mayes
Arizona Attorney General
2005 N. Central Ave.
Phoenix, Arizona 85004

Re: Records Request #3 – Evidentiary Support for Consumer Alert on Women’s Health Care Centers

Dear Attorney General Mayes:

Arizona’s Consumer Fraud Act is designed to ensure that Arizonans receive truthful information about products and services. *See* A.R.S. § 44-1521 *et seq.* The Attorney General is entrusted to protect our people from deception, fraud, or misrepresentations about products or services. *Id.* at §§ 44-1522, 44-1524, 44-1531. As your office website proudly proclaims, “The Consumer Protection and Advocacy Section at the Attorney General’s Office protects people – including Arizona’s most vulnerable residents – from fraudsters and scammers, and from all types of deceptive and harmful business practices by enforcing Arizona’s consumer protection laws and other state and federal laws.” Arizona Attorney General, *About Consumer Protection*.¹

Whether you have properly and lawfully carried out these important duties is now in question. The House Ad Hoc Committee on Executive Oversight received disturbing testimony at its April 17, 2024 hearing about your possible abuse of our state’s Consumer Fraud Act. The questions raised by this testimony demand answers.

Last month, you “issued a consumer alert warning Arizonans seeking reproductive healthcare services about a potential obstacle hiding in plain sight: so-called Crisis Pregnancy Centers or ‘CPCs.’” Arizona Attorney General, *Attorney General Mayes Warns Patients About Crisis Pregnancy Centers*, Mar. 13, 2024.² You claimed, without evidence, that “CPCs may make misleading statements about the services they provide, or otherwise attempt to deceive patients in medically vulnerable situations.” *Id.*

¹ Available at <https://www.azag.gov/consumer/about>

² Available at <https://www.azag.gov/press-release/attorney-general-mayes-warns-patients-about-crisis-pregnancy-centers>

Your consumer alert contained many more allegations about advertising and operational practices that failed to identify any supporting evidence. *See Arizona Attorney General, Consumer Alert: Understanding the difference between ‘crisis pregnancy centers’ and licensed facilities that provide reproductive health care*, Mar. 2024.³ For example:

- “CPCs often advertise a full range of reproductive health care services, but do not provide abortion care or abortion referrals, and usually do not provide birth control or other contraceptives.” *Id.* at p. 2.
- “CPCs often use tactics meant to mislead and deceive patients.” *Id.* at p. 3.
- “For example, CPCs may: . . . [o]perate with volunteers who sometimes wear white coats, so they look like medical professionals, but the volunteers usually have no medical background or training.” *Id.*
- “CPCs often spread fabricated information and debunked or misleading science about fetal development and abortion safety to discourage patients from considering abortion care.” *Id.* at p. 4.
- “CPCs often use delay tactics to make getting an abortion more difficult, more expensive, or potentially unavailable under a state’s law.” *Id.*
- “Under the guise of ‘counseling,’ CPCs sometimes use manipulation and pressure to persuade people out of seeking abortion care.” *Id.* at p. 5.
- “CPCs frequently ‘medicalize’ the appearance of their facilities and operations to seem like full-service medical clinics.” *Id.*

These statements alleging specific activity and frequency—“often,” “frequently,” “sometimes”—indicate that you have specific knowledge and information on each issue. But you and your office have not identified any supporting evidence.

This Committee’s April 17, 2024 hearing included witnesses representing organizations that provide health care and other services to pregnant women, new mothers, and their babies. These witnesses provided compelling testimony disputing the allegations in your consumer alert.

The Attorney General is supposed to protect Arizonans from deception, fraud, and misrepresentations about products and services. It would be extremely concerning if the Attorney General issued a consumer alert filled with deception, fraud, and misrepresentations about organizations providing health care services to women. *Cf. Nat’l Inst. of Fam. & Life Advoc. v. Becerra*, 585 U.S. 755, 779 (2018) (Kennedy, J., concurring) (“a paradigmatic example of the serious threat presented when government seeks to impose its own message in the place of individual speech, thought, and expression . . . is requir[ing] primarily pro-life pregnancy centers to promote the State’s own preferred message advertising abortions”).

³ Available at <https://www.azag.gov/sites/default/files/2024-03/Consumer%20Alert%20Crisis%20Pregnancy%20Centers.pdf>

The unit that created your consumer alert raises additional questions. While the Attorney General may organize her office into “such bureaus, subdivisions or units as he [or she] deems most efficient and economical,” A.R.S. § 41-192(B)(1), this cost-savings authority is limited if “otherwise provided by law.” *Id.* at § 41-192(B). The Legislature’s appropriation power is such a limitation. “The Legislature, in the exercise of its lawmaking power, establishes state policies and priorities and, through the appropriation power, gives those policies and priorities effect.” *Rios v. Symington*, 172 Ariz. 3, 6, (1992). “An appropriation is ‘the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other.’” *Id.* (quoting *Hunt v. Callaghan*, 32 Ariz. 235, 239 (1927)).

Your consumer alert reports that it was prepared by the “Reproductive Rights Unit.” On occasion, the Legislature has appropriated money for specific units in the Attorney General’s Office. For example, your current office budget provides funding for the Criminal Division Major Fraud Unit and the Organized Retail Theft Task Force. *See* FY2024 Appropriations Report, Attorney General – Department of Law, at 58.⁴ The Legislature has not, however, appropriated funding for a Reproductive Rights Unit. Please provide this Committee with a legal justification for spending money on a Reproductive Rights Unit that was not appropriated funding by the Legislature.

Moreover, the Reproductive Rights Unit is located within your Office of the Solicitor General and not within your Office’s Consumer Protection and Advocacy Section. Thus, it is unclear why the Reproductive Rights Unit is issuing legal pronouncements about consumer protection matters. Abuse of your authority is implicated in multiple ways by employing a unit not funded by the Legislature or within the Consumer Protection and Advocacy Section to exercise consumer protection authority in a manner contrary to the Consumer Fraud Act.

Pursuant to this legislative investigation, and alternatively under the Arizona Public Records Act, A.R.S. § 39-121, *et seq.*, please provide us with the following records no later than **May 6, 2024**:

1. All evidentiary support for statements made in the March 13, 2024 Consumer Alert.
2. All consumer complaints received by your office between January 1, 2023 and March 13, 2024 containing the words “crisis pregnancy center,” “CPC,” “Planned Parenthood,” or “abortion clinic.”
3. Copies of all emails sent between February 1, 2024 and March 13, 2024, from you or any member of your Reproductive Rights Unit to any email address domain other than

⁴ Available at <https://www.azjlb.gov/24AR/att.pdf>

Letter to Attorney General Mayes – Records Request #3
Re: Evidentiary Support for Consumer Alert on Women’s Health Care Centers
April 26, 2024
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@azag.gov that contain any of the following terms: “consumer alert,” “crisis pregnancy center,” “CPC,” “Planned Parenthood,” “abortion clinic,” or “reproductive health care.”

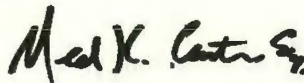
We further request an index of records that have been withheld and the reasons the records or categories of records have been withheld. *See* A.R.S. § 39-121.01(D)(2). Feel free to include any other relevant information that you believe would address our concerns.⁵

At this time, we are not requesting your testimony on this subject, but if you wish to testify, please let us know and we will work with your schedule to arrange a Committee hearing.

Respectfully,



Jacqueline Parker
Chair, Committee on Executive Oversight



Neal Carter
LD 15, Committee on Executive Oversight

⁵ For additional information regarding the House’s standard investigative protocols, please visit: <https://www.azhouse.gov/alispdfs/AZHouseInvestigativeProtocols.pdf>



KRIS MAYES
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE OF ARIZONA

May 3, 2024

VIA EMAIL

The Honorable Jacqueline Parker
1700 W. Washington, Suite H
Phoenix, Arizona 85007
jparker@azleg.gov

The Honorable Neal Carter
1700 W. Washington, Suite H
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ncarter@azleg.gov

Re: Letter requesting records pertaining to Consumer Alert on “Crisis Pregnancy Centers”
(CPCs)

Dear Representatives Parker and Carter:

I have received your letter of April 26, 2024, concerning the March 2024 Attorney General Consumer Alert titled, “Understanding the difference between ‘crisis pregnancy centers’ and licensed facilities that provide reproductive health care.” In response, I write to explain the scope of my Office’s enforcement authority regarding fraudulent and deceptive practices, describe some of the many sources of information that prompted and informed the Alert, and clarify the nature of the Reproductive Rights Unit.

I. Enforcement Authority under the Arizona Consumer Fraud Act

As you know, Arizona’s Consumer Fraud Act broadly protects Arizonans from “any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact.” A.R.S. § 44-1522(A). The Office of the Attorney General has similarly broad authority to enforce the Act to protect Arizonans from unlawful, deceptive practices. *See id.* § 44-1524(A)-(B).

Notably, this enforcement authority is triggered whenever the Office has “reasonable cause to believe that a person has engaged in, is engaging in or *is about to engage in* any practice or transaction” in violation of the Consumer Fraud Act. A.R.S. § 44-1524(A) (emphasis added).

In other words, the Act expressly is concerned with protecting Arizonans on the front end of deceptive conduct before it occurs, not merely pursuing bad actors after Arizonans are already harmed.

As you will surely agree, one of the most important ways to protect consumers before such harm occurs is to arm the public with relevant information so individuals and families can make informed decisions in the marketplace based on their unique circumstances. I take this aspect of my role very seriously. As part of the Office's work to proactively prevent Arizonans from being defrauded or misled, we regularly educate consumers on deceptive tactics that we have reason to believe are occurring or might occur in the State, and we provide practical information so Arizonans can protect themselves. This education often takes the form of a "consumer tip" or a "consumer alert" on topics ranging from auto purchases, credit reporting, door-to-door sales,¹ sporting events scams,² holiday shopping and charitable giving,³ and more.

In sum, the Attorney General Office's authority under the Consumer Protection Act is broad and nothing prohibits my Office from educating consumers on how to avoid becoming victimized by scams or other deceptive practices. Indeed, the Act contemplates that my Office will be proactive in investigating potential violations and enforcing the law if there is reasonable cause to believe a violation might occur. *See* A.R.S. § 44-1524. My Office will continue to act to protect Arizonans by enforcing Arizona's consumer protection laws and other state and federal laws and educating the public about issues that affect their families, health, and pocketbooks.

II. Summary of Information that Prompted and Informed the Consumer Alert

Consistent with that statutory charge, my Office issued the March 2024 Consumer Alert regarding "Crisis Pregnancy Centers" or CPCs.⁴ That Alert was prompted and informed by unequivocal investigations, studies, and news reporting regarding the well-documented practices of many CPCs across the country. This information is not new or isolated. I summarize some of it below, but this summary is by no means exhaustive. For example, multiple medical and ethical journals describe the CPC practices that the Alert warned of:

¹ <https://www.azag.gov/consumer/tips>

² <https://www.azag.gov/press-release/attorney-general-mayes-warns-arizonans-be-vigilant-against-sporting-events-scams>

³ <https://www.azag.gov/press-release/attorney-general-mayes-offers-tips-safer-holiday-shopping-and-charitable-giving>

⁴ *See* Office of the Arizona Attorney General, *Consumer Alert: Understanding the difference between 'crisis pregnancy centers' and licensed facilities that provide reproductive health care* (Mar. 2024), <https://www.azag.gov/sites/default/files/2024-03/Consumer%20Alert%20Crisis%20Pregnancy%20Centers.pdf>.

- CPCs may “engage in purposefully manipulative and deceptive practices that spread misinformation on sexual health and abortion” and “delay access to medically legitimate prenatal and abortion care, which negatively impacts maternal health.” Montoya et al., *The Problems with Crisis Pregnancy Centers: Reviewing the Literature and Identifying New Directions for Future Research*, Int’l J. Women’s Health. 2022; 14: 757–763, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9189146/>.
- CPCs sometimes have “staff wear white coats, although they typically have no medical training,” and they “commonly draw links between abortion and adverse mental health sequelae, breast cancer, and future infertility, (all of which have been discredited by research), with the goal of diverting women with undesired pregnancies from abortion.” Borrero et al., *Crisis Pregnancy Centers: Faith Centers Operating in Bad Faith*, J Gen Intern Med. 2019 Jan; 34(1): 144–145, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6318184/>.
- CPCs often “strive to give the impression that they are clinical centers, offering legitimate medical services and advice, yet they are exempt from regulatory, licensure, and credentialing oversight that apply to health care facilities,” and sometimes, “CPCs violate principles of medical ethics, despite purporting to dispense medical advice.” Bryant et al, *Why Crisis Pregnancy Centers Are Legal but Unethical*, AMA J Ethics. 2018;20(3):269-277, <https://journalofethics.ama-assn.org/article/why-crisis-pregnancy-centers-are-legal-unethical/2018-03>.

This conduct has been documented in numerous media reports and warnings from a non-profit medical organization. For example, one news article reported that CPCs engaged in “deceptive advertising, aiming to persuade women to forgo abortions rather than providing them with the range of medically appropriate options.” McShane, Julianne, *Crisis pregnancy center failed to spot an ectopic pregnancy, threatening patient’s life, lawsuit alleges*, NBC News (June 28, 2023), <https://www.nbcnews.com/health/womens-health/crisis-pregnancy-center-ectopic-pregnancy-lawsuit-rcna91660>.

Another report stated that CPCs “often pop up close to abortion clinics with the goal of luring pregnant women away.” Krueski, Kimberly, *Millions in tax dollars flow to anti-abortion centers in US*, Associated Press (Feb. 5, 2022), <https://apnews.com/article/abortion-business-health-nashville-personal-taxes-fffa6f6f86e6eaa448b8ea89087a1c46>. And another observed that “[r]esearch has found that crisis pregnancy centers commonly disseminate misinformation.” Tolan et al, *The Crisis Pregnancy Center Next Door: How taxpayer money intended for poor families is funding a growing anti-abortion movement*, CNN (Oct. 25, 2022), <https://www.cnn.com/2022/10/25/us/crisis-pregnancy-centers-taxpayer-money-invs/index.html>.

This is just a small sample of the many sources documenting similar practices by CPCs across the United States. Medical organizations have echoed these warnings. For

instance, the American College of Obstetricians and Gynecologists (ACOG) issued a brief stating that common CPC practices include “false and misleading information, emotional manipulation, and delays to divert pregnant people from accessing comprehensive and timely care from patient-centered, appropriately trained, and licensed medical professionals.” See ACOG, Crisis Pregnancy Centers Issue Brief, <https://www.acog.org/advocacy/abortion-is-essential/trending-issues/issue-brief-crisis-pregnancy-centers>.

In response to this information, at least four other states have issued consumer alerts to their residents warning that CPCs might attempt to mislead individuals regarding the scope of health care services offered. My Office followed suit for two key reasons.

First, based on this information, my Office determined that there was a meaningful risk that CPCs operating in Arizona might be engaging in similar deceptive practices, making it necessary to educate consumers of that risk so that they can protect themselves and obtain appropriate health care services with all the relevant information. *State ex rel. Horne v. AutoZone, Inc.*, 229 Ariz. 358, 361 (2012) (explaining the Act prohibits deceptive “practices,” meaning “a habitual action and something more than an accumulation of a number of individual instances of conduct.” (cleaned up)); *State ex rel. Corbin v. Goodrich*, 151 Ariz. 118, 124 (App. 1986) (noting failure to disclose staff’s lack of expertise constituted a failure to disclose material and relevant facts under the Act).

Second, as a consumer protection matter, and as the Alert explained, Arizonans “have the right to make deeply personal health care decisions that are right for [them], without interference, coercion, deception or shame,” regardless of what that choice is. Further, the Alert’s underlying purpose and many of its recommendations are not limited to CPCs. As the Alert made clear, if Arizonans “feel uncomfortable or intimidated at any point—*at any facility*—[they] should leave.” (Emphasis added.)

III. The Reproductive Rights Unit

Your letter also asked about the nature of and funding for the Reproductive Rights Unit. The Attorney General may “[o]rganize the [Office] into such bureaus, subdivisions or units as [s]he deems most efficient and economical.” A.R.S. § 41-192(B). In early 2023, I established the Reproductive Rights Unit to monitor key issues and legal developments in the reproductive healthcare space and take appropriate action.

The Attorney General has wide-ranging statutory responsibilities, including serving as the State’s chief legal officer, A.R.S. § 41-192(A), representing the State in federal court, A.R.S. § 12-932, taking action with respect to unlicensed health care institutions, A.R.S. § 36-430, enforcing civil rights laws, A.R.S. § 41-1492.09(A), and protecting consumers from deceptive practices, A.R.S. § 44-1524. Because these responsibilities may implicate legal issues in the reproductive healthcare space, the Reproductive Rights Unit allows the Office to efficiently and economically fulfill its existing statutory obligations with respect to these issues.

The Unit is comprised of individuals from across the Attorney General's Office, including attorneys from the Consumer Protection & Advocacy Section, Civil Rights Division, State Government Division, and Solicitor General's Office. No attorney is assigned to the Unit fulltime, however, as the Unit is a cross-divisional resource for attorneys to share information and collaborate in furtherance of their regularly assigned duties that implicate reproductive rights issues. The Alert, for example, was drafted, edited, and reviewed by members of the Unit in various parts of the Office, as well as other attorneys in the Office with relevant expertise. Nothing in the Consumer Fraud Act limits the Attorney General's authority under the Act to individuals in the Consumer Protection Section.

Such cross-divisional units are not uncommon. For example, the Office has also housed an education working group and an Open Meeting Law enforcement task force, both of which, like the Reproductive Rights Unit, have allowed the Office to more efficiently accomplish its work. Organizing units or task forces is not unique to my administration. It has been a feature of many past Attorney General's Offices from both political parties. For example, the Office has previously had a Conflict Resolution Unit under Attorney General Goddard⁵ and a Task Force Against Senior Abuse under Attorney General Horne.⁶ Like the Reproductive Rights Unit, these groups properly existed to further the work of the Office.

Finally, my Office acknowledges your records request and will process and respond as promptly as possible. Due to the press of many other time-sensitive litigation matters and court deadlines, the Office's response may issue on a rolling basis.

Sincerely,

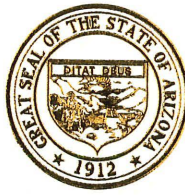


Kris Mayes
Attorney General

⁵ <https://www.azag.gov/press-release/alternative-dispute-resolution-week-activities>

⁶ <https://www.azag.gov/press-release/ag-horne-announces-judgment-against-telemarketer>

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Arizona House of Representatives
Phoenix, Arizona 85007

April 3, 2024

Via Email and U.S. Mail

Hon. Kris Mayes
Arizona Attorney General
2005 N. Central Ave.
Phoenix, Arizona 85004

Re: Records Request #2 – Recordings of Town Hall Meetings, External Emails Relating to Groundwater & Public Nuisance Issues, and Employee Reimbursement Records

Dear Attorney General Mayes:

We write to you today in our official capacity, as the Chair and Vice Chair of the Ad Hoc Committee on Executive Oversight, to investigate your use of public resources to host “town halls” relating to water policy and your stated interest in bringing public nuisance lawsuits against farmers operating in rural Arizona based on their water usage.¹

Farming is a vital part of our state’s economy.² Arizona is home to almost 17,000 farms. The University of Arizona reported that approximately 95% of Arizona’s farms are family farms, and Arizona has the largest percentage of female farmers (48.7%) of any state in the country.³ Arizona farmers generate more than \$23 billion and employ 162,000 workers.⁴

As you may know, under Arizona’s Agricultural Protection Act (“AAPA”) (also known as Arizona’s “Right to Farm” statutes), “[a]gricultural operations conducted on farmland that are consistent with good agricultural practices and established before surrounding nonagricultural uses

¹ See Brandon Loomis, Arizona Republic, *Attorney general seeking evidence of groundwater overpumping in rural Arizona, may sue*:

<https://www.azcentral.com/story/news/local/arizona-environment/2024/03/29/arizona-attorney-general-may-sue-corporate-farms-overpumping-groundwater/73143798007/>

² United States Department of Agriculture, *State Summary Highlights: 2022*,

https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1_Chapter_2_US_State_Level/st99_2_001_001.pdf, page 1.

³ Valorie Rice, *Arizona Agriculture: Not Your Average Farmers*,

<https://www.azeconomy.org/2019/09/economy/arizona-agriculture-not-your-average-farmers/>.

⁴ Arizona Department of Agriculture, *Guide to Arizona Agriculture*,

https://agriculture.az.gov/sites/default/files/AZDA_GuideToAZAg_2018.pdf, page 8.

are presumed to be reasonable and do not constitute a nuisance unless the agricultural operation has a substantial adverse effect on the public health and safety.” A.R.S. § 3-112(A). Additionally, “[a]gricultural operations undertaken in conformity with federal, state and local laws and regulations are presumed to be good agricultural practices and not adversely affecting the public health and safety.” A.R.S. § 3-112(B).

Putting aside whether your novel lawsuit can be reconciled with the AAPA, we are troubled by your decision to use public resources and host “town hall” meetings to “gather evidence” targeting the agricultural industry and manufacturing a public nuisance lawsuit that could very well result in taxpayers footing the bill. *See* A.R.S. § 3-112(C)(2).

We are also disturbed by allegations that you have conveyed inaccurate information about Arizona’s groundwater code and the scope of your statutory authority—which very clearly does not include crafting water policy for the state on behalf of the Legislature or the Governor. *See* A.R.S. § 45-401(A) (declaring “it is in the best interest of the general economy and welfare of this state and its citizens that the **legislature** evoke its police power” to regulate groundwater) (emphasis added); Brahm Resnik, 12 News, *Saudi farm confusion: Go. Hobbs says AG Mayes has no authority to take action against controversial groundwater pumper*, <https://www.12news.com/article/news/politics/its-very-complex-gov-hobbs-says-ag-kris-mayes-doesnt-have-the-power-to-block-saudi-water-deal/75-1179f6ae-e9ff-43de-b324-af1874156179> (noting Governor Hobbs’ position on Attorney General’s lack of authority to take action against Saudi-owned farm and Attorney General’s potential conflict of interest).

You reportedly stated, “If we have to take this issue to the ballot and let all 7 million Arizonans decide this matter or all of the folks who vote in the next election then that’s what I’m prepared to do.”⁵ To be clear, you have no authority whatsoever to refer any measure to voters for their approval, and publicly advocating for a ballot measure raises questions about your ability to impartially perform any duties required for any future ballot measure relating to groundwater issues. Moreover, Arizona law prohibits using public resources (including personnel, monies, materials, buildings, vehicles, etc.) to influence an election. *See* A.R.S. § 16-192. We urge you to retract your false statements, revisit the statutory responsibilities and powers of your office, and discontinue using public resources to make campaign speeches in violation of Arizona law.

Pursuant to this legislative investigation, and alternatively under the Arizona Public Records Act, A.R.S. § 39-121, *et seq.*, please provide us with the following records no later than **April 16, 2024**:

1. Recordings or transcripts of all town hall meetings conducted in 2023 and 2024 during which any groundwater or public nuisance issues were solicited or discussed.
2. Copies of all emails sent between October 1, 2023, and April 3, 2024, from you or any employee of your office to any email address domain other than @azag.gov that contain

⁵ Madison Thomas, *Attorney General Kris Mayes visits Cochise County to discuss groundwater supply*, <https://www.kgun9.com/news/community-inspired-journalism/cochise-county/attorney-general-kris-mayes-visits-cochise-county-to-discuss-groundwater-supply>

any of the following terms: “groundwater”, “farm”, “pumping”, “public nuisance”, “nuisance”, “town hall”, “agriculture”, “agricultural”, “dairy”, “listening session”, or “wells.”

3. Copies of all records, including emails, orders, and receipts, regarding any employee’s or vendor’s request for reimbursement of expenses, whether approved or not, for travel, lodging, food, or any other expense relating to town halls on groundwater or public nuisance issues. For any approved expense, include the funding source.

We further request an index of records that have been withheld and the reasons the records or categories of records have been withheld. *See* A.R.S. § 39-121.01(D)(2). Feel free to include any other relevant information that you believe would address our concerns.⁶

At this time, we are not requesting your testimony on this subject, but if you wish to testify, please let us know and we will work with your schedule to arrange a Committee hearing.

Respectfully,



Jacqueline Parker
Chair, Committee on Executive Oversight



Austin Smith
Vice-Chair, Committee on Executive Oversight

⁶ For additional information regarding the House’s standard investigative protocols, please visit:
<https://www.azhouse.gov/alispdfs/AZHouseInvestigativeProtocols.pdf>.



KRIS MAYES
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE GOVERNMENT DIVISION/EDUCATION & HEALTH SECTION

KEVIN D. RAY
SECTION CHIEF COUNSEL
DIRECT No. 602-542-8328
KEVIN.RAY@AZAG.GOV

April 21, 2023

Tom Horne
State Superintendent of Public Instruction
Arizona Department of Education
1535 West Washington Street
Phoenix, AZ, 85007
Sent via email to: Tom.Horne@azed.gov

Re: Disqualification of AGO in the *Jane Doe, et. al., v. Horne, et. al.* Transgender Girls Sports Lawsuit

Dear Superintendent Horne:

On behalf of the Attorney General, this letter serves as notice under A.R.S. § 41-192(E) that this Office is disqualified from representing you in the above-referenced matter. Accordingly, you are authorized to employ legal counsel under A.R.S. § 41-192(E) in accordance with applicable state procurement laws. A list of outside counsel procured by this Office is attached for your convenience.

Sincerely,

/s/ Kevin D. Ray
Kevin D. Ray
Section Chief Counsel
Education and Health Section

KDR
#11187359

EXHIBIT

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Arizona House of Representatives
Phoenix, Arizona 85007

April 12, 2024

Via Email and U.S. Mail

Hon. Kris Mayes
Arizona Attorney General
2005 N. Central Ave.
Phoenix, Arizona 85004

Re: Refusal to Defend State Laws; Disqualification of Attorney General's Office

Dear Attorney General Mayes:

We write to you today in our official capacity, as the Chair and Vice Chair of the Ad Hoc Committee on Executive Oversight (“CEO”), regarding Arizona’s laws that require your office to defend state laws in state and federal courts.

As the Arizona Attorney General handbook explains, the Attorney General “serves as the chief legal officer of the State and the various departments and agencies of the State.” *Ariz. Att’y Gen. Handbook*, § 1.3.1 (citing A.R.S. § 41-192(A)). “[T]he Attorney General is required to prosecute and defend in the Arizona Supreme Court ‘all proceedings in which the state or an officer thereof in his official capacity is a party.’” *Ariz. Att’y Gen. Handbook*, § 1.3.4 (quoting A.R.S. § 41-193(A)(1)). Additionally, you have “the duty to ‘[r]epresent the state in any action in a federal court.’” *Id.* (quoting A.R.S. § 41-193(A)(3)).

We are deeply concerned about your refusal to defend the constitutionality of state laws. Even before you took office, you publicly stated that Arizona’s law protecting unborn children from discriminatory abortions based on the child’s genetic abnormality, such as Down Syndrome (A.R.S. § 13-3603.02(A)), is “unconstitutional” and “violate[s] Arizona’s privacy clause.”¹ Of course, no court has ever said so. You have also doubled down on Governor Hobbs’ unconstitutional Executive Order No. 2023-11—inaccurately asserting that you possess the power to strip Arizona’s fifteen elected county attorneys of their statutory authority to prosecute illegal abortions. Consequently, Speaker Toma and President Petersen invoked their statutory authority, pursuant to A.R.S. § 12-1841, to intervene in *Isaacson v. Mayes* to do *your* job. Your actions constitute a complete dereliction of your duty to defend state laws.

¹ See Associated Press, *U.S. Supreme Court: Arizona Can Enforce Genetic Issue Abortion Ban*, KTAR NEWS (June 30, 2022), <https://ktar.com/story/5135300/u-s-supreme-court-arizona-can-enforce-genetic-issue-abortion-ban/>

Letter to Attorney General Mayes

Re: Refusal to Defend State Laws; Disqualification of Attorney General's Office

April 12, 2024

Page 2 of 3

Your position on Arizona's abortion laws is also irreconcilable with your refusal to fully defend the injunction that your predecessor secured for all Arizonans against the Biden Administration's unconstitutional COVID-19 vaccine mandate for federal contractors.² The injunction protected Arizonans' medical freedoms, but you decided it was more important to protect the Biden Administration. Fortunately, the federal government rescinded its unconstitutional mandate, but only after many courts struck it down.³

You also refused to defend Arizona's Save Women's Sports Act in *Doe v. Horne*. The Arizona Legislature passed this Act in 2022 to protect athletic opportunities for women and girls by ensuring they are not unfairly forced to compete against men playing on women's sports teams. All young Arizona athletes are entitled to participate in extracurricular activities that enable them to grow and thrive, and to be eligible for hard-earned opportunities, including titles, standings, and scholarships.

Under A.R.S. §41-192(E), the Attorney General may determine that he or she "is disqualified from providing judicial or legal services on behalf of any state agency in relation to any matter." However, we are trying to gain a better understanding of the necessity of this law and the circumstances under which it is ever appropriate for the Arizona Attorney General to invoke disqualification of the entire office instead of adhering to the legal duty to defend state laws.

By disqualifying yourself in *Doe v. Horne*, for example, Superintendent Horne was left with no choice but to hire outside legal counsel and incur litigation costs at the taxpayer's expense. Additionally—without Arizona's chief legal officer defending the constitutionality of the Act—Again, Speaker Toma and President Petersen felt compelled to intervene to do the job you refused to do.

In light of these unprecedented circumstances, and pursuant to this legislative investigation, we respectfully request a response to the following questions:

- 1. Why did you disqualify your office from representing Superintendent Horne and refuse to defend Arizona's Save Women's Sports Act in *Doe v. Horne*?**
- 2. Are there any other state or federal cases in which you have disqualified your office from representing the State of Arizona or any state agency or otherwise refused to defend state laws? If so, what was your reason for disqualification or your refusal to defend Arizona law in those cases?**

² See Erin Mulvaney, *Arizona Court Adds to Orders Blocking Contractor Vaccine Mandate* (Jan. 27, 2022), <https://news.bloomberglaw.com/daily-labor-report/arizona-court-adds-to-orders-blocking-contractor-vaccine-mandate>

³ See *The Biden-Harris Administration Will End COVID-19 Vaccination Requirements for Federal Employees, Contractors, International Travelers, Head Start Educators, and CMS-Certified Facilities* (May 1, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/01/the-biden-administration-will-end-covid-19-vaccination-requirements-for-federal-employees-contractors-international-travelers-head-start-educators-and-cms-certified-facilities/>

Letter to Attorney General Mayes

Re: Refusal to Defend State Laws; Disqualification of Attorney General's Office

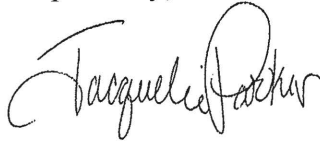
April 12, 2024

Page 3 of 3

In lieu of a written response, you are welcome to address these questions before the Committee at our next hearing on April 17, 2024, and to provide us with any other relevant information that may alleviate our concerns.⁴

Please let us know no later than 5:00 p.m. on Tuesday, April 16, 2024, if you would like to testify.

Respectfully,



Jacqueline Parker
Chair, Committee on Executive Oversight



Austin Smith
Vice-Chair, Committee on Executive Oversight

⁴ For additional information regarding the House's standard investigative protocols, please visit: <https://www.azhouse.gov/alispdfs/AZHouseInvestigativeProtocols.pdf>.

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KRISTIN K. MAYES
ATTORNEY GENERAL
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*Attorneys for Defendant Kristin K. Mayes
in her official capacity as Arizona Attorney
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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Paul A. Isaacson, M.D., on behalf of
himself and his patients, et al.,

Plaintiffs,

v.

Kristin K. Mayes, Attorney General of
Arizona, in her official capacity, et al.,

Defendants.

Case No. 2:21-cv-01417-DLR

**RESPONSE TO MOTION TO
INTERVENE**

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On February 3, 2023, Arizona Senate President Petersen and Speaker of the Arizona House of Representatives Toma moved to intervene in this matter. *See* Doc. 155. Attorney General Mayes takes no position on that motion to intervene.

Additionally, Attorney General Mayes advises this Court that she has concluded the state laws challenged in this litigation are unconstitutional. She will not defend the constitutionality of those laws going forward.

RESPECTFULLY SUBMITTED this 17th day of February, 2023.

KRISTIN K. MAYES
ATTORNEY GENERAL

By /s/ Alexander W. Samuels
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her official capacity as Arizona Attorney
General*

Arizona Attorney General's Office Files Motion to Withdraw Execution of Aaron Brian Gunches

Friday, January 20, 2023

PHOENIX – Today, the Arizona Attorney General's office filed in the Arizona Supreme Court a motion to withdraw a motion previously filed by the State for a warrant of execution of Aaron Brian Gunches. The State requested the warrant of execution only after and because Mr. Gunches initiated the now-pending proceedings with his own motion requesting execution on November 25, 2022. In a January 4, 2023 filing, Mr. Gunches reversed his decision and requested his motion be withdrawn.

*"My predecessor's administration sought a warrant of execution for Mr. Gunches after he initiated the proceedings himself. These circumstances have now changed. However, that is not the only reason I am now requesting the previous motion be withdrawn," said **Attorney General Kris Mayes**. "A thorough review of Arizona's protocols and processes governing capital punishment is needed. I applaud Governor Hobbs for establishing a Death Penalty Independent Review Commissioner to begin that process."*

The review will include, among other things, the State's procurement of drugs and chemicals used in lethal injection and gas chamber executions, ADCRR procedures and protocols for conducting executions – including transparency and media access, access to legal counsel for the inmate, contingency planning and staff training.

Arizona is not alone in ordering such a review. Similar reviews have been ordered by officials from both parties around the country, and at least one such review recently revealed numerous problems, including failures to follow execution protocols. A review at the federal level is also underway.

*"If Arizona is going to execute individuals, it should have a system for doing so that is transparent, accountable, and faithful to our Constitution and the rule of law," continued **Attorney General Mayes**. "I look forward to working with the Governor, the newly established commissioner, and others to ensure the public's confidence in Arizona's capital punishment system."*

Arizona resumed executions in 2022 after an eight-year pause was triggered by the botched execution of Joseph Wood.

Motion to Withdraw Motion for Warrant of Execution.

(https://mcusercontent.com/cc1fad182b6d6f8b1e352e206/files/31f7c492-65ef-61e1-6567-b85ed48a6cc0/Motion_to_Withdraw_Motion_for_Warrant_of_Execution.pdf)

COS Motion to Withdraw Motion for Warrant of Execution.

(<https://mcusercontent.com/cc1fad182b6d6f8b1e352e206/files/e7527c0b-ae1-7f27-470e->

8e04d95fa9ea/COS_Motion_to_Withdraw_Motion_for_Warrant_of_Execution.pdf)

Exhibit to Motion to Withdraw. (https://mcusercontent.com/cc1fad182b6d6f8b1e352e206/files/56c718e8-c978-4cbc-399e-62c9870513dd/Exhibit_to_Motion_to_Withdraw.pdf)

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(<https://www.linkedin.com/company/arizona-attorney-general's-office/>)

(<https://www.youtube.com/@ArizonaAttorneyGeneralMayes>)

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

v.

AARON BRIAN GUNCHES,

Appellant.

CR 13–0282–AP

Maricopa County Superior Court

No. CR 2003–038541–001

THE STATE OF ARIZONA’S MOTION TO WITHDRAW MOTION FOR WARRANT OF EXECUTION

Execution warrant proceedings were initiated in this case when Aaron Brian Gunches filed a motion with this Court requesting issuance of a warrant for his execution. Since then, Gunches has sought to withdraw that request, without objection from the State. Because the State’s motion for warrant of execution was prompted by Gunches’s now-withdrawn request, and because a thorough examination of the administration of capital punishment in Arizona is warranted before further warrants of execution are sought, the State moves to withdraw its motion seeking issuance of a warrant of execution in this case.

I. The State’s motion for warrant of execution was filed because Gunches asked to be executed.

Gunches was sentenced to death after pleading guilty to the first-degree murder and kidnapping of Ted Price. *See State v. Gunches*, 240 Ariz. 198, 200-01, ¶¶ 1-4 (2016) (“*Gunches II*”). On November 25, 2022, Gunches initiated the now-

EXHIBIT

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pending proceedings by filing a “Motion: Issuance of Death Warrant,” in which he requested that this Court issue a warrant for his execution. The State filed a response on December 7, 2022, joining in Gunches’s motion and also moving for this Court to issue a warrant of execution. *See* A.R.S. § 13-759(A) (providing that the Supreme Court shall issue warrants of execution “on a motion by the state”); Ariz. R. Crim. P. 31.23(b) (similarly providing that warrants of execution shall be issued “[o]n the State’s motion”). This Court stated that it anticipated conferencing the motions on January 31, 2023.

On January 4, 2023, however, Gunches filed a motion seeking to withdraw his request. The State did not object to Gunches’s motion to withdraw. After Gunches filed his motion to withdraw, this Court confirmed that it “anticipates conferencing all pending motions on January 31, 2023, with issuance of a Warrant of Execution that day, if the motion for warrant of execution is granted.” No. CR-13-0282-AP (order filed Jan. 6, 2023).

The State’s December 7 motion for warrant of execution was precipitated by Gunches’s November 25 request to be executed. Put differently, the State would not have moved for a warrant of execution at this time if Gunches had not asked to be executed. And on that front, circumstances have now changed. In his January 4 filing, Gunches makes clear that he wishes to withdraw his prior motion and no

longer requests to be executed at this time.

Because the State would not have moved for a warrant of execution without Gunches first doing so, and because Gunches now seeks to withdraw his motion, the State likewise moves to withdraw its motion for warrant of execution. Gunches's change in position, however, is not the only reason the State now moves to withdraw its motion for warrant of execution. As further detailed below, the State will not proceed with further executions at least until a thorough review of execution protocols has been conducted.

II. The State does not intend to seek a warrant of execution in any case at least until a thorough examination of the administration of capital punishment in Arizona has been conducted.

a. Arizona has used lethal injection since 1993, with multiple lengthy pauses in executions during the years since its adoption.

The first execution by lethal injection in Arizona occurred in 1993 after the voters amended the state constitution to make lethal injection the State's lawful method of execution. Between 1993 and 2000, 20 individuals were executed by lethal injection.¹ After November 2000, however, no executions occurred until Robert Comer was executed in May 2007. And after Comer's execution, more than three years passed before executions resumed in October 2010. Between

¹ Walter LaGrand was executed by lethal gas at his request in 1999.

2010 and 2013, 13 individuals were executed, all by lethal injection.

b. Executions stopped in 2014 and did not resume until 2022.

The first and only execution in 2014 was the execution of Joseph Wood, who was executed using a two-drug combination—midazolam and hydromorphone—that had not previously been used in the state.² Wood’s execution took much longer than anticipated, lasting approximately two hours from the first administration of drugs to death. “During that time, Wood was administered 15 doses of lethal-injection drugs, even though Arizona’s protocol calls for only two.” *First Amend. Coalition of Arizona v. Ryan*, 938 F.3d 1069, 1073 (9th Cir. 2019).

Not surprisingly, litigation followed soon after Wood’s execution, and the State agreed to a stay of all executions until the litigation concluded. *First Amend. Coalition of Arizona v. Ryan*, No. 2:14-cv-01447-NVW-JFM, Docs. 67, 68 (D. Ariz.). That stay was vacated in June 2017 when the district court issued its final judgment in the litigation. *Id.* at Doc. 187. Despite the stay being lifted, the State did not seek to carry out any executions for nearly four more years. During these years when executions were not being performed, the State encountered substantial

² Previous lethal injection executions in Arizona had utilized a three-drug combination of sodium pentothal or pentobarbital, pancuronium bromide, and potassium chloride, or a single-drug administration of pentobarbital.

difficulties in obtaining lethal injection drugs.³

c. The State resumed executions in 2022.

In April 2021, the State initiated proceedings to obtain warrants of execution for Frank Atwood and Clarence Dixon. Rather than file a motion for warrant of execution, the State sought a briefing schedule from this Court on such a motion. The State explained that it required a fixed briefing schedule because the Arizona Department of Corrections, Rehabilitation, and Reentry (ADCRR) intended to use compounded pentobarbital that had a 90-day shelf life. The State thus requested a briefing schedule to ensure that it could compound the drugs at the time it filed a motion for warrant of execution in order to meet mandatory testing requirements and also ensure that the drugs would not expire before the execution date.

However, after this Court granted the State's request and set briefing schedules in both cases, the State moved to modify those schedules. The State explained that, while ADCRR's compound pharmacist had "previously advised ADCRR that the pentobarbital to be used ... would have a 90-day beyond-use date once compounded," the pharmacist had revised that opinion and "advised ADCRR

³ By way of example, federal authorities in July 2015 refused admission of a shipment of sodium thiopental that the State had attempted to import. *See* *Feds Confiscate Lethal-Injection Drugs Imported by 2 States* (Oct. 23, 2015), <https://apnews.com/article/173ced925a864bd3b07e36210c9d3612> (last visited Jan. 19, 2023).

that, until certain specialized testing of a sample batch is conducted,” pentobarbital that was compounded for the executions would have an initial beyond-use date of 45 days. *State v. Atwood*, No. CR-87-0135-AP, Motion to Modify Briefing Schedule (filed 6/22/2021); *State v. Dixon*, No. CR-08-0025-AP, Motion to Modify Briefing Schedule (filed 6/22/2021). In response, this Court vacated the existing briefing schedules, denied the State’s motions to modify them, and ordered that the State could “renew its scheduling motion after specialized testing to determine a beyond-use date for compounded doses of the drug.” *Atwood*, No. CR-87-0135-AP, Order (filed 7/12/2021); *Dixon*, No. CR-08-0025-AP, Order (filed 7/12/2021).

The State renewed proceedings to obtain execution warrants for both Atwood and Dixon in January 2022, filing motions indicating that testing had established that the compounded pentobarbital to be used in the executions had a beyond-use date of 90 days.⁴ *Atwood*, No. CR-87-0135-AP, Motion to Set Briefing Schedule (filed 1/5/2022); *Dixon*, No. CR-08-0025-AP, Motion to Set Briefing Schedule (filed 1/5/2022). Ultimately, this Court issued warrants of execution and the State executed Dixon on May 11, 2022, and Atwood on June 8,

⁴ As the State later informed this Court, testing ultimately established that the pentobarbital had a beyond-use date of 180 days. *See State v. Hooper*, CR83-0044-AP, Motion to Set Briefing Schedule (filed 7/29/2022).

2022, both using compounded pentobarbital. In October 2022, this Court issued, at the State's request, a warrant of execution for Murray Hooper and the State executed him on November 16, 2022, also using compounded pentobarbital. Nearly eight years had passed between the execution of Joseph Wood and the recent resumption of executions.

d. A thorough review of the administration of capital punishment in Arizona, including lethal injection protocols, is now warranted.

The recent history of executions by lethal injection in Arizona and elsewhere has caused many, including courts, to express concerns regarding whether executions are being carried out constitutionally, humanely, and in compliance with the State's own laws and procedures. In the context of litigation that followed Joseph Wood's execution, for example, the Ninth Circuit noted that although the Constitution did not create an entitlement to certain information relating to execution procedures, the Court was "troubled by the lack of detailed information regarding execution drugs and personnel." *First Amend. Coalition*, 938 F.3d at 1080. In reaching that conclusion, the Ninth Circuit looked at much of the history recited above, which it characterized as "Arizona's checkered past with executions." *Id.*

Similarly, even where courts have held that due process was not violated in Arizona capital cases, some judges have expressed concerns, and sometimes in

harsh terms. *See id.* at 1072 (noting prior concerns with Arizona’s execution procedures, citing a perceived “shroud of secrecy surrounding Arizona’s execution proceedings and the State’s pattern of deviating from its lethal-injection protocols at the last minute”) (citations omitted); *see also Wood v. Ryan*, 759 F.3d 1076, 1087 (9th Cir. 2014) (“Arizona’s recent history reinforces the role of this information in the public discourse.”), *vacated by Ryan v. Wood*, 573 U.S. 976 (2014).

Regardless of whether the State agrees with these characterizations, it is nonetheless concerning that any Court would have such significant and repeated concerns about Arizona’s system of capital punishment. And of course, the Court is not alone in raising such concerns.⁵ Moreover, while the Ninth Circuit decisions cited above confronted the question of what level of transparency is legally required, that question is fundamentally different in nature than the question of whether the public interest has been served by the previous levels of disclosure.

A system of capital punishment must be underpinned by faithful adherence to the law and public confidence in the system. Transparency helps accomplish

⁵ *See, e.g., States Under Scrutiny for Recent Lethal Injection Failures* (Nov. 22, 2022), <https://www.azcentral.com/story/news/local/arizona/2022/11/22/arizona-and-others-under-scrutiny-for-recent-lethal-injection-failures/69667483007/> (last visited Jan. 19, 2023).

those dual goals. And on that front, the State need not limit itself to the minimum level of transparency and accountability that the law requires. Accordingly, review of the administration of capital punishment in Arizona is now warranted, as is additional transparency.

Today, Governor Hobbs ordered a review of Arizona's execution procedures and protocols, to be conducted by an Independent Review Commissioner who will issue a final report with recommendations to the Governor and Attorney General. *See* Ex. 1 (Executive Order No. 2023-05.) The Commissioner's review will include:

1. The State's procurement of lethal injection drugs, including but not limited to the source of the drugs, the cost to the State, and any considerations about the drugs such as composition and expiration;
2. The State's procurement of gas chamber chemicals, including but not limited to the source of the chemicals, the cost to the State, and the composition of the chemicals;
3. ADCRR procedures and protocols for conducting an execution by gas chamber and by lethal injection, including but not limited to setting lines for a lethal injection, transparency and media access, access to legal counsel for the inmate, and contingency planning; and
4. Staffing considerations, including but not limited to training, staffing plans to conduct executions, and staff background and experience for administering an execution.

Id.

Such a review – and accompanying pause in executions until state officials and the public can be confident that executions are being carried out lawfully and humanely – is far from unprecedented. Similar reviews have recently been undertaken by Tennessee⁶ and Alabama.⁷ Indeed, after more than seven months, the Tennessee review recently revealed numerous problems, including a failure to follow execution protocols.⁸ A similar review at the federal level is also underway, and followed on the heels of a recent resumption in executions using a single dose of pentobarbital.⁹ And, of course, Arizona only recently resumed executions after nearly eight years without one.

In the context of capital punishment, it is vital “to insure that every

⁶ Tennessee Execution Pause Through 2022 Could Last Longer (June 13, 2022), <https://apnews.com/article/politics-executions-tennessee-e4c90328bb6317c11bd98bf9dcdeb68a> (last visited Jan. 19, 2023).

⁷ Alabama Governor Orders Temporary Halt to Executions After Third Failed Lethal Injection (Nov. 21, 2022), <https://www.cbsnews.com/news/alabama-executions-paused-after-3rd-failed-lethal-injection/> (last visited Jan. 19, 2023).

⁸ Tennessee Failed to Follow Its Own Execution Protocols Since 2018, New Report Finds (Dec. 28, 2022), <https://www.tennessean.com/story/news/politics/2022/12/28/tennessee-death-penalty-state-failed-to-follow-rules/69760185007/> (last visited Jan. 19, 2023).

⁹ *See* Attorney General Memorandum: Moratorium on Federal Executions Pending Review of Policies and Procedures (July 1, 2021), [justice.gov/d9/2022-12/attorney_general_memorandum_july_1_2021.pdf](https://www.justice.gov/d9/2022-12/attorney_general_memorandum_july_1_2021.pdf) (last visited Jan. 19, 2023).

safeguard is observed.” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976) (citations omitted). The Supreme Court has likewise observed that because of the “qualitative difference” between a sentence of death and any other, “there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.” *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976).

So too is there a heightened need to ensure any capital sentence is carried out constitutionally, legally, humanely, and with transparency. To that end, no further warrants of execution will be sought at this time, and a detailed review of the administration of capital punishment in Arizona will be conducted.

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III. Conclusion.

For the foregoing reasons, the State respectfully moves to withdraw its motion for warrant of execution.

RESPECTFULLY SUBMITTED this 20th day of January, 2023.

Kristin K. Mayes
Attorney General
(Firm State Bar No. 14000)

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KRIS MAYES
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE OF ARIZONA

May 16, 2024

VIA EMAIL

The Honorable Rachel Mitchell
County Attorney
Maricopa County Attorney's Office
225 West Madison Street
Phoenix, Arizona 85003

Re: Death penalty

Dear County Attorney Mitchell:

Thank you for the ongoing dialogue we have had about the death penalty over the last 17 months. I write this letter to ensure that you understand my position and plans regarding death sentences in Arizona.

First, I wish to reiterate that my office continues to defend death sentences obtained by county attorneys in Maricopa County and elsewhere. Lawyers in my office continue to defend more than 100 death sentences through the appellate, post-conviction, and habeas corpus processes in state and federal court. Indeed, earlier this year, my Section Chief for Capital Litigation argued *Thornell v. Jones* in the United States Supreme Court. This is a case in which the Ninth Circuit vacated a death sentence and I made the discretionary decision to request that the Supreme Court overturn that decision and reinstate Jones's death sentence.

As I have conveyed to you multiple times now, including when we met in January of this year, I respect the role of the death penalty in Arizona's laws. And I understand that many family members of victims continue to await closure in these (often decades-old) cases. As the chief law enforcement officer of the State, it is my intent to enforce Arizona law, whether that be through the defense of lawfully imposed death sentences on appeal or the seeking of warrants in a timely manner once a defendant has exhausted his appeals and ADCRR is prepared to carry out the warrant lawfully.

To that end, I intend to begin seeking warrants no later than the first quarter of 2025, so long as ADCRR is capable of carrying out a lawful execution at that time. By then, I anticipate that Judge Duncan will have completed his independent review and that ADCRR will have had

Hon. Rachel Mitchell
May 16, 2024
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sufficient time to make any appropriate improvements to their procedures for carrying out the death penalty.

In the interim, my office will continue to defend death sentences in appellate proceedings, as we did in the United States Supreme Court this April, and prepare for the warrant process, which as you know has historically required significant preparation and entailed significant litigation.

If you have any questions or would like to discuss these issues further, please let me know, and I will do my utmost to meet with you promptly. I would also be happy to discuss with you other issues of great importance to Arizonans, including women's access to reproductive health care and the importance of equal treatment under the law, regardless of a defendant's wealth, prominence, or political connections.¹

Sincerely,



Kris Mayes
Attorney General

¹ On that front, I have concerns about your Office's recent prosecution of former ADCRR Director Charles Ryan. See, e.g., <https://www.azcentral.com/story/news/local/tempe/2024/02/26/tempe-police-detectives-say-charles-ryan-got-preferential-treatment-after-standoff/72704243007/>.



Maricopa County Attorney

RACHEL H. MITCHELL

May 17, 2024

Kris Mayes
Arizona Attorney General
2005 N Central Ave
Phoenix AZ 85004

Dear General Mayes,

I am in receipt of your May 16, 2024 letter. On the subject of the death penalty discussion in that letter, let me reiterate what I have repeatedly said:

1. Arizona law does not give Governor Hobbs the ability to unilaterally suspend the death penalty.
2. While you may feel like her actions have put you in a bad position, your complicity in failing to seek a warrant of execution, ignores the rights of the survivors of the murder victims and disregards victim's rights.
3. By going along with these delay tactics, you are supporting a false narrative of "botched" executions. The executions conducted in 2022 were done pursuant to a revised protocol following litigation in federal court and were in no way "botched". I know that you have not observed an execution, but I attended the most recent execution – that of Murray Hooper. The sole delay in the process was so that the medical team could obtain a smaller needle so that it would "hurt less". Having reviewed the case that led to the sentence of death, I can assure you that the defendant did not extend any such mercies to his victims. Instead, he terrorized and tortured his victims and ultimately shot them in the head before slashing the throat of one victim.

I also would note that the crime occurred in 1980. The other two executions conducted in 2022 were of a child rapist and murderer whose crime occurred in 1984 and of a rapist and murderer whose crime was in 1978.

Your promise that you will start to do your job in 2025 is hollow given that former Judge Duncan's review was supposed to be finished in December 2023. The victims and the community have waited long enough for the execution warrant process to begin on the Aaron Gunches matter. Based on my prior meeting with the Director and ADCRR's general counsel, I can see no reason the Department cannot or should not be ready to proceed at this time. Director Thornell confirmed this when seeking confirmation by the Arizona Senate.

EXHIBIT

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The real reason for this letter, however, is to address your comments in the last paragraph. A cynical person might interpret the inclusion of such unrelated topics (abortion and equal treatment of defendants) as a thinly-veiled message that any attempt by my office to force you to do your job will be met with an attempt to make a political impact. The timing of you expressing your concerns when the Ryan case has been heavily covered for over two years is more than interesting. I realize that that you have never worked as a prosecutor, but speaking as someone who has spent 32 years working as a prosecutor, I am on solid ground to inform you that prosecutors don't run from bullies. But since I am not a cynical person, I will assume that that was not your motive.

As you well know, no prosecution office in Arizona has received a submittal regarding abortion since the *Dobbs* decision came out two years ago. Not one. My office does not have any say on what the law will be or even should be. That decision rests with the voters, the legislature, and the governor. You know that. I know that. The voters know that.

The remainder of this letter will address the footnote at the end of your letter. Specifically, you state in your footnote that you "have concerns about [this] Office's recent prosecution of former ADCRR Director Charles Ryan" and then you cite to, not a police report, but a newspaper article. I am surprised that you, after labeling yourself in this same letter as "Arizona's chief law enforcement officer," would include a sentence and footnote like this about a specific case handled by this office under our jurisdictional mandates (and where your office has no concurrent jurisdiction).

Bluntly, I find your statements to be legally irresponsible for a prosecutor to make, and frankly disappointing. I say that not because you and I as lawyers and prosecutors reviewed the same material and came to different conclusions, or because we disagree about the final outcome, but rather because you and your prosecutors have not and could not have seen what my dedicated and experienced prosecutors reviewed.

Nowhere in your letter or footnote does it document that you or any member of your staff ever engaged in the extensive review that my office did. Nowhere in your letter or footnote does it document that you or any member of your staff reviewed or studied the body worn camera footage, scene photos, medical records, lab reports, statements made by any officers involved in the investigation, statements made by the defendant, his wife, or others with direct knowledge of the facts. Nowhere in your letter or footnote does it document that you or your staff reviewed the grand jury presentation transcript to determine what that body examined and why decisions were made by the grand jury about probable cause. Nowhere in your letter does it even reflect that you or your staff ever analyzed the facts as set forth in the full investigation to determine what charges were appropriate. Nor does your letter indicate that you ever reached out to the then-chief of police to get his input as I did.

If you had a desire to know more, you needed only to speak with your chief criminal deputy—who worked at MCAO at the time—who participated in the review and recommendation process.

Here at the Maricopa County Attorney's Office, our filing standard requires evidence sufficient to prove beyond a reasonable doubt each element of an offense. That filing standard is typically referred by prosecutors as a "reasonable likelihood of conviction".

Once a charging decision is made and a case filed, our prosecutors often engage in plea negotiations and discussions with the defense about disposition of the matter. In that context, we consider the input of the victim(s), among other factors. A non-exhaustive list of other factors includes the nature of the charge, the strength of the case, the character and background of the defendant, any mitigating information provided to us by the defense or others, and of course any aggravating factors that exist. The result of all that work is often a plea agreement that resolves the matter in the interests of justice given all the factors involved.

Unlike your office, which, again, does not have independent jurisdiction to handle this kind of matter, this office has spent countless hours reviewing this matter at every level. Police reports and body-worn cameras were reviewed and re-reviewed numerous times, the matter was staffed and discussed carefully by many prosecutors who actually handle these types of cases on a daily basis, and all relevant information was considered. Many experienced prosecutors reviewed the evidence and considered the facts and law surrounding the case, both before it was charged and during plea discussions. In fact, the issue of charging was fully staffed on two occasions under two different county attorneys. The resulting recommendations were the same.

What is most disappointing about your letter is not that you disagree with the charging or outcome of the matter, even if your opinions are only informed by media reports. What is most disappointing is that the last paragraph of your letter implies (if not directly accuses) the experienced, dedicated prosecutors and public servants of this office of misfeasance or utterly inappropriate and unethical behavior without a shred of evidence to suggest the same—because there is none. As a 32-year prosecutor who still reviews evidence and cases using the same standards in every instance, I have to say that it is highly concerning to me that an attorney general would suggest that a case at MCAO was handled with improper motives without any evidence to support the accusation. I cannot be more clear: the charging and final outcome of the Ryan matter was not influenced by inappropriate factors in any way. I have a clear track record of not allowing someone's status or political affiliation to affect how I handle cases. You, more than most, know that. Any implication to the contrary is simply false.

Finally, because I have far more prosecution experience than you, I feel the need to caution you against making unfounded claims that a prosecutor would show favoritism to a defendant who is a member of the same political party because it opens the door to the converse argument: that a defendant who is of a different political party than a prosecutor will not receive justice. I know you do not feel that way.

Sincerely,

A handwritten signature in cursive script that reads "Rachel H. Mitchell". The signature is written in black ink and is positioned above the typed name.

Rachel H. Mitchell
Maricopa County Attorney