

JACQUELINE PARKER
1700 WEST WASHINGTON, SUITE H
PHOENIX, ARIZONA 85007-2844
PHONE: (602) 926-3375
TOLL FREE: 1-800-352-8404
jparker@azleg.gov
DISTRICT 15



AUSTIN SMITH
1700 WEST WASHINGTON, SUITE H
PHOENIX, ARIZONA 85007-2844
PHONE: (602) 926-3560
TOLL FREE: 1-800-352-8404
asmith@azleg.gov
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

FILED

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.

Thomas Fink
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