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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

RON GOULD, in his individual capacity,

Plaintiff,

v.

**KRIS MAYES, in her Official Capacity as
Attorney General of the State of Arizona,**

Defendant,

and

**ARIZONA ALLIANCE FOR RETIRED
AMERICANS,**

Intervenor-Defendant.

Case No. CV2024-000815

**PLAINTIFF'S RESPONSE TO THE
ARIZONA ALLIANCE FOR RETIRED
AMERICANS' MOTION TO DISMISS**

(Assigned to the Hon. Frank Moskowitz)

Plaintiff Ron Gould ("Plaintiff" or "Gould") hereby files this Response to the Arizona Alliance for Retired Americans' ("AARA") Motion to Dismiss ("AARA Motion" or "AARA MTD"). The AARA Motion is almost entirely duplicative of the Attorney General's ("AG") Motion to Dismiss ("AG MTD") and should be denied on the same grounds enumerated in Plaintiff Gould's Response to the AG MTD ("Response to AG MTD"). Likewise, AARA's argument for dismissal of Count 2, seeking a declaratory judgment as to legislative immunity from prosecution, also more or less repeats the AG's arguments regarding the extent of county authority

as to elections. Because AARA could have and should have simply filed a joinder in the AG MTD, the AARA MTD has needlessly multiplied proceedings and AARA should be sanctioned accordingly under A.R.S. § 12-349(A)(3). This Response is supported by the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED on August 13, 2024.

WILENCHIK & BARTNESS, P.C.

/s/ Dennis I. Wilenchik

Dennis I. Wilenchik, Esq.

Brian R. Gifford, Esq.

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Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

- a. The AARA Motion Repeats All the Same Arguments as the AG MTD; Therefore, Plaintiff's Response to AG MTD Applies Equally to the AARA MTD and Is Hereby Incorporated by Reference.**

Preliminarily, the AARA Motion makes no new arguments but simply restates and repackages the same erroneous arguments that the AG already made in its MTD and Reply in support of its MTD ("Reply MTD"). AARA makes the following arguments, all of which appear in the AG's MTD briefing, and to which Plaintiff has previously responded:

- That Gould's "rights, status, legal relations" are not affected by statute¹ and that there is no actual controversy ripe for adjudication, [AARA Mot. at 7; AG MTD at 5-7], [*rebutted by* Pl. Response to AG MTD at 5-7];

¹ AARA cites one new case *Dail v. City of Phoenix*, 128 Ariz. 199, 201 (App. 1980) for the proposition that the Court has refused to interpret the Declaratory Judgments Act "to create standing where standing did not otherwise exist." [AARA Mot. at 7.] The case is plainly inapposite, however. In *Dail*, the Court held that the fact of being a taxpayer was not sufficient injury for standing under the DJA without evidence of further fiscal injury through increased

- That because Gould sued in his individual capacity (rather than the Board suing) his rights are not affected by statute, even though he is the one that was specifically threatened by the AG. [AARA Mot. at 8; AG MTD at 5-7], [*rebutted by* Pl. Response to AG MTD at 5-7];
- That Gould has no concrete plan to violate the statute and that there is no history of past prosecution, despite the AG threat of prosecution [AARA Mot. at 9; AG MTD at 13; AG Reply MTD at 6-7 (admitting that there may be a relevant history of past prosecution)], [*rebutted by* Pl. Response to AG MTD at 3-4, 8-10];
- That Plaintiff is not at risk of prosecution, despite the AG threatening it [AARA Mot. at 10; AG MTD at 7-10], [*rebutted by* Pl. Response to AG MTD at 4];
- That Plaintiff is seeking an improper advisory opinion, even though he faces criminal prosecution promised by the AG if he proceeds with his conscience that has thus far prevented the vote [AARA Mot. at 10; AG MTD at 7, 14], [*rebutted by* Pl. Response to AG MTD at 3-4];
- That Plaintiff's claims are not ripe because they hinge on occurrence of future, speculative events, even though the future is a promise by the AG to prosecute him criminally if he votes as he wants to [AARA Mot. at 11; AG MTD at 12], [*rebutted by* Pl. Response to AG MTD at 3-4];
- The doctrine that standing exists because the issue is capable of repetition, yet evading review, does not apply here, [AARA Mot. at 11-12; AG MTD at 13], [*rebutted by* Pl. Response to AG MTD at 10 (explaining that short window between a board of supervisors noticing a vote on an issue and actually voting is too short time in which to pursue a declaratory judgment action)];
- That Arizona requires use of electronic vote tabulation only, [AARA Mot. at 12-14; AG MTD at 14-16], [*rebutted by* Pl. Response to AG MTD at 10-14]; and
- That counties lack authority to authorize a hand count of votes, and relatedly, that the legislative immunity claim fails for the same reason, [AARA Mot. at 15-16, 17; AG Reply MTD at 10], [*rebutted by* Pl. Response to AG MTD at 10-14; see also First Am. Compl. ¶¶ 12-16].

taxation. *Dail*, 128 Ariz. at 202. Here, in contrast, Plaintiff has shown unique individual consequences and imminent injury in the form of prosecution and loss of liberty that he faces if he continues to vote to conduct a hand count of ballots in Mohave County Elections.

1 Accordingly, Plaintiff hereby incorporates his Response to the AG MTD by reference as it
2 addresses virtually all the points raised in AARA's gratuitous and time-wasting MTD.

3 **b. Standing for Plaintiff's Claims Does Not Depend on a Series of Hypothetical**
4 **Future Events.**

5 First, as to the Motion, it is clear that all allegations in the Complaint must be accepted as
6 true for purposes of the ruling. This is not a hypothetical matter according to the Complaint.
7 Though AARA's citation of *Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1139 (9th
8 Cir. 2000) merely rehashes what the AG addressed at length in her Reply MTD, [AG Reply MTD
9 at 6-7], Plaintiff will briefly address AARA quoting that case for the proposition that "Plaintiff's
10 claims are 'wholly contingent upon the occurrence of unforeseeable events' and therefore
11 'too...“speculative” to support jurisdiction.'" [AARA MTD at 11.] Nothing could be further from
12 the truth here. Plaintiff has voted for a hand count twice, despite threat of prosecution,
13 demonstrating that he would and intends to do so again. [First Am. Compl. ¶¶ 11, 28, 31.] The
14 AG threatened him with criminal prosecution if he does so again, and given the AG's multiple
15 highly questionable and controversial politically-motivated criminal prosecutions since taking
16 office, such prosecution is more than merely hypothetical. Moreover, Plaintiff has also alleged
17 that "after a very extended pause, Supervisor Lingenfelter announced the deciding vote of 'no'"
18 to conducting a hand count. [First Am. Compl. ¶ 29.] Under these circumstances, and based on
19 Supervisor Lingenfelter himself choosing to put the matter on the agenda for the second time in
20 November 2023, Plaintiff has clearly alleged sufficient facts to infer that Supervisor Lingenfelter
21 was wavering; that he cast his "no" vote based on fear of prosecution; and that, as Chairperson,
22 he would be more inclined to put the matter to a vote again if the fear of prosecution were removed.
23 [First Am. Compl. ¶¶ 17, 25, 29, 31.] These circumstances taken as true, clearly demonstrate that
24 Plaintiff has sufficiently pleaded facts to support that "an actual controversy" exists; Plaintiff's
25 claims are anything but speculative. It is important this court speed up this matter to be relevant
26 under Rule 57 and conduct any hearing required to declare that a criminal prosecution as
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1 threatened for any such vote would be unconstitutional and unlawful to avoid uncertainty that
2 could lead to disastrous results for Plaintiff.

3 **c. Legislative Immunity Applies Here.**

4 Plaintiff does not disagree with the standards quoted by AARA as to when legislative
5 immunity applies. However, Plaintiff strenuously disagrees with the argument that the legislature
6 lacks specific authority to vote to conduct a full hand count. [AARA MTD at 17.] This issue
7 obviously goes to the very heart of this litigation, and Plaintiff's position is that the overall scheme
8 of the election law statutes grants counties discretionary authority as to whether to decide to hand
9 count or electronically tabulate ballots in the first instance, or both. [Pl. Response to AG MTD at
10 10-14.]

11 **d. The AARA MTD Has Needlessly Multiplied Proceedings and Wasted
12 Resources of the Parties and the Court and Deserves Sanction.**

13 "[I]n any civil action commenced or appealed in a court of record in this state, the court
14 shall assess reasonable attorney fees, expenses and, at the court's discretion, double damages of
15 not to exceed five thousand dollars against an attorney or party, including this state and political
16 subdivisions of this state, if the attorney or party does any of the following...3. Unreasonably
17 expands or delays the proceeding." A.R.S. § 12-349(A)(3). Here, as explored above, AARA has
18 clearly "unreasonably expanded" this proceeding by filing a motion to dismiss that is almost
19 entirely duplicative of the arguments already raised by the AG when AARA could have simply
20 filed a joinder in the AG's motion. AARA's Motion adds no substance nor any additional helpful
21 perspective to the AG MTD and serves only to unnecessarily increase expenses for the parties and
22 the Court. Undersigned counsel also explicitly advised AARA of this fact. *See Exhibit A* attached
23 hereto.

24 Accordingly, Plaintiff hereby requests that AARA be sanctioned by paying Plaintiff's
25 attorney fees and expenses related to responding to the AARA Motion, and damages up to and
26 including, "double damages not to exceed five thousand dollars."

1 **II. CONCLUSION**

2 For the reasons stated herein, the court should deny the AARA MTD as a matter of law
3 and should sanction AARA for unnecessarily insisting on bringing it rather than joining the AG
4 Motion, under A.R.S. § 12-349 because its intent was to add needless cost for the Plaintiff who is
5 an individual and a government supervisor.

6 **RESPECTFULLY SUBMITTED** on August 13, 2024.

7 **WILENCHIK & BARTNESS, P.C.**

8 */s/ Dennis I. Wilenchik*

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Brian R. Gifford, Esq.

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13 **ELECTRONICALLY** filed on August 13, 2024,
14 via AZTurboCourt.com.

15 **ELECTRONICALLY** transmitted to the
16 Hon. Frank Moskowitz by the Clerk of the
Court via AZTurboCourt.com

17 **COPY** transmitted via AZTurboCourt.com
18 on August 13, 2024, and via email to:

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EXHIBIT A

WILENCHIK & BARTNESS
— A PROFESSIONAL CORPORATION —

Christine Ferreira

From: Dennis Wilenchik
Sent: Monday, July 15, 2024 3:16 PM
To: Lali Madduri; Daniel Cohen; Brian R. Gifford; Samuels, Alexander; X_Lisa Borowsky_Shared; Bonnie Conrad; Christine Ferreira
Cc: Mark, Emma; Mataele, Shannon; Andy Gaona; Austin Yost; Diana Hanson; Julie Zuckerbrod
Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

That was a lot to say a little. Our position is clear and has not changed despite your rhetoric and we reserve all rights

Sincerely Yours,



www.wb-law.com

Dennis I. Wilenchik

Attorney at Law

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ATTORNEY/CLIENT COMMUNICATION

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From: Lali Madduri <lmadduri@elias.law>
Sent: Monday, July 15, 2024 2:52 PM
To: Dennis Wilenchik <diw@wb-law.com>; Daniel Cohen <dcohen@elias.law>; Brian R. Gifford <briang@wb-law.com>; Samuels, Alexander <Alexander.Samuels@azag.gov>; X_Lisa Borowsky_Shared <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>
Cc: Mark, Emma <Emma.Mark@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Andy Gaona <agaona@cblawyers.com>; Austin Yost <ayost@cblawyers.com>; Diana Hanson <dhanson@cblawyers.com>; Julie Zuckerbrod <jzuckerbrod@elias.law>
Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Counsel,

Plaintiff's threat of seeking sanctions under A.R.S. § 12-349 if Intervenor-Defendant files a motion to dismiss is completely baseless. As explained in our previous email, the Alliance is a full and equal party to the case and has a right to be fully heard on all of its arguments, including to preserve all of its rights. The Alliance also intends to comply with the Court's June 28 order that granted the Alliance's Motion to Intervene and ordered the Alliance to respond to the First Amended Complaint. None of this is remotely sanctionable. Indeed, no Arizona court has, to our knowledge, ever awarded sanctions against an Intervenor for asserting all of their rights or for filing a motion to dismiss solely because it raises some arguments similar to those made by another party.

It is Plaintiff—not the Alliance—who has repeatedly unreasonably expanded these proceedings. A motion for attorneys' fees for the Alliance's forthcoming motion to dismiss, combined with Plaintiff's previous actions in this litigation—objecting to the Alliance's counsel's PHV motions, objecting to the Alliance filing a notice of lodging a proposed Motion to Dismiss, and now repeatedly threatening sanctions if the Alliance exercises its rights as a full party in this action—demonstrates a pattern of unreasonably expanding the proceedings. The Alliance reserves its right to seek sanctions under A.R.S. § 12-349.

The Alliance has completed its obligations to confer with Plaintiff's counsel under Rule 12(j) and 7.1(h). When the parties conferred, we discussed the arguments raised in the Alliance's MTD and explained that the MTD is substantively similar to the Alliance's previously lodged MTD. The parties agreed that there were no potential amendments to the First Amended Complaint that would resolve the issues raised. We have not heard anything to the contrary in your subsequent correspondence, and we will proceed with filing the Motion to Dismiss. We will attach this entire exchange to our separate certification of counsel so that everyone's positions on this issue are clear and before the Court.

Best,
Lali

Lali Madduri
Partner
Elias Law Group LLP
202-968-4593

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From: Dennis Wilenchik <diw@wb-law.com>

Sent: Friday, July 12, 2024 12:19 PM

To: Daniel Cohen <dcohen@elias.law>; Brian R. Gifford <briang@wb-law.com>; Samuels, Alexander <Alexander.Samuels@azag.gov>; X_Lisa Borowsky_Shared <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>

Cc: Mark, Emma <Emma.Mark@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Andy Gaona <agaona@cblawyers.com>; Austin Yost <ayost@cblawyers.com>; Diana Hanson <dhanson@cblawyers.com>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>

Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Lets be clear. If you waste our time under 12-349 expanding this matter by making the same arguments without simply a joinder we will seek appropriate sanctions. If you have new arguments I have not heard you express them to Brian. If there is some misunderstanding on that please clarify with Brian your "new" arguments that differ from the others. Thank you

Sincerely Yours,



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From: Daniel Cohen <dcohen@elias.law>

Sent: Friday, July 12, 2024 9:01 AM

To: Brian R. Gifford <briang@wb-law.com>; Samuels, Alexander <Alexander.Samuels@azag.gov>; Dennis Wilenchik <diw@wb-law.com>; X_Lisa Borowsky_Shared <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>

Cc: Mark, Emma <Emma.Mark@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Andy Gaona <agaona@cblawyers.com>; Austin Yost <ayost@cblawyers.com>; Diana Hanson <dhanson@cblawyers.com>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>

Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Brian,

We were surprised to receive your email. There is no basis whatsoever for the Plaintiff to threaten sanctions against the Alliance for filing a Motion to Dismiss. As you know, the Court ordered the Alliance to respond to the First Amended Complaint when it granted intervention. The Alliance is a full and equal party to this case and has a right to be fully heard on all of its arguments, including to preserve all of its rights. Any threat of sanctions for the Alliance exercising its rights as a party—and for complying with a court order—is completely baseless. We also disagree with your characterization of the motion. While the Alliance agrees with the Attorney General on several grounds for dismissal—and makes arguments in support of those grounds in the motion—the Alliance also makes several distinct arguments. And even if the motions were similar, that would not provide grounds for sanctions, or even cause the Plaintiff to have to expend more resources—you could simply address any arguments you believe are similar in the same way you have in response to the Attorney General's motion. It would be the motion for sanctions that would be frivolous and unnecessary, not a motion to dismiss served by a party to the litigation, in full and fair exercise of its legal rights in these proceedings.

Best,
Dan

Dan Cohen

Associate

Elias Law Group LLP

250 Massachusetts Ave NW

Washington DC 20001

202-987-5156

he/him/his

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From: Brian R. Gifford <briang@wb-law.com>

Sent: Thursday, July 11, 2024 6:53 PM

To: Daniel Cohen <dcohen@elias.law>; Samuels, Alexander <Alexander.Samuels@azag.gov>; Dennis Wilenchik <diw@wb-law.com>; X_Lisa Borowsky_Shared <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>

Cc: Mark, Emma <Emma.Mark@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Andy Gaona <agaona@cblawyers.com>; Austin Yost <ayost@cblawyers.com>; Diana Hanson <dhanson@cblawyers.com>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>

Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Dan,

Thanks for taking time to do the call just now. As I mentioned, the proposed motion to dismiss makes the exact same arguments as the Attorney General's motion to dismiss—other than with respect to the one-page section related to legislative immunity—thereby making it unnecessary and a waste of resources for the court and parties to deal with, which is exactly why Plaintiff opposed AARA's intervention in the first place. AARA should be filing a joinder in the AG's motion as opposed to another completely duplicative motion. If AARA proceeds with filing the motion to dismiss, Plaintiff will seek sanctions for AARA doing so.

Please let me know if you would like to discuss this further.

Best,
Brian



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Brian R. Gifford
briang@wb-law.com

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Phoenix, Arizona 85004
P 602-606-2810 | F 602-606-2811

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From: Daniel Cohen <dcohen@elias.law>
Sent: Thursday, July 11, 2024 12:26 PM
To: Samuels, Alexander <Alexander.Samuels@azag.gov>; Brian R. Gifford <briang@wb-law.com>; Dennis Wilenchik <diw@wb-law.com>; X_Lisa Borowsky_Shared <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>
Cc: Mark, Emma <Emma.Mark@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Andy Gaona <agaona@cblawyers.com>; Austin Yost <ayost@cblawyers.com>; Diana Hanson <dhanson@cblawyers.com>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>
Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Thanks Alexander, no concerns from us.

Dan Cohen

Associate

Elias Law Group LLP

250 Massachusetts Ave NW

Washington DC 20001

202-987-5156

he/him/his

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From: Samuels, Alexander <Alexander.Samuels@azag.gov>
Sent: Thursday, July 11, 2024 3:20 PM
To: 'Brian R. Gifford' <briang@wb-law.com>; Daniel Cohen <dcohen@elias.law>; Dennis Wilenchik <diw@wb-law.com>; X_Lisa Borowsky_Shared <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>
Cc: Mark, Emma <Emma.Mark@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Andy Gaona <agaona@cblawyers.com>; Austin Yost <ayost@cblawyers.com>; Diana Hanson <dhanson@cblawyers.com>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>
Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

I and other members of the AG team are traveling today and thus may not be able to join. That is not a concern from our perspective, but if anyone has concerns please say so and I can do my best to call in.

From: Brian R. Gifford <briang@wb-law.com>
Sent: Thursday, July 11, 2024 12:06 PM
To: Daniel Cohen <dcohen@elias.law>; Dennis Wilenchik <diw@wb-law.com>; X_Lisa Borowsky_Shared <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>
Cc: Mark, Emma <Emma.Mark@azag.gov>; Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Andy Gaona <agaona@cblawyers.com>; Austin Yost <ayost@cblawyers.com>; Diana Hanson <dhanson@cblawyers.com>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>
Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

That time is fine. Thanks.



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From: Daniel Cohen <dcohen@elias.law>
Sent: Thursday, July 11, 2024 11:34 AM
To: Brian R. Gifford <briang@wb-law.com>; Dennis Wilenchik <diw@wb-law.com>; X_Lisa Borowsky_Shared <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>
Cc: Mark, Emma <Emma.Mark@azag.gov>; Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Andy Gaona <agaona@cblawyers.com>; Austin Yost <ayost@cblawyers.com>; Diana Hanson <dhanson@cblawyers.com>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>
Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Hi Brian, how about 3:30 PT this afternoon? If that works for you I'll send an invite.

Dan Cohen

Associate

Elias Law Group LLP

250 Massachusetts Ave NW

Washington DC 20001

202-987-5156

he/him/his

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From: Brian R. Gifford <briang@wb-law.com>
Sent: Thursday, July 11, 2024 1:59 PM
To: Daniel Cohen <dcohen@elias.law>; Dennis Wilenchik <diw@wb-law.com>; X_Lisa Borowsky_Shared <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>
Cc: Mark, Emma <Emma.Mark@azag.gov>; Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Andy Gaona <agaona@cblawyers.com>; Austin Yost <ayost@cblawyers.com>; Diana Hanson <dhanson@cblawyers.com>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>
Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Hi Dan,

Yes, I am generally available this afternoon or tomorrow. Please let me know what time works for you.

Best,
Brian



www.wb-law.com

Brian R. Gifford
briang@wb-law.com

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From: Daniel Cohen <dcohen@elias.law>
Sent: Thursday, July 11, 2024 8:28 AM
To: Brian R. Gifford <briang@wb-law.com>; Dennis Wilenchik <diw@wb-law.com>; X_Lisa Borowsky_Shared <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>
Cc: Mark, Emma <Emma.Mark@azag.gov>; Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Andy Gaona <agaona@cblawyers.com>; Austin Yost <ayost@cblawyers.com>; Diana Hanson <dhanson@cblawyers.com>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>
Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Hi Brian,

Now that AARA has been granted intervention, we plan to file a motion to dismiss and would like to satisfy the meet and confer requirement under Rule 12(j) and 7.1(h). Are you available for a phone call today or tomorrow?

Thanks,
Dan

Dan Cohen

Associate

Elias Law Group LLP

250 Massachusetts Ave NW

Washington DC 20001

202-987-5156

he/him/his

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From: Andy Gaona <agaona@cblawyers.com>
Sent: Thursday, February 22, 2024 3:41 PM
To: Dennis Wilenchik <diw@wb-law.com>; Brian R. Gifford <briang@wb-law.com>; Mark, Emma <Emma.Mark@azag.gov>
Cc: Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Lisa Borowsky <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>; Austin Yost <ayost@cblawyers.com>; Marilyn Robb <mrobb@elias.law>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>; Jonathan Hawley <jhawley@elias.law>; Daniel Cohen <dcohen@elias.law>; Diana Hanson <dhanson@cblawyers.com>
Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Good afternoon, Dennis:

I will report your refusal and attach this entire email string (ending with this email) to my certification as an exhibit to avoid any confusion about anyone's position.

Regards,

Andy Gaona
(he/him/his)
602.381.5486
agaona@cblawyers.com

From: Dennis Wilenchik <diw@wb-law.com>
Sent: Thursday, February 22, 2024 1:37 PM
To: Andy Gaona <agaona@cblawyers.com>; Brian R. Gifford <briang@wb-law.com>; Mark, Emma <Emma.Mark@azag.gov>
Cc: Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Lisa Borowsky <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>; Austin Yost <ayost@cblawyers.com>; Marilyn Robb <mrobb@elias.law>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>; 'jhawley@elias.law' <jhawley@elias.law>; dcohen@elias.law
Subject: Re: Gould v. Mayes (CV 24-00815); Good Faith Consultation

[EXTERNAL SENDER]

You can say it's our position that because your client is not a party we know of no basis to allow you to file such a mt under the rules and we believe it is improper and should be stricken as a result and thus hac we no duty to meet and confer at this time- thank you

Sent via the Samsung Galaxy Z Fold3 5G, an AT&T 5G smartphone
Get [Outlook for Android](#)

Sincerely Yours,



www.wb-law.com

Dennis I. Wilenchik

Attorney at Law

diw@wb-law.com

The Wilenchik & Bartness Building
2810 North Third Street
Phoenix, Arizona 85004
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From: Andy Gaona <agaona@cblawyers.com>
Sent: Thursday, February 22, 2024 12:58:36 PM
To: Brian R. Gifford <briang@wb-law.com>; Mark, Emma <Emma.Mark@azag.gov>
Cc: Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Dennis Wilenchik <diw@wb-law.com>; Lisa Borowsky <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>; Austin Yost <ayost@cblawyers.com>; Marilyn Robb <mrobb@elias.law>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>; 'jhawley@elias.law' <jhawley@elias.law>; dcohen@elias.law <dcohen@elias.law>
Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Thanks, Brian. We will proceed with lodging our proposed motion to dismiss, and my certification will explain to the Court your refusal to allow us to participate in the meet and confer occurring later today.

Regards,

Andy Gaona
(he/him/his)
602.381.5486
agaona@cblawyers.com

From: Brian R. Gifford <briang@wb-law.com>
Sent: Thursday, February 22, 2024 12:14 PM
To: Andy Gaona <agaona@cblawyers.com>; Mark, Emma <Emma.Mark@azag.gov>
Cc: Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Dennis Wilenchik <diw@wb-law.com>; Lisa Borowsky <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>; Austin Yost <ayost@cblawyers.com>; Marilyn Robb <mrobb@elias.law>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>; 'jhawley@elias.law' <jhawley@elias.law>;

dcohen@elias.law

Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

[EXTERNAL SENDER]

Andy,

Thanks for your email. We do refuse to meet and confer because AARA has no right to file any documents with the court other than the Motion to Intervene that was already filed, and we object to AARA filing a "proposed" motion to dismiss, whatever that means, at this time. If the court grants AARA's motion to intervene, then AARA may file whatever it wishes. Until then, AARA's participation in the case in any way, including in today's meet and confer phone call, is inappropriate. Moreover, we do NOT waive any right to meet and confer, and if AARA's motion to intervene is ultimately granted, then AARA must still meet and confer with our office prior to filing a motion to dismiss. Any other order of operations would require our client to essentially expend money starting to litigate against AARA (including by reviewing and preparing to oppose AARA's "proposed motion", if the comment about keeping the case on "one track" means anything) before AARA is even a party to the case. This highlights the inappropriateness of AARA's "proposed motion."

Thanks,
Brian



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briang@wb-law.com

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From: Andy Gaona <agaona@cblawyers.com>

Sent: Thursday, February 22, 2024 11:18 AM

To: Mark, Emma <Emma.Mark@azag.gov>; Brian R. Gifford <briang@wb-law.com>

Cc: Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Dennis Wilenchik <diw@wb-law.com>; Lisa Borowsky <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>; Austin Yost <ayost@cblawyers.com>; Marilyn Robb <mrobb@elias.law>; Lali Madduri <lmadduri@elias.law>; Julie Zuckerbrod <jzuckerbrod@elias.law>; 'jhawley@elias.law' <jhawley@elias.law>; dcohen@elias.law

Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Good morning, Brian:

The Proposed Intervenors intend to file a proposed motion to dismiss tomorrow in an effort to do everything we can to keep this case on one track, something I'm sure the Court will appreciate. But before we do so, we'd like to (and in fact have to) comply with the requirements of Rule 12(j) and 7.1(h). And to that end, it makes perfect sense for us to participate in today's meet and confer. Our involvement will add just a few minutes (at most) to that already-scheduled call.

Your email below says that you "do not consent to AARA being a part of today's meet and confer nor do we see any benefit to their being a part of it." I'm writing to confirm that you are refusing to meet and confer with the proposed intervenors regarding their proposed motion to dismiss. If that's the case, so be it; I'll indicate as much to the Court in my good faith consultation certificate.

Thanks, and we look forward to your prompt response.

Regards,

Andy Gaona

(he/him/his)

602.381.5486

agaona@cblawyers.com

From: Mark, Emma <Emma.Mark@azag.gov>

Sent: Thursday, February 22, 2024 11:11 AM

To: 'Brian R. Gifford' <briang@wb-law.com>

Cc: Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Dennis Wilenchik <diw@wb-law.com>; Lisa Borowsky <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>; Andy Gaona <agaona@cblawyers.com>; Austin Yost <ayost@cblawyers.com>; Marilyn Robb <mrobb@elias.law>; Lali Madduri <lmadduri@elias.law>; 'jhawley@elias.law' <jhawley@elias.law>; dcohen@elias.law

Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

[EXTERNAL SENDER]

Brian-

I've copied AARA's counsel here so they can respond to your objection to their attendance at today's meet and confer.

Thanks,
Emma

From: Brian R. Gifford <briang@wb-law.com>

Sent: Thursday, February 22, 2024 10:07 AM

To: Mark, Emma <Emma.Mark@azag.gov>

Cc: Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>; Dennis Wilenchik <diw@wb-law.com>; Lisa Borowsky <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>; Christine Ferreira <ChristineF@wb-law.com>; e57659d03+matter1543895506@maildrop.clio.com

Subject: FW: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Hi Emma,

We are a little confused by your email. AARA's motion to intervene has not been granted yet, and may never be granted, so they certainly do not have the court's permission to file a responsive pleading tomorrow. Because they are not yet a party and have nothing to do with the Attorney General's proposed motion to dismiss, we do not consent to AARA being a part of today's meet and confer nor do we see any benefit to their being a part of it. If we are missing something, please let us know, but otherwise let's please proceed with having today's meet and confer only be between our office and the AG's office.

Thanks,
Brian



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Brian R. Gifford
briang@wb-law.com

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From: Mark, Emma <Emma.Mark@azag.gov>
Sent: Thursday, February 22, 2024 9:28 AM
To: Dennis Wilenchik <diw@wb-law.com>; Brian R. Gifford <briang@wb-law.com>; Lisa Borowsky <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>
Cc: Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>
Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Dennis-

It occurred to us that the proposed intervenor defendant (AARA) may also need to set up a meet and confer to the extent they plan to file a responsive pleading tomorrow. For the sake of coordinating schedules, we have included AARA's counsel in the invite for our call this afternoon.

Thanks,
Emma

From: Dennis Wilenchik <diw@wb-law.com>
Sent: Monday, February 19, 2024 8:55 AM
To: Mark, Emma <Emma.Mark@azag.gov>; Brian R. Gifford <briang@wb-law.com>; Lisa Borowsky <LisaB@wb-law.com>; Bonnie Conrad <bonniec@wb-law.com>

Cc: Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>

Subject: RE: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Should be able to do so. Bonnie will let you know by tomw as we are out today. thanks

Sincerely Yours,



www.wb-law.com

Dennis I. Wilenchik

Attorney at Law

diw@wb-law.com

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2810 North Third Street
Phoenix, Arizona 85004
P 602-606-2810 | F 602-606-2811

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From: Mark, Emma <Emma.Mark@azag.gov>

Sent: Sunday, February 18, 2024 8:16 PM

To: Dennis Wilenchik <diw@wb-law.com>; Brian R. Gifford <briang@wb-law.com>; Lisa Borowsky <LisaB@wb-law.com>

Cc: Samuels, Alexander <Alexander.Samuels@azag.gov>; Mataele, Shannon <Shannon.Mataele@azag.gov>

Subject: Gould v. Mayes (CV 24-00815); Good Faith Consultation

Hi Dennis-

We are planning to file a motion to dismiss on Friday 2/23 and will need to confer as required by Rule 12(j) and 7.1(h). Are you/your team available for a phone call on Thursday? We shouldn't need too much of your time but would like to get something scheduled.

Thanks,
Emma

Emma Mark
Senior Litigation Counsel



Arizona Attorney General Kris Mayes
Solicitor General's Office
2005 N. Central Ave., Phoenix, AZ
85004
Direct: (602) 542-8860
emma.mark@azag.gov
<http://www.azag.gov>

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