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13 ** Pro Hac Vice Application Pending*

14 **ARIZONA SUPERIOR COURT**
15 **MARICOPA COUNTY**

16 RON GOULD, in his individual capacity,	) No. CV2024-000815
)
17 Plaintiff,	) NOTICE OF LODGING PROPOSED
	) MOTION TO DISMISS OF PROPOSED
18 v.	) INTERVENOR-DEFENDANT
	) ARIZONA ALLIANCE FOR RETIRED
19 KRIS MAYES, in her Official Capacity as	) AMERICANS
20 Attorney General of the State of Arizona,)
)
21 Defendant.	) (Assigned to the Hon. Brad Astrowsky)
)

23 Proposed Intervenor-Defendant the Arizona Alliance for Retired Americans (the
24 "Alliance"), through undersigned counsel, hereby gives notice of lodging its (1) Proposed
25 Motion to Dismiss (attached as Exhibit 1), and (2) Proposed Certification of Counsel Under
26 Rules 7.1(h) and 12(j) (attached as Exhibit 2). In the spirit of "secur[ing] the just, speedy, and

1 inexpensive determination” of this matter, Ariz. R. Civ. P. 1, the Alliance lodges these
2 documents at the same time Defendant Kris Mayes will file a Motion to Dismiss in an attempt
3 to keep this case moving along a single track and allow for its quick resolution.

4 RESPECTFULLY SUBMITTED this 23rd day of February, 2024.

5 **COPPERSMITH BROCKELMAN PLC**

6 By: /s/ D. Andrew Gaona

7 D. Andrew Gaona

8 Austin C. Yost

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15 ** Pro Hac Vice Application Pending*

16 ORIGINAL e-filed and served via electronic
17 means this 23rd day of February, 2024, upon:

18 Honorable Brad Astrowsky
19 Maricopa County Superior Court
20 c/o Stephanie Pham
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EXHIBIT 1

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Defendant Arizona Alliance for Retired
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** Pro Hac Vice Application Pending*

ARIZONA SUPERIOR COURT
MARICOPA COUNTY

RON GOULD, in his individual capacity,

Plaintiff,

v.

KRIS MAYES, in her official capacity as the
Attorney General of the State of Arizona,

Defendant.

No. CV2024-000815

**PROPOSED MOTION TO DISMISS
OF PROPOSED INTERVENOR-
DEFENDANT ARIZONA
ALLIANCE FOR RETIRED
AMERICANS**

(Assigned to the Hon. Brad Astrowsky)

Under Rule of Civil Procedure 12(b)(1), (6), Proposed Intervenor-Defendant the Arizona Alliance for Retired Americans (the “Alliance”) moves to dismiss Plaintiff’s claims.

INTRODUCTION

Arizona law is clear: electronic tabulating equipment must be used to count ballots unless it is impracticable. A.R.S. § 16-621; 2023 Elections Procedures Manual (“EPM”) at 200 (citing statutes).¹ Plaintiff seeks extraordinary relief: a judicial permission slip allowing counties to abandon the state’s longstanding and detailed ballot counting procedures and tally all votes for the 2024 elections by hand, without even attempting to use available, certified, rigorously tested, and highly accurate electronic tabulating equipment.

Plaintiff’s effort is only the latest in a recent series of attempts by a small but vocal few who cite vague and unsupported concerns about threats to election integrity to cast doubt on the accuracy of proven voting equipment. Each time, experienced elections officials, county attorneys, and courts have confirmed that Arizona law forbids expansive hand counts and election officials must follow that law when tabulating ballots. Plaintiff now asks this Court to bless his personal desire to violate Arizona law and give Mohave County judicial permission to conduct a full hand count of all ballots. This request is all the more extraordinary because Mohave County has no plans to do so. In fact, the County Board of Supervisors (the “Mohave Board”)—of which Plaintiff is only one of five members—wisely voted *against* repeated proposals to conduct a full hand count, heeding calls from their county attorney and the Attorney General that doing so would violate Arizona law, and even if legal, it is practically impossible.

Plaintiff’s brazen request must be rejected for at least four reasons. *First*, Plaintiff has suffered no injury and identifies no legal right that has been affected. *Second*, Plaintiff’s speculations about hypothetical future events do not create a justiciable controversy. *Third*, Plaintiff is wrong on the law: Arizona law requires electronic tabulation of ballots except in narrow circumstances, which Plaintiff explicitly emphasizes do not exist here. *Fourth*, neither Plaintiff nor the Mohave Board has discretionary authority to invent their own extra-

¹ The EPM is available at https://apps.azsos.gov/election/files/epm/2023/20231230_EPM_Final_Edits_406_PM.pdf (Dec. 2023).

1 statutory hand count procedures.

2 This case is the paradigmatic example of a request for an advisory opinion. It also
3 threatens to inject chaos into ballot counting procedures, undermine voter confidence,
4 seriously jeopardize the timely certification of election results, and violate Arizonans'
5 fundamental right to vote, all during a presidential election year. The Court should dismiss
6 Plaintiff's complaint with prejudice, and without leave to amend.

7 **BACKGROUND**

8 Arizona law requires electronic tabulation of ballots. *See* A.R.S. § 16-621(A); EPM
9 at 200. The tabulating equipment used to count ballots undergoes thorough testing by
10 independent, neutral experts, *see* A.R.S. § 16-442(A)–(B), as well as four independent
11 audits: two logic and accuracy tests before the election, *see* A.R.S. § 16-449(A)–(B), a
12 limited hand count audit of electronically tabulated ballots, *see* A.R.S. § 16-602(B), (F),
13 and post-election logic and accuracy testing, *see* EPM at 243–44.

14 Arizona counties routinely report highly accurate results from electronic tabulating
15 equipment, and recent post-election audits have found no significant errors in any Arizona
16 county.² For the 2022 election, Mohave County Elections Director Allen Tempert reported
17 zero discrepancies in Mohave County between the statutory hand count audit and the
18 tabulated results.³

19 Nevertheless, isolated skeptics have recently attempted to solve non-existent
20 problems with electronic tabulation equipment by expanding the use of hand counts. Courts
21 have uniformly rejected these misguided efforts. For example, in 2022, Representative and
22 candidate Mark Finchem and candidate Kari Lake sued to ban the use of voting machines
23 and electronic ballot tabulation equipment in Maricopa and Pima Counties, seeking to force

24 ² *See Summary of Hand Count Results – 2022 Gen. Election*, ARIZ. SEC'Y OF STATE,
25 <https://azsos.gov/node/218> (last visited February 23, 2024). The Court may take judicial
26 notice of the secretary of state's website. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58,
65 ¶ 28 n.2 (2020).

27 ³ *See Mohave Cnty. Hand Count / Early Ballot Audit Rep.*, MOHAVE CNTY. ELECTIONS
28 DEP'T, <https://apps.azsos.gov/election/2022/ghc/2022generalhandcountreport-mohave.pdf>
Nov. 15, 2022).

1 county election officials to hand count all ballots during the 2022 elections. *See Lake v.*
2 *Hobbs*, 623 F. Supp. 3d 1015 (D. Ariz. 2022), *aff'd sub nom. Lake v. Fontes*, 83 F.4th 1199
3 (9th Cir. 2023). A federal judge dismissed their suit and denied a preliminary injunction
4 because plaintiffs had “articulated only conjectural allegations of potential injuries”
5 involving the use of electronic tabulating equipment. *Id.* at 1032. The court further found
6 that conducting a full hand count would not be in the public interest, citing a lack of any
7 evidence that a hand count would be more accurate, the impossibility of conducting a hand
8 count without enormous resources, and the expectation that “the results of the election
9 would be delayed.” *Id.* at 1019 n.1.

10 Then, in October 2022, the Cochise County Board of Supervisors (the “Cochise
11 Board”) voted to conduct a full hand count audit, in contravention of lawful audit
12 procedures under A.R.S. § 16-602. Proposed Intervenor, the Alliance, successfully sued to
13 prevent the Cochise Board from doing so. *See Ruling, Ariz. All. for Retired Ams., Inc. v.*
14 *Crosby*, No. CV2022-00518 (Cochise Cty. Sup. Ct. Nov. 7, 2022) (“*Arizona Alliance I*”)
15 (granting the Alliance’s request to enjoin the Cochise Board from conducting a full hand
16 count audit), *aff'd* 537 P.3d 818 (Ariz. App. 2023). The court held: “The decision as to how
17 to conduct and tabulate elections is appropriately in the domain of the State Legislature,
18 supplemented by the delegated rule making authority of the Secretary of State. The
19 Legislature has spoken clearly, and elected officials are required to follow its direction.” *Id.*
20 at 11. The court of appeals affirmed, and held that “the legislature provided for a detailed
21 method to verify the results from electronically tabulated voting machines,” which did not
22 allow a full hand count in the first instance, and “counties must follow that method unless
23 and until the legislature determines otherwise.” *Ariz. All. for Retired Ams., Inc. v. Crosby*,
24 537 P.3d 818, 824 ¶ 19 (App. 2023) (“*Arizona Alliance II*”).

25 In 2023, a member of the public requested that the Mohave Board consider
26 conducting a full hand count of all ballots for the 2024 general election. After receiving
27 advice on the legal consequences and practical risks of a full hand count, the Board voted
28 twice against transgressing Arizona law, once on August 1, 2023, and again on November

1 20, 2023.

2 At the August 1 meeting, Mohave County Elections Director Tempert explained to
3 the Board the significant expense, delay, and risk of inaccuracies that would result if it
4 moved forward with such a plan. Director Tempert told the Board that a full hand count for
5 the 2024 election would require hiring over 300 new workers and would cost about \$1.1
6 million.⁴ He also advised that he ran a test hand count of 850 ballots, a process that took
7 three days and had 46 errors.⁵ At this error rate, a hand count of the 105,000 ballots cast in
8 Mohave County in the 2020 general election would have resulted in nearly 6,000 errors and,
9 as Director Tempert emphasized, would have been “an awful lot of work . . . in a short
10 amount of time,”⁶ and “would just be astronomical to try to put together.”⁷ Mohave County
11 Deputy Attorney Ryan Esplin advised the Board to follow Arizona law and the EPM by
12 using electronic tabulating equipment to count ballots rather than conduct a hand count.⁸
13 When Plaintiff stated his belief that the EPM was only a “negotiated document”⁹ and that
14 he did not “know that the manual not allowing a hand count is really something that [the
15 Board] need[ed] to fall back on,”¹⁰ Deputy County Attorney Esplin responded that “it is a
16 criminal offense to fail to follow the Elections Procedures Manual” unless it conflicts with
17 a statute.¹¹ He also predicted that the 2023 EPM would provide “more clarity . . . as to
18 whether the counties can do hand counts or not.”¹² Ultimately, the Board voted 3–2 against
19 a full hand count for the 2024 election.¹³

21 ⁴ FAC ¶¶ 9–11; Mohave Cnty. Ariz. – Local Government, *Board of Supervisors Special*
22 *Meeting - 08/01/2023*, YOUTUBE (Aug. 1, 2023), at 26:08–27:00,
<https://www.youtube.com/watch?v=B26KaFJLMKw> (hereinafter “August 1 Video
23 Recording”).

24 ⁵ *Id.* at 13:04–51.

25 ⁶ *Id.* at 11:29–41.

26 ⁷ *Id.* at 21:11–18.

27 ⁸ *Id.* at 40:27–55.

28 ⁹ *Id.* at 44:35–40.

¹⁰ *Id.* at 46:27–34.

¹¹ *Id.* at 45:10–40.

¹² *Id.* at 43:51–44:07.

¹³ FAC ¶ 11; August 1 Video Recording at 1:58:10–30.

1 The Board met again on November 20 to discuss the possibility of conducting a full
2 hand count. Before that meeting, Attorney General Kris Mayes sent the Board a legal
3 memorandum, echoing Deputy County Attorney Esplin's advice that directing a full hand
4 count would violate Arizona law and recommended the Board vote against it. During the
5 meeting, Deputy County Attorney Esplin repeated:

6 If you look at it, the statutes and . . . the laws, there's hardly anything there
7 that suggests that you can hand count it. *And if it's not there, you're not*
8 *authorized to do it.* That's why our advice to you is take the safe route and
9 use the machines because we know those are legal. We know the law. The
law says very clear, this is what we do[.]¹⁴

10 The Board again voted 3–2 against a full hand count.¹⁵ Plaintiff Supervisor Gould
11 was one of the two members of the Board in the minority.

12 Plaintiff now seeks a declaratory judgment from this Court to authorize what even
13 the Mohave Board has twice voted to reject, a full hand count in the first instance, in
14 violation of Arizona law.

15 LEGAL STANDARD

16 Dismissal under Arizona Rule of Civil Procedure 12(b)(1) is proper when the court
17 lacks subject matter jurisdiction. *See State v. Maldonado*, 223 Ariz. 309, 311 ¶ 14 (2010)
18 (“[A] court that lacks subject matter jurisdiction cannot adjudicate the action.”). Subject
19 matter jurisdiction refers to a court’s “power to hear and determine a particular type of
20 case.” *Church of Isaiah 58 Project of Ariz., Inc. v. La Paz Cnty.*, 233 Ariz. 460, 462 ¶ 9
21 (App. 2013) (internal quotation omitted). “When the court’s subject matter jurisdiction is
22 challenged under Rule 12(b)(1), the court may take evidence and resolve factual disputes
23 essential to its disposition of the motion.” *Gatecliff v. Great Republic Life Ins. Co.*, 154
24 Ariz. 502, 506 (App. 1987).

25 Dismissal under Rule 12(b)(6) is appropriate where the complaint fails to state a

26 ¹⁴ Mohave Cnty. Ariz. – Local Government, *Board of Supervisors Meeting - 11/20/2023*
27 (Nov. 20, 2023), at 4:14:10–31, <https://www.youtube.com/watch?v=BvpSrZl68ZE>
28 (emphasis added).

¹⁵ *Id.* at 4:46:07–22.

1 claim for relief because “as a matter of law . . . the plaintiff would not be entitled to relief
2 under any interpretation of the facts.” *Cleckner v. Ariz. Dep’t of Health Servs.*, 246 Ariz.
3 40, 42 ¶ 6 (App. 2019) (internal quotation omitted). “[M]ere conclusory statements are
4 insufficient to state a claim upon which relief can be granted.” *Cullen v. Auto-Owners Ins.*,
5 218 Ariz. 417, 419 ¶ 7 (2008).

6 ARGUMENT

7 **I. Plaintiff’s claims are not justiciable.**

8 Arizona employs “a rigorous standing requirement.” *Fernandez v. Takata Seat Belts,*
9 *Inc.*, 210 Ariz. 138, 140 ¶ 6 (2005). Standing is a threshold question that must be resolved
10 before reaching the merits. *See Sears v. Hull*, 192 Ariz. 65, 68 ¶ 9 (1998) (“Because we
11 agree that the plaintiffs lack standing, we do not address the merits of their claims.”). “[T]he
12 standing doctrine . . . ensures that courts refrain from issuing advisory opinions, that cases
13 be ripe for decision and not moot, and that issues be fully developed between true
14 adversaries.” *Bennett v. Brownlow*, 211 Ariz. 193, 196 ¶ 16 (2005).

15 These principles apply with even greater force in declaratory judgment actions
16 because courts lack “jurisdiction to render a judgment” unless the complaint “set[s] forth
17 sufficient facts to establish that there is a justiciable controversy.” *Planned Parenthood Ctr.*
18 *of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 310 (1972); *see also Klein v. Ronstadt*, 149
19 Ariz. 123, 124 (App. 1986) (similar); *Dail v. City of Phoenix*, 128 Ariz. 199, 201 (App.
20 1980) (refusing to interpret Declaratory Judgments Act “to create standing where standing
21 did not otherwise exist”). Declaratory relief must “be based on an existing state of facts, not
22 those which may or may not arise in the future.” *Lake Havasu Resort, Inc. v. Com. Loan*
23 *Ins.*, 139 Ariz. 369, 377 (App. 1983). To bring a claim for declaratory relief, a plaintiff must
24 therefore show that its “rights, status or other legal relations” are “affected by a statute,”
25 *Arizona Sch. Boards Assn., Inc. v. State*, 252 Ariz. 219, 224 ¶ 16 (2022) (quoting A.R.S. §
26 12-1832), and “that there [is] an actual controversy ripe for adjudication,” *Bd. of Sup’rs of*
27 *Maricopa Cnty. v. Woodall*, 120 Ariz. 379, 380 (1978). Because Plaintiff has failed to
28 establish either of these elements, his claims must be dismissed.

1 **A. Plaintiff lacks standing because he fails to allege any current or future**
2 **injury.**

3 Plaintiff's theory of standing suffers from both factual and legal deficiencies and
4 should be rejected. To have standing to bring an action, "a plaintiff must allege a distinct
5 and palpable injury." *Sears*, 192 Ariz. at 68 ¶ 16. Far from doing so, Plaintiff alleges no
6 past, present, or future injury. This alone dooms his claim for declaratory relief.

7 Plaintiff broadly asserts that this case is about his individual liberty, FAC ¶ 6, but he
8 fails to allege that any of his individual "rights, status or other legal relations are affected
9 by [any] statute," as is required for declaratory relief. *See* A.R.S. § 12-1832. Plaintiff
10 brought this lawsuit in his *individual* capacity, not as a County Supervisor, and not on behalf
11 of the Mohave Board (which wisely declined to vote for a full hand count and did not
12 authorize him to bring this suit on its behalf). Plaintiff does not—and cannot—allege that
13 he in his personal capacity has a right to initiate a hand count and he has no authority to
14 unilaterally assert the rights of the Board. For this reason alone, the Court should dismiss
15 this case.

16 More fundamentally, Plaintiff cites no statute that authorizes the Mohave Board to
17 order a full hand count, *see* FAC ¶¶ 14–15, 39–41—because none exists. And, as discussed
18 in Section II(B), *infra*, the legislative powers of counties and their officers are limited to
19 only those prescribed by statute. Plaintiff's Complaint instead haphazardly cites a series of
20 election statutes that describe the ballot counting procedures for Arizona elections, none of
21 which he alleges causes him any injury. FAC ¶¶ 33, 39–41, 52; *Id.* ¶¶ A–G (citing, *e.g.*,
22 A.R.S. § 16-443 (authorizing use of electronic vote tabulating equipment); § 16-445
23 (requiring election officials to file the computer program software used on electronic
24 tabulating equipment with secretary of state); § 16-449 (requiring election officials to test
25 electronic tabulating equipment and programs); § 16-451 (describing the means of financing
26 electronic tabulating equipment); § 16-468 (providing requirements for ballots used in an
27 optical scanning system); § 16-602 (providing requirements for tallying ballots and auditing
28 results); § 16-621 (providing requirements for counting ballots at counting centers); § 16-

1 622 (defining the official canvass and unofficial results)). Indeed, *many* of these statutes
2 pertain to counting ballots electronically. And while Plaintiff alleges only that these
3 “election statutes [] appear not to *bar* his intended support” for a hand count, FAC ¶ 6
4 (emphasis added), as explained *infra* Section II(A), other provisions of Arizona law *require*
5 electronic tabulation. Because no interpretation of the election statutes Plaintiff cites could
6 affect his rights, status, or legal relation, he establishes *no* injury, much less a cognizable
7 one. Plaintiff’s Complaint amounts to nothing more than “a mere difference of opinion
8 between public officers,” which “cannot form the basis for declaratory judgment.” *Riley v.*
9 *Cochise Cnty.*, 10 Ariz. App. 55, 60 (1969).

10 Nor are Plaintiff’s rights affected by the Attorney General’s November 19, 2023,
11 memorandum, which he claims was a “threat” of his imminent criminal prosecution, *see*
12 FAC ¶¶ 1–2, 5, 17–21, 31, 38. When considering the genuineness of a claimed threat of
13 prosecution, courts consider whether the plaintiff has “articulated a ‘concrete plan’ to
14 violate the law in question,” and “the history of past prosecution or enforcement under the
15 challenged statute.” *Thomas v. Anchorage Equal Rts. Comm’n*, 220 F.3d 1134, 1139 (9th
16 Cir. 2000). Plaintiff’s allegations fall far short of meeting these requirements. While
17 Plaintiff insists that he alone will continue to seek a hand count, *see* FAC ¶¶ 31, 49, there
18 can only be a “concrete plan” to violate the law if the Board as a whole votes to do so
19 because elections are the responsibility of county boards of supervisors, not any individual.
20 *See* A.R.S. § 11-251(3). The Attorney General’s memorandum confirms this: it advises “*the*
21 *Board . . . not [to] direct the Elections Department to act illegally*” and only if “it does, [the
22 Attorney General’s office] will promptly sue and obtain a court order.” FAC, Ex. A at 3
23 (emphasis added). Plaintiff admits as much, recognizing that his disagreement with Arizona
24 law could affect his rights only if “a future vote results in an *overall* ‘yes’ with respect to
25 hand-counting all ballots,” FAC ¶¶ 37, 50 (emphasis added), but he makes no allegations
26 that such an outcome is likely.

27 Plaintiff’s own experience confirms that he is not at risk of prosecution for his past
28 individual attempts to ignore Arizona law. Plaintiff has *already twice* voted for a hand count

1 and faced no criminal repercussions, *see* FAC ¶¶ 35, 49, and the Attorney General has never
2 initiated charges against Plaintiff, *see, e.g.*, FAC ¶¶ 30, 37, 50, or any other county
3 supervisor who voted for a hand count when the Board as whole rejected such action.
4 Plaintiff's fear of criminal prosecution is thus not based on a genuine threat and cannot form
5 the basis of his declaratory judgment action.

6 At bottom, Plaintiff seeks an improper advisory opinion blessing his desire to violate
7 Arizona law. But “[n]o proceeding lies under the declaratory judgments acts to obtain a
8 judgment which is merely advisory or which merely answers a moot or abstract question.”
9 *Moore v. Bolin*, 70 Ariz. 354, 356 (1950); *Iman v. S. Pac. Co.*, 7 Ariz. App. 16, 21 (1968)
10 (“[T]he Declaratory Judgments Act was not intended to constitute the court a ‘fountain of
11 legal advice.’”). The factual scenario that Plaintiff claims gives rise to his injury does not
12 exist now, has never existed, and may never exist. *See Velasco v. Mallory*, 5 Ariz. App.
13 406, 410–11 (1967) (An advisory opinion is “anticipative of troubles which do not exist;
14 may never exist; and the precise form of which, should they ever arise, [courts] cannot
15 predict.”). The Court should decline to indulge him.

16 All the remaining relief Plaintiff seeks is similarly abstract and improper. Plaintiff
17 asks the Court to opine on the court of appeals' opinion in *Arizona Alliance II*, 537 P.3d
18 818, FAC ¶ D, but he alleges no facts requiring further analysis of that ruling. Plaintiff also
19 requests a declaration that he may not be prosecuted for his votes to hand count ballots
20 because he is entitled to legislative immunity protection, *id.* ¶¶ E, F, despite his own
21 experience demonstrating that such prosecution is far from imminent. And although he
22 brings this case in his individual capacity, Plaintiff seeks a declaration regarding the duties
23 of the Mohave Board and *all* boards of supervisors in Arizona. *Id.* ¶¶ B, C. Because each of
24 Plaintiff's requests seek the Court's counsel on abstract questions that do not affect any of
25 his rights, he effectively asks the Court to serve as Plaintiff's personal “fountain of legal
26 advice.” *Iman*, 7 Ariz. App. at 21. The Court should decline to do so.

27 **B. Plaintiff's claims are not ripe.**

28 For the same reasons Plaintiff lacks standing, his claims are not ripe for judicial

1 review. “It is well settled that a proceeding for a declaratory judgment must be based upon
2 an actual controversy” and Arizona courts “will not decide as to future or contingent rights.”
3 *Moore*, 70 Ariz. at 356–57. Plaintiff’s claims are unmoored from any present, existing
4 controversy and are thus unripe for this Court’s consideration.

5 Plaintiff’s claims depend on a series of hypothetical future events, none of which are
6 likely to come to pass. Only *if* the Board were to hold a future vote on whether to conduct
7 a full hand count in violation of Arizona law, and only *if* a majority of that hypothetical
8 Board voted for a full hand count—something neither the Mohave Board nor any other in
9 Arizona has ever done—could an actual controversy potentially exist. Plaintiff’s claims are
10 “wholly contingent upon the occurrence of unforeseeable events” and are therefore “too
11 ‘imaginary’ and ‘speculative’ to support jurisdiction.” *Thomas*, 220 F.3d at 1139, 1141
12 (quoting *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979)).

13 **C. Because Plaintiff’s claims have never been ripe, they do not meet the**
14 **“capable of repetition yet evading review” exception to mootness.**

15 This Court should reject Plaintiff’s conclusory assertion that his claims are
16 justiciable because they are likely to recur. Although Arizona courts will sometimes
17 consider a question that has “become moot” where the issue is one “capable of repetition
18 yet evading review,” *Phoenix Newspapers, Inc. v. Molera*, 200 Ariz. 457, 460 ¶ 12 (App.
19 2001), this exception to the justiciability doctrine is only applied in election cases “where
20 an election’s occurrence initially rendered the issues moot, but the same issues were likely
21 to recur in a future election,” *Arizona Alliance II*, 537 P.3d at 821 ¶ 5. Accordingly, for the
22 exception to apply, there must be an issue that was once justiciable but was rendered moot
23 by an election. But as explained above, Plaintiff’s action for declaratory relief was never
24 justiciable. Unlike in *Arizona Alliance* where the Cochise Board voted to conduct a full
25 hand count audit in the 2022 election, the Mohave Board has *never* voted to conduct a full
26 hand count in *any* election. FAC ¶¶ 11, 28–29. Nor is there any indication that it will.
27 Plaintiff merely asserts that he alone will continue voting for a hand count, but he does not
28 allege any facts demonstrating that a majority of his colleagues will vote to violate the law

1 with him in the future. Because Plaintiff's claims are not ripe and were never ripe, the
2 exception does not apply.¹⁶

3 **II. Plaintiff fails to state a claim in Count I because Arizona law requires the**
4 **use of electronic tabulating equipment except in rare circumstances, which**
5 **is not alleged here.**

6 In Count One, Plaintiff seeks declaratory relief that under Arizona law, the “use of
7 vote tabulating machines in the first instance, rather than hand counting ballots, is . . .
8 optional” and that county boards “have the legal authority” to decide whether to hand count
9 ballots “even in situations where use of vote tabulating machines is not impracticable[.]”
10 FAC ¶¶ 39–41. Plaintiff fails to state a claim for relief because Arizona law requires the
11 exact opposite—electronic tabulating equipment must be used *unless* impracticable. And
12 county boards have no power to authorize any actions not provided for by law, including a
13 hand count of all ballots.

14 **A. Arizona law requires the use of electronic tabulating equipment unless**
15 **impracticable.**

16 A.R.S. § 16-621 describes the ballot counting procedure for Arizona elections and
17 requires that: “All proceedings at the counting center . . . shall be conducted in accordance
18 with the approved [EPM] issued pursuant to § 16-452[.]” The EPM, which has the force of
19 law, *see, e.g., Ariz. Republican Party v. Richer*, 255 Ariz. 363, 358 ¶ 7 (App. 2023), *review*
20 *granted* (Jan. 9, 2024), in turn states: “Electronic ballot tabulating systems shall be used for
21 every election.” EPM at 200.¹⁷

22 Consistent with Title 16, the EPM provides only one limited exception to electronic

23 ¹⁶ Plaintiff is also wrong to suggest that this issue will likely evade review if it arises again
24 simply because “it involves election cycles.” *See* FAC ¶ 1. Both of the Mohave Board's
25 prior votes on hand counting ballots took place about a year or more before the relevant
26 election. *See* FAC ¶¶ 11, 28. Had the Board voted in favor of a hand count at one of these
27 prior votes, a court could have timely adjudicated any disputes. Plaintiff alleges no facts
28 indicating a future vote would necessarily preclude judicial review.

¹⁷ Although EPM provisions that directly contradict statutes do not have the force of law,
Leibsohn v. Hobbs, 254 Ariz. 1, 7 ¶ 22 (2022), Plaintiff has not alleged, nor could he, that
to be the case here.

1 tabulation equipment—“the rare circumstance when electronic tabulation is not
2 practicable.” *Id.*; see A.R.S. § 16-621(C) (“If for any reason it becomes impracticable to
3 count all or a part of the ballots with tabulating equipment, the officer in charge of elections
4 may direct that they be counted manually[.]”). Thus, electronic tabulating equipment is
5 mandatory unless it “becomes impracticable,” in which case the officer in charge of
6 elections “may” conduct a hand count. EPM at 200. Plaintiff seeks to overwrite this plain
7 legal requirement to make electronic tabulating equipment “optional,” even where their use
8 is “not impracticable.” FAC ¶¶ 39–41. But neither Plaintiff nor this Court has the authority
9 to rewrite Arizona’s election laws to give county boards powers not specifically granted to
10 them by the Legislature. See *Hancock v. McCarroll*, 188 Ariz. 492, 498 (App. 1996)
11 (“County supervisors may exercise no powers except those specifically granted by statute
12 and in the manner fixed by statute.” (internal quotation omitted); *Ballesteros v. Am.*
13 *Standard Ins. Co. of Wis.*, 226 Ariz. 345, 349 ¶ 17 (2011) (“[I]t is not [the court’s] place to
14 rewrite [a] statute.”). This should be the end of the inquiry; because Arizona law is clear
15 that electronic tabulating equipment must be used, Plaintiff fails to state a claim, and his
16 complaint should be dismissed.

17 Unsurprisingly, Plaintiff fails to identify any statute that allows for discretionary
18 hand counting of ballots. Instead, he clumsily strings together a series of statutes, none of
19 which casts doubt on the mandatory use of electronic tabulating equipment, and each of
20 which presumes the use of such equipment. See FAC ¶ 39 (citing A.R.S. § 16-441 (setting
21 an effective date for Article 4 of the election code in relation to when electronic tabulating
22 equipment is approved); A.R.S. § 16-442 (describing procedures for selection of vote
23 tabulating equipment); A.R.S. § 16-443 (authorizing use of electronic tabulation equipment
24 at all elections); A.R.S. § 16-444 (defining a “voting device” as “an apparatus that the voter
25 uses to record the voter’s votes by marking a paper ballot, which votes are subsequently
26 counted by electronic tabulating equipment”); A.R.S. § 16-445 (requiring computer election
27 programs used on electronic tabulation equipment to be filed with the secretary before an
28 election); A.R.S. § 16-451 (authorizing board of supervisors to finance the cost of vote

1 tabulating equipment as it may deem best for local interests); A.R.S. § 16-468 (requiring
2 ballots used in an optical scanning system to fit the construction of electronic tabulating
3 equipment); A.R.S. § 16-602 (describing the procedures for a limited hand count audit to
4 take place after votes are initially counted by electronic tabulation equipment); A.R.S. § 16-
5 621 (assuming the use of electronic tabulating equipment to count damaged or defective
6 ballots); A.R.S. § 16-622 (defining “the official canvass” of each election district as the
7 result printed by the vote tabulating equipment); A.R.S. § 16-663 (requiring any court-
8 ordered recount to compare the electronic tabulation results from 5% of precincts with a
9 hand count of those ballots, and if the results are within the designated margin of error, the
10 recount is complete and the electronic tabulation is the official result)).

11 If these statutes prove anything, it is that Arizona law is replete with provisions that
12 presuppose the use of electronic tabulating equipment. Allowing elective hand counting
13 would thus impermissibly render large swaths of Title 16 superfluous. *See Ariz. All. II*, 537
14 P.3d at 822 ¶ 9 (“We will not interpret a statute in a manner that renders a provision
15 superfluous.”); *Herman v. City of Tucson*, 197 Ariz. 430, 434 ¶ 14 (App. 1999) (courts
16 “must avoid interpreting a statute so as to render any of its language mere surplusage, but
17 rather, must give meaning to each word, phrase, clause, and sentence so that no part of the
18 statute will be void, inert, redundant, or trivial.” (cleaned up)).

19 Plaintiff’s complaint rests on intentional or unknowing ignorance of Arizona law.
20 But A.R.S. § 16-621 and the EPM are clear: under Arizona law, electronic tabulating
21 equipment must be used except in the rare circumstance where it becomes impracticable.

22 **B. County boards may not authorize a hand count not provided in law or**
23 **create their own extra-statutory hand counting procedures.**

24 The Mohave Board—to say nothing of Plaintiff in his individual capacity—may not
25 authorize a hand count for the additional reason that “[c]ounty election officials [are] legally
26 required to follow the [] EPM and [have] no discretion to vary from it.” *Ariz. Republican*
27 *Party*, 255 Ariz. 363 ¶ 42. This rule stems from the “well-settled” principle “that the
28 legislative powers of counties are very limited.” *Hancock*, 188 Ariz. at 498. County boards

1 of supervisors have “entirely derivative” law-making power: they “may exercise no powers
2 except those specifically granted by statute and in the manner fixed by statute.” *Id.* (internal
3 quotations omitted). “Actions taken by a board of supervisors by methods unrecognized by
4 statute are ‘without jurisdiction and wholly void.’” *Id.* (quoting *Mohave Cnty. v. Mohave-*
5 *Kingman Ests., Inc.*, 120 Ariz. 417, 420 (1978)). And “[a] governmental body may not do
6 indirectly what a statute does not give it the power to do directly.” *Id.* As explained above,
7 Arizona law does not provide for a hand count in the first instance, and neither Plaintiff nor
8 the Mohave Board may create extra-statutory procedures for doing so.

9 In an analogous case brought by the Alliance when the Cochise Board *did* decide to
10 move forward with a full hand count last election cycle, both the trial court and the court of
11 appeals correctly applied these well-settled limitations in finding the Board’s extra-statutory
12 attempt unlawful. *See* Ruling, *Ariz. All. I*, No. CV-2022-00518; *Ariz. All. II*, 537 P.3d at
13 824 ¶ 19. Arizona law allows only for a limited hand count audit of electronically tabulated
14 results, providing a procedure that starts with a small random sample and only gradually
15 expands if statutorily defined discrepancies are found. *See* A.R.S. § 16-602(B)–(F). The
16 Cochise Board sought to ignore the plain statutory text and instead authorize a full hand
17 count audit of all ballots cast in the election pursuant to its own invented procedures—just
18 as Plaintiff here seeks to ignore Arizona law and authorize a full hand count of ballots. The
19 trial court enjoined Cochise’s intended hand count audit, holding that it would “require[]
20 election officials to audit ballots in a manner not permitted by law,” and was thus unlawful.
21 Ruling at 10, *Ariz. All. I*, No. CV-2022-00518. The court explained: “The decision as to
22 how to conduct and tabulate elections is appropriately in the domain of the State Legislature,
23 supplemented by the delegated rule making authority of the Secretary of State. The
24 Legislature has spoken clearly, and elected officials are required to follow its direction.” *Id.*
25 at 11. Affirming the trial court’s ruling, the court of appeals similarly held:

26 Because the legislature provided for a detailed method to verify the results
27 from electronically tabulated voting machines, counties must follow that
28 method unless and until the legislature determines otherwise. Accordingly,
the County did not have independent authority to conduct a hand-count audit

1 of all precinct or early ballots in the first instance for the 2022 election.

2 *Ariz. All. II*, 537 P.3d at 824 ¶ 19. The same reasoning applies here. Arizona law
3 requires the use of electronic tabulating equipment in the first instance except in the “rare
4 circumstance,” where it is “not practicable.” EPM at 200; A.R.S. § 16-621(C). Plaintiff has
5 pointed to *no* statutory authority outlining, or even contemplating, a procedure for a full
6 hand count in the first instance when electronic tabulation is a viable option. Nonetheless,
7 like the Cochise Board’s last election, Plaintiff seeks to ignore the law and create his own
8 procedure under the fabricated cloak of election integrity. While Plaintiff may feel his
9 unlawful actions would “restor[e] voter confidence in elections,” FAC ¶ 7, the Arizona
10 Supreme Court disagrees:

11 Election laws play an important role in protecting the integrity of the
12 electoral process. Thus, public officials should, by their words and actions,
13 seek to preserve and protect those laws. But when public officials . . . change
14 the law based on their own perceptions of what they think it *should* be, they
undermine public confidence in our democratic system and destroy the
integrity of the electoral process.

15 *Ariz. Pub. Integrity All.*, 250 Ariz. at 61 ¶ 4 (emphasis in original) (internal citations
16 omitted).

17 Plaintiff fails to state a claim in Count I because Arizona law requires the use of vote
18 tabulating machines in the first instance where practicable, and county boards cannot
19 circumvent the law and create new full hand count procedures.

20 **III. Plaintiff fails to state a claim in Count II because legislative immunity does**
21 **not apply.**

22 In Count II, Plaintiff seeks declaratory relief that, “as a county legislator,” he has
23 legislative immunity from being prosecuted for voting to conduct an unlawful hand count.
24 FAC ¶¶ 45–52. Plaintiff fails to state a claim for relief because Plaintiff does not have
25 discretion to violate Arizona’s election laws.

26 Legislative immunity applies when an act “reflect[s] a discretionary, policymaking
27 decision” that occurs in “a field where legislators traditionally have power to act.” *Ariz.*
28 *Indep. Redistricting Comm’n v. Fields*, 206 Ariz. 130, 138 ¶ 21 (App. 2003) (quoting *Bogan*

1 v. *Scott-Harris*, 523 U.S. 44, 56 (1998)). But under Arizona law, county boards have neither
2 the discretion nor legal authority to conduct a full hand count where electronic tabulation is
3 available. *See supra* Section II(B).

4 Plaintiff relies on a single, distinguishable case, *Mesnard v. Campagnolo*, 251 Ariz.
5 244 (2021), to support his claim that legislative immunity applies. FAC ¶ 45. *Mesnard*
6 involved legislative immunity for alleged defamation in the form of a legislative report
7 investigating potential misconduct, which fell squarely within the Legislature’s
8 discretionary statutory authority. *Id.* at 250–51 ¶¶ 19–22. By contrast, under A.R.S. § 11-
9 251(3), the county board of supervisors only has specific statutory authority to: set election
10 precincts, appoint inspectors and election judges, “canvass election returns, declare the
11 result and issue certificates thereof.” They have no discretionary or policy making authority
12 in the administration of elections. *See Arizona Republican Party*, 255 Ariz. 363 ¶ 42.
13 (“County election officials [are] legally required to follow the [] EPM and [have] no
14 discretion to vary from it.”); *Hancock*, 188 Ariz. at 498 (“The Board of Supervisors can
15 exercise only those powers specifically ceded to it by the legislature. . . . Actions taken by
16 a board of supervisors by methods unrecognized by statute are without jurisdiction and
17 wholly void.” (internal quotations omitted)). Because Plaintiff has no authority or discretion
18 to order a hand count, he cannot have legislative immunity from prosecution for doing so.

19 **CONCLUSION**

20 For these reasons, the Alliance requests that the Court grant its Motion to Dismiss.

21 RESPECTFULLY SUBMITTED this 23rd day of February, 2024.

22 **COPPERSMITH BROCKELMAN PLC**

23 By: /s/ D. Andrew Gaona

24 D. Andrew Gaona

Austin C. Yost

25 **ELIAS LAW GROUP, LLP**

26 Lalitha D. Madduri*

27 Dan Cohen*

28 Julie Zuckerbrod*

*Attorneys for Proposed Intervenor-Defendant
Arizona Alliance for Retired Americans*

**Pro Hac Vice Application Pending*

ORIGINAL e-filed and served via electronic
means this 23rd day of February, 2024, upon:

Honorable Brad Astrowsky
Maricopa County Superior Court
c/o Stephanie Pham
Stephanie.pham@jbazmc.maricopa.gov

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DIW@wb-law.com

Lisa M. Borowsky
LisaB@wb-law.com

Brian R. Gifford
admin@wb-law.com

Wilenchik & Bartness
2810 North Third Street
Phoenix, Arizona 85004
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Emma H. Mark
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Office of the Attorney General
2005 North Central Avenue
Phoenix, Arizona 85004
*Attorneys for Defendant Arizona Attorney General
Kris Mayes*

/s/ Diana J. Hanson

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EXHIBIT 2

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*Attorneys for Proposed Intervenor-Defendant
Arizona Alliance for Retired Americans*

** Pro Hac Vice Application Pending*

ARIZONA SUPERIOR COURT
MARICOPA COUNTY

RON GOULD, in his individual capacity,	)	No. CV2024-000815
)	
Plaintiff,	)	CERTIFICATION OF COUNSEL
	)	UNDER RULES 7.1(H) AND 12(J)
v.)	
)	
KRIS MAYES, in her Official Capacity as	)	(Assigned to the Hon. Brad Astrowsky)
Attorney General of the State of Arizona,)	
)	
Defendant.)	
)	
)	

Under Arizona Rules of Civil Procedure 7.1(h) and 12(j), D. Andrew Gaona declares and certifies as follows:

- I am a partner in the law firm of Coppersmith Brockelman PLC.
- I am counsel of record for Proposed Intervenor-Defendant the Arizona Alliance

1 for Retired Americans (the “Alliance”).

2 3. Before filing the Alliance’s Proposed Motion to Dismiss (“Motion”), undersigned
3 attempted to confer with counsel for Plaintiff about the issues raised in the Motion as required
4 by Rule 12(j), Ariz. R. Civ. P., by asking to join a meet-and-confer call that took place between
5 Plaintiff’s counsel and Defendant’s counsel on February 22, 2024 at 3:00 PM.

6 4. Counsel for Plaintiff refused to allow undersigned counsel to participate in that
7 meet-and-confer call. A true and correct copy of the email correspondence between undersigned
8 counsel, counsel for Plaintiff, and counsel for Defendant is attached hereto as Exhibit A.

9 5. Counsel for Defendant had no objection to undersigned counsel participating in
10 the meet-and-confer call.

11 I declare under penalty of perjury that the foregoing is true and correct.

12 RESPECTFULLY SUBMITTED this 23rd day of February, 2024.

13 **COPPERSMITH BROCKELMAN PLC**

14 By: /s/ D. Andrew Gaona

15 D. Andrew Gaona

16 Austin C. Yost

17 **ELIAS LAW GROUP LLP**

18 Lali Madduri*

19 Dan Cohen*

20 Julie Zuckerbrod*

21 *Attorneys for Proposed Intervenor-Defendant*
22 *Arizona Alliance for Retired Americans*

23 * *Pro Hac Vice Application Pending*

24 ORIGINAL e-filed and served via electronic
25 means this 23rd day of February, 2024, upon:

26 Honorable Brad Astrowsky
Maricopa County Superior Court
c/o Stephanie Pham
Stephanie.pham@jbazmc.maricopa.gov

1 Dennis I. Wilenchik
2 DIW@wb-law.com
3 Lisa M. Borowsky
4 LisaB@wb-law.com
5 Brian R. Gifford
6 admin@wb-law.com
7 Wilenchik & Bartness
8 2810 North Third Street
9 Phoenix, Arizona 85004
10 *Attorneys for Plaintiff Ron Gould*

11 Alexander Samuels
12 alexander.samuels@azag.gov
13 Emma H. Mark
14 Emma.Mark@azag.gov
15 Office of the Attorney General
16 2005 North Central Avenue
17 Phoenix, Arizona 85004
18 *Attorneys for Defendant Arizona Attorney General*
19 *Kris Mayes*

20 /s/ Diana J. Hanson
21 _____
22
23
24
25
26

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EXHIBIT A

Diana Hanson

From: Andy Gaona
Sent: Thursday, February 22, 2024 1:41 PM
To: Dennis Wilenchik; Brian R. Gifford; Mark, Emma
Cc: Samuels, Alexander; Mataele, Shannon; Lisa Borowsky; Bonnie Conrad; Christine Ferreira; Austin Yost; Marilyn Robb; Lali Madduri; Julie Zuckerbrod; 'jhawley@elias.law'; dcohen@elias.law; Diana Hanson
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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ATTORNEY/CLIENT COMMUNICATION

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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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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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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 Wilenchi <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 Wilenchi <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,



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Dennis I. Wilenchik

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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



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