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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.

Case No. _____

COMPLAINT

(Tier II)

Plaintiff Ron Gould in his individual capacity, alleges as follows:

PARTIES

1. Plaintiff Ron Gould (“Plaintiff” or “Gould”) is a Supervisor of the Mohave County Board of Supervisors. Plaintiff Gould is seeking a declaration of the court, based on the Attorney General’s threatened criminal charges against him personally over his support and voting for changing the manner of election counting in his County. The matter involves a justiciable controversy, Plaintiff has standing to raise it, and actual adverse positions are presented that require a declaration to avoid potential criminal charges being filed by this Attorney General. Moreover, the issue is “capable of repetition yet evading review” both because it involves election cycles that occur quickly and then recur after a couple years and because of the short timeframe

1 between when the Board of Supervisors would place the issue on a public meeting agenda to vote
2 on the issue again and when the proposed vote would actually occur. *AARA v. Crosby*, 537 P.3d
3 818, 821 (Ariz. App. Ct. 2023) (addressing hand count audit issue, despite claim of mootness,
4 because “the same issues were likely to recur in a future election”). Plaintiff therefore has
5 prudential standing to bring this declaratory judgment action. A.R.S. § 12-1831 *et seq.*

6 2. Defendant Kris Mayes (“Defendant” or “Mayes”) is the Attorney General of the
7 State of Arizona. Defendant has been sued in her official capacity based on her threat of bringing
8 criminal charges against Ron Gould individually for exercising his right as a Supervisor of the
9 Mohave County Board of Supervisors to vote in the past, and for his plan to vote again in the
10 future, to change the method of counting votes in his County before any election contest, and to
11 avoid such a contest by initially hand counting all votes. Defendant Mayes has further proven her
12 intention to prosecute elected officials who disagree with her interpretation of Title 16 election
13 statutes, as demonstrated by her recent indictment of other Board of Supervisors in other Counties
14 who exercised their rights and obligations, and she appears to be doing so for political reasons,
15 while claiming otherwise. Thus, there is an actual controversy between Defendant and Plaintiff,
16 which would be redressable by a declaration in Plaintiff’s favor that the relevant elections statutes
17 have the meaning that Plaintiff ascribes to them. If Plaintiff is incorrect, then he seeks a declaration
18 to avoid being in harm’s way. *Brush & Nib Studio, LC v. City of Phoenix*, 244 Ariz. 59, 68, 418
19 P.3d 426, 435 (App. Ct. 2018) (“A ‘genuine threat of imminent prosecution’ exists if a party
20 establishes a concrete plan to violate the law, the authorities intend to prosecute the party, and
21 there is a history of past prosecution or enforcement. A party, thus, need not suffer arrest or actual
22 prosecution before challenging a law.”) (citations omitted).

23 **JURISDICTION AND VENUE**

24 3. The events and omissions giving rise to this action occurred both in Mohave County
25 and in Maricopa County, in Arizona.

26 4. This Court has jurisdiction over the subject matter and the parties to this action
27 pursuant to A.R.S. § 12-123 and Arizona Constitution Article 6 § 14.

1 5. Venue is proper in Maricopa County, Arizona pursuant to A.R.S. § 12-401. As a
2 state elected official, Mayes must be sued in said County.

3 **GENERAL ALLEGATIONS**

4 6. This case is about an elected official potentially losing his liberty and being jailed
5 as a criminal, if Defendant Mayes is correct, for voting according to his conscience, and pursuant
6 to the will of his constituents, based on election statutes that appear not to bar his intended support
7 for vote counting based on hand counting and not the use of electronic voting machines. Such a
8 loss of liberty could occur, based on Mayes’s threat of criminal prosecution (*see* Exhibit “A”
9 attached hereto and incorporated herein by reference) simply based on voting to tabulate elections
10 by hand, which in fact, was the only method of tabulating elections prior to the development of
11 current electronic voting technologies that have been criticized for their deficiencies.

12 7. This case is also about restoring voter confidence in elections. There are many
13 Arizona citizens that believe, rightly or wrongly, that there have been significant errors, failures,
14 or possibly even tampering with electronic vote tabulating machines across the state in the 2020
15 and 2022 elections. This case is about restoring voter confidence, by allowing persons with the
16 authority to do so, like Plaintiff, to vote to take a different path without fear of reprisal. This case
17 is NOT about the use of hand counting to confirm or question electronic tabulation. It is about the
18 ability to alter the primary method of vote counting before any contest in or question regarding
19 the results is involved.

20 **Mohave County Board of Supervisors Investigates and Conducts**

21 **First Vote re Using a Hand Count for 2024 Election**

22 8. On June 5, 2023, the Mohave County Board of Supervisors directed the Mohave
23 County Elections Director to develop a plan for initial tabulation of the 2024 Mohave County
24 elections—including the Presidential Preference Election, Primary Election, and General
25 Election—by hand counting.

26 9. On July 20, 2023, the Mohave County Elections Department submitted its analysis
27 to the Board of Supervisors regarding plans for tabulating the 2024 elections by hand. Though the
28 Elections Department noted some potential difficulties with conducting such a hand count, the

1 Elections Department ultimately outlined a series of recommended steps that would need to occur
2 to “successfully hand count the 2024 Primary and General Elections.”

3 10. On August 1, 2023, at a Mohave County Board of Supervisors meeting, the Board
4 heard a presentation from the Mohave County Elections Director regarding the practicalities and
5 difficulties of tabulating the 2024 elections by hand.

6 11. At the same August 1, 2023 meeting, the Mohave County Board of Supervisors
7 moved for a vote to hand tabulate ballots for the 2024 elections. When a vote was taken on the
8 motion, Supervisors Gould and Angius voted to proceed with hand tabulation of ballots for the
9 2024 elections, and the remaining three Supervisors, including Supervisor Lingenfelter, voted
10 against hand-tabulating the ballots.

11 **Further Developments re Potential Mohave County Hand Count**

12 12. On October 18, 2023, the Arizona Court of Appeals (Division 2), *Arizona All. for*
13 *Retired Americans, Inc. v. Crosby*, 537 P.3d 818 (Ariz. App. Ct. 2023), affirmed a Superior Court
14 order holding that conducting an expanded hand count of all ballots, as a way of *auditing* a final
15 count produced by the vote tabulating machines, was illegal.

16 13. However, neither the appellate court nor the Superior Court in that case addressed
17 the issue here—whether conducting a full hand count, in the first instance, and without any use of
18 vote tabulating machines, is legal or illegal under existing law.

19 14. In fact, both the plain meaning of Arizona Revised Statutes Title 16 and the
20 legislative history behind these elections statutes support the power of a county Board of
21 Supervisors to elect to tabulate votes using hand counting in the first instance, notwithstanding
22 the widespread use of electronic tabulating machines, which Title 16 also recognizes.

23 15. Specifically, A.R.S. 16-451 gives the Board of Supervisors the right and power to
24 decide not only how to fund electronic tabulating machines but also whether to do so in the first
25 instance. A.R.S. § 16-451 (“The board of supervisors **may** provide for the payment of the cost of
26 vote tabulating equipment in such manner and by such method as it may deem for the best local
27 interests and also may for that purpose issue bonds, certificates of indebtedness or other
28 obligations which shall be a charge on the county or city.”) (emphasis added). Use of the word

1 “may,” rather than “shall,” is in sharp contradistinction to other elections statutes in Title 16 and
 2 demonstrates the legislative intent to reserve to the Board of Supervisors the power to decide
 3 whether to fund, and therefore by implication, whether to use at all, these vote tabulating
 4 machines. *See* A.R.S. § 16-511 (stating that various items “**shall** be furnished by the board of
 5 supervisors . . . at the expense of the county.”); A.R.S. § 16-551(E). This is further confirmed by
 6 the original enactment of A.R.S. § 16-451 in 1979 at the same time as A.R.S. § 16-441 and A.R.S.
 7 § 16-442(B), which statutes, even more explicitly than A.R.S. § 16-451, gave the Board of
 8 Supervisors the right to decide whether to use these machines. *See, e.g.,* prior version of A.R.S. §
 9 16-441 (“This article applies only in counties in which the board of supervisors provides, by
 10 resolution, that it shall apply . . .”). Thus, the only reasonable interpretation of A.R.S. § 16-451
 11 is that it permitted—and still permits—a county board of supervisors to choose whether to fund
 12 (and therefore whether to use) vote tabulating machines because any other interpretation would
 13 mean that the 1979 legislature **required** funding of equipment that the 1979 versions of A.R.S.
 14 §§ 16-441 and 16-442(B) demonstrate was clearly optional. Though the text of A.R.S. §§ 16-441
 15 and 16-442 both changed in 2003 to ensure that counties could not use their discretion to
 16 accidentally violate new federal law under the Help America Vote Act (“HAVA”), the text of
 17 A.R.S. § 16-451 did **not** change. Moreover, though HAVA prohibited use of certain tabulating
 18 devices for federal elections, it did not prohibit hand counting. Therefore, A.R.S. § 16-451 means
 19 the same thing that it did in 1979—that the Boards of Supervisors may choose whether to fund,
 20 and by necessary implication whether to use, electronic tabulating machines.

21 16. Other statutes such as A.R.S. § 16-443, which states that at all elections “votes **may**
 22 be . . . counted by . . . vote tabulating devices”, also have not changed since 1979 and provide
 23 additional support for the proposition that use of vote tabulating devices is optional, not
 24 mandatory, under the statutory scheme. This is further confirmed by the conditional language of
 25 many other statutes that recognize that vote tabulating equipment will **not** be used at all state-level
 26 elections. *See, e.g.,* A.R.S. § 16-445 (“For any state, county, school district, special district, city
 27 or town election, including primary elections, that uses vote tabulating devices . . .”); A.R.S. §
 28

1 16-602(A) (“For any primary, special or general election in which the votes are cast on an
2 electronic voting machine or tabulator”); A.R.S. § 16-663; etc.

3 **November 19, 2023 Threatening Letter from Attorney General Mayes**

4 17. On or around November 17, 2023, Supervisor Lingenfelter of the Mohave County
5 Board of Supervisors placed on the agenda for the November 20, 2023 Board Meeting another
6 vote regarding choosing to hand tabulate ballots for the 2024 elections.

7 18. Then, on November 19, 2023, obviously aware of the foregoing, Attorney General
8 Mayes sent the Exhibit “A” letter (the “**Attorney General’s Letter**”) addressed to the Mohave
9 County Board of Supervisors, and to each Supervisor by name, including Mr. Gould, intending to
10 chill the vote in favor of hand counting, and/or the agenda item being discussed, and to intimidate
11 the Supervisors in doing so. In the letter, the Attorney General addressed the then-upcoming
12 November 20, 2023 vote regarding conducting a hand count of all ballots. The Attorney General
13 plainly stated that a “yes” vote would direct the Election Department to “violate the law” and that
14 “the legal consequences would be serious.” *Id.*

15 19. The Attorney General’s Letter asserts that “full hand counts . . . are illegal under
16 Arizona law” and that the elections statutes instead require using automatic hand-tabulating
17 equipment rather than hand counts, citing A.R.S. §§ 16-449, 16-468, 16-602, 16-621, and 16-622.
18 *Id.* The letter further claims that ballots may be counted manually “only if ‘it becomes
19 impracticable to count all or part of the ballots with tabulating equipment,’” citing A.R.S. § 16-
20 621. *Id.* The letter also cites the aforementioned October 2023 appellate opinion, regarding the
21 proposed Cochise County “complete hand-count **audit**,” for the proposition that such an audit
22 must occur after a “multi-step process.” *Id.* (emphasis added).

23 20. In the letter, the Attorney General concludes that voting to conduct a full hand count
24 would violate the Supervisors’ oath of office, and promises that if the Supervisors so voted, the
25 Attorney General’s office would “promptly sue and obtain a court order.” *Id.* The letter then
26 threatens each Supervisor: “[Y]ou should be aware that an illegally expanded hand count may
27 result in **various felony and misdemeanor criminal penalties**. We hope you will choose not to
28

1 violate the law and thus that it will not be necessary for us to consider whether criminal
2 prosecution is warranted for conducting an illegal hand count.” *Id.* (emphasis added).

3 21. To drive home her intimidation and threat, and abuse of her Office, the Attorney
4 General disingenuously concluded: “My office is committed to upholding the sanctity of
5 Arizona’s elections and democratic process.” This was followed by a threat that her Office will
6 “pursue to the fullest extent of the law all possible remedies to ensure the sanctity of Arizona’s
7 elections.” *Id.* The message was clear, albeit erroneous, from Plaintiff’s perspective. A County
8 has the power and right to determine its initial method of counting votes and is not required to use
9 electronic voting machines to do so. There is no controlling Arizona authority to the contrary.

10 **November 20, 2023 Mohave County Board of Supervisors Vote**

11 22. On November 20, 2023, the Mohave County Board of Supervisors heard more than
12 two hours of public comment on the proposed vote whether to hand-tabulate ballots for the 2024
13 elections.

14 23. The Attorney General’s Letter was also read publicly at the meeting.

15 24. Throughout the Board Meeting, Supervisors Angius and Gould openly supported
16 voting for hand-tabulating the 2024 elections. Supervisors Bishop and Johnson openly opposed
17 it.

18 25. Supervisor Lingenfelter, however, was plainly on the fence.

19 26. His comments at the meeting conveyed his belief that the people should tell the
20 government how to conduct elections, not vice versa; that the state has delegated the responsibility
21 for elections to the counties; and that the legal significance of words such as “may” was unclear
22 in statutes like A.R.S. § 16-443, which states: “ballots or votes **may** be cast, recorded and counted
23 . . . by . . . vote tabulating devices.” A.R.S. § 16-443 (emphasis added); *see also* A.R.S. § 16-445.
24 Plaintiff contends that the word “may” is not unclear at all, and clearly denotes a voluntary
25 decision by the individual County to choose its method for tabulation of the votes. Nothing therein
26 or thereby would prevent, or should prevent, a vote to hand count ballots as the primary method
27 of tabulation, if the Supervisors so choose.
28

1 27. Also, during the meeting, Supervisor Gould expressed his commitment to restoring
2 Mohave County voters' faith in elections, even if it resulted in him being prosecuted pursuant to
3 the Attorney General's Letter. Thus, the Attorney General's purported concerns about his motives
4 are entirely unfounded, and off base, and were offered up for political reasons, not genuine legal
5 ones.

6 28. Ultimately, when the vote was taken at the end of the meeting, Supervisors Gould
7 and Angius immediately voted yes, and supervisors Bishop and Johnson immediately voted no.

8 29. Then, after a very extended pause, Supervisor Lingenfelter announced the deciding
9 vote of "no," *i.e.*, that the tabulation of 2024 elections would not be completed by hand.

10 **Attorney General Mayes's Second Statement**

11 30. Later that same day, the Attorney General issued the following statement on the
12 Attorney General's website: "I am greatly relieved and commend the Mohave County Board of
13 Supervisors for their decision not to authorize a hand count of all ballots for the 2024 election,
14 upholding Arizona law. As Attorney General, it is my duty to enforce our laws and ensure the
15 integrity of our elections. The Board's decision to adhere to state-mandated procedures for ballot
16 counting avoids potential legal complications and reinforces public trust in the integrity of our
17 elections."

18 31. Notwithstanding the current state of the Mohave Board's vote, it is believed that the
19 pressure of the Attorney General's threats to the Board members prior to the vote influenced the
20 voting process and ultimate vote. Regardless, the issue is not finally resolved, and is expected to
21 come up again in the future, and Supervisor Gould intends to continue raising the issue and voting
22 in favor of using hand counting; thus the need to resolve this issue of statewide importance as to
23 whether the Supervisors are properly subjected to criminal prosecution for their vote, and whether
24 the Attorney General's position on that vote is correct as a matter of law or not.

25 **COUNT ONE**
26 **DECLARATORY RELIEF**
(Pursuant to A.R.S. § 12-1831 *et seq.*)

27 32. Plaintiff incorporates by reference the above allegations.
28

1 33. Pursuant to Arizona's Uniform Declaratory Judgment Act,
2 A.R.S. §§ 12-1831 *et seq.*, Plaintiff is entitled to and requests a judicial determination and
3 declaratory judgment because Plaintiff is a person whose right, status, or other legal relations, and
4 indeed his very freedom from criminal prosecution, are affected by the various elections statutes
5 cited by the Attorney General's Letter and by Supervisor Lingenfelter, such as A.R.S. §§ 16-443,
6 16-445, 16-449, 16-468, 16-602, 16-621, and 16-622, and whether these statutes directly bar a
7 County from utilizing a hand count of votes as the initial method of tabulation of the vote, which
8 power and right is supported by many other statutes from Title 16.

9 34. No Arizona court to our knowledge has directly weighed in on this issue before,
10 finding such a method to be impermissible, or to be the subject of criminal prosecution if voted
11 on by a supervisor of a Board of Supervisors.

12 35. Plaintiff has already twice voted to hand count ballots and has established that he
13 will continue to so vote until the vote passes with most of the Board, for so long as he remains a
14 member of the Board. Plaintiff plans to raise the issue in the future and expects the issue to come
15 to a vote in the future. Plaintiff recognizes that this, like many election issues, is an issue that is
16 capable of repetition yet evading review.

17 36. The November 20, 2023 vote may have been, and likely was, affected by the
18 threatening Attorney General's Letter.

19 37. If a future vote results in an overall "yes" vote with respect to hand-counting all
20 ballots for the 2024 elections and/or any future election cycle, Plaintiff will very likely be subject
21 to criminal prosecution by the current Attorney General, which prosecution she has already
22 threatened and who is currently similarly prosecuting other County Supervisors that apparently
23 disagree with her interpretation of the election laws.

24 38. Therefore, Supervisor Gould plainly has the right to bring this declaratory judgment
25 action, and the matter is ripe for adjudication given the adverse positions staked out and important
26 to be resolved, so that the Plaintiff is not subjected to further threats and harassment by the
27 Attorney General.

28

1 39. Plaintiff therefore seeks a declaration from this Court to declare that, pursuant to the
2 plain language and context of statutes such as A.R.S. §§ 16-441, 16-442, 16-443, 16-444, 16-445,
3 16-451, 16-468, 16-602,16-621, 16-622, and 16-663, and in the context of Title 16 more broadly,
4 use of vote tabulating machines in the first instance, rather than hand counting ballots, is not
5 mandatory, but rather optional.

6 40. Plaintiff further asks this Court to declare that pursuant to A.R.S. §§ 11-202, 11-
7 251(1), 11-251(3), 11-251(30), 16-441, 16-442, 16-443, 16-444, 16-445, 16-451, 16-468, 16-
8 602,16-621, 16-622, and 16-663, County Boards of Supervisors generally have the legal authority
9 to decide as an initial matter whether to use vote tabulating machines versus hand counting to
10 tabulate ballots, even in situations where use of vote tabulating machines is not impracticable,
11 without fear of reprisals by the Attorney General bringing criminal prosecutions for voting their
12 conscience in accordance with the law.

13 41. Plaintiff further asks this Court to declare, pursuant to A.R.S. §§ 11-202, 11-251(1),
14 11-251(3), 11-251(30), 16-441, 16-442, 16-443, 16-444, 16-445, 16-451, 16-468, 16-602,16-621,
15 16-622, and 16-663, that the Mohave County Board of Supervisors has the legal authority to
16 decide whether to hand count ballots as an initial matter, rather than using vote tabulating
17 machines, even in situations where use of vote tabulating machines is not impracticable, for the
18 upcoming 2024 election cycle and that its members should not be intimidated or threatened with
19 criminal prosecution for their votes.

20 42. Plaintiff further asks this Court to decide and declare that *AARA v. Crosby*, 537 P.3d
21 818 (Ariz. App. Ct. 2023), only applies to conducting a full-count **audit** of an original count that
22 was conducted primarily by vote tabulating machines, and therefore does not operate to block the
23 requested relief sought here, *i.e.*, a declaration that a full hand count, without any use of vote
24 tabulating machines, is a permissible option in the first instance, as the sole means of counting
25 and tallying the results of the vote.

26
27 ...
28 ...

1 **REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment in his favor and against Defendant as follows:

3 A. Declare that pursuant to the plain language of statutes such as A.R.S. §§ 16-442, 16-
4 443, 16-445, 16-451, 16-621, and 16-663, and in the context of Title 16 more broadly, use of vote
5 tabulating machines in the first instance, rather than hand counting ballots, is not mandatory, but
6 rather optional;

7 B. Declare that pursuant to A.R.S. §§ 11-202, 11-251(1), 11-251(3), 11-251(30), 16-
8 442, 16-443, 16-445, 16-451, 16-621, and 16-663, and in the context of Title 16 more broadly,
9 County Boards of Supervisors generally have the legal authority to decide whether to use vote
10 tabulating machines versus hand counting to tabulate ballots, even in situations where use of vote
11 tabulating machines is not impracticable;

12 C. Declare that pursuant to A.R.S. §§ 11-202, 11-251(1), 11-251(3), 11-251(30), 16-
13 442, 16-443, 16-445, 16-451, 16-621, and 16-663, and in the context of Title 16 more broadly,
14 the Mohave County Board of Supervisors has the legal authority to decide whether to hand count
15 ballots, rather than using vote tabulating machines, even in situations where use of vote tabulating
16 machines is not impracticable, for the upcoming 2024 election cycle;

17 D. Declare that *AARA v. Crosby*, 537 P.3d 818 (Ariz. App. Ct. Oct. 18, 2023), only
18 applies to conducting a full hand count **audit** of an original count primarily by vote tabulating
19 machines, and therefore does not operate to block the requested relief sought here, *i.e.*, a
20 declaration that a full hand count, without any use of vote tabulating machines, is a permissible
21 option in the first instance; and

22 E. That Plaintiff should not be subjected to threats and intimidation by the Attorney
23 General for voting to have hand counting be the primary initial method of vote tabulation.

24 F. At this time, Plaintiff does not seek any relief against Defendant other than the above
25 stated Declaratory Judgments and costs pursuant to A.R.S. §§ 12-341, 12-1840.

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27 . . .

28 . . .

