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

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

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

23 Plaintiff,

24 vs.

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

Defendants.

No: _____

COMPLAINT

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

2 **INTRODUCTION**

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

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

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

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

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

24 **JURISDICTION AND VENUE**

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

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

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

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

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

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

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

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

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

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

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

6 **B. The Agreement**

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

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

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

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

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

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

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

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

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

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

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

1 43. The Agreement is contrary to law.

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

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

7 **COUNT ONE**

8 **(Quo Warranto – Assumption and Exercise of Authority**

9 **Beyond Constitutional and Statutory Limits)**

10 46. Plaintiff incorporates the preceding paragraphs by reference.

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

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

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

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

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

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

9 RESPECTFULLY SUBMITTED: March 7, 2023.

10 KRISTIN K. MAYES
11 ATTORNEY GENERAL

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25 ACL@azag.gov

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

EXHIBIT A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 28th day of February, 2023.

COCHISE COUNTY:



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

COCHISE COUNTY RECORDER



David W. Stevens
Cochise County Recorder

ATTEST:



Tim Mattix, Clerk of the Board

APPROVED AS TO FORM:

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

EXHIBIT B

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this _____ day of _____, 2023.

COCHISE COUNTY:

COCHISE COUNTY RECORDER

Ann English
Chairman, Board of Supervisors

David W. Stevens
Cochise County Recorder

ATTEST:

Tim Mattix, Clerk of the Board

APPROVED AS TO FORM:

Christine J. Roberts 2/22/2023

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