



October 1, 2021

Hon. Mark Brnovich
Attorney General
Office of the Attorney General
2005 N. Central
Phoenix, AZ 85004

Dear General Brnovich,

I am writing to withdraw my October 4, 2017 request for a formal legal opinion and to submit the following request in its place.

From time to time, there are attempts to change Arizona's wildlife statutes via ballot initiative. For example, in 2017, an organization by the name of Arizonans for Wildlife began collecting signatures to ban the hunting of mountain lions, bobcats, jaguars, ocelots and lynx in Arizona. When an effort like this occurs, members of the public frequently ask employees of the Arizona Game and Fish Department to express an opinion either in favor or against the ballot initiative.

Arizona Law imposes restrictions on the Game and Fish Director and Department employees from using their positions or public resources to actively support or oppose the measure. For instance, A.R.S. § 17-213 prohibits the Director and Department employees from participating in a political campaign or using the Director's office to influence the outcome of an election. The full statute provides that:

“Neither the Director nor any employee of the department shall take active part in a political campaign nor use his office to influence in any way an election or the results thereof. Failure to abide by the provisions of this section shall constitute grounds for dismissal of the director or any employee.”

I am requesting a formal legal opinion interpreting A.R.S. § 17-213 and the statute's applicability to actions the Director and agency employees may take, and the opinions that they may express, during personal time and without the use of public resources. I have two questions.

First, does the term “use his office” refer only to the use of official government power using public resources to affect an election? Given that public officials and employees

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have certain free speech rights, does the phrase prohibit the Director or the Department employees from expressing an opinion or taking action to support or defeat the proposed ballot measure when such actions do not involve the use of public resources or the exercise of governmental power?

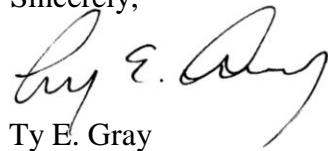
Second, if A.R.S. § 17-213 prohibits activities that occur on personal time and do not involve the exercise of governmental power or use of public resources, does this create a conflict with activities permitted under A.R.S. § 41-752?

Ballot measures that would ban hunting of any wildlife species would have a significant impact on the Department's wildlife management authority. As Director, I want to make sure that any actions I take in response to a ballot measure are consistent with the law. Due to severe consequences for failing to comply with A.R.S. § 17-213, a formal Attorney General opinion on these questions is essential to clarify the scope of statutory restrictions in the statute.

Your interpretation will provide the necessary guidance to a sizeable number of employees in the agency who are uncertain they can ever express an opinion or take any action without violating the law.

Thank you for your consideration of this matter, and I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Ty E. Gray", written in a cursive style.

Ty E. Gray
Director