



Maricopa County

Bill Gates, District 3
Board of Supervisors

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November 27, 2022

The Honorable Kelly Townsend
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Re: November 23, 2022 Correspondence

Senator Townsend,

At 11:20 a.m. on November 23, 2022—you delivered a document entitled “Legislative Subpoena” and dated November 22, 2022 (the “Document”) to the Clerk of the Board of the Maricopa County Board of Supervisors (the “Board”). At the outset, I acknowledge the authority of the Arizona Legislature to issue legislative subpoenas pursuant to A.R.S. § 41-1151, *et. seq.* and will appropriately comply with any properly issued legislative subpoena. Further, the Board appreciates the interest of the Arizona Legislature in these election-related questions. As has always been the case, the Board is willing to answer questions and provide information, to the extent it is legally able to do so, whether the questions are posed in a legislative subpoena or in a request for information from the Legislature. To that end, the Board has already directed employees to begin collecting documents responsive to many of the questions and requests in this document. The Board looks forward to assisting the Legislature in its analysis of Arizona election legislation.

Many of your questions appear to be based on an erroneous assumption that County voters were disenfranchised. That is not the case: all registered voters in the County were provided the opportunity to vote.

As to the position set forth at its conclusion, that the Document is a properly issued legislative subpoena and that failure to comply would subject my fellow Board members and me to a finding of contempt, I respectfully disagree. The Document is not a properly issued legislative subpoena. It fails to meet numerous statutory requirements enacted by the Arizona Legislature, and these flaws are fatal to its enforceability.

First, Arizona law requires the notice of a subpoena to be reasonable; the notice provided by the Document was not. A subpoena may command a person “to attend as a witness” and “to produce, upon reasonable notice, any material and relevant books, papers or documents in his possession or under his control[.]” A.R.S. § 41-1154 (emphasis added). The Document contains 31 numbered requests, including many with multiple subparts. Maricopa County was closed Thanksgiving Day, the Friday after Thanksgiving, and the weekend. You have provided less than a full business day to respond to this massive request. That is not a reasonable time to respond.

Further, the Document is addressed to the “Maricopa County Supervisor’s Office”. There is no such governmental entity. Likewise, there is no scheduled hearing. Instead, this document requests that I

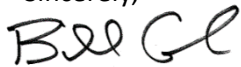
“present to [your] office in writing” the response to this subpoena. Pursuant to law, “[a] subpoena may be issued by the presiding officer of either house or the chairman of any committee before whom the attendance of a witness is desired.” A.R.S. § 41-1151 (emphasis added). A legislative “subpoena is sufficient if it states whether the proceeding is before the senate, house of representatives or a committee, is addressed to the witness, requires the attendance of the witness at a certain time and place, and is signed by either presiding officer or a committee chairman.” *Id.* (emphasis added). Thus, a legislative subpoena issued by either the Senate President or a committee chairperson must be tethered to a hearing. This requirement ensures that the investigation is performed in public by the authorized committee or legislative body.

Finally, as set forth above, a legislative subpoena may only include two discrete types of requests: (1) testimony at a hearing (A.R.S. § 41-1151) and (2) “material and relevant books, papers or documents” (A.R.S. § 41-1154). More than ten of the 31 numbered items in the Document do not fall into either of these categories and, therefore, are improper for inclusion in a legislative subpoena.

To reiterate, although the Document does not meet the legal requirements of an enforceable legislative subpoena, the Board is committed to transparency in this election. We are reviewing your requests and collecting information which we will promptly provide to you.

In the meantime, as you are likely aware, the Arizona Attorney General’s Office recently requested much of the same information requested in your document. The Board responded to that Office’s inquiry on November 27, 2022 and issued a linked report in the response, both of which are publicly available at <https://elections.maricopa.gov/asset/jcr:474f2301-1ff1-476d-a7fa-08945131f86c/LTR-2022.11.27-Liddy-to-Wright-FINAL.pdf>. The response, detailed report and accompanying documents are responsive to many of your inquiries concerning the 2022 General Election, including your requests 1-6, 9, 12, 24, 28 and 29.

Sincerely,



Bill Gates
Chairman, Maricopa County Board of Supervisors