



# Arizona State Legislature

1700 West Washington  
Phoenix, Arizona 85007

May 25, 2023

Via Email and Regular Mail

Hon. Kris Mayes  
Arizona Attorney General  
2005 North Central Avenue  
Phoenix, Arizona 85004

**Re: Demand to Retract False Statements Regarding ESAs and to Use State Resources to Serve Interests of Arizonans, Not Politics**

Dear Attorney General Mayes:

It has come to our attention that you made inaccurate and inflammatory public statements attacking Empowerment Scholarship Accounts (“ESAs”) and impugning the motives of thousands of parents that use ESAs to provide the best education for their children. We demand you publicly retract your patently false statements.

Specifically, you claimed that “there are no controls” on the ESA program, “no accountability,” that “they” (presumably parents) are “spending hundreds of millions of dollars of taxpayer money,” that this “needs to be looked at,” and that it’s your “responsibility to do that” as Arizona’s “top law enforcement officer.”

It is alarming that the state’s chief legal officer would make such outlandish claims that are refuted by Arizona law. Numerous statutory provisions in the ESA laws expressly require accountability, oversight, and investigations when appropriate. *See, e.g.*, A.R.S. § 15-2403 (requiring, among other things, the Arizona Department of Education to conduct or contract for “random, quarterly and annual audits” of ESAs “as needed to ensure compliance”, authorizing the Department to remove parents or qualified students if they fail to comply with the contract or applicable laws, rules or orders, and enabling the State Board of Education to refer cases “of substantial misuse of monies” and suspected cases of fraud to the Attorney General).

You have not cited a shred of evidence to suggest that either the Arizona Department of Education or the State Board of Education—both of whom you represent—have failed to comply with their statutory obligations, and there is no basis to believe that these agencies will disregard or refuse to follow the law in the future. And while you have a statutory responsibility to investigate matters that are referred to you, the Legislature did not authorize and does not condone the selective targeting or roving investigations of ESA parents. Of course, Arizona’s Ethical Rules do not tolerate the initiation of criminal proceedings absent probable cause to

believe that any parent has committed a crime. *See* Arizona Ethical Rule 3.8 (listing the special ethical responsibilities of a prosecutor). Further, it would raise ethical questions if a government attorney were to publicly insinuate that a current client is engaging in misconduct with no factual basis. *See, e.g.,* Arizona Ethical Rule 1.7 (imposing a duty of loyalty to a current client).

As legislators and other elected officials have long emphasized, Arizona was the first in the nation to implement universal school choice and has been a model for the rest of the country. Legal and political attacks against ESAs have failed time and time again. Parents have spoken and the Legislature has enacted ESAs into law. Your job, as an executive branch official, is to execute the law, not attack it. We demand that you cease making baseless and politically-motivated attacks, including your threats to parents who are simply making educational decisions within their legal rights. It's time to move on and accept that ESAs are here to stay.

One of the primary functions of your office is to represent the state of Arizona when its laws are challenged in state and federal courts. *See* A.R.S. § 41-193(A). But you recently disqualified yourself entirely from providing legal representation in *Doe v. Horne* to defend Arizona's Save Women's Sports Act. Your unilateral disqualification has required Superintendent Horne to engage his own counsel at taxpayers' expense to perform a core function that belongs to your office. As you are aware, because you have refused to defend several of Arizona's laws in the short five months that you have been in office, President Petersen and Speaker Toma have invoked their statutory right to intervene in *Doe v. Horne* and several other cases. To our knowledge, prior Arizona Attorneys General have historically defended Arizona laws, even if they personally disagreed with the wisdom or policy of those laws.

We are also puzzled by your press release about the 2024 Budget, where you stated that you are "opposed to any statewide proposal that does not adequately fund Arizona's ability to fight the fentanyl crisis and the drug cartels[.]" But you lead Arizona's largest public law firm and have many tools available at your disposal to do just that—including a \$12 million appropriation from the One Arizona Opioid Settlement Agreement (more than double the amount that your predecessor received in last year's fiscal budget). The issue is not resources, it is priorities.

Unsurprisingly, it appears that your threat to initiate a lawsuit over the bipartisan budget negotiated with Governor Hobbs has not materialized. We agree with the sentiment of Representative Livingston's letter in response to your litigation threat and urge you to prioritize your office's resources on serving the interests of Arizonans, not politics. Arizonans expect the state's chief legal officer to refrain from engaging in politically-motivated pursuits, threats, or lawsuits, and to make public statements that align with Arizona law and the duties of your office.

Sincerely,



Ben Toma  
Speaker of the Arizona  
House of Representatives



Warren Petersen  
President of the Arizona State Senate



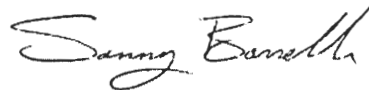
Travis Grantham  
Speaker Pro Tempore



T.J. Shope  
President Pro Tempore



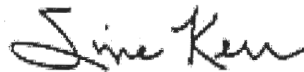
Leo Biasiucci  
House Majority Leader



Sonny Borrelli  
Senate Majority Leader



Teresa Martinez  
House Majority Whip



Sine Kerr  
Senate Majority Whip

cc: Tom Horne, Arizona State Superintendent of Public Instruction