

NEWS RELEASE

Arizona House of Representatives
Representative Jacqueline Parker (R-15)
Representative Austin Smith (R-29)
1700 West Washington • Phoenix, Arizona • 85007

Friday, April 12, 2024
FOR IMMEDIATE RELEASE

House Executive Oversight Committee Presses Attorney General Mayes Over Refusal to Defend State Laws

STATE CAPITOL, PHOENIX – State Representative Jacqueline Parker, Chairwoman of the House Ad Hoc Committee on Executive Oversight (CEO), and Vice Chairman Austin Smith today sent a letter to Attorney General Kris Mayes seeking answers concerning her refusal to defend state laws. Since assuming the office over a year ago, Attorney General Mayes has refused to defend Arizona laws and disqualified her office from important cases, forcing Arizona taxpayers to incur costs for external legal counsel.

The Committee leaders' letter details specific instances in which Attorney General Mayes has declined to defend the constitutionality of laws, including those protecting unborn children and athletic opportunities for women and girls – actions that raise significant questions about the adherence to the role and responsibilities assigned to the Attorney General's Office.

The Committee is seeking to understand Attorney General Mayes' reasons for not defending the state laws and other instances where she has disqualified her office from representing the state or its agencies.

The letter invites Attorney General Mayes to address these concerns at the upcoming CEO hearing on April 17, or to provide a detailed written response.

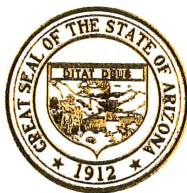
A copy of their letter is attached below.

Jacqueline Parker is a Republican member of the Arizona House of Representatives serving Legislative District 15, which includes East Mesa, Queen Creek, and San Tan Valley. She serves as Chairwoman of the House Municipal Oversight and Elections Committee. Follow her on X/Twitter at @electjacqparker.

Austin Smith is a Republican member of the Arizona House of Representatives serving Legislative District 29 in Goodyear, Surprise, El Mirage, Youngtown, Wittmann, Morristown, and Allah. He serves as Vice Chairman of the House Natural Resources, Energy & Water Committee and is also a member of the Municipal Oversight & Elections, and Ways & Means Committees. Follow him on X/Twitter at @azaustinsmith.

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Arizona House of Representatives
Phoenix, Arizona 85007

April 12, 2024

Via Email and U.S. Mail

Hon. Kris Mayes
Arizona Attorney General
2005 N. Central Ave.
Phoenix, Arizona 85004

Re: Refusal to Defend State Laws; Disqualification of Attorney General's Office

Dear Attorney General Mayes:

We write to you today in our official capacity, as the Chair and Vice Chair of the Ad Hoc Committee on Executive Oversight ("CEO"), regarding Arizona's laws that require your office to defend state laws in state and federal courts.

As the Arizona Attorney General handbook explains, the Attorney General "serves as the chief legal officer of the State and the various departments and agencies of the State." *Ariz. Att'y Gen. Handbook*, § 1.3.1 (citing A.R.S. § 41-192(A)). "[T]he Attorney General is required to prosecute and defend in the Arizona Supreme Court 'all proceedings in which the state or an officer thereof in his official capacity is a party.'" *Ariz. Att'y Gen. Handbook*, § 1.3.4 (quoting A.R.S. § 41-193(A)(1)). Additionally, you have "the duty to '[r]epresent the state in any action in a federal court.'" *Id.* (quoting A.R.S. § 41-193(A)(3)).

We are deeply concerned about your refusal to defend the constitutionality of state laws. Even before you took office, you publicly stated that Arizona's law protecting unborn children from discriminatory abortions based on the child's genetic abnormality, such as Down Syndrome (A.R.S. § 13-3603.02(A)), is "unconstitutional" and "violate[s] Arizona's privacy clause."¹ Of course, no court has ever said so. You have also doubled down on Governor Hobbs' unconstitutional Executive Order No. 2023-11—inaccurately asserting that you possess the power to strip Arizona's fifteen elected county attorneys of their statutory authority to prosecute illegal abortions. Consequently, Speaker Toma and President Petersen invoked their statutory authority, pursuant to A.R.S. § 12-1841, to intervene in *Isaacson v. Mayes* to do *your* job. Your actions constitute a complete dereliction of your duty to defend state laws.

¹ See Associated Press, *U.S. Supreme Court: Arizona Can Enforce Genetic Issue Abortion Ban*, KTAR NEWS (June 30, 2022), <https://ktar.com/story/5135300/u-s-supreme-court-arizona-can-enforce-genetic-issue-abortion-ban/>

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Your position on Arizona's abortion laws is also irreconcilable with your refusal to fully defend the injunction that your predecessor secured for all Arizonans against the Biden Administration's unconstitutional COVID-19 vaccine mandate for federal contractors.² The injunction protected Arizonans' medical freedoms, but you decided it was more important to protect the Biden Administration. Fortunately, the federal government rescinded its unconstitutional mandate, but only after many courts struck it down.³

You also refused to defend Arizona's Save Women's Sports Act in *Doe v. Horne*. The Arizona Legislature passed this Act in 2022 to protect athletic opportunities for women and girls by ensuring they are not unfairly forced to compete against men playing on women's sports teams. All young Arizona athletes are entitled to participate in extracurricular activities that enable them to grow and thrive, and to be eligible for hard-earned opportunities, including titles, standings, and scholarships.

Under A.R.S. §41-192(E), the Attorney General may determine that he or she "is disqualified from providing judicial or legal services on behalf of any state agency in relation to any matter." However, we are trying to gain a better understanding of the necessity of this law and the circumstances under which it is ever appropriate for the Arizona Attorney General to invoke disqualification of the entire office instead of adhering to the legal duty to defend state laws.

By disqualifying yourself in *Doe v. Horne*, for example, Superintendent Horne was left with no choice but to hire outside legal counsel and incur litigation costs at the taxpayer's expense. Additionally—without Arizona's chief legal officer defending the constitutionality of the Act—Again, Speaker Toma and President Petersen felt compelled to intervene to do the job you refused to do.

In light of these unprecedented circumstances, and pursuant to this legislative investigation, we respectfully request a response to the following questions:

- 1. Why did you disqualify your office from representing Superintendent Horne and refuse to defend Arizona's Save Women's Sports Act in *Doe v. Horne*?**
- 2. Are there any other state or federal cases in which you have disqualified your office from representing the State of Arizona or any state agency or otherwise refused to defend state laws? If so, what was your reason for disqualification or your refusal to defend Arizona law in those cases?**

² See Erin Mulvaney, *Arizona Court Adds to Orders Blocking Contractor Vaccine Mandate* (Jan. 27, 2022), <https://news.bloomberglaw.com/daily-labor-report/arizona-court-adds-to-orders-blocking-contractor-vaccine-mandate>

³ See *The Biden-Harris Administration Will End COVID-19 Vaccination Requirements for Federal Employees, Contractors, International Travelers, Head Start Educators, and CMS-Certified Facilities* (May 1, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/01/the-biden-administration-will-end-covid-19-vaccination-requirements-for-federal-employees-contractors-international-travelers-head-start-educators-and-cms-certified-facilities/>

Letter to Attorney General Mayes

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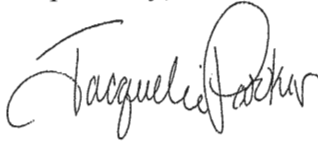
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In lieu of a written response, you are welcome to address these questions before the Committee at our next hearing on April 17, 2024, and to provide us with any other relevant information that may alleviate our concerns.⁴

Please let us know no later than 5:00 p.m. on Tuesday, April 16, 2024, if you would like to testify.

Respectfully,



Jacqueline Parker
Chair, Committee on Executive Oversight



Austin Smith
Vice-Chair, Committee on Executive Oversight

⁴ For additional information regarding the House's standard investigative protocols, please visit: <https://www.azhouse.gov/alispdfs/AZHouseInvestigativeProtocols.pdf>.