

# YELLOW SHEET REPORT

## NEWS NOTES AND GOSSIP

### **THAT GRIN IS WORTH \$400,000**

Former Attorney General Tom Horne has been exonerated by Cochise County Attorney Brian McIntyre, who absolved him of any wrongdoing in the illegal coordination case that hounded his unsuccessful bid for re-election in 2014 and effectively ended his political career.

McIntyre's decision also means Horne won't have to pay the \$400,000 fine that Yavapai County Attorney Sheila Polk leveled against him. McIntyre's conclusions are the final word on the matter. "So, duct tape my file shut," McIntyre told our reporter this morning. The county attorney got the case after the Attorney General's Office sent it to him following the Supreme Court's decision that Polk's handling of the case violated Horne's due process rights. McIntyre determined that while Horne and Kathleen Winn, who



ran an independent expenditure committee that aided his campaign for attorney general in 2010, communicated at a time "which would cause any outside observer to cry foul," the record did not establish that the act is illegal. "Both sides to this dispute present equally plausible explanations as to what did or did not occur during that communication," McIntyre wrote. "The party bearing the burden, therefore, has failed to meet it." A copy of McIntyre's decision can be viewed in the "documents" section.

### **COCHISE COUNTY ATTORNEY SAYS RECORD FAVORS HORNE**

In absolving Horne, McIntyre zeroed in on the FBI's testimony and the email exchange between Winn and political consultant Brian Murray on Oct. 20, 2010, which, to the prosecution, was key in proving its illegal coordination case against Horne and Winn. In the email exchange, Winn had told Murray that "we" didn't like how many times Business Leaders for Arizona, the independent expenditure group she ran, had mentioned Democrat Felicia Rotellini, Horne's 2010 general election opponent, in its ad. She also commented that she has "several masters" to answer to and has two "strong personalities" debating the ad's content. The Yavapai County Attorney's Office concluded that she must have been referring to Horne. But McIntyre said the evidence does not reveal any actual communication between Horne and Winn, and the record supports the conclusion that those "strong personalities" did not include Horne. McIntyre also panned the FBI, saying its "inaccurate and misleading summary of the conversations with Mr. Tatham and subsequent inaccurate testimony regarding the same, calls into question the reliability of other statements offered." McIntyre was referring to real estate agent Greg Tatham, who, during an administrative law judge hearing in 2014, had contradicted FBI agents' testimony about whether Winn's name ever came up in his conversations with them ([YS, 2/12](#)). "The record, unfortunately, supports a conclusion that the investigation being conducted was not a search for the truth, but rather, only intended to shore up conclusions already drawn," McIntyre added.

## **‘OPPRESSIVE CLOUD’ HAS LIFTED**

In a news release, Horne’s attorneys, Dennis Wilenchik and Jack Wilenchik, said the “oppressive cloud” hanging over their client has been cleared. “This case was brought by an overzealous prosecutor who chose to act as ‘judge, jury and executioner’ and to overrule a judge. Justice has finally prevailed for the former Attorney General,” they added. Polk could not be immediately reached for comment.

## **FANCY LISTENING TO 18 HOURS OF TESTIMONY?**

McIntyre told our reporter that he spent several weeks listening to 18 hours of testimony from the 2014 ALJ hearing, not counting reading the briefings from both sides. He also afforded each side the opportunity to submit additional briefs to him, if the parties thought it was warranted. (Horne and Winn’s attorneys did; the prosecution did not). McIntyre said he could have said no to taking up the case, but the AG needed help. “Frankly, they’ve assisted our office with conflicts before,” he said, noting the prosecutors form a small community in Arizona. “Since I figured I could spend the time, I agreed to assist.”

## **DON’T WORRY, YOU’LL BE THERE IN SPIRIT, PAUL**

If a federal court agrees, former Pinal County Sheriff Paul Babeu and former Pinal County Attorney Lando Voyles would no longer be defendants in a federal lawsuit at the center of the civil asset forfeiture debate. In June, plaintiff Rhonda Cox sought to have Babeu and Voyles replaced by their successors, Mark Lamb and Kent Volkmer, respectively, because they were named in the suit “only in their official capacities – capacities in which they no longer serve.” In response, Babeu and Voyles’ shared counsel, James Jellison, indicated his clients are not opposed to the substitution, but took issue with a second request in Cox’s motion. Cox’s attorneys wrote that a document filed on behalf of both Babeu and Voyles by Jellison made no mention of the current sheriff or county attorney and “raises questions about whether the proper people are giving direction to that lawyer (meaning Jellison) and whether that lawyer can properly continue to represent the defendants in this matter.” Cox requested a hearing, briefing or “other such procedures” to confirm that everything is kosher on the defendants’ side. Jellison said that request “improperly” seeks to explore his relationship with his client, lacks legal support, and is also a “thinly veiled attempt to improperly interject irrelevant material, opinions and arguments into the case at a time when this court’s decision on the pending motions to dismiss appears imminent.” Jellison went on to argue that Cox’s request “appears motivated by the ulterior purpose of placing recent newspaper articles in front of this court.” (Some of those articles were referenced in the plaintiff’s request.) The parties are waiting to hear from US District Court Judge Diane Humetewa, but on Monday, Cox’s attorneys responded, insisting they “sought only to bring to the attention of the court an unusual issue into which she has no visibility but which could impact the course of these proceedings.”

## **IF A PROTEST ISN’T INCONVENIENT, WHAT’S THE POINT?**

More protesters against the Better Care Reconciliation Act were arrested for trespassing at Flake’s Phoenix and Tucson offices today, in addition to the five yesterday. Disability rights advocates led by ADAPT camped out at Flake’s office to try to get a meeting with the senator and persuade him to vote against the health care proposal. One image tweeted by Cronkite News reporter Devin Conley from yesterday’s protest shows a woman lying on the table of a conference room in Flake’s office to protest the health care bill ([LINK](#)). Shope responded to the tweet, saying, “Call me old fashioned but I’ve always followed rules of respect and decorum. This is just rude.” Garrick Taylor, the Arizona Chamber’s spokesman, tweeted that he isn’t sure lying on the table is the “best way for an activist to have his or her position taken seriously.” A rundown of yesterday’s protests from liberal website Shareblue alleged the media were initially denied access to the protest and people weren’t allowed to use the bathrooms ([LINK](#)). But Jason Samuels, Flake’s communications director, pushed back against these claims. “Not true. Protesters were given pizza, water, a conference call w @JeffFlake & access to Flake office restroom. And media clearly had access,” Samuels

tweeted. Today, Samuels added that Flake staffers “stood in the heat for hours meeting w/ protesters & provided water.” And it was the property manager, not Flake or his staff, who called Phoenix police on the protesters, he said. ProgressNow condemned the arrests, saying the protesters simply wanted to share their stories about how they rely on Medicaid for survival and get a clear answer from Flake on how he plans to vote on BCRA. The group sarcastically said Flake “truly espouses American values” when his constituents get cited for trespassing and could be arrested for trying to meet with him. “Nothing says God Bless America and Happy Independence Day by having disabled American citizens and other constituents be cited with trespassing for wanting to speak to their representative. We are truly lucky to have such a considerate and fair-minded representative in Congress,” Josselyn Berry, ProgressNow’s Executive Director, said in a news release.

### **THE QUESTION IS: WHO DEFINES THE STATE’S BEST INTERESTS?**

The idea of withholding records to protect the “best interests of the state,” Reagan’s reason for denying the Trump administration’s request for voter data, goes back to 1952, when the Arizona Supreme Court recognized the exemption to public records laws in *Mathews v Pyle*. The case stemmed from a records request made by William R. Mathews, then editor of the *Arizona Daily Star*, to inspect records sent from the Attorney General to the governor’s office. It established a common law definition of public records and the concept of withholding records to serve the best interests of the state ([LINK](#)). Another notable case involving the “best interests of the state” exemption is the 1991 *Board of Regents v Phoenix Newspapers*, which considered whether candidates for university president could be kept confidential ([LINK](#)). The court’s ruling in that case said candidates that are being seriously considered and interviewed for the office should be disclosed if publicly requested, but not prospects (meaning anyone who applies for the job). Revealing prospects’ names could “chill the attraction of the best possible candidates for the position,” the court said. That case reverberates to this day: When UofA searched for a new president earlier this year, the *Daily Wildcat* was repeatedly rebuffed when it tried to get access to the names and resumes of candidates interviewed for the job ([LINK](#)). The “best interests of the state” exemption has been litigated extensively, and the AG’s public records handbook lays out several cases, many involving law enforcement and criminal investigations, where use of the exemption was upheld or denied ([LINK](#)). But, the handbook says, the “cloak of confidentiality may not be used, however, to save an officer or public body from inconvenience or embarrassment.”

### **DHS: EXPECT GRIM OPIOID DATA**

The Dept of Health Services first opioid data-dump went out this week ([LINK](#)). The report for the week of June 15-22 showed 191 suspected overdoses, 15 of which were fatal. The report also showed 18 babies born with possible drug-related withdrawal symptoms, 102 naloxone doses administered by emergency services or law enforcement, and 51 naloxone kits sold at pharmacies that week. But not all of those required to report the opioid information are submitting data yet, the department said. “As we continue to collect data, we expect to see those numbers increase week to week,” the agency’s blog post said. The department will also be gathering more information to add to its weekly reports as more people start sending in the required data.

## ·PRESS RELEASES AND NEWS CLIPS·

### **Arizona Advocacy Network Statement on Voter File Request**

Last week, Kansas Secretary of State and vice chair of the Presidential Advisory Commission on Election Integrity Kris Kobach sent letters to all 50 Secretaries of State demanding massive amounts of voter data, vowing to make the lists available to the public. The letter requested information beyond what is usually contained in voter registration records including social security numbers, birthdates, and military affiliation under the assertion that it would be used

to improve the integrity and security of voting systems. Secretary of State Michele Reagan did the right thing for Arizona voters by denying the request.

Kobach's goal in requesting the voter rolls, although unstated, is presumably to create a nationwide voter database modeled after the Interstate Voter Registration Crosscheck Program. Crosscheck, a project of Kobach's that compares voter registration lists across state lines to search for individuals that have voted multiple times in the same election, has 32 states participating- Arizona included. Crosscheck's underdeveloped method of identifying double votes only uses voter's first names, last names, and dates of birth and has resulted in thousands of false accusations of duplicate voting and the subsequent removal of legitimate voters from the rolls. A study from January of this year found that Interstate Crosscheck could lead to the removal of 200 legitimate voters for every one double vote found. Also concerning is that Kobach likely already has access to Arizonans' voter registration information through participation in Crosscheck.

The vast majority of state election officials around the country have signaled that they intend to deny Kobach's request. If Kobach is able to get access to voter registration data from all 50 states, we expect him to create a nationwide version of Crosscheck. Thousands of false cases of duplicate voting would be reported, leading to widespread wrongful purging of voters from the rolls. Millions of voters with the same first name, last name, and date of birth will be at risk for wrongful accusation of double voting.

The security risks contained in this request are also quite startling. The letter sent to the Secretaries of States offered two options to transmit the data: via email to a White House address or file hosting services run through the Pentagon that is not currently equipped to appropriately handle encrypted web traffic. In a time where fears of election tampering and the hacking of voter rolls have become reality, the lack of concern for data security contained in this request is troubling. While there are ways to securely aggregate voter registration data such as those used by the Electronic Registration Information Center (ERIC), a publicly run non-profit that utilizes advanced encryption algorithms to protect its data, the Commission has given no indication it has plans to secure the data.

The establishment of a nationwide database containing voters' most personal information is hardly the route we should be taking to improve the integrity and security of our elections. We need funding to repair broken voting machines that cause confusion and long lines at the polls. We need to pass automatic voter registration, which will securely add millions of voters to the rolls, save money, and mitigate the already rare occurrences of voter fraud. States should be joining ERIC to both clean up and grow their voter lists. We need to consider pulling out of Crosscheck and joining ERIC to ensure that our data is secure. Allowing Kris Kobach, a man with a track record of voter suppression, free reign over our voter rolls is dangerous to the future of our democracy.

## **Former Arizona Department of Insurance Director J. Michael Low Joins Kutak Rock**

The law firm of Kutak Rock LLP announced today that former Director of the Arizona Department of Insurance J. Michael Low has joined the firm's Insurance, Regulatory and Government Affairs Group. Low, who will represent insurers, insurance associations and institutions before government agencies, will be resident in the firm's Scottsdale office.

Low represents clients in a wide range of insurance-related matters, including reinsurance, arbitrations, and insurance corporate and regulatory matters involving the formation, merger and acquisition of insurers, including captive insurers, and litigation consulting regarding strategy, and witness and trial preparation.

Pat Ray, managing partner of Kutak Rock's Scottsdale office and a member of the firm's Executive Committee, remarks, "We are extremely fortunate to welcome Mike to Kutak Rock. His deep knowledge of the insurance regulatory arena and experience advocating for the industry positions him as an invaluable resource for the firm's clients and attorneys alike. Clients across several of the firm's practices—including health care and senior living—require strong insurance regulatory guidance and compliance knowledge. Mike's background and reputation will inspire high levels of confidence with clients, existing and new."

Paul Gerding, Jr., Chair of the Litigation Department in Kutak Rock's Scottsdale office, adds, "Mike is among the leading insurance, regulatory and government affairs attorneys in the United States. As Kutak Rock continues its expansion of insurance and regulatory-related services in Arizona and the western states, our ability to deliver

comprehensive, “one-firm” legal services is a compelling driver for our clients and prospects. Mike’s experience and regional presence is an ideal complement and necessary component for our global client base.”

During his legal tenure, Low has authored numerous reports and testified as an expert witness in more than 100 matters in state and federal court involving life, health, property and casualty insurance coverage, claims handling and bad faith issues. He recently moderated the Arizona Health Insurance Symposium panel discussion in Phoenix on Current State and Federal Health Insurance Issues and was a featured speaker on Captive Insurer Best Practices at the Western Region Captive Insurance Conference in Salt Lake City.

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## Rep. Ruben Gallego to hold press availability ahead of his Community Town Hall

Rep. Ruben Gallego is hosting a Community Town Hall tonight, inviting his constituents in Arizona’s 7<sup>th</sup> District to share about the issues impacting their lives. He will also share what he is doing to represent his constituents in Washington, DC.

Rep. Gallego will be available for interviews and to answer questions from the press before the town hall, from 6 p.m. to 6:30 p.m.

WHAT: Community Town Hall

WHEN: Tonight, Thursday July 6, 2017

6:00 p.m. press availability

6:30 p.m. town hall begins

WHERE: Burton Barr Central Library

Pulliam Auditorium, First Floor

1221 N Central Ave, Phoenix, AZ 85004

WHO: Rep. Ruben Gallego

RSVP: Please RSVP to [christina.carr@mail.house.gov](mailto:christina.carr@mail.house.gov) if you plan to attend.

## ADEQ Announces Request for Grant Applications to Fund \$1 Million+ in Projects to Improve Quality of Arizona’s Vital Surface Waters

*Expanded grant project opportunities now include proactive projects as well as traditional restoration projects to address non-regulated pollution sources.*

– Applications are Due Friday, Aug. 11, 2017 –

PHOENIX (July 6, 2017) – Arizona Department of Environmental Quality (ADEQ) officials announced today a request for applications for Cycle 20 Water Quality Improvement Grant (WQIG) Program funds. Cycle 20 grant opportunities newly offer proactive Watershed Preservation Grants (WPGs) in addition to traditional WQIGs to address non-regulated pollution sources.

Critical to the health of Arizona’s waters, ADEQ’s WQIG Program funds projects that address the leading cause of water quality impairment in the United States, nonpoint source pollution.

Traditional WQIGs fund projects to restore water quality that does not meet applicable standards, whereas new WPGs fund proactive projects to protect Arizona waters currently meeting standards, but where threats to water quality are documented.

“The \$993,880 grant for the Horseshoe Draw project is an outstanding example of how our program supports community-based approaches to protect and restore Arizona’s waters,” said ADEQ Water Quality Division Director, Trevor Baggiore.

Completed last month, the [Horseshoe Draw project](#) will reduce sediment and pathogen transport (such as E. coli) to the San Pedro River by lessening erosion and lowering flood peaks. An ancillary, yet extremely significant project

benefit, is the protection now provided for the area roadway and property, which previously was destroyed by flood waters.

Baggiore continued, “Central to the ongoing success of our Water Quality Improvement Grant Program is its competitive process that requires awardees to cover 40 percent of the total project cost. By extending Cycle 20 project opportunities to include proactive Watershed Preservation Grants, we now can maximize the benefits of on-the-ground water quality protections and improvements for Arizona’s community health, drinking water supplies, wildlife, fisheries and recreation.”

To support applicants and facilitate this grant program, ADEQ is providing free grant application webinars (July 10 and July 14) during which ADEQ will walk participants through the WQIG Program and application process, as well as field specific questions.

The Cycle 20 grant application process requires completion and submittal of the full application packet to ADEQ no later than Friday, Aug. 11, 2017, at 3 p.m. MST, as well as a project proposal presentation to ADEQ. Grants will be awarded in early fall 2017.

ADEQ encourages interested parties to confirm their eligibility and apply for WQIG Program Cycle 20 WQIGs and new WPGs to continue to protect, restore and improve Arizona’s water quality.

**WQIG Program Applicant Resources:**

- [Cycle 20 Webinar Details and RSVP >](#)
- [Grant Manual >](#)
- [WQIG Program and Application Packet >](#)
- [Animated WQIG Program Video Story >](#)

**WQIG Program Contact:**

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## ”QUOTE OF THE DAY”

“Call me old fashioned but I’ve always followed rules of respect and decorum. This is just rude.”

- *Shope on Twitter, reacting to the tactics used by people protesting against the Better Care Reconciliation Act in Flake’s office.*