

From: [Brnovich, Mark](#)
To: [Drave, Dominic](#)
Bcc: [Bailey, Michael](#)
Subject: Discriminatory effect
Date: Tuesday, November 17, 2015 12:51:48 PM

Even assuming partisan discriminatory "intent" by IRC, what is discriminatory "effect". Don't you think we have to address that? And I keep saying to myself, I don't think these partisan redistricting cases are justiciable (position of Thomas and Scalia), but isn't that what we are asking court to do?

Attorney General Mark Brnovich
Sent from my iPhone

From: Brnovich, Mark
To: Bailey, Michael; Medina, Rick; Anderson, Ryan; Kredit, Beth
Subject: FW: Dollar General Amicus Brief by State of Oklahoma
Date: Thursday, October 01, 2015 11:54:07 AM
Attachments: 10 01 15 Ltr re Dollar General Corp v Mississippi Band of Choctaw Indian....pdf

Can you please set up a meeting? Please include everyone on this cc if possible.

From: Ethel Branch [mailto:ebranch@nndoj.org]
Sent: Thursday, October 01, 2015 11:13 AM
To: Brnovich, Mark
Subject: Dollar General Amicus Brief by State of Oklahoma

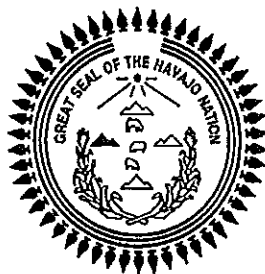
Good morning Honorable Attorney General Brnovich,

I hope this message finds you and the great State of Arizona well. Please find attached correspondence from me regarding the *Dollar General* amicus brief submitted by the State of Oklahoma. A hard copy will follow by mail. I would love to have an opportunity to sit down with you and discuss this matter. Also, I'd like to touch base on the Gold King Mine spill. I have another meeting in Phoenix either late next week or the week after. It would be great if our schedules could align so we could meet then to discuss these items. I'll let you know as soon as that meeting date is set. If there are dates in that timeframe that work particularly well for you, please let me know and I'll try to work with the team to schedule our meeting for the dates that work for you.

Respectfully,

Ethel Branch, Attorney General
Navajo Nation Department of Justice
Office of the Attorney General
PO Box 2010
Window Rock, Arizona 86515
928 [REDACTED]
ebranch@nndoj.org

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NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL B. BRANCH
ATTORNEY GENERAL

RODGERICK T. BEGAY
ACTING DEPUTY ATTORNEY GENERAL

October 1, 2015

Honorable Attorney General Mark Brnovich
Office of the Attorney General
State of Arizona
1275 West Washington Street
Phoenix, Arizona 85007

RE: *Dollar General Corp, et al. v. Mississippi Band of Choctaw Indians, et al.*
No. 13-1496 (U.S. Supreme Court Pet. Granted June 15, 2015)

Dear Honorable Attorney General Brnovich:

Congratulations on being elected as the new Attorney General for the State of Arizona. I had the honor and pleasure of meeting with Governor Ducey and Senator McCain here on the Nation in August. I am quite pleased with the strong leadership that exists in the State, and I look forward to continuing the long-standing collaborative and mutually beneficial relationship between the State and the Nation. Our relationship is built on a solid foundation of mutual trust and respect that is reflected in our many shared agreements. For example, your Office has an agreement with us to bring arbitration claims before the Nation's courts. We take great pride in our courts and have long enjoyed respect for our courts by the State of Arizona. As neighbors, we are bound to each other through many interconnections. For example, Arizona benefits substantially from State taxes collected on the Navajo Nation. This past year alone Arizona taxes collected on the Nation exceeded \$20 million, and likely reached \$25 million. This mutually beneficial relationship would not be possible without the mutual cooperation and respect between our two governments.

At times we respectfully disagree with each other, as neighbors sometimes do, but we seek to find common ground and work through those differences. The pending U.S. Supreme Court case captioned *Dollar General Corporation v. Mississippi Band of Choctaw Indians* is just such an opportunity where I believe we can arrive at a mutually agreeable and shared, or at least similar, position. As you know, through your Office, the State of Arizona has signed onto an amicus brief filed by the State of Oklahoma in the *Dollar General* case. The Oklahoma brief characterizes tribal courts in a distinctly negative light and suggests that state courts are, in all instances, the appropriate fora for tort claims against non-Indians who harm tribal citizens on tribal lands. It describes factual situations unique to Oklahoma and Wyoming, and suggests that the same jurisdictional challenges that exist there also apply here. Yet the situation in Arizona is quite different. Our governments have a history of working together in fashioning shared solutions to our shared jurisdictional challenges. Given the history of cooperation and respect between our governments, I am confident that if we meet on this issue we will be able to jointly overcome the potentially significant points of difference that your signature on the Oklahoma brief has raised.

Letter to Honorable Attorney General Mark Brnovich

RE: *Dollar General Corp, et al. v. Mississippi Band of Choctaw Indians, et al.,*
No. 13-1496 (U.S. Supreme Court Pet. Granted June 15, 2015)

October 1, 2015

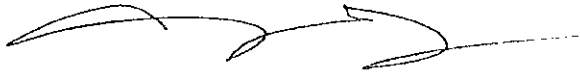
Page 2

As Arizona is dedicated to protecting its citizenry, so is the Navajo Nation. We are especially committed to protecting our youth. To wit, one of the four pillars of the Begaye-Nez administration is youth and elders, and many of the shared nine priorities of the three branches of the Navajo Nation government touch on the interests of our children and young adults. We accordingly agree with the Choctaw Supreme Court in their discussion of tribal jurisdiction regarding the direct effect that the inability to exercise jurisdiction over non-Indians who contract with an Indian nation has on the political integrity, economic security, and health or welfare of that Indian nation. As the Choctaw Supreme Court stated, "If the Tribe cannot protect the 'health or welfare' of its members by insuring the availability of a Tribal forum for disputes when it places a Tribal minor with a non-Indian commercial venture, who is on the Reservation solely as a result of a commercial lease with a Tribal entity, then this exception becomes essentially meaningless. It becomes no more than a bankrupt formalism." As many of the children and youth of our Nation are also citizens of Arizona, we are confident that you also wish to take action that is maximally protective of them, and will continue to be supportive of our courts and their exercise of justice on our lands.

We strongly urge you and the State of Arizona to consider the long-term and widespread implications of supporting a position advanced by the State of Oklahoma. Arizona's support in the *Dollar General* appeal against tribal courts and tribal jurisdiction would send the wrong message to the many Indian nations in Arizona, and threaten to set the relationship between Arizona and the Navajo Nation back decades. I do not want that to occur, especially as you and I sit on the verge of incredible collaborative work. I want to continue strengthening and improving our relationship for the benefit of our shared citizens as well as for the benefit of our non-Navajo neighbors and friends who are citizens of the State. I thus respectfully request that you remove the State of Arizona's name from the Oklahoma amicus brief and I respectfully urge you to consider signing onto the State of Mississippi's amicus brief, which we understand, when filed, will be strongly supportive of tribal justice systems. Mississippi shares a mutually beneficial and strong economic and political relationship with the Mississippi Band of Choctaw Indians, much like the relationship we share with you.

Thank you for your attention to this important matter. I welcome the opportunity to meet with you to discuss this further.

Respectfully,



Ethel Branch, Attorney General
Navajo Nation Department of Justice

xc: Russell Begaye, President, The Navajo Nation
Lorenzo Bates, Speaker, The Navajo Nation Council
Allen Sloan, Acting Chief Justice, Judicial Branch

From: Brnovich, Mark
To: Anderson, Ryan; Baer, Aaron
Cc: Bailey, Michael
Subject: FW: Public Comment Agenda for Proposed POST Rules
Date: Friday, December 11, 2015 11:50:10 AM

We need to set up a meeting with sheriff wilmot.

From: Wilmot, Leon - Sheriff [mailto:Leon.Wilmot@ycso.yumacountyaz.gov]
Sent: Friday, December 11, 2015 10:09 AM
To: 'Lyle Mann'; mgarcia@ak-chin.nsn.us; jdedman@apachecounty.net; tkelly@ajcity.net; dnanenga@avondale.org; Brnovich, Mark; mneubert@azcc.gov; Mark Killian (mkillian@azda.gov); Gregory McKay (dcsdirector@azdes.gov); cryan@azcorrections.gov; Terence Azbill; dbergin@azgaming.gov; Andy Tobin (atobin@azinsuranc.gov); Dona Markley (dmmarkley@azdj.gov); Michael Rosenberger (michael.rosenberger@azliquor.gov); Frank Milstead (fmilstead@azdps.gov); nthompson@azracing.gov; Robert M. Bray (RBray@azdor.gov); sstanton@azdot.gov; gelms@azgfd.gov; jream@azstateparks.gov; Michael Lloyd Thompson (Michael.L.Thompson@asu.edu); John.Edmundson@azwestern.edu; pfmoncada@cityofbenson.com; Jamie.Kootswatewa@bia.gov; cobpolice@cityofbisbee.com; Lawrence Hall (LHALL@buckeyeaz.gov); bwilliamson@bullheadcity.com; lance.cencelewski@bnsf.com; nancy.gardner@campverde.az.gov; Chris Vasquez (chris_vasquez@casagrandeaz.gov); astein@cavecreek.org; luis.martinez@centralaz.edu; jgaylord@cap-az.com; sean.duggan@chandleraz.gov; cwynn@chinoaz.net; Randy.Taylor@clarkdale.az.gov; negrete@townofclifton.com; mdannels@cochise.az.gov; bpribil@coconino.az.gov; Dan Siegfried (siegfried@cocopah.com); Jeremiah Darger (jerryd@tooc.us); James S. Malinski (jmalinski@coolidgeaz.com); jfanning@cottonwoodaz.gov; kraig.fullen@douglasaz.gov; m.hogan@eagaraz.gov; mike.mceuen@eac.edu; Terry A. McDonald (tmcdonald@cityofelmirage.org); William Pitman (bpitman@eloyaz.gov); ktreadway@coconino.az.gov; Daniel.Hughes@florenceaz.gov; Jesse Crabtree (jcrabtree@ftmcdowell.org); rlimon@fmpdpd.org; marshal@fredonia.net; bbeauchamp@gilacountyaz.gov; ashepherd@co.gila.az.us; kathleen.kirkham@gric.nsn.us; tim.dorn@gilbertaz.gov; dblack@glendaleaz.com; ttruet@globeaz.gov; jgeier@goodyearaz.gov; kangle@graham.az.gov; pallred@graham.az.gov; lavila@co.greenlee.az.us; ltagaglia@townofhayden.net; jacksonhpd@cableone.net; rhonyumptewa@hopi.nsn.us; dgrey@huachucacityaz.gov; fbradley@Hualapai-nsn.gov; jeromechief@jeromepd.org; tpd-rmi@att.net; rdevries@cityofkingman.gov; jdrum@lapazsheriff.org; doyled@lhc.gov; Steve Nash (S.NASH@townofmammoth.us); trozema@marana.com; Mikel.Longman@domain.maricopa.edu; MANNING@mcao.maricopa.gov; jenniferwaller@mail.maricopa.gov; a_lake@mcs.maricopa.gov; steve.stahl@maricopa-az.gov; harry.beck@mesaaz.gov; John Meza (john.meza@mesaaz.gov); miamicop@cableone.net; Matthew Smith (matt.smith@mohavecounty.us); shawn.blackburn@mohavecounty.us; Jim McCabe (Jim.McCabe@mohavecounty.us); brad.carlyon@navajocountyaz.gov; sheriff@navajocountyaz.gov; Jesse Delmar - Director Navajo DPS; andersonharvey@navajo-nsn.gov; Derek Arnson (darnson@nogalesaz.gov); gt.fowler@nau.edu; dsharp@orovalleyaz.gov; Frank Balkcom (fbalkcom@cityofpage.org); Peter Wingert (pwingert@paradisevalleyaz.gov); cop@townofparkeraz.us; michael.a.valenzuela@pascuayaqui-nsn.gov; marshal300@patagonia-az.gov; dengler@paysonaz.gov; roy.minter@peoriaaz.gov; jack.ballentine@phoenix.gov; Joseph G. Yahner (lisa.coombe@phoenix.gov); Michelle Nieuwenhuis (mnieuwenhuis@pima.edu); pimacounty.attorney@pcao.pima.gov; caroline.vargas@sheriff.pima.gov; pimachief@gmail.com; lando.voyles@pinalcountyaz.gov; paul.babeu@pinalcountyaz.gov; rwheeler@ci.pinetop-lakeside.az.us; jerald.monahan@prescott-az.gov; bjarrell@pvaz.net; qsite1@ci.quartzsite.az.us; [REDACTED]@gmail.com; jbrugman@ci.safford.az.us; John Noland (jnoland@sahuaritaaz.gov); patrick.melvin@srmic-nsn.gov; Timothy Stevens (scgfd.leo@scat-nsn.gov); abenally@scpd.scat-nsn.gov; Javier Arellano; gsilva@co.santa-cruz.az.us; testrada@santacruzcountyaz.gov; arodbell@scottsdaleaz.gov; rcota@sedonaaz.gov; jshelley@showlowaz.gov; Adam D. Thrasher (adam.thrasher@sierravistaaz.gov); Larry Scarber (LScarber@stpd.org); Benjamin Cotman (benjamincotman@somertonaz.gov); Michael B. Ford (mford@southtucson.org); mnuttall@springervilleaz.gov; Daniel Brown (dbrown@stjohnsaz.gov); David M. Neuss (david.neuss@pinalcountyaz.gov); Terry Young (terry.young@surpriseaz.gov); tom_ryff@tempe.gov; swoods@thatcher.az.gov; Vincent Garcia (Vincent.garcia@tonation-nsn.gov); lrodriguez@tollesonaz.org; Bob Randall (rrandall@cochise.az.gov); mschlosser@tontoapache.org; jivanoff@tucsonairport.org; roberto.villasenor@tucsonaz.gov; jdparker@up.com;

seastone@uapd.arizona.edu; Donald Jones (djones@town.wellton.az.us); rangers@wmat.us; Steven Kane (stevenkane@wmat.us); pwingert@ci.wickenburg.az.us; gchilders@willcoxcity.org; hnixon@williamsaz.gov; steve.garnett@ci.winslow.az.us; Frank Lopez (frank.lopez@yc.edu); sheila.polk@co.yavapai.az.us; Scott Mascher (scott.mascher@yavapai.us); Jon Huey (jhuey@yan-tribe.org); sdesjadon@ypit.com; jon.smith@yumacountyaz.gov; Lekan, John - YPD Chief
Cc: Jack Lane; Michael Saltz; Marie Dryer; Jeanne Hann (jeanne@arizonarulesllc.com)
Subject: RE: Public Comment Agenda for Proposed POST Rules

13-4-105 A9

9. Not have illegally possessed, sold, produced, cultivated, or transported for sale marijuana;

Not have illegally possessed marijuana? Ever? That wording needs some work because farther down it still talks about not to exceed 20 times.

From: Lyle Mann [mailto:lylem@azpost.gov]

Sent: Thursday, December 10, 2015 12:17

To: mgarcia@ak-chin.nsn.us; idedman@apachecounty.net; tkelly@ajcity.net; dnannenga@avondale.org; Mark Brnovich (mark.brnovich@azag.gov); mneubert@azcc.gov; Mark Killian (mkillian@azda.gov); Gregory McKay (dcsdirector@azdes.gov); cryan@azcorrections.gov; Terence Azbill; dbergin@azgaming.gov; Andy Tobin (atobin@azinsurance.gov); Dona Markley (dmmarkley@azdjg.gov); Michael Rosenberger (michael.rosenberger@azliquor.gov); Frank Milstead (fmilstead@azdps.gov); nthompson@azracing.gov; Robert M. Bray (RBray@azdor.gov); sstanton@azdot.gov; gelms@azgfd.gov; jream@azstateparks.gov; Michael Lloyd Thompson (Michael.L.Thompson@asu.edu); John.Edmundson@azwestern.edu; pfmoncada@cityofbenson.com; Jamie.Kootswatewa@bia.gov; cobpolice@cityofbisbee.com; Lawrence Hall (LHALL@buckeyeaz.gov); bwilliamson@bullheadcity.com; lance.cencelewski@bnsf.com; nancy.gardner@campverde.az.gov; Chris Vasquez (chris_vasquez@casagrandeaz.gov); astein@cavecreek.org; luis.martinez@centralaz.edu; jgaylor@cap-az.com; sean.duggan@chandleraz.gov; cwynn@chinoaz.net; Randy.Taylor@clarkdale.az.gov; negrete@townofclifton.com; mdannels@cochise.az.gov; bpribil@coconino.az.gov; Dan Siegfried (siegfriedd@cocopah.com); Jeremiah Darger (jerryd@tocc.us); James S. Malinski (jmalinski@coolidgeaz.com); jfanning@cottonwoodaz.gov; kraig.fullen@douglasaz.gov; m.hogan@eagaraz.gov; mike.mceuen@eac.edu; Terry A. McDonald (tmcdonald@cityofelmirage.org); William Pitman (bpitman@eloyaz.gov); ktreadway@coconino.az.gov; Daniel.Hughes@florenceaz.gov; Jesse Crabtree (jcrabtree@ftmcdowell.org); rlimon@fmpd.org; marshal@fredonia.net; bbeauchamp@gilacountyaz.gov; ashepherd@co.gila.az.us; kathleen.kirkham@gric.nsn.us; tim.dorn@gilbertaz.gov; dblack@glendaleaz.com; ttruet@globeaz.gov; jgeier@goodyearaz.gov; kangle@graham.az.gov; pallred@graham.az.gov; lavila@co.greenlee.az.us; ltartaglia@townofhayden.net; jacksonhpd@cableone.net; rhonyumptewa@hopi.nsn.us; dgrey@huachuacacityaz.gov; fbradley@Hualapai-nsn.gov; jeromechief@jeromepd.org; tpd-rmi@att.net; rdevries@cityofkingman.gov; jdrum@lapazsheriff.org; doyled@lhcaz.gov; Steve Nash (S.NASH@townofmammoth.us); trozema@marana.com; Mikel.Longman@domail.maricopa.edu; MANNING@mcao.maricopa.gov; jenniferwaller@mail.maricopa.gov; a_lake@mcso.maricopa.gov; steve.stahl@maricopa-az.gov; harry.beck@mesaaz.gov; John Meza (john.meza@mesaaz.gov); miamicop@cableone.net; Matthew Smith (matt.smith@mohavecounty.us); shawn.blackburn@mohavecounty.us; Jim McCabe (Jim.McCabe@mohavecounty.us); brad.carlyon@navajocountyaz.gov; sheriff@navajocountyaz.gov; Jesse Delmar - Director Navajo DPS; andersonharvey@navajo-nsn.gov; Derek Arnson (darnson@nogalesaz.gov); gt.fowler@nau.edu; dsharp@orovalleyaz.gov; Frank Balkcom (fbalkcom@cityofpage.org); Peter Wingert (pwingert@paradisevalleyaz.gov); cop@townofparkeraz.us; michael.a.valenzuela@pascuayaqui-nsn.gov; marshal300@patagonia-az.gov; dengler@paysonaz.gov; roy.minter@peoriaaz.gov; jack.ballentine@phoenix.gov; Joseph G. Yahner (lisa.coombe@phoenix.gov); Michelle Nieuwenhuis (mnieuwenhuis@pima.edu); pimacounty.attorney@pcao.pima.gov; caroline.vargas@sheriff.pima.gov; pimachief@gmail.com; lando.voyles@pinalcountyaz.gov; paul.babeu@pinalcountyaz.gov; rwheeler@ci.pinetop-lakeside.az.us; jerald.monahan@prescott-az.gov; bjarrell@pvaz.net; qsite1@ci.quartzsite.az.us; [REDACTED]@gmail.com; jbrugman@ci.safford.az.us; John Noland (jnoland@sahuaritaaz.gov); patrick.melvin@srpmic-nsn.gov; Timothy Stevens (scqfd.leo@scat-nsn.gov); abenally@scpd.scot-nsn.gov; Javier Arellano; gsilva@co.santa-cruz.az.us;

testrada@santacruzcountyaz.gov; arobell@scottsdaleaz.gov; rcota@sedonaaz.gov; ishelley@showlowaz.gov; Adam D. Thrasher (adam.thrasher@sierravistaaz.gov); Larry Scarber (LScarber@stpd.org); Benjamin Cotman (benjamincotman@somertonaz.gov); Michael B. Ford (mford@southtucson.org); mnuittall@springervilleaz.gov; Daniel Brown (dbrown@stjohnsaz.gov); David M. Neuss (david.neuss@pinalcountyaz.gov); Terry Young (terry.young@surpriseaz.gov); tom_ryff@tempe.gov; swoods@thatcher.az.gov; Vincent Garcia (Vincent.garcia@tonation-nsn.gov); lrodriguez@tollesonaz.org; Bob Randall (rRANDALL@cochise.az.gov); mSchlosser@tontoapache.org; jivanoff@tucsonairport.org; roberto.villasenor@tucsonaz.gov; jdparker@up.com; seastone@uapd.arizona.edu; Donald Jones (djones@town.wellton.az.us); rangers@wmat.us; Steven Kane (stevenkane@wmat.us); pwingert@ci.wickenburg.az.us; gchilders@willcoxcity.org; hnixon@williamsaz.gov; steve.garnett@ci.winslow.az.us; Frank Lopez (frank.lopez@yc.edu); sheila.polk@co.yavapai.az.u; Scott Mascher (scott.mascher@yavapai.us); Jon Huey (jhuey@yan-tribe.org); sdesjadon@vplf.com; jon.smith@yumacountyaz.gov; Willmot, Leon - Sheriff; Lekan, John - YPD Chief

Cc: Jack Lane; Michael Saltz; Marie Dryer; Jeanne Hann (jeanne@arizonarulesllc.com)

Subject: Public Comment Agenda for Proposed POST Rules

The POST Board is in the process of promulgating a revision to the Administrative Rules under which the Board functions. The required Public Comment opportunity for either written or oral comment is scheduled for noon, on Tuesday, December 15th. The link below has a copy of the proposed Rules if you are interested.

The proposed Rules are presented in the legislative format wherein the new language is underlined and the new language is ~~strikethrough~~.

You will see many seemingly wordsmithing changes for example "person" becomes "individual" and those are to allow us to change every section of the Rule so that we can avoid a Rule review process for five years.

Some of the highlight of the of the proposed Rules are:

- Clarifying the difference between an individual who is appointed to an academy and one who attends an academy as an open enrollee;
- Deleting reference to a limited correctional peace officer because it is a position that no longer exists;
- Specifying conditions under which an agency may seek to have an individual appointed with restrictions;
- Clarifying restrictions on certified status that result from training or qualification deficiencies;
- Clarifying that it is an agency rather than an individual that applies for a waiver of required training; and
- Clarifying the status, training, and time requirements applicable to obtaining a waiver of required training.
- Clarifying that an outside provider of training may provide only continuing training;
- Clarifying that the Board may withdraw its confirmation that a continuing training course conducted by an outside provider meets requirements of the basic peace officer course if the Board receives information that the course content does not meet requirements;
- Adding requirements regarding the time within which an open enrollee must obtain an

appointment and additional training requirements if an appointment is not obtained within the specified time;

- Establishing that illegally possessing marijuana, as well as illegally using it, disqualifies an individual from being a peace officer. A definition of illegal is added;
- Simplifying the medical assessment of whether an individual is able to perform the essential functions of the job of peace officer;
- Adding three grounds for denial, suspension, or revocation of certification;
- Adding that certification as a specialty or limited-authority peace officer requires passing relevant portions of the comprehensive final examination;
- Adding a report regarding criminal convictions or pleas by peace officers;
- Adding a requirement that a state correctional officer or cadet complete a Board-approved field training program; and
- Deleting salary as a reimbursable training expense.

A full copy of the proposed Rules can be found at
<https://post.az.gov/sites/default/files/proposedrules.pdf> .

Thank you for assistance in this matter of mutual concern. If you have any questions, I would be happy to answer them.

Lyle W. Mann
Executive Director
Direct (602) [REDACTED]

Confidentiality and Nondisclosure Notice: This e-mail transmission and any attachments are intended for use by the person(s) or entity (entities) named above and may contain confidential/privileged information. Any unauthorized use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please contact the sender by e-mail, and delete or destroy all copies plus attachments.

From: [Brnovich, Mark](#)
To: [Bailey, Michael](#); [Anderson, Ryan](#)
Subject: Fwd: Message From Attorney General Zoeller re TPP
Date: Friday, October 02, 2015 4:30:11 PM
Attachments: [2014-02-05 NAAG Letter to Froman re TPP - Final.pdf](#)
[ATT00001.htm](#)

Attorney General Mark Brnovich
Sent from my iPhone

Begin forwarded message:

From: Michael Hering <mhering@NAAG.ORG>
Date: October 2, 2015 at 1:18:37 PM MST
To: Tobacco <Tobacco@NAAG.ORG>, James McPherson
<jmcpherson@NAAG.ORG>, "Chris Toth" <ctoath@NAAG.ORG>, Jeffrey
Hunter <jhunter@NAAG.ORG>
Cc: Marjorie Tharp <mtharp@NAAG.ORG>
Subject: **Message From Attorney General Zoeller re TPP**

To all Attorneys General, Chief Deputies, and Executive Assistants:

Please see the message below from Attorney General Zoeller regarding the
Trans-Pacific Partnership Treaty:

Dear Colleagues,

As your NAAG liaison to the United States Trade Representative, I wanted to
provide you with this update:

The United States and 11 other countries are currently engaged in what may
be the final round of negotiations on the proposed Trans-Pacific Partnership
Treaty concerning trade and investment. A major concern of state Attorneys
General concerning the treaty has been its treatment of tobacco and, in
particular, the question whether large international tobacco companies will
have the ability under the treaty's so called "investor-state dispute settlement"
(ISDS) provisions to challenge state and local tobacco regulations under
standards and in forums that would not be available under United States law.

Forty-eight state attorneys general expressed concern about this issue in a
February 5, 2014 letter to the United States Trade Representative,
Ambassador Michael Froman. (That letter is attached.) The letter requested
that tobacco, because of its uniquely harmful effect on the public health, be
carved out entirely from the treaty. In meetings with Ambassador Froman and
his staff, I spoke with the USTR representatives last month and stressed that,

at the very least, the treaty's ISDS provisions should exclude investor claims relating to tobacco regulation.

Ambassador Froman has just informed me that U.S. treaty negotiators have proposed to exclude tobacco-related claims from the treaty's ISDS provisions, and that exclusion now appears likely to be included in the final agreement.

This is a major victory for state regulation of tobacco and for the public health. I urge you to express support for this action, regardless of your ultimate position on final approval of the treaty as a whole when it comes to a vote in Congress next year. I also urge you to communicate with your state's representatives and senators that the tobacco carve-out from the ISDS provisions should not be a reason to vote against approval.

Gregory F. Zoeller

*Michael G. Hering
Director and Chief Counsel
NAAG Center for Tobacco and Public Health
2030 M Street, NW
Washington, DC 20036
(202) 326-6023 office
(202) [REDACTED] mobile*

From: [Brnovich, Mark](#)
To: [Anderson, Ryan](#); [Garcia, Mia](#); [Baer, Aaron](#)
Subject: Fwd: Proposed US-Mexico Letter of Intent; PGR Article
Date: Friday, October 02, 2015 12:22:15 PM
Attachments: [Letter of Agreement Multiple States CWAG-CNPJ Eng 2015.docx](#)
[ATT00001.htm](#)
[DOJ- Mexico Extradites 13 Defendants to Face Charges in the United States.docx](#)
[ATT00002.htm](#)
[Letter of Agreement Multiple States CWAG-PGR Eng 2015.docx](#)
[ATT00003.htm](#)

Let's run traps. I assume we can do release etc once we do this.

Attorney General Mark Brnovich
Sent from my iPhone

Begin forwarded message:

From: Lauren Niehaus <lniehaus@cwagweb.org>
Date: October 2, 2015 at 11:16:11 AM MST
To: "lawrence.wasden@ag.idaho.gov"
<lawrence.wasden@ag.idaho.gov>, "cynthia.coffman@state.co.us"
<cynthia.coffman@state.co.us>, "Peter F. Kilmartin"
<pkilmartin@riag.ri.gov>, "seanreyes@utah.gov"
<seanreyes@utah.gov>, "mark.brnovich@azag.gov"
<mark.brnovich@azag.gov>, "gzoeller@comcast.net"
<gzoeller@comcast.net>
Cc: "janet.carter@ag.idaho.gov" <janet.carter@ag.idaho.gov>,
"erin.lamb@state.co.us" <erin.lamb@state.co.us>, "MNason@riag.ri.gov"
<MNason@riag.ri.gov>, "Delberta.Pfeifer@ag.ks.gov"
<Delberta.Pfeifer@ag.ks.gov>, "clesmes@utah.gov"
<clesmes@utah.gov>, "vbransford@nmag.gov"
<vbransford@nmag.gov>, "Beth.kredit@azag.gov"
<Beth.kredit@azag.gov>, "JeanMarie.Leisher@atg.in.gov"
<JeanMarie.Leisher@atg.in.gov>, Susan Lustig <slustig@cwagweb.org>
Subject: Proposed US-Mexico Letter of Intent; PGR Article

Dear Attorneys General –

Thank you for bearing with us with all of these preparation emails for the US-Mexico/Cuba Exchange!

Attached please find a draft Letter of Intent that will be offered for signature to all AGs in attendance at the Binational AG Exchange. We used this format last year in an effort to consolidate how many copies each person has to sign. We are also floating a similar Letter of Intent to PGR for the AGs signature, which is also attached and if they agree, will be signed on the 13th.

At the end of the day on the 13th, those interested in signing this will be invited to do so, but it is not required. An electronic copy will be sent to your offices for those who

choose to sign.

Also, attached is an exciting announcement from USDOJ about collaborations with Mexico's Attorney General Arely Gomez, who you will be meeting with on Tuesday the 13th, which have led to the extradition of 13 defendants to the United States to face charges.

Thank you all and see you soon!

Lauren Niehaus
Director of Program Coordination
CWAG Alliance Partnership
303 [REDACTED] – Cell
LNiehaus@cwagweb.org

1300 I Street
Sacramento, CA 95814
www.cwagweb.org/AP

From: [Brnovich, Mark](#)
To: [Medina, Rick](#); [Bailey, Michael](#); [Anderson, Ryan](#)
Subject: Fwd: Revision: Wire Act
Date: Wednesday, December 02, 2015 3:46:59 PM
Attachments: [image001.png](#)
[ATT00001.htm](#)
[image002.png](#)
[ATT00002.htm](#)
[image003.png](#)
[ATT00003.htm](#)
[Wire Act Sign On Packet.pdf](#)
[ATT00004.htm](#)

Does that clear it up? I'm not even sure what it means.

Attorney General Mark Brnovich
Sent from my iPhone

Begin forwarded message:

From: Alexandra McGuire <amcguire@NAAG.ORG>
Date: December 2, 2015 at 5:42:00 PM EST
To: Alexandra McGuire <amcguire@NAAG.ORG>
Cc: Adam Piper <apiper@scag.gov>
Subject: Revision: Wire Act

This message is being sent to all Attorneys General, Chief Deputies, and Executive Assistants:

Please see the following revision:

Dear Colleagues:

Attorney General Laxalt (NV) asked Attorney General Wilson this morning if we, as a co-sponsor of the letter, would be willing to make a clarification to correct an oversight in the letter. The simple language below is designed to ensure that the letter expresses our concern without getting so deep into the policy making process as to own future amendments to the bill.

Attorney General Wilson feels this addition by Attorney General Laxalt strengthens the letter in terms of its current and future interpretation.

Language to be added:

Our primary concern is the restoration of the Wire Act to its original form in 2011. This letter does not opine on unintended collateral and peripheral consequences policymakers will have to consider throughout the legislative process.

If your state has already signed on and you accept the changes, your response will presumptively remain affirmative (no further action is needed). If you wish to change your responses, please notify Allie McGuire at amcguire@naag.org using the attached response form no later than **1:00 pm (EST) Friday, December 4, 2015.**

The attached **“Wire Act”** sign-on packet contains:

1. “Dear Colleague” letter from Attorneys General Koster and Wilson,
2. Draft letter to Congress to clarify the Wire Act to prohibit all forms of internet gambling,
3. Response Form: please return to Allie McGuire by email at amcguire@naag.org or by fax at **(202) 521-4052** by **1:00 pm (EST) Friday, December 4, 2015.**

If you have any questions, please feel free to contact Adam Piper of the South Carolina Attorney General’s Office at (803) 734-3970, apiper@scag.gov, and/or Jim Farnsworth of the Missouri Attorney General’s Office at (573) 751-8807.

If you have any questions about your state’s response, please contact Allie McGuire at 202-326-6008 or amcguire@naag.org.

Please note that if you are interested in which states have signed on to this letter, you may check the real-time status at this website, **please note the new site password below:**

[http://\[REDACTED\].org/](http://[REDACTED].org/)

password: [REDACTED]

Please do not share the password with anyone outside of the NAAG Community.

The deadline to sign on is 1:00 pm (EST) Friday, December 4, 2015.

Thank you,
Allie

Allie McGuire

NAGTRI Program Specialist
National Association of Attorneys General
2030 M St NW, 8th Floor
Washington, DC 20036
202 [REDACTED] | amcguire@naag.org

From: [Brnovich, Mark](#)
To: [Anderson, Ryan](#); [Medina, Rick](#); [Bailey, Michael](#); [Baer, Aaron](#)
Subject: Fwd: SIGN ON Letter to FCC
Date: Thursday, December 17, 2015 1:54:25 PM
Attachments: [Letter to FCC re text messaging and Twilio.pdf](#)
[ATT0001.htm](#)
[Twilio Summary\(CTIA\).docx](#)
[ATT0002.htm](#)

Attorney General Mark Brnovich
Sent from my iPhone

Begin forwarded message:

From: "Wasden, Lawrence" <lawrence.wasden@ag.idaho.gov>
Date: December 17, 2015 at 1:52:17 PM MST
To: "Carter, Janet" <janet.carter@ag.idaho.gov>
Subject: **SIGN ON Letter to FCC**

My Fellow Attorneys General:

Attached is a sign on comment to the FCC regarding a petition for a declaratory ruling that would open text messaging to spam and phishing messages because it seeks to prohibit the carriers current use of blocking and filtering technology to protect user's text message accounts. Text messaging is a convenient form of communication that so far has not become inundated with spam and phishing messages in the same way that much of our e-mail has. This letter seeks to protect text messaging by commenting to the FCC that the current system is working just fine. Attached to this e-mail is the draft letter and an overview of the issue if you would like more information.

If you would like to sign on, please contact Teri Nealis at teri.nealis@ag.idaho.gov by 12 noon on December 21. If you have questions regarding the letter, please contact Brian Kane at (208) 334-4523 or at brian.kane@ag.idaho.gov

The turnaround on this one is tight, as all comments must be submitted by Dec. 21.

Thank you for your consideration.

LAWRENCE G. WASDEN
Idaho Attorney General

From: Brnovich, Mark
To: [Watkins, Paul](#); [Bailey, Michael](#)
Subject: Fwd: US v. Sierra Pacific Industries, et al. (15-15799)
Date: Friday, November 20, 2015 12:50:25 AM
Attachments: [62 - US Opposition to RJN with exhs.pdf](#)
[ATT0001.htm](#)

Attorney General Mark Brnovich
Sent from my iPhone

Begin forwarded message:


From: "Christensen, Cassie (USACAE)" <Cassie.Christensen@usdoj.gov>
Date: November 19, 2015 at 8:54:45 PM MST
Cc: "Taylor, Kelli L. (USACAE)" <Kelli.L.Taylor@usdoj.gov>, "Kennedy, Colleen (USACAE)" <Colleen.M.Kennedy@usdoj.gov>
Subject: **FW: US v. Sierra Pacific Industries, et al. (15-15799)**

Counsel,

Attached please find a copy of today's filing in the above-captioned matter.

Best regards,

Cassie L. Christensen | *Paralegal Specialist*
United States Attorney's Office | Eastern District of California
501 I Street, Suite 10-100 | Sacramento, CA 95814
Telephone: (916) 554-2737 | Fax: (916) 554-2900 | Email: cassie.christensen@usdoj.gov

 Please consider the environment before printing this email.

From: [Brnovich, Mark](#)
To: [Bailey, Michael](#); [Lopez, John](#)
Subject: Fwd: White Mountain -1 CA-CV-12-0831
Date: Wednesday, October 28, 2015 3:43:16 PM
Attachments: [Appellee's Second Supp Citation.pdf](#)
[ATT00001.htm](#)
[Certificate of Service for 2nd Suppl.pdf](#)
[ATT00002.htm](#)
[Breyer 10.19.15 order.pdf](#)
[ATT00003.htm](#)

Attorney General Mark Brnovich
Sent from my iPhone

Begin forwarded message:

From: Marsha Marcinkowski <mmarcinkowski@wbazlaw.com>
Date: October 28, 2015 at 3:42:10 PM MST
To: "Kevin.Ray@azag.gov" <Kevin.Ray@azag.gov>, "aubreyjoy.corcoran@azag.gov" <aubreyjoy.corcoran@azag.gov>, "Laura.Flores@azag.gov" <Laura.Flores@azag.gov>, "charles.grube@azag.gov" <charles.grube@azag.gov>, "mark.brnovich@azag.gov" <mark.brnovich@azag.gov>, "vigilj@mcao.maricopa.gov" <vigilj@mcao.maricopa.gov>, "whiteb@mcao.maricopa.gov" <whiteb@mcao.maricopa.gov>, "liddy@mcao.maricopa.gov" <liddy@mcao.maricopa.gov>, "gjernigan@azleg.gov" <gjernigan@azleg.gov>, "pgentala@azleg.gov" <pgentala@azleg.gov>, "tstowe@azleg.gov" <tstowe@azleg.gov>, "tfeltus@kflawaz.com" <tfeltus@kflawaz.com>, "YCAO@yavapai.us" <YCAO@yavapai.us>
Cc: Steve White <swhite@wbazlaw.com>, Emma Andersson <eandersson@aclu.org>, "dpochoda@acluaz.org" <dpochoda@acluaz.org>
Subject: White Mountain -1 CA-CV-12-0831

Attached is a copy of Appellee's Second Supplemental Citation to Legal Authority filed today with AZ Turbo Appellate Court Division 1. Also attached are copies of the Certificate of Service and Judge Breyer's Order of 10/19/15 filed today. A copy is also being mailed via U.S. first-class mail.

Marsha Marcinkowski
Legal Assistant
White Berberian PLC
60 East Rio Salado Pkwy, Suite 900
Tempe, Arizona 85281

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. C 98-00086 CRB

Plaintiff,

**ORDER RE MOTION TO DISSOLVE
PERMANENT INJUNCTION**

v.

MARIN ALLIANCE FOR MEDICAL
MARIJUANA, and LYNETTE SHAW,

Defendants.

The Marin Alliance for Medical Marijuana (“MAMM”) asks this Court to dissolve a permanent injunction that this Court entered against it in 2002. See Mot. Dissolve Perm. Inj. (dkt. 262). Having reviewed the filings and accompanying papers, the Court DENIES the motion to dissolve the injunction. However, the enforcement of said injunction must be consistent with the new directive of Congress in Section 538 of the Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. 113-235, 128 Stat. 2130 (2014) (“2015 Appropriations Act”),¹ which prohibits the Department of Justice from expending any funds in connection with the enforcement of any law that interferes with California’s ability to “implement [its] own State law[] that authorize[s] the use, distribution, possession, or cultivation of medical marijuana.” See 2015 Appropriations Act § 538. As long as Congress

¹ Congress extended the force of Section 538 by passing the Continuing Appropriations Act of 2016 (“2016 Appropriations Act”), Pub. L. 114-53, § 103, 129 Stat. 502 (2015).

1 precludes the Department of Justice from expending funds in this manner, the permanent
2 injunction will only be enforced against MAMM insofar as that organization is in violation
3 of California “State laws that authorize the use, distribution, possession, or cultivation of
4 medical marijuana.” See id.; Fed. R. Civ. P. 60(b).

5 **I. BACKGROUND**

6 As a matter of federal law, marijuana is prohibited as a Schedule I drug under the
7 Controlled Substances Act (“CSA”). 21 U.S.C. § 812(c). But under state law, California’s
8 Compassionate Use Act of 1996 exempted from state criminal prosecution physicians,
9 patients, and primary caregivers who possess or cultivate marijuana for
10 medicinal purpose with a physician’s recommendation. See Cal. Health and Safety Code
11 Ann. §§ 11362.5 (“Compassionate Use Act”). The Compassionate Use Act was passed in a
12 state-wide November 1996 referendum with the support of 56% of voters. United States v.
13 Cannabis Cultivators Club, 5 F. Supp. 2d 1086, 1091 (N.D. Cal. 1998) (dkt. 61).

14 This Court has a lengthy history with this defendant on these issues. In 1998, the
15 Government filed an action seeking declaratory and injunctive relief against MAMM (and
16 five other medical marijuana dispensaries, all of which were deemed related and reassigned
17 to this Court) on the grounds that it was engaged in the distribution of marijuana in violation
18 of the CSA. See 21 U.S.C. §§ 801 et seq. At that time, the City and County of San
19 Francisco and other cities in which the related defendants are located, acting as amici curiae,
20 “urge[d] the Court not to adopt the injunctive relief sought by the federal government
21 because of the adverse consequences an injunction would have on the public health of their
22 citizens.” Cannabis Cultivators Club, 5 F. Supp. 2d at 1094. But this Court determined that
23 the preliminary injunction “must be granted” on the grounds of there being “a strong
24 likelihood that defendants’ conduct violates the Controlled Substances Act, [and thus] the
25 Supremacy Clause of the United States Constitution requires that the Court enjoin further
26 violations of the Act.” Cannabis Cultivators Club, 5 F. Supp. 2d at 1091, 1105.

27 Thereafter, defendants openly violated this Court’s preliminary injunction, which
28 prompted the Government to initiate contempt proceedings. In the litigation that ensued,

1 defendants sought to modify the preliminary injunction to exclude distributions of marijuana
2 that were medically necessary, which this Court denied on October 16, 1998. See Order (dkt.
3 174). The Ninth Circuit reversed this Court in an interlocutory appeal of that decision,
4 United States v. Oakland Cannabis Buyers' Co-Op ("OCBC"), 190 F.3d 1109, 1115 (9th Cir.
5 1999), and in turn were reversed by the Supreme Court, United States v. OCBC, 532 U.S.
6 483 (2001). There, the Supreme Court held that there is no medical necessity exception to
7 the CSA's prohibition on the manufacture and distribution of marijuana. OCBC, 532 U.S. at
8 486. In so doing, the Supreme Court explained that even when a district court is exercising
9 its equity jurisdiction in the course of fashioning an injunction, its usual discretion to
10 "consider the necessities of the public interest" was "displaced" by the "judgment of
11 Congress, deliberately expressed in legislation." Id. at 496–98. As applied here, then, the
12 district court may weigh whether an injunction should be the means of enforcing the statute
13 instead of another permissible means of enforcement—"not whether enforcement is
14 preferable to no enforcement at all." Id. at 497–98. "Consequently, when a court of equity
15 exercises its discretion, it may not consider the advantages and disadvantages of
16 nonenforcement of the statute, but only the advantages and disadvantages of 'employing the
17 extraordinary remedy of injunction' over the other available methods of enforcement." Id. at
18 498 (quoting Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982)). "To the extent the
19 district court considers the public interest and the conveniences of the parties, the court is
20 limited to evaluating how such interest and conveniences are affected by the selection of an
21 injunction over other enforcement mechanisms." Id.

22 Following the Supreme Court's ruling, the OCBC defendants moved to dissolve their
23 preliminary injunctions in this Court and the Government moved for summary judgment and
24 for a permanent injunction. See Mem. and Order May 3, 2002 (dkt. 229). This Court
25 granted the Government's motion for summary judgment and, after the defendants declined
26 to reassure this Court that they would not resume their distribution activity, entered a
27 permanent injunction on June 10, 2002. See United States v. Cannabis Cultivator's Club,
28 No. 98-85 et al., 2002 WL 1310460 (June 10, 2002); Mem. and Order June 20, 2002 (dkt.

1 247); Permanent Injunction (dkt. 248).

2 For the next near-decade, defendant MAMM continued to operate a medical
 3 marijuana dispensary out of its same location. The United States Attorney's Office waited
 4 until September 2011 to send cease and desist letters to MAMM and other medical marijuana
 5 dispensaries in the area. The Mayor of the Town of Fairfax responded with a series of letters
 6 to United States Attorney Melinda Haag stating that MAMM was operating as a model
 7 business in careful compliance with its local Use Permit in a "cooperative and collaborative
 8 relationship" with the community. See Bragman Letter October 2011, Anton Aff. in Support
 9 of Defendant's Mot. to Dissolve Perm. Injunction (dkt. 262-3) at Ex. 2. The Mayor
 10 explained that Marin has "the highest documented rate of breast cancer in the United States,"
 11 and Marin's breast cancer patients have especially benefitted from MAMM. Id. He asserted
 12 that "elimination of this vital community access facility would effectively prevent [patients]
 13 from obtaining medical marijuana," with the "paradoxical impact of increasing public safety
 14 concerns for local law enforcement" if the market were pushed underground. Id. According
 15 to the letter, the "record clearly establishes that [MAMM] has been in clear and unambiguous
 16 compliance with existing state and local laws providing for the medical use of marijuana."
 17 Id. To avoid "needlessly increas[ing] the suffering of hundreds of patients who have come to
 18 rely on [MAMM] as a safe access point for medical marijuana," he urged Haag "to exercise
 19 [her] discretion to reconsider [her] office's evaluation of the legal viability of [MAMM] in
 20 light of its documented record of lawful operation and benefit to the community." Id.²

21 The U.S. Attorney's Office nevertheless pressed its forfeiture action. In response,
 22 MAMM and three other dispensaries filed suit seeking to enjoin the Government from taking
 23 any enforcement action against them. See Am. Compl. (dkt. 21), Marin Alliance For Med.
 24 Marijuana v. Holder, 866 F. Supp. 2d 1142 (N.D. Cal. 2011) (No. 11-5349 SBA). The court
 25

26 ² A follow-up letter from the Mayor in December 2014 stated his belief that "changed
 27 circumstances justify reconsideration of the District Court's injunction," particularly the struggles of
 28 Marin patients who were left without a legal medical cannabis dispensary, the loss of tax revenues to
 the town, the uptick of drug-related arrests, and the change in the social and legal perception of medical
 marijuana. See Bragman Letter Dec. 2014, Anton Aff. in Support of Defendant's Mot. to Dissolve
 Perm. Injunction (dkt. 262-3) at Ex. 3.

1 denied the Plaintiffs' motion for a temporary restraining order, denied their motion for a
 2 preliminary injunction, and granted the Government's motion to dismiss. See Marin
 3 Alliance, 866 F. Supp. 2d 1142 (N.D. Cal. 2011); Marin Alliance, No. 11-5349, 2012 WL
 4 2862608 (N.D. Cal. July 11, 2012).

5 Seven days after the initial complaint in that litigation was filed, the Government
 6 initiated a forfeiture action against the property on which MAMM operated. See Compl.,
 7 United States v. Real Property Located at 6 School Street, Fairfax, California, No. 11-cv-
 8 5596 (filed Nov. 18, 2011). The forfeiture complaint cited this Court's permanent injunction
 9 and MAMM's violation of the CSA given that it was operating a medical marijuana
 10 dispensary. See id. The litigation was resolved in a settlement with the property owner, who
 11 agreed no longer to rent the property to MAMM in exchange for the Government's
 12 agreement not to seize the property. See Stipulation and Order ¶ 4 (dkt. 18), No. 11-5596.

13 Then the legal and factual circumstances changed. Section 538 of the 2015
 14 Appropriations Act—which governed Treasury Funds for the fiscal year ending September
 15 30, 2015, and which has now been extended until December 11, 2015, by the 2016
 16 Appropriations Act, Pub. L. 114-53, § 103, 129 Stat. 502 (2015)—states as follows:

17 None of the funds made available in this Act to the Department of Justice may be
 18 used, with respect to the States of . . . California [and 32 other states], to prevent such
 19 States from implementing their own State laws that authorize the use, distribution,
 20 possession, or cultivation of medical marijuana.

21 2015 Appropriations Act § 538. MAMM argues that the injunction is now unenforceable
 22 under Section 538 and should therefore be dissolved.

23 **II. LEGAL STANDARD**

24 Federal Rule of Civil Procedure 60 provides for relief from a judgment or order under
 25 the following circumstances, as relevant here:

26 (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and
 27 just terms, the court may relieve a party or its legal representative from a final
 28 judgment, order, or proceeding for the following reasons:

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(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Relief under Rule 60(b) is counterbalanced against “the strong public interest in the timeliness and finality of judgments.” See Phelps v. Alameda, 569 F.3d 1120, 1135 (9th Cir. 2009). Typically, “[a] party seeking modification or dissolution of an injunction bears the burden of establishing that a significant change in facts or law warrants revision or dissolution of the injunction.” Alto v. Black, 738 F.3d 1111, 1120 (9th Cir. 2013) (quoting Sharp v. Weston, 233 F.3d 1166, 1170 (9th Cir.2000)). “That requirement presumes that the moving party could have appealed the grant of the injunction but chose not to do so, and thus that a subsequent challenge to the injunctive relief must rest on grounds that could not have been raised before.” Id. (citing Transgo, Inc. v. Ajac Transmission Parts Corp., 911 F.2d 363, 365 (9th Cir.1990)). In order to meet their burden under Rule 60(b), MAMM would have to establish that Section 538 represents a significant change in the law that “renders continued enforcement [of the injunction] detrimental to the public interest.” Horne v. Flores, 557 U.S. 433, 447 (2009) (as cited and characterized by the Government’s supplemental brief (dkt. 272) at 12).³

³ At the initial stage, “a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 156–57 (2010) (quoting eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006)). “An injunction should issue only if the traditional four-factor test is satisfied.” Id. at 157 (citing Winter v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 380–82 (2008)). “It is not enough for a court considering a request for injunctive relief to ask whether there is a good reason why an injunction should not issue; rather, a court must determine that an injunction should issue under the traditional four-factor test set out above.” Id. at 158.

Even if a Plaintiff survives this inquiry, “[i]njunctive relief must be tailored to remedy the specific harm alleged, and an overbroad preliminary injunction is an abuse of discretion.” Natural Resources Defense Council, Inc. v. Winter, 508 F.3d 885, 886 (9th Cir. 2007) (later litigation reversed on other grounds by Winter, 555 U.S. at 12).

1 **III. DISCUSSION**

2 The plain reading of the text of Section 538 forbids the Department of Justice from
 3 enforcing this injunction against MAMM to the extent that MAMM operates in compliance
 4 with California law. Although the parties argued at length whether equitable
 5 concerns—namely the harmful effects engendered by MAMM’s closure and the
 6 demonstrable lack of harm that resulted from the 14 years in which it operated—support the
 7 dissolution or modification of the injunction, these arguments can be dismissed out of hand.
 8 MAMM’s approach stems from Rule 60(b)(5)’s provision that the court may grant relief
 9 from a final judgment when “applying it prospectively is no longer equitable.” See Fed. R.
 10 Civ. P. 60(b)(5). But this Court continues to be bound by OCBC’s prohibition on conducting
 11 public policy balancing in determining whether to enjoin behavior that violates the CSA. See
 12 OCBC, 532 U.S. at 496–98. “To the extent the district court considers the public interest and
 13 the conveniences of the parties, the court is limited to evaluating how such interest and
 14 conveniences are affected by the selection of an injunction over other enforcement
 15 mechanisms.” Id. at 498.

16 In other words, this Court is not in a position to “override Congress’ policy choice,
 17 articulated in a statute, as to what behavior should be prohibited.” See id. at 497. On the
 18 contrary: This Court’s only task is to interpret and apply Congress’s policy choices, as
 19 articulated in its legislation. And in this instance, Congress dictated in Section 538 that it
 20 intended to prohibit the Department of Justice from expending any funds in connection with
 21 the enforcement of any law that interferes with California’s ability to “implement [its] own
 22 State law[] that authorize[s] the use, distribution, possession, or cultivation of medical
 23 marijuana.” 2015 Appropriations Act § 538. The CSA remains in place, and this Court
 24 intends to enforce it to the full extent that Congress has allowed in Section 538, that is, with
 25 regard to any medical marijuana not in full compliance with “State law[] that authorize[s] the
 26 use, distribution, possession, or cultivation of medical marijuana.” Id.

27 The Government’s contrary reading so tortures the plain meaning of the statute that it
 28 must be quoted to ensure credible articulation. Specifically, the Government contends that

1 Section 538 proscribes

2 “the use of appropriated funds to ‘prevent’ states from ‘implementing their
3 own’ medical marijuana laws. Such prohibited uses could include, for
4 example, federal actions that interfered with a state’s promulgation of
5 regulations implementing its statutory provisions, or with its establishment of a
6 state licensing scheme. However, such uses do not include CSA enforcement
7 actions against individuals or private businesses because such actions do not
8 prevent a State from implementing its own laws. . . . [T]here is no evidence in
9 the record that California has been impeded in any way in implementing its
10 own State laws during the thirteen years the permanent injunction at issue has
11 been in effect.”

12 Gov’t Supp. Brief (dkt. 272) at 6 & n.2. Where to start? An initial matter, perhaps, is the
13 contradiction inherent in the Government’s assertion that enjoining any one medical
14 marijuana dispensary—here, MAMM—does not impede California’s implementation of its
15 medical marijuana laws. The Government appears to mean that, in the grand scheme of
16 things, shutting down any given dispensary may be presumed to have such a minimal effect
17 on California’s medical marijuana regime that it does not “prevent” California from
18 “implementing” its State law. But if anything, the Government’s reliance on the operation of
19 other medical marijuana dispensaries to justify enjoining this dispensary is an a fortiori
20 reason why the injunction is inappropriate in its present form.

21 Moreover, this drop-in-the-bucket argument is at odds with fundamental notions of
22 the rule of law. It has never been a legal principle than an otherwise impermissible
23 government intrusion can be countenanced because any one defendant is a small piece of the
24 legal landscape. Section 538 either allows the DOJ to shut down medical marijuana
25 dispensaries for violating the CSA, or it does not. It contains no limitation that requires a
26 State to implement its medical marijuana laws in one way or not another—via a centralized
27 state dispensary, for example, or through highly regulated local private dispensaries—before
28 Section 538’s prohibition is triggered. Rather, Section 538 takes as a given that States

1 implement their medical marijuana laws in the ways they see fit. California has chosen its
2 way: allowing private dispensaries to operate under strict state and local regulation.
3 California’s Compassionate Use Act states that its purpose is “[t]o ensure that seriously ill
4 Californians have the right to obtain and use marijuana for medical purposes where that
5 medical use is deemed appropriate and has been recommended by a physician . . .” Cal.
6 Health & Safety Code § 11362.5(A). In the years following the passage of the
7 Compassionate Use Act, the California Legislature enacted extensive legislation
8 implementing and regulating the medical marijuana regime. The legislature established a
9 detailed process through which patients receive permits from county health departments. See
10 Cal. Health & Safety Code Ann. §§ 11362.7–11362.83 (West 2015). California law specifies
11 that medical marijuana dispensaries must be located outside a 600-foot radius of any school
12 and empowers local authorities to adopt additional restrictions. See id. at § 11362.768. It
13 also requires the State Attorney General to “develop and adopt appropriate guidelines to
14 ensure the security and nondiversion of marijuana grown for medical use” by qualified
15 patients. Id. at § 11362.81. These extensive Guidelines explain a detailed regime in which
16 qualified, licensed patients may obtain medical marijuana from private dispensaries operating
17 as nonprofit collectives or cooperatives under extensive licensing requirements for business
18 incorporation, record keeping, taxation, verification, security, and the like. See Guidelines
19 for the Security and Non-Diversion of Marijuana Grown for Medical Use at Part IV (2008),
20 http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf. The
21 Town of Fairfax, operating under its authority in Cal. Health & Safety Code § 11362.768,
22 added its own extensive local permitting requirements, which mandate that a medical
23 marijuana dispensary comply with 72 conditions regulating every conceivable aspect of the
24 time, place, and manner of the dispensary’s operation. See Amended Conditions of Approval
25 for the Marin Alliance Medicinal Marijuana Dispensary Use Permit Number 97-UP-2,
26 Approved on August 15, 2002, MAMM Supplemental Brief (dkt. 271) at Ex. 11.

27 In sum, this intricate legal framework “implements” California’s medical marijuana
28 laws by allowing licensed patients to obtain medical marijuana from highly regulated non-

1 profit cooperative dispensaries. Against this backdrop, Section 538 states that “None of the
2 funds made available in this Act to the Department of Justice may be used, with respect to
3 the States of . . . California [and 32 other states], to prevent such States from implementing
4 their own State laws that authorize the use, distribution, possession, or cultivation of medical
5 marijuana.” 2015 Appropriations Act § 538. To “implement,” of course, means to “carry
6 out, accomplish, to give practical effect to and ensure of actual fulfillment by concrete
7 measures.” Merriam-Webster Dictionary (2015). It defies language and logic for the
8 Government to argue that it does not “prevent” California from “implementing” its medical
9 marijuana laws by shutting down these same heavily-regulated medical marijuana
10 dispensaries; whether it shuts down one, some, or all, the difference is of degree, not of kind.
11 And, contrary to the Government’s representation, the record here does support a finding that
12 Californians’ access to legal medical marijuana has been substantively impeded by the
13 closing of dispensaries, and the closing of MAMM in particular. See Bragman Letter
14 December 2014, Anton Aff. in Support of Defendant’s Mot. to Dissolve Perm. Injunction
15 (dkt. 262-3) at Ex. 3 (“Since the departure of the Marin Alliance, the County of Marin, with a
16 population of over 250,000, has not had a legal medical cannabis dispensary to serve the
17 local patient population. Marin County has exceptionally high rates of breast and prostate
18 cancer. Those patient groups both benefit from proven medical benefits of cannabis but now
19 are unable to have safe access in their local community.”).

20 Given that the statutory language of Section 538 is plain on its face, the Court “must
21 enforce it according to its terms,” see King v. Burwell, 135 S. Ct. 2480, 2489 (2015), and
22 need not consider the legislative history. But it comes as no surprise to the Court that the
23 legislative history of Section 538 points in only one direction: away from the counterintuitive
24 and opportunistic meaning that the DOJ seeks to ascribe to it now. Without exception, it
25 appears that both the supporters and opponents of Section 538 in Congress at least agreed
26 that the words mean what they appear to mean. See, e.g., 60 Cong. Rec. 82, H4914, H4984
27 (daily ed. May 29, 2014) (statement of Cosponsor Rep. Dina Titus) (“[T]his commonsense
28 amendment simply ensures that patients do not have to live in fear when following the laws

1 of their States and the recommendations of their doctors. Physicians in those States will not
2 be prosecuted for prescribing the substance, and local businesses will not be shut down for
3 dispensing the same.”) (emphasis added); 160 Cong. Rec. 82, H4914, H4984 (daily ed. May
4 29, 2014) (statement of Rep. Alcee Hastings) (“Specifically, the bill is a bipartisan
5 appropriations measure that looks to prohibit the DEA from spending funds to arrest state-
6 licensed medical marijuana patients and providers. Many of my colleagues and their
7 constituencies agree that patients who are allowed to purchase and consume medical
8 marijuana in their respective states should not be punished by the federal government.”)
9 (emphasis added); 160 Cong. Rec. 82, H4914, H4984 (daily ed. May 29, 2014) (statement of
10 Lead Sponsor Rep. Sam Farr) (“This is essentially saying, look, if you are following State
11 law, you are a legal resident doing your business under State law, the Feds just can’t come in
12 and bust you.”); 160 Cong. Rec. 70, H4020, H4053–55 (daily ed. May 9, 2014) (statement of
13 Lead Sponsor Dana Rohrabacher) (“The harassment from the [DEA] is something that
14 should not be tolerated in the land of the free. Businesspeople who are licensed and certified
15 to provide doctor recommended medicine within their own States have seen their businesses
16 locked down, their assets seized, their customers driven away, and their financial lives ruined
17 by very, very aggressive and energetic Federal law enforcers enforcing a law . . . Instead of
18 continuing to finance this repressive and expensive approach, we should be willing to allow
19 patients and small businesses to follow their doctors’ advice under the watchful eye of State
20 law enforcement and regulators . . .”) (emphasis added); 160 Cong. Rec. 82, H4914,
21 H4983–84 (daily ed. May 29, 2014) (statement of Rep. John Fleming in opposition) (“What
22 this amendment would do is, it wouldn’t change the law, it would just make it difficult, if not
23 impossible, for the DEA and [DOJ] to enforce the law.”).

24 In fact, the members of Congress who drafted Section 538 had the opportunity to
25 respond to the very same argument that the DOJ advances here. In a letter to Attorney
26 General Eric Holder on April 8, 2015, Congressmen Dana Rohrabacher and Sam Farr
27 responded as follows to “recent statements indicating that the [DOJ] does not believe a
28 spending restriction designed to protect [the medical marijuana laws of 35 states] applies to

1 specific ongoing cases against individuals and businesses engaged in medical marijuana
2 activity”:

3 As the authors of the provision in question, we write to inform you that this
4 interpretation of our amendment is emphatically wrong. Rest assured, the
5 purpose of our amendment was to prevent the Department from wasting its
6 limited law enforcement resources on prosecutions and asset forfeiture actions
7 against medical marijuana patients and providers, including businesses that
8 operate legally under state law. In fact, a close look at the Congressional
9 Record of the floor debate of the amendment clearly illustrates the intent of
10 those who sponsored and supported this measure. Even those who argued
11 against the amendment agreed with the proponents’ interpretation of their
12 amendment.

13 Letter to Attorney General Holder, Anton Aff. in Support of Defendant’s Mot. to Dissolve
14 Perm. Injunction (dkt. 262-3) at Ex. 7. Having no substantive response or evidence, the
15 Government simply asserts that it “need not delve into the legislative history here” because
16 the meaning of the statute is clearly in its favor. The Court disagrees.

17 To the extent the Government cites a few cases addressing Section 538, none are
18 analogous or even particularly favorable to the Government’s position. In each one of the
19 cases that the Government cites, the individual or organization at issue was not operating in
20 compliance with State law—in which case this Court agrees that Section 538 does not apply
21 by its own terms. See, e.g., United States v. Tote, No. 1:14-mj-212, 2015 WL 3732010 (E.D.
22 Cal. June 12, 2015) (rejecting a criminal defendant’s argument that his criminal prosecution
23 for driving under the influence of marijuana on federal land should be dismissed under
24 Section 538 because Section 538 did not repeal federal laws criminalizing the possession of
25 marijuana and “Defendant was using marijuana in a manner that violates California law”);
26 United States v. Firestack-Harvey, No. 13-cr-24, 2015 WL 3533222 (E.D. Wash. June 4,
27 2015) (rejecting the applicability of Section 538 to a criminal prosecution of three individuals
28 because the conduct at issue involved operating a for-profit marijuana business that was not

United States District Court
For the Northern District of California


1 authorized by Washington state law); United States v. Silkeutsabay, No. 13-cr-140, 2015 WL
2 2376170 (E.D. Wash. May 18, 2015) (concluding that Section 538 was “inapplicable to
3 prosecution of Defendants’ case where over 1000 marijuana plants were seized—a number
4 far in excess of that authorized under Washington’s medical marijuana law”). A single Ninth
5 Circuit case held that a prohibition on the deduction of expenses in connection with illegal
6 drug trafficking applied to bar a medical marijuana dispensary from deducting its business
7 expenses to eliminate a tax deficiency. See Olive v. Commissioner of Internal Revenue, 792
8 F.3d 1146, 2015 WL 4113811 (9th Cir. 2015). In that separate context, the Ninth Circuit
9 explained that “Section 538 does not apply” because the government was “enforcing only a
10 tax, which does not prevent people from using, distributing, possessing, or cultivating
11 marijuana in California. Enforcing these laws might make it more costly to run a dispensary,
12 but it does not change whether these activities are authorized in the state.” See id. at *4.

13 **IV. CONCLUSION**

14 For the foregoing reasons, as long as Congress precludes the Department of Justice
15 from expending funds in the manner proscribed by Section 538, the permanent injunction
16 will only be enforced against MAMM insofar as that organization is in violation of California
17 “State laws that authorize the use, distribution, possession, or cultivation of medical
18 marijuana.”⁴ See 2015 Appropriations Act § 538; Fed. R. Civ. P. 60(b).

19 **IT IS SO ORDERED.**

20 Dated: October 19, 2015


21 _____
22 CHARLES R. BREYER
23 UNITED STATES DISTRICT JUDGE

24 _____
25 ⁴ To the Court’s recollection, the Government has yet to allege or even suggest that
26 MAMM was at any time operating in violation of state law. The only evidence in the record on
27 this point is to the contrary: a letter from the Mayor of Fairfax to United States Attorney Melinda
28 Haag states that “Based upon its satisfaction of the scores of conditions in the Use Permit issued
by the Town of Fairfax, the record clearly establishes that the Marin Alliance has been in clear
and unambiguous compliance with existing state and local laws providing for the medical use
of marijuana.” See Bragman Letter October 2011, Anton Aff. in Support of Defendant’s Mot.
to Dissolve Perm. Injunction (dkt. 262-3) at Ex. 2; see also Bragman Letter December 2014, id.
at Ex. 3 (same). Rather, the Government has taken the position that the injunction is justified
solely because MAMM operates in contravention of the CSA. Whether MAMM in fact operates
in compliance with California state law is not before the Court at this time.

ARIZONA COURT OF APPEALS
DIVISION ONE

WHITE MOUNTAIN HEALTH
CENTER, INC., an Arizona non-profit
corporation,

Plaintiff-Appellee,

v.

MARICOPA COUNTY; WILLIAM
MONTGOMERY, ESQ., Maricopa
County Attorney,

Defendants-Appellants,

STATE OF ARIZONA ex rel.
MARK BRNOVICH, in his official
capacity as Attorney General,

Intervenor-Defendant-Appellant.

Court of Appeals
Division One

1 CA-CV 12-0831
1CA-CV13-0697
1CA-CV-14-0372
(Consolidated)

Maricopa County Superior Court
Case No. CV2012-053585

**APPELLEE'S SECOND
SUPPLEMENTAL
CITATION TO LEGAL
AUTHORITY**

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Appellee, White Mountain Health Center, Inc. (White Mountain), through counsel, submits this supplemental citation to legal authority, pursuant to Rule 17, Ariz.R.Civ.App.P.

Attached hereto is the Order Re Motion to Dissolve Permanent Injunction, issued on October 19, 2015, in the case of *United States v. Marin Alliance for Medical Marijuana et al.* (N.D. Cal No. C98-00086). The federal district court's October 19 order denies the *Marin* defendants' motion to dissolve a permanent injunction previously issued against them, but the order also mandates that "[e]nforcement of the injunction must be consistent with the new directive of Congress in Section 538 of the Consolidated and Continuing Appropriations Act of 2015."¹ Order at 1, *Marin* (No. C98-00086).

The *Marin* order supplements legal authority presented and discussed in White Mountain's recent Supplemental Brief, filed October 15, 2015. In that submission, White Mountain argues that Section 538 provides additional evidence that Congress does not intend for the federal Controlled Substances Act (CSA) to preempt the Arizona Medical Marijuana Act (AMMA). The *Marin* order, relatedly, interprets Section 538 as barring the Department of Justice from interfering with the administration of medical marijuana enterprises that operate in

¹ Section 538 prohibits Department of Justice from expending funds to "prevent...[Arizona, California and other states] from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana." Pub. L. 113-235, § 538, 128 Stat. 2130, 2217 (2014). Congress extended the force of Section 538's mandate with Continuing Appropriations Act, Pub. L. 114-53, § 101(a)(2), 129 Stat 502, 508 (2015).

compliance with state medical marijuana laws. The court explained that “[t]he plain reading of the text of Section 538 forbids the Department of Justice from enforcing this injunction against [the Marin Alliance] to the extent that [the Marin Alliance] operates in concert with California law.” Order at 7, *Marin* (No. C98-00086). This conclusion bears on the proceedings before this court insofar as “Section 538 takes as a given that States will implement their medical marijuana laws in the ways they see fit.” *Id.* at 9.

White Mountain respectfully requests that in its review of this case, the Court consider the supplemental legal authority provided in the *Marin* order.

RESPECTFULLY SUBMITTED this 28th day of October, 2015.

/s/ Steven M. White

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Attorneys for Plaintiff-Appellee

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2015, I electronically filed Appellee's Second Supplemental Citation to Legal Authority with the Clerk of the Court. Copies are provided to the parties of record both electronically and by depositing same in the U.S. mail, first-class postage prepaid, addressed /to:

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/s/ Marsha Marcinkowski

ARIZONA COURT OF APPEALS
DIVISION ONE

WHITE MOUNTAIN HEALTH
CENTER, INC., an Arizona non-profit
corporation,

Plaintiff-Appellee,
v.

MARICOPA COUNTY; WILLIAM
MONTGOMERY, ESQ., Maricopa
County Attorney,

Defendants-Appellants,

STATE OF ARIZONA ex rel.
MARK BRNOVICH, in his official
capacity as Attorney General,

Intervenor-Defendant-Appellant.

Court of Appeals
Division One

1 CA-CV 12-0831
1CA-CV13-0697
1CA-CV-14-0372
(Consolidated)

Maricopa County Superior Court
Case No. CV2012-053585

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/s/ Marsha Marcinkowski

From: [Brnovich, Mark](#)
To: [Bailey, Michael](#)
Subject: Re: <no subject>
Date: Tuesday, November 24, 2015 4:43:26 PM

Can u grab crutches

Attorney General Mark Brnovich
Sent from my iPhone

On Nov 24, 2015, at 3:27 PM, Bailey, Michael <Michael.Bailey@azag.gov> wrote:

Re the DC week

Michael G. Bailey
Chief Deputy / Chief of Staff
Office of the Arizona Attorney General
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[Phoenix, AZ 85007](#)
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[602-542-4085](#) Fax

(This email was sent from a mobile device and likely used voice transcription and automatic correction applications. For that reason, please note the possibility of inadvertent content error.)

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Begin forwarded message:

From: "Lopez, John" <John.Lopez@azag.gov>
Date: November 24, 2015 at 3:03:19 PM MST
To: "Bailey, Michael" <Michael.Bailey@azag.gov>
Subject: Fwd: <no subject>

Mike:

As you know, Jason is on the SOS' pleadings with Braden and Richard. If possible, would you let Jason know when Mark can meet with our SOS' legal team in DC.? This would be very beneficial to Mark. I recommend that we meet before the Heritage moot.

Thanks,

John

Sent from my iPhone

Begin forwarded message:

From: Jason Torchinsky <jtorchinsky@hvjt.law>
Date: November 24, 2015 at 12:50:57 PM PST
To: "john.lopez@azag.gov"
<john.lopez@azag.gov>
Subject: <no subject>

John,

Any details yet on when the AG is available to meet with us next week?

- Jason

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[REDACTED] (cell)

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From: Brnovich, Mark
To: Bailey, Michael
Subject: Re: Intellectual property letter
Date: Wednesday, October 14, 2015 9:33:47 AM

Which 42 signed 2014 letter why haven't more signed onto this?

Attorney General Mark Brnovich
Sent from my iPhone

On Oct 14, 2015, at 11:00 AM, Bailey, Michael <Michael.Bailey@azag.gov> wrote:

Here's a copy of the text. PW and JL each have it.

Dear Mr. Marti:

We, the Attorneys General of ## states,¹, write to offer the following comments regarding the U.S. Government's intellectual property enforcement efforts and the development of the Joint Strategic Plan on Intellectual Property Enforcement for the 3-year period of 2016–2018.

Intellectual property rights protect and spur innovation and creativity, and are critical to our economy and our culture. The economic impact of intellectual property is substantial and growing. According to the Global Intellectual Property Center of the U.S. Chamber of Commerce, intellectual property creates, either directly or indirectly, 55.7 million jobs for U.S. workers with 74 percent of our exports directly relating to intellectual property.² This economic engine is fueled by the creativity and innovation of entrepreneurs, artists, and others, and it is critical vital that their individual intellectual property rights be acknowledged and protected.

In our critical role as enforcers of state consumer protection laws, we frequently deal with issues related to intellectual property, particularly the problems of counterfeit products and, increasingly, with bad faith patent assertions. Counterfeit products are often of inferior quality or outright harmful design, which poses a serious and very real threat to the health, safety, and wellbeing of our citizens. In addition, predatory bad faith patent demands can stifle innovation and hurt the economy.

Recognizing the importance of intellectual property, the National Association of Attorneys General (NAAG) convened a special Intellectual Property Committee in 2006. Currently co- chaired by Montana Attorney General Tim Fox and Washington Attorney General Bob Ferguson, the committee focuses on developing and promoting states' best practices to:

- Protect intellectual property and the related business and commerce associated with it;

¹ Washington, Montana

² *Pirates, Thieves, and Trolls*, NAAGazette, August 2014,

<http://www.naag.org/publications/naagazette/volume-8- number-8/pirates-thieves-and-trolss.php>
(last visited October 5, 2015).

- Educate consumers about the dangers and impacts of purchasing and using counterfeit goods; and
- Identify strategies to employ against those who abuse the important protections afforded by intellectual property laws.

As you develop the Joint Strategic Plan for the next three years, we encourage you to consider the following:

1. Maintain funding opportunities for intellectual property theft trainings for state and local law enforcement agencies. The existing Joint Strategic Plan focuses on ensuring efficiency and coordination, in part by improving national law enforcement efforts to protect intellectual property rights. As chief enforcers of the consumer protection laws in our states, we support continuing this approach. In particular, we encourage maintaining grant opportunities available through the Department of Justice that fund training for state and local agencies focused on intellectual property theft.

The National Association of Attorneys General received a Bureau of Justice Assistance grant in 2009, which was extended in through 2016. Using this funding, and in conjunction with the National White Collar Crime Center, NAAG has held 84 training events for state and local law enforcement personnel seminars in 47 states.

2. Expand public outreach and education efforts by collaborating with states and other partners to improve message permeation in local markets. The current plan recognizes the importance of raising awareness and changing public attitudes towards infringing activities. We encourage continued funding for a public awareness campaign intended to reduce demand for infringing products and material. Unless there is acknowledgement of the issue by the public, especially in the health and safety arena, there will continue to be a demand for counterfeit goods. If possible, this effort should be increased and expanded to include state and local partners. Developing a public awareness campaign designed in coordination with state and local agencies can leverage local resources and connections to potentially reach a broader audience, and can be helpful in showcasing local impacts, which may be more meaningful for audiences.

3. Federal law should confirm state enforcement authority to prohibit bad faith patent assertions. The aggressive and deceptive tactics used by some patent assertion entities are a growing concern for states. In the last three years, twenty-seven states have passed legislation to address bad faith patent assertions, commonly referred to as “patent trolling.” Generally these laws prohibit bad faith patent assertions as violative of state consumer protection laws that prevent deceptive trade practices. In fact, the U.S. Patent and Trademark Office recognizes the important role of states in addressing this issue by suggesting the following course of action for those who received a patent demand letter: “If you think the letter is deceptive, predatory, or in bad faith, you may consider filing a complaint with your state attorney general’s office.”³ Some recent legislative proposals at the federal level, however,

³ *I Got a Letter ...*, United States Patent and Trademark Office, <http://www.uspto.gov/patents-maintaining-patent/patent-litigation/i-got-letter> (last visited October 5, 2015).

included language that would explicitly preempt state legislation. We strongly believe that any efforts towards patent reform should not preempt state laws, and should, rather, affirm the authority of the states to stop assertions of patent infringements made in bad faith.

4. Increase transparency of patentees that send demand letters. As articulated in a February

24, 2014 letter to congressional leadership signed by 42 attorneys general, “we support any efforts to increase transparency in the patent enforcement process, as sunlight and transparency may deter the worst abusers of our patent laws.”⁴

Whether through rulemaking by the U.S. Patent and Trademark Office or through legislation, the plan should support efforts to reduce abusive patent litigation by helping the public get access to information in order to defend itself against frivolous litigation. Transparency can be improved by requiring disclosure by all parties with a financial interest in the patent at the time a patent demand letter is sent. Patent trolls are successful in extracting licensing fees in part because it can be difficult for targets to know against whom they are defending themselves.

5. Develop proposals for alternative patent dispute resolution systems that reduce costs associated with litigation. One reason patent trolls are successfully in extracting licensing fees is that patent litigation is usually more costly than settlement. As the current plan identifies, the ~~current~~ system is time consuming and prohibitively expensive. As such, we are generally supportive of structural federal patent litigation reform that would create less- expensive forums for enforcement and, as a result, foster an environment in which abusers of the patent enforcement system cannot thrive.

5.—6. Federal law should confirm state enforcement authority to prohibit bad faith copyright assertions. ~~The~~ While we appreciate that copyright holders have a legitimate right to protect their interests, aggressive, harassing, and deceitful tactics used by some copyright owners and third party agents to procure licensing agreements and settlements are a growing concern for many states. These “copyright trolls” use the threat of federal statutory damages as a way to scare small businesses and individuals into paying licensing ~~fees~~ or settlement fees rather than face costly federal litigation. As such, we support any rule making or amendments which would dissuade the debt-collecting scare tactics of copyright enforcement, create more transparent copyright enforcement, and provide stronger state consumer protections to those subjected to bad faith enforcement.

We appreciate the opportunity to submit ~~this comment~~ these comments in response to the request for public comments on the issue of improving the U.S. Government’s intellectual property enforcement efforts. We look forward to continuing to work in collaboration with the federal government in the effort to protect intellectual property rights and the associated economic and cultural benefits.

Sincerely,

⁴ Letter from 42 State Attorneys General to Senators Patrick Leahy, Chuck Grassley, John D. Rockefeller IV, and John Thune (February 24, 2014)

(<http://www.naag.org/assets/files/pdf/signons/Patent%20Trolling%20Legislation%20Final%20Sign%20On.pdf>)

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From: [Brnovich, Mark](#)
To: [Medina, Rick](#); [Bailey, Michael](#); [Anderson, Ryan](#); [Baer, Aaron](#)
Subject: RE: NAAG Gaming Update Proposal
Date: Monday, December 14, 2015 12:40:57 PM

Let them know we want to do a joint letter. Tweet as necessary. Key is that its up to individual states.

From: Medina, Rick
Sent: Friday, December 11, 2015 2:13 PM
To: Brnovich, Mark; Bailey, Michael; Anderson, Ryan; Baer, Aaron
Subject: FW: NAAG Gaming Update Proposal

Just received this from Mississippi AG's Office...

From: BLAKE BEE [<mailto:BLBEE@ago.state.ms.us>]
Sent: Friday, December 11, 2015 1:12 PM
To: Medina, Rick
Subject: NAAG Gaming Update Proposal

Rick,

I'm sorry we keep playing phone tag. Our office has been approached by representatives of the fantasy sports industry who have asked us to disseminate the attached information as part of a NAAG gaming committee update. Of course we would like Arizona's thoughts before taking any action.

The materials include a brief letter that is an update on actions the attorneys general in New York and Florida have taken related to daily fantasy sports. I have attached the letter and three other documents; which are (1) draft daily fantasy sports regulations proposed by Attorney General Healey of Massachusetts; (2) daily fantasy sports legislation introduced in Florida and (3) daily fantasy sports legislation introduced in Illinois.

Are these documents something Arizona would be interested in disseminating as a gaming update?

Blake

Blake Bee
Executive Counsel
Special Assistant Attorney General
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205-0220
PH: (601)359-3070
FX: (601)359-2009
blbee@ago.state.ms.us

This message is being sent by the Office of the Attorney General for the State of Mississippi and is intended only for the use of the individual to which it is addressed and may contain information that is legally privileged or confidential. If you are not the intended recipient, you are hereby notified that any distribution or copying of this message is strictly prohibited. If you have received this message in error, please notify the original sender or the Office of the Attorney General at (601) 359-3680 immediately by telephone or by return e-mail and delete this message from your computer. Thank you.

From: [Brnovich, Mark](#)
To: [Bailey, Michael](#)
Subject: Re: School Land Trust Litigation
Date: Thursday, December 03, 2015 1:20:31 PM

No. I fly out of BWI.

Attorney General Mark Brnovich
Sent from my iPhone

On Dec 3, 2015, at 3:18 PM, Bailey, Michael <Michael.Bailey@azag.gov> wrote:

No, didn't buy a ticket - hope that doesn't hurt.....
I've carried a suitcase onto train in nyc. It's not especially comfortable, but it worked. If something goes wrong here, a lesson learned I guess.

I think you ought to have Dom pick you up on Sunday. And on Friday you fly out of DCA, right?

Michael G. Bailey
Chief Deputy / Chief of Staff
Office of the Arizona Attorney General
[1275 W. Washington Street](#)
[Phoenix, AZ 85007](#)
[602-542-8080](#) Office
[602-542-4085](#) Fax

(This email was sent from a mobile device and likely used voice transcription and automatic correction applications. For that reason, please note the possibility of inadvertent content error.)

NOTICE: This email (and any attachments) may contain PRIVILEGED OR CONFIDENTIAL information and is intended only for the use of the specific individual(s) to whom it is addressed. If you have received this email in error, please immediately notify Valerie Neumann at [602-542-8017](tel:602-542-8017) and delete the original email. Thank you.

On Dec 3, 2015, at 1:07 PM, Brnovich, Mark <Mark.Brnovich@azag.gov> wrote:

Did u buy a train ticket ahead of time? What's deal with traveling with bag?

Attorney General Mark Brnovich
Sent from my iPhone

On Dec 3, 2015, at 2:54 PM, Bailey, Michael

<Michael.Bailey@azag.gov> wrote:

Yes - train in to union station.
Should be to hotel around 1030.

Michael G. Bailey
Chief Deputy / Chief of Staff
Office of the Arizona Attorney General
1275 W. Washington Street
Phoenix, AZ 85007
602-542-8080 Office
602-542-4085 Fax

(This email was sent from a mobile device and likely used voice transcription and automatic correction applications. For that reason, please note the possibility of inadvertent content error.)

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On Dec 3, 2015, at 12:53 PM, Brnovich, Mark
<Mark.Brnovich@azag.gov> wrote:

Sorry. Then to BWI?

Attorney General Mark Brnovich
Sent from my iPhone

On Dec 3, 2015, at 2:15 PM, Bailey,
Michael <Michael.Bailey@azag.gov>
wrote:

I'm in the air now, but have
a long layover in Charlotte

Michael G. Bailey
Chief Deputy / Chief of Staff

Office of the Arizona Attorney
General
1275 W. Washington Street
Phoenix, AZ 85007
602-542-8080 Office
602-542-4085 Fax

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received this email in error,
please immediately notify
Valerie Neumann at 602-
542-8017 and delete the
original email. Thank you.

On Dec 3, 2015, at 11:41
AM, Brnovich, Mark
<Mark.Brnovich@azag.gov>
wrote:

When do U
leave?

Attorney General
Mark Brnovich
Sent from my
iPhone

On Dec 3, 2015,
at 1:40 PM,
Bailey, Michael
<Michael.Bailey@azag.gov
> wrote:

I
forwarded
to our
Ed
people.

Let
me
know
if he
sends
a poc,
and I
will
forward
that
too.

**Michael
G.**

Bailey
Chief
Deputy
/ Chief
of Staff
Office
of the
Arizona
Attorney
General

1275

W.

Washington

Street

Phoenix,

AZ

85007

602-

542-

8080

Office

602-

542-

4085

Fax

(This
email
was

sent
from a
mobile
device
and
likely
used
voice
transcription
and
automatic
correction
applications.

For
that
reason,
please
note
the
possibility
of
inadvertent
content
error.)

NOTICE:
This
email
(and
any
attachments)
may
contain
PRIVILEGED
OR
CONFIDENTIAL
information
and is
intended
only
for
the
use of
the
specific

individual(s)
to
whom
it is
addressed.
If you
have
received
this
email
in
error,
please
immediately
notify
Valerie
Neumann
at
602-
542-
8017
and
delete
the
original
email.
Thank
you.

On
Dec 3,
2015,
at
11:27
AM,
Brnovich,
Mark
<Mark.Brnovich@azag.gov
>
wrote:

I
sent
him
an
email
asking

who
the
point
of
contact
should
be
for
his
office.
Maybe
somebody
can
reach
out
directly
to
him
as
our
POC?

Attorney
General
Mark
Brnovich
Sent
from
my
iPhone

Begin
forwarded
message:

From:
"Richards,
Craig
W
(LAW)"
<craig.richards@alaska.gov>
>

Date:
December
3,
2015
at
3:13:35
AM

EST

To:

"mark.brnovich@azag.gov"

<mark.brnovich@azag.gov>

Subject:

**School
Land
Trust
Litigation**

General
Bronvich,

I
hope
all
is
going
well.
I
had
my
one
year
anniversary
yesterday
in
office,
which
I
assume
mirrors
your
own
term
of
service.
It
has
certainly
been
an

interesting
and
enjoyable
experience.
I'll
be
attending
the
RAGA
and
NAAG
events
in
DC
early
next
year,
and
look
forward
to
catching
up.

In
the
meantime,
I
was
hoping
you
could
do
me
a
small
favor.
Alaska
has
ongoing
school
trust
litigation,
and
there

has
been
suggestion
that
Arizona's
recent
litigation
should
inform
Alaska's
handling
of
its
case.
Any
chance
you
could
have
an
assistant
attorney
general
forward
me
a
couple
of
documents
that
explain
the
case
and
outcome.
Maybe
the
complaint,
any
relevant
orders/decisions,
and
any
publicly
available

settlement
documents?

Sincerely,

Craig
Richards
Attorney
General
State
of
Alaska
1031
W.
Fourth
Ave
Anchorage,
Alaska
99501
W:
(907)
269-
5602
C:
(907)



From: [Brnovich, Mark](#)
To: [Baer, Aaron](#)
Cc: [Anderson, Ryan](#); [Garcia, Mia](#); [Bailey, Michael](#); [Watkins, Paul](#)
Subject: RE: Talking Points
Date: Thursday, December 10, 2015 11:40:11 AM
Attachments: [image001.png](#)

Permanent or preliminary injunction? Has a TRO been issued? Haven't we issued subpoenas? When is court hearing? I need a bunch more info. Hugh is a lawyer, so he always asks procedural questions. What's next step, etc? so those 6 states joined this amicus or our original filing? who is asking for release of videos? I need more background info

From: Baer, Aaron
Sent: Thursday, December 10, 2015 10:59 AM
To: Brnovich, Mark
Cc: Anderson, Ryan; Garcia, Mia
Subject: Talking Points

- On Tuesday, our office filed an amicus brief in a California District Court encouraging the court to deny a Preliminary Injunction that would block the release of more than 500 hours of undercover videos from the Center for Medical Progress – the group that taped the videos.
- Our amicus also said that if the court does issue a PI, that it is narrowly tailored to allow disclosure of materials in compliance with lawfully issued subpoenas, other requests from law enforcement, and CMP's voluntary disclosure of information to law enforcement.
- 6 other states joined our brief – Alabama, Arkansas, Michigan, Montana, Nebraska, and Oklahoma.
- Currently the videos are blocked from being released due to a Temporary Restraining Order the court issued in August. The Court at that time said we could review the videos resulting from our subpoenas and requests, but only after the National Abortion Federation reviewed them first. This resulted in our office receiving **36 minutes of the 500 remaining hours of video.**
- **The question is, if the National Abortion Federation has nothing to hide, why are they so adamantly trying to stop law enforcement from viewing the videos.**

Aaron Baer
Policy Advisor



Office of Attorney General Mark Brnovich
1275 W. Washington, Phoenix, AZ 85007
Desk: 602-542-6903 | Cell: 602-540-6745
Aaron.Baer@azag.gov
<http://www.azag.gov>

From: Brnovich, Mark
To: Watkins, Paul; Baer, Aaron; Roysden, Beau; du Mee, Matthew; Syms, Maria
Cc: Anderson, Ryan; Garcia, Mia; Bailey, Michael
Subject: RE: Talking Points
Date: Thursday, December 10, 2015 11:59:07 AM
Attachments: image001.png

Thanks. That's much better. And we doubled number of states assisting us?

From: Watkins, Paul
Sent: Thursday, December 10, 2015 11:57 AM
To: Brnovich, Mark; Baer, Aaron; Roysden, Beau; du Mee, Matthew; Syms, Maria
Cc: Anderson, Ryan; Garcia, Mia; Bailey, Michael
Subject: RE: Talking Points

We will work with Aaron to build this out in more detail, include a copy of the existing TRO, and provide more comprehensive information, including the information for a brief filed by a press group (including wolf blitzer) on CMP's behalf, demonstrating the bi-partisan nature of this case.

To answer your questions briefly. A TRO has been issued by the district judge which currently prevents us from accessing a number of responsive videos. We have issued a subpoena to CMP. The court hearing is December 18th. The next step is this hearing. If that fails, there will likely be an appeal to the 9th Circuit and we will be looking for many more states to join us. Those 6 states joined this filing. Only Alabama, Oklahoma and Michigan joined our original filing. We are asking for a release of the videos.

From: Brnovich, Mark
Sent: Thursday, December 10, 2015 11:40 AM
To: Baer, Aaron
Cc: Anderson, Ryan; Garcia, Mia; Bailey, Michael; Watkins, Paul
Subject: RE: Talking Points

Permanent or preliminary injunction? Has a TRO been issued? Haven't we issued subpoenas? When is court hearing? I need a bunch more info. Hugh is a lawyer, so he always asks procedural questions. What's next step, etc? so those 6 states joined this amicus or our original filing? who is asking for release of videos? I need more background info

From: Baer, Aaron
Sent: Thursday, December 10, 2015 10:59 AM
To: Brnovich, Mark
Cc: Anderson, Ryan; Garcia, Mia
Subject: Talking Points

- On Tuesday, our office filed an amicus brief in a California District Court encouraging the court to deny a Preliminary Injunction that would block the release of more than 500 hours of undercover videos from the Center for Medical Progress – the group that taped the videos.
- Our amicus also said that if the court does issue a PI, that it is narrowly tailored to allow

disclosure of materials in compliance with lawfully issued subpoenas, other requests from law enforcement, and CMP's voluntary disclosure of information to law enforcement.

- 6 other states joined our brief – Alabama, Arkansas, Michigan, Montana, Nebraska, and Oklahoma.
- Currently the videos are blocked from being released due to a Temporary Restraining Order the court issued in August. The Court at that time said we could review the videos resulting from our subpoenas and requests, but only after the National Abortion Federation reviewed them first. This resulted in our office receiving **36 minutes of the 500 remaining hours of video.**
- **The question is, if the National Abortion Federation has nothing to hide, why are they so adamantly trying to stop law enforcement from viewing the videos.**

Aaron Baer

Policy Advisor



Office of Attorney General Mark Brnovich
1275 W. Washington, Phoenix, AZ 85007
Desk: 602-542-6903 | Cell: 602-540-6745
Aaron.Baer@azag.gov
<http://www.azag.gov>

From: Brnovich, Mark
To: [REDACTED]@gmail.com
Subject: Sign off
Date: Friday, December 11, 2015 5:22:26 PM

Decision below: Humane Society et al. v. Jewell et al., No. 1:13-cv-186, 76 F. Supp. 3d 69 (D.D.C. Dec. 19, 2014). In a 111-page opinion, the district court set aside the Service's final rule delisting wolves within the Western Great Lakes region. In the final rule that the court set aside, the Service created a distinct population segment (DPS) under its ESA authority, and simultaneously delisted that DPS from the overall population of listed wolves. The district court determined that the DPS provision of the ESA was ambiguous, and that the DPS provision was intended to act as a one-way ratchet to list, but not delist, species. Accordingly, the district court did not defer to the Service's reasonable interpretation of the DPS provision. The district court determined that the Service did not have the authority to create a DPS within the Western Great Lakes region for a species already listed across the lower 48 states and delist that species in the Western Great Lakes DPS area. The practical effect of the district court's interpretation is that a species listed under the ESA across a broad range cannot be delisted anywhere unless it is delisted everywhere.

The proposed amicus brief supports: arguments made by the Service and the States of Wisconsin and Michigan and their respective Departments of Natural Resources. A complete list of parties may be found at page ii of the attached draft amicus brief under "Parties and Amici."

Purpose of amicus brief: To date, four briefs have been filed opposing the district court's decision. These briefs extensively argue that the Service has the authority under the plain language of the ESA to recognize a DPS and delist that DPS. The briefs also argue that the Service's interpretation of the ESA is reasonable and that the district court erred when it refused to give Chevron deference to that interpretation.

Attorney General Mark Brnovich
Sent from my iPhone

From: [Brnovich, Mark](#)
To: [Anderson, Ryan](#); [Bailey, Michael](#)
Subject: story
Date: Monday, November 09, 2015 9:39:41 AM

<http://money.cnn.com/2015/11/05/news/exxonmobil-climate-change-investigation/index.html>

Mark Brnovich
Arizona Attorney General

From: Mark Brnovich
To: Ryan Anderson; Bailey, Michael; Aaron Baer
Subject: Fwd: Senior Staff Retreat - Please RSVP
Date: Friday, December 11, 2015 1:03:37 PM

Sent from my iPhone

Begin forwarded message:

From: Samantha Dravis <[REDACTED]@ruleoflawdefensefund.org>
Date: December 11, 2015 at 12:46:45 PM MST
To: Samantha Dravis <[REDACTED]@republicanags.com>
Subject: Senior Staff Retreat - Please RSVP

To: Attorneys General, AG Senior Staff, Schedulers

This email is to provide additional details about the **Senior Staff Retreat** I have mentioned in recent days. RLDF is planning to host a policy retreat for the senior staff members on **April 27 – 28, 2016**, at the **Grand America Hotel in Salt Lake City, Utah**. <http://www.grandamerica.com>

The event would begin with lunch on April 27 and conclude with lunch on April 28. I will send along a detailed programming agenda in early January, and I will reach out to your offices to begin discussing which issues are salient and timely that you'd like to see discussed on the panels. **RLDF will be happy to take care of travel and hotel expenses for a maximum of two staff persons from each office for this event.**

Understanding that schedules for spring 2016 may be fluid at this point, if you could **RSVP as soon as possible** and indicate your preliminary interest and who from your office will likely attend, that would be appreciated as we work with the hotel to secure the room block.

Happy Holidays/Merry Christmas to everyone!

Regards,

Samantha Dravis
703-[REDACTED]

From: [Mark Brnovich](#)
To: [Brnovich, Mark](#)
Date: Wednesday, November 18, 2015 11:38:39 AM
Attachments: [Help Sheet - Spanish Phrases - Mexico Trip.pdf](#)
[ATT00001.txt](#)

HELP SHEET – SPANISH PHRASES MEXICO TRIP

- Thank you all for coming this morning, afternoon, evening
 - a. Regular – Gracias por venir aquí esta mañana.
 - b. Phonetic – GRAHSIAS POUR VENEER AHKEY - ESTAH MANEEANA.
 - c. Afternoon – ESTAH TAHRDEH.
 - d. Evening – ESTAH NOHCHEH.

- Thank you so much to the government of Sonora.
 - a. Regular -Muchas gracias al gobierno de Sonora.
 - b. Phonetic - MUCHAS GRAHSIAS AL GOHBYERNOH DEH SONORAH.

- My name is Mark Brnovich.
 - a. Regular –Mi nombre es Mark Brnovich.
 - b. Phonetic – MI NOMBRE ES MARK BRNOVICH.

- My call me “El Bruno”
 - a. Regular – Mi dicen El Bruno
 - b. Phoentic – MEH DEESEHN EL BRUNO.

- I am the AG for the State of Arizona.
 - a. Regular – Soy el fiscal general del estado Arizona.
 - b. Phonetic – SOY EL FEESKAL HENERAL DEHL ESTAHDOH DEH ARISONAH.

- I'd like to continue in Spanish but I only took two years in high school so now I must switch to English.
 - a. Regular - Quisiera continuar en español pero estudié solamente 2 años de español en la secundatia.
 - b. Phonetic – KEESIERA KONTINUAR EN EPANIOL PERO ESTUDIEH SOLO DOS AHNEEOS EN LA SEHKOONDARYA.

- Thank you for coming today.
 - a. Regular -Gracias por venir hoy.
 - b. Phonetic – GRAHSIAS POUR VENEER OY.

From: Brnovich, Mark
To: Balley, Michael; Watkins, Paul
Subject: Another do not call violation
Date: Wednesday, October 28, 2015 3:42:22 PM

520-265-8782.

Attorney General Mark Brnovich
Sent from my iPhone

From: Brnovich, Mark
To: Balley, Michael
Subject: asu book store has this supplement
Date: Friday, November 06, 2015 12:07:34 PM

<http://www.cap-press.com/books/isbn/9781611638158/Election-Law-Fifth-Edition-2015-Supplement#>

Mark Brnovich
Arizona Attorney General

From: Brnovich, Mark
To: Balley, Michael; Johnson, John
Subject: Auditor general report
Date: Thursday, October 01, 2015 8:44:34 PM
Attachments: 15-118_Highlights.pdf
ATT00001.txt

http://www.azauditor.gov/sites/default/files/15-118_Highlights.pdf

REPORT HIGHLIGHTS
PERFORMANCE AUDIT

Our Conclusion

This report addresses the Arizona Department of Child Safety's (Department) child safety and risk assessment practices, including its approach for determining whether to remove a child from his/her home. Similar to other child welfare agencies, the Department uses three common factors to assess child safety. Agencies' risk assessment processes are more varied, and the Department uses multiple factors and relies on caseworker judgment to assess risk. However, the Department's child safety and risk assessment tool does not sufficiently guide caseworkers in making child safety decisions. Insufficient training has also limited caseworkers' ability to conduct child safety and risk assessments. The Department needs to modify or replace its child safety and risk assessment tool, provide adequate training for caseworkers and supervisors, and improve safety planning.

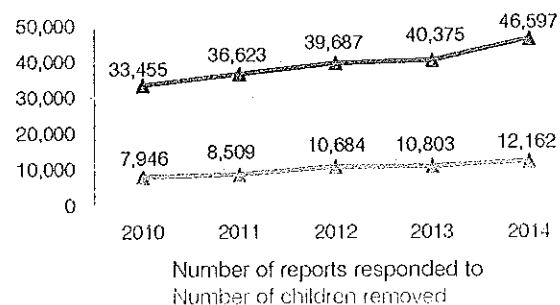


2015

Department, like other child welfare agencies, considers three common factors to assess child safety, but agencies' risk assessment processes are more varied

Department uses common factors to assess child safety—Assessing child safety and risk is a primary department responsibility. As such, and similar to other child welfare agencies, the Department assesses child safety based on threats of danger to the child, child vulnerabilities, and the ability of the caregiver to protect the child. If a child is determined to be unsafe through the assessment of these factors, a safety plan must be implemented. The safety plan describes actions the Department will take to mitigate current safety threats, which may include removing the child from the home. The safety planning process involves Team Decision Making (TDM), which is a meeting of caseworkers, family members, and other stakeholders to address the safety and placement of the child. Appropriately assessing child safety and risk is critical because the removal of a child can have a significant impact on the child and family. In Arizona, child removals have been increasing.

Annual number of Arizona child abuse and neglect reports responded to compared to number of children removed from the home Federal fiscal years 2010 through 2014



Department uses multiple risk factors and caseworker judgment to assess risk to children—In addition to evaluating child safety, child welfare agencies gather and assess information about families to determine whether children are at risk for future maltreatment so that action may be taken to prevent it, such as providing services to improve family functioning. Child welfare agencies' risk assessment models encompass similar overarching components, such as using forms or tools to capture and record information. However, despite sharing similar components, child welfare agencies vary in how they assess risk, including variation in the specific risk factors used. In addition, child welfare agencies generally use two distinct risk assessment approaches, an actuarial-based or a consensus-based risk approach. The Department uses a consensus-based risk approach, whereby department staff rely on their professional judgment, experience, guidance documents, and training to determine what risk factors are present and what actions would best address a particular situation.

Department has inadequately implemented critical components of its child safety and risk assessment process

Deficiencies in the child safety and risk assessment process impact effectiveness—The Department's child safety and risk assessment (CSRA) tool lacks the

structure to guide caseworkers in documenting and assessing child safety and risk. The CSRA tool does not effectively tell caseworkers what specific information should be considered or documented, which could lead to poor and inconsistent decision making. We found that department staff did not consistently document information in the CSRAs and did not always meet the Department's documentation requirements. Other reviews have identified similar concerns regarding how the structure of the Department's CSRA tool can affect documentation and decision making around child safety and risk.

Further, although critical to determining whether to remove a child, the CSRA tool does not require caseworkers to explicitly list and explain the safety factors. Consequently, the Department cannot identify how frequently a specific factor or set of conditions affects the decision to remove a child and does not have this data available to make improvements to its child safety and risk assessment process.

The Department's safety planning practices may also be inadequate. The Department uses a TDM meeting to consider the safety plan for a child, which may include removal from the home. Participants can all discuss their safety concerns for the child. Although caseworkers and supervisors should come to these meetings with open minds, some indicated that they come with their decision already made regarding the child-removal decision and may not adequately engage with families during the meeting. This approach is counterproductive and may result in unnecessary child removals. Although a TDM facilitator manages the meeting, the ultimate decision of whether to remove a child rests with the caseworker and supervisor. In addition, services that could mitigate child removal, such as parenting education and crisis intervention, have long waiting lists in some parts of the State.

Mentoring and coaching are also an important part of caseworker and supervisor preparation to properly conduct safety and risk assessments. Between fiscal years 2013 and 2015, the Department hired about 1,550 new caseworkers. Part of new caseworker training includes accompanying a mentor to do investigations and attend TDMs. However, because of the lack of access to mentors, some of these caseworkers may not receive critical mentoring opportunities. In addition, the Department does not provide formal mentoring or coaching to new supervisors as part of their training to oversee caseworkers.

Department plans to improve some child safety and risk assessment practices—These plans include revising the CSRA tool to be more structured and better guide caseworkers through the safety and risk assessment process. The Department is also in the early stages of piloting a field guide, which supplements the CSRA and contains checkboxes describing the information needed and narrative responses to improve answers' details. Additionally, the Department plans to reduce the time families will have to wait for services.

Department could learn from other agencies' child safety and risk assessment practices—The Breakthrough Series Collaborative is a program that involved 21 public and tribal welfare agencies aimed at improving the way they assessed child safety and risk. For example, the Carver County, Minnesota, child welfare agency has focused on further engaging children and families in safety and risk assessments and safety planning by adopting age-appropriate interviewing tools; using family safety networks comprising relatives, friends, and neighbors; and engaging families to identify safety concerns and family strengths, which lead to more accurate safety assessments.

Recommendations

The Department should:

- Review other agencies' efforts to improve safety and risk assessments and determine whether these actions would improve its practices;
- Continue efforts to modify or replace its CSRA tool to better guide caseworkers in assessing child safety and risk;
- Reduce waitlists for in-home family services to improve safety planning; and
- Ensure caseworkers and supervisors have adequate training and mentoring.

From: [Brnovich, Mark](#)
To: [Medina, Rick](#); [Baer, Aaron](#); [Anderson, Ryan](#)
Subject: Call
Date: Wednesday, October 28, 2015 3:37:48 PM

When mike is done with education briefing why don't u call me.

Attorney General Mark Brnovich
Sent from my iPhone

From: Brnovich, Mark
To: Anderson, Ryan; Medina, Rick; Baer, Aaron; Garcia, Mia
Subject: DFS
Date: Wednesday, November 11, 2015 3:12:43 PM

All these shows on ESPN are talking about NY AG ruling. Interesting on so many levels. Discussing "is it gambling, should NFL divest themselves, will this lead to legalized sports betting, etc". I feel like they need a real expert---someone like me--to explain this.

Attorney General Mark Brnovich
Sent from my iPhone

From: [Brnovich, Mark](#)
To: [Anderson, Ryan](#); [Baer, Aaron](#)
Subject: Did you see story
Date: Wednesday, November 11, 2015 4:55:15 PM

On DOC ties to botched OK executions? I'm almost ready to issue something where we say our office won't sign any more death warrants to we get this straightened out. It's the ultimate punishment. The state can't half ass it. And this all on DOC.

Attorney General Mark Brnovich
Sent from my iPhone

From: Brnovich, Mark
To: Bailey, Michael; Kredit, Beth
Subject: DOJ amicus
Date: Monday, November 23, 2015 7:25:19 AM

Can I get the DOJ amicus and the original IRC brief in a binder. I don't need attachments.

Attorney General Mark Brnovich
Sent from my iPhone

From: Brnovich, Mark
To: Bailey, Michael; Anderson, Ryan; Garcia, Mia
Subject: Doody case
Date: Tuesday, November 10, 2015 5:08:21 PM

Do our office handle the criminal appeal on the Jonathan doody case? Saw the conviction was upheld. Should we send a quick note congratulating our team on that difficult case?

Attorney General Mark Brnovich
Sent from my iPhone

From: Brnovich, Mark
To: Bailey, Michael
Subject: Draft kings
Date: Friday, October 02, 2015 12:20:49 PM

When Watkins gets back, can you maybe chat with him about a recent draft kings ad I saw. It was one of those, you can get 200 in free credit. The promo code was "beer". But the minimum age to play is 18. Seems like they need to pick better promo codes. Are they promoting both gambling and drinking?

Attorney General Mark Brnovich
Sent from my iPhone

From: [Brnovich, Mark](#)
To: [Bailey, Michael](#); [Lopez, John](#); [Draye, Dominic](#)
Subject: El Tarasco - error404
Date: Tuesday, November 24, 2015 1:49:34 PM

<http://eltarasco.menu/ourstory.php>

Attorney General Mark Brnovich
Sent from my iPhone

From: Brnovich, Mark
To: Anderson, Ryan; Pierce, Amilyn
Subject: Facebook
Date: Wednesday, October 21, 2015 9:47:46 PM

I saw a message from Scott oconnor from late sept. Saying he say a letter from May of this year posted on our website. With tom Horne letterhead. Do you know what he's referring to? Can some one follow up with him?

Attorney General Mark Brnovich
Sent from my iPhone

From: [Brnovich, Mark](#)
To: [\[REDACTED\]@gmail.com](#)
Subject: Fish and wildlife case
Date: Friday, December 11, 2015 5:21:34 PM

The State of Wyoming is preparing an amicus brief in *Humane Society v. Jewell*, a case before the D.C. Circuit Court of Appeals, which involves the Endangered Species Act (ESA) and the U.S. Fish and Wildlife Service's (Service) final rule delisting wolves in the Western Great Lakes region. Attached below is a copy of the district court's decision, and a draft of Wyoming's proposed amicus brief. The brief is still in the review process at the Wyoming Attorney General's office and subject to revision. Please review the materials below and advise if your state wishes to join the amicus brief.

Attorney General Mark Brnovich
Sent from my iPhone

From: [Brnovich, Mark](#)
To: [Welch, Leslie](#); [Bailey, Michael](#)
Subject: FW: (From: GOEO Executive Director) 2016 EO Plan - Large Agencies
Date: Monday, December 21, 2015 9:58:50 AM
Attachments: [Large Agency 2016.zip](#)

From: Dora Espinosa [<mailto:Dora.Espinosa@azdoa.gov>]
Sent: Monday, December 21, 2015 7:02 AM
To: Craig Brown; Nancy M Gomez; Brnovich, Mark; Welch, Leslie; Robert Charlton; June Beckwith; Mike Fowler; Joey Ridenour; Judy Bontrager; jjerich@azcc.gov; Wendy Walther; sleyvas@aztf.gov; Raymond Smith; gmkay@azdes.gov; Wendy Thompson; Wanell Costello; Pam Stocksdale; Ruth Willingham; Dawn Brockman; Charles Ryan; Eric Abt; tjeffries@azdes.gov; Morris Greenidge; dmarkley@azdjg.gov; Danaille Wall; John Halikowski; Kerry Bernard; diane.douglas@azed.gov; Billie Belanger; cabrera.misael@azdeq.gov; Chris Weakland; Larry Voyles; Diana Angula Shaffer; Tom Betlach; Sylvia Vega; Michael Traylor; Lori Moreno; CARA.CHRIST@AZDHS.GOV; Laurie Wicker; Imcgrory@azica.gov; KLEFEVRE@ICA.STATE.AZ.US; atobiin@azinsurance.gov; Scott Greenberg; latkins@land.az.gov; mlobato@azland.gov; tboulie@azlottery.gov; pgarland@azlottery.gov; michael.t.mcguire14.mil@mail.mil; Wendy Smith-Reeve; Ted Ihrman; Karen Brown; fmiinstead@azdps.gov; Francesca Anatra; jfleetham@azroc.gov; Laura Hamisch; Paul Matson; Tracy Darmer; dbriant@azdor.gov; May, James; marvin.lamer@asdb.az.gov; Paul Creasy; dbyers@courts.az.gov; Yvonne Wong; sosadmin@azsos.gov; Liz Atkinson; wwright@azdvs.gov; Yadira Price; TBUSCHATZKE@AZWATER.GOV; Lupe Beimer
Cc: Barry Wong; Dora Espinosa
Subject: (From: GOEO Executive Director) 2016 EO Plan - Large Agencies

MEMO

To: Agency Directors, Executive Directors and Equal Opportunity Administrators
From: Governor's Office of Equal Opportunity – Barry Wong, Executive Director
Date: December 18, 2015
Subject: Annual Agency EO Plan (2016) – Preparation, Guidelines, Requirements, Timeline

INTRO/SUMMARY: The Governor's Office of Equal Opportunity (GOEO) is pleased to, again, work with you to achieve agency annual compliance with gathering and reporting information on your workforce in the form of an Equal Opportunity Plan (EO Plan).

This memo will specify what workforce information is to be compiled, in what categories, the format and timeline for submitting to GOEO. **NEW:** GOEO is asking each agency to provide in its EO Plan only the information, documents and completed forms requested; also, for agency efficiency purposes templates are provided to fill in the necessary information.

WORKFORCE GOAL: Governor Ducey strives to have a state government workforce that is talented, diverse and professional (in how it conducts business and interacts amongst each other), and a work environment that is free from unlawful discrimination, harassment and retaliation.

USE OF AGENCY INFORMATION: Agency workforce information submitted is used as follows – by GOEO in its annual report to the Governor on the state of and demographics of the state government workforce; in state reports to the federal government's Equal Employment Opportunity Commission and Department of Justice.

TIMELINE (for EO Plan Submission): Received by GOEO no later than – February 12, 2016, 5:00pm

METHOD OF SUBMITTING: Electronic (email) AND hard copy (one copy) to

- Email: equalopportunity@azdoa.gov
- U.S. Mail, Interoffice Mail or Courier to:
 - Governor's Office of Equal Opportunity
 - Attn: Barry Wong, Executive Director
 - 100 North 15th Avenue, Suite 261
 - Phoenix, Arizona 85007

EO PLAN PREPARATION AND INFORMATION REQUIRED: The following information and documents requested was addressed at GOEO's EO Plan Summit. If you were unable to attend or have any questions on preparation of the EO Plan please contact our GOEO office at 602-542-3711 and ask for Dora Espinosa (Equal Opportunity Program Manager) or Barry Wong (Executive Director). Please compile and complete the following information and documents (forms, templates and samples documents are attached; a checklist is included for your use:

1. Cover Letter to Governor: Prepare a cover letter on agency letterhead addressed to Governor Doug Ducey. Sample attached.
2. A Non-Discrimination Policy: Please print this document on agency letterhead and insert the name of your agency as indicated throughout the document. Include full contact information for the designated agency Equal Opportunity Administrator. Indicate the location where this policy is accessible to employees (website address and physical locations). This policy must be signed and dated by the Agency Director or designee. (Copy included with EO Plan and copies posted at workplace for employee to read.)
3. Hiring Summary & Workforce Analysis Chart: As in recent years, Agency EO and/or HRIS Administrators will be able to create these reports. Once they have been created, please review for accuracy and signature. You may contact Connie Magallanes, HRIS Business Analyst, at 602.542.4757 to resolve any discrepancies.
4. Agency Barrier Analysis: Using the data produced within the Workforce Analysis Charts, please identify possible barriers the agency has experienced in recruiting and retaining diverse applicants. A template has been included for you to complete your Barrier Analysis.
5. An Agency Strategic Plan for 2016: The purpose of the plan is for agencies to define LEAN strategies and goals to address areas where workforce representation is below parity. Please collaborate with agency staff to develop an optimal strategic plan to attract and retain diverse applicants. Include full contact information for internal staff members responsible for the successful completion of your plan. A semi-annual follow-up is planned to evaluate the Agency results. A template is attached to this e-mail.
5. An EO Complaint Report: Based on the 2015 calendar year, please include information on the type and number of EO complaints processed by the agency. A template is attached.

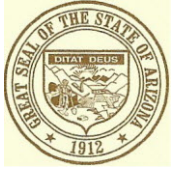
Dora Espinosa

Equal Opportunity Program Manager/ADA Coordinator
Governor's Office of Equal Opportunity/State of Arizona
100 North 15th Avenue, Suite 261, Phoenix, AZ 85007
Phone (602) 364-1384
dora.espinosa@azdoa.gov

How am I doing? Please take a few moments to answer a few questions.

<https://www.surveymonkey.com/r/VOCHRAdmin>

The information contained in this e-mail message and any attachment is privileged and confidential, intended only for the use of specific individuals and/or entities to which it is addressed. If you are not one of the intended recipients, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you received this communication in error, please immediately notify the sender by return e-mail.



DOUGLAS A. DUCEY
GOVERNOR

Arizona Department of Corrections

1601 WEST JEFFERSON
PHOENIX, ARIZONA 85007
(602) 542-5497
www.azcorrections.gov



CHARLES L. RYAN
DIRECTOR

February 11, 2015

The Honorable Douglas A. Ducey
Governor
State of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

Dear Governor Ducey:

Enclosed, is the Arizona Department of Corrections' Equal Opportunity Plan for Calendar Year 2015. The plan reflects the continuing commitment of the Arizona Department of Corrections to ensure that all individuals have equal access to employment opportunities within the Department and that all employees enjoy a working environment free of discrimination, harassment, and retaliation.

The Arizona Department of Corrections will make certain that all employees maintain optimum levels of professionalism, and can expect the highest level of honesty, integrity, and impartiality in all interactions.

The Arizona Department of Corrections will continue to ensure that all employees, applicants, and the public are aware of the Department's official policy on Equal Employment Opportunity and its commitment to non-discrimination.

Sincerely,

[signature]

Charles L. Ryan
Director

Enclosure: Equal Opportunity Plan, Calendar Year 2015

cc: File

(Insert Agency Name)

Large Agency

2016 Agency EO Plan CHECKLIST

Submitted by:

Date:

Cover Letter to the Governor

Non-Discrimination Policy Statement

- Must include name of EO Administrator, phone number, and e-mail address
- Location(s) of where this policy is accessible to Employee:
 - Website Address
 - Physical Location(s)

Hiring Summary

- HRIS XP391 Report

Workforce Analysis Chart

- HRIS XP391 Report

Barrier Analysis

- List number of employees excluded on HRIS XP391 Report
- Identify Protected Group/Job Category and any gaps in parity

Strategic Plan Summary Report

- Develop 2 LEAN strategies minimum with goals
- Identify the person responsible for that goal, e-mail address and phone number
- Must be signed by Agency Director
- Summarize the goals under each strategy and include a measurable outcome for each

Agency EEO Complaint Report

- Identify the type and number of Internal/External Complaints processed

EEO STRATEGIC PLAN

JANUARY 1, 2016 TO DECEMBER 31, 2016

| | |
|---------------------------|--|
| Vision: | |
| Outcomes: | |
| Strategy: | |
| Goal(s): | |
| 1. | |
| 2. | |
| Measurement: | |
| Responsible Party: | |
| Title: | |
| Phone Number: | |
| Email: | |
| Completion Date: | |
| Progress Review: | |

Approval (Agency Director):

Director

Date

Agency Name

2015 Accomplishments

SAMPLE

**Please use your Agency Letter head and include your agency policy
Replace all red information using your Agency information**

NON-DISCRIMINATION POLICY

In recognition of its legal and moral obligations, the (Agency Name) hereby commits itself to a policy of non-discrimination as follows:

1. The (Agency Name) shall not discriminate on the basis of race, color, religion, sex, age, disability, national origin, or any other characteristic protected by law. Equal Opportunity applies to such employment practices as hiring, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, selection for training, job assignments, accessibility, working conditions and special duty details.
2. All (Agency Name) management personnel shall actively support recruitment and career development programs to ensure equitable representation of minorities, females, seniors, LGBT and individuals with disabilities, special disabled veterans and Vietnam Era veterans in all job categories and pay grades.
3. The (Agency Name) shall not tolerate discrimination in the agency as it creates an intimidating, degenerating, hostile and offensive working environment. Each employee has an affirmative duty to maintain a workplace free of harassment, intimidation, discrimination. (AGENCY NAME) prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of such reports.
4. The Department will post the Non-Discrimination Policy throughout departmental facilities.
5. All written bid announcements, request for proposals, employment announcements, requests for applications, program brochures, literature and general solicitations shall include the phrase:

“AN EQUAL EMPLOYMENT OPPORTUNITY AGENCY”

The (Agency Name) is committed to ensuring that all its employees can work in an environment free from harassment, discrimination and retaliation.

As Director of the (Agency Name), I am committed to the principles of Equal Employment Opportunity. To ensure the dissemination and implementation of the 2016 Equal Opportunity Plan throughout all levels of the Department, (Name of Equal Opportunity Administrator) shall serve as the Equal Opportunity Administrator for the (Agency Name, telephone number and email address).

This policy is accessible to employees at (website address and physical location/s within agency).

(Name of Agency Director and Title)

Date

Any employee who has any questions or concerns about this policy should talk with the (Agency Contact) at (telephone number) or the Governor's Office of Equal Opportunity, <http://eo.azgovernor.gov>, 602-542-3711.