

1 Arizona Subpoena Analysis For Gail Golec

2

3 *Analysing Arizona State legislation and case law, Arizona Senate (AS) subpoenas*
4 *both dated 15 Dec 2020, subpoena A – **Full Forensic Audit** and Subpoena B –*
5 ***Scanned Ballot Audit**, Senate records and other relevant documentation regarding*
6 *the assertion that a vote must take place to enforce the subpoenas currently in force*
7 *against the Maricopa County Board of Supervisors (MCBOS).*

8

9 A subpoena (or witness summons) is a writ issued by a government agency, (most
10 often a court), to compel testimony by a witness or the production of evidence under a
11 penalty for failure.¹

12 The two most common forms of subpoena are:

- 13 • *subpoena ad testificandum* which compels testimony before the ordering
14 authority, and
15 • *subpoena duces tecum* a court order requiring a witness to produce documents
16 in the possession or under the control of the witness to a certain place at a
17 certain time.²

18

19 Background

20 Within hours of the highly contentious election of November 3, 2020, witnesses began
21 to come forward in person and in writing (informally, anonymously and via affidavit)
22 to describe their experiences of election irregularities, mistakes, interference,
23 anomalies and alleged fraud. Within a few short weeks, those witnesses, from all over
24 the United States, would be numbered in the tens of thousands. Many swearing
25 affidavits and risking reprisals of various kinds as well as perjury should anything they
26 swore to, be discovered later to be deliberately false.

27 Thanks to a powerful campaign of direct advocacy, witness and expert testimony and
28 local, national and international pressure, the Arizona Senate, under the leadership of
29 President Karen Fann, agreed to hold a full forensic audit into the 2020 election and
30 on 31st March 2021, she announced the team that would run the audit process.

31 The MCBOS has engaged in a campaign of smears, distortions, disingenuous
32 commentary and obstruction from the very beginning. Why then, does it seem that the
33 Arizona Senate, (who fought so hard for subpoenas and defended them in a Court of
34 law), is so unwilling to enforce their subpoenas in the face of blatant obstructionism
35 and conduct which almost certainly rises to the criminal?

36

¹ <https://en.wikipedia.org/wiki/Subpoena>

² <https://legal-dictionary.thefreedictionary.com/subpena+duces+tecum>

37 Timeline

38 **On November 30, 2020**, a joint legislative session of the Arizona State Legislature
39 was held at the Hyatt Regency, in Phoenix, Arizona, to discuss election fraud and
40 irregularities³. In attendance were President Trump’s personal attorneys Rudy
41 Giuliani and Jenna Ellis with a roster of expert and fact witnesses including Colonel
42 Phil Waldron, former Michigan State Senator Patrick Colbeck, Matt Braynard, Dr
43 Shiva Ayyadurai, Bobby Piton, and Liz Harris.

44 During the hearing referenced at [3] below, there was an exchange between Mayor
45 Rudy Giuliani and Senator Kelly Townsend beginning at 2.07:40 which has relevance
46 to later statements made by various members of the Arizona State Senate (and others)
47 and will be discussed in context later in this analysis.

48 The exchange proceeds as follows:

49 Sen Townsend: ... “I’m the Chair of the Elections Committee, if we were to hold an
50 actual Committee hearing, we would have subpoena power to go and look at the
51 machines, to look at these things, you know, and inspect them and get down to it. So,
52 we can do an audit, we just need to conduct a committee hearing to give us that
53 subpoena power to be able to do so.”

54 It is obvious therefore, even at that early stage in the process (Nov 2020), (and quite
55 contrary to many public statements made thereafter), that the Senate *did* have the
56 requisite knowledge and understanding of their own powers and processes to begin
57 the subpoena of MCBOS or Pima County (or both) at the very first opportunity their
58 schedules would allow.

59 In addition, an important and authoritative document named “The Constitutional
60 Authority of State Legislatures To Choose Electors” by John C Eastman⁴, was
61 presented to the panel to inform the debate, and a link to it is presented below.

62 On **December 4, 2020**, the Arizona State Legislature released a statement titled,
63 “Legislative Leaders call for audit of Maricopa County election software and
64 equipment.” The press release went on to state that – “Senate President Karen Fann
65 and Speaker of the House Rusty Bowers today called for an independent audit of the
66 Dominion software and equipment used by Maricopa County in the 2020 General
67 Election. The two leaders, along with incoming Senate Government Chair Michelle
68 Ugenti-Rita and House Majority Leader Warren Petersen, had numerous phone calls
69 with members of the Maricopa County Board of Supervisors.

70 “As a longtime (sic) advocate for improving and modernizing our election system, I am
71 pleased to learn that the Maricopa County Board of Supervisors is supportive of
72 conducting an independent audit of their voting software and equipment,” said Sen.
73 Ugenti-Rita. “It is important we maintain all of the voting public’s confidence in our
74 elections and this is a positive first step in the right direction.””

³ <https://www.youtube.com/watch?v=rri6flxaXww>

⁴ <https://americanmind.org/memo/the-constitutional-authority-of-state-legislatures-to-choose-electors/>

75 On **December 15, 2020**, Representative Mark Fincham wrote⁵ – “Subpoenas
76 issued! Finally, we will gain visibility into what happened in the Maricopa County
77 election, which affects the entire state because of population concentration.”

78 The subpoenas referenced are those noted above as “subpoena A” and “subpoena B”.

79 On **December 18, 2020**, the Maricopa Board of Supervisors had a dramatic change
80 of heart. Instead of being “supportive of conducting an independent audit of their
81 voting software and equipment” they voted 4-1 to refuse to comply with the subpoenas
82 and instead to file a complaint in Superior Court.

83 On **January 20, 2021**, which just happened to be inauguration day, officials from
84 Maricopa County again decided to reverse course and agreed to an audit of the voting
85 equipment used in the Nov 3 election.

86 President Fann wrote in her press release – “I am pleased to announce that after a
87 hard-fought battle to seek information on behalf of Arizona voters regarding the
88 integrity of the 2020 election, we have reached a favorable agreement with the
89 Maricopa County Board of Supervisors. Not only has the Board agreed to turn over all
90 the relevant information we sought in our subpoenas so that we may perform an audit,
91 but they also acknowledge that the Legislature is a sovereign power of the state and
92 that the county is a political subdivision, and as such, the Legislature has the
93 constitutional and statutory authority to issue subpoenas.”

94 However, by **January 27, 2021**, the Maricopa County Board of Supervisors had
95 decided again to refuse an audit, opting instead to do their own.

96 This prompted Warren Peterson, Chair of the Judiciary Committee to say, “A county
97 audit will not prevent the Senate from doing their own audit. My concern with the
98 county audit is that the scope of the audit is an inch deep. With the limited scope, they
99 have asked to be audited, they are guaranteed to find nothing.”⁶

100 And he was right.

101 On **January 31, 2021**, along with their friends in the media, MCBOS suggested that
102 it was unlawful for them to hand over ballots to an auditor.

103 **February 3, 2021**, the MCBOS yet again refused a request for subpoena compliance
104 by the State Senate, this time to set a date for the handover of machines and ballots as
105 per the subpoenas.

106 On the same day, US NEWS⁷ reported that “Republicans who control the Arizona
107 Senate are moving ahead with their threat to pass a contempt resolution finding
108 Maricopa County has failed to comply with a subpoena demanding access to elections
109 equipment and ballots cast in the November election.

⁵ <https://mailchi.mp/ddbd6be3bb22/first-issue-of-the-finchem-frontline-journal-1134289>

⁶ <https://www.thegatewaypundit.com/2021/01/maricopa-county-officials-sell-america-refuse-audit-2020-ballots-gop-senators-vow-fight/>

⁷ <https://www.usnews.com/news/best-states/arizona/articles/2021-02-02/county-still-refusing-demand-by-arizona-senate-on-election>

110 The Senate Rules committee plans to meet Wednesday afternoon to start the
111 procedure for introducing the resolution. Timing on a full Senate vote is unclear.”

112 Then, on **February 20, 2021**, the Arizona Senate passed retrospective legislation
113 (backdated to December 31, 2019) granting themselves the ability to subpoena
114 election records like ballots and tabulating equipment and ignore any laws to the
115 contrary.

116 On **February 26, 2021**, Judge Timothy Thomason ruled that subpoenas issued by
117 Arizona’s State Senate are valid and should be enforced, and he disputed arguments
118 from Maricopa County officials saying the subpoenas are unlawful.⁸

119 The full judgement may be found [here](#) (discussion follows).

120 On **March 31, 2021**, Arizona State Senate president Karen Fann released a press
121 statement⁹ wherein she announced the team which had been chosen to run the
122 “comprehensive, full forensic audit of the 2020 election in Maricopa County, including
123 a hand recount of all ballots.” The companies chosen were, Wake Technology Services,
124 Inc., CyFIR, LLC, Digital Discovery, and Cyber Ninjas, Inc.

125 The very next day, **April 1, 2021**, the MCBOS held an emergency session to discuss
126 what further delaying tactics they could apply in the face of the previous day’s
127 announcement.

128 “At the emergency Executive and possibly Open session the Maricopa County Board
129 of Supervisors may consider: Legal advice regarding Board responsibilities and
130 authority re: Elections, election equipment, audits, Senate subpoenas, and litigation.

131 The emergency is due to the need to get Legal advice regarding newly received
132 information from Senate concerning compliance with election-related subpoenas.”

133 Bear in mind, this is *after* Judge Timothy Thomason ruled¹⁰ that:

134 *“The Court finds that [the] Subpoenas are legal and enforceable. There is no*
135 *question that the Senators have the power to issue legislative subpoenas. The*
136 *Subpoenas comply with the statutory requirements for legislative subpoenas.*
137 *The Senate also has broad constitutional power to oversee elections. The*
138 *Arizona legislature clearly has the power to investigate and examine election*
139 *reform matters. Accordingly, the Senators have the power to subpoena material*
140 *as part of an inquiry into election reform measures. As such, the Subpoenas*
141 *have a proper legislative purpose. The Subpoenas also do not violate*
142 *separation of powers principles. Production of the subpoenaed materials would*
143 *not violate confidentiality laws.”*

⁸ https://www.theepochtimes.com/judge-rules-arizonas-maricopa-county-must-turn-over-2-1-million-november-election-ballots-to-senate_3712862.html?utm_medium=social&utm_source=twitter&utm_campaign=digitalsub

⁹ <https://www.azsenaterepublicans.com/post/arizona-senate-hires-auditor-to-review-2020-election-in-maricopa-county>

¹⁰ <https://assets.documentcloud.org/documents/20701122/minute-entry-in-maricopa-county-v-fann.pdf>

144 On **April 9, 2021**, Nick Moseder reported¹¹ on his YouTube channel that current
145 president of the Senate, Karen Fann, had appointed former President of the Senate,
146 Ken Bennett, to be the Senate’s liaison to the Maricopa County forensic audit.

147 Two weeks of threats, bile, spite and tantrums followed from the MCBOS, and the
148 Democrats and the media, but I repeat myself... but by **April 14, 2021**, the
149 commencement date (April 22, 2021) and the venue (The Coliseum at the state
150 fairgrounds) had been announced.

151 **April 19, 2021**, Scott Walter of the Capital Research Centre (CRC), as reported by
152 the Gateway Pundit¹², revealed that Maricopa County received around \$3million from
153 Facebook billionaire Mark Zuckerberg and his wife, through a Chicago based non-
154 profit, “Centre for Technology and Civic Life” (CTCL). Details thereafter turn very
155 murky as no-one seems to know who received the money, how or on what it was spent
156 or where it went.

157 In an act of sheer panic and desperation, on **April 22, 2021**, the MCBOS filed suit
158 seeking:

- 159 • declaratory judgment declaring that the Audit is unlawful and in violation of
160 statute and the Election Procedures Manual (EPM).
- 161 • a temporary restraining order and a preliminary and permanent injunction
162 preventing defendants and any of their agents from proceeding with the Audit.
- 163 • an order awarding Plaintiffs their taxable costs.
- 164 • an order awarding Plaintiffs their attorneys’ fees under any applicable statute
165 or equitable doctrine; and
- 166 • any other relief as may be appropriate.

167 The suit, which contained many of the same re-hashed arguments and pleadings
168 rejected by Judge Thomason, may be found [here](#).

169 In a twist which will shock absolutely nobody at this point, the Judge eventually
170 assigned to hear the case on **April 26, 2021**, was Daniel (Dan) Martin, a Democrat
171 appointee who worked from 1992 to 1996 for the Law firm Brown & Bain (now Perkins
172 Coie) as an associate.

173 Perkins Coie which represents Hilary Clinton, other high-profile Democrats and the
174 Democrat Party, achieved significant notoriety via their involvement in the Russia-
175 Gate scandal:

176 *“[Mark Elias] The Perkins Coie lawyer was the focus of stories related to the*
177 *Steele dossier and the long-denial of the Clinton campaign that it actually*
178 *funded investigation. Despite such false statements by the campaign before the*
179 *election, the money was found to have been paid out as a legal expense*

¹¹ <https://www.youtube.com/watch?v=T-nyupZd0iA>

¹² <https://www.thegatewaypundit.com/2021/04/huge-maricopa-county-given-3-million-zuckerbucks-election-no-one-knows-specifically-went-used/>

180 through Elias as counsel for the campaign. Elias also reportedly was present
181 when this funding was denied to the media and to Congress.”¹³

182 Perkins Coie brought in CrowdStrike, the outside firm relied on by disgraced former
183 Director James Comey’s, FBI to conclude that Russia hacked the Democratic National
184 Committee’s servers.

185 “Perkins Coie was also the firm that paid Fusion GPS on behalf of Clinton’s
186 campaign and the DNC to produce the infamous Christopher Steele dossier
187 that reportedly served as part of the roadmap for the FBI to investigate
188 ultimately disproven Russia collusion charges. The same dossier, which
189 contained wild and unsubstantiated charges, was cited as purported evidence
190 in four successful FISA court applications to conduct surveillance on Trump
191 campaign adviser Carter Page.”¹⁴

192 Mark Elias has aggressively inserted himself into the Maricopa County audit along
193 with an alleged coterie of far-left, radical Democrat aligned lawyers.

194 Judge Martin was assigned to the case by the Civil Presiding Judge, Judge Pamela
195 Gates. Judge Gates just happens to be married to Maricopa County Supervisor, Bill
196 Gates!

197 Despite concerns, on **April 28, 2021**, Judge Martin of the Arizona Superior Court
198 dismissed the temporary restraining order, arguing that, “the plaintiffs failed to show
199 enough evidence that there would be harm to voters due to the audit procedures
200 currently being used.”¹⁵

201 And so, the audit was given the green light to proceed.

202 On **May 5, 2021**, it was revealed that the MCBOS was refusing to hand over routers
203 to the audit team even though routers were specifically itemized at paragraph 13,
204 subpoena A – Full Forensic Audit

205 “13. Access or control of ALL routers, tabulators or combinations thereof (some
206 routers are inside the tabulator case) in order to garner the system logs. At the
207 same time the public IP of the router should be obtained.”

208 The MCBOS have excused this blatant violation of the terms of the subpoena by
209 claiming that compliance would cause a “significant security risk” to data utilized by
210 numerous law enforcement agencies.

211 Deputy County Attorney, Joseph LaRue, explained in a letter to Senate Audit Liaison
212 Ken Bennett, “[w]e had previously believed that the risk would be eliminated by
213 redacting the law enforcement data on the routers and not producing it. But we were
214 informed that redaction did not eliminate the risk. We also learned that if criminal

¹³ <https://jonathanturley.org/2021/02/05/the-return-of-marc-elias-the-lawyer-implicated-in-the-clinton-dossier-scandal-is-back-in-the-news/comment-page-2/>

¹⁴ <https://www.breitbart.com/politics/2020/05/12/hillarys-law-firm-that-paid-for-dossier-also-recruited-crowdstrike-to-probe-dnc-hack/>

¹⁵ https://www.azfamily.com/news/politics/arizona_politics/maricopa-county-superior-court-judge-wont-pause-vote-audit-allows-for-appeal/article_4dad5c1e-a840-11eb-92dc-3bebe2f36a78.html

215 elements or others gained access to this data, it might compromise county and federal
216 law enforcement efforts and put the lives of law enforcement personnel at risk.”

217 This excuse has caused a great deal of consternation and has been widely ridiculed.

218 On **May 6, 2021**, it was revealed that in another breach of the terms of the subpoena,
219 the MCBOS were refusing to hand over Administrator level passwords to the voting
220 machines. They claimed that they do not have them, and in fact never had them.
221 Thereby admitting they ceded complete control over the Nov 3 election, to Dominion.

222 This had been revealed earlier at the joint legislative hearing on November 30, 2020,
223 during the testimony of Jan Bryant.

224 On **May 7, 2021**, Ken Bennett revealed in an interview that Dominion had refused to
225 hand over the missing Administrator level passwords.

226 Additionally, the MCBOS held yet another emergency session:

227 *“The emergency is due to the Senate indicating that they would take action*
228 *against the County and Supervisors if the County does not provide passwords*
229 *it does not have, and routers that could allow access to sensitive law*
230 *enforcement data, as well as protected health information and personal data of*
231 *county citizens.”*

232 On **May 12, 2021**, it was discovered that the entire database showing the “Results
233 Tally and Reporting” for the 2020 election had been deleted from the Maricopa County
234 voting machines.

235 This included adjudicated ballot files, ballots that were reviewed and manipulated by
236 someone (the system won’t tell you who or when) and likely changed to Biden votes.

237 The adjudication process is currently designed to allow voter fraud through changing
238 votes from one candidate to another.¹⁶

239 Following these discoveries and acts of non-compliance, Senate President Karen Fann
240 wrote a letter to the MCBOS, inviting them (“and any other officers or employees of
241 Maricopa County (to include officials in the Elections Department) who possess
242 knowledge or information concerning the matters set forth”¹⁷) “to attend a meeting at
243 the Arizona State Capitol on **Tuesday, May 18, 2021**, at 1:00 p.m.” in order to
244 discuss matters arising from the issues identified and subpoena non-compliance.

245 A copy of that letter, in full, may be found [here](#).

246 Instead of; acting like mature adults, turning up at the Senate meeting and presenting
247 counter-factual arguments and a defence, the MCBOS threw a tantrum and held yet
248 another “Emergency session”. The minutes released to the press and public stated that,

¹⁶ <https://www.thegatewaypundit.com/2021/05/breaking-exclusive-data-drives-deleted-maricopa-county-included-adjudicated-files-votes-changed/>

¹⁷ <https://100percentfedup.com/breaking-bombshell-maricopa-co-deleted-entire-2020-election-database-showing-results-tally-and-reporting-days-before-equipment-was-delivered-to-the-audit-this-is-spoilati/>

249 *“Andrea Cummings, legal counsel, stated that the emergency was due to the*
250 *need to get legal advice regarding the Senate seeking a hearing and press*
251 *event ... to discuss unfounded allegations against the County.”*

252 They scheduled a further public meeting on **Monday, May 17, 2021**, to “lay out the
253 facts” ... however, rather than “laying out the facts” they issued threats, Chairman Jack
254 Sellers said he and the rest of the MCBOS were going to ignore legislative inquiries and
255 subpoenas. They also formally declined to attend Karen Fann’s meeting the following
256 day.

257 During the Senate meeting on **May 18, 2021**, testimony was given by Ben Cotton,
258 founder of CyFIR, the digital forensics and cyber risk solutions company taking part
259 in the audit. He told¹⁸ Arizona Senate President Karen Fann, and Senate Judiciary
260 Chairman Warren Petersen, that he discovered the missing file directory while
261 reviewing the Master File Table. He further discovered that the database directory
262 from the D drive of the machine “EMSPprimary” [Election Management System] had
263 been deleted. However, he went on to tell president Fann and Warren Peterson that
264 he’d managed to recover all of the deleted files and had access to all of the relevant
265 data.

266 During an interview with Jordan Conradson of the Gateway Pundit on **May 20, 2021**,
267 Arizona Senate Majority Whip Sonny Borrelli, was asked:

268 **Conradson:** So, what’s the next step in enforcing the subpoenas on routers
269 and passwords?

270 **Sonny Borrelli:** I’m not going to signal any kind of strategy but we’re just
271 going to continue on with the audit after the graduation ceremonies that are
272 going on at the coliseum. They’re going to resume going back to the headcount
273 and verifying all of the ballots. So, we’re just going to continue to march and do
274 what we’re doing. We’ve been asking for cooperation from the supervisors from
275 day one. The Supervisor Chairman and Hickman said they’re more than willing
276 to cooperate, they want to cooperate, they want to have an audit and they want
277 to work with us. But as soon as the gavel hit, it was the complete opposite.

278 During an interview with Jordan Conradson of the Gateway Pundit on **May 26, 2021**,
279 the Senate appointed Audit liaison, Ken Bennett, was asked:

280 **Conradson:** at what point does this require criminal action If they’re not
281 following the subpoenas?

282 **Bennett:** It may never get to criminal action. If they don’t want to cooperate,
283 they don’t want to cooperate.

284 On **June 3, 2021**, Gail Golec interviewed Arizona Senate Majority Whip, Sonny
285 Borrelli, at the Arizona audit site. The interview¹⁹ was broadcast on the Arizona

¹⁸ <https://www.westernjournal.com/arizona-election-audit-allegedly-deleted-files-maricopa-county-recovered/>
¹⁹ <https://www.youtube.com/watch?v=BPZTLiXLsyw&lc=UgyGVU17kxrByJa7V1Z4AaABAg.9O9veNl0-s49ODBUUj9QU>

286 Conservative News YouTube channel, as well as on Rumble. During that interview
287 there were several exchanges of particular interest to this piece. They are as follows:

288 1. @1:25

289 **Borrelli:** ... I'm kind of disappointed because of the transparency that we're
290 hearing from the Secretary of State's office is ridiculous. Because what is
291 transparent is the obstruction and resistance that's coming out of the Secretary
292 of State's office and the Maricopa County office. They've gone on the record
293 saying they will not co-operate one iota, they're done co-operating, which they
294 really haven't co-operated much at all.

295 2. @5:40

296 **Borrelli:** ... well we've already hit them with a subpoena and they're defying
297 our subpoena, the ballot... err... the routers and everything and a whole bunch
298 of stuff they haven't turned over and complied with the subpoena...

299 **Golec:** But it's completely enforceable but we have a problem with Paul Boyer.

300 **Borrelli:** Well, it comes down to... we have the authority...

301 **Golec:** We have the authority...

302 **Borrelli:** But it comes down to power and we don't have that power because
303 when we tried to pass a resolution of contempt, we had one Senator decide to
304 vote with the Democrats and... and... basically undermine our own authority,
305 which is *your* authority because you send us here to represent you.

306 The County is a political sub-division of the State. We can delegate the authority
307 of the election, but the overall responsibility falls on to the State Legislature,
308 that is enshrined in the Constitution, there's no if's and but's about it. A Judge
309 has even confirmed that and it's just really appalling that the supervisors are
310 really still continuing to – not give up the routers.

311 They even drafted in the Sheriff to make a statement that it violates... umm...
312 harms some law enforcement investigation and so on and forth, which is
313 garbage because they're supposed to be on a sole and separate IT system. As a
314 matter of fact, the Sherriff's Office is not even nowhere near the elections
315 department ... the routers do not have any other data other than a date and time
316 stamp of internet traffic. It's the same way with your phone bill, you look at a
317 phone bill, it's got a date and time stamp of a phone number you called or calls
318 coming in so on and so forth. The same thing goes for the routers, so there's no
319 law enforcement data on there, there's no Health Department data on there
320 <inaudible> that's a violation of HIPAA (The Health Insurance Portability and
321 Accountability Act, 1996).

322 **Golec:** Right

323 **Borrelli:** Well... why would any of these... these IT systems be hooked up to
324 the Elections Department in the first place? It's ridiculous.

325 **Golec:** Let me ask you a question though, again about the enforcement,
326 because we know that Judge Thomason said that it's completely enforceable...

327 **Borrelli:** Right...

328 **Golec:** ... and I know that you just want to get this audit done...

329 **Borrelli:** The Judge ruled that our subpoenas are lawful...

330 **Golec:** ...are enforceable...

331 **Borrelli:** ...and enforceable but the enforcement part comes down to the
332 Senate, we have to pass a resolution to hold them in contempt...
333 **Golec:** So, that's in the Senate House rules... to pass a resolution to hold
334 somebody in contempt?
335 **Borrelli:** It's in State... it's in... it's in Statute...
336 **Golec:** It's in Statute? Because that was a question that came up yesterday and
337 I said, you know... I don't even know... like why... why do we have to vote on
338 enforcing a subpoena? That doesn't even make sense. Why do you have to vote
339 on it... it's...
340 **Borelli:** Well... we didn't vote on the subpoena... but to enforce the subpoena
341 you have to have a majority vote in the Senate... or the House... whoever issued
342 the subpoena. The subpoena was issued <inaudible> we have the power to
343 enforce, however, it's hard to enforce when you have one member who's not
344 going to... uhmmm... stick with the caucus and vote with the Democrats.
345 Unfortunately, that's the way it is. You know, we're waiting <inaudible>.
346 Hopefully, the County Supervisors will comply, and they'll co-operate but I'm
347 not holding my breath. But we have other options that we're looking at, I cannot
348 disclose at this time.
349 **Golec:** Yeah, I hope it's locking them up.
350 **Borrelli:** Well, we just want to get down to the truth.
351 **Golec:** Well, if it's me, and it's a subpoena, I would have been in jail right now.

352
353 Note:

354 In his judgement in Maricopa County, et al. v. Karen Fann et al, the Honorable
355 Timothy J. Thomason stated on p.5²⁰ that, "[T]he statutes of this State give the
356 Senators the right to issue subpoenas and to enforce those subpoenas."
357 (Revised Statutes or 2019 & 2020 referenced below)

358
359 He further states, "[T]his Court has serious concerns about whether it has
360 jurisdiction to enforce the Subpoenas and the Senators have not asked the Court
361 to issue an order enforcing the Subpoenas."²¹

362
363 AZ Rev Stat § 41-1151 (2019)²²

364 41-1151 Issuance and service of legislative subpoena

365 "A subpoena may be issued by the presiding officer of either house or the
366 chairman of any committee before whom the attendance of a witness is desired.
367 The subpoena is sufficient if it states whether the proceeding is before the
368 senate, house of representatives or a committee, is addressed to the witness,
369 requires the attendance of the witness at a certain time and place, and is signed
370 by either presiding officer or a committee chairman. The subpoena may be
371 served and returned in like manner as civil process."

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373
374

²⁰ <https://assets.documentcloud.org/documents/20701122/minute-entry-in-maricopa-county-v-fann.pdf>

²¹ *ibid* P.6

²² <https://law.justia.com/codes/arizona/2019/title-41/section-41-1151/>

375 AZ Rev Stat § 41-1153 (2019)
376 41-1153. Disobedience of subpoena as legislative contempt

377

378 A. If a witness neglects or refuses to obey a legislative subpoena, or, appearing,
379 neglects or refuses to testify, the senate or the house may, by resolution
380 entered in the journal, commit him for contempt.

381 B. A witness neglecting or refusing to attend in obedience to a subpoena may
382 be arrested by the sergeant-at-arms and brought before the senate or house
383 upon authority of a copy of the resolution signed by the president or speaker,
384 and countersigned by the secretary or chief clerk.

385

386 AZ Rev Stat § 41-1154 (2019)

387 41-1154. Disobedience of legislative subpoena or refusal to give testimony or
388 produce papers; classification.

389 A person who, being subpoenaed to attend as a witness before either house of
390 the legislature or any committee thereof, knowingly fails or refuses without
391 lawful excuse to attend pursuant to such subpoena, or being present knowingly
392 refuses to be sworn or to answer any material or proper question, or to produce,
393 upon reasonable notice, any material and relevant books, papers or documents
394 in his possession or under his control, is guilty of a class 2 misdemeanor.

395

396 Footnote 5, p7²³

397 The Arizona statute has no similar counterpart in federal law. It is true that
398 Congress' constitutional subpoena power is vested in the body as a whole and
399 delegation of that power to a committee must entail an authorizing resolution.
400 See, e.g., *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020); *Comm. on the*
401 *Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 70-71
402 (D.D.C. 2008).

403

404 Arizona legislative subpoenas, however, are not governed by the federal
405 standards and rules for issuing congressional subpoenas. Arizona legislative
406 subpoenas are not issued by the body as a whole and, therefore, require no
407 "resolution." Indeed, the presiding officer of the Senate, the president, does not
408 chair any committee. Yet, the statute gives that official the authority to issue a
409 subpoena. This clearly indicates that no committee resolution is necessary.

410

411 From "The Senate Rules"²⁴

412 Rule 2 – The President

413

414 D. The President shall sign all acts, addresses, joint resolutions, writs, warrants
415 and subpoenas issued by the order of the Senate, and decide all questions of
416 order, subject to an appeal by any member, on which appeal no member shall
417 speak more than once, unless by permission of the Senate.

418

²³ <https://assets.documentcloud.org/documents/20701122/minute-entry-in-maricopa-county-v-fann.pdf>

²⁴ <https://www.azsenate.gov/alispdfs/SenateRules.pdf>

419 Definition of Resolutions Within The Arizona State Legislature²⁵

420

421 *Resolutions* – a declaration of legislative opinion, will, intent, or resolve in
422 matters within the legislature's legal purview. There are three types of
423 resolutions:

424

425 *Simple Resolutions* are considered only by one house and may express an
426 opinion, appoint a committee, commemorate the death of a prominent public
427 figure, or request the return of a bill from the other house in the legislature.
428 Simple resolutions are not signed by the Governor.

429

430 *Concurrent Resolutions* are processed through both houses of the legislature,
431 but are not signed by the governor. They may provide for the submittal of a
432 referendum to voters, initiate legislative action to amend either the U.S. or
433 Arizona Constitution, or express regret for the death of a prominent public
434 figure.

435

436 *Joint Resolutions* are used for temporary measures having the effect of law.
437 They cannot be used to amend the U.S. or Arizona Constitutions. They are
438 passed through both houses and signed by the Governor.

439

440 Conclusions

441

442 *The UK Parliament.*

443 “The current edition of Erskine May (24th Edition London, Butterworths,
444 2011) directly echoes a passage in the 9th edition to the effect that “it is not
445 usual ... for select committees to examine witnesses on oath, except upon
446 inquiries of a judicial or other special nature” (p824).”

447

448 As Parliament is, in effect, the highest court in the land, lying under oath to a
449 committee of Parliament would be perjury and has been historically punished
450 as such, though, it has to be said, not for some time.

451

452 In the United States Congress, 18 U.S.C. § 1001(a)²⁶, states:

453 (a) Except as otherwise provided in this section, whoever, in any matter within
454 the jurisdiction of the executive, legislative, or judicial branch of the
455 Government of the United States, knowingly and willfully (*sic*)—

456 (1) falsifies, conceals, or covers up by any trick, scheme, or device, a
457 material fact;

458 (2) makes any materially false, fictitious, or fraudulent statement or
459 representation; or

460 (3) makes or uses any false writing or document knowing the same to
461 contain any materially false, fictitious, or fraudulent statement or entry
462 shall be fined under this title, imprisoned not more than 5 years or, if the

²⁵ <https://libguides.law.asu.edu/ArizonaLaw/arizonalegisature>

²⁶ <https://www.law.cornell.edu/uscode/text/18/1001>

463 offense involves international or domestic terrorism (as defined in
464 section 2331), imprisoned not more than 8 years, or both....

465

466 Indeed, a significant portion of the charge sheet laid against Roger Stone,
467 concerned five alleged instances of making false statements to Congress.

468 However, it remains to be seen whether Dr Anthony Fauci will receive the same
469 treatment for allegedly lying, under oath, to the Republican Senator, Dr. Rand
470 Paul.

471

472 Congressional subpoena power is defined as: “the authority granted to
473 committees by the rules of their respective houses to issue legal orders requiring
474 individuals to appear and testify, or to produce documents pertinent to the
475 committee’s functions, or both.” Provided in clause 2(m)(1) and (3) of House
476 Rule XI²⁷, House committees and subcommittees specifically have the authority
477 to subpoena documents, information, and in-person sworn testimony at public
478 and closed-door hearings; however, the conditions under which committees
479 issue subpoenas can vary.²⁸

480

481 However, it seems not all Congressional sessions, Committees or applications
482 of the rules are equal. As Congressman Matt Gaetz (Fl) stated on Fox News in
483 May of 2020, “[u]nfortunately, when (Devin) Nunes and (Mark) Meadows and
484 (Jim) Jordan and I wanted subpoena power it was Paul Ryan and Trey Gowdy
485 that wouldn’t give us that subpoena power. Democrats sent out hundreds of
486 subpoenas. When we had control and could have run this (*Russia-Gate*) to
487 ground in 2017, we didn’t send out a single subpoena. Not one. And that’s a
488 failure of our Republican leadership.”²⁹

489

490 So, as we have seen, subpoenas are legally enforceable writs designed to compel
491 the production of either; testimony, or evidentiary materials of one sort or
492 another (or both) from one party to another.

493

494 Legislative subpoenas generally take a similar form across common law
495 jurisdictions i.e., standing (and *ad hoc*) committees are empowered by their
496 rules to issue subpoenas (usually through a majority vote) and to enforce them
497 in the event of a breach. Enforcement may be through internal rules or through
498 an external body e.g., the DoJ bringing a prosecution under specific statute.

499

500 However, Arizona is different. Arizona does not follow (line 404/5 above) the
501 general standard for the issuance, or the enforcement of subpoenas. Instead (as
502 per line 365 above) “the presiding officer of either house or the chairman of any
503 committee before whom the attendance of a witness is desired may issue a
504 subpoena.

505

²⁷ <https://crsreports.congress.gov/product/pdf/R/R44247>

²⁸ <https://center-forward.org/congressional-subpoenas/>

²⁹ <https://www.thegatewaypundit.com/2020/05/epic-matt-gaetz-tosses-trey-gowdy-bus-paul-ryan-blocking-gop-subpoenas-deep-state-operatives-video/>

506 However, in this case, issuance is not the issue at hand. Enforcement is.
507
508 Judge Thomason clearly stated in his judgement (at line 359 above) “[T]his
509 Court has serious concerns about whether it has jurisdiction to enforce the
510 Subpoenas and the Senators have not asked the Court to issue an order
511 enforcing the Subpoenas.”
512
513 It is highly doubtful therefore, that any appeals for enforcement of the
514 subpoenas by the Courts would bear fruit, and a motion by MCBOS for
515 dismissal on the grounds of lack of jurisdiction would likely succeed. This would
516 be highly damaging politically for the Senate Republicans, President Fann in
517 particular.
518
519 It is the Arizona legislature, (in this case, the Senate), which has sole
520 jurisdiction over the enforcement of its own subpoenas and may do so through
521 the Sergeant-at-Arms.
522
523 The question then becomes; why is this not happening?
524
525 In most jurisdictions there are mechanisms by which an issuing body will seek
526 to enforce its subpoenas. In the UK through perjury laws, in the US House and
527 Senate, either through its own internal enforcement rules (contempt of
528 Congress etc) or via another Federal agency bringing action under Federal Law,
529 (in this case 18 U.S.C. § 1001(a)).
530 So, for example the Senate Judiciary Committee will have the power to enforce
531 its own subpoena OR refer an alleged perjurer for criminal prosecution.
532
533 Again, it seems Arizona is different. In this case no Committee issued the
534 subpoena. Indeed, no Committee needs to do so under Arizona Statute. The
535 Presiding Officer of either House or the Chair of a Committee may do so.
536 One would think therefore, that the person/entity which issued the subpoena
537 in this instance, Karen Fann (who chairs no committees), would also have the
538 power to enforce it.
539 This does not look to be the case.
540 At line 378 above – “If a witness neglects or refuses to obey a legislative
541 subpoena, or, appearing, neglects or refuses to testify, the senate or the house
542 may, by resolution entered in the journal, commit him for contempt.”
543 And as we see at (Ln 421 above) simple resolutions are considered only by one
544 house and may express an opinion, appoint a committee, commemorate the
545 death of a prominent public figure, or request the return of a bill from the other
546 house in the legislature. Simple resolutions are not signed by the Governor.
547 There is no mention here or any reference to consideration by any “Committee”,
548 “Presiding Officer” or “President”. Therefore, it must be interpreted as meaning
549 precisely what it says – i.e., a (simple) resolution is considered by one House
550 (in this case the Senate, as the President of the Senate was the issuer) and it is
551 they who may “by resolution entered in the journal, commit... for contempt.”
552 Again, the question must be asked, why isn’t this happening.

553 As Sonny Borrelli said (Ln 343 above) “we have the power to enforce, however,
554 it’s hard to enforce when you have one member who’s not going to... stick with
555 the caucus and vote with the Democrats.”

556

557 This raises several questions:

558 The Arizona Oath of Office³⁰ states the following:

559 “I do solemnly swear (or affirm) that I will support the Constitution of the
560 United States and the Constitution and laws of the State of Arizona; that I will
561 bear true faith and allegiance to the same, and defend them against all enemies,
562 foreign and domestic, and that I will faithfully and impartially discharge the
563 duties of the office of (name of office) according to the best of my ability, so help
564 me God (or so I do affirm).”

565 Anyone who fails to comply with a legislative subpoena is guilty of a Class2
566 misdemeanor. In the case of the MCBOS there may well be other charges
567 capable of being brought. How does this square with the oath of office?

568 Furthermore, if the problem here is in fact Paul Boyer, what, as Chief Whip, is
569 Sonny Borrelli doing about it? Party discipline is, after all, his responsibility, as
570 is making sure Republican members of the Senate vote in accordance with the
571 Republican Senate’s agenda. Has Paul Boyer had the whip removed? Has he
572 been disciplined in any way? If so, how? If not, why not? Has the Republican
573 party of Arizona censured Paul Boyer? If not, why not? Has Kelli Ward gone on
574 the record about this? How is his recall going?

575

576 It’s a pity there is no local Arizonan equivalent of 18 U.S.C. § 1001(a), then AG
577 Brnovich could step in, and a judge would no longer be considering whether he
578 had jurisdiction to enforce a legislative subpoena but instead a legislative
579 provision.

580

581 I also doubt that such a Statute could be added to the Legislative calendar as
582 Gov. Douchev would simply veto it.

583

584 Sorry, I have no better news for you Gail.

585

586 My kindest regards

587

588 Christina Morgan

³⁰ <http://keepandbeararms.com/information/XclBViewItem.asp?ID=1682>