

Aliza Barraza

From: K Madsen <[REDACTED]>
Sent: Sunday, April 2, 2023 2:28 PM
To: District1; District2; District3; District4; District5; COB_mail
Subject: BOS Legal Opinion
Attachments: BOS_LegalOpinionReExclusionofCitizenatBOSMtgs_Dist4Submittal_Redacted.pdf

CAUTION: This message and sender come from outside Pima County. If you did not expect this message, proceed with caution. Verify the sender's identity before performing any action, such as clicking on a link or opening an attachment.

Dear Board:
I am very concerned about the attached legal opinion that goes against the actions chosen by the Board Chair. A legal challenge would be quite costly and risky to the reputation of Pima County governance. I concur with the attached opinion, as the Board's action clearly is a violation of citizens' right to speak in front of the Board and attend the meetings. Since elected Board members have taken oaths to follow AZ law and the U.S. Constitution, the Chair has put the Pima Board as a whole on significantly shaky ground.

Kathy Madsen
Registered Voter, Pima County

[Vertical stamp and handwritten mark]



Stephen W. Christy
Supervisor, District 4

PIMA COUNTY BOARD OF SUPERVISORS


33 N. STONE AVENUE, FLOOR 11
TUCSON, ARIZONA 85701

TELEPHONE 520-724-8094
E-MAIL: district4@pima.gov

MEMORANDUM

DATE: March 16, 2023

TO: Melissa Manriquez
Clerk of the Board

FROM: Steve Christy
District 4 Supervisor 

SUBJECT: Agenda Addendum Item

Please place the following item on the Addendum to the Agenda for the Board of Supervisors meeting of March 21, 2023:

BOARD OF SUPERVISORS

**Discussion/Direction/Action regarding the exclusion of a Pima County citizen from Board of Supervisors meetings and the legal opinion, obtained by the District 4 office, which assesses this action taken by the Board's counsel.
(District 4)**

Thank you.

JOHN F. MUNGER
MARK E. CHADWICK (1966-2022)
THOMAS A. DENKER
ROBERT J. METLI
DAVID RUIZ *
ANDREW H. BARBOUR **
ADRIANE J. HOFMEYR ***
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STEVEN W. BLOCH *
JEFFREY H. JACOBSON

* Admitted in Washington DC only

March 14, 2023

Via Electronic Mail and U.S. Mail

Honorable Stephen W. Christy
District 4 Supervisor
Pima County Board of Supervisors
33 N. Stone Ave., Floor 11
Tucson, AZ 85701

Re: Exclusion of Citizen from Public Meetings

Dear Supervisor Christy:

This office has been asked to render a legal opinion regarding the lawfulness of the action taken by Pima County in excluding a citizen from public meetings of the Pima County Board of Supervisors for a period of three months. It is our opinion that this action was unlawful, and that it would be held as such if challenged in a court of law.

I. FACTUAL BACKGROUND

Our opinion as stated above is based upon our understanding of the relevant facts, which are as follows:

- A. In an undated letter bearing the signature of its chief civil deputy, the Office of the Pima County Attorney cited Pima County's "Board of Supervisor Rules and Regulations" and informed a citizen of Pima County that, "As a result of your repeated actions in 'making personal . . . or slanderous remarks' at multiple board meetings, even escalating such remarks after fair notice and warning was given by the Board Chair, you are hereby barred from audience before the Board for three (3) months, effective immediately and ending June 1, 2023." (Ellipsis in original.)
- B. It is not clear who made the decision to exclude the citizen from future board meetings, nor is it clear how or by whom the length of that exclusion was decided.

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C. The factual basis for the decision to exclude the citizen from future board meetings, as stated in the undated letter referenced above, was as follows:

- “1. On January 24, 2023, you [the citizen] stated, “I see that this Board needs to be taken to task, and Mr. Brown, to look into possibly filing pedophilia charges against [County Supervisor] Matt Heinz.” You were then cautioned by Board Chair Adelita Grijalva that your comments were inappropriate.
- “2. On February 7, 2023, you continued to call for charges to be filed against Mr. Heinz for alleged acts of sexual conduct with a minor, at which point you were given a verbal warning by Board Chair Grijalva that the consequences would be escalated if you continued with such conduct.
- “3. On February 21, 2023, you stated, “Immediately following the oral presentations by members of the audience at the last meeting, I was threatened by Adelita Grijalva that she would have me arrested if I mentioned the word, ‘pedophile,’ once again in relation to the yet unresolved issue pertaining to the joy boy encounter on a recent cruise of one of our unnamed Board Members, which was televised for all to see. I ask once again, what progress has been made to uncover the passenger manifest of the cruise in order to verify the biological age of that unsupervised male who paraded into the Board Member’s stateroom while wearing women’s panties. Where is the leadership of this board? Why isn’t anyone demanding a full investigation into the facts? Well, pedophile! Pedophile! Pedophile!”

(Punctuation and capitalization in original.)

- D. The citizen’s accusations, as quoted in the County Attorney’s letter, reference the events of a recent meeting of the Pima County Board of Supervisors, which meeting was attended by Supervisor Matt Heinz *via* videoconference. During the meeting, the alleged victim appeared behind Supervisor Heinz in provocative clothing and began to disrobe before the video feed terminated.
- E. The citizen in question has claimed to be possessed of specialized knowledge, training, and/or experience that enabled the citizen to determine from watching the recorded video of the above-referenced board meeting that the alleged victim likely was a minor.
- F. It appears from the recorded video that Supervisor Heinz and the alleged victim share or shared an intimate familiarity of a nature that likely would satisfy the elements of a felony if the alleged victim was, in fact, a minor. Conversely, other than the recorded video of the above-referenced board meeting, there is no evidence in the public record suggesting that Supervisor Heinz committed a crime under current law in connection with these events.

- G. There is no proof in the public record that the alleged victim was, in fact, a minor. Likewise, neither the Pima County Board of Supervisors nor the Pima County Attorney has published the results or methodology of any independent investigation into the age of the alleged victim at the time the recorded video was made.
- H. The citizen in question was not noisome or unduly boisterous at any relevant meeting of the Board of Supervisors, did not engage in the physical disruption of any official proceedings, did not issue any physical threats, did not use profanities or obscenities, and did not threaten or intimate an intention to engage in the physical disruption of any future proceedings.
- I. In the recent past, Supervisor Heinz has expressed a strong preference for a policy compelling certain persons to undergo specific medical procedures, and has asserted that those who disagree with such a policy are “murderers.” The County has not condemned or taken any action against Supervisor Heinz as a result of those remarks.¹

Any changes, corrections, or additions to the facts as we understand them (and have set forth above) could affect our opinion as stated herein.

II. DISCUSSION

A. SUMMARY

The action of excluding a citizen from meetings of the Pima County Board of Supervisors under the circumstances presented here is unlawful both under Arizona statute and under the courts’ interpretation of the United States Constitution. Specifically, Arizona’s “open-meeting law” requires that any member of the public wishing to attend a public meeting shall be allowed to do so, while existing constitutional jurisprudence renders the relevant portion of Pima County’s “Board of Supervisor Rules and Regulations” unconstitutional, both on its face and as applied in this case.

B. THE ACTION IN QUESTION VIOLATED THE OPEN-MEETING LAW

Arizona Revised Statutes section 38-431.01(A) states, “All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.” (Emphases added.) Thus, there is no question that by law “[m]embers of the public have a right to be present while their governing public bodies debate matters that will significantly affect the public.” *Tanque Verde Unified Sch. Dist. No. 13 of Pima Cnty. v. Bernini*, 206 Ariz. 200, 204, ¶12 (App. 2003), as corrected (Nov. 6, 2003).

¹ It is the opinion of this office that Supervisor Heinz’s remarks in this regard are protected as a matter of constitutional law. See, section II(C), below.

Here, one or more government actors² has declared that a particular citizen shall be excluded from mere attendance at future public meetings of the Pima County Board of Supervisors. This declaration was made despite the fact that the citizen in question was not noisome or unduly boisterous at any relevant past meeting of the Board of Supervisors, did not engage in the physical disruption of any official proceedings, did not issue any physical threats, did not use profanities or obscenities, and did not threaten or intimate an intention to engage in the physical disruption of any future proceedings. Such government action cannot be squared with the language of Arizona's open-meeting law; there is no good-faith interpretation of the statute that could allow for the exclusion of any person from future public meetings as a consequence of that person's past exercise of the right to engage in non-threatening speech.³

Other aspects of the government action at issue here are problematic as well. For example, there is no indication in the public record of how or why three months was chosen as the appropriate amount of time to exclude the citizen in question from public meetings of the Board of Supervisors. Why not one week? Why not a lifetime ban? There is no discernable relationship between the content of the citizen's speech and the punishment handed down by the government in reaction to the citizen's engaging in that speech. In other words, the government's action in suspending this citizen's rights under the open-meeting law appears to be arbitrary, capricious, and divorced entirely from any sort of due process.

C. THE ACTION IN QUESTION VIOLATED THE CONSTITUTION

Under the First and Fourteenth Amendments to the U.S. Constitution, government "shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I; U.S. Const. amend XIV. Pima County's "Board of Supervisor Rules and Regulations" qualifies as a "law" in this context.

In the situation evaluated here, the content of the speech to which the government objects plainly is a matter of public concern and legitimate public inquiry. If an elected official is a sexual predator of children, then the public has a right to know (just as the public has a right to know if an elected official misuses public funds, cheats on his taxes, or violates campaign-finance laws). It is reasonable and fair to point out that nothing currently in the public record qualifies as proof that Supervisor Heinz engaged in any such activity. It further is reasonable and fair to point out that Supervisor Heinz is entitled to a presumption of innocence under the law. It is *not* reasonable or fair, however, to say that it is inappropriate under the facts of this matter to demand the government perform an investigation (which is what the citizen in question did here), or to

² Again, it is not clear who made the final decision to take the action evaluated herein.

³ In fact, if the only action taken had been to remove the citizen in question from one of the public meetings referenced in the County Attorney's letter, even that limited action would have violated the open-meeting law given the absence of any threats or physical disruption of the proceedings.

say that the speech in question is anything other than the exact type of speech that is protected under the First Amendment.⁴

1. The Relevant Regulation Is Unconstitutional on Its Face

A statute or regulation is unlawful under the Constitution if the regulation is “overbroad,” meaning that “a substantial amount of its applications are unconstitutional, judged in relation to [its] plainly legitimate sweep.” *Acosta v. City of Costa Mesa*, 718 F.3d 800, 811 (9th Cir. 2013) (quoting *United States v. Stevens*, 559 U.S. 460, 472 (2010)). Stated another way, if a regulation is constitutional as applied to a certain individual or set of circumstances, but it nevertheless could be applied to others in an unconstitutional way, then the regulation is overbroad and unlawful. *City Council v. Taxpayers for Vincent*, 466 U.S. 789, 800-01 (1984). A court will not uphold an unconstitutional statute merely because the government promises to use it responsibly. *Stevens, supra*, 559 U.S. at 480.

Here, the County Attorney’s letter identifies section K(7) of the Pima County Board of Supervisors Rules and Regulations as the basis for excluding the citizen in question from future public meetings of the Board of Supervisors. That regulation, as quoted by the County Attorney, states:

Citizens attending a meeting will observe rules of propriety, decorum and good conduct. Any person making personal, impertinent, or slanderous remarks or who becomes boisterous while addressing the Board, may be removed by the Sergeant at Arms at the direction of the Chair. Such person may be barred from further audience before the Board.

(Emphasis added.) In our opinion, this regulation -- which is not limited to proscribing activity that actually disrupts the proceedings -- likely will, if challenged in court, be found to be unlawful on its face.

“An ordinance that governs the decorum of a city council meeting is ‘not facially overbroad [if it] only permit[s] a presiding officer to eject an attendee for actually disturbing or impeding a meeting.’ However, actually disturbing or impeding a meeting means ‘[a]ctual disruption’ of the meeting; a municipality cannot merely define disturbance ‘in any way [it] choose[s],’ e.g., it may not deem any violation of its rules of decorum to be a disturbance.” *Acosta, supra*, 718 F.3d at 811 (quoting *Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir.2010) (en banc)).

On the basis of the above principles, the Ninth Circuit Court of Appeals held that a city ordinance that was remarkably similar to Pima County’s Regulation K(7) was unconstitutional on its face. That unlawful ordinance stated:

⁴ This office does not endorse or condemn the viewpoint expressed by the citizen in question, and we express no opinion on the necessity of an investigation as demanded by the citizen; we merely recognize that the citizen in question has engaged in constitutionally protected speech by expressing the belief that such an investigation should be conducted.

(a) The presiding officer at a meeting may in his or her discretion bar from further audience before the council, or have removed from the council chambers, any person who commits disorderly, insolent, or disruptive behavior, including but not limited to, the actions set forth in (b) below.

(b) It shall be unlawful for any person while addressing the council at a council meeting to violate any of the following rules after being called to order and warned to desist from such conduct:

(1) No person shall make any personal, impertinent, profane, insolent, or slanderous remarks.

(2) No person shall yell at the council in a loud, disturbing voice.

(3) No person shall speak without being recognized by the presiding officer.

(4) No person shall continue to speak after being told by the presiding officer that his allotted time for addressing the council has expired.

(5) Every person shall comply with and obey the lawful orders or directives of the presiding officer.

(6) No person shall, by disorderly, insolent, or disturbing action, speech, or otherwise, substantially delay, interrupt, or disturb the proceedings of the council.

See, Acosta, supra, 718 F.3d at 811 (emphases supplied by court). In holding this regulation to be unconstitutional, the *Acosta* court noted that a comment amounting to nothing more than bold criticism of city council members would fall under the prohibited category, while disruptive complimentary comments would not, and the court did not approve of the prohibition of subjectively insolent or offensive language that did not rise to the level of causing an actual disturbance. *Id.*, 718 F.3d at 815.

The court in *Acosta* also found that the regulation in question was not susceptible to a “narrowing construction” that would render the regulation constitutional because there was no textual link between the prohibited conduct and the requirement of an actual disruption. *Id.*, 718 F.3d at 813.

The analysis in *Acosta* applies perfectly to Pima County’s Regulation K(7). Regulation K(7) contains no requirement that the prohibited conduct cause an actual disruption in the proceedings, which is why it is our opinion that this regulation likely will, if challenged in court, be found to be unlawful on its face.

2. The Relevant Regulation Is Unconstitutional as Applied by Pima County

“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). “[W]hile a speaker may be stopped

if his speech becomes irrelevant or repetitious, even in a limited public forum a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint he is expressing.” *Acosta, supra*, 718 F.3d at 816.

In the present matter, and according to the County Attorney’s letter, Pima County has excluded a citizen from public meetings (and therefore stopped the citizen from speaking at those meetings) “[a]s a result of [the citizen’s] repeated actions in ‘making personal . . . or slanderous remarks’ at multiple board meetings.” Even if the exclusion of a citizen from future public meetings were permissible under Arizona’s open-meeting law, even if Pima County’s Regulation K(7) were not unconstitutional on its face, and even if the demand for an investigation made by the citizen in question in this matter was made in a manner that constituted “personal or slanderous remarks,” the County’s action here was unconstitutional. This is because other individuals have -- in the recent past -- been permitted to express the opinion that those who disagree with their policy preferences are guilty of heinous crimes, and have faced no consequences therefor.⁵ In our opinion, this establishes that the citizen in question is being silenced because of the views expressed by the citizen, rather than because of the manner of that expression. *See, e.g., Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 46 (1983) (limits on speech are impermissible where those limits constitute “an effort to suppress expression merely because public officials oppose the speaker’s view”); *Cox v. State of Louisiana*, 379 U.S. 536, 557-58 (1965) (“It is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups . . . by selective enforcement of an extremely broad prohibitory statute.”).

III. CONCLUSION

Based on the above, it is the opinion of this office that Pima County has acted unlawfully, under both Arizona statutory law and the United States Constitution, by excluding a citizen from future public meetings of the Pima County Board of Supervisors. If you have any questions about the contents of this letter, please feel free to contact me.

MUNGER, CHADWICK & DENKER, P.L.C.



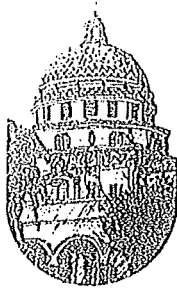
Thomas A. Denker

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⁵ *See again*, footnote 1, above.

Laura Conover
Pima County Attorney



(520) 724-5700
pcao.pima.gov
32 N. Stone Avenue, Suite 2100
Tucson, AZ 85701

Civil Division

Ms. Shirley Requard

RE: Board Policy Violations during Call to the Audience

Dear Ms. Requard:

We appreciate your engagement at the Pima County Board of Supervisor meetings. Civic engagement and political discourse are vital components in our democracy. Likewise, rules and regulations are vital components in our democracy to ensure that elected and other government officials can perform their duties in a timely and orderly manner. In Pima County, some of those rules are outlined in the Board of Supervisor Rules and Regulations¹, and include the following:

B. Chair. (4) Control of Chamber. The Chair controls the Board Chamber

K. Participation by Employees and Public. (7) Orderly Conduct. Citizens attending a meeting will observe rules of propriety, decorum and good conduct. Any person making personal, impertinent, or slanderous remarks or who becomes boisterous while addressing the Board, may be removed by the Sergeant at Arms at the direction of the Chair. Such person may be barred from further audience before the Board....

On January 24, 2023, February 7, 2023, and February 21, 2023, you engaged in the following violations of Board policy by “making personal...or slanderous remarks”:


1. On January 24, 2023, you stated, “I see that this Board needs to be taken to task, and Mr. Brown, to look into possibly filing pedophilia charges against Matt Heinz.” You were then cautioned by Board Chair Adelita Grijalva that your comments were inappropriate.
2. On February 7, 2023, you continued to call for charges to be filed against Mr. Heinz for alleged acts of sexual conduct with a minor, at which point you were given a verbal warning by Board Chair Grijalva that the consequences would be escalated if you continued with such conduct.
3. On February 21, 2023, you stated, “Immediately following the oral presentations by members of the audience at the last meeting, I was threatened by Adelita Grijalva that she would have me arrested if I mentioned the word, ‘pedophile,’ once again in relation to the yet unresolved issue pertaining to the joy boy encounter on a recent cruise of one of our unnamed Board Members, which was televised for all to see. I ask once again, what progress has been made to uncover the passenger manifest of the cruise in order to verify the biological age of that unsupervised male who paraded into the Board Member’s stateroom while wearing women’s panties. Where is the leadership of this board? Why isn’t anyone demanding a full investigation into the facts? Well, pedophile! Pedophile! Pedophile!”

¹ Available here: [AdoptedBOSRulesandRegs_Revised12012020.pdf \(pima.gov\)](#)

In accordance with Board policy, a person violating regulation K.7 “may be barred from further audience before the Board.” As a result of your repeated actions in “making personal...or slanderous remarks” at multiple board meetings, even escalating such remarks after fair notice and warning was given by the Board Chair, you are hereby barred from audience before the Board for three (3) months, effective immediately and ending June 1, 2023.

Once you are permitted to attend future meetings, you are hereby directed to refrain from similar conduct, or you will be barred from further meetings. Such conduct includes, but is not limited to, refusing to follow the directives of the Chair, and making personal attacks such as calling a board member a “pedophile” on multiple occasions, or any other conduct that leads to a disruption or delay during a Supervisor’s meeting.

Thank you in advance for your cooperation.



Samuel E. Brown

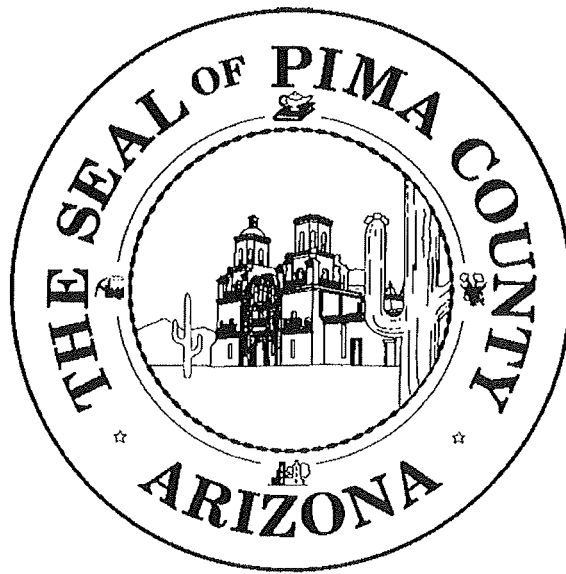
Chief Civil Deputy, Pima County Attorney’s Office

CC: Board of Supervisors
County Administrator

PIMA COUNTY BOARD OF SUPERVISORS

RULES AND REGULATIONS

TUCSON, ARIZONA



Adopted December 1, 2020

BOARD OF SUPERVISORS RULES AND REGULATIONS
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PIMA COUNTY BOARD OF SUPERVISORS

RULES AND REGULATIONS

THESE RULES AND REGULATIONS SUPERSEDE ANY RESOLUTIONS OR POLICIES ADOPTED BY PREVIOUS BOARDS OF SUPERVISORS.

During the first meeting of the Board of Supervisors in January of each year, the Board of Supervisors shall, by majority vote, select the Chair, Vice Chair and Acting Chair. These officers of the Board shall serve until the first meeting in January of the subsequent year.

A. Definitions

1. Acting Chair: A Supervisor elected by the Board to act as the Chair in the absence or disability of both the Chair and the Vice-Chair.
2. Board: A Quorum or more of the duly elected Supervisors acting as a unit.
3. Chair: The Supervisor elected by the Board to preside over the Board.
4. Member: Individual duly elected or appointed Supervisor.
5. Quorum: The minimum number of persons required to act as the Board. A quorum of the five (5) member Board requires at least three (3) Supervisors. A.R.S. Section 1-216(B).
6. Vice-Chair: A Supervisor elected by the Board to act as Chair in the absence or disability of the Chair.

B. Chair

- | | |
|---------------------------|---|
| <u>Presides</u> | 1. The Chair presides at all meetings and hearings of the Board of Supervisors. |
| <u>Vice-Chair</u> | 2. The Vice-Chair presides in the absence or disability of the Chair. |
| <u>Acting Chair</u> | 3. The Acting Chair presides in the absence or disability of both the Chair and Vice-Chair. |
| <u>Control of Chamber</u> | 4. The Chair controls the Board Chamber. |

- Decides Points of Order 5. The Chair preserves order and decides all points of order and procedure, subject to appeal to membership. The Chair may vote on all matters except upon the Chair's own rulings.
- Motions 6. The Chair may make a motion or second any motion made by a member.
- Declare Votes 7. Motions may be determined by viva voce vote, or at the request of any member, by roll call. The Chair will declare all votes. If any member questions the vote, the Chair will order a roll call.
- Sign Documents 8. The Chair signs resolutions, ordinances, and other documents adopted or approved by the Board.
- Sergeant At Arms 9. The Chair will have the services of a Sergeant at Arms, as required, to preserve order and enforce the rules and orders of the Chair and Board of Supervisors. The Sargeant at Arms shall be appointed by a majority vote of the Board of Supervisors and shall serve until his/her successor is appointed.

C. Clerk of the Board

- Prepares Agenda 1. The Clerk prepares the Board agenda and provides the agenda to the Members together with such other memoranda and communications as the Board directs.
- Attends Meetings 2. The Clerk or a Deputy will attend all meetings of the Board and attest all instruments signed by the Chair.
- Notices 3. The Clerk will prepare, post and publish all required Notices of the Board of Supervisors.
- Minutes 4. The Clerk will prepare for approval and maintain the permanent record minutes of all Board proceedings.
- Roll Call 5. The Clerk will call the roll in the order directed by the Board. After the roll has once been called, the Clerk will again call the names of those who passed or did not vote.
- Unsigned Communications 6. The Clerk will not place unsigned communications on the Board agenda.

Matters
Continued

7. The Clerk shall place matters that the Board does not act upon on the next meeting agenda unless the Board otherwise directs.

D. Agenda

- | | |
|-----------------------------------|--|
| <u>Order of Business</u> | 1. The Board will hear and consider matters on its agenda at the hour set or as soon thereafter as practical. |
| <u>Change of Order</u> | 2. At any time after Roll Call, any Member may request a change to the order of business. |
| <u>Submissions/
Deadlines</u> | 3. All material submitted for a Board agenda must conform to Board of Supervisors Policy No. C2.5 and Administrative Procedure No. C4.1. |

E. Board Chambers

- | | |
|----------------------|---|
| <u>Described</u> | 1. The Board Chambers consist of the Hearing Room, the Members' Dais and the Executive Chamber. |
| <u>Dais</u> | 2. Except by permission of the Chair, no person will have the privilege of, or be admitted to, the Dais. |
| <u>Chambers Open</u> | 3. The Hearing Room in the Board Chambers will be open to the public at all public meetings. |
| <u>Removal</u> | 4. The Sergeant at Arms will maintain order in the Board Chambers, and under the direction of the Chair may remove from the Chambers persons causing disturbances or otherwise violating the rules. |

F. Voting

- | | |
|------------------------|---|
| <u>Quorum to Act</u> | 1. A quorum may conduct the business of the County. |
| <u>Passing Motions</u> | 2. A majority vote of the quorum present is necessary to pass any motion unless applicable law requires a greater number of votes. |
| <u>Tie Vote</u> | 3. A tie vote will result in postponement of consideration of a matter until the next regularly scheduled Board meeting, but not including a meeting scheduled for the following day. |

- a. Motion to approve or grant. A second tie vote on a motion to approve or grant an item results in denial of the item.
- b. Motion to approve or grant - rezoning applications only. A second tie vote on a motion to approve or grant a rezoning application requires the item be set to a time certain within 30 days for final action. A third tie vote on a motion to approve or grant a rezoning application results in denial of the item.
- c. Motion to deny or disapprove. A second tie vote on a motion to disapprove or deny an item leaves the item open before the Board for future disposition.

Conflict of Interest 4. A Member will not discuss or vote upon a matter where the Member has a conflict of interest under A.R.S. Title 38, Chapter 3, Article 8. The Member will recuse himself/herself in that event.

Pass 5. A Member may pass on the first roll call but must vote aye or nay on the second and final roll call.

Leaving Seat 6. When a roll call is commenced, no Member may leave his/her seat until the vote is disclosed.

Change of Vote 7. A Member may change his/her vote after the roll has been completed and before announcement of the result, but not thereafter.

Leaving Hearing Room 8. No Member may leave the Board Chamber during session without permission of the Chair.

G. Motions

Second to Motion 1. A second to a motion is required.

Dividing a Question 2. Upon request, before a question is put, a question will be divided if it includes propositions so distinct in substance that, one being taken away, a substantial proposition shall remain.

Separate Consideration 3. Upon request, amendments to motions may be considered separately.

Dilatory Motion 4. The Chair will not entertain a dilatory motion.

H. Reconsideration

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|---------------------|---|
| <u>Who May Make</u> | 1. When a matter has been voted upon, any Member who voted on the prevailing side may move for reconsideration for cause. |
| <u>When Made</u> | 2. A Member on the prevailing side may file an intention to move for reconsideration for cause only at the same or the next regularly scheduled meeting of the Board. |
| <u>Contracts</u> | 3. No motion approving a contract may be reconsidered unless evidence exists that the contract was not awarded in conformance with applicable federal, state or local laws or policies, or that the party awarded the contract did not meet the contract specifications. |
| <u>Vote</u> | 4. A majority vote is sufficient to pass a motion to reconsider even when the matter to be reconsidered requires a greater vote for passage. After a motion to reconsider has been acted upon, a second motion to reconsider the same item requires a unanimous vote to pass. |

I. Passage of Ordinances/Resolutions

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|----------------------------|---|
| <u>Copy of Text</u> | 1. The Clerk will provide the Board a copy of the proposed ordinance/resolution prior to the meeting. |
| <u>Required Readings</u> | 2. Any Member may request a full reading. Otherwise, the ordinance or resolution will be read by number and title only. An ordinance or resolution may be passed and adopted at any time after the reading. |
| <u>Available to Public</u> | 3. Copies of proposed ordinances and resolutions will be available to the public, when feasible, at the Office of the Clerk of the Board not less than forty-eight hours before the hour the Board convenes to consider the ordinance or resolution. Should copies not be available, said ordinance or resolution will be ordered read in full before the vote upon the request of any member of the public at the meeting. |
| <u>Waiver</u> | 4. Any requirement relating to reading and passing of ordinances and resolutions is considered waived by the Board voting upon the item without an objection being raised. |

J. Decorum and Debate

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|--------------------------------|---|
| <u>Being Recognized</u> | 1. When a Member desires to speak or make a motion, the Member will address the Chair. Upon being recognized, the Member may address the Board. |
| <u>First Person Recognized</u> | 2. When more than one Member addresses the Chair, the Chair will name the person who is to speak, recognizing the person who first addressed the Chair. |
| <u>Interruptions</u> | 3. No Member will interrupt another except to raise a point of order or to correct a mistake. |
| <u>Decorum</u> | 4. No Member will indulge in personal attacks, impugn motives of Members, or use language tending to hold a Member up to contempt. |

K. Participation by Employees and Public

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| <u>Employees Recognized</u> | 1. When an officer or employee of the County desires to speak, the officer or employee will address the Chair and, upon being recognized, state his/her name and position with the County and then speak. |
| <u>Public Recognized</u> | 2. No person in the Hearing Room will be permitted to speak unless recognized by the Chair, who may at his/her discretion, permit persons to speak on agenda items which have not been noticed as a hearing. |
| <u>Call to the Public</u> | 3. On Call to the Public, a person desiring to speak will address the Chair. Upon being recognized, the person will advance to the podium, state his/her full name, whom he/she represents, and state the subject matter. |
| <u>No Interruptions</u> | 4. No person may interrupt legislative proceedings. |
| <u>Procedure</u> | 5. Orderly procedure requires that each person proceeds without interruption from the audience and retires when his/her time is up; that all arguments be addressed to the Board, and that there be no questioning or argument between individuals. Unless otherwise required by applicable law, and to the greatest extent practicable, the Chair will allow each speaker an equal amount of time to speak. |

- Questions 6. The Members of the Board and staff members on the dais may only ask questions and make appropriate comments regarding any item that has been specifically noticed on the agenda.
- Orderly Conduct 7. Citizens attending a meeting will observe rules of propriety, decorum and good conduct. Any person making personal, impertinent, or slanderous remarks or who becomes boisterous while addressing the Board, may be removed by the Sergeant at Arms at the direction of the Chair. Such person may be barred from further audience before the Board. The Chair will not permit unauthorized remarks from the audience, stamping of feet, whistling, yelling, booing, clapping, cheering and similar demonstrations. The Chair may direct offenders from the Chambers.
- Signs 8. Signs must not obstruct the view of any person in the Hearing Room or hinder any person's participation in the proceedings. The Board Chair or a Board Member acting as Chair, can direct the Sergeant at Arms to have offensive signs removed from the Hearing Room or otherwise be placed out of sight.

L. Zoning Hearings

- Order of Procedure 1. Staff shall present their report. The applicant may speak next then all persons who wish to speak on the matter will be heard. The applicant may then rebut, and a spokesperson for any opposition may also have the opportunity to rebut. Applicants and others may appear in person or by counsel.
- Questions 2. Members may direct questions to the applicant or any person speaking in order to bring out relevant facts, circumstances or conditions affecting the case and may call for questions from staff.
- Information 3. All supporting evidence for and against each case will be presented to the Board. The applicant will be responsible for the presentation of all information supporting his or her case.
- Closing Hearings 4. The Board may close or continue the hearing by motion.

Decision 5. The Board may take the case under advisement for later consideration and determination, or may defer action if it concludes that additional evidence is needed or further study is required, or may make its decision immediately.

M. Executive Session

Procedure 1. The Board may, by motion, convene into executive session pursuant to A.R.S. §38-431.01 et. seq. for discussion of any business which may in the opinion of the Board be required. The Members will retire to the Executive Chamber and exclude unnecessary personnel. Rules of the Board will apply in executive session, but no final vote may be taken.

N. Parliamentary Procedure

Robert's Rules 1. The Board will follow Robert's Rules of Order where applicable and not in conflict with these or other superior rules. The order of precedence in determining parliamentary procedure is:

- a. Constitution of Arizona
- b. Arizona Revised Statutes
- c. Pima County Ordinances
- d. Rules of the Board

O. Suspension of Rules

Majority Vote 1. No rule of the Board may be suspended except by at least three (3) affirmative votes supporting the proposed suspension. A motion to suspend the rules will be decided without debate. Procedure that is inconsistent with a rule of procedure, without objection, implies suspension.

P. Amendment of Rules

Three Votes 1. No rule of the Board may be amended except by three (3) affirmative votes.

Q. Economic Development

Oversight and
Confidentiality

1. The County Administrator shall make the Chairman of the Board of Supervisors or his/her designee aware of all potential economic development projects. The County Administrator and the Chairman or his/her designee shall be subject to the same non-disclosure requirements and shall maintain the client confidentiality necessary in economic development projects.

Aliza Barraza

From: Terra R. <[REDACTED]>
Sent: Monday, April 3, 2023 8:40 AM
To: District1; District2; District3; District4; District5; COB_mail
Subject: Agenda item #11 Legal Opinion Regarding Exclusion of Citizen at Board Meetings

CAUTION: This message and sender come from outside Pima County. If you did not expect this message, proceed with caution. Verify the sender's identity before performing any action, such as clicking on a link or opening an attachment.

Board members,

I ask each one of you to follow the oath you took before taking office (upholding the constitution), Arizona law and the United States Constitution regarding the unlawful exclusion of a member of the public from your meetings. Rectify this wrong you have done.

Thank you, Terra Radliff

Terra Radliff

AGENDA MATERIAL

DATE 4/4/23 ITEM NO. RA 11, 28, 29, 30, 31, 45

Aliza Barraza

ADDENDUM MATERIAL

From: S. Fickes [redacted] >
Sent: Monday, April 3, 2023 8:09 AM
To: COB_mail
Subject: Fwd: Pima County Board of Supervisors Meeting 4-4-24 Comments

DATE 4/4/23 ITEM NO. ADD 1

CAUTION: This message and sender come from outside Pima County. If you did not expect this message, proceed with caution. Verify the sender's identity before performing any action, such as clicking on a link or opening an attachment.

I am Sharon Fickes, legal resident of Pima County. Contact [redacted]
Below are my comments for the BOS Supervisors for the 4-4-24 meeting

Agenda Item 11 Unfinished Business 3/21/23 Legal Opinions Exclusion of Citizen from Public Meeting
Addendum 1 Item #1 Request by Attorney Sam Brown for Executive Session re: public meetings & action

There is only **one** reason to have an Executive Session to discuss the issue of excluding the public from a Public meeting of the Board of Supervisors. That one reason is because of Chair, Adelita Grijalva and her desire to hide behind the shield of an Executive Session because she cannot face the public for her actions. Both legal opinions of (1) undated memo from Attorney Sam Brown outlining his reasons why Chair Grijalva could take the action excluding a citizen and (2) legal opinion of Munger, Chadwick & Denker, PLC expressing numerous violations by Chair Grijalva based on Arizona Statutes and the US Constitution. Both opinions are available on-line at the Board of Supervisors website. There is no breach of privacy for Shirley Requard, her name is also in the public as the citizen banned from the BOS meetings. Also in the public eye are the videos of all the meetings. Pima County residents deserve to see and hear how this issue and others are discussed and resolved. An Executive Session only provides Chair Grijalva a method to continue with lack of transparency to Pima County. Do not allow an Executive Session for these items at the 4-4-23 BOS meeting.

Agenda Items #28, #29, #30, #31, #45 Total = \$11,389,569.87 funding illegals food, shelter + other

Again and continuing your actions of working with the Federal government to provide taxpayer funds (yes these are still my taxes) to Non-Government Agencies (NGO) supporting illegals coming into Pima County, Arizona. We do not have Arizona protected from invasion by others, illegals, crooks, drug runners, human traffickers, and others. Pima County Board of Supervisors can refuse to continue this participation, cancel the contract, return the funds, dry up the source of support to illegals. Possibly Pima County Grant Management & Innovation department could use their creative minds to find funds supporting the citizens of Pima County by accepting funds to help close our border, support our police, support Homeland Security. Stop supporting illegals. NOW is the time the public must pursue SB1487: ARS 41-194.01 against Pima County Board of Supervisors. **VOTE NO TO ALL Items**

God Bless America

Sharon Fickes

