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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **MARICOPA COUNTY**

11 **JUDICIAL WATCH, INC.**

12) **Maricopa County Superior Court**

13 Plaintiff,

14) **CV 2025 000675**

15 v.

16) **COMPLAINT FOR SPECIAL ACTION**

17 **KRIS MAYES, in her official capacity as**

18) **(A.R.S. § 39-121.02)**

19 **Attorney General of the State of Arizona,**

20)

21 **ARIZONA DEPARTMENT OF LAW,**

22)

23 **an executive department of the State of**

24)

25 **Arizona,**

26)

27 **Defendants.**

28)

29)

30 Plaintiff Judicial Watch, Inc. brings this special action against Defendants Kris Mayes, in

31 her official capacity as Arizona Attorney General, and the Arizona Department of Law, to

1 compel compliance with the Arizona Public Records Law, A.R.S. §§ 39-121, *et seq.* As grounds
2 therefor, Plaintiff alleges as follows:

3 **PARTIES**

4 1. Plaintiff Judicial Watch, Inc. (“Plaintiff”) is a not-for-profit, educational
5 organization incorporated under the laws of the District of Columbia and headquartered at 425
6 Third Street SW, Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency,
7 accountability, and integrity in government and fidelity to the rule of law. As part of its mission,
8 Plaintiff regularly requests records from federal, state, and local governments pursuant to open
9 records laws. Plaintiff analyzes the responses and disseminates its findings and the requested
10 records to the American public to inform them about “what their government is up to.”

11 2. Defendant Kris Mayes is the Attorney General for the State of Arizona, an
12 “officer” as that term is defined in A.R.S. § 39-121.01(A)(1). Attorney General Mayes has
13 possession, custody, and control of records to which Plaintiff seeks access.

14 3. Defendant Arizona Department of Law (commonly known as the Attorney
15 General's Office, designated in this Complaint as “AZAG,” and collectively with the Attorney
16 General designated as “Defendants”) is an executive department of the State of Arizona, and a
17 “public body” as that term is defined in A.R.S. § 39-121.01(A)(2). The Department of Law has
18 possession, custody, and control of records to which Plaintiff seeks access.

19 **JURISDICTION AND VENUE**

20 4. This Court has jurisdiction over this matter pursuant to A.R.S. § 39-121.02 and
21 Rule 3 of the Arizona Rules of Procedure for Special Actions (RPSA).

1 5. Venue is proper in this Court under RPSA 6(a)(2), because Defendant Mayes is an
2 officer of the State of Arizona and Defendant Department of Law is a public body of the State of
3 Arizona.

GENERAL ALLEGATIONS

5 6. In early November of 2024, multiple news outlets reported that Attorney General
6 Mayes directed the criminal division of AZAG to investigate whether recent comments made by
7 President-Elect Donald Trump regarding former United States Congresswoman Liz Cheney
8 constituted death threats under Arizona law.

9 7. On November 12, 2024, Plaintiff sent to Defendants by both AZAG's online public
10 records request form and certified mail a request asking Defendants to produce the following
11 public records pursuant to the Arizona Public Records Law, A.R.S. §§ 39-121, *et seq.*:

12 1. Any AZAG documents, to include but not limited to emails, memos,
13 directives, and/or texts, regarding your office and/or Criminal Division
14 Chief analyzing the aforementioned statement as qualifying as a death
15 threat.

4. Any AZAG documents and/or lists generated by your office, from January 1, 2023, to the completion of this request, showing the number of criminal investigations and/or analyses regarding death threats as prohibited and/or defined by the Arizona Revised Statutes (*i.e. A.R.S. §13-1202, §13-404*)
5. Any AZAG documents addressing the limits of free speech as addressed in the 1st Amendment of the Constitution of the United States.
6. Any AZAG documents, inquiries, and/or investigations, from August 20, 2024 to the completion of this request, of the City of Surprise, the Surprise Police Department, and/or Surprise Police Chief Pina regarding the dismissed criminal charges/arrest of Rebekah Massie (*referred to as "objectively outrageous" by North Valley Justice of the Peace Gerald A. Williams*), such arrest occurring on or around August 20, 2024.

8. The time frame of the request was identified as “October 31, 2024, to the completion of this request.” The request also noted Plaintiff’s willingness to accept “rolling collection” of the requested records to facilitate a timelier response.

9. A true and correct copy of Plaintiff's public records request is attached as **Exhibit A**. A true and correct copy of the email Plaintiff received which acknowledged submission of Plaintiff's records request to AZAG's online public records form is attached as **Exhibit B**. A true and correct copy of the USPS tracking page showing that Plaintiff's certified mailing of its records request was delivered to Defendants is attached as **Exhibit C**.

10. As of the date of this Complaint, Plaintiff has not received any records in response to Plaintiff's records request, nor has Plaintiff received any communication from Defendants regarding any update as to the status of Defendants' processing of Plaintiff's records request.

11. As of the date of this Complaint, after nearly two months, Defendants have failed adequately search for and promptly furnish documents in response to Plaintiff's request; indicate when or even whether responsive records will be provided; and (iii) provide any explanation for withholding responsive public records. Pursuant to A.R.S. § 39.121.01(E), Defendants' failure to promptly respond to Plaintiff's records request means that access to the requested records is deemed to be denied by Defendants.

COUNT ONE

(Violation of Arizona Public Records Law, A.R.S. §§ 39-121, *et seq.* – Failure to furnish responsive public records)

12. Plaintiff realleges and incorporates by reference paragraphs 1 through 11 as if fully herein.

13. Article V, § 1(D) of the Arizona Constitution requires the Attorney General to . . . public records, books and papers,” and to “perform such duties . . . as may be required . . .” Article V, § 9 of the Arizona Constitution provides that “[t]he powers and duties of . . . attorney general . . . shall be as prescribed by law.” A.R.S. § 41-193(A) provides that “[t]he department of law shall be composed of the attorney general and the subdivisions of the department created as provided in this article[, and unless otherwise provided by law the department shall: . . . 9. Perform other duties prescribed by law.”

1 14. Among Defendants' duties required and prescribed by law are those set by
2 Arizona's Public Records Law, which requires public officers and public bodies to maintain all
3 records reasonably necessary or appropriate to maintain an accurate knowledge of their official
4 activities and activities supported by public money. A.R.S. § 39-121.01(B).

5 15. Arizona's Public Records Law grants every person the right to examine or be
6 promptly furnished with copies of public records. A.R.S. §§ 39-121 and 39-121.01(D). A
7 presumption in favor of disclosure applies to all public records. To discharge its duties under the
8 Public Records Law, public officers and public bodies must adequately search for and promptly
9 furnish responsive public records, unless the public officer or body can present evidence
10 demonstrating that an exception to disclosure applies.

11 16. Access to a public record is deemed denied if the custodian fails to promptly
12 furnish documents in response to a public records request. A.R.S. § 39-121.01(E).

13 17. Plaintiff has a right to inspect and obtain copies of the public records requested on
14 November 12, 2024 (Exhibit A), unless Defendants can present evidence justifying
15 nondisclosure.

16 18. Defendants have violated Arizona's Public Records Law by failing for nearly two
17 months to adequately search for and promptly furnish the public records requested on November
18 12, 2024 (Exhibit A) to Plaintiff.

19 19. By doing so, Defendants have failed to perform a duty required by law as to which
20 Defendants have no discretion and/or has failed to properly exercise discretion which
21 Defendants have a duty to exercise.

20. By doing so, Defendants have proceeded without or in excess of jurisdiction and authority.

21. Defendants' conduct is arbitrary and capricious and/or an abuse of discretion.

22. An actual controversy exists between Plaintiff and Defendants regarding Defendants' duties under the Arizona Public Records Law, and a Special Action to resolve this controversy is authorized by statute, A.R.S. § 39-121.02.

23. Plaintiff is being irreparably harmed and damaged by Defendants' ongoing violations of Plaintiff's right to access public records. Plaintiff will continue to be irreparably harmed and damaged unless the relief requested in this special action is granted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against defendants as follows:

A. Directing Defendants to immediately comply with A.R.S. §§ 39-121, *et seq.*, to conduct an adequate search for records responsive to Plaintiff's public records request, and to provide Plaintiff with copies of all public records requested on November 12, 2024, unless an exception to disclosure supported by specific evidence applies;

B. Permanently enjoining Defendants from continuing to fail to adequately search for all such public records, and from continuing to withhold any such public records unless an exception to disclosure supported by evidence applies;

- C. Awarding attorney's fees and other legal costs reasonably incurred by Plaintiff in this action pursuant to A.R.S. § 39-121.02(B) and RPSA 7(i); and
- D. Granting Plaintiff such other and further relief as the Court deems just and proper.

7 RESPECTFULLY SUBMITTED on January 7, 2023.

David Wolfe

David J. Hoffa

State Bar No. 038052

c/o Mark Spencer

P.O. Box 30042

Phoenix, AZ 850

(989) 627-7757

davjhoffa@gmail.com

Attorney for Plaintiff

EXHIBIT A



Judicial Watch®

*Because no one
is above the law!*

November 12, 2024

CERTIFIED MAIL

Kris Mayes, Arizona Attorney General
Arizona Attorney General's Office
2005 N Central Ave.
Phoenix, AZ 85004

Re: **Records under Public Records Law**
A.R.S. § 39-101 through 39-221

Ms. Mayes;

On November 1, 2024, NBC posted an online report entitled *Arizona attorney general's office ("AZAG") probing Trump's violent comments about Liz Cheney*. Within the report you were quoted as saying, "I have already asked my criminal division chief to start looking at that statement, analyzing it for whether it qualifies as a death threat under Arizona's laws." The statement concerning Cheney, made by President-elect Donald Trump was:

"She's a radical war hawk. Let's put her with a rifle standing there with nine barrels shooting at her. Okay, let's see how she feels about it. You know when the guns are trained on her face — you know, they're all war hawks when they're sitting in Washington in a nice building."



<https://www.nbcnews.com/politics/2024-election/arizona-ags-office-probing-trumps-violent-comments-liz-cheney-rena178228>

Pursuant to the provisions of the Arizona Public Records Law (*APRL*), A.R.S. §39-101 through §39-221, and unless otherwise noted, within the date range of October 31, 2024, to the completion of this request, please provide copies of:

1. Any AZAG documents, to include but not limited to emails, memos, directives, and/or texts, regarding your office and/or Criminal Division Chief analyzing the aforementioned statement as qualifying as a death threat.
2. Any AZAG documents produced by your office revealing and/or determining whether the aforementioned statement was analyzed to be a violation of Arizona and/or Federal law.
3. Any AZAG documents indicating the number of AZAG employees, hours, and/or costs to carry out/complete your directive to analyze the aforementioned statement.
4. Any AZAG documents and/or lists generated by your office, from January 1, 2023, to the completion of this request, showing the number of criminal investigations and/or analyses regarding death threats as prohibited and/or defined by the Arizona Revised Statutes (*i.e. A.R.S. §13-1202, §13-404*)
5. Any AZAG documents addressing the limits of free speech as addressed in the 1st Amendment of the Constitution of the United States.
6. Any AZAG documents, inquiries, and/or investigations, from August 20, 2024 to the completion of this request, of the City of Surprise, the Surprise Police Department, and/or Surprise Police Chief Pina regarding the dismissed criminal charges/arrest of Rebekah Massie (*referred to as “objectively outrageous” by North Valley Justice of the Peace Gerald A. Williams*), such arrest occurring on or around August 20, 2024.

These records are considered public under A.R.S. §39-101 through §39-221. For purpose of this request the term “record” shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, telegrams, teletypes, facsimiles, papers, forms, records, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, check, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases, (2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail, meaning any electronically transmitted text or graphic communication created upon and transmitted or received by any computer or other electronic device, and all materials stored on compact disk, computer disk, diskette, hard drive, server, or tape; (3) any audio, aural, visual, or video records, recordings, or representations of any kind, including without limitation all cassette tapes, compact disks, digital video disks, microfiche, microfilm, motion pictures, pictures, photographs, or videotapes; (4) any graphic materials and data compilations from which information can be obtained; (5) any materials using other means of preserving thought or expression; and (6) any tangible things from which data or information can be obtained, processed recorded, or transcribed. The term “record” also shall mean any drafts, alterations, amendments, changes, or modifications of or to any of the foregoing.

Pursuant to A.R.S. §39-121.01.D.1, records must be furnished promptly. We look forward to your prompt response. Any response or records that can be delivered via e-mail attachments are certainly acceptable. Additionally, all responsive records in an electronic format

("PDF" is preferred) is appreciated. We also are willing to accept a "rolling production" of responsive records if it will facilitate a more timely production.

If any responsive record or portion thereof is claimed to be exempt from production, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption (A.R.S. §39-121.01.D.2.) Additionally, any reasonably segregable portion of a record otherwise exempt from disclosure is required to be made available after deletion of the portions that are exempted by law.

Finally, the information sought is for non-commercial purposes. Please be advised that if the records are not provided to our office or if we do not hear from your office we will assume that AZAG's office is refusing to comply with our Public Records Request. If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at [REDACTED] or mspencer@judicialwatch.org. The local Arizona address is:

Judicial Watch Inc.
PO Box 30042
Phoenix, AZ 85046

Sincerely,



MARK SPENCER
Southwest Projects Coordinator
Judicial Watch, Inc.

EXHIBIT B

Mark Spencer

From: Arizona Attorney General <webmaster@azag.gov>
Sent: Tuesday, November 12, 2024 1:41 PM
To: Mark Spencer
Subject: [EXTERNAL] Public Records Request: Number: PRR-2024-102660-1903

Office of Arizona Attorney General

Kris Mayes

Public Records Request Form

Submitted by:

Full Name: Mark Spencer
Company: Judicial Watch, Inc.
Street Address: PO Box 30042
City, State: Phoenix, Arizona
Zip Code: 85046
Phone: 6025107875
E-mail Address: mspencer@judicialwatch.org

AFFIRM that the records are for personal use and not for commercial purposes: I affirm

Details of Request

Records Requested:

On November 1, 2024, NBC posted an online report entitled Arizona attorney general's office ("AZAG") probing Trump's violent comments about Liz Cheney. Within the report you were quoted as saying, "I have already asked my criminal division chief to start looking at that statement, analyzing it for whether it qualifies as a death threat under Arizona's laws." The statement concerning Cheney, made by President-elect Donald Trump was:

"She's a radical war hawk. Let's put her with a rifle standing there with nine barrels shooting at her. Okay, let's see how she feels about it. You know when the guns are trained on her face — you know, they're all war hawks when they're sitting in Washington in a nice building."

Pursuant to the provisions of the Arizona Public Records Law (APRL), A.R.S. §39-101 through §39-221, and unless otherwise noted, within the date range of October 31, 2024, to the completion of this request, please provide copies of:

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directives, and/or texts, regarding your office and/or Criminal Division Chief analyzing the aforementioned statement as qualifying as a death threat.

2. Any AZAG documents produced by your office revealing and/or determining whether the aforementioned statement was analyzed to be a violation of Arizona and/or Federal law.

3. Any AZAG documents indicating the number of AZAG employees, hours, and/or costs to carry out/complete your directive to analyze the aforementioned statement.

4. Any AZAG documents and/or lists generated by your office, from January 1, 2023, to the completion of this request, showing the number of criminal investigations and/or analyses regarding death threats as prohibited and/or defined by the Arizona Revised Statutes (i.e. A.R.S. §13-1202, §13-404)

5. Any AZAG documents addressing the limits of free speech as addressed in the 1st Amendment of the Constitution of the United States.

6. Any AZAG documents, inquiries, and/or investigations, from August 20, 2024 to the completion of this request, of the City of Surprise, the Surprise Police Department, and/or Surprise Police Chief Pina regarding the dismissed criminal charges/arrest of Rebekah Massie (referred to as “objectively outrageous” by North Valley Justice of the Peace Gerald A. Williams), such arrest occurring on or around August 20, 2024.

Intake Number: **PRR-2024-102660-1903**

EXHIBIT C

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