

SUPREME COURT OF ARIZONA

KAREN FANN, in her official) Arizona Supreme Court
capacity as President of the) No. CV-22-0018-PR
Arizona Senate; WARREN PETERSEN,)
in his official capacity as) Court of Appeals
Chairman of the Senate Judiciary) Division One
Committee; the ARIZONA SENATE, a) No. 1 CA-SA 21-0216
house of the Arizona Legislature,)
) Maricopa County
Petitioners,) Superior Court
) No. CV2021-008265
v.)
) **FILED 9/29/2022**
THE HONORABLE MICHAEL KEMP,)
Judge of the SUPERIOR COURT OF)
THE STATE OF ARIZONA, in and for)
the County of MARICOPA,)
)
Respondent Judge,)
)
AMERICAN OVERSIGHT,)
)
Real Party in Interest.)
_____)

AMENDED ORDER

The Court en banc has considered American Oversight's Motion for Reconsideration and the Senate's Response.

With regard to its request for attorneys' fees, American Oversight asks the Court to address its request by (1) acknowledging that it prevailed in part and (2) directing the trial court to consider that partial success when deciding any forthcoming fee application.

Here, this Court granted review on three issues: (1) whether the Senate's audit records were protected by legislative privilege; (2) whether a prima facie claim of legislative privilege requires an affirmative showing of legislative impairment; and (3) the burden of proof framework and standard that control challenges to privilege log entries. In its Response, the Senate argues that the Court "adopted unqualifiedly the Senate's positions with respect to the first two issues" and "substantially ratified the Senate's conception of the factual and legal showing necessary to obtain in camera review of purportedly privileged materials."

Although this opinion resolved certain issues of first impression, on balance, the Court agrees with the Senate that American Oversight did not substantially prevail in this special action. The trial court will no doubt consider this opinion and other holdings in its ultimate determination of which party substantially prevailed. After consideration,

IT IS ORDERED denying the Motion for Reconsideration.

DATED this 29th day of September, 2022.

/s/
JOHN R. LOPEZ IV
Justice

TO:

Hon. Jeff Fine
Kory A Langhofer
Thomas J Basile
L Keith Beauchamp
D Andrew Gaona
David Jeremy Bodney
Craig C Hoffman
Matthew E Kelley
Hon. Michael W Kemp
Hon. Joseph C Welty
Hon Pamela S Gates
Raymond L Billotte
Amy M Wood
jn