

# ARIZONA SUPREME COURT

KRISTIN K. MAYES, ARIZONA  
ATTORNEY GENERAL,

Petitioner,

vs.

RACHEL H. MITCHELL,  
MARICOPA COUNTY ATTORNEY,

Respondent,

vs.

AARON BRIAN GUNCHES,

Real Party in Interest.

No. CV-24-0127-SA

## **RESPONDENT'S SUPPLEMENTAL BRIEF**

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## INTRODUCTION

Last year, this Court granted Arizona Attorney General (“AAG”) Mark Brnovich’s request to issue a warrant for the execution of Real Party in Interest Aaron Brian Gunches (“Gunches”). (Maricopa County Attorney’s Office’s (“MCAO”) Motion to Set Briefing Schedule, filed 6/5/24, at 2-3.) The warrant expired before the execution was carried out. (MCAO’s Briefing-Schedule Motion, at 3.)

Since then, Arizona Attorney General Kristin K. Mayes (“AAG Mayes”) has refused to seek a subsequent execution warrant, even though it is undisputed that Gunches’s sentence has been lawfully obtained and exhaustively reviewed. The refusal to proceed with Gunches’s execution contravenes Arizona law and constitutes an ongoing violation of the Victims’ constitutional and statutory rights.<sup>1</sup>

Because of this, Maricopa County Attorney Rachel H. Mitchell (“CA Mitchell”) asked this Court to set a briefing schedule in anticipation of her request to issue another execution warrant. (MCAO’s Briefing-Schedule Motion.) AAG Mayes attempted to prevent the consideration of that request by moving to strike CA Mitchell’s motion. (AAG’s Motion to Strike, filed 6/19/24.) That led this Court to

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<sup>1</sup> The Victims are Karen Price, the sister of murder victim Ted Price, and Brittney Kay, Ted’s daughter. *See* A.R.S. § 13-4401(19) (defining victims).

issue an order (1) deeming the AAG’s motion to strike as a standalone petition for special-action relief and (2) directing the parties to address the issue stated below. (Order, filed 6/24/24, as amended 6/25/24, at 1-2.)

### **ISSUE PRESENTED FOR REVIEW**

Whether the constitutional and statutory authority, power, and duty to request a warrant of execution pursuant to A.R.S. § 13-759(A) and Arizona Rule of Criminal Procedure (“Rule”) 31.23(a) and (b) rests exclusively with the AAG. (Order, filed 6/24/24, at 2.)

### **JURISDICTIONAL STATEMENT**

The exercise of special-action jurisdiction is fitting to address the issue presented here, *viz.*, AAG Mayes’s allegation that CA Mitchell—a constitutional officer—“has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority.” Ariz. R. P. Spec. Act. 3(b); *see* Ariz. Const. art. 6, § 5(1) (granting this Court original jurisdiction to issue “mandamus, injunction and other extraordinary writs to state officers”); Ariz. R. P. Spec. Act. 1(a) (stating requests for extraordinary writs are cognizable as special actions and governed by the special-action rules); *Forty–Seventh Legislature v. Napolitano*, 213 Ariz. 482, 485, ¶ 10 (2006) (explaining extraordinary-writ relief is available only via special-action proceedings).

## MATERIAL FACTS

The well-documented history of this case is recounted in MCAO's briefing-schedule motion and this Court's prior Decision Orders. (MCAO's Briefing-Schedule Motion, at 2-3, Exhibits B-D.) *See also State v. Gunches*, 240 Ariz. 198 (2016); *State v. Gunches*, 225 Ariz. 22 (2010). The events leading to this special-action proceeding are described in the Introduction section above.

## ARGUMENT

### I. Summary.

The issue presented turns on the answer to this question: does "the State," as expressed in Rule 31.23 and § 13-759, refer exclusively to the AAG, thereby barring any non-AAG prosecutor or prosecuting agency from requesting an execution warrant? The answer begins and ends with the legal text: fairly read, the governing laws do not grant the AAG exclusive authority to request execution warrants.

Rule 31.23(a) provides, "After affirming a death sentence, the Supreme Court must issue a warrant of execution if *the State* files a notice stating" certain post-conviction-relief ("PCR") and habeas-corpus proceedings have expired. Ariz. R. Crim. P. 31.23(a)(1)-(3) (emphasis added). Rule 31.23(b) further authorizes "the State" to move for an execution warrant after habeas-corpus proceedings have concluded. Section 13-759(A) likewise references "the state":

After a conviction and sentence of death are affirmed and the first post-conviction relief proceedings have concluded, the supreme

court shall issue a warrant of execution that authorizes the director of the state department of corrections to carry out the execution thirty-five days after the supreme court’s mandate or order denying review or upon motion by *the state*. The supreme court shall grant subsequent warrants of execution on a motion by *the state*. The time for execution shall be fixed for thirty-five days after *the state’s* motion is granted. (Emphasis added.)

As explained below, the plain meaning of these legal texts compels the conclusion that “the State” unambiguously encompasses all prosecutors and prosecuting agencies, without restriction. Accordingly, CA Mitchell is authorized to seek an execution warrant here. *See* A.R.S. § 11–532(A)(1) (obligating Arizona county attorneys—the public prosecutors for their counties—to prosecute public offenses “*on behalf of the state*”) (emphasis added); *State v. Payne*, 223 Ariz. 555, 562, ¶ 19 (App. 2009) (explaining county attorneys are public prosecutors statutorily obligated to prosecute offenses for the State).

## **II. Interpretation of Rule 31.23 and § 13-759.**

### **A. Guiding Principles.**

Questions of statutory and rule interpretation begin with the plain meaning of the legal text, understood in context. *Glazer v. State*, 244 Ariz. 612, 614, ¶ 9 (2018); *see also State v. Brearcliffe*, 254 Ariz. 579, 585, ¶ 22 (2023) (noting that the same principles guide the interpretation of statutes and procedural rules alike); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 56 (2012) (“The words of a governing text are of paramount concern, and what they

convey, in their context, is what the text means.”). Clear and unambiguous text is dispositive of meaning; thus, it is effectuated without further inquiry. *Rosas v. Arizona Dep’t of Econ. Sec.*, 249 Ariz. 26, 28, ¶ 13 (2020); *see also Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022) (presuming authors of a legal text say what they mean and mean what they say).

When a legal text gives an “express definition” of a term, that definition is conclusive and must be strictly applied. *Sturgeon v. Frost*, 587 U.S. 28, 56 (2019); *State v. Petrak*, 198 Ariz. 260, 264, ¶ 10 (App. 2000); *see* Scalia & Garner at 228 (“It is very rare that a defined meaning can be replaced with another permissible meaning of the word on the basis of other textual indications; the definition is virtually conclusive.”). These express definitions exclude “unstated meanings of that term.” *Meese v. Keene*, 481 U.S. 465, 484 (1987).

Examining context in this endeavor requires consideration of the *entire* legal text, not merely words in isolation. *Stambaugh v. Killian*, 242 Ariz. 508, 509, ¶ 7 (2017); *see* Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2121 (2016) (noting courts should “find the *best reading* of the statute by interpreting the words of the statute, taking account of the context of the whole statute, and applying the agreed-upon semantic canons”); Scalia & Garner at 167-69 (“Context is a primary determinant of meaning[,]” and the specific provision and the broader statutory scheme as a whole “provide[ ] the context for each of its parts.”).

In this examination, interpreters presume words or phrases “bear[ ] the same meaning throughout a text.” *Fann v. State*, 251 Ariz. 425, 442, ¶ 60 (2021); Scalia & Garner at 170 (discussing the presumption-of-consistent-usage canon). “[D]ifferent wording within a statutory scheme,” on the other hand, “intends to give a different meaning and consequence to that language.” *Egan v. Fridlund–Horne*, 221 Ariz. 229, 239, ¶ 37 (App. 2009); Scalia & Garner at 170 (explaining “a word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning”).

Interpreters likewise look to other laws that treat with similar subjects or purpose, so that coherence and consistency are maintained. *Stambaugh*, 242 Ariz. at 509, ¶ 7; *see also* Kevin Tobia *et. al.*, *Statutory Interpretation from the Outside*, 122 Colum. L. Rev. 213, 291 (2022) (“[T]he *in pari materia* canon creates a presumption of statutory coherence, which includes consistency across related provisions regarding word meanings.”). Related laws are thus read together and harmonized “as though they constituted one law.” *Moreno v. Jones*, 213 Ariz. 94, 99, ¶ 28 (2006); *see State v. Hansen*, 215 Ariz. 287, 289, ¶ 7 (2007) (explaining procedural rules and statutes are read in conjunction and harmonized whenever possible); Scalia & Garner at 252-55 (discussing the related-statutes canon).

## **B. “The State” in Rule 31.23.**

Rule 31.23 furnishes the procedural mechanism to request an execution warrant. *See* A.R.S. § 13-102 (stating the Arizona Rules of Criminal Procedure (“Rules”) regulate criminal prosecutions); *State v. Birmingham*, 96 Ariz. 109, 110-11 (1964) (explaining procedural rules give practical effect to substantive law). Procedural rules “have the force and effect of statute.” *Preston v. Denkins*, 94 Ariz. 214, 219 n.2 (1963).

No guesswork is needed to discern the meaning of “the State” in the Rules. Rule 1.4(g) expressly defines “the State” as “the State of Arizona, or any other Arizona state or local governmental entity that files a criminal charge in an Arizona court. ‘The State’ in the context of certain rules includes the prosecutor representing the State.” Ariz. R. Crim. P. 1.4(g); *see* Scalia & Garner at 226 (“When . . . a definitional section says that a word ‘means’ something, the clear import is that this is its only meaning.”).

This definition leaves no room for ambiguity: “the State” unequivocally includes *all* prosecuting agencies and prosecutors. *See* A.R.S. § 11-532(A)(1); *Payne*, 223 Ariz. at 562, ¶ 19; *see also* Ariz. R. Crim. P. 1.4(d) (defining “parties” in a criminal case as the State of Arizona and the defendant). What the definition does not say is that “the State” means the AAG and only the AAG.

The term’s all-encompassing definition is consistently applied throughout the Rules and comports with common sense. “The State” files misdemeanor and felony charges. *See* Ariz. R. Crim. P. 2.1, 2.2. “The State” conducts preliminary hearings and grand jury presentations. *See* Ariz. R. Crim. P. 5.1, 5.3, 5.4, 12.1, 12.2, 12.7. “The State” has disclosure duties. *See* Ariz. R. Crim. P. 15.1. “The State” responds to pretrial motions. *See* Ariz. R. Crim. P. 16.2. “The State” can dismiss charges. *See* Ariz. R. Crim. P. 16.4. “The State” conducts trial. *See* Ariz. R. Crim. P. 19.1. “The State” handles post-trial motion work. *See* Ariz. R. Crim. P. 24.1, 24.2. “The State” participates in sentencing. *See* Ariz. R. Crim. P. 26.6, 26.8, 26.12. “The State” prosecutes and defends appeals.<sup>2</sup> *See* Ariz. R. Crim. P. 31.2, 31.7, 31.8, 31.10. “The State” defends its convictions in PCR proceedings. *See* Ariz. R. Crim. P. 32.2, 32.4, 32.9, 32.13, 33.2, 33.4, 33.9, 33.13.

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<sup>2</sup> The special-action petition mentions in passing (at 4 & n.1, 5) that in direct-appeal and PCR matters, it “has long permitted county attorneys to represent the State in this Court . . . [t]hrough cooperative relationships.” But county attorneys do not need the AAG’s permission to handle appellate work—direct appeals, special actions, petitions for review, PCR proceedings, or otherwise—in their own criminal cases, whether in the court of appeals or this Court. County attorneys are entitled to do so for the same reasons explained in this brief: they represent the State in their criminal prosecutions. *See, e.g.*, A.R.S. § 13-4032 (governing appeals by “the state”); Ariz. R. Crim. P. 31.2 (governing notices of appeal filed by “the State”). Certainly, MCAO neither seeks nor receives AAG permission when handling MCAO’s own appellate work.

In none of those examples does or could “the State” mean only the AAG. On the contrary, *all* prosecutors in *all* prosecutions are necessarily included. *See Smith v. Superior Court*, 101 Ariz. 559, 560 (1967) (noting “the primary responsibility for prosecuting criminal actions at the trial court level rests with the county attorney”).

And likewise, “the State” requests execution warrants. *See* Ariz. R. Crim. P. 31.23. The term means nothing different in Rule 31.23 than anywhere else in the Rules. Therefore, Rule 31.23 authorizes CA Mitchell to move, on behalf of the State, for an execution warrant in Gunches’s case.

Further contextual analysis—though not needed—bolsters that conclusion. The Rules make it apparent that they distinguish between, on the one hand, “the State”—the collective prosecutorial arm of Arizona’s executive branch—and, on the other hand, the “attorney general” or “county attorney,” which are specifically referred to by individual name.<sup>3</sup>

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<sup>3</sup> The Rules also use the general terms “prosecuting attorney’s office” or “prosecuting agency” at various times. This does not affect the analysis. The definition of “the State” includes law enforcement officers, who are also authorized to file criminal complaints against defendants. *See* A.R.S. § 13-3903; Ariz. R. Crim. P. 2.1(a)(1), 3.1(e); *State ex rel. Brannan v. Williams*, 217 Ariz. 207, 212, ¶ 13 (App. 2007). Thus, using a term such as “prosecuting agency” in a given Rule just means to exclude the police from its application. *See, e.g.*, Ariz. R. Crim. P. 28.2(b)(1)-(2), (5) (distinguishing “prosecuting agency” from “law enforcement agency”).

The PCR Rules, among others, illustrate this distinction. PCR proceedings are “part of the original criminal action,” Ariz. R. Crim. P. 32.2(a), 33.2(a), and handled “in the court where the defendant was sentenced.”<sup>4</sup> Ariz. R. Crim. P. 32.4(b)(1), 33.4(b)(1). For example, upon receipt of a PCR notice, court clerks must send copies *inter alia* to the “prosecuting attorney’s office” and the AAG. Ariz. R. Crim. P. 32.4(b)(4)(A)-(B), 33.4(b)(4)(A)-(B). Rules 32.4(b)(5) and 33.4(b)(5) then go on to require “the State” to notify the victims. Ariz. R. Crim. P. 32.4(b)(4)(A)-(B), 33.4(b)(4)(A)-(B).

These PCR Rules thus identify three distinct parties: the State, the AAG, and the prosecuting attorney’s office. The juxtaposition of these different terms denotes different meanings, demonstrating that “the State” and the AAG are treated separately. *See Egan*, 221 Ariz. at ¶ 37; *Scalia & Garner* at 170; *see also Fann*, 251 Ariz. at 442, ¶ 60. This distinction is likewise found in other Rules. *See Ariz. R. Crim. P. 31.8(d)(2)(A)-(B)* (identifying the State, AAG, and county attorney); *Ariz. R. Crim. P. 12.26* (identifying AAG only); *Ariz. R. Crim. P. 7.6(d)(6)(B)* (identifying county attorney only).

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<sup>4</sup> Insofar as the special-action petition suggests otherwise (at 4 n.1, 5), the county attorneys do not need to obtain AAG permission to represent the State in the superior court in *any* proceedings, including PCR matters. Nor do the county attorneys need such permission in PCR-review proceedings under Rules 32.16(a) and 33.16(a). *See also supra* n.2.

The Rules' expression of "attorney general" in these examples (and elsewhere) would not be necessary—or make any logical sense—if "the State" referred exclusively to the AAG. The disparate treatment of the three distinct terms refutes any suggestion that "the State" is synonymous with the AAG.

Further, Rule 31 sets forth the appellate procedures to be followed in criminal prosecutions and contains an independent definitional section for terms relevant to criminal appeals. *See* Ariz. R. Crim. P. 31.1(c). That section does not disturb Rule 1.4(g)'s definition of "the State," where the term is not referenced. Thus, when adopting Rule 31, this Court could have, but did not, alter the definition of "the State" for appellate proceedings, fortifying that "the State" unquestionably means the same there as it does everywhere else.

There is only one reasonable interpretation of "the State" in the Rules, *viz.*, it unambiguously encompasses all prosecuting officers, agencies, and prosecutors. *CA Mitchell* is therefore entitled to seek the execution warrant at issue here.

**C. "The state" in § 13-759.**

An analysis of "the state" in §13-759 yields the same conclusion. Although Title 13 does not provide an express definition of "the state," *see* A.R.S. § 13-105, that does not matter, given that procedural rules and statutes are read together as constituting one law. *See Moreno*, 213 Ariz. at 99, ¶ 28; *Hansen*, 215 Ariz. at 289, ¶ 7. Therefore, Rule 1.4(g)'s definition of "the State" applies equally to the Rule's

statutory counterpart, § 13-759. *See Sheridan v. Superior Court*, 91 Ariz. 211, 214 n.7 (1962) (citing statutory definitions to interpret procedural rule). This point alone is dispositive.

Yet, there is more. The context of § 13-759 buttresses the conclusion that “the state” means all prosecutors without limitation. Section 13-759 was enacted as one of the capital-sentencing statutes codified at §§ 13-751 through -759. Section 13-759 is not the only one of those statutes that references “the state”; sections 13-751 through -54 do as well.

Sections 13-751 through -54 govern a capital trial’s aggravation and penalty phases, which follow a guilty verdict on a qualifying offense and constitute sentencing proceedings *entirely within the province of the trial prosecutors*. *See State ex rel. Thomas v. Granville*, 211 Ariz. 468, 473, ¶ 21 (2005) (explaining the jury’s decision to impose a death sentence is an actual sentence, not a mere recommendation). Because there is no suggestion that “the state” means something different in § 13-759 than elsewhere in the statutory scheme, trial prosecutors are equally entitled to seek execution warrants as they are to conduct capital trial and sentencing proceedings. *See Smith v. United States*, 508 U.S. 223, 233 (1993) (“Just as a single word cannot be read in isolation, nor can a single provision of a statute.”).

Moreover, like the Rules, the criminal code expressly distinguishes “the State” from “attorney general” and “county attorney.” And also like the Rules, Title 13 does so by specifically naming the individual officer or agency.

For example, § 13-4234(A) provides that “The clerk of the trial court shall file [and] . . . promptly send copies to the defendant, the defendant’s attorney, if known, the *county attorney* and the *attorney general* . . . . *The state* shall notify the victim on request.” (Emphasis added.) The specific identification of the officers—*viz.*, referring to them by name rather than “the state”—negates the suggestion that “the state” is just another way of saying “attorney general.” This purposeful distinction is repeated throughout the criminal code. *See, e.g.*, A.R.S. §§ 13-121 (naming AAG only), -2314(A) (naming the state, AAG, and county attorney), -2315 (same), -3010(A) (naming AAG, county attorney, and prosecuting agency), -3015(A)-(E) (naming AAG and county attorney), -3863 (same), -4071(B)(1)-(2) (naming the state, AAG, county attorney, municipal prosecutor, and city prosecutor).

The special-action petition’s request for relief would thus have this Court depart from bedrock statutory-interpretation rules and construe the governing laws atextually. But courts refrain from rewriting enacted laws, as the AAG seeks to do here. *See Shady Grove Orthopedic Assoc. v. Allstate Ins. Co.*, 559 U.S. 393, 403 (2010) (“[W]hat matters is the law the Legislature *did* enact. We cannot rewrite that

to reflect our perception of legislative purpose.”). Accordingly, the AAG is not entitled to special-action relief.

### **III. The AAG’s Faulty Assertion of Exclusive Authority Under § 41-193(A)(1).**

Ignoring the plain language of Rule 31.23 and § 13-759,<sup>5</sup> the special-action petition (at 2, 3, 7<sup>6</sup>) relies solely on § 41-193(A)(1) to argue the AAG has “exclusive authority” to represent the State in this Court. *See* A.R.S. § 41–193(A)(1) (stating “[u]nless otherwise provided by law the [AAG] shall . . . [p]rosecute and defend in the supreme court all proceedings in which this state . . . is a party”). That reliance is misplaced.

In *State ex rel. Brnovich v. Arizona Bd. of Regents*, 250 Ariz. 127 (2020), this Court rejected a similar attempt by the AAG to procure a substantively identical “open-ended grant of authority” under § 41-193(A). *Brnovich*, 250 Ariz. at 132-33, ¶¶ 19-21. There, this Court explained that § 41-193 imposes “specific and granular

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<sup>5</sup> Despite making no attempt to identify ambiguity, the special-action petition (at 4, 10-12, 14-16) resorts to extratextual matters in the form of alleged public-policy concerns, “practical sense,” proposed rule and statutory amendments, funding issues, and “historical practices” to support its exclusive-authority claim. But where, as here, neither ambiguity nor absurdity are found in the governing laws, employing such secondary tools of construction is unwarranted.

<sup>6</sup> When referring to the special-action petition’s page numbers, the brief cites the PDF file’s page number, not the number in the petition’s footer.

. . . duties of legal representation” on the AAG. *Brnovich*, 250 Ariz. at 132, ¶ 19. This statute does not, however, list the AAG’s powers or give the AAG “broad grants of authority.” *Id.*

This reasoning applies equally here, foreclosing the AAG’s latest exclusive-authority claim. The AAG’s subsection (A)(1) duty merely obligates the AAG to represent the State in this Court, meaning the AAG cannot decline to provide such representation. The imposition of this duty also frees the AAG from obtaining the consent of another officer or entity before acting in furtherance of the legal representation.

But as in *Brnovich*, the AAG’s exclusive-authority claim fails because it again erroneously conflates the imposition of a statutory duty with a grant of exclusive authority and unrestricted power. *See id.*, 250 Ariz. at 132-33, ¶¶ 19-21; *see also Chiafalo v. Washington*, 591 U.S. 578, 599 (2020) (Thomas, J., joined by Gorsuch, J. concurring) (discussing the erroneous conflation of imposition of duty with the grant of a power); *Bd. of Sup’rs of Maricopa Cnty. v. Woodall*, 120 Ariz. 379, 383 (1978) (Cameron, J., dissenting) (“There is a difference . . . between duty and exclusive power.”) (quotation omitted). Statutory obligations do not—as the AAG would have it—equate to dominion.

Not only that, but nothing in § 41-193 purports to exclusively vest *anything*—duty, authority, power, or otherwise—in the AAG. Instead, the statute contains the

limiting phrase “unless otherwise provided by law,” which expressly contemplates the governance of other laws that may subordinate the AAG’s duties. *See Harris v. Brain*, 1 CA-SA 15-0125, 2015 WL 4600213, \*2, ¶ 6 n.1 (Ariz. App. July 30, 2015) (mem. dec.) (stating “§ 41–193(A) affirmatively contemplates that other laws may govern—it provides that the department of law . . . may exercise its powers ‘[u]nless otherwise provided by law’”). Therefore, although § 41-193(A)(1) directs the AAG to represent the State in this Court, it does not provide—explicitly or implicitly—that *only* the AAG can do so.

Section 41-193(A)’s limiting phrase is squarely implicated here: the county attorney’s authority to request an execution warrant is indeed “otherwise provided by law,” *viz.*, Rule 31.23, § 13-759, and § 11-532(A)(1). No controversy results from the concurrent representation of the State by different legal offices. *See Crosby-Garbotz v. Fell in & for Cnty. of Pima*, 246 Ariz. 54, 60, ¶ 24 (2019) (concluding the State can be a party in different actions involving “different legal offices”); *see also In re 1969 Chevrolet*, 134 Ariz. 357, 359 (App. 1982) (noting county attorneys “often represent[ ] the State of Arizona”).

Nonetheless, the special-action petition (at 7) cites *Arizona Dep’t of Corr. v. Fenton*, 163 Ariz. 174 (App. 1989), to press that because the legislature “expressly delegated the [subsection (A)(1)] duty of representation” to the AAG, “that

representation cannot be asserted by others without authorization.” *Fenton* is inapposite.

Unlike here, the issue in *Fenton* was whether outside counsel retained by the AAG had the authority to invoke rights granted by statute to the AAG. 163 Ariz. at 175-76. Surely, whether the AAG’s agent in a civil case, acting for the AAG, is afforded the same rights as the AAG has nothing to do with the issue presented here. Nor does *Fenton* stand for a proposition that even approximates the special-action petition’s proffered reading of it.

#### **IV. The AAG’s Unfounded Claim of Supervisory Authority Under § 41-193(A)(4).**

The special-action petition (at 4-7) retreats to the mistaken assumption that § 41-193(A)(4) grants the AAG general supervisory authority over the county attorneys, which can be exercised at the AAG’s discretion. The petition (at 4-5) goes on to assert—again mistakenly—that “pursuant to [this] supervisory authority,” the AAG can allow county attorneys to “appear on behalf of the State on appeal.”

Section 41-193(A)(4) provides, “Unless otherwise provided by law,” the AAG “shall . . . [e]xercise supervisory powers over county attorneys of the several counties in matters pertaining to that office *and require reports relating to the public business thereof.*” (Emphasis added.) Of the nine subsections listed in § 41-193(A), only subsection (A)(4) contains the phrase “supervisory authority”; otherwise, it is omitted.

Because the AAG’s supervisory-powers duty is stated solely in subsection (A)(4), it is likewise confined to that subsection. That is, it does not extend to the other duty-imposing subsections. Consequently, all the AAG can do to “supervise” the county attorneys is what subsection (A)(4) expressly provides: require reports relating to the county attorney’s public business. Nothing more.

Thus, the AAG does not and could not “supervise” the county attorneys in the context of representing the State in this Court, given that subsection (A)(1) does not provide the AAG a coterminous supervisory duty. To read statutory terms into places where the legislature has intentionally excluded them—as the AAG seeks to do here—is to disregard a well-settled principle of statutory construction. *American C.L. Union of Arizona v. Ariz. Dep’t of Child Safety*, 251 Ariz. 458, 463, ¶ 20 (2021); *cf. City of Surprise v. Ariz. Corp. Comm’n*, 246 Ariz. 206, 211, ¶ 13 (2019) (“[T]he expression of one item implies the exclusion of others.”).

The AAG’s proposed interpretation would also conflict with other § 41-193(A) subsections, stripping them of effect. Subsection (A)(5) is particularly instructive on this point. That subsection provides, “At the direction of the governor, or if deemed necessary, assist the county attorney of any county in the discharge of the county attorney’s duties.”

But if the AAG possessed unrestricted supervisory power as the special-action petition suggests, the AAG would not need to await the governor’s “direction.” Nor

would the AAG merely “assist” a county attorney. Instead, the AAG would just order the county-attorney supervisee to do what the AAG said. The AAG’s suggested reading would thus improperly render subsection (A)(5) extraneous and meaningless. *See Bilke v. State*, 206 Ariz. 462, 464, ¶ 11 (2003) (construing statutes to avoid rendering any word “superfluous, void, contradictory, or insignificant”) (quotation omitted); Scalia & Garner at 174 (discussing the surplusage canon, where every word in a statute must be given effect, and “[n]one should be ignored”).

Furthermore, under the AAG’s proffered construction of § 41-193(A)(4), the AAG would subsume the county attorney’s duties and powers, given that the AAG could step in at any time and veto any disapproved-of action. This would effectively relegate the county attorneys—independently elected constitutional officers—to assistant attorneys general, folding the county attorneys’ offices into the AAG’s law department. The absurdity of that outcome should be self-evident. *See Patches v. Indus. Comm’n*, 220 Ariz. 179, 182, ¶ 10 (App. 2009) (“[C]ourts must, where possible, avoid construing statutes in such a manner as to produce absurd or unconstitutional results.”).

## **V. CA Mitchell's Independent Authority.**

Arizona law gives elected county attorneys the power and duty to represent the public's interest in the State's prosecution of those charged with crimes. Ariz. Const. art. 12, § 3; A.R.S. § 11-532(A)(2); *State ex rel. Berger v. Myers*, 108 Ariz. 248, 249 (1972). What CA Mitchell seeks here is nothing more than that; it is a request to carry out the lawful sentence that resulted from MCAO's prosecution of Gunches. It is both undisputed and undisputable that the legal requirements for the execution warrant's issuance are satisfied. Indeed, for that reason, the AAG sought and obtained the prior execution warrant in this matter.

AAG Mayes refuses to ask for a subsequent warrant so that an already lengthy process of reviewing execution protocols may continue—the same protocols that were in place when AAG Brnovich obtained the prior execution warrant. By AAG Mayes's own account, when that review will be finished is left to anyone's guess. In any event, AAG Mayes's desire to review protocols, or anything else for that matter, should be beside the point.

To excuse the AAG's inaction, the special-action petition suggests (at 17-19) that because the AAG represents the Arizona Department of Corrections, Rehabilitation and Reentry ("ADCRR"), it "makes practical sense" for the AAG to decide exactly when an execution warrant should be sought, and now is just not the right time. Absent from Rule 31.23 and § 13-759, of course, is any term indicating—

much less stating—ADCRR representation is required to seek an execution warrant. The asserted “practical sense” of the arrangement does not override governing law.

Not only does the AAG’s ADCRR-representation argument lack anything approaching authoritative legal support, but it also disregards the Victims’ right to finality. “Arizona courts are especially concerned with the finality of criminal cases because the Arizona Constitution requires courts to protect the rights of victims of crime by ensuring a ‘prompt and final conclusion of the case after the conviction and sentence.’” *State v. Towery*, 204 Ariz. 386, 391, ¶ 14 (2003) (quoting Ariz. Const. art. 2, § 2.1(A)(10)). This serves “[t]o preserve and protect victims’ rights to justice and due process.” Ariz. Const. art. 2, § 2.1(A); see *Fitzgerald v. Myers*, 243 Ariz. 84, 92, ¶ 25 (2017) (protecting a victim’s constitutional right to finality).

Victims have standing to seek orders to enforce their rights. A.R.S. § 13–4437(A). Prosecutors are obliged to assert the victim’s rights upon request. A.R.S. § 13–4437(C); Ariz. R. Crim. P. 39(d)(1).

Here, the Victims have asserted their constitutional and statutory rights, and have asked CA Mitchell to help enforce them. CA Mitchell has not only the authority but the duty to do so.

As does AAG Mayes.

But where CA Mitchell seeks to fulfill that duty, AAG Mayes intends to stop her, even though “[o]nly with real finality can the victims of crime move forward.” *Calderon v. Thompson*, 523 U.S. 538, 556 (1998).

### **CONCLUSION**

This Court should deny special-action relief and grant CA Mitchell’s motion to set a briefing schedule leading to CA Mitchell’s request for an execution warrant.

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BY /s/  
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