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June 9, 2025

RCVD COCHISE CNTY BOS
JUN 9 2025 PM 1:33

IN PERSON DELIVERY
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VIA PERSONAL SERVICE

Clerk of the Cochise County Board of Supervisors
1415 Melody Lane
Bisbee, AZ 85603

CC'd via email to:
mrusing@rllaz.com

Re: NOTICE OF CLAIM: A.R.S. 12-821.01

To whom it may concern:

I have been retained to represent TERRY THOMAS CROSBY regarding his claim against Cochise County for indemnification for legal fees expended in defending against a wrongful criminal prosecution brought against him individually, based solely on his good faith actions and legitimate actions taken in the course and scope of his employment as a County Supervisor for Cochise County.

Factual Background and Legal Basis¹ for Indemnification

On November 18, 2022, the Cochise County Board of Supervisors voted to “table accepting the [2022] election results until Monday the 28th of November, at 10:00 a.m., until such evidence about lawful certification by an accredited laboratory is presented and confirmed by persons with expertise in that field.” The meeting minutes for that date, attached here as **Exhibit 1**, clearly indicate that the Board expressed its key concern was to have an interactive presentation of evidence potentially supporting or detracting from certification of the election.

¹ Mr. Crosby may also possess a valid claim against Cochise County for indemnification of his legal expenses based on the separate grounds of the County’s vicarious liability for the County Attorney’s failure to provide any legal advice at all to the Board of Supervisors at the November 28, 2022 public meeting or in connection with the decision being made at that meeting.



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Then, prior to the November 28, 2022 Cochise County Board meeting, former Board Chairman English wrongfully structured the meeting agenda to preclude any oral presentation from experts related to the election certification. Her action marginalized the first amendment rights of the proposed presenters and the public's right to know that their Cochise County Supervisors were making an informed and accurate/valid decision to certify the 2022 election, as well as the public's right to have public meetings proceed in the manner previously voted on by a majority of the Board. *See, e.g., Hunt v. Campbell*, 19 Ariz. 254, 279 (1917) (Supreme Court agreeing with Cochise County decision not to include certain ballots in the canvass because they had no proof of origin nor proper chain of custody).

At the November 28, 2022 meeting, Mr. Crosby noted on the record that the meeting was “mis-agendized” and moved as follows: “that this item remain tabled until December 2nd. There will be a Board of Supervisors meeting agendized, including presentation and interaction between the Secretary's representative, if they so choose, up to and equal in time to that of and following these individuals... The Board of Supervisors vote on certification of the canvass will follow those conclusion statements this Friday.” The Board of Supervisors then proceeded to a vote with Mr. Crosby and Mrs. Peggy Judd voting in support of this motion. A copy of the meeting minutes from this November 28, 2022 meeting is attached as **Exhibit 2**.

This November 28, 2022 vote is the central and sole basis for the criminal charges that the Arizona attorney general has been unlawfully pursuing against Mr. Crosby. Mr. Crosby is clearly entitled to indemnification from the County for his continuing legal fees and his anticipated future legal fees in defending against this criminal matter because Mr. Crosby's actions and voting: 1) were all taken in good faith and with objectively reasonable bases, as demonstrated above; and 2) were all taken in the course and scope of his employment as a county supervisor. Under the Third Restatement of Agency § 8.14, “a principal has a duty to indemnify an agent ... when the agent suffers a loss that fairly should be borne by the principal in light of their relationship.” *In re Sky Harbor Hotel Properties, LLC*, 246 Ariz. 531, 533 (2019) (“Absent controlling authority to the contrary, [Arizona] generally follow[s] the Restatement when it sets forth sound legal policy.”).



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Every reason supports that Mr. Crosby’s defense “fairly should be borne by [Cochise County]” in these circumstances. First, Mr. Crosby had a statutory duty to canvass the election in his role as a county supervisor and possessed duties to the public to ensure all Board decisions were reached in an open fashion with the public being allowed to be heard. Second, Arizona Supreme Court precedent supports that major questions of validity of ballots/tabulation could be addressed by county supervisors before certifying the canvass. *Campbell*, 19 Ariz. at 279. Third and finally, Mr. Crosby did nothing outside the scope of his employment as a County supervisor—all he did was propose a motion and cast a vote, both of which are clearly within the scope of his employment as an elected county official, and involved him addressing circumstances thrust upon him at the last minute which were beyond his control (*i.e.*, Chairman English’s wrong agenda). Accordingly, there is a sound legal basis for Mr. Crosby’s claim for indemnification against Cochise County here.

Moreover, because Mr. Crosby’s damages, in the form of legal fees expended, are continuing and future oriented and yet to be incurred, Mr. Crosby cannot possibly have “realize[d] he [] has been damaged”—in the past tense—in the meaning of A.R.S. 12-821.01(B). Therefore, this notice of claim is timely².

Damages

Mr. Crosby has thus far incurred \$263,146.25 in legal fees and \$3,847.38 in legal costs in defending himself in the aforementioned criminal case. He anticipates incurring an additional \$50,000.00 to \$200,000.00 in fees and costs that will be incurred to continue defending the case through trial and any post-trial proceedings and to appeal any judgment against him if he were to lose at trial.

Accordingly, Mr. Crosby hereby demands payment in the amount of \$300,000.00 to settle the aforementioned indemnification and other claims.

² In addition, any claim asserted by Mr. Crosby against Cochise County for indemnification could not possibly have been addressed by a disinterested quorum of the Cochise County Board of Supervisors so long as Mrs. Judd was a Board Member. Therefore, because the claim could not possibly have been addressed until on or after Mrs. Judd left office on or around December 31, 2024, that is another reason that this notice of claim is clearly timely, being filed within six months of Mrs. Judd leaving office.



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Thank you for your attention to this matter. Please do not hesitate to contact me directly to discuss this further.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dennis I. Wilenchik'.

Dennis I. Wilenchik, Esq.

Attachments as stated above.