

Conflict Counsel

Description of issue and how recommending the agency's request furthers the agency's mandates

Pursuant to A.R.S. § 41-192, the Arizona Secretary of State's Office (the Office) is represented by the Arizona Attorney General's Office in legal matters arising from the Office's statutory responsibilities. However, circumstances periodically arise in which the Attorney General determines that a conflict of interest exists or is otherwise unable to represent the Office. In those instances, Arizona law and applicable court procedures require the Office to obtain independent legal representation to protect the interests of the Office and ensure compliance with its statutory responsibilities.

Over the past several years, election administration has become one of the most heavily litigated areas of state government. As Arizona's chief elections officer, the Secretary is routinely named in litigation involving election administration, ballot measures, candidate qualification, voter registration, election procedures, public records, and the constitutionality of state election laws. In many of these cases, the Office must respond on expedited timelines established by statute or court order, making immediate access to qualified legal representation essential.

Recognizing these realities, the legislature included one-time funding in the FY2025 budget to allow the Office to retain conflict counsel when necessary. The FY2025 budget also established specific authority permitting the Office to employ outside counsel when:

1. The Office is named as a defendant;
2. The Office determines that a conflict prevents representation by the Attorney General; and
3. The Office is either a nominal party or is defending the constitutionality of a law or referendum enacted by the Legislature.

These provisions acknowledged that conflicts requiring independent legal representation are an expected part of administering statewide elections and that the Office must have the ability to obtain qualified counsel without disrupting its statutory responsibilities.

In addition, the Arizona Attorney General's Office has recognized the continuing need for these legal services by requesting funding to support legal representation for the Office through an interagency service agreement (ISA). While previous one-time appropriations have allowed the Office to obtain conflict counsel when necessary, they do not establish a reliable funding source for what has become a recurring operational need.

Because election litigation continues throughout each election cycle, the need for conflict counsel is no longer an extraordinary or one-time expense. Establishing ongoing funding will ensure the Office can obtain qualified legal representation whenever conflicts arise, comply with legislative direction, and continue administering Arizona's election laws without interruption.

Proposal

Appropriate \$750,000 from the state General Fund in FY2028 and each fiscal year thereafter to provide an ongoing funding source for conflict counsel and other legal representation required when the Arizona Attorney Generals Office is unable to represent the Office due to a conflict of interest or other legal limitation.

The appropriation will allow the Office to:

- Retain qualified outside legal counsel when conflicts prevent representation by the Attorney General's Office.
- Comply with the conflict counsel provisions established by the legislature.
- Ensure timely legal representation in election litigation and other matters requiring expedited judicial review.
- Protect the legal interests of the Office while continuing to fulfill its statutory responsibilities.
- Avoid disruptions in election administration resulting from delays in securing legal representation.

Alternatives considered and reasons for rejection

The Office considered continuing to rely upon periodic one-time appropriations to fund conflict counsel. This alternative was rejected because election litigation and conflicts requiring independent legal representation have become recurring operational responsibilities rather than isolated events. One-time appropriations create uncertainty and limit the Office's ability to effectively plan for ongoing legal representation.

The Office also considered relying exclusively upon representation by the Arizona Attorney General's Office. This alternative was rejected because Arizona law, court rules, and professional ethical obligations require independent legal representation when conflicts of interest exist. In those circumstances, the Office has no practical alternative but to retain qualified outside counsel.

Impact of not funding this fiscal year

Without ongoing funding, the Office may be unable to obtain timely conflict counsel when the Attorney General's Office is unable to provide representation due to a conflict of interest. Delays in securing qualified legal representation could impede the Office's ability to respond to litigation involving election administration, defend the constitutionality of state laws when authorized by the legislature, or otherwise fulfill its statutory responsibilities.

Continued reliance on one-time appropriations would also create uncertainty regarding the Office's ability to obtain conflict counsel during future election cycles, increasing operational and legal risk while potentially requiring emergency funding or judicial intervention to secure appropriate representation.

Providing ongoing funding ensures the Office can obtain qualified legal counsel whenever conflicts arise and continue carrying out its statutory duties without interruption.

Statutory reference

- A.R.S. § 41-192
- Applicable General Appropriation Act footnote governing employment of conflict counsel.
- Applicable Arizona Rules of Professional Conduct and court procedures regarding conflicts of interest.

Equipment to be purchased

None.

Classification of new positions

None.

Annualization

\$750,000 in FY2028 and thereafter.