



# Nuts & Bolts: Arizona State legislature's authority to issue & enforce legislative summons or subpoena

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# Introduction of Presentation

- Reading the law on the AZ state legislature's authority to summon or subpoena.
- What has the AZ Superior court said about the AZ state legislature's authority by law to subpoena?
- What has AZ Superior court said about Maricopa County refusing to produce certain information to AZ state legislature?
- Does the AZ state legislature have power to punish those who violate a legislative subpoena?
- Can a County USURP the AZ State legislature's authority?
- Is there any question or doubt that the AZ state legislature has the power to subpoena?



# Reading the law on the AZ state legislature's authority to summon or subpoena.

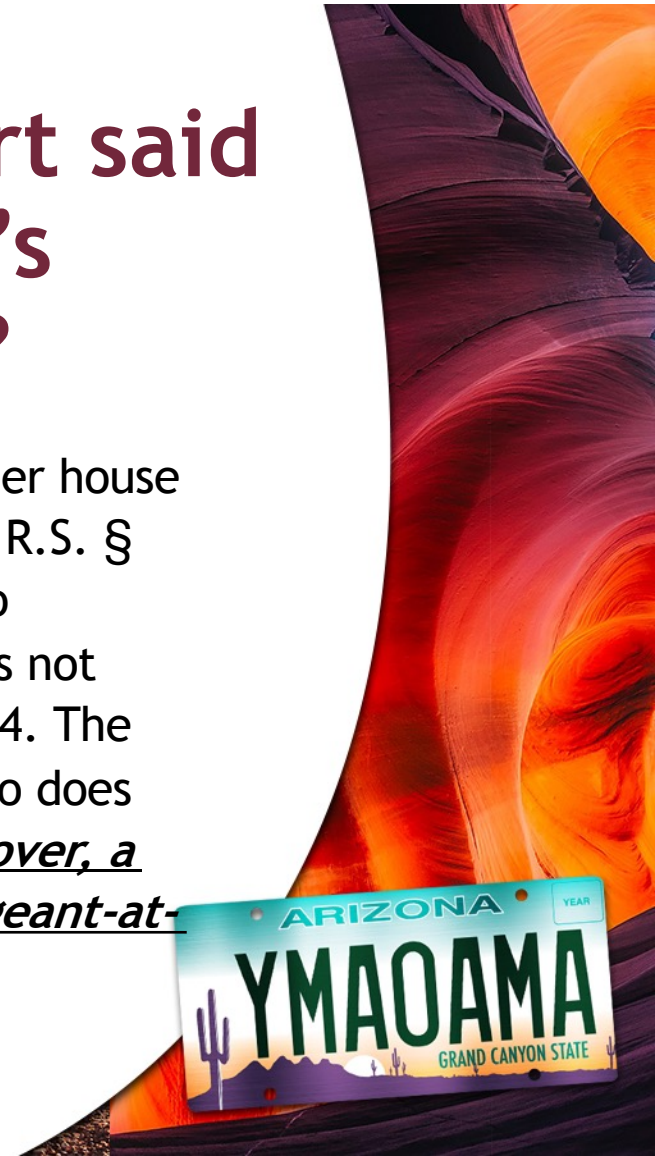
- Arizona Revised Statutes Title 41 - State Government
  - Article 4 - Witnesses and Punishment of Contempt (s)
    - **A.R.S 41-1151 - Issuance and service of legislative subpoena**
      - A subpoena may be issued by the presiding officer of either house or the chairman of any committee before whom the attendance of a witness is desired. The subpoena is sufficient if it states whether the proceeding is before the senate, house of representatives or a committee, is addressed to the witness, requires the attendance of the witness at a certain time and place, and is signed by either presiding officer or a committee chairman. The subpoena may be served and returned in like manner as civil process.
    - **A.R.S 41-1152 - Immunity of witnesses**
      - Testimony or evidence produced pursuant to this article may not be admitted in evidence or used in any manner in any criminal prosecution against a natural person sworn and examined before either house of the legislature or any committee of either house, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with an appearance required by section 41-1151 if it constitutes either the compelled testimony or the private papers of such person which would be privileged evidence pursuant to the fifth amendment of the Constitution of the United States or article II, section 10 of the Constitution of Arizona and such person claimed the privilege against self-incrimination and a majority of the committee, after consultation with the attorney general, votes to order such person to testify or produce such papers.
    - **A.R.S 41-1153 - Disobedience of subpoena as legislative contempt**
      - A. If a witness neglects or refuses to obey a legislative subpoena, or, appearing, neglects or refuses to testify, the senate or the house may, by resolution entered in the journal, commit him for contempt.
      - B. A witness neglecting or refusing to attend in obedience to a subpoena may be arrested by the sergeant-at-arms and brought before the senate or house upon authority of a copy of the resolution signed by the president or speaker, and countersigned by the secretary or chief clerk.



# What has the AZ Superior court said about the AZ state legislature's authority by law to subpoena?

- “ A.R.S. § 41-1151 authorizes ‘ the presiding officer of either house or the chairman of any committee ‘ to issue a subpoena. A.R.S. § 41-1151 et seq. provides a mechanism for the legislature to enforce the subpoenas and provides that a person who does not comply is guilty of a misdemeanor. A.R.S. §§ 41-1153, -1154. The statutes also authorize the Senate to find that a person who does not comply with a subpoena to be held in contempt. Moreover, a person who does not comply can be arrested by the sergeant-at-arms. A.R.S. § 41-1153 “

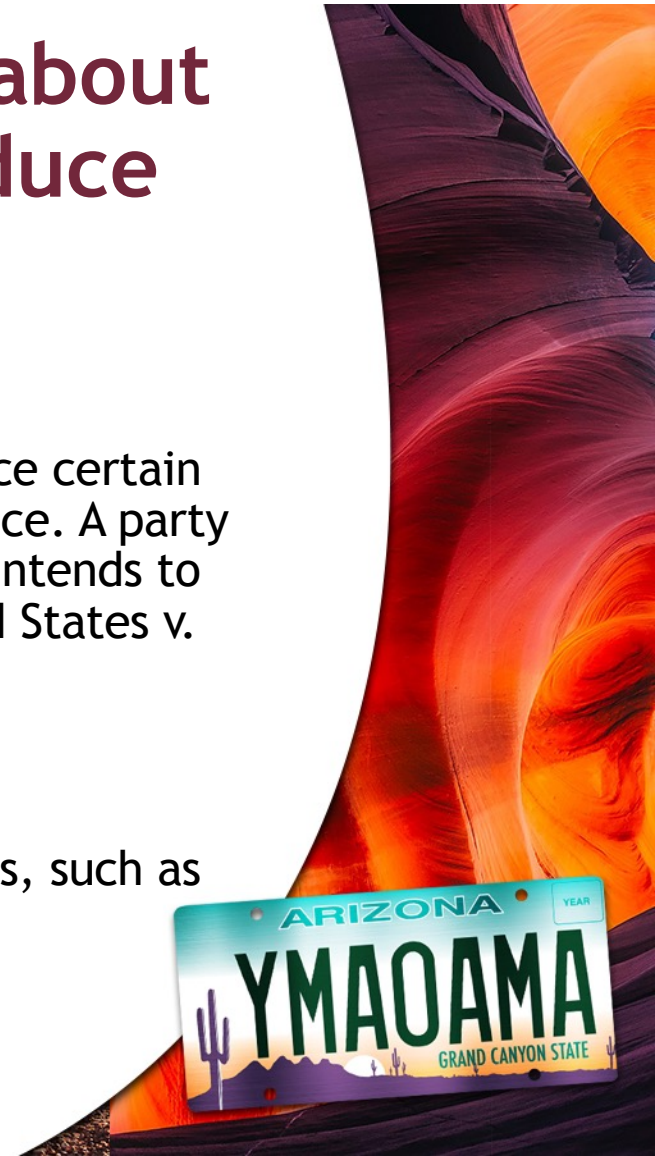
- *Maricopa County v. Karen Fann* (2021)



# What has AZ Superior court said about Maricopa County refusing to produce certain information to AZ state legislature?

- “ Moreover, it appears as if the County is refusing to produce certain information, irrespective of whether it had reasonable notice. A party cannot use the lack of reasonable notice as a defense if it intends to not comply, irrespective of the notice provided. See United States v. Bryan, 339 U.S. 323, 333-34 (1950). “
- “ The County’s argument that the Senate cannot subpoena electronically stored information (“ESI”) or tangible objects, such as voting “machines”, *is also meritless.* “

- *Maricopa County v. Karen Fann (2021)*



# Does the AZ state legislature have power to punish those who violate a legislative subpoena?

- “ The Arizona Supreme Court has held that ‘ [i]t is within the powers of legislative committees to conduct investigations...and to issue subpoenas and to summon witnesses generally any committee” to issue subpoenas. A.R.S. § 41-1151. and *punish them for contempt* if they refuse to answer relevant questions or produce records.’ *Buell v. Superior Court (1964)* ”

- *Maricopa County v. Karen Fann (2021)*



# Can a County USURP the AZ State legislature's authority?

- “ The County suggests that the Subpoenas could ‘usurp’ the administration of elections and duties of County officials and the Secretary of State. Therefore, according to the County, the Subpoenas present separation of powers problems. The entire electoral infrastructure, however, is a legislative creation. The functions of County officials and the Secretary of State were the result of delegations by the legislature. “
- “ Subpoenaing materials from the County is not a usurpation of the County’s powers. Rather, it is simply gathering of information. “

- *Maricopa County v. Karen Fann (2021)*



# Is there any question or doubt that the AZ state legislature has the power to subpoena?

- “ There is no question that the Senators have the power to issue legislative subpoenas. “
- “ It is not the Court’s function to ascertain the wisdom of the Senators’ decision to issue the Subpoenas or to determine if any attendant investigation is ‘ justified. ‘ This Court is not in a position to determine if the ‘ real ‘ purpose of the Subpoenas. “

- *Maricopa County v. Karen Fann (2021)*

