

RESOLUTION NO. 2019 - _____

RESOLUTION AUTHORIZING SAN JUAN COUNTY TO FILE A LAWSUIT AGAINST THE SAN JUAN COUNTY ATTORNEY, KENDALL LAWS, RELATED TO HIS FAILURE TO COMPLY WITH THE LAWFUL DIRECTIVES OF THE COUNTY AS STATED IN RESOLUTIONS 2019-04 AND 2019-06 AND FURTHER AUTHORIZING THE CHAIRMAN OF THE SAN JUAN COUNTY COMMISSION TO RETAIN OUTSIDE COUNSEL TO BRING THE LAWSUIT.

WHEREAS, the San Juan County Attorney, Kendall Laws, has a history that raises legitimate questions concerning his actions as the County Attorney and as the son of Kelly Laws, who was a candidate for the County Commission District 2 seat: in 2018, the County Attorney participated in and directed an unlawful investigation into the residence status of Willie Grayeyes; he was aware of an unlawful and unconstitutional scheme to remove Mr. Grayeyes as a candidate for the County Commission District 2 seat; and he made a baseless request to the Davis County Attorney to initiate a criminal action against Mr. Grayeyes.

WHEREAS, in November 2018, the San Juan County Commissioners-elect, Kenneth Maryboy and Willie Grayeyes, requested the County Attorney, Kendall to prepare a comprehensive inventory of civil litigation in which the County is a party.

WHEREAS, the County Attorney declined to prepare the requested inventory, stating that he was too busy.

WHEREAS, the San Juan County Commission, acting in its official capacity, approved Resolution 2019-04, directing the County Attorney to immediately prepare a comprehensive inventory of civil litigation in which the County is a party and submit that inventory to the Commission.

WHEREAS, the litigation inventory is essential for the governance of the County, as it is believed the County has exhausted its financial reserves in the last four to five years through expenditures of up to \$5 million in legal fees to outside attorneys for civil litigation.

WHEREAS, the County Attorney has failed and refused to prepare the requested litigation inventory and, consequently, the County Commission remains unaware of the civil cases in which the County is a party, including who represents the County, the nature and scope of the representation agreements, how the agreements were approved by the County, the fees and costs incurred by the County for this representation and the potential future liability under these agreements.

WHEREAS, in Resolution 2019-05, the County changed its direction in matters concerning the Bears Ears National Monument, rescinding prior actions taken in support of the unlawful reduction of the Monument and calling for its restoration.

WHEREAS, in Resolution 2019-06, consistent with the position taken by the County in Resolution 2019-05, the County directed the County Attorney to terminate the County's

relationship with Mountain States Legal Foundation and withdraw the County from the litigation concerning the Bears Ears National Monument.

WHEREAS, the County Attorney has failed to report to the County Commission on his compliance with Resolution 2019-06 despite repeated inquiries from the Chairman of the Commission.

WHEREAS, on March 15, 2019, attorneys for Mountain States Legal Foundation, Zhonette Brown and David C. McDonald, acting in disregard of Resolution No. 2019-06, filed a *CONSOLIDATED REPLY BRIEF OF INTERVENORS STATE OF UTAH, SAN JUAN COUNTY, AMERICAN FARM BUREAU FEDERATION, AND UTAH FARM BUREAU FEDERATION SUPPORTING FEDERAL DEFENDANTS' MOTION TO DISMISS* stating that they are directed by an unidentified "County official" and that they need not withdraw the County from the Cases.

WHEREAS, it is apparent that the County Attorney has not complied with the directives contained in Resolution No. 2019-06.

WHEREAS, the Utah Supreme Court has outlined the remedies that a County may pursue when a County Attorney refuses to take actions directed by the County as client through an official action of the County Commission in *Salt Lake County Commission v. Salt Lake County Attorney*, 985 P.2d 899 (1999), including attempting to meet with a County Attorney to informally resolve differences, but also includes filing of a lawsuit, such as a declaratory judgment action, to compel compliance by the County Attorney.

WHEREAS, the Chairman of the Commission has attempted to meet with the County Attorney to discuss his failure to comply with the lawful directives of the County, but this effort has been unsuccessful.

WHEREAS, the County Commission concludes that the County Attorney has made clear that he will not comply with the lawful directives of the County and that filing a lawsuit in the manner outlined in *Salt Lake County Commission v. Salt Lake County Attorney* is the only way to obtain his compliance concerning Resolution 2019-04 and Resolution 2019-06 and furthermore is the only way to ensure his compliance in future.

NOW, THEREFORE, BE IT RESOLVED:

Section 1: San Juan County is authorized to file suit against the San Juan County Attorney, Kendall Laws, due to his failure to comply with the lawful directives of the County contained in Resolution 2019-04 and 2019-06.

Section 2: The authorized suit may be for any remedy contemplated in *Salt Lake County Commission v. Salt Lake County Attorney*, as well as any other remedy available in law or equity, such as an action for mandamus or for removal from elected office, pursuant to Utah Code

section 77-6-1, *et seq.*, as discussed by the Utah Supreme Court in *Madsen v. Brown*, 701 P.2d 1086 (1985).

Section 3: The Chairman of the Commission is authorized to retain outside legal counsel to pursue the lawsuit against the County Attorney on behalf of the County.

Section 4: The Chairman of the Commission is also authorized, in his sole discretion, to file a complaint with the Utah Office of Professional Conduct against the County Attorney.

Section 5: This resolution shall become immediately and fully effective on the date of its approval.

PASSED, ADOPTED AND APPROVED by the Board of San Juan County Commissioners this _____ day of _____ 2019.

Those voting aye:

Those voting nay:

Those abstaining:

Absent:

Board of San Juan County Commissioners

Kenneth Maryboy, Chairman

ATTEST:

John David Nielson, County Clerk/Auditor