

TUCSON & REGION

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Court says AG can challenge hotel deal

HOWARD FISCHER
Capitol Media Services

PHOENIX — Arizona Attorney General Mark Brnovich is going to get a chance to challenge a deal that he says illegally gives away taxpayer funds to benefit a private company.

Brnovich did not wait too long before filing suit against the Board of Regents over an agreement to building a 330-room Omni hotel and a 30,000-square-foot conference center on land owned by Arizona State University, the Arizona Supreme Court said Tuesday.

Justice John Lopez, writing for the unanimous court, said state law gives Brnovich up to five years to pursue any claims of misspending of public funds.

But the decision does not mean that the deal is illegal. Instead, it sends the case back to a trial judge to hear evidence.

What the courts ultimately decide, however, likely could affect more than this particular deal. It also could alter or upend other arrangements that state universities have where they approve commercial leases of public property to private entities.

In prepared statements, each side claimed victory, focusing on the points they won and ignoring where the justices found fault with their arguments.

“From the very beginning, we said this lawsuit is about protecting hardworking Arizonans by ensuring that taxpayer funds are not used for private business deals,” Brnovich said. But that does not address the fact that the justices did not actually conclude the deal was illegal.

And Lyndel Manson, who chairs the Board of Regents, pointed out that the justices affirmed lower court rulings that the land where the hotel is being built “is and has long been tax-exempt state land.”

Manson also said that the hotel will benefit the university and mentioned that Omni will pay an estimated \$120 million in rent.

But she did not address the question the justices said needs to be resolved, like whether it was a good deal or whether the financial arrangement actually amounts to an illegal gift. And Manson also glossed over the fact that the \$120 million she cites as a benefit is to be paid over 60 years.

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MAMTA POPAT, ARIZONA DAILY STAR

Tucson Mayor Regina Romero, far left, and Pima County Attorney Laura Conover, second from right, and others listen to Tucson Police Department Assistant Chief Monica Prieto speak during a press conference to launch the local monthlong campaign of Sexual Assault Awareness Month on April 5.

Groups team up to bust sexual assault myths

CAITLIN SCHMIDT
Arizona Daily Star

With a sexual assault taking place nearly every minute in the United States, agencies and community groups across Pima County are teaming up this month for outreach and events designed to support survivors and fight misinformation.

TucSAAM, Tucson’s version of April’s Sexual Assault Awareness Month, started last year when local victim service agencies, advocacy groups, law enforcement and legal rights organizations came together with the idea of informing the public while also supporting survivors of sexual assault, through virtual education events, digital campaigns and online outreach.

But with COVID-19 precautions winding down and in-person events ramping up this spring, organizers are working on a month full of in-person events and outreach across Tucson. The theme of this year’s campaign, “The Truth About Teal,” (the color associated with Sexual Assault Awareness Month,) aims to dispel myths surrounding



sexual assault and provide factual information about the scope of the problem and its impact on survivors.

Someone in America is sexually assaulted every 68 seconds, and one out of every six American women has been the victim of attempted sexual assault or rape, according to the Pima County Attorney’s Office. And with less than one-third of assaults being reported to police, more needs to be done to break down the barriers to reporting, local experts say.

With two-thirds of transgender people having been sexually assaulted and at least one in 33 men having been the victim of an attempted sexual assault or rape,

experts are clear that anyone can be a victim.

TucSAAM 2022 officially kicked off Friday, with representatives from the Southern Arizona AIDS Foundation inviting people at the Fourth Avenue Street Fair to come into the Thornhill Lopez Center, SAAF’s safe space for LGBTQ+ youth, for water and information about local resources and facts about sexual assault.

New to the group this year, SAAF’s Anti-Violence Project program director Carrie Eutizi designed the marketing materials used during this year’s campaign. That includes a bookmark with local resources that’s being distributed at several Pima County libraries and Bookmans locations here. Bookmans, along with the libraries also will have displays up that have information about local resources and a recommended list of books that can help people better understanding the survivor experience.

Bookmans also is bringing author Karen Moe, a sexual assault survivor who wrote a book about being abducted by a serial rapist

in Prescott in 1994, to talk about her experience and promote her new book.

“While I thought that was a great idea, I did want to focus on a few more local resources for our community,” said Bookmans’ Community Manager James Robertson. “It’s easy to hear a story and things of that nature, but in my opinion, it’s always better to have something local you can turn to if you have questions about what our community can offer in those situations.”

Getting resources into libraries is a big step toward reaching survivors, organizers say.

“The (libraries) experience people in crisis all the time,” said Molly Hilber, grants and contracts manager for Pima County Behavioral Health. “One of the materials they wanted the most copies of was the list of crisis service lines for all our partners.”

A similar display will also be up at the UA library, thanks to community outreach professional Cynthia Chapman, who works with the UA’s Consortium

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Sales rising for street vendors at border

SUSAN BARNETT
Special to the Arizona Daily Star

The border traffic brings life-saving business to many families in Nogales, Sonora.

Maria Catalena Enriquez wakes up at 5:30 every morning to grind corn to make fresh tamales she will peddle to carloads of people waiting to cross into Arizona.

“Thanks to my *tamalitos* I have been able to move forward,” said Enriquez, known to her customers simply as Cathy. “I am very grateful to God that I have had the chance to make my tamales and not depend on anyone. What I get, I get how I can.”

By 7 a.m. she’s at the Nogales port of entry selling her tamales to the people waiting to drive

over into Arizona. She sells sweet tamales and green chile and cheese tamales — a dozen at 150 pesos or \$7.50 U.S. — each made fresh every day.

Another vendor’s family business sells plushies, hats, piggy banks and other trinkets along the road. Jaziel Cesar Perez works a booth near the car line with his family, toiling 10- to 12-hour days, six days a week, even under the blazing sun.

Perez’s family has a booth on the outskirts of the road, but they also carry trinkets through the line to try and sell to people waiting in their cars.

“People try to barter a lot,” Perez said. “They wouldn’t do that at a store or supermarket, but they barter with us, and ob-

viously it bothers us.”

The exchange rate is about 19 pesos to a dollar, though it fluctuates.

“People always want everything cheaper,” said Diego Trujillo, who sells artisanal goods. He voiced a common issue among vendors. “Sometimes you just can’t give it to them or sometimes you’ll sell it to them just to have something in your bag.”

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VIEW: Take a trip back in time with this photo gallery showing Nogales, Sonora in 1956. Point your smartphone camera at the QR code, then tap the link.



MAMTA POPAT, ARIZONA DAILY STAR

Maria Catalena Enriquez sells homemade tamales to drivers waiting to cross into the United States from Nogales, Sonora, on March 15.

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Assault

From B1

on Gender-Based Violence and is part of an on-campus Sexual Assault Response Team that started last year.

The group is working with the campus medical team and residence advisors to get the word out about this year's efforts to dispel myths about sexual assault and let students know about campus resources available to survivors.

A communitywide campaign

It's been a long road for the parties involved to arrive at a communitywide campaign like TucSAAM, said Colleen Phelan, a victim advocate with the Pima County Attorney's Office.

Phelan says she never thought she'd see such an outpouring of support for survivors. Tuesday's official kick-off included Mayor Regina Romero, Pima County Attorney Laura Conover and Monica Prieto, an assistant chief in the Tucson Police Department.

More than 50 people turned out for the event, many of whom were representing the 30 local organizations involved in Pima County's Sexual Assault Response Team.

Most of the crowd sported TucSAAM t-shirts or teal clothing and accessories, including Conover and Romero, who said the Southern Arizona Center Against Sexual Assault was the first Tucson board on which she volunteered and holds a special place in her heart all these years later.

"We're gathered in power today to have difficult conversations so we can unburden survivors of sexual assault, and specifically so that we can sup-

Sexual Assault Awareness Month calendar

A full calendar of April's TucSAAM events and detailed information can be found at April 2022 - SAAM Events (sacasa.org)

- April 9 and 29: Winding Road Theatre Ensemble performs "A Shot Away, Personal Accounts of Military Sexual Trauma" at Rhythm Industry Factory at 7:30 p.m.
- April 14: SAAF AVP Survivor and UA Advocates resource fair and crafting at UA Student

- Union from 12:30- 4 p.m.
- April 18: Winding Road Theatre Ensemble performs "A Shot Away, Personal Accounts of Military Sexual Trauma" at the UA.
- April 19: Take Back the Night at the House of Neighborly Service, 243 W. 33rd St., from 3:30- 8 p.m.
- April 27: Denim Day - Wear denim all day to show your support of sexual assault survivors & raise awareness. Victim Advocate Legal Services will be available from 1- 3 p.m.
- April 30: Take Back the Night: Virtual.

port marginalized communities where incidents of sexual assault are pervasive," Romero said. "It's not that members of marginalized communities can't speak for themselves, it's just that it's harder to own your space when others are intent on demeaning your gender identity, your ethnicity, your language or your legal status."

Prieto talked about her experience working in TPD's adult sexual assault unit, saying that she's been impressed with the progress the department has made over the last decade in terms of educating officers on using a trauma-informed approach when interacting with survivors.

"Tucson police has been diligent in relaying the message ... that trauma impacts everyone differently," Prieto said. "Our primary role is law enforcement, but we know that justice isn't all that's needed."

Prieto said she's grateful for the team effort to address sexual assault in Pima County, saying it's broken down silos, allowed for members to learn from each other's mistakes and brought

survivors to the forefront of their efforts.

"My dream is to have educated juries, and the only way to get educated juries is if we talk about sexual assault," Phelan said. "The only way we talk about sexual assault is if we have things like this that make the community see this is OK to talk about."

Deputy Pima County Attorney Victoria Otto, who works in the office's special victims unit, said she'd like to take that dream a step further and no longer need juries, because the community is full of children, teens and adults who are educated about consent.

"If you want to tell your child don't have sex, OK fine," Otto said. "But it is also really important to start really early with 'When we say, we use our words and not our hands and we don't touch other people without their permission, that continues throughout your whole life.' That silence is not consent, that passivity is not consent. That if someone is just laying still, that is not consent."

Otto said that historically, the

Local resources for sexual assault survivors

- The Southern Arizona Center Against Sexual Assault (SACASA) has crisis advocates available 24/7 through their hotline, 520-327-7273. For more information about SACASA and its services, visit sacasa.org
- For information about or to contact the UA Survivor Advocacy program, visit survivor-

advocacy.arizona.edu or call 520-621-5767

- Sexual assault survivors can contact the Rape, Abuse and Incest National Network, RAINN at 1-800-656-HOPE (4673) any time for help
- For support and resources from the Pima County Attorney Victim Services division call 520-724-5525 and ask to speak with an advocate. Advocates are available Monday through Friday from 8 a.m. to 5 p.m.

group has been mostly reaching out to people who are already engaging on the issue, so she was pleased to see more communitywide events and participation this year.

This includes young people. SAAF's Vanessa Delgado is working to create youth workshops and activities for Take Back the Night Tucson, an annual event celebrated worldwide to speak out against sexual violence, raise awareness and support survivors of assault. She said she's been working with the group to create youth activities and workshops for kids and teens at the April 19 event.

SACASA director Kaitlyn Monje said she's been incredibly impressed with the diversity of events the group has planned throughout the month.

"The only chance we have at really making an impact is to have the difficult conversations and stop sweeping these kinds of things under the rug," she said.

With SACASA often seeing an uptick in survivors calling their crisis line in April because of the emphasis put on sexual assault, the group is always looking for volunteers, as is the county attorney's victim advocate pro-

gram.

While the statistics for reporting sexual assault have improved, there's still a long way to go, said Mary Pekas, a detective in the Tucson Police Department's adult sexual assault unit.

"There was a time when 75% went unreported, and now we're closer to about 66%," Pekas said. "That pales in comparison to other major crimes."

Pekas says she is hoping this year to bust the myth that police are always the first to be called by people who are sexually assaulted.

"I talk to people who are reporting these things to police and have an understanding of what happens," she said. But many times survivors will call a parent or friend - someone they trust and that cares about them - before calling the police, Pekas added.

"They want to be comforted," Pekas said. "Even if they are the kind of person who reports things to police, in that moment, sometimes they're not"

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Hotel

From B1

At the core of the lawsuit is the 2018 agreement between the regents and Omni to construct a new hotel, convention center and parking lot on land that ASU owns on the southeast corner of Mill Avenue and University Drive. Construction is currently underway with a planned opening next spring.

That deal gives Omni the option to lease the hotel and conference center property for 60 years and purchase the land at the end of that lease for a nominal fee.

Brnovich argued there are two basic problems with that.

The first is that because the property is owned by the regents, it is tax exempt. That means Omni would not pay property taxes that otherwise would

be due during the least term.

That argument didn't wash with the Supreme Court.

The justices said Brnovich was basing his claim on a provision in the Arizona Constitution which makes it illegal to transfer property to evade taxes. But in this case, they said, there was no such evasion as the land, owned by the regents, never was taxable in the first place.

That, however, is only part of the issue.

The other is the nature of the deal itself, and whether it violates the Gift Clause of the Arizona Constitution. It makes it illegal for public agencies to "make any donation or grant, by subsidy or otherwise, to any individual, association or corporation."

Brnovich pointed out that ASU is paying \$19.5 million to build the conference center even though the contract allows the school to use it without paying rent just seven days a year. And the attorney general said the school agreed to pay about \$30 million to construct a 1,200-spot parking garage but will "gift" Omni 275 of the spots that the hotel gets to use exclusively and keep the revenue from the spaces, a move he contends is giving away the equivalent of \$8 million.

Until now, however, Brnovich has been unable to even make his case.

Both the trial judge and the state Court of Appeals tossed the claim, concluding that Brnovich had waited too long because state laws generally say such claims need to be brought within a year.

But Lopez said there is a separate statute that

gives the attorney general up to five years to file suit to recover illegally paid public monies. And that, he wrote, gives Brnovich a chance to have his day in court.

Closely related to the Gift Clause is the question of whether the lease portion of the deal is not for the "benefit of the state" but instead for the benefit of Omni. And here the Supreme Court concluded that Brnovich has the authority to pursue those claims.

Manson said the regents continue to insist those claims are "meritless." And ASU President Michael Crow, in his own statement, said he believes the deal will pass legal muster.

"It represents an economic development win for the city, an operational asset to the university and the sort of entrepreneurial focus state leaders and the Board of Regents have called upon our public universities to have," he said.

But Crow acknowledged that what the courts ultimately decide will have implications far beyond this specific arrangement. He called the deal "a model for future partnerships to advance community and higher education interests

for the state of Arizona."

It isn't just Brnovich and the courts who have been looking into how Arizona universities make leases for commercial use.

In a 2019 report, Auditor General Lindsey Perry said the Board of Regents has been leasing out property for commercial use without proper oversight and with only limited transparency, creating a "risk of inappropriate use of public resources."

The report found a lack of written guidance for real estate policies, "increasing the risk of not ensuring that use of its property benefits Arizona and the universities." That includes any sort of guidance on how the board should document the economic and tax impacts of its policies.

And what that means, according to Perry, is that the board "risks approving commercial lease agreements that allow a public resource to be used primarily for private benefit."

John Arnold, the board's executive director, said at the time there were new policies that address those issues. But Perry said her staff found those new policies wanting, missing things like how to determine if lease rental rates reflect fair market value.

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NORTH			
♠ Q			
♥ K 10 8 2			
♦ J 8 4 3			
♣ A Q 10 6			
WEST		EAST	
♠ A K J 10 9 7 4 2	♠ 6 3	♥ A 7 4	♥ Q 10 6
♥ 9 5	♦ Q 10 6	♣ J 9 7 5 2	
♦ 9	♣ K 4		
♣ 8 3			
SOUTH			
♠ 8 5	♥ Q J 6 3	♦ A K 7 5 2	♣ K 4

The bidding:
South 1♦ West 4♠ North 5♦ East

Opening lead — king of spades.

Usually, when a player makes a bid — or a series of bids — he is trying to describe his hand to his partner as accurately as he can. In doing so, though, he cannot help revealing his hand to the opponents at the same time. They also have ears, and they can't be stopped from listening in on what is intended as a private conversation.

As a result, both sides are frequently able to take advantage of knowledge gleaned from the adverse bidding. Thus, in the pres-

ent case, West's four-spade bid gives South vital information that he can put to good use during the play.

Assume West leads the king of spades and shifts to a club. Since South must lose a heart, his sole problem is to escape a trump loser. If he plays normally — that is, if he cashes the A-K of diamonds — he will make the contract if the trumps divide 2-2 or either defender has the singleton queen.

However, with West marked by the bidding with seven or eight spades, he is far more likely to have one or no diamonds than to have two. If he has none, South is a dead duck whatever he does, so he should proceed on the assumption that West has a singleton. And if West does have a singleton, it is twice as likely to be the nine or ten as the queen.

Accordingly, declarer should win the club with dummy's queen at trick two and lead the jack of diamonds, planning to let it ride if East follows low. If East covers with the queen and West produces the nine or ten, South should return to dummy with a club to take a diamond finesse.

In the actual hand, this method of play succeeds, and South makes the contract.

Tomorrow: A hairsplitting decision.

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