IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

DAVID WELCH, INDIVIDUALLY AND ON BEHALF OF ALL CITIZENS OF COCHISE COUNTY, PRECINCT FIVE,
Petitioner/Appellant,

v.

COCHISE COUNTY BOARD OF SUPERVISORS, PATRICK G. CALL, ANN ENGLISH, AND PEGGY JUDD,
Respondents/Appellees.

No. 2 CA-CV 2019-0101
Filed October 9, 2020

Appeal from the Superior Court in Cochise County
No. CV201900060
The Honorable Monica L. Stauffer, Judge

REVERSED AND REMANDED

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OPINION

Presiding Judge Eppich authored the opinion of the Court, in which Judge Eckerstrom and Judge Brearcliffe concurred.

E P P I C H, Presiding Judge:

¶1 David Welch appeals from the trial court's dismissal of his claims against the Cochise County Board of Supervisors and members Peggy Judd, Ann English, and Patrick Call (collectively, "the board") relating to the board's decision to appoint Call as a justice of the peace. Welch contends the court erred in concluding he lacked standing and had failed to state claims on which relief could be granted. Because Welch has standing as a taxpayer and has sufficiently pleaded violations of Arizona's open-meeting and conflict-of-interest statutes, we reverse.

Factual and Procedural Background

¶2 "In reviewing a trial court's decision to dismiss a claim, we accept as true all facts asserted in the complaint." *Harris v. Cochise Health Sys.*, 215 Ariz. 344, ¶ 2 (App. 2007). On or about February 10, 2019, the Cochise County Board of Supervisors posted a public notice for a meeting and possible executive session to be held the morning of February 12. Two items were listed on the agenda: "Discussion regarding the process for filling the vacancy for Justice of the Peace in Justice Precinct 5" and "Appoint _____ as Justice of the Peace for Justice Precinct 5." The meeting began around the scheduled time, and the board discussed the process for filling the justice-of-the-peace position, rejecting the idea of an application process or a committee-driven process. In particular, Call agreed with the others that accepting applications would be a lengthy process, and if the board formed a committee but did not agree with its suggested candidate, it would be disappointing to those involved. English subsequently moved to go into executive session to discuss the matter; Call seconded the motion and it passed unanimously. The board met in executive session for approximately thirty minutes. When it returned, the board unanimously voted to table the matter and recess until 11:30 a.m.

¶3 The board reconvened the meeting just after 12:30 p.m., citing time conflicts with previously scheduled matters as the reason it was more than an hour late. English immediately moved to appoint Call as justice of

the peace. After brief remarks by English and Judd, the board appointed Call to the position by a two to zero vote, with Call abstaining.

¶4 Two days later, Welch sued the board, alleging that Call's appointment had been illegal because the appointment process violated Arizona's open-meeting laws, *see* A.R.S. § 38-431.01 to -431.09, and involved a prohibited conflict of interest, *see* A.R.S. § 38-503 (requiring public officers to disclose and refrain from voting or otherwise participating in any matter in which the officer has a substantial interest in the decision). He sought (1) an order declaring that Call's appointment was null and void; (2) a writ of mandamus ordering the board "to comply with the open meeting statutes and properly notify the public of its intent to appoint one of its own members to fill the vacancy of Justice of the Peace and to open the position to the public for application (bidding) by other qualified candidates"; (3) a writ of mandamus ordering the board to convene a committee and consider other qualified applicants; (4) a writ of mandamus ordering the board to produce the minutes of the executive session for *in camera* review and possible public release under § 38-431.07(C); (5) an injunction prohibiting any further closed meetings in filling the vacancy; (6) an injunction prohibiting any further executive sessions on the issue and ordering the board to comply with open-meeting statutes; (7) an injunction requiring the board to notify the public of its intent to fill the vacancy with one of its own members and to open the position to public applications from qualified candidates; (8) monetary penalties against the individual board members; and (9) attorney fees and costs.

¶5 On February 24, the board noticed a meeting on February 26 to ratify its actions appointing Call. The next day, Welch petitioned for a temporary restraining order and preliminary injunction prohibiting the board from appointing Call or taking further action on that matter. Later that day, the trial court issued a restraining order prohibiting the board from taking further action on the issue and ordering the board to appear at a hearing to show cause why the injunction should not be granted.

¶6 Despite the temporary restraining order, Call took the oath of office later that day. Welch promptly filed a motion for contempt against Call, alleging that Call had violated the order by taking the oath. Shortly thereafter, Welch filed an amended complaint seeking additional injunctive and declaratory relief, including (1) prohibiting the board from paying and Call from receiving a salary for justice-of-the-peace services; (2) requiring Call to pay any salary received as justice of the peace back to the county; (3) prohibiting Call from further serving as justice of the peace; (4) prohibiting the board from taking any action to ratify Call's appointment; (5) removing

Call, English, and Judd from office for knowing violation of open-meeting laws and § 38-503; and (6) declaring Call to be unfit to serve as justice of the peace because of his knowing and intentional violation of those laws.

¶7 A different judge presided over the injunction hearing; the judge who had issued the temporary restraining order had recused herself because she had criticized Call's appointment in an email to another judge. The trial court vacated the temporary restraining order and ruled it void *ab initio*, finding abuse of discretion because the issuing judge had failed to disclose her conflict and the order failed to state several required findings.[1] The court denied Welch's subsequent motion for a new temporary restraining order and other emergency relief. A few days after the temporary restraining order was vacated, the board ratified its decision to appoint Call in a noticed public meeting.

¶8 The board then moved to dismiss Welch's action for lack of standing and failure to state claims, and after a hearing, the trial court granted the motion on both grounds. As to the requests for declaratory and injunctive relief, the court found that Welch lacked standing because he had made "no attempt to show distinct, palpable injury or particularized harm" and had no standing as a taxpayer because "[t]he county's expenditure of the tax monies on Justice of the Peace #5 would be spent regardless of the person appointed." The court also found that Welch lacked standing to bring a mandamus action against the Board of Supervisors for the alleged open-meeting and conflict-of-interest violations because Welch was not a "person affected" under A.R.S. §§ 38-431.07(A) and 38-506(B), the standing provisions of the open-meeting and conflict-of-interest laws. Finally, the court found that Welch lacked standing to seek Call's removal from office, concluding that remedy was statutorily limited to the attorney general, a county attorney, or a person claiming present entitlement to the office who had first sought action by the attorney general or county attorney.

¶9 The trial court also concluded that even if Welch had standing, he had failed to state any claims upon which it could grant relief. The court found that the board had "cured any issue of open meetings laws improprieties at the . . . ratification meeting." And it found no actionable conflict of interest because the board had discretion to appoint any qualified candidate—even without opening the application process or convening a

[1]Hearing transcripts are not included in the record.

selection committee. Lastly, the court denied as moot Welch's request to compel production of the executive session minutes for *in camera* review.

¶10 Welch timely appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(5)(b).

Taxpayer Standing

¶11 Welch argues the trial court erred in dismissing his claims for lack of standing, contending that as a resident and taxpayer of Precinct 5 he had standing to enforce the open-meeting and conflict-of-interest statutes. We review de novo a trial court's grant of a motion to dismiss, *Premier Physicians Grp., PLLC v. Navarro*, 240 Ariz. 193, ¶ 6 (2016), and its determination of whether standing exists, *Judson C. Ball Revocable Tr. v. Phx. Orchard Grp. I, L.P.*, 245 Ariz. 519, ¶ 5 (App. 2018). We read the allegations in the complaint in conjunction with the exhibits attached to the complaint and other public records in the trial court record. *See Workman v. Verde Wellness Ctr., Inc.*, 240 Ariz. 597, ¶ 10 (App. 2016) (exhibits attached to complaint and public records regarding matters referenced in the complaint not considered matters outside the pleadings). We assume the truth of well-pled factual allegations and any reasonable inferences that can be drawn from them. *Cullen v. Auto-Owners Ins.*, 218 Ariz. 417, ¶ 7 (2008).

¶12 As the board points out, Welch did not explicitly state in his complaint that he was a taxpayer, alleging only that he was a "resident living within the Justice Court Five precinct" and had a matter pending in that court when he filed his petition. But the board effectively conceded in its motion to dismiss that Welch was a citizen taxpayer and argued only that he lacked standing despite taxpayer status. Because the board did not point out this alleged pleading defect as a basis to argue a lack of taxpayer standing in the trial court, we decline to consider this particular challenge to standing for the first time on appeal. *See Torrez v. State Farm Mut. Auto. Ins.*, 130 Ariz. 223, 225 n.2 (App. 1981) (standing argument raised for first time on appeal waived); *Harris*, 215 Ariz. 344, ¶ 18 (issue conceded in trial court not preserved for appeal). Thus, we consider whether Welch had standing as a taxpaying citizen to challenge the board's actions.

¶13 Arizona's open-meeting laws provide standing to "[a]ny person affected by an alleged violation." *See* § 38-431.07(A). The parties do not cite, and we have not found, any case interpreting § 38-431.07(A) to determine taxpayer standing. But this court has determined that taxpayers have qualified standing under similar language in A.R.S. § 12-1832, an enforcement provision of the Uniform Declaratory Judgments Act that

provides standing to "[a]ny person . . . whose rights . . . are affected by a statute." *See Dail v. City of Phoenix*, 128 Ariz. 199, 201-02 (App. 1980). In *Dail*, we held that the taxpaying-citizen plaintiff lacked standing, but only because the funds alleged to be illegally spent were not raised by the defendant city's taxation; the money came from revenue generated by the city's water system. *Id.* at 202-03; *see also, e.g.*, *Tucson Cmty. Dev. & Design Ctr., Inc. v. City of Tucson*, 131 Ariz. 454, 456 (App. 1981) (no taxpayer standing for alleged illegal expenditure of funds from federal community block grant program). We concluded that a taxpayer would have standing under § 12-1832 to challenge an illegal expenditure of public funds if the funds were raised through taxation. *Dail*, 128 Ariz. at 201-03. We reasoned that such standing would exist based on the taxpayer's "liability to replenish the public treasury for the deficiency which would be caused by the misappropriation." *Id.* (quoting *Ethington v. Wright*, 66 Ariz. 382, 386 (1948)).

¶14 The board also argues that because Welch did not allege he had attended or would have attended any meetings, he was not affected by the alleged violations of the open-meeting laws. It contends we should follow *Arnold v. City of Stanley*, 345 P.3d 1008, 1012-13 (Idaho 2015), in which that court interpreted similar language in its open-meeting statute to deny standing to a citizen where the citizen had not alleged any intent to attend the allegedly flawed meeting. But we are statutorily directed to construe our open-meeting laws "in favor of open and public meetings," § 38-431.09(A); we thus decline to adopt such a narrow interpretation of the standing provision. Violations of open-meeting laws may facilitate improper expenditures by hiding from the public eye the processes leading to them. A taxpayer who must replenish the treasury for an improper expense incurred at a meeting is not affected merely because he himself was hindered in observing the meeting; he is affected because others who might have brought the impropriety to light could not observe.[2] In sum, we conclude that a citizen taxpayer is a "person affected by" expenditures of public funds arising from violations of open-meeting laws.[3]

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[2]These "others" include the press. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491 (1975) ("[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations.").

[3]Moreover, although the public has a right to observe the meetings of a public body, there is no right to affect its decisions through active

¶15 Similarly, "[a]ny person affected by" a public agency's decision may sue to enforce our conflict-of-interest law. § 38-506. We see no principled reason to interpret this language differently than we do similar language in § 12-1832 and § 38-431.07(A). Taxpayers must replenish the treasury when, for example, a public official fails to disclose a conflict of interest or participates in a decision despite a conflict, and taxpayer-generated funds are illegally expended as a result. *See* § 38-503(B) (public official with substantial interest in public agency's decision must disclose such interest and refrain from participating in decision). A taxpayer is thus affected by such conflict-of-interest violations, and therefore has standing under § 38-506.

¶16 We reject the board's contention that Welch is not affected here because a justice of the peace would have to be paid regardless of whether Call was appointed. In the context of taxpayer standing to contest an illegal expenditure, such expenditures include those made without complying with good-government statutes, even if the purpose of the expenditure is proper. *See Rodgers v. Huckelberry*, 247 Ariz. 426, ¶¶ 2, 10-17 (App. 2019) (taxpayer had standing to challenge expenditure on economic development for competitive-procurement violation); *Smith v. Graham Cty. Cmty. Coll. Dist.*, 123 Ariz. 431, 432-33 (App. 1979) (taxpayer had standing to challenge expenditure on school roof for competitive-bidding violation); *Secrist v. Diedrich*, 6 Ariz. App. 102, 104 (1967) (same; school landscaping). The taxpayer has an interest in enforcing good-government laws not only to deter expenditures for illegal purposes, but also to "maximize value received for money spent" on proper purposes. *Rodgers*, 247 Ariz. 426, ¶ 13.

¶17 Here, Welch has alleged open-meeting and conflict-of-interest violations resulting in an illegal expenditure of municipal funds: a salary paid to an official who improperly participated in his own appointment during a process that was improperly shielded from public view. Welch's interest in receiving good value for money spent is frustrated when an insider improperly participates in his own selection for a salaried public office in a process that lacks required transparency. Welch therefore

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participation. *See* § 38-431.01(A) (public must be permitted to "attend and listen"), (H) (public body has discretion whether to allow members of the public to address the body). Because a person attending a public meeting has no right to actively participate and potentially affect decisions, it makes little sense to condition whether he is affected by an open-meeting violation on whether he attended or would have attended.

has taxpayer standing under § 38-431.07(A) and § 38-506 to challenge the process and selection at issue here.

¶18 Regardless of taxpayer standing, the board argues Welch has no standing to seek the removal of Call or the other board members from office because A.R.S. § 12-2043 limits standing for this relief to the attorney general, county attorney, and persons alleging a present right to hold those offices. In general, § 12-2043 does limit standing to remove a public official from office to these persons. *See Jennings v. Woods*, 194 Ariz. 314, ¶¶ 14-22 (1999). Any other person must request the attorney general or county attorney to bring such an action, and if the request is denied, the person may petition a court to issue a writ of mandamus to compel the attorney general or county attorney to act. *Crouch v. City of Tucson*, 145 Ariz. 65, 67 (App. 1984).

¶19 There is no public remedy allowing removal from office for a conflict-of-interest violation. *See* § 38-506. Moreover, the open-meeting laws do not provide one. Section 38-431.07(A) states that "[i]f the court determines that a public officer with intent to deprive the public of information knowingly violated any provision of this article, the court may remove the public officer from office." That same subsection states that the attorney general has the right to "commence a suit . . . against an individual member of a public body for a knowing violation" of the open meeting laws. *See id.* Read together, and considered along with the lack of any explicit provision for an affected person to bring suit for a knowing violation, these provisions reserve for the attorney general alone the right to seek removal of a public officer under the open meeting laws. *See PAM Transp. v. Freightliner Corp.*, 182 Ariz. 132, 133 (1995) ("[I]f a statute specifies under what conditions it is effective, we can ordinarily infer that it excludes all others."). In sum, there is no exception here to the generally applicable standing limits under § 12-2043, which do not provide private citizens with standing to remove public officials from office. Welch thus lacks standing to prosecute the board's removal and such claims were properly dismissed.[4]

[4]A citizen's recourse to remove a public official whose appointment has been rendered null and void under § 38-431.05(A) would be to request the attorney general take action to remove the official under A.R.S. § 12-2041 or that the same action be taken by the county attorney under A.R.S. § 12-2042. If the attorney general or county attorney were to fail to take the requested action in that circumstance, a citizen claiming the office could seek a writ of mandamus compelling action. *See Jennings*, 194 Ariz. 314,

Dismissal for Failure to State a Claim

¶20 Welch contends that the trial court erred in dismissing his action on the alternative ground that he had failed to state claims upon which relief could be granted. "We review de novo an order granting a motion to dismiss for failure to state a claim." *Abbott v. Banner Health Network*, 239 Ariz. 409, ¶ 7 (2016).

Open-meeting laws

¶21 Welch contends the trial court erred in dismissing his claims for open-meeting violations, arguing he has alleged facts showing the violations and that they were not cured by ratification. Our open-meeting laws provide that "[a]ll meetings of any public body shall be public meetings," permitting all "to attend and listen to the deliberations and proceedings." § 38-431.01(A). "All legal action of public bodies shall occur during a public meeting," *id.*, including any "collective decision, commitment or promise made . . . pursuant to . . . the laws of this state," A.R.S. § 38-431(3).

¶22 The public bodies of a county must "[p]ost all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings," generally at least twenty-four hours before the meeting. § 38-431.02(A)(2)(b), (C). A meeting may be recessed and resumed with less than twenty-four hours' notice, however, if the initial meeting was properly noticed "and if, before recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given." § 38-431.02(E).

¶23 "[L]egal action transacted by any public body during a meeting held in violation of [open-meeting laws] is null and void," unless the legal action is ratified at a later meeting. § 38-431.05(A), (B). A mere technical violation of open-meeting laws is insufficient to invalidate a public body's actions, however. *See Karol v. Bd. of Ed. Trustees*, 122 Ariz. 95, 97-98 (1979). Actions taken in substantial compliance with open-meeting laws are therefore valid. *See Carefree Imp. Ass'n v. City of Scottsdale*, 133 Ariz. 106, 112 (App. 1982). We review "whether there has been substantial

¶ 22 (citizen claiming office may seek mandamus relief when attorney general fails to take action to remove ineligible public official under § 12-2043); *Crouch*, 145 Ariz. at 67 (same for county attorney).

compliance [with the open-meeting laws] by reviewing the whole of the proceeding, rather than its several parts." *Id.*

¶24 Taken as true, the allegations in Welch's complaint establish an open-meeting violation. According to the allegations, the board recessed the February 12 meeting and provided the public with a time that the meeting was to resume, but it resumed the meeting more than an hour later than the time it had provided. The public was therefore not adequately noticed as to the time the meeting resumed. *See* § 38-431.02(E). And while the board argues that any violation that occurred was at most a technical violation, the alleged untimely resumption of the February 12 meeting, when viewed in the context of the allegations as a whole, suggests something more substantial. The February 12 agenda gave no notice that the board would be considering Call, one of its own, for the position.[5] English's motion to appoint Call was the first substantive action taken after the executive session—raising an inference that Call's candidacy was discussed in that private session. But when the board resumed public proceedings, it recessed and did not reveal Call's interest in the position, which was not disclosed until the reconvened session. Taken as true, the facts as alleged support an inference that the board contravened "the intent of the legislature to open the conduct of the business of government to public scrutiny and to ban decision-making in secret," thus constituting more than a mere technical violation. *See Ahnert v. Sunnyside Unified Sch. Dist. No. 12*, 126 Ariz. 473, 475 (App. 1980).

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[5]Having concluded that Welch has sufficiently pleaded an open-meeting violation concerning the late resumption of the February 12 meeting, we need not evaluate whether other alleged open-meeting violations—which were not individually examined by the trial court in light of its conclusion that ratification cured all ills—have been adequately pled. Thus, for example, we do not decide whether this notice complied with the requirement that an agenda "list the specific matters to be discussed, considered or decided at the meeting." § 38-431.02(H); *see Karol*, 122 Ariz. at 98 (agenda must contain information "sufficient to apprise the public in attendance of the basic subject matter of the action so that the public may scrutinize the action taken during the meeting"). Instead, we view this notice within the context of the allegations as a whole. *See Carefree*, 133 Ariz. at 112. The parties may continue to litigate, and the court may consider in the first instance, whether Welch's other alleged open-meeting violations state adequate claims.

¶25 The board argues that it cured any open-meeting violation when it ratified its decision to appoint Call. It contends the trial court correctly determined that Welch's open-meeting claims were moot on this basis. But ratification merely provides a way to ensure the effectiveness of decisions by negating the consequence that a decision at an improper meeting is null and void. *See* § 38-431.05. Nothing in the ratification provisions suggests that ratification negates an open-meeting violation in any other way. *See id.* We therefore conclude that ratification does not preclude possible sanctions. *See* § 38-431.07(A) (providing for sanctions including civil penalties, attorney fees, and removal from office). Thus, despite the board's ratification, the trial court erred in dismissing Welch's claims for sanctions under the open-meeting laws.

Conflict of interest

¶26 Welch argues the court also erred in concluding that he did not state a claim for conflict of interest. Under § 38-503(B), "[a]ny public officer or employee who has . . . a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision." A substantial interest is "any nonspeculative pecuniary or proprietary interest, either direct or indirect, other than a remote interest." A.R.S. § 38-502(11); *see* § 38-502(10) (enumerating remote interests).

¶27 Here, Welch has sufficiently stated a claim against Call for conflict of interest. He alleges facts showing that Call actively participated in the board's decisions to exclude others from consideration for the justice-of-the-peace position, then voted to go into closed executive session. Welch's allegations raise an inference that Call may have advanced his own candidacy in the executive session. When the board resumed public deliberations after the executive session, Call seconded the motion to table the matter of filling the position—delaying disclosure of his interest in the position until the improperly noticed resumed session. The salary Call is alleged to receive as justice of the peace establishes his non-speculative, non-remote pecuniary interest in the board's decisions relating to the position.[6] Because Welch has alleged facts suggesting Call participated in

[6]In his amended complaint, Welch also alleged conflicts of interest under A.R.S. § 38-504(C), which provides that a public officer shall not attempt to use his position to secure any valuable benefit "if the . . . benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties,"

some manner in a decision in which he had a qualifying pecuniary interest, he has stated a claim for a conflict-of-interest violation. The trial court therefore erred in ruling otherwise.

Ratification

¶28 In the trial court, Welch claimed that the ratification of the decision to appoint Call was ineffective because the board did not comply with the open-meeting laws' ratification procedure. The court implicitly rejected this contention in ruling that the ratification cured any open-meeting-law violation.

¶29 In his opening brief, Welch failed to argue that the ratification was itself improper, arguing the issue in his reply brief only after the board pointed out in its response that he had not raised it. He therefore has abandoned his claim that the ratification was improper. *See Robert Schalkenbach Found. v. Lincoln Found., Inc.*, 208 Ariz. 176, ¶ 17 (App. 2004) ("Generally, we will consider an issue not raised in an appellant's opening brief as abandoned or conceded."). And because Welch's claim that Call's appointment is null and void for an open-meeting violation depends on a lack of proper ratification, *see* § 38-431.05 (properly ratified action not null and void), he has abandoned this claim as well.

***In camera* review**

¶30 Welch argues that the board abused its discretion by failing to grant his request for an *in camera* review of the executive session minutes, contending that the "public deserves to know what happened in the secret meeting," and *in camera* review is the "first step" on the "path to the truth." In an action challenging the validity of an executive session, "the court may review in camera the minutes of the executive session," and may disclose them to the parties or admit them into evidence if relevant and necessary to do justice. § 38-431.07(C). Welch offers no meaningful argument why the trial court was required to conduct an *in camera* review despite the discretionary word "may" in § 38-431.07(C). Nonetheless, the court abused its discretion by denying *in camera* review because it premised its ruling on other erroneous rulings, which it incorrectly concluded had rendered *in camera* review moot. *See State v. Bernstein*, 237 Ariz. 226, ¶ 9 (2015) (error of

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and the benefit would not ordinarily accrue to the officer by virtue of his duties. He does not mention this provision in his appeal, however. We therefore deem his claims of conflict of interest under this provision abandoned. *See Gordon v. Estate of Brooks*, 242 Ariz. 440, ¶ 9 (App. 2017).

law constitutes abuse of discretion). Therefore, the court should reconsider on remand whether *in camera* review of the executive session minutes is warranted.

Other equitable remedies

¶31 In his complaint, Welch sought various writs of mandamus, including: (1) to immediately remove the board members from public office; (2) to "properly notify the public of its intent to appoint one of its own members to fill the vacancy of Justice of the Peace and to open the position to the public for application . . . by other qualified candidates"; (3) to require the board "to convene a proper judicial selection committee" to select a justice of the peace; (4) to order Call to pay back his salary; and (5) to stop paying the board's legal fees. The board contends that mandamus is inappropriate for any of Welch's requests for relief.

¶32 In general, a superior court may issue a writ of mandamus to a person or board "to compel, when there is not a plain, adequate and speedy remedy at law, performance of an act which the law specially imposes as a duty resulting from an office." A.R.S. § 12-2021. Mandamus relief is available only "where the act sought to be compelled is ministerial." *Crouch*, 145 Ariz. at 67. Discretionary acts may not be controlled through mandamus. *See Sensing v. Harris*, 217 Ariz. 261, ¶ 6 (App. 2007). When a public official abuses his or her discretion, mandamus is available only to compel the official to act properly. *Id.*

¶33 The open-meeting laws specifically provide for mandamus for the purpose of "requiring that a meeting be open to the public" if the open-meeting laws are violated. § 38-431.04. The conflict-of-interest statute does not specifically provide for mandamus relief, but includes among permissible remedies "any other remedies provided by law," § 38-506(A), including "such equitable relief as [the court] deems appropriate in the circumstances," § 38-506(B). "[O]ther remedies provided by law" would thus include the equitable remedy of mandamus under § 12-2021 in an appropriate case.

¶34 The allegations in Welch's complaint describe open-meeting violations and therefore establish a basis for mandamus to order the board to conduct open meetings under § 38-431.04. But otherwise, Welch fails to individually justify the writs he seeks by identifying the specific duty that must be fulfilled or explaining why no other plain, adequate, and speedy remedy exists. We thus deem these other requests for mandamus to be

waived.[7] *See State v. Bolton*, 182 Ariz. 290, 298 (1995) (insufficient argument waives claim on review). His similar requests for relief via injunction may be available, however, under § 38-506(B) if a conflict of interest is found, and under § 38-431.07(A) if an open-meeting violation is found and the injunction serves "the purpose of requiring compliance with, or the prevention of violations of," the open-meeting laws.[8]

Disposition

¶35 We reverse the trial court's ruling dismissing Welch's claims subject to the qualifications described in this decision, and remand for further proceedings consistent herewith. As the board has not prevailed, its request for attorney fees and costs is denied.

[7] At any rate, mandamus is not appropriate for some of Welch's requested writs. For example, the board has no duty to utilize a selection committee to fill a justice of the peace vacancy. *See* A.R.S. § 16-230(A)(2) (requiring board of supervisors to fill vacant elected county office positions with four-year terms; no requirement of selection committee mentioned); *cf.* Ariz. Const. art. VI, § 37 (providing for judicial selection commission only for courts of record). Therefore, mandamus would not be available to require the board to convene a judicial selection committee. *See Sensing*, 217 Ariz. 261, ¶ 6 (discretionary acts may not be compelled through mandamus). Nor would mandamus be appropriate to enjoin the board from paying legal fees. *See Smoker v. Bolin*, 85 Ariz. 171, 173 (1958) (mandamus not appropriate to restrain action).

[8] The parties have not meaningfully litigated, and we do not decide, whether the court may "forever enjoin each [board member] from serving in any public office of this state," or whether Call may "be forever enjoined" from serving as the Justice of the Peace in Precinct 5, as Welch requests.