

**Scharf-Norton Center for  
Constitutional Litigation at the  
GOLDWATER INSTITUTE**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

MI FAMILIA VOTA, et al.,

Plaintiffs,

vs.

ADRIAN FONTES, in his official capacity  
as Arizona Secretary of State, et al.,

Defendants,

No. 2:22-cv-00509-SRB  
(Consolidated)

**MOTION TO QUASH  
SUBPOENAS**

Pursuant to Federal Rule of Civil Procedure 45(d)(3)(A), non-party Arizona Free Enterprise Club (“FEC”) moves to quash the Subpoena to Produce Documents (Exhibit 1) and the Rule 30(b)(6) Deposition Subpoena (Exhibit 2) (the “Subpoenas”) issued by Arizona Asian American Native Hawaiian and Pacific Islander for Equity Coalition (“AANHPI”).

**I. Introduction**

The Supreme Court has stated time and again that individual legislators’ opinions about a statute reveal little or nothing about the law’s meaning and validity. *See, e.g., Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2350 (2021); *Palmer v.*

*Thompson*, 403 U.S. 217, 224–25 (1971). It is thus all the more true that the statements and opinions of *private parties*, several degrees removed from any official government action, have no bearing on the question of whether a state law is consistent with federal law.

Nevertheless, AANHPI is trying to use this Court’s power to compel FEC—a private non-profit and a non-party in this litigation—to turn over, and testify about, broad categories of confidential information whose public disclosure would harm core First Amendment interests: financial records, personally identifiable information about donors and other affiliates, and internal deliberations about advocacy strategies and lobbying efforts.

Under binding Ninth Circuit precedent, to obtain compelled disclosure of sensitive political speech materials, AANHPI would need to demonstrate that its subpoena is the least restrictive means of achieving a compelling or substantial interest. *Perry v. Schwarzenegger*, 591 F.3d 1147, 1161 (9th Cir. 2010). But there is no interest, let alone a compelling or substantial one, in obtaining evidence irrelevant to the claims at issue—evidence, moreover, that, even if it were relevant, could be obtained via public records requests or discovery on the parties.

The Subpoenas chill speech by advocacy groups of all stripes by raising the specter of having to reveal their finances and internal communications to the world whenever a lawsuit challenges a law on which they advocated. They also undermine legislatures’ deliberative processes by discouraging citizens from petitioning their elected representatives (and discouraging representatives from engaging with citizens), lest doing so put them in the crosshairs of opponents willing to use the discovery process to stifle free speech. Moreover, even apart from their infringement on First Amendment interests, the Subpoenas are overbroad, unduly burdensome, and seek information that is irrelevant to the claims in this case. For all these reasons, the Court should quash the Subpoenas.

## **II. Background**

In this lawsuit, numerous plaintiffs are challenging the validity of two Arizona voting laws enacted in 2022:

- House Bill 2492, which requires voting registrants to show proof of citizenship, specifies ways for registrants to prove citizenship, and establishes penalties for registrants who fail to provide such proof; and
- House Bill 2243, which directed election offices to review and update their voting rolls by removing ineligible voters.

The Plaintiffs allege that parts of these bills violate various federal statutory and constitutional provisions. Specifically, they argue that the laws violate and are preempted by various sections of the National Voter Registration Act; they discriminate on the basis of race and national origin; they invite arbitrary and discriminatory enforcement; they unduly burden the right to vote; and they violate Section Two of the Voting Rights Act by denying or abridging citizens' right to vote on account of race or color. *See* Dkt. 304, Order Denying Motion to Dismiss (detailing Plaintiffs' claims).

In addition to Defendants State of Arizona, Governor Katie Hobbs, Secretary of State Adrian Fontes, and all fifteen County Recorders, other defendants have intervened to defend the validity of these laws, including Speaker of the House of Representatives Ben Toma and President of the Senate Warren Petersen. Dkt. 363.

On June 1, 2023, AANHPI served FEC, a non-party to the lawsuit, with a Subpoena to Produce Documents. The Subpoena requested "All Documents and Communications" regarding eight categories of topics:

- Any "discussion, analysis, and/or evidence of non-citizens voting in Arizona elections prior to the passage/attempted passage of" the bills in question;
- "[A]ny Campaign/PAC Contributions or Expenditures made by [FEC] from January 1, 2017 to July 1, 2022";
- FEC's "Legislative Strategies, Lobbying Efforts, and/or Campaign/PAC Contributions or Expenditures Regarding the drafting, introduction and passage/attempted passage of laws related to voting";
- "[I]nterpretation of H.B. 2492, H.B. 2243, and/or H.B. 2617";

- The “impact, legality and/or constitutionality” of the bills in question (“including ... all draft or final opinions”);
- How the bills in question would impact voter eligibility, voter registration or turnout, or election outcomes in Arizona;
- How County Recorders confirm whether registered voters are citizens or have proof of citizenship for purposes of HB 2243, and how verifying citizenship would impact voter eligibility;
- “[A]ny database referenced by H.B. 2243 and H.B. 2492 ... for the purpose of verifying a registered voter’s citizenship status.”

Exhibit 1.

The Subpoena further sought “all non-identical copies and drafts” of such documents, not only from FEC itself, but also from “any past and/or present members, directors, employees, agents, assigns, or representatives, including but not limited to lobbyists, interns, and contractors; and any past and present benefactors, donors, and board members.” *Id.*

On June 29, 2023, AANHPI served FEC with a 30(b)(6) Deposition Subpoena, requiring FEC to produce a knowledgeable witness to testify in eight areas. Exhibit 2. These areas generally track the categories in AANHPI’s earlier Subpoena to Produce Documents, but in some instances they are even broader. For example, they encompass all “Advocacy Efforts” and “Legislative Strategies” by FEC “related to elections, voter registration, and voting” during a six-year period, “including but not limited to all attempts to influence Constituent Groups” or public officials.” Deposition Notice attached as Exhibit 3 at 8. They also cover FEC’s “reasons for advocating for” the bills in question, FEC’s “understanding of how” the bills would operate and affect elections, and FEC’s “understanding of the legality and/or constitutionality of” the bills. *Id.*

FEC timely objected to both Subpoenas, asserting that the requests were irrelevant, overbroad, unduly burdensome, and violative of FEC’s First Amendment associational rights.<sup>1</sup> Exhibit 4. Despite conferring about the Subpoenas and FEC’s

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<sup>1</sup> “[T]imely-served written objections suspend the non-party’s obligation to comply with a subpoena commanding production of documents, pending a court order.” *A&F Bahamas, LLC v. World Venture Group, Inc.*, No. CV 17-8523 VAP (SS), 2018 WL

objections by phone on June 29 and July 6, and additional conferrals by email, FEC and AANHPI have thus far been unable to reach a mutually agreeable resolution.

### **III. Discussion**

Federal Rule of Civil Procedure 45(d)(3)(A) sets forth the grounds for quashing a subpoena. Relevant here, “the court... must quash or modify a subpoena” if the subpoena “requires disclosure of privileged or other protected matter, if no exception or waiver applies,” or if the subpoena “subjects a person to undue burden.”

As a preliminary matter, the Subpoenas seek information that is irrelevant to this lawsuit. Moreover, the Subpoenas should be quashed because (1) much of the information they seek is privileged under the First Amendment and (2) complying would be unduly burdensome in light of the sensitive information they seek, FEC’s circumstances, and the Subpoenas’ tenuous connection to the lawsuit.

#### **A. The Subpoenas seek information irrelevant to this lawsuit.**

AANHPI’s 53-page complaint refers to FEC in just three of its 174 paragraphs: it references some tweets and articles from FEC and alleges that FEC “helped craft H.B. 2492, along with numerous other voter laws [during the 2022 legislative] session targeting voters of color.” Compl. ¶¶ 15, 49. It also cites public testimony before the Arizona Senate Judiciary Committee by an individual affiliated with FEC, *id.* ¶ 49, and alleges that one of HB 2243’s precursors was “pushed by” FEC, *id.* ¶ 57. Apart from these passing references to FEC in AANHPI’s complaint, there has been virtually no discussion of FEC or its political advocacy in any other briefing or orders during this lawsuit.

Moreover, AANHPI’s complaint *never* references donations, political action committees, internal communications by FEC, or any of the other topics on which the Subpoenas seek information. Neither the Complaint nor any other briefing before this Court indicates how such materials could be relevant to any claim or defense in this

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5961297, at \*4 (C.D. Cal. Oct. 19, 2018) (citation and quotation marks omitted); *see* Fed. R. Civ. P. 45(d)(2)(B).

case. None of this should be surprising, because FEC, its internal communications, and its financial information *have nothing to do with this lawsuit*.

**1. FEC's internal communications and analysis are irrelevant to this lawsuit.**

Both Subpoenas focus heavily on information about communications that took place entirely between private individuals and organizations:

- “[D]iscussion, analysis, and/or evidence of non-citizens voting in Arizona elections” (Request 1);
- Documents and Communications related to [FEC’s] Legislative Strategies, Lobbying Efforts, and/or Campaign/PAC Contributions” (Request 3);
- “Documents and Communications Regarding interpretation of H.B. 2492, H.B. 2243, and/or H.B. 2617” (Request 4);
- “Documents and Communications Regarding the potential impact, legality and/or constitutionality of H.B. 2492, H.B. 2243, and/or H.B. 217 (including but not limited to all draft or final opinions in [FEC’s] possession, custody or control...” (Request 5);
- “Documents and Communications Regarding how the actual or potential implementation of H.B. 2492, H.B. 2243, and/or H.B. 2617 would impact Arizonans who are eligible to vote or particular demographics or Arizonans who are eligible to vote” (Request 6);
- “Documents and Communications Regarding how County Recorders ‘confirm[ing]’ a registered voter is not a citizen and/or lacks DPOC... would impact Arizonans who are eligible to vote or particular demographics of Arizonans who are eligible to vote” (Request 7);
- “Documents and Communications Regarding any database referenced by H.B. 2243 and H.B. 2492 ... for the purpose of verifying a registered voter’s citizenship status” (Request 8);

Exhibit 1.

The Deposition Subpoena goes even further, seeking testimony about mental impressions and subjective opinions of FEC employees, even if those thoughts were never shared. *See* Exhibit 3 at 8 (discussing FEC’s “reasons for advocating for” bills and its “understanding of the [bills’] legality and/or constitutionality” and how they might operate).

These requests seek information purely internal to FEC, regarding FEC’s own private analysis and interpretation of legal and policy issues. They have no conceivable

relevance to the issues in this lawsuit: namely, whether the challenged laws, as enacted and enforced by the government Defendants (not by FEC), and as construed by this Court (again, not by FEC), violate federal law. The requests are also irrelevant to any allegations of discriminatory motive or intent by the officials who enacted and enforce the laws. Rather, they seek information private to FEC, which no government official ever even saw.

Assuming AANHPI intends to argue that FEC promoted or advocated for H.B. 2243 and H.B. 2492 to advance its own discriminatory purposes (a theory AANHPI has not even pleaded, let alone corroborated with evidence), the Supreme Court has closed the door on that approach. In *Democratic National Committee*, 141 S. Ct. 2321, the Court considered the so-called “cat’s paw theory” of discrimination, whereby a discriminatory actor might manipulate legislators into passing a discriminatory law for “sincere, though mistaken, non-race-based” reasons. *Id.* at 2350. The Court held that this theory, while accepted in employment discrimination cases, “has no application to legislative bodies,” as the theory is premised “on the agency relationship that exists between an employer and a supervisor.” *Id.* No such agency relationship exists, however, between “legislators who vote to adopt a bill” and “the bill’s sponsor or proponents.” *Id.*

Under our form of government, legislators must exercise independent judgment and represent their constituents. It is not only insulting and undemocratic to suggest that they are mere tools of private entities, but no such legal theory can justify intruding on the free speech and privacy rights of individuals or groups who petition the government for or against the passage of legislation. *See also Thai Meditation Ass’n of Ala., Inc. v. City of Mobile*, 980 F.3d 821, 836 (11th Cir. 2020) (“[W]e won’t impute the discriminatory intent of one or a few decisionmakers to the entire group—let alone, as here, of a subordinate *non*-decisionmaker to the final decisionmakers.”).



In fact, the Court has repeatedly cautioned against imputing even *a fellow legislator's* discriminatory intent (let alone a private citizen's intent) to other legislators. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2255–56 (2022) (“Even when an argument about legislative motive is backed by statements made by legislators who voted for a law, we have been reluctant to attribute those motives to the legislative body as a whole.” (collecting cases) (citations omitted)); *Palmer*, 403 U.S. at 225 (“It is difficult or impossible for any court to determine the ‘sole’ or ‘dominant’ motivation behind the choices of a group of legislators.”); *United States v. O'Brien*, 391 U.S. 367, 384 (1968) (“What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it.”).

For this reason, courts have held that third-party subpoenas that pry into a private organization's internal communications and strategy, like these, have little or no relevance in a constitutional challenge to a law. *Boe v. Marshall*, No. 2:22-cv-184-LCB, 2022 WL 14049505, at \*2–3 (M.D. Ala. Oct. 24, 2022) (quashing subpoena seeking advocacy group's records “ranging from draft legislation, to communications with the Alabama Legislature, to polling or public opinion data, to social media postings,” as having “little—if any—relevance” to constitutionality of legislation group supported). The mere fact that a private party supports passage of a law does not make the private party answerable in a subsequent constitutional challenge to that law, nor does it make the party a proper target of a subpoena.

## **2. FEC's financial information is irrelevant to this lawsuit.**

Requests 2 and 3 of the Document Subpoena seek financial information such as “Documents and Communications Regarding any Campaign/PAC Contributions or Expenditures.”<sup>2</sup> Exhibit 1. To the extent this refers to *internal* communications regarding

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<sup>2</sup> The Deposition Subpoena does not specifically address this issue, but its references to “Campaign/PAC Contributions or Expenditures,” as well as “all attempts to influence” public officials, indicate that AANHPI likely intends to question FEC about its financial activities.



FEC's finances and donors, such information has no conceivable bearing on state officials' actions or intent.

To the extent it refers to communications with, or contributions to, *the officials themselves*, it is still irrelevant to those officials' actions or intent, unless AANHPI is seeking to show that those officials were bribed. But such grave allegations of criminal misconduct are completely absent from the pleadings in this case, and unsupported by any evidence. As in other cases where disclosure implicates third parties' privacy interests, AANHPI cannot obtain sensitive financial records from third parties base on "mere speculation that the [records] could house relevant evidence." *DeLeon-Reyes v. Guevara*, No. 1:18-cv-01028, 2020 WL 7059444, at \*5 (N.D. Ill. Dec. 2, 2020).

**B. Compelling FEC to disclose this information would violate the First Amendment.**

The Ninth Circuit employs a burden-shifting approach to analyzing First Amendment privilege in the subpoena context. "[T]he opponents of disclosure" must first make "a prima facie case of arguable First Amendment infringement"; the burden then shifts to the subpoena's proponent "to 'demonstrate a sufficient need for the discovery to counterbalance that infringement.'" *In re Anonymous Online Speakers*, 661 F.3d 1168, 1174 (9th Cir. 2011) (citation omitted). Mirroring the "exacting scrutiny" standard, this test is meant to ensure that the discovery is (1) "rationally related to a compelling ... interest," and (2) the "'least restrictive means' of obtaining the desired information." *Brock v. Local 375, Plumbers Int'l Union of Am.*, 860 F.2d 346, 349–50 (9th Cir. 1988) (citation omitted). But the Subpoenas here cannot pass that test, and both steps of the privilege inquiry favor FEC.

First, the Subpoenas infringe FEC's First Amendment interests by burdening its associational rights. A subpoena burdens associational rights when it seeks sensitive information about political associations that could "result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which

objectively suggest an impact on, or ‘chilling’ of, the members’ associational rights.” *Perry*, 591 F.3d at 1160 (citation omitted).

In *Perry*, advocacy groups intervened in a lawsuit to defend the constitutionality of Proposition 8, a California ballot initiative that defined marriage as only “between a man and a woman.” *Id.* at 1152. In discovery, the plaintiffs sought these groups’ “internal campaign communications concerning strategy and messaging,” “including draft versions of communications never actually disseminated to the electorate at large.” *Id.* at 1153. The district court denied (in relevant part) the groups’ motion for a protective order. But the Ninth Circuit issued a writ of mandamus ordering the district court to grant the protective order. *Id.* It explained that compelled disclosure of internal campaign communications could “deter ... participation” in such campaigns and could “have a deterrent effect on the free flow of information within campaigns,” because it would “chill” the right of a political organization to “exchange ideas and formulate strategy and messages, and to do so in private.” *Id.* at 1162.

As in *Perry*, disclosure of FEC’s internal strategies, other communications, and information about financial contributions would lead to membership withdrawal and chilled association because it would expose FEC’s affiliates to risks of retaliation and harassment. Already, FEC and its employees are frequent targets of menacing phone calls and voicemails, including threats of violence. Decl. of Scot Mussi, attached as Exhibit 5 ¶¶ 14, 15. An FEC employee has even “had her car vandalized while she was parked at the Arizona Capitol, in retaliation for engaging in public communications there on FEC’s behalf.” *Id.* ¶ 16. Donors and staff members have expressed their fear of being outed or “doxxed,” and publicizing sensitive internal communications and other information about lightning-rod issues like election integrity will lead to donors and others disassociating from FEC out of fear for their own safety. *Id.* ¶¶ 12, 13, 17–19.

Publicizing confidential internal deliberations and exposing sensitive communications would also severely undermine FEC’s ability to carry out its mission. Along with deterring donors and staff members by exposing them to threats of

retaliation, it would cripple FEC’s ability to work with legislators and other advocacy groups, who will be unwilling to engage with FEC if they fear their private conversations will be made public. *Id.* ¶¶ 20–22. In fact, the case for First Amendment infringement is even stronger here than in *Perry*. FEC, unlike the intervenors in *Perry*, is not a party to this case. As noted above, courts are less willing to burden non-parties than litigants with intrusive subpoenas.

Second, AANHPI cannot “demonstrate a sufficient need for the discovery to counterbalance” the heavy burden its Subpoenas impose on FEC’s First Amendment rights. *Perry*, 591 F.3d at 1164. To satisfy this standard, “the party seeking the discovery must show that the information sought is *highly relevant* to the claims or defenses in the litigation—a more demanding standard of relevance than that under Federal Rule of Civil Procedure 26(b)(1).” *Id.* at 1161. “The request must also be carefully tailored to avoid unnecessary interference with protected activities, and the information must be otherwise unavailable.” *Id.*

But AANHPI cannot meet that high standard. As already noted, the Subpoenas seek three categories of information: (1) documents and communications government officials never saw, (2) documents and communications government officials did see, and (3) information about financial contributions to government officials and their campaigns. The first and third categories have no meaningful connection to any of the claims or defenses in this case, because they involve communications that shed no light on what government officials did or intended to do.<sup>3</sup> Indeed, after more than a year of complex litigation and extensive motion practice, neither AANHPI nor any other party has even *tried* to articulate a theory connecting FEC’s private communications to the validity of the challenged statutes. As for the second category (documents and

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<sup>3</sup> Here, too, FEC’s case is even stronger than the intervenors’ case in *Perry*. While the *Perry* intervenors’ public communications and messaging strategy were arguably relevant to the intent and meaning of a ballot initiative, FEC’s communications with the general public are completely irrelevant to the validity of a bill passed by the Legislature.

communications government officials *did* see), assuming such documents are relevant, AANHPI should seek them from the officials and government entities that are actually parties to this lawsuit, rather than burdening FEC's fundamental constitutional rights.

**C. Compelling FEC to disclose this information is unduly burdensome.**

Even setting aside the constitutional issues, the Court should quash the Subpoenas because they are unduly burdensome to FEC. “[A]n evaluation of undue burden requires the court to weigh the burden to the subpoenaed party against the value of the information to the serving party.” *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005) (quotation marks and citations omitted). This evaluation includes “such factors as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed.” *Id.* (quotation marks and citation omitted).

“[N]on-parties are entitled to special consideration when it comes to subpoena requests under Rule 45.” *Mi Familia Vota v. Hobbs*, 343 F.R.D. 71, 81 (D. Ariz. 2022). “[W]hile the discovery rules generally seek to avoid undue burdens, that concern is particularly important in the subpoena context precisely because the nonparty targets of the subpoenas do not have a direct stake in the lawsuit,” and should therefore not have “to shoulder the same types of discovery burdens as the parties.” *Id.* (quotation marks and citation omitted). Courts are therefore “quicker to find that the burden or expense in question is undue and offer protection as needed to alleviate it” when a party subpoenas a non-party. *Id.* (quotation marks and citation omitted); *see also Va. Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (“Nonparties are ‘strangers’ to the litigation, and ... should not be drawn into the parties’ dispute without some good reason, even if they have information that falls within the scope of party discovery.” (alterations adopted and citations omitted)).

The Subpoenas would require FEC, a small organization with only five staff members, to review thousands of documents for relevance and privilege. It would also

mean sharing highly sensitive information about FEC’s finances, internal strategy and planning, and donor relations, in circumstances likely to ensure that such information is widely disseminated after being produced. Both Subpoenas, but especially the Deposition Subpoena, would require FEC to compile and review *six years’* worth of information about anything FEC has said or done “related to elections”—an exceptionally broad category.

Considering the tenuous connection between the Subpoenas and the issues in this lawsuit, the financial burden, combined with the imposition on “privacy [and] confidentiality interests,” *Jordan*, 921 F.3d at 189 (collecting cases), “greatly outweighs any slight relevance [they] may have.” *Boe*, 2022 WL 14049505, at \*2.

Even assuming FEC’s alleged communications with legislators were relevant to AANHPI’s claims, the Subpoenas’ requests for this information are directed at the wrong entity. Indeed, the only communications that AANHPI alleges to have occurred between FEC and legislators were public statements to the Senate Judiciary Committee. Compl. ¶¶ 15, 49. These statements are already publicly available on the Arizona Legislature’s website. Assuming that any other communications with public officials occurred (and are relevant), they would presumably be subject to public records laws, or could be obtained from parties to this lawsuit—in ways that would be easier, less burdensome, and would create less risk of non-discoverable information being disclosed.<sup>4</sup>

“When an opposing party and a non-party both possess documents, the documents should be sought from the party to the case.” *Soto v. Castlerock Farming & Transp., Inc.*, 282 F.R.D. 492, 505 (E.D. Cal. 2012); *accord Adams v. Symetra Life Ins. Co.*, No. CV-18-00378-TUC-JGZ (LAB), 2020 WL 6469949, at \*5 (D. Ariz. Nov. 3, 2020) (“Courts generally hold that where an opposing party and a nonparty both possess

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<sup>4</sup> Likewise, campaign contributions are subject to extensive public reporting requirements and are available for public viewing on the Arizona Secretary of State’s webpage. *See* Ariz. Sec’y of State, Campaign Finance and Reporting, <https://azsos.gov/elections/campaign-finance-reporting> (last visited July 12, 2023).

documents, the documents should be sought from the party to the case.”); *Nidec Corp. v. Victor Co. of Japan*, 249 F.R.D. 575, 577 (N.D. Cal. 2007) (quashing a non-party subpoena where information was “obtainable from a source more direct, convenient, and less burdensome—namely, from Defendants”).

Subpoenas are inappropriate when they seek information from non-parties that is “redundant of other information that is already available to the parties.” *Ark. State Conference NAACP v. Ark. Bd. of Apportionment*, No. 4:21-cv-01239-LPR, 2022 WL 300917, at \*6–7 (E.D. Ark. Jan. 31, 2022) (quashing subpoenas to government officials seeking testimony that is already available in “on-the-record transcripts from Board of Apportionment meetings,” and additional “testimony that goes to the underlying motivations of the constitutional officers is either irrelevant or unnecessary at this stage of the case”).

Where a plaintiff can “obtain the same information, or comparable information” from a defendant, it is required to “explain why...that would [not] satisfy its needs” before trying to get the evidence from a non-party as in this case. *Jordan*, 921 F.3d at 189. AANHPI has not even attempted this, and it should not be permitted to burden a private non-party with such sweeping and intrusive requests absent good reason.

#### **IV. Conclusion**

For the foregoing reasons, FEC respectfully requests this Court quash the Subpoenas.

#### **V. Certification**

Undersigned counsel certifies that after personal consultation and sincere efforts to do so, counsel has been unable to satisfactorily resolve this matter. *See* L.R. Civ. 72(j).

**RESPECTFULLY SUBMITTED** this 12th day of July, 2023 by:

/s/ Scott Day Freeman

Scott Day Freeman (19784)

John Thorpe (034901)

**Scharf-Norton Center for Constitutional Litigation  
at the GOLDWATER INSTITUTE**

*Attorneys for Non-Party*

*Arizona Free Enterprise Club*

**CERTIFICATE OF SERVICE**

Document Electronically Filed and Served on all counsel of record by ECF this  
12th day of July, 2023.

/s/ Kris Schlott

Kris Schlott, Paralegal



## UNITED STATES DISTRICT COURT

for the  
District of Arizona

Mi Familia Vota, et al.,

*Plaintiff*

v.

Adrian Fontes, in his official capacity as Arizona  
Secretary of State, et al.,*Defendant*

Civil Action No. 22-cv-00509-SRB (consolidated)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Arizona Free Enterprise Club - Scot Mussi  
1835 E Elliot Road, Suite 102, Tempe, AZ 85284*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

SEE ATTACHED EXHIBIT A.

Place: Spencer Fane LLP 2415 E. Camelback Road, Suite 600 Phoenix, AZ 85016	Date and Time:  06/14/2023 5:00 pm
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☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/31/2023

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

/s/ Andrew Federhar

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Arizona Asian American Native Hawaiian and Pacific Islander for Equity Coalition, who issues or requests this subpoena, are:  
Andrew Federhar; 2415 E. Camelback Rd., Ste. 600, Phoenix, AZ 85016; afederhar@spencerfane.com; (602)-333-5427

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 22-cv-00509-SRB (consolidated)

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

No. CV-22-00519-PHX-SRB  
No. CV-22-01003-PHX-SRB  
No. CV-22-01124-PHX-SRB  
No. CV-22-01369-PHX-SRB  
No. CV-22-01381-PHX-SRB  
No. CV-22-01602-PHX-SRB  
No. CV-22-01901-PHX-SRB

1 Plaintiff Arizona Asian American Native Hawaiian and Pacific Islander for Equity  
2 Coalition hereby serves this Subpoena to Produce Documents/Information under Rule 45  
3 of the Federal Rules of Civil Procedure upon Arizona Free Enterprise Club (“AZFEC”).  
4

5 **DEFINITIONS**

6 The following definitions (applicable whether the terms in question are capitalized  
7 or not) apply to this document as a whole and as to each of the following requests for  
8 production and shall be deemed incorporated therein:

9 1. “Any” or “all” means “any and all.”

10 2. “Arizona Legislature” means the members and staff of the Arizona Senate  
11 and Arizona House of Representatives.

12 3. “Attorney General” refers to Defendant Kris Mayes, in her official capacity  
13 as Arizona Attorney General, and includes any predecessors and successors to the Office  
14 of the Arizona Attorney General, including but not limited to former Arizona Attorney  
15 General Mark Brnovich; as well as any past and present employees, agents, assigns, or  
16 representatives of the Office of the Arizona Attorney General; and any other persons or  
17 entities that, at any time, acted on behalf or for the benefit of the Office of the Arizona  
18 Attorney General.

19 4. “Campaign/PAC Contributions or Expenditures” refers to money, advances,  
20 proceeds, cryptocurrency, loans, in-kind donations, including but not limited to the  
21 payment of goods or services, advertisements and coordinated communications, or any  
22 other thing of value that is made for the purpose of influencing an election. The term  
23 includes but is not limited to independent expenditures and contributions to an official  
24 campaign, political action committee, or tax-exempt organization, including but not limited  
25 to entities organized under Section 527 of the U.S. Internal Revenue Code or Section  
26 501(c) of the U.S. Internal Revenue Code.

27 5. “Communication” means any transfer of information of any type, whether  
28 written, oral, electronic, or otherwise, and includes transfers of information via email,

1 report, letter, text message, voicemail message, written memorandum, note, summary,  
2 Twitter, and other means. It includes communications entirely internal to the Arizona  
3 Legislature, as well as communications that include or are with entities and individuals  
4 outside of the Arizona Legislature.

5 6. “Constituent Groups” refers to organizations formal and informal, including  
6 but not limited to, advocacy groups, lobbyists, volunteer or membership organizations, and  
7 other groups who advocate on behalf of specific constituencies in legislative matters that  
8 affect their constituencies’ interests, including but not limited to their staff, employees,  
9 agents, assigns, or representatives. For purposes of these requests, “Constituent Groups”  
10 includes, but is not limited to, the Arizona Free Enterprise Club and its employee Greg  
11 Blackie, and the Arizona Association of Counties and its executive director Jennifer  
12 Marson.

13 7. “County Recorders” refers to the County Recorders of Arizona’s fifteen  
14 counties and their predecessors and successors, as well as the current and former  
15 employees, officers, attorneys, agents, trustees, investigators, representatives, contractors,  
16 and consultants of the County Recorders.

17 8. “Document” is synonymous in meaning and scope to the term “document”  
18 as used under Federal Rule of Civil Procedure 34 and “writings” and “recordings” as  
19 defined in Federal Rules of Evidence 1001, and it includes, but is not limited to, records,  
20 reports, lists, data, statistics, summaries, analyses, communications (as defined above), any  
21 computer discs, tapes, printouts, emails, databases, and any handwritten, typewritten,  
22 printed, electronically recorded, taped, graphic, machine-readable, or other material, of  
23 whatever nature and in whatever form, including all non-identical copies and drafts thereof,  
24 and all copies bearing any notation or mark not found on the original.

25 9. “DPOC” refers to documentary proof of citizenship, defined by A.R.S. § 16-  
26 166 as “satisfactory evidence of citizenship.”  
27  
28

1           10. “Governor” refers to Katie Hobbs, in her official capacity as Arizona  
2 Governor, and includes any predecessors and successors to the Office of the Arizona  
3 Governor including but not limited to former Arizona Governor Doug Ducey; as well as  
4 any past and present employees, agents, assigns, or representatives of the Office of the  
5 Arizona Governor; and any other persons or entities that, at any time, acted on behalf or  
6 for the benefit of the Office of the Arizona Governor.

7           11. “H.B. 2617” means House Bill 2617 introduced into the Arizona House of  
8 Representatives on January 31, 2022 from Fifty-fifth Legislature Second Regular Session  
9 2022.

10           12. “H.B. 2492” refers to the Arizona House Bill 2492 signed into law by the  
11 Governor on March 30, 2022, Chapter 99 to Session Laws from the Fifty-fifth Legislature  
12 Second Regular Session 2022.

13           13. “H.B. 2243” refers to the Arizona House Bill 2243 signed into law by the  
14 Governor on July 6, 2022, Chapter 370 to Session Laws from the Fifty-fifth Legislature  
15 Second Regular Session 2022.

16           14. “Legislative Strategies” refers to methods and/or plans for advancing or  
17 frustrating potential and/or actual bills, policies, regulations or other official actions taken  
18 by public agencies and/or public officials and includes, for example, drafting of bills.

19           15. “Lobbying Efforts” refers to attempts to influence Constituent Groups, State  
20 Legislators, the Governor, Secretary of State, Attorney General or other public officials,  
21 directly or indirectly, in the drafting, passage, and/or implementation of potential and actual  
22 bills, policies, regulations or other official actions.

23           16. “Person” includes both natural persons and entities, without limitation,  
24 including but not limited to all predecessors in interest, groups, associations, partnerships,  
25 corporations, agencies, or any other legal, business, or governmental entity. The acts “of”  
26 a Person are defined to include the acts of directors, officers, members, employees, agents,  
27 or attorneys acting on the Person’s behalf.  
28



1           17. “Relating to,” “regarding,” or “concurring” and their cognates are to be  
2 understood in their broadest sense and shall be construed to include pertaining to,  
3 commenting on, memorializing, reflecting, recording, setting forth, describing, evidencing,  
4 or constituting.

5           18. “Secretary of State” refers to Defendant Adrian Fontes, in his official  
6 capacity as Arizona Secretary of State, and includes any predecessors and successors to the  
7 Office of the Arizona Secretary of State, including but not limited to former Arizona  
8 Secretary of State Katie Hobbs; as well as any past and present employees, agents, assigns,  
9 or representatives of the Office of the Arizona Secretary of State; and any other persons or  
10 entities that, at any time, acted on behalf or for the benefit of the Office of the Arizona  
11 Secretary of State.

12           19. “State Legislators” refers to the Arizona state Senators and Representatives,  
13 including but not limited to all elected members of the Arizona Legislature, their past or  
14 present staff, state legislative committees and committee staff, employees, agents, assigns,  
15 or representatives, who together comprise the members of the Arizona Legislature for the  
16 55th session.

17           20. “Thing” has the meaning prescribed in the Federal Rules of Civil Procedure,  
18 including but not limited to Rules 26 and 34. The term “Thing” specifically includes, by  
19 way of example but not limitation, any disc, tape, or other electronic media storage device.

20           21. “You,” “Your” and “AZFEC” refers to the Arizona Free Enterprise Club,  
21 and includes any past and/or present members, directors, employees, agents, assigns, or  
22 representatives, including but not limited to lobbyists, interns, and contractors; and any  
23 past and present benefactors, donors, and board members.

24           22. To “Identify” or provide the “Identity” or “Identification” of a Person who is  
25 a natural Person means to state for that Person: the Person’s full name, present or last  
26 known address(es), present or last known telephone number(s), present or last known  
27 employer and that employer’s address, present or last known job title, and whether the  
28

1 Person is represented by counsel in connection with this litigation. To “Identify” or provide  
2 the “Identify” or “Identification” of a Person that is an entity means to state for that entity:  
3 the entity’s full name, present or last known address for its principal place of business,  
4 present or last known telephone number, type (e.g., corporation, partnership, trust), date  
5 and place of formation, registered agent, all known names under which the entity has  
6 operated in the past, and all known addresses at which the entity has conducted business in  
7 the past.

8 23. To “Identify” any Document or Thing or to provide the “Identity” or  
9 “Identification” of any Document or Thing means:

- 10 a. To provide a brief description of such Document or Thing sufficient to  
11 support a request for production;  
12 b. To state its type (e.g., e-mail, letter, memorandum, computer system,  
13 software);  
14 c. To state its date;  
15 d. To state the purchase date of the Thing;  
16 e. To identify each author and recipient (including actual and designated  
17 recipients of copies);  
18 f. To identify who made the Thing, if applicable;  
19 g. To specify the place where the Document or Thing may be inspected and  
20 its custodian; and  
21 h. If a copy of the Document or Thing has been previously supplied, to so  
22 state and specifically identify the previously supplied copy by reference  
23 to Bates number(s) or other identifying information such as litigation  
24 control number.

25 24. To “Identify” an event or Communication means to state:

- 26 a. Its type (e.g., oral communication, telephone call, meeting or  
27 conference, teletype communication, purchase, sale);  
28

- b. Its date, time and place;
- c. The identity of all Persons participating, attending and observing, as well as Persons most knowledgeable about the event or Communication;
- d. A detailed description of the event or Communication and what transpired; and
- e. The identify of any Documents referenced, referred to, relied upon, or created in connection with the event, including any record made of the event.

### **DOCUMENTS TO BE PRODUCED**

1. All Documents and Communications Regarding discussion, analysis, and/or evidence of non-citizens voting in Arizona elections prior to the passage/attempted passage of H.B. 2492, H.B. 2243, and/or H.B. 2617, including but not limited to Documents and Communications Regarding Your article published on February 8, 2022, titled “How More Illegals Started Voting in AZ Elections and How House Bill 2492 Is Going to Fix It.”

2. All Documents and Communications Regarding any Campaign/PAC Contributions or Expenditures made by You from January 1, 2017 to July 1, 2022.

3. All Documents and Communications related to Your Legislative Strategies, Lobbying Efforts, and/or Campaign/PAC Contributions or Expenditures Regarding the drafting, introduction and passage/attempted passage of laws related to voting, including but not limited to all Documents and Communications Regarding the outlining, research for drafting, drafting, introduction and passage/attempted passage of H.B. 2492, H.B. 2243, and/or H.B. 2617 (including but not limited to Documents and Communications with any State Legislators, any Constituent Groups, the Governor, the Attorney General, any County Recorders, VoterVoice, or any other Persons Regarding those bills and/or drafts of those bills).

1           4.       All Documents and Communications Regarding interpretation of H.B. 2492,  
2 H.B. 2243, and/or H.B. 2617.

3           5.       All Documents and Communications Regarding the potential impact,  
4 legality and/or constitutionality of H.B. 2492, H.B. 2243, and/or H.B. 2617 (including but  
5 not limited to all draft or final opinions in Your possession, custody, or control Regarding  
6 how H.B. 2492, H.B. 2243, and/or H.B. 2617 do or do not comply with the U.S.  
7 Constitution, the Civil Rights Act of 1964, the National Voter Registration Act of 1993,  
8 and/or any other federal or state statutes).

9           6.       All Documents and Communications Regarding how the actual or potential  
10 implementation of H.B. 2492, H.B. 2243, and/or H.B. 2617 would impact Arizonans who  
11 are eligible to vote or particular demographics of Arizonans who are eligible to vote,  
12 including but not limited to how the passage/attempted passage of H.B. 2492, H.B. 2243,  
13 and/or H.B. 2617 may affect future electoral outcomes in Arizona or may affect which  
14 Arizonans successfully register and vote in future elections.

15           7.       All Documents and Communications Regarding how County Recorders  
16 “confirm[ing]” a registered voter is not a citizen and/or lacks DPOC, pursuant to A.R.S. §  
17 16-165, as amended by H.B. 2243, and/or “match[ing] the applicant with information that  
18 verifies the applicant is a United States citizen,” pursuant to A.R.S. § 16-121.01, as  
19 amended by H.B. 2492, would impact Arizonans who are eligible to vote or particular  
20 demographics of Arizonans who are eligible to vote.

21           8.       All Documents and Communications Regarding any database referenced by  
22 H.B. 2243 and H.B. 2492 (including but not limited to those enumerated in A.R.S. § 16-  
23 165, as amended by H.B. 2243, and A.R.S. § 16-121.01, as amended by H.B. 2492), for  
24 the purpose of verifying a registered voter’s citizenship status).

1 Dated: May 31, 2023

Respectfully submitted,

2 By /s/ Andrew Federhar

3 LATHAM & WATKINS LLP

4 Sadik Huseny (*pro hac vice*)

Amit Makker (*pro hac vice*)

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San Francisco, CA 94111-6538

6 Telephone: (415) 391-0600

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16 *Attorneys for Plaintiff*

## UNITED STATES DISTRICT COURT

for the

District of Arizona



Mi Familia Vota, et al

*Plaintiff*

v.

Adrian Fontes, in his official capacity as Arizona  
Secretary of State, et al.*Defendant*

Civil Action No. 22-cv-00509-SRB (consolidated)

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Arizona Free Enterprise Club  
1835 E. Elliot Road, Suite 102, Tempe, AZ 85284*(Name of person to whom this subpoena is directed)*

☒ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Place: Spencer Fane LLP 2415 E. Camelback Road, Suite 600 Phoenix, AZ 85016	Date and Time: 07/14/2023 9:00 am
---	--------------------------------------

The deposition will be recorded by this method: audio-and-video means

- ☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 06/29/2023

CLERK OF COURT

OR

/s/ Amit Makker

*Signature of Clerk or Deputy Clerk**Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Arizona Asian American Native Hawaiian and Pacific Islanders for Equity Coalition, who issues or requests this subpoena, are:

Amit Makker, 505 Montgomery Street, Suite 2000, San Francisco, CA, 94111, amit.makker@lw.com, 415-391-0600

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 22-cv-00509-SRB (consolidated)

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 on *(date)* \_\_\_\_\_ .

☐ I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:



**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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 American Native Hawaiian And Pacific  
 Islander For Equity Coalition*

**UNITED STATES DISTRICT COURT  
 DISTRICT OF ARIZONA**

Mi Familia Vota, et al.,

Plaintiffs,

v.

Adrian Fontes, in his official capacity as  
 Arizona Secretary of State; et al.,

Defendants.

AND CONSOLIDATED CASES

Case No.: 22-cv-00509-SRB  
 (Consolidated)

**PLAINTIFFS' NOTICE OF RULE  
 30(b)(6) DEPOSITION TO ARIZONA  
 FREE ENTERPRISE CLUB**

**TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

PLEASE TAKE NOTICE THAT, pursuant to Federal Rule of Civil Procedure 30(b)(6), Arizona Asian American Native Hawaiian And Pacific Islander For Equity Coalition (“Plaintiff”) through its attorneys, will take the deposition of Arizona Free Enterprise Club at Spencer Fane LLP, 2415 E. Camelback Road, Suite 600, Phoenix, AZ 85016 on July 14, 2023 at 9:00 A.M. (or at another time mutually agreed on by the parties) and will continue from day to day thereafter until it is concluded.

The deposition will be taken upon oral examination before a notary public or an officer authorized to administer oaths. The deposition will be recorded stenographically and may also be recorded by a videographer by audio-and-video means. Testimony derived pursuant to this Notice shall be used for any and all appropriate purposes permitted by the Federal Rules of Civil Procedure.

Pursuant to Rule 30(b)(6), Defendant shall designate one or more of its officers, directors, managing agents, or other persons who will testify on its behalf as to all matters known or reasonably available to Defendant with respect to each of the Topics set forth herein. At least seven (7) days before the date set for the deposition, Defendant shall identify, by name and position, each person so designated and set forth the Topic(s) on which that person will testify.

**DEFINITIONS**

The definitions set forth in Plaintiff’s Subpoena to Arizona Free Enterprise Club are incorporated herein by reference.

1. “Advocacy Efforts” refers to lobbying and/or any other attempts to influence Constituent Groups, State Legislators, the Governor, Secretary of State, Attorney General or other public officials, directly or indirectly, in the drafting, passage, and/or implementation of potential and actual bills, policies, regulations or other official actions.

2. “Any” or “all” means “any and all.”

1           3.     “Arizona Legislature” means the members and staff of the Arizona Senate  
2 and Arizona House of Representatives.

3           4.     “Attorney General” refers to Defendant Kris Mayes, in her official capacity  
4 as Arizona Attorney General, and includes any predecessors and successors to the Office  
5 of the Arizona Attorney General, including but not limited to former Arizona Attorney  
6 General Mark Brnovich; as well as any past and present employees, agents, assigns, or  
7 representatives of the Office of the Arizona Attorney General; and any other persons or  
8 entities that, at any time, acted on behalf or for the benefit of the Office of the Arizona  
9 Attorney General.

10          5.     “Campaign/PAC Contributions or Expenditures” refers to money, advances,  
11 proceeds, cryptocurrency, loans, in-kind donations, including but not limited to the  
12 payment of goods or services, advertisements and coordinated communications, or any  
13 other thing of value that is made for the purpose of influencing an election. The term  
14 includes but is not limited to independent expenditures and contributions to an official  
15 campaign, political action committee, or tax-exempt organization, including but not limited  
16 to entities organized under Section 527 of the U.S. Internal Revenue Code or Section  
17 501(c) of the U.S. Internal Revenue Code.

18          6.     “Communication” means any transfer of information of any type, whether  
19 written, oral, electronic, or otherwise, and includes transfers of information via email,  
20 report, letter, text message, voicemail message, written memorandum, note, summary,  
21 Twitter, and other means. It includes communications entirely internal to the Arizona  
22 Legislature, as well as communications that include or are with entities and individuals  
23 outside of the Arizona Legislature.

24          7.     “Constituent Groups” refers to organizations formal and informal, including  
25 but not limited to, advocacy groups, lobbyists, volunteer or membership organizations, and  
26 other groups who advocate on behalf of specific constituencies in legislative matters that  
27 affect their constituencies’ interests, including but not limited to their staff, employees,  
28 agents, assigns, or representatives. For purposes of these requests, “Constituent Groups”

1 includes, but is not limited to, the Arizona Free Enterprise Club and its employee Greg  
2 Blackie, and the Arizona Association of Counties and its executive director Jennifer  
3 Marson.

4 8. "County Recorders" refers to the County Recorders of Arizona's fifteen  
5 counties and their predecessors and successors, as well as the current and former  
6 employees, officers, attorneys, agents, trustees, investigators, representatives, contractors,  
7 and consultants of the County Recorders.

8 9. "Document" is synonymous in meaning and scope to the term "document"  
9 as used under Federal Rule of Civil Procedure 34 and "writings" and "recordings" as  
10 defined in Federal Rules of Evidence 1001, and it includes, but is not limited to, records,  
11 reports, lists, data, statistics, summaries, analyses, communications (as defined above), any  
12 computer discs, tapes, printouts, emails, databases, and any handwritten, typewritten,  
13 printed, electronically recorded, taped, graphic, machine-readable, or other material, of  
14 whatever nature and in whatever form, including all non-identical copies and drafts thereof,  
15 and all copies bearing any notation or mark not found on the original.

16 10. "DPOC" refers to documentary proof of citizenship, defined by A.R.S. § 16-  
17 166 as "satisfactory evidence of citizenship."

18 11. "Governor" refers to Katie Hobbs, in her official capacity as Arizona  
19 Governor, and includes any predecessors and successors to the Office of the Arizona  
20 Governor including but not limited to former Arizona Governor Doug Ducey; as well as  
21 any past and present employees, agents, assigns, or representatives of the Office of the  
22 Arizona Governor; and any other persons or entities that, at any time, acted on behalf or  
23 for the benefit of the Office of the Arizona Governor.

24 12. "H.B. 2617" means House Bill 2617 introduced into the Arizona House of  
25 Representatives on January 31, 2022 from Fifty-Fifth Legislature Second Regular Session  
26 2022.

1           13. “H.B. 2492” refers to the Arizona House Bill 2492 signed into law by the  
2 Governor on March 30, 2022, Chapter 99 to Session Laws from the Fifty-fifth Legislature  
3 Second Regular Session 2022.

4           14. “H.B. 2243” refers to the Arizona House Bill 2243 signed into law by the  
5 Governor on July 6, 2022, Chapter 370 to Session Laws from the Fifty-fifth Legislature  
6 Second Regular Session 2022.

7           15. “Legislative Strategies” refers to methods and/or plans for advancing or  
8 frustrating potential and/or actual bills, policies, regulations or other official actions taken  
9 by public agencies and/or public officials and includes, for example, drafting of bills.

10           16. “Person” includes both natural persons and entities, without limitation,  
11 including but not limited to all predecessors in interest, groups, associations, partnerships,  
12 corporations, agencies, or any other legal, business, or governmental entity. The acts “of”  
13 a Person are defined to include the acts of directors, officers, members, employees, agents,  
14 or attorneys acting on the Person’s behalf.

15           17. “Relating to,” “regarding,” or “concurring” and their cognates are to be  
16 understood in their broadest sense and shall be construed to include pertaining to,  
17 commenting on, memorializing, reflecting, recording, setting forth, describing, evidencing,  
18 or constituting.

19           18. “Secretary of State” refers to Defendant Adrian Fontes, in his official  
20 capacity as Arizona Secretary of State, and includes any predecessors and successors to the  
21 Office of the Arizona Secretary of State, including but not limited to former Arizona  
22 Secretary of State Katie Hobbs; as well as any past and present employees, agents, assigns,  
23 or representatives of the Office of the Arizona Secretary of State; and any other persons or  
24 entities that, at any time, acted on behalf or for the benefit of the Office of the Arizona  
25 Secretary of State.

26           19. “State Legislators” refers to the Arizona state Senators and Representatives,  
27 including but not limited to all elected members of the Arizona Legislature, their past or  
28 present staff, state legislative committees and committee staff, employees, agents, assigns,



1 or representatives, who together comprise the members of the Arizona Legislature for the  
2 55th session.

3 20. “Thing” has the meaning prescribed in the Federal Rules of Civil Procedure,  
4 including but not limited to Rules 26 and 34. The term “Thing” specifically includes, by  
5 way of example but not limitation, any disc, tape, or other electronic media storage device.

6 21. “You,” “Your” and “AZFEC” refers to the Arizona Free Enterprise Club,  
7 and includes any past and/or present members, directors, employees, agents, assigns, or  
8 representatives, including but not limited to lobbyists, interns, and contractors; and any  
9 past and present benefactors, donors, and board members.

10 22. To “Identify” or provide the “Identity” or “Identification” of a Person who is  
11 a natural Person means to state for that Person: the Person’s full name, present or last  
12 known address(es), present or last known telephone number(s), present or last known  
13 employer and that employer’s address, present or last known job title, and whether the  
14 Person is represented by counsel in connection with this litigation. To “Identify” or provide  
15 the “Identify” or “Identification” of a Person that is an entity means to state for that entity:  
16 the entity’s full name, present or last known address for its principal place of business,  
17 present or last known telephone number, type (e.g., corporation, partnership, trust), date  
18 and place of formation, registered agent, all known names under which the entity has  
19 operated in the past, and all known addresses at which the entity has conducted business in  
20 the past.

21 23. To “Identify” any Document or Thing or to provide the “Identity” or  
22 “Identification” of any Document or Thing means:

- 23 a. To provide a brief description of such Document or Thing sufficient to
- 24 support a request for production;
- 25 b. To state its type (e.g., e-mail, letter, memorandum, computer system,
- 26 software);
- 27 c. To state its date;
- 28 d. To state the purchase date of the Thing;



- e. To identify each author and recipient (including actual and designated recipients of copies);
- f. To identify who made the Thing, if applicable;
- g. To specify the place where the Document or Thing may be inspected and its custodian; and
- h. If a copy of the Document or Thing has been previously supplied, to so state and specifically identify the previously supplied copy by reference to Bates number(s) or other identifying information such as litigation control number.

24. To “Identify” an event or Communication means to state:

- a. Its type (e.g., oral communication, telephone call, meeting or conference, teletype communication, purchase, sale);
- b. Its date, time and place;
- c. The identity of all Persons participating, attending and observing, as well as Persons most knowledgeable about the event or Communication;
- d. A detailed description of the event or Communication and what transpired; and
- e. The identify of any Documents referenced, referred to, relied upon, or created in connection with the event, including any record made of the event.

### **DEPOSITION TOPICS**

1. The basis whereby AZFEC alleged voter fraud in Arizona from January 1, 2016 to July 1, 2022, including but not limited to, the manner and process of any investigation or other manner of gathering fact by AZFEC of alleged voter fraud related to the articles posted on AZFEC’s website titled “The Proliferation of the ‘Federal Only Voter’ List: How Arizona Ended up with 11,600 Voters in 2020 Who Have Never Proven Their Citizenship” and “How More Illegals Started Voting in AZ Elections and How House Bill 2492 Is Going to Fix It.”

1           2.       AZFEC's Advocacy Efforts from January 1, 2016 to July 1, 2022 related to  
2 elections, voter registration, and voting, including but not limited all attempts to influence  
3 Constituent Groups, State Legislators, the Governor, Secretary of State, Attorney General  
4 or other public officials, directly or indirectly, in the drafting, passage, and/or  
5 implementation of H.B. 2492, H.B. 2243, and/or H.B. 2617.

6           3.       AZFEC's Legislative Strategies from January 1, 2016 to July 1, 2022 related  
7 to elections and voting, including but not limited to the manner in which AZFEC advocated  
8 for or against potential and/or actual bills, policies, regulations or other official actions  
9 taken by public agencies and/or public officials, including but not limited to the drafting of  
10 H.B. 2492, H.B. 2243, and/or H.B. 2617.

11          4.       AZFEC's reasons for advocating for H.B. 2492, H.B. 2243, and/or H.B.  
12 2617.

13          5.       AZFEC's understanding of how the actual or potential passage of H.B. 2492,  
14 H.B. 2243, and/or H.B. 2617 would operate in practice, including but not limited to the  
15 laws' potential effect on the Arizona electorate, voter fraud in Arizona and the outcome of  
16 future elections, now and at the time AZFEC attempted to influence Constituent Groups,  
17 State Legislators, the Governor, Secretary of State, Attorney General or other public  
18 officials, directly or indirectly, in the drafting, passage, and/or implementation of H.B.  
19 2492, H.B. 2243, and/or H.B. 2617.

20          6.       AZFEC's understanding of the legality and/or constitutionality of H.B. 2492,  
21 H.B. 2243, and/or H.B. 2617, now and at the time AZFEC attempted to influence  
22 Constituent Groups, State Legislators, the Governor, Secretary of State, Attorney General  
23 or other public officials, directly or indirectly, in the drafting, passage, and/or  
24 implementation of H.B. 2492, H.B. 2243, and/or H.B. 2617.

25          7.       AZFEC's understanding of the likely or potential impact of H.B. 2492, H.B.  
26 2243 and/or H.B. 2617 on Arizona citizens who are eligible to vote and/or Arizona  
27 registered voters, including burdens associated thereto, now and at the time AZFEC  
28 attempted to influence Constituent Groups, State Legislators, the Governor, Secretary of

1 State, Attorney General or other public officials, directly or indirectly, in the drafting,  
 2 passage, and/or implementation of H.B. 2492, H.B. 2243, and/or H.B. 2617.

3 8. AZFEC's understanding of the maintenance, operation, accessibility,  
 4 usefulness and/or accuracy of any database referenced by H.B. 2243 and H.B. 2492,  
 5 including but not limited to those enumerated in A.R.S. § 16-165, as amended by H.B.  
 6 2243, and A.R.S. § 16-121.01, as amended by H.B. 2492), for the purpose of verifying a  
 7 registered voter's citizenship status.

11 Dated: June 29, 2023

Respectfully submitted,

12 By /s/Amit Makker

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

MI FAMILIA VOTA, et al.,

Plaintiffs,

vs.

ADRIAN FONTES, in his official capacity  
as Arizona Secretary of State, et al.,

Defendants,

No. 2:22-cv-00509-SRB  
(Consolidated)

**OBJECTIONS OF ARIZONA  
FREE ENTERPRISE CLUB TO  
SUBPOENA TO PRODUCE  
DOCUMENTS ISSUED BY  
ARIZONA ASIAN AMERICAN  
NATIVE HAWAIIAN AND  
PACIFIC ISLANDER FOR  
EQUITY COALITION**

Pursuant to Federal Rule of Civil Procedure 45(d)(2)(B), non-party Arizona Free Enterprise Club (“FEC”) objects as follows to the Subpoena to Produce Documents (“Subpoena”) served on it June 1, 2023, by Plaintiff Arizona Asian American Native Hawaiian and Pacific Islander for Equity Coalition (“AANHPI”).

## **Objections**

A. The Subpoena seeks irrelevant information: this lawsuit is a challenge to election laws enacted by the Arizona Legislature and enforced by Arizona state and county officials. All defendants are government entities or government officials. The claims in this lawsuit deal exclusively with whether the challenged laws violate federal law or the Constitution by unlawfully discriminating on the basis of race, ethnicity, or other protected class, or by unduly burdening voting rights. Thus, the only matters on which AANHPI may legitimately seek discovery in this lawsuit are whether the statutes unlawfully discriminate on the basis of race, ethnicity, or other protected class, and whether the statutes unduly burden voting rights. FEC therefore objects to the Subpoena because it seeks information that is not relevant. Instead, the Subpoena seeks information about FEC's internal deliberations, financial records, and identities of donors, employees, and other affiliates.

B. The requests for information are unduly burdensome and disproportional to the needs of the case: even assuming the Subpoena were reasonably calculated to lead to discoverable evidence, it is unduly burdensome to FEC, which is a private entity, a non-party to this lawsuit, and a small non-profit organization with limited resources. If AANHPI is seeking evidence of the Legislature's alleged discriminatory intent in enacting the challenged laws, or other officials' discriminatory intent in enforcing the laws, AANHPI should seek such evidence from the officials themselves. Rather than seeking legitimately discoverable information, the Subpoena is designed to harass FEC

and cause it undue hardship insofar as it seeks highly sensitive information with no conceivable relevance to the lawsuit.

C. The Subpoena seeks information in violation of FEC's First Amendment rights: it attempts to use the District Court's authority to coerce a private non-party to reveal privileged information about its political activities, advocacy, and affiliations. The First Amendment protects individuals and organizations from being compelled to produce internal records and associational information where disclosure could create a risk of harassment, membership withdrawal, or discouragement of new members, and where it could chill associational rights. *Perry v. Schwarzenegger*, 591 F.3d 1147, 1159–61 (9th Cir. 2010); *see also, e.g., N.A.A.C.P. v. Alabama*, 357 U.S. 449, 460–61 (1958). The Subpoena seeks private, confidential, and highly sensitive information related to (among other things) donors, political affiliations, and internal strategies. The First Amendment prohibits coercing third parties into disclosing such privileged material, particularly when, as noted elsewhere, production would severely burden the third party, such material is irrelevant to the issues in the lawsuit, and the material could be obtained with less burden from parties.

For brevity, the above objections are incorporated into FEC's objections to each individual request below.

## **REQUEST NO. 1**

All Documents and Communications Regarding discussion, analysis, and/or evidence of non-citizens voting in Arizona elections prior to the passage/attempted passage of H.B. 2492, H.B. 2243, and/or H.B. 2617, including but not limited to

Documents and Communications Regarding Your article published on February 8, 2022, titled “How More Illegals Started Voting in AZ Elections and How House Bill 2492 Is Going to Fix It.”

**RESPONSE**

The request is overbroad, unduly burdensome, and irrelevant, and it violates FEC’s First Amendment rights, because it seeks information regarding communications and deliberations (including sensitive internal deliberations) that have no bearing on the validity of the challenged laws.

**REQUEST NO. 2**

All Documents and Communications Regarding any Campaign/PAC Contributions or Expenditures made by You from January 1, 2017 to July 1, 2022.

**RESPONSE**

The request is irrelevant and not calculated to lead to discoverable evidence regarding the validity of the challenged laws. Moreover, it is unduly burdensome, it violates FEC’s First Amendment rights, and it is designed to harass and cause hardship to FEC by forcing FEC to reveal sensitive financial information that is of no value in the present litigation.

**REQUEST NO. 3**

All Documents and Communications related to Your Legislative Strategies, Lobbying Efforts, and/or Campaign/PAC Contributions or Expenditures Regarding the drafting, introduction and passage/attempted passage of laws related to voting, including but not limited to all Documents and Communications Regarding the outlining, research

for drafting, drafting, introduction and passage/attempted passage of H.B. 2492, H.B. 2243, and/or H.B. 2617 (including but not limited to Documents and Communications with any State Legislators, any Constituent Groups, the Governor, the Attorney General, any County Recorders, VoterVoice, or any other Persons Regarding those bills and/or drafts of those bills).

## **RESPONSE**

The request is irrelevant and not calculated to lead to discoverable evidence regarding the validity of the challenged laws. It unduly burdens FEC's First Amendment rights by seeking sensitive information regarding protected advocacy activities. Any information within the scope of this request that might arguably show discriminatory intent by government officials is appropriately sought from those officials, not from FEC. Moreover, it is unduly burdensome, and it is designed to harass and cause hardship to FEC by forcing it to reveal sensitive information that is of no value in the present litigation.

## **REQUEST NO. 4**

All Documents and Communications Regarding interpretation of H.B. 2492, H.B. 2243, and/or H.B. 2617.

## **RESPONSE**

The request is vague and unclear as it does not specify whose "interpretation" of the bills it seeks information about. To the extent the request refers to the "interpretations" of government officials, it is properly directed at those officials themselves, many of whom are already parties to this litigation (unlike FEC) and all of



whom are subject to public records laws (unlike FEC). Requiring a private non-party like FEC to provide evidence of government officials' interpretations of laws is unduly burdensome and duplicative of discovery properly directed at the officials themselves. To the extent the request refers to "interpretations" of the laws by anybody other than government officials, such request is unduly burdensome and not reasonably calculated to lead to discoverable evidence because private parties' subjective opinions about laws are irrelevant to the validity of those laws. Moreover, it violates FEC's First Amendment rights by seeking sensitive information regarding internal strategies and associational activities.

#### **REQUEST NO. 5**

All Documents and Communications Regarding the potential impact, legality and/or constitutionality of H.B. 2492, H.B. 2243, and/or H.B. 2617 (including but not limited to all draft or final opinions in Your possession, custody, or control Regarding how H.B. 2492, H.B. 2243, and/or H.B. 2617 do or do not comply with the U.S. Constitution, the Civil Rights Act of 1964, the National Voter Registration Act of 1993, and/or any other federal or state statutes).

#### **RESPONSE**

The request is vague because it is unclear whose "opinions" it refers to. To the extent it refers to government officials' opinions, the request is appropriately directed at those officials, not at a private non-party. To the extent it refers to others' opinions, the request is not reasonably calculated to lead to discoverable information because any such information has no bearing on the validity of the challenged laws. Moreover, it is unduly

burdensome, and designed to harass and cause hardship to FEC by forcing it to reveal sensitive information that is of no value in the present litigation. Additionally, it violates FEC's First Amendment rights by seeking sensitive information regarding internal strategies and associational activities.

#### **REQUEST NO. 6**

All Documents and Communications Regarding how the actual or potential implementation of H.B. 2492, H.B. 2243, and/or H.B. 2617 would impact Arizonans who are eligible to vote or particular demographics of Arizonans who are eligible to vote, including but not limited to how the passage/attempted passage of H.B. 2492, H.B. 2243, and/or H.B. 2617 may affect future electoral outcomes in Arizona or may affect which Arizonans successfully register and vote in future elections.

#### **RESPONSE**

The request is vague because it is unclear whose opinions or analysis regarding the laws' implementation it refers to. To the extent it refers to government officials' opinions, the request is appropriately directed at those officials, not at a private non-party. To the extent it refers to others' opinions, the request is not reasonably calculated to lead to discoverable information because any such information has no bearing on the validity of the challenged laws. Moreover, it is unduly burdensome and designed to harass and cause hardship to FEC, in violation of the First Amendment, because it would force FEC to reveal sensitive information that is of no value in the present litigation.

#### **REQUEST NO. 7**

All Documents and Communications Regarding how County Recorders “confirm[ing]” a registered voter is not a citizen and/or lacks DPOC, pursuant to A.R.S. § 16-165, as amended by H.B. 2243, and/or “match[ing] the applicant with information that verifies the applicant is a United States citizen,” pursuant to A.R.S. § 16-121.01, as amended by H.B. 2492, would impact Arizonans who are eligible to vote or particular demographics of Arizonans who are eligible to vote.

#### **RESPONSE**

The request is vague because it is unclear whose opinions or analysis regarding the laws’ impacts it refers to. To the extent it refers to government officials’ opinions, the request is appropriately directed at those officials, not at a private non-party. To the extent it refers to others’ opinions, the request is not reasonably calculated to lead to discoverable information because any such information has no bearing on the validity of the challenged laws. Moreover, it is unduly burdensome, designed to harass and cause hardship to FEC, and violates the First Amendment by forcing FEC to reveal sensitive information that is of no value in the present litigation.

#### **REQUEST NO. 8**

All Documents and Communications Regarding any database referenced by H.B. 2243 and H.B. 2492 (including but not limited to those enumerated in A.R.S. § 16-165, as amended by H.B. 2243, and A.R.S. § 16-121.01, as amended by H.B. 2492), for the purpose of verifying a registered voter’s citizenship status) [sic].

#### **RESPONSE**

To the extent this request seeks government officials' communications, the request is appropriately directed at those officials, not at a private non-party. To the extent it seeks others' communications, the request is not reasonably calculated to lead to discoverable information because any such information has no bearing on the validity of the challenged laws. Moreover, it is unduly burdensome, designed to harass and cause hardship to FEC, and violates the First Amendment by forcing FEC to reveal sensitive information that is of no value in the present litigation.

**RESPECTFULLY SUBMITTED** this 12th day of June, 2023.

/s/ John Thorpe

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Enterprise Club*

**CERTIFICATE OF SERVICE**

Document served on all counsel of record by email this 12th day of June, 2023.

/s/ John Thorpe

## DECLARATION OF SCOT MUSSI

I, Scot Mussi, declare under penalty of perjury under the laws of the State of Arizona as follows:

1. I am over the age of eighteen and have personal knowledge of the matters stated in this declaration and am competent to testify regarding them.
2. I am the President and Executive Director of the Arizona Free Enterprise Club (“FEC”), which is a statewide research and public policy organization that is registered and in good standing with the Arizona Corporation Commission. I have served in this capacity since 2014, and I am authorized to make this declaration on behalf of FEC.
3. Since 2005, FEC has been a leading organization in Arizona advocating for principles of free enterprise and pro-growth, limited government policies. To advance that mission, FEC engages in extensive public education, lobbying, and grassroots activity, including hosting public policy events, issuing policy papers, and communicating with individual citizens, the media, and policymakers on public policy issues. Our communication efforts focus on helping the public understand why policies that promote free enterprise help ensure prosperity for all Americans and Arizonans.
4. FEC is a tax-exempt social welfare organization under section 501(c)(4) of the Internal Revenue Code. FEC is a not-for-profit organization operating exclusively to promote the social welfare of the community.



5. On or about June 1, 2023, FEC received a Subpoena to Produce Documents (“Subpoena”) in this lawsuit from Arizona Asian American Native Hawaiian Pacific Islander for Equity Coalition (“AANHPI”).
6. On or about June 29, 2023, FEC received a Notice of 30(b)(6) Deposition in this lawsuit, also from AANHPI.
7. FEC timely objected to both the Subpoena and the Notice of Deposition in their entirety.
8. I directed FEC to object to the Subpoena and the Notice of Deposition because these requests seek information that I believe is highly sensitive and confidential, the publication of which would severely hinder FEC’s ability to continue its mission of advocacy, lobbying, and coalition building.
9. FEC funds its activities by raising contributions from donors throughout Arizona.
10. FEC keeps the names and addresses of its donors strictly confidential. It does not publicly disclose the identities of its donors or the amounts of donations received, and it has expressed to its donors its commitment to safeguard this information.
11. FEC solicits contributions in a variety of ways, including meeting with donors, and FEC works to build and maintain personal relationships with many of its donors.
12. In conversations with FEC staff, donors have expressed concerns about confidentiality and potential reprisals for FEC’s advocacy and public communications, and in particular, for FEC’s work on issues related to election integrity.

13. Many FEC donors are concerned about having their contributions publicly disclosed and about being outed or “doxxed” for their support of FEC.
14. FEC and its staff have been subject to harassment because of its public communications, particularly its work on issues related to election integrity.
15. For example, both I and members of my staff have received numerous phone calls and voicemails from individuals threatening violence, harassing, and trying to intimidate us because of FEC’s speech and activities.
16. On one occasion, a staff member had her car vandalized while she was parked at the Arizona Capitol, in retaliation for engaging in public communications there on FEC’s behalf.
17. It is my understanding and belief that current and future donors, as well as FEC staff members, are justifiably afraid that disclosure of their affiliations with and support of FEC will result in harassment and reprisals.
18. Donors have informed me that although they would like to continue contributing to FEC, they fear the risk of harassment and reprisal they will face if their identities or contributions become publicly known.
19. Donors have informed me that they would limit, alter, or eliminate their contributions to FEC if their identities or contributions become publicly known.
20. FEC works extensively with many individuals and organizations, including legislators and members of other advocacy groups, in order to educate them on policy issues, advocate policy positions, and build coalitions.

21. This work depends on personal relationships and involves private conversations in which it is essential that individuals feel free to share their ideas and concerns in confidence, without fear that those communications will be shared with the general public.
22. Based on conversations I have had with these individuals and organizations, it is my understanding and belief that many of them will be less willing to work or associate with FEC in an open and collaborative manner if they do not believe FEC will keep their communications confidential.
23. In addition to the effects on staff, donors, legislators, and other partners, FEC would incur significant cost, in the form of staff time and money, to comply with the Subpoena.
24. Complying with the Subpoena would likely mean reviewing several thousand pages of documents and emails spanning a period over five years, many of which contain highly sensitive personally identifiable information, and many of which are subject to attorney-client, work product, and First Amendment privilege.
25. Reviewing these documents for responsiveness and privilege would take more than one hundred hours of staff time, which would be extremely burdensome for FEC, which has only five employees. It would require diverting staff away from their other duties, which would significantly affect FEC's ability to carry out its mission.



26. Reviewing these documents for responsiveness and privilege would also require FEC to hire outside counsel at considerable cost, as FEC does not have the resources to maintain in-house counsel.

I declare that to the best of my knowledge the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Scot Mussi", written over a horizontal line.

Scot Mussi

DATED: 7-12-23

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

MI FAMILIA VOTA, et al.,

Plaintiffs,

vs.

ADRIAN FONTES, in his official capacity  
as Arizona Secretary of State, et al.,

Defendants,

No. 2:22-cv-00509-SRB  
(Consolidated)

**PROPOSED ORDER GRANTING  
MOTION TO QUASH**

Having considered the briefing, and good cause appearing, the Court GRANTS  
Arizona Free Enterprise Club's Motion to Quash.