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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 CENTER FOR ARIZONA POLICY, INC.,
14 an Arizona nonprofit corporation;
15 ARIZONA FREE ENTERPRISE CLUB;
16 DOE I; DOE II;

17 Plaintiffs,

18 vs.

19 ARIZONA SECRETARY OF STATE;
20 KATIE HOBBS, in her official capacity;
21 ARIZONA CITIZENS CLEAN
22 ELECTIONS COMMISSION; DAMIEN R.
23 MEYER, in his official capacity as
24 Chairman; AMY B. CHAN, in her official
25 capacity as Commissioner; GALEN D.
26 PATON, in his official capacity as
27 Commissioner; MARK KIMBLE, in his
28 official capacity as Commissioner; STEVE
M. TITLA, in his official capacity as
Commissioner; THOMAS M. COLLINS, its
executive director,

Defendants.

Case No.

**VERIFIED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

For their Verified Complaint, Plaintiffs allege as follows:

INTRODUCTION

1. This civil rights lawsuit challenges Proposition 211, styled the “Voters Right to Know Act” (referred to herein as “Prop 211” or the “Act”), because it violates the constitutional rights of Arizonans by requiring charitable organizations and individuals to report their names, addresses, employers, and charitable giving to the government and to publicly disclose that information if those nonprofit groups engage in speech on matters of

1 public concern. Plaintiffs are charitable organizations that will be adversely impacted by
2 the Act and individuals whose future charitable donations will be silenced or altered
3 because of the Act.

4 2. Prop 211 was passed in the November 2022 general election and was
5 enacted into law by the proclamation of the governor on December 5, 2022. The Act
6 requires organizations or individuals that spend more than \$50,000 on “Campaign Media
7 Spending” in a statewide campaign, or \$25,000 in a non-statewide campaign, to turn over
8 to the Secretary of State the names, mailing addresses, occupations, and identities of
9 employers of donors who gave more than \$5,000 to the organization during that election
10 cycle for that purpose, as well as of the top three donors of the organization, irrespective
11 of whether the donations could be used for “Campaign Media Spending.” Failure to make
12 the necessary disclosures can result in the imposition of significant fines and other
13 assessments.

14 3. Arizona’s Constitution guarantees its citizens the right to speak freely, a
15 right broader than the free-speech rights guaranteed under the First Amendment of the
16 U.S. Constitution. As with its federal counterpart, Arizona’s right to “speak freely”
17 includes the right to not be forced to speak. The Act violates Arizonans’ right to speak
18 freely by chilling donors from supporting causes they believe in and wish to support, lest
19 their charitable giving become public knowledge. It also impairs the speech of nonprofit
20 organizations, including Plaintiffs, because those organizations will be compelled to
21 refrain from speaking or engaging in public dialogue to avoid compromising the privacy
22 of their donors. The Act also violates Arizonans’ right not to speak by forcing the
23 disclosure of confidential donations and their donors.

24 4. Unlike its federal counterpart, Arizona’s Constitution expressly guarantees
25 that an individual’s “private affairs” will not be disturbed, particularly those that pertain to
26 financial information and one’s choices when casting a ballot. The Act violates that right
27 by forcing the disclosure of information related to confidential monetary and in-kind
28 donations to charities engaging in “Campaign Media Spending.”

1 5. Arizona's Constitution and laws also guarantee that Arizonans will have a
2 government with a separation of powers, with a legislative branch that passes legislation,
3 an executive that enforces laws, and a judicial that interprets them. Through the
4 separation of powers, governmental power is constrained, and the rights of Arizona
5 citizens better guaranteed. The Act violates the separation of powers by granting an
6 unelected commission—immune from *any* legislative oversight or influence—with broad
7 authority to create laws, interpret them, and enforce them. By consolidating broad powers
8 in this manner, the principle of separation of powers is violated, which infringes upon the
9 rights of Arizonans.

10 6. Prop 211 is styled the “Voters’ Right to Know Act,” but that is a misnomer.
11 Voters only get to know who felt comfortable subjecting themselves to the Act’s identity
12 and financial reporting requirements when communicating their political views; voters do
13 not get to know who the Act silenced. That is backwards. Transparency is for
14 government; privacy is for individuals. Prop 211 is unconstitutional and must be
15 enjoined.

PARTIES, JURISDICTION, AND VENUE

The Organizational Plaintiffs

18 7. Plaintiff Center for Arizona Policy, Inc., (“CAP”) is an Arizona nonprofit
19 organization based in and operating in Maricopa County. CAP is a statewide research and
20 education organization that seeks to promote and defend foundational principles of life,
21 marriage, family, and religious freedom. CAP is a tax-exempt, charitable organization
22 under section 501(c)(3) of the Internal Revenue Code.

23 8. Plaintiff Arizona Free Enterprise Club (“FEC”) is an Arizona nonprofit
24 organization that is based and operates in Maricopa County, Arizona. FEC is a statewide
25 research and public policy organization that advocates for principles of free enterprise and
26 pro-growth, limited government policies through extensive public education, lobbying,
27 and grassroots activity, including hosting public policy events, issuing policy papers, and
28 communicating with individual citizens, the media, and policymakers on public policy

1 issues. FEC is a tax-exempt social welfare organization under section 501(c)(4) of the
2 Internal Revenue Code. FEC is a not-for-profit organization operating exclusively to
3 promote the social welfare of the community.

4 **The Individual Donor Plaintiffs Who Desire Privacy—the “Doe Plaintiffs”**

5 9. Plaintiff Doe I is a citizen of Arizona and a resident of Maricopa County.
6 Doe I alleges that the Act is unconstitutional because it requires Doe I to reveal his or her
7 identity when donating to charitable organizations that engage in public communications
8 supporting issues and candidates that Doe I supports. Thus, the Act chills speech because
9 it deters Doe I from exercising his or her right to speak freely. The Act also deters Doe I
10 from speaking because it violates other rights Arizona law guarantees, including the right
11 to be undisturbed in his or her private affairs and the separation of powers.

12 10. If Doe I were required to disclose his or her identity in this action, then the
13 public would know that Doe I has supported charities that engage in public
14 communications in support of issues or candidates Doe I supports financially in amounts
15 governed by the Act. The public also would know that Doe I intends or desires to engage
16 in similar speech in the future. Doe I wants his or her identity kept private in relation to
17 his or her giving to charities that support issues and candidates Doe I supports through
18 public communications. If Doe I were to be identified in this action, the very right Doe I
19 seeks to protect would be lost. Accordingly, “Doe I” is used as a pseudonym for this
20 Plaintiff because identifying this Plaintiff by name would undermine the rights sought to
21 be vindicated in this action.

22 11. Plaintiff Doe II is a citizen of Arizona and a resident of Maricopa County.
23 Doe II alleges herein that the Act is unconstitutional because, in part, it requires Doe II to
24 reveal his or her identity when donating to charitable organizations that engage in public
25 communications supporting issues and candidates that Doe II supports. Thus, the Act
26 chills speech because it deters Doe II from exercising his or her right to speak freely. The
27 Act also deters Doe II from speaking because it violates other rights Arizona law
28

1 guarantees, including the right to be undisturbed in his or her private affairs and the
2 separation of powers.

3 12. If Doe II were required to disclose his or her identity in this action, then the
4 public would know that Doe II has supported charities that engage in public
5 communications in support of issues or candidates Doe II supports by donating money
6 and other resources to that charity in amounts governed by the Act. The public also
7 would know that Doe II intends to engage in similar speech-related conduct in the future.
8 Doe II wants his or her identity kept private in relation to his or her giving to charities that
9 support issues and candidates Doe II supports through public communications. If Doe II
10 were to be identified in this action, the very right Doe II seeks to protect would be lost.
11 Accordingly, “Doe II” is used as a pseudonym for this Plaintiff because identifying this
12 Plaintiff by name would undermine the rights sought to be vindicated in this action.

13 **Defendants Responsible for Implementing and Enforcing the Act**

14 13. Defendant Arizona Secretary of State (“SOS”) is a division of the executive
15 department of the government of the State of Arizona, with its main address in Maricopa
16 County. Pursuant to the Act, the SOS is responsible for receiving and retaining
17 information regarding donations used for “Campaign Media Spending,” as the Act defines
18 that term, and transmitting that information to the Arizona Citizens Clean Elections
19 Commission.

20 14. Defendant Katie Hobbs is the current Secretary of State (“Secretary Hobbs”)
21 and is sued in her official capacity only. Secretary Hobbs is the elected official
22 responsible for administering the SOS’s office.

23 15. Defendant Arizona Citizens Clean Election Commission (the
24 “Commission”) is a jural entity with a physical address in Maricopa County, and is
25 responsible for implementing and administering the Citizens Clean Elections Act set forth
26 in A.R.S. § 16-940 *et seq.* In addition to administering the provisions of A.R.S., Title 16,
27 Chapter 6, Article 2, of the Arizona Revised Statutes, the Commission promulgates rules
28 and enforces A.R.S. §§ 16-940 through 16-961.

1 of these defined terms are unclear. Throughout this Verified Complaint, capitalized terms
2 reference terms that are “defined” in the Act.

3 24. The Act defines a Covered Person as a person or entity that spends, through
4 direct or in-kind contributions, more than \$50,000 on Campaign Media Spending in a
5 statewide campaign, or \$25,000 in a non-statewide campaign, during an Election Cycle
6 (the two years between general elections), with certain exceptions. A.R.S. § 16-971(7).

7 25. The Act defines Campaign Media Spending as any public communication
8 that supports or opposes a ballot measure or a candidate. It also includes public
9 communications that refer to a candidate when that communication is made within 90
10 days of a primary election and thereafter until the election, even if the communication
11 does not advocate for or against the candidate or is otherwise unrelated related to the
12 election. A.R.S. § 16-971(2).

13 26. Campaign Media Spending includes any “research, design, production,
14 polling, data analytics, mailing or social media list acquisition or any other activity
15 conducted in preparation for” a public communication about a candidate, initiative, or
16 referendum counts towards the \$50,000 (or \$25,000) threshold. A.R.S. § 16-971(2)(vii).

17 27. Campaign Media Spending by an individual or entity includes all Campaign
18 Media Spending by “entities established, financed, maintained, or controlled by” the
19 individual or entity. A.R.S. § 16-971(7)(a).

20 28. The Act requires any Covered Person to disclose to the SOS the names,
21 mailing addresses, occupations, and employers of any individual “donor of Original
22 Monies who contributed, directly or indirectly, more than \$5,000 of Traceable Monies or
23 in-kind contributions for Campaign Media Spending during the Election Cycle to the
24 Covered Person and the date and amount of each of the donor’s contributions.” A.R.S. §
25 16-973(A)(6). If the donor is an organization, the Act requires the Covered Person to
26 disclose to the SOS the name, mailing address, federal tax status, and state of
27 incorporation, registration, or partnership of that organization.
28

1 29. After a Covered Person receives more than \$5,000 from a donor that is
2 available for “Campaign Media Spending,” the Act requires the donor to identify all
3 persons or organizations who contributed more than \$2,500 (indirectly or directly) to the
4 donor to enable the donor’s gift to the Covered Person and all intermediary or pass-
5 through persons or entities.

6 30. The Act prohibits anyone from structuring a solicitation, donation,
7 expenditure, disbursement, or other transaction—or even attempting to assist another in
8 doing so—to avoid the reporting requirements of the Act.

9 31. The Act requires any Covered Person, when soliciting or receiving a
10 donation, to inform the potential or actual donor that the donor has 20 days to “opt out” of
11 having his, her, or its donation used for Campaign Media Spending, with the Covered
12 Person unable to use those funds until 21 days after providing the notice or until the donor
13 provides written consent pursuant to the Act, whichever is earlier. The Act does not
14 require the Covered Person to provide this notice to the original sources of monies
15 acquired by the donor or any intermediaries of those monies. *See* A.R.S. § 16-972.

16 32. After meeting the threshold for Campaign Media Spending, the Covered
17 Person must disclose, as part of its campaign media, at least the names of the three donors
18 who made the three largest contributions to the Covered Person during the Election Cycle,
19 irrespective of whether those donors decided to “opt out” from having all or part of their
20 contributions used for Campaign Media Spending.

21 33. For reported donations, the Act permits the names, mailing addresses,
22 occupations, and employers (or names, mailing addresses, federal tax statuses, and states
23 of incorporation, registration, or partnership) of the original source of that donation to
24 remain confidential only if the disclosure is prohibited by law or court orders or if the
25 original source of that donation proves to the satisfaction of the Commission that the
26 source or the source’s family “would subject the source or the source’s family to a serious
27 risk of physical harm.” A.R.S. § 16-973(F).

28

1 34. The Act imposes various record-keeping and filing requirements with the
2 SOS.

3 35. The Commission “is the primary agency authorized to implement and
4 enforce” the Act. A.R.S. § 16-974(A). The Act empowers the Commission to conduct
5 investigations, issue subpoenas, conduct hearings, engage in “rule-making,” and impose
6 penalties.

7 **Center for Arizona Policy**

8 36. CAP is a charitable organization that engages in public education, lobbying,
9 and grassroots activity, including hosting public policy events, issuing policy papers, and
10 communicating with individual citizens, the media, and policymakers on public policy
11 issues. CAP qualifies as a tax-exempt, charitable organization under section 501(c)(3) of
12 the Internal Revenue Code.

13 37. Certain of CAP’s activities appear to fall within the Act’s definition of
14 Campaign Media Spending, and CAP’s expenditures related to those activities exceed the
15 thresholds set forth in the Act. Other of CAP’s activities might constitute Campaign
16 Media Spending. The Act’s vague definition for that activity makes it impossible for
17 CAP to reasonably determine which of its activities would be permitted, prohibited, or
18 otherwise covered by the Act.

19 38. CAP funds its activities through charitable contributions from donors
20 throughout Arizona. During an Election Cycle, CAP receives charitable contributions
21 from individual donors that exceed the Act’s \$5,000 threshold.

22 39. CAP does not publicly disclose the identity of its donors, nor does it
23 disclose the amounts of individual donations. CAP informs its donors that CAP will
24 maintain the confidentiality of their donations and identities. CAP maintains a written
25 donor privacy policy to this effect. Donors to CAP have expressed concern about having
26 their contributions and identities disclosed to government officials and/or the public, and
27 therefore require that their contributions and identities remain confidential.
28

1 40. As a direct consequence of the implementation of the Act, donors to CAP
2 will limit or eliminate their contributions to CAP rather than risk having their names,
3 addresses, and employment information turned over to the government. In addition, other
4 donors to CAP may “opt out” of having their contributions used for Campaign Media
5 Spending, which will curtail CAP’s ability to engage in that activity.

6 41. CAP has been subject to harassment and intimidation because of its
7 charitable activities related to communicating with the public on matters of public policy
8 and issue advocacy. CAP believes that its donors, if disclosed, may experience similar
9 harassment and intimidation because of their charitable contributions to CAP.

10 42. Implementation of the Act will force CAP to communicate to each of its
11 donors that the donor may “opt out” from having CAP use the donation for Campaign
12 Media Spending if they do so within the period the Act prescribes. During that period,
13 CAP will be unable to use the donation for that purpose.

14 43. Implementation of the Act will force CAP to refrain from providing any
15 information to donors regarding the Act’s reporting requirements other than to inform the
16 donor of the donor’s ability to “opt out” within the period the Act prescribes. The Act
17 also inhibits CAP’s ability to receive professional advice regarding how it can comply
18 with the Act and how it should communicate with donors or solicit donations because,
19 among other reasons, the Act vaguely prohibits anyone from “structur[ing] or assist[ing]
20 in structuring, or attempt[ing] or assist[ing] in an attempt to structure any solicitation,
21 contribution, donation, expenditure, disbursement or other transaction to evade the
22 reporting requirements.” A.R.S. § 16-975.

23 44. Rather than compromise its donors’ confidentiality, expose them to the risk
24 of retaliation and harassment, risk liability with attempting to comply with the Act’s
25 unclear requirements, and submit to the unchecked authority of the Commission to
26 enforce the Act, CAP is considering avoiding any activity that could be considered
27 “Campaign Media Spending” or that are otherwise governed by the Act.

28

1 45. To avoid falling prey to the Act, its many traps and ambiguities, and its
2 potential for substantial monetary sanctions, CAP would be required to discontinue many
3 of the kinds of public communications it currently makes, including virtually all
4 references to candidates, starting ninety days before a primary election and continuing
5 until the date of a general election, and issue advocacy pertaining to ballot measures.

6 46. CAP's issue advocacy is a reason donors contribute to CAP. If CAP is
7 forced to discontinue this activity, CAP will lose much of its donor support.

8 **Arizona Free Enterprise Club**

9 47. FEC is a charitable organization that advocates for free enterprise and pro-
10 growth, limited-government policies. To advance its mission, FEC engages in public
11 education and grassroots activity, including hosting public policy events, issuing policy
12 papers, and communicating with citizens, the media, and policymakers on public policy
13 matters.

14 48. FEC engages in some political activities in support of its social welfare
15 purposes, such as lobbying on questions of public policy and supporting or opposing
16 candidates for election, but as an organization that qualifies under section 501(c)(4) of the
17 Internal Revenue Code, those activities are not its primary activities.

18 49. Certain of FEC's activities appear to fall within the Act's definition of
19 Campaign Media Spending, and FEC's expenditures related to those activities exceed the
20 thresholds set forth in the Act. Other of FEC's activities might constitute Campaign
21 Media Spending. The Act's vague definition of that term makes it impossible for FEC to
22 determine which of its activities would be permitted, prohibited, or otherwise covered by
23 the Act.

24 50. FEC funds its activities through charitable contributions from donors
25 throughout Arizona. During an Election Cycle, FEC typically receives charitable
26 contributions from individual donors that exceed the Act's \$5,000 threshold.

27 51. FEC keeps the names and addresses of its donors, along with the amounts of
28 their charitable contributions, strictly confidential, and does not disclose them to

1 government officials in Arizona or any other jurisdiction. Donors to FEC have expressed
2 their concern about having their contributions and identities disclosed to government
3 officials and the public. FEC informs its donors that FEC will maintain the confidentiality
4 of their donations and identities.

5 52. With the implementation of the Act, donors to FEC will limit or eliminate
6 their contributions to FEC rather than risk having their names, addresses, and employers
7 publicly disclosed. In addition, other donors to FEC may “opt out” of having their
8 contributions used for Campaign Media Spending, which will curtail FEC’s ability to
9 engage in that activity.

10 53. FEC has been subject to harassment and intimidation because of its
11 charitable activities related to communicating with the public on matters of public policy
12 and issue advocacy. FEC believes that its donors, if disclosed, may experience similar
13 harassment and intimidation because of their charitable contributions to FEC.
14 Furthermore, certain of FEC’s donors have informed FEC that they fear the risk of
15 harassment or reprisal they will face if their contributions to FEC become publicly known.

16 54. FEC and the Commission have been at odds with respect to past ballot
17 initiative campaigns. FEC and the Commission have been adverse parties in extensive
18 litigation that resulted in a U.S. Supreme Court case that significantly curbed the
19 Commission’s power. Thus, FEC is justifiably concerned that the Commission will harass
20 or retaliate against FEC given the ambiguous language of the Act and the Commission’s
21 unchecked powers to interpret and enforce the Act.

22 55. Implementation of the Act will force FEC to communicate to each of its
23 donors that the donor may “opt out” from having FEC use the donation for Campaign
24 Media Spending if they do so within the period the Act prescribes. During that period,
25 FEC will be unable to use the donation for that purpose.

26 56. Implementation of the Act constrains FEC’s ability to provide information
27 to donors regarding the Act’s reporting requirements other than to inform the donor of the
28 donor’s ability to “opt out” within the period the Act prescribes.

1 57. Rather than compromise its donors' confidentiality, expose them and FEC
2 to the risk of retaliation and harassment, risk liability with attempting to comply with the
3 Act's unclear requirements, and submit to the unchecked authority of the Commission to
4 enforce the Act, FEC is likely to avoid future activity that could possibly be considered
5 "Campaign Media Spending" or that is otherwise governed by the Act.

6 58. To avoid falling prey to the Act, its many traps and ambiguities, and its
7 potential for substantial monetary sanctions, FEC would be required to discontinue many
8 of the kinds of public communications it currently makes, including virtually all
9 references to candidates, starting ninety days before a primary election and continuing
10 until the date of a general election, and issue advocacy pertaining to ballot measures.

11 59. FEC's issue advocacy is a reason donors contribute to FEC. If FEC is
12 forced to discontinue this activity, FEC will lose donor support.

13 **Doe I**

14 60. Doe I has a history of giving to charitable organizations that would be
15 regarded as Covered Persons under that Act in amounts that would exceed the Act's
16 \$5,000 disclosure threshold. Before implementation of the Act, Doe I's intent was to
17 continue charitable giving in ways that would be subject to the Act's disclosure
18 requirements.

19 61. Doe I donates to certain charitable organizations precisely because those
20 organizations engage in issue advocacy, some of which would be considered Campaign
21 Media Spending.

22 62. Doe I expects and relies upon the charitable organizations to which Doe I
23 donates to keep Doe I's name, address, and other identifying information confidential. In
24 particular, Doe I does not want his or her identity disclosed to government officials or to
25 the public with respect to the donations to charitable organizations that engage in
26 Campaign Media Spending in Arizona.

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1 63. Because of the Act's disclosure requirements, Doe I plans to limit or
2 eliminate Doe I's contributions to charitable organizations that engage in issue advocacy
3 or Campaign Media Spending in Arizona.

4 64. Doe I is concerned that he or she will be subject to harassment or retaliation
5 if Doe I's contributions to charitable organizations that engage in Campaign Media
6 Spending in Arizona are known to the public. Doe I's concern is not limited to a risk of
7 "serious physical harm" and includes economic, reputational, and other forms of
8 harassment and retaliation.

9 **Doe II**

10 65. Doe II has a history of giving to charitable organizations that would be
11 regarded as Covered Persons under that Act in amounts that would exceed the Act's
12 \$5,000 disclosure threshold. Before implementation of the Act, Doe I's intent was to
13 continue these past charitable giving practices.

14 66. Doe II donates to certain charitable organizations precisely because those
15 organizations engage in issue advocacy, the type of activity that would be considered
16 Campaign Media Spending.

17 67. Doe II expects and relies upon the charitable organizations to which Doe II
18 donates to keep his or her name, address, and other identifying information confidential.
19 In particular, Doe II does not want his or her identity disclosed to government officials or
20 to the public with respect to the donations to charitable organizations that engage in
21 Campaign Media Spending in Arizona.

22 68. Because of the Act's disclosure requirements, Doe II plans to limit or cease
23 his or her contributions to charitable organizations that engage in issue advocacy or
24 Campaign Media Spending in Arizona.

25 69. Doe II is concerned that he or she will be subject to harassment or retaliation
26 if his or her contributions to charitable organizations that engage in Campaign Media
27 Spending in Arizona are known to the public. Doe II's concern is not limited to a risk of
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1 “serious physical harm,” and includes economic, reputational, and other forms of
2 harassment and retaliation.

3 **CONSTITUTIONAL VIOLATIONS**

4 **COUNT I**

5 **Arizona Constitution Article II, Section 6—Right to Speak Freely**

6 70. Plaintiffs incorporate by reference all preceding allegations.

7 71. The Arizona Constitution broadly protects the right to free expression:
8 “Every person may freely speak, write, and publish on all subjects, being responsible for
9 the abuse of that right.” Ariz. Const. art. II, § 6.

10 72. The Arizona Constitution’s protection for free speech “provides broader
11 protections for free speech than the First Amendment.” *Brush & Nib Studio, LC v. City of*
12 *Phoenix*, 247 Ariz. 269, 281 ¶ 45 (2019). Consequently, “a violation of First Amendment
13 principles ‘necessarily implies’ a violation of the broader protections of article 2, section 6
14 of the Arizona Constitution,” *id.* at 282 ¶ 47, but a law that does not violate the First
15 Amendment may still violate the Arizona Constitution.

16 73. Like the U.S. Constitution’s First Amendment protections, Arizona’s
17 Constitution “includes both the right to speak freely and the right to refrain from speaking
18 at all.” *Id.* at 282 ¶ 48 (internal quotations and citation omitted).

19 74. Under the Arizona Constitution, an Arizonan “may not be forced to speak a
20 message he or she does not wish to say.” *Id.* at 283 ¶ 52.

21 75. The U.S. Supreme Court has “held laws unconstitutional that require
22 disclosure of membership lists for groups seeking anonymity.” *Rumsfeld v. Forum*
23 *for Acad. & Institutional Rights, Inc. (FAIR)*, 547 U.S. 47, 69 (2006). Such laws
24 “ma[k]e group membership less attractive” and violate the First Amendment by
25 “affecting the group’s ability to express its message.” *Id.*

26 76. As a direct and proximate result of the Act, Plaintiffs are suffering, and will
27 suffer in the future, irreparable harm to their free-speech rights under the Arizona
28 Constitution. Covered Persons under the Act are forced to disclose the identities and

1 charitable contributions of donors who desire those donations to fund what the Act calls
2 Campaign Media Spending, even though the Covered Person and donors do not want that
3 information disclosed. The Act also is vague because terms and categories such as, but
4 not limited to, Campaign Media Spending (A.R.S. § 16-971(2)); “directly or indirectly
5 contributed” (A.R.S. §§ 16-971(19), 16-972(D) & (E), 16-973(A)(4), (6) & (E), (G), &
6 (I), 16-974(C)); “promotes, supports, attacks, or opposes” (A.R.S. § 16-971(2)); and
7 “[r]esearch, design, production, polling, data analytics, mailing or social media list
8 acquisition or any other activity” (A.R.S. § 16-971(2)(vii)) are unclear on their face,
9 preventing individuals and organizations from determining whether the Act applies to
10 them. As a consequence, the Act penalizes and deters speech and dissuades Plaintiffs and
11 other similar organizations from engaging in Campaign Media Spending and donors from
12 contributing to Plaintiffs and other similar charities that engage in Campaign Media
13 Spending.

14 77. Plaintiffs have no adequate legal, administrative, or other remedy by which
15 to prevent or minimize this harm. Unless Defendants are enjoined from implementing and
16 administering the Act, Plaintiffs and others similarly situated will continue to suffer great
17 and irreparable harm.

18 COUNT II

19 Arizona Constitution Article II, Section 8—Right to Undisturbed Private Affairs

20 78. Plaintiffs incorporate by reference all preceding allegations.

21 79. Article II, Section 8 of Arizona’s Constitution states, “No person shall be
22 disturbed in his private affairs, or his home invaded, without authority of law.” This
23 clause distinguishes between an individual’s “private affairs” and an individual’s right not
24 to have his home invaded, and thus affords broader constitutional protections than does
25 the federal Constitution.

26 80. The Private Affairs Clause prohibits, among other things, government
27 efforts to investigate a private organization’s financial dealings, or to compel the
28 disclosure of an organization’s financial records, books, and files, or to compel the public

1 disclosure of tax information or other sensitive information. *State v. Mixton*, 250 Ariz.
2 282, 291 ¶¶ 34–35 (2021).

3 81. At the time the Private Affairs Clause was written, information relating to
4 (inter alia) the financial support of ballot initiative campaigns, or of organizations other
5 than campaign committees, or of charitable organizations that engage in speech on matters
6 of public concern, was considered a private affair.

7 82. Through the Act, the state of Arizona compels the disclosure of confidential
8 charitable activities of Plaintiffs against their will and without just cause.

9 83. As a direct and proximate result of the Act, Plaintiffs are suffering, and will
10 suffer in the future, irreparable harm to their rights under the Arizona Constitution to have
11 their private affairs undisturbed. Plaintiffs have no adequate legal, administrative, or
12 other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined
13 from implementing and administering the Act, Plaintiffs and others similarly situated will
14 continue to suffer great and irreparable harm.

15 **COUNT III**

16 **Violation of Separation of Powers**

17 84. Plaintiffs incorporate by reference all preceding allegations.

18 85. Pursuant to Article III of the Arizona Constitution, the powers of the state
19 government are “divided into three separate departments, the legislative, the executive,
20 and the judicial; and ... no one of such departments shall exercise the powers properly
21 belonging to either of the others.”

22 86. The Act violates the Arizona Constitution’s requirement that the powers of
23 the state government be divided into distinct and separate departments. Among other
24 things:

25 87. The Act provides that the Commission’s “rules and ... enforcement actions
26 ... are not subject to the approval of or any prohibition or limit imposed by any other
27 executive or legislative governmental body or official ... [n]otwithstanding any law to the
28 contrary.” A.R.S. § 16-974(D).

1 88. The Act provides that any rules the Commission adopts pursuant to the Act
2 “are exempt from Title 41, Chapters 6 and 6.1,” Arizona’s Administrative Procedures Act.
3 *Id.*

4 89. The Act provides that the Commission can “[a]dopt and enforce rules,”
5 “[i]ssue and enforce civil subpoenas,” “[i]nitiate enforcement actions,” “[c]onduct fact-
6 finding hearings and investigations,” “[i]mpose civil penalties for noncompliance,”
7 “[s]eek legal and equitable relief in court,” “[e]stablish the records persons must maintain
8 to support their disclosures,” and “[p]erform any other act that may assist in implementing
9 this chapter.” A.R.S. § 16-974(A)(1)-(8).

10 90. The Act provides independent funding of the Commission with respect to its
11 administration and enforcement of the Act through the collection of penalties the
12 Commission itself imposes and grants the Commission the authority to impose a
13 “surcharge” to civil and criminal penalties as a source of additional funding. A.R.S. 16-
14 976.

15 91. The Act grants the Commission plenary power to write its own rules, to
16 interpret them, and to enforce them, consolidating legislative, judicial, and executive
17 powers into a single, unelected commission, which violates the Separation of Powers
18 doctrine in the Arizona Constitution

19 92. As a direct and proximate result of the Act, Plaintiffs are suffering, and will
20 suffer in the future, irreparable harm to their rights under the Arizona Constitution
21 because governmental power is being exercised in violation of the separation of powers.
22 Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or
23 minimize this harm. Unless Defendants are enjoined from implementing and
24 administering the Act, Plaintiffs and others similarly situated will continue to suffer great
25 and irreparable harm.

1 **REQUEST FOR RELIEF**

2 For their relief, Plaintiffs respectfully request that this Court take the following
3 actions:

- 4 A. Enter a judgment declaring the Act unconstitutional and unlawful in
5 its entirety;
- 6 B. Enter a permanent injunction against Defendants prohibiting them
7 from administering and enforcing the Act;
- 8 C. Award Plaintiffs their costs and attorney fees pursuant to A.R.S. §§
9 12-341, 12-348, and the private attorney general doctrine; and
- 10 D. Award such other and further relief as may be just and equitable.

11 **RESPECTFULLY SUBMITTED** this 15th day of December, 2022.

12
13 /s/ Scott Day Freeman
14 Jonathan Riches (025712)
15 Timothy Sandefur (033670)
16 Scott Day Freeman (019784)
17 **Scharf-Norton Center for Constitutional**
18 **Litigation**
19 **at the GOLDWATER INSTITUTE**
20 500 East Coronado Road
21 Phoenix, Arizona 85004
22 (602) 462-5000
23 litigation@goldwaterinstitute.org
24 *Attorneys for Plaintiffs*
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VERIFICATION

I, Cathi Herrod, declare under penalty of perjury that I am the President of Center for Arizona Policy, Inc. (“CAP”), a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* CAP has authorized me to verify that the facts stated in the foregoing Verified Complaint related to CAP are true and correct to the best of my knowledge, information, and belief.

Dated this 13th day of December, 2022.



Cathi Herrod

VERIFICATION

I, Scot Mussi, declare under penalty of perjury that I am the President of Arizona Free Enterprise Club (“FEC”), a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* FEC has authorized me to verify that the facts stated in the foregoing Verified Complaint related to FEC are true and correct to the best of my knowledge, information, and belief.

Dated this 13th day of December, 2022.

Scot Mussi

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VERIFICATION

I, Cathi Herrod, declare under penalty of perjury that I am the President of Center for Arizona Policy, Inc. ("CAP"), a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* CAP has authorized me to verify that the facts stated in the foregoing Verified Complaint related to CAP are true and correct to the best of my knowledge, information, and belief.


Dated this 13th day of December, 2022.

Cathi Herrod

VERIFICATION

I, Scot Mussi, declare under penalty of perjury that I am the President of Arizona Free Enterprise Club ("FEC"), a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* FEC has authorized me to verify that the facts stated in the foregoing Verified Complaint related to FEC are true and correct to the best of my knowledge, information, and belief.

Dated this 13th day of December, 2022.


Scot Mussi

VERIFICATION

I, **Redacted**, declare under penalty of perjury that I am a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* I verify that the facts stated in the foregoing Verified Complaint related to DOE I are true and correct to the best of my knowledge, information, and belief.

Dated this 13 day of December, 2022.

Redacted

VERIFICATION

I, **Redacted**, declare under penalty of perjury that I am a Plaintiff in the action entitled *Center for Arizona Policy, Inc., et al. v. Arizona Secretary of State, et al.* I verify that the facts stated in the foregoing Verified Complaint related to DOE II are true and correct to the best of my knowledge, information, and belief.

Dated this 13th day of December, 2022.

Redacted