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DISTRICT 28

Arizona House of Representatives  
Phoenix, Arizona 85007

COMMITTEES:  
APPROPRIATIONS,  
Chairman  
APPROPRIATIONS  
SUBCOMMITTEE ON  
EDUCATION  
APPROPRIATIONS  
SUBCOMMITTEE ON HEALTH  
& WELFARE  
WAYS & MEANS

JOINT LEGISLATIVE BUDGET  
COMMITTEE  
JOINT COMMITTEE ON  
CAPITAL REVIEW

June 14, 2023

Via Email and U.S. Mail

Hon. Kris Mayes  
Arizona Attorney General  
2005 North Central Avenue  
Phoenix, Arizona 85004

**Re: *Complaint and Request for Investigation of Governor Hobbs' Use of State Resources to Influence Elections Pursuant to A.R.S. § 16-192***

Dear Attorney General Mayes:

I have reviewed your letter of May 3, 2023, declining my request for a legal opinion regarding whether A.R.S. § 16-192 (which prohibits the use of public resources to influence elections) allows a Governor-Elect to use a state-sponsored website to fundraise for entities that make expenditures to influence elections. In your letter, you stated that the material I submitted with my opinion request "shows that there are factual disputes regarding how certain funds are being used and/or how the recipient plans to use them" and that your office "declines to resolve disputed questions of fact" in a legal opinion.

To my knowledge, you have not undertaken an investigation of Governor Hobbs' conduct, even though your Office is empowered to investigate potential violations of Title 16. See A.R.S. § 16-192(D); A.R.S. § 16-1021.

Accordingly, I am submitting this formal Complaint and request that you exercise your statutory authority to fully investigate the facts and determine whether Governor Hobbs' political fundraising violated A.R.S. § 16-192.

As explained in my initial letter of March 6, 2023, Governor-Elect Hobbs used a state website, inauguration.az.gov, to purportedly raise money for an Inaugural Ceremony at the Capitol on January 5, 2023, and an Inaugural Ball at Talking Stick Resort on January 7, 2023. Prominently featured on the state website is a link stating "2023 Katie Hobbs Inauguration Fund" and "Learn more about contributions and sponsorships." That link leads to another webpage, which directed all individuals "interested in sponsoring or donating to the 2023 inauguration" to Hobbs' campaign staffer, Rose Huerta.

As relevant here, Governor-Elect Hobbs used the state website to fundraise for at least two entities: the Arizona Democratic Party (“ADP”) and the Katie Hobbs Inaugural Fund (“Inaugural Fund”), a 501(c)(4) entity.

I have enclosed the following materials in support of this Complaint:

- A. Inaugural Fund’s Accounting of Income and Expenses from 11/18/22 to 2/10/23
- B. Seven letters exchanged between me and Governor Hobbs’ Office and the Inaugural Fund (dated 2/13/23 (two letters), 2/16/23, 2/22/23, 3/1/23, 3/14/23, and 3/20/23)
- C. Emails between Ms. Huerta and employees of the Governor’s Office (dated 11/21/22, 2/6/23, 2/7/23, and 2/8/23)
- D. Arizona Court of Appeals’ Opinion in *Lake v. Hobbs, et al.*, No. 1 CA-CV 22-0779 & No. 1 CA-SA 22-0237 (2/16/23)

While it is unnecessary to repeat the contents of my March 6th letter, I incorporate the allegations therein and encourage your investigators to review my March 6th letter for additional context and background. I also summarized the findings of my legislative investigation to the Arizona House of Representatives’ Government Committee on March 29, 2023. See <https://www.azleg.gov/videoplayer/?eventID=2023031134> (starting at 1:20:10).

The enclosed documents show that the Inaugural Fund paid over \$17,000 to Elias Law Group, a law firm that represented Katie Hobbs in her capacity as the Contestee in the election contest filed by Kari Lake. See Exhibits A & D. It would be prudent for your investigators to request copies of Elias Law Group’s invoices spanning from November 2022 to present day. Those records should assist your Office in determining whether the Inaugural Fund paid those legal fees to fund a legitimate inaugural purpose, or instead to influence the Governor’s election after procuring those funds through the state website in violation of A.R.S. § 16-192.

Additionally, because Ms. Huerta was delegated the responsibility of “managing a lot of the fundraising,” see Exhibit C, she acted as a third-party vendor to the Governor-Elect and the Governor’s Office. Consequently, Ms. Huerta’s emails that have a substantial nexus to government activities—*i.e.*, managing, facilitating, and collecting donations, which the Inaugural Fund obtained through the state’s inauguration website—are subject to Arizona’s Public Records law. See *Fann v. Kemp*, Arizona Court of Appeals No. 1 CA-SA 21-0141, 2021 WL 3674157 (Aug. 19, 2021) (records that have “a substantial nexus to government activities” are “no less public records simply because they are in possession of a third party”).

As of February 16, 2023, the Inaugural Fund had a balance of over \$868,000. *See* Exhibit A. Yet the Inaugural Fund has stated it has no intention of providing “further information about future donors or future expenditures.” *See* Exhibit B. And to this day, the public has been left in the dark about the funds that the Governor-Elect raised for the ADP through the \$150/ticket sales for the Inaugural Ball advertised on the state website. *See* <https://inauguration.az.gov/content/inaugural-ball>; Exhibit B (March 1, 2023, letter from Governor Hobbs disclaiming possession of “any records regarding the account where proceeds from ticket sales for the Inaugural Ball were deposited”).

These lingering questions concerning the legality of the Governor’s unprecedented use of state resources must be promptly investigated. Even assuming your investigation reveals that no funds have *yet* been used to influence elections, it may be necessary to seek injunctive relief to determine who controls the remaining funds and to prohibit the Governor and/or any third parties from using those funds to influence elections in violation of A.R.S. § 16-192.

Finally, please note that S.B. 1299, which was signed into law and should take effect later this year, is no impediment to your investigation. Because S.B. 1299 requires all inaugural donations to be deposited directly into the state protocol account, it prohibits future Governors and Governors-Elect from unlawfully using state resources to engage in political fundraising under the guise of inauguration fundraising. However, S.B. 1299 does *not* have retroactive application and does not remedy past violations of A.R.S. § 16-192.

No one is above the law, including Governor Hobbs. Please confirm that you will promptly initiate an investigation of this Complaint, and do not hesitate to contact me if you have any questions.

Respectfully,

A handwritten signature in cursive script that reads "David Livingston".

David Livingston  
Representative, Arizona House of Representatives  
Chairman, Appropriations Committee

# Exhibit A

# Income

Date	Source	Amount
11/18/2022	APS	\$250,000.00
11/21/2022	Kathleen Hager	\$50.00
11/21/2022	Walter Johnson	\$25.00
11/22/2022	Valley Partnership	\$10,000.00
11/23/2022	Donalyn Milkles	\$25,000.00
11/23/2022	Nestor Guzman	\$10,000.00
11/23/2022	Pam Grissom	\$10,000.00
11/23/2022	William Perry	\$25,000.00
11/26/2022	Michael Johnson	\$10.00
11/27/2022	Patricia Hill	\$4.00
11/29/2022	Realtors Issues Mobilization Committee	\$100,000.00
11/29/2022	Robert Frampton	\$25.00
11/29/2022	Jeff Einbinder	\$25.00
11/30/2022	Global External	\$10,000.00
12/01/2022	Summit Consulting Group, Inc	\$5,000.00
12/1/2022	Michael M Racy	\$5,000.00
12/1/2022	Sheila Kloetkorn	\$5,000.00
12/1/2022	Cheryl Najafi	\$25,000.00
12/1/2022	Jane Dowling	\$5,000.00
12/02/2022	Christine Augustine	\$5,000.00
12/2/2022	Bobette Gorden	\$5,000.00
12/2/2022	Greater Phoenix Leadership	\$25,000.00
12/2/2022	Jonathan Keyser	\$5,000.00
12/2/2022	Karen Gresham	\$5,000.00
12/4/2022	Gonzalo de la Melena	\$5,000.00
12/05/2022	Horizon Strategies, LLC	\$5,000.00
12/05/2022	John W. Graham	\$10,000.00
12/05/2022	JV Farms, Inc	\$5,000.00
12/6/2022	Todd Pearson	\$5,000.00
12/7/2022	Daryl Kling	\$5,000.00
12/8/2022	Lisa Uñas	\$500.00

Date	Source	Amount
12/8/2022	M. Quinn Delaney	\$5,000.00
12/09/2022	Arizona Food Marketing Alliance	\$5,000.00
12/09/2022	Go West CU Association	\$5,000.00
12/09/2022	Health System Alliance of Arizona	\$25,000.00
12/09/2022	Reginald M. Ballantyne III	\$10,000.00
12/11/2022	Michael Trauscht	\$1,000.00
12/12/2022	Arizona Dispensary Association	\$25,000.00
12/13/2022	Jason Barraza	\$1,000.00
12/14/2022	Client Network Services	\$10,000.00
12/14/2022	Community Medical Services	\$5,000.00
12/14/2022	Matthew Benson	\$500.00
12/14/2022	Gary Willman	\$5,000.00
12/14/2022	Republic Services	\$5,000.00
12/14/2022	Russell Smoldon	\$5,000.00
12/14/2022	Jack Henness	\$500.00
12/14/2022	Grand Canyon State Electric Cooperative Association	\$5,000.00
12/14/2022	Sharon and Oliver Harper	\$5,000.00
12/15/2022	Mohit Asnani	\$25,000.00
12/15/2022	William Perry	\$25,000.00
12/15/2022	Keith Beauchamp	\$5,000.00
12/16/2022	Environmental Defense Fund	\$17,500.00
12/19/2022	Alliance Bank	\$59.97
12/19/2022	Community Health Systems INC	\$10,000.00
12/20/2022	Mckone Strategies	\$5,000.00
12/20/2022	National Audubon Society Action Fund	\$2,500.00
12/22/2022	Greater Phoenix Leadership	\$25,000.00
12/22/2022	Arthur Pelberg	\$1,000.00
12/23/2022	Robyn DeBell	\$250.00
12/23/2022	Tanae Morrison	\$2,500.00
12/26/2022	Bijan Ansari	\$5,000.00

Date	Source	Amount
12/27/2022	Victor Smith	\$5,000.00
12/27/2022	Suma Hodge	\$2,500.00
12/28/2022	Salt River Project	\$25,000.00
12/28/2022	Vimo Inc	\$5,000.00
12/28/2022	Tony Bradley	\$5,000.00
12/28/2022	Arizona Coyotes	\$10,000.00
1/2/2023	Cecil Patterson	\$3,000.00
1/2/2023	Tania Torres	\$2,500.00
01/03/2023	Law Offices Of Gretchen Jacobs	\$5,000.00
01/03/2023	Tucson Electric	\$10,000.00
1/4/2023	Ivory Price	\$5,000.00
1/4/2023	Shawn Pearson	\$5,000.00
1/5/2023	Mischelle McMillan	\$25.00
01/11/2023	Amazon	\$10,000.00
01/11/2023	Arizona Association Community Managers	\$10,000.00
01/11/2023	Arizona AT&T Employees PAC	\$5,000.00
01/11/2023	Arizona Chapter of NAIOP Inc	\$10,000.00
01/11/2023	Arizona Indian Gaming Association	\$5,000.00
01/11/2023	Arizona Rock Products Association	\$15,000.00
01/11/2023	Associated Highway Patrolmen of AZ PAC	\$5,000.00
01/11/2023	Asurion	\$5,000.00
01/11/2023	Aveda Institute Tucson	\$1,000.00
01/11/2023	Blue Cross Blue Shield	\$100,000.00
01/11/2023	Bowlin Travel Centres Inc	\$5,000.00
01/11/2023	Coalition for the Enhancement of Pre-Hospital Care	\$5,000.00
01/11/2023	Comcast Corporation	\$5,000.00
01/11/2023	CRNAS of Arizona PAC	\$10,000.00
01/11/2023	CVS Health	\$25,000.00
01/11/2023	Dairymen for Arizona	\$10,000.00
01/11/2023	Education Choices For Arizona	\$10,000.00

Date	Source	Amount
01/11/2023	Elevation Health Services LLC	\$5,000.00
01/11/2023	Enterprise Holdings Inc PAC	\$10,000.00
01/11/2023	First Strategic	\$5,000.00
01/11/2023	Gowan Company LLC	\$10,000.00
01/11/2023	Hensley Beverage Company	\$10,000.00
01/11/2023	Home Builders Association of Central Arizona	\$10,000.00
01/11/2023	Honeywell International PAC	\$25,000.00
01/11/2023	Husch Blackwell Strategies	\$5,000.00
01/11/2023	Irrigation Electrical	\$2,500.00
01/11/2023	Kutak Rock LLP PAC	\$5,000.00
01/11/2023	Lockheed Martin Employee PAC	\$5,000.00
01/11/2023	National Credit Alliance	\$5,000.00
01/11/2023	OneMain General Services Corp	\$1,000.00
01/11/2023	Painters Allied Trades District Council 36	\$10,000.00
01/11/2023	Richard K. Parrott	\$5,000.00
01/11/2023	Rock Holdings Inc	\$10,000.00
01/11/2023	Southwest Mountain States/Regional Council of Carpenters	\$25,000.00
01/11/2023	Suns Legacy Partners, LLC	\$10,000.00
01/11/2023	Taylor Morrison Inc	\$25,000.00
01/11/2023	Tenet Healthcare Corporation	\$5,000.00
01/11/2023	Tohono O'Odham Nation	\$25,000.00
01/11/2023	Union Pacific Corporation Fund for Effective Government	\$26,450.00
01/11/2023	Wells Fargo & Company	\$10,000.00
01/11/2023	Western Alliance Bank	\$10,000.00
01/12/2023	Altra Client Services LLC	\$10,000.00
01/12/2023	American Traffic Solutions, Inc	\$10,000.00
01/12/2023	AZAHP Inc	\$10,000.00
01/12/2023	Click Automotive	\$5,000.00
01/12/2023	NAPHCARE Arizona LLC	\$25,000.00
01/12/2023	Oportun, Inc	\$1,000.00



Date	Source	Amount
01/12/2023	The Studio Academy of Beauty	\$1,000.00
01/18/2023	ER Squibb & Sons LLC	\$1,000.00
01/18/2023	Janet L Turnage	\$1,000.00
01/18/2023	Local First Arizona	\$5,000.00
01/20/2023	Centene Management Company, LLC	\$5,000.00
01/23/2023	Door Dash	\$5,000.00
1/24/2023	Kevin Roberts	\$1.00
1/25/2023	Jeffrey Szymanek	\$10.00
01/26/2023	Scientific Games LLC	\$5,000.00
01/30/2023	Bank of America	\$5,000.00
01/31/2023	Intel	\$25,000.00
2/1/2023	Kevin Roberts	\$1.00
02/02/2023	Transcanada USA Services Inc	\$5,000.00
02/08/2023	The Boeing Company	\$10,000.00
02/08/2023	United HealthCare System Inc	\$50,000.00
2/8/2023	Nicole Herbots	\$5.00
2/8/2023	Manuel Olmedo	\$10.00
02/09/2023	Acadia Healthcare Company, Inc FEDPAC	\$10,000.00
02/09/2023	Sunshine Residential Homes, Inc	\$100,000.00

# Expenses

Date	Vendor	Purpose	Amount
11/23/2022	ActBlue	Credit Card Processing	\$3.24
11/28/2022	ActBlue	Credit Card Processing	\$2,590.92
11/30/2022	2400 North Central Holding, LLC	Rent	\$6,608.24
11/30/2022	ActBlue	Credit Card Processing	\$0.98
12/01/2022	ActBlue	Credit Card Processing	\$2.32
12/01/2022	Hone Strategies	Communications Consulting	\$3,500.00
12/02/2022	ActBlue	Credit Card Processing	\$370.23
12/05/2022	ActBlue	Credit Card Processing	\$1,480.92
12/06/2022	ActBlue	Credit Card Processing	\$1,480.92
12/07/2022	ActBlue	Credit Card Processing	\$185.23
12/08/2022	ActBlue	Credit Card Processing	\$185.23
12/09/2022	ActBlue	Credit Card Processing	\$185.23
12/12/2022	ActBlue	Credit Card Processing	\$203.96
12/14/2022	ActBlue	Credit Card Processing	\$962.46
12/15/2022	ActBlue	Credit Card Processing	\$37.23
12/16/2022	ActBlue	Credit Card Processing	\$1,148.84
12/16/2022	Alliance Bank	Bank Fee	\$120.00
12/16/2022	Talking Stick Resort	Venue Fee	\$206,688.90
12/19/2022	2400 North Central Holding, LLC	Rent	\$7,310.53
12/19/2022	ActBlue	Credit Card Processing	\$1,110.46
12/19/2022	Hone Strategies	Communications Consulting	\$7,000.00
12/19/2022	PRO EMOperations, LLC	Production	\$34,954.58
12/19/2022	The Heard Museum	Catering	\$2,512.00
12/22/2022	ActBlue	Credit Card Processing	\$92.73
12/27/2022	ActBlue	Credit Card Processing	\$962.46
12/28/2022	ActBlue	Credit Card Processing	\$102.21
12/29/2022	ActBlue	Credit Card Processing	\$463.13
12/29/2022	ActBlue	Refund	\$4.00
12/30/2022	ActBlue	Credit Card Processing	\$555.46
12/30/2022	Atlasta Catering Service, Inc	Catering	\$5,662.40
01/03/2023	Alaina Pemberton	Reimbursement-Arizona Rentals, Inc.	\$894.86

Date	Vendor	Purpose	Amount
01/03/2023	Alaina Pemberton	Reimbursement-Lanyards	\$30.40
01/03/2023	Alaina Pemberton	Reimbursement-Staples	\$2,604.92
01/03/2023	Alaina Pemberton	Reimbursement-Wristbands	\$71.64
01/03/2023	Southwick Linens	Linens	\$6,328.84
01/04/2023	Alaina Pemberton	Reimbursement-Easels	\$1,289.40
01/04/2023	Alaina Pemberton	Reimbursement-Staples	\$715.62
01/05/2023	AcBlue	Credit Card Processing	\$203.96
01/06/2023	AcBlue	Credit Card Processing	\$370.46
01/06/2023	Indigenous Enterprise	Performance	\$10,000.00
01/09/2023	AcBlue	Credit Card Processing	\$1.16
01/09/2023	Alaina Pemberton	Reimbursement-Staples	\$276.01
01/09/2023	Jack Dalton Creative	Photographer	\$1,925.00
01/09/2023	Mariachi Pasion	Performance	\$3,000.00
01/09/2023	Southwick Linens	Linens	\$223.00
01/11/2023	Alaina Pemberton	Reimbursement-PhotoBooth	\$1,940.40
01/11/2023	Jim May Productions	Performance	\$3,500.00
01/11/2023	PRO EMOperations, LLC	Production	\$36.60
01/11/2023	Revelle Men's Chorus	Performance	\$3,000.00
01/11/2023	RoseMark Production LLC	Production	\$149,095.99
01/11/2023	The Arrogant Butcher	Luncheon	\$6,754.75
01/13/2023	Superior Protection Services	Security	\$2,707.25
01/13/2023	UPS	Postage	\$195.70
01/18/2023	Elias Law Group	Legal Fees	\$17,357.00
01/18/2023	Hannah Fishman	Reimbursement-Office Supplies	\$86.74
01/18/2023	Hannah Fishman	Reimbursement-Portable SSD	\$205.38
01/18/2023	Nicole DeMont	Reimbursement- Uhaul	\$86.03
01/18/2023	Southwick Linens	Linens	\$64.68
01/19/2023	S. D. Crane Builders, Inc	Fencing	\$22,826.29
1/20/2023	CVS Health	Returned Item	\$25,000.00
01/23/2023	Andrew Godinich	Communications Consulting	\$12,000.00

Date	Vendor	Purpose	Amount
01/23/2023	Andrew Godinich	Reimbursement- Flights	\$597.20
01/23/2023	Andrew Godinich	Reimbursement- Rental car	\$416.26
01/24/2023	D.B Mitchell	Communications Consulting	\$7,500.00
01/25/2023	Alaina Pemberton	Reimbursement-Arizona Rentals, Inc.	\$769.92
01/25/2023	Jess I Mcintosh	Communications Consulting	\$3,500.00
01/26/2023	ActBlue	Credit Card Processing	\$0.27
01/26/2023	Amalgamated Bank	Bank Fee	\$211.00
01/27/2023	ActBlue	Credit Card Processing	\$0.60
01/27/2023	Alaina Pemberton	Reimbursement-Room at Talking Stick	\$482.12
01/27/2023	Coppersmith Brockelman PLC	Legal Fees	\$2,904.00
02/01/2023	Access Professional Interpreting	ASL Interpreter	\$246.00
02/01/2023	Talking Stick Resort	Venue Fee	\$148,979.18
02/03/2023	ActBlue	Credit Card Processing	\$0.27
02/03/2023	The Pivot Group, Inc.	Design/Printing	\$80,722.93
02/06/2023	Lamp Left Media LLC	Videographer	\$1,600.00
02/10/2023	ActBlue	Credit Card Processing	\$1.02

# Exhibit B

DAVID LIVINGSTON  
1700 WEST WASHINGTON, SUITE H  
PHOENIX, ARIZONA 85007-2844  
CAPITOL PHONE: (602) 926-4178  
TOLL FREE: 1-800-352-8404  
dlivingston@azleg.gov



## Arizona State Legislature

1700 West Washington

Phoenix, Arizona 85007

DISTRICT 28

COMMITTEES:  
APPROPRIATIONS,  
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& WELFARE  
WAYS & MEANS

JOINT LEGISLATIVE BUDGET  
COMMITTEE  
JOINT COMMITTEE ON  
CAPITAL REVIEW

February 13, 2023

Via hand-delivery

Hon. Katie Hobbs  
Governor of Arizona  
1700 W. Washington St., 9th Floor  
Phoenix, Arizona 85007

**Re: Request for Information Relevant to Proposed Legislation**

Dear Governor Hobbs,

As you know, the 56th Legislature is well into its First Regular Session. The Arizona House of Representatives ("House") has already heard hundreds of bills in various Committee hearings and will soon consider bills transmitted to the House from the Arizona State Senate.

To that end, I have serious concerns relating to the procurement of funds that appear to have been solicited and donated for the purpose of sponsoring Inauguration events hosted at the Capitol in early January. It is my understanding that you or your campaign manager publicly disclosed some of the donors and the amounts of their donations several weeks ago, but this disclosure is incomplete. And you have not confirmed whether you intend to transfer the leftover inaugural funds to the State's protocol fund governed by A.R.S. § 41-1105, as former governors have done. If my understanding is incorrect, please let me know.

You may be aware that Senate Bill ("S.B.") 1299 is scheduled for a committee hearing on Wednesday, February 15, 2023. S.B. 1299 would promote transparency by requiring the Governor's office to publish on its website, within 15 days after an inauguration ceremony, information detailing each organization that organized, supported, or funded the ceremony.

To determine whether S.B. 1299 or any other legislation regulating the solicitation, disclosure, or use of inauguration funds may be appropriate, I am requesting you or your designated agent to provide me with the following information:

1. A complete and accurate accounting of all deposits to and withdrawals from the "State Inaugural Fund" from November 1, 2022, to February 13, 2023, including the date, amount, and purpose of each transaction.
2. All documents, emails, and other records created, sent, or received, from November 1, 2022, to February 13, 2023, associated with the advertisement or solicitation of funds procured for the "State Inaugural Fund."

Letter to Governor Hobbs re: Inauguration Funds  
February 13, 2023  
Page 2 of 2

3. The 2022 Annual Report of the Governor's Protocol Fund, required by A.R.S. § 41-1105(E).<sup>1</sup>

You are welcome to submit any other documents or information relevant to this inquiry. Given that the deadlines for proposed legislation are rapidly approaching, I am requesting production of this information no later than **12:00 p.m. on Thursday, February 16, 2023.**

Alternatively, if you or your agent would prefer to present this information in person rather than submitting it in writing, I invite you or your agent to provide a brief presentation or testimony on this topic at the House Appropriations Committee Hearing on Monday, February 20, 2023.

Please let me know your preference and feel free to contact me if you have any questions about this request.<sup>2</sup> Thank you for your attention to this matter.

Sincerely,



David Livingston  
Representative, Arizona House of Representatives  
Chairman, Appropriations Committee

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<sup>1</sup> This report is a public record under A.R.S. § 41-1105(E), and is therefore alternatively requested under the Arizona Public Records Act, A.R.S. § 39-121, *et seq.*

<sup>2</sup> For additional information regarding the House's standard investigative protocols, please visit: <https://www.azhouse.gov/alispdfs/AZHouseInvestigativeProtocols.pdf>.

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DISTRICT 28



## Arizona State Legislature

1700 West Washington  
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WAYS & MEANS

JOINT LEGISLATIVE BUDGET  
COMMITTEE  
JOINT COMMITTEE ON  
CAPITAL REVIEW

February 13, 2023

Via Email & Regular Mail

Nicole DeMont  
C/O Sam Coppersmith  
Statutory Agent for Katie Hobbs Inaugural Fund  
CB Service Entity LLC  
2800 N. Central Avenue  
Suite 1900  
Phoenix, AZ 85004

**Re: Request for Information Relevant to Proposed Legislation**

Dear Ms. DeMont,

It is my understanding that you are the Director of the Katie Hobbs Inaugural Fund, registered as an Arizona nonprofit organization, Entity ID No. 23458914. The purpose of this letter is to request information about this fund for legislative purposes.

Specifically, Senate Bill ("S.B.") 1299 is scheduled for a committee hearing on Wednesday, February 15, 2023. S.B. 1299 proposes to add A.R.S. § 41-111, which would promote transparency by requiring the Governor's office to publish on its website, within 15 days after an inauguration ceremony, information detailing each organization that organized, supported, or funded the ceremony.

To determine whether S.B. 1299 or any other legislation regulating the solicitation, disclosure, or use of inauguration funds may be appropriate, I am requesting you or your designated agent to provide me with the following information:

1. A complete and accurate accounting of all deposits to and withdrawals from the "Katie Hobbs Inaugural Fund" from November 1, 2022, to February 13, 2023, including the date, amount, and purpose of each transaction.
2. All documents, emails, and other records created, sent, or received, from November 1, 2022, to February 13, 2023, associated with the advertisement or solicitation of funds procured for the "Katie Hobbs Inaugural Fund."

You are welcome to submit any other documents or information relevant to this inquiry. Given that the deadlines for proposed legislation are rapidly approaching, I am requesting production of this information no later than **12:00 p.m. on Thursday, February 16, 2023.**



Letter to Nicole DeMont re: Inauguration Funds  
February 13, 2023  
Page 2 of 2

Alternatively, if you or your agent would prefer to present this information in person rather than submitting it in writing, I invite you or your agent to provide a brief presentation or testimony on this topic at the House Appropriations Committee Hearing on Monday, February 20, 2023.

Please let me know your preference and feel free to contact me if you have any questions about this request.<sup>1</sup> Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "David Livingston".

David Livingston  
Representative, Arizona House of Representatives  
Chairman, Appropriations Committee

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<sup>1</sup> For additional information regarding the House's standard investigative protocols, please visit: <https://www.azhouse.gov/alispdfs/AZHouseInvestigativeProtocols.pdf>.



250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

February 16, 2023

**VIA ELECTRONIC MAIL**

Representative David Livingston  
Arizona House of Representatives  
1700 West Washington, Suite H  
Phoenix, Arizona 85007-2844  
dlivingston@azleg.gov

**Re: Response to February 13, 2023 Request for Information**

Dear Chairman Livingston,

We write as counsel to the Katie Hobbs Inaugural Fund (“the Inaugural Fund”), in response to the Request for Information you sent on February 13, 2023 requesting that the Inaugural Fund provide you with certain documents in less than three days’ time.

Under the guise of the Arizona Senate’s consideration of Senate Bill (“S.B.”) 1299, your letter makes broad and improper requests for information from the Inaugural Fund—including requesting the disclosure of its internal communications and its communications with prospective donors—purportedly “[t]o determine whether S.B. 1299 or any other legislation regulating the solicitation, disclosure, or use of inauguration funds may be appropriate.”

But the Inaugural Fund’s communications are wholly irrelevant to the legislation in question (S.B. 1299), which would require the disclosure of inaugural funds’ contributions and expenditures (like funds raised and expended by Arizona political action committees). The legislation does not—and, as a matter of constitutional law, cannot—compel the disclosure of a private organization’s communications, whether that organization be a campaign committee for a Republican legislative candidate or an inaugural fund of a recently elected Democratic governor. The fact that the chairman of a Republican-led committee is demanding the communications of only one such organization—which, coincidentally, happens to be affiliated with the Democratic governor—illustrates the impropriety of such a request. And the fact that your letter does not reference any legal basis for the request, coupled with your failure to respond to repeated inquiries from the media for such a justification, further underscores its baselessness.<sup>1</sup>

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<sup>1</sup> *Legislative leader warns Hobbs of 'serious concerns' about funds*, Howard Fischer Capitol Media Servs. (Feb. 14, 2023), [https://tucson.com/news/government-and-politics/legislative-leader-warns-hobbs-of-serious-concerns-about-funds/article\\_3a6abcc8-ac80-11ed-bcb1-ab3845b2d48b.html](https://tucson.com/news/government-and-politics/legislative-leader-warns-hobbs-of-serious-concerns-about-funds/article_3a6abcc8-ac80-11ed-bcb1-ab3845b2d48b.html).

Several weeks ago, and honoring the Governor's commitment to transparency, the Inaugural Fund already disclosed a substantial amount of the information sought in Request No. 1 by providing a then-current list of its donors and expenditures related to the inaugural event held at the State Capitol. In that same spirit, and though not required by law to do so, the Inaugural Fund is providing the attached accounting of all its donors and all its expenditures to date (irrespective of any connection to the event held at the State Capitol). But the Inaugural Fund will not comply with Request No. 2, which would create a dangerous, unlawful, and unconstitutional precedent whereby legislators of one political party abuse their powers to seek the communications of their political opponents.

**Request No. 1.** Your first request asks for “[a] complete and accurate accounting of all deposits to and withdrawals from the ‘Katie Hobbs Inaugural Fund’ from November 1, 2022, to February 13, 2023, including the date, amount, and purpose of each transaction.”

As you know, the Inaugural Fund is an Arizona non-profit and 501(c)(4) non-profit organization. Unlike political committees, section 501(c)(4) organizations are not required by IRS rules or Arizona law to publicly disclose the (1) identities of their donors, or (2) information about their expenditures beyond what must be included on their tax returns. Request No. 1 thus requests information that the Inaugural Fund is under no legal obligation to disclose.

However, in the interest of transparency, and because the Inaugural Fund has already voluntarily provided a substantial amount of the information sought, the Inaugural Fund has enclosed documents responsive to this request, which are Bates Numbered Hobbs 001-008. And because inaugural events have now concluded and all expenses related to those events have now been paid, the Inaugural Fund will provide no further information about future donors or future expenditures.

**Request No. 2.** Your second request asks for “[a]ll documents, emails, and other records created, sent, or received, from November 1, 2022, to February 13, 2023, associated with the advertisement or solicitation of funds procured for the ‘Katie Hobbs Inaugural Fund.’” It asks that the Inaugural Fund respond to this broad request in three business days.

This request is improper for several reasons. First, this request far exceeds the scope of any permissible legislative purpose that could support it. It seeks *all* of the Inaugural Fund's emails associated with the “advertisement and solicitation of funds,” including those emails that are private and internal to the organization. These records are wholly irrelevant to the scope of S.B. 1299, which merely purports to require certain disclosures of the contributions and expenditures of future inaugural funds. It is telling that you have not made the same request of any committees or organizations associated with your Republican colleagues or any Republican candidate who

sought election in 2022, despite public allegations that they have violated the law.<sup>2</sup> Request No. 2 is thus neither relevant nor proportional in scope to the purported purpose of the request.<sup>3</sup>

Second, Request No. 2 seeks documents and communications that are protected from disclosure by the First Amendment privilege. The Supreme Court has held that an organization engaged in civic or political advocacy is shielded by the First Amendment from disclosure of information that would reveal associational information and chill First Amendment rights. The First Amendment privilege provides robust protections against disclosure for the internal communications of nonprofit and political organizations because such disclosures can “have [] a chilling effect” on the exercise of First Amendment rights and “deter protected [First Amendment] activities.”<sup>4</sup> The First Amendment privilege is qualified, not absolute, but courts have held that a government agency seeking the disclosure of arguably privileged information must demonstrate that the information sought goes to the heart of the agency’s inquiry and is narrowly tailored to target the agency’s needs.<sup>5</sup>

Because Request No. 2 seeks documents and communications that are privileged but that do not relate to the purported purpose of the request, the Inaugural Fund is not producing any documents in response to this request. And requiring that documents like this be disclosed, particularly by a political opponent, would set a dangerous precedent going forward for those on both sides of the political aisle.

We are available to further discuss this matter at your convenience.

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<sup>2</sup> See, e.g., Makena Kelly, *Mysterious pro-Kari Lake PAC paid fake elector \$2 million for ads and promotion*, The Verge (July 21, 2022), <https://www.theverge.com/2022/7/21/23273007/kari-lake-arizona-governor-jake-hoffman-karrin-taylor-robson-rally-forge-pac>; Richard Ruelas, *Republican files complaint against PAC promoting Kari Lake campaign, says finance form masks its donors*, Ariz. Republic (July 20, 2022).

<sup>3</sup> See, e.g., *State ex rel. Goddard v. W. Union Fin. Servs., Inc.*, 216 Ariz. 361, 369 (App. 2007) (quoting *Peters v. United States*, 853 F.2d 692, 699 (9th Cir.1988)) (“Subpoenas that are overbroad are not enforceable.”); see also *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2036 (2020) (holding that “to narrow the scope of possible conflict between the branches, courts should insist on a subpoena no broader than reasonably necessary to support Congress’s legislative objective”).

<sup>4</sup> *Puente Arizona v. Arpaio*, 314 F.R.D. 664, 673 (D. Ariz. 2016); *Perry v. Schwarzenegger*, 591 F.3d 1147, 1163 (9th Cir. 2010)

<sup>5</sup> *Perry*, 591 F.3d at 1161 (holding that upon a prima facie showing of First Amendment infringement, “the party seeking the discovery must show that the information sought is highly relevant” and “carefully tailored to avoid unnecessary interference with protected activities”).

February 16, 2023  
Page 4

Sincerely,

A handwritten signature in black ink, appearing to be 'Jonathan S. Berkon', written in a cursive style with a long horizontal flourish extending to the right.

Jonathan S. Berkon, Elias Law Group LLP  
Aria C. Branch, Elias Law Group LLP  
Andy Gaona, Coppersmith Brockelman PLC

DAVID LIVINGSTON  
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Chairman  
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EDUCATION  
APPROPRIATIONS  
SUBCOMMITTEE ON HEALTH  
& WELFARE  
WAYS & MEANS

DISTRICT 28

Arizona House of Representatives  
Phoenix, Arizona 85007

JOINT LEGISLATIVE BUDGET  
COMMITTEE  
JOINT COMMITTEE ON  
CAPITAL REVIEW

February 22, 2023

*Via email*

Hon. Katie Hobbs  
Governor of Arizona  
1700 W. Washington St., 9th Floor  
Phoenix, Arizona 85007

**Re: Supplemental Request for Information Relevant to S.B. 1299 and Related Legislation**

Dear Governor Hobbs,

Thank you for your disclosures in response to my February 13, 2023, letter regarding the finances of the State Inaugural Fund. Those records have not alleviated my concerns regarding your administration's solicitation of inaugural funds. Instead, they have prompted new concerns and this supplemental request for more information.

Your inaugural events were advertised to the public on a state-sponsored website, [inauguration.az.gov](http://inauguration.az.gov). This website promotes your official title and displays the official state seal. One tab appearing at the top on the website lists a general heading—"Inaugural Fund"—but the website does not provide any information about the State Inaugural Fund or the Katie Hobbs Inaugural Fund. The website simply directs all interested sponsors & donors to one person, stating: "If you are interested in sponsoring or donating to the 2023 inauguration, please contact Rose Huerta at [Rose@KatieHobbs.org](mailto:Rose@KatieHobbs.org)."

The state website also advertised tickets "available for \$150 each" to attend the "Inaugural Ball" that was held on Saturday, January 7, 2023 at Talking Stick Resort. But the records you disclosed do not show that any ticket-sale proceeds were deposited in the State Inaugural Fund.

The emails produced in your initial disclosure have revealed the following:

1. Ms. Huerta communicated with state employees to facilitate transactions for donors and was responsible for "managing a lot of the fundraising" associated with the inaugural events.
2. As of February 6, 2023, the State Inaugural Fund was "\$903.73 short," leaving insufficient funds to pay an outstanding invoice from Pro Production.
3. On February 7, 2023, a state employee received a check from United Healthcare in the amount of \$50,000 and "reached out to Rose" requesting "the Donor Intent Form so we can deposit the check."

4. On February 8, 2023, the state employee wrote that she “was informed that the check from United Healthcare was not supposed to be sent to [the state] fund”, and this meant that the State Inaugural Fund was “short \$1,189.62,” leaving insufficient funds to pay the Pro Production invoice.

In light of this new information, I am requesting the following:

1. The current balance of the State Inaugural Fund.
2. Information and relevant financial records regarding the account where proceeds from ticket sales for the Inaugural Ball were deposited.
3. Copies of all outstanding invoices for inaugural events that are awaiting payment.
4. All emails, documents, and other records or correspondence regarding any deposits to or withdrawals from the State Inaugural Fund that have occurred since February 8, 2023.
5. Copies of all emails sent and received by [Rose@KatieHobbs.org](mailto:Rose@KatieHobbs.org), between November 1, 2022, and February 20, 2023, which contain the following keywords: finances, financial, sponsor, sponsorship, donate, donation, contribute, contribution, inauguration, inaugural, “inaugural ball”, ceremony, ceremonial, “donor intent”, “intent form”, tax-deductible, charitable, “fund tracking”, invoice.

As Speaker Toma and President Petersen have already explained in a previous letter, state law prohibits you from using public resources, including “web pages, “personnel,” and “any other thing of value” to influence an election. *See* A.R.S. § 16-192. I find it alarming that you have already committed to spend \$500,000 for political purposes, yet you refuse to commit to the people of Arizona any intention to give leftover inaugural funds back to the State where those funds belong.

It is unfortunate that the Legislature must consider codifying basic principles of integrity and accountability to regulate inaugural funds because of your unprecedented actions. Please produce the information requested above no later than **Wednesday, March 1, 2023, at 12:00 p.m.**<sup>1</sup>

Sincerely,



David Livingston  
Representative, Arizona House of Representatives  
Chairman, Appropriations Committee

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<sup>1</sup> For additional information regarding the House’s standard investigative protocols, please visit: <https://www.azhouse.gov/alispdfs/AZHouseInvestigativeProtocols.pdf>.



STATE OF ARIZONA  
OFFICE OF THE GOVERNOR

KATIE HOBBS  
GOVERNOR

EXECUTIVE OFFICE

March 1, 2023

Via Email

Hon. David Livingston  
Representative, Arizona House of Representatives  
Chairman, Appropriations Committee  
1700 W. Washington St., Suite H  
Phoenix, Arizona 85007  
[dlivingston@azleg.gov](mailto:dlivingston@azleg.gov)

Re: Supplemental Request for Information dated February 22, 2023 (the "Request")

Dear Representative Livingston:

The Governor's Office is in receipt of your Request of February 22, 2023 and provided the responsive documents in its custody or control. However, because your request went beyond the listing of information sought and made unfounded accusations and insinuations of illegal and "unprecedented" action, I write separately to urge you to limit your rhetoric to statements that are supported by fact and stop expending taxpayer resources in pursuit of this political agenda. The "new concerns" raised in your Request are grasping at straws.

*First*, you make much of the fact that: (1) information about both the public Inauguration Ceremony and the private Inaugural Ball were displayed on a state-sponsored website, and (2) the website included a line stating that those interested in donating to the inauguration may contact a campaign staffer, Rose Huerta. Despite your suggestion otherwise, there is nothing unusual or improper about this. For example, Governor Ducey's campaign fundraisers were also listed on his state-sponsored website soliciting donations for his inauguration. Ms. Huerta was similarly charged with facilitating donations to the State Inaugural Fund. The mere existence of a separate private fundraising effort at that time does not render the private effort or Ms. Huerta's facilitation of donations into the State Inaugural Fund illegitimate. Further, neither the inclusion of Ms. Huerta's contact information nor the embedded link for the Inaugural Ball constitute an expenditure of public resources. The website itself served a legitimate public purpose and would have been created and maintained regardless. Inclusion of that information required at most a *de minimus* investment of time, and no public resources were expended in the production or sale of tickets to the Inaugural Ball.<sup>1</sup> Indeed, the Attorney General's Office dismissed a complaint against Governor Ducey because it concluded that an official telephone conference – conducted using state resources – did not violate state law even though the

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<sup>1</sup> Because the receipt, processing, and distribution of ticket proceeds for the Inaugural Ball was not handled by the State, the Governor's Office does not possess any records regarding the account where proceeds from ticket sales for the Inaugural Ball were deposited.



Governor expressly advocated against a ballot measure during the call.<sup>2</sup> Here, not only was any use of state resources similarly *de minimus* at most, there was no electoral advocacy whatsoever.

*Second*, as you know, funds raised into the State Inaugural Fund were used for Inauguration Ceremony expenses. Your Request presupposes that the State Inaugural Fund lacks sufficient funds to pay invoices received, and insinuates something improper therefrom. You are wrong on both. As is common for events of this type, donors pledged their support and then worked out the logistics of transmitting their donations later. Services were procured for the event based on those pledges into the State Inaugural Fund. Any brief period in which the amount of invoices received exceeded the amount of donations received was simply due to the lag between a donor's pledge and the actual delivery and deposit of the donated funds. You can be assured that the State Inaugural Fund will have sufficient funds to pay its outstanding invoices, and will likely have additional funds remaining, which will be transferred to the Promotional Fund.

*Finally*, you allude to a commitment to spend \$500,000 on legislative races. You can be assured that no public resources, from the Governor's Office or elsewhere, were expended on that effort, and from what I understand, that amount does not include any funds raised into the 501(c)(4) Katie Hobbs Inaugural Fund.<sup>3</sup>

Be it former Senate President Karen Fann's Cyber Ninjas fiasco and the resulting "report" from former Attorney General Mark Brnovich, twisting the findings of his own investigators who spent over 10,000 hours chasing nonexistent election fraud, or last week's Senate Elections and House Municipal Oversight & Elections Joint Committee hearing, it has apparently become standard operating procedure among the Republican caucus to make and facilitate wild accusations with no basis in fact. But the 2020 election was not stolen; the Governor's ownership of a home with a mortgage is not evidence that she is taking bribes from the Sinaloa Cartel; and the mere fact that there were both public and private inaugural events and both public and private fundraising during that time does not mean public resources were used to influence an election. When elected officials make wild allegations without factual basis, they denigrate themselves and, given their role, that denigration ultimately harms the reputation of the State of Arizona.

Arizonans deserve a Legislature that is focused on facts, not politically expedient speculation. And they deserve a Legislature that is committed to solving the real problems that confront our State, not pursuing political agendas at taxpayer expense. The Governor and her Office are eager to work with you and your colleagues when you're ready to get back to the people's business.

Sincerely,



Bo Dul  
General Counsel  
Office of Governor Katie Hobbs

Cc:

Linley Wilson, [lwilson@azleg.gov](mailto:lwilson@azleg.gov)

<sup>2</sup> See Letter from Attorney General M. Brnovich to R. Desai re: Complaint Alleging Unlawful Use of State Resources by Governor Ducey (Feb. 12, 2021), attached as Exhibit A.

<sup>3</sup> See <https://twitter.com/jeremyduda/status/1628142218908401664?s=20>.

# EXHIBIT A



MARK BRNOVICH  
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL  
SOLICITOR GENERAL'S OFFICE

MICHAEL S. CATLETT  
DEPUTY SOLICITOR GENERAL

February 12, 2021

*Via Email*

Roopali H. Desai  
Coppersmith Brockelmann  
2800 N. Central Ave, Ste 1900  
Phoenix, AZ 85004  
[rdesai@cblawyers.com](mailto:rdesai@cblawyers.com)

*Counsel for Invest in Education (Sponsored by AEA and Stand for Children)*

*Re: Complaint Alleging Unlawful Use of State Resources by Governor Ducey*

Dear Ms. Desai:

The Arizona Attorney General's Office ("Office") has completed its review of the complaint your client, Invest in Education (Sponsored by AEA and Stand for Children) ("Committee"), submitted on October 5, 2020, alleging that Governor Doug Ducey ("Governor") violated A.R.S. § 16-192. Based on the complaint, the evidence submitted, and relevant legal materials, the Office was unable to substantiate a violation of A.R.S. § 16-192 and will take no further action on the complaint.

The Committee alleges that Governor Doug Ducey ("Governor") violated § 16-192(A) in advocating against the passage of Proposition 208 on a conference call with members of Arizona's business community on September 29, 2020. More specifically, the Governor participated in a conference call with Arizona's business community "to discuss how we can continue to safely keep Arizona's economy open."<sup>1</sup> It appears, based on the audio recording of the call provided by your client ("Recording"), that the purpose for the call was to discuss the state of the economy as it relates to the COVID-19 pandemic.

The Recording further reveals that the Governor was asked by a participant, "Is there any tool that you can provide us with, or give us a place to go, so that we can share this with the people, our employees, and the men and women that we work with in these small businesses, so

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<sup>1</sup> Twitter, @dougducey, <https://twitter.com/dougducey/status/1311061984759017472?s=20> (Sept. 29, 2020, 2:55pm).

they understand the power of this particular Proposition 208 and how costly it could be?” Recording at 0:23-0:40. The Governor responded to the question posed with his opinion that Proposition 208 would be “a small business killer” (at 0:47-0:49), noting that if it passed, he believed Arizona “would go from being the most competitive in the state in the nation with low taxes and high quality of life to being uncompetitive.” *Id.* at 0:56-1:05. Further, the Governor stated that “if Prop 208 were to pass if these dollars don’t have accountability tied to them, they won’t get to the classroom and they won’t benefit our teachers.” Finally, the Governor encouraged participants on the call to “go directly to the site, noprop208AZ.com, please help spread the word.” *Id.* at 2:06-2:14.

The Complaint alleges that the Governor violated A.R.S. § 16-192(A) because his comments were intended to influence an election by opposing the passage of a proposition. The Complaint alleges that the Governor utilized “public resources” in the form of his own time during the work day and the telecommunications equipment the Governor used to conduct the conference call.

Arizona law prohibits the state and other public bodies from “us[ing] public resources to influence an election.” A.R.S. § 16-192(A). Arizona law also expressly and correctly recognizes, however, that this prohibition “does not deny the civil and political liberties of any person as guaranteed by the United States and Arizona Constitutions.” A.R.S. § 16-192(F). Such civil and political liberties include the First Amendment right to speak on matters of public concern. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (The First Amendment reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”); *Citizens United v. Federal Election Co.*, 558 U.S. 310, 341 (2010) (“The First Amendment protects speech and speaker, and the ideas that flow from each.”).

Here, an individual public official, the Governor, is alleged to have responded to a question seeking his views on a pending proposition during a conference call. Such a discussion about the passage or defeat of a proposition asking the citizens of Arizona to decide how the State will fund public education unquestionably involves a matter of public concern entitled to First Amendment protection.

That the Governor engaged in the speech at issue supports, and in no way undermines, the existence of a matter of public concern. Attorney General Napolitano previously determined that “the effective discharge of an elected official’s duty would necessarily include the communication of one’s considered judgment of . . . [a] proposal to the community which he or she serves.” Ariz. Att’y Gen. Op. I00-020 (Sept. 11, 2000) (quoting *Smith v. Dorsey*, 599 So. 2d 529, 541 (Miss. 1992)).

Attorney General Goddard similarly concluded that “elected officials may communicate their views on pending ballot measures and may use their official titles when doing so.” Ariz. Att’y Gen. Op. I07-008 (May 10, 2007).

And, in an opinion discussing the proper interpretation of several related state statutes

governing the “Use of Public Funds to Influence the Outcomes of Elections,” Attorney General Brnovich explained that these Arizona laws should “not be employed to improperly silence public officials from expressing views on important matters of public policy.” Ariz. Att’y Gen. Op. I-15-002 (July 30, 2015). Thus, the Governor’s statements here are protected under the First Amendment. *See* Ariz. Att’y Gen. Op. I00-020 (“Elected officials ‘acting in their official capacity shed no First Amendment rights in their advocacy of policies.’”).

The question then becomes whether the interests protected under A.R.S. § 16-192(A), *in this particular case*, overrule the Governor’s free speech rights because he exercised those rights during the work day and using the State’s telecommunications equipment. The Office does not believe that the manner in which the Governor exercised his First Amendment rights in this case is sufficient to override his First Amendment rights or support a violation of A.R.S. § 16-192(A).

Starting with the fact that the Governor made his statements during the work day, Attorney General Brnovich has previously explained that whether alleged electioneering “occurred during the traditional work day is not a relevant consideration to evaluating if public resources have been expended *when the actor at issue is a politically elected official.*” Ariz. Att’y Gen. Op. I-15-002 (emphasis added). “Instead, the inquiry for elected officials must consider whether the official used public resources other than his time.” *Id.*

As to use of the State’s telecommunications equipment, Attorney General Brnovich has explained that “[t]he use of either an elected official’s title or other incidental uses of the attributes of office also is not a use of public resources for purposes of the statutory prohibition.” *Id.* Attorney General Brnovich gave the presence of a regular security detail as one example of such incidental use: “[T]he presence of a regular security detail paid for by an elected official’s office by itself does not constitute the use of public resources for purposes of the statutory prohibition because the security detail must accompany the elected official *regardless of whether the elected official is communicating about a ballot measure.*” *Id.* (emphasis added).

Here, the Committee has not alleged that the topic of the Governor’s conference call—the state of business in Arizona—was improper. The Committee has submitted no evidence that the State expended additional resources because the Governor responded to a question from a constituent about his views on a matter of public concern. Thus, it appears that whatever public resources were expended because of that response would have been expended “regardless of whether [the Governor was] communicating about a ballot measure.” *Id.*

The Committee’s complaint also refers to a matter that arose in 2018 under A.R.S. § 15-511, which pertains to school districts. The news article referenced in the Committee’s complaint<sup>2</sup> notes that the Phoenix Union School District fined and disciplined two of its teachers

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<sup>2</sup> *See* Lily Altavena, *Two Phoenix teachers fined, disciplined for political advocacy* (Dec. 20, 2018), <https://www.azcentral.com/story/news/politics/arizona-education/2018/12/20/2-arizona-teachers-disciplined-fined-invested-advocacy-redford-political-school-classroom/2378093002/>

Ms. Roopali Desai  
*Public Money Complaint*  
February 12, 2021  
Page 4

and the president of the district's teacher union for advocating in support of a pending proposition "while on the clock."<sup>3</sup> Notably, Arizona law expressly prohibits school district employees from "giv[ing] pupils written materials to influence the outcome of an election or to advocate support for or opposition to pending or proposed legislation" or "us[ing] the authority of their positions to influence the vote or political activities of any subordinate employee." A.R.S. § 15-511(D), (E). Not only is the restriction in A.R.S. § 15-511 not applicable here, the underlying facts in the 2018 matter are distinguishable from the facts here. Utilizing school district resources to influence students or subordinates raises unique interests not at issue here.

For these reasons, the Office has concluded that the Governor did not violate A.R.S. § 16-192(A) when he provided his opinion on a matter of public concern in response to a question posed to him on a conference call with Arizona business leaders regarding the state of the economy, and the Office will take no further action on the Committee's complaint.

Any allegations that fall outside of the scope of the Committee's complaint are not included in this disposition. The Attorney General's Office appreciates the Committee's interest in government accountability.

Sincerely,



Michael S. Catlett  
Deputy Solicitor General

cc: *Via Email*

Anni L. Foster  
Office of the Governor

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<sup>3</sup> As the article notes, the Office declined to take further action on other complaints based on A.R.S. § 15-511 where the allegations "didn't rise to the level of violating state law."

DAVID LIVINGSTON  
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DISTRICT 28

Arizona House of Representatives  
Phoenix, Arizona 85007

COMMITTEES:  
APPROPRIATIONS,  
Chairman  
APPROPRIATIONS  
SUBCOMMITTEE ON  
EDUCATION  
APPROPRIATIONS  
SUBCOMMITTEE ON HEALTH  
& WELFARE  
WAYS & MEANS

JOINT LEGISLATIVE BUDGET  
COMMITTEE  
JOINT COMMITTEE ON  
CAPITAL REVIEW

March 14, 2023

*Via email*

Jonathan S. Berkon, [jberkon@elias.law](mailto:jberkon@elias.law)  
Aria C. Branch, [abranche@elias.law](mailto:abranche@elias.law)  
Elias Law Group  
250 Massachusetts Ave. NW, Suite 400  
Washington, DC 2001

Andy Gaona, [agaona@cblawyers.com](mailto:agaona@cblawyers.com)  
Coppersmith Brockelman PLC

***Re: Supplemental Request for Information Relevant to Proposed  
Legislation***

Dear Counsel,

Thank you for your February 16<sup>th</sup> letter and for providing me with an accounting of the income and expenses of the Katie Hobbs Inaugural Fund. I am surprised by the hostile tone of your letter and your accusations that my inquiries are politically motivated. As I mentioned, my inquiries concern proposed legislation, Senate Bill 1299. This bill received a unanimous, bipartisan vote in the Senate (29-0-1) and has been assigned to the Arizona House of Representatives' Government Committee.

The following background should provide you with additional context for my request. You may not be aware that, nearly two months ago, Speaker Toma of the Arizona House of Representatives and the Arizona Senate President Petersen called on Governor Hobbs to transfer any leftover inauguration funds to the Protocol Fund, consistent with the practice of former governors. In their letter, they explained that A.R.S. § 16-192 would not allow using inaugural funds to influence an election. That letter has gone unanswered.

I recently asked the Arizona Attorney General for an opinion on whether A.R.S. § 16-192 allows a Governor-Elect to use a state website to fundraise for entities that make expenditures to influence elections. Enclosed is a copy of my request for an opinion and the materials I submitted to the Attorney General. You are welcome to submit a legal analysis to me or to the Arizona Attorney General on that question as well, to the extent you wish to do so.

While I await the Attorney General's opinion, I am considering potential amendments to S.B. 1299. Unlike other states, Arizona does not have statutes regulating the solicitation or use of inauguration funds or the disclosure of expenditures. Texas, for example, has a detailed statutory scheme that governs inaugural contributions and expenditures. *See* Tex. Govt. Code § 401.001, *et. seq.* One provision requires any inaugural fund balances exceeding

\$100,000 to be “transferred to an account in the general revenue fund.” Tex. Govt. Code § 401.011(a).

Unfortunately, the records that you and Governor Hobbs have produced—and the records withheld—raise more questions than they have answered. Nonetheless, I have considered your objection that my initial request was overbroad and have tailored my request to the following:

1. Copies of all emails sent and received by [Rose@KatieHobbs.org](mailto:Rose@KatieHobbs.org), between November 1, 2022, and March 14, 2023, which contain the following keywords: finances, financial, sponsor, sponsorship, donate, donation, contribute, contribution, inauguration, inaugural, “inaugural ball”, ceremony, ceremonial, “donor intent”, “intent form”, tax-deductible charitable, “fund tracking”, invoice.<sup>1</sup>
2. All documents, records, emails, and invoices associated with the Katie Hobbs Inaugural Fund’s expenditures on “Rent”, “Communications Consulting”, and “Legal Fees.” If these expenditures were not made for inaugural events, please provide documentation or an explanation that would support a conclusion that the Katie Hobbs Inaugural Fund had permission or authority to make such expenditures.
3. An explanation of the “Credit Card Processing” entries listed as expenditures of the Katie Hobbs Inaugural Fund.
4. An accounting of the income and expenditures of the Katie Hobbs Inaugural Fund for the period of February 10, 2023, to March 10, 2023.
5. Information and relevant financial records regarding the account where proceeds from ticket sales for the Inaugural Ball were deposited.<sup>2</sup>
6. An explanation of how the Katie Hobbs Inaugural Fund intends to use the remaining funds left in the account, along with relevant legal authority to make such expenditures under Arizona law.

Please produce these records by **5:00 p.m. on Monday, March 20, 2023.**

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<sup>1</sup> As you may know, the Governor-Elect used a state website, [inauguration.az.gov](http://inauguration.az.gov), to direct individuals interested in sponsoring or donating “to the 2023 inauguration” to Ms. Huerta. Governor Hobbs has confirmed that Ms. Huerta is a “campaign staffer” who was “charged with facilitating donations to the State Inaugural Fund” and has provided me with emails that state employees received from Ms. Huerta. A few of those emails are enclosed for your reference.

<sup>2</sup> I am seeking this information from you because, in her recent letter to me, Governor Hobbs claimed that her office “does not possess any records regarding the account where proceeds from ticket sales for the Inaugural Ball were deposited.”



Letter to Katie Hobbs Inaugural Fund  
March 14, 2023  
Page 3 of 3

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "David Livingston".

David Livingston  
Representative, Arizona House of Representatives  
Chairman, Appropriations Committee

cc: Arizona Attorney General Kris Mayes  
Enclosures



250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

March 20, 2023

**VIA ELECTRONIC MAIL**

Representative David Livingston  
Arizona House of Representatives  
1700 West Washington, Suite H  
Phoenix, Arizona 85007-2844  
dlivingston@azleg.gov

**Re: Response to March 14, 2023 Request for Information**

Dear Chairman Livingston,

We write as counsel to the Katie Hobbs Inaugural Fund (“the Inaugural Fund”) in response to the Supplemental Request for Information you sent on March 14, 2023 (“Supplemental Request”). On February 16, and honoring the Governor’s commitment to transparency, the Inaugural Fund provided you with an accounting of its donors and expenditures up to that date, irrespective of any connection to the inaugural event held at the State Capitol.<sup>1</sup> The Inaugural Fund was under no legal obligation to provide any of that information yet did so anyway.

But for the reasons set forth more fully in our February 16 letter, the Supplemental Request is improper and lacks any legal basis. Producing the documents and additional “information” you seek would set a dangerous precedent for those on both sides of the political aisle and for the constitutionally protected speech and associational rights of all Arizonans. The Inaugural Fund will thus not be producing any documents or information in response to the Supplemental Request, other than to say that the Inaugural Fund has not made any expenditures intended to influence the outcome of an election.

First, as we previously noted, the Inaugural Fund is an Arizona non-profit corporation organized and operating under section 501(c)(4) of the Internal Revenue Code. It is not required by IRS rules or Arizona law to publicly disclose (1) the identities of its donors or (2) information about its expenditures beyond what must be included on its tax returns. You acknowledge as much in your March 14 letter, writing that “[u]nlike other states, Arizona does not have statutes regulating the solicitation or use of inauguration funds or the disclosure of expenditures.” Moreover, the

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<sup>1</sup> The Inaugural Fund has identified one additional contribution made via ActBlue (for \$15) and one additional expenditure made via ActBlue for processing fees (\$1.02) made on or before the date of the letter.

Inaugural Fund's internal organizational communications are protected by the First Amendment privilege.<sup>2</sup>

Second, like your initial set of requests, the Supplemental Request has no connection to S.B. 1299. As you acknowledge in your letter, S.B. 1299 is not even before your committee. That you are supposedly "considering potential amendments to S.B. 1299" is irrelevant. As we noted in our February 16 letter, S.B. 1299 does not—and, as a matter of constitutional law, cannot—compel the disclosure of a private organization's communications.<sup>3</sup>

Regards,

A handwritten signature in blue ink, appearing to read "Andy Gaona".

Andy Gaona  
Jonathan S. Berkon  
Aria C. Branch

---

<sup>2</sup> See *Puente Arizona v. Arpaio*, 314 F.R.D. 664 (D. Ariz. 2016); *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010).

<sup>3</sup> Notably, the Texas law you appear to cite as a model for your potential proposed amendments does not regulate 501(c)(4) organizations like the Inaugural Fund.

# Exhibit C



John McCleve <jimccleve@az.gov>

## Re: Inaugural Fund Questions

1 message

John McCleve <jimccleve@az.gov>

To: Alaina Pemberton <alaina@katiehobbs.org>

Cc: Rose Huerta <rose@katiehobbs.org>

Mon, Nov 21, 2022 at 5:43 PM

Let me think about who should collect the credit card information. There are very tight security controls we have to adhere to when it comes to credit cards and protecting them. We certainly wouldn't be able to send through email unless it was an approved encrypted system. I'll get back to you in the morning on that.

Nice to meet you Rose, please let me know if you have any questions or need additional information.

Thx  
JM

**John McCleve, CPA**

CFO/Comptroller  
Arizona Office of the Governor  
1700 W Washington, Suite 500  
Phoenix, AZ 85007  
Office (602) 542 1310  
Cell (602) 327 7286  
Email [jimccleve@az.gov](mailto:jimccleve@az.gov)



On Mon, Nov 21, 2022 at 3:34 PM Alaina Pemberton <alaina@katiehobbs.org> wrote:

Thank you so much! We are doing the real swearing in the 2nd with a ceremonial swearing in on the 5th.

That is great news about the credit card process. Would we be able to collect that information and call or would the donors have to call directly?

I've also cc-ed my coworker Rose Huerta who will be managing a lot of the fundraising. She will reach out if she has any questions.

On Mon, Nov 21, 2022 at 3:16 PM John McCleve <jimccleve@az.gov> wrote:

Looks like we should be able to start collecting credit card donations as early as tomorrow or Wednesday of this week. It also appears we can take the credit card information over the phone as long as we have the following details: Card#, Amount, Expiration Date, Street#, Zip Code and 3 digit Security Code on the back. Still waiting to hear back on the wire transfer process and if that's an option as well.

Thx

JM

**John McCleve, CPA**

CFO/Comptroller  
Arizona Office of the Governor  
1700 W. Washington, Suite 500  
Phoenix, AZ 85007  
Office: (602) 542-1310  
Cell: (602) 327-7286  
Email: [jmccleve@az.gov](mailto:jmccleve@az.gov)



On Mon, Nov 21, 2022 at 12:54 PM Alaina Pemberton <[alaina@katiehobbs.org](mailto:alaina@katiehobbs.org)> wrote:

Also here is a letter we wrote. If you don't mind looking at it as well I would really appreciate it.

Thank you!

On Mon, Nov 21, 2022 at 12:06 PM Alaina Pemberton <[alaina@katiehobbs.org](mailto:alaina@katiehobbs.org)> wrote:

Per our conversation, attached is the draft fact sheet I put together. Let me know if you have any edits.

Thank you so much again for your help. We really appreciate it.

Best,  
Alaina

On Mon, Nov 21, 2022 at 11:27 AM Alaina Pemberton <[alaina@katiehobbs.org](mailto:alaina@katiehobbs.org)> wrote:

Sounds great! Thank you!

On Mon, Nov 21, 2022 at 11:24 AM John McCleve <[jmccleve@az.gov](mailto:jmccleve@az.gov)> wrote:

Sure, I'm at a doctors appointment and will call as soon as I'm out.

On Mon, Nov 21, 2022 at 10:28 AM Alaina Pemberton <[alaina@katiehobbs.org](mailto:alaina@katiehobbs.org)> wrote:

Hi John- I hope this email finds you well.

I am working for Governor-elect Hobbs on inaugural fundraising. I have a few questions regarding the account. Would you be available to chat sometime today or tomorrow? My cell is [REDACTED]

Thank you,  
Alaina

**John McCleve, CPA**

CFO/Comptroller  
Arizona Office of the Governor

2/14/23, 10:24 PM

State of Arizona Mail - Re: Inaugural Fund Questions

1700 W. Washington, Suite 500  
Phoenix, AZ 85007  
Office: (602) 542-1310  
Cell: (602) 327-7286  
Email: [jmccleve@az.gov](mailto:jmccleve@az.gov)





John McCleve <jimccleve@az.gov>

**Re: Inauguration 2023 Fund Tracking - Updated 02/6/2023**  
1 message

Rose Huerta <rose@katiehobbs.org>

Wed, Feb 8, 2023 at 4:57 PM

To: Kristen Lindstrom <klindstrom@az.gov>

Cc: Alaina Pemberton <alaina@katiehobbs.org>, Allie Bones <abones@az.gov>, Jean Bell <jbell@az.gov>, John McCleve <jimccleve@az.gov>

Thanks, Kristen. Dexcom will be sending out the check by the end of the week.

On Wed, Feb 8, 2023 at 4:46 PM Kristen Lindstrom <klindstrom@az.gov> wrote:  
Good Afternoon,

I wanted to send another update since we've had some activity this week. We will get the first Pro Production (\$66,106.92) invoice paid today. We also sent over the ADOA employee reimbursements to be paid as well. I was informed that the check from United Healthcare was not supposed to be sent to our fund here so we are currently short \$1,189.62 to pay the second Pro Production (\$33,697.10) invoice. Accenture let us know that they are still in the process of sending over a check to us. Let me know if you have any questions.

Thank you,  
Kristen

On Tue, Feb 7, 2023 at 1:14 PM Alaina Pemberton <alaina@katiehobbs.org> wrote:  
I have one more invoice I will be sending over for \$11,676.06 this week.

On Tue, Feb 7, 2023 at 1:05 PM Rose Huerta <rose@katiehobbs.org> wrote:  
I have a contact for Dexcom. I can reach out to them as well.

On Tue, Feb 7, 2023 at 11:18 AM Kristen Lindstrom <klindstrom@az.gov> wrote:  
Hi Allie,

We did receive a check late yesterday afternoon for \$50,000 from United Healthcare. I have reached out to Rose to see if she could get us the Donor Intent form so we can deposit the check. This will definitely cover the current shortfall. I am not positive if the other checks are coming or not. We are going to reach out to our contact at Accenture to find out a status update on their check. However, we do not have contact information for Dexcom. We currently have the two Pro Production invoices. Alaina will have to let us know if there are any additional outstanding invoices left to pay. Let me know if you need anything else.

Thanks,  
Kristen

On Mon, Feb 6, 2023 at 10:26 PM Allie Bones <abones@az.gov> wrote:



What's the deal with the \$15k pending? Are those definitely not coming in at this point? And then I heard there was another donation made recently, so that will cover the shortfall. Are there any other state vendor invoices we are expecting after this?

Thanks!

Allie

On Mon, Feb 6, 2023 at 1:38 PM Kristen Lindstrom <[klingstrom@az.gov](mailto:klingstrom@az.gov)> wrote:  
Good afternoon,

Attached please find the updated Inauguration 2023 tracking sheet. We are still waiting for donation checks from Accenture and Dexcom.

We also have one Pro Production invoice for \$33,697.10 that can not be paid until we receive one of the outstanding donation checks. We are currently \$903.73 short. Please let me know if you have any questions.

Thanks,  
Kristen

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**Kristen E. Lindstrom, CPA**

*Indirect Cost Accounting Manager  
Arizona Office of the Governor  
1700 W. Washington, Suite 500  
Phoenix, AZ 85007  
(602) 542-1739 (Office)  
(602) 542-1329(fax)  
[KLindstrom@az.gov](mailto:KLindstrom@az.gov)*

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Allie Bones  
COS, Governor Hobbs  
602-391-8690

---

**Kristen E. Lindstrom, CPA**

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**Kristen E. Lindstrom, CPA**

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# Exhibit D

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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KARI LAKE, *Plaintiff/Appellant,*

*v.*

KATIE HOBBS, et al., *Defendants/Appellees.*

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KARI LAKE, *Petitioner,*

*v.*

THE HONORABLE PETER THOMPSON, Judge of the SUPERIOR  
COURT OF THE STATE OF ARIZONA, in and for the County of  
MARICOPA, *Respondent Judge,*

KATIE HOBBS, personally as Contestee; ADRIAN FONTES, in his official  
capacity as Secretary of State; STEPHEN RICHER, in his official capacity  
as Maricopa County Recorder, et al., *Real Parties in Interest.*

No. 1 CA-CV 22-0779

No. 1 CA-SA 22-0237

(Consolidated)

FILED 2-16-2023

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Appeal from the Superior Court in Maricopa County

No. CV2022-095403

The Honorable Peter A. Thompson, Judge

**AFFIRMED; RELIEF DENIED**

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COUNSEL

Blehm Law PLLC, Scottsdale  
By Bryan James Blehm

Olsen Law PC, Washington, DC  
By Kurt Olsen  
*Co-Counsel for Kari Lake*

Perkins Coie, LLP, Phoenix  
By Alexis E. Danneman

Elias Law Group, LLP, Seattle, WA  
By Abha Khanna

Elias Law Group, LLP, Washington, DC  
By Lalitha D. Madduri, Christina Ford, Elena Rodriguez Armenta  
*Co-Counsel for Katie Hobbs*

Coppersmith Brockelman, PLC, Phoenix  
By D. Andrew Gaona  
*Counsel for Secretary of State Adrian P. Fontes*

Maricopa County Attorney's Office, Phoenix  
By Thomas P. Liddy, Joseph Eugene La Rue, Joseph Branco, Karen J.  
Hartman-Tellez, Jack O'Connor, Sean M. Moore, Rosa Aguilar

The Burgess Law Group, Phoenix  
By Emily M. Craiger  
*Co-Counsel for Maricopa County Recorder Stephen I. Richer; Election Day  
Director Scott Jarrett; Supervisors Bill Gates, Clint L. Hickman, Jack Sellers,  
Thomas Galvin, Steve Gallardo; and Maricopa County Board of Supervisors*

Davillier Law Group, LLC, Phoenix  
By Veronica Lucero, Arno Naeckel  
*Counsel for Amicus Curiae David Mast*

**OPINION**

Chief Judge Kent E. Cattani delivered the opinion of the Court, in which Presiding Judge Maria Elena Cruz and Judge Peter B. Swann<sup>1</sup> joined.

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**C A T T A N I**, Chief Judge:

¶1 Kari Lake appeals the Maricopa County Superior Court’s ruling rejecting her request to set aside Katie Hobbs’s 17,117 vote win in Arizona’s 2022 gubernatorial election. Lake’s arguments highlight election-day difficulties, but her request for relief fails because the evidence presented to the superior court ultimately supports the court’s conclusion that voters were able to cast their ballots, that votes were counted correctly, and that no other basis justifies setting aside the election results. Accordingly, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 After voting returns were announced, Lake filed this election contest against Hobbs as contestee; the Arizona Secretary of State (now Adrian Fontes); and Maricopa County elections officials.<sup>2</sup> Lake’s 10-count complaint primarily alleged that Maricopa County election results were tainted by misconduct on the part of the Maricopa County Defendants, as well as by illegal votes. *See* A.R.S. §§ 16-672(A)(1), (4). Lake sought a declaration that she, not Hobbs, was the victor or, alternatively, an order invalidating the election results. *See* A.R.S. §§ 16-676(B), (C).

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<sup>1</sup> Judge Peter B. Swann retired from this court effective November 28, 2022. In accordance with the authority granted by Article 6, Section 3, of the Arizona Constitution and pursuant to A.R.S. § 12-145, the Chief Justice of the Arizona Supreme Court has designated Judge Swann as a judge *pro tempore* in the Court of Appeals to participate in the resolution of cases assigned to this panel for the duration of Administrative Order 2022-162.

<sup>2</sup> The Maricopa County Defendants include the County’s elections officials and board: Maricopa County Recorder Stephen Richer; Maricopa County Director of Elections Scott Jarrett; the Maricopa County Board of Supervisors; and Supervisors Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and Steve Gallardo.

LAKE v. HOBBS, et al.  
Opinion of the Court

¶3 The superior court dismissed eight of the ten counts for failure to state a claim, for undue delay, as duplicative, as outside the scope of an election contest, or for some combination thereof. The court granted Lake's request for a trial on claims alleging that: (1) an official interfered with ballot-on-demand printers, leading to tabulators rejecting misprinted ballots and costing Lake votes, and (2) the Maricopa County Defendants violated chain-of-custody requirements when handling early ballots submitted on election day, permitting some number of ballots to be unlawfully added to the official results. Both claims were premised on allegations of official misconduct under A.R.S. § 16-672(A)(1). After a bench trial, the superior court found that Lake had failed to prove any element of either claim—including alleged misconduct or an effect on the election results—and confirmed Hobbs's election as governor.

¶4 Lake now challenges the superior court's rulings on five of her ten claims. She asserts that legal errors tainted the court's rulings and that factual errors undermined the court's bench-trial ruling on her printer/tabulator and chain-of-custody claims. Finally, she asserts that the court erroneously dismissed her signature-verification and constitutional (equal protection and due process) claims, and she asks us to order a new election.

#### DISCUSSION

¶5 Arizona law recognizes only limited grounds to contest election results for state office, and such election contests must be brought in the manner authorized by statute—here, A.R.S. § 16-672. See *Griffin v. Buzard*, 86 Ariz. 166, 168 (1959); *Sorenson v. Superior Court*, 31 Ariz. 421, 422–23 (1927); see also *Donaghey v. Att'y Gen.*, 120 Ariz. 93, 95 (1978) (“The failure of a contestant to an election to strictly comply with the statutory requirements is fatal to his right to have the election contested.”). Only claims falling within the statutory terms are cognizable. *Henderson v. Carter*, 34 Ariz. 528, 534–35 (1928) (“The remedy may not be extended to include cases not within the language or intent of the legislative act.”). “[W]e are not permitted to read into [the election contest statute] what is not there . . . .” *Grounds v. Lawe*, 67 Ariz. 176, 187 (1948).

¶6 Generally, even in an election contest, official returns are prima facie evidence of the number of votes cast and for whom, and the challenger has the burden to prove otherwise. *Hunt v. Campbell*, 19 Ariz. 254, 268 (1917); *Findley v. Sorenson*, 35 Ariz. 265, 271–72 (1929); *Oakes v. Finlay*, 5 Ariz. 390, 395 (1898); see also *Moore v. City of Page*, 148 Ariz. 151, 159 (App. 1986) (drawing “all reasonable presumptions [to] favor the validity

LAKE v. HOBBS, et al.  
Opinion of the Court

of an election”). Arizona has a “strong public policy favoring stability and finality of election results,” *Donaghey*, 120 Ariz. at 95, and mere technical violations are insufficient to invalidate an election. *Territory v. Bd. of Supervisors*, 2 Ariz. 248, 252–53 (1887); *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180 (1994). Mistakes or omissions do not invalidate an election unless they affect the result or at least render it uncertain. *Findley*, 35 Ariz. at 269; *Miller*, 179 Ariz. at 180. To satisfy this standard, the challenger must show “ballots procured in violation of a non-technical statute in sufficient numbers to alter the outcome of the election.” *Miller*, 179 Ariz. at 180.

**I. Preliminary Legal Questions.**

¶7 Lake argues that the superior court applied several incorrect legal standards and definitions when assessing her claims. We review such questions of law de novo. *Fitzgerald v. Myers*, 243 Ariz. 84, 88, ¶ 8 (2017).

¶8 Lake first asserts that the challenger in an election contest need only prove her claim by a preponderance of the evidence, not clear and convincing evidence, as the superior court required. The preponderance standard is satisfied by proof that the fact in issue “is more probable than not,” whereas the heightened clear and convincing evidence standard requires proof that the fact in issue “is highly probable or reasonably certain.” *Kent K. v. Bobby M.*, 210 Ariz. 279, 284–85, ¶ 25 (2005) (citations omitted).

¶9 Lake cites no authority for her argument that a preponderance of the evidence standard applies in an election contest, and we are aware of none. Although Arizona appellate courts have not expressly stated that the clear and convincing standard applies in all election contests, our courts have long noted the general principle that only proof of “the most clear and conclusive character” will overturn an election. *See Oakes*, 5 Ariz. at 398; *see also Hunt*, 19 Ariz. at 268, 271 (holding that “nothing but the most credible, positive, and unequivocal evidence should be permitted to destroy the credit of official returns,” and requiring “clear and satisfactory proof” of the alleged fraud “to overcome the prima facie case made by the returns of an election”); *Buzard v. Griffin*, 89 Ariz. 42, 50 (1960) (requiring clear and convincing evidence in a contest alleging fraud); *cf. Griffin*, 86 Ariz. at 173 (noting that an election contest does not require proof beyond a reasonable doubt as necessary to convict in a criminal action).



LAKE v. HOBBS, et al.  
Opinion of the Court

¶10 A higher burden of proof is consistent with the holdings in those cases. And it is further supported by Arizona’s “strong public policy favoring stability and finality of election results,” *Donaghey*, 120 Ariz. at 95, and by the presumption of “good faith and honesty” of elections officials. *Hunt*, 19 Ariz. at 268. We thus agree with the superior court that Lake was required to prove her case by clear and convincing evidence.

¶11 Lake also asserts that the superior court erred by requiring proof that the alleged official misconduct “did in fact affect the result” of the election, positing instead that some unquantifiable uncertainty suffices. But election results are not rendered uncertain unless votes are affected “in sufficient numbers to alter the outcome of the election.” *Miller*, 179 Ariz. at 180. This rule requires a competent mathematical basis to conclude that the outcome would plausibly have been different, not simply an untethered assertion of uncertainty. *See Reyes v. Cuming*, 191 Ariz. 91, 94 (App. 1997) (setting aside an election because illegal votes “indisputably changed the outcome of the election,” proven by the fact that the losing candidate had been in the lead until illegal votes were counted); *Huggins v. Superior Court*, 163 Ariz. 348, 352–53 (1990) (holding that although the aggregate number of illegal votes exceeded the margin of victory, the number was not “of sufficient magnitude to change the result” after a “pro rata deduction of the illegal votes according to the number of votes cast for the respective candidates” in that district) (quoting *Grounds*, 67 Ariz. at 182).

¶12 Finally, Lake contends that the superior court erred by defining “misconduct” under § 16-672(A)(1) as requiring proof that an elections official intended to improperly affect the result. We agree that there may be circumstances under which something less than intentional misconduct may suffice. *Cf. Findley*, 35 Ariz. at 269 (explaining that “honest mistakes or mere omissions” are insufficient to invalidate an election “unless they affect the result, or at least render it uncertain”) (emphasis added). Nevertheless, Lake’s claims alleging misconduct do not entitle her to relief. Ultimately, her arguments about legal standards and definitions are unavailing because her claims fail under any standard for reasons set forth below.

## II. Bench Trial Claims.

¶13 On review after a bench trial, we accept the superior court’s factual findings unless clearly erroneous. *Shooter v. Farmer*, 235 Ariz. 199, 200, ¶ 4 (2014). The superior court assesses witness credibility, weighs the evidence, and resolves conflicting facts and expert opinions, all factual determinations to which we defer. *Id.* at 201, ¶ 4; *Grounds*, 67 Ariz. at 182.

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We review de novo, however, any questions of law, including the ultimate legal conclusions drawn from the superior court's factual findings. *Ariz. Bd. of Regents v. Phx. Newspapers, Inc.*, 167 Ariz. 254, 257 (1991); *Pima Cnty. v. Pima Cnty. L. Enft Merit Sys. Council*, 211 Ariz. 224, 227, ¶ 13 (2005).

**A. Printer/Tabulator Claim.**

¶14 Lake alleged that Maricopa County elections officials, either negligently or intentionally, failed to adequately test ballot-on-demand printers or in some other manner “injected” misconfigured ballots that could not be read by on-site tabulators at vote centers. This claim fails because, at most, the evidence regarding misconduct was disputed, and ample evidence supported the superior court's conclusion that the printer/tabulator issues resulted from mechanical malfunctions that were ultimately remedied.

¶15 More importantly, Lake presented no evidence that voters whose ballots were unreadable by on-site tabulators were not able to vote. To the contrary, Lake's cybersecurity expert confirmed that any misconfigured ballots (or ballots that on-site tabulators could not read for other reasons) could be submitted physically through secure “Door 3,” duplicated onto a readable ballot by a bipartisan board at Maricopa County's central tabulation facility, and ultimately counted.

¶16 Lake's claim thus boils down to a suggestion that election-day issues led to long lines at vote centers, which frustrated and discouraged voters, which allegedly resulted in a substantial number of predominately Lake voters not voting. But Lake's only purported evidence that these issues had any potential effect on election results was, quite simply, sheer speculation.

¶17 Lake's expert testified that tens of thousands of voters were, in his words, “disenfranchised” by printer/tabulator issues. But the expert based his opinion on the number of people who declined to complete his exit poll on election day and who he thus assumed had been unable to vote. The expert testified—based on about 50 fewer people than expected completing his exit poll on election day—that he could “infer . . . by the absence of their participation” that a population equaling approximately 16% of the total election-day turnout across Maricopa County had been deprived of their right to vote, and that the deprivation derived from printer/tabulator issues. But the expert failed to provide any reasonable basis for using survey responses or non-responses to draw inferences about the motivations or preferences of people who did not vote. The expert

offered no basis for linking any individual's alleged failure to vote to the printer/tabulator issues specifically (as opposed to any other reason), or to otherwise equate a failure to vote with elections officials depriving potential voters of an opportunity to do so. Likewise, he offered no basis for his opinion on the rate of ostensibly-tabulator-induced non-voting—approximately 16% of election-day voters—other than the fact that he picked the number precisely because it was “what it would have needed [to be] in order for it to change the outcome.”

¶18 Whatever the merits of the expert's actual poll results, his conclusions regarding alleged “disenfranchise[ment]” were baseless. Thus, the superior court did not err by finding this testimony insufficient to call into question the election results. And lacking proof that the results were in any way uncertain, Lake's printer/tabulator claim fails.

#### **B. Chain-of-Custody Claim.**

¶19 In this claim, Lake alleged that Maricopa County failed to maintain proper chain-of-custody documentation or follow chain-of-custody procedures for early ballot packets submitted in drop boxes on election day and that these failures might have permitted some unspecified number of ballots to be wrongfully inserted before being counted.

¶20 Arizona law requires the “officer in charge of elections” to document “the chain of custody for all . . . ballots during early voting through the completion of provisional voting tabulation.” A.R.S. § 16-621(E). Early ballot packets submitted at vote centers on election day need not be counted on location so long as they “are transported in a secure and sealed transport container to the central counting place to be counted there.” *Ariz. Sec'y of State, 2019 Elections Procedures Manual* (“EPM”) 193 (Dec. 2019); *see also Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 63, ¶ 16 (2020) (EPM “has the force of law”). A “retrieval form” must be “attached to the outside of the secure ballot container or otherwise maintained in a manner prescribed by the County Recorder or officer in charge of elections that ensures the form is traceable to its respective secure ballot container.” EPM at 62. “When the secure ballot container is opened by the County Recorder or officer in charge [of] elections (or designee), the number of ballots inside the container shall be counted and noted on the retrieval form.” *Id.*

¶21 At best, Lake's evidence on chain-of-custody misconduct was disputed, and the superior court reasonably credited testimony from Maricopa County elections officials over testimony from Lake's witness.

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*See Shooter*, 235 Ariz. at 201, ¶ 4; *Grounds*, 67 Ariz. at 182. Regarding ostensibly missing chain-of-custody documentation, Lake's evidence was either misdirected (e.g., a witness who reported not receiving certain forms in response to a public records request but who also confirmed that she "know[s] they exist") or was provided by individuals who were not present or could not see the relevant area. For their part, Maricopa County elections officials confirmed the existence of chain-of-custody forms documenting how election-day early ballot packets are processed from vote center to tabulation. The court had ample basis to conclude that Lake failed to prove improper chain-of-custody documentation.

¶22 Lake also asserts that Maricopa County elections officials wrongfully failed to count election-day early ballot packets immediately upon receipt from vote centers, which she argues left the process vulnerable to manipulation. County elections officials explained that, given the volume of ballot packets received from vote centers on election day, they scan tamper-evident seals, complete chain-of-custody documents, open the ballot transport containers, sort the ballot packets by type into mail trays, place those trays into secure cages, and estimate the number of early ballot packets based on the number of trays. A bipartisan team transports those secure cages to Maricopa County's certified election services vendor, where a bipartisan team of County employees supervise as the vendor scans and counts each early ballot packet. Lake argues that this process does not satisfy the EPM's directive that "[w]hen the secure ballot container is opened . . . the number of ballots inside the container shall be counted." EPM at 62. But she does not cite authority imposing any express time requirement or otherwise explain how an initial estimate followed by precise count—when bipartisan teams of county personnel monitor the early ballot packets throughout the process—does not qualify as "counted."

¶23 Moreover, even assuming, for the sake of argument, that Maricopa County's election-day process resulted in a technical violation of the EPM, Lake failed to present evidence, as opposed to speculation, that any such breach affected the election results. Lake suggests the difference between the County Recorder's initial estimate of election-day early ballot packets received—"over 275,000" or "275,000+"—and the precise count after the vendor scanned those packets—291,890—somehow rendered at least 25,000 votes illegal. Questionable mathematics aside, Lake does not explain (or offer any legal basis) for how the difference between an initial estimate and a final, precise figure invalidates any vote.

¶24 Finally, the only other evidence Lake presented to show that the purported chain-of-custody violation affected the election results was

an affidavit from one of the vendor's employees who stated that the vendor permitted its employees to insert their own (and their family members') ballots into batches of early ballot packets coming from the Maricopa County facility. The affiant estimated that she "personally saw about 50 ballots" inserted in this manner. But the superior court "d[id] not give the Affidavit much weight." Instead, the court credited testimony by Maricopa County elections officials that the practice was not permitted and likely did not happen, noting specifically that "County employees—who follow the EPM—have eyes on the ballot process" at the vendor's facility. We defer to these credibility determinations. See *Shooter*, 235 Ariz. at 201, ¶ 4. Moreover, even taking the affidavit as true, 50 ballots (even if *all* were against Lake) is orders of magnitude short of having any plausible effect on the outcome. See *Miller*, 179 Ariz. at 180. The superior court did not err by denying Lake's chain-of-custody claim.

### III. Summary Dismissal of Lake's Other Claims.

¶25 We review de novo the superior court's ruling dismissing Lake's other claims before trial. See *Coleman v. City of Mesa*, 230 Ariz. 352, 355–56, ¶¶ 7–8 (2012). We assume the truth of the complaint's well-pleaded factual allegations relating to those claims but are mindful that "mere conclusory statements are insufficient." *Id.* at 356, ¶ 9; see also *Hancock v. Bisnar*, 212 Ariz. 344, 348, ¶¶ 16–17 (2006) (applying Ariz. R. Civ. P. 8 standards to election contest complaint); *Griffin*, 86 Ariz. at 170. We will affirm the dismissal if the challenger "would not be entitled to relief under any interpretation of the facts susceptible of proof." *Coleman*, 230 Ariz. at 356, ¶ 8 (citation omitted).

#### A. Signature-Verification Claim.

¶26 The superior court construed Lake's signature-verification claim as a challenge to Maricopa County's existing election procedures, a type of claim that must be brought before an election occurs, not after. See, e.g., *Sherman v. City of Tempe*, 202 Ariz. 339, 342, ¶¶ 9–11 (2002) (noting that requiring such challenges be brought before the election avoids post-election requests "to overturn the will of the people, as expressed in the election" based on grounds that existed beforehand). Lake asserts that her complaint did not challenge the validity of Maricopa County's signature-verification procedures but rather alleged violations of those procedures during the 2022 election, and that the superior court therefore erred by dismissing this claim.

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¶27 In Arizona, early ballots are returned in envelopes containing a ballot affidavit that the voter must sign. *See* A.R.S. § 16-547(A), (D). Before the early ballot is tabulated, the ballot-affidavit signature must be verified. *See* A.R.S. § 16-550(A). To do so, the county recorder must compare the signature on the ballot affidavit with the voter’s “registration record” to verify that the voter made the signature on the ballot affidavit. A.R.S. § 16-550(A).

¶28 To complete signature verification, the EPM (in effect since 2019) directs elections officials to consult the voter registration form and “additional known signatures from other official election documents in the voter’s registration record, such as signature rosters or early ballot/PEVL request forms.” EPM at 68. Likewise, the signature-verification process described in Maricopa County’s 2022 Elections Plan involves a comparison of the ballot-affidavit signature against “a historical reference signature that was previously verified and determined to be a good signature for the voter,” drawn from documents including “voter registration forms, in-person roster signatures and early voting affidavits from previous elections.” Maricopa County’s process also contemplates “multi-level signature verification,” with a first-level reviewer comparing the ballot-affidavit signature to up to three signatures on file, and if the signature does not match those exemplars, further review by a manager, who compares the signature against all of the signatures on file for the voter.

¶29 If the signature-verification process results in a determination that the signatures “correspond,” the ballot may be tabulated; if the signatures do not match, the voter must, if reasonably possible, be contacted, given an opportunity to cure the mismatch, and have their vote counted. *See* A.R.S. § 16-550(A); EPM at 68–69.

¶30 Although she now argues otherwise, Lake’s signature-verification claim alleged a procedural violation of the election process. Lake’s complaint alleged that the Maricopa County Recorder “accepted a material number” of early ballot packets with an “affidavit signature that the Maricopa County Recorder or his designee determined did not match the signature in the putative voter’s ‘registration record.’” But this assertion was premised on *first-level* reviewers’ rejection rates, not on the ultimate determination after Maricopa County’s multi-level signature-verification process. Thus, at best, Lake’s signature-verification claim attacked Maricopa County’s process for verifying signatures that first-level reviewers questioned – a challenge to the County’s election procedures, not a claim that the *overall* procedures were violated. Accordingly, the superior court correctly concluded that Lake’s contest attacked the manner of

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holding an election. *See, e.g., Sherman*, 202 Ariz. at 342, ¶ 10 (timing of publicity pamphlet distribution); *Tilson v. Mofford*, 153 Ariz. 468, 470–72 (1987) (manner of drafting ballot initiatives and descriptions in publicity pamphlets); *Kerby v. Griffin*, 48 Ariz. 434, 449 (1936) (printing and circulating publicity pamphlets). And because Lake waited until after the election to challenge a signature-verification process of which she was on notice months before the election, the superior court correctly dismissed the claim. *See Kerby*, 48 Ariz. at 444.

**B. Equal Protection and Due Process Claims.**

¶31 Lake argues that the superior court erred by dismissing her claims asserting equal protection and due process violations. Her arguments fail, however, because these claims were expressly premised on an allegation of official misconduct in the form of interference with on-site tabulators—the same alleged misconduct as in Lake’s printer/tabulator claim. *See supra* ¶¶ 14–18. Because these claims were duplicative of a claim that Lake unsuccessfully pursued at trial, the superior court did not err by dismissing them.

**CONCLUSION**

¶32 For the foregoing reasons, we affirm the superior court’s ruling confirming Hobbs’s election as governor.

¶33 We deny Hobbs’s request for an award of attorney’s fees on appeal because she offered no substantive basis for the award. *See* ARCAP 21(a)(2); *see also* Ariz. R.P. Spec. Act. 4(g) (cross-referencing ARCAP 21’s requirements).



AMY M. WOOD • Clerk of the Court  
FILED: AA