IN THE SUPREME COURT
STATE OF ARIZONA

ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION; LOUIS J. HOFFMAN; VICTORIA STEELE; ARIZONA ADVOCACY NETWORK, Petitioners, v. THE HONORABLE MARK H. BRAIN, Judge of the Superior Court, of the State of Arizona, County of Maricopa, Respondent Judge, and KEN BENNETT, in his official capacity as Secretary of State; ANDY BIGGS, in his official capacity as President of the Arizona State Senate; ANDREW M. TOBIN, in his official capacity as Speaker of the Arizona House of Representatives, Real Parties in Interest	No. CV-13-0341 Court of Appeals Division One No. 1 CA-SA 13-0239 Maricopa County Superior Court No. CV2013-010338

BRIEF AMICUS CURIAE OF THE INSTITUTE FOR JUSTICE IN SUPPORT OF REAL PARTIES IN INTEREST ANDY BIGGS AND ANDREW M. TOBIN

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INTEREST OF *AMICUS*

This brief *amicus curiae* is submitted pursuant to Rule 16 of the Arizona Rules of Civil Appellate Procedure and is accompanied by a motion for leave to file.

The Institute for Justice is a nonprofit, public-interest legal center dedicated to defending the essential foundations of a free society: private property rights, economic and educational liberty, and the free exchange of ideas. As part of that mission, the Institute has litigated cases across the country challenging laws that restrict the ability of Americans to finance political speech, including here in Arizona. *See Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011); *Galassini v. Town of Fountain Hills*, No. CV-11-02097-PHX-JAT, 2013 U.S. Dist. LEXIS 142122 (D. Ariz. Sept. 30, 2013); *May v. McNally*, 203 Ariz. 425, 55 P.3d 768 (Ariz. 2002). The Institute has also filed amicus curiae briefs in several campaign-finance cases, including *McCutcheon v. FEC*, No. 12-536 (U.S. argued Oct. 8, 2013); *Citizens United v. FEC*, 558 U.S. 310 (2010); *Davenport v. Washington Education Association*, 551 U.S. 177 (2007); *Randall v. Sorrell*, 548 U.S. 230 (2006); *Wisconsin Right to Life, Inc. v. FEC*, 546 U.S. 410 (2006); and *McConnell v. FEC*, 540 U.S. 93 (2003).

This litigation concerns the contribution limits set in the prior version of A.R.S. § 16-905 and whether the Legislature could increase those limits following

the adoption of A.R.S § 16-941 as part of the Clean Elections Act. This Court granted review here "only as to this issue: whether the court of appeals erred in holding that, 'as a matter of statutory construction, when the voters enacted the Clean Elections Act in 1998, they fixed campaign contribution limits as they existed in 1998, subject to authorized adjustments.'"

The resolution of this question, however, cannot occur without an acknowledgment that the contribution limits in the prior version of A.R.S. § 16-905—among the lowest in the nation—were of doubtful constitutionality. Thus, in deciding whether A.R.S. § 16-941 froze Arizona's contribution limits at those very low levels, this Court must interpret the statutes in a way that recognizes that one interpretation results in a violation of the First Amendment, while the other does not. *See Greyhound Parks of Ariz., Inc. v. Waitman*, 105 Ariz. 374, 377, 464 P.2d 966, 969 (Ariz. 1970) ("Where different interpretations of an ambiguous provision in the statute are possible, a construction should be adopted which avoids constitutional doubts."). Put another way, this Court should avoid interpreting the statues in a manner that places an unconstitutional restriction on free speech and association back on the books.

The Institute believes that its legal perspective will provide this Court with valuable insights regarding the free speech and free association implications of a ruling that could re-impose Arizona's unconstitutional contribution limits and strip

from the Legislature its ability to protect constitutional rights by amending unconstitutional laws.

ARGUMENT

Limits on contributions to political campaigns—especially low limits—directly implicate First Amendment rights: The right of recipients to raise money to spend on political speech and the right of contributors to associate with recipients and other contributors to fund political speech. Until this year, Arizona had some of the lowest contribution limits in the nation. *See Ariz. Free Enter. Club's Freedom Club PAC v. Bennett* ("*AFEC*"), 131 S. Ct. 2806, 2827 (2011) ("Arizona already has some of the most austere contribution limits in the United States."). Indeed, in *Randall v. Sorrell*, 548 U.S. 230, 250-51 (2006) (plurality opinion), a case in which the Supreme Court held that Vermont's contribution limits were unconstitutionally low, the Court specifically noted that Arizona's limits were similarly low.

During the 2013 legislative session, acting from concerns about the constitutionality of Arizona's low limits, the Legislature increased those limits. *See* Appendix to Petition for Review of a Special Action Decision of the Court of Appeals ("App'x") 210-37. This led to the present lawsuit by Citizens Clean Elections Commission ("CCEC"). The CCEC has asked the courts to enjoin the

new limits, in part. This injunction would re-impose the old, very low, limits for statewide and legislative races during the 2014 elections.

While this Court has granted review only on a question of statutory interpretation, this Court should not decide this question by closing its eyes to the First Amendment implications of its decision. Simply put, if the new limits are enjoined, and the old limits re-imposed, the end result will be that Arizonans' First Amendment rights will be irreparably harmed. Accordingly, this Court must take this harm into account when considering the question it has granted review of here, as the First Amendment ramifications are unavoidable in resolving the statutory questions. At a minimum, these considerations weigh in favor of a statutory interpretation that avoids the reposition of a statute unconstitutional under the First Amendment, *Randall*, and other U.S. Supreme Court precedent.

I. Campaign Contributions are Protected by the First Amendment, and This Court Cannot Ignore the First Amendment Implications of Its Ruling.

Limits on contributions to and expenditures by political campaigns "impose direct quantity restrictions on political communication and association by persons, groups, candidates, and political parties." *Buckley v. Valeo*, 424 U.S. 1, 18 (1976). And while the Court has tolerated some limits on contributions, those limits are

bounded.[1] Contribution limits can only be justified by the prevention of quid pro quo corruption. *Buckley*, 424 U.S. at 26; *see also Citizens United v. FEC*, 558 U.S. 310, 359 (2010) ("When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption."). This means that other interests cannot support contribution limits. *E.g.*, *AFEC*, 131 S. Ct. at 2825 ("We have repeatedly rejected the argument that the government has a compelling state interest in 'leveling the playing field' that can justify undue burdens on political speech."). Moreover, the Supreme Court has flatly rejected the argument (inherent in Arizona's old limits) that "the lower the limit, the better." *Randall*, 548 U.S. at 248. Thus, in *Randall*, the Court struck down contribution limits as too low to be constitutional, and in doing so specifically noted that Arizona had similarly low limits. *Id.* at 250-51, 253, 262.

Thus, as much as the CCEC has tried to avoid the fact, a ruling in its favor would have real, serious, and negative ramifications for Arizonans' First Amendment rights. This litigation ultimately asks whether the Legislature could increase Arizona's unconstitutionally low contribution limits and thereby restore

[1] Moreover, at least three Supreme Court justices have expressly called on the Court to increase constitutional protection of campaign contributions, *see Randall*, 548 U.S. at 266 (Thomas and Scalia, JJ., concurring); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 410 (2000) (Kennedy, J., dissenting), and a fourth has expressed willingness to consider increasing constitutional protection, *Randall*, 548 U.S. at 263 (Alito J., concurring).

free speech and free association rights of Arizonans to give and receive campaign contributions. Because these rights are protected by the First Amendment, they trump any statutory construction or mandate of the Voter Protection Act. *See generally*, U. S. Const. art. VI, cl. 2 (the Supremacy Clause) ("This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."). Indeed, these First Amendment rights trump vague and unsupported concerns about corruption or its appearance, *Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013), as well as claimed hardships to the election system, *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 489 (2d Cir. 2013).

A court order that results in a violation of First Amendment rights is itself unconstitutional, just as an action of any other branch of government that violates protected rights is unconstitutional. Thus, injunctions—including preliminary injunctions—against First Amendment protected activities face "heavy presumption[s]" against their "constitutional validity." *CBS, Inc. v. Davis*, 510 U.S. 1315, 1317 (1994) (Blackmun, J., Circuit Judge) (preliminary injunction against publication is itself a prior restraint); *see also New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam) (Pentagon Papers case)

(same). As explained in the following section, the CCEC cannot overcome that presumption.

II. Because the CCEC's Motion for Preliminary Injunction Sought the Reimposition of the Old Contribution Limits, the CCEC Bore the Burden of Justifying Those Limits, Which It Did Not and Cannot Do.

In this litigation the CCEC sought to have the old, very low, contribution limits re-imposed on Arizonans through an injunction. App'x 312-13. In response, the opposing parties made a colorable claim that the CCEC's proposed injunction would infringe First Amendment rights. *Id.* at 130-35. Accordingly, the burden shifted to the CCEC to justify the constitutionality of the old, very low, contribution limits. *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1116 (9th Cir. 2011) (once there is a colorable claim that First Amendment rights "have been infringed, or are threatened with infringement . . . the burden shifts to the government to justify the restriction").[2] And the CCEC was required to offer actual evidence to meet its burden, because speculation and "mere conjecture" are never enough to carry a First Amendment burden. *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 392 (2000); *see also Edenfield v. Fane*, 507 U.S. 761, 770-71

[2] Ordinarily, it is "the government" that is charged with justifying limitations on speech. But this case is in an unusual posture. Only the CCEC, an administrative agency that does not enforce contribution limits, has sought to re-impose the old contribution limits. The Legislature, however, has determined that the old contribution limits are unconstitutional. Accordingly, the "special constitutional burden" to "*justify* a law that restricts political speech" falls to the CCEC. *Thalheimer*, 645 F.3d at 1117 (emphasis added).

(1993) (holding that, even in the commercial-speech context, "mere speculation or conjecture" are insufficient to carry a First Amendment burden).

But the record is devoid of any evidence in support of the constitutionality of the old, very low, contribution limits. The CCEC thus failed to produce evidence sufficient to carry its burden at the preliminary-injunction stage. Nor could the CCEC have produced sufficient evidence. As set forth in the following three sections, academic research undermines the notion that contribution limits have any effect on perceptions of government, and certainly not at the very low levels that the CCEC would prefer; the structure and content of Arizona's contribution laws demonstrate they are not appropriately tailored to combatting corruption; and the history of the Clean Elections Act demonstrates it was adopted not to combat quid pro quo corruption, but rather for the unconstitutional purpose of "leveling the playing field."

A. Academic Research Undermines the Assertion That Perceptions of Government are Influenced by Political Contributions and Spending.

The overwhelming majority of empirical studies have found virtually no relationship between trust in government and political contributions and spending. For example, a 2003 study demonstrated that the sharp decline in the public's trust in government during the 1960s and 1970s preceded the significant increase in congressional campaign spending that began in the late 1970s. *See* David M.

Primo, *Campaign Contributions, the Appearance of Corruption, and Trust in Government, in* Inside the Campaign Finance Battle: Court Testimony on the New Reforms 285, 290 (A. Corrado *et al.* eds., 2003). Moreover, this same study found virtually no relationship between campaign spending and trust in government during the period after 1980. *Id.*

This same study discovered that trust in government actually increased at the same time that political parties were becoming more dependent upon "soft money" —contributions to political parties that, to a large extent, came from corporations. *Id.* A 2004 study confirmed that, even as "soft money" contributions increased in the 1990s, public perceptions of government as corrupt were declining. *See* Nathaniel Persily and Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. Pa. L. Rev. 119, 148 (2004). This study concluded that "trends in general attitudes of corruption seem unrelated to anything happening in the campaign finance system (*e.g.*, a rise in contributions or the introduction of a particular reform)." *Id.* at 122. Instead, the study explained that the public's perception of corruption rises and falls with the popularity of the incumbent president, declining during popular wars and economic prosperity while rising during times of recession. *Id.* at 121.

Moreover, earlier research into campaign spending concluded that increased spending has the "generally beneficial" effect of shedding light on a candidate's

policies and stances on issues. *See* John J. Coleman & Paul F. Manna, *Congressional Campaign Spending and the Quality of Democracy*, 62 J. of Politics 757, 759 (2000), *available at* http://www.campaignfreedom.org/doclib/20100303_ColemanSpendingDemocracy2000.pdf. This study examined variation across districts in the 1994 and 1996 U.S. House elections and concluded that increased campaign spending in a congressional district did not encourage mistrust or cynicism. *Id.* at 757. To the contrary, campaign spending actually contributed to the "quality and quantity" of public discourse and made "political elites (or would-be elites) accountable to the governed." *Id.*

Again, the CCEC has offered nothing to counter this plethora of actual empirical evidence. Indeed, it appears that the most the CCEC can say is that there is (or was) a perception that corruption exists. *See* CCEC, et al., Resp. to Amicus Curiae Br. by Various Chambers of Commerce and Chamber PACS 5-6 (pointing only to self-serving declarations of concern and intent, not actual evidence, to justify the constitutionality of the Clean Elections Act and contribution limits generally). This is simply insufficient to overcome actual evidence, however. "When government lawyers make arguments seeking to justify a state's infringement of a constitutional right, they tend not to say something like 'most people think a problem exists, so the state has a compelling interest in allaying their fears.'" Persily and Lammie, *Perceptions of Corruption and Campaign*

Finance, 153 U. Pa. L. Rev. at 120. The CCEC simply cannot carry its constitutional burden, even at the preliminary injunction state of this litigation, to justify the laws at issue here in the face of this empirical evidence.

B. The Structure and Content of Arizona's Contribution Limits Demonstrate They are Not Appropriately Tailored to Combat Corruption or the Appearance Thereof.

Arizona's scheme of campaign contribution limitations suffers from a further constitutional flaw: Its structure and content demonstrates that it is not appropriately tailored to combat corruption or the appearance thereof. Not only does this render the scheme unconstitutional, it further "raises serious doubts about whether the government is in fact pursuing the interest it invokes," as opposed to pursuing a forbidden purpose, like the suppression of disfavored political activity. *Brown v. Entm't Merchs. Ass'n*, 131 S. Ct. 2729, 2740 (2011) (speaking of underinclusive laws); *see also First Nat'l Bank v. Bellotti*, 435 U.S. 765, 794-95 (1978) (dealing with a restriction on political contributions that was both over- and under-inclusive to achieve the ends claimed).

First, the structure of Arizona's law demonstrates that the old limits are not tailored to preventing corruption. That is because Arizona has long allowed certain political committees to give much larger contributions than individuals and other political committees are allowed to give. Individuals and most political committees in Arizona are allowed, under the old contribution limits, to contribute

just $912 to statewide candidates and $440 to legislative candidates.[3] However, other political committees, dubbed "Super PACs,"[4] are permitted to contribute $4,560 to statewide candidates and $1,816 to legislative candidates.[5] To qualify as a Super PAC a group has to "receive[] monies from five hundred or more individuals in amounts of ten dollars or more in the two year period immediately before application to the secretary of state." A.R.S. 16-905(G). Essentially then, this is a privileged designation reserved for large, formal, groups, as the roster of Arizona Super PACs confirms.[6] But allowing some donors to contribute greater amounts than others at least strongly suggests that such greater amounts are themselves not corrupting.[7]

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[3] All Arizona limits take from The Secretary of State's published Campaign Finance Limits for the 2013-2014 Election Cycle, *available at* http://www.azsos.gov/election/2014/info/campaign_contribution_limits.pdf.

[4] These groups are not to be confused with what are known as "Super PACs" in the federal system. In the federal system, Super PACs are better identified as "independent expenditure only" committees. Contributions to and expenditures by such committees cannot be constitutionally limited because they engage only in independent expenditures, which have been found, as a matter of law, to be incapable of causing of quid pro quo corruption. *See generally*, *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc).

[5] Campaign Finance Limits for the 2013-2014 Election Cycle, *supra* n.3. Contributions to local candidates are not discussed above because the CCEC has not sought to have the courts re-impose the old limits for local candidates. Nevertheless, Arizona Super PACs retain the ability to contribute double what other political committees and individuals are allowed. *Id*.

[6] Secretary of State, SuperPAC Committees List, *available at* http://www.azsos.gov/cfs/SuperPACList.aspx.

[7] Moreover, according certain special privileges to a privileged group, especially in reference to fundamental constitutional rights, suggests substantial equal protection

Second, Arizona's prior contribution limits cannot be justified when compared to their federal counterparts. Federal contribution limits are currently $2,600 per election for both Representatives and Senators.[8] Thus, the contribution limit for Arizona's federal officials is approximately three times as much as Arizona's prior general limit for statewide candidates and six times as much as Arizona's prior general limit for legislative candidates. There is no reason to believe that federal candidates are approximately three times more resistant to quid pro quo corruption or the appearance thereof than are statewide officials, much less six times more resistant than are legislative candidates.

Third, the relief requested by the CCEC here further highlights the irrationality of Arizona's contribution limits. The injunction sought by the CCEC and entered by the Court of Appeals applies only to candidates for the legislature or statewide office. App'x 122 n.1. Thus, in Arizona today, local officials may (under the new law) accept much greater amounts from contributors than are candidates for the legislature or statewide office.[9] If local candidates can receive these larger contributions without a threat of quid pro quo corruption, it is

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concerns. *See Citizens United*, 558 U.S. at 340 ("restrictions distinguishing among different speakers, allowing speech by some but not others" are prohibited).

[8] Federal Election Commission Contribution Limits 2013-2014, *available at* http://www.fec.gov/pages/brochures/contriblimits.shtml.

[9] Campaign Finance Limits for the 2013-2014 Election Cycle, *supra* n.3.

irrational to assert that legislative or statewide candidates would be corrupted by the same amounts.

Finally, the fact that Arizona's old contribution limits are *substantially* more restrictive than almost every other state in the nation cannot be ignored. Under its old system, Arizona limited aggregate contributions by any individual to all candidates and committees who give to candidates to just $6,390 in a calendar year.[10] But only eight other states have aggregate contribution limits of any kind, and each and every one of them has higher aggregate contribution limits than Arizona.[11] Twelve states have no limits on individual or political committee contributions.[12] And of the thirty-seven remaining states, at least thirty-two have limits that are *markedly* higher than Arizona's.[13]

The content and structure of Arizona's old contribution limits demonstrate that they are not adequately tailored to combatting quid pro quo corruption. They are therefore unconstitutional. This lack of tailoring further suggests that the true

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[10] *Id.*

[11] These states are Connecticut, Maine, Maryland, Massachusetts, Minnesota, New York, Rhode Island, and Wisconsin. *See* National Conference of State Legislatures, State Limits on Contributions to Candidates (Updated October 2013), *available at* http://www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2012-2014.pdf.

[12] Alabama, Indiana, Iowa, Mississippi, Missouri, Nebraska, North Dakota, Oregon, Pennsylvania, Texas, Utah, and Virginia. State Limits on Contributions to Candidates, supra n.11.

[13] State Limits on Contributions to Candidates, supra n.11.

purpose of the low limits was something other than combating quid pro quo corruption. To the extent that the CCEC now argues that the old limits were fixed—never to be increased—by the Clean Elections Act, the improper purposes behind the old contribution limits are only magnified, because, as the following section explains, the Clean Elections Act itself was adopted not to combat quid pro quo corruption, but rather to further unconstitutional purposes.

C. The Clean Elections Act was Adopted to Further Unconstitutional Purposes; the Legislature Cannot Be Bound to Further Such Purposes.

The Clean Elections Act was not an exercise in combatting quid pro corruption—or even the nebulous appearance thereof—but rather an effort to limit campaign spending, "level the playing field," and silence certain speakers and groups that proponents disagreed with. These are plainly unconstitutional purposes. *AFEC*, 131 S. Ct. at 2826 ("[W]e have, as noted, held that it is not legitimate for the government to attempt to equalize electoral opportunities in this manner. And such basic intrusion by the government into the debate over who should govern goes to the heart of First Amendment values."); *Citizens United*, 558 U.S. at 340 ("Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. As instruments to censor, these categories are

interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content." (citations omitted)); *Buckley*, 424 U.S. at 57 ("The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise.").

The Legislature is prohibited from enacting laws to further unconstitutional purposes. Similarly, the Legislature cannot be bound by a voter initiative to further unconstitutional purposes. Ariz. Const. art. 22, § 14 ("Any law which may not be enacted by the Legislature under this Constitution shall not be enacted by the people."). "[T]he whole point of the First Amendment is to protect speakers against unjustified government restrictions on speech, even when those restrictions reflect the will of the majority." *AFEC*, 131 S. Ct. at 2828.

In *AFEC*, the Supreme Court noted "ample" evidence that the Clean Elections Act was not adopted to combat quid pro quo corruption, but rather for the unconstitutional purpose of "leveling the playing field," and ultimately reducing the amount of political speech. *Id*. at 2825. Indeed, until called to task by the Supreme Court, the CCEC itself proclaimed that "'The Citizens Clean Elections Act was passed by the people of Arizona in 1998 to level the playing field when it comes to running for office.'" *See id.* at 2825 n.10.

The arguments for the Clean Elections Act appearing in the Secretary of State's publicity pamphlet[14] demonstrate that supporters of the Act wanted to reduce campaign spending, level the playing field, and "end the money chase" by having candidates become publicly funded. Quid pro quo corruption had little, if anything to do with the Clean Elections Act. In the rare instance that a proponent mentioned "corruption," it was equated with the existence of private money in the campaign system in general, which proponents blamed for their failure to achieve their desired policy goals. Arguments for the Act in the ballot proposition guide stated that "important issues regarding health care, children and the environment are affected by political contributions" and extolled the Act's ability to "end the money chase, halt corruption, limit campaign spending and reduce special interest influence." Further, the public was promised that "limiting campaign spending and increasing disclosure requirements . . . will level the playing field so that the voices of Arizona's working families and seniors on fixed incomes are heard just as loudly as the big money donors who are corrupting our system."

Moreover, although a full recounting of the "ample" factual record of the unconstitutional purposes of the Clean Elections Act built in *AFEC* is not possible here, one document, attached to this brief as Exhibit A, bears mention. That

[14] Publicity Pamphlet, Proposition 200 (1998), *available at* http://www.azsos.gov/election/1998/Info/PubPamphlet/prop200.pdf.

document sets forth the purpose of the Clean Elections Act as articulated by its official proponents, "Arizonans for Clean Elections":

> Q What does the Arizona Clean Money, Clean Elections Initiative do?
>
> A The Initiative addresses the most serious problems that concern voters. It will
>
> ~ limit campaign spending
>
> ~ shorten the campaign period
>
> ~ prohibit special-interest contributions to participating candidates
>
> ~ eliminate the need for candidates & lawmakers to waste valuable time doing fund raising so they can instead focus full time on doing their jobs
>
> ~ provide a level playing field, financially, so good people without money or connection to special interest have a fair chance to run for office.

There is no mention of quid pro quo corruption, but rather "problems"—such as an un-"level" political playing field and "too much" campaign spending—that, constitutionally, cannot be considered problems. Thus the proponents of the Clean Elections Act admitted that the Act was intended to serve unconstitutional purposes. *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 471 ¶ 14, 212 P.3d 805, 809 (Ariz. 2009) ("In determining the purpose of an initiative, we consider . . . materials in the Secretary of State's publicity pamphlet available to all voters before a general election.").

CONCLUSION

Although this Court has granted review in this case only to interpret a statute, that interpretation should—indeed must—be made with an eye on the First Amendment implications that flow from the requested relief. This Court is, as it should be, loathe to interpret a statue in a manner that results in abridgement of First Amendment rights. This should be especially true where the interpretation would also set an unconstitutional statute beyond the power of the Legislature to correct. For that reason, this Court should interpret the statutes at issue here in a manner that avoids the First Amendment violations that could otherwise result. But regardless of the statutory interpretation settled on, Arizona's old, very low, contribution limits are unconstitutional. Ordering that they be re-imposed on the people of Arizona—as the CCEC has sought—is therefore a violation of the constitution and will lead to nothing more than further litigation to protect First Amendment Rights.

Respectfully submitted this 6th day of December, 2013, by:

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Exhibit A

The Most Asked Questions About Arizona's Clean Money, Clean Elections Initiative

"YEAH, BUT. . ."

For more information, contact "Arizonans for Clean Elections"
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E-mail: info@azclean.org Fax: 602-2236

Q *What does the Arizona Clean Money, Clean Elections Initiative do?*

A The Initiative addresses the most serious problems that concern voters. It will
- ~limit campaign spending
- ~shorten the campaign period
- ~prohibit special-interest contributions to participating candidates
- ~eliminate the need for candidates & lawmakers to waste valuable time doing fund raising so they can instead focus full time on doing their jobs
- ~provide a level playing field, financially, so good people without money or connections to special interests have a fair chance to run for office

Q *How will the Initiative accomplish these goals?*

A Candidates would receive a set amount of money from the Arizona Clean Elections Fund if they voluntarily agree to reject all private special-interest contributions, to limit campaign spending, and to shorten their campaign season.

Before receiving money from the Fund, candidates would first have to demonstrate that they had public support by collecting a specific number of $5 "qualifying contributions" to be deposited into the Arizona Clean Elections Fund.

Candidates who choose to raise money by continuing to use the old system ~ accepting contributions from wealthy special interests ~ would be faced with various disincentives to raise more money than a Clean Elections opponent.

It toughens up election laws by providing more oversight of campaign finance reports and increasing fines for those who break the laws that govern our democratic elections.

Q *Is it constitutional?*

A Yes. According to the U.S. Supreme Court, public financing of election campaigns is constitutional as long as the system is voluntary. Candidates do not have to choose it; they are free to reject public financing and continue raising and spending private money, just as before.

Q *Is there really a need for Clean Money Campaign Reform in a state like Arizona?*

A Yes. Despite past reforms, special-interest money still dominates AZ elections. The majority of the money comes from a very few wealthy individuals, corporations, and PACs. Only ¼ of 1% of the American public gives more than $200 in campaign donations to candidates. Most candidates have to get money to run their campaigns from somewhere to compete; if not from us, then where?

Here lies the problem. Who do you suppose has the ready cash for campaigns? Those very wealthy special interests who have an issue before the Legislature. The concentration of that much political power ~ or the ability to disproportionately effect who gets elected ~ by a very small number of Arizonans is inherently undemocratic. In short, money talks, especially in politics, and campaign money is coming from the same interests who will be lobbying in Phoenix when Election Day is over.

Q *Are you saying that big contributors buy lawmakers votes?*

A No candidate would say that a contribution from a special-interest lobbyist would buy a specific vote. But one does question whether special-interest groups would contribute as much as they do today, sometimes millions of dollars, if they didn't think they would benefit in some way.

If a baseball player were to give a thousand dollars to an umpire before the umpire called him "safe" or "out," we'd call it a bribe. Period. If a defense lawyer were to give a thousand dollars to each member of a

jury and the judge before they reached a decision or ruled on a case, we'd want that lawyer disbarred and thrown in jail.

Yet we allow big business, the wealthy, and special-interest groups to make large contributions to the very people who will vote on legislation that effects their future business profits/concerns. We are not saying that these contributions are buying influence or votes. However, one might question why corporate welfare blossoms in AZ. During the last few years, our politicians have doled out huge corporate welfare subsidies, predominantly to the largest and most powerful businesses. The Diamondbacks got $240 million for their stadium. Intel got about $180 million for their Chandler factory, and Sumitomo got about $165 million for their north Phoenix factory. Even Dial Corporation received $7 million when they downsized their workforce by 250 jobs and moved to Scottsdale.

Q *What makes you think candidates will choose to finance their campaigns with Clean Money?*

A There will be strong incentives for candidates. No elected official likes having to spend so much time raising money, year in and year out. No challenger looks forward to the task of trying to raise the huge sums of money being spent today. And what candidate or elected official enjoys the public perception, if not the reality, that they are compromised by their acceptance of large contributions from special interests?

Q *Won't the publicly-funded candidates still get buried by wealthy, self-financed candidates who do not need to fund raise and can spend as much money as they want ~ such as Steve Forbes & Ross Perot?*

A No. Under this Initiative, participating candidates will get a dollar-for-dollar match, up to a set limit. If a non-participating opponent spends more than the public financing limit, the Clean Money candidate is eligible for up to three times the set amount. In addition, under a system that offers public funding, candidates will have the "free-of-special-interest" leverage that a Clean Money campaign will provide. This benefits the image of <u>all</u> candidates that participate.

Q *How much will Clean Money Campaign Reform cost? How will it be paid for?*

A Assuming near total participation by candidates, we estimate this system would cost approximately $8 million a year from a state budget of $6 billion, or about $5 per year per tax paying family. Revenue for the Clean Money Fund will come from a combination of sources. Funding sources include a $5 check off on state income tax forms (a taxpayer that checks this box also receives a $5 reduction in the amount of tax owed), a $100 annual fee for lobbyists representing commercial or for-profit activities, a 10% surcharge on civil and criminal fines and penalties, plus taxpayers may redirect tax owed to the state to the Clean Elections Fund (up to 20% or $500 whichever is greater). All the $5 "qualifying contributions" candidates collect would also be put in the Fund. To put the cost of Clean Elections in perspective, if we simply repealed the 1997 legislature's tax cut giveaway to the 1,300 people who already make more than a million dollars a year, we would have enough money to pay for the whole proposal.

Q *What is "Arizonans for Clean Elections?"*

A Arizonans for Clean Elections is a growing, broad-based citizens' organization that is bringing energy, hope and concrete solutions to the campaign finance reform movement. It is a non-partisan organization that is working toward putting a Clean Money, Clean Elections Initiative on the Arizona ballot in 1998. Supporters currently include the League of Women Voters of Arizona, Common Cause of Arizona, Arizona Sierra Club, National Organization for Women, National Association of Letter Carriers, United We Stand-Arizona, Arizona Citizen Action, several community leaders, and the list goes on.

Coalition members believe the way to end the corrupting relationship between special interests and politicians is to offer another way to finance campaigns. They believe if candidates choose Clean Money Campaign Reform, they can free themselves of big-money special interest & the conflict of interest that invariably follows. The coalition is offering citizens, candidates, & politicians a better way.

Citizens must get engaged, take responsibility for the problem, and solve it. Please join the team and help

make democracy work in Arizona. Apathy translates Into approval of the current system.

Q *Won't the public see this as just another government spending program, or worse, a welfare program for politicians?*

A Clearly, the public distrusts politicians, and taxpayers are wary of new public expenditures. However, Clean Money Campaign Reform is very likely to save taxpayers money. Studies show that wealthy individuals and powerful corporations who supply most of the money for congressional campaigns are the recipients of billions of dollars of unnecessary tax breaks, subsidies, and regulatory exemptions. By eliminating candidates' dependence on these big-money donors, Clean Money reform will make it more likely that lawmakers will be able to say 'no' to these kinds of costly giveaways.

Q *Won't Clean Money enable "fringe candidates" to run for office with public money?*

A The public has a right to support whomever it wants, but qualifying requirements will be stiff enough to deter fringe candidates who lack public support from getting public financing. Some form of public financing already exists in 22 states and a number of municipalities. Where these systems are in place, the fears that opponents had raised about public money going to fringe candidates have not come to pass.

Q *What about the person who says, "I can't give time to help a candidate. Why shouldn't I be allowed to give money?"*

A People will still be able to give money after Clean Money reform. During the primary period, they can give a $5 "qualifying contribution" and a small amount in "seed money" to help their favorite candidate qualify for public financing. And, of course, they can still make a financial contribution to a political party. It's important to point out that contributing money to political campaigns is not one of the principal ways most people participate in the political process. Studies show that 96% of the American people make no political contributions at all, & that most of the money in congressional races comes from less than ½ of 1% of the population.

Q *Why total public financing? Why not push for partial public financing, or a matching system like the one we have for presidential primaries.*

A This past round of presidential primaries, like the ones before it, made it abundantly clear that providing matching money does not solve the problems that the public is rightly concerned about. If candidates must solicit or use <u>any</u> special interest or private money, they have compromised their independent position.

Q *Is the passage of a Clean Money, Clean Elections Initiative a real possibility or just wishful thinking?*

A Clean Money Campaign Reform is more than a dream or wishful thinking. It's already state law in Maine, where it was approved by voters in Nov. by a 56 to 44 percent victory. A grassroots movement is gaining momentum across the U.S., and nearly two dozen other states are working on similar items.

A system similar to this has worked successfully in Tucson for years for their city elections. As a result, candidates for mayor spend less now in real dollars than they did ten years ago —a statement that is not true of any other major city in the country.

Q *What's the long-term strategy/goal?*

A The national strategy is to focus on the state level first. Maine's passage of full public financing for candidates was the first step in the journey toward the end goal of passage of such legislation on the federal level. It is hoped that 3 or 4 more states will pass similar legislation in 1998 — the leaders of this movement are looking to Arizona to be one of those states. Once the public has demonstrated broad support for this idea across the nation, we will then de- mand that Congress pass a similar system for all federal elections, including Congress & the presidency. Senators Paul Wellstone, John Kerry, and John Glenn have introduced a Clean Money, Clean Elections bill in the Senate. But they need the grassroots support from across the country to make our congressional representatives listen. After all, the majority of the elected officials aren't going to upset the system that got them where they are. The system worked for them, so obviously, in their eyes, the system isn't broken, so why fix it? We need to help enlighten them and push for change. . . change that makes $ense!