

1 Scott Day Freeman (019784)
2 Adam Shelton (038252)
3 **Scharf-Norton Center for Constitutional Litigation at the**
4 **GOLDWATER INSTITUTE**
5 500 E. Coronado Rd.
6 Phoenix, Arizona 85004
7 (602) 462-5000
8 litigation@goldwaterinstitute.org

9 *Attorneys for Plaintiffs*

COPY

JUN 18 2024



CLERK OF THE SUPERIOR COURT
G. FARLER
DEPUTY CLERK

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

12 WILLIAM JAMES "JIM" LANE;
13 YVONNE CAHILL; SUSAN WOOD; AND
14 SCOTTSDALE QUALIFIED VOTER IV,

15 Plaintiffs,

16 vs.

17 CITY OF SCOTTSDALE, a municipal
18 corporation; DAVID D. ORTEGA,
19 SOLANGE WHITEHEAD, TAMMY
20 CAPUTI, TOM DURHAM, BARRY
21 GRAHAM, BETTY JANICK, and KATHY
22 LITTLEFIELD, in their official capacities as
23 members of and constituting the City
24 Council of the City of Scottsdale;
25 BENJAMIN LANE, in his official capacity
26 as the Maricopa County Recorder; and
27 ADRIAN FONTES, in his official capacity
28 as the Arizona Secretary of State,

Defendants,

CV 2024-015767

Case No.

**MOTION FOR PRELIMINARY
AND PERMANENT INJUNCTION**

INTRODUCTION

The City of Scottsdale is telling voters that its new sales tax referral "reduces" taxes when in fact it raises them. Scottsdale voters should not be misled.

Plaintiffs seek to protect their rights, and the rights of all Scottsdale voters, by challenging Scottsdale's latest tax referral. The measure is worded in an unfair and deceptive manner and amounts to a "bait and switch." The measure promises a "tax

1 reduction” but delivers a tax increase. *Molera v. Hobbs*, 250 Ariz. 13, 20 ¶ 13 (2020); *see*
2 *also* Ariz. Const. art. 2 § 4.

3 In addition, A.R.S. § 9-500.14 prohibits cities from spending money or using
4 resources “for the purpose of influencing the outcome of elections.” City officials have
5 published on the City’s website—and based on past practice, will place in the City’s 2024
6 General Election Publicity Pamphlet—a “Q&A Document” about the ballot referral. The
7 City’s questions and answers are similarly misleading, amounting to statutorily prohibited
8 electioneering.

9 The ballot referral language and the City’s effort to promote passage undermine the
10 fairness and integrity of the 2024 General Election in Scottsdale. The Arizona Supreme
11 Court has explained that “[t]he courts must be alert to preserving the purity of elections
12 and its doors must not be closed to hearing charges of deception and fraud that in any way
13 impede the exercise of a free elective franchise.” *Griffin v. Buzard*, 86 Ariz. 166, 173
14 (1959). **If this measure is permitted to remain on the ballot, Scottsdale voters will be**
15 **misled into believing they are reducing their taxes when in fact they are increasing**
16 **them.** Put another way, voters will be asked to impose a tax without being told explicitly
17 that a “Yes” vote will lead to a higher tax rate than a “No” vote, or that “No” vote will
18 have the effect of a three-times greater reduction in the sales tax rate than a “Yes” vote.
19 That calls into question the integrity of the election process, as does Scottsdale’s use of
20 City resources to advocate for the passage.

21 FACTUAL BACKGROUND

22 At its April 2, 2024, meeting, the Scottsdale City Council adopted Resolution
23 13092, Option B, (the “Resolution”), which refers to Scottsdale voters a measure that will
24 increase the City’s sales tax rate. *See* Verified Compl. ¶¶ 20, 23–27 & Exs. 1–3 attached
25 thereto. The Resolution purports to “replace and reduce” a current tax that will be
26 expiring.

27 The Resolution approved the following language for the ballot referral:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

“Official Title”

A CITY CODE AMENDMENT TO REPLACE AND REDUCE SCOTTSDALE’S EXPIRING TRANSACTION PRIVILEGE AND USE TAX RATE SOLELY TO FUND: 1) IMPROVEMENTS AND MAINTENANCE FOR CITYWIDE PARKS AND RECREATIONAL FACILITIES; 2) MAINTENANCE AND PROTECTION FOR THE MCDOWELL SONORAN PRESERVE; AND 3) INCREASED POLICE AND FIRE RESOURCES RELATED TO CITYWIDE PARKS AND THE PRESERVE.

“Descriptive Title”

Authorizes the City to replace and reduce the current 0.20% transaction privilege and use tax rate, expiring in 2025, to 0.15%, for 30 years solely to fund the improvement, maintenance, and protection of Citywide Parks and Recreational Facilities, and the maintenance and protection of the Preserve as determined by ordinance.

A “YES” vote shall have the effect of authorizing the City to replace and reduce the current 0.20% transaction privilege and use tax rate, expiring in 2025, to 0.15%, for 30 years, effective July 1, 2025, for the purpose of: 1) improvements and maintenance for Citywide Parks and Recreational Facilities; 2) maintenance and protection for the McDowell Sonoran Preserve; and 3) increased Police and Fire resources related to Citywide Parks and the Preserve, with all being more specifically determined by City ordinance.

A “NO” vote shall have the effect of denying the City the authority to replace and reduce the current 0.20% transaction privilege and use tax rate, expiring in 2025, to 0.15%, for 30 years, effective July 1, 2025, for the purpose of: 1) improvements and maintenance for Citywide Parks and Recreational Facilities; 2) maintenance and protection for the McDowell Sonoran Preserve; and 3) increased Police and Fire resources related to Citywide Parks and the Preserve.

“Tagline”¹

SHALL SCOTTSDALE’S CURRENT 0.20% TRANSACTION PRIVILEGE AND USE TAX RATE, EXPIRING JUNE 30, 2025, BE REPLACED AND REDUCED TO 0.15% FOR 30 YEARS SOLELY TO FUND IMPROVEMENTS, MAINTENANCE, AND INCREASED POLICE AND FIRE PROTECTION OF CITYWIDE PARKS, RECREATIONAL FACILITIES, AND THE PRESERVE AS DETERMINED BY CITY ORDINANCE?

¹ The ballot language will include the Tagline and, space permitting, the “Yes/No” language and Descriptive Title above.

1 Verified Compl. ¶¶ 23–26.

2 The Resolution became effective 30 days after passage, *see* Scottsdale City Charter
3 art. 7 §§ 1, 5, and the City was to transmit the ballot language to the Maricopa County
4 Recorder by early June.²

5 Scottsdale city officials also published on the City’s website a “Q&A Document”
6 that provides information to prospective voters. Verified Compl. ¶ 65 & Ex. 5.³ Based on
7 past practice, the Q&A Document will be included in the City’s Publicity Pamphlet that is
8 sent to registered voters in Scottsdale before the November general election. *Id.* ¶ 66.

9 The so-called “expiring tax” was imposed in 1995. That tax increased the City’s
10 sales tax rate by 0.20% on July 1, 1995, to raise money to purchase land for the newly
11 established McDowell Sonoran Preserve (the “Land Acquisition Tax”). Verified Compl.
12 ¶ 9.⁴ That tax was to be in place until the land was acquired but not longer than June 30,
13 2025, i.e., 30 years. *Id.* ¶ 13. When the Land Acquisition Tax expires, Scottsdale’s city
14 sales tax rate will decrease from 1.75% to 1.55%.⁵ *See* Scottsdale Tax Rates⁶. If voters
15 approve the new tax in November, however, the City’s sales tax rate will be 1.70% on
16 July 1, 2025, 0.15% higher than if voters reject the Resolution or if the Resolution is
17 disqualified and the status quo maintained.

18 Plaintiffs are residents of Scottsdale and qualified voters and taxpayers. Compl. ¶¶
19 33–36. Each conducts business in the City that is subject to the City’s sales tax. *Id.* Each
20 Plaintiff objects to the City’s misleading ballot referral and the City’s illegal
21 electioneering efforts through the Q&A Document. *Id.*

22
23 ² *See* City of Scottsdale February 27, 2024, Work Study Session Closed Caption Transcript
24 at 51, found at 02-27-24-Closed-Caption-Transcript-Work-Study.pdf (scottsdaleaz.gov)
25 (City Clerk: “Ballot language is due to Maricopa County in early June. ... [W]e would
26 need the Council to finalize that language prior to that date because we need to provide it
27 in a finalized form to the County in early June.”)

28 ³ <https://www.scottsdaleaz.gov/Assets/ScottsdaleAZ/Elections/2024/2025-scottsdale-sales-tax-answers.pdf>

⁴ *See* City of Scottsdale Voting History at
<https://www.scottsdaleaz.gov/Assets/ScottsdaleAZ/Elections/052395ballot.pdf>.

⁵ If current state and county sales taxes are included, the overall sales tax rate in
Scottsdale drops from 8.05% to 7.85%.

⁶ <https://www.scottsdaleaz.gov/taxes>

1 Defendants are responsible for the passage and implementation of the Resolution
2 and the administration of the November 2024 General Election. *Id.* ¶¶ 37–40.

3 ARGUMENT

4 Legal standard for preliminary and permanent injunctions

5 A party seeking a preliminary injunction must show 1) a likelihood of success on
6 the merits; 2) the possibility of irreparable harm if relief is not granted; 3) balance of
7 hardships favoring the moving party; and 4) public policy weighs in favor of injunctive
8 relief. *Fann v. State*, 251 Ariz. 425, 432 ¶ 16 (2021). Courts apply a sliding scale in
9 determining whether to issue a preliminary injunction rather than a strict balancing of the
10 four factors. *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 410–11 ¶ 10
11 (2006). Thus, to warrant a preliminary injunction the plaintiff must “establish either 1)
12 probable success on the merits and the possibility of irreparable injury; or 2) the presence
13 of serious questions and that the balance of hardships tips sharply in favor of the moving
14 party.” *Id.* (citation and internal marks omitted).

15 The standard for issuing a permanent injunction is substantially the same as that
16 applied to a request for preliminary injunctive relief, except that the plaintiff must prove
17 actual success on the merits rather than the likelihood of success on the merits. *See* Ariz
18 R. Civ. P. 65(a)(2)(A).

19 Here, the only “facts” at issue are the words the City authorized for its ballot
20 referral and Q&A Document, matters that cannot reasonably be disputed. This Court can
21 conclude, without an evidentiary hearing or trial, that the City’s words are misleading by
22 applying a reasonable person standard to the language, without expert witness evidence.
23 *Molera*, 250 Ariz. at 20 ¶ 13. Accordingly, the Court should treat Plaintiffs’ request for a
24 preliminary and permanent injunction as the same and grant their request for permanent
25 injunction summarily because all factors favor Plaintiffs.

1 **I. Plaintiffs will prevail on the merits of each of their claims.**

2 Plaintiffs seek injunctive and declaratory relief on three claims: 1) misleading
3 ballot referral language; 2) unlawful electioneering using government resources; and
4 3) lack of fair notice and violation of due process.

5 Plaintiffs' claims rest on the principle that when the government refers a question
6 to the voters to decide, i.e., a ballot referral, the government must be fair, evenhanded, and
7 not mislead or engage in a "bait and switch." Nor should the government use its resources
8 to influence the outcome of a matter it refers to voters through lack of impartiality or
9 rhetorical strategy.

10 **A. Plaintiffs' first claim: The ballot measure language is misleading and**
11 **engages in a bait and switch.**

12 A "court should disqualify an initiative from the ballot whenever the 100-word
13 description either communicates objectively false or misleading information or obscures
14 the principal provisions' basic thrust." *Molera*, 250 Ariz. at 20 ¶ 13. Although the
15 sponsors of an initiative "are free to describe the measure in a positive way ... they may
16 not engage in a 'bait and switch.'" *Id.* Courts look to "the meaning a reasonable person
17 would ascribe to the petition," and "the trial judge should ordinarily decide the sufficiency
18 of a description without expert witness evidence." *Id.* ¶¶ 11, 13 (citation & internal marks
19 omitted).

20 *Molera* concerned whether the description of an initiative on petition signature
21 sheets failed, but the same rule applies to descriptions of referrals by legislative bodies to
22 voters. Section 19-102(A)—the statute concerning initiative petitions and relied upon by
23 *Molera*—provides that initiative petitions "shall be substantially in the form prescribed in
24 § 19-101." *Id.* Section 19-101, in turn, concerns referrals to the people by referendum
25 petition, including those referrals "by the legislative body of an incorporated city, town[,]
26 or county." A.R.S. § 19-101(A); *see also* A.R.S. § 19-141 (applying most provisions of
27 A.R.S. Chapter 19 to the legislation of cities, towns, and counties). There is no
28

1 substantive difference between the two statutes in terms of the requirements for the
2 description of the matter voters are to decide.⁷

3 Indeed, legislative referrals can and should be held to a higher standard than citizen
4 initiatives or referenda because Arizona law prohibits governments from using public
5 resources to influence the outcome of elections. *See, e.g.*, A.R.S. § 9-500.14(A); Ariz.
6 Op. Atty. Gen. No. I15-002, 2015 WL 4719005, at *7 (2015) (in ballot measure context,
7 questions include “whether the use of public resources involves dissemination of
8 information in a manner that is not impartial or neutral.”).

9 The Scottsdale City Charter is in accord, explaining that “[a]ll city matters on
10 which the council is or shall be empowered to legislate may be submitted by the council,
11 of its own motion, to the electors for adoption or rejection at a general or special election
12 in the same manner and with the same force and effect as matters submitted on petition.”
13 Scottsdale City Charter, art. 10. And, with respect to matters submitted in petition, “[t]he
14 provisions of the constitution and general laws of the state, as the same now exist or
15 hereafter may be amended, governing the initiative and referendum and recall of elected
16 officers shall apply in the city.” *Id.*

17 The Resolution’s approved ballot language fails the test because it is misleading for
18 reasons that include the following:

19 *First*, the term “replace” in the Resolution is deceptive. The Land Acquisition Tax
20 expires before the Resolution’s new tax goes into effect. Voters are not swapping one tax
21 for another; they are adding a new tax on July 1, 2025, where one does not exist. *See*
22 Verified Compl. ¶¶ 56–57. In debating the language, even Scottsdale’s Mayor
23 acknowledged that use of the word “replacing” was illogical (although he later voted in
24 favor of the Resolution). *Id.* ¶ 31. Thus, the Resolution engages in a deceptive slight-of-
25 hand by stating that the new tax will “replace” the “current tax” expiring in 2025, while

26 ⁷ Since *Molera* was decided, the legislature amended both statutes to allow 200-word
27 descriptions for petitions. Doubling the permissible length raises the bar for referrals
28 because legislative bodies can be more complete with their descriptions of the principal
provisions of the questions voters are asked to decide, i.e., clarity is less likely to be
sacrificed for concision.

1 not making clear that the Land Acquisition Tax will expire on its own terms, without the
2 need of any “replacement,” before the new tax would be imposed.

3 *Second*, the term “reduce” in the Resolution is deceptive because the new tax does
4 not, and cannot, “reduce” the current Land Acquisition Tax. *Id.* ¶¶ 56, 58. By June 30,
5 2025, Scottsdale’s sales tax burden drops 0.20% because the Land Acquisition Tax must
6 terminate. Councilmember Graham noted that the word is misleading because it assumes
7 that the 0.20% rate would remain in effect as of July 1, 2025, unless voters “reduce” it by
8 approving the Resolution. *Id.* ¶ 30. But passage of the Resolution would raise the sales
9 tax rate by 0.15% on July 1, 2025, not reduce it.

10 *Third*, the Resolution engages in a “bait and switch” because it obscures what is
11 really going on—the City is raising the sales tax rate to provide additional revenue to fund
12 services it already provides from its general fund. Verified Compl. ¶¶ 56, 60. The
13 expiring 0.20% Land Acquisition Tax is a single-purpose tax that raises money to acquire
14 land to be added to the Preserve. On the other hand, the new tax raises money for City
15 services related to parks (and the Preserve), including for improvement, maintenance, and
16 public safety related thereto, but not for land acquisition. But the City already provides
17 these services, drawing upon funding sources other than the Land Acquisition Tax. The
18 Resolution, therefore, seeks to raise taxes to augment the funding of City services already
19 provided, but under the guise of “replacing and reducing” an expiring tax earmarked from
20 something entirely different—a classic “bait and switch.” *Id.*

21 *Fourth*, the Resolution’s Descriptive Title explanations as to the consequences of a
22 “Yes” or “No” vote are deceptive, inherently misleading, and fundamentally unfair.
23 Verified Complaint ¶¶ 56, 61. Contrary to the ballot language, a “Yes” vote means that
24 Scottsdale will impose a new 0.15% sales tax beginning July 1, 2025, and a “No” vote
25 means that no new sales tax rate will be added.

26 *Fifth*, the Descriptive Title explanations are also misleading because a “No” vote
27 preserves the status quo, which will reduce taxes, while a “Yes” vote will increase them.
28 Verified Compl. ¶¶ 56, 62–63. Even if one accepts the characterization of the new tax as

1 “replacing” the old tax, which it does not, a “Yes” vote would “reduce” taxes by only
2 0.05% while a “No” vote would reduce them by 0.20%—300% more. Yet, the
3 Descriptive Title states that a “No” vote shall “deny[] the City the authority to replace and
4 reduce the current 0.20% [sales tax] rate, expiring in 2025.” *Id.* ¶ 25. Indeed, neither the
5 Descriptive Title nor the Tagline text informs voters that sales tax rates will be lower
6 without this measure. But both the Descriptive Title and the Tagline describe the measure
7 as a tax reduction. This is inherently misleading and deceptive.

8 Given its inherently misleading language, the Resolution’s voter referral should be
9 disqualified, and Defendants should be permanently enjoined from placing the measure on
10 the ballot. Verified Compl. ¶¶ 36-40, 44-63, 75-77, 79-80.

11 **B. The City’s Q&A Document violates A.R.S. § 9-500.14.**

12 Arizona law explicitly prohibits a city or town from spending or using any of its
13 resources, including web pages, computer hardware, and personnel, to influence the
14 outcome of an election. A.R.S. § 9-500.14(A).⁸ Arizona law defines “influencing the
15 outcome of elections” as “supporting or opposing a ballot measure, question or
16 proposition, including any bond, budget or override election and supporting or opposing
17 the circulation of . . . a petition for a ballot measure, question[,] or proposition *in any*
18 *manner that is not impartial or neutral.*” A.R.S. § 9-500.14(H)(2) (emphasis added). The
19 legislature added this broad definition to reject the narrow test adopted by the Arizona
20 Court of Appeals in *Kromko v. City of Tucson*, 202 Ariz. 499 (App. 2002). *See* Ariz. Op.
21 Atty. Gen. No. I15-002, 2015 WL 4719005, at *4.

22 In analyzing whether a public official has violated this law, the court should
23 determine “(1) whether the use of public resources has the purpose of supporting or
24 opposing [a] ballot measure, and (2) whether the use of public resources involves
25 dissemination of information in a manner that is not impartial or neutral.” *Id.* at *7. If a
26 reasonable person *could* conclude that the challenged action either supports or opposes a

27 _____
28 ⁸ This prohibition also includes “the use of city-focused or town-focused promotional
expenditures that occur after an election is called and through election day.” A.R.S. § 9-
500.14(B).

1 ballot measure, then a court will look to “whether the use of public resources disseminates
2 information in a manner that is not impartial or neutral,” and, like legislative council’s
3 obligation to provide an impartial analysis, the city’s impartiality must ““avoid[] argument
4 or advocacy”” and or ““be free from any misleading tendency, whether of amplification,
5 of omission, or of fallacy.”” *Id. (citing Tobin v. Rea*, 231 Ariz. 189, 194 ¶¶ 12–13 (2013).
6 Nor should the city use a “rhetorical strategy” to persuade the reader. A.G. Op. at *7; *see*
7 *also Citizens for Growth Mgmt. v. Groscost*, 199 Ariz. 71, 72–73 ¶ 6 (2000).

8 The Q&A Document, under any reasonable reading, demonstrates that the City is
9 using that document to influence voters to vote in favor of passage.

10 For example, the City’s answer to Question 1 repeats the misleading “replace and
11 reduce” ballot language to further mislead voters into approving the new tax measure. As
12 explained above, the new tax does not “replace and reduce” a current tax, but the City’s
13 language is designed to make voters think that is what will happen. Verified Compl. Ex. 5
14 at 1.

15 Question 2 answers, “Will this increase the *current tax rate*?” (emphasis added).
16 The City’s answer is “no.” The question, however, is a *non sequitur*, and the answer is
17 fallacious. The “current tax rate” is irrelevant because the ballot question concerns a
18 future tax rate, the rate as of July 1, 2025. And the answer is false regarding the future tax
19 rate, which will *increase*. *Id.*

20 The answer to Question 2 also states that “[i]f the replacement 0.15% tax is
21 approved, the total sales tax rate [meaning the City sales tax rate added with state and
22 other sales tax rates] in Scottsdale will decrease from 8.05% to 8.00% effective July 1,
23 2025.” *Id.* The explanation fails to inform voters that by not approving the measure the
24 status quo would prevail, which means the old tax would expire on its own terms and the
25 overall sales tax rate would decrease from 8.05% to 7.85%. Nowhere does this answer
26 acknowledge that the tax rate would “decrease” 300% more if voters do not approve the
27 measure.
28

1 Question 7 asks, “Why is a sales tax being proposed to address these expenses
2 rather than Bonds?” *Id.* at 3. The answer to this question is entirely advocacy about why
3 a sales tax is better than a bond. The answer states: “[a] sales tax *more appropriately*
4 distributes the costs to maintain, improve and protect the city’s amenities—the McDowell
5 Sonoran Preserve, city parks, and WestWorld—to everyone who uses them, including
6 tourists and other nonresidents or non-property owners.” *Id.* (emphasis added). This is
7 not impartial; instead, it advocates in favor of the ballot question’s funding mechanism.

8 Question 14 asks, “Could these parks, Preserve and public safety expenses by
9 covered with the General Fund or other revenues?” *Id.* at 6. The obvious,
10 straightforward, and truthful response to this hypothetical question is “Yes.” But the City
11 answers by stating that “[t]hese additional expenses to upgrade aged parks and enhance
12 maintenance and protection of city parks and the Preserve, as well as additional capital
13 improvement for WestWorld would be *deferred* as they compete for other Police and Fire
14 or other primary operating expenses that are of a *higher priority* in the General Fund.” *Id.*
15 (emphasis added). The answer goes on to claim that “[t]he proposed 0.15% tax funding
16 can *greatly enhance* the city’s ability to provide the best renewal, preservation and
17 protection of our city parks and the McDowell Sonoran Preserve and increase our ability
18 to ensure on-going capital asset replacements for our *aged parks*.” *Id.* (emphasis added).
19 The City’s choice of words demonstrates advocacy, specifically the use of terms
20 “deferred,” “higher priority,” “greatly enhance,” and “aged parks.” The word choice is a
21 clear signal to voters about the purported necessity of this measure, and therefore
22 encourages voters to approve the measure.

23 Because the Q&A Document advocates for the passage of the ballot measure while
24 using city resources, and will be placed in the Publicity Pamphlet based on past practice,
25 Plaintiffs have shown a likelihood of winning on the merits of their claim that Scottsdale
26 has engaged in electioneering in violation of Arizona law.

1 **C. The City’s ballot referral violates the Due Process Clause of the**
2 **Arizona Constitution**

3 Plaintiffs also will prevail on their third claim because the Resolution violates their
4 due process rights under Article 2, Section 4, of the Arizona Constitution. Verified
5 Compl. ¶¶ 94–98. Arizona’s Due Process Clause requires laws and government actions to
6 afford Plaintiffs adequate notice and be fundamentally fair. *Cf. Hernandez v. Frohmler*,
7 68 Ariz. 242, 249–50 (1949) (stating that purpose of single subject rule “is to prevent the
8 voter ... from being surprised and enacting something he never intended.”) The City’s
9 Resolution fails in both respects because it is misleading as set forth above.

10 **II. Plaintiffs will suffer irreparable injury without an injunction.**

11 Irreparable injury occurs when the harm is “not remediable by damages” and
12 there is no other adequate legal remedy. *See IB Prop. Holdings, LLC v. Rancho Del Mar*
13 *Apartments, Ltd.*, 228 Ariz. 61, 65 ¶ 10 (App. 2011) (citation omitted). Here, Plaintiffs’
14 injury is patently irreparable.

15 If Defendants are not enjoined, Scottsdale would be allowed to foist its misleading
16 ballot referral on City voters. Whether voters vote “Yes” or “No,” are motivated to vote
17 on the measure or dissuaded, or believe they understand the measure perfectly or are
18 unsure, is irrelevant: The misleading referral language means the will of the voters is
19 unknown, and it calls into question the accuracy and trustworthiness of the election
20 results.

21 The misleading nature of the referral also injures Plaintiffs because the
22 Resolution’s approved ballot language and the City’s Q&A Document are unquestionably
23 designed with the result in mind: to mislead voters into approving the sales tax rate
24 increase. Thus, Plaintiffs, as Scottsdale electors and residents who purchase goods and
25 services in the City, will also pay the price monetarily.

26 This case seeks only equitable relief, and no monetary damages could remedy the
27 problem. There is, moreover, no other appropriate remedy at law to resolve these
28 concerns. Therefore, without an injunction, Plaintiffs will suffer irreparable injury.

1 **III. The balance of hardships tips sharply in Plaintiffs' favor.**

2 Plaintiffs will succeed on the merits and irreparable harm will result absent
3 injunctive relief. These two factors are sufficient to establish that the balance of hardships
4 favor Plaintiffs. *See The Power P.E.O., Inc. v. Emps. Ins. of Wausau*, 201 Ariz. 559, 562
5 ¶ 16 (App. 2002).

6 In contrast to the extensive harms Plaintiffs would face absent an injunction, as set
7 out above, Defendant would not be seriously harmed by an injunction. The City can try
8 again, at a time of its choosing, with a ballot referral that complies with the law. On the
9 other hand, the long-term consequences to the voters of Scottsdale of allowing a legally
10 defective referral to move forward in the election process far outweigh any concerns about
11 delaying the implicant of a tax increase.

12 **IV. Public policy favors the injunction.**

13 Finally, Plaintiffs are entitled to an injunction because it is in the public interest.
14 Scottsdale citizens have a plain interest in not being misled by City leaders on ballot
15 questions and they have a right to the lawful use of City resources. For these reasons,
16 public policy demands that the Resolution's approved ballot language be disqualified and
17 kept off the 2024 General Election Ballot and the corresponding Publicity Pamphlet.
18 *Molera*, 245 Ariz. at 297–98 ¶ 27 (“the proper remedy for failure to satisfy statutory
19 prerequisites is to enjoin the measure from appearing on the ballot.”). Public policy also
20 favors stopping the City from using government resources to attempt to influence the
21 outcome of an election. *Kromko*, 202 Ariz. at 502 ¶ 8 (“the information that may be
22 presented in the pamphlet is controlled by the election statutes that require a fair and
23 impartial presentation of information on the issues.”).

24 **V. No bond should be required.**

25 No bond should be required because Plaintiffs seek permanent injunctive relief
26 given the exigent circumstances, and because this case is brought in the public interest.
27 *See In re Wilcox Revocable Tr.*, 192 Ariz. 337, 341 ¶¶ 19–20 (App. 1998) (courts may
28 waive bond requirement in appropriate circumstances); *cf. Save Our Sonoran, Inc. v.*

1 *Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005) (“requiring nominal bonds is perfectly
2 proper in public interest litigation.”); *Ctr. For Food Safety v. Vilsack*, 753 F. Supp.2d
3 1051, 1062 (N.D. Cal. 2010), *rev’d on other grounds*, 363 F.3d 1166 (9th Cir. 2001)
4 (waiving bond requirement because “requiring the organization to pay a bond would
5 fatality [sic] harm its ability to bring lawsuits on behalf of the public interest.”). Even if
6 the Court should take an interim step of granting a preliminary injunction before granting
7 permanent relief, no bond should be required. In that instance, the Court will have
8 determined that Plaintiffs demonstrated a high likelihood of success on their statutory and
9 constitutional claims.

10 CONCLUSION

11 Plaintiffs respectfully request that the Court grant their application for order to
12 show cause, decide their motion for preliminary and permanent injunction on an expedited
13 basis, and grant their motion for preliminary and permanent injunction as requested
14 herein.

15
16 **RESPECTFULLY SUBMITTED** this 17th day of June 2024.

17 GOLDWATER INSTITUTE

18 /s/ Scott Day Freeman

19 Scott Day Freeman (019784)

20 Adam Shelton (038252)

21 Scharf-Norton Center for

22 Constitutional Litigation at the

23 GOLDWATER INSTITUTE

24 500 E. Coronado Rd.

25 Phoenix, Arizona 85004

26 *Attorneys for Plaintiffs*