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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

DEBORAH McEWEN, *et al.*,

Plaintiff,

vs.

BOARD OF DIRECTORS OF THE
ARIZONA COMMERCE AUTHORITY,
et al.,

Defendant.

Case No. CV2025-001929

**MOTION OF ARIZONA FREE
ENTERPRISE CLUB AND GRAND
CANYON LEGAL CENTER TO FILE
A BRIEF AS *AMICI CURIAE***

(Assigned to the Hon. Michael Herrod)

The Arizona Free Enterprise Club and Grand Canyon Legal Center (collectively, "Proposed *Amici*") respectfully move the Court for leave to file a brief in this proceeding as *amici curiae* in support of the Plaintiffs.

Proposed *Amicus* Arizona Free Enterprise Club is an Arizona nonprofit social welfare corporation that engages in public education and advocacy in support of free markets, limited government, and economic growth in the State of Arizona.

Proposed *Amicus* Grand Canyon Legal Center is a project of the AZ Liberty Network, an Arizona charitable organization that is focused on increasing public knowledge and civic participation with respect to social, cultural and economic issues affecting Arizona. The Grand Canyon Legal Center was established to champion in civil litigation constitutional rights and structural limitations on government power.

1 Arizona's Gift Clause vindicates individual rights, the rule of law, and the security
2 of the public fisc by constraining government actors from misappropriating taxpayer-
3 owned resources to enrich favored private interests. The proper construction and rigorous
4 application of this constitutional precept is central to the organizational missions of both
5 Proposed *Amici*.

6 Although no specific rule controls the filing of *amicus curiae* briefs in the Superior
7 Court, the judiciary has generally welcomed such submissions whenever an "[a]micus
8 curiae can provide information, perspective, or argument that can help the . . . court
9 beyond the help that the parties' lawyers provide." A.R.C.A.P. 16(b)(1)(C)(iii). Moreover,
10 courts have "inherent power to do all things reasonably necessary for administration of
11 justice." *Schavey v. Royston*, 8 Ariz. App. 574, 575 (1968). And it has been remarked that
12 "an amicus who makes a strong but responsible presentation in support of a party can truly
13 serve as the court's friend." *Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 131 (3d
14 Cir. 2002) (Alito, J.). Consequently, Arizona trial courts have long accepted *amicus curiae*
15 briefs even in the absence of a specific rule authorizing such briefs. *See, e.g., Home*
16 *Builders Ass'n of Cent. Ariz. v. City of Apache Junction*, 198 Ariz. 493, 496 ¶ 6 n.4 (App.
17 2000) ("Several amici have appeared, both here and in the trial court . . .").

18 For these reasons, Proposed *Amici* respectfully request that the Court grant them
19 leave to participate as *amici* in these proceedings.¹ To that end, Proposed Amici submit a
20 proposed order granting this Motion and attach the Amicus Brief hereto.

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¹ Consistent with A.R.C.A.P. 16(b)(2)-(3), the undersigned state that they have read the Defendants' Motion to Dismiss, and that no person other than the Proposed Amici has provided financial resources for the preparation of the brief. Moreover, consistent with A.R.C.A.P. 16(a) this brief has not been authored, in whole or in part, by counsel for any party.

1 RESPECTFULLY SUBMITTED this 5th day of September, 2025.

2
3 FRAZIER LAW, PLLC

4
5 By: /s/ Brennan A.R. Bowen

6 Brennan A.R. Bowen

7 Grant H. Frazier

8 Maddalena S. Savary

9 *Attorneys for Amici*

1 **CERTIFICATE OF SERVICE**

2 ORIGINAL filed this 5th day of September, 2025 with:

3 Clerk of the Superior Court
4 Maricopa County Superior Court
5 201 W. Jefferson
6 Phoenix, Arizona 85003

7 COPY electronically delivered this 5th day of September, 2025 to:

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

DEBORAH McEWEN, *et al.*,

Plaintiff,

vs.

BOARD OF DIRECTORS OF THE
ARIZONA COMMERCE AUTHORITY,
et al.,

Defendant.

Case No. CV2025-001929

ORDER

Good cause appearing from the motion of Arizona Free Enterprise Club and Grand
Canyon Legal Center for leave to file a brief as *amici curiae*,

IT IS HEREBY ORDERED, granting the motion;

IT IS FURTHER ORDERED, the proposed brief attached to the motion is deemed
to be filed.

DATED this _____ day of _____, 2025.

The Honorable Michael Herrod
Maricopa County Superior Court

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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 DEBORAH McEWEN, *et al.*,

11 Plaintiff,

12 vs.

13 BOARD OF DIRECTORS OF THE
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14 *et al.*,

15 Defendant.

Case No. CV2025-001929

**BRIEF OF ARIZONA FREE
ENTERPRISE CLUB AND GRAND
CANYON LEGAL CENTER AS
AMICI CURIAE**

(Assigned to the Hon. Michael Herrod)

16 The Arizona Free Enterprise Club and Grand Canyon Legal Center (collectively,
17 “*Amici*”) respectfully submit this brief in opposition to Defendants’ Motion to Dismiss
18 (the Motion”) and in support of Plaintiffs’ constitutional challenge.

19 **INTRODUCTION**

20 “What’s in a name? That which we call a rose [] By any other name would smell as
21 sweet.” *Moore v. Smotkin*, 79 Ariz. 77, 79 (1955) (quoting William Shakespeare, *Romeo*
22 *and Juliet* act 2, sc. 2). As it was in Shakespeare’s time, so too in ours. One might call a
23 thing by a different name, but the thing remains what it is. What the Arizona Motion
24 Picture Production Program (the “Program”) calls a tax credit is, in reality, a direct subsidy
25 of public funds to private actors without adequate consideration for the gift.
26

1 The Program—codified at A.R.S. §§ 41-1517, 43-1082, and 43-1165—authorizes
2 up to \$125 million annually in refundable tax credits to film production companies.
3 Although its financial benefits are labeled as “tax credits,” the Program’s subsidies are in
4 fact direct payments of public funds to private enterprises. Unlike general tax exemptions
5 or deductions, the Program operates as an appropriation of state resources to a narrow
6 class of private actors, and does so without receiving proportionate (or, arguably, any)
7 consideration in return for that expenditure.

8 The Arizona Constitution’s Gift Clause prohibits the State from making “any
9 donation or grant, by subsidy or otherwise, to any individual, association, or corporation.”
10 Ariz. Const. art. IX, § 7. A century ago, the Arizona Supreme Court explained the purpose
11 behind this constitutional prohibition:

12 The Gift Clause represents the reaction of public opinion to the orgies of
13 extravagant dissipation of public funds by counties, townships, cities, and
14 towns in aid of the construction of railways, canals, and other like
15 undertakings during the half century preceding 1880, and it was designed
16 primarily to prevent the use of public funds raised by general taxation in aid
of enterprises apparently devoted to quasi public purposes, but actually
engaged in private business.

17 *Turken v. Gordon*, 223 Ariz. 342, 346 (2010) (quoting *Day v. Buckeye Water*
18 *Conservation & Drainage Dist.*, 28 Ariz. 466, 473 (1925)) (brackets omitted); *see also*
19 *Schires v. Carlat*, 250 Ariz. 371, 374 ¶ 6 (2021) (“In a nutshell, the evil to be avoided was
20 the depletion of the public treasury or inflation of public debt by a public entity engaging
21 in non-public enterprises, by giving advantages to special interests,”) (cleaned up and
22 citations omitted).

23 Contrary to the Defendants’ arguments, not all tax policies are immune from the
24 Gift Clause’s restrictions, nor would enforcing the Gift Clause here “upend state tax
25 policy.” Motion. at 1. Two of the most poignant distinctions here are between (1) ordinary
26 tax exemptions or non-refundable credits that merely reduce liability (*i.e.*, mechanisms

1 that reduce what a taxpayer owns but confer no benefit beyond negating what is owed);
2 and (2) refundable credits, like those here, which operate as direct transfers of public
3 money (*i.e.*, can provide money in excess of what a taxpayer owes). And the refundable
4 credits offered by the Program go a step further because of the extremely narrow scope of
5 taxpayers who may receive them, as opposed to other refundable tax credits that are
6 widely available. These distinctions are outcome-determinative here.

7 INTERESTS OF AMICI CURIAE

8 *Amicus* Arizona Free Enterprise Club is an Arizona nonprofit social welfare
9 corporation that engages in public education and advocacy in support of free markets,
10 limited government, and economic growth in the State of Arizona.

11 *Amicus* Grand Canyon Legal Center is a project of the AZ Liberty Network, an
12 Arizona charitable organization that is focused on increasing public knowledge and civic
13 participation with respect to social, cultural and economic issues affecting Arizona. The
14 Grand Canyon Legal Center was established to champion in civil litigation constitutional
15 rights and structural limitations on government power.

16 The Arizona Gift Clause vindicates individual rights, the rule of law, and the
17 security of the public fisc by constraining government actors from misappropriating
18 taxpayer-owned resources to enrich favored private interests. The proper construction and
19 rigorous application of this constitutional precept is central to the organizational missions
20 of both Proposed *Amici*.

21 ARGUMENT

22 The Arizona Supreme Court has “adopted a two-pronged test . . . to determine
23 whether a public entity has violated the Gift Clause.” *Schires*, 250 Ariz. at 374 ¶ 7
24 (explaining the court’s previous decision in *Wistuber v. Paradise Valley Unified Sch. Dist.*,
25 141 Ariz. 346, 349 (1984)). “First, a court asks whether the challenged expenditure serves
26 a public purpose.” *Id.* “If not, the expenditure violates the Gift Clause, and the inquiry

1 ends.” *Id.* at 374–75. “If a public purpose exists, the court secondarily asks whether ‘the
2 value to be received by the public is far exceeded by the consideration being paid by the
3 public.’” *Id.* at 375 (citation omitted). “If so, the public entity violates the Gift Clause by
4 ‘providing a subsidy to the private entity.’” *Id.* at 375 (citation omitted).

5 Here, Defendants largely attempt to avoid this two-prong analysis by arguing,
6 among other things, that the Gift Clause has no application to the Program’s refundable
7 tax credits either because (1) tax credits are not “a gift, donation, grant, or subsidy” within
8 the Gift Clause’s scope, Motion at 6, or (2) because the Gift Clause categorically does not
9 apply to tax credits under Defendants’ reading of *Kotterman v. Killian*, 193 Ariz. 273
10 (1999), *see id.* at 5.¹ Defendants are mistaken.

11 As detailed below, the Gift Clause is not limited to donations, grants, and subsidies,
12 nor are all tax credits categorically outside the sweep of the Gift Clause. Thus, the Gift
13 Clause’s two-prong analysis applies to the Program, and the Program fails at least the
14 second prong as the consideration here (to the extent there is any) is grossly
15 disproportionate to the benefits the Program confers on private actors.

16 **I. The Gift Clause Applies to Subsidies in All Forms, Including**
17 **Refundable Tax Credits.**

18 The Gift Clause is written in sweeping terms: the state shall not “ever ... make any
19 donation or grant, *by subsidy or otherwise*.” Ariz. Const. art. IX, § 7 (emphasis added). By
20 its plain language utilizing the phrase “or otherwise,” the Gift Clause is not—as
21 Defendants suggest—limited to “a gift, donation, grant, or subsidy.” *See State v. Korzep*,
22 165 Ariz. 490, 493 (1990) (“We give words their usual and commonly understood
23 meaning unless the legislature clearly intended a different meaning.”). Indeed, Arizona
24 courts have long applied the Gift Clause beyond direct appropriations and have struck
25 down such other forms of subsidies as the conferral of indirect or non-monetary benefits

26 ¹ Defendants raise other arguments in support of their Motion to Dismiss, which Plaintiffs
and the other amici address, and which are not the subject of this brief.

1 on private entities. *See, e.g., Rowlands v. State Loan Bd.*, 24 Ariz. 116, 123 (1922)
2 (forgiving interest on state loans violated the Gift Clause); *Neptune Swimming Found. v.*
3 *City of Scottsdale*, 256 Ariz. 551, 560 ¶¶ 28–29 (2024) (explaining that even “foregoing
4 collecting” revenue may constitute a subsidy).

5 Thus, as the Gift Clause plainly provides, the State may “otherwise” bestow a
6 benefit on a private actor that runs afoul of the Gift Clause even when there is no direct
7 “gift, donation, grant, or subsidy.” *See Neptune Swimming Found.*, 256 Ariz. at 560 ¶ 28
8 (“The framers did not restrict their prohibition [in the Gift Clause] to the grant of public
9 money.” (quoting *Ariz. Ctr. L. Pub. Int. v. Hassell*, 172 Ariz. 356, 367 (App. 1991))). The
10 refundable tax credits here are at least a form of “otherwise” conferred public benefits to
11 private actors, and are therefore subject to Gift Clause analysis.

12 What’s more, as Plaintiffs properly highlight, the refundable film credits at issue
13 are, in reality, subsidies in both form and effect. *See Plaintiffs’ Resp.* at 2 (explaining how
14 the Program’s tax credits can result the in expenditure of public funds beyond a tax-filer’s
15 tax liability); *see also id.* at (explaining how subsidies are usually “indirect” and can
16 encompass “tax breaks” (quoting *Subsidy*, Black’s Law Dictionary (12th ed. 2024))).

17 Indeed, the Congressional Budget Office (“CBO”) recognizes that refundable tax
18 credits are essentially “subsidies delivered through the tax system” that “could
19 alternatively be provided through spending programs.” Janet Holtzblatt, Report:
20 *Refundable Tax Credits*, CBO (Jan. 24, 2013)² (capitalization normalized). And the CBO
21 acknowledges that the “choice between using the tax system and relying on spending
22 programs hinges largely on administrative considerations, such as the effectiveness in
23 reaching the target population, timeliness, and the ability to ensure compliance with rules.”
24 *Id.* Put differently, whether through spending programs or refundable tax credits, the
25 government is subsidizing private actors. *See Gordon Gray, Reassessing the Budgetary*

26 ² Available at: <https://www.cbo.gov/publication/43767#section3>.

1 *Treatment of Refundable Tax Credits*, American Action Forum (Mar. 9, 2023)³ (“Both
2 congressional budget agencies and the executive branch record the refundable portion of
3 refundable credits as spending or outlays.”). In either event, a refundable tax credits is still
4 a subsidy, and the Gift Clause applies to subsidies.

5 In sum, if the recipient’s tax liability is less than the amount of the Program’s tax
6 credit, the State issues a check for the difference. That is a subsidy or “otherwise” an
7 expenditure of public funds to a private actor and plainly within the Gift Clause’s scope.

8 **II. Neither Tax Policy Generally, No Tax Credits Specifically Are Per Se**
9 **Exempt from Gift Clause Scrutiny.**

10 Defendants’ claim that “[a]pplying the Gift Clause to tax credits would upend
11 Arizona’s tax framework” is overwrought. *See* Motion at 9. Defendants contend that
12 because tax policy is a legislative function, courts cannot apply the Gift Clause to tax
13 credits—invoking Arizona’s separation of powers doctrine. *Id.* at 7–9. They also argue
14 that the Arizona Supreme Court’s *Kotterman* decision categorically exempts tax credits
15 from Gift Clause challenges. *Id.* at 5. Both arguments fail.

16 *First*, tax policy is not exempt from Gift Clause analysis. Indeed, courts have
17 repeatedly subjected tax-based subsidies to Gift Clause scrutiny. *See, e.g., Maricopa Cnty.*
18 *v. State*, 187 Ariz. 275, 280 (App. 1996) (holding that when a “taxing entity modifies its
19 laws to impose on itself an obligation to refund revenues that it collected lawfully in the
20 past” it “constitutes a transaction that implicates the Gift Clause”); *Pimalco, Inc. v.*
21 *Maricopa Cnty.*, 188 Ariz. 550 (App. 1997) (applying the two-pronged Gift Clause
22 analysis to the elimination of tax liability). Arizona’s separation of powers doctrine does
23 not command otherwise because while “the legislature has plenary power over taxation,”
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25 ³ Available at: <https://www.americanactionforum.org/research/reassessing-the-budgetary-treatment-of-refundable-tax-credits/#:~:text=The%20budgetary%20treatment%20of%20refundable%20tax%20credits,recorded%20as%20spending%20for%20federal%20budgetary%20purposes.>
26

1 that power remains “[s]ubject to constitutional limitations.” *Waddell v. 38th St. P’ship*,
2 173 Ariz. 137, 140 (Tax Ct. 1992). And the Gift Clause is precisely such a limitation. This
3 point is well covered in President Petersen’s Amicus Brief, at 3–5, and Amici here will not
4 belabor it here.

5 *Second*, the Arizona Supreme Court’s decision in *Kotterman*, 193 Ariz. 273, is not
6 the categorical bar of Gift Clause challenges to tax credits that Defendants suppose. That
7 case upheld a non-refundable credit for contributions to school tuition organizations—*i.e.*,
8 upheld a tax credit that should only reduce existing tax liability. *See generally id.* There,
9 the Court reasoned that the non-refundable tax credit did not amount to a “gift ” because
10 “[o]ne cannot make a gift of something that one does not own.” *Id.* at 288 ¶ 52. But this
11 reasoning cuts against Defendants here because a refundable tax credit results in providing
12 a payment to a tax-filer beyond what that filer is owed, and that money did belong to the
13 state (and the public) before it was given away.

14 Put differently, refundable credits (like those used by the Program) are categorically
15 different than non-refundable tax credits (like those used in *Kotterman*). This is because
16 refundable credits are “the equivalent of a direct expenditure program” because they
17 provide cash payments to taxpayers with no liability. *See Stanley S. Surrey, Tax Incentives*
18 *as a Device for Implementing Government Policy*, 83 HARV. L. REV. 705, 723–24 (1970).
19 Most tax credits and deductions are constitutionally unproblematic because they do not
20 entail actual expenditures of public money or confer a benefit beyond reducing tax
21 liability.⁴ But programs like this one—where the state makes direct payments to private
22 actors—can cross the constitutional line.

23 ⁴ There are other tax subsidies, such as transferable tax credits, that also confer benefits to
24 private actors beyond reducing tax liability. *See Rachel Chang, Understanding Direct Pay*
25 *and Transferability for Tax Credits in the Inflation Reduction Act*, Center for American
26 Progress (Jun. 5, 2023) <https://www.americanprogress.org/article/understanding-direct-pay-and-transferability-for-tax-credits-in-the-inflation-reduction-act/> (explaining how certain transferable tax credits function). Transferable tax credits may also be problematic under the Gift Clause because they allow for the monetization and selling of tax credits,

1 Indeed, this distinction was recognized in *Maricopa Cnty.*, 187 Ariz. 275, where the
2 court addressed the retroactive application of *ad valorem* property taxes to certain parcels
3 of land depending on their classification. The defenders of the tax “reason[ed] that
4 allowing taxpayers to obtain refunds of excess taxes paid for previous years d[id] not
5 constitute making a gift of public funds where the excess payments resulted from the
6 taxpayers’ failure to comply” with certain procedural requirements. *Id.* at 280. Thus, the
7 proponents of the tax classification “asserted that if the Gift Clause applies [t]here, then
8 there is nothing to prevent it from applying as well to special valuation methods, property
9 tax classifications, and other uses of tax policy to further economic or social purposes.” *Id.*
10 Put differently, just like Defendants here, they argued against the applicability of the Gift
11 Clause to the tax policy at issue based upon a hypothetical parade of policy horrors that
12 would result in Arizona’s tax system if the Gift Clause applied.

13 The Court rejected that approach to the Gift Clause and tax policy and reasoned, in
14 relevant part, as follows:

15 The flaw in appellants’ reasoning is that it draws no distinction between
16 legislative measures that result in tax benefits that take effect prospectively
17 and those that annul closed taxing transactions in order to confer tax benefits
18 retroactively. In the first category, the taxing entity *forgoes revenues* that it
19 could have chosen to collect in the future by changing its laws prospectively
20 so the taxpayers’ obligation to pay never arises. In the second category,
21 however, the taxing entity *modifies its laws to impose on itself an obligation
to refund revenues* that it collected lawfully in the past. The operation of HB
2007 falls into the second category and thus constitutes a transaction that
implicates the Gift Clause.

22 *Id.* (emphasis added). In short, the key to the application of the Gift Clause was affirmative
23 payment of money as opposed to forgoing collections. So too here.

24 Here, the Program authorizes precisely the type of cash transfer at issue in
25 *Maricopa Cnty.* For example, as Plaintiffs note, one pre-approved project (MoPic-2024-

26 but that question is not one that need be answered here for the Court to find that the
challenged Program is unconstitutional.

1 004) stands to receive over \$1.2 million. Plaintiffs' Resp. at 11. If that company's tax
2 liability is less than \$1.2 million, the State is authorized to cut that company a check for
3 the difference. See A.R.S. § 42-1118(A)(1) ("If it is determined that the amount cannot be
4 credited against a tax or installment of taxes due from the taxpayer, the department
5 may . . . Refund the entire amount of tax, interest and penalty, in a lump sum or in not
6 more than five annual installments, to the taxpayer from whom it was collected . . .").
7 That is a public expenditure, indistinguishable from a direct subsidy appropriated through
8 the budget process. Thus, the Gift Clause is implicated, and its protections apply.

9 **III. The Program Benefits a Narrow Set of Private Recipients—Unlike**
10 **Other Broadly Available Refundable Credits—And Does So Without**
11 **Adequate Consideration.**

12 Because the Gift Clause applies, the Program must serve a public purpose and
13 receive adequate consideration for its expenditure in order to pass constitutional muster.
14 See *Schires*, 250 Ariz. at 374–75 ¶ 7. The consideration inquiry "focuses on what the
15 public is giving and getting from an arrangement and then asks whether the 'give' so far
16 exceeds the 'get' that the government is subsidizing a private venture in violation of the
17 Gift Clause." *Id.* at 376 ¶ 14. The gross disparity between give and get here is the
18 Program's most obvious failure.

19 The Program cannot satisfy the consideration prong. Here, the State does not
20 receive any consideration for the subsidy conferred by the Program—save perhaps an
21 acknowledgement that a given film was shot or produced in Arizona. But that is not
22 enough. As the Arizona Supreme Court recently explained, Potential future tax revenues
23 and economic development, without any commitment from the beneficiaries of the
24 expenditure, is not adequate consideration under the Gift Clause. See *id.* at 377 ¶ 16
25 (explaining that an "anticipated indirect benefit" is "valueless" for purposes of the Gift
26 Clauses consideration prong); *id.* ¶ 18 ("A business's obligation to pay taxes is
independent of an economic development agreement. As with anticipated economic

1 impact, fiscal impact is an indirect benefit that is irrelevant to our analysis”). And the only
2 arguable direct benefit here is recognition that a film was produced or shot in Arizona; but
3 the value of that is nearly (if not totally) impossible to quantify, which is required for Gift
4 Clause purposes. *See id.* at 376 ¶ 14 (“Analysis of adequacy of consideration for Gift
5 Clause purposes focuses on the objective fair market value of what the private party has
6 promised to provide in return for the public entity’s payment.” (cleaned up, citation
7 omitted)). Thus, there is little (if any) consideration provided for the large government
8 subsidies to members of the film industry.

9 Moreover, this case may also represent one of the rare cases where public purpose
10 is also lacking. Generally, there is “difficulty in precisely defining ‘public purpose,’”
11 which leads courts to “take ‘a broad view of permissible public purposes’ and give
12 significant deference to the judgment of elected officials.” *Id.* 375 ¶ 9 (quoting *Turken*,
13 223 Ariz. at 346 ¶ 28). But that discretion is not limitless. *See id.* (providing cases
14 establishing that “public money spent to defeat a proposed amendment” to an existing law
15 “served a political purpose rather than a public purpose”). It strains credulity to say that
16 subsidizing a highly specific private industry via tax revenue is a public purpose. This is
17 not true for all tax credits. For example, providing tax breaks for people having children
18 serves a public purpose because it encourages citizens to make more citizens (*i.e.*, have
19 babies). And the government clearly has a public interest in the birth of the next generation
20 of citizens because without citizens the government would cease to exist. But the Program
21 here appears to be the very sort of favoritism that the Gift Clause was designed to prevent.

22 Indeed, Arizona courts have emphasized that the Gift Clause was designed to
23 prevent favoritism toward special interests, particularly subsidies to railroads and other
24 private enterprises during the territorial era. *See Indus. Dev. Auth. v. Nelson*, 109 Ariz.
25 368, 372 (1973) (“These provisions were designed to prevent the economic losses of the
26 19th century suffered by municipal corporations which gave money, credit or other

1 valuable advantages to railroads, canal companies, etc. When the private corporations
2 failed in their obligations, the municipalities were required to pay the obligations from
3 public treasuries.”). The Program revives precisely that evil: selective transfers of public
4 funds to private businesses under the guise of economic development with the public left
5 to pay these obligations from its treasuries.

6 Because there is no consideration sufficient to save the Program, the Court need not
7 wade into the public purpose analysis here. But the Program fails in any event.

8 CONCLUSION

9 In sum, the Program is not merely a tax credit scheme; it is a direct appropriation of
10 public funds to private enterprises masquerading as tax relief. The Gift Clause squarely
11 prohibits such subsidies. Distinguishing between non-refundable tax credits or programs
12 where only extant tax liability is extinguished (*i.e.*, *Kotterman*) and refundable ones is
13 critical: the former involve no expenditure of public funds, while the latter do. And even
14 among refundable credits, this Program is unique in crossing the constitutional line
15 because it benefits only a narrow private industry, with no proportional return to
16 taxpayers. Put differently, striking down the Program would not precipitate bedlam in the
17 Arizona tax code. Thus, there is nothing exempting the Program from the Gift Clause’s
18 reach, under which the Program undoubtedly fails scrutiny.

19 For these reasons, the Motion to Dismiss should be denied, and the Program should
20 be subjected to full Gift Clause analysis and, eventually, struck down as unconstitutional.

21
22 RESPECTFULLY SUBMITTED this 5th day of September, 2025.

23 FRAZIER LAW, PLLC

24 By: /s/ Brennan A.R. Bowen

25 Brennan A.R. Bowen

26 Grant H. Frazier

Maddalena S. Savary

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