SUPREME COURT OF ARIZONA

CENTER FOR ARIZONA POLICY, INC., et al. Plaintiffs/Plaintiffs, v. ARIZONA SECRETARY OF STATE, et al. Defendants/Appellees, and ARIZONA ATTORNEY GENERAL, and VOTERS' RIGHT TO KNOW, Intervenor-Defendants/Appellees.	Arizona Supreme Court No. CV-24-0295-PR Court of Appeals Division One No. 1 CA-CV 24-0272 Maricopa County Superior Court No. CV2022-016564 FILED WITH WRITTEN CONSENT OF ALL PARTIES

AMICUS CURIAE BRIEF OF JOHN D. LESHY IN SUPPORT OF APPELLEES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Treatises

Constitutional Provisions

STATEMENT OF IDENTITY AND INTEREST

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ARGUMENT

I. Introduction.

In its opinion, the Court of Appeals noted that both the Voter's Right to Know Act ("VRTK Act") being challenged and Section 16 of Article VII of the Arizona Constitution "were designed to fight corruption and undue influence in elections," and that Section 16 "exhibits the framers' intent to give more deference to transparency in election financing." Op. ¶20 (citing John D. Leshy, *The Arizona State Constitution* 16 (2d ed. 2013).

This observation is absolutely correct, but Section 16 is not the only evidence of the framers' commitment to free and fair elections untainted by undue influence. As discussed more fully below, other provisions of the Constitution and

the historical context of its adoption all support the conclusion that the VRTK Act is completely in harmony with the framers' concern for safeguarding the purity of the electoral process, a process that they thought absolutely vital to the proper functioning of the Arizona government. The Act thus advances the framers' "noble vision of government: a healthy skepticism about concentrations of power, balanced by a deep-seated optimism that government should play an active, positive role for social betterment." John D. Leshy, *The Arizona State Constitution*, 43 (2d ed. 2013) (hereafter *AZCON*)[1].

II. The historical context of the Arizona Constitution compels the conclusion that the VRTK Act is constitutional and completely consistent with the intent of the framers.

When the VRTK Act is considered in the historical context of 1911, the year that the Arizona Constitution was overwhelmingly ratified by the voters, the only reasonable conclusion is that the Act aligns perfectly with the overriding intent of the framers. This Court has consistently recognized that the Arizona Constitution should be construed in a manner that gives effect to the intent and purpose of the framers and the voters who adopted it. *Brewer v. Burns*, 222 Ariz. 234, 239 ¶ 26 (2009) (quoting *State ex rel. Morrison v. Nabours*, 79 Ariz. 240, 245, (1955)).

[1] As noted in *AZCON*, its historical discussion was largely drawn from Leshy's earlier deep exploration of the background, basic themes and provisions of the Arizona Constitution of 1910. *AZCON* at 3.

The Arizona Constitution was "drafted at the high-water mark of the progressive movement," an era that historian Richard Hofstadter enduringly labeled the "age of reform" in his classic work of the same name. John D. Leshy, *The Making of the Arizona Constitution*, 20 Ariz. St. L.J. 1, 6 (1988) (hereafter "*Making*"). It was "marked by enormous popular interest in government in general, with widespread debate over not merely its role in American life, but also its structure and mechanics." *Id*.

Unsurprisingly, Arizona's nearly half-century of experience being governed as a U.S. Territory significantly influenced the crafting of its Constitution in 1910. The territorial government was, according to a widely-held perception both in Arizona and in the U.S. Congress, dominated by large corporate interests mostly funded by outside investors. *AZCON* at 5–7; *Making* at 10–13 (esp. notes 51–62). George W.P. Hunt, the President of the 1910 Constitutional Convention who would go on to serve seven terms as Governor, noted that when Arizona was a territory, these interests "reigned . . . virtually untrammeled," and historians have generally agreed with his assessment. *Making* at 12, n. 59. Convention delegates were understandingly concerned that the "corruption of territorial days" could give wealthy interests "undue influence" on the decisions of the new state's government. *Id*. at 69; *see also AZCON* at 16.

Arizona's demography in 1910 was "not as far out of the mainstream of American life as one might have imagined by considering only its sparse population and relative geographic remoteness." *Making* at 29–30. The framers of the Arizona Constitution represented a cross-section of interests, with most having backgrounds in law, business, ranching, and mining. *Id*. at 34. Many were not only politically experienced but ambitious and would go on to exercise considerable influence on the new state's governance for decades to come.[2] *Id*. at 36–40; *see also AZCON* at 9–10.

"The most constant thread running through the Arizona Constitution is its emphasis on democracy, on popular control expressed primarily through the electoral process," which reflected the framers "shared belief" that "if the citizenry sufficiently controlled the government, social justice could be accomplished." *AZCON* at 14; *see also Making* at 59–63. The Constitution went to extraordinary lengths to ensure that practically every important officer of both the state and local governments, including judges, would be elected by a vote of the people. *AZCON* at 15; *see also Making* at 60. Moreover, it required primary elections to select candidates for all these elective offices, which was a "distinctly progressive innovation in 1910, recognizing that general elections could be made meaningless

[2] As would delegate Morris Goldwater's nephew, Senator and presidential candidate Barry Goldwater. *Making* at 37-38.

if political machines handpicked the candidates." *AZCON* at 239; *see also Making* at 62.

In the original version of the Constitution, the "reins of [electoral] accountability were further tightened by short terms of office; elections for nearly all state and local government offices were to be held every two years." *AZCON* at 16; *see also Making* at 60–62. Finally, the Constitution included the progressive movement's innovative tools of direct democracy, the initiative, referendum, and recall. *AZCON* at 12; *see also Making* at 32–33, 63.

Understandably, given their heavy reliance on elections as the key to popular control of government, the framers sought to have those elections be fair and free from undue influence. Thus, the Constitution provided for the secret ballot, Ariz. Const. art. VII, § 1; *AZCON* at 235; *see also Making* at 68, and required all elections to be "free and equal" where "no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Art. II, § 21; *AZCON* at 87.

It also specified that "[t]here shall be enacted . . . laws to secure the purity of elections and guard against abuses of the elective franchise," Art. VII, § 12; *AZCON* at 241; *see also Making* at 69, and directed the first state legislature to enact a law requiring publicity of all contributions to expenditures by candidates for public office. Art. VII, § 16; *AZCON* at 244; *see also Making* at 68. It also

prohibited corporations from making "any contribution of money or anything of value for the purpose of influencing any election or official action." Art. XIV, § 18, *AZCON* at 352–53; *see also Making* at 68–69. And it forbade ever requiring a fee in order to have the name of any candidate placed on a ballot in any election. Art. VII, § 14; *AZCON* at 243. These provisions all remain in the Constitution today. *See Making* at 5–6, n. 20.

Other parts of the Arizona Constitution can likewise fairly be said to reflect this concern. Section 13 of Article II forbids any law from "granting to any citizen, class or citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations." Art. II, § 13. Commentators have suggested that this section reflects a concern about the political influence of powerful corporations. *See AZCON* at 73 n.18–19; *Making* at 11–13, 29. Similar language prohibiting local or special laws granting special privileges, immunities, or franchises is found in Article IV. Art. IV, part 2, § 19 (13). *See AZCON* at 73-74,160–63; *Making* at 96. Likewise, Section 1 of Article IX provides, among other things, that the "power of taxation shall never be surrendered, suspended, or contracted away," and that taxes shall be "uniform." Art. IX, § 1; *AZCON* at 255–56. And Section 7 of the same article forbids any unit of government from donating to or subsidizing "any individual,

association, or corporation" except under certain conditions. Art. IX, § 7; *AZCON* at 268–71.

The framers' concern about corporate and wealthy interests dominating the electoral process was characteristic of the progressive movement. It also was not an issue on which the political parties were sharply divided. For example, in a widely reported speech on the "New Nationalism," delivered in August 1910, a few weeks before the Arizona framers began deliberating, former president Theodore Roosevelt, the nation's most prominent Republican, said that "the special interests should be driven out of politics," and that efforts to "prevent the political domination of money" were essential, making it "particularly important that all moneys received or expended for campaign purposes should be publicly accounted for, not only after election, but before election as well." T. Roosevelt, *The New Nationalism*, 21, 29, 30 (1910) (available at https://www.loc.gov/resource/gdcmassbookdig.newnationalism01roos/?sp=1&st=gallery (last accessed 6/17/2025); *see also* Robert S. La Forte, *Theodore Roosevelt's Osawatomie Speech*, 32 Kansas Hist. Q. 187–200 (1966) (available at https://web.archive.org/web/20031019121849/http://kancoll.org/khq/1966/66_2_laforte.htm (last accessed 6/17/2025).

Thus, both the historical context and the content of the Arizona Constitution demonstrate a fervent commitment to election integrity and a government free from undue influence by outside, monied interests.

III. Because the Court must construe the Constitution as a whole and give effect to all of its provisions, both Section 6 and Section 8 of Article II must be interpreted in harmony with all those provisions discussed above aimed at securing free and fair elections.

Since Arizona's first year of statehood, this Court has insisted that the Arizona Constitution be construed as a whole document. *State v. Osborne*, 14 Ariz. 185, 204 (1912). As the *Osborne* Court explained, there is a presumption that every clause in a constitution was inserted for a purpose, and each provision must be construed to harmonize with other provisions. *Id.*; *see also Gherna v. State,* 16 Ariz. 344, 353 (1915) ("If different portions [of a constitution] seem to conflict, the courts must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory." (quoting Thomas M. Cooley, LL.D., *Treatise on the Constitutional Limitations* 91–92 (7th ed. 1903))); *Greenlee County v. Laine*, 20 Ariz. 296, 300 (1919) (also quoting Cooley).

While Arizona courts have applied this rule of construction when confronted with seemingly contradictory amendments to the Constitution, *see, e.g. Hughes v. Martin*, 203 Ariz. 165, 168 ¶14 (2002) (harmonizing two constitutional

amendments adopted by the voters on the same day), it is even more imperative when construing provisions that were all part of the original Constitution that was submitted to the voters and ratified overwhelmingly. *See* *Osborne*, 14 Ariz. at 205–06.

When this fundamental rule of construction is applied in this case, the plaintiffs' claim that the Act violates Arizona's Constitution withers under any level of scrutiny. As discussed below, the Constitution explicitly embraces a requirement of meaningful disclosure of campaign donations and expenditures. That express provision cannot be "harmonized" with the plaintiffs' unsupported interpretations of Sections 6 and 8 of Article II.

A. The framers of the Arizona Constitution expressly addressed the need for disclosure of campaign donations as an anti-corruption measure.

The framers' concerns about election integrity and protecting against electoral corruption motivated them to include a mandatory directive in the Constitution that required the legislature, at its first session, to enact a law providing for the publicity of all campaign contributions and expenditures before and after each election. Ariz. Const. art. VII, §16. Properly understood, this provision shows how paramount such publicity was to the framers, leading them to direct that the new state's legislature put a measure into place to accomplish this

"at its first session." They left it up to the legislative process to determine the specific details and left ample room for that process to update those details from time to time as conditions and circumstances changed.

In their Supplemental Brief the plaintiffs note that the original proposition which ultimately became Section 16 included more detail and contemplated a disclosure law that would apply to any primary, general or municipal election. Brief at 8. They argue that because the final version of Section 16 contained different, somewhat more limited language, the framers "*rejected*" that idea, and instead were implicitly prohibiting measures like the VRTK Act that provided for such publicity in certain circumstances. Brief, at 7–8 (citing *The Records of the Arizona Constitutional Convention of 1910* at 146–150 (John S. Goff ed., 1991) (hereinafter "Goff").

The inferences plaintiffs draw, however, have no support either in the text itself or in the historical record. Because the convention delegates rejected the notion of compiling an official complete record of the convention proceedings, it is not possible to determine with any accuracy why the framers made the decisions they did in crafting the exact language of specific provisions. *See AZCON* at 10–11; *see also Making* at 40–44. Goff reports that the Committee on Suffrage and Elections recommended (with no explanation provided) that Proposition 70 be

amended to reflect the language ultimately appearing in the Constitution, and that was done. Goff at 108, 1370.

Yet, Goff does provide some additional insight into why the language of Proposition 70 was simplified. Specifically, when the amended Proposition came before the Committee of the Whole for adoption, the change was questioned by some of the delegates and one in particular, Delegate Parsons, took exception to the decision to make the language more general. Goff at 146. In response, Delegate Windsor reportedly explained the recommendation from the Committee on Suffrage and Elections this way: "The committee agrees that the constitution should contain a good campaign publicity law . . . . [U]nderstand that the constitutional convention cannot provide for all these matters in the constitution, but we are the machinery which must frame a fundamental law and the legislature must do the rest." *Id*. After further give and take about the need for specificity, the framers ultimately agreed to accept the recommendation of the Committee on Suffrage and Elections and leave the details for the legislature to flesh out. *Id*. at 149–50.

And that is precisely what happened. Shortly after statehood, Governor Hunt called a special session to, among other things, enact "registration and other laws to secure the purity of elections and guard against abuses of the elective franchise, and providing for general publicity, before and after election, of all campaign

contributions to, and expenditures of campaign committees and candidates for public office." *See* Governor's Proclamation dated May 21, 1912, reprinted in *Journals of the Special Session of the First Legislative Assembly of the State of Arizona* 27, 28 (1912).

In that special session, the Arizona legislature passed Senate Bill No. 63, "Providing for General Publicity Before and After Election of All Campaign Contributions . . . ." SB 63, 1st Leg., 1st Sp. Sess. (Ariz. 1912); Laws 1st Sp. Sess. 1912, c. 69. The detailed statute was entirely in keeping with the original Proposition 70 which had provided for the publicity of "all contributions" made for the purpose of "influencing any primary, general, or municipal election." Goff at 1179. The statute achieved the same result by requiring disclosures of contributions to "political committees" which were defined as "committees of all political parties, organized and conducted *for the purpose of influencing the result of any election in any county, city, town, or precinct in this state.*" Laws 1st Sp. Sess. 1912, c. 69, p. 199 (emphasis added). Thus, contrary to the plaintiffs' suggestion, the change to the constitutional provision did not limit its disclosure requirements based on the type of election.

In sum, the Constitution's plain language, the historical record, and the legislation enacted at the legislature's first session all demonstrate that the framers of the Arizona Constitution recognized the need for disclosure of campaign

contributions and saw no contradiction between mandating such disclosures and including rights to free speech and privacy elsewhere in the same Constitution.

B. The "speak freely" provision of Article II, Section 6, does not and was never intended to limit legislative authority to require disclosure of campaign donations.

The right to speak freely found in Section 6, Article II of Arizona's Constitution, that "[e]very person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right," was never intended to preclude legislation requiring disclosure of campaign contributions. Ariz. Const. art. II, § 6. At the time that the Arizona Constitution was adopted, the U.S. Supreme Court had not yet applied the federal Bill of Rights to the states. *State v. Stummer*, 219 Ariz. 137, 142 n. 4 (2008). Thus, the Arizona framers made the independent decision to include a free speech provision in the state Constitution. *Id.*; *see also* Goff at 759 (reporting that Delegate Ingraham counseled that the Bill of Rights are restrictions upon the power of the United States and not restrictions upon the states). However, as this Court noted in *Stummer*, "the framers declined to adopt the language of the First Amendment's free speech provision, although they did use some federal constitutional provisions as models for related provisions. . . ." 219 Ariz. at 142 n. 4. Rather, the Arizona framers opted to adopt a

freedom of speech provision from a similar provision in Washington's Constitution. *Id*.

Moreover, when the framers decided to include the right to speak freely in the Arizona declaration of rights, the idea that requiring the disclosure of campaign contributions and expenditures somehow implicated freedom of speech was many decades away. *See Buckley v. Valeo,* 424 U.S. 1 (1976). As plaintiffs acknowledge, this Court should interpret the terms of the Constitution consistent with the meaning they had at the time it was adopted. Brief at p. 1, citing *State v. Mixton*, 250 Ariz. 282, 290 ¶33 (2021). When the framers met in 1910, there is no way they could have intended that Section 6's declaration that "[e]very person may freely speak, write, and publish on all subjects" would have any impact whatsoever on the legislative authority to enact a law requiring meaningful disclosure of campaign contributions.

Further, Arizona courts have long recognized that the right to speak freely granted by the Constitution is not an absolute right and may be subject to reasonable restrictions, particularly when balanced against other constitutional rights. *See, e.g. State v. Baldwin,* 184 Ariz. 267, 273 (App. 1995) (holding that in conflict between state Constitution's right to free speech and right to privacy, speech does not have such primacy as to "subordinate any countervailing interest in privacy").

Likewise, any argument that the "speak freely" provision should be read to limit the ability to require disclosure of campaign contributions is further undermined by the qualification the provision itself includes, that a party is responsible for "abuse" of the right. Art. II § 6. Plaintiffs attempt to limit this exception to speech that is defamatory. *See* Brief at 2. Yet, that narrow reading is not supported by the text, which can be fairly read to implicitly acknowledge that the legislature (or the people by initiative) can define an "abuse" as a failure to disclose campaign contributions pursuant to the legislation mandated by Section 16.

In sum, the "speak freely" provision of the Arizona Constitution must be read in a manner that recognizes the historic context, the effect that context had on the framers' and voters' intent, and the Constitution as a whole. All of those factors support a finding that the VRTK Act does not violate Article 2, Section 6 of the Arizona Constitution.

C. The "right to privacy" provision of Article 2, Section 8, does not preclude the exercise of legislative authority to require the disclosure of campaign donations.

Finally, the argument that the provision that "[n]o person shall be disturbed in his private affairs, or his home invaded without authority of law," Ariz. Const. art. II, § 8, prohibits legislation requiring disclosure of campaign contributions is

unsupportable. First, Section 1, Article VII only guarantees a secret ballot; nothing in the Arizona Constitution suggests that efforts, especially contributions, to influence how a voter marks that ballot are "private affairs." To the contrary, all of the provisions of Article VII (suffrage and elections) demonstrate the framers' intent that elections and the source of campaign funds can and should be subject to close regulation. Thus, it cannot fairly be said that the framers of the Arizona Constitution thought that contributing money to influence an election was a "private affair," especially when that money is used for public communications.

Also, the protection provided by Section 8, Article II, is explicitly qualified by its final phrase, "without authority of law." This Court has acknowledged that "authority of law" is not limited to search warrants or probable cause. *See, e.g.,* *Draper v. Gentry,* 255 Ariz. 417, 423 (2023) (declining to decide the requirements of the phase but observing that "a court order that follows notice and an opportunity to be heard constitutes authority of law under the provision's plain meaning.") Under any construction of that phrase, legislation that is entirely consistent with a specific constitutional provision, including one that is enacted through the initiative process with overwhelming approval of Arizona voters, ought to qualify as "authority of law." Thus, the "private affairs" clause, the "right

to privacy"[3] guaranteed by the Arizona Constitution, does not render the VRTK Act unconstitutional.

CONCLUSION

When the Arizona Constitution is considered in its entirety and in its historical context, it is apparent that the VRTK Act is wholly consistent with the framers' intent and with the Constitution itself. The framers understood the importance of maintaining election purity and recognized that requiring disclosure of campaign contributions and expenditures was an important tool in achieving that goal.

Respectfully submitted this 24th day of June, 2025

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[3] Most publications of the Arizona Constitution (including that posted online by the state legislature) give this section the caption "right to privacy," but it was not so captioned by the framers of the Arizona Constitution. *See AZCON*, at xxii-xxiii; *see also Making* at 82-83, n. 504.