		COPY
1	AMERICA FIRST LEGAL FOUNDATION	MAY 0 9 2023
2 3	James K. Rogers (No. 027287)	COURT SEAL SEAL
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5	Washington, D.C. 20003	
6	Phone: (202) 964-3721 James.Rogers@aflegal.org	
7	Attorney for Plaintiff America First Legal Foundation	
8	IN THE SUPERIOR COURT (	<b>DF THE STATE OF ARIZONA</b>
9	IN AND FOR THE CO	UNTY OF MARICOPA
10	America First Legal Foundation,	Case No.CV 2023-007067
11	Plaintiff,	PLAINTIFF'S COMPLAINT FOR
12	v. Adrian Fontes, in his official capacity as	SPECIAL ACTION RELIEF
13	Arizona Secretary of State;	
14	The Arizona Secretary of State's Office.	
15	Defendants.	
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For its complaint against Arizona Secretary of State Adrian Fontes (the "Secretary") and the Arizona Secretary of State's Office ("AZSOS"), Plaintiff America First Legal Foundation ("AFL") hereby submits this Complaint for Special Action Relief to secure access to public records pursuant to A.R.S. § 39-121 to -128 (the "Public Records Law"), and Ariz. R. Special Actions ("RPSA") 1-6, and allege as follows:

#### INTRODUCTION

7 1. Majorities of Arizona voters-55 percent-"believe it is likely that problems 8 with the 2022 election in Maricopa County affected the outcome."<sup>1</sup> With public confidence 9 in elections being so low, the need for transparency in government has never been higher. 10 Arizona's Public Records Law is designed especially for times like now, to ensure that 11 citizens understand how their elected representatives are conducting the business of 12 government. When citizens see that public officers are faithfully carrying out their duties, 13 then public confidence in our institutions increases. And if it is discovered that public 14 officers are not acting in good faith, then transparency is essential for citizens to be able to 15 hold their representatives accountable.

16 2. In Arizona, there is a "strong presumption in favor of public inspection of
17 public records." *Jud. Watch, Inc. v. City of Phoenix*, 228 Ariz. 393, 400 ¶ 32 (App. 2011).
18 As such, all records covered by the Public Records Law, A.R.S. § 39-121 to -128, "are
19 presumed open to the public for inspection." *Carlson v. Pima Cnty.*, 141 Ariz. 487, 491
20 (1984).

3. "The core purpose of the public records law is to allow the public access to
official records ... so that the public may monitor the performance of government officials
and their employees. To justify withholding public documents, the State's interest in nondisclosure must outweigh the general policy of open access...." *Fann v. Kemp in & for Cnty. of Maricopa*, 253 Ariz. 537 ¶ 9 n.1 (2022) (cleaned up).

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<sup>1</sup> Most Arizona Voters Believe Election 'Irregularities' Affected Outcome, RASMUSSEN REPORTS, (Mar. 17, 2023), <u>https://tinyurl.com/45j5pcnt</u>.

1 Yet, the Secretary claimed that Plaintiff's limited public records request for 4. 2 the emails of just four public officers and employees over the span of only nine days 3 constitutes "an unreasonable administrative burden" so great that the Secretary was 4 completely absolved of his responsibilities under the law. His summary denial of Plaintiff's 5 reasonable and targeted public records request, however, got things backward. Public 6 officers "bear the burden of showing that [a public records request] ... pose[s] an 7 unreasonable administrative burden," and "must articulate sufficiently weighty reasons to 8 tip the balance away from the presumption of disclosure and toward nondisclosure." ACLU 9 v. Arizona Dep't of Child Safety, 240 Ariz. 142, 153 ¶ 36 (App. 2016) (cleaned up).

10 11 5. Because the Secretary wrongfully denied Plaintiff's public records request, and because that request does not pose an unreasonable administrative burden, Plaintiff files this special action to compel production of the requested public records.

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## PARTIES

14 6. Plaintiff AFL is a nonprofit organization working to promote the rule of law 15 in the United States, prevent executive overreach, ensure due process and equal protection 16 for all Americans, and encourage public knowledge and understanding of the law and 17 individual rights guaranteed under the United States Constitution and the laws of the United 18 States. AFL's mission includes promoting government transparency and accountability by 19 gathering official information, analyzing it, and disseminating it through reports, press 20 releases, and other media, including social media platforms, all to educate the public. AFL 21 is entitled under Arizona law to make public records requests of Arizona public officers 22 and public bodies, which are required to furnish copies of such records in a prompt manner. 23 A.R.S. §§ 39-121.01(D)(1) and (E).

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7. Defendant Adrian Fontes is the Arizona Secretary of State (the "Secretary") and is named in his official capacity. The Secretary oversees AZSOS and has a nondiscretionary statutory duty to comply with the Public Records Law. The Secretary has

1 failed to comply with that mandatory statutory duty. Plaintiff requests that the Court order 2 him to comply with his statutory duty. The Secretary, therefore, is properly joined as a 3 defendant to this action and the Court may enter special action relief against him. See Ariz. 4 R. P. Spec. Act. 2(a)(1) ("The complaint shall join as a defendant the body, officer, or 5 person against whom relief is sought"); see also Arizonans for Second Chances, Rehab., & 6 Pub. Safety v. Hobbs, 249 Ariz. 396, 404 ¶18 (2020) (concluding that the petitioners had 7 properly stated a mandamus action against the Secretary by alleging that the Secretary 8 refused to perform a constitutional duty and asking the Arizona Supreme Court to order 9 the Secretary to perform that duty). The Secretary is an "officer" within the meaning of 10 A.R.S. § 39-121.01(A)(1). Upon information and belief, the Secretary has custody, and is 11 responsible for the preservation, maintenance, care, and production of, the requested public 12 records at issue in this case.

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  - 13 8. Defendant Arizona Secretary of State's Office is a department of the State of 14 Arizona and is headed by the Secretary; Arizona statutes also refer to it as the "Department 15 of State.". A.R.S. § 41-121.02(B) ("The secretary of state shall have charge of and direct 16 the department of state.") AZSOS is a "public body" within the meaning of A.R.S. § 39-17 121.01(A)(2). AZSOS has the same obligations as the Secretary to comply with the Public 18 Records Law. Upon information and belief, AZSOS has custody, and is responsible for the 19 preservation, maintenance, care, and production of, the requested public records at issue in 20 this case.
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### SPECIAL ACTION JURISDICTION

9. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to article 6, sections 14 and 18 of the Arizona Constitution. The Court further has subject matter jurisdiction pursuant to A.R.S. §§ 12-123(B), 12-2021, and 39-121.02 and RPSA Rules 3 and 4.

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1	10. Venue lies in Maricopa County pursuant to RPSA 4(b) and pursuant to	
2	A.R.S. § 12-401(16) because the Secretary is a state officer who holds office in that county	
3	and because AZSOS is a state body.	
4	FACTUAL BACKGROUND	
5	11. Election day on November 8, 2022 was marred by "widespread failures" and	
6	"technical problems" that led to "the anger and frustration of voters who were subjected to	
7	inconvenience and confusion at voter centers." Lake v. Hobbs, CV 2022-095403 at 3-4,	
8	(Ariz. Super. Ct. Dec. 24, 2022) (Under Advisement Ruling).	
9	12. "[T]he Secretary of State administers elections in Arizona" Fann, 253	
10	Ariz. 537 ¶ 21; see also A.R.S. § 41-121 (enumerating duties of Secretary of State). The	
11	chaos on election day in 2022 happened under the watch of the Secretary's predecessor,	
12	Katie Hobbs, who was also a candidate in that election for Governor of Arizona.	
13	13. On November 18, 2022, amidst the post-election chaos, and while votes were	
14	still being counted and allegations of mismanagement and potential malfeasance were	
15	publicly spreading, AFL submitted a public records request to AZSOS and to Secretary	
16	Hobbs requesting "all emails sent to and from the following individuals":	
17	Katie Hobbs – Secretary of State	
18	Allie Bones – Assistant Secretary of State	
19	C. Murphy Hebert – Director of Communications	
20	Sophia Solis – Deputy Communications Director	
21	The request covered November 8, 2022, to November 16, 2022. Attached hereto as Exhibit	
22	1 is a copy of AFL's public records request and follow-up emails between AFL and AZSOS	
23	to clarify the scope of AFL's request.	
24	14. On February 1, 2023, Amy B. Chan, General Counsel for AZSOS sent a letter	
25	to AFL denying in full AFL's public records request, claiming that AFL's request for nine	
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1	days' worth of emails from four persons "impose[d] an unreasonable administrative burden	
2	for the Arizona Secretary of State's Office." Attached as Exhibit 2 is a copy of that letter.	
3	COUNT I	
4	Special Action Relief to Compel Immediate Production of Public Records	
5	(A.R.S. § 39-121 to -128)	
6	15. Plaintiff incorporates by reference the foregoing allegations as if fully set	
7	forth herein.	
8	16. Defendants are required by law to preserve and maintain all records	
9	"reasonably necessary or appropriate to maintain an accurate knowledge of their official	
10	activities and of any of their activities that are supported by public monies from this state."	
11	A.R.S . § 39-121.0l(B).	
12	17. Defendants are required by law to produce or make available such public	
13	records to "any person" upon request. A.R.S. § 39-121(D)(1).	
14	18. A public records request need not be presented in any particular format or	
15	use any specific verbiage. A.R.S. § 39-121.01(D)(1).	
16	19. Public officers and agencies "bear the burden of showing that [a public record	
17	request] pose[s] an unreasonable administrative burden" and "must articulate	
18	sufficiently weighty reasons to tip the balance away from the presumption of disclosure	
19	and toward nondisclosure." $ACLU$ , 240 Ariz. At ¶ 36 (cleaned up). In determining whether	
20	Defendants have "met this burden, the court should consider the resources and time it took	
21	to locate and redact, as necessary, the requested materials; the volume of materials	
22	requested; and the extent to which compliance with the requests disrupted [Defendants']	
23	ability to perform [their] core functions." Id.	
24	20. A person who has been denied access to requested public records "may	
25	appeal the denial through a special action in the superior court." A.R.S. § 39-121.02(A).	
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1	A court in a special action proceeding may compel a public officer "to perform a duty		
2	required by law as to which he has no discretion." RPSA 3(a); see also A.RS. § 12-2021.		
3	21. All of the documents and information AFL seeks through its public records		
4	request are "public records" subject to mandatory and prompt disclosure under the Public		
5	Records Law because they have a "substantial nexus" to the Defendants' official duties		
6	and activities in connection with the conduct and administration of elections in Arizona.		
7	See Griffis v. Pinal County, 215 Ariz. 1, 4 ¶ 10 (2007).		
8	22. By Defendants' own admission, there are thousands of emails in Defendants'		
9	custody that are responsive to AFL's public records request. See Exhibit 2.		
10	23. Defendants have a nondiscretionary statutory duty to promptly produce or		
11	make available to AFL all records sought in its public records request because Defendants		
12	have failed to satisfy—and, indeed, cannot satisfy—their burden to show that fulfilling the		
13	request poses an unreasonable administrative burden.		
14	PRAYER FOR RELIEF		
15	Based on the foregoing, AFL respectfully requests:		
16	A. Special action relief compelling Defendants to immediately produce or make available		
17	to AFL all public records requested by its Public Records Request;		
18	B. An award of reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-341, 12-		
19	348, 12-2030, 39-121.02(B), the private attorney general doctrine, and other		
20	applicable law; and		
21	C. For such other relief as the Court deems just and proper.		
22	RESPECTFULLY SUBMITTED this 9th of May, 2021.		
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24	America First Legal Foundation		
25	Br: -		
26	James K. Rogers (No. 027287)		
	Attorney for America First Legal Foundation		
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# Exhibit 1

From:	AFL FOIA <foia@aflegal.org></foia@aflegal.org>
Sent:	Wednesday, November 23, 2022 3:58 PM
То:	Public Records Request
Cc:	Amy Chan; Lori Wilson; Gabby Williams; Public Records Request
Subject:	Re: - Public Records Request AZSOS

Hello,

The records we request are all emails sent to and from the following individuals:

Katie Hobbs – Secretary of State

Allie Bones - Assistant Secretary of State

C. Murphy Hebert – Director of Communications

Sophia Solis - Deputy Communications Director

The timeframe for this request is from November 8, 2022, to November 16, 2022.

Thank you,

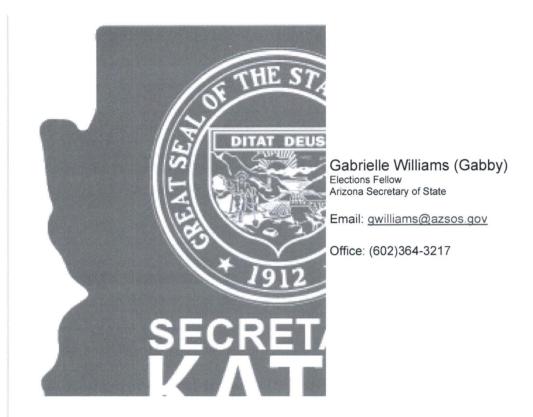
America First Legal Foundation

On Mon, Nov 21, 2022 at 3:46 PM Public Records Request < <pre>prr@azsos.gov wrote: Good morning,

I have received your request for Public Records however it doesn't identify which records you are requesting. Please fill out the attached form and return it by email or postal mail detailing your request.

Given the volume of requests that our office receives, it will take time for our office to review and respond to your request.

Sincerely,



1700 W Washington St., 7th Fl. | Phoenix, AZ | 85007

From: <u>webmaster@azsos.gov</u> <<u>webmaster@azsos.gov</u>> on behalf of Arizona Secretary of State via Arizona Secretary of State <<u>webmaster@azsos.gov</u>>

Sent: Friday, November 18, 2022 1:39 PM To: Public Records Request <<u>prr@azsos.gov</u>> Subject: - Public Records Request AZSOS

CAUTION: The following message contains information provided by an anonymous user through an online webform. Please treat the below message with caution, avoid clicking links, downloading attachments, or replying with personal information. Submitted on Friday, November 18, 2022 - 13:39

Submitted values are:

==Contact Information== ==Name== First Name: Reed Last Name: Rubinstein

> Phone Number: 202-964-3721 Email: <u>FOIA@aflegal.org</u> ==Address== Street Address: 611 Pennsylvania Ave SE Address Line2: #231 City: Washington

State: DC Zip Code: 20003

==Category==

Category: Other Requests Other Category: All emails sent to and from the following individuals: Katie Hobbs – Secretary of State Allie Bones – Assistant Secretary of Sta

==Acknowledgment== Acknowledgment: I acknowledge the requested petition(s) are being used for a \*non-commercial purpose\*.

# Exhibit 2

From: Sent: To: Cc: Subject: Attachments: Public Records Request <prr@azsos.gov> Wednesday, February 1, 2023 5:42 PM foia@aflegal.org Lori Wilson Public Record Request-Response 2022 1118 AFLF Response.pdf

Good afternoon,

Please see the attached information regarding your request. Thank you for bearing with us as we are still transitioning while getting more fully staffed.

Sincerely,



Amy B. Chan (She | Her | Hers) General Counsel Arizona Secretary of State

Email: <u>achan@azsos.gov</u> Offstate Office: 602-542-6167 Cell: 602-540-3403



February 1, 2023

### VIA E-MAIL

Mr. Reed Rubinstein America First Legal Foundation 611 Pennsylvania Ave SE #231 Washington DC 20003 FOIA@aflegal.org

Dear Mr. Rubenstein:

Thank you for your public records request, received by this office on November 18, 2022. You requested "all emails sent to and from the following individuals: Kate Hobbs-Secretary of State; Allie Bones-Assistant Secretary of State; C. Murphy Hebert-Director of Communications; [and] Sophia Solis-Deputy Communications Director" from November 8, 2022 through November 16, 2022.

We are unable to fulfill this request as currently filed. Retrieving "all" emails or correspondence from the identified accounts for the timeframe requested involves many thousands of emails, each of which must be reviewed prior to disclosure, including screening and redacting for privileged, private, and confidential information not subject to disclosure. Therefore, providing the requested records imposes an unreasonable administrative burden for the Arizona Secretary of State's Office. *See Hodai v. City of Tucson*, 365 P.3d 959, 968 (Ariz. 2016).

For the foregoing reasons, we now consider this request closed. If, based on the above information, you wish to narrow your request, please feel free to contact our office. Options to narrow the scope of your requests include restricting the request to emails about a particular subject within a shorter time frame.

Sincerely,

Fring & Chan

Amy B. Chan General Counsel

1700 West Washington, Seventh Floor Phoenix, Arizona 85007