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**AMERICA FIRST LEGAL  
FOUNDATION**

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

America First Legal Foundation,  
Plaintiff,  
v.  
Adrian Fontes, in his official capacity as  
Arizona Secretary of State;  
  
The Arizona Secretary of State's Office.  
Defendants.

Case No. CV 2023-007067

**PLAINTIFF'S COMPLAINT FOR  
SPECIAL ACTION RELIEF**

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1 For its complaint against Arizona Secretary of State Adrian Fontes (the  
2 “Secretary”) and the Arizona Secretary of State’s Office (“AZSOS”), Plaintiff America  
3 First Legal Foundation (“AFL”) hereby submits this Complaint for Special Action Relief  
4 to secure access to public records pursuant to A.R.S. § 39-121 to -128 (the “Public Records  
5 Law”), and Ariz. R. Special Actions (“RPSA”) 1-6, and allege as follows:

## 6 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).

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

26 <sup>1</sup> *Most Arizona Voters Believe Election ‘Irregularities’ Affected Outcome*, RASMUSSEN  
REPORTS, (Mar. 17, 2023), <https://tinyurl.com/45j5pcent>.



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.

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.

### 21 SPECIAL ACTION JURISDICTION

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



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. § 39-121.01(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).

26

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.R.S. § 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.

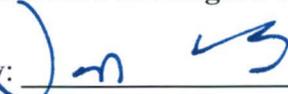
14 **PRAYER FOR RELIEF**

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.

23  
24 **America First Legal Foundation**

25 By:  \_\_\_\_\_

26 James K. Rogers (No. 027287)

*Attorney for America First Legal Foundation*

# Exhibit 1

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**From:** AFL FOIA <foia@aflegal.org>  
**Sent:** Wednesday, November 23, 2022 3:58 PM  
**To:** 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

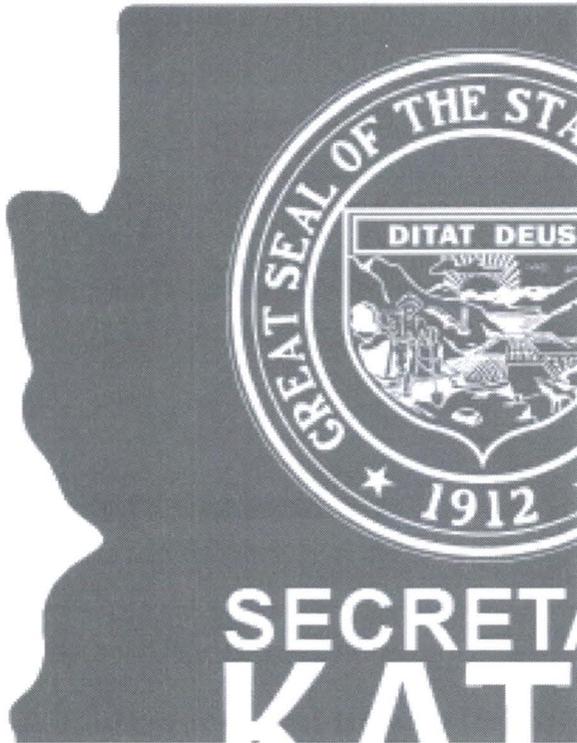
On Mon, Nov 21, 2022 at 3:46 PM Public Records Request <[pr@azsos.gov](mailto:pr@azsos.gov)> wrote:

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,



**Gabrielle Williams (Gabby)**

Elections Fellow  
Arizona Secretary of State

Email: [gwilliams@azsos.gov](mailto:gwilliams@azsos.gov)

Office: (602)364-3217

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

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**From:** [webmaster@azsos.gov](mailto:webmaster@azsos.gov) <[webmaster@azsos.gov](mailto:webmaster@azsos.gov)> on behalf of Arizona Secretary of State via Arizona Secretary of State <[webmaster@azsos.gov](mailto:webmaster@azsos.gov)>

**Sent:** Friday, November 18, 2022 1:39 PM

**To:** Public Records Request <[pr@azsos.gov](mailto:pr@azsos.gov)>

**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: [FOIA@aflegal.org](mailto:FOIA@aflegal.org)

==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

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**From:** Public Records Request <pr@azsos.gov>  
**Sent:** Wednesday, February 1, 2023 5:42 PM  
**To:** foia@aflegal.org  
**Cc:** Lori Wilson  
**Subject:** Public Record Request-Response  
**Attachments:** 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: [achan@azsos.gov](mailto:achan@azsos.gov)  
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](mailto: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,

Amy B. Chan  
General Counsel