



ATTORNEYS AT LAW

The Wilenchik & Bartness Building  
2810 North Third Street Phoenix, Arizona 85004

Telephone: 602-606-2810 Facsimile: 602-606-2811

Dennis I. Wilenchik, #005350  
John “Jack” D. Wilenchik, #029353  
Jordan C. Wolff, #034110  
[admin@wb-law.com](mailto:admin@wb-law.com)  
*Attorneys for Defendant Cyber Ninjas, Inc.*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

**AMERICAN OVERSIGHT,**

**Plaintiff,**

**vs.**

**KAREN FANN, et al.**

**Defendants, and**

**CYBER NINJAS, INC.,**

**Real Party in Interest.**

**Case No.: CV2021-008265**

**MOTION TO DISMISS**

**(Assigned to the Honorable Judge Kemp)**

CyberNinjas, Inc. (“CNI”) hereby moves to dismiss American Oversight’s action for failure to state a claim for which relief can be granted in accordance with Ariz.R.Civ.P. 12(b)(6) *inter alia*.

Plaintiff fails to allege that the government actually owns much less possesses any of the documents that it is seeking from CNI. Only documents which the government actually owns, much less possesses, may be deemed public records. There is binding Arizona Supreme Court caselaw on this issue (*see Salt River*, discussed below), and even a United States Supreme Court case on point under FOIA law (*see Forsham*, discussed below).

1 But this is also common sense. CNI’s company documents concerning things such as the  
2 amount of money that it negotiated to be paid from the Senate are clearly not “public” records that  
3 the Senate is entitled to see, much less the public—but that is exactly what is being sought here.  
4 While such things may be related to the “audit” (i.e. to CNI’s contracted work for the Senate),  
5 they are neither owned by the government nor public record. This is a crucial and obvious  
6 distinction in public-records caselaw but also implicates basic common-law property rights,  
7 contract law, and even the federal and Arizona constitutions.<sup>1</sup> CNI’s contract expressly defined  
8 what documents the government would and would not own, and it provided that the Senate does  
9 not own any records other than the audit report which CNI produced (and the Senate’s own  
10 documents and information, which of course the Senate already and are already subject to public  
11 records requests). CNI’s own records belong to CNI as a matter of law and they are not public  
12 record. And it should go without saying; but the law is the law, no matter how much media and/or  
13 political influences may militate against it.

14 **1. It is Well-Settled under Arizona and FOIA Caselaw that Only Documents the**  
15 **Government Owns, Much Less Possesses, May be Deemed Public Records**

16 The Arizona Supreme Court has previously ruled that documents which the State does not  
17 own must not be produced in response to a public records request—even in cases where the State  
18 is in possession of the records, which is not even the case here. This authority is binding on the  
19 Court and must not be neglected. In the seminal case of *Salt River Pima-Maricopa Indian Cmty.*  
20 *v. Rogers*, 168 Ariz. 531, 534, 815 P.2d 900, 903 (1991), the Arizona Supreme Court addressed  
21 whether records that belong to non-governmental or private bodies may be considered “public  
22 records,” relying heavily on federal FOIA law. *See also Church of Scientology v. Phoenix Police*  
23 *Dep’t*, 122 Ariz. 338, 340, 594 P.2d 1034,1036 (App. 1979)(FOIA offers guidance to Arizona  
24 courts in construing Arizona public records statute). The Supreme Court noted that federal courts  
25 have “uniformly held that an agency must control a record before it is subject to disclosure”; and  
26

---

27 <sup>1</sup> Private persons or companies are free from government search-and-seizure of private documents  
28 under the Fourth and Fourteenth Amendments as well as the privacy clause of the Arizona  
constitution.

1 “[t]he control test is helpful in analyzing our statute, which also exempts private information from  
 2 disclosure even when it is held by a government agency.” *Id.*, 168 Ariz. at 541, 815 P.2d at 910.  
 3 “An agency has control over the documents when they have come into the agency’s possession in  
 4 the legitimate conduct of its official duties.” *Id.*, 168 Ariz. at 541-42, 815 P.2d at 910-11 (*quoting*  
 5 *U.S. Dep’t of Just. v. Tax Analysts*, 492 U.S. 136, 145 (1989))(quotation marks omitted). Where  
 6 documents are not in control of the government, they were not generated by the government, they  
 7 never entered the government’s files, and they were not used by the government for any purpose,  
 8 then they are not “public records.” *Id.*, 168 Ariz. at 542, 815 P.2d at 911 (*citing Kissinger v. Repts.*  
 9 *Comm. for Freedom of the Press*, 445 U.S. 136, 157 (1980)).

10 Plaintiff fails to allege that the government owns CNI’s documents, much less that any of  
 11 CNI’s documents were generated by the government or even entered the Senate’s files, or were  
 12 even actually used by the Senate for any purpose. Under CNI’s contract with the Senate, the only  
 13 document that the Senate was entitled to have and control is the final audit report that CNI agreed  
 14 to prepare, which was completed and produced to the Senate some time ago and is now clearly a  
 15 public record. But CNI’s own records are not public records simply because they may relate to  
 16 that audit report, a notion that is unsupported in Arizona and FOIA caselaw. Further, in *Salt River*,  
 17 the Arizona Supreme Court cited with approval (several times) two FOIA decisions that squarely  
 18 addressed the kind of issues at bar: *Forsham v. Harris*, 445 U.S. 169 (1980) and *Ciba–Geigy*  
 19 *Corp. v. Mathews*, 428 F.Supp. 523, 532 (S.D.N.Y.1977).

20 In *Forsham*, the United States Supreme Court considered a FOIA request for the raw data  
 21 underlying a government study that was actually conducted by a private medical research  
 22 organization. 445 U.S. at 169. Although a federal agency funded the study, the data was generated  
 23 and possessed by the private company and never passed into the hands of the agency. The Supreme  
 24 Court found the fact that the study was financially supported by a FOIA-covered government  
 25 agency did not transform the data into “agency records”; nor did the agency’s right of access to  
 26 the materials under federal regulations change the result. The Supreme Court explained that  
 27 “FOIA applies to records which have been *in fact* obtained, and not to records which merely *could*  
 28 *have been* obtained.” *Id.*, 445 U.S. at 186 (emphasis in original). In denying the FOIA claim, the

1 Supreme Court explained that federal funds do not convert a private organization into an “agency”  
2 for purposes of the FOIA without “extensive, detailed, and virtually day-to-day supervision” by  
3 the agency of the private organization. *Id.*, 445 U.S. at 180. Of course, nothing of the sort has been  
4 alleged here; and in general the notion that “Cyber Ninjas Inc.” is so intertwined with the  
5 government as to be a “government agency” is without foundation. Ultimately, the Supreme Court  
6 held that “[w]ith due regard for the policies and language of the FOIA, we conclude that data  
7 generated by a privately controlled organization which has received grant funds from an agency  
8 ... but which data has not at any time been obtained by the agency, are not ‘agency records’  
9 accessible under the FOIA. Without first establishing that the agency has created or obtained the  
10 document, the agency’s reliance on or use of the document is similarly irrelevant.” *Id.*, 445 U.S.  
11 at 170. Again, in the case at bar there is no allegation that CNI exclusively holds any records that  
12 are owned by the Senate, or even generated by the Senate; and while there has also been no  
13 allegation that the Senate “relied on” CNI’s records, such an allegation would be “irrelevant”  
14 anyway. *Id.*

15       The other closely-related FOIA decision discussed by the Arizona Supreme Court in *Salt*  
16 *River (Ciba–Geigy Corp. v. Matthews)* concerned a private group of researchers (called the  
17 “UGDP”) who applied for and received federal grants to conduct diabetes studies. *Ciba*, 428  
18 F.Supp. at 532. Under federal regulations, the UGDP was required to submit interim and final  
19 reports to the government and to allow the government “access” to their raw data; but the *Ciba*  
20 court noted that the government customarily relied on the UGDP’s reports rather than accessing  
21 the underlying data. The plaintiff questioned “the manner in which the UGDP [handled its own]  
22 raw data,” as well as “the accuracy of the results reported,” so the plaintiff made a FOIA request  
23 for the UGDP’s underlying data and claimed that the data was a public record (or “agency record,”  
24 in FOIA parlance). *Id.*, 428 F. Supp. at 526. The plaintiff made three arguments: first, that the  
25 UGDP was a “de facto federal agency and that its records are therefore agency records”; second,  
26 that “even if the UGDP is not a federal agency in itself, it nevertheless served as an extension of  
27 a federal agency” (essentially an “agent” argument); and third, that even if those arguments failed  
28 then the “disclosure of [UGDP’s] records may still be compelled if those records can be

1 characterized as Government agency records.” *Id.*, 428 F. Supp. at 526. (In the instant action, the  
2 Court appears to be relying on the latter argument.)

3 The *Ciba* court rejected all three arguments. First, it held that even though the UGDP  
4 received public funding, it was not an “agency.” *Id.* To reach this decision the court looked at  
5 obvious factors like “whether the organization has the authority in law to perform the  
6 decisionmaking functions of a federal agency and whether its organizational structure and daily  
7 operations are subject to substantial federal control.” *Id.*, 428 F. Supp. at 527. With respect to the  
8 plaintiff’s other two arguments, the court disposed of them by finding that the plaintiff had not  
9 proven that “the records were either Government-owned or subject to substantial Government  
10 control or use. In other words, it must appear that there was significant Government involvement  
11 with the records themselves in order to deem them agency records.” *Id.*, 428 F. Supp. at 529. The  
12 *Ciba* court held “that federal funding, regardless of amount, [was] not sufficient to vest the  
13 underlying raw data of the UGDP research with a public character. To hold otherwise at a time  
14 when public monies flow to numerous private endeavors would surely have a chilling effect on  
15 [them]...” *Id.*, 428 F. Supp. at 530. The *Ciba* court also found that “Government access to and  
16 reliance upon” the data did not mean that the government owned or “controlled” it. *Id.* The *Ciba*  
17 court explained that “[a]lthough the federal defendants have access to the underlying data, there  
18 is no evidence that they have used it to exercise regular dominion and control over the raw data.”  
19 *Id.*, 428 F. Supp. at 530–31. “Mere access without ownership and mere reliance without control  
20 will not suffice to convert the UGDP data into agency data.” *Id.* “Just as the Government cannot  
21 be compelled to obtain possession of documents not under its control or furnish an opinion when  
22 none is written, it should not be compelled to acquire data it neither referred to directly nor relied  
23 upon in making decisions.” *Id.*, 428 F. Supp. at 531. “The distinction between direct reliance, in  
24 whole or in part, upon a summary report and direct reliance (via usage or control) on supporting  
25 documentation is necessary to preserve a salutary balance between the public’s right to be  
26 informed of the grounds for Government decisionmaking and the protection of private interests.”  
27 *Id.*, 428 F. Supp. at 532.

1 The authorities here could not be clearer, and of course the Arizona Supreme Court’s  
2 precedent is directly binding. Plaintiff’s claims must be dismissed because the Plaintiff fails to  
3 allege that the government owns CNI’s records, much less that the government possesses or even  
4 relied on them (even though such reliance is “irrelevant,” to quote the United States Supreme  
5 Court). CNI’s records are therefore not public record as a matter of law.

6 **2. CNI’s Contract Affirmatively Provides that the Senate Does not Own its**  
7 **Company Records**

8 Although the burden belongs to Plaintiff and not to CNI to demonstrate that the Senate  
9 owns (much less possesses) CNI’s company records, CNI’s contract with the Senate was  
10 affirmatively clear that the Senate does not. (CNI’s contract may be properly considered by the  
11 Court on a Motion to Dismiss as it is integral to the case; it has also been considered by the Court  
12 before, prior to CNI being joined.)

13 First, it should be beyond dispute that CNI was a private contractor.<sup>2</sup> CNI’s contract with  
14 the Senate addressed ownership of documents and materials in Section 7. Section 7.3 provided:

15 Contractor’s Proprietary Rights. As between Client [Senate] and Contractor  
16 [CNI], Contractor owns all right, title and interest in and to the Services,<sup>3</sup>  
17 including, Contractor’s Intellectual Property.<sup>4</sup> Except to the extent  
18 specifically provided in the applicable Statement of Work, this Agreement  
19 does not transfer or convey to Client or any third party any right, title or  
20 interest in or to the Services or any associated Contractor’s Intellectual  
Property rights, but only grants to Client a limited, non-exclusive right and  
license to use as granted in accordance with the Agreement. Contractor shall

21  
22 <sup>2</sup> For example, Section 18.1 expressly provides that CNI was an “independent contractor” and  
23 “[n]either party is the agent of the other nor may [ ]either bind the other in any way...” *See also*  
24 Section 12.2: “Contractor (i) is a corporation, duly organized, validly existing and in good  
standing under the Laws of the State of Florida, and (ii) has full corporate power to own, lease,  
license and operate its assets...”

25 <sup>3</sup> According to Section 4.1.1, “Services shall mean consulting, training or any other professional  
26 services to be provided by Contractor to Client, as more particularly described in a Statement of  
27 Work, including any Work Product provided in connection therewith.”

28 <sup>4</sup> See definition immediately below.

1 retain all proprietary rights to Contractor’s Intellectual Property and Client  
2 will take no actions which adversely affect Contractor’s Intellectual Property  
3 rights. **For the avoidance of doubt and notwithstanding any other**  
4 **provision in this Section or elsewhere in the Agreement, all documents,**  
5 **information, materials, devices, media, and data relating to or arising**  
6 **out of the November 3, 2020 general election in Arizona, including but**  
7 **not limited to voted ballots, images of voted ballots, and any other**  
8 **materials prepared by, provided by, or originating from the Client or**  
9 **any political subdivision or governmental entity in the State of Arizona,**  
10 **are the sole and exclusive property of the Client or of the applicable**  
11 **political subdivision or governmental entity, and Contractor shall have**  
12 **no right or interest whatsoever in such documents, information,**  
13 **materials, or data.**

14 (Emphasis original.) In turn, Section 4.1.3 expressly defined “Contractor’s Intellectual property”  
15 as:

16 all right, title and interest in and to the Services, including, but not limited to,  
17 all inventions, skills, know-how, expertise, ideas, methods, processes,  
18 notations, documentation, strategies, policies, reports (with the exception of  
19 the data within the reports, as such data is the Client’s proprietary data) and  
20 computer programs including any source code or object code, (and any  
21 enhancements and modifications made thereto), developed by Contractor in  
22 connection with the performance of the Services hereunder and of general  
23 applicability across Contractor’s customer base. For the avoidance of doubt,  
24 the term shall not include (1) the reports prepared by Contractor for Client  
25 (other than any standard text used by Contractor in such reports) pursuant to  
26 this Agreement or any Statement of Work, which shall be the exclusive  
27 property of Client and shall be considered “works made for hire” within the  
28 meaning of the Copyright Act of 1976, as amended; and (2) any data or  
process discovered on or obtained from the Dominion devices that will be  
the subject of the forensic review.

Finally, Section 7.1 also provided:

...As between Client and Contractor, Client or a political subdivision or  
government entity in the State of Arizona owns all right, title and interest in  
and to (i) any data provided by Client (and/or the End Client, if applicable)  
to Contractor; (ii) any of Client’s (and/or the End Client, if applicable) data  
accessed or used by Contractor or transmitted by Client to Contractor in  
connection with Contractor’s provision of the Services (Client’s data and  
Client’s End User’s data, collectively, the “Client Data”); (iii) all intellectual  
property of Client (“Client’s Intellectual Property”) that may be made  
available to Contractor in the course of providing Services under this  
Agreement.

1 Nowhere in the Agreement does it provide that the Senate has ownership of CNI's  
2 company records – in fact it says just the opposite. As a matter of law, the Senate does not own  
3 anything but the report that CNI produced (and the Senate's own documents and information,  
4 which of course the Senate already has and are already subject to public records requests). What  
5 is being alleged here is not that CNI is in exclusive possession of any Senate-owned materials, but  
6 rather that CNI is in possession of its own privately-owned records, and those are simply not  
7 subject to public records law. To misapply public-records law in an effort to force CNI to give its  
8 records to the government and public clearly violates its private-property and contract rights, not  
9 to mention compels what is effectively an illegal search-and-seizure of private records. There is  
10 no genuine legal authority in support of such a thing, just a steady drumbeat of improper media  
11 and political influence.

12 **3. CNI is Not Subject to Suit under Public-Records Law**

13 A.R.S. § 39-121.02(A) is clear that an action for denial of access to public records can only  
14 be filed against an “officer or a public body” who has “denied access” to public records. CNI is  
15 neither.

16 The Rules of Special Action and Rule 19 of the Rules of Civil Procedure (governing  
17 joinder) also do not provide a substantive basis for a lawsuit against CNI, and certainly no basis  
18 for a claim of fees against CNI. If anyone could be named a party to a lawsuit (and subject to fee  
19 claims), simply because they allegedly have documents related to their government work, then (1)  
20 it would render the “against the officer or public body” language in A.R.S. § 39-121.02(A)  
21 nugatory; and (2) every government employee or contractor could be named as a party to a lawsuit  
22 and subject to fee claims, because they all have documents related to government work. CNI is at  
23 best an entity whose records are being claimed to be relevant, and therefore at most a witness in  
24 this action. Finally, there is no reason why relief cannot be afforded in its absence because it has  
25 no public records as a matter of law.

26 It has been erroneously argued (in another action) that lawsuits can be filed against any  
27 “custodian” of records, meaning that any state employee or even contractor who has possession  
28 of state records can be properly sued under the statute. A.R.S. § 39-121.02(A) expressly provides:



1 Any person who has requested to examine or copy public records pursuant to this article,  
2 and who has been denied access to or the right to copy such records, may appeal the denial  
3 through a special action in the superior court, pursuant to the rules of procedure for special  
4 actions against the officer or public body.

5 (Emphasis added.)

6 The word “custodian” is not used when describing who is to be sued—only “officer or  
7 public body.” The word “custodian” is used only in A.R.S. §§ 39-121.01 and 39-121.03, where it  
8 clearly refers to the “officer in custody” of records under A.R.S. § 39-121, to whom record  
9 requests are made. This is consistent with the language in A.R.S. § 39-121.02(A) which provides  
10 that only public officers or public bodies may be sued, and the language in A.R.S. § 39-121 which  
11 provides that only “[p]ublic records and other matters in the custody of any officer” shall be open  
12 to inspection. Otherwise, any government employee or contractor would be open to being sued  
13 under public-records statutes by members of the public, and to being held responsible for their  
14 fees as well.

15 In another action, the erroneous argument has also been made that CNI must be treated  
16 differently because it allegedly does not provide “ordinary goods or services” and/or that it is  
17 uniquely subject to public records requests because the government has “entirely outsourced” an  
18 “important” function.<sup>5</sup> In reality, these arguments are without a legal basis and amount to little  
19 more than acknowledgement of improper media and political influence over this case. There is no  
20 legal authority which supports that holding a contractor liable under the public records statutes  
21 (including for fees) turns on whether it provides “ordinary services,” or whether its function is  
22 “important” or “entirely outsourced.” Whenever the government hires a private contractor, the  
23 government is “entirely outsourcing” something – that is the definition of a private contractor.  
24 And whether something is “important” or “unique” is at once arbitrary and true of every  
25 government function—they are all important and unique, because the government itself is

---

26 <sup>5</sup> It was also argued in another case that CNI’s contract was unique because the Senate was acting  
27 in an “oversight” capacity. This is strictly inaccurate, since the ballot investigation was  
28 conducted by the judiciary (not oversight) committee; but it also totally legally irrelevant, for  
all of the reasons herein.

1 important and unique. The construction company that built the Court of Appeals' building  
2 engaged in an "important" undertaking that was unique, since there is only one. Or the office-  
3 supply vendor who provides the legal notepads for jurors – that is also an important and unique  
4 undertaking, since the courts are also important and unique. To create a "rule" that only  
5 contractors who provide "outside-of-the-ordinary" goods or services are subject to public records  
6 requests is at once dangerous, confusing and unpredictable. After all, exactly what is "unusual"  
7 about CNI's services as an auditor? Is it because CNI audited an election? In which case should  
8 not all election contractors and workers now be subject to public-records requests, litigation, and  
9 fee claims -- for example the company which provides the vote-tabulation machines? It is also  
10 performing an "out-of-the-ordinary," "important" government function which is "entirely  
11 outsourced" to a private contractor. The bottom line is that such arguments are being invented out  
12 of whole cloth and find no genuine support in either the plain wording of the law or binding  
13 Arizona and Supreme Court caselaw.

14 **4. CNI's Contract Does not Give the Government Ownership Much Less**  
15 **Possession of its Company Records**

16 CNI is aware that this Court previously found (in a ruling by which CNI is not bound) that  
17 a provision in CNI's Agreement with the Senate regarding the sharing of defense materials  
18 (Section 18.5) gives the Senate the right to access or request CNI's documents. First, as explained  
19 above, this does not equate to the Senate owning (much less "hav[ing] *in fact* obtained" the  
20 records, to quote the United States Supreme Court in *Forsham*); and actual ownership and  
21 possession are prerequisites to being considered a public record. "Government access to and  
22 reliance upon information" do "not signify Government ownership or control of such  
23 information." *Ciba-Geigy Corp.*, 428 F. Supp. at 530. "Mere access without ownership and mere  
24 reliance without control will not suffice to convert [private] data into agency data." *Id.* Further,  
25 the idea that CNI's private company records can be converted into "public records" simply  
26 because someone sued the Senate claiming that they are public records – such that its records are  
27 "needed for the defence of such claims" under Section 18.5, causing the Senate to obtain them  
28 and *make* them public records – is circuitous. Such logic could be used to render any of CNI's

1 private records “public,” which is not only unfair but also “unreasonable” within the meaning of  
2 Section 18.5. Further, Section 18.5 requires only “reasonable cooperation” with the Senate—and  
3 even then, only if it is at no expense to CNI. Further, Section 18.5 provides only for reasonable  
4 cooperation in the event that either party to the Agreement is subject to a claim regarding the  
5 Agreement or its actions taken pursuant to the Agreement. The Senate’s obligations (*vel non*)  
6 under public-records law exist independent of the Agreement and arise under A.R.S. §§ 39-121  
7 *et seq.* Claims such as these regarding the Senate’s obligations to provide public records to  
8 members of the public therefore do not implicate Section 18.5. Wide-ranging requests for  
9 production of documents such are at issue here are not undertakings without expense and therefore  
10 no obligation under Section 18.5 is triggered. In addition, the Senate retains the discretion under  
11 Section 18.5 to seek or sue for records, and it clearly violates the separation-of-powers doctrine  
12 to force the Senate to invoke a contractual clause much less bring a claim. Finally, the Senate is  
13 in material breach of CNI’s contract for failure to pay CNI on the balance of CNI’s contract, and  
14 for its failure to indemnify CNI, *inter alia*—which excuses CNI from further performance under  
15 the contract, even if Section 18.5 genuinely applied. But again, the overarching point here is that  
16 even if it were applicable, Section 18.5 would entitle the government at most to access and not  
17 ownership of the documents, so they are not public records as a matter of law.

18 **5. Plaintiff’s claims are based on records requests that were not even sent to CNI;**  
19 **Plaintiff lacks standing to litigate over records it has never requested from CNI**

20 Plaintiff seeks a number of categories of documents in this suit but fails to allege that all  
21 of its requests were ever sent to CNI; in fact, the requests dated April 6, 2021 (Ex. 13 to Amended  
22 Complaint) and May 10, 2021 (Exhibit 23 to Amended Complaint) were made only to the Senate,  
23 on their face. Even if public-records law were applicable to CNI, a records request must actually  
24 be made before any response from CNI comes due. Further, Plaintiff lacks standing to litigate  
25 over records which it has not even requested from CNI. As a practical matter, CNI was first  
26 notified of Plaintiff’s particular requests as part of service of the suit, and it believes that the  
27 number of responsive documents that have not yet been produced is minimal. But in the meantime  
28

1 it is being forced to deal with expensive litigation and an application for default which is not fair  
2 even under public-records law as it normally operates.

3 **Conclusion**

4 For the foregoing reasons, CNI's Motion to Dismiss must be granted. In accordance with  
5 Rule 54(g)(1), CNI requests its fees and costs.

6 **RESPECTFULLY SUBMITTED** January 21, 2022.

7 **WILENCHIK & BARTNESS, P.C.**

8 */s/ John "Jack" D. Wilenchik* \_\_\_\_\_

9 Dennis I. Wilenchik, Esq.

10 John "Jack" D. Wilenchik, Esq.

11 Jordan Wolff, Esq.

12 2810 North Third Street

13 Phoenix, AZ 85004

[admin@wb-law.com](mailto:admin@wb-law.com)

*Attorneys for Cyber Ninjas, Inc.*

14 **ELECTRONICALLY** filed January 21, 2022,  
15 via AZTurboCourt.com

16 **COPY** electronically transmitted by the Clerk  
17 of the Court via AZTurboCourt.com  
to the Honorable Michael Kemp

18 **ELECTRONICALLY** served January 21, 2022 via  
19 AZTurboCourt.com upon:

20 Kory Langhofer, Esq.

21 Thomas Basile, Esq.

**STATECRAFT PLLC**

649 N. Fourth Ave., 1<sup>st</sup> Floor

Phoenix, Arizona 85003

[kory@statecraftlaw.com](mailto:kory@statecraftlaw.com)

[tom@statecraftlaw.com](mailto:tom@statecraftlaw.com)

*Attorneys for Senate Defendants*

1 Keith Beauchamp, Esq.  
2 Roopali H. Desai, Esq.  
3 D. Andrew Gaona, Esq.  
4 **COPPERSMITH BROCKELMAN PLC**  
5 2800 North Central Avenue, Suite 1900  
6 Phoenix, Arizona 85004  
7 [kbeauchamp@cblawyers.com](mailto:kbeauchamp@cblawyers.com)  
8 [rdesai@cblawyers.com](mailto:rdesai@cblawyers.com)  
9 [agaona@cblawyers.com](mailto:agaona@cblawyers.com)  
10 *Attorneys for American Oversight*

11 David J. Bodney, Esq.  
12 Craig C. Hoffman, Esq.  
13 **BALLARD SPAHR LLP**  
14 1 East Washington Street, Suite 2300  
15 Phoenix, Arizona 85004-2555  
16 [bodneyd@ballardspahr.com](mailto:bodneyd@ballardspahr.com)  
17 [hoffmanc@ballardspahr.com](mailto:hoffmanc@ballardspahr.com)  
18 *Attorneys for Phoenix Newspapers, Inc. and Kathy Tulumello*

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
By: /s/ Christine M. Ferreira