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December 26, 2023

**VIA EMAIL**

Hon. David Livingston  
Arizona House of Representatives  
1700 West Washington, Suite H  
Phoenix, AZ 85007-2844

*Re: Complaint concerning the use of public resources  
Public Monies Investigation No. PM2023-018*

Dear Representative Livingston,

The purpose of this letter is to address a complaint pursuant to A.R.S. § 16-192 that you submitted to our Office via letter on June 14, 2023 (the "Complaint"), enclosed as **Exhibit A**. Upon receiving the Complaint, we opened an investigation under the above-referenced number and have carefully investigated this matter. We have reviewed the documents included with and referenced in the Complaint along with documents received from Governor Hobbs's office, enclosed as **Exhibit B**, and the Katie Hobbs Inaugural Fund, a 501(c)(4) organization (the "KHIF"), enclosed as **Exhibit C**. We also met with representatives of the Governor's Office and the KHIF, and interviewed a former employee of Elect Katie Hobbs, Governor Hobbs's 2022 campaign committee (the "Hobbs Campaign"). Based on all information collected and reviewed during this investigation, including documentation showing the transfer of certain funds to the State Promotional Fund, we were unable to identify any violations of A.R.S. § 16-192 for the reasons set forth below.

**I. Factual Background.**

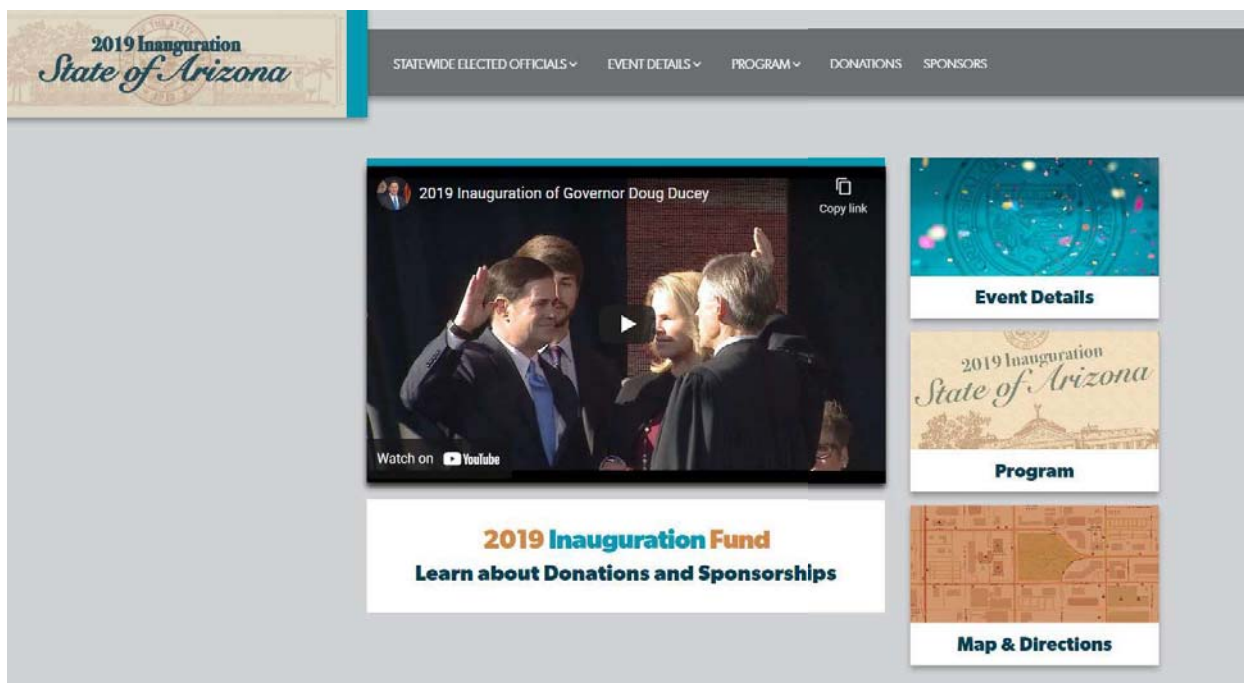
Arizona held a general election on November 8, 2022, during which Arizona voters chose Katie Hobbs as Arizona's next Governor. The results of the November 2022 election were certified on December 5, 2022 by Governor Doug Ducey, Secretary of State Katie Hobbs, Attorney General Mark Brnovich, and Chief Justice Robert Brutinel of the Arizona Supreme Court. After the election results were certified, Kari Lake, the Republican gubernatorial nominee for the November 2022 election, filed a lawsuit purporting to challenge the certified results. That lawsuit is now on appeal for the second time.

Katie Hobbs was sworn in as Arizona's 24th Governor on January 2, 2023. A public

inauguration ceremony took place on January 5, 2023 on the Arizona Capitol Mall (the “Ceremony”). A private inaugural ball, hosted by the KHIF, took place on January 7, 2023 at Talking Stick Resort (the “Ball”).

On or around November 30, 2022, an employee of the Hobbs Campaign contacted members of Governor Ducey’s staff about setting up a website for the 2023 Inauguration. Ex. B at 164. A meeting between staffers from the Hobbs Campaign and employees from Governor Ducey’s office took place on December 2, 2022. *Id.* at 40, 198, 200. Following that meeting, members of Governor Ducey’s staff began taking steps to create a website for the 2023 Inauguration. *Id.* A member of Governor Ducey’s staff first reached out to the Arizona Department of Administration (“ADOA”) regarding the domain name, asking ADOA to reserve [azinauguration.gov](https://azinauguration.gov). *Id.* at 188. ADOA responded that State policy is to use “third-level domains of [az.gov](https://az.gov)” and suggested “[inauguration.az.gov](https://inauguration.az.gov)” (the “2023 Website”). *Id.* at 186. The Hobbs Campaign agreed, and Governor Ducey’s staff went about securing the domain. *Id.* at 41. Governor Ducey’s webmaster then started to build the Website. *Id.* at 40. On December 5, 2022, the Hobbs Campaign emailed the Governor’s webmaster and stated, “We have decided to use EventBrite for our inauguration ticket sales and would love to get that embedded onto the site.” *Id.* at 200. The webmaster responded that she was familiar with EventBrite and asked the Hobbs campaign to send the “embed code,” which was sent later that day. *Id.*

It appears that Governor Ducey’s webmaster used Governor Ducey’s 2019 Inauguration website (the “2019 Website”) as a template for the Website. The landing page for the 2019 Website (<https://2019azinauguration.az.gov>) contained links to information about event details, the inauguration program, directions, and the “2019 Inauguration Fund.”



The link titled “2019 Inauguration Fund” directed website visitors to a page titled “Donations,” which solicited two types of donations. First, it directed individual donors to the

State Inauguration Fund. Second, it directed corporate donors to contact Kelly Molique or Corinne Lovas and provided email addresses for both.

## Donations

### Individual Donations

Thank you for your interest in donating to the Governor's **2019 Inauguration Fund** through the State of Arizona. The State of Arizona is a qualifying organization for the purpose of charitable contributions.

Please send your contribution via check to:

2019 Inauguration Fund, c/o John McCleve  
Governor's Accounting Office  
1700 West Washington Street  
Phoenix, AZ 85007

To make your contribution via credit card, please visit: <https://azdonate.az.gov/>

Statewide Elected  
Officials

Event Details

Program

Donations

Donations

Sponsors

Tweet to @AZInaugural2019 Tweets by  
AZInaugural2019

### Corporate Donations

Please contact Kelly Molique at 480-213-5910 or [kelly@lovasco.com](mailto:kelly@lovasco.com) or Corinne Lovas at 623-218-6616 or [corinne@lovasco.com](mailto:corinne@lovasco.com) to RSVP or for any questions you may have.

#### Sponsorships Packages:

##### \$25,000 - Grand Canyon Level

- 6 Inauguration tickets - VIP seating
- 3 VIP Parking passes
- 6 VIP Inauguration Reception tickets
- 3 Photos at the VIP Reception
- 6 Inaugural pins
- Logo included on program, website and other promotional materials

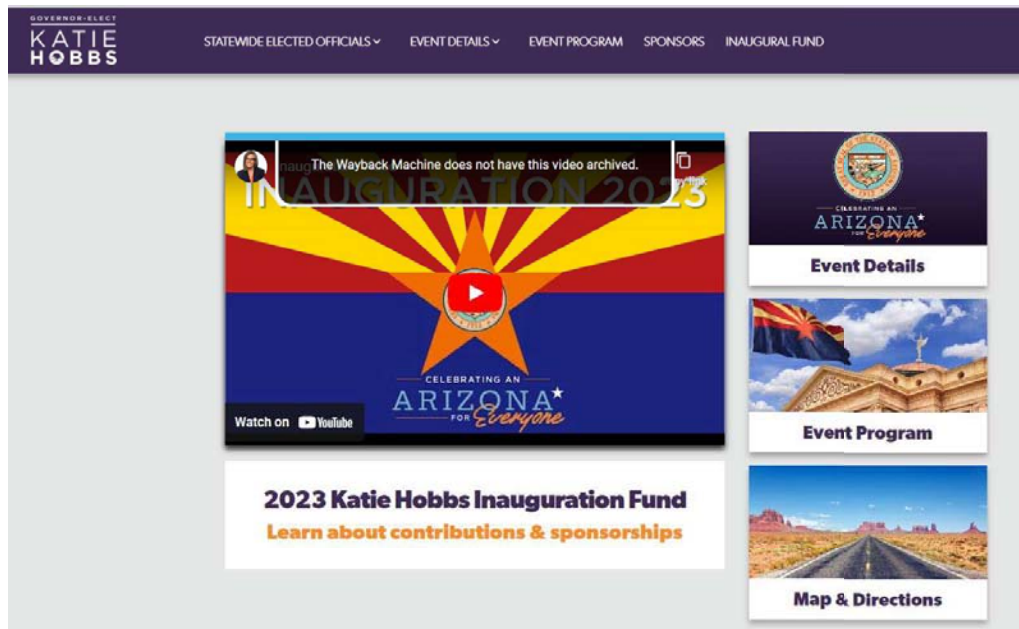
##### \$15,000 - Sedona Red Rocks

- 3 Inauguration tickets - VIP seating
- 2 VIP Parking passes
- 3 VIP Inauguration Reception tickets
- 2 Photos at the VIP Reception
- 3 Inaugural pins
- Logo included on program, website and other promotional materials

Ms. Molique and Ms. Lovas appear to be affiliated with Lovas Co., LLC, a vendor that performed work for Ducey for Governor and Arizonans for Strong Leadership, a political action committee associated with Governor Ducey. It is unclear from our review of the archived version of the 2019 Website where Ms. Molique or Ms. Lovas directed corporate donors to give money.

Governor Ducey’s webmaster sent a draft version of the inauguration website to the Hobbs Campaign on December 11, 2022. *Id.* at 52-53. Over the next three days, the Hobbs Campaign and Governor Ducey’s webmaster exchanged emails regarding edits to the 2023 Website. *Id.* The Website went live on December 14, 2022. *Id.* at 50-52. That same day, the Hobbs Campaign asked Governor Ducey’s webmaster to “Cut all the sponsorship levels on the Inaugural Fund page and just keep ‘If you are interested in sponsoring or donating to the 2023 inauguration, please contact Rose Huerta at Rose@KatieHobbs.org.’” *Id.* at 50.

Much like the 2019 Website, the landing page for the live version of the Website contained links to pages with information about event details, the inauguration program, directions, and the “2023 Katie Hobbs Inauguration Fund.”



The link titled “2023 Katie Hobbs Inauguration Fund” directed 2023 Website visitors to a page (the “Donation Page”) that, in turn, directed those interested in donating to contact Rose Huerta at Rose@KatieHobbs.org, consistent with the direction provided to Governor Ducey’s webmaster by the Hobbs Campaign. *Id.* at 50.

## Inaugural Fund

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If you are interested in sponsoring or donating to the 2023 inauguration, please contact Rose Huerta at [Rose@KatieHobbs.org](mailto:Rose@KatieHobbs.org).

As part of our investigation, we interviewed Rose Huerta. Ms. Huerta was the Finance Director for the Hobbs Campaign. She was employed by the Hobbs Campaign until approximately February 2023. Ms. Huerta was not at any time an employee of the State of Arizona. According to Ms. Huerta, she was responsible for corresponding with prospective donors about the 2023 Inauguration. Ms. Huerta indicated that she fielded emails from potential donors and provided instructions to each prospective donor based on where the donor wished to give money.

We asked Ms. Huerta if she tracked the number of donors or prospective donors who contacted her based on the 2023 Website, and she stated that she did not because she did not have any way to know how any prospective donor obtained her email address. Based on Ms. Huerta's understanding, the 2023 Website was not the only method by which her email address was disseminated to prospective donors. For example, Governor-Elect Hobbs sent emails directly connecting donors with Ms. Huerta. *See, e.g.*, Ex. C at 100.

Ms. Huerta stated that she was responsible for providing donors with information about options for donating to support the inauguration. Donors had two options: donating to a state-owned account (the "Promotional Fund") or to the KHIF. Monies donated to the Promotional Fund were used to pay for expenses related to the Ceremony. Ms. Huerta indicated that she sent donors a document titled "2023 Inauguration Sponsorships," *id.* at 109, which outlined various levels of sponsorship. Each sponsorship level came with certain benefits such as tickets to the Ball, reserved seating and parking at the Ceremony, recognition in the Inaugural Program, and copies of the Inaugural Program signed by Governor Hobbs. *Id.* Ms. Huerta said that it was her understanding that the sponsorship levels applied to both donations to the Promotional Fund and to the KHIF. Ms. Huerta indicated that Hobbs Campaign staff processed tickets to the Ceremony and the Ball using EventBrite for donors who gave at one of the sponsorship levels.

When a donor indicated they were interested in giving to the Promotional Fund, Ms. Huerta stated that she would send required forms, such as the donor intent form, and then would connect the donor with staff in the Governor's accounting office who would process the payment<sup>1</sup>. For

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<sup>1</sup> Donations to the Promotional Fund were processed by the Governor's accounting office. Some were processed during the final days of the Ducey administration, and others were processed during the initial weeks of the Hobbs administration. Although donations to the Promotional Fund straddled the two administrations, we note that the change in administration does not appear to

those donors who were interested in giving to the KHIF, Ms. Huerta provided a sheet with instructions for making a donation via mail, electronically via the ActBlue fundraising platform, or via wire transfer. *Id.* at 111. Ms. Huerta indicated that other than providing directions for making payments, she was not involved in collecting or processing any donations to the KHIF. Further, she stated, to her knowledge, the 2023 Website was not configured to accept donations to the KHIF. The 2023 Website did not in fact process any donations on behalf of the KHIF. Additionally, the 2023 Website did not link directly to any website controlled by or associated with the KHIF. Ms. Huerta stated that, to her knowledge, no State employee assisted with soliciting or processing donations for the KHIF. She reiterated that she would connect donors who expressed interest in giving to the Promotional Fund with the Governor’s accounting office, and that she would assist with obtaining donor intent forms. The Hobbs Campaign voluntarily produced emails between Ms. Huerta, prospective donors, and the Governor’s accounting staff regarding donations to the Promotional Fund. We also received from the Governor’s office emails regarding donations to the Promotional Fund. Our review of these emails revealed only one instance of the Governor’s office staff interacting with a donation meant for the KHIF. On or about February 7, 2023, the Governor’s office received a check for \$50,000 from United Healthcare that was meant for the KHIF. *Ex. B* at 1046. Although the Governor’s accounting staff initially believed that the check was intended for the Promotional Fund, the check was not deposited into the Promotional Fund because it was not accompanied by the required donor intent form. *Id.* at 1048. Accordingly, upon learning of the error, the Governor’s accounting staff forwarded the check to the KHIF. We found no other evidence of any State employee interacting with the KHIF in any capacity.

Consistent with the instructions from the Hobbs Campaign, the 2023 Website contained two EventBrite links—one that allowed users to obtain a free ticket to the Ceremony and one that allowed users to buy tickets to the Ball. *Id.* at 301. Proceeds from the sale of tickets to the Ball went into an account owned by the Arizona Democratic Party (“ADP”). According to EventBrite records obtained during our investigation, *see Ex. C* at 235-287, 53 people used the 2023 Website to buy a ticket to the Ball resulting in a net deposit of \$7,950 into the ADP-owned account.<sup>2</sup> *Id.* at 235-237. We also obtained records showing that, after we started our investigation, ADP transferred that entire sum (\$7,950) from the aforementioned account into the State Promotional Fund. *Id.* at 288.

Finally, during our investigation, representatives of the KHIF stated that the KHIF had retained the Elias Law Group to perform compliance-related legal work for the KHIF. We received a redacted copy of an engagement letter between the KHIF and the Elias Law Group showing that the Elias Law Group represented the KHIF with respect to “nonprofit tax matters.” *Id.* at 84-86. We also received a sworn declaration from a member of the KHIF’s Board of Directors stating that no monies belonging to the KHIF were used to pay any invoices for legal work performed on behalf of Governor-Elect/Governor Hobbs in the *Lake v. Hobbs* litigation. *Id.* at 289.

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have resulted in any staffing changes in the Governor’s accounting office during the relevant time period.

<sup>2</sup> The tickets processed through the 2023 Website are those with the tracking link “echckt.” *Ex. C* at 235-37. Each ticket was sold for \$150. *Id.*

## II. Legal Standard

### A. Legislative history of § 16-192 and related statutes.

A.R.S. § 16-192 is the newest addition to a group of statutes that govern the use of public resources for purposes of influencing elections. *See* A.R.S. § 9-500.14 (addressing the use of city or town resources to influence elections); § 11-410 (addressing the use of county resources to influence elections); § 15-511 (addressing the use of school district or charter school resources to influence elections); § 15-1408 (addressing the use of community college district resources to influence elections); § 15-1633 (addressing the use of university resources to influence elections); § 16-192 (addressing the use of state or special district resources to influence an election) (collectively the “Public Resource Election Statutes”).

Most of the Public Resource Election Statutes, specifically § 9-500.14, § 11-410, § 15-511, and § 15-1408, were enacted in 1996 with the passage of Senate Bill 1247. *See* S.B. 1247, 42nd Leg., 2d Reg. Sess. (Ariz. 1996). The initial versions of these statutes were substantially similar. *See id.* Each provided that the relevant public entity “shall not use its personnel, equipment, materials, buildings or other resources for the purpose of influencing the outcomes of elections.” *Id.* Section 15-1633 was added in 2005 via Senate Bill 1207. S.B. 1207, 47th Leg., 1st Reg. Sess. (Ariz. 2005). The language of § 15-1633 differed slightly from its sister statutes, providing that a “person acting on behalf of a university or a person who aids another person acting on behalf of a university shall not use university personnel, equipment, materials, buildings or other resources for the purpose of influencing the outcomes of elections.” *Id.*

Section 16-192 was originally adopted in 1998. S.B. 1110, 43rd Leg., 2d Reg. Sess. (Ariz. 1998). The original version of the statute covered only “special district resources” and provided that a “special taxing district shall not use its personnel, equipment, materials, buildings, or other resources for the purpose of influencing the outcome of an election.” *Id.* That version of § 16-192 was repealed and replaced in 2013 as part of House Bill 2156, which also amended all the other Public Resource Election Statutes. *See* H.B. 2156, 51st Leg., 1st Reg. Sess. (Ariz. 2013).

HB 2156 made several changes to the Public Resource Election Statutes. First, it expanded the list of public resources covered, providing that the relevant public entities “shall not *spend or use its resources, including the use of or expenditure of monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer hardware and software, webpages*, personnel, equipment, buildings or *any other thing of value . . .* for the purpose of influencing the outcomes of elections.” *Id.* (added language italicized). As to both § 9-500.14 and § 11-410, HB 2156 added enforcement authority, providing that “the attorney general or the county attorney of the county in which the alleged violation occurred may initiate a suit” in superior court “for the purpose of complying with this section,” and that the court may impose certain civil penalties against a person “who knowingly violates or aids another person in violating” the statute. H.B. 2156, 51st Leg., 1st Reg. Sess. (Ariz. 2013); § 9-500.14(E), (F); § 11-410 (E), (F). HB 2156 also amended all of the Public Resource Election Statutes, to specifically define “influencing the outcomes of elections” to mean:

supporting or opposing a candidate for nomination or election to public office or the recall of a public officer or supporting or opposing a ballot measure, question or proposition, including any bond, budget or override election and supporting or opposing the circulation of a petition for the recall of a public officer or a petition for a ballot measure, question or proposition in any manner that is not impartial or neutral.

H.B. 2156, 51st Leg., 1st Reg. Sess. (Ariz. 2013). Rather than amending § 16-192, HB 2156 repealed the statute and replaced it with new text. *Id.* The new text shared some similarities with the rest of the Public Resource Election Statutes, but it was also notably different in some ways. Section 16-192 provides that:

this state and special taxing districts and any public agency, department, board, commission, council or authority shall not ***spend or use public resources to influence an election***, including the use or expenditure of monies, accounts, credit, materials, equipment, buildings, facilities, vehicles, postage, telecommunications, computer hardware and software, web pages and personnel and any other thing of value of the public entity.

A.R.S. § 16-192(A) (emphasis added). Whereas the other Public Resource Election Statutes restrict certain public entities from spending or using resources “for the purpose of influencing the outcomes of elections,” section 16-192 provides that the State and other public entities cannot “spend or use public resources to ***influence an election***.” Compare § 16-192(A) (emphasis added) with § 9-500.14(A); § 11-410 (A); § 15-511(A); § 15-1408 (A); § 15-633(A). HB 2156 also added a specific definition of “[i]nfluence an election”:

supporting or opposing a candidate for nomination or election to public office or the recall of a public officer or supporting or opposing a ballot measure, question or proposition, including any bond, budget, or override election and supporting or opposing the circulation of a petition for the recall of a public officer or a petition for a ballot measure, question or proposition in any manner that is not impartial or neutral.

H.B. 2156, 51st Leg., 1st Reg. Sess. (Ariz. 2013). The definition of “influence an election” is similar to the definition of “influence the outcomes of elections” that was added to the other Public Resource Election Statutes by HB 2156. *See id.*

HB 2156 also added penalty and enforcement provisions to § 16-192 that were similar to those added to § 9-500.14 and § 11-410. H.B. 2156, 51st Leg., 1st Reg. Sess. (Ariz. 2013). Under § 16-192, a person or public entity that knowingly violates the statute or knowingly aids another in violating the statute “is liable for a civil penalty of not more than five thousand dollars for each violation.” § 16-192 (E). “The court may also order the person or public entity in violation to pay an additional penalty that equals the value of the public resources unlawfully used.” *Id.* (F).



## **B. Prior interpretation of the Public Resource Election Statutes.**

In 2015, this Office considered the scope of the Public Resource Election Statutes in a published Attorney General Opinion. Ariz. Op. Atty. Gen. No. I15-002, 2015 WL 4719005 (July 30, 2015) (the “Opinion”). Although the Opinion answered a question about A.R.S. § 11-410, our Office made clear that “[b]ecause the operative language in that section is repeated elsewhere,” the Opinion’s analysis “applies equally to the same language as found in” the other Public Resource Election Statutes. I15-002 at \*3 n.2.

The Opinion is instructive for our analysis in this matter. There, our Office was presented with two questions: (1) “[w]hen do the restrictions on the use of public resources ‘for purposes of influencing the outcomes of elections’ arise with regard to a ballot measure?” and (2) “[w]hat conduct or communications does the prohibition in A.R.S. § 11-410 preclude?” I15-002 at \*1.

Our Office first looked at how “influencing the outcome of elections” had previously been interpreted. I15-002 at \*1 (citing Ariz. Op. Atty. Gen. No. I00-020). In a 2000 Attorney General Opinion, our Office concluded that “whether something has the purpose of influencing an election should be generally an objective test,” and provided guidance as to certain conduct that would not be prohibited by the Public Resource Election Statutes, such as speaking out individually regarding ballot measures, preparing and distributing election information required by statute, etc. *Id.* (citing I00-020).

Then, in 2002, the Court of Appeals issued an opinion interpreting § 9-500.14. The court concluded that “an actor would not be found to violate the prohibition unless the communication at issue ‘unambiguously urges a person to vote in a particular manner.’” I15-002 at \*2 (citing *Kromko v. City of Tucson*, 202 Ariz. 499, 503 ¶ 10 (App. 2002)). The court also held that § 9-500.14 did not expressly require that government communications about an election be impartial. *Kromko*, 202 Ariz. at 502.

The 2015 Opinion then discussed how the legislature adopted HB 2156 in 2013 and added a “statutory definition of ‘influencing the outcomes of elections’” that was “lacking at the time of the *Kromko* decision.” I15-002 at \*2. The Opinion next examined when “temporally ... these prohibitions arise” with respect to ballot measures and concluded that § 11-410’s “prohibitions arise upon the filing of an application for a serial number for a ballot initiative or referendum.” *Id.* at \*3. Our Office reasoned that aligning “the statutory prohibition with [an] objectively identifiable date is consistent with Arizona’s election laws generally, which typically tie election-related prohibitions and duties to objectively identifiable dates and times,” and that a “contrary rule would cause unnecessary ambiguity and potentially chill the otherwise permissible conduct or speech of elected officials and public employees.” *Id.*

Next, the Opinion examined the conduct or communications precluded by § 11-410. Our Office reasoned that the adoption of HB 2156 “effectively rejected the *Kromko* ‘unambiguously urge’ test as the only measure of influencing the outcome of elections” but noted that the legislature “did not clearly articulate its preferred alternative to that test.” *Id.* at \*4. Because we cannot “read a statute in a way that would render a portion superfluous or ineffective,” our Office concluded that any test “must incorporate all elements of the definition” of “influencing the outcomes of elections” adopted by the legislature in 2013. *Id.*

Our Office then articulated a two-part test for determining whether particular conduct or communications are prohibited by the Public Resource Election Statutes: (1) “was there a use of public resources?” and (2) “if so, were the public resources used for the purpose of influencing the outcomes of elections?” *Id.* First, we noted that a “violation of the statutory prohibitions must ... involve the use or expenditure of a public resource that has value.” *Id.* “The use of either an elected official’s title or other incidental uses of the attributes of office also is not a use of public resources for purpose of the statutory prohibition.” *Id.* at \*5.

If a public resource was indeed used, our Office concluded that the analysis of whether a public resource was used for the purpose of influencing an election is an objective one that “necessarily involve[s] a fact-specific, case-by-case evaluation.” *Id.* at \*6. The “Legislature intended the prohibition on the use of public resources” to apply to uses of public resources that “unambiguously urge the electorate to vote in a particular matter,” or “support or oppose” a ballot measure or candidate by “presenting [ ] information in any manner that is not impartial or neutral.” *Id.*

Our Office also adopted an objective two-prong test to determine whether a use of public resources is for the purpose of influencing an election. The test looks to (1) “whether the use of public resources has the purpose of supporting or opposing” a ballot measure or candidate, and (2) “whether the use of public resources involves dissemination of information in a manner that is not impartial or neutral.” *Id.* at \*7. “If the use of public resources unambiguously urges voters to vote for or against” a candidate or ballot measure, then it will violate § 16-192. *Id.* If “a reasonable person could not find that the use of public resources supports or opposes” a candidate or ballot measure, then it will not violate § 16-192. *Id.* “If a reasonable person could conclude that the use of public resources supports or opposes” a candidate or ballot measure “but reasonable minds could differ,” then “the test will require closer examination of whether the use of public resources disseminates information in a manner that is not impartial or neutral.” *Id.* “If an analysis of the manner of the use of public resources reveals that it engages in advocacy, misleads, or uses rhetorical strategy, the use of public resources will violate [§ 16-192] because (1) a reasonable person could find that the use [of public resources] supports or opposes” a candidate or ballot measure, and “(2) it is not impartial or neutral.” *Id.*

Our Office then noted that any assessment under the Public Resource Election Statutes “must account for the delicate balance between the prohibition on the improper use of public resources to influence elections and the need for public officials and employees to carry out their public functions.” *Id.* “If a reasonable person could find that the use of public resources supports or opposes” a candidate or ballot measure, “we assess whether it is done in a neutral or impartial manner by examining whether it is: (1) free of advocacy; (2) free of misleading tendencies, including amplification, omission, or fallacy; and (3) free of partisan coloring.” *Id.*

The Opinion went on to list some examples in an effort to provide further clarification. “Routine uses of public resources made in the normal course of government functions would be presumed not to run afoul of the statutory prohibitions unless additional evidence demonstrates the use of resources was for the purpose of influencing an election.” *Id.* at \*8. “[R]outine communications are presumed to be permissible; but that presumption may be rebutted by evidence that the communication meaningfully deviated from the routine in a manner that objectively indicated it had the purpose of influencing an election in violation of statutory prohibitions.” *Id.*

This lengthy examination of the history of § 16-192 and the other Public Resource Election Statutes is helpful to frame our analysis of the questions raised by the Complaint.

### **III. Analysis.**

As set forth above, the first step in the objective test set forth in the Opinion is to determine whether there was a use of public resources. I15-002, at \*4. The Complaint identifies several possible public resources at issue: (1) the 2023 Website, (2) the time and effort of State employees to build and maintain the 2023 Website, (3) monies donated to the Promotional Fund and spend on the Ceremony, and (4) the time and effort of State employees to set up and tear down the Ceremony. The Complaint does not appear to assert that monies donated to the Promotional Fund or the time and effort of ADOA employees in setting up the Ceremony were used to influence an election. The Complaint does allege that Governor Hobbs’s use of the 2023 Website violated § 16-192.

For purposes of our analysis, we presume that the creation of a public website to disseminate information about the inauguration of state officials, without more, is a routine use of public resources made in the normal course of government functions. I15-002 at \* 8. A violation of § 16-192 could occur where an inauguration website created using public resources, as a whole or in part, “deviate[s] from the routine in a manner than objectively indicate[s] that it had the purpose of influencing an election.” *Id.* at \* 8. The majority of the content on the 2023 Website neither appears to deviate from a routine use of public resources nor could be reasonably interpreted as an attempt to influence an election. However, we identified two components of the 2023 Website that require further analysis: (1) the EventBrite link, and (2) the Donation Page. We therefore analyze whether those components of the 2023 Website, and the time and effort of State employees to build and maintain them “deviated from the routine in a manner that objectively indicated that it had the purpose of influencing an election in violation of” § 16-192. *Id.* at \* 8.

**A. EventBrite link**

**i. Did the EventBrite links deviate from the routine use of public resources?**

In order to determine whether the use of EventBrite links “deviated from the routine” use of public resources, we looked to previous inauguration websites for context. We were able to review materials related to one other inauguration, the 2019 inauguration. We asked Governor Hobbs’s Office to search for archived records related to other inauguration sites, but they were unable to locate any. Based on our review of the 2019 Website, it appears that two EventBrite links were used to provide tickets for the 2019 Inauguration ceremony—one link for “Invited Guests,” and one link for “Members of the Public.” The 2023 Website also included two EventBrite links. One link provided free tickets to the Ceremony. The second sold tickets to the Ball. The use of EventBrite to distribute free tickets to inaugural ceremonies appears to have been a routine use of public resources made in the normal course of government functions. The use of the 2023 Website to sell tickets for a private event, however, does appear to deviate from the routine use of public resources. We therefore analyze whether the use of EventBrite to sell tickets to a private event “objectively indicated it had the purpose of influencing an election in violation of statutory provisions.” *Id.* at \* 8.

**ii. Did the EventBrite link objectively indicate that it had the purpose of influencing an election?**

The ticket link for the Ball stated “The Inaugural Ball is being held on Saturday, January 7th, 2023 and tickets are available for \$150 each. To reserve your ticket, use the order form below[.]” *See* 2023 Website, Inaugural Ball available at <https://web.archive.org/web/20230102002702/https://inauguration.az.gov/content/inaugural-ball>. We learned through our investigation that proceeds from ticket sales were deposited into an account controlled by ADP. However, the 2023 Website did not contain any information about what would happen to the proceeds from ticket sales. EventBrite records show that 53 tickets were purchased through the Website. As noted above, the ADP transferred the proceeds from those ticket sales to the Promotional Fund after the initiation of our investigation. Thus, there is no possibility that those funds could be used to influence a future election.

We also evaluated whether the words associated with the ticket link could have been interpreted to support Katie Hobbs’s election. They could not. The clear purpose of the website was to communicate information related to Governor Hobbs’s inauguration, not to support her candidacy in an election that had already concluded. Indeed, the words associated with the ticket link did not even mention the election, nor did they refer to it indirectly. They merely told a reader when the Ball would occur, how much tickets cost, and how to order tickets. In doing so, they did not influence the results of an already-concluded election.

In sum, although the inclusion of an EventBrite link selling tickets to a private inaugural ball does appear to deviate from the routine use of public resources in the normal course of ordinary government functions, we conclude that the EventBrite link for the Ball did not “objectively indicate that it had the purpose of influencing an election.” We also conclude that there is no

possibility that proceeds from those ticket sales could be used to influence a future election because the proceeds from all ticket sales processed by the 2023 Website have been transferred to the Promotional Fund.

## **B. Donation Page**

We next analyze the inclusion of the Donation Page on the Website. The Complaint specifically identifies the following sentence from that page: “If you are interested in sponsoring or donating to the 2023 Inauguration, please contact Rose Huerta at [Rose@KatieHobbs.org](mailto:Rose@KatieHobbs.org).” Ex. A at 1.

### **i. Did the Donation Page deviate from the routine use of public resources?**

In particular with the 2019 inauguration in mind, the inclusion of the Donation Page here did not “meaningfully deviate[ ] from the routine.” I15-002 at \* 8. As noted above, the 2019 Website included a “Donations” page soliciting both individual and corporate sponsorships for the 2019 inauguration. The 2019 Website also included contact information for two individuals associated with a consulting company that performed work for Governor Ducey’s 2018 re-election campaign and his PAC. Accordingly, the inclusion of a donation page and contact information for a private person associated with a governor or governor-elect’s campaign on their inauguration website, without more, does not appear to deviate from the normal course of government function.

We do note one difference between the 2019 Website’s donation page and the Donation Page. Unlike the private individuals listed on the 2019 Website, the domain name for Ms. Huerta’s email address belongs to Elect Katie Hobbs, which was Governor Hobbs’s 2022 candidate committee, making clear that Ms. Huerta is associated with the Hobbs Campaign. If Katie Hobbs were a candidate for Governor at the time that Rose Huerta’s email address was posted on the 2023 Website, that could perhaps be interpreted as supporting a candidate for election, but Katie Hobbs was not a candidate during the relevant time here.

### **ii. Did the Donation Page objectively indicate that it had the purpose of influencing an election?**

As discussed above, we presume that the Public Resource Election Statutes, like other Arizona election laws, tie prohibitions to objectively identifiable dates and times. At the time Ms. Huerta’s email address was posted on the Donation Page (on or around December 14, 2022), Katie Hobbs was not a candidate for any office. She was the outgoing Secretary of State and the Governor-Elect. The Donation Page does not reference any election, so even assuming Governor Hobbs intends to seek re-election in 2026, no reasonable person could interpret the Donation Page (or any other part of the 2023 Website) as supporting or opposing the nomination or election of Katie Hobbs for Governor in 2026. The Donation Page (and the 2023 Website more broadly) also do not refer to a ballot measure, question or proposition, or a petition for the recall of a public officer or for a ballot measure, question, or proposition. Accordingly, we conclude that the Donation Page did not “objectively indicate[ ] it had the purpose of influencing an election.”

Given our conclusion that § 16-192’s prohibitions are tied to objectively identifiable dates and times, we also cannot conclude that the Website could have been used to “influence” the November 2022 election. Voting in the November 2022 election concluded at 7 pm on November 8, 2022. The Website did not go live until December 14, 2022. No information on the Website could have influenced the vote of any Arizona voter in the November 2022 election. Although Ms. Lake continues to pursue post-election litigation, the November 2022 gubernatorial election concluded at the very latest on December 5, 2022, when the results were certified. No reasonable person could have seen the Website on or after December 14, 2022 and concluded that it was urging them to support Katie Hobbs in the already-concluded November 2022 election. Indeed, it would have been impossible for any Arizona voter to view the Website on or after December 14, 2022 and then cast a vote in the November 2022 election.

The Complaint suggests that the KHIF may have paid legal fees on behalf of Katie Hobbs in her capacity as a litigant in the *Lake v. Hobbs* litigation. As noted above, the KHIF voluntarily produced evidence of an attorney-client relationship with the Elias Law Group related to “nonprofit tax matters” and provided a declaration from a member of its board of directors stating that the Fund did not pay any fees related to the *Lake v. Hobbs* litigation. Nothing on the 2023 Website referenced the *Lake v. Hobbs* case or encouraged visitors to give money to fund Governor-Elect Hobbs’s defense in the case. No reasonable person could have seen the 2023 Website and concluded that it was encouraging them to donate money to pay Katie Hobbs’s legal fees. Accordingly, to the extent that the Complaint suggests that the 2023 Website may have been used to influence the already-concluded November 2022 election on this basis, we conclude that it was not.

In sum, under the first prong of the objective two-part test set forth in the Opinion, we conclude that there was not a use of public resources as to the Donation Page because the creation of the 2023 Website was a routine use of public resources in the course of a normal government function—providing the public with information about the gubernatorial inauguration—and nothing about the Donation Page deviated from the routine in a manner that objectively indicated an intent to influence an election.

#### **D. Potential future expenditures**

The Complaint suggests that “[e]ven assuming your investigation reveals that no funds have *yet* been used to influence elections, it may be necessary to seek injunctive relief to determine who controls the remaining funds and to prohibit the Governor and/or any third parties from using those funds to influence elections in violation of A.R.S. § 16-192.” Ex. A at 3. As noted above, the 2023 Website processed some ticket sales for the Ball, and the proceeds of those sales were deposited into an account controlled by ADP. ADP has since transferred all money from those sales to the Promotional Fund. Ex. C at 288. There is therefore no possibility that any funds transferred to ADP via the Website will be used to influence a future election. Accordingly, no violation of § 16-192 has occurred or will occur as to these funds.

It is unclear how many people viewed the Donation Page of the 2023 Website, contacted Ms. Huerta, and then gave money to the KHIF. Neither Ms. Huerta nor the KHIF tracked that information or asked prospective donors how they heard about the KHIF. Unlike the ticket sales

for the Ball, though, no donation to the KHIF was processed using the 2023 Website. Aside from the check intended for the KHIF that was mistakenly sent to the Governor's Office, we found no evidence that any State employee interacted with any donation made to the KHIF. There is no allegation and no evidence that the KHIF has received any monies or other resources that belong to the State.

Because there is no evidence here that the KHIF has wrongfully received public resources, § 16-192 therefore does not authorize this Office to take any action against the Fund.

#### **E. Future inaugurations**

We note that the factual scenario set forth in the Complaint and this letter is unlikely to reoccur. The bill you introduced during this year's legislative session, Senate Bill 1299, which was signed into law, ensures that for future inaugurations, the Office of the Governor must post the names of entities that provide funding for *any* inaugural events along with (1) the name, address, and occupation of the chairperson and treasurer of the entity, (2) the name address and occupation of any individual or corporation who donates to the entity, and (3) an itemized list of the goods and services purchased by the entity for the inaugural ceremony. *See* A.R.S. § 41-1111. That bill will hopefully avoid future disputes over inauguration donations.

#### **IV. Conclusion**

After carefully investigating and analyzing this matter, we did not identify any instance in which the 2023 Website used public resources for the purpose of influencing an election. We have now concluded our investigation and consider this matter closed.

Sincerely,



Nathan T. Arrowsmith  
Unit Chief  
Solicitor General's Office  
Special Litigation and Government  
Accountability Section