

August 3, 2014

Kory A. Langhofer
Attorney at Law
602.382.4078 tel
602.382.4020 fax
klanghofer@bhfs.com

VIA E-MAIL

Arizona Secretary of State's Office
c/o Christina Estes-Werther, State Elections Director
1700 West Washington Street, 7th Floor
Phoenix, Arizona 85007

RE: Audit of Save Our Future Now

Ms. Estes-Werther:

I am writing on behalf of Save Our Future Now (the "Organization") in response to your letter of July 23, 2014, concerning the Organization's expenditures during the current election cycle. Specifically, your letter requested "information about the expenditures [the Organization] has made to offset the primary purpose of influencing elections." Although we object to the audit letter for the reasons expressed below, the Organization is willing to provide to your office basic information concerning its expenditures to date in the 2014 election cycle.

A. The Secretary of State's Office Lacks Authority to Audit the Organization

As a preliminary matter, we would like to express concern about the issuance of audit letters by the Arizona Secretary of State. The audit letter referenced no statutory, constitutional, or other legal authority for the audits and, to our knowledge, the Arizona Secretary of State lacks legal authority to compel the production or disclosure of sensitive internal information by politically active organizations apart from the information required for registration and disclosure under Title 16 of the Arizona Revised Statutes.

Because the recipients of the audit letter are not legally required to disclose the requested information to your office, the Fifth Amendment to the U.S. Constitution, which provides the right to remain silent, prohibits your office from basing any "reasonable cause" finding or referral to the Arizona Attorney General's office on the refusal of an organization to respond to the audit letter or the supposed inadequacy of any such response. See generally *Griffin v. California*, 380 U.S. 609, 615 (1965) (discussing the right to remain silent).

B. The Organization's Current Expenditures

Notwithstanding our objection to the issuance of the audit letter, the Organization is willing to provide basic information concerning its expenditures to date in the 2014 election cycle. As of the date of this letter, the Organization has spent approximately \$1,471,000. Of that, approximately \$19,000 has been spent on administrative costs such as legal and accounting fees; approximately \$960,000 has been spent on social welfare activities (excluding Arizona ballot measure campaigns, which constitute electioneering activities for purposes of Arizona law but not federal tax law); and approximately \$492,000 to influence candidate or

One East Washington Street, Suite 2400
Phoenix, AZ 85004
main 602.382.4040

ballot measure elections in Arizona or elsewhere.¹ Excluding administrative costs, the Organization has spent approximately 66% of its funds on social welfare activities during the 2014 election cycle—which easily satisfies the requirement that the Organization not be “organized, conducted or combined” primarily for the purpose of influencing Arizona elections. See Ariz. Rev. Stat. § 16-901(19).

Although the Organization will likely make additional independent expenditures in the 2014 election cycle, it will at all times ensure that its social welfare expenditures (as defined above) continue to exceed its electioneering expenditures (again, as defined above).

Please do not hesitate to contact me with any questions.

Sincerely,

/s/ Kory A. Langhofer
Kory A. Langhofer

¹ As you may know, some organizations tend to overreport their social welfare expenditures by wrongly classifying as social welfare certain public communications that “in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.” See Ariz. Rev. Stat. § 16-901.01(A)(1). The Organization decidedly does not take that approach. Rather, the Organization treats as social welfare only expenditures that, under the guidance of the Internal Revenue Service, could be made by an organization operating under Section 501(c)(3) of the Internal Revenue Code (and therefore do not constitute partisan political campaign intervention) and that do not advance the passage or defeat of an Arizona ballot measure. See *generally* I.R.S. Rev. Rul. 2007-41 (June 18, 2007). A representative sample of the Organization’s social welfare communications is attached hereto as Exhibit A.

Exhibit A

TURN YOUR MAILBOX INTO A BALLOT BOX

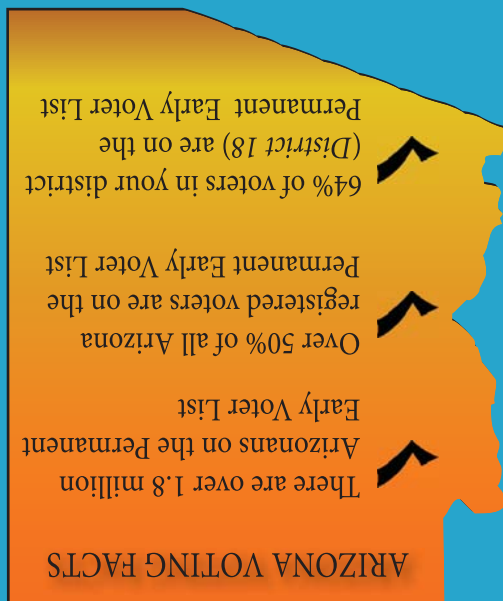


BECOME AN EARLY VOTER TODAY!

Save Our Future Now
3104 E. Camelback Rd. #1126
Phoenix, AZ 85016

PRST STD
U.S. POSTAGE
PAID
PHX, AZ
PERMIT NO 4559

VOTING BY MAIL IS EASY, SAFE & CONVENIENT



TEAR HERE AND MAIL BACK

(YOU MAY DROP THIS CARD IN THE MAIL OR USE AN ENVELOPE)

PLACE
STAMP
HERE

Save Our Future Now
VOTE BY MAIL CENTER
3104 E. Camelback Rd. #1126
Phoenix, AZ 85016

MAIL BALLOT REQUEST

FOR THE PRIMARY ELECTION ON AUGUST 26, 2014 AND
GENERAL ELECTION ON NOVEMBER 4, 2014

☐ PLEASE PUT ME ON THE PERMANENT EARLY VOTER LIST

Last Name First Name MI

Resident Address | Apt # City ZIP

DATE OF BIRTH (FOR VERIFICATION) MM/DD/YY

()

Phone

Email

VOTER SIGNATURE REQUIRED BY LAW

×

MAIL BALLOT REQUEST (for spouse)

FOR THE PRIMARY ELECTION ON AUGUST 26, 2014 AND
GENERAL ELECTION ON NOVEMBER 4, 2014

☐ PLEASE PUT ME ON THE PERMANENT EARLY VOTER LIST

Last Name First Name MI

Resident Address | Apt # City ZIP

DATE OF BIRTH (FOR VERIFICATION) MM/DD/YY

()

Phone

Email

VOTER SIGNATURE REQUIRED BY LAW

×

TEAR HERE AND MAIL BACK

(YOU MAY DROP THIS CARD IN THE MAIL OR USE AN ENVELOPE)

BECOME AN EARLY VOTER IN 3 EASY STEPS

STEP 1

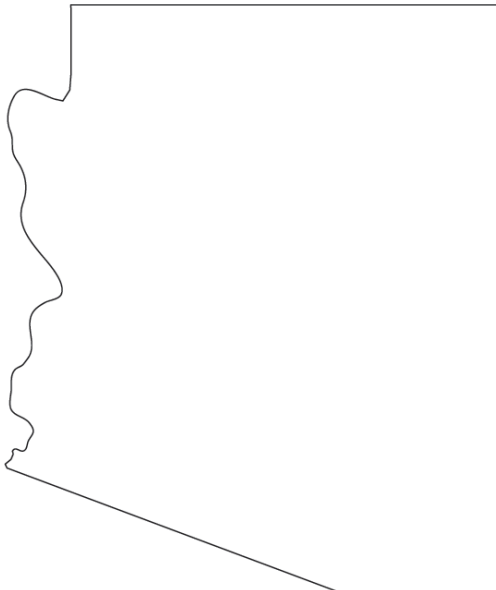
Tear off the application card at the bottom of this page and check to make sure your information is correct

STEP 2

Fill in your date of birth (for verification purposes) and sign your name on the application

STEP 3

Check the box on the application to become a permanent early voter and mail the application back to us



2014 WILL BE A VERY IMPORTANT YEAR FOR THE
FUTURE OF ARIZONA. MANY IMPORTANT OFFICES
WILL BE DECIDED BY VOTERS LIKE YOU:

Governor

Secretary of State

Treasurer

Attorney General

Superintendent of Public Instruction

Corporation Commissioner