

Jared G. Keenan (027068)  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION ARIZONA  
3707 North 7th Street, Suite 235  
Phoenix, AZ 85014  
Telephone: (602) 650-1854  
jkeenan@acluaz.org

Dana Paikowsky\*<sup>o</sup>  
CAMPAIGN LEGAL CENTER  
1101 14th Street NW, Suite 400  
Washington, DC 20005  
Telephone (202) 736-2200  
dpaikowsky@campaignlegalcenter.org

*Attorneys for Plaintiffs*

\*Application for *pro hac vice* admission to be filed

<sup>o</sup> Licensed to practice in California; supervision by  
Danielle Lang, member of the D.C. Bar

**ARIZONA SUPERIOR COURT  
APACHE COUNTY**

Campaign Legal Center,

Plaintiff,

v.

Joseph Dedman Jr., in his official capacity  
as Apache County Sheriff, Larry Noble, in  
his official capacity as Apache County  
Recorder, Apache County Sheriff's Office,  
and Apache County Recorder's Office,

Defendants.

No.

**VERIFIED COMPLAINT FOR  
STATUTORY SPECIAL ACTION  
AND INJUNCTIVE RELIEF**

**and**

**APPLICATION FOR ORDER TO  
SHOW CAUSE**

## Introduction

1. “Democracies die behind closed doors,” *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th Cir. 2002), which is why Arizona enacted its Public Records Law (“PRL”): to open government activity up to public scrutiny. *See Griffis v. Pinal Cnty.*, 215 Ariz. 1, 4 (2007). By persistently refusing to live up to their obligations under this law, however, Sheriff Dedman, Recorder Noble, and their offices have effectively shut the door in the public’s face. Plaintiff Campaign Legal Center (“CLC”) seeks relief from this Court to obtain the public records it is entitled to and make plain that Defendants must take seriously their legal obligations to be transparent and accountable to the people they serve.

2. Over the last nine months, CLC has sent three public record requests each to Defendants Apache County Sheriff’s Office (“ACSO”) and Apache County Recorder’s Office (“ACRO”), on March 30, August 3, and November 2, 2020. *See* Exhibits A-F. CLC submitted these records requests through its work with the Arizona Coalition to End Jail-Based Disenfranchisement (“the Coalition”)<sup>1</sup> for exactly the purpose the PRL is intended to serve—to enable the Coalition to assess county policies and procedures and engage in public oversight of county activities. But after more than nine months and repeated follow-ups, neither ACSO nor ACRO has produced a single document or even acknowledged CLC’s repeated requests.

3. Defendants’ persistent refusal to comply with CLC’s requests violates

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<sup>1</sup> In addition to CLC, the Coalition comprises several Arizona-based organizations, including All Voting is Local – Arizona, Arizona Advocacy Foundation, Arizona Center for Empowerment, Arizona Coalition for Change, American Friends Service Committee – Arizona, Mass Liberation, One Arizona, Poder in Action, and the ACLU of Arizona.

Arizona’s PRL, which requires the government to “promptly” disclose public records. A.R.S. § 39-121.01(D)(1). Defendants have not only failed to furnish any records—much less furnish them “promptly”—they have also failed to provide any explanation for why they are being withheld. Arizona courts have consistently held that far shorter delays than those at issue here—303, 177, and 86 days, respectively—violate the PRL. *See, e.g., Phoenix New Times, L.L.C. v. Arpaio*, 217 Ariz. 533, 539-47 (App. 2008) (finding delays of 49 days and 141 days violated Arizona’s public records law). This case demands the same result.

4. Apache County Sheriff’s Office and Apache County Recorder’s Office have escaped public oversight for too long. Intervention from this Court is necessary to ensure that Defendants comply with the law and furnish the requested records immediately.

### **Parties and Jurisdiction**

5. Plaintiff Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit organization that works to protect the right to vote and expand access to the ballot through litigation, policy analysis, state-based advocacy, and public education. As part of these efforts, CLC engages in oversight work to ensure that historically marginalized voters—including incarcerated eligible voters—can vindicate their constitutional right to vote. CLC is also committed to ensuring government transparency and accountability, particularly when government actions affect the fundamental right to vote.

6. Defendant Joseph Dedman Jr. is the elected Apache County Sheriff and an “officer” as defined in A.R.S. § 39-121.01(A)(1).

7. Defendant Apache County Sheriff’s Office (“ACSO”) is a “public body” as

defined in A.R.S. § 39-121.01(A)(2).

8. Defendant Larry Noble is the elected Apache County Recorder and an “officer” as defined in A.R.S. § 39-121.01(A)(1).

9. Defendant Apache County Recorder’s Office (“ACRO”) is a “public body” as defined in A.R.S. § 39-121.01(A)(2).

10. CLC brings this action and invokes the jurisdiction of this Court pursuant to A.R.S. § 39-121.02 and Rules 1 and 4 of the Arizona Rules of Procedure for Special Actions.

11. Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b) of the Arizona Rules of Procedure for Special Actions.

### **Factual Allegations**

#### *CLC and the Arizona Coalition to End Jail-Based Disenfranchisement Rely on Arizona’s PRL for Crucial Oversight and Public Education Work*

12. The Arizona Coalition to End Jail-Based Disenfranchisement, of which Plaintiff CLC is a part, exists to ensure that eligible incarcerated voters in Arizona can exercise their constitutional right to vote.

13. Many Arizonans incarcerated in county jails—specifically those in pretrial detention and those serving misdemeanor sentences—retain the fundamental right to vote despite their incarceration. *See* Ariz. Const. Art. 7 Sec. 2 (disqualifying only persons “convicted of treason or felony” from voting in Arizona); Ariz. Sec. State 2019 Election Procedures Manual Ch. 2 sec. VII (“Individuals held in pretrial detention or serving a sentence for a misdemeanor conviction remain eligible to register and vote[.]”); A.R.S. §

16-452; *see also O'Brien v. Skinner*, 414 U.S. 524, 530 (1974) (finding that pretrial detainees suffer “no legal disability impeding their legal right to register or to vote”); *Goosby v. Osser*, 409 U.S. 512 (1973).

14. While the law is clear that many incarcerated voters retain their right to vote, practical ballot access for these voters is dependent on the behavior of local election and law enforcement officials. Because of their positions, Defendants Apache County Sheriff Joseph Dedman Jr., Apache County Recorder Larry Noble, and their offices have tremendous power to enfranchise incarcerated voters in their jurisdictions by providing necessary resources and support. Conversely, these same officials can put in place policies that impede incarcerated voters’ access to the ballot, thereby violating their constitutional rights.

15. In 2020, the Coalition endeavored to better understand how recorders and sheriffs across the state facilitate voting for incarcerated voters in their counties by submitting PRL requests to sheriffs and recorders across Arizona. The Coalition analyzed each county’s policies and practices to determine whether they were providing sufficient support to jailed voters and published their findings in two reports, *Unlock the Vote Arizona: Procedures for Jail-Based Voting by County, July 2020*<sup>2</sup> and *Unlock the Vote Arizona, Part 2: Jail-Based Voting in Arizona’s August 2020 Primary Election*.<sup>3</sup> The

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<sup>2</sup> Arizona Coalition to End Jail-Based Disenfranchisement, *Unlock the Vote Arizona: Procedures for Jail-Based Voting by County, July 2020* (July 2020), <https://www.votefromjail.org/wp-content/uploads/2020/07/July-JBV-Report.pdf>.

<sup>3</sup> Arizona Coalition to End Jail-Based Disenfranchisement, *Unlock the Vote Arizona, Part 2: Jail-Based Voting in Arizona’s August 2020 Primary Election* (Sept. 2020), <https://www.votefromjail.org/wp-content/uploads/2020/10/September-JBV-Report-1.pdf>.

Coalition intends to publish a third report on the state of jailed voting access during the November 3, 2020 General Election, again relying on PRL requests to gather information.

16. The Coalition’s reports on jail voting have gained local and national attention and have been enormously successful in raising public awareness about the challenges of voting in jail.<sup>4</sup> The reports have also successfully pressured counties to improve their policies and practices to better serve incarcerated voters.

17. Without the information the Coalition gleaned from PRL requests, they would not have been able to publish these reports or advocate for the reforms they identified as necessary through their public records review.

*Defendants Have Repeatedly Ignored CLC’s PRL Requests*

18. On March 30, 2020, CLC submitted its first requests to ACSO and ACRO for election-related records—specifically records related to absentee ballots and emergency ballots requested from and sent to jailed Apache County voters during the March 17, 2020 Presidential Preference Election (“PPE”). *See* Exhibits A, B.

19. From Defendants Dedman and ACSO, CLC requested:

- a. Records showing all requests for ballots or assistance voting received by the Apache County Sheriff’s Office or staff from electors who were

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<sup>4</sup> *See, e.g.,* Madeleine Carlisle & Lissandra Villa, *Whether or Not You’re Able to Vote in Jail May Come Down to Where You’re Incarcerated*, TIME (Oct. 1, 2020), <https://time.com/5895219/voting-jail-2020-election/>; Jack Karp, *From Behind Bars, Pretrial Detainees Fight To Vote*, Law360 (Oct. 25, 2020), <https://www.law360.com/access-to-justice/articles/1322319/from-behind-bars-pretrial-detainees-fight-to-vote>; Nicole Lewis & Aviva Shen, *Unlocking the Vote in Jails*, Slate (Oct. 24, 2020), <https://slate.com/news-and-politics/2020/10/jail-voting-suppression.html>.

detained in your correctional facilities, including written requests and requests made by phone or in person by the elector's relative or agent and the outcomes of those requests;

- b. Records showing policies and procedures that governed the facilitation of voting for electors who were detained in your correctional facility during the PPE;
- c. Records showing any complaints Apache County Sheriff's Office received from electors who were detained in local correctional facilities or their agents during the PPE regarding difficulty voting or accessing a ballot;
- d. Records showing voter registration support or resources provided to electors confined in local correctional facilities in preparation of the PPE and any policies or guidance relating to voter registration in your jail.

20. From Defendant Noble's predecessor in office and ACRO, CLC requested:

- a. Records showing all requests for ballots for the PPE received by the Apache County Recorder's Office from eligible and registered electors who were detained in federal, state, or local correctional facilities, jails, and prisons, including written requests and requests made by phone or in person by the elector's relative or agent and the outcomes of those requests.

- b. Records showing how many ballots were returned to the Apache County Recorder's Office from electors who were detained in federal, state, or local correctional facilities, jails, and prisons and counted in the PPE.
- c. Records showing policies and procedures that governed the facilitation of voting for electors who were detained in federal, state, or local correctional facilities, jails, and prisons during the PPE.
- d. Records showing any complaints Apache County Recorder's Office received from electors who were detained in federal, state, or local correctional facilities, jails, and prisons or their agents during the PPE regarding difficulty voting or accessing a ballot.
- e. Records showing any voter registration outreach or assistance provided to electors confined in local correctional facilities in preparation of the PPE.

21. To date, Defendants have neither acknowledged nor responded to CLC's March 30 requests.

22. On August 3, 2020, CLC requested from ACSO and ACRO the same categories of information listed above for the August 4, 2020 Primary Election. *See* Exhibits C, D.

23. Defendants have neither acknowledged nor responded to CLC's August 3 requests.

24. On November 2, 2020, CLC requested from ACSO and ACRO the same



categories of information listed above for the November 3, 2020 General Election. *See* Exhibits E, F.

25. On November 30, 2020, CLC emailed ACSO and ACRO to follow up on our November 2 requests. *See* Exhibits G, H.

26. Defendants, again, have neither acknowledged nor responded to CLC's November 2 requests or CLC's November 30 follow-up.

27. On January 19, 2021, CLC sent letters to Defendants demanding that they immediately furnish the records requested on March 30, August 3, and November 2, 2020. *See* Exhibits I, J. Defendants have not responded to these letters.

28. To date, Defendants have failed to comply with CLC's public record requests and have provided no justification for this failure.

29. It has been 303, 177, and 86 days—almost ten, six, and three months—respectively since CLC submitted its requests.

### **Arizona Open Records Law**

#### **Failure to Promptly Produce Records**

30. Arizona's Public Records Law ("PRL") requires public officers like Sheriff Dedman and Recorder Noble and public bodies like ACSO and ACRO to maintain "all records . . . reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from this state or any political subdivision of this state." A.R.S. § 39-121.01(B).

31. The purpose of the PRL is "to make government agencies accountable to the public by giving the public a right of access to records concerning an agency's activities."

*Salt River Pima-Maricopa Indian Cmty. v. Rogers*, 168 Ariz. 531, 541 (App. 1991); *see also Griffis*, 215 Ariz. 4 (the PRL serves to “open government activity to public scrutiny”). Arizona’s PRL thus recognizes the importance of transparency to democracy by mandating that the public have broad access to “official records and other government information so that the[y] . . . may monitor the performance of government officials and their employees.” *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351 (App. 2001) (citation omitted).

32. Arizona’s public policy further favors disclosure of records. *Primary Consultants, L.L.C. v. Maricopa Cnty. Recorder*, 210 Ariz. 393, 396-97 (App. 2005) (finding “[t]he legislature . . . established a policy of presumptive access to public records”) (citing *Carlson v. Pima Cnty.*, 141 Ariz. 487, 491 (1984)). The burden of disclosure falls “squarely upon” public officials. *Cox Ariz. Publ’ns, Inc. v. Collins*, 175 Ariz. 11, 14 (1993). This burden includes the requirement to “establish the adequacy of [the] search.” *Phoenix New Times*, 217 Ariz. at 539 (citations omitted).

33. Sheriffs, recorders, and their offices are not exempt from the PRL or its promptness requirement. *See, e.g., Primary Consultants*, 210 Ariz. 393; *Phoenix New Times*, 217 Ariz. 533. And when, as here, records are subject to disclosure, “the required response is *prompt and actual production* of the documents.” *Phoenix New Times*, 217 Ariz. at 538 (emphasis added). Indeed, the plain language of the PRL requires the custodian of public records to “promptly” furnish records upon request. A.R.S. § 39.121.01(D)(1). Prompt is defined as “‘quick to act or to do what is required’ or ‘done, spoken, etc. at once or without delay.’” *W. Valley View, Inc. v. Maricopa Cnty. Sheriff’s Off.*, 216 Ariz. 225, 230 (App. 2007). The PRL “further specifies that to the extent the party does not receive a

prompt response, “[a]ccess to a public record is deemed denied.” *Phoenix New Times*, 217 Ariz. at 538 (quoting A.R.S. § 39–121.01(E)). “A denial of access to public records is deemed wrongful if the person requesting the records was, in fact, entitled to them.” *Id.*

34. Arizona courts have repeatedly held that delays far shorter than those at issue here are not prompt, but instead “wrongful.” *Id.* at 545-46 (holding that a delay of 49 days and 141 days violated Arizona public records law)<sup>5</sup>; *see also ACLU of Az. v. Az. Dep’t of Child Safety*, 248 Ariz. 26, 30 (App. 2020) (records not promptly produced where “DCS failed to provide any communicative or responsive documents to ACLU-AZ for over six months”); *Lunney v. State*, 244 Ariz. 170, 173 (App. 2017) (“[W]ithout justification for the delay, a 135–day response time to a request is not prompt[.]”); *Hodai v. City of Tucson*, 239 Ariz. 34, 44, 45 (App. 2016) (delay of eight to ten months is not prompt, especially where “a simple search by one person with knowledge may be sufficient”); *Star Publ’g Co. v. Parks*, 178 Ariz. 604, 605 (App. 1993) (delay of one month in furnishing public records was not prompt when public entity could not point to specific reasons warranting delay); *Hill v. Maricopa Cnty.*, 2020 WL 3428152 (App. 2020) (four-month delay constituted a failure to respond promptly). Defendants have failed to respond to Plaintiff’s requests for 303, 177, and 86 days, respectively. Their unresponsiveness violates Arizona’s PRL and its promptness requirement.

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<sup>5</sup> In *Phoenix New Times*, only one of the Sheriff’s Office’s responses was deemed prompt: the response the office issued “on the same day as the request.” 217 Ariz. at 544.

Attorney's Fees and Costs

35. Upon prevailing in a lawsuit arising out of its public records request, a plaintiff is entitled to an award of attorneys' fees and costs. *See* A.R.S. §§ 39-121.02, 12-348, 12-341, 12-2030.33.

36. Access to records is "deemed denied" if the custodians of the records fail to promptly produce them. A.R.S. § 39-121.01(E). This is true here, therefore Plaintiff is entitled to attorney's fees and costs.

Right to Speedy Return on Order to Show Cause

37. Because this is a statutory Special Action, Plaintiff is entitled to a "speedy return date" on its application for an order to show cause. Ariz. R.P. Spec. Action 4(c); *see also* Ariz. R. Civ. P. 7.3(a) (authorizing a superior court judge to "issue an order requiring a person to show cause why the party applying for the order should not have the relief it requests in its application").

**APPLICATION FOR ORDER TO SHOW CAUSE**

As set forth in Plaintiff's Complaint for Special Action Relief, Defendants are prohibited by law from withholding the requested records. Accordingly, pursuant to Ariz. R. Civ. P. Rule 6(d) and Rule 4(c) of the Arizona Rules of Procedure for Special Actions, it is appropriate and proper for this Court to issue an Order to Show Cause why the requested relief should not be granted.

**WHEREFORE**, Plaintiff CLC respectfully requests that this Court award the following relief:

1. Issue an order directing Defendants Apache County Sheriff Joseph Dedman Jr., Apache County Sheriff's Office, Apache County Recorder Larry Noble, and Apache County Recorder's Office to immediately provide copies of the public records requested on March 30, August 3, and November 2, 2020 in Exhibits A-F, pursuant to A.R.S. §§ 39-121 through 39-121.03;
2. Award Plaintiff its taxable costs in this action and reasonable attorneys' fees pursuant to A.R.S. §§ 39-121.02, 12-348, 12-341, and 12-2030.33 and Rule 4(g) of the Arizona Rules for Special Actions, and;
3. Grant Plaintiff such other and further relief as may be just and proper in these circumstances.

Respectfully submitted this 28th day of January 2021.

By /s/ Jared G. Keenan

Jared G. Keenan

American Civil Liberties Union Foundation of Arizona

Dana Paikowsky

*(pro hac vice application forthcoming)*

Campaign Legal Center