

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Mi Familia Vota, et al.,

Plaintiffs,

v.

Adrian Fontes, in his official capacity as
Arizona Secretary of State, et al.,

Defendants.

AND CONSOLIDATED CASES

No. CV-22-00509-PHX-SRB

ORDER

On May 31, 2023, Plaintiff, Arizona Asian American Native Hawaiian and Pacific Islander for Equity Coalition (“Equity Coalition”) issued a subpoena to non-party, Arizona Free Enterprise Club (“FEC”) with a return date of June 14, 2023 seeking 5 ½ years of documents including such things as all campaign contributions and expenditures made by FEC, all documents related to legislative strategies and lobbying efforts concerning voting laws including any research done by FEC and all communications with state legislators, the Governor, the Attorney General, County Recorders, constituent groups or “any other Persons” regarding the voting laws, opinions and research documents FEC might have about the impact, legality and constitutionality of the voting laws at issue here, and the impact the voting laws might have on Arizonans and on electoral outcomes.

1 Equity Coalition also issued a Rule 30(b)(6) subpoena on June 29, 2023 for
2 FEC's deposition to take place on July 14, 2023 seeking to inquire about any
3 investigation about voter fraud, FEC's advocacy efforts over a 6 ½ years period
4 related to elections, voter registration, and voting directed at state legislators, the
5 governor, the secretary of state, the attorney general, other public officials and
6 constituent groups, FEC's legislative strategies over that same six and a half year
7 period, the reasons FEC advocated for the voting laws at issue in this case, how the
8 passage of the laws would operate in practice, the legality and constitutionality of
9 the laws, the impact of the laws and FEC's understanding of the "maintenance,
10 operations, accessibility, usefulness and/or accuracy of the databases referenced in
11 the voting laws.

12 FEC has moved to quash both subpoenas arguing that they call for irrelevant
13 information, that compelling much of the information would violate FEC's First
14 Amendment rights and that compelling FEC to produce the requested information
15 would be unduly burdensome. Equity Coalition has responded in opposition
16 claiming its subpoenas are narrowly tailored seeking only relevant information.

17 While FEC brags on its website that it was responsible for the passage of the
18 voting laws and has blog posts with titles such as "How More Illegals Started Voting
19 in AZ Elections and How House Bill 2492 Is Going to Fix It," this does not open
20 non-party, FEC to wide-ranging discovery about all its internal and external
21 documents related in any way to elections issues and FEC's advocacy and
22 expenditures over many years. Much of what is sought is irrelevant to the primary
23 issues before the Court for trial. For example, FEC's opinions about the legality and
24 constitutionality of the voting laws is not relevant. And as Equity Coalition points
25 out, FEC doesn't even have a lawyer on its staff. Many of the documents requested
26 likely violate FEC's First Amendment Rights. *See, Perry v. Schwarzenegger*, 591
27 F.3d 1147 (9th Cir. 2009).


1 The public records will reflect what FEC had to say to the Arizona Legislature
2 at its hearings on the voting laws and many of the public officials whose
3 communications from FEC are sought, are parties to this case and are the appropriate
4 persons to produce those documents.

5 The Court agrees that most of the requests are unduly burdensome. FEC has
6 given an estimate of the number of hours it would take of its limited staff to comply
7 with the subpoenas.

8 There are two categories of documents that should be produced, and such
9 production should not be overly burdensome, or be violative of FEC's First
10 Amendment Rights. The Court will order FEC to produce the documents described
11 in categories 1, 6 and 8. Any research or other documents in FEC's possession that
12 would demonstrate whether non-citizens were voting, how the voting laws would
13 impact Arizonans eligible to vote and election outcomes, and information on the
14 reliability and availability of the databases referenced in the voting laws are relevant.
15 If FEC has no such documents in any of these categories, it shall provide Equity
16 Coalition with a Declaration under oath to that effect.

17 IT IS ORDERED granting in part and denying in part Non-party Arizona Free
18 Enterprise Club's Motion to Quash Subpoenas. (Doc. 455) The Rule 30(b)(6)
19 deposition subpoena is quashed in its entirety.

20 Dated this 26th day of September, 2023.

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25 Susan R. Bolton
26 United States District Judge
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