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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

BARBARA TELLMAN,
Plaintiff,

vs. Case No. C20154431

FOUNDATION FOR RESPONSIBLE
ACCOUNTABLE GOVERNMENT, INC.,
Defendant.

Tucson, Arizona
October 02, 2015

BEFORE: THE HON. GUS ARAGON, JUDGE
Division 30

PLAINTIFF'S APPLICATION FOR TEMPORARY ORDER, PRELIMINARY
INJUNCTION AND ORDER TO SHOW CAUSE

KRISTINE B. VALDEZ, RPR
CERTIFIED COURT REPORTER #50182
Pima County Superior Court
Tucson, Arizona 85701 APPEARANCES:

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Vincent L. Rabago, Esq.,
appearing for the Plaintiff;

Andrew H. Barbour, Esq.,
appearing for the Defendant.

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: This is C20154331, Barbara Tellman versus Foundation For Responsible Accountable Government, Inc., a Delaware Corporation.

This is the time set for an order to Show Cause.

There's a camera in the courtroom and I received the request late in the day yesterday; as far as the parties are concerned, is there any objection to the camera in the courtroom?

MR. BARBOUR: None, Your Honor.

MR. RABAGO: No, Your Honor.

THE COURT: I'm assuming that there might be some witnesses today; am I correct?

MR. RABAGO: There may be one witness, Your Honor, depending on what we hear at the beginning of the proceeding.

THE COURT: Do the parties know of any witnesses that would prefer-- well, that would object to a camera in the courtroom?

MR. BARBOUR: No, Your Honor.

THE COURT: If the parties become aware of any such individual, please advise the Court.

Let's see, let me start with Plaintiff's

1 counsel, have you announce your appearance for the record.

2 MR. RABAGO: Thank you, Your Honor. Vince
3 Rabago on behalf of Barbara Tellman.

4 THE COURT: And is there a defense counsel?

5 MR. BARBOUR: Yes, Your Honor. Andrew
6 Barbour from the Munger Chadwick, PLC on behalf of the
7 Defendants, Foundation For Responsible Government.

8 THE COURT: Mr. Barbour, I'm thinking that
9 you got pretty short notice on the hearing; am I correct?

10 MR. BARBOUR: Yes, sir.

11 THE COURT: Were you prepared to proceed
12 fully today?

13 MR. BARBOUR: To address the Temporary
14 Restraining Order request, yes, Your Honor.

15 THE COURT: So you're ready to go as far as
16 the OSC is concerned?

17 MR. BARBOUR: Can you spell out OSC?

18 THE COURT: Order to Show Cause.

19 MR. BARBOUR: Thank you very much. Yes, Your
20 Honor, we are.

21 THE COURT: All right. Thank you, sir.

22 Show the parties-- well, let me see who was
23 present as far as parties are concerned or individual
24 party representatives.

25 Ms. Tellman is here.

1 MS. TELLMAN: Yes.

2 MS. BAUSERMAN: Yes, Christine Bauserman, I'm
3 the president of the Foundation.

4 THE COURT: All right, thank you, ma'am.
5 Any other party?

6 MR. ANTENORI: Frank Antenori, I'm a member
7 of the Board of Directors of the Foundation.

8 THE COURT: All right. Do any of you prefer
9 not to be filmed during proceedings. If you have any
10 problem with that, we'll accommodate it.

11 MS. BAUSERMAN: No.

12 THE COURT: I order that the filming not
13 include in the court staff members.

14 Is there any question about that on the part
15 of the cameraman?

16 MR. VASQUEZ: No, Your Honor.

17 THE COURT: All right. Sir, you're Mr.
18 Buganski?

19 A VOICE: No I'm Walter Vasquez, this is Mr.
20 Buganski.

21 THE COURT: Show that Bret Buganski is here
22 on behalf KVOA.

23 Are there any questions about Supreme Court
24 Rule 122 on behalf of KVOA?

25 MR. BUGANSKI: No, Your Honor.

1 THE COURT: Thank you. All right.

2 Let's see, Mr. Rabago, how do you want to
3 proceed this morning?

4 MR. RABAGO: Well first, Your Honor, we are
5 prepared to go forward either on the evidence and
6 affidavit as well as the -- also the affidavit supporting
7 the complaint, so that's a verified complaint, and I would
8 be calling my client here today. I have witnesses -- i
9 mean exhibits that have been marked and a courtesy copy
10 for the Court.

11 However, it was in yesterday I think, or
12 today before in the Daily Star, it was published with an
13 interview of the president of the Defendant that she was
14 going to comply and register. So I addressed and asked
15 Counsel before court started this morning if -- if that
16 was in fact the case because it will determine how much
17 time we may need to spend on this and whether or not we
18 need to call my client.

19 He indicated that, that they were not going
20 to be doing that, but I wanted to make sure, now that
21 we're in open court and on the record, that I would ask
22 the Court and let you know, counsel know that question so
23 that we can have that on the record.

24 MR. BARBOUR: Your Honor, if I may clarify
25 something. I believe the question was asked whether we

1 filed anything, and to that question, I answered, no,
2 because we have not filed anything with this Court. I did
3 not see --

4 THE COURT: You mean with the Corporation
5 Commission?

6 MR. BARBOUR: No, with the Court, I
7 understood the question to be asking whether we filed
8 anything with the Court. So, of course, I said; no.

9 I am not aware that anything has been filed
10 with the Corporation Commission yet, but it may have; it
11 may be it may be processing now as -- I couldn't tell you.

12 THE COURT: So, is it fair for us to assume
13 then that there's been no filing with the Corporation
14 Commission and we show proceed based on that assumption.

15 MR. BARBOUR: I think we can proceed on that
16 assumption; yes.

17 THE COURT: Mr. Rabago, how do you want to
18 go forward?

19 MR. RABAGO: I'm happy to put my client on
20 the stand and take some evidence, I do believe that the
21 affidavit is sufficient and the exhibits which are true
22 and accurate copies of what has been presented with the
23 complaint are sufficient. But I'm happy to present my
24 client and maybe present a number of questions without
25 having to go into necessarily everything, but certainly to

1 the material allegations.

2 THE COURT: Mr. Barbour, what is your
3 preference? The affidavit is an attachment to at least
4 part of the court pleadings, what do you think we should
5 do this morning?

6 MR. BARBOUR: I would like to hear the
7 witness speak.

8 THE COURT: You would like to have the
9 witness called?

10 MR. BARBOUR: Well, I mean if Mr. Rabago, if
11 he's giving us an alternative between going with the
12 affidavit and calling some witness, I prefer that we call
13 his witness.

14 THE COURT: I'm going to defer to you on
15 that, because I know this is an important matter to your
16 client, so I think it's appropriate to have some testimony
17 and some cross-examination, parties wish to do that, so
18 are you calling Barbara Tellman?

19 MR. RABAGO: I would, Your Honor. And I also
20 wanted to inquire of the Court if the Court wanted a few
21 opening remarks before we begin testimony or afterwards.

22 THE COURT: I prefer to have it in closing.
23 Is there any objection to that?

24 MR. BARBOUR: No, Your Honor.

25 MR. RABAGO: Okay, thank you.

1 Your Honor. And also, to clarify, about
2 whether or not they were filing, I actually asked two
3 questions because we received the --

4 THE COURT: It doesn't matter to me now. At
5 this point I've been told, and there's no misunderstanding
6 on my part, that it's unknown whether there have been
7 Corporation Commission filings in Arizona --

8 MR. RABAGO: Correct.

9 THE COURT: -- and there have been no
10 filings with the Superior Court on behalf the Defendant,
11 so that's crystal clear to me.

12 Any question that you have about that?

13 MR. RABAGO: No, Your Honor. The only thing
14 I wanted to clarify to the Court I asked two questions of
15 them; one was about the filing with the court, apparently,
16 one was made one was about the ACC filing --

17 THE COURT: That doesn't matter to me, I
18 mean oftentimes there are misunderstandings --

19 MR. RABAGO: Sure.

20 THE COURT: -- there may have been one here,
21 I'm not concerned about that.

22 MR. RABAGO: Very good. Thank you, Your
23 Honor.

24 THE COURT: Ms. Tellman, will you come
25 forward and the Clerk of the Court will swear you in.

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(Whereupon Ms. Tellman was sworn.)

THE COURT: Ms. Tellman, please walk up to the witness chair, watch your step, take a seat. I'm going to give you -- I'm going ask you a couple questions and I'm going to ask you to speak loudly and clearly for me.

First of all, tell us your full name and spell it for us.

THE WITNESS: Barbara, B-A-R-B-A-R-A; Jane, J-A-N-E; Tellman, T-E-L-L-M-A-N.

THE COURT: Thank you. The lawyers are going to ask you some questions. Go ahead, Counsel.

MR. RABAGO: Thank you, Your Honor. If the Court pleases, may I approach the and bench give a courtesy copy of the exhibits?

THE COURT: Sure.

MR. RABAGO: If you would like.

THE COURT: Tell me what it is.

MR. RABAGO: It's just a whole set of exhibits, I don't know if we'll use all of them just for the Court to have it on the bench. I already submitted a copy to the clerk.

THE COURT: I will go ahead and take those.

1 I won't -- I won't consider them until there is
2 appropriate foundation --

3 MR. RABAGO: Thank you, Your Honor.

4 THE COURT: -- and they are admitted.

5 MR. RABAGO: Absolutely.

6 THE COURT: I appreciate I've been given a
7 courtesy copy of exhibits.

8 MR. RABAGO: Thank you, Your Honor. I also
9 have given a copy --

10 THE COURT: A through -- well, I guess it's
11 not A through -- it's A, B --

12 MR. RABAGO: A, B, C, F.

13 THE COURT: F, G, D, I, J, K, L, and M. All
14 right. Thank you, Counsel.

15 MR. RABAGO: Very good, Your Honor.

16

17 BARBARA JANE TELLMAN,

18 having been duly sworn, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21

22 BY MR. RABAGO:

23 Q. Ms. Tellman, are you a citizen of the State of
24 Arizona?

25 A. Yes, I am.

1 Q. And are you registered to vote?

2 A. Yes, I am.

3 Q. Did you vote in the primary election this year?

4 A. Yes, I did.

5 Q. This is for the City of Tucson City Counsel
6 elections?

7 A. Right.

8 Q. And let me ask you, have you ever been a party in
9 an election-related cases before?

10 A. Yes. I was a party to a case in 1990, I believe
11 and '91, somewhere around there relating to a referendum
12 on a re-zoning where our right to be on the ballot was
13 challenged and I was the party representing the right to
14 be on the ballot and we -- we prevailed in all three
15 levels.

16 Q. Okay; thank you. So do you consider yourself an
17 engaged and a patriotic citizen?

18 A. Yes.

19 Q. Let me ask you this, you filed this case, you're
20 the Plaintiff, is that the reason why we're here because
21 of your belief in the system?

22 A. Yes, and I've been been involved in election
23 integrity issues for the last 12 years, extensively.

24 Q. Okay; thank you. And when you say, election
25 integrity issues, can you just quickly elaborate, what

1 does that mean?

2 A. I have been an observer for the County and the
3 City elections, I've observed the tabulation and the
4 practice and the ballots for the past approximately
5 eight-year. I am a member of the Pima County Election
6 Integrity Commission, which oversees election integrity
7 for Pima County, and I am actually the vice chair of that
8 commission, but I'm not here representing that commission
9 in any way whatsoever.

10 I'm also one of the two citizens appointed
11 by the Board of Supervisors to test the accuracy of the
12 computers before and after each election.

13 Q. Thank you. Now, are you familiar with the name
14 Foundation For Responsible Accountable Government, Inc.?

15 A. Yes.

16 Q. Now, do you -- do you know whether or not that
17 is a corporation that is organized and registered in the
18 State of Arizona?

19 A. I could not find it as a corporation registered
20 in Arizona.

21 Q. What did you do to determine that?

22 A. I checked the Corporation -- Corporation
23 Commission website.

24 Q. And -- and you did not find a corporation by that
25 name?

1 A. No.

2 Q. Did you research this corporation's state of
3 organization elsewhere on the internet?

4 A. Yes, I managed to determine that it was
5 incorporated in Delaware.

6 Q. How did you do that?

7 A. I went on the internet.

8 Q. And what website did you go, where did you look
9 it up?

10 A. It the State of Delaware Secretary of State's
11 website.

12 Q. Okay. Is the Secretary of State or Division of
13 Corporation?

14 A. Division of Corporation, sorry; yeah.

15 Q. And what did you learn there from looking at
16 that website?

17 A. I learned from there, and one other source,
18 Citizen Audit, that it is a corporation that is registered
19 as a trade organization.

20 Q. Okay.

21 MR. RABAGO: Your Honor, I'd like to present
22 the witness with a copy of Exhibit A, I don't know if the
23 Court wants me to use the actual marked exhibits?

24 THE COURT: It's better that you use the
25 official exhibits.

1 MR. RABAGO: Thank you.

2 THE COURT: Mr. Barbour, at any time you
3 want to review the exhibits --

4 MR. BARBOUR: May I confer with Mr. Rabago?

5 MR. RABAGO: Correct, the exhibits I handed
6 defense counsel, except the clerk renumbered them instead
7 of A, they are numerical, A is one, Roman numeral.

8 MR. BARBOUR: Okay.

9 BY MR. RABAGO:

10 Q. What I'll do, I'll hand you all the exhibits.
11 I'm going to ask you to look at Exhibit 1 --

12 A. Okay.

13 Q. -- for the Plaintiff.

14 THE COURT: Are you calling it one, sir?

15 MR. RABAGO: Yes, it's been marked by the
16 clerk as Exhibit Number 1. I apologize for not informing
17 the Court earlier.

18 BY MR. RABAGO:

19 Q. Now, have you had a chance to look at that
20 document?

21 A. Yes.

22 Q. Now, is that a copy of a web page that you
23 observed that was then printed out and made into an
24 exhibit?

25 A. Yes; as far as I can tell, yes.

1 Q. And is that the information that you refer to
2 about showing that this Defendant is, in fact, registered
3 out of state in the State of Delaware?

4 A. Yes.

5 Q. Now, does the website you looked at, was it a an
6 official government website?

7 A. Yes, it was.

8 MR. BARBOUR: Objection, foundation.

9 THE COURT: I'll sustain that. Are you
10 moving to strike?

11 MR. BARBOUR: Yes, Your Honor.

12 THE COURT: Grant the motion to strike.

13 MR. RABAGO: Your Honor, I haven't asked to
14 admit it yet, so I'm not sure what is being stricken.

15 THE COURT: I moved to strike the last -- I
16 granted the motion to strike the last answer, you -- you
17 may ask the witness, to the best of her knowledge, this is
18 an an official government website, but you still haven't
19 clarified what government you're talking about.

20 MR. RABAGO: Absolutely. Thank you, Your
21 Honor.

22 BY MR. RABAGO:

23 Q. Ms. Tellman, to the best of your knowledge, based
24 on the research that you did in to this particular
25 corporation, was this an official government website?

1 A. Yes.

2 Q. And were there -- was it marked for which state?

3 A. The State of Delaware, Division of
4 Corporations -- Department of State Division of
5 Corporations.

6 Q. Okay. Now, you don't live in Delaware, right?

7 A. No.

8 Q. Never been to Delaware?

9 A. No -- well, I have been there.

10 Q. Now, let me -- so your testimony is that, based
11 on the research you've done and you looked exhaustively on
12 the internet, would that be fair to say?

13 A. Yeah, I tried.

14 Q. And you could only find one register corporation
15 with this exact name in the State of Delaware?

16 A. Correct.

17 THE COURT: That question wasn't very clear
18 to me. You mean from all the searches you did, ma'am,
19 that -- and I'm assuming you searched all 50 states?

20 THE WITNESS: No, I did not search all 50
21 states.

22 THE COURT: How many did you search?

23 THE WITNESS: I was given an indication that
24 they were a corporation in Delaware so that's the state I
25 checked out.

1 THE COURT: So your last answer would have
2 been that -- the answer -- the last answer Mr. Rabago, was
3 for the state of Delaware, this was the only corporation
4 that had this name?

5 THE WITNESS: Right.

6 THE COURT: All right. Go ahead, sir.

7 MR. RABAGO: Thank you, Your Honor.

8 BY MR. RABAGO:

9 Q. And when you were doing those searches, are you
10 familiar with doing internet research?

11 A. Yes, I'm very familiar with it.

12 Q. When you type in a name, such as Foundation for
13 Responsible Accountable Government, Inc., does it bring up
14 a number of different names that are the same or similar?

15 A. I found some similar names, not exact.

16 Q. Okay. So is it fair to say that when you did
17 your search, you know at the bottom of the web screen
18 there are a number of pages that will show up --

19 A. Correct.

20 Q. -- is that correct?

21 A. Yeah.

22 Q. And did you go through those?

23 A. I didn't actually look at everyone in detail if
24 the name wasn't the same.

25 Q. Okay. So in other words, you you didn't look

1 details if it wasn't this name?

2 A. If it wasn't Foundation For Responsible
3 Government, I did not.

4 Q. Is it fair to say --

5 A. Yeah.

6 Q. -- the same that were the --

7 A. Yeah.

8 THE COURT: Wait a second, ma'am. This is
9 not like normal conversation, so wait until the lawyer
10 asks and then you answer, but make sure you wait until
11 he's done, I'll have him wait until you're done --

12 THE WITNESS: Okay.

13 THE COURT: -- that way the reporter gets a
14 better record.

15 THE WITNESS: Okay

16 THE COURT: Take your time.

17 THE WITNESS: Okay.

18 BY MR. RABAGO:

19 Q. Ms. Tellman, did you -- you also answered earlier
20 in your testimony you went to the Arizona Secretary --
21 excuse me, Corporation Commission website --

22 A. Right.

23 Q. -- is that correct?

24 A. Correct.

25 Q. And how do you know that's a state sponsored

1 government website?

2 A. It's stated very clearly on the website that it
3 is part of the State of Arizona government.

4 Q. In your past experience with your
5 election-related issue, have you had occasion to use that
6 website?

7 A. Yes.

8 Q. On many occasions?

9 A. No, not many.

10 Q. Okay, but in relation to elections for example?

11 A. Yes.

12 Q. How about looking up campaign data, campaign
13 finance data?

14 A. That would be more in the Secretary of State's
15 website.

16 Q. Correct; thank you, I stand corrected. Let me
17 let me ask you this, can you take a look -- I think it's
18 Number 6, Exhibit 6, if I did my number correctly. I know
19 these are somewhat out of order?

20 THE COURT: What did that used to be called
21 when you first --

22 THE WITNESS: It was Exhibit F, now I
23 believe it's Exhibit 6.

24 THE COURT: Thank you.

25 MR. RABAGO: Although I haven't had too much

1 coffee this morning, so I might be off.

2 BY MR. RABAGO:

3 Q. Is that a printout of a web page from the Arizona
4 Corporation Commission?

5 A. Yes.

6 Q. And when you look at that page, you see that
7 there's a file number that does list the name, you see
8 that?

9 A. I'm not sure.

10 Q. The first name of the search on that page?

11 A. Yes, it's blurred out in this copy.

12 Q. Okay. Are you able to see it well enough, that
13 copy may have not been a good copy.

14 THE COURT: Let me see if that's the
15 official exhibit. I want to see if it's legible.

16 THE WITNESS: This is what he's talking
17 about.

18 THE COURT: All right, her six is different
19 from my six.

20 THE CLERK: You know what happened, Judge, he
21 had them out of order and had to go in order with the
22 numbering, so I identified --

23 THE COURT: Oh.

24 THE CLERK: They had to be numbers.

25 THE COURT: Why don't you come up here and

1 take a look -- Counsel, both of you come up and take a
2 look at what is now being called six because it's
3 different from what my understanding of six was.

4 MR. RABAGO: That's correct, Your Honor.
5 This is not -- if I could -- let me -- I can take a minute
6 and look at the ones -- because they were apparently out
7 of order when the clerk received them, so they weren't
8 done alphabetically, that way we can clarify for
9 everybody.

10 THE COURT: Counsel, why don't you both step
11 up to the witness and make sure that you both have a clear
12 understanding of what is what, as far as the number of the
13 exhibits are.

14 MR. BARBOUR: I'll just grab my exhibits and
15 put them in the same order.

16 THE COURT: You may do that; take as long as
17 you need.

18 MR. RABAGO: I'm going do the same thing,
19 Your Honor.

20 THE COURT: I'll tell you what, when you
21 both get them figured out, run them through me and I'll
22 know what you're talking about.

23 MR. BARBOUR: I have B.

24 THE COURT: B is what, sir?

25 MR. BARBOUR: Let me confer with Counsel

1 here.

2 MR. BARBOUR: Our B is number two as labeled.

3 MR. RABAGO: That's correct.

4 THE COURT: Okay.

5 MR. BARBOUR: Our Exhibit 3 -- excuse me, our
6 Exhibit C is the one marked three.

7 THE COURT: Thank you.

8 MR. RABAGO: Most of them are in order.

9 MR. BARBOUR: That's correct. Our D is
10 labeled four.

11 THE COURT: Thank you, sir.

12 MR. BARBOUR: Our F is Exhibit 5, Your Honor.

13 THE COURT: Thank you.

14 MR. RABAGO: Six is G.

15 MR. BARBOUR: I have that. H -- our Exhibit
16 H is number seven, Your Honor.

17 THE COURT: Thank you.

18 MR. BARBOUR: Exhibit I is labeled number
19 eight. Thank you.

20 MR. BARBOUR: J is nine.

21 MR. RABAGO: Correct.

22 MR. BARBOUR: J is nine, Your Honor.

23 MR. RABAGO: K is ten.

24 MR. BARBOUR: K is ten, Your Honor.

25 MR. RABAGO: L is 11.

1 MR. BARBOUR: Yes, L is 11.

2 MR. BARBOUR: Exhibit M is number 12, Your
3 Honor.

4 THE COURT: Thank you, Your Honor.

5 MR. RABAGO: Thank you, Your Honor. One of
6 them was out of order, it threw the whole loop out of
7 order. Now we're back in business.

8 THE COURT: All right. So Counsel, you both
9 agree that the questioning was correct as to Exhibit 1?

10 MR. RABAGO: Correct, Your Honor.

11 MR. BARBOUR: Referring to Delaware
12 Corporation Commission web page was apparently Delaware
13 Commission web page; yes.

14 THE COURT: Thank you.

15 BY MR. RABAGO:

16 Q. Ms. Tellman, could you look at Exhibit 5, which
17 if we'VE done this correctly on its face it appears to be
18 an Arizona Corporation Commission web page?

19 A. Yes.

20 Q. Now, did you -- when you look at that web page,
21 it showed -- it did show the name Foundation For
22 Responsible Accountable Government; correct?

23 A. Yes.

24 Q. And but not registered as a corporation?

25 A. Right.

1 Q. And what happened when you clicked on that?
2 When -- the link that was provided there on the ACC
3 website, did it take you to another website?

4 A. No, no. Sorry I just don't remember exactly.

5 Q. Did it have the words, trade name?

6 A. Yes; yes.

7 Q. And are you aware that the Arizona Secretary of
8 State regulates trade names?

9 A. Yes.

10 Q. So you -- you looked, you didn't find a
11 corporation registered as a corporation in the State of
12 Arizona. After not finding the Corporation with this name
13 in the State of Arizona, did you go to the Arizona
14 Secretary of State's web page?

15 A. Yes.

16 Q. And on that web page, which I would like you to
17 look at Exhibit 7, number seven?

18 A. Uh-huh.

19 Q. Can you tell what that reflects?

20 A. That is registering a name of the Foundation For
21 Responsible Government.

22 Q. Okay. And it does not state the word,
23 incorporated on that --

24 A. No, it does not.

25 Q. And do you see the very top of that where it

1 starts the information are the words, File ID are listed?

2 A. At the very, very top of the page.

3 Q. Where it says, general information and then
4 there's box of information?

5 A. Yeah, yes. Oh, I see, I'm sorry, yes.

6 Q. And can you read that number?

7 A. Five, six, three, five, two, seven.

8 Q. Okay. Now, going back to Exhibit 5 which was the
9 Arizona Corporation Commission web page?

10 A. Uh-huh.

11 Q. On the first entry there, do you see that same
12 number?

13 A. Five, six, three, five, two, seven.

14 Q. And that's -- that's the matching number to the
15 Arizona Secretary of State --

16 A. Yes, yes.

17 Q. -- trade name?

18 THE COURT: Ma'am, you're still talking over
19 one another. So, ma'am, I'm going caution you again, wait
20 until he's done, wait another second and then you answer.

21 THE WITNESS: I apologize.

22 BY MR. RABAGO:

23 Q. Okay. So is it fair to say that after looking
24 at -- and you also used the Arizona Secretary of State
25 website; correct?

1 A. Yes.

2 Q. And you've used that many more times than the
3 Arizona Corporation Commission website?

4 A. Yes.

5 Q. You look up campaign data?

6 A. Yes.

7 Q. And on this occasion you used it to look up the
8 registered trade name?

9 A. Yes.

10 Q. And that registered trade name, can you tell us
11 who the owner was, shown on the website, government
12 website?

13 A. I believe the name is Christine Bauserman.

14 Q. And is she listed as the owner?

15 A. Yes.

16 Q. And now, I would like to have you look at
17 Exhibit 6, which I previously tried to ask you about, but
18 it was the wrong page. Did you then also research any
19 website that, on its face, had the name Responsible for --
20 -- Foundation for Responsible Accountable Government?

21 A. Yes.

22 Q. And is that a copy of a web page printed out from
23 that website?

24 A. It looks exactly like it.

25 Q. Now, was the -- do you recall if the website name

1 was wwwfragaz.org?

2 A. I believe it's frag.org.

3 Q. Was there an AZ in there as well, do you recall?

4 A. I don't know.

5 Q. Okay. But it does not list -- when you researched
6 that internet website for an entity presenting itself as
7 Foundation for Responsible Accountable Government, did you
8 find anywhere on that website stating that it was a
9 corporation?

10 A. No.

11 THE COURT: I'm sorry, what was the last
12 question?

13 MR. RABAGO: When she researched the website
14 that popped up with the name, Foundation for Responsible
15 Accountable Government, did she find anywhere in searching
16 through that website, that this was a corporation and she
17 already answered, no.

18 THE COURT: She said, no, and your question
19 was intended with, was it listed in -- in a corporation
20 anywhere at all?

21 MR. RABAGO: No. I can explain. I was going
22 to address this a little bit in argument, Your Honor, but
23 this website does not state it's a corporation and it is
24 using the trade name that was just referenced, which also
25 does not state that it's a corporation and that trade name

1 is not registered to it, it's actually registered to
2 someone else.

3 THE COURT: I understand your question now,
4 all I needed to do was understand your question. So your
5 other comments I will ignore and you can repeat them in
6 closing.

7 MR. RABAGO: Thank you, Your Honor.

8 BY MR. RABAGO:

9 Q. Now, did you find evidence that this Delaware
10 corporation, Foundation for Responsible Accountable
11 Government, is operating in the State of Arizona?

12 A. Yes, I did.

13 Q. And what did you find that supports that
14 conclusion?

15 A. I found several things. I found that they have
16 been responsible for a number of town halls, they have a
17 blog that mentions Arizona, Tucson elections specifically,
18 everything I located on there appeared to be specific to
19 the City of Tucson.

20 Q. Let me turn your attention to Exhibits C -- I
21 mean three, excuse me. Did you find what appeared to be
22 official government I.R.S., Internal Revenue Service,
23 documents online for this corporation?

24 A. Yes, I did.

25 Q. And what address was used for that tax document?

1 A. Christine Bauserman, 12221 East Makohoh Trail,
2 Tucson, Arizona, 85749.

3 THE COURT REPORTER: Can you please spell
4 that for me?

5 THE WITNESS: The street name?

6 THE COURT REPORTER: No, the name --

7 THE WITNESS: B-A-U-S-E-R-M-A-N.

8 BY MR. RABAGO:

9 Q. You may want to spell the street address a well?

10 A. M-A-K-O-H-O-A, Trail.

11 Q. Is that an A or H?

12 A. M-A-K-O-H-O-H.

13 Q. And does that -- based on finding that document,
14 is that an accurate copy of what you found on the internet
15 and on the I.R.S. website?

16 A. To the best of my knowledge.

17 Q. And did you see any information about whether or
18 not this was a tax exempt organization under the I.R.S.
19 rule?

20 A. Yes, it's -- it's not on this page, it was on
21 this website.

22 Q. Well, if you look at the very top of the page,
23 the biggest --

24 A. I'm sorry, you're right; you're right.

25 Q. Did you see that?

1 A. Yes, I'm sorry.

2 Q. What does that say?

3 A. Exempt organization.

4 Q. Okay. Based on finding this tax document, it
5 didn't tell you what sort of tax exempt organization this
6 was, did it?

7 A. No.

8 Q. Is Exhibit 4, can you take a quick look at that.
9 Is that a similar tax document but for a different year?

10 A. Yes.

11 Q. And what year is Exhibit 4 listed for?

12 A. 2014.

13 Q. Go back to Exhibit 3, if you could and tell us
14 what tax year that was listed for?

15 A. 2013.

16 Q. And do you see a category that has a statement of
17 doing business as?

18 A. It has nothing.

19 Q. But you did see a category there?

20 A. Doing business as, there's nothing after that
21 colon.

22 Q. And what's the next category you see on that
23 page?

24 A. Gross receipts.

25 Q. What can you read that, what does that say?

1 A. Gross receipts not greater than \$50,000.

2 Q. Okay. Is the same language on Exhibit 3 as well?

3 A. Yes.

4 Q. After finding this information, did you then go
5 to a -- a different website called CitizenAudit.org?

6 A. Yes, I did.

7 Q. And what do you know -- what is that website for
8 as far as you know?

9 A. It's a place where citizens can find out
10 information about corporation financial -- financial
11 matters, etc.

12 Q. Is it designed specifically to investigate
13 non-profits?

14 A. Yes.

15 Q. And did you find the name Foundation for
16 Responsible Accountable Government, Inc., on that website?

17 A. Yes, I did, it's an exhibit.

18 Q. Yes, turn in your exhibits to Exhibit 2. Is
19 Exhibit 2, to the best of your knowledge, a copy of what
20 you viewed on that particular website for the name
21 Responsible for -- Foundation for Responsible You
22 Accountable Government, Inc.?

23 A. Correct.

24 Q. And did you find an address on this particular
25 document linked to this corporation?

1 A. 120 South Houghton 138-177, Tucson, Arizona,
2 85748.

3 Q. Okay. And did you see any purported information
4 about their assets and income for that year?

5 A. Zero.

6 Q. What year was that?

7 A. 2013.

8 Q. And does it also have 12 on there?

9 A. Oh, yes.

10 Q. Now, further down when you researching this
11 particular website, did you see anything about the type of
12 501(c) organization it was?

13 A. Yes, it was listed as a 501(c)(6) trade
14 organization.

15 Q. Okay. Was that your conclusion based on the
16 words, board of trade, that were on the website?

17 A. Yes, yes.

18 Q. And is that that on the exhibit?

19 A. Yes, right in the center.

20 Q. Okay. And your can you based -- I'm not I know
21 your not an IRS agent, but can you tell us what your
22 understanding of a 501(c)(6) trade organization is?

23 MR. BARBOUR: Objection, calls for a legal
24 conclusion.

25 THE COURT: Sustained. Counsel, are you

1 still on Exhibit 2?

2 MR. RABAGO: Yes, Your Honor.

3 THE COURT: I could not find 501(c)(6) on
4 here, I found something about 501(c)(3) that says all
5 organizations except 501(c)(3). So where, if anywhere on
6 this exhibit, does it reference 501(c)(6)?

7 MR. RABAGO: Your Honor, that was the
8 question I asked the witness about -- that her conclusion
9 for that was based on the words, board of trade, which is
10 right smack dab in the middle of page right after it says,
11 all organizations except 501(c)(3), and then it says,
12 board of trade.

13 THE COURT: I'm little bit thick this
14 morning because I'm not finding that language. Can you
15 direct me more specifically?

16 MR. RABAGO: Yes, Your Honor. There's
17 language in the middle of the page above the big bold
18 category says, federal tax disclosures, right above
19 federal tax disclosure.

20 THE COURT: I see. Thank you. So you asked
21 the witness some questions about what board of trade
22 means --

23 MR. RABAGO: Correct.

24 THE COURT: -- in that context?

25 MR. RABAGO: That's what I was about to do to

1 understand how she concluded that it was 501(c)(6) because
2 Your Honor is correct it does say 501(c)(6), all it says
3 board of trade, that's why I was getting to the line of
4 questioning.

5 THE COURT: Mr. Barbour, you've objection on
6 the foundation grounds?

7 MR. BARBOUR: More on legal conclusion,
8 ground, Your Honor.

9 THE COURT: I'm going to sustain that.

10 MR. RABAGO: Okay.

11 THE COURT: Unless you can lay some more
12 foundation here, I'm not going rely on testimony of about
13 501(C)(6). Very good.

14 BY MR. RABAGO:

15 Q. Okay. Do you have personal knowledge as to
16 whether or not a board of trade is different than a
17 501(C)(3) organization?

18 A. No.

19 MR. BARBOUR: Objection, Your Honor.

20 THE COURT: She said, "no," and that was
21 just -- it was a broad question, do you have personal
22 knowledge; she said, no.

23 BY MR. RABAGO:

24 Q. Now, are you -- okay. Are you familiar with the
25 name Revitalize Tucson?

1 A. Yes.

2 Q. And how are you familiar with that name?

3 A. I believe it's the organization that is
4 sponsoring a number of billboards and other activity in
5 the Tucson city elections.

6 Q. Okay. And so are you familiar with the term,
7 political committee?

8 A. Yes.

9 Q. And independent expenditure political committee?

10 A. Yes.

11 Q. And did you have occasion to look at what is
12 marked as Exhibit 8?

13 A. Yes.

14 Q. And on Exhibit 8, does Exhibit 8 reflect an
15 official government document that you pulled up from the
16 City of Tucson's campaign finance website?

17 A. Yes, it is.

18 Q. And who is listed as a co-committee chairman down
19 in the named section this document?

20 A. Frank Antenori, A-N-T-E-N-O-R-I.

21 Q. Okay. And further down on that website, what --
22 who is listed as the name of committee chairman?

23 A. Christine Bauserman.

24 Q. And what address listed there?

25 A. 12221 East Makohoh Trail.

1 Q. Now, turning to Exhibit 11 -- excuse me,
2 Exhibit 12, did you in recent weeks visit the same website
3 for campaign finance reports from the City of Tucson?

4 A. Yes.

5 Q. Did you pull up a copy of the Campaign Finance
6 Administration Report that is provided here in Exhibit 12?

7 A. Yes.

8 Q. And was that the a primary election finance
9 report for that same group, local independent expenditure
10 campaign group called Revitalized Tucson?

11 A. Yes it is.

12 Q. Did you go through the expenditures and donors,
13 in that document?

14 A. Yes.

15 Q. If I can turn your attention to the 4th page of
16 this official campaign finance report in Exhibit 12?

17 A. Yes.

18 Q. What entity did you see listed there?

19 A. I see two contributions listed, one Foundation
20 for Responsible Accountable Government to the amount of
21 50,000 -- \$50,200 and I see Todd Dunaway for the amount of
22 \$50.

23 Q. And what address was used for the Foundation for
24 Responsible Accountable Government?

25 A. 120 South Houghton Road, Tucson.

1 Q. What number -- is there some additional
2 information there?

3 A. Suite number, 138-177.

4 Q. And how does -- what is the occupation described
5 as?

6 A. Foundation.

7 Q. Now, have you seen billboards around Tucson --

8 A. Yes, I have.

9 Q. Please wait until I finish the question.

10 A. Yeah.

11 Q. Have you seen billboards around Tucson related to
12 the upcoming 2015 City Tucson City Counsel elections?

13 A. Yes.

14 Q. And have you read news reports about those
15 billboards?

16 A. Yes.

17 Q. And is it your understanding that those
18 billboards were purchased by the Revitalized Tucson
19 Political Committee?

20 A. That is my --

21 MR. BARBOUR: I object, on relevance, this
22 has nothing to do with whether the Corporation is
23 registered or not registered in the State of Arizona.

24 THE COURT: Well, I think the theory is they
25 are doing business in some fashion here, so I'm going to

1 overrule the objection on those grounds.

2 MR. RABAGO: Thank you, Your Honor.

3 BY MR. RABAGO:

4 Q. Now, is it your understanding, in looking at
5 Exhibit 12, and I'd like to turn your attention back to
6 that. And I'd like you to look, I think it's the 5th page
7 on Exhibit M?

8 THE COURT: All right, you're talking about
9 Exhibit 12?

10 MR. RABAGO: Correct.

11 BY MR. RABAGO:

12 Q. It's the last page in the exhibit where it says
13 independent expenditures?

14 A. Right.

15 Q. Do you see the first category for that amount of
16 money, 15,200?

17 A. Moret and Associates Advertising.

18 Q. And what does it say the purpose and description
19 of purchase is?

20 A. Advertise, billboards.

21 Q. Now, based on your research of -- and what you
22 have seen with respect to these billboards and research
23 into the campaign finance support of this committee, does
24 it appear to you that the -- that the foundation for
25 Responsible Accountable Government is almost

1 singlehandedly funding that committee except for that \$50
2 you mentioned?

3 A. Yes.

4 Q. Now, do you know when the ballots for the
5 election get mailed out for the general public?

6 A. Some have already been mailed out to military and
7 overseas voters, the remainders will be mailed out in
8 phases, starting probably October 6th.

9 Q. Okay, so less than a week?

10 A. Yes.

11 Q. Now, are you familiar with the term that's been
12 in the media quite a bit and related to elections called,
13 dark money?

14 A. Yes.

15 Q. What is your understanding of that term?

16 A. It's money that is contributed for political
17 purposes without having to reveal the actual donors, able
18 to perhaps conceal the donors behind another organization
19 with the name, but the donors are not listed within that
20 organization.

21 Q. And does that concern you?

22 A. Yes.

23 Q. Why does that concern you?

24 A. I have had considerable experience with this
25 problem, it's definitely affects elections, it affects the

1 kind of information the citizens can get, who is
2 influencing elections.

3 Q. Now, returning to Exhibit 12 on page four, I'm
4 sorry, page three.

5 A. Is that the detailed summary?

6 Q. Where it says, contributions, schedule A. I'm
7 sorry, it should be the fourth page, my apology.

8 A. Uh-huh.

9 Q. That was the testimony that relates to the
10 testimony you gave earlier about Foundation for
11 Responsible Accountable Government contributing \$50,200?

12 A. Correct.

13 Q. Now, on that --

14 THE COURT: You said -- so there's no
15 confusion, you're saying it's the fourth page. Are you
16 referring to the page number, page three of five?

17 MR. RABAGO: Correct, Your Honor, I think
18 that's my 4th page. Let me double-check. Maybe I
19 miscounted. It's the fourth actual page and it's listed
20 as schedule A, page three of five on the bottom.

21 BY MR. RABAGO:

22 Q. Are we looking at the same page Ms. Tellman, it
23 says Contribution From Individuals at the top?

24 A. Yes.

25 Q. That's the page we looked at earlier that --

1 A. Yes.

2 Q. -- showed \$50,200?

3 A. Yes; yes.

4 Q. Does anywhere on that page does that information
5 that you looked up on this official document from the City
6 of Tucson tell the public that this is a corporation?

7 A. I do not see the word corporation there with
8 the name--

9 Q. Do you see the I --

10 A. I see --

11 THE COURT: I'm going to caution you both
12 again not to talking over each other. You're both doing
13 it. Take your time. Slow down, take a breath, wait until
14 one is done speaking before the other one speaks.

15 MR. RABAGO: Thank you, Your Honor.

16 BY MR. RABAGO:

17 Q. When you looked at the website for this entity,
18 using the name Foundation for Responsible Accountable
19 Government, did they tell you much about what specific
20 activities it is engaged in?

21 A. They have a very general description of their
22 mission which is something of the nature of making
23 citizens aware of responsible government, that kind of
24 very general thing, and then they have specific thing that
25 they have done.

1 Q. Do they --

2 THE COURT: I didn't hear you ma'am on the
3 general mission.

4 THE WITNESS: They have a general mission, I
5 don't remember the exact statements, it's been a very
6 general about informing citizens about the government.

7 BY MR. RABAGO:

8 Q. Does it have any -- do you recall if it had any
9 statements about holding government accountable?

10 A. Yes.

11 Q. Okay. Making them responsible and accountable?

12 A. Yes.

13 Q. Now, in your research of this name, and aside
14 from when you already testified to, did you find any other
15 examples of any conduct engaged in by this entity that you
16 were aware that you could find?

17 A. All the examples I found were related to the City
18 of Tucson elections.

19 Q. Okay. Was there information maybe about the bond
20 or election under town hall website?

21 A. Yes; there were a number of town halls that -- I
22 believe three town halls and various issues.

23 Q. But all that information you found was
24 election-related?

25 A. Yes, City of Tucson election-related.

1 Q. And the County as well from what you just
2 mentioned, right? Did you find any information what so
3 ever about that you could see where this entity was active
4 in any other place?

5 A. No.

6 Q. Any information you testified to on the exhibits
7 we presented is accurate, insofar as it was presented on
8 the website on these government and other websites where
9 these copies were printed from?

10 A. Yes.

11 Q. Now, by their own name, is it your perspective
12 that they are in the business of influencing government
13 and holding the government accountable?

14 A. Yes.

15 Q. But all you found was related to these elections?

16 A. Yes, these local elections.

17 MR. RABAGO: Your Honor, I'm finished with my
18 questions.

19 THE COURT: Thank you.

20 Cross-examination?

21 MR. BARBOUR: Yes, Your Honor.

22

23

24

25

CROSS EXAMINATION

1

2

3 BY MR. BARBOUR:

4 Q. Ms. Tellman, good morning.

5 A. Good morning.

6 Q. This is a verified complaint; is that correct?

7 A. Yes.

8 Q. So you reviewed all the allegations one
9 hundred percent, you know everything that's in there?

10 A. Yes.

11 Q. Okay. All right. Ms. Tellman, what's your
12 political affiliation?

13 A. Democrat.

14 MR. RABAGO: Objection, relevance.

15 THE COURT: Overruled.

16 THE WITNESS: Democratic party.

17 BY MR. RABAGO:

18 Q. Okay. Ms. Tellman, what kind of support, if any,
19 do you give to the Democratic party or causes it supports?

20 A. Small donations.

21 Q. Small donations. Any activity volunteer?

22 A. Yes. Volunteer, work on behalf --

23 A. Yes, I'm a volunteer.

24 Q. What sort of work is that?

25 A. It's a great variety of things.

1 Q. Such as?

2 A. List everything? Registration of voters,
3 observing of election activities, election integrity-type
4 issues. I have run some campaigns for some candidates. I
5 have been a volunteer in a whole range of things. I do
6 data analysis and GIS mapping for the party.

7 Q. I see. Okay. Any -- any other groups that your
8 aligned with aside from the Democratic party?

9 A. Oh, yes.

10 THE COURT: You mean political groups or,
11 garden club?

12 MR. BARBOUR: Political groups, Your Honor.

13 THE WITNESS: I'm not quite sure what you're
14 asking.

15 BY MR. BARBOUR:

16 Q. Something like AFL, the CIO or something like
17 that, anything --

18 THE COURT: Actually that's a labor group.
19 Why don't you frame your question so that she understand
20 your intent.

21 BY MR. BARBOUR:.

22 Q. Any political groups that are tractionally siding
23 with the Democratic party that you support?

24 A. Yes.

25 Q. Okay. What groups are those?

1 A. Oh, D, triple C, the DSCC, a great variety of
2 groups.

3 Q. Okay. Do you spend your money donating -- you
4 donate money to those causes as well?

5 A. Yes.

6 Q. Do you donate your time to those causes?

7 A. Maybe two one or two of the groups, but not to
8 all of them.

9 Q. Are you currently employed?

10 A. No.

11 Q. Okay. Is -- is that pretty much most of what you
12 do is support Democratic causes and political groups
13 association with the Democratic party?

14 A. Well, I have a life other than that.

15 THE COURT: I'm sorry, what was your answer,
16 ma'am?

17 THE WITNESS: I do a lot of that, not
18 full-time.

19 BY MR. BARBOUR:

20 Q. Okay. How much of your time would you say is
21 devoted to those activities?

22 A. Depends on the season, election season I'm
23 probably donating a hundred percent of my time, other
24 times it's maybe fifty percent.

25 Q. So between, 20 to 40 hours a week pretty much

1 year round?

2 A. I wouldn't say that; no. Election season is
3 relatively short and major elections are only once every
4 two years.

5 Q. Okay. All right. So half time, the rest of time
6 I believe you said --

7 A. Maybe less.

8 Q. -- maybe 20 hours a week?

9 Do you support any causes that identify with
10 the Republican party?

11 A. No, but the ACLU certainly has Republican people
12 on its board, it's a non-party organization.

13 Q. I don't think I asked about the ACLU, I said
14 ACL --

15 A. I do support the ACLU.

16 Q. To some extent I do as well?

17 A. Okay.

18 Q. Let me see. As -- as a self-described patriotic
19 citizen, I believe you said that earlier?

20 A. Yes.

21 Q. Do you believe in freedom of speech?

22 A. Yes.

23 Q. Do you believe it's the Court's role to tamp down
24 on political expression?

25 A. To clamp down on?

1 Q. Yeah, to quash it, to prevent it?

2 A. Only where it's causing a danger.

3 Q. Okay.

4 THE COURT: Only what, ma'am?

5 THE WITNESS: Where it's causing a danger to
6 society.

7 BY MR. BARBOUR:.

8 Q. A danger, like yelling fire in a crowded theater,
9 that sort of thing?

10 A. Yeha.

11 THE COURT: Counsel, just to understand that
12 when I make my ruling, it's going to be based on Arizona
13 law and so it won't necessarily be based on this witness's
14 feelings about what political free speech is, or --

15 MR. BARBOUR: It's strictly impeachment, Your
16 Honor.

17 THE COURT: Okay. I understand, and I think
18 you established, that the witness is very involved in the
19 Democratic process and she supports the Democratic party,
20 that's clear to me.

21 MR. BARBOUR: Okay.

22 BY MR. BARBOUR:

23 Q. Ms. Tellman, for Exhibit 7, I believe that was
24 the exhibit with the listing from Secretary of State's
25 webpage, about the trade name, who's the owner of the

1 trade name?

2 Q. It's marked Exhibit H, it's number seven?

3 A. The Secretary of State?

4 Q. Yes. Who is the owner of trade name?

5 A. Christine Bauserman.

6 Q. Okay. So it's not the defendant that owns that
7 trade name; is that correct?

8 A. The name is listed under here as Foundation for
9 Responsible Government --

10 A. I'm not asking about the trade name, I'm asking
11 ownership, it's not the defendant that owns the trade
12 name, is it?

13 A. I'm not quite sure what you mean.

14 Q. Owner?

15 A. Yes.

16 Q. It --

17 A. Christine Bauserman is the owner of the trade
18 name.

19 Q. Okay. So just to confirm, the entity Foundation
20 for Responsible Accountable Government, is not the owner
21 of that trade name?

22 A. Okay.

23 Q. Okay. Are you making any claims to the trade
24 name yourself?

25 A. To the trade name?

1 Q. Yeah, I mean, I'm just wondering, why it's an
2 issue, basically.

3 THE COURT: I don't understand your
4 question. Are you asking her if she's making a claim to
5 this particular trade name?

6 MR. BARBOUR: Yes, Your Honor. I mean if
7 this is an issue, I can only imagine it's an issue because
8 there's some kind of trade name infringement going on here
9 if -- infringement, but I think that's what is going on.

10 THE COURT: All right, that's probably
11 something you can establish on your own or argue to me.

12 MR. BARBOUR: Okay.

13 THE COURT: I --

14 MR. BARBOUR: But in any case --

15 THE COURT: I want to make sure the witness
16 understood the question.

17 Did you understand the question, ma'am?

18 THE WITNESS: No, I don't.

19 MR. BARBOUR: I'll strike it, that's fine,
20 Your Honor.

21 BY MR. BARBOUR: .

22 Q. Ms. Tellman, I want to look at Exhibit M for a
23 moment?

24 A. What's the number?

25 Q. M is -- oh. I'm sorry it's 12, Exhibit 12 also

1 marked a Exhibit M.

2 Now, this -- correct me, if I'm wrong, this
3 is filed by Revitalized Tucson; is that correct?

4 A. I just found it; that is correct.

5 Q. Okay. Are you alleging any wrongdoing by
6 Revitalize Tucson; have they done anything wrong?

7 A. No.

8 Q. They haven't done anything wrong, okay. Are they
9 free to put those billboards up?

10 A. Yes, they are.

11 Q. Okay. All right. Did you say that putting those
12 billboards up is a danger to the public?

13 A. No.

14 Q. Okay; okay. Ms. Tellman, you mentioned in your
15 complaint that the basis for your restraining order is
16 early ballots are going to be going out shortly; is that
17 correct?

18 A. Some have already gone out.

19 Q. Some have already gone out. Who do early
20 ballots typically go to?

21 A. The earliest ballots to go to military and
22 overseas personnel, those are the ones we already have
23 some voting; some votes have come back on those.

24 Q. Okay?

25 A. Then the rest go to anybody who has registered as

1 a permanent early voter or who has requested a ballot for
2 this particular election.

3 Q. Uh-huh; okay. So for that first batch of voters,
4 the first category, military and overseas, are they in
5 town?

6 A. No.

7 Q. Okay. Do you believe they have seen the
8 billboards in question?

9 A. They probably heard of them.

10 Q. How is that?

11 A. From friends, relatives, there has been some news
12 articles about them.

13 Q. Uh-huh; okay. Ms. Tellman, to confirm, you also
14 said that, as far as activities go on the part of the
15 Defendant, Foundation for Responsible Accountable
16 Government, you say they are related to the City of
17 Tucson; is that correct?

18 A. Or Pima County.

19 Q. Or Pima County. They are all election-related?

20 A. I can't -- can't think of anything that wasn't.

21 THE COURT: She said as far as she knew.

22 BY MR. BARBOUR:

23 Q. A far as you know. Are you alleging that they
24 have sold any products or signed any contracts in Tucson
25 or anywhere else in Arizona?

1 A. I'm alleging that they donated a large amount --

2 Q. My question is --

3 A. They have not.

4 Q. You're not, okay.

5 No contracts that they entered into, no --
6 no sale of product, no purchase of products, no sale of
7 services, no receipt of services; is that correct?

8 A. I'm alleging that they are using--

9 Q. That's not my question, that's a "yes" or "no"
10 answer, ma'am?

11 A. Repeat the question.

12 Q. For for the Defendant, have they engaged /do you
13 know if they have engaged in any contracts, where they are
14 selling anything where they are providing a service, where
15 they are purchasing anything, whether they are receiving a
16 service?

17 A. Not directly.

18 Q. Do you know of something indirectly?

19 A. They are donating to an organization that has
20 made contracts.

21 Q. But they themselves haven't made any?

22 A. No.

23 Q. Are they transacting any business within the
24 state then?

25 A. I think their attempt to influence an election,

1 isn't a type of business transaction.

2 Q. How is that?

3 A. Because they are spending large sums of money in
4 the City of Tucson, they are indirectly through --

5 Q. In exchange for what, ma'am?

6 A. In exchange for election results.

7 Q. Are you saying that they are purchasing votes
8 somehow?

9 A. No, I'm not saying that.

10 Q. So I'm not clear exactly what the business is
11 that they are engaged in, what they are transacting within
12 the state?

13 A. They have not directly done business, but I
14 believe that indirectly they are.

15 Q. So they have not done business in the state?

16 A. It depends on how you define business.

17 Q. Okay. All right. So nothing -- nothing in the
18 tractional sense say, one would normally think of the
19 average Joe on the street wouldn't think of transacting
20 business, selling a pack of gum at the convenience store,
21 getting your car fixed, something like that?

22 A. No, but if somebody gives me --

23 Q. Are they -- do you know if they are bound to
24 any --

25 THE COURT: Hang on a second, you need to

1 let her finish her answer. Had you finished your last
2 answer, ma'am?

3 THE WITNESS: If somebody gave me a \$100 to
4 buy something in the City of Tucson, and I bought it. I
5 would feel that that person was indirectly doing business.

6 BY MR. BARBOUR:

7 Q. When you were young, if your parents or
8 grandparents ever gave you a gift of cash, would that be
9 transacting business?

10 A. Probably not.

11 Q. Probably not; okay. All right. Now, I believe
12 Counsel, opposing Counsel here had asked you whether you
13 knew whether their business was holding government
14 accountable, whether that was their line of business?

15 A. That was what they claim.

16 Q. Okay. But they claim that as a line of business
17 or --

18 A. They claim that as their business, as their job,
19 whatever, that is their intent. I don't know what word
20 you want to use.

21 Q. Have you heard heard them say that's their line
22 of business?

23 A. I have not heard that particular word.

24 Q. Have you heard something similar to it?

25 A. That that is their mission.

1 Q. To hold accountable --

2 A. Yes.

3 Q. To hold the government accountable. I don't
4 think there's any disagreement there.

5 Okay. So to be clear, the -- the
6 billboards haven't been seen by the people who are
7 overseas casting votes under early ballots; is that
8 correct?

9 A. I can't answer that with the advent of cell
10 phones; anybody can see anything anywhere in the world.

11 Q. Okay. Do you think that that's probably the
12 only -- the only factor they have in their decision to
13 vote one way or the other is those billboards?

14 A. There's only one factor, but it could be an
15 important factor.

16 Q. Uh-huh; okay, all right. Ms. Tellman, how have
17 you been harmed?

18 A. Pardon me?

19 Q. How have you been harmed --

20 A. Harmed?

21 Q. -- by defendant's activity, have you suffered any
22 harm?

23 MR. RABAGO: Objection, relevance.

24 MR. BARBOUR: Your Honor --

25 THE COURT: I'll allow it.

1 MR. BARBOUR: Thank you.

2 THE WITNESS: Pardon me?

3 BY MR. BARBOUR:

4 Q. He's allowed it.

5 A. Have I been harmed?

6 Q. Yes.

7 A. I have been highly offended by the billboards.

8 Q. Have been highly offended by anything else in
9 your life?

10 A. Yes.

11 Q. Okay, cuss word or, you know -- I don't know,
12 something on TV that you may find inappropriate?

13 A. What I find offensive about the billboards is
14 that they imply a lot of things that are not accurate.

15 Q. Okay. So are you -- but you're not one of those
16 people that are on those billboards --

17 THE COURT: I'm sorry, what was that
18 question?

19 BY MR. BARBOUR:

20 Q. You are not any of those people that are named on
21 this billboards are you? They've never mentioned you?

22 A. No, but I'm very close to all three of them.

23 Q. Okay. Do you know if they are public figures?

24 A. Yes, they are.

25 Q. Okay. Do you know if they've -- they've given

1 you the right to sue for a defamation claim on their
2 behalf?

3 A. I'm not suing for defamation.

4 Q. Exactly. Okay. So are you claiming the right to
5 be free from offense?

6 MR. RABAGO: Objection, relevance.

7 THE COURT: Sustained.

8 BY MR. BARBOUR:

9 Q. So, ma'am, your offense is the harm that you
10 suffered here, your offense of the billboards?

11 A. I will be -- I have not suffered the harm yet
12 until the election; if the billboards have influenced the
13 election, I will feel harmed.

14 Q. Are you claiming they have influenced the
15 elections?

16 A. Not yet.

17 Q. Okay, so they have influenced the election?

18 A. Not yet.

19 MR. RABAGO: Objection, calls for
20 speculation.

21 THE COURT: Actually the question and answer
22 weren't clear to me, so I really don't know how to take
23 that information right now.

24 Are you asking her if, temporarily at this
25 time, she's making this claim. And I don't understand her

1 answer in the context of your question. I think she may
2 be saying, and might be wrong, so I'm not going to
3 conclude this, that I don't know whether there's been harm
4 caused until the election takes place and then I may or
5 may not believe that there was harm caused. So I don't
6 really know what you're asking exactly and what she's
7 answering exactly.

8 MR. BARBOUR: Okay, I'll rephrase.

9 BY MR. BARBOUR:

10 Q. First of all, I believe you said the only harm
11 that you have suffered is your offense of these
12 billboards?

13 A. At the present time.

14 Q. Okay. What is your future harm, what is the harm
15 that you fear?

16 A. If the billboards succeed in persuading the
17 voters things that are true that are not true in the
18 election is affected, then I will feel very harmed.

19 Q. You will feel very harmed?

20 A. Yes.

21 Q. Okay. Because the election doesn't go your way?

22 A. No, because false information was the basis for
23 some people to believe.

24 Q. Okay; ma'am. The defense didn't put up those
25 billboards?

1 A. No.

2 Q. No.

3 THE COURT: I'm sorry, ask that question
4 again.

5 BY MR. BARBOUR:

6 Q. Did Defendants put up those billboards?

7 THE COURT: I think you asked that earlier.

8 MR. BARBOUR: Okay.

9 BY MR. BARBOUR:

10 Q. All right. So I'll just summarize, your fear is
11 that you know, possibly incorrect information may be --
12 may influence the election among the public?

13 A. That is a fear.

14 Q. Okay. But these billboards and that information
15 is not the responsibility of this corporation, of the
16 defendant?

17 A. This corporation has has donated in three
18 separate occasions money to make more and more billboards
19 of the same type.

20 Q. Is that the stated purpose of the donation?

21 A. I don't know what else it could be since that's
22 what it's been spent for.

23 Q. Is there -- are you alleging any election
24 campaign violations here?

25 A. No.

1 Q. Okay.

2 MR. BARBOUR: I think that's all, Your Honor.

3 THE COURT: Thank you. Redirect?

4 MR. RABAGO: Thank you, Your Honor.

5

6

REDIRECT EXAMINATION

7

8 BY MR. RABAGO:

9 Q. Ms. Tellman, in reference to the question asked
10 earlier by Counsel for the Defendant about the fact that
11 Foundation for Responsible Accountable Government does not
12 own the trade name, do you remember those questions?

13 A. Yes.

14 Q. And this is in the complaint that you alleged as
15 your verified complaint, is it your belief that it's in
16 fact this corporation is misleadingly using this trade
17 name that is not registered to it?

18 A. Yes.

19 Q. Now, let's talk about the contracts that were
20 mentioned. You -- when we testified on direct and then
21 opposing Counsel asked some questions about what you knew
22 about any contracts that this corporation has entered into
23 in the State of Arizona, do you remember those questions?

24 A. Yes.

25 Q. Now, the -- you do know that they are using an

1 address in Tucson; correct?

2 A. Yes.

3 Q. Does real estate, to your knowledge, come free of
4 charge?

5 A. No.

6 Q. And you identified at least two different
7 addresses they are using in Tucson, Arizona; correct?

8 A. I suppose it's possible that they used the home
9 address of somebody.

10 Q. Okay.

11 A. I do not know, it's unclear.

12 Q. And the other address on Houghton Road, which has
13 number of suites attached to 138-177, do you remember
14 that?

15 A. Yes.

16 Q. By suite numbers, do you -- did you come to --
17 did you come to a conclusion that is probably an office
18 address or a mailing address, like a post office address,
19 perhaps even?

20 A. Possibly, I don't know.

21 Q. Okay. Do you know if they give out free post
22 office boxes to people?

23 A. I've never seen it.

24 Q. You don't personally know what they are doing,
25 but can you infer, or have you made the inference, that

1 they are doing some sort of activity that require some
2 expenditures in Tucson?

3 A. Yeah.

4 Q. Do websites come free?

5 A. No.

6 Q. Now, they are advertising information on their
7 websites about the City of Tucson elections; correct?

8 A. Correct.

9 Q. Did you happen to read today's Arizona Daily
10 Star?

11 A. No.

12 Q. Okay. Did you read any articles yesterday about
13 the push poll survey being done by this corporation?

14 A. Yes, and it says that on their website.

15 Q. And do you foe what a push poll is?

16 A. Yes.

17 Q. What is it?

18 A. It's poll in which questions are asked in such a
19 way to --

20 THE COURT: None of this was covered on
21 cross so it's not proper redirect.

22 MR. RABAGO: Well, Your Honor, I'm trying to
23 establish that they had to have expended some monies and
24 she doesn't have direct information or access to
25 contracts, but that's -- I mean it's there and that's, you

1 know, where the inference is.

2 THE COURT: You're pursuing expenditure
3 issues that was covered on cross?

4 MR. RABAGO: Correct, Your Honor.

5 THE COURT: All right, I'll allow it.

6 THE WITNESS: Repeat the question.

7 BY MR. RABAGO:

8 Q. What is a push poll?

9 A. A push poll is a poll in which questions are
10 asked in such a way that the answers tend to be biased and
11 you get the answers that you would like to get.

12 Q. Okay. And that's in relation to the City
13 Council?

14 A. Yes.

15 Q. Okay.

16 A. There were some general questions on that poll
17 also.

18 Q. Okay. Now, you also indicated that you saw that
19 they are holding town halls?

20 A. Yes.

21 Q. In Tucson?

22 A. Yes.

23 Q. Okay. Now, there was a question asked about you
24 if your grandparents gave you money is that business
25 activity?

1 A. No.

2 Q. Are your grandparents a corporation?

3 A. No.

4 Q. Okay. So it's a different thing, right?

5 A. Definitely.

6 Q. Now, to the extent that questions were asked
7 about the harm, do you recall those questions?

8 A. Yes.

9 Q. Have you also either in the application for
10 temporary restraining order indicated that part of the
11 harm is that this out of state corporation that is not
12 registered in Arizona is almost singlehandedly bankrolling
13 what you have described as a negative misleading political
14 campaign of the billboards?

15 A. That is my impression.

16 MR. BARBOUR: Objection, leading.

17 THE COURT: Sorry?

18 MR. BARBOUR: Objection, leading.

19 THE COURT: This was leading, I'm going to
20 sustain that.

21 BY MR. RABAGO:

22 Q. What would you describe the harm as being in
23 relation to this out-of-state corporation making over
24 \$50,000 contributions to the Revitalize Tucson Political
25 Committee?

1 A. I believe the harm is that it will influence
2 voters; it has influenced voters already.

3 Q. Of course you don't know what everybody thinks
4 because you're not all those --

5 A. No, sir.

6 Q. -- voters; correct?

7 A. Correct.

8 Q. And so the questions asked of you about how this
9 is harming other voters, you're here on your own behalf
10 but believe that this is impacting the election; correct?

11 A. Yes.

12 Q. Do you believe that it's substantial and
13 irreparable injury if this company doesn't follow Arizona
14 law and register in the State of Arizona, to get a
15 certificate of authority to do its activity in the State
16 of Arizona?

17 A. Yes.

18 MR. BARBOUR: Leading, Your Honor.

19 THE COURT: Sorry, sir?

20 MR. BARBOUR: Leading, Your Honor, objection.

21 THE COURT: Sustained.

22 MR. RABAGO: Okay.

23 BY MR. RABAGO:

24 Q. In terms of this entity not having --

25 THE COURT: Counsel, just to make sure I

1 don't miss any objection, I'm going to ask you to stand
2 and boom it out.

3 MR. BARBOUR: I will do that.

4 BY MR. RABAGO:

5 Q. Now, let me ask you this, you're not trying to
6 stifle anybody's freedom of speech, are you?

7 A. On, no.

8 Q. You are aware that if this corporation decided to
9 comply and follow Arizona law and get government
10 permission to do business here, that it will be allowed to
11 speak as it wants within the confines of the law, correct?

12 A. Correct.

13 Q. Do you think it's responsible for an out-of-state
14 corporation that is operating in -- what appears to be
15 operating solely in the State of Arizona to not register
16 with Arizona Corporation Commission?

17 MR. BARBOUR: Can you repeat the question, I
18 didn't hear that?

19 BY MR. RABAGO:

20 Q. What is your perspective about whether or not or
21 not it's responsible for an out-of-state corporation that
22 is not registered in the State of Arizona to conduct its
23 affairs here; do you think that's responsible?

24 MR. BARBOUR: Objection, relevance.

25 THE COURT: I'm going to sustain that,

1 that's really my question.

2 MR. RABAGO: Okay. Sure, Your Honor.

3 BY MR. RABAGO:

4 Q. To this day, do you have any way of finding out,
5 publically through your research on the internet, who is
6 funding their activity in the State of Arizona?

7 A. Who is funding the --

8 Q. The Defendant's activity in the State of Arizona?

9 A. No.

10 Q. In your mind is that the classic definition what
11 we described earlier as, dark money?

12 A. Yes.

13 MR. BARBOUR: Objection relevance.

14 THE COURT: Sustained.

15 MR. RABAGO: I have no further questions,
16 Your Honor.

17 THE COURT: All right. May the witness be
18 excused?

19 MR. BARBOUR: Yes, Your Honor.

20 THE COURT: Ma'am, you may step down.

21 Please watch your step. Go ahead and hand the exhibits to
22 me. I'll return them to the clerk.

23 Any other evidence, exhibits? Are you
24 offering any exhibits into evidence?

25 MR. RABAGO: Yes, Your Honor. I would like

1 to offer Exhibits 1, 2, 3, 4, 5, 6, 7, 8, and 12.

2 THE COURT: Let's take them one at a time.
3 I want to make sure Counsel is not disadvantaged by the
4 quick listing of them.

5 Exhibit 1, any objection?

6 MR. BARBOUR: None, Your Honor.

7 THE COURT: One is admitted.

8 Exhibit 2, any objection?

9 MR. BARBOUR: No, Your Honor.

10 THE COURT: Two is admitted.

11 Three, any objection?

12 MR. BARBOUR: None, Your Honor.

13 THE COURT: Three is admitted.

14 Four, any objection?

15 MR. BARBOUR: None, Your Honor.

16 THE COURT: Four is admitted.

17 Five any objection?

18 MR. BARBOUR: None, Your Honor.

19 THE COURT: Five is admitted.

20 Six, any objection?

21 MR. BARBOUR: No, Your Honor.

22 THE COURT: Six is admitted.

23 Seven, any objection?

24 MR. BARBOUR: No, Your Honor.

25 THE COURT: Seven is admitted.

1 Eight, any objection?

2 MR. BARBOUR: I would object, Your, Honor
3 this is not relevant to the activity -- activity of
4 Revitalize Tucson are not at issue.

5 THE COURT: Let me just take a look here. I
6 want to make sure I have the right objection -- I'm sorry
7 the right exhibit. All right, on relevancy grounds,
8 that's your objection?

9 MR. BARBOUR: Yes, Your Honor.

10 THE COURT: That objection is overruled,
11 eight is admitted.

12 Twelve, any objection?

13 MR. BARBOUR: Same as before, Your Honor.

14 THE COURT: Say again?

15 MR. BARBOUR: Same as before, Your Honor
16 relevance, Revitalize Tucson, their actions are not at
17 issue in this case.

18 THE COURT: The objection is overruled. On
19 that basis, 12 is admitted.

20 Any other evidence exhibits, witnesses?

21 MR. RABAGO: Your Honor, we also submit the
22 Affidavit that has been obviously attached to the
23 Application and Request for Temporary Restraining Order
24 and Order to Show cause.

25 THE COURT: And that would be your Affidavit

1 of the Plaintiff?

2 MR. RABAGO: Of the Plaintiff.

3 THE COURT: Yes, Your Honor. Is there only
4 one, so there's no confusion here?

5 MR. RABAGO: There's only one, it's attached
6 to the Application.

7 THE COURT: Any objection to the Affidavit
8 that's attached to the Application?

9 MR. BARBOUR: Your Honor, may I have one
10 moment?

11 THE COURT: Sure, take your time. You know
12 what we'll do here, Counsel, we'll take a break, it will
13 be a short one because it's almost lunch time. But the
14 staff is working hard here, especially the court reporter,
15 she is taking down all the words.

16 I'm going to tell you both before we take a
17 break, that I would like to hear from, I believe it's Ms.
18 Bauserman. Did I get the name right?

19 MS. BAUSERMAN: Yes.

20 THE COURT: I would like to hear from Ms.
21 Bauserman. So during break I want the attorneys to get
22 their heads together and determine who they think should
23 call Ms. Bauserman because I would like to hear from her
24 before we leave today. So I want you to talk about that
25 we'll reconvene in ten minutes, it will be 11:32 by my

1 watch.

2 At this time we're at recess. Thank you;
3 we'll take up the objections again and I think you were on
4 number 12.

5 MR. BARBOUR: It was 12.

6 THE COURT: I'm sorry, it was the affidavit.

7 MR. BARBOUR: Yeah.

8 THE COURT: So we'll take that up after the
9 break.

10 MR. BARBOUR: Yes.

11 MR. RABAGO: Thank you, Your Honor.

12

13 (Recess)

14

15 (Whereupon the Court went off the record.)

16

17 THE COURT: We're go back on record, we were
18 addressing the Affidavit of the Plaintiff that's been
19 offered. Are there objections to the Affidavit?

20 MR. BARBOUR: There's some hearsay in it,
21 Your Honor, but I don't think it's worth -- worth
22 objecting to.

23 THE COURT: Well, now that look at the
24 Affidavit, is there anything you would like to call the
25 witness back to ask her about?

1 MR. BARBOUR: Yes, Your Honor, I think I
2 would like to ask questions.

3 THE COURT: I will allow -- since the
4 Affidavit was offered, you didn't know necessarily it was
5 going to be offered.

6 So, ma'am, we're going to have you come
7 back, you're still under oath.

8 I'll ask you not to cover things that were
9 already covered, but maybe new things that you hadn't
10 heard mentioned on direct or cross or redirect.

11 MR. BARBOUR: Yes, Your Honor.

12

13 RE-CROSS EXAMINATION

14

15 BY MR. BARBOUR:

16 Q. Ms. Tellman, paragraph 15, number 15 of your
17 Affidavit, you say that the Foundation of the Defendant
18 appear to be abusing Arizona trade name registration laws,
19 how so?

20 A. Because the sentence, the trade name is owned by
21 officer Christine Bauserman who holds exclusive rights to
22 the Corporation is using Ms. Bouserman's trade name to
23 engage in business activities in Arizona.

24 Q. Okay. But that's not your cause of action if it
25 were some kind of violation, is it?

1 A. Pardon me?

2 Q. Are you harmed by that?

3 A. Am I harmed by -- only in the sense I said
4 earlier that the influencing of the election has had a
5 major harm on the community and thus, myself.

6 Q. Uh-huh; let me see. Ms. Tellman, number three,
7 paragraph number three says, I examined State of Delaware
8 Corporation Division records online, where the Defendant
9 is listed as a Delaware corporation.

10 Ms. Tellman, I believe earlier when Counsel
11 was examining you on direct, you said that they were --
12 you were quote, given an indication that they were
13 incorporated in Delaware, who gave you that indication?

14 A. The website.

15 Q. All right.

16 MR. BARBOUR: I think that's about it, Your
17 Honor.

18 THE COURT: All right. So your comments on
19 the Affidavit were a little bit fuzzy, are you objecting
20 or not?

21 MR. BARBOUR: No, Your Honor.

22 THE COURT: The Affidavit, we'll identify it
23 as Exhibit 13, but for the record, everyone knows that
24 it's already attached to the pleading. Is anybody asking
25 that a copy of the Affidavit be separately marked and

1 tagged as an exhibit for the purposes of the record here?
2 I think the record is clear now. But if any of you want
3 it separately marked and tagged as 13, we'll do that.

4 MR. BARBOUR: We might as well, Your Honor.

5 THE COURT: Okay.

6 MR. RABAGO: I'm happy to do that. I will
7 take the copy back that my client has and they have a copy
8 already, so I'll just submit that.

9 THE COURT: All right. We'll have that
10 marked and tagged and it will be admitted at this time.

11 MR. RABAGO: May I approach, Your Honor?

12 THE COURT: Yes, sir. And it will be
13 Exhibit 13, sir. Is that where you are?

14 MR. RABAGO: I believe it is.

15 THE CLERK: Yes.

16 THE COURT: It will be Exhibit 13 and I
17 admitted -- does the Plaintiff -- you may step down.
18 Thank you for coming.

19 MR. RABAGO: Your Honor. May I redirect on
20 one of those questions, Your Honor, or no, it's okay.

21 THE COURT: If you want. I mean you didn't
22 know your client was going to be called, I'll allow it,
23 briefly.

24 MR. RABAGO: Just one brief question.

25

REDIRECT EXAMINATION

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BY MR. RABAGO:

Q. Now, Ms. Tellman, in looking at Arizona Secretary of State's website, which identifies the owner of the name in Arizona, Foundation for Responsible Accountable Government, it's identified to an individual not a corporation; right?

A. Yes.

Q. And that same individual that you already previously identified as Christine Bauserman is the chair of the political committee; correct?

A. To my knowledge, yes.

Q. The political committee, by that I mean, Revitalize Tucson?

A. Right.

Q. In your mind, did that raise concerns about the independence of this corporation from the committee?

MR. BARBOUR: Objection, Your Honor, relevance.

THE COURT: You've already gone beyond why your client was recalled, I won't allow anything further. You may step down, ma'am. Thank you.

MR. RABAGO: Thank you, Your Honor.

THE COURT: Are there any other items of

1 evidence on behalf of the Plaintiff?

2 MR. RABAGO: Just handing this over, Your
3 Honor, and that's it, as far as I know.

4 THE COURT: Is there any evidence on behalf
5 of the Defendant?

6 MR. BARBOUR: Your Honor, Counsel and I
7 discussed who would call Ms. Bauserman, we agreed -- we
8 would both like to call her on direct, so we would like to
9 defer to you as who should call her.

10 THE COURT: Well, she's an interested party,
11 she's sitting at your table. I'm -- since she's being
12 called at my request, I'm assuming you were going call her
13 anyway.

14 MR. BARBOUR: I had -- had just one or two
15 quick questions for her.

16 THE COURT: Since she's being called at my
17 request, I'm going to allow you both to treat her with
18 leading questions, if you need to, in order expedite the
19 proceedings because none of you was calling her, except
20 for my indication that I would like her called. So I'll
21 let you both essentially cross-examine her.

22 And -- and a couple of things I'm interested
23 in, if she knows anything about, if it's not already in
24 evidence, who incorporated what's been identified as a
25 Delaware corporation, who the incorporators are, who the

1 officials are, the date of the Corporation, any of those
2 things that she may know.

3 So Mr. Barbour, I'll let you go first.

4 MR. BARBOUR: Okay.

5 THE COURT: And we'll have a witness come up
6 and be sworn in.

7

8 (Whereupon the witness was sworn)

9

10 THE COURT: Please take the witness chair,
11 watch your step on the way up. And once you're
12 comfortably seated I'll have you tell us your full name.

13 THE WITNESS: Christine Bauserman
14 C-H-R-I-S-T-I-N-E, B-A-U-S-E-R-M-A-N.

15 THE COURT: Thank you. The lawyers are
16 going ask you some questions, we'll start with Mr.
17 Barbour.

18 Go ahead, Counsel.

19

20 DIRECT EXAMINATION

21

22 BY MR. BARBOUR:

23 Q. Ms. Bauserman, what is your role with the
24 Foundation for Responsible Accountable Government?

25 A. I'm on the board of directors and the board of

1 directors appointed me to be the president.

2 THE COURT: I'm sorry, you're a rapid
3 speaker, I heard board of directors, what else?

4 THE WITNESS: And the board appointed me to
5 be the president.

6 BY MR. BARBOUR:

7 Q. Okay. And separately, you are involved in
8 Revitalized Tucson?

9 A. Yes.

10 Q. Okay. Are they related?

11 A. No.

12 Q. Okay. Is is the -- is Revitalize Tucson a
13 subsidiary?

14 A. No.

15 Q. There's no corporate relation?

16 A. None at all, it is an independent expenditure
17 formed in the City of Tucson.

18 Q. Okay. Is it an entity with the Corporation
19 Commission --

20 A. Not -- no.

21 THE COURT: I'm going ask you both to make
22 sure that one is done speaking before the other one does.

23 MR. BARBOUR: Apologize, Your Honor.

24 THE COURT: Go ahead, sir, ask another
25 question.

1 BY MR. BARBOUR: .

2 Q. Okay. Ms. Bauserman, does the Foundation for
3 Responsible Accountable Government, at this time, have any
4 intent or plans or expectations that will be making any
5 further distribution to Revitalize Tucson?

6 A. The Foundation does not have a grant request
7 right now from Revitalize Tucson.

8 Q. Okay. So -- so the answer is, no, there are no
9 plans currently for the for Defendant to make any -- any
10 distribution or donations?

11 A. Correct; the answer is, no.

12 Q. Okay. Did -- did the Foundation for Responsible
13 Accountable Government design those billboards?

14 A. No, it did not.

15 Q. Okay. Did it contract to have those billboards
16 put up?

17 A. No, we did not.

18 Q. Does it conduct any business, does it transact
19 any business within the State of Arizona?

20 A. It transacts no business in Arizona.

21 MR. BARBOUR: I have no further questions,
22 Your Honor.

23 THE COURT: Thank you. Mr. Barbour,
24 rebuttal?

25 MR. RABAGO: Thank you, Your Honor, I'll hand

1 this to the clerk before I get started. Thank you.

2

3

CROSS EXAMINATION

4 BY MR. RABAGO:

5 Q. Good morning, Ms. Bauserman?

6 A. Good morning.

7 Q. So for the record, the Foundation For Responsible
8 Accountable Government is incorporated in the State of
9 Delaware?

10 A. Yes, it is.

11 Q. Did you incorporate it?

12 A. Yes, I did, or I did the paperwork, I don't
13 incorporate.

14 Q. Okay. Does the -- this corporation, does it
15 engage in any business activity in the State of Delaware?

16 A. It does not engage in business activity.

17 Q. Okay. Does it engage in business activity in any
18 of the United States?

19 A. No.

20 Q. Okay. So it's your contention that the activity
21 it engages in is not business in any way, shape or form?

22 A. It's a not-for-profit organization.

23 Q. Okay is it registered -- do you know what a
24 501(C)(6) organization is

25 A. I do.

1 Q. What is it?

2 A. It's a tax classification for a membership
3 organization.

4 Q. Is it -- is it known -- is that a trade
5 membership organization tax?

6 A. I don't know that.

7 Q. Okay. You don't know the registration
8 requirements under 501(c)(6) then to start talk about it
9 then --

10 THE COURT: Hang on a second. Make sure
11 he's done before you answer them and that's so the record
12 is clear and I'll understand the testimony better.

13 Ask your question again.

14 BY MR. RABAGO:

15 Q. Are you aware of the I.R.S. requirements for
16 501(c)(6) trade member organizations?

17 A. Yes.

18 Q. Okay. And are you aware of -- I know you used
19 the name foundation as part of your corporate name, that's
20 correct; right?

21 A. Yes.

22 Q. And are you aware that there is actually an
23 I.R.S. tax exemption code for foundations, which is not
24 501(c)(6)?

25 A. No.

1 Q. You're not aware of that.

2 Ms. Bauserman, have you ever read the
3 compliance guide for 501(c)(3), Private Foundations issued
4 by the I.R.S.?

5 A. (c)(3)?

6 Q. 501(c)(3) Private Foundations.

7 MR. BARBOUR: Objection, Your Honor,
8 relevance, 501(c)(3) -- nobody is alleging foundation
9 501(c)(3).

10 THE COURT: How is that relevant?

11 MR. RABAGO: Your Honor, there is no
12 foundation under 501(c)(6), foundations are under
13 401(c)(3) or they are private charitable foundations,
14 either private or public for 501(c)(3), under the I.R.S.
15 rule.

16 THE COURT: To be honest with you, I'm not
17 going to be competent to evaluate --

18 MR. RABAGO: Okay.

19 THE COURT: -- I.R.S. rules and regulations.

20 MR. RABAGO: Sure.

21 THE COURT: You can ask the witness what
22 reading, if any, she has done to come up to speed on rules
23 and reg, but I'm not going to be trying the issue of
24 whether there's compliance with the I.R.S. code.

25 BY MR. RABAGO:

1 Q. Are you aware that private foundations are
2 absolutely prohibited from directly or indirectly
3 participating in political campaigns on an -- opposition
4 candidates or for candidate?

5 MR. BARBOUR: Objection, again, this in
6 501(c)(3) stuff.

7 THE COURT: It may or may not be, and
8 there's no foundation for it, you're testifying here, so
9 I'm going to sustain that.

10 MR. RABAGO: Okay.

11 BY MR. RABAGO:

12 Q. Ms. Bauserman, what amount of revenues did you
13 take in in 2013 on behalf of -- or the Corporation,
14 what -- what amount of revenues did your corporation take
15 in in the tax year 2013?

16 A. How much revenue did it take in the Foundation?

17 Q. The Foundation For Responsible Accountable
18 Government.

19 A. Is that public knowledge? I don't -- that is not
20 public information.

21 Q. I'm asking you the question, I'm not asking if
22 it's public information?

23 A. How much -- well, I mean it's not public
24 information, I'm not allowed -- I don't think I'm at
25 liberty to discuss that with you.

1 THE COURT: Ma'am, unless there's an
2 objection, you have to answer the questions. There was a
3 question before you right now.

4 MR. BARBOUR: Your Honor, I would object on
5 the ground foundation, she's the president, she's not the
6 treasurer.

7 THE COURT: Well, she may or may not know as
8 president, and if she doesn't know, she can tell us that.

9 MR. BARBOUR: Okay.

10 THE WITNESS: I -- I do not know, I know it
11 was under 50,000 that's why the postcard.

12 Q. Okay. Did you file that tax document?

13 A. Yes, I did.

14 Q. Okay. You're filing a tax document and you don't
15 know what was the basis for -- for that document?

16 A. I did not review that information, it was under
17 the \$50,000.

18 Q. I'll ask you the same question about 2014. Do
19 you not -- do you know the amount of revenues that this
20 corporation took in in 2014?

21 MR. BARBOUR: Same objection, Your Honor.

22 THE COURT: It's overruled.

23 If you know, ma'am.

24 THE WITNESS: I do not know.

25 BY MR. BARBOUR: .

1 Q. Did you have a chance to look at Exhibits D and C
2 to the -- that have been presented here today, which are
3 the documents submitted under your name at your address?

4 THE COURT: Now you are referring to them by
5 letters.

6 MR. RABAGO: I'm sorry, Exhibits 3 and 4; my
7 apologies, Your Honor.

8 THE WITNESS: I received the documents last
9 night at 6:00 o'clock. I skimmed through them. I saw
10 that they were there. I did not read them.

11 MR. RABAGO: Okay, I'm happy to -- if I could
12 ask the clerk to hand me Exhibits 3 and 4.

13 MR. RABAGO: Your Honor, may I approach?

14 THE COURT: Sure.

15 BY MR. RABAGO:

16 Q. Have you had a chance to look at them again now?

17 A. Yes.

18 Q. Now these are tax documents, essentially tax
19 returns that you filed on behalf of the Foundation For
20 Responsible Accountable Government, Inc.?

21 A. Yes.

22 Q. And you're telling us that you have no idea what
23 the amounts were to give you that conclusion that it was
24 under \$50,000 for 2013 and 2014?

25 A. Yes.

1 Q. Ms. Bauserman are you willing to disclose --

2 THE COURT: Wait a minute, let me make sure
3 I understand that answer.

4 Ma'am, do you believe that the revenues were
5 under \$50,000?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Go ahead, sir.

8 BY MR. BARBOUR:

9 Q. Were they substantially under \$50,000, Ms.
10 Bauserman?

11 A. I do not know.

12 Q. What is the source of those revenues?

13 MR. BARBOUR: Objection, relevance.

14 THE COURT: Tell me how that's relevant.

15 MR. RABAGO: The argument by the defense is
16 that they are not engaged in any sort of business
17 activity, so I'm not sure what exactly how they obtained
18 revenue.

19 THE COURT: Well, I think the witness has
20 testified that they don't do business, I guess that leaves
21 the donation. I'll let you explore that. Are you asking
22 her if there are donations or are you asking her who the
23 donors are?

24 MR. RABAGO: First I was asking if -- where
25 they came from, where the money comes from, where that

1 money came from.

2 THE COURT: You're asking who the donor --
3 assuming the donor, you're assuming who the donors are?

4 MR. RABAGO: Yes, Your Honor. Let's just
5 cut to the chase. I would be happy to ask where the money
6 that -- let me just skip -- I'll withdraw the question and
7 we'll just focus on this year, even -- and then ask the
8 questions of the Court if that helps save time.

9 THE COURT: Is it your objection that --
10 that it's nobody's business at this hearing who the donors
11 are?

12 MR. BARBOUR: I would say that it is, first
13 of all --

14 THE COURT: Ms. Bauserman is nodding yes,
15 I --

16 MR. BARBOUR: This is no one's business who
17 the donors are.

18 THE COURT: Why is it anybody business? If
19 for example if I gave if \$10 for the Corporation for
20 Foundation For Responsible Accountable Government Inc.,
21 why is that anybody's business?

22 MR. RABAGO: Well, first of Your Honor, you
23 wouldn't know you were giving to a corporation, because it
24 doesn't identify itself as such if you go on their
25 website.

1 Secondly, we don't know if they are engaging
2 in business or not, they certainly have an addresses here,
3 they filed taxes --

4 THE COURT: Well, that's a different issue,,
5 you asked -- you asked to be allowed to ask for who the
6 donors are, and I don't really see why it's anyone's
7 business that a member of the public decides to send \$10
8 into an entity, maybe without even knowing who they are or
9 what they do, why is that anyone's business --

10 MR. RABAGO: Well, Your Honor in terms of --

11 THE COURT: -- I mean at this hearing.

12 MR. RABAGO: Sure, I understand. The first
13 question was -- well, I'm trying to establish what are
14 they really doing here, are they truly in -- what is their
15 activity?

16 THE COURT: Well, you can ask her if all
17 their money comes from donations as far a she knows, you
18 can ask that.

19 MR. RABAGO: All right. Thank you.

20 BY MR. RABAGO:

21 Q. Ms. Bauserman, does all of your money come from
22 donations?

23 THE COURT: When you say, your money, you
24 mean the --

25 BY MR. RABAGO:

1 Q. The Corporation's money?

2 A. Versus what?

3 Q. I don't know, it's your corporation?

4 A. Yes, yes it's donations -- yes.

5 Q. Okay?

6 THE COURT: Ma'am, usually when you get
7 money it's because somebody is paying for work or they are
8 giving you a gift and the gift could be to family or it
9 could be a donation-type gift. Do you understand that
10 question?

11 THE WITNESS: I guess. I'm not selling
12 anything to make money, so I guess they are donations.

13 THE COURT: So the Corporation that we're
14 here about, is their source of income, is it donations?

15 THE WITNESS: Yes.

16 THE COURT: Go ahead, sir.

17 BY MR. RABAGO:

18 Q. Okay, and is that source primarily other
19 corporate donations to your entity?

20 MR. BARBOUR: Again, Your Honor this is --
21 this goes to the identity of the donors.

22 THE COURT: Sustained.

23 BY MR. RABAGO:

24 Q. Ms. Bauserman, are you willing to publically
25 disclose who your donors are?

1 MR. BARBOUR: Objection, Your Honor;
2 relevance.

3 THE COURT: How is that relevant?

4 MR. RABAGO: Well --

5 THE COURT: I think she said earlier -- I
6 don't think that's public information about something and
7 if she was willing, how does that if it's not relevant to
8 my considerations and I already ruled that it's not, why
9 do I care if she's willing to disclose it or not?

10 MR. RABAGO: Well, Your Honor, in terms of
11 the harm, and maybe this would obviously come to some
12 degree a little bit later in argument, the relevance is
13 that we have an out-of-state corporation that, if you're
14 in Arizona and you look them up, they don't say they are a
15 corporation, they are using somebody else's trade name
16 which is registered.

17 THE COURT: Well, you can ask her about
18 those kind of things, but I really don't think it's my
19 business who the donors are.

20 MR. RABAGO: And I guess the point that --

21 THE COURT: It's really not relevant to me
22 whether she's willing to disclose that or not.

23 MR. RABAGO: Okay.

24 BY MR. RABAGO:

25 Q. Let me ask it this way, I understand the Court's

1 concern, I think there's another way for me to ask the
2 question.

3 Are your members in your corporation for a
4 particular trade under this trade organization 501(c)(6)
5 tax exception?

6 THE COURT: I didn't understand that, ask it
7 again.

8 BY MR. RABAGO:

9 Q. You're familiar with your exemptions, or I guess
10 you testified earlier you weren't familiar with all the
11 rules for your tax exemptions, let me ask it this way.

12 Do you have members of your organization
13 that are -- that contribute money to the Corporation?

14 MR. BARBOUR: Again, Your Honor, identity of
15 the donors.

16 MR. RABAGO: I'm not asking who.

17 MR. BARBOUR: That information --

18 THE COURT: You're really trying to narrow a
19 certain class, it doesn't matter to me if they are members
20 that are donating money or not.

21 MR. RABAGO: Okay.

22 THE COURT: So I'm not going to allow that.

23 MR. RABAGO: Okay, Your Honor.

24 BY MR. RABAGO:

25 Q. Now --

1 THE COURT: Unless you're contending there's
2 some rule or regulation that requires, hypothetically, me
3 as a member of the public to identify who I donate money
4 to, I mean --

5 MR. RABAGO: Well, Your Honor, there are
6 there are actually rules about that for foundations, and I
7 know the Court didn't want do go down that road.
8 Foundations are are required to disclose if they engage in
9 certain activities.

10 THE COURT: You're testifying here, so if
11 you want to bring an expert on that topic --

12 MR. RABAGO: Sure.

13 THE COURT: -- you may do so, or if you want
14 me to show me law on that you may do.

15 Based on what I have before me right now,
16 I'm not going to let you ask to identify donors or ask
17 whether she's willing to identify donors. Move on to
18 something else.

19 MR. RABAGO: Thank you, Your Honor, I will
20 happy to do so.

21 BY MR. RABAGO:

22 Q. Now, Ms. Bauserman, you're not conducting any
23 activity in any other state, are you with -- I'm talking
24 the defendant is not engaged in any other activity in any
25 other state other than Arizona?

1 A. Is the Foundation?

2 Q. Is the Corporation, is the Corporation engaged in
3 any activity in any state other than Arizona?

4 A. No.

5 Q. So the only activity this corporation engages in
6 is in Arizona?

7 A. I -- you know, activity, I send e-mails to people
8 throughout the United States. I mean, activity, what do
9 you mean by, activity?

10 Q. Is -- is the Corporation making contributions to
11 political campaigns in any other state?

12 A. That's none of your business.

13 THE COURT: Sorry, what was your answer?

14 THE WITNESS: I said it's not the business
15 of --

16 THE COURT: It's what?

17 MR. RABAGO: She said it's none of my
18 business.

19 THE WITNESS: It's --

20 THE COURT: Well, actually it is.

21 THE WITNESS: The Corporation? Could you
22 ask the question again what my transacting activities or
23 business?

24 BY MR. RABAGO:

25 Q. The first question was, were you conducting any

1 activities in any other state, that was the first
2 question?

3 MR. BARBOUR: I would object on relevancy
4 grounds, it's vague. What do you mean by activities?

5 THE COURT: Well, we already started down
6 that down road, she said she sent e-mails outside of
7 Arizona, and then she asked him to clarify, and then she
8 said it's none of his business. So, ask your question
9 again.

10 BY MR. RABAGO:

11 Q. Does the Corporation engage in any political
12 donations for political campaigns in any other state in
13 the union?

14 A. You're asking me who the Foundation donates to?
15 You said, do I engage in political donations.

16 THE COURT: He's asking you if you donate --
17 if the Corporation donates to anyone outside of Arizona?

18 THE WITNESS: Does the Foundation donate?

19 BY MR. RABAGO:

20 Q. Does the Corporation?

21 A. I -- I do not think the Corporation has made any
22 donations at this time.

23 Q. Does the Corporation have any offices in any
24 state in the union other than Arizona?

25 A. Offices, no.

1 Q. Okay. Does the Corporation hold town halls about
2 political election events in any other state other than
3 Arizona?

4 A. No.

5 Q. Does the Corporation pay money to do a telephone
6 survey, that was reported in the newspaper today, as was
7 discussed in earlier testimony?

8 A. Yes.

9 Q. And that was related to the City of Tucson?

10 A. No.

11 Q. It was not related to the City Council?

12 A. It was -- yes, it was related to government
13 activity in Tucson.

14 Q. Okay. Did you personally write that check?

15 A. Yes.

16 Q. And you did that here in Tucson, in the State of
17 Arizona?

18 A. Yes.

19 Q. Did you -- were you the one that wrote the checks
20 for the \$50,200 that were given to the political
21 independent campaign expenditure campaign that you are the
22 chairman -- chairwoman of?

23 A. I either wrote checks or did transactions, my
24 treasurer was out of country on vacation.

25 THE COURT: I didn't understand. You said

1 either I wrote it or--

2 THE WITNESS: I wrote it or did a
3 transaction, a transfer at the bank.

4 BY MR. RABAGO:

5 Q. Now, it's correct that Mr. Frank Antenori is also
6 on this board of this corporation with you?

7 A. He's a board member, yes.

8 Q. Okay. And he is also one of the co-chairs of the
9 political committee Revitalize Tucson?

10 A. Yes, he is.

11 Q. Who are the other board members?

12 A. For the Foundation?

13 Q. For the Corporation we're here about, one entity,
14 it's a corporation, the Foundation For Responsible
15 Accountable Government Corporation?

16 A. At this moment, none. When this was formed we
17 had two other members; one died in a motorcycle accident
18 and the older one moved and was unaccessible and unable to
19 be on the board.

20 THE COURT: I'm not sure I understand you.
21 The Defendant, do they have a board of
22 directors that's active now?

23 THE WITNESS: Yes.

24 THE COURT: And I think you said you're one
25 of the officers are you on the board?

1 THE WITNESS: Yes.

2 THE COURT: Are there other board members?

3 THE WITNESS: Yes.

4 THE COURT: Is Mr. Antenori one?

5 THE WITNESS: Yes.

6 THE COURT: And I think his question, who is
7 on the board, did you answer that question?

8 THE WITNESS: Yes.

9 THE COURT: Okay, go ahead, sir.

10 BY MR. RABAGO:

11 Q. To recap, the only members on this board, are you
12 and Mr. Antenori?

13 A. Yes.

14 Q. Now, earlier in your testimony, it was asked by
15 your attorney, your -- the Defendant's attorney that you
16 did not have an intent to --

17 THE COURT: Let me stop you right here.

18 MR. RABAGO: Sure.

19 THE COURT: Lawyers are always overly
20 optimistic about how long we're going to take and we're
21 into the noon hour here. Should we come back after lunch
22 or are you going to be done in two minutes?

23 MR. RABAGO: I'm going to be done in about
24 two minutes, Your Honor.

25 THE COURT: Don't tell me about two minutes,

1 if you say two minutes, then I'm going hold you to that.
2 If you need more time than that, we're going to take a
3 break.

4 MR. RABAGO: I'm done in two minutes, Your
5 Honor.

6 THE COURT: I'm going to hold you to that.

7 MR. RABAGO: All right. Start the clock.

8 BY MR. RABAGO:

9 Q. Ms. Bauserman, in your testimony, your attorney
10 asked you if you intended to spend any more money on
11 the -- in the city council races by donating money to the
12 Revitalize Tucson Committee this election, do you remember
13 that question?

14 A. Yes; yes.

15 Q. And you indicated you were not?

16 A. Yes, I indicated we do not have a grant request
17 at the moment.

18 Q. So if someone makes a grant request, you would
19 then spend money?

20 A. The board of directors would have to approve
21 that.

22 Q. Okay. So it's possible that if someone -- if
23 that happens, then you would, you and your partner on this
24 board of directors, Frank Antenori, will make that
25 decision?

1 A. That is the -- the way the Corporation is set up.

2 Q. Okay, you understand that these monies that were
3 spent are not grants but these are political donations?

4 A. No, they are grants.

5 Q. You understand -- have you seen the campaign
6 finance report for your own committee, Revitalize Tucson,
7 which shows that these are political donations, it's your
8 committee, ma'am?

9 A. Ask that again.

10 Q. Revitalize Tucson, you are the chair of that
11 committee and you reported -- your committee reported
12 political donations from the Foundation For Responsible
13 Accountable Government, Inc.?

14 A. Correct.

15 Q. Those are political donations.

16 MR. BARBOUR: May I have the exhibit? What
17 exhibit number is that?

18 MR. RABAGO: Exhibit 12, I believe.

19 THE COURT: All right. Counsel, I'm going
20 to give you a chance to --

21 MR. RABAGO: That's the last question, Your
22 Honor.

23 THE COURT: Well, she hasn't answered yet.
24 He wants to look at the exhibit, we'll come back it to.
25 We're going come back at 1:30 -- well 1:30 or 1:15. What

1 is your preference, Counsel?

2 MR. BARBOUR: I have no preference.

3 MR. RABAGO: 1:15 is fine, Your Honor.

4 THE COURT: 1:15 we'll come back at 1:15,
5 ma'am, so you will be called back; have a nice lunch and
6 we'll reconvene at 1:15.

7 MR. RABAGO: Thank you Your Honor.

8

9 (Whereupon the Court went off the record.)

10

11 (Recess)

12

13 THE COURT: Thank you ladies and gentlemen,
14 please be seated.

15 We're back on the record at this time. Ms.
16 Bauserman will you please step up to the witness chair.

17 Mr. Rabago, had you completed your
18 questions?

19 MR. RABAGO: I think we were finishing it up,
20 Your Honor.

21 THE COURT: I don't recall if there was a
22 question about Exhibit 12 that defense counsel wanted to
23 address prior to the completion of the question and posing
24 of a new question. Have you finished that up, sir?

25 MR. BARBOUR: I think we've gone over that

1 fairly well.

2 THE COURT: Okay. So you're ready to go
3 ahead with another question?

4 MR. BARBOUR: With, Ms. Bauserman, yes.

5 THE COURT: Well, I meant Mr. Rabago,
6 because he's still --

7 MR. BARBOUR: He's still on Ms. Bauserman,
8 and that's fine.

9 THE COURT: Go ahead, sir.

10 MR. RABAGO: Thank you, sir.

11 BY MR. RABAGO:

12 Q. If my -- my memory serves -- Ms. Bauserman,
13 welcome back. The question I asked you was, in relation
14 to your testimony about grant requests, as the president
15 of this corporation, you understand that the monies that
16 your corporation has given to the Revitalized Tucson
17 Committee are political contributions; right?

18 MR. BARBOUR: Objection, relevance.

19 THE COURT: I'm sorry?

20 MR. BARBOUR: Objection, relevance, Your
21 Honor.

22 THE COURT: No, I will allow it.

23 THE WITNESS: No, they are not political
24 contributions, they are for policy advocacy.

25 BY MR. RABAGO:

1 Q. So in your role as chairwoman of the political
2 committee your committee has reported these as political
3 contributions; you're aware of that, right?

4 A. They are on a political form, yeah.

5 Q. Yeah a political form, the campaign finance form
6 by which political contributions are reported to the
7 public; right?

8 A. Well, the treasurer -- you know there's category
9 when you make transactions of what it is and the
10 Foundation reports them as it's political advocacy.

11 Q. It is so --

12 A. Or policy or advocacy for -- that means they are
13 advocacy rights.

14 Q. And those are reported on a campaign finance
15 document, I believe one that you signed as political
16 contributions --

17 A. Revitalized Tucson does a report.

18 Q. Correct. So in your role as a chairwoman of
19 Revitalized Tucson, you reported these donations from this
20 corporation as political contributions; correct?

21 A. If that's what the -- what is that -- do you have
22 the exhibits?

23 Q. I do have Exhibit 12, please, have a look at it?

24 A. There's like A, B, C and D -- in front me?

25 Q. Sorry, let me -- I forgot those were no longer in

1 front of you.

2 A. They are contributions from individuals, the
3 Foundation contribution from the -- an individual the way
4 it's reported.

5 Q. Okay. As a political contribution. You
6 understand, what political contributions are, right Ms.
7 Bauserman?

8 A. I'm not a treasurer.

9 Q. I didn't ask you, you're the chairwoman?

10 A. Right.

11 Q. Do you understand what a political contribution
12 is in this country?

13 A. No, I guess I don't. What I mean, a political,
14 contribution, what are you asking?

15 Q. Well, in politics and elections people donate
16 money to campaigns, those are called political
17 contributions, do you understand this?

18 A. Okay, yeah; then this is not political
19 contribution because this is not a campaign.

20 Q. The Revitalize Tucson Committee is not a
21 political campaign?

22 A. It's a committee, it's not a campaign.

23 Q. Well, it's an independent expenditure campaign
24 for this election, do you understand that?

25 A. It is, but -- okay, yeah.

1 Q. Okay. You're running this -- this political
2 committee, you're aware of that, right?

3 A. Right.

4 Q. And I guess I'm having trouble believing that you
5 don't know that these are political contributions when
6 you're the chairwoman, I'm just trying --

7 THE COURT: What you believe or don't
8 believe is not relevant here.

9 MR. RABAGO: Thank you, Your Honor.

10 THE COURT: So please don't state your
11 opinions about what is believable or what's --

12 MR. RABAGO: I appreciate that, Your Honor, I
13 apologize.

14 THE COURT: You can certainly advocate in
15 closing argument, but even in closings, I don't want you
16 telling me what you do or do not believe.

17 MR. RABAGO: Thank you, Your Honor.

18 BY MR. RABAGO:

19 Q. So you indicated -- the question I had asked
20 before we left for lunch, the other question was -- in
21 relation to these issues, was the Corporation's intent not
22 to make anymore contributions, you said they were grants,
23 but then I asked you what would happen if somebody made a
24 request, do you remember that testimony?

25 A. Yes.

1 Q. And you said you would consider that request?

2 A. The policy is the board will consider -- of
3 course, we'll consider all grant requests. If you would
4 like to make one, if the Democrat committees would like to
5 make one, they can make one, too.

6 THE COURT: Ma'am, just answer the question.

7 THE WITNESS: Okay.

8 BY MR. RABAGO:

9 Q. And you are the person that, as the chaired
10 committee, it was your committee that made the request to
11 this corporation; correct?

12 A. Correct.

13 Q. And then as the president of this corporation,
14 you wrote the check back to the committee that you chair;
15 correct?

16 A. That is correct.

17 Q. And you called that a grant and not a political
18 contribution?

19 A. Correct.

20 Q. Is anyone who denotes to the Foundation for
21 Responsible Accountable Government, Inc, are they a member
22 of the organization as a --

23 MR. BARBOUR: Objection, again, we're going
24 back to the identity of donors.

25 THE COURT: Sustained.

1 BY MR. RABAGO:

2 Q. How does one become a member?

3 THE COURT: Counsel, just so that you both
4 know, I'm going to assume that donors could be anyone
5 under the sun.

6 MR. RABAGO: Correct, Your Honor, I
7 appreciate that.

8 BY MR. RABAGO:

9 Q. Can anyone be a member of your corporation by
10 donating?

11 THE COURT: When you say "member", are you
12 talking about the defendant corporation?

13 MR. RABAGO: Correct, Your Honor.

14 THE COURT: Okay. So when you say "member"
15 do you mean shareholder, do you mean board of directors
16 member, what do you mean?

17 MR. RABAGO: They are registered as a trade
18 member organization, think Chambers of Commerce or NFL
19 they have different members of line of business or trade
20 that come together for -- typically for a specific line of
21 business.

22 THE COURT: So you're now judging this to an
23 LLC with members.

24 MR. RABAGO: I'm not sure how they run it
25 actually, Your Honor, that's why I'm inquiring how does

1 one become a member for their purposes as they identify
2 themselves to be a 501(c)(6) trade organization.

3 MR. BARBOUR: Objection, Your Honor, I'm not
4 sure I understand why running a corporation is relevant to
5 to any claims that they have.

6 THE COURT: Well, I am going give the
7 parties some latitude here. Frankly, I'm curious about
8 the structure of things myself, so I'm going overrule that
9 and understand that ultimately I'll decide what's is
10 relevant and how much weight --

11 MR. BARBOUR: Of course.

12 THE COURT: -- allocate to relevant
13 evidence, and what to exclude as irrelevant or what to
14 determine has little relevance or little weight for me in
15 determining the case. But I think it's important to allow
16 the parties some latitude in this context.

17 MR. BARBOUR: Understood, Your Honor.

18 THE WITNESS: So what was the question
19 again?

20 BY MR. RABAGO:

21 Q. Can anyone who donates to the Corporation become
22 a member by virtue of their donation to the Corporation?

23 A. Yes.

24 Q. So if -- if my client, for example or member of
25 public donates to -- on your website, that makes them a

1 member?

2 A. Is -- yes.

3 THE COURT: Is that automatic, ma'am,
4 if you donate you become automatically a member of the
5 Defendant Corporation?

6 THE WITNESS: Yes.

7 BY MR. RABAGO:

8 Q. Now earlier you said that you conduct no business
9 activity anywhere in the United States, do you remember
10 that testimony?

11 A. Yeah.

12 Q. So the activity that we have identified today,
13 these donations to Revitalize Tucson, the telephone
14 survey, the town halls and the e-mails, would you consider
15 that then your primary purpose?

16 A. It's -- yes, the foundation is for government
17 accountability.

18 Q. But did you understand the question?

19 A. Is that my primary purpose?

20 Q. The conduct that was described earlier today in
21 today's testimony, including the contributions, the
22 telephone survey that was referenced, the town halls that
23 you talked about, and your e-mails that you referenced,
24 would you consider that activity a primary purpose of your
25 corporation?

1 A. Yeah, it's government accountability and we do
2 that mostly through e-mails and educational through town
3 halls.

4 Q. Is the answer "yes" that conduct described your
5 primary purpose?

6 A. Yeah, I mean we don't do a lot of polls, but --

7 Q. Referring to everything?

8 A. What?

9 Q. Everything, the -- do you have other examples of
10 activity that you have done or do?

11 A. I'm mean that's our -- yeah, we're trying to hold
12 the government accountable, so we're trying these
13 different veins, it's kind of knew how we're going to, you
14 know, educate people and show how we hold government
15 accountable and what works and what is successful, so --

16 Q. So your testimony is that that conduct, that I
17 just described, is what your primary activity is and the
18 purpose of your activity is to hold government accountable
19 and responsible through that activity?

20 A. Correct.

21 Q. As an individual, do you -- are you registered of
22 a particular party?

23 A. Yes, I'm a registered Republican.

24 Q. Are you active in the Republican party?

25 A. I'm a pre -- elected precinct comitteeman and a

1 state committeeman.

2 Q. Do you engage in other activities that are
3 Republican-oriented activities, whether they are
4 committees, like the Republican senatorial campaign
5 committee, similar types of committee and conduct that was
6 asked of my own client earlier?

7 A. Yes.

8 Q. Do you participate in those?

9 A. Yes.

10 Q. And are you employed?

11 A. Employed -- I have a consulting company.

12 Q. Okay. What does that consulting company do?

13 A. Successful strategy, I consult on political --
14 political things right now.

15 Q. Okay. Do you consult on political campaigns?

16 A. A campaign right now, currently, no.

17 Q. Okay. In the past you have been a consultant on
18 political campaigns?

19 A. I have been campaign manager, scheduler, things
20 like that, I have been staff on campaigns.

21 Q. Okay. The Houghton address is that a mailing box
22 or is that a business location, what is that address?

23 A. That is a P.O. Box so that people wouldn't know
24 where I lived.

25 Q. Okay. The Corporation is using that also as its

1 mailing address, is that so that nobody would know where
2 the Corporation lived so-to-speak?

3 A. Well, the Corporation is in Delaware, has an
4 address, that's where you sent the summons and the
5 complaint to me.

6 Q. Sure.

7 A. And -- but, yeah a lot of it was just -- you
8 know, I had been told not to use my personal address so
9 people wouldn't know where I lived and then -- but
10 sometimes you just can't help that.

11 Q. Got it. Well, so you did it for the same purpose
12 then with respect to using the Corporation's address as
13 that at that location on Houghton as well?

14 A. Right, it was a place to get mail; right.

15 Q. Correct. But you're not the Corporation, you're
16 talking about your not wanting people to know your
17 personal address, this is the Corporation; right?

18 A. Correct.

19 Q. Why didn't you use the Delaware address for that
20 corporation?

21 A. For mail.

22 Q. Correct.

23 A. Because I wanted to be able to pick up the mail.

24 Q. Okay. And that's the same box that you pick up
25 the political --

1 A. Yes.

2 Q. -- mail for you're the campaign committee,
3 Revitalize Tucson, the political committee?

4 A. Yes.

5 Q. Now, Ms. Bauserman, you -- you use your personal
6 address on the I.R.S. tax returns that are publically
7 available on the internet; correct?

8 A. I have to --

9 Q. Okay.

10 A. -- the I.R.S. required that.

11 Q. And that's out in the world and available to the
12 public, in fact, my client found it, it's available to the
13 public; right?

14 A. Right, and that was after the establishment of
15 the Corporation and the P.O. Box and then basically you
16 can't get around it.

17 Q. Okay. Now, the trade name that was referenced
18 earlier today, that is a trade name that you obtained
19 under your name and you own that; right?

20 A. Yes, I have a lot of trade names. I develop
21 websites and when you get a website it's always
22 recommended to make sure the trade name is secure because
23 you can go through all this problem of creating a website
24 in a company and any company and then someone else can go
25 to secure the trade name and rip that from you and it's a

1 lot of work to redo it, so it's always recommended to
2 secure the trade name, it's an easy step to do.

3 Q. Okay.

4 A. Even opening a bank account, they recommend you
5 to search the trade name.

6 Q. Now you listed on that trade name registration
7 form, that the business of that entity or that trade name
8 is, community organizer; correct?

9 A. Yes.

10 Q. Okay. Now, this corporation is a Delaware
11 corporation that you are president of, that's not
12 community organizer, is it?

13 A. Is that listed as my occupation or the occupation
14 of the trade name?

15 Q. We can look at it.

16 A. Okay.

17 Q. Let's just do that, that way there's no
18 confusion.

19 A. A lot of those questions are like my personal
20 e-mail, my personal address, not the personal address of
21 the trade name.

22 Q. Okay.

23 A. You know they are not asking you, this is the
24 trade name and where does this trade name live.

25 Q. Okay. So turn to Exhibit 7, if you would?

1 A. I don't have that.

2 Q. Do you have that in front of you? Let me hand
3 you the official one as the Court asked earlier for us to
4 do. Handing you Exhibit 7?

5 A. Okay. That is the business type and so that was
6 probably in the beginning when it was started in 2013, you
7 get the trade name before you incorporate. So the
8 Corporation was still being formed and the officers and
9 everything -- you know, that -- the details are still
10 being established and the bylaws being written, the
11 Corporation being formed, so it was just like get the
12 trade name before somebody finds out about it and that way
13 you can secure the name. And it is community organizing,
14 means holding government accountable, you know.

15 Q. Is it your understanding that community organizer
16 is a purpose of a corporation registered as a tax exempt
17 trade member organization?

18 THE COURT: Are you talking about the
19 Defendant?

20 MR. RABAGO: Correct, the Defendant.

21 THE WITNESS: What was that?

22 BY MR. RABAGO:

23 Q. Is it your understanding that community organizer
24 is a accepted purpose for your tax exempt registration of
25 the Corporation as a 501(c)(6) member organization?

1 A. No, it's government transparency. Okay, so I put
2 this down just to secure the name.

3 Q. That was on January 22nd, 2013, according to this
4 document?

5 A. That the trade name was secured?

6 Q. Correct.

7 A. Correct.

8 Q. And it uses your address for Foundation For
9 Responsible Accountable Government; correct?

10 A. Correct, because it was -- like I said, the
11 Corporation was not established yet.

12 Q. So this is a second government document available
13 to the public online which has your personal address?

14 A. Correct. Like I said, I realized you couldn't get
15 around that in some cases, but --

16 Q. And the trade name is not, Foundation for
17 Responsible Accountable Government Incorporated, is it?

18 MR. BARBOUR: Asked and answered.

19 THE COURT: Sustained.

20 While we're on that, ma'am the trade name,
21 you consider that your individual personal property?

22 THE WITNESS: I believe that's the law,
23 yeah.

24 THE COURT: In other words, you believe you
25 own it personally?

1 THE WITNESS: I think that is the def --
2 like I said, I've always just been -- you know, when you
3 go to open -- when you're going to do this stuff, everyone
4 says, get the trade name and anybody can go online and get
5 a trade name.

6 THE COURT: But you have to pay for a trade
7 name or do you just sign up?

8 THE WITNESS: I think it's \$5 or \$10.

9 THE COURT: It's a small amount?

10 THE WITNESS: Yeah.

11 THE COURT: It's money that you paid?

12 THE WITNESS: I don't remember on this case.
13 Like I said I've gotten --

14 THE COURT: The Corporation -- the Corporate
15 Defendant didn't pay that?

16 THE WITNESS: No, it didn't exist at this
17 time, yeah.

18 THE COURT: Okay. Go ahead, sir.

19 BY MR. RABAGO:

20 Q. Ma'am, there was some testimony about what's
21 currently was placed on your website on September 30th
22 regarding a telephone survey we talked about earlier?

23 A. Yes.

24 Q. Did the Corporation pay for that?

25 A. Yes.

1 Q. How much did it pay for that?

2 A. Do I have to tell that transactions of the --
3 \$4,000.

4 Q. Okay.

5 THE COURT: Let me make sure I understand
6 that. Are you saying that the Corporation, the Defendant
7 here paid for this phone surveyor?

8 THE WITNESS: Yes.

9 THE COURT: Not through a grant but
10 directly?

11 THE WITNESS: I -- it paid the -- I do
12 believe it paid the consulting company to do a survey. We
13 paid a consulting company to perform the survey.

14 THE COURT: Directly?

15 THE WITNESS: It paid -- well, it paid a
16 consulting company for consulting.

17 THE COURT: Did you write the check?

18 THE WITNESS: It was a bank transaction.

19 THE COURT: Was it a bank account of the
20 Defendant corporation or with Revitalize Tucson?

21 THE WITNESS: It was not -- Revitalize
22 Tucson had nothing to do with it. The Foundation -- and I
23 don't remember if the Foundation secured -- well it
24 secured the consulting company, but I don't remember which
25 consulting company it secured.

1 THE COURT: It's a phone survey to solicit
2 phone input here in Tucson?

3 THE WITNESS: The company or the --

4 THE COURT: No, the phone calls that are
5 being made to take survey, are they calling folks in
6 Tucson?

7 THE WITNESS: Yes.

8 THE COURT: Okay. Go ahead, sir.

9 BY MR. RABAGO:

10 Q. And so the Corporation spent approximately \$4,000
11 to purchase that?

12 A. Yes.

13 Q. Did you conduct that bank transaction personally?

14 A. Yes.

15 MR. RABAGO: I have no further questions,
16 Your Honor.

17 THE COURT: All right. Let me just ask a
18 couple other questions.

19 The billboard expenditures, I thought you
20 said earlier they were done through the grant funding; is
21 that correct?

22 THE WITNESS: The billboard expenditures
23 were done by Revitalize Tucson.

24 THE COURT: In other words, Revitalize
25 Tucson solicited grant money and use the the grant money

1 to pay for the billboard?

2 THE WITNESS: Yes.

3 THE COURT: Okay. And the grant money came
4 from the Defendant corporation here?

5 THE WITNESS: Yes.

6 THE COURT: But in the phone survey
7 instance, it wasn't a grant mechanism?

8 THE WITNESS: No.

9 THE COURT: Can you tell me why the
10 difference?

11 THE WITNESS: Well, it's -- the Foundation
12 does it's own -- like does the town halls and does e-mails
13 and does educational purposes and it was to find out --
14 and it was released to the public, it was made public just
15 so everybody could know what the issues are, you know,
16 holding government accountable, what do the people want to
17 understand, what do they want to know.

18 THE COURT: So the foundation distinguishes
19 between things like phone surveys and town halls and just
20 different from buying billboard space.

21 THE WITNESS: Well, yes, its main form of
22 existence is for educational purposes; it has a town hall
23 scheduled for Tuesday because the elections are really
24 confusing now because of the County being in charge of it
25 and the people and the City aren't going get mail-in

1 ballots now. So we actually have the election integrity
2 commissioners showing up to do an explanation of how this
3 election is being ran.

4 THE COURT: So when the Foundation bought --
5 when the Foundation sets up a -- a town hall, do they have
6 to rent space?

7 THE WITNESS: It hasn't to date, but we may
8 have to for one in October.

9 THE COURT: So the town halls, do they
10 involve any expenditures directly by the foundation or
11 have they?

12 THE WITNESS: It's not like the -- the
13 Foundation usually does not write like a check to a hotel
14 to say, it would write a check to a consultant that wants
15 to put on the event.

16 THE COURT: Does the Foundation pay the
17 consultant to put on the event?

18 THE WITNESS: It hasn't at this point, but
19 if -- there's an event where we might have with Martha
20 McSally and if she shows up there would be large people.
21 So, yeah, the board has decided -- it doesn't do anything
22 without the board asking the treasurer and everybody to
23 make sure it's in compliance.

24 THE COURT: So I'm getting back to the phone
25 survey now. The Foundation, the Defendant here, paid

1 someone to run the phone survey?

2 THE WITNESS: Yes.

3 THE COURT: And that was a consultant that
4 was paid?

5 THE WITNESS: Yeah.

6 THE COURT: And you took care of the payment
7 to the consultant?

8 THE WITNESS: Right.

9 THE COURT: Can you tell me where the
10 consultant was located?

11 THE WITNESS: Well, it's either -- there's a
12 consultant in Tucson and there's a consultant in Phoenix.

13 THE COURT: Well, what I'm wondering is this
14 Tucson survey, where was that consultant?

15 THE WITNESS: Phoenix, the one who actually
16 ran the poll and did the, you know, gave the information
17 back.

18 THE COURT: So the Corporation then directly
19 sent a bank draft or bank payment order to a consultant in
20 Phoenix to run the phone survey in Tucson?

21 THE WITNESS: Yes.

22 THE COURT: Okay. When was that done?

23 THE WITNESS: A couple weeks ago, last week,
24 two weeks ago.

25 THE COURT: All right, thank you, ma'am.

1 Anything else before we step away from the
2 lectin?

3 BY MR. RABAGO:

4 Q. When did the Corporation receive the results of
5 that survey, was it a couple weeks ago?

6 A. No, it was this week; it was last like Thursday
7 night very, very late, then we made it public on Monday.

8 Q. On Monday it was made?

9 A. I believe it was Monday, wasn't it --

10 Q. Your website says --

11 A. Tuesday, I think it was Tuesday it was made
12 public.

13 MR. RABAGO: Thank you, Your Honor. No
14 further questions.

15 THE COURT: All right. This would be --
16 well, normally there wasn't -- normally there's direct and
17 cross and redirect. I'm going let both of you take
18 another turn with the witness, but I'm going to ask you
19 you not to repeat things that were already covered, treat
20 it as though it was redirect.

21 MR. BARBOUR: Absolutely, Your Honor.

22 THE COURT: Actually I told you could
23 cross-examine her, so treat it as hybrid type of re-cross.

24 MR. BARBOUR: Okay.

25 THE COURT: I apologize for reinventing the

1 rules here, but this was a witness that was called at my
2 behest so I have made some modifications.

3 MR. BARBOUR: That's fine.

4 THE COURT: You can ask leading questions.

5 MR. BARBOUR: Okay.

6

7

RE-DIRECT EXAMINATION

8

9 BY BY MR. BARBOUR:

10 Q. Ms. Bauserman, those surveys that the Foundation
11 arranged for or hired the consultant to do, did they --
12 were they campaign calls, were they advocating for any
13 candidates?

14 A. No, not in any way.

15 Q. Were they advertising for anything for or against
16 another candidate?

17 A. No.

18 Q. Were they advertising for Revitalize Tucson?

19 A. No.

20 Q. Okay. But you did -- you did make that
21 information public?

22 A. Yes.

23 Q. Okay. All right. Have you -- have you done more
24 surveys than that or is that an isolated incident?

25 A. You know, actually a couple years ago I did do a

1 like an e-mail, you have an e-mail distribution called
2 Constant Contact, it does it's own surveys now, it did
3 surveys.

4 Q. Okay, but this particular survey -- and between
5 now and that e-mail survey you were talking about, that
6 was what maybe two years, maybe?

7 A. Yeah.

8 Q. So in two years you have one isolated --

9 A. Right.

10 Q. -- incident of hiring a consultant for services
11 to obtain information that you distributed publically?

12 A. Right.

13 Q. Would you say that was for the public benefit?

14 A. Well, yeah, we are about holding government
15 accountable. Like I said, we've been around for two years
16 and we are growing and figuring out what works and what
17 doesn't work and, you know, we thought it would benefit
18 everybody to hold our government accountable.

19 Q. Okay. I want to go to the issue of membership in
20 the foundation. When you say "membership," does that mean
21 that the member has a share, an interest in the
22 Corporation as a voting member?

23 A. No.

24 Q. Okay. So is it something more akin to like pay
25 \$20 you get a membership to the Greenpeace or something?

1 A. Yes.

2 Q. Okay; all right. Let's see. Now also, Counsel
3 asked you about the purpose of the survey e-mail and town
4 halls, I believe he asked whether those were the primary
5 purpose of the Foundation itself. Are -- are those
6 e-mails surveys and town halls themselves the purpose of
7 the Corporation of the Foundation or are they a means to
8 carry out the Foundation's goals of government
9 accountability?

10 A. That's what I meant, yeah.

11 Q. Thank you. I think that might be it.

12 MR. BARBOUR: That's it, Your Honor; thank
13 you.

14 THE COURT: Thank you. Let me see if I have
15 any other questions for you. Bear with me because you
16 know a lot more about this than I do, and I'm seeing a lot
17 of it for the first time; and if I make you repeat
18 anything I apologize for that as well.

19 When you set up the Delaware corporation,
20 that's the defendant now, approximately how many -- I
21 forget the term that's used, what's called an --
22 initiators of the Corporation were there.

23 THE WITNESS: We had four board members.

24 THE COURT: Okay. And now you're down to
25 two?

1 THE WITNESS: Yes.

2 THE COURT: Was Revitalize Tucson, was it
3 set up after the Defendant corporation?

4 THE WITNESS: Oh, Revitalize Tucson was just
5 set up a few months ago; it's in Tucson.

6 THE COURT: Well, after the Corporation was
7 set up?

8 THE WITNESS: Yes.

9 THE COURT: And Revitalize Tucson has a
10 board of chairpersons?

11 THE WITNESS: It is an independent
12 expenditure committee, so it has -- no, it doesn't.

13 THE COURT: But you had listed two
14 co-chairs?

15 THE WITNESS: You have a sponsor and a
16 director and a treasurer.

17 THE COURT: So a sponsor would be Mr.
18 Antenori?

19 THE WITNESS: Yeah.

20 THE COURT: You call him --

21 THE WITNESSSS: Co-chair.

22 THE COURT: Then you're the chairperson?

23 THE WITNESS: Yes.

24 THE COURT: And the Defendant corporation,
25 it -- it -- you indicated that it's -- it's educational,

1 it's a corporation set up for educational purposes?

2 THE WITNESS: Yes.

3 THE COURT: And it operates on donations?

4 THE WITNESS: Yes.

5 THE COURT: And it sends -- it gives grant
6 money to certain entities that it considers worthy of a
7 grant?

8 THE WITNESS: Yes.

9 THE COURT: Has -- and you been asked this
10 before, has it given grants to anyone other than
11 Revitalize Tucson?

12 THE WITNESS: Not this year.

13 THE COURT: But the grants, they are drafted
14 on paper and they are sent or given to an officer of the
15 Defendant corporation?

16 THE WITNESS: Yes.

17 THE COURT: The Revitalize Tucson grants,
18 were they generally drafted by you?

19 THE WITNESS: Yes.

20 THE COURT: The Defendant's -- the Defendant
21 corporations giving of grants, it was based upon a
22 decision of the board of directors of the Defendant
23 corporation?

24 THE WITNESS: Yes.

25 THE COURT: And the board of directors

1 includes yourself and Mr. Antenori?

2 THE WITNESS: Yes.

3 THE COURT: Bear with me for just a minute.

4 When the Corporation was set up as a
5 Delaware corporation, do you know why Delaware was
6 selected as the state of incorporation?

7 THE WITNESS: That was the decision, you
8 know, the treasurer and everybody knows -- I was told that
9 was the best state to open a corporation.

10 THE COURT: It wasn't at your behesting?

11 THE WITNESS: No, it was actually the first
12 state in Arizona to ever do Corporations.

13 THE COURT: Okay. Counsel, any follow-up to
14 my questions?

15 MR. BARBOUR: None, Your Honor.

16 MR. RABAGO: None, Your Honor.

17 THE COURT: All right. Thank you. You may
18 be seated, ma'am. Thank you for your patience.

19 MR. RABAGO: Your Honor, may I ask one
20 question, there was some confusion; one last question,
21 promise.

22 THE COURT: One and then I'll give you a --

23 MR. RABAGO: That's fine, Your Honor.

24 BY MR. RABAGO:

25 Q. Ms. Bauserman, you indicate there was just two

1 members on the board, who is the treasurer of the
2 Corporation?

3 A. Sean Bailey.

4 Q. Of the Corporation?

5 A. Yes.

6 Q. Okay. And is that the same Sean Bailey that is
7 listed as the treasurer of the political committee as
8 well?

9 A. Yes.

10 MR. RABAGO: Thank you, Your Honor; no
11 further questions.

12 THE COURT: Anything -- I think you went
13 over your one question so --

14 MR. RABAGO: My apologizes.

15 THE COURT: You asked two or three.

16 Do you have more questions?

17 MR. BARBOUR: No, sir.

18 THE COURT: Thank you, you may be seated.

19 Any witnesses, exhibit, evidence by any of
20 the parties?

21 MR. RABAGO: No, sir.

22 MR. BARBOUR: Not from our side, Your Honor.

23 THE COURT: Do you each want to give closing
24 comments, one closing apiece. I ask you to to limit
25 yourself to 15 minutes or less with the understanding that

1 I had read and will reread the documents. I won't be
2 ruling from the bench, but I will be ruling as promptly as
3 I can.

4 One of the issues that I want to address is
5 the statute that's been cited by the Plaintiff, A.R.S.
6 10-1502, subpart(F) and one of the questions I had was
7 whether or not the Defendant is transacting business as
8 that term is used in 10-1502(f).

9 Go ahead, Counsel.

10 MR. RABAGO: Yes, thank you, Your Honor.

11 Your Honor has heard a lot of testimony
12 today about this corporation that's out of state that
13 calls itself a foundation, it's a corporation, and you
14 heard a lot of testimony about what they do in Arizona.

15 This today, in relation to the statute that
16 the Court cited and also in relation to a similar statute,
17 which is 11502(F), for non-profit corporations, both of
18 those statutes provide a very simple statutory remedy for
19 any person in this state to sue for an injunction to stop
20 an out-of-state corporation that has not received a
21 Certificate of Authority to conduct affairs in Arizona and
22 register with the Arizona Corporation Commission and
23 provide other corporate filings as required by the Arizona
24 Corporation Commission.

25 Now, this out-of-state corporation calls

1 itself Foundation for Responsible Accountable Government,
2 Inc., and by that, what they do is they engage in
3 activity, which has been described as they are holding
4 government responsible and accountable, they also
5 described it as education. But what we heard is that they
6 have spent \$50,000 -- over \$50,000, \$50,200 on what are
7 identified a political contributions in the City Council
8 race, four transactions to that sum total.

9 We heard the testimony that they have
10 independently themselves paid for telephone phone survey
11 about the City Council on, you know, the eve of -- five
12 days now from ballots dropping for the City Council race.

13 This case is not about restricting anybody's
14 speech, what it is about is about citizens or the Attorney
15 General's right, either or, to file an action to stop an
16 out-of-state corporation that has not received a
17 Certificate of Authority to conduct affairs here, to make
18 them get one before they conduct anymore affairs. It's a
19 very simple process, it can probably be filled out in half
20 an hour.

21 And so this is not about stopping any
22 political speech per se, this is about making sure that if
23 they are going to participate in our elections by giving
24 these contributions, by having these town halls, by paying
25 for phone surveys, all conducted this year, no other

1 conduct talks about, except for some e-mails, it's the
2 only state in the union where they do this.

3 And there's no other activity that they do
4 except for what they have described, then that is their
5 business; they are in the business of giving contributions
6 to campaigns here; they are in the business holding town
7 halls about such campaigns or such issues on the ballot;
8 and now running surveys about the City Council on the eve
9 of these elections.

10 So what we are asking for, is that if they
11 are going to be in the business of participating in our
12 elections in the State of Arizona that the least they can
13 do, is come from Delaware to Arizona and register in the
14 State of Arizona as an out-of-state foreign corporation,
15 which is a term for any corporation that's not
16 incorporated here.

17 The matter is urgent, as we described,
18 because in this context what we have is the chairperson of
19 this political committee is the president of this
20 corporation, the other board member of this -- or excuse
21 me, co-chair or sponsoring individual for this committee
22 is the board member for -- this other board member for
23 this out-of-state corporation.

24 The treasurer, Mr. Sean Bailey, for the
25 political committee is the treasurer for this corporation.

1 THE COURT: Mr. Rabago, you're swaying back
2 and forth, I'm going to ask you to keep a respectful
3 distance --

4 MR. RABAGO: I'm giving the Court a vertigo
5 problem.

6 THE COURT: -- between yourself.

7 MR. RABAGO: What I should have done -- may I
8 approach, I should have done that at the beginning. I
9 apologize.

10 THE COURT: I don't want anybody to feel
11 uncomfortable by my arms waving about.

12 MR. RABAGO: I promise I won't hit Mr.
13 Antenori when I was waving --

14 MR. BARBOUR: We're not concerned, Your
15 Honor. We're okay.

16 MR. RABAGO: Well, the matter is urgent for
17 those purposes. They spent money, they purchased things
18 here, they used a postal mailing address, they pay their
19 taxes out of Arizona, they hold town halls here, this is
20 their business, what they are doing, it's their business.

21 THE COURT: Wait a minute. Did you say -- I
22 just want you to explain this. Did they say they pay
23 their taxes out of Arizona? Are you saying that --

24 MR. RABAGO: Correct.

25 THE COURT: -- that the Defendant

1 corporation is paying taxes?

2 MR. RABAGO: Well, no. Thank you for
3 correcting me, or catching that, Your Honor. They filed
4 their tax returns from Arizona using Ms. Bauserman's
5 personal home address. We have not identified any
6 physical address, there's been no testimony about it.
7 There's been no testimony that they engage in anything
8 else other than this activity.

9 So they call themselves a foundation, but
10 they are a corporation at the end of the day. There is a
11 distinction, the Court is more -- I had some citations in
12 our complaint but there is distinction between what a -- a
13 foundation is and that entity that's registered with the
14 I.R.S. under 501(c)(3), that's what foundations are, I
15 tried to get into that, I understand why the Court didn't
16 go there or allow me to go there.

17 Then there are entities, such as a trade
18 organization, such as the Chamber of Commerce, a business
19 league, line of trade, think the NFL, that's also cited in
20 our complaint, and they are different. And an entity,
21 such as 501(c)(6), they are allowed to engage some
22 political activity so long as its not their primary
23 purpose.

24 And so at the end of the day, my client is
25 concerned about the campaign that is being run with these

1 billboards and until the campaign finance reports were
2 released as public documents, nobody knew who had paid for
3 those other than the committee itself, nobody knew who
4 made the donations. But they given 50,200 and it was
5 approximately 45,000 or whatever to buy the billboards,
6 they singlehandedly have funded that campaigns. They are
7 allowed to do so. They have a freedom of speech under the
8 citizens of the United States, that is not what this case
9 is about. This case is simply about Arizona law and about
10 this being their business, that's all they do. And is it
11 commercial, in the sense that they are selling an item;
12 apparently not. But they are engaged in the business of
13 trying to influence an election, which they described as
14 holding the government accountable, and -- and they are
15 doing it through these campaign donations.

16 Well, what was stark to me and shocking was
17 the attempt to describe --

18 THE COURT: Wait a minute, whatever you felt
19 was stark or shocking is not relevant.

20 MR. RABAGO: Not to you.

21 THE COURT: You can submit to me what --

22 MR. RABAGO: Okay.

23 THE COURT: -- you believe might be stark or
24 shocking to an individual person --

25 MR. RABAGO: Sure.

1 THE COURT: -- but not you, that's stating
2 your own opinion about the case.

3 MR. RABAGO: I understand, Your Honor.

4 The attempt to describe political
5 contributions as grants flies in the face of credibility,
6 Your Honor. A political committee accepts political
7 contributions. We have the chairwoman of a political
8 committee on the witness stand and those campaign finance
9 reports are reporting those political contributions from
10 this other entity. Those campaign finance reports don't
11 disclose that it's a corporation, they don't disclose that
12 it's from Delaware. And on the witness stand, president
13 of this corporation, who's also the chairwoman of this
14 committee, continued to refer to those as grants, and that
15 somebody asked her for a grant and that they give a grant.

16 There were no -- the Court's own questions
17 asked of the witness that just testified, provided the
18 testimony that there had been no other grants this year to
19 anybody else, no other donations so-to-speak. So that
20 what is they are engaged in, that is their conduct, that's
21 why they are apparently incorporated was that type of
22 activity.

23 So when I asked about these different types
24 of activity, if that was their primary purpose, their
25 primary is expressed on their website, but what is that

1 conduct? That conduct is attempting to influence this
2 election which they are entitled to do, but we think if
3 that is there -- if that is their sole activity, and they
4 are operating out of Arizona, and they are operating in
5 Tucson, and they are buying telephone surveys and they are
6 in the midst of election with the same three board members
7 that are on this political committee, that the very least
8 that Arizona could require of them is to register their
9 out-of-state corporation here, present their bylaws to the
10 State of Arizona, have a statutory agent of service here
11 in Arizona before they are allowed to do anymore activity.
12 It's a simple thing for them to do, the burden is minimal.

13 What was not provided in the testimony by
14 the Defendant's witness was that there's an undue hardship
15 on it to register, that there's a problem with them
16 registering, that there's any sort of difficulty or
17 urgency why they shouldn't register. But on the other
18 side of the coin, we expressed and shown what we believe
19 the timing, their involvement in the election, the witness
20 who has testified about the misleading nature of the
21 billboard campaign that is being funded by this
22 corporation, and we heard about that and it's been
23 described as dark money.

24 Now, we have not alleged that this political
25 committee is violating Arizona law, that's not what this

1 complaint is about, it's a very straightforward statutory
2 injunction case. In the old days, if the Court has been
3 in practice for awhile like myself -- or had been
4 practicing before you became a judge, Your Honor, the old
5 days there used to be lawsuits using a similar statute to
6 actually void corporate actions and the Legislature
7 changed that. And so most of the case that are out there
8 that talk about this particular provisions in the statute,
9 they are relying on those older cases where people had to
10 prove business activity or isolated transactions, they
11 were defending saying this is not really a business here,
12 because at issue oftentimes were actual substantial
13 contracts and whether or not a contract could be voided by
14 one of the parties because the Corporation had not
15 properly registered; because the law said if you're not
16 registered in Arizona, your conduct is void.

17 The Legislature got rid of that and said,
18 we're going to make a very straightforward simple process
19 that says, any citizen, any person can file an action, so
20 you don't have an interest in the contract, any person can
21 file the action for an injunction and if they register,
22 the case gets dismissed, it's a very straightforward
23 process.

24 Now, we have gone through all the process of
25 presenting testimony and talking about the exigency, we do

1 believe there's exigencies related to the election because
2 they are bankrolling this campaign. But at the end of
3 day, I don't even know that the statute itself turns into
4 preliminary injunction, it's to be a straightforward
5 process if the Corporation doesn't want to register, they
6 don't have to, the Court can eventually issue an
7 injunction and they won't do any more activity here.

8 If they register -- and it doesn't mean they
9 are changing from Delaware, they are just simply
10 registering that they are here. They would still have an
11 incorporation elsewhere, they just register, we are an
12 out-of-state corporation in Arizona conducting our affairs
13 here. But if they do that, this case by statute, by law,
14 gets dismissed. We're not -- we don't get into any
15 further discovery, we don't do anything that's the end of
16 it; aside for asking for costs which are mandatory under
17 and reasonable fees under the statute.

18 But we think it's very important because an
19 entity that presents itself with a name that it's -- that
20 gives the impression and it's presented in the Affidavit
21 that gives the impression it's a charitable foundation,
22 when it's actually an out-of-state corporation and uses
23 the trade name of somebody else that does not belong to
24 them and doesn't identify itself as a corporation, that
25 trade name, it's just a Foundation For Responsible

1 Accountable Government, it doesn't say incorporated, and
2 it says it's supposed to be a community organizer. And
3 when a corporation starts doing things that are -- and to
4 my client, it's in the affidavit and it's also in the
5 verified complaint, is misleading to the public. What is
6 this entity doing? Who are they? When you go to this
7 website, it doesn't tell you, it doesn't even tell you
8 it's a corporation, it doesn't tell you that you become a
9 member if you donate on the face of website, it just says
10 donate here.

11 Under the circumstance, we believe that is
12 harmful for the public, we believe it's harm for the
13 public in general and then more specific with respect to
14 the impending elections. Now, if they register and they
15 get their Certificate of Authority, probably take about a
16 week or two; I don't work at the Arizona Corporation
17 Commission, but I do -- have filed ACC paperwork, it's
18 very straightforward, you can pay for an expedited fee
19 even to get your paperwork processed faster.

20 Minimal burden, minimum burden on the
21 Defendant and the question that this Court is -- is going
22 to grapple with, and I anticipate this is what the
23 Defendant's counsel is going to argue that -- that that's
24 not business, what they are doing is not purchasing
25 something, it's not selling products, it's not

1 advertising, therefore, it's not business. What I would
2 submit to the Court is, that activity that's been
3 described today is the only type of business it engages
4 in, that is its purpose. And the statute itself give a
5 full limited exceptions as to what is not business and
6 says it's not an exclusive -- an exclusive list. And for
7 example, holding a board meeting here, corporation for
8 them or some other company maybe who wants to come to
9 Arizona, that's not considered business activity.

10 Bank trans -- bank servicing loan
11 corporation, they hold a bunch of mortgages, but they are
12 not based here, there's foreclosures, that's not
13 considered activity just because they have to hold a loan
14 that was originated in Arizona when they are actually
15 headquartered elsewhere. So there's a few examples there.

16 But under these circumstances where the only
17 activity that we see is their influence in an election,
18 which we're not saying itself is illegal under, you know,
19 freedom of speech or some other issue, that's what this
20 case about. We're just saying that given what has been
21 happening, given how the facts have been presented to this
22 Court, given the fact that there is an election coming up
23 and that it took some work for my client to actually
24 discover who was behind this corporation? That's not
25 readily available. There was a lot of chain of dots, as

1 the Court can see, from the ten or so exhibits that have
2 been admitted into evidence. So it's not public, being
3 transparent as to the entity being corporation in Arizona,
4 what they are doing here, what you see when you get on the
5 website, who it is, but you have to operate only in
6 Arizona, they are not operating anywhere else.

7 And we believe that -- if they are in the
8 business of donating to campaigns, they are the business
9 of holding town halls about election issues, they are in
10 the business of doing telephone surveys related to the
11 City Council during the City Council election and
12 releasing those a week before the ballot. And it's been
13 described even as was testified to here today as a push
14 poll, which is a survey designed to be biased to influence
15 somebody and that was in today's newspaper. I asked Ms.
16 Tellman about that she testified about that expenditure,
17 that was that we heard testimony from the witness for the
18 Defendant that that was their expenditure.

19 And so when you're doing that, we believe
20 that that is the sort of activity, at a minimum, they
21 should register here. Because if they claim to be
22 responsible, they want responsible and accountable
23 government but they are not being responsible and
24 accountable to the Arizona law and to the Arizona
25 Corporation Commission.

1 THE COURT: Let me -- I'm going to cut you
2 off, I want you to address the issue for me --

3 MR. RABAGO: Yes -- Your Honor.

4 THE COURT: -- before you stop. The statute
5 that I referred to earlier talks about transacting
6 business in Arizona and then you used the term, primary
7 purpose. What is the source of your use of the
8 terminology, primary purpose?

9 MR. RABAGO: I refer to that terminology
10 because under I.R.S. code and regulations, a --

11 THE COURT: So, it's not an Arizona law?

12 MR. RABAGO: It's not in Arizona law.

13 THE COURT: Okay.

14 MR. RABAGO: Yeah, I'm --

15 THE COURT: Let me ask you a follow-up then.

16 Transacting business, do you believe it
17 requires a showing that the majority of the activity of
18 the Defendant be transacting business in Arizona or are
19 you arguing that just hiring the poll consultant directly
20 is sufficient to be transacting business in Arizona?

21 MR. RABAGO: I believe that hiring the poll
22 is certainly sufficient by itself, but I would extend that
23 to say that there --

24 THE COURT: You answered my question.

25 MR. RABAGO: Okay, it's everything though,

1 Your Honor.

2 THE COURT: All right. Thank you, sir.

3 MR. RABAGO: Thank you, Your Honor.

4 THE COURT: And I did let Plaintiff's
5 counsel go for 20 minutes, so I'll let you go for 20 if
6 want sir.

7 MR. BARBOUR: Thank you, Your Honor.

8 I'd like to address few of the comments from
9 opposing counsel first, then I'd like to get to the
10 substance of my own arguments.

11 First of all, as to whether the Foundation
12 is in fact a foundation or not, that's something for the
13 I.R.S. to sort out. As far as whether we're allowed to
14 use the name "foundation" in a trade name or, you know, as
15 an entity name, that's -- there's no problem. I mean,
16 whether it's a corporation or not, that doesn't matter.
17 Any -- any corporation -- excuse me, I should say, any
18 nonprofit entity in the state is a corporation, a
19 nonprofit corporation. I can't speak to Delaware laws,
20 I'm not licensed in Delaware, but I would suspect similar
21 policies are throughout the country. There's no such
22 thing as a foundation under Title 10 of the Arizona
23 Revised Statutes.

24 Under the statutes that they cite, 10-1502,
25 and 10-11502, they -- again, that's very correct, we're

1 going to argue that they are not transacting business in
2 the state. Of course that's not the argument that the
3 Plaintiff was making, Plaintiff's complaint -- it's hardly
4 an accident that in their paragraphs, I think it's 29 and
5 30, they deliberately misquote the statute, they broaden
6 it from transacting business in the state to conducting
7 affairs, not once but five times in two paragraphs, the
8 citations; that's not accidental, that's just
9 mischaracterizing what the law is in the state.

10 I mean they are mischaracterizing because I
11 would argue, in order to encompass such things as exercise
12 of free speech by making donations to a local entity, and
13 they can certainly do that as a foundation too because the
14 purpose of a 501(c)(6) organization, to the extent that
15 I.R.S. rules are relevant today, is to foster business
16 conditions, improve business conditions, that's exactly
17 what they are doing. The billboards themselves they
18 cite, you know -- you know, supportable and supported
19 statistics as to the miserable business conditions in the
20 town. We want those fixed, that's a perfectly legitimate
21 goal of the Foundation.

22 THE COURT: So then in your mind, is it a
23 501(c)(3) or a 501(c)(6)?.

24 MR. BARBOUR: 501(c)(6), absolutely. I mean,
25 that's absolutely how it's registered, that's how the

1 I.R.S. treats it; that's how -- that's how they operate.

2 THE COURT: Thank you.

3 MR. BARBOUR: They are not in the business of
4 participating in Tucson elections, it's not a business,
5 it's simply not. Even if you're a candidate, it's not a
6 business. Your job is not campaigner, your job is not
7 candidate, your job is, you know, lawyer or current
8 elective representative trying to get into office. But,
9 you know, it's not -- it's not a line of business for a
10 person in that position, certainly not a line of business
11 for an organization twice removed therefrom.

12 And this is an entity donating money
13 pursuant to request, not just voluntarily mind you, it is
14 pursuant to request that they are donating this money to
15 support an organization that supports local business
16 conditions themselves, Revitalize Tucson.

17 There's -- there's no urgency in this case
18 Your Honor, there are a handful of billboards out there
19 put up by the local entity, Revitalize Tucson, and not by
20 the Defendant. The harm is so speculative, I mean, it's
21 pure speculation that there would even be another
22 donation, pursuant to request, it's speculative that
23 Revitalize Tucson would even put up another billboard,
24 it's speculative that somebody would, you know, would be
25 swayed by those billboards. I -- there's only a handful

1 of them around town. What they cited as urgency is the
2 fact that overseas voters, who aren't even in town to see
3 these billboards might be swayed by the opinions of an
4 intermediate who's reporting what these billboards may
5 have said, as if that's the first thing you're going to
6 talk with your son or daughter in Afghanistan.

7 Now, the burden is not for us today to show
8 an undue burden on ourselves to comply, this is a
9 temporary restraining order hearing, I believe, and the
10 burden is on the Plaintiff to show that she's -- that
11 she's faced with irreparable and immediate harm and she
12 has admitted, on the stand, that the only harm that she
13 has suffered here is offense, she's taken offense of
14 political advertisements, that's not something the Court
15 can grant relief for.

16 And while that's a past harm, that's exactly
17 the same kind of harm she's saying today is grounds for
18 the injunction, I'm afraid I'm going to be offended
19 further; there's no relief for that, Your Honor.

20 As to dark money, it's just name calling.
21 They -- they admit themselves very openly that there's no
22 violations of any election law, there's no violations of
23 any tax law, they can hardly -- they can hardly even
24 allege that there's a violation of corporation law under
25 Title 10.

1 You know, as I'm sure Your Honor -- Your
2 Honor is aware, you know the definitions of what -- I'll
3 just -- if I may just read to you from the statute itself.

4 THE COURT: Sure. Let me know what you're
5 citing.

6 MR. BARBOUR: Sure, it's Arizona Revised
7 Statutes 10-1501, authority to transact business required.
8 And now it does list -- it does require that a foreign
9 corporation not transact business until they are
10 registered, but then it gives a non-exclusive list of
11 exceptions to transacting business, including, transacting
12 business in interstate commerce and -- where is it?
13 Conducting an isolated transaction that is completed
14 within 30 days and that is not one in the course of
15 repeated actions of a like nature.

16 The only transaction that they can -- you
17 know, transaction with the capital "T", I suppose, the
18 only transaction they can cite is that they hired a
19 consultant service in Phoenix who very well could have
20 been in any other state, it doesn't matter that it was in
21 Phoenix, to do this job of calling people and finding out
22 where they, you know, were they satisfied with local
23 politicians, you know, a feeler, it was a survey, and that
24 wasn't even a service for them, they released that
25 information publically. Again, an isolated incident, once

1 in the entire existence of the Corporation.

2 Also, the list, like I said, is not
3 exclusive, you know, there are any other categories of
4 activity that the Judge may find as not qualifying as
5 transacting business. And I think (D), 1501(D) is a
6 clear -- is a clear illustration of the direction the
7 Court should take. It says, this section does not apply
8 to insurance corporations or corporation transacting in
9 this state only in the business of lending monies to
10 religious, social or benevolent association.

11 My goodness, lending money is still
12 profitable activity, that's still a transaction as the man
13 on the street knows it. But even there, that doesn't
14 qualify as transacting business, if it's given to that --
15 if you're dealing with a religious, social or benevolent
16 association. That's what effectively what we're doing.
17 We've got a -- we've got an out-of-state corporation
18 that's donating money, not even lending it, but donating
19 money to a social association, an independent political
20 expenditure here. There's no transacting business here
21 at all, all there is is free speech.

22 Now, I'd like to go into a little more
23 substance here. Now, as I said, there's no relief for an
24 allegation of so-called dark money. It's not about dark
25 money, there's no allegations of wrongdoing here. There's

1 no relief for being offended at political expression or
2 local billboards which is, again, the only harm that the
3 Plaintiff can allege. There are no allegation of
4 impropriety under tax laws, election laws, no relief under
5 any of those.

6 Now, there could be an action to enjoin
7 transaction business of a foreign corporation if it's not
8 registered in the state. As I said, of course, they are
9 not transacting business. Now, the only thing that they
10 have done, that survey, it's not a transaction of
11 business, it's the exercise of free speech. They are
12 gathering information and they are sharing that
13 information. Same thing, you know, if you want to expand
14 that and say the donations were somehow transactions, same
15 thing. They are expressing their support for an
16 organization that will use those funds to -- to, you know,
17 to take positions on, you know, on the upcoming election.

18 The Defendant is not supporting any
19 candidate one way or the other, it's supporting business
20 conditions in the City and that's quite appropriate and
21 certainly in line.

22 Everyone knows, of course, that politics are
23 contentious. What they are asking for here is, you know,
24 fundamentally I think -- I think, and I hope the Court
25 will see -- see it as I do, I --

1 THE COURT: Whatever you see, is not
2 relevant to me.

3 MR. BARBOUR: Of course.

4 THE COURT: You can argue what you believe
5 is reasonable under the circumstances with you advocating
6 what the statutes mean, that type of thing.

7 MR. BARBOUR: Of course. Your Honor, I will
8 admit that their concerns about transparency are a little
9 relevant here and I will say that their complaint is very
10 transparent. I -- I will tell you this, it's a cynical
11 approach to -- to clamping down on the expression of
12 political opinion and in the bargain to try to collect
13 some attorney fees in the process.

14 There's nothing, there's no harm that merits
15 any relief here. You know, if I -- if I may adopt a quote
16 from Carl von Clausewitz, he said -- you know originally
17 he said, war is continuation of politics by other means,
18 but litigation is a continuation of politics by other
19 means, and the Court is not to be swept up in, you know,
20 supporting political position, one way or other, and
21 that's exactly what Plaintiff is trying to do here.

22 The -- this is not -- it's not election law,
23 it's strictly politics, it's one way or the other. I
24 don't like what that person said, I don't want to hear it,
25 I want them clamped down. You know the -- the activities

1 they have engaged in, they are not only not forbidden by
2 any statute, they are expressly protected by First
3 Amendment as Counsel says, Citizens of the United.

4 Now, let me get back here. Now, if
5 Defendant -- excuse me, if Defendant had been transacting
6 business buying, selling, contracting for services one way
7 or the other, other than for the public benefit, which is
8 what they have done, maybe there would be a claim under
9 1501 or 11502 -- excuse me 1502 or 11502. But, you know,
10 we're not dealing with transaction business, we're not --

11 THE COURT: Let me ask you a question about
12 that comment. If they had been doing business other than
13 for public benefit, is there, what you might call, a
14 public benefit exception to the requirement that you
15 register if you're transacting business?

16 MR. BARBOUR: I would argue -- no, I would
17 not argue anything they did would otherwise qualify as a
18 transaction of business under the statute, but I would
19 also argue that having the polls conducted, issuing the
20 grants to the local entity, I think those are -- I think
21 those are perfectly fair activities that don't fall under
22 this statute here, they don't invoke their right to bring
23 a claim for injunction, they are free to do these things.
24 And I think --

25 THE COURT: But is there something in the

1 statute or in a case that tells me if they are acting for
2 the public benefit, the registration requirement does not
3 apply?

4 MR. BARBOUR: I can't think of a case, but I
5 think it's certainly good policy, certainly in conformity
6 with this statute here.

7 THE COURT: So it's a policy argument you're
8 making. I just want to make sure I understood where it
9 came from.

10 MR. BARBOUR: Yeah; certainly, Your Honor.
11 Like I said, I mean, if there had been
12 transaction of business or if this were -- if this were
13 something other than a temporary order hearing, then maybe
14 something in the statute would apply, but neither of those
15 two; we're not asking the garden variety injunction today,
16 they are after the temporary restraining order and, of
17 course, they are also arguing that there's transaction
18 business; neither of those are before the Court here.

19 Plaintiff wants a temporary restraining
20 order, she must first, I'm sure as the Court knows, show
21 probability of success on the merits; she cannot, it's --
22 it's literally impossible. The statute itself requires
23 that the that her claim be dismissed if she gets the
24 relief that she wants.

25 Now a temporary restraining order, that's

1 something different. That's not the ultimate relief in an
2 injunction claim. The statute -- let me go on here.
3 Number two, she must show imminent irreparable harm.
4 Again, the only thing she claims as potential harm, are
5 more billboards, put up by a third party not even by
6 Defendant.

7 Now, she can't even claim harm from, you
8 know, a secondary effect of their actions, she certainly
9 can't, you know, claim harm from the fact of the donations
10 themselves. It just doesn't -- it just doesn't work, Your
11 Honor.

12 Again, she's admitted that the only harm she
13 had was that she felt offended and the Court is not here
14 to avenge her feeling or to clamp down free speech.

15 You know, regardless -- regardless of what
16 claim she think she has in the statute, it does not give
17 her ground for a temporary restraining order. There's no
18 urgency, there's no harm, there's no -- there's no
19 equities here that balance in their favor.

20 You know -- and I mean, if they are claiming
21 that the remedy is simple, and it could be done today,
22 what is their -- what is there to enjoin really? There's
23 nothing.

24 The -- the injunction is in the public
25 interest. Well, what public interest would be served?

1 The interest of that part of the public that votes
2 Democrat, that's it; they are not the only public.

3 You know -- and, again, enjoining --
4 enjoining the Corporation for making further donations, it
5 make no sense because they don't even have any plans to
6 make any further donations, there's nothing to enjoin in
7 their actions. Your Honor, there's just -- there's
8 nothing here that qualifies for temporary restraining
9 order. I mean maybe, if the facts were different, they
10 would have some claim for an injunction, the facts aren't
11 here. The facts they allege don't fall under the statute
12 here, and just simply nothing is ripe for temporary
13 restraining order.

14 THE COURT: Thank you, sir. Thank you
15 Counsel. Your presentations have been very thorough; they
16 are very educational to me. I need to review the testimony
17 and the exhibits and I'm planning to issue a ruling from
18 chambers hopefully this afternoon, if I need more time
19 I'll mull it over on the weekend and I'll come in and put
20 something out during the weekend because I generally come
21 in, at least for a while, on Saturday or Sunday.

22 Mr. Rabago, something else?

23 MR. RABAGO: Yes, Judge, I just wanted to
24 apologize to the Court and Counsel. Counsel is correct, I
25 did miscite the -- the language in there, that's not in

1 there, I went and looked it up right now. I think I was
2 looking at the old language, where the old statute states
3 conducting an enterprise and something else, that was
4 unintentional. I completely apologize for that. Thank
5 you for bringing that to my attention.

6 THE COURT: What paragraph is that?

7 MR. BARBOUR: Twenty-nine and thirty.

8 THE COURT: Twenty-nine, thirty.

9 MR. RABAGO: It does state transact business
10 activity, I just said conduct affairs.

11 THE COURT: All right, I'll make sure I take
12 into account that 29 and 30 have misstated the requirement
13 in the statute.

14 MR. RABAGO: I miscited it, I misstated,
15 correct.

16 THE COURT: I just want to make sure I look
17 at the correct statute.

18 MR. RABAGO: Correct.

19 THE COURT: Counsel, both of you agree I
20 should be looking at 10-1502 and 11-502?

21 MR. BARBOUR: Yes. And the statutes on both
22 sides of those, the definitions and other related
23 statutes.

24 THE COURT: All right. Thank you both for
25 your thoroughness and courtesy.

1 MR. BARBOUR: Thank you, Your Honor.

2 THE COURT: Have a nice weekend.

3 MR. RABAGO: Thank you, Your Honor.

4 MR. BARBOUR: Thank you.

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6 (Whereupon the Court went off the record.)

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C E R T I F I C A T E

I, Kristine B. Valdez do hereby certify that as an Official Court Reporter for the Pima County Superior Court I reported the foregoing proceedings to the best of my skill and ability; and that the same was transcribed under my supervision via computer-aided transcription; and that the foregoing pages of typewritten matter are a true, correct, and complete transcript of all the proceedings had as set forth in the title page hereto.

KRISTINE B. VALDEZ, RPR
CERTIFIED COURT REPORTER #50182
Pima County Superior Court
Tucson, Arizona 85701

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CERTIFICATE

STATE OF ARIZONA)
)
COUNTY OF PIMA) SS.

I, Kristine B. Valdez, RPR, RMR, do hereby certify that as an official court reporter for the Pima County Grand Jury, I was present at the foregoing proceedings before the Grand Jury; that while there I took down in stenographic shorthand all the oral testimony adduced and the proceedings had; that my stenographic shorthand notes were transcribed into typewriting; and that the foregoing pages contain a full, true and correct transcript of the matter as set forth in the title page thereto.

Kristine B. Valdez, RPR, RMR,
Official Court Reporter
Certified Reporter #50182

Dated: July 15, 2015