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Superior Court of California
County of Fresno
By: S. Garcia, Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF FRESNO
9

10 Fresnans Interested in Fair Elections

Case No. **24CECG04394**

11 Petitioner,

PETITION FOR WRIT OF MANDAMUS

12 v.

13 Andrew Janz, in his official capacity,

14 Respondent,

15 City of Fresno,

16 Real Party in Interest.
17
18

19 Petitioner alleges:

20 1. Petitioner, Fresnans Interested in Fair Elections (“FIFE” or “Petitioner”) is an
21 unincorporated association located in Fresno County, California, and its members are now, and at
22 all times from and after October 4, 2023 were, residents of Fresno County, California.

23 2. Respondent, Andrew Janz (“Janz” or “Respondent”), is, and at all relevant times was, the
24 duly appointed City Attorney of the City of Fresno.

25 3. Certain members of FIFE were candidates for elected office in the City of Fresno in the
26 March 2024 primary election. These members, and each of them, were injured by the actions and
27 omissions of Janz, as described below. These harms include, but are not limited to, their incumbent
28 opponents having an unfair fundraising advantage in which they could use their office to encourage

1 campaign contributions to their campaign committee prior to officially running for reelection, in
2 exchange for actually or appearing to support the preferred positions of their campaign contributors.

3 4. Other members of FIFE, including Dion Bourdase, were unsuccessful candidates for elected
4 office in the County of Fresno against incumbent Fresno City Council members. These members,
5 and each of them, were injured by the actions and omissions of Janz, as described below. These
6 harms include, but are not limited to, their incumbent opponent having an unfair fundraising
7 advantage in which the incumbent could use his office to encourage campaign contributions to his
8 campaign committee prior to officially running for reelection, in exchange for actually or appearing
9 to support the preferred positions of his campaign contributors. The incumbent city council member
10 then transferred his Fresno City Council campaign committee funds to his Fresno County campaign
11 committees.

12 5. Respondent, as the City Attorney, is charged with the duty of administering and enforcing
13 the charter provisions, ordinances, and rules that govern elections for offices in the City of Fresno,
14 including the charter provisions and ordinances that govern donations to candidates for offices of
15 the City of Fresno.

16 6. On or about October 5, 2023, Janz issued a public memorandum with the subject “City of
17 Fresno Election Law Frequently Asked Questions.” The memorandum sets forth the following,
18 which purports to be the legal position of the City of Fresno with regards to Fresno Charter Section
19 309:

20 **“Are candidates limited to a specific window of time for fundraising?”**

21 No. Following the U.S. Fifth Circuit's decision in *Zimmerman v. City of Austin,*
22 *Texas* (5th Cir. 2019) 881 F.3d 378 (holding fundraising time limits violate the First
23 Amendment); the City does not enforce campaigning windows.

24 Note that Charter Section 309 limits campaign solicitations and contributions to a
25 time window of the election filing date through the end of the calendar year in
26 which the election is held. However, in light of the holding in *Zimmerman* the City's
27 temporal provision of Charter Section 309 will not be enforced unless and until a
28 court having jurisdiction over the City holds to the contrary or the *Zimmerman*

1 holding is reversed or overruled. This does not affect the campaign contribution
2 dollar limits, but only pertains to the time limits for contribution solicitations and
3 payments.” (**Exhibit A**, “City of Fresno Election Law Frequently Asked
4 Questions,” *available at* [https://www.fresno.gov/wp-content/uploads/2023/10/23-](https://www.fresno.gov/wp-content/uploads/2023/10/23-10-5-M-Candidates-for-COF-Elective-Office-re-Election-Law-FAQ.pdf)
5 [10-5-M-Candidates-for-COF-Elective-Office-re-Election-Law-FAQ.pdf](https://www.fresno.gov/wp-content/uploads/2023/10/23-10-5-M-Candidates-for-COF-Elective-Office-re-Election-Law-FAQ.pdf) as of
6 October 1, 2024, emphasis in original.)

7 7. The interpretation of the City of Fresno Charter Section 309 taken by Janz effectively
8 nullifies that provision of the City of Fresno Charter, despite that section being adopted by voters in
9 1993, and voters choosing not to modify that section in the 2018 general election.

10 8. **Exhibit B** is a true and correct copy of a portion of the March 2, 1993 primary election voter
11 guide containing the text of Measure E, a City of Fresno charter amendment that included the
12 addition of Section 309, along with an impartial analysis of the then Fresno City Attorney, James
13 Lough, of the proposed charter amendment and the argument in favor of Measure E. There were no
14 arguments in opposition submitted against Measure E. The voters passed Measure E.

15 9. After *Zimmerman* was decided, the Fresno City Council put repeal of Section 309 on the
16 ballot in the November 2018 general election as part of Measure O, which purported to be
17 “Technical Charter Cleanup.” **Exhibit C** is a true and correct copy of the November 2018 voter
18 guide containing the text of Measure O and the impartial analysis of the then Fresno City Attorney,
19 Douglas Sloan. City Attorney Sloan’s analysis stated – incorrectly – that Section 309 was
20 unconstitutional pursuant to an unnamed circuit court opinion, which was presumably *Zimmerman*.
21 There were no arguments submitted for or against Measure O. Measure O failed.

22 10. Respondent's decision to cease enforcement of Charter Section 309 was made without any
23 controlling appellate decision requiring Respondent to do so. Instead, it directly contradicts binding
24 Ninth Circuit precedent in *Thalheimer v. City of San Diego*, which upheld a similar temporal
25 restriction on incumbents accepting campaign donations. (*Thalheimer v. City of San Diego*, 645
26 F.3d 1109, 1124, 1125 (9th Cir. 2011), *overruled on other grounds in Bd. of Trustees of Glazing*
27 *Health & Welfare Tr. v. Chambers*, 941 F.3d 1195, 1199 (9th Cir. 2019). Respondent has a duty in
28 his capacity as City Attorney to enforce and defend the Charter of the City of Fresno, including

1 Section 309, at least until a court with jurisdiction over the City of Fresno decides Section 309 is
2 unenforceable. In light of the voters' decisions not once, but twice, in support of Section 309,
3 Respondent also has a duty to the citizens of Fresno to enforce and defend that section, and to defend
4 the people's judgment that City Councilmembers should not be able to raise campaign contributions
5 until the filing period for an election has commenced.

6 11. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of the law other
7 than the issuance by this Court of a writ of mandamus. There is no administrative or other process
8 by which Petitioner can compel the City Attorney to enforce the Charter of the City of Fresno other
9 than by the Court's issuance of a writ.

10 12. Petitioner has retained Jared Gordon to represent Petitioner in this proceeding and Petitioner
11 is obligated to pay Mr. Gordon for the costs of this action and for his services at his then-current
12 hourly rate.

13
14 **Prayer for Relief**

15 WHEREFORE, petitioner requests that the court:

16 1. Issue a peremptory writ of mandamus setting aside Respondent's decision to not enforce
17 City of Fresno Charter Section 309;

18 2. Issue a peremptory writ of mandamus requiring Respondent to enforce City of Fresno
19 Charter Section 309 upon all current and future persons and candidate committees subject to that
20 section;

21 3. Award petitioner the costs of this proceeding;

22 4. Award Petitioner attorneys' fees pursuant to California Code of Civil Procedure §1021.5;

23 and

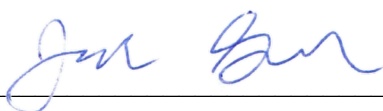
24 5. Award Petitioner any other and further relief the court considers proper.

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Dated: October 4, 2024

By: 
Jared Gordon,
Attorney for Petitioner,
Fresnans Interested in Fair Elections

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VERIFICATION

I am a member of Fresnans Interested in Fair Elections, the Petitioner in this action, and I have read the foregoing Petition for Writ of Mandamus and know its contents. The matters stated in the Petition for Writ of Mandamus are true based on my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 4, 2024



Dion Bourdase

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Exhibit A



ANDREW JANZ
City Attorney

October 5, 2023

TO: Candidates for City of Fresno Elective Office

RE: City of Fresno Election Law Frequently Asked Questions

Candidates seeking election to a City of Fresno office (Council or Mayor) are subject to applicable federal, state, and local laws.

The following is a list of frequently asked questions, followed by corresponding answers taken from our past responses to written inquiries submitted to our Office. This memorandum is also available on the City of Fresno website. Please note the law could change following the publication of this memo, and the law should be independently verified at the time there is a concern.

QUESTIONS

1. **Will the City Attorney's Office offer legal advice on campaign issues?**
2. **What are the sources of local laws concerning City elections?**
3. **What are the primary local legal issues to be aware of when running for a City office?**
4. **What are the City's residency requirements for elective offices?**
5. **What are the fee and alternative signature requirements to file nomination papers?**
6. **Are candidates limited to a specific window of time for fundraising?**
7. **What is the maximum contribution amount allowed by the City's Local Campaign Contribution Limits Ordinance (the Ordinance)?**
8. **May a person or small contributor committee contribute the maximum amount permitted by the Ordinance to a candidate in the direct primary election, and then, if a run-off is needed, contribute the maximum amount to the same candidate in the run-off election?**
9. **If a corporation has three principals and each principal may direct and control the contribution of the corporation, can each principal make a separate \$5,500 contribution to a candidate on behalf of the corporation?**
10. **What should a candidate do if he or she receives a contribution in excess of the contribution limit?**
11. **Are candidates' personal funds used for campaign purposes subject to local campaign contribution limits?**
12. **Is a loan to a candidate from himself or herself, used for campaign purposes, subject to local campaign contribution limits?**

13. Is a loan to a candidate from a third party, used for campaign purposes, subject to local campaign contribution limits?
14. May a candidate transfer funds from one campaign account to a different campaign account of the same candidate?
15. May a state or local elected official (or defeated candidate) transfer unexpended campaign funds to a candidate for City office? If so, what are the limitations?
16. What restrictions apply to the use of public resources and authority for an election?
17. What types of activities may the City fund using public resources?
18. What types of activities may City officials and employees engage in during a campaign?
19. What rules apply to campaign political signs?
20. May political signs be placed on the sides or tops of buildings?
21. Must a member of an appointed City board or commission resign from his or her appointment before becoming a candidate for an elected City office?
22. What are the upcoming Municipal Election dates?
23. What are the deadlines to request the County Clerk to add ballot measures to the June and November elections?
24. Where can candidates obtain additional information about election laws and procedures?

ANSWERS

1. Will the City Attorney's Office offer legal advice on campaign issues?

The City Attorney's Office does not provide legal advice to candidates concerning state or federal law, but may offer clarifications of applicable City election laws.

Candidates should retain their own advisors for compliance with state laws, such as the Political Reform Act of 1974 (PRA), and federal laws concerning tax exempt entities and committees, among others. The City Attorney's Office is pleased to work with candidates and their advisors to help ensure compliance with City laws. All discussions will be on a neutral, objective basis, not confidential, and if the discussion results in analysis of an issue not previously covered, it is likely the City Attorney's Office will publish the response so all can be similarly informed. The City Attorney's Office will not discuss policy or potential policy changes with candidates. Once a candidate has been elected, the City Attorney's Office will be pleased to meet with the elected candidates to discuss City organizational structure and legal issues.

2. What are the sources of local laws concerning City elections?

Sources of local election laws include the City of Fresno Charter (Charter), the Fresno Municipal Code (FMC), and Council resolutions and ordinances. Candidates must be

familiar with the provisions of all sources of applicable laws, which are available on the City's website or from the City Clerk's Office or the City Attorney's Office. Here is a summary list:

- A. Charter Article III
- B. Charter Article VIII
- C. Charter Article XIV
- D. FMC Sections 2-1001 – 2-1006
- E. FMC Sections 2-1101 – 2-1113
- F. FMC Section 3-103
- G. City of Fresno Resolution No. 2019-120
- H. City of Fresno Master Fee Schedule
- I. See: <https://www.fresno.gov/cityattorney/#legalresources>

3. What are the primary local legal issues to be aware of when running for a City office?

- A. Residency requirements for Mayor and Councilmembers
- B. Fee and/or signature gathering requirements for nomination paperwork
- C. Fundraising time window to solicit and accept contributions (see update below)
- D. Contribution dollar limits per donor per election
- E. Campaign loan restrictions
- F. Contribution transfer restrictions
- G. Restrictions on use of public resources or authority for campaigns
- H. Election sign rules
- I. Conflicts of interest created by campaign donations over \$250

4. What are the City's residency requirements for elective offices?

To be eligible to hold City elective office, a person must have been a resident of the City for at least thirty days immediately preceding the filing of the nomination papers for that office. (Charter, § 304.) To be eligible to hold office as a Councilmember, a person must have been a resident of the Council District for which he or she is seeking office, for at least the same time period. (Charter, § 304.1.)

To ensure compliance with the thirty day residency requirement for candidates seeking a Council office, the Council and Mayor Residency Act (Act) was enacted in 2011 and has been amended various times to address concerns and clarify requirements. (See City of Fresno Resolution No. 2019-120.) The Act requires candidates to file specific documents with the City Clerk to verify residency in the district, including proof of voter registration, a residential deed or evidence of a lease, motor vehicle registration, a PG&E or City utility

bill, and an affidavit of residency. In addition, the Act specifies a process for verification of Councilmember residency while serving in office.

5. What are the fee and alternative signature requirements to file nomination papers?

Candidate filing fees and alternative signature requirements are set by FMC Sections 2-1003 through 2-1006. Current filing fees are \$300 for Councilmember candidates and \$500 for Mayoral candidates. (See Master Fee Schedule.)

In lieu of the filing fee, a candidate may gather signatures on a form to be provided by the City Clerk or County Clerk under contract to provide election services. Generally, Council candidates must submit 250 signatures from registered voters within the applicable Council district boundary; Mayor candidates must submit 500 signatures from voters registered within the City.

Note: Candidates running for Council office in the June 2022 direct primary election must submit only 155 signatures pursuant to Elections Code Section 21620 (for elections following redistricting).

6. Are candidates limited to a specific window of time for fundraising?

No. Following the U.S. Fifth Circuit's decision in *Zimmerman v. City of Austin, Texas* (5th Cir. 2019) 881 F.3d 378 (holding fundraising time limits violate the First Amendment); the City does not enforce campaigning windows.

Note that Charter Section 309 limits campaign solicitations and contributions to a time window of the election filing date through the end of the calendar year in which the election is held. However, in light of the holding in *Zimmerman* the City's temporal provision of Charter Section 309 will not be enforced unless and until a court having jurisdiction over the City holds to the contrary or the *Zimmerman* holding is reversed or overruled. This does not affect the campaign contribution dollar limits, but only pertains to the time limits for contribution solicitations and payments.

7. What is the maximum contribution amount allowed by the City's Local Campaign Contribution Limits Ordinance (the Ordinance)?

Under the Ordinance a "person" may contribute up to \$5,500 per election, and a "small contributor committee" (as defined in Government Code Section 85203) may contribute up to \$10,900 per election. (FMC, §§ 2-1101, et seq.) The contribution limits apply to each election taking place during the period January 1, 2023, through December 31, 2024, without regard to when contributions are made. The word "election" refers to any direct primary election, general municipal election, or special municipal election, held pursuant to Charter Sections 1400 and 1401, or other applicable laws. The contribution limits for candidates for City elective office are the same as for candidates for State Senate and Assembly under the PRA. The contribution limits are adjusted every odd numbered year by the Fair Political Practices Commission (FPPC), in accordance with the Consumer Price Index.

- 8. May a person or small contributor committee contribute the maximum amount permitted by the Ordinance to a candidate in the direct primary election, and then, if a run-off is needed, contribute the maximum amount to the same candidate in the run-off election?**

Yes. Since the maximum contribution amount is established per election, a committee may contribute up to the maximum amount permitted to a candidate in the direct primary election, and make the same contribution amount to the same candidate for the general municipal election. If a candidate is not on the ballot in a run-off election, he or she may only receive the maximum amount permitted for the direct primary election.

- 9. If a corporation has three principals and each principal may direct and control the contribution of the corporation, can each principal make a separate \$5,500 contribution to a candidate on behalf of the corporation?**

No. Pursuant to FMC Section 2-1105(a), the contribution limit for a "person" is \$5,500 to a candidate per election. A corporation is a "person" for purposes of the contribution limits. Thus, the corporation through its principals, acting independently or in concert, may only contribute \$5,500 to the candidate. In addition, pursuant to FMC Section 2-1107, a contribution made by the corporation at the direction and control of a particular principal will be aggregated with any other contribution made by that principal to the same candidate in the same election.

- 10. What should a candidate do if he or she receives a contribution in excess of the contribution limit?**

Under the Ordinance, the candidate or the candidate's controlled committee shall return any amount in excess of the contribution limit to the contributor within fourteen days of receipt. The excess contribution and the date of its return shall be reported on a form prepared or provided by the City Clerk.

- 11. Are candidates' personal funds used for campaign purposes subject to local campaign contribution limits?**

No. The Ordinance does not apply to a candidate's contributions of his or her personal funds to his or her own campaign. However, personal loans from a candidate to his or her own campaign are subject to the provisions described below.

- 12. Is a loan to a candidate from himself or herself, used for campaign purposes, subject to local campaign contribution limits?**

No. The Ordinance's contribution limits do not apply to loans made by a candidate to his or her own campaign. However, a candidate for elective office may not personally lend to his or her campaign an amount, the outstanding balance of which exceeds \$100,000. Furthermore, a candidate may not charge interest on any loan he or she makes to his or her campaign. (FMC, § 2-1106(b).)

13. Is a loan to a candidate from a third party, used for campaign purposes, subject to local campaign contribution limits?

Yes, unless the loan is received by the candidate from a commercial lending institution in the ordinary course of business on terms available to the general public, and for which the candidate is personally liable. All other loans are subject to local campaign contribution limits. (FMC, § 2-1106(a).)

14. May a candidate transfer funds from one campaign account to a different campaign account of the same candidate?

Yes. Candidates are permitted to transfer funds raised in a prior election for City office or legally accepted in connection with another office that is not a City office, into a campaign account for a City elective office. Transfers that include contributions from prior campaigns that were not City campaigns shall be subject to contribution limits set forth in the Charter and FMC. Funds may be transferred from a City campaign account to a County campaign account belonging to the same candidate in a “first in, first out” method of accounting. (See generally, California Code of Regulations Title 2, section 18536(a).) Subsection B of Section 2.62.040 of the Fresno County Code of Ordinances limits “contribution(s)” to County committees but is silent as to the issue of transfers which are distinguished from contributions.

15. May a state or local elected official (or defeated candidate) transfer unexpended campaign funds to a candidate for City office? If so, what are the limitations?

Yes, provided the unexpended funds are not “surplus” campaign funds, which may not be transferred to another candidate under state law, and that the transfer complies with local elections laws.

“Surplus” funds are unexpended campaign funds which remain under the control of a candidate upon the ninetieth day after leaving elective office, or the ninetieth day following the end of the postelection reporting period following the defeat of a candidate for office, whichever occurs last. (Gov. Code, § 89519(a).) “Surplus” funds may only be used for certain purposes which do not include transfers to another candidate.

Based on the City of Fresno’s election laws, the transfer of unexpended campaign funds (which are not surplus funds) is limited to \$5,500 per contributor per election. (FMC, §§ 2-1105(a), 2-1108.) To transfer campaign funds, the candidate must track what funds from particular contributors have been spent or transferred previously, and then account for transfers per contributor per election within the contribution limits. For example, if Donor 1 contributed \$5,500 to Candidate A for the 2022 election, and Candidate A desires to transfer those funds to Candidate B, then Candidate B may not accept any further contribution for that election from Donor 1. Contributions are considered spent on a “first in first out” basis, so the timing and sequence of prior contributions and expenditures must be tracked. The City Attorney’s Office may assist in clarifying these issues.

The foregoing limitations do not apply to independent expenditures, which are governed by Government Code Section 85500, et seq.

16. What restrictions apply to the use of public resources and authority for an election?

No officer or employee of the City and no candidate for any City office shall, directly or indirectly, solicit any assessment, subscription, or contribution, whether voluntary or involuntary, for any political purpose whatsoever, from anyone on the eligible lists or holding any position in the Administrative Service. (Charter, § 813.)

Telephone calls, faxes, and personal contacts for political purposes during business hours at City Hall or during an employee's or officer's hours of duty on City premises are prohibited. (Gov. Code, § 8314.) Additionally, use of City distribution channels (City mailboxes, e-mail, etc.) may not be used for campaign activities. (*San Leandro Teachers Assn. v. Governing Bd. of San Leandro Unified School Dist.* (2009) 46 Cal.4th 822, 845.)

The local provisions are consistent with Government Code Sections 3201 through 3209, which, among other things, prohibit public employees from engaging in the following types of activities:

- A. Use public funds to "take sides" to influence a measure that has qualified for the ballot.
- B. Distribute campaign literature through the City's mail system.
- C. Send or receive campaign related e-mails on City computers or other electronic devices.
- D. Place campaign literature on the City's web page or City premises.
- E. Create a link from the City website to a website containing campaign materials.
- F. Use City copy machines, telephones, fax machines, computers, stationary, or other City resources for campaign purposes.
- G. Direct City staff to walk precincts, draft campaign ads, or carry out other campaign related tasks during compensated work hours.
- H. Urge City employees to vote for a candidate or ballot measure during compensated work hours.
- I. Participate in political activities while in uniform displaying a City logo or references.
- J. Use public funds to attend a political fundraiser.
- K. Solicit, receive, or agree to receive a benefit in exchange for any official actions (bribery or extortion).
- L. Request a donation to any campaign in exchange for any City action.

17. What types of activities may the City fund using public resources?

The following are permitted uses of public resources:

- A. Use public funds to develop a measure for the ballot to present to Council for legislative action.
- B. Use public funds to prepare and disseminate an accurate, fair, and impartial analysis of a measure that has qualified for the ballot.
- C. Use public funds to lobby the state legislature to aid or prevent passage of state legislation that will affect the City as directed by Council.
- D. Have Council adopt a resolution to support or oppose a ballot measure at an open meeting that does not expressly advocate the passage or defeat of the ballot measure.

18. What types of activities may City officials and employees engage in during a campaign?

City officials and employees may do all of the following with regard to ongoing campaigns:

- A. Take a position or work on a campaign on personal time.
- B. Make campaign contributions to a candidate or local ballot measure with personal funds.
- C. Attend a campaign fundraiser at personal expense during personal time.
- D. Make public appearances on personal time to advocate a ballot measure or candidate.
- E. Participate in campaign activities at City facilities that are open and available for expression of all political viewpoints, such as sidewalks, parks, and areas in front of City Hall on personal time.

19. What rules apply to campaign political signs?

Political signs are regulated as “yard signs” (without regard to content) under the City’s Development Code (FMC, Chapter 15) that became effective in January 2016. There is no application, permit, or fee requirement for yard signs. The former restrictions on political signs being allowed only between ninety days prior to an election and fifteen days after an election no longer exist. Candidates may place signs in any of the Council districts. However, the City does impose time, place, and manner restrictions on yard signs. FMC Section 15-2611 provides that yard signs:

- A. May not exceed six square feet in area in residential districts or thirty-two square feet in area for other districts;
- B. May not exceed three feet in height or width including support structures in residential districts or eight feet in height or width, including support structures in other districts;
- C. May not be attached to utility poles;
- D. May not be placed on any public right of way or any property owned by the City;

- E. May be placed on private property with the permission of the property owner or on existing signs on private property with the permission of the sign owner or lessee; and
- F. May not be erected in a manner so that it will or reasonably may be expected to interfere with, obstruct, confuse, or mislead traffic.

Signs not erected or maintained in accordance with these provisions shall be the responsibility of the owner of the property on which the sign is located, shall be deemed a public nuisance, and may be abated by the property owner, the candidate or person advocating the vote described on the sign (if applicable), or the City. The cost of removal incurred by the City shall be assessed against the property owner and/or, if applicable, the candidate and/or person advocating the vote described on the sign.

20. May political signs be placed on the sides or tops of buildings?

There is currently nothing in the Development Code that specifically addresses yard signs on the sides or tops of buildings. However, the Code provides that yard signs are lightweight materials supported by poles, stakes or wireframes; which entails placement of yard signs in the ground, and not on buildings. Signs that are attached to buildings are subject to additional requirements related to size, material, and sight lines, and require a permit from the Planning Director.

In the event of ambiguity FMC 15-203 states the Planning Director, upon consultation with the City Attorney's office, shall make the interpretation for any definition not expressly identified in the Development Code, or provide clarification and interpretation of the Development Code.

21. Must a member of an appointed City board or commission resign from his or her appointment before becoming a candidate for an elected City office?

No. Charter Section 902 provides that members of boards and commissions may not hold paid office or employment in the City government. However, candidates for such offices are not prohibited from serving on boards and commissions.

If a candidate holds a position on an appointed board or commission, he or she is restricted from soliciting or receiving campaign contributions from persons with business before the board or commission and may be subject to the limitations of Government Code Section 84308.

22. What are the upcoming Municipal Election dates?

2024 Regular Elections for Council Districts 2, 4, and 6, and Mayor

- November 13- December 12, 2023 - Filing window for nomination papers
- March 5, 2024 - Direct Primary Election
- November 5, 2024 - General Election

Unless otherwise published, key filing dates and deadlines will coincide with those set by the California Secretary of State for California's Presidential Primary and are available at: <https://www.sos.ca.gov/elections/upcoming-elections/pres-prim-march-2024>.

23. What are the deadlines to request the County Clerk to add ballot measures to the June and November elections?

The deadline for the March 5, 2024, primary election the deadline to submit an argument is December 8, 2023 (E-88). For the November 5, 2024, general election the deadline to submit an argument is August 9, 2024.

24. Where can candidates obtain additional information about election laws and procedures?

Candidates may contact the City Clerk or the City Attorney with questions or concerns regarding local election law and procedures. A candidate may request written clarifications from the City Attorney concerning City election laws or procedures. To the extent the candidate shall rely upon and follow the written clarifications, the candidate shall be deemed to have complied with the City elections laws in questions, and it shall be deemed a complete defense to any claim or action concerning the matter. The City Attorney's Office does not have the statutory duty or authority to give advice on the PRA or its application. Candidates should contact the FPPC for questions or advice relating to the PRA. The FPPC can be reached at (866) ASK-FPPC or (916) 322-5660.

Respectfully submitted,



ANDREW JANZ
City Attorney

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Exhibit B

CITY OF FRESNO CHARTER AMENDMENT, MEASURE E (Full Text of Measure)

SECTION 303 of the Charter of the City of Fresno shall be amended to read:

SECTION 303. TERMS OF OFFICE.

Except as otherwise provided in this article, the terms of elective offices shall be four years. Incumbents shall hold office until their successors are elected and qualified.

In 1981 and every fourth year thereafter, the offices of Councilmembers designated as Number Two, Number Four and Number Six and the office of Mayor shall be filled at the general municipal election held in May, or at such other time as provided by this Charter. In 1983 and every fourth year thereafter, the offices of Councilmembers designated as Number One, Number Three and Number Five shall be filled at the general municipal election held in May, or at such other time as provided by this Charter.

No person elected to the Council for two successive terms shall again be eligible to hold that same office until one full term has intervened. This limitation applies to any combination of two successive terms as Mayor, Councilmember, or Mayor and Councilmember. This limitation applies to terms to which persons have been elected or appointed after May, 1985.

SECTION 309 is added to the Charter of the City of Fresno to read:

SECTION 309. OFF-YEAR CONTRIBUTIONS PROHIBITION.

No mayoral candidate, Council candidate, or any committee controlled by such person shall solicit or accept any contribution in support of such candidate's election prior to the date fixed by law for the filing of nomination papers with respect to such election, or following the year in which such election is held.

SECTION 1404 is added to the Charter of the City of Fresno to read:

SECTION 1404. BALLOT MEASURES.

Any measure submitted to the voters at a municipal election shall be worded so that a "yes" vote indicates approval of the measure proposed and a "no" vote indicates disapproval.

UNDERLINED AND CROSSED-OUT LANGUAGE REPRESENTS AMENDMENTS TO THE CHARTER

CITY OF FRESNO CHARTER AMENDMENT, MEASURE E

(Impartial Analysis by City Attorney)

This initiative measure would amend Charter Section 303 (Terms of Office) and add two sections to the Charter, Section 309 (Off-Year Contributions, Prohibition) and Section 1404 (Ballot Measures). The term of office section would limit any person to two successive terms as a Councilmember, Mayor or any combination of the two positions. After serving two terms, a person could seek another term in the same office after four years has expired. This amends, by implication, the lifetime ban for holding office after two successive terms found under Section 304.1 which was adopted by the people in November 1992.

This measure will apply retroactively to persons who were elected to office after the May 1985 election. This means that it is retroactive to elective officers elected in the 1989 and 1991 municipal elections. The current law, as adopted November 1992, operates prospectively beginning in 1993 or 1995, depending upon the office.

The contribution prohibition section of the initiative measure bans a candidate for Council or Mayor from receiving contributions until the date fixed by law for filing nomination papers for the office. Contributions can be solicited until the end of the calendar year in which the election is held. These prohibitions apply to the solicitation or acceptance of campaign contributions by the candidate or the candidate's controlled committee.

Under the ballot measure section, all initiatives must be worded so the "yes" indicates approval and "no" indicates disapproval. This is consistent with general State law for initiatives.

Finally, if any provision of this measure is invalidated, the remaining parts shall remain in force if they can reasonably be given effect.

The above statement is an impartial analysis of measure E. If you desire a copy of this measure, call the election official's office at 488-3246 and a copy will be mailed at no cost to you.

s/ James P. Lough
City Attorney



10VP26

CITY OF FRESNO CHARTER AMENDMENT, MEASURE E

(Argument in Favor)

PROPOSITION E IS A NON-PARTISAN, REASONABLE, FAIR AND DEMOCRATIC MEASURE TO TO REFORM OUR GOVERNMENT AND IMPROVE THE PRESENT CITY-WIDE SYSTEM FOR ELECTING THE MAYOR AND COUNCIL-MEMBERS IN THE DISTRICT. 32,000 PLUS VOTER'S HAS MANDATED THAT THIS MEASURE BE PLACED ON THE BALLOT. LIMITING POLITICIANS' CONSECUTIVE TERMS IS NOT RADICAL OR EXTREME. IN FACT, IT HELPS TO PREVENT POLITICAL CORRUPTION AND POWER GRABBING. MORE THAN 160 CITIES, TOWNS AND COUNTIES IN THE UNITED STATES HAVE LAWS LIMITING POLITICIANS TERMS. GOVERNORS IN 30 STATES CAN ONLY SERVE TWO TERMS. SAN MATEO COUNTY LIMITS SUPERVISORS TERMS AND FOR MORE THAN 30 YEARS SAN FRANCISCO'S MAYORS HAVE BEEN LIMITED TO TWO CONSECUTIVE TERMS. THE CURRENT SYSTEM FAVORS INCUMBENTS POLITICIANS AND DENIES EXPERIENCED NEWCOMERS A FAIR CHANCE TO SERVE. WE KNOW THAT A LAKE OR POND WILL STAGNATE UNLESS ITS WATERS ARE REPLENISHED FROM TIME TO TIME. SO TOO WILL AN ELECTED BODY GROW STALE WITHOUT A REGULAR INFUSION OF FRESH FACES AND NEW IDEAS.

NO OFF YEAR CONTRIBUTIONS WILL PROHIBIT COUNCIL CANDIDATES OR THEIR COMMITTEES FROM SOLICITING OR ACCEPTING CAMPAIGN CONTRIBUTIONS PRIOR TO FILING NOMINATION PAPERS OR FOLLOWING THE YEAR IN WHICH THE ELECTION WAS HELD. THIS PART IS NECESSARY TOWARDS THE FIRST STEPS IN CAMPAIGN REFORM AND LEVEL THE PLAYING FIELD FOR ALL SERIOUS CANDIDATES WHO WISH TO SEEK OFFICE.

YES MEANS YES AND INDICATES APPROVAL AND "NO" INDICATES DISAPPROVAL. THIS CLARIFICATION IS NECESSARY IN ALL BALLOT MEASURES SO THAT THE VOTERS DO NOT BECOME CONFUSED NOR DECEIVED IN WHAT AND HOW THEY ARE VOTING FOR ANY MEASURE IN THE FUTURE.

MEASURE E, WAS WRITTEN FOR THE BENEFIT AND PROTECTION OF THE VOTERS AND NOT FOR THE PROTECTION OF THE POLITICIAN.
VOTE YES ON MEASURE E.

s/ Sidney C. Tuck

NO ARGUMENT WAS FILED AGAINST THIS MEASURE



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Exhibit C

**CITY OF FRESNO
MEASURE O**

TECHNICAL CHARTER CLEANUP. Shall the City of Fresno Charter be amended to remove or modify these legally unenforceable sections? (1) §309, prohibiting "off-year" campaign contributions—removed as unconstitutional. (2) §701's City Manager residency requirement —removed as unconstitutional. (3) §1225, prohibiting residential water meters—removed as preempted by state/federal law. (4) §1207, requiring the City Council to raise taxes to balance the budget—amended and made subject to the Proposition 218 requirement for voter approval of taxes.

Yes

No

IMPARTIAL ANALYSIS BY CITY ATTORNEY

Ballot Measure O proposes several technical changes to the City Charter to modify or eliminate provisions that are unconstitutional or preempted by state or federal law.

Existing Law: Charter §309 prohibits "off year" campaign contributions, which is contrary to and therefore unconstitutional under the First Amendment to the United States Constitution pursuant to a United States Circuit Court of Appeals decision.

Charter §701 requires the Chief Administrative Officer (City Manager) to reside within the Fresno City limits, which is contrary to and preempted by the California State Constitution, Article 11, §10(b).

Charter §1225 prohibits residential water meters, which is contrary to and preempted by California Water Code §§525 & 529 and the Central Valley Project Improvement Act, which makes federal Central Valley water allocations contingent upon meter installation and use.

Charter §1207 requires the Council to impose taxes necessary to meet appropriations made, which is not permissible following the passage of Proposition 218 which requires new municipal taxes to be approved by voters.

Proposed Change: The Charter Amendment will amend the City of Fresno Charter to remove or modify the following illegal and unenforceable sections:

- (1) §309, prohibiting "off-year" campaign contributions—removed as unconstitutional.
- (2) §701's residency requirement for the City Manager—removed as unconstitutional.

- (3) §1225, prohibiting residential water meters—removed as preempted by state and federal law.
- (4) §1207, requiring the City Council to raise taxes to balance the budget—amended and made subject to the Proposition 218 requirement for voter approval of taxes.

This Measure was placed on the ballot by the City of Fresno.

s/ Douglas T. Sloan
City Attorney

The above statement is an impartial analysis of Measure O. If you desire a copy of the measure, please call the Fresno County Clerk's Office at 559-600-3011 or the City of Fresno Clerk's Office at 559-621-7650, and a copy will be mailed at no cost to you. You may also access the full text of the measure on the county website: FresnoVote.com.

NO ARGUMENTS WERE FILED FOR OR AGAINST MEASURE O

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5
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF FRESNO
9

10 Fresnans Interested in Fair Elections

11 Petitioner,

12 v.

13 Andrew Janz, in his official capacity,

14 Respondent,

15 City of Fresno,

16 Real Party in Interest.
17
18

Case No.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS**

19 **I. INTRODUCTION**

20 It is often said that “we all make mistakes.” Petitioner’s Petition for Writ of Mandate (the
21 “Petition”) seeks to correct a mistaken legal analysis by the City Attorney of the City of Fresno,
22 Andrew Janz (“Respondent” or “Janz”) regarding Section 309 of the City of Fresno Charter
23 (“Section 309”). Section 309 limits the time periods in which candidates for City of Fresno offices
24 (e.g. city council) can accept campaign contributions to the period between the opening of the filing
25 period for an election and the end of the year in which the election for that office occurs.

26 Relying upon a 5th Circuit Court of Appeals case, *Zimmerman v. City of Austin*, which is
27 merely persuasive authority in the 9th Circuit, Respondent decided not to enforce Section 309.
28

1 (*Zimmerman v. City of Austin, Texas*, 881 F.3d 378, 392 (5th Cir. 2018).)¹ In doing so, Respondent
2 appears to have not considered, or to have considered and not properly credited, the binding 9th
3 Circuit precedent of *Thalheimer v. City of San Diego*. (*Thalheimer v. City of San Diego*, 645 F.3d
4 1109, 1123 (9th Cir. 2011), *overruled on other grounds by Bd. of Trustees of Glazing Health &*
5 *Welfare Tr. v. Chambers*, 941 F.3d 1195 (9th Cir. 2019).)

6 The Petition seeks to correct this mistake by Respondent and asks that the Court direct Janz
7 to enforce and defend Section 309 by writ of mandate in compliance with the Charter of the City of
8 Fresno, *Thalheimer*, and subsequent 9th Circuit case law.

9 **II. Statement of Facts**

10 The voters of the City of Fresno approved an amendment to the Charter of the City of Fresno
11 on March 2, 1993 in the form of Measure E (Petition, Exhibit C). That amendment included Section
12 309. Section 309 reads:

13 “No mayoral candidate, Council candidate, or any committee controlled by such
14 person shall solicit or accept any contribution in support of such candidate's election
15 prior to the date fixed by law for the filing of nomination papers with respect to
16 such election, or following the year in which such election is held.” (Charter of the
17 City of Fresno, Section 309.)

18 Section 309 was enforced by the City of Fresno and its City Attorney until at least February 2018.

19 Section 309 was adopted amidst a backdrop of concerns about municipal corruption of
20 Fresno city councilmembers by local developers and their agents. The corruption scandals of the
21 early 1990s in Fresno and Clovis culminated in Operation Rezone, an investigation by the FBI that
22 resulted in a criminal investigation of several members of the Fresno City Council and the Clovis
23 City Council. (*See e.g.* “Leading Fresno Developer Is Indicted on Corruption Charges,” Los Angeles
24 Times, February 21, 1998.)

25 On February 1, 2018, the Fifth Circuit Court of Appeals issued a decision in *Zimmerman v.*
26 *City of Austin, Texas* that invalidated a similar restriction on a time limit for local campaign

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28 ¹ The public memorandum in which this position was announced, which is Exhibit A of the Petition,
does not include the full citation.

1 contributions imposed by the City of Austin, Texas. (*Zimmerman*, *supra*, 881 F.3d at 392.) At some
2 time thereafter, then City Attorney Douglas Sloan appears to have decided that Section 309 was no
3 longer enforceable in light of *Zimmerman*.

4 In the November 2018 general election, the voters of the City of Fresno were asked to pass
5 a charter amendment referred to as Measure E that purportedly would have removed charter
6 provisions that were no longer legal in the view of City Attorney Sloan, which included Section
7 309. (Petition, Exhibit D.) The voters of Fresno rejected Measure E.

8 Despite the voters' clear direction as to whether Section 309 should remain in force in the
9 2018 election, Respondent decided in 2023 that he would no longer enforce that section of the
10 Charter of the City of Fresno. Instead, he issued a public memorandum with the subject "City of
11 Fresno Election Law Frequently Asked Questions" on October 5, 2023. That memorandum stated
12 that the City Attorney would no longer enforce Section 309's time limits on contributions based on
13 the holding in the *Zimmerman* case. (Petition, Exhibit A.)

14 Thereafter, the City of Fresno ceased to enforce Section 309's limits on when contributions
15 could be received, and at least two incumbent city councilmembers running in 2024 elections were
16 able to raise funds before their competitors, including members of Petitioner.²

17 **III. Argument**

18 **A. Zimmerman is Not a Controlling Precedent**

19 Respondent relies on *Zimmerman v. City of Austin* for his opinion that Section 309 is
20 unenforceable. (Petition, Exhibit A). However, *Zimmerman* is a Fifth Circuit decision and is
21 therefore not binding authority on persons or courts in the Ninth Circuit, where Fresno is located.
22 Only courts and persons within a circuit are bound by decisions of that circuit court. (*Hart v.*
23 *Massanari*, 266 F.3d 1155, 1171 (9th Cir. 2001).)

24 Where a Ninth Circuit precedent applies, the Ninth Circuit and lesser courts in the Ninth
25 Circuit are obligated to follow it as to questions of federal law and the U.S. Constitution. (*See e.g.*

26
27 ² The two incumbent city councilmembers running in the 2024 elections are Councilmember Garry
28 Bredefeld and Councilmember Luis Chavez, both of whom are candidates for Fresno County
Supervisor in the general election.

1 *San Remo Hotel, L.P. v. San Francisco City & Cnty.*, 364 F.3d 1088, 1095 (9th Cir. 2004), *aff'd sub*
2 *nom. San Remo Hotel, L.P. v. City & Cnty. of San Francisco, Cal.*, 545 U.S. 323, 125 S. Ct. 2491,
3 162 L. Ed. 2d 315 (2005).) Indeed, when a court within the Ninth Circuit must decide an issue
4 governed by a prior Ninth Circuit opinion, “the later court is bound to reach the same result, even if
5 it considers the rule unwise or incorrect. Binding authority must be followed unless and until
6 overruled by a body competent to do so.” (*Hart, supra*, 266 F.3d at 1170.)³

7 Here, binding Ninth Circuit precedent makes it clear that Respondent cannot set aside
8 Section 309 on the authority of the *Zimmerman* case from the Fifth Circuit.

9 **B. Thalheimer is the Controlling Precedent**

10 The Ninth Circuit has previously addressed a temporal restriction on campaign
11 contributions, similar to Section 309, in *Thalheimer v. City of San Diego*. (*Thalheimer v. City of San*
12 *Diego*, 645 F.3d 1109, 1121-1125 (9th Cir. 2011), *overruled on other grounds by Bd. of Trustees of*
13 *Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195 (9th Cir. 2019). In *Thalheimer*, the
14 Ninth Circuit considered a San Diego ordinance that made it unlawful for candidates or candidate
15 committees to “solicit or accept contributions prior to the twelve months preceding the primary
16 election for the office sought.” (*Thalheimer, supra*, 941 F.3d at 1114.)⁴

17 The Ninth Circuit recognized that “off-year contributions are more likely linked to business
18 the donor has before the city, thus creating the appearance of quid pro quo ‘corruption by the sale
19 of influence.’” (*Thalheimer, supra*, 645 F.3d at 1121.) That anticorruption interest justified the
20 temporal restriction on campaign contributions of the City of San Diego, and likewise justifies
21 Section 309. The *Thalheimer* court deferred to the judgment of the San Diego City Council as

23 ³ Although not necessary for the Court to consider because of the Ninth Circuit precedent, the Fourth
24 and Sixth Circuits agree with the Ninth Circuit and disagree with the Fifth Circuit on the
25 constitutionality of temporal restrictions on campaign contributions. (*See Thalheimer, supra*, 645
26 F.3d at 1122-1123; *N. Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 716 (4th Cir. 1999);
Gable v. Patton, 142 F.3d 940, 951 (6th Cir. 1998).)

27 ⁴ The San Diego Ethics Commission interpreted that ordinance to also apply as a spending restriction
28 on candidates own money outside of the permitted period. The district court enjoined that
interpretation, and the parties to *Thalheimer* did not dispute it at the Ninth Circuit. (*Thalheimer,*
supra, 645 F.3d at 1114.) Section 309 does not contain such a restriction.

1 whether the length of the temporal restriction was appropriate, and this Court should do the same as
2 to the twice-expressed will of the voters of the City of Fresno. (*Thalheimer, supra*, 941 F.3d at 1123-
3 1124.)

4 **C. Thalheimer was Overruled Only on Other Grounds**

5 The *Thalheimer* case included rulings on a variety of different San Diego election law
6 ordinances, as well as the standards for mootness following a subsequent remedial measure. It is in
7 relation to the latter that *Thalheimer* was overruled by a subsequent Ninth Circuit case, *Board of*
8 *Trustees of Glazing Health and Welfare Trust v. Chambers*. (*Bd. of Trustees of Glazing Health &*
9 *Welfare Tr. v. Chambers*, 941 F.3d 1195, 1199 (9th Cir. 2019).) In *Chambers*, the Ninth Circuit
10 decided whether a case was mooted by the legislative repeal of the law at issue and determined that
11 legislative repeals should not be treated the same as voluntary cessations of challenged acts or
12 enforcement of challenged acts, permitting repeal of a law as a means to moot a case. (*Chambers,*
13 *supra*, 941 F.3d at 1199.) That overruled *Thalheimer's* position that legislative repeal of a different
14 San Diego law than the temporal restriction on campaign contribution was not sufficient to moot
15 the case as to that law. Other courts have recognized that *Thalheimer* was only overruled in part.
16 (See e.g. *California Chamber of Com. v. Becerra*, 529 F. Supp. 3d 1099, 1117 (E.D. Cal. 2021),
17 *aff'd sub nom. California Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468
18 (9th Cir. 2022).) It may be that Respondent or his office noted that *Thalheimer* was overruled on
19 other grounds, and assumed incorrectly that *Thalheimer* had thus been overruled as to the
20 constitutionality of temporal restrictions on campaign contributions, which is not the case.

21 Neither the Ninth Circuit nor another court has overruled the holding in *Thalheimer* that
22 upheld the temporal limits on campaign contributions or the other holdings of *Thalheimer* that do
23 not deal with the mootness issue. The Ninth Circuit has favorably cited *Thalheimer* just two years
24 ago, well after *Zimmerman*, on an issue other than mootness. (See *California Chamber of Com. v.*
25 *Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 478 (9th Cir. 2022), *cert. denied*, 143 S. Ct.
26 1749, 215 L. Ed. 2d 649 (2023). Accordingly, *Thalheimer* is still good law and the precedent this
27 Court should look to in determining whether Respondent should be required to enforce Section 309.

1 **D. Section 309 Could Satisfy Even the *Zimmerman* Court**

2 One of the reasons that the *Zimmerman* court ruled against the City of Austin on temporal
3 restrictions on campaign contributions was that the City of Austin provided inadequate evidence to
4 justify its anticorruption interest. The *Zimmerman* district court expressly found that “Austin failed
5 to produce sufficient evidence to justify the temporal limit.” (*Zimmerman, supra*, 881 F.3d at 392.)
6 Austin provided some generalized testimony from a former councilmember and testimony from an
7 expert political scientist that the temporal restriction “alleviated concerns of the appearance of *quid*
8 *pro quo* corruption.” (*Id.* at 392.)

9 In contrast, the City of Fresno could readily establish that voters in 1993 were responding to
10 the widely perceived, and in some cases actual, corruption of the Fresno City Council and Clovis
11 City Council at the time, which subsequently resulted in the Operation Rezone investigation of
12 numerous elected officials in both cities. One of the Fresno City Councilmembers in 1993, Bob
13 Lung, was charged with mail fraud, money laundering, and accepting a bribe. (*See* “Leading Fresno
14 Developer Is Indicted on Corruption Charges,” Los Angeles Times, available at:
15 <https://www.latimes.com/archives/la-xpm-1998-feb-21-mn-21438-story.html> (February 21, 1998).)
16 At least nine others were convicted of corruption-related crimes. (*Id.*) Unlike Austin, where the
17 appearance of corruption was only theoretical, the perception of widespread corruption of the Fresno
18 City Council in the early to mid-1990s was ultimately proved by federal prosecutors. This corruption
19 exceeded even the municipal corruption that the *Thalheimer* district court considered in connection
20 with that case.

21 The actual corruption in Fresno during the period that Section 309 was adopted, and the
22 subsequent conviction of many political players prior to the second vote reaffirming Section 309,
23 should be more than sufficient for a court to find that the City of Fresno could provide adequate
24 evidence that its temporal limits on campaign contributions were a reasonably tailored measure to
25 respond to its interest in preventing actual corruption and the appearance of *quid pro quo* corruption.

26 **IV. Conclusion**

27 For the reasons set forth in the Petition and above, this Court should issue a Writ of Mandate
28 to Respondent to require Respondent to enforce Section 309 on all current and future candidates

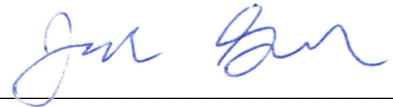
1 subject to its restrictions.

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5 Dated: October 4, 2024

By: 

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Jared Gordon,

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Attorney for Petitioner,

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Fresnans Interested in Fair Elections

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