

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

FREE AND FAIR ELECTION FUND,)
FREEDOM PAC, MISSOURIANS FOR)
WORKER FREEDOM, AMERICAN)
DEMOCRACY ALLIANCE, JOHN ELLIOTT,))
HERZOG SERVICES, INC., AND FARMERS)
STATE BANK,)

Case No. Case No. 2:16-cv-4332

Plaintiffs,)

v.)

MISSOURI ETHICS COMMISSION,)
including Commission Chair Nancy Hagan,)
Commission Vice Chair Bill Deeken, and)
Commissioners Eric L. Dirks, Don Summers,)
Kim Benjamin, and George Ratermann,)
in their official capacities,)

and)

JAMES KLAHR, in his official capacity as)
Executive Director of the Missouri Ethics)
Commission,)

Defendants.)

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND
PERMANENT AND PRELIMINARY INJUNCTION UNDER 42 U.S.C. § 1983**

Plaintiffs Free and Fair Election Fund (“Fair Elections”), Freedom PAC, Missourians for Worker Freedom (“Worker Freedom”), American Democracy Alliance (“ADA”), John Elliott, Herzog Services, Inc. (“HSI”), and Farmers State Bank allege for their Verified Complaint for Declaratory Judgment and Permanent and Preliminary Injunction under 42 U.S.C. § 1983:

1. Plaintiffs bring this civil rights claim under 42 U.S.C. § 1983 to remedy Missouri's continuous and ongoing violations of their rights of free political speech and association. These fundamental rights are secured from infringement under the First Amendment of the United States Constitution, applicable to Missouri through the Fourteenth Amendment. The state constitutional provision at issue, Amendment 2, is not only flawed at its core, it is riddled with any number of fatal errors. For example, it bans all corporate contributions in ballot measure and judicial retention campaigns, even for nonprofit corporations and even though, as a matter of law, there is no possibility of corruption. It applies identical rules to committees that spend money free of candidate influence and committees that contribute to candidates, even though these two types of committees are constitutionally distinguishable. It imposes per-race aggregate contribution caps on all contributors, even including contributions that are not made to candidates. It arbitrarily imposes blanket bans on contributions from some business entities, but not others. Amendment 2 even makes it a crime for the newly-banned entities to fund a ballot measure to address their injury by fixing Amendment 2. But even if these and other blatantly unconstitutional provisions are severed from Amendment 2, the remainder cannot be saved. The "rump" amendment would be unintelligible and could not be said to reflect the will of those who voted for Amendment 2 believing they were only passing federal-style contribution limits. Amendment 2 cannot be saved.

I. General Background

2. In November 2016, Missouri voters passed Amendment 2, which became effective at the end of the 30th day after the November 8, 2016 general election, (the end

of December 8, 2016). It was enacted as Article VIII, § 23 of the Missouri Constitution. Citations to portions of Amendment 2, as adopted, are referred to using the term “Section 23.”

3. Amendment 2’s text is available at <http://www.moga.mo.gov/MoStatutes/ConstHTML/A080231.html> (accessed December 23, 2016).

4. A true and correct copy of Amendment 2’s text is attached as Exhibit A.

5. Amendment 2 imposes major new restrictions in campaign finance, which severely burden political speech and association. Plaintiffs challenge the following aspects of the law.

A. Source Bans for PACs (Counts I-III)

6. First, Amendment 2 creates a new Missouri entity called a “political action committee,” (or “PAC”), which is similar to but not precisely identical to a type of committee already recognized under Missouri statutes, called a “continuing committee.” Amendment 2 imposes blanket bans on contributions to PACs from any entity that is not a union, federal PAC, or corporation, association, or partnership formed under chapters 347 to 360, RSMo. This effectively bans contributions from all corporations, associations, or partnerships organized under the laws of Missouri’s sister states; Missouri state-chartered banks; and many other entities. Amendment 2 also prohibits PACs from receiving contributions from most other types of political committees. This violates the First and Fourteenth Amendments (see Count I, below), and also Article IV of the United States Constitution (see Count II).

7. To the extent that the PAC source bans cover a special type of PAC that only spends money independently of candidates, and does not give contributions to candidates (called an “independent expenditure PAC”), it is a separate and independent violation of the First Amendment under the U.S. Supreme Court’s decision in *Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876 (2010) (see Count III).

B. Source Bans for Ballot Measures and Judicial Retention Contests (Count IV)

8. Amendment 2 also bans contributions by certain entities to “campaign committees,” which are used to support or oppose ballot measures, or to support or oppose the retention of judges under the Missouri Nonpartisan Court Plan. Plaintiffs challenge the former restriction, in this case. The banned entities include corporations and unions. See Section 23.3(3)(a). A duplicative provision also bans foreign (non-Missouri) corporations from contributing to campaign committees. See Section 23.3.(16)(c). The banning of corporate contributions to non-candidate, issue-related committees violates the First Amendment under a clearly controlling decision by the U.S. Supreme Court, *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407 (1978). See Count IV.

C. Contribution Limits (Counts V through VII)

9. Amendment 2 imposes contribution limits. The limits are contained in subsection 3, and provide as follows:

3. (1) Except as provided in subdivisions (2), (3) and (4) of this subsection, the amount of contributions made by or accepted from any person other than the candidate in any one election shall not exceed the following:

(a) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, office of state senator, office of state representative or any other state or judicial office, two thousand six hundred dollars.

10. Combined with other provisions, this permits an individual, partnership, or unincorporated association to contribute up to \$2,600 per election for statewide, legislative, or judicial office (\$5,200 total for the primary and general elections) and \$25,000 per election to a political party (\$50,000 total for the primary and general elections). A political party may also contribute up to \$2,600 per election for statewide, legislative, or judicial office. Corporations and labor unions are now prohibited from making contributions to candidate committees, political parties, and political party committees.

11. Missouri's new "per-election" limits are not "per-candidate, per-election" limits—the type of limits that exist at the federal level. They limit not only how much a specific committee may "accept from" a donor, they also limit the total contribution that can be "made by" a donor in a given *race*, not merely to a given candidate committee. This has several important consequences. For example, a donor who gives the maximum to one candidate, but who later changes her mind to support the other candidate, is prohibited from giving anything to the other candidate; the donor's maximum for that race will have already been reached. As a corollary, the amount of money a donor can contribute to any particular candidate or committee is based on how many candidates or committees the donor may support or oppose in that race. At a minimum, the donor that supports a candidate in a race must decide in advance how much of her \$2,600 limit to

contribute to the candidate in light of their desire to make other contributions supporting or opposing other candidates in the same race. The limits have the effect of restricting how many candidates or committees the donor may support. They are therefore special “aggregate” limits that violate the First Amendment. “To require one person to contribute at lower levels than others because he wants to support more candidates or causes is to impose a special burden on broader participation in the democratic process.” *McCutcheon v. FEC*, 134 S. Ct. 1434, 1449 (2014). *See* Count V.

12. Amendment 2’s contribution limits also apply to independent expenditure-only PACs, since the definition of “contribution” includes anything of value given to support a committee that, in turn, supports or opposes candidates. *See* Section 23.7(7). No person can give more than \$2,600 to an independent-expenditure-only PAC that is supporting or opposing candidates. This violates the First Amendment under the *Citizens United* decision, as recognized by the U.S. Court of Appeals for the D.C. Circuit in *Speechnow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc). *See* Count VI.

13. Amendment 2’s contribution limits are vague and almost impossible to comply with in the case of PACs—whether regular PACs or independent-expenditure-only PACs—that support or oppose multiple candidates (including judicial retention measures). It is necessary to know precisely how much of a contribution to a PAC must be attributed to a given election, since that contribution counts as part of the aggregate \$2,600 limit. But Amendment 2 supplies no standard for making this essential determination. The vagueness of the limit will lead to standard-less or arbitrary enforcement, chilling all PAC contribution activity. For this reason, it violates the First

Amendment and Due Process Clauses of the Fifth and Fourteenth Amendments. *See* Count VII.

II. Jurisdiction and Venue

14. Plaintiffs bring this action pursuant to 28 U.S.C. § 2201, 42 U.S.C. § 1983, and Rule 57 of the Federal Rules of Civil Procedure.

15. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1).

III. Plaintiffs

A. Fair Elections

17. Fair Elections is an active Missouri political action committee and continuing committee in good standing.

18. The purpose of Fair Elections is to receive contributions and make independent expenditures to influence or attempt to influence the action of voters in connection with Missouri elections for statewide, state legislative, and state judicial office.

19. Fair Elections intends to use contributions it receives now through August 7, 2018, by making independent expenditures in support of one or more candidates in the 2018 Republican primary for Missouri state auditor.

20. Fair Elections discusses its plans to make independent expenditures with potential donors.

21. Fair Elections intends to make only independent expenditures.

22. Fair Elections intends to raise funds in unlimited amounts.

23. Fair Elections will not use any funds to make contributions, whether direct or in-kind to candidates or committees, except that Fair Elections may make contributions, whether direct or in-kind to other committees that also intend to make only independent expenditures and do not make contributions to candidates.

24. Fair Elections does not engage in coordination with candidates, candidate committees, political parties, or political party committees.

25. The threatened complaint, investigation, prosecution, civil penalty, and criminal penalty provisions under Missouri law (Mo. Const. art. VIII, § 23 and Chapters 105 and 130, RSMo) applicable to alleged violations of Amendment 2 are collectively referred to herein as the “**Threatened Sanctions.**” The **Threatened Sanctions** are enumerated *infra*.

26. Fair Elections desires to accept unlimited contributions from Freedom PAC and other Plaintiffs, described *infra*, including ADA, John Elliott, HSI, and Farmers State Bank, but will not do so because of the **Threatened Sanctions.**

27. The **Threatened Sanctions** would deter a person of reasonable firmness from accepting a contribution in excess of \$2,600 per election, and in this case, have in fact deterred Fair Elections from accepting such contributions.

B. Freedom PAC

28. Freedom PAC is an active Missouri political action committee and continuing committee in good standing.

29. Freedom PAC makes or intends to make contributions to candidates, independent expenditures, contributions to ballot measure committees, and expenditures in support of ballot measures.

30. Freedom PAC intends to support one or more candidates in the 2018 Republican primary for Missouri state auditor with a \$2,600 contribution to each supported candidate's candidate committee.

31. Freedom PAC also intends to make independent expenditures in support of one or more candidates in the 2018 Republican primary for Missouri state auditor.

32. Freedom PAC desires to accept contributions from Plaintiffs, described *infra*, ADA, John Elliott, HSI, and Farmers State Bank.

33. Freedom PAC would make a contribution in excess of \$2,600 per election to Fair Elections for the purpose of making independent expenditures in support of one or more candidates in the 2018 Republican primary for Missouri state auditor, but will not do so because of the **Threatened Sanctions**.

34. The **Threatened Sanctions** would deter a person of reasonable firmness from making a contribution in excess of \$2,600 per election to Fair Elections, and in this case, have in fact deterred Freedom PAC from making such a contribution.

35. Freedom PAC desires to accept contributions in excess of \$2,600 per election from other Plaintiffs, described *infra*, including ADA, John Elliott, HSI, and Farmers State Bank, but will not do so because of the **Threatened Sanctions**.

36. The **Threatened Sanctions** would deter a person of reasonable firmness from accepting a contribution in excess of \$2,600 per election, and in this case, have in fact deterred Freedom PAC from accepting such contributions.

C. Worker Freedom

37. Worker Freedom is an active Missouri campaign committee in good standing.

38. The purpose of Worker Freedom is to oppose the passage of any 2018 statewide ballot measure that harms the right of employees to decide for themselves whether or not to join or financially support a union.

39. Worker Freedom desires to accept contributions from ADA, HSI, and Farmers State Bank.

D. John Elliott

40. Plaintiff John Elliott is a citizen and taxpayer of the state of Missouri and a resident of Platte County, Missouri.

41. Mr. Elliott desires to make a contribution of \$2,600 per election to the candidate committee of more than one candidate in the 2018 Republican primary for Missouri state auditor, but will not do so because of the **Threatened Sanctions**.

42. The **Threatened Sanctions** would deter a person of reasonable firmness from making contributions of \$2,600 to the candidate committee of more than one candidate in the 2018 Republican primary for Missouri state auditor.

43. Mr. Elliott would make a contribution in excess of \$2,600 per election to Fair Elections for the purpose of making independent expenditures in support of one or

more candidates in the 2018 Republican primary for Missouri state auditor, but will not do so because of the **Threatened Sanctions**.

44. The **Threatened Sanctions** would deter a person of reasonable firmness from making a contribution in excess of \$2,600 per election to Fair Elections, and in this case, have in fact deterred Mr. Elliott from making such a contribution.

45. Mr. Elliott would make a contribution in excess of \$2,600 per election to Freedom PAC, but will not do so because of the **Threatened Sanctions**.

46. Mr. Elliott would make his contribution to Freedom PAC with the understanding the Freedom PAC will use some of Mr. Elliott's contribution to make independent expenditures in support of one or more candidates in the 2018 Republican primary for Missouri state auditor.

47. Mr. Elliott has no understanding or agreement regarding Freedom PAC's use of any portion of his contribution not spent on making independent expenditures in support of one or more candidates in the 2018 Republican primary for Missouri state auditor.

48. However, Mr. Elliott is aware that Freedom PAC intends to make a contribution to the candidate committee(s) of one or more candidates in the 2018 Republican primary for Missouri state auditor.

49. The **Threatened Sanctions** would deter a person of reasonable firmness from making a contribution in excess of \$2,600 per election to Freedom PAC, and in this case, have in fact deterred Mr. Elliott from making such a contribution.

E. ADA

50. Plaintiff ADA is a Missouri not-for-profit corporation, in good standing, organized under Chapter 355, RSMo. ADA is a citizen and taxpayer of the state of Missouri, with a principal place of business in Jackson County, Missouri.

51. ADA accepts contributions from corporations.

52. ADA would make a contribution in excess of \$2,600 per election to Fair Elections, but will not do so because of the **Threatened Sanctions**.

53. The **Threatened Sanctions** would deter a person of reasonable firmness from making a contribution in excess of \$2,600 per election to Fair Elections, and in this case, have in fact deterred ADA from making such a contribution.

54. Plaintiff ADA would make a contribution to Worker Freedom, but will not do so because of the **Threatened Sanctions**.

55. The **Threatened Sanctions** would deter a person of reasonable firmness from making a contribution to Worker Freedom, and in this case, have in fact deterred ADA from making such a contribution.

F. HSI

56. Plaintiff HSI is a for-profit corporation, in good standing, organized under the laws of the state of Kansas. HSI has authority to transact business in the state of Missouri pursuant to Chapter 351, RSMo. *See* § 351.572, RSMo, *et seq.*, and maintains a principal place of business in St. Joseph, Missouri.

57. HSI is required to file, and does in fact file, biennial registration reports with the state of Missouri which list the name and physical address of its officers and

board of directors. The biennial registration reports are public documents available for public review on the Missouri Secretary of State's website.

58. HSI maintains a registered agent for service of process in the state of Missouri.

59. HSI would make a contribution, including a contribution in excess of \$2,600 per election, to Fair Elections, but will not do so because of the **Threatened Sanctions**.

60. The **Threatened Sanctions** would deter a person of reasonable firmness from making a contribution to Fair Elections, and in this case, have in fact deterred HSI from making such a contribution.

61. HSI would make a contribution to Freedom PAC, but will not do so because of the **Threatened Sanctions**.

62. The **Threatened Sanctions** would deter a person of reasonable firmness from making a contribution to Freedom PAC, and in this case, have in fact deterred HSI from making such a contribution.

63. HSI would make a contribution to Worker Freedom, but will not do so because of the **Threatened Sanctions**.

64. The **Threatened Sanctions** would deter a person of reasonable firmness from making a contribution to Worker Freedom, and in this case, have in fact deterred HSI from making such a contribution.

G. Farmers State Bank

65. Plaintiff Farmers State Bank is a Missouri state-chartered bank, in good standing, organized under Chapter 362, RSMo. Farmers State Bank is a citizen and taxpayer of the state of Missouri, with a principal place of business in Cameron, Missouri.

66. Farmers State Bank would make a contribution, including a contribution in excess of \$2,600 per election, to Fair Elections, but will not do so because of the **Threatened Sanctions**.

67. The **Threatened Sanctions** would deter a person of reasonable firmness from making a contribution to Fair Elections, and in this case, have in fact deterred Farmers State Bank from making such a contribution.

68. Farmers State Bank would make a contribution to Freedom PAC, but will not do so because of the **Threatened Sanctions**.

69. The **Threatened Sanctions** would deter a person of reasonable firmness from making a contribution to Freedom PAC, and in this case, have in fact deterred Farmers State Bank from making such a contribution.

70. Farmers State Bank would make a contribution to Worker Freedom, but will not do so because of the **Threatened Sanctions**.

71. The **Threatened Sanctions** would deter a person of reasonable firmness from making a contribution to Worker Freedom, and in this case, have in fact deterred Farmers State Bank from making such a contribution.

H. Additional Related Facts About Plaintiffs

72. Freedom PAC, ADA, John Elliott, HSI, and Farmers State Bank are collectively referred to as “**Contributor Plaintiffs.**”

73. **Contributor Plaintiffs** each desire to make a contribution of money in excess of \$2,600 per election to Fair Elections.

IV. Burdens of independent expenditures and benefits of contributions

74. **Contributor Plaintiffs** desire to make contributions, rather than making independent expenditures, because it is comparatively burdensome for **Contributor Plaintiffs** to express their political beliefs and effect political change by making expenditures in isolation from one another. That is so for several reasons.

75. First, **Contributor Plaintiffs** believe that they benefit, and do in fact benefit, from expressing their political speech in the form of contributions to the respective committees, rather than each plaintiff making independent expenditures, without the benefit of any association.

76. Making contributions to a committee, rather than making expenditures, provides qualitative benefits to **Contributor Plaintiffs**, including the benefits of assembly and association with like-minded persons.

77. Making contributions to a committee, rather than making expenditures, provides quantitative benefits to **Contributor Plaintiffs**. That is because **Contributor Plaintiffs** can engage in comparatively more speech, and can engage in more effective speech, by making contributions to a joint effort than they can by separately making expenditures with their more limited resources. Contributions allow for the pooling of

resources. Also, contributors do not have to account for the individualized regulatory and start-up requirements associated with making expenditures.

78. Additionally, the speech of **Contributor Plaintiffs** benefits from the speech of other like-minded persons. The respective committees to which they seek to contribute are in a better position than **Contributor Plaintiffs** to know the most effective use of the proposed contributions.

79. Speech is comparatively more burdensome for **Contributor Plaintiffs** than the respective committees to which they seek to contribute. These burdens include high fixed costs or start-up costs in political campaigning, including retaining qualified staff, surveying the public, and producing and distributing effective media ads.

80. Costs for some types of speech are so high that if like-minded individuals or entities cannot come together to pool their funds, the speech will not occur at all. For example, several groups may wish to come together to fund a television ad about a candidate race, but that is not coordinated with either candidate's campaign. If none of the groups have sufficient resources to pay for the entire cost, and they are also prohibited from pooling their contributions to pay for the ad, then the ad will never be aired, and the groups' speech will be muzzled. The same result will occur where a small number of individuals and entities are not prohibited from pooling their resources, but face contribution limits so low that it is impossible to recruit a sufficient number of separate donors so that, adding up each small contribution, there are insufficient funds to run the ad. Either way, the result is the same. Contribution limits or source prohibitions will keep

ads from airing, even though they are completely separated from the campaign of any candidate.

81. Additionally, complying with Missouri's noncommittee expenditure reporting requirement is burdensome for **Contributor Plaintiffs**, except Freedom PAC. Missouri law requires any person who is not a committee that makes an expenditure aggregating \$500 or more in support of a candidate to file a report of their expenditures. Section 130.047, RSMo. Failing to properly do so subjects a person to investigation, embarrassment, and possible civil and criminal sanctions. **Contributor Plaintiffs** view these burdens as significant. In contrast, if **Contributor Plaintiffs** are permitted to make contributions, they are subject to less burdensome reporting requirements under Missouri law.

82. **Contributor Plaintiffs**, except Freedom PAC, do not have to file any reports if they make contributions.

V. Defendants

A. The MEC

83. Defendant Missouri Ethics Commission ("MEC") is a state agency acting under the executive branch of Missouri state government. The MEC investigates and enforces the laws related to campaign finance disclosure.

84. The MEC's principal place of business is in Jefferson City, Missouri.

85. The MEC is composed of six members, appointed by the Governor with the advice and consent of the Missouri Senate. Each member is a citizen and resident of the state of Missouri, and the term of each member is four years.

86. As of the date of this Verified Complaint, the members of the commission are chair Nancy Hagan, vice chair Bill Deeken, Eric L. Dirks, Don Summers, Kim Benjamin, and George Ratermann. Each member is named as a defendant in his or her official capacity.

87. The MEC is the state entity responsible for receiving a complaint that alleges a violation of Amendment 2. Mo. Const. art. VIII, § 23.4.(1).

88. The MEC uses state of Missouri funds generated by taxation to fund its operations, including investigations of potential civil and criminal violations of Missouri campaign finance law.

89. The MEC is the state entity responsible for auditing and investigating the allegations contained in a complaint that alleges a violation of Amendment 2. Mo. Const. art. VIII, §§ 23.4.(2), 23.4.(3).

90. Any natural person may file a complaint alleging a violation of Amendment 2. Mo. Const. art. VIII, § 23.4.(1).

91. Subject to certain limitations, any natural person may file a complaint in the heat of an election campaign to attempt to gain a political advantage or to subject a political opponent to a burdensome complaint investigation procedure.

92. The MEC is the state entity responsible for determining whether a complaint alleging a violation of Amendment 2 contains reasonable grounds “that a violation of law has occurred within the jurisdiction of the commission.” Mo. Const. art. VIII, § 23.4.(4).

93. “If, during an audit or investigation, the [MEC] determines that a formal investigation is necessary, the [MEC] shall assign the investigation to a special investigator” Section 105.959.5, RSMo.

94. Amendment 2 provides, “If, after audit and investigation of the complaint and upon a vote of at least four members of the commission, the commission determines that there are reasonable grounds to believe that a violation of law has occurred within the jurisdiction of the commission, the commission shall proceed with such complaint as provided by sections 105.957 to 105.963. RSMo, as amended from time to time.” Mo. Const. art. VIII, § 23.4.(4).

95. If the MEC concludes, based on the report from the special investigator or based on an audit, that there are reasonable grounds to believe that a violation of any criminal law has occurred, the MEC may seek to have a special prosecutor appointed. Section 105.961.2, RSMo.

96. If the MEC concludes, based on the report from the special investigator or based on an audit, that there are reasonable grounds to believe that a violation of any law has occurred which is not a violation of criminal law or that criminal prosecution is not appropriate, the MEC may conduct its own hearing and issue findings and conclusions. Section 105.961.3, RSMo.

97. “Upon vote of at least four members, the [MEC] may initiate formal judicial proceedings seeking to obtain any of the following orders:

(1) Cease and desist violation of any provision of sections 105.450 to 105.496, or chapter 130, or sections 105.955 to 105.963;

- (2) Pay any civil penalties required by sections 105.450 to 105.496 or chapter 130;
- (3) File any reports, statements, or other documents or information required by sections 105.450 to 105.496, or chapter 130; or
- (4) Pay restitution for any unjust enrichment the violator obtained as a result of any violation of any criminal statute as described in subsection 6 of this section.”

Section 105.961.5, RSMo.

98. The MEC has through “reconciliation agreements or civil action, the power to seek fees for violations in an amount not greater than one thousand dollars or double the amount involved in the violation.” Section 105.961.4(6), RSMo.

99. The MEC maintains a policy of imposing fees through reconciliation agreements, where the MEC negotiates for a complaint respondent to pay about 10% of the amount involved in a violation, with the remainder of the fee stayed until any further violation of the campaign finance laws within a two-year period from the date of the MEC’s order.

B. Executive Director James Klahr

100. Defendant James Klahr is the duly appointed and acting Executive Director of the MEC, and is named as a defendant in his official capacity.

101. Pursuant to Missouri law, the Executive Director “shall be responsible for the administrative operations of the [MEC] and perform such other duties as may be delegated or assigned to the director by law or by rule of the [MEC].” § 105.955(11), RSMo.

102. Executive Director Klahr is the Missouri state official responsible for “[e]xamin[ing] each report and statement filed with the [MEC] pursuant to the requirements of this chapter to determine if the statements are properly completed and filed within the time required by this [Chapter 130, RSMo.]” Section 130.056.1(6), RSMo.

103. Mr. Klahr’s duties include, but are not limited to, making an initial determination as to whether complaints filed with the MEC provide jurisdiction for investigation, and employing and supervising the work of the MEC’s investigators.

104. Executive Director Klahr, under the supervision of the MEC, is the state official charged with overseeing the review and audit of campaign finance reports and statements filed with the MEC pursuant to Chapter 130, RSMo, and determining whether “a violation” has occurred. Section 105.959.1, RSMo.

C. Penalties Enforced by the Ethics Commission and Klahr

105. Section 23.5. of Amendment 2 provides:

“Any person who knowingly and willfully accepts or makes a contribution in violation of any provision of Section 3 of this Article or who knowingly and willfully conceals a contribution by filing a false or incomplete report or by not filing a required report under chapter 130, RSMo, as amended from time to time, shall be held liable to the state in civil penalties in an amount of at least double and up to five times the amount of any such contribution.”

106. Section 23.6.(1) of Amendment 2 provides:

“Any person who purposely violates the provisions of section 3 of this Article is guilty of a class A misdemeanor.”

107. Each of Amendment 2's references to "section 3 of this Article" actually references Section 23.3 of Article VIII of the Missouri Constitution, not Section 3 of Article VIII. Article VIII, § 3 of the Missouri Constitution refers to the secrecy of ballots, and was not the subject of Amendment 2.

108. On December 1, 2016, the MEC stated on its website that the criminal penalties found in Sections 23.4 and 23.5 apply to violations of Amendment 2.

109. Amendment 2 imposes a three-year statute of limitations for any violation of Section 23.3.

Notwithstanding any other provision of law which bars prosecutions for any offenses other than a felony unless commenced within one year after the commission of the offense, any offense under the provisions of this section may be prosecuted if the indictment be found or prosecution be instituted within three years after the commission of the alleged offense.

Mo. Const. art. VIII, § 23.6.(2).

110. Defendants MEC and Klahr act under color of Missouri law in administering the **Threatened Sanctions**.

111. As discussed below, the enforcement of Amendment 2 under color of state law will violate: (1) Plaintiffs' civil rights of free speech and association, as protected under the First Amendment and incorporated through the Fourteenth Amendment; (2) certain Plaintiffs' right to equal protection under the law, protected under the Fourteenth Amendment (3) HSI's rights as protected under Article IV of the U.S. Constitution; and (4) and certain Plaintiffs' right to Due Process, as protected under the Fifth and Fourteenth Amendments.

112. As discussed below, the threatened enforcement of Amendment 2 under color of state law has violated and will continue to violate (1) Plaintiffs' civil rights of free speech and association, as protected under the First Amendment and incorporated through the Fourteenth Amendment; (2) certain Plaintiffs' right to equal protection under the law, protected under the Fourteenth Amendment (3) HSI's rights as protected under Article IV of the U.S. Constitution; and (4) and certain Plaintiffs' right to Due Process, as protected under the Fifth and Fourteenth Amendments.

VI. Amendment 2 Background

113. On December 2, 2014, Todd Jones submitted to the Secretary of State an initiative petition sample sheet proposing to amend Article VIII of the Missouri Constitution by adding one new section, section 23.

114. The Secretary of State identified the initiative petition as number 2016-007.

115. On January 13, 2015, Secretary of State Jason Kander certified the Official Ballot Title for Amendment 2, comprised of the applicable summary statement and the fiscal note summary. The Official Ballot Title read:

Shall the Missouri Constitution be amended to:

- establish limits on campaign contributions by individuals or entities to political parties, political committees, or committees to elect candidates for state or judicial office;
- prohibit individuals and entities from intentionally concealing the source of such contributions;
- require corporations or labor organizations to meet certain requirements in order to make such contributions; and
- provide a complaint process and penalties for any violations of this amendment?

It is estimated this proposal will increase state government costs by at least \$118,000 annually and have an unknown change in costs for local governmental entities. Any potential impact to revenues for state and local governmental entities is unknown.

116. Amendment 2's ballot language stated that the amendment imposed limits on contributions to PACs as well as candidate committees.

117. The Missouri attorney general approved the legal content and form of Amendment 2's ballot language.

118. Missouri's courts entertained a challenge to the summary statement portion of Amendment 2's ballot language and found that it was fair and sufficient. *See Reevesv. Kander*, 462 S.W.3d 853, 855–56 (Mo. App. W.D. 2015) (describing lower court decision upholding summary statement).

119. On August 4, 2016, Missouri Electric Cooperatives, doing business as Association of Missouri Electric Cooperatives ("AMEC"), David Klindt ("Klindt"), and Legends Bank ("Legends") filed a petition for declaratory judgment and injunctive relief contesting Amendment 2.

120. On August 9, 2016, Secretary of State Jason Kander certified the initiative petition for the November 2016 general election ballot as "Amendment 2."

121. On August 9, 2016, immediately after Secretary of State Jason Kander certified Amendment 2 for inclusion on the November 2016 general election ballot, AMEC, Klindt, and Legends filed an Amended Petition seeking an order to compel Kander to reverse his decision that Amendment 2 was sufficient to be certified for inclusion on the ballot, based on various constitutional arguments.

122. The trial court rejected the constitutional arguments by AMEC, Klindt, and Legends.

123. The Missouri Court of Appeals, Western District, affirmed, but did so on the basis that the constitutional challenges by AMEC, Klindt, and Legends were not ripe for review pre-election.

124. On November 8, 2016, Amendment 2 was adopted by plebiscite.

125. Pursuant to Article XII, § 2(b) of the Missouri Constitution, Amendment 2's effective date was "the end of thirty days after the [November 8, 2016] election." This means that Amendment 2 took effect at the last conceivable instant on December 8, 2016. The MEC publicly stated on its website that the effective date of Amendment 2 is December 8, 2016.

VII. Allegations Common to All Counts

126. The Missouri Constitution's proscription of and threatened punishment for conduct Plaintiffs desire to engage in has established a real, substantial, presently existing controversy admitting of specific relief.

127. Plaintiffs have legally protectable interests at stake because each Plaintiff has a personal interest in engaging in speech, association, and other conduct protected by the United States Constitution.

128. A pre-enforcement challenge under the U.S. Constitution is ripe for judicial determination.

129. Plaintiffs lack an adequate remedy at law to engage in constitutionally protected conduct free from the threat of civil and criminal penalties. No legal process would terminate Plaintiffs' position of uncertainty and insecurity.

130. Plaintiffs will suffer irreparable harm unless Defendants are enjoined. Plaintiffs' loss of constitutional and statutory rights cannot be adequately redressed with damages or recovered at a later date.

131. Absent an injunction from this Court, Plaintiffs will continue to suffer irreparable harm. The Missouri Constitution commands Defendants MEC and Klahr to investigate and enforce unconstitutional restrictions on political speech and association.

132. Plaintiffs fear the **Threatened Sanctions** will be imposed upon them unless the Court permanently enjoins Defendants MEC and Klahr, and their agents who have notice of the injunction, from enforcing unconstitutional restrictions in Section 23, or investigating alleged violations of the same.

COUNT I – THE BAN ON CONTRIBUTIONS TO PACs VIOLATES THE RIGHT TO FREEDOM OF SPEECH, FREEDOM OF ASSOCIATION, AND EQUAL PROTECTION UNDER THE LAW

**The First and Fourteenth Amendments to the U.S. Constitution
(Plaintiffs HSI, Farmers State Bank, Fair Elections, and Freedom PAC)**

133. Plaintiffs incorporate the preceding paragraphs of this Verified Complaint as if fully set forth herein.

134. Section 23.7.(20) provides the following definition of “political action committee” (“PAC”):

(20) “Political action committee”, a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee, political party committee,

campaign committee, exploratory committee, or debt service committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter. Such a committee includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters. Such committee shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures.

135. Section 23.7.(6)(c) provides the following definition of “continuing committee”:

“Continuing committee”, a committee of continuing existence which is not formed, controlled or directed by a candidate, and is a committee other than a candidate committee or campaign committee, whose primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter. “Continuing committee” includes, but is not limited to, any committee organized or sponsored by a business entity, a labor organization, a professional association, a trade or business association, a club or other organization and whose primary purpose is to solicit, accept and use contributions from the members, employees or stockholders of such entity and any individual or group of individuals who accept and use contributions to influence or attempt to influence the action of voters. Such committee shall be formed no later than sixty days prior to the election for which the committee receives contributions or makes expenditures;

136. Section 23.3.(12) imposes a ‘source prohibition’ that prevents entities not listed therein from contributing to PACs:

(12) Political action committees shall only receive contributions from individuals: unions: federal political action committees; and corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, as amended from time to time, and shall be prohibited from receiving contributions from other political action committees[.]

137. Section 23.3.(12) provides an exhaustive and exclusive list of the entities that may contribute to any PAC.

138. Under Amendment 2 and other provisions of Missouri law, corporations, associations, and partnerships formed under chapters 347 to 360, RSMo, are generally permitted to make contributions to PACs.

139. Section 23.3.(12) prohibits several different types of potential donors (collectively, “**Banned PAC Contributors**”) from giving to PACs, including, but not limited to:

- a) Foreign (non-Missouri) corporations;
- b) Foreign (non-Missouri) partnerships;
- c) Foreign (non-Missouri) associations;
- d) Missouri state-chartered banks and trust companies organized under Chapter 362, RSMo;
- e) Missouri loan and investment companies organized under Chapter 368, RSMo;
- f) Missouri savings and loan associations organized under Chapter 369, RSMo;
- g) Missouri credit unions organized under Chapter 370, RSMo;

- h) Missouri development finance corporations organized under Chapter 371, RSMo;
- i) Missouri fraternal benefit societies organized under Chapter 378, RSMo;
- j) Missouri insurance corporations organized under Chapter 379, RSMo;
- k) Missouri county, town and farmers' mutual property insurance companies organized under Chapter 380, RSMo;
- l) Missouri railroad corporations organized under Chapter 388, RSMo;
- m) Missouri telephone and telegraph companies organized under Chapter 392, RSMo;
- n) Missouri cooperative, nonprofit, membership corporations organized under Chapter 394, RSMo;
- o) other political action committees, as defined in Mo. Const. art. VIII, § 23.7(20);
- p) candidate committees, as defined in Mo. Const. art. VIII, § 23.6(b); and
- q) political party committees, as defined in Mo. Const. art. VIII, § 23.7(23).

140. Section 23.3.(16)(c) provides a 'source prohibition' that prevents a "campaign committee, candidate committee, continuing committee, exploratory committee, political party committee, [or] political party" from "knowingly accept[ing] contributions from . . . [a]ny foreign corporation that does not have the authority to transact business in this state pursuant to Chapter 347, RSMo"

141. No foreign corporation can have authority to transact business in the state of Missouri pursuant to Chapter 347, RSMo, as that Chapter only applies to Limited Liability Companies, which are unincorporated associations, not corporations.

142. Sections 23.3.(12) and 23.3.(16)(c) do not further any compelling, substantial, sufficiently important, or legitimate state interest.

143. For example, Section 23.3.(12) prohibits certain Missouri state-chartered banks from contributing to PACs, but nothing in Section 23 prohibits the same contribution by a parent company, a bank-holding company, incorporated as a general for-profit corporation under Chapter 351, RSMo.

144. Section 23.3.(12) prohibits rural electric cooperatives incorporated under Chapter 394, RSMo, from contributing to PACs, whereas Missouri's investor-owned electric utilities are not prohibited from giving to PACs.

145. Sections 23.3.(12) and 23.3.(16)(c) prohibit HSI from contributing to PACs or ballot measure campaign committees, even though HSI has a principal place of business in the state of Missouri, and HSI maintains a certificate of authority to do business in Missouri.

146. As a foreign for-profit corporation, HSI was required to disclose its officers and board members, and did in fact disclose its officers and board members, on its application for certificate of authority to do business in the state of Missouri. *See* Section 351.576, RSMo.

147. In contrast, a newly formed Missouri corporation organized under Chapters 351 or 355, RSMo, is not required to name its board members until the date its

first annual report is due, which for not-for-profit corporations is “August thirty-first of the year following the calendar year in which a domestic corporation was incorporated.” Section 355.856.3, RSMo.

148. HSI and Farmers State Bank are entitled to declaratory relief that Sections 23.3.(12) and 23.3.(16)(c) violate the First and Fourteenth Amendments to the U.S. Constitution and are void to the extent Sections 23.3.(12) and 23.3.(16)(c) prohibit HSI and Farmers State Bank from making contributions to Fair Elections or Freedom PAC.

149. Missouri law also required HSI to name a registered agent in the state of Missouri, as well as disclose its principal place of business. HSI is in compliance with these requirements.

150. Fair Elections and Freedom PAC are entitled to declaratory relief that Sections 23.3.(12) and 23.3.(16)(c) violate the First and Fourteenth Amendments to the U.S. Constitution and are void to the extent Sections 23.3.(12) and 23.3.(16)(c) prohibit Fair Elections or Freedom PAC from accepting contributions from HSI and Farmers State Bank.

151. Sections 23.3.(12) and 23.3.(16)(c) chill substantially more protected free speech than they lawfully restrict and should be declared void as substantially overbroad.

152. HSI, Farmers State Bank, Fair Elections, and Freedom PAC are entitled to permanent injunctive relief prohibiting Defendants MEC and Klahr from enforcing Sections 23.3.(12) or 23.3.(16)(c) to prohibit contributions from HSI or Farmers State Bank to Fair Elections or Freedom PAC.

153. HSI, Farmers State Bank, Fair Elections, and Freedom PAC are entitled to permanent injunctive relief prohibiting Defendants MEC and Klahr from imposing the **Threatened Sanctions** based on an alleged or actual violation of Sections 23.3.(12) or 23.3.(16)(c).

COUNT II – THE BAN ON CONTRIBUTIONS TO PACs BY FOREIGN CORPORATIONS VIOLATES THE PRIVILEGES AND IMMUNITIES CLAUSE IN ARTICLE IV OF THE U.S. CONSTITUTION
Article IV, § 2, Clause 1 of the U.S. Constitution
(Plaintiffs HSI, Fair Elections, and Freedom PAC)

154. Plaintiffs reincorporate the preceding paragraphs as if fully stated herein.

155. Sections 23.3.(12) and 23.3(16) prohibit foreign corporations, partnerships, and associations from donating to PACs; however, nothing in Section 23 imposes similar restrictions on domestic Missouri corporations, partnerships, or associations.

156. The freedom of speech and the freedom of association are fundamental rights.

157. Sections 23.3.(12) and 23.3(16) do not further any identifiable, sufficiently important or substantial state interest.

158. Sections 23.3.(12) and 23.3(16) are not closely related to the advancement of any sufficiently important or substantial state interest, considering other legislative choices available to the state of Missouri that would still permit foreign corporations, partnerships, and associations to make contributions to PACs.

159. HSI is entitled to declaratory relief that Sections 23.3.(12) and 23.3(16) violate the Privileges and Immunities Clause in Article IV of the U.S. Constitution, and

are unconstitutional and void, to the extent Sections 23.3.(12) and 23.3(16) prohibit HSI from making contributions to Fair Elections or Freedom PAC.

160. Fair Elections and Freedom PAC are entitled to declaratory relief that Sections 23.3.(12) and 23.3(16) are unconstitutional under the Privileges and Immunities clause and void to the extent they prohibit Fair Elections and Freedom PAC from accepting contributions from HSI or any foreign corporation, partnership, or association that has authority to transact business in the state of Missouri.

161. HSI, Fair Elections, and Freedom PAC are entitled to permanent injunctive relief prohibiting Defendants MEC and Klahr from imposing the **Threatened Sanctions** based on an alleged or actual violation of Sections 23.3.(12) and 23.3(16), to prohibit contributions from HSI to Fair Elections or Freedom PAC.

**COUNT III – THE BAN ON CONTRIBUTIONS TO INDEPENDENT
EXPENDITURE-ONLY PACs VIOLATES
THE FREEDOMS OF SPEECH AND ASSOCIATION
The First and Fourteenth Amendments to the U.S. Constitution
(Plaintiffs HSI, Farmers State Bank, Freedom PAC, and Fair Elections)**

162. Section 23.7.(20) provides that a committee is defined and treated as a PAC even if the committee only makes independent expenditures.

163. Section 23.7.(6)(c) provides that a committee may be a continuing committee even if the committee only makes independent expenditures.

164. No compelling or sufficiently important state interest supports the prohibitions in Sections 23.3.(12) and 23.3.(16)(c) outlawing contributions from HSI, Farmers State Bank, and Freedom PAC to Fair Elections.

165. HSI, Farmers State Bank, and Freedom PAC are entitled to declaratory relief that Sections 23.3.(12) and 23.3.(16)(c) violate the First and Fourteenth Amendments to the U.S. Constitution to the extent Sections 23.3.(12) and 23.3.(16)(c) prohibit HSI, Farmers State Bank, and Freedom PAC from making contributions to Fair Elections.

166. Fair Elections is entitled to declaratory relief that Sections 23.3.(12) and 23.3.(16)(c) violate the First and Fourteenth Amendments to the U.S. Constitution and are void to the extent Sections 23.3.(12) and 23.3.(16)(c) prohibit Fair Elections from accepting contributions from HSI, Farmers State Bank, and Freedom PAC, or any **Banned PAC Contributor.**

167. HSI, Farmers State Bank, Freedom PAC, and Fair Elections are entitled to permanent injunctive relief prohibiting Defendants MEC and Klahr from imposing the **Threatened Sanctions** based on an alleged or actual violation of Sections 23.3.(12) and 23.3(16), or otherwise to prohibit contributions from HSI, Farmers State Bank, or Freedom PAC to Fair Elections.

**COUNT IV – THE BAN ON CORPORATE AND UNION CONTRIBUTIONS TO
A BALLOT MEASURE CAMPAIGN COMMITTEE VIOLATES THE
FREEDOMS OF SPEECH AND ASSOCIATION
The First and Fourteenth Amendments to the U.S. Constitution
(Plaintiffs ADA, HSI, Farmers State Bank, and Worker Freedom)**

168. Plaintiffs reincorporate the preceding paragraphs as if fully stated herein.

169. Amendment 2 prohibits corporations or unions from making contributions to a campaign committee for the purpose of opposing one or more ballot measures.

170. Section 23.3.(3)(a) provides:

It shall be unlawful for a corporation or labor organization to make contributions to a campaign committee, candidate committee, exploratory committee, political party committee or a political party: except that a corporation or labor organization may establish a continuing committee which may accept contributions or dues from members, officers, directors, employees or security holders.

171. The definition of a campaign committee includes a committee formed for the purpose of supporting or opposing a ballot measure. A campaign committee is defined in Section 23.7.(6)(a) as:

“Campaign committee”, a committee, other than a candidate committee, which shall be formed by an individual or group of individuals to receive contributions or make expenditures and whose sole purpose is to support or oppose the qualification and passage of one or more particular ballot measures in an election or the retention of judges under the nonpartisan court plan, such committee shall be formed no later than thirty days prior to the election for which the committee receives contributions or makes expenditures, and which shall terminate the later of either thirty days after the general election or upon the satisfaction of all committee debt after the general election, except that no committee retiring debt shall engage in any other activities in support of a measure for which the committee was formed[.]

172. Section 23.3.(3) prohibits ADA, HSI, and Farmers State Bank from making contributions to Worker Freedom.

173. No sufficiently important state interest supports the prohibition in Section 23.3.(3) outlawing contributions from ADA, HSI, and Farmers State Bank to Worker Freedom.

174. Section 23.3.(16)(c) prohibits a foreign corporation, including HSI, from making contributions to Worker Freedom, because no foreign corporation can have

authority to transact business in the state of Missouri pursuant to Chapter 347, RSMo, when such chapter only applies to LLCs.

175. No sufficiently important state interest supports the prohibition in Section 23.3.(16)(c) outlawing contributions from HSI to Worker Freedom.

176. ADA, HSI, and Farmers State Bank are entitled to declaratory relief that Sections 23.3.(3) and 23.3.(16)(c) are unconstitutional under the First and Fourteenth Amendments and void to the extent they prohibit ADA, HSI, and Farmers State Bank from making contributions to Worker Freedom.

177. Worker Freedom is entitled to declaratory relief that Sections 23.3.(3) and 23.3.(16)(c) are unconstitutional under the First and Fourteenth Amendments and void to the extent they prohibit Worker Freedom from accepting contributions from ADA, HSI, and Farmers State Bank or any other corporation or union authorized to do business in the state of Missouri.

178. ADA, HSI, Farmers State Bank, and Worker Freedom are entitled to permanent injunctive relief prohibiting Defendants MEC and Klahr from enforcing Sections 23.3.(3) or 23.3.(16)(c) to prohibit contributions from ADA, HSI, or Farmers State Bank to Worker Freedom.

179. ADA, HSI, Farmers State Bank, and Worker Freedom are entitled to permanent injunctive relief prohibiting Defendants MEC and Klahr from imposing the **Threatened Sanctions** based on an alleged or actual violation of Sections 23.3.(3) or 23.3.(16)(c) pertaining to corporate and labor union contributions to ballot measure campaign committees.

**COUNT V – MONETARY LIMITS ON CONTRIBUTIONS “PER ELECTION”
VIOLATE THE FREEDOMS OF SPEECH AND ASSOCIATION
The First and Fourteenth Amendments to the U.S. Constitution
(Plaintiffs John Elliott and Freedom PAC)**

180. Plaintiffs reincorporate the preceding paragraphs as if fully stated herein.

181. Section 23.3.(1) prohibits John Elliott and Freedom PAC from making contributions in excess of \$2,600 per election, regardless of the number of candidates supported or opposed in a given race.

182. Section 23.3.(1) prohibits Freedom PAC from accepting contributions in excess of \$2,600 per election, regardless of the number of candidates supported or opposed in a given race.

183. Section 23.3.(1) prohibits Freedom PAC from accepting contributions in excess of \$2,600 per election, which decreases the amount of contributions Freedom PAC may accept, compared to a \$2,600 “per-candidate, per-election” limit.

184. If John Elliott and Freedom PAC support one candidate in a given election, they may each contribute the maximum amount of \$2,600.

185. If John Elliott and Freedom PAC support two candidates in a given election, they may each contribute the maximum amount of \$2,600, split between two candidates.

186. No sufficiently important state interest exists for limiting contributions made or accepted on a “per election” basis, as opposed to a “per candidate, per election” basis.

187. No sufficiently important state interest supports including contributions made to PACs, including independent expenditure-only PACs, in a person's campaign contribution limit. Only contributions to candidates and candidate committees should count against that limit, in order for the limit to be closely drawn to the state's interest in preventing *quid pro quo* corruption and its appearance.

188. Section 23.3.(1) is not closely drawn to any sufficiently important state interest. Rather, Section 23.3.(1) unnecessarily abridges associational freedoms.

189. Section 23.3.(1) is not closely drawn to preventing *quid pro quo* corruption or its appearance.

190. A total contribution limit that applies irrespective of the number of candidates a person supports or opposes in a given race does not relate to preventing corruption or its appearance.

191. The risk and appearance of corruption are no greater if a person contributes \$2,600 each to multiple candidates in an election, than if that same person is forced to choose how to allocate \$2,600 amongst several candidates the person desires to support.

192. Rather, Section 23.3.(1) is designed to promote, and in fact promotes, leveling—the equalizing of perceived “disproportional level of influence over the political process.” Mo. Const. art. VIII, § 23.2.

193. Missouri lacks any legitimate or sufficiently important state interest in leveling.

194. John Elliott and Freedom PAC are entitled to declaratory relief that Section 23.3.(1) is unconstitutional under the First and Fourteenth Amendments and void

to the extent it limits the amount of contributions John Elliott or Freedom PAC may make on a “per-election” basis.

195. Section 23.3.(1) chills substantially more protected free speech than it lawfully restricts and should be declared void as substantially overbroad.

196. John Elliott and Freedom PAC are entitled to permanent injunctive relief prohibiting Defendants MEC and Klahr from imposing the **Threatened Sanctions** based on an alleged or actual violation of the “per election” limit in Section 23.3.(1). in order to limit the amount of contributions John Elliott and Freedom PAC may make on a “per-election” basis.

197. John Elliott and Freedom PAC are entitled to permanent injunctive relief prohibiting Defendants MEC and Klahr from imposing the **Threatened Sanctions** based on an alleged or actual violation of Section 23.3.(1).

COUNT VI – MONETARY LIMITS ON CONTRIBUTIONS TO PACs THAT ONLY MAKE INDEPENDENT EXPENDITURES VIOLATE THE FREEDOMS OF SPEECH AND ASSOCIATION

**The First and Fourteenth Amendments to the U.S. Constitution
(Plaintiffs ADA, John Elliott, HSI, Farmers State Bank, Freedom PAC, and Fair Elections)**

198. Plaintiffs reincorporate the preceding paragraphs as if fully stated herein.

199. Section 23.3.(1) prohibits ADA, John Elliott, HSI, Farmers State Bank, and Freedom PAC from making contributions to Fair Elections in excess of \$2,600 per election in which Fair Elections will participate, even though Fair Elections does not

make any contributions to candidates and does not engage in any coordination with any candidate, campaign committee, political party, or political party committee.

200. Section 23.3.(1) prohibits Fair Elections from accepting contributions in excess of \$2,600 per election in which Fair Elections will participate.

201. No sufficiently important state interest supports the prohibition in Section 23.3.(1) limiting contributions from ADA, John Elliott, HSI, Farmers State Bank, and Freedom PAC to Fair Elections.

202. ADA, John Elliott, HSI, Farmers State Bank and Freedom PAC are entitled to declaratory relief that Section 23.3.(1) is unconstitutional under the First and Fourteenth Amendments and void to the extent it limits the amount of contributions ADA, John Elliott, HSI, Farmers State Bank, and Freedom PAC may make to Fair Elections.

203. Fair Elections is entitled to declaratory relief that Section 23.3.(1) is unconstitutional under the First and Fourteenth Amendments and void to the extent it prohibits Fair Elections from accepting unlimited contributions from ADA, John Elliott, HSI, Farmers State Bank, Freedom PAC or any other comparable individual, corporation, or PAC.

204. ADA, John Elliott, HSI, Farmers State Bank, Fair Elections and Freedom PAC are entitled to permanent injunctive relief prohibiting Defendants MEC and Klahr from imposing the **Threatened Sanctions** based on an alleged or actual violation of Section 23.3.(1), in order to limit the amount of contributions ADA, John Elliott, HSI, Farmers State Bank, or Freedom PAC may make to Fair Elections.

COUNT VII – CONTRIBUTION LIMITS TO PACs ARE VOID FOR VAGUENESS

**The Fifth and Fourteenth Amendments to the U.S. Constitution
(Plaintiffs John Elliott, Freedom PAC, and Fair Elections)**

205. Plaintiffs reincorporate the preceding paragraphs as if fully stated herein.

206. Section 23.3.(1) does not provide a person of ordinary intelligence fair notice of what is prohibited when making or accepting contributions. First, the limits apply to all contributions made by a person, per race and per election, and within the same race and election, they apply to the aggregate “amount of contributions made by” that person. The limits are not specific to a given candidate or for that matter, to any given recipient at all. This means that the limit does not refresh when the contributor wants to give to a new recipient; a new \$2,600 is not available for giving merely because the donor gives to a different recipient. Additionally, a “contribution” is not merely a transfer from a person to a candidate committee. Rather, a person’s donation to “*any committee,*” including but not limited to a PAC, where that committee is in turn “supporting or opposing candidates,” *also* constitutes a “contribution.” This means that the aggregate \$2,600 limit also includes contributions to PACs. If a person gives to a PAC supporting multiple candidates, the precise amount of the person’s contribution to the PAC that is attributable to each candidate must be known, since this “attributed” amount counts against the donor’s overall \$2,600 limit in that race and election. Likewise, if a person has already given the maximum amount of \$2,600 to a candidate committee, that person will need to know whether it is possible to give any money to a multi-candidate-supporting PAC that also happens to support the candidate. It may be

that the first dollar given to the multi-candidate PAC is an immediate violation of the \$2,600 limit. Or it may be that none of it will count.

207. Additionally, Section 23 does not define how much knowledge of a PAC's goals will result in a contribution to a PAC counting against an individual like John Elliott's per-election contribution limit. For these and other reasons, donors cannot fairly determine whether a donation to a multi-candidate-supporting PAC violates the limits in Section 23.3.(1).

208. Applying the per-election contribution limits in Section 23.3.(1) lacks standards such that the limits authorize and encourage seriously discriminatory enforcement.

209. Accordingly, multi-candidate PACs cannot fairly determine whether a prospective donation violates the limits in Section 23.3.(1) because PACs do not have ready access to information about the amount of other contributions a donor has made to (1) the candidate or (2) other PACs that may support or oppose a candidate in an election.

210. Usually, multi-candidate PACs cannot fairly determine the amount of a prospective donation that will be used to support or oppose a candidate in an election, nor can multi-candidate PACs fairly determine the knowledge or expectations of its donors about the potential use of contributions multi-candidate PACs receive.

211. Section 23.3.(1) fails to establish standards for applying the contribution limits that are sufficient to guard against the arbitrary deprivation of the liberty interests of John Elliott, Freedom PAC, and Fair Elections.

212. The threat of arbitrary enforcement has chilled the speech of John Elliott, Freedom PAC, and Fair Elections.

213. John Elliott is entitled to declaratory relief that Section 23.3.(1) is void for vagueness under the Fifth and Fourteenth Amendments to the U.S. Constitution to the extent it imposes a limit on the amount of contributions made by Mr. Elliott to Freedom PAC.

214. Freedom PAC is entitled to declaratory relief that Section 23.3.(1) is void for vagueness under the Fifth and Fourteenth Amendments to the U.S. Constitution to the extent it prohibits Freedom PAC from accepting unlimited contributions from John Elliott.

215. John Elliott and Freedom PAC are entitled to declaratory relief that Section 23.3.(1) is void for vagueness under the Fifth and Fourteenth Amendments to the U.S. Constitution to the extent it imposes any limit on the amount of contributions made by John Elliott or Freedom PAC to Fair Elections.

216. Fair Elections is entitled to declaratory relief that Section 23.3.(1) is void for vagueness under the Fifth and Fourteenth Amendments to the U.S. Constitution to the extent it prohibits Fair Elections from accepting unlimited contributions from John Elliott or Freedom PAC.

217. John Elliott, Fair Elections, and Freedom PAC are entitled to permanent injunctive relief prohibiting Defendants MEC and Klahr from imposing the **Threatened Sanctions** based on an alleged violation of Section 23.3.(1) in order to limit the amount of contributions from John Elliott to Fair Elections or Freedom PAC.

218. John Elliott, Fair Elections, and Freedom PAC are entitled to permanent injunctive relief prohibiting Defendants MEC and Klahr from imposing the **Threatened Sanctions** based on an alleged violation of Section 23.3.(1) in order to limit the amount of contributions from John Elliott or Freedom PAC to Fair Elections.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court enter judgment in favor of Plaintiffs on all of Plaintiffs' claims, as follows:

(I) Under Count I, that the Court issue an order permanently enjoining Defendants MEC and Klahr, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing Article VIII, §§ 23.3.(12) or 23.3.(16)(c) of the Missouri Constitution to prohibit contributions from HSI or Farmers State Bank to Fair Elections or Freedom PAC, or imposing the **Threatened Sanctions** on any of the foregoing entities based on their alleged or actual violation of these provisions; or, because these provisions are facially unconstitutional, from otherwise imposing the **Threatened Sanctions** based on any person's alleged or actual violation of Article VIII, §§ 23.3.(12) or 23.3.(16)(c);

(II) Under Count II, that the Court issue an order permanently enjoining Defendants MEC and Klahr, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction from enforcing Article VIII, §§ 23.3.(12) or 23.3.(16)(c) of the Missouri Constitution to

prohibit contributions from HSI to Fair Elections or Freedom PAC, or imposing the **Threatened Sanctions** on any of the foregoing entities based on their alleged or actual violation of these provisions;

(III) Under Count III, that the Court issue an order permanently enjoining Defendants MEC and Klahr, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction from enforcing Article VIII, §§ 23.3.(12) or 23.3.(16)(c) of the Missouri Constitution to prohibit contributions from HSI, Farmers State Bank, or Freedom PAC to Fair Elections, or imposing the **Threatened Sanctions** on any of the foregoing entities based on their alleged or actual violation of these provisions;

(IV) Under Count IV, that the Court issue an order permanently enjoining Defendants MEC and Klahr, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction from enforcing Article VIII, §§ 23.3.(3) or 23.3.(16)(c) to prohibit contributions from ADA, HSI, or Farmers State Bank to Worker Freedom; or imposing the **Threatened Sanctions** on any of the foregoing entities based on their alleged or actual violation of these provisions;

(V) Under Count V, that the Court issue an order permanently enjoining Defendants MEC and Klahr, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction from enforcing Article VIII, § 23.3.(1) to limit the amount of contributions John Elliott and Freedom PAC may make on a “per-election” basis; or imposing the **Threatened**

Sanctions on any of the foregoing entities based on their alleged or actual violation of these provisions; or, because these provisions are facially unconstitutional, from otherwise imposing the **Threatened Sanctions** based on any person's alleged or actual violation of Article VIII, § 23.3.(1);

(VI) Under Count VI, that the Court issue an order permanently enjoining Defendants MEC and Klahr, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction from enforcing Article VIII, § 23.3.(1) in order to limit the amount of contributions ADA, John Elliott, HSI, Farmers State Bank, or Freedom PAC may make to Fair Elections; or imposing the **Threatened Sanctions** on any of the foregoing entities based on their alleged or actual violation of these provisions;

(VII) Under Count VII, that the Court issue an order permanently enjoining Defendants MEC and Klahr, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction from enforcing Article VIII, § 23.3.(1) in order to: limit the amount of contributions from John Elliott to Fair Elections or Freedom PAC; or limit the amount of contributions from John Elliott or Freedom PAC to Fair Elections; or imposing the **Threatened Sanctions** on any of the foregoing entities based on their alleged or actual violation of these provisions;

(VIII) That the Court issue declaratory relief consistent with the averments in Counts I through VII and this prayer for relief;

(IX) That Plaintiffs be granted an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and 28 U.S.C. § 2202, or other applicable provision; and

(X) That Plaintiffs recover such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23rd day of December, 2016.

GRAVES GARRETT, LLC

/s/ Edward D. Greim _____

Todd P. Graves (Mo. Bar #41319)
Edward D. Greim (Mo. Bar #54034)
Alan T. Simpson (Mo. Bar #65183)
1100 Main Street, Suite 2700
Kansas City, Missouri 64105
Tel.: (816) 256-3181
Fax: (816) 222-0534
tgraves@gravesgarrett.com
edgreim@gravesgarrett.com
asimpson@gravesgarrett.com

Attorneys for Plaintiffs

Verification

I, James Thomas, III, declare as follows:

1. I am the treasurer of three Plaintiffs in the present case and a citizen of the United States of America. I am a citizen and taxpayer of the state of Missouri.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory Judgment, Permanent Injunction, and Other Relief, and if called on to testify I would competently testify as to the matters stated herein.

3. I have personal knowledge of Free and Fair Election Fund, its activities, and its intentions, including those set out in the foregoing Verified Complaint for Declaratory Judgment, Permanent Injunction, and Other Relief, and if called on to testify I would competently testify as to the matters stated herein.

4. I have personal knowledge of Freedom PAC, its activities, and its intentions, including those set out in the foregoing Verified Complaint for Declaratory Judgment, Permanent Injunction, and Other Relief, and if called on to testify I would competently testify as to the matters stated herein.

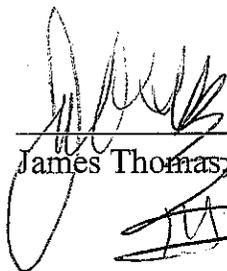
5. I have personal knowledge of Missourians for Worker Freedom, its activities, and its intentions, including those set out in the foregoing Verified Complaint for Declaratory Judgment, Permanent Injunction, and Other Relief, and if called on to testify I would competently testify as to the matters stated herein.

6. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning myself, my activities,

and my intentions are true and correct, as are the factual statements concerning Free and Fair Election Fund, its activities, and its intentions; Freedom PAC, its activities, and its intentions; and Missourians for Worker Freedom, its activities, and its intentions.

28 U.S.C. § 1746.

Executed on December 23, 2016.



James Thomas III


Verification

I, John Elliott, declare as follows:

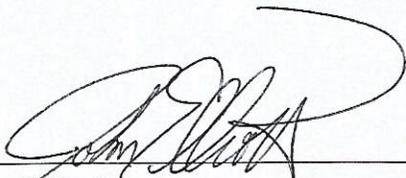
1. I am a Plaintiff in the present case and a citizen of the United States of America. I am a citizen and taxpayer of the state of Missouri. I also am a director of Plaintiff American Democracy Alliance.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory Judgment, Permanent Injunction, and Other Relief, and if called on to testify I would competently testify as to the matters stated herein.

3. I have personal knowledge of American Democracy Alliance, its activities, and its intentions, including those set out in the foregoing Verified Complaint for Declaratory Judgment, Permanent Injunction, and Other Relief, and if called on to testify I would competently testify as to the matters stated herein.

4. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning myself, my activities, and my intentions are true and correct, as are the factual statements concerning American Democracy Alliance, its activities, and its intentions. 28 U.S.C. § 1746.

Executed on December 22, 2016.



John Elliott

Verification

I, Troy Elbert, declare as follows:

1. I am a citizen of the United States of America. I am a citizen and taxpayer of the state of Missouri. I also am a President of Plaintiff Herzog Services, Inc.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory Judgment, Permanent Injunction, and Other Relief, and if called on to testify I would competently testify as to the matters stated herein.

3. I have personal knowledge of Herzog Services, Inc., its activities, and its intentions, including those set out in the foregoing Verified Complaint for Declaratory Judgment, Permanent Injunction, and Other Relief, and if called on to testify I would competently testify as to the matters stated herein.

4. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning myself, my activities, and my intentions are true and correct, as are the factual statements concerning Herzog Services, Inc., its activities, and its intentions. 28 U.S.C. § 1746.

Executed on December 23, 2016.



Signed Name

Troy Elbert

Printed Name

Verification

I, R. Michael Poland, declare as follows:

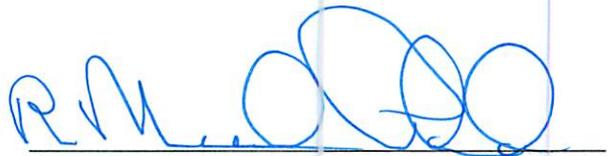
1. I am a citizen of the United States of America. I am a citizen and taxpayer of the state of Missouri. I also am President of Plaintiff Farmers State Bank.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing Verified Complaint for Declaratory Judgment, Permanent Injunction, and Other Relief, and if called on to testify I would competently testify as to the matters stated herein.

3. I have personal knowledge of Farmers State Bank, its activities, and its intentions, including those set out in the foregoing Verified Complaint for Declaratory Judgment, Permanent Injunction, and Other Relief, and if called on to testify I would competently testify as to the matters stated herein.

4. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning myself, my activities, and my intentions are true and correct, as are the factual statements concerning Farmers State Bank, its activities, and its intentions. 28 U.S.C. § 1746.

Executed on December 28, 2016.



Signed Name



Printed Name