

**FEDERAL ELECTION COMMISSION****FIRST GENERAL COUNSEL'S REPORT****MUR 7881**

DATE COMPLAINT FILED: Feb. 23, 2021

DATE OF NOTIFICATIONS: Mar. 1, 2021

DATE OF LAST RESPONSE: Apr. 16, 2021

DATE ACTIVATED: May 25, 2021

EXPIRATION OF SOL: Sept. 23 – Oct. 15, 2025

ELECTION CYCLE: 2020

**COMPLAINANT:**

Jay Stone

**RESPONDENTS:**USC Schwarzenegger Institute for State and Global  
Policy

Arnold Schwarzenegger

Carol Folt

Dana Goldman

Christian Grose

Conyers Davis

**RELEVANT STATUTES:**

52 U.S.C. § 30116(a)(1)(A)

52 U.S.C. § 30118(a)

**INTERNAL REPORTS CHECKED:**

None

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint alleges that grants funded by Arnold Schwarzenegger and distributed by the University of Southern California Schwarzenegger Institute for State and Global Policy (the “Institute”) constituted excessive in-kind contributions from Schwarzenegger to Joe Biden’s 2020 principal campaign committee, Biden for President, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint also raises potential allegations that the grants were prohibited corporate in-kind contributions from the Institute to Biden for President. Schwarzenegger donated \$2.5 million to the Institute, which the Institute then used to

1 make grants to state and local election administrators to help them address the challenges of  
2 holding an election during the COVID-19 pandemic. The Complaint, however, alleges that the  
3 true purpose of the grants was to increase votes for Biden in swing states to help him win the  
4 election. The Complaint further alleges that Schwarzenegger remained in control of the funds  
5 after he made the donation to the Institute.

6 Respondents deny the allegations, asserting that the grants were made solely for the  
7 purpose of increasing voter access in jurisdictions with demonstrated financial need, and not to  
8 influence the outcome of any federal election. Further, Respondents contend that the Institute  
9 awarded the grants based on objective criteria to states previously subject to Section V of the  
10 Voting Rights Act, and that the Institute ultimately awarded grants to all eligible applicants,  
11 including both majority Republican and majority Democrat counties.

12 As discussed below, the available information does not provide a reasonable basis to  
13 conclude that Respondents funded or awarded the grants at issue for the purpose of influencing a  
14 federal election. The Complaint's chief support for the allegations is essentially limited to the  
15 identities of the grant recipients, which included ten counties in Georgia and one in Arizona that  
16 were apparently important to Biden winning those states. However, several of these counties  
17 were historically Republican-leaning, and the Institute also made 22 additional grants to counties  
18 in other states, including states won by Biden's opponent, Donald Trump, and to counties in  
19 those states that were also historically Republican-leaning. One such state, of which ten counties  
20 received grants, was North Carolina. The grants in North Carolina, a swing state, to historically  
21 Republican-leaning counties appear to contradict the supposed purpose of helping Biden win the  
22 election, as alleged by the Complaint. Furthermore, regardless of Respondents' purpose for

1 awarding the grants, there is no indication that they coordinated with any candidate or  
2 committee.

3           Accordingly, we recommend that the Commission dismiss the allegation that  
4 Schwarzenegger made an excessive individual contribution, in violation of 52 U.S.C.  
5 § 30116(a)(1)(A). In addition, we recommend that the Commission dismiss the allegations that  
6 the Institute made, and Institute officials Conyers Davis, Carol Folt, Dana Goldman, and  
7 Christian Grose impermissibly consented to, prohibited corporate contributions, in violation of  
8 52 U.S.C. § 30118(a).

## 9 **II. FACTUAL BACKGROUND**

10           Arnold Schwarzenegger is a movie star and champion bodybuilder, known professionally  
11 as the “Terminator,” who also served as the 38th governor of California.<sup>1</sup> Schwarzenegger is  
12 presently the Governor Downey Professor of State and Global Policy at the University of  
13 Southern California (“USC”) and Chairman of the Institute.<sup>2</sup> In 2012, Schwarzenegger  
14 committed \$20 million of his personal funds to USC and formed the Institute for the stated  
15 purpose of seeking bipartisan solutions to various public policy issues.<sup>3</sup> The Institute is a part of  
16 USC’s School of Public Policy, which is a 501(c)(3) non-profit corporation.<sup>4</sup>

17           On September 23, 2020, the Institute announced a grant program for local election  
18 officials throughout the country to receive funding to assist with the challenges related to

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<sup>1</sup> Compl. at 29 (Feb. 23, 2021).

<sup>2</sup> *Id.* at 6.

<sup>3</sup> Carla Rivera, *USC And Arnold Schwarzenegger To Launch Policy Think Tank*, L.A. TIMES (Aug. 2, 2012), <https://www.latimes.com/local/la-xpm-2012-aug-02-la-me-0802-usc-gift-20120802-story.html>.

<sup>4</sup> Resp. at 3 (Apr. 16, 2021).

1 opening and staffing polling sites, COVID-19, and the election.<sup>5</sup> The grants were funded by a  
2 \$2.5 million donation from Schwarzenegger<sup>6</sup> and were distributed to 33 counties in eight states.<sup>7</sup>  
3 Schwarzenegger wrote an open letter, posted on the grant program's website, that announced the  
4 grants and described the motivation behind funding the program:

5 I am making grants available for local and state elections officials who want to reopen  
6 polling stations they closed because of a lack of funding. These grants are completely  
7 non-partisan and will be offered to those who demonstrate the greatest need and ability to  
8 close gaps in voting access. I don't care if you are an independent authority, a  
9 Democratic elections official, or a Republican elections official — I just don't want a  
10 single American to lose their ability to vote because of a lack of funding.<sup>8</sup>  
11

12 The grant application form echoed Schwarzenegger's letter, stating that the "awarded  
13 grants are non-partisan and will be awarded to those who demonstrate the greatest need and  
14 ability to close gaps in voting access."<sup>9</sup>

15 Carol Folt is the President of USC.<sup>10</sup> Dana Goldman is the interim Dean of USC's  
16 School of Public Policy.<sup>11</sup> Christian Grose is Academic Director of the Institute and oversaw the

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<sup>5</sup> USC Schwarzenegger Institute Initiates Democracy Grants for Voting Access and Election Administration, USC SOL PRICE SCHOOL OF PUBLIC POLICY, <https://priceschool.usc.edu/democracy-grants-for-voting-access-and-election-administration/> (last visited Aug. 3, 2021).

<sup>6</sup> Compl. at 2.

<sup>7</sup> *Id.* at 9, 26 (indicating that the Institute awarded grants to 33 counties in eight states: Alabama (1), Arizona (1), Georgia (10), Mississippi (1), North Carolina (10), South Carolina (2), Texas (2), Virginia (6)). The Complaint provides information that the Institute awarded a total of \$1,745,636 to twelve specific counties and states that the amounts for the remaining 21 counties is presently unknown. *Id.* at 20-22.

<sup>8</sup> Arnold Schwarzenegger's Letter to Election Officials, USC SCHWARZENEGGER INSTITUTE, <https://pollingaccessgrants.org/> (last visited Aug 11, 2021).

<sup>9</sup> Democracy Grants for Voting Access & Election Administration: Call for Proposals, USC SCHWARZENEGGER INSTITUTE, <https://web.archive.org/web/20201007000853/https://pollingaccessgrants.org/> (July 2, 2021).

<sup>10</sup> Carol Folt Biography, USC OFFICE OF THE PRESIDENT, <https://www.president.usc.edu/biography/> (last visited Aug. 3, 2021).

<sup>11</sup> Dana Goldman, USC SOL PRICE SCHOOL OF PUBLIC POLICY, <https://priceschool.usc.edu/people/dana-goldman/> (last visited Aug. 3, 2021).

1 election grants program.<sup>12</sup> Conyers Davis is the Global Director of the Institute and participated  
2 in the grant awards process.<sup>13</sup> Schwarzenegger, the Institute, Folt, Goldman, Grose, and Davis  
3 together filed a joint Response in this matter denying the allegations.<sup>14</sup>

4 The Complaint alleges that the true purpose of the election grants program was for  
5 Schwarzenegger to make “partisan election grants to settle his personal and political scores with  
6 Donald Trump,” and that the “election grants were meant to hide his campaign contributions to  
7 Joe Biden.”<sup>15</sup> In support of this contention, the Complaint asserts that of the 33 election grants  
8 awarded by the Institute, ten were awarded to historically Democratic-leaning counties in  
9 Georgia, and one to Maricopa County, Arizona, and were key to the outcome, in favor of Biden,  
10 in those counties.<sup>16</sup> However, a review of public election results from those ten counties in  
11 Georgia indicates that, in fact, six were historically Democratic-leaning, two were historically  
12 Republican-leaning, and two were historically mixed.<sup>17</sup>

13 The Complaint further alleges that that Respondents specifically solicited the ten counties  
14 in Georgia and Maricopa County, Arizona, to apply for grants as a form of “gerrymandering,”  
15 whereby “Schwarzenegger deliberately packed money into Democratic counties because he

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<sup>12</sup> About the Institute: Our Team, USC SCHWARZENEGGER INSTITUTE, <http://schwarzeneggerinstitute.com/about-the-institute/about-the-institute-leadership> (last visited Aug. 3, 2021); Jordan Wilkie, *Concerns About Private Funding For Elections Have Little Grounding In Truth*, CAROLINA PUBLIC PRESS (June 15, 2021), <https://carolina-publicpress.org/46529/concerns-about-private-funding-for-elections-have-little-grounding-in-truth/erinstitute.com/about-the-institute/about-the-institute-leadership>.

<sup>13</sup> Compl. at 3.

<sup>14</sup> Resp. at 1.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.* at 9-16.

<sup>17</sup> See 2012 Georgia Presidential Results, POLITICO (Nov. 19, 2012), <https://www.politico.com/2012-election/results/president/georgia/>; 2016 Georgia Presidential Election Results, POLITICO (Dec. 13, 2016), <https://www.politico.com/2016-election/results/map/president/georgia/>; 2020 Georgia Counties Election Results, POLITICO, <https://www.politico.com/2020-election/results/georgia/> (last visited Aug. 24, 2021).

1 wanted to increase Biden's statewide votes,"<sup>18</sup> and that the Institute's public claims of making  
2 the grant program widely available were untrue.<sup>19</sup> As additional support for the apparent  
3 political motivations in awarding the grants, the Complaint points to Schwarzenegger's public  
4 comments disparaging Trump and his candidacy, and news reports concerning a dispute between  
5 Schwarzenegger and Trump.<sup>20</sup>

6 And, in order to "cover-up" these targeted grants, the Complaint alleges that the Institute  
7 awarded grants to ten historically Republican-leaning counties in North Carolina,<sup>21</sup> asserting that  
8 "Georgia was a swing state and in play, whereas North Carolina was not."<sup>22</sup> However, based on  
9 a review of historic election results and public coverage of the 2020 presidential election, this is  
10 a questionable characterization of North Carolina's status.<sup>23</sup> The Institute distributed 12

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<sup>18</sup> Compl. at 3-4, 13-14.

<sup>19</sup> *Id.* at 3-4.

<sup>20</sup> Compl. at 2. The Complaint states that Schwarzenegger and Donald Trump have engaged in a public feud with each other originating with Schwarzenegger's allegedly unsuccessful replacement of Trump on the *Celebrity Apprentice* television show. *Id.* at 4-5, Ex. 2 (citing Ashley Boucher, *Arnold Schwarzenegger Claps Back After Donald Trump Digs at Him Over Celebrity Apprentice Ratings*, PEOPLE, (July 11, 2019), <https://www.yahoo.com/lifestyle/arnold-schwarzenegger-says-im-still-235923455.html>).

<sup>21</sup> A review of public election results from those ten counties in North Carolina indicates that two were historically Democratic-leaning and eight historically Republican-leaning. *See* 2012 North Carolina Presidential Election Results, POLITICO (Nov. 19, 2012), <https://www.politico.com/2012-election/results/president/north-carolina/>; 2016 North Carolina Presidential Election Results, POLITICO (Dec. 13, 2016), <https://www.politico.com/2016-election/results/map/president/north-carolina/>; 2020 North Carolina County Results, POLITICO, <https://www.politico.com/2020-election/results/north-carolina/> (last visited Aug. 24, 2021).

<sup>22</sup> Resp. at 16-18; *see* List of Grant Recipients, USC SCHWARZENEGGER INSTITUTE, <https://pollingaccessgrants.org/> (last visited Aug. 11, 2021).

<sup>23</sup> Kevin Breuninger, *Here's Why Swing-State North Carolina Is 'Smack In The Middle' Of The 2020 Election*, CNBC (Oct. 10, 2020), <https://www.cnbc.com/2020/10/20/2020-election-north-carolina-swing-state.html>; *How North Carolina Became A Swing State*, PBS NEWS HOUR (Aug. 24, 2019), <https://www.pbs.org/newshour/show/how-north-carolina-became-a-swing-state>; Kelsey Walsh, *North Carolina To Be A Crucial Battleground State In 2020*, ABC NEWS (Aug. 24, 2020), <https://abcnews.go.com/Politics/north-carolina-crucial-battleground-state-2020/story?id=72544898>; 2012 North Carolina Presidential Election Results, POLITICO (Nov. 19, 2012), <https://www.politico.com/2012-election/results/president/north-carolina/>; 2016 North Carolina Presidential Election Results, POLITICO (Dec. 13, 2016), <https://www.politico.com/2016-election/results/map/president/north-carolina/>; 2020 North Carolina County Results, POLITICO <https://www.politico.com/2020-election/results/north-carolina/> (last visited Aug. 24, 2021).

- 1 additional grants to counties in Texas,<sup>24</sup> Mississippi,<sup>25</sup> Alabama,<sup>26</sup> Virginia,<sup>27</sup> and South
- 2 Carolina,<sup>28</sup> representing five historically Democratic-leaning counties, three historically
- 3 Republican-leaning counties, and three historically mixed counties. The Complaint does not

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<sup>24</sup> Cameron and Young counties were the two grant recipients in Texas. Voters in Cameron County have historically voted Democrat with 65% of the vote for Obama in 2012, 69% of the vote for Clinton in 2016, and 56% of the vote for Biden in 2020. *See* Cameron County, Texas General Elections Results for 2012, <https://www.cameroncounty.us/elections/wp-content/uploads/2020/01/Gen2012Summary.pdf>; Cameron County, Texas General Elections Results for 2016, <https://www.cameroncounty.us/elections/wp-content/uploads/2020/11/20201110155934606.pdf>; Cameron County, Texas General Elections Results for 2020 <https://www.cameroncounty.us/elections/wp-content/uploads/2018/03/2016-GENERAL-SUMMARY.pdf>. Voters in Young County have historically voted Republican with 85.1% for Romney in 2012, 84% of the vote for Trump in 2016, 86% of the vote for Trump in 2020. *See* 2012 Texas Presidential Results, POLITICO (Nov. 19, 2012), [https://www.politico.com/2012-election/results/president/texas/Young\\_County](https://www.politico.com/2012-election/results/president/texas/Young_County), Texas 2016 General Election Results, (Nov. 8, 2016), <http://www.co.young.tx.us/upload/page/2681/2016%20general%20canvass.pdf>; Young County, Texas 2020 General Election Results, (Nov. 3, 2020), <http://www.co.young.tx.us/upload/page/2681/FINAL.Canvass%20Results-11-13-2020%2008-14-08%20AM.pdf>.

<sup>25</sup> Hinds County, Mississippi was the one grant recipient in Mississippi, and voters in Hinds County have historically voted more favorably for the Democrat presidential candidate with 72% for Obama in 2012, 71% for Clinton in 2016, 74% of the vote for Biden in 2020. *See* Hinds County, Mississippi General Election Results (Nov. 6, 2012) <https://www.co.hinds.ms.us/pgs/elections/20121106-General-totals.txt>; Hinds County, Mississippi General Election Results (Nov. 8, 2016), <https://www.co.hinds.ms.us/pgs/elections/11102016Results.txt>; Hinds County, Mississippi General Election Results (Nov. 3, 2020), [https://www.co.hinds.ms.us/pgs/elections/20201103\\_Summary\\_Report.pdf](https://www.co.hinds.ms.us/pgs/elections/20201103_Summary_Report.pdf).

<sup>26</sup> Perry County Alabama was the one grant recipient in Alabama, and voters in Perry County have historically voted more favorably for the Democrat presidential candidate with 75% of the vote for Obama in 2012, 73% of the vote for Clinton in 2016 and 74% of the vote for Biden in 2020. *See* 2012 Alabama Presidential Results, POLITICO (Nov. 19, 2012), <https://www.politico.com/2012-election/results/president/alabama/>; 2016 Alabama Presidential Results, POLITICO (Dec. 13, 2016), <https://www.politico.com/2016-election/results/map/president/alabama/>; Alabama Presidential Election Results 2020, NBC NEWS (Mar. 6, 2021), <https://www.nbcnews.com/politics/2020-elections/alabama-president-results>.

<sup>27</sup> Voters in four of the six counties in Virginia that received grants voted more favorably for the Republican presidential candidate consistently since 2012, while voters in two counties have a mixed history voting more favorably for the Republican presidential candidate in two out of the three past presidential elections. *See* 2012 Virginia Presidential Election Results, POLITICO (Nov. 19, 2012), <https://www.politico.com/2012-election/results/president/virginia/>; 2016 Virginia Presidential Election Results, POLITICO (Dec. 13, 2016), <https://www.politico.com/2016-election/results/map/president/virginia/>; Virginia Presidential Race 2020, POLITICO <https://www.politico.com/2020-election/results/virginia/> (last visited Aug. 12, 2021).

<sup>28</sup> Barnwell County, South Carolina was the one grant recipient in South Carolina. Voters in South Carolina have historically voted more favorably for the Republican presidential candidate in the past three Presidential elections. Barnwell County has been mixed with 52.3% for Obama in 2012, 51.6% for Trump in 2016, 53.2% of the vote for Trump in 2020. *See* 2012 South Carolina Presidential Results, POLITICO (Nov. 19, 2012), <https://www.politico.com/2012-election/results/president/south-carolina/>; 2016 South Carolina Presidential Results, POLITICO (Dec. 13, 2016), <https://www.politico.com/2016-election/results/map/president/south-carolina/>; 2020 South Carolina Presidential Results, POLITICO <https://www.politico.com/2020-election/results/south-carolina/> (last visited Aug. 12, 2021).

1 specify any theory as to why those other 12 counties were awarded grants or how they may have  
2 factored into the Institute's alleged purpose of helping Biden win the election.<sup>29</sup>

3         The Response contends that grantees were determined by a "robust application process"  
4 and that "[e]ach grant application was reviewed by a committee of experts, including USC  
5 faculty, who determined each county's eligibility with key program criteria and demonstrated  
6 financial need."<sup>30</sup> The Institute's grant application stated that the grants would be allocated to  
7 "jurisdictions needing support for the operation of polling."<sup>31</sup> The application further required  
8 that the recipients be located in states previously covered by Section V of the Voting Rights Act,  
9 which thereby limited the pool of potential recipients to 15 states.<sup>32</sup> More specifically, the grant  
10 application form stated that applications would be assessed based on the grantee's ability to  
11 "open or re-open physical polling places" or infrastructure for vote-by-mail, and a demonstrated  
12 need and ability to increase voting access for "populations otherwise facing the greatest  
13 difficulty in casting a valid ballot."<sup>33</sup>

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<sup>29</sup> *Id.* at 21-22; *see* List of Grant Recipients, USC SCHWARZENEGGER INSTITUTE, <https://pollingaccessgrants.org/> (last visited Aug. 11, 2021).

<sup>30</sup> Resp. at 2.

<sup>31</sup> Democracy Grants for Voting Access & Election Administration: Call for Proposals, USC SCHWARZENEGGER INSTITUTE, <https://web.archive.org/web/20201007000853/https://pollingaccessgrants.org/> (last visited Aug. 11, 2021).

<sup>32</sup> Resp. at 2-3; *see also* Democracy Grants for Voting Access & Election Administration: Call for Proposals, USC SCHWARZENEGGER INSTITUTE, <https://web.archive.org/web/20201007000853/https://pollingaccessgrants.org/> (last visited Aug. 11, 2021).

<sup>33</sup> Democracy Grants for Voting Access & Election Administration: Call for Proposals, USC SCHWARZENEGGER INSTITUTE, <https://web.archive.org/web/20201007000853/https://pollingaccessgrants.org/> (last visited Aug. 11, 2021).



1 According to the Response, every eligible county that applied was awarded a grant.<sup>34</sup>  
 2 The Institute announced the grants on the Institute's website,<sup>35</sup> on the USC Sol Price School of  
 3 Public Policy website,<sup>36</sup> the grant program's own website,<sup>37</sup> and on Schwarzenegger's Twitter  
 4 account.<sup>38</sup> The grant program was also widely covered by national news media.<sup>39</sup>

5 The Response asserts that the Institute's grants were not political contributions under the  
 6 Act because their purpose was to increase nonpartisan voter access and not to influence a federal  
 7 election.<sup>40</sup> More specifically, the Response argues that the Complaint misdescribes the political  
 8 makeup of the recipients and that, in fact, the counties receiving grants did not lean Democratic  
 9 or pro-Biden as heavily as claimed by the Complaint.<sup>41</sup> For instance, the Response states that  
 10 "one-third of the grants the Institute awarded in Georgia went to counties carried by President

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<sup>34</sup> Resp. at 4. Respondents assert that each grant application was subject to a three-step nonpartisan review process: (1) a committee of USC faculty and staff; (2) individual experts in the field of election administration, voting rights and public policy; and (3) an objective criterion review of population size and the total amount of its requested budget. *See id.*

<sup>35</sup> *Schwarzenegger Institute Announces Democracy Grants for Voting Access & Election Administration*, USC SCHWARZENEGGER INSTITUTE (Sept. 25, 2020), <http://schwarzenegger.usc.edu/institute-in-action/article/schwarzenegger-institute-announces-democracy-grants-for-voting-access-elect>.

<sup>36</sup> *USC Schwarzenegger Institute Initiates Democracy Grants for Voting Access and Election Administration*, USC SOL PRICE SCHOOL OF PUBLIC POLICY, (<https://priceschool.usc.edu/democracy-grants-for-voting-access-and-election-administration/>) (last visited Aug. 12, 2021).

<sup>37</sup> *See supra* note 8.

<sup>38</sup> *See* Arnold (@Schwarzenegger), TWITTER (SEPT. 23, 2020, 5:30 PM), <https://twitter.com/schwarzenegger/status/1308881570045071361?lang=en>. Schwarzenegger has 4.9 million followers on his verified Twitter account.

<sup>39</sup> *See, e.g.*, Jessica Napoli, *Arnold Schwarzenegger Offers To Pay For Reopening Of Polling Places In The South: 'I'm A Fanatic About Voting'*, FOX NEWS, <https://www.foxnews.com/entertainment/arnold-schwarzenegger-pay-reopening-polling-places-south> (Sept. 3, 2020); Mike Murphy, MARKET WATCH, *Voting 'Fanatic' Arnold Schwarzenegger Offers To Pay To Reopen Closed Polling Places*, <https://www.marketwatch.com/story/voting-fanatic-arnold-schwarzenegger-offers-to-pay-to-reopen-closed-polling-places-2020-09-03>; Matt Perez, *Schwarzenegger Offers Local Election Officials Funding To Reopen Polling Places*, FORBES (Sept. 23, 2020), <https://www.forbes.com/sites/mattperez/2020/09/23/schwarzenegger-offers-local-election-officials-funding-to-reopen-polling-places/?sh=455e6dba443b>.

<sup>40</sup> Resp. at 2-3; *Democracy Grants for Voting Access & Election Administration: Call for Proposals*, USC SCHWARZENEGGER INSTITUTE, <https://web.archive.org/web/20201007000853/https://pollingaccessgrants.org/> (last visited Aug. 3, 2021).

<sup>41</sup> *See* Resp. at 4-6.

1 Trump,” and that “President Trump carried eight of the ten North Carolina counties that applied  
2 for and received grants.”<sup>42</sup> Moreover, the Complaint states that, given the history of voting  
3 rights in many of the recipient counties, it is “unsurprising and entirely appropriate” that they  
4 applied for the grants.<sup>43</sup>

### 5 **III. LEGAL ANALYSIS**

6 Under the Act, a “contribution” includes any “gift, subscription, loan, advance, or deposit  
7 of money or anything of value made by any person for the purpose of influencing any election  
8 for Federal office.”<sup>44</sup> The term “anything of value” includes all in-kind contributions, such as  
9 “the provision of any goods or services without charge or at a charge that is less than the usual  
10 and normal charge.”<sup>45</sup> In-kind contributions include “coordinated expenditures,” that is,  
11 expenditures “made by any person in cooperation, consultation or in concert, with, or at the  
12 request or suggestion of, a candidate, his [or her] authorized committees, or their agents.”<sup>46</sup>  
13 They also include coordinated communications, as determined by a three-part test set out in the  
14 Commission’s regulations.<sup>47</sup>

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<sup>42</sup> *Id.* at 5-6.

<sup>43</sup> *Id.* at 5 (“A June 2020 analysis showed that polling closures in Georgia, Louisiana, Mississippi, and South Carolina -- all states with substantial Black populations and previously subject to Section V of the Voting Rights Act -- caused the number of voters assigned to a polling place to significantly increase in the years after the Court's decision in Shelby County.”).

<sup>44</sup> 52 U.S.C. § 30101(8); *accord* 11 C.F.R. § 100.52(a).

<sup>45</sup> 11 C.F.R. § 100.52(d) (listing examples of goods or services, such as securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists).

<sup>46</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also* 52 U.S.C. § 30101(9)(A)(i) (defining the term “expenditure” to include “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office”).

<sup>47</sup> A communication is coordinated and thus treated as an in-kind contribution when it is: (1) paid for by a third-party; (2) satisfies one of five content standards; and (3) satisfies one of five conduct standards. 11 C.F.R. § 109.21(a).

1           The Act prohibits corporations from making contributions to federal candidates, and  
2 likewise bars candidates, political committees (other than independent expenditure-only political  
3 committees and committees with hybrid accounts), and other persons, from knowingly accepting  
4 or receiving corporate contributions.<sup>48</sup> The Act also provides that “any officer or any director of  
5 any corporation” shall not “consent to any [prohibited] contribution or expenditure by the  
6 corporation.”<sup>49</sup> Further, the Act limits the amount an individual may contribute to an authorized  
7 committee per election, which was \$2,800 during the 2020 cycle.<sup>50</sup>

8           **A.     The Commission Should Dismiss the Allegations that Schwarzenegger Made**  
9           **an Excessive Individual Contribution and that the Institute Made a**  
10           **Prohibited Corporate Contribution**

11           The Complaint alleges that the grants funded by Schwarzenegger and made by the  
12 Institute were strategically awarded to counties in Georgia and Arizona to help Biden win those  
13 states and that the remaining recipients in other states were designed to conceal the true objective  
14 of the grant program and, therefore, that the grants should be treated as in-kind contributions to  
15 Biden for President.<sup>51</sup>

16           The available information does not reasonably suggest that Respondents acted with the  
17 purpose of influencing a federal election. As a threshold matter, Respondents maintain that the  
18 Institute awarded grants to all counties that applied and satisfied the criteria to show that they

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<sup>48</sup> 52 U.S.C. § 30118(a); *accord* 11 C.F.R. § 114.2(a), (d). For purposes of the corporate contribution ban, the Act defines contribution in section 30118 to include the general definition set out above, as well as “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section.” 52 U.S.C. § 30118(b)(2).

<sup>49</sup> 52 U.S.C. § 30118(a).

<sup>50</sup> 52 U.S.C. § 30116(a)(1)(A); FEC, *Contribution Limits for 2019-2020*, <https://www.fec.gov/updates/contribution-limits-2019-2020/> (stating inflation-adjusted amounts for 2020 cycle).

<sup>51</sup> Compl. at 16-18.

1 needed financial assistance.<sup>52</sup> Moreover, there is no information to indicate that the Institute  
2 specifically targeted or otherwise influenced the counties that applied; and there is information  
3 that the Institute promoted the grant program widely.<sup>53</sup> Further, as detailed below, whereas the  
4 Complaint alleges that the list of recipients itself is indicative of a electoral purpose, it appears  
5 that the Complaint overstates the potential benefits to Biden and overlooks how grants might  
6 have also helped Biden's opponent, Trump, in a potential swing state.

7         With respect to the rationale as to why Georgia, a state allegedly important to helping  
8 Biden win the election, received so many grants, the Response asserts that voters in Georgia  
9 have historically suffered acutely from voter-access problems exacerbated by the closing of 331  
10 polling locations between 2012 and 2020.<sup>54</sup> Therefore, given significant voter-access issues in  
11 Georgia, the Response states that it is logical that a disproportionately high number of counties in  
12 Georgia (10) applied for the grant.<sup>55</sup> The Complaint points to overlap between grants awarded  
13 by the Institute and grants awarded by another non-profit, the Center for Tech and Civic Life  
14 ("CTCL"), that is the subject of a similar complaint in another matter, as indicative of a common  
15 plan to increase turnout for Biden.<sup>56</sup> However, a plausible explanation for the overlap is also that  
16 these counties were in particular financial need and proactive in seeking outside funding.

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<sup>52</sup> See *supra* note 34.

<sup>53</sup> See *supra* notes 35-39.

<sup>54</sup> Resp. at 6.

<sup>55</sup> *Id.* Respondents' contention regarding voter access issues in Georgia appears to be supported by publicly available information. See, e.g., Kevin Collier, *et al.*, *Georgia Election 'Catastrophe' In Largely Minority Areas Sparks Investigation: Long Lines, Lack of Voting Machines And Shortages Of Primary Ballots Plagued Voters*, NBC NEWS (June, 10, 2020), <https://www.nbcnews.com/politics/2020-election/georgia-secretary-state-launches-investigation-after-unacceptable-voting-problems-n1228541>.

<sup>56</sup> Compl. at 20-22 (indicating that 23 of the 33 counties that received election grants from the Institute also received election grants from CTCL); see also First Gen. Counsel's Report at 2,

1           Moreover, even if the Commission were to apply the logic of the Complaint to analyze  
2 the alleged motives for the grants, the Complaint itself appears to overstate the benefit the grants  
3 in Georgia might have offered Biden. Whereas the Complaint states that all ten recipient  
4 counties in Georgia were historically Democratic-leaning, in fact, only six were historically  
5 Democratic-leaning, undercutting the allegation that the Institute's purpose for awarding grants  
6 was to drive up votes for Biden. A review of election results shows that voters in Lee and Lamar  
7 counties, had previously voted for the Republican nominee for president since 2008, and Early  
8 and Gwinnett counties had mixed outcomes in recent presidential elections.<sup>57</sup> Regarding  
9 Maricopa County in Arizona, the Response asserts that no other counties in Arizona applied for  
10 grants, and there is no information to otherwise suggest that Respondents specifically invited this  
11 county to apply.<sup>58</sup>

12           Perhaps the most important piece of information undermining the Complaint's allegation  
13 that the grants were awarded for the purpose of influencing a federal election is the makeup of  
14 the recipient counties in North Carolina. Though the Complaint contends that the grants to  
15 counties in North Carolina to historically Republican-leaning counties were "cover" to hide the  
16 targeted grants in Georgia and Arizona to help Biden, this allegation is premised on a potentially  
17 mistaken assumption that North Carolina was not a swing state in the 2020 election.<sup>59</sup> The

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<sup>57</sup> The Complaint incorrectly states that Biden won Early, Lamar, and Lee counties and provides a table with incorrect figures. Compl. at 10. See Georgia County Election Results 2008, NEW YORK TIMES, (Dec. 9, 2008) <https://www.nytimes.com/elections/2008/results/states/president/georgia.html>; 2012 Georgia Presidential Election Results, POLITICO, (Nov. 19, 2012), (<https://www.politico.com/2012-election/results/president/georgia/>); 2016 Georgia Presidential Election Results, POLITICO (Dec. 13, 2016), <https://www.politico.com/2016-election/results/map/president/georgia/>.

<sup>58</sup> Compl. at 4.

<sup>59</sup> *Id.*

1 Complaint's assumption about North Carolina not being a swing state appears to be contradicted  
2 by publicly available information demonstrating that North Carolina was perceived to be in  
3 contention between Biden and Trump prior to the election and ultimately was contested.<sup>60</sup>  
4 Assuming, *arguendo*, the Complaint's theory that the grants in Georgia and Arizona helped  
5 increase votes for Biden, it follows that the grants in North Carolina would have helped increase  
6 votes for Trump, significantly undermining the notion that the larger purpose of the grant  
7 program was to help Biden win the election.

8       Beyond the Complaint's internal shortcomings, it is also relevant that the grants appear to  
9 have been awarded in a manner that is consistent with the Institute's stated purpose and past  
10 initiatives. The Institute's stated mission is to advance "post-partisanship, where leaders put  
11 people over political parties and work together to find the best ideas and solutions to benefit the  
12 people they serve."<sup>61</sup> The Institute has several areas of focus including environmental, health,  
13 fiscal, educational and political policy.<sup>62</sup> Within the political policy area, the Institute has goals  
14 of redistricting, open primaries, transparency, and voter participation.<sup>63</sup> The Institute has held

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<sup>60</sup> See *supra* note 23 and accompanying text.

<sup>61</sup> See USC Schwarzenegger Institute for State and Global Policy, *Mission*, USC SCHWARZENEGGER INSTITUTE, <http://schwarzenegger.usc.edu/about-the-institute/mission> (last visited Aug. 3, 2021).

<sup>62</sup> *Id.*

<sup>63</sup> See USC Schwarzenegger Institute for State and Global Policy, *Political Reform*, USC SCHWARZENEGGER INSTITUTE, <http://schwarzenegger.usc.edu/policy-areas/political-reform> (last visited Aug. 3, 2021).

1 symposiums, sponsored academic research, and supported litigation in furtherance of these  
2 goals.<sup>64</sup>

3         The Complaint's allegation that that Respondents specifically invited the ten counties in  
4 Georgia and Maricopa County, Arizona, to apply for grants to impact the election in favor of  
5 Biden appears unsupported by the factual record.<sup>65</sup> The allegation here is not supported by any  
6 specific examples of outreach by the Institute to those recipient counties, but rather an  
7 assumption that outreach must have occurred given the identity of the grant recipients, which  
8 allegedly favored Biden. The Complaint presumes, without providing any support, that the  
9 recipients of the grants would constitute a "random" selection of the eligible counties.<sup>66</sup>  
10 However, based on the available information, it appears that the grant recipients were self-  
11 selected, and Respondents state that the Institute ultimately awarded grants to each eligible  
12 county that applied.<sup>67</sup> The awarding of grants to every qualified applicant is strongly  
13 inconsistent with the Complaint's theory that grantees were selected based on veiled political  
14 motivations. Further, the multiple ways in which the Institute announced the grants and the  
15 coverage the grants received in the press appears to controvert the speculative allegations in the  
16 Complaint that Respondents targeted counties that it deemed helpful to the alleged purpose of  
17 helping Biden win the election.<sup>68</sup>

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<sup>64</sup> See USC Schwarzenegger Institute for State and Global Policy, *Institute In Action*, USC SCHWARZENEGGER INSTITUTE, <http://schwarzenegger.usc.edu/institute-in-action/political-reform> (last visited Aug. 3, 2021).

<sup>65</sup> Compl. at 3-4, 13-14.

<sup>66</sup> *Id.* at 13 ("The 0.000000221938762 probability of winning the UK National Lottery is significantly higher than the 0.000000000049 probability of USC Schwarzenegger Institute randomly selecting three Georgia counties to receive its grants.").

<sup>67</sup> Resp. at 4.

<sup>68</sup> See *supra* notes 35-39 and accompanying text (describing coverage of the grant program on the Institute's website, USC's website, Schwarzenegger's Twitter account, and the national news media).

1           Moreover, regardless of Respondents' motives for awarding the grants, there is nothing to  
2 suggest that Respondents coordinated their actions with Biden or his campaign. The Complaint  
3 does not allege that any of the Respondents communicated with Biden or his campaign regarding  
4 the grants issue nor are we aware of any such information. And there is nothing to suggest that  
5 Respondents provided a good or service to Biden or his campaign. The grants were not directly  
6 used to fund campaign work, and even if they had the effect of getting more Biden voters to the  
7 polls, as discussed above, the Institute's objective appears to have been for the salutary purpose  
8 of aiding nonpartisan election administrators in carrying out the mechanics of voting during the  
9 COVID-19 pandemic rather than for the purpose of influencing an election. Therefore, the  
10 Institute's grant program could be considered "nonpartisan activity designed to encourage  
11 individuals to vote or to register to vote," which is specifically excluded from the definition of an  
12 "expenditure," and thus from the definition of a "contribution."<sup>69</sup>

13           Accordingly, the available information does not indicate that Schwarzenegger or the  
14 Institute made prohibited or excessive contributions, and we recommend that the Commission  
15 dismiss the allegation that Schwarzenegger violated 52 U.S.C. § 30116(a)(1)(A),<sup>70</sup> and dismiss  
16 the allegation that the Institute violated 52 U.S.C § 30118(a).

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<sup>69</sup> See 52 U.S.C. §§ 30101(9)(B)(ii); 30101(8)(B)(vi); *see also* First Gen. Counsel's Rpt. at 4 & Cert. (Aug. 7, 2006), MUR 5684 (Sean Combs, *et al.*) (dismissing allegations of corporate and excessive contributions when Citizen Change conducted a media campaign aimed at voter registration and mobilization that included clear and consistent statements as to its non-partisan motivation and goals).

<sup>70</sup> The excessive contribution allegation is premised on the notion that Schwarzenegger maintained control of the funds and therefore made a contribution in the name of another with the Institute acting as the conduit. Compl. at 2, 7, 9, 32; *see* 52 U.S.C. § 30122. The corporate contribution allegation is premised on the Institute taking control of the funds. Compl. at 4. For the reasons discussed earlier, both allegations are vitiated by the threshold conclusion that the grants were awarded for a purpose other than influencing a federal election.



1           **B.     The Commission Should Dismiss the Allegations that Institute Officials**  
2                   **Davis, Folt, Goldman, and Grose Impermissibly Consented to a Prohibited**  
3                   **Corporate Contribution**

4           The Complaint does not clearly explain how Davis, Folt, Goldman, and Grose are alleged  
5 to have violated the Act, but the Complaint could be read to allege that they are officers and  
6 directors at the Institute within the meaning of 52 U.S.C. § 30118(a) and therefore were  
7 prohibited from consenting to prohibited corporate contributions.<sup>72</sup> Although not all of these  
8 individuals appear to be officers or directors within the meaning of Section 30118(a), as already  
9 discussed, it does not appear that the Institute made a prohibited contribution. Therefore, we  
10 recommend that the Commission dismiss the allegations that Davis, Folt, Goldman, and Grose  
11 violated 52 U.S.C. § 30118(a).

12   **IV.   RECOMMENDATIONS**

- 13           1.     Dismiss the allegation that Arnold Schwarzenegger violated 52 U.S.C.  
14                   § 30116(a)(1)(A) by making an excessive individual contribution;  
15  
16           2.     Dismiss the allegation that the USC Schwarzenegger Institute for State and  
17                   Global Policy violated 52 U.S.C. § 30118(a) by making a prohibited corporate  
18                   contribution;  
19  
20           3.     Dismiss the allegations that Conyers Davis, Carol Folt, Dana Goldman, and  
21                   Christian Grose, violated 52 U.S.C. § 30118(a) by consenting to prohibited  
22                   corporate contributions;  
23  
24           4.     Approve the attached Factual and Legal Analysis;  
25  
25           5.     Approve the appropriate letters; and

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<sup>72</sup> 52 U.S.C. § 30118(a).

1           6.     Close the file.

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Lisa J. Stevenson  
Acting General Counsel

9/20/2021  
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Date

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