

**BEFORE THE STATE ELECTION BOARD
STATE OF GEORGIA**

In re:)
)
)
DeKalb County Board of Registration and)
Elections, Nancy Jester, Dele Lowman Smith,)
Karli Swift, Anthony Lewis & Susan Motter) **SEB Case No. _____**
(Private Election Funding by)
U.S. Alliance for Election Excellence),) **COMPLAINT**
)
Respondents.)
_____)

SUMMARY

As the members of this Board are aware, in 2021 the General Assembly adopted wide-ranging election reform legislation, the Election Integrity Act of 2021 (“the Act”), designed to address various issues that had arisen in the 2020 elections.¹ One of the principal issues which the General Assembly was focused on addressing was the funding of county government election operations by private groups and organizations, including but not limited to groups with partisan agendas. The General Assembly decided in no uncertain terms to stop that practice. The legislation that it passed and that Governor Kemp signed was unequivocal: it expressly provided that no election superintendent “shall take or accept any funding, grants, or gifts from any source other than from the governing authority of the county or municipality, the State of Georgia, or the federal government.”² In other words, only public funds—and not funds from any private source—may now be used “for the conduct of primaries and elections” in Georgia counties.³

¹ *See* “Election Integrity Act of 2021,” 2021 Ga. Laws 9 (SB 202).

² O.C.G.A. § 21-2-71(b).

³ *Id.* § 21-2-71(a).

At its January 27, 2023 meeting, in a rather blatant attempt to circumvent the new Georgia law and to return to prior practices now barred, the DeKalb County Board of Registration and Elections (“County Board”) announced it had been awarded, through the County of DeKalb (“County”), a \$2 million grant from the U.S. Alliance for Election Excellence (“the Alliance”).⁴ As even County Board Chair Dele Lowman Smith acknowledged at the meeting, however, Georgia law precludes the County Board from receiving this grant.⁵

Notwithstanding that the law expressly prohibits the County Board from accepting such funds from a private source, the County Board is proceeding forward under the pretense that the transactions were legal because the funds are not traveling directly from the Alliance to the County Board.⁶ This is a cynical argument in service of a clear attempt to circumvent the General Assembly’s mandate. Such evasion undermines democratic self-governance as reflected in Georgia’s duly enacted laws and erodes public trust and confidence in our elections. It is patently unlawful, and it cannot be allowed to succeed. This Board has the obligation and authority under O.C.G.A. §§ 21-2-31 – 21-2-33.1 to ensure that it does not. The State Election Board should investigate and take appropriate action.

⁴ DeKalb County Board of Registration and Elections Meeting, January 27, 2023 (hereinafter “January 27 County Board Meeting”), https://dekalbcountyga.granicus.com/player/clip/3882?view_id=2&redirect=true&h=178f7f35365d9c958fc9e2afdc3cf9d0; *see also* Amis, Sara. “DeKalb Voter Registration and Elections receives \$2 million excellence grant.” *The Decaturish*, January 30, 2023, <https://deaturish.com/2023/01/dekalb-voter-registration-and-elections-receives-2-million-excellence-grant/>.

⁵ January 27 County Board Meeting (at 52-53 minute mark), https://dekalbcountyga.granicus.com/player/clip/3882?view_id=2&redirect=true&h=178f7f35365d9c958fc9e2afdc3cf9d0 (explaining that the lengthy application process was led by the county’s finance department because election offices are not allowed to receive grants directly).

⁶ O.C.G.A. § 21-2-71 (ban on superintendent from receiving private grant money); *see also* O.C.G.A. § 21-2-2(35) (definition of “Superintendent” includes the “county board of elections and registration”).

BACKGROUND

The Alliance is a coalition of left-wing non-profit organizations and aligned companies that seeks to use private money—often referred to as “Zuck Bucks”—to entrench its ideological vision of election administration best practices in local election offices.⁷ It is currently engaged in a 5-year, \$80 million initiative to ostensibly provide non-partisan training, resources, and private grant funding to election offices around the country.⁸ In exchange for its money and resources, the Alliance expects recipients to share “technical data and usage statistics” for the Alliance to use for its own purposes and to implement the Alliance’s agenda-driven “coaching” and “best practices” into the performance of their election administration duties.⁹

At the core of the Alliance is the Center for Tech and Civic Life (“CTCL”).¹⁰ CTCL is a well-funded non-profit and the primary author of the original Zuck Bucks scheme that notoriously infected the 2020 election. According to public sources, during the 2020 election cycle CTCL distributed nearly \$350 million in private contributions (mostly sourced to billionaire megadonor Mark Zuckerberg) to election offices located in areas pivotal to

⁷ Snead, Jason and Andy Jackson. “The U.S. Alliance for Election Excellence: Newly revealed documents, acquired by the Honest Elections Project, shed light on the left’s latest attempt to influence the election process,” (hereinafter “HEP Report”), *Honest Elections Project, John Locke Foundation*, https://www.honestelections.org/wp-content/uploads/2023/01/HEP_Locke_Alliance-for-Election-Excellence-Report-1.pdf, pages 2-6.

⁸ *Id.*; “U.S. Alliance for Election Excellence FAQs.” *U.S. Alliance for Election Excellence*, <https://www.electionexcellence.org/faq>.

⁹ Snead, Jason and Andy Jackson, “The U.S. Alliance for Election Excellence: Newly revealed documents, acquired by the Honest Elections Project, shed light on the left’s latest attempt to influence the election process,” (hereinafter “HEP Appendix”), *Honest Elections Project, John Locke Foundation*, https://www.honestelections.org/wp-content/uploads/2023/01/HEP_Locke_Alliance-for-Election-Excellence-Report_APPENDIX.pdf, pages 3, 6.

¹⁰ HEP Report, https://www.honestelections.org/wp-content/uploads/2023/01/HEP_Locke_Alliance-for-Election-Excellence-Report-1.pdf, pages 1-2.

Democrats' get-out-the-vote efforts and electoral success.¹¹ Despite its claims of neutrality, these efforts were widely understood by policymakers and the public alike to be a not-so-subtle campaign to influence election outcomes.¹² In the wake of the controversy surrounding how these contributions were used to influence the election, Mr. Zuckerberg disclaimed “plans to repeat” such contributions on the ground that they were a “one-time” effort to address “the unprecedented nature of the [COVID-19] crisis.”¹³

The dangers of private grant money were readily apparent to legislators. Among other things, private financing of election administration creates obvious conflicts of interest between the narrow, partisan objectives of allegedly civic-minded organizations like CTCL and the absolute need for election administrators to avoid bias or partisan influence, both in appearance and practice.¹⁴ The mere existence of these conflicts at least threatens to, and almost certainly does, undermine both election integrity and public confidence in elections.

Georgia and other states quickly responded to the threat posed by private grant funding by enacting new laws. The Georgia General Assembly, for example, flatly prohibited private elections financing in the Act.¹⁵ Twenty-two other states have taken similar steps, often on a

¹¹ “CTCL Launches the U.S. Alliance for Election Excellence,” April 11, 2012, <https://www.techandciviclelife.org/us-alliance-for-election-excellence-launch/>.

¹² WSJ Editorial Board, “Zuckerbucks Shouldn’t Pay for Elections.” *Wall Street Journal*, January 3, 2022, <https://www.wsj.com/articles/zuckerbucks-shouldnt-pay-for-elections-mark-zuckerberg-center-for-technology-and-civic-life-trump-biden-2020-11640912907> (“Exhibit 1”).

¹³ Vigdor, Neil. “Mark Zuckerberg Ends Election Grants.” *New York Times*, April 12, 2022, <https://www.nytimes.com/2022/04/12/us/politics/mark-zuckerberg-midterms-elections-grant.html> (“Exhibit 2”).

¹⁴ Exhibit 1.

¹⁵ O.C.G.A. § 21-2-71.

bipartisan basis.¹⁶ The goal of these laws is to eradicate the scourge of private money in elections and to prevent the corrosive effects that inevitably follow when such financing is allowed to influence election administration toward ideological agendas.

The grant at issue in this Complaint is simply a cynical effort to evade O.C.G.A. § 21-2-71 by first passing the Alliance’s private grant through the County before it reaches the County Board. The indirect grant here is economically and legally indistinguishable from the direct grant that the County Board concedes that the Act prohibits. The County Board ends up with the same funds, subject to the same terms and conditions as it would have if the grant had been made directly. And those funds thus come with the same corrosive conflicts of interest that the legislature sought to address with the Act. Indeed, public statements, County documents, and public reporting suggest that the County understands its receipt of the grant is entirely contingent upon adhering to the Alliance’s terms and conditions, including that the funds “be used exclusively” for “planning and operationalizing safe and secure election administration infrastructure in DeKalb County.”¹⁷ Thus, unlike tax revenue, for example, the County lacks any real control over the Alliance’s funds. The funds maintain their private character as they work their way to the County Board’s accounts, as if they had been deposited there directly.

¹⁶ Prohibiting Private Funding of Elections, National Conference of State Legislatures, <https://www.ncsl.org/elections-and-campaigns/prohibiting-private-funding-of-elections>. Pennsylvania and Virginia both prohibited private funding of elections and did so with bipartisan support.

¹⁷ DeKalb County Government, Resolution, File # 2023-0055 Substitute (hereinafter “County Resolution”), available at: <https://dekalbcountyga.legistar.com/LegislationDetail.aspx?ID=5987625&GUID=74D76167-C090-4754-B592-9DE68B8CBDEA&Options=&Search=> (“The grant funds must be used exclusively for the public purpose of planning and operationalizing safe and secure election administration infrastructure in DeKalb County.”); see January 27 County Board Meeting, https://dekalbcountyga.granicus.com/player/clip/3882?view_id=2&redirect=true&h=178f7f35365d9c958fc9e2afdc3cf9d0 (County Board Chair acknowledging that Alliance grant will be used by County Board to create a “voter-centric election process”); see also Amis. “DeKalb Voter Registration and Elections receives \$2 million excellence grant.” *The Decaturish*, January 30, 2023, <https://decaturish.com/2023/01/dekalb-voter-registration-and-elections-receives-2-million-excellence-grant/> (reporting the same).

As a result, these funds are not the type of “public funds” the County is authorized to “appropriate,” within its discretion, to the County Board. They are prohibited private funds, plain and simple. Passing the grant funds through the County before giving them to the County Board to use exclusively for election administration is just a transparent sham designed to evade the statutory prohibition codified in O.C.G.A. § 21-2-71. That is unlawful.¹⁸

This is even more the case given that the County, the County Board, and the Alliance have all publicly conceded that the funds were donated by the Alliance for the express purpose of affecting the County Board’s management of elections. For example, a February 2, 2023 press statement that appears on the County government’s official website states as follows:

The U.S. Alliance for Election Excellence has selected DeKalb County Voter Registration & Elections [the County government department which is governed by the County Board] to join the group’s inaugural cohort of Centers for Election Excellence. DeKalb County is the only jurisdiction in the state of Georgia to receive this prestigious recognition.

As a Center for Election Excellence, DeKalb County was awarded \$2 million and will join a select bipartisan group of election officials to share best practices and strategies in their ongoing pursuit of excellence.

“The County is pleased to be a recipient of this funding in support of the Elections Department’s ongoing efforts to serve as a model for election integrity not just in Georgia but throughout our nation,” said DeKalb County CEO Michael Thurmond.

“I am thrilled we have chosen DeKalb County as a Center for Election Excellence,” said Tiana Epps-Johnson, executive director of the Center for

¹⁸ See *Telecom*USA, Inc. v. Collins*, 260 Ga. 362, 393 S.E.2d 235 (1990) (observing that statutes should not be read to introduce absurdities that enable the very pre-enactment mischief sought to be corrected); see also *State v. Darby*, 284 Ga. 271, 274, 663 S.E.2d 160, 164 (2008) (applying the “general rule that one cannot do indirectly that which the law does not allow to be done directly”); see also *Clay v. Oxendine*, 285 Ga. App. 50, 54, 645 S.E.2d 553, 556-57 (2007) (instructing courts to “look at the totality of the circumstances” in order to determine if a transaction is a permissible arrangement or a “sham” aimed at concealing an illegal scheme); *Whitley v. Whitley*, 220 Ga. 471, 473, 139 S.E.2d 381, 383 (1964) (noting an important legal “difference between the legitimate arrangement of one’s affairs” for legitimate purposes and “sham transactions designed to camouflage the actual situation”); *Hayes v. Hayes*, 279 Ga. 741, 620 S.E.2d 806 (2005) (same).

Tech and Civic Life. “DeKalb County is a leader in safe, secure, and inclusive elections that put voters first. This program will take their election administration work to the next level.”

“My vision as Chair has been for DeKalb County to become a pacesetter for elections in the Southeast, so earning the Center for Elections Excellence designation is particularly gratifying,” said Dele Lowman Smith, Chair of the DeKalb County Board of Registration & Elections. “What is even more exciting is **how the resources and collaboration that come with this will enable us to keep innovating for the benefit of DeKalb voters.**”¹⁹

This and other publicly available information make it clear that the County, the County Board, and the Alliance are all aware that, for purposes of O.C.G.A. § 21-2-71, the “source” of these funds is the Alliance. It is also quite clear that they are all aware that the superintendent, which is defined in state law to include the “county board of elections and registration,” i.e., the County Board, is the beneficiary of and has accepted those private funds.²⁰

JURISDICTION

The Georgia State Election Board has jurisdiction over this matter pursuant to O.C.G.A. §§ 21-2-31, 21-2-33, and 21-2-33.1 because it involves an alleged violation of the Georgia election code and matters concerning and connected with the Board’s discharge of its duties to “obtain uniformity” of elections throughout the state and ensure “legality and purity in all primaries and elections.”²¹ The Board is also “vested with the power to issue orders . . . directing

¹⁹ See <https://www.dekalbcountyga.gov/news/dekalb-county-voter-registration-elections-designated-center-election-excellence> (emphasis added).

²⁰ See O.C.G.A. § 21-2-2(35).

²¹ O.C.G.A. § 21-2-31(1).

compliance with” Georgia election laws “or prohibiting the actual or threatened commission of any conduct constituting a violation” of the state’s election laws.²²

COMPLAINANT

Complainant Restoring Integrity and Trust in Elections (RITE) is a 501(c)(4) non-profit organization with the mission of protecting the rule of law in elections.²³ RITE seeks to defend duly-enacted state laws that protect and promote the integrity of our elections, ensure equal protection under the law for all voters, promote intrastate uniformity in the elections process, oppose laws that threaten or dilute the right of qualified citizens to vote, oppose unlawful executive and administrative actions related to voting, and advocate for the rights of states to set election procedures that promote transparency and accuracy. RITE brings this Complaint to redress alleged violations of the Georgia election code and to bolster transparency and confidence in Georgia’s elections.

GENERAL ALLEGATIONS

CTCL Used Private Grant Funding to Boost Democrats in the 2020 Election

Based on public information, in the 2020 election CTCL distributed approximately \$45 million in grants to forty-three Georgia counties.²⁴ CTCL distributed more than \$31 million during the general election, with counties won by Joe Biden receiving \$29 million, or more than

²² O.C.G.A. § 21-2-33.1.

²³ “Who We Are.” *Restoring Integrity and Trust in Elections*, <https://riteusa.org/about-us/>.

²⁴ Thayer, Parker and Hayden Ludwig. “Shining a Light on Zuck Bucks in the 2020 Battleground States.” *Capital Research Group*, January 18, 2022, <https://capitalresearch.org/article/shining-a-light-on-zuck-bucks-in-key-states/>.

93% of the total.²⁵ It doled out an additional \$14.5 million to fifteen Georgia counties during the Senate Runoff Election in 2021, more than 60% of which went to the Democrat strongholds of Fulton and DeKalb counties.²⁶ Notably, while those counties are critical to Democrat electoral success in this state, they make up just 17% of the state’s population.²⁷

Early last year, the Capital Research Center (“CRC”), which examines non-profit spending, political involvement, and advocacy, issued an investigative report of CTCL’s 2020 election funding in Georgia.²⁸ The report found that counties won by Joe Biden received an average of \$5.33 per capita of CTCL’s largess, while those won by Donald Trump received merely \$1.41.²⁹ The Georgia counties of Clayton (\$12.88), DeKalb (\$12.59), Douglas (\$11.53), and Fulton (\$10.01) received the largest CTCL per capita outlays during the 2020 general election.³⁰ Joe Biden won Clayton, DeKalb, and Fulton counties in 2020 with the highest margins in the state and Douglas County was one of the top ten counties nationwide that swung the most toward Democrats in 2020.³¹

²⁵ Dublois, Hayden and Tyler Lamensky. “How Zuckerbucks Influenced the Georgia Elections.” *Foundation for Government Accountability*, May 24, 2021, <https://thefga.org/wp-content/uploads/2021/05/How-Zuckerbucks-Influenced-the-Georgia-Elections.pdf>.

²⁶ *Id.*

²⁷ “2020 Census Count by Georgia County Population.” *Georgia General Assembly*, August 12, 2021, https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/2020-count-by-county-population--with-2010.pdf?sfvrsn=c99191_2.

²⁸ Parker and Ludwig. “Shining a Light.” *Capital Research Group*, January 18, 2022, <https://capitalresearch.org/article/shining-a-light-on-zuck-bucks-in-key-states/>.

²⁹ *Id.*

³⁰ *Id.*

³¹ “Georgia Presidential Election Results.” *New York Times*, March 6, 2021, <https://www.nytimes.com/interactive/2020/11/03/us/elections/results-georgia-president.html>; Chinni, Dante. “The Georgia Counties Turning the State Blue are Growing. And Quickly.” *NBC News*, February 28, 2021, <https://www.nbcnews.com/politics/meet-the-press/georgia-counties-turning-state-blue-are-growing-fast-n1259089>.

The Alliance Seeks to Achieve Political Objectives and Its Grants Come with Strings Attached

The Alliance is little more than CTCL and a few new partners that share its ideology and objectives. CTCL is undoubtedly at the core of the Alliance.³² County officials note as much and specifically identify CTCL as the source of the grant.³³ In a press release, CTCL announced it was responsible for “launching” the Alliance.³⁴ And CTCL unquestionably has partisan objectives. In addition to using its 2020 private funding scheme to attempt to tilt the 2020 electoral playing field toward Democrats, it was founded and controlled by another similar organization that has worked to “subtly influenc[e] the tone and the strategy of hundreds of campaigns and nonprofits at every scale.”³⁵

In addition to CTCL, the Center for Secure and Modern Elections (“CSME”) also forms the backbone of the Alliance.³⁶ CSME is one of the largest 501(c)(3) organizations in the

³² See Note 7, *supra*.

³³ County Resolution, available at: <https://dekalbcountyga.legistar.com/LegislationDetail.aspx?ID=5987625&GUID=74D76167-C090-4754-B592-9DE68B8CBDEA&Options=&Search=> (The legislation authorizing approval by County officials states its purpose is to “[a]mend the Grants Budget to accept and appropriate \$2,000,000.00 from the Center for Tech and Civic Life (“CTCL”), for the public purpose of planning and operationalizing safe and secure election administration infrastructure in DeKalb County[.]” (emphasis added).

³⁴ “CTCL Launches the U.S. Alliance for Election Excellence,” April 11, 2012, <https://www.techandciviclelife.org/us-alliance-for-election-excellence-launch/>.

³⁵ Fung, Brian. “Inside the Democratic Party’s Hogwarts for Digital Wizardry.” *Washington Post*, July 8, 2014, <https://www.washingtonpost.com/news/the-switch/wp/2014/07/08/inside-the-democratic-partys-hogwarts-for-digital-wizardry/> (“Exhibit 3”).

³⁶ “CTCL Launches the U.S. Alliance for Election Excellence,” April 11, 2012, <https://www.techandciviclelife.org/us-alliance-for-election-excellence-launch/>.

Arabella Advisors network, which the *New York Times* calls an “opaque network” of the left and *The Atlantic* calls the “massive progressive dark-money group you’ve never heard of.”³⁷

As evident from the Alliance’s membership and personnel, its description of itself as merely “a nonpartisan collaborative [of] experts to help local election departments improve operations” must be taken with a grain of salt.³⁸ Its thinly veiled goal is to use CTCL funds to inject its subtle influences into election administration in Georgia and beyond. This is exactly what CTCL did during the 2020 election, leading to passage of the Act forbidding private financing of elections in Georgia.

This time around, however, the strings that come attached to the funding are even more explicit. According to the notes of a local election official, the arrangement requires election offices to “give something” to “get something.”³⁹ In exchange for the Alliance’s private grant, election administrators are required to hand over data about their internal operations.⁴⁰ Among other things, the Alliance uses this data to develop “improvement plans” that election offices are expected to implement.⁴¹ Meanwhile, the Alliance purports to accredit election offices as

³⁷ “Influence Watch: New Venture Fund.” *Capital Research Group*, <https://www.influencewatch.org/non-profit/new-venture-fund/>; Vogel, Kenneth P. and Katie Robertson. “Top Bidder for Tribune Newspapers Is an Influential Liberal Donor,” *New York Times*, April 13, 2023, <https://www.nytimes.com/2021/04/13/business/media/wyss-tribune-company-buyer.html>; Green, Emma. “The Massive Progressive Dark-Money Group You’ve Never Heard Of,” *The Atlantic*, November 2, 2021, <https://www.theatlantic.com/politics/archive/2021/11/arabella-advisors-money-democrats/620553/>.

³⁸ “Introducing the U.S. Alliance For Election Excellence.” *U.S. Alliance for Election Excellence*, <https://www.electionexcellence.org/>.

³⁹ HEP Report, https://www.honestelections.org/wp-content/uploads/2023/01/HEP_Locke_Alliance-for-Election-Excellence-Report-1.pdf, page 22.

⁴⁰ HEP Appendix, https://www.honestelections.org/wp-content/uploads/2023/01/HEP_Locke_Alliance-for-Election-Excellence-Report_APPENDIX.pdf, pages 3, 6.

⁴¹ *Id.*

“Centers for Election Excellence.”⁴² The implication being that accreditation will flow to those offices that implement the Alliance’s improvement plans, adopt its standard operating procedures, and make use of its “legal, policy, political department” to determine “how to implement law.”⁴³ Complainant does not question the pure motives of election officials seeking out resources to improve election administration, but the risk that they will essentially become captive to the Alliance’s interests given the strings attached is exactly what the General Assembly was attempting to avoid in passing Senate Bill 202.

Private Grants Pose Grave Threats to Election Integrity and Public Confidence

After the 2020 election, CRC investigated the partisan distribution of CTCL private election funding in states. As CRC’s President Scott Walter observed, it is simply difficult to believe that “people of such partisanship will put their partisanship aside while taking hundreds of millions of dollars and distributing it to election offices.”⁴⁴

Concerns about the private funding of elections prior to the 2020 election also rippled through academia and the mainstream media. For example, *New York Times* reporter Ken Vogel stated in September 2020:

The prospect of election administrators tapping large pools of private money has raised new legal and political questions. That is partly because it is unusual for elections to be subsidized by nongovernment funding at this level, but also because most of the cash is coming from nonprofit groups that have liberal ties,

⁴² HEP Report, https://www.honestelections.org/wp-content/uploads/2023/01/HEP_Locke_Alliance-for-Election-Excellence-Report-1.pdf, page 13.

⁴³ HEP Appendix, https://www.honestelections.org/wp-content/uploads/2023/01/HEP_Locke_Alliance-for-Election-Excellence-Report_APPENDIX.pdf, page 6.

⁴⁴ Walter, Scott. “Georgia Election Officials, a Billionaire, and the ‘Nonpartisan’ Center for Tech and Civic Life.” *Capital Research Center*, November 27, 2020, <https://capitalresearch.org/article/center-for-tech-civic-life/>.

and the biggest source of the cash, Mr. Zuckerberg, has drawn fire from across the political spectrum.⁴⁵

Similarly, Nicholas Riccardi with the *Associated Press* reported that “[t]he cash comes with a new set of questions about donor transparency, motivations and the influence of groups and figures that are not democratically accountable[,]” and that “[c]onservatives note the Democratic origins of CTCL and that its donations have predominantly been in areas where Democrats depend on votes.”⁴⁶

Finally, Kathleen Hale, an Auburn University political scientist and election administration expert, noted:

Private philanthropy is just that—private.... Private goals, agendas, and processes are not determined with public input, and are not subject to public scrutiny, or held accountable to the public in any way. And that’s as it should be for private funds. That’s the history of American philanthropy. But not for money spent on the machinery of democracy. Private funding in this arena is profoundly undemocratic, and elections should not be subject to the influence of private philanthropy.⁴⁷

As these and other reports indicate, private funding of elections tends to increase skepticism over the accuracy and transparency of election results, corroding public trust and confidence in our electoral system.

⁴⁵ Vogel, Kenneth P. “Short of Money to Run Elections, Local Authorities Turn to Private Funds.” *New York Times*, September 25, 2020, <https://www.nytimes.com/2020/09/25/us/politics/elections-private-grants-zuckerberg.html> (“Exhibit 4”).

⁴⁶ Riccardi, Nicholas. “Not Plan A: Charities are Stepping Up to Pay for Elections.” *The Associated Press*, September 16, 2020, <https://apnews.com/article/technology-elections-denver-mark-zuckerberg-election-2020-92257bbc1fef9ed0e18861e5b5913f6>.

⁴⁷ “‘Zuckerbucks’ for 2022 elections? Republicans say thumbs down.” Politifact, March 15, 2022, <https://www.politifact.com/article/2022/mar/15/zuckerbucks-2022-elections-republicans-say-thumbs-/>.

Georgia Law Bans Private Elections Funding

Shortly after the 2020 election, the Georgia General Assembly took decisive action to address the corrosive nature of private funding on the state’s elections. Aiming to eliminate the subtle influence such private money can exert on election administration, the Assembly enacted legislation to ban private funding of elections. That statutory ban is set forth in the Act, which expressly forbids superintendents and registrars alike from taking or accepting “any funding, grants, or gifts from any source other than from the governing authority of the county or municipality, the State of Georgia, or the federal government.”⁴⁸

The Assembly was quite clear about its motivations and objectives for enacting the statutory ban. In its legislative findings, the Assembly noted that the Act would “[p]romot[e] uniformity in the distribution of funds to election operations.”⁴⁹ It specifically noted that this uniformity would “boost voter confidence” and prevent “certain counties” from securing “political advantage” because of private funding.⁵⁰

The Alliance’s Private Grant to DeKalb County Violates Georgia Law

No one seriously disputes that Georgia law prohibits the Alliance from giving its funds directly to the County Board. In fact, it is evident that both the County and the County Board understand as much. Both before and after the grant, officials from both entities have been very

⁴⁸ O.C.G.A. §§ 21-2-71(b) & 21-2-212(f).

⁴⁹ 2021 Ga. Laws 9, § 2.

⁵⁰ *Id.*

scrupulous in their remarks to note that the funds are not flowing directly to the County Board.⁵¹ For example, at the County Board’s January 27, 2023 meeting, Chair Dele Lowman Smith was careful to make clear that the reason the lengthy application process was led by the county’s finance department was because election offices are not allowed to receive grants directly.⁵² This issue came up again at the DeKalb County Board of Commissioners meeting on January 10, 2023. There, the Commissioners offered their opinion that the County’s involvement in the grant process would cleanse the funds and enable the County Board to circumvent Georgia’s laws.⁵³

The only question, then, is whether the County Board can collude with the County to receive private money indirectly that it is concededly forbidden from receiving directly. Georgia law is clear that the answer to this question is no.

The Act is not a prohibition on “directly” taking private funding. It is a prohibition on taking private funding, full stop. The law says that election offices shall not “take or accept any funding, grants or gifts *from any source*” other than the county, state, or federal government.⁵⁴ The dividing line is between private funding and public funding. The question to be addressed is the “source” and “nature” of the funds—not the accounts through which the funds flow *en route* to their destination. In this case, the Alliance is clearly the source of the funds, even if they flow

⁵¹ January 27 County Board Meeting, https://dekalbcountyga.granicus.com/player/clip/3882?view_id=2&redirect=true&h=178f7f35365d9c958fc9e2afdc3cf9d0; Amis. “DeKalb Voter Registration and Elections receives \$2 million excellence grant.” *The Decaturish*, January 30, 2023, <https://decalurish.com/2023/01/dekalb-voter-registration-and-elections-receives-2-million-excellence-grant/>; DeKalb County Board of Commissioners Meeting, January 10, 2023 (hereinafter “January 10 County Board of Commissioners Meeting”), http://dekalbcountyga.granicus.com/player/clip/3862?meta_id=410182.

⁵² January 27 County Board Meeting, https://dekalbcountyga.granicus.com/player/clip/3882?view_id=2&redirect=true&h=178f7f35365d9c958fc9e2afdc3cf9d0.

⁵³ January 10 County Board of Commissioners Meeting, http://dekalbcountyga.granicus.com/player/clip/3862?meta_id=410182.

⁵⁴ O.C.G.A. § 21-2-71 (emphasis added).

first through County accounts. This fact is obvious to all. And it is evident from the fact that the grant is conditioned upon fulfillment of specific requirements set by the Alliance.⁵⁵ Nothing in the record suggests that the County could have exercised its discretion to give the funds to any entity other than the County Board. And, in fact, it appears that the County is passing through every Alliance dollar to the County Board, without apparent modification of any type.⁵⁶

The remainder of O.C.G.A. § 21-2-71 drives home the point that the prohibition speaks to the source and nature of the funds—their public or private nature or character—and not the accounts through which the funds might flow. Whereas subsection (b) of that statute authorizes the County Board to receive “funding, grants, or gifts” from the County, the State, and the federal government, under subsection (a), it is clear that funds sourced from the County take the form of “appropriations,” a term generally understood to mean “public funds,” rather than grants or gifts.⁵⁷ Any reading of subsection (b) to authorize the County to provide *any* form of funding to the County Board simply reads subsection (a)’s specific authorization of appropriations out of

⁵⁵ See County Resolution, available at: <https://dekalbcountyga.legistar.com/LegislationDetail.aspx?ID=5987625&GUID=74D76167-C090-4754-B592-9DE68B8CBDEA&Options=&Search=> (grant funds must be used “exclusively” for election administration); see, e.g., HEP Appendix, https://www.honestelections.org/wp-content/uploads/2023/01/HEP_Locke_Alliance-for-Election-Excellence-Report_APPENDIX.pdf, pages 3, 6 (generally describing Alliance membership requirements and specifically referencing expectations and conditions of similar Alliance grant awarded to Brunswick County, North Carolina); *id.* at page 8 (A similar Alliance grant awarded to Kane County, Illinois included the following condition: “Before CTCL transmits these funds to Grantee, CTCL requires that Grantee... agree to use the grant funds” “exclusively for the public purpose of planning and operationalizing safe and secure election administration infrastructure in Kane County.”); HEP Report, https://www.honestelections.org/wp-content/uploads/2023/01/HEP_Locke_Alliance-for-Election-Excellence-Report-1.pdf, pages 10-11 (grant documents showing Alliance requires recipients to use full grant amount for “specific election infrastructure needs”).

⁵⁶ County Resolution, available at: <https://dekalbcountyga.legistar.com/LegislationDetail.aspx?ID=5987625&GUID=74D76167-C090-4754-B592-9DE68B8CBDEA&Options=&Search=>.

⁵⁷ See O.C.G.A. § 21-2-71(a) (authorizing the County to “appropriate” funds to the County Board); O.C.G.A. § 21-2-71(b); see also O.C.G.A. § 45-12-71(2) (defining General Assembly “appropriations” as a sum of money “from public funds” to be used as authorized).

the statute.⁵⁸ Subsection (a) thus qualifies subsection (b)'s funding authorization, limiting the funds the County Board can receive from the County to those that are public in nature.⁵⁹

Additional core principles of statutory construction further support the conclusion that the Alliance's grant is unlawful. For example, statutes must not be read to produce absurdities such as enabling the very pre-enactment mischief they were enacted to correct.⁶⁰ But that is precisely what is happening here. The General Assembly quite apparently sought to eliminate disuniformities in election administration caused by the selective interjection of private financing. But as the County Board's Executive Director Keisha Smith noted to her colleagues, DeKalb is the only elections office in Georgia selected to receive funding from the Alliance.⁶¹

Similarly, it is a "general rule" of Georgia law that "one cannot do indirectly that which the law does not allow to be done directly."⁶² Again, that is exactly what has happened here. Depositing the money first with the County before it is passed in full forthwith to the County

⁵⁸ See *Couch v. Red Roof Inns, Inc.*, 291 Ga. 359, 362 (2012) ("The fundamental rules of statutory construction . . . require us to construe a statute according to its terms, to give words their plain and ordinary meaning, and to avoid a construction that makes some language mere surplusage.") (Internal citation omitted).

⁵⁹ See *id.*

⁶⁰ See *Telecom*USA, Inc. v. Collins*, 260 Ga. 362, 393 S.E.2d 235 (1990) (observing that statutes should not be read to introduce absurdities that enable the very pre-enactment mischief sought to be corrected).

⁶¹ January 27 County Board Meeting, https://dekalbcountyga.granicus.com/player/clip/3882?view_id=2&redirect=true&h=178f7f35365d9c958fc9e2afdc3cf9d0.

⁶² *State v. Darby*, 284 Ga. 271, 274, 663 S.E.2d 150, 164 (2008).

Board produces nothing of either economic or political substance. It is merely an attempt to accomplish by indirect means that which is clearly forbidden to be done directly. It is a sham.⁶³

Viewed in its entirety, the Alliance's grant violates Georgia law. The Alliance, the County, and the County Board have sought to sidestep this otherwise obvious conclusion by passing the funds through the County before they are passed along, in full and totally subject to the Alliance's terms and conditions, to the County Board. This Board should protect the integrity of Georgia's election laws by using the investigative and injunctive authorities at its disposal to ensure that this cynical effort to evade Georgia law fails.

The conclusion that the Alliance is the "source" of the funds is also supported by the manner in which the Georgia Government Transparency and Campaign Finance Commission enforces Georgia's campaign finance laws. The Commission has long advised candidates and political committees that, when a donor provides funds to a conduit committee, with instructions from the donor or an agreement between the conduit and the donor that the funds will be passed directly on to another candidate or political committee, the receiving candidate or committee should identify the initial donor as the contributor. Such a pass-through contribution is prohibited if its "source" is a prohibited source, like a foreign national. And even when the source is permissible, such contributions also count toward the initial donor's contribution limits. In other words, it is common under Georgia law, including its election law, for regulatory agencies to

⁶³ See *Clay v. Oxendine*, 285 Ga. App. 50, 54, 645 S.E.2d 553, 556-57 (2007) (instructing courts to "look at the totality of the circumstances" in order to determine if a transaction is a permissible arrangement or a "sham" aimed at concealing an illegal scheme); *Whitley v. Whitely*, 220 Ga. 471, 473, 139 S.E.2d 381, 383 (1964) (noting an important legal "difference between the legitimate arrangement of one's affairs" for legitimate purposes and "sham transactions designed to camouflage the actual situation"); *Hayes v. Hayes*, 279 Ga. 741, 620 S.E.2d 806 (2005) (same).

confirm that, funds that flow through a conduit with the intention or agreement that they will be passed on to a third party are sourced to the initial donor for reporting purposes.

The same conclusion applies here. In this case, the County, the County Board, and the Alliance have all been explicit in noting that the contributed funds came from the Alliance (a prohibited source) and are to be given to the County Board for its management of county election operations. Such a practice is directly banned by the Act.

ACTION REQUESTED

Complainant requests that the State Election Board invoke its authority under state law to further investigate this matter and find that the proposed course of action by the County and the County Board, and the Alliance's conduct, undermines confidence and trust in Georgia's elections and violates Georgia law. Specifically, the Board should exercise its authority under O.C.G.A. § 21-2-31(5) and its subpoena power "[t]o investigate, or authorize the Secretary of State to investigate" violations of Georgia election law by the County Board, specifically its use of the County as a straw man to accept private grants, i.e., "grants . . . from any source other than from the governing authority of the county or municipality, the State of Georgia, or the federal government."⁶⁴ Finally, if such investigation leads the Board to determine that a violation of Georgia election law has occurred or might occur, then the Board should exercise its powers under O.C.G.A. § 21-2-33.1 to require the County and the County Board to immediately "cease and desist from committing further violations" (which would include not spending the grant money and terminating the contract with CTCL) and impose appropriate sanctions.

⁶⁴ O.C.G.A. § 21-2-71.

Areas for Further Investigation

Complainant requests that the State Election Board require the County and the County Board to provide sufficient documents, testimony, and written responses to allow the State Election Board to answer the following questions:

1. The Chair of the County Board and County officials suggest that because the application process for this CTCL funding was led by the County's finance department, it does not violate Georgia law. How does this differ, if at all, from the approach the County took in 2020? Was the County's finance department, for example, not involved in the application and grant process in the 2020 CTCL funding of the County Board?
2. What has been the involvement of the County Board and its Department of Voter Registration and Elections thus far in the process, including communications with the County and with the Alliance?
3. Has the County Board or any of its employees conducted interviews with Alliance partners (along the lines of what seemingly occurred in North Carolina)?
4. Was the County told (like Brunswick County in North Carolina) that this is a "give something and get something" program, or was the County otherwise made aware of the Alliance's expectation in awarding the grant?
5. Has the County Board or any of its employees agreed to give, or actually given, the Alliance anything thus far in return for the grant award?
6. Were any promises, implicit or explicit, made by the County Board or any of its employees in securing the grant award?

7. Has the County Board or any of its employees disseminated CTCL's internal operating procedures or utilized CSME's legal or consulting services?

8. Did the County discuss with CTCL or its Alliance partners whether this program complied with Georgia law? Did CTCL advise the County on the grant's permissibility under Georgia law or offer advice to the County on how to structure the grant so that it might be legally permissible? Did either party mention the ban on private election funding recently passed in Georgia?

9. Why did the County Commissioners delay voting on approving the grant at its January 10, 2023 meeting and instead refer the grant legislation to the OPS-County Operations Committee?

10. What subsequent actions did the OPS-County Operations Committee take following the Commissioners' referring the grant legislation to it?

11. What communications has the Alliance had with the County, the County Board, or the County Board's Department of Voter Registration and Elections about the County Board, and what information about the County Board has already been sent to the Alliance?

Respectfully submitted this 16th day of January, 2023.



Douglas Chalmers, Jr.
Georgia Bar No. 118742
Chalmers, Adams, Backer & Kaufman, LLC
5805 State Bridge Road #G77
Johns Creek, Georgia 30097
(770) 630-5927 (phone)
dchalmers@chalmersadams.com
Counsel for Complainant