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**STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER**

*In the Matter of*

Docket No. 20-0257

**ARMED CITIZENS' LEGAL DEFENSE  
NETWORK, INC.,**

**ARMED CITIZENS' LEGAL  
DEFENSE NETWORK, INC.'S REPLY  
IN SUPPORT OF MOTION TO STAY  
CEASE AND DESIST ORDER**

Appellant.

COMES NOW Appellant Armed Citizens' Legal Defense Network, Inc. (hereinafter "ACLDN"), by and through its counsel, Spencer Freeman, Freeman Law Firm, Inc., and pursuant to RCW 48.04.020 files this Reply in Support of its Motion to Stay the Cease and Desist Order pending resolution of this action.

**I. INTRODUCTION**

OIC is a governmental agency and thus subject to the laws and limitations of the U.S. Constitution and the Washington State Constitution. ACLDN filed a motion to stay arguing that constitutional due process rights have been violated by the issuance of the Cease and Desist Order without an opportunity to have the issued heard by a neutral tribunal. In response, OIC outlined statutory authority for OIC's actions and case law citations regarding standards for a stay. However, that there is statutory authority for a cease and desist order does not obfuscate OIC's responsibilities to act in compliance with the Constitution. It is well-known and well-

1 established that statutes and state actions are *always* governed by the Constitution. Further, the  
2 case law citations presented by OIC, and relied upon in the Presiding Officer’s cited prior  
3 Order, do *not* address procedural due process requirements (as explained below, such were not  
4 at issue in those cases).

5 There is clear concern that a government agency completely ignores a constitutional  
6 challenge to its actions. Moreover, OIC’s failure to respond to an argument constitutes OIC’s  
7 concession to the point. *State v. Ward*, 125 Wn. App. 138, 143-44, 104 P.3d 61 (2005).

8 RCW 48.02.080(3) provides that OIC can issue a Cease and Desist Order or file an  
9 action in court seeking injunctive relief. Thus, there are actually three options for OIC: (1)  
10 Issue a Cease and Desist Order effective immediately upon service; (2) Issue a Cease and  
11 Desist Order effective at a future date, allowing for an automatic stay should the recipient  
12 request a hearing (RCW 48.04.040(1)); or, (3) File an action in court seeking injunctive relief.  
13 The latter two provide for proper procedural due process, allowing for a tribunal to hear from  
14 ACLDN before a Cease and Desist Order takes effect. OIC chose the first, and ACLDN has  
15 challenged whether in this instance such meets procedural due process requirements. OIC  
16 failed to present any argument supporting its actions in relation to due process.

17 OIC determined that ACLDN memberships constitute insurance. OIC is wrong. OIC  
18 should NOT be permitted to shut down a business without meeting constitutional mandates,  
19 which requires a neutral tribunal hearing from ACLDN on the issue and reviewing OIC’s  
20 determination. Such is the exact nature of procedural due process – and OIC is simply ignoring  
21 it.

22 There is a chilling statement by OIC in its response: “The insurance commissioner has  
23 broad authority to issue a Cease and Desist Order against an unauthorized insurer without  
24 providing advance warning or an automatic stay should the entity file a hearing demand.”  
25 There is no authority or citation provided for this statement. It is apparent that OIC believes it  
26

1 can act without *any* consideration for procedural due process. At a minimum, OIC requests this  
2 matter to go forward without engaging in constitutional analysis.

## 3 II. FACTS

4 ACLDN filed its motion on *procedural* due process; however OIC relied upon the  
5 substance of its case in response. Accordingly, ACLDN presents responsive facts here.

6 ACLDN was established in 2008 to provide education in the lawful use of force (self-  
7 defense) and assist in the legal fight against prosecution (criminal or civil) after a justifiable use  
8 of force in self-defense. The latter was and is to ensure that citizens engaged in proper self-  
9 defense acts are not unfairly treated by the justice system. Such assistance is in the form of  
10 access to network attorneys and experts and the possibility of financial assistance. *Second*  
11 *Declaration of Marty Hayes ISO Motion to Stay Cease and Desist Order* (“*2<sup>nd</sup> Decl. M.*  
12 *Hayes*”), p 1-2, ¶¶ 2-4.

13 Education is a priority of ACLDN to best ensure that lawful use of force is adhered to  
14 and, in fact, the member would be less likely to be so involved. ACLDN states:

15 A Network member is probably the least likely gun owner to be involved in a  
16 shooting or otherwise use deadly force. This is because of our aggressive  
17 educational program that starts when you join the Network. A 253-page book  
18 plus an informative series of nine educational video lectures is given to each new  
19 member. Our member education commitment ensure that your understanding of  
use of force is self defense is first class. Our content-rich on-line journal carries  
on that mission each month.

20 *2<sup>nd</sup> Decl. M. Hayes*, p 2, ¶¶ 5-6, Ex. A.

21 ACLDN memberships benefits are immediately available upon signing up are intended  
22 to educate and assist members such that involvement in an incident is significantly reduced.  
23 These educational benefits are then added to and supplemented on a monthly basis.  
24 Membership benefits are described in three categories: (1) Education; (2) Legal Support when it  
25 is most needed; and (3) Network Affiliated Attorneys and Experts. ACLDN makes it expressly  
26 clear that education is the priority, including teaching the legal parameters of use of force for

1 self-defense, handling the aftermath of using force in self-defense, post self-defense legal  
2 concerns, and articulating pre-assault indicators and how they influence the self-defense  
3 decision-making process. *2<sup>nd</sup> Decl. M. Hayes*, p 2, ¶¶ 7-8, Ex. B.

4 The education provided by ACLDN is substantial and continuous. Upon signing up, the  
5 member receives a 253-page book and nine educational videos, all focused on teaching material  
6 on aspects regarding the laws of self-defense and pragmatic issues pertaining to self-defense.  
7 Thereafter, the ACLDN member has access to the ACLDN monthly journal, past and current  
8 issues, which include educational articles, interviews, and updates. These educational materials  
9 are drafted and compiled by recognized national experts in their fields. Importantly, these  
10 educational materials are *only* available to ACLDN members. They are not commercially  
11 available. *2<sup>nd</sup> Decl. M. Hayes*, p 3, ¶¶ 8-10, Ex B and C.

12 The network of affiliated attorneys and experts provides ACLDN members with on-  
13 going access to trained, educated, and reputable individuals for consultations and advice as  
14 needed or desired by the ACLDN member. Those attorneys and experts are part of the network  
15 in order to make them available to ACLDN members. The affiliated attorneys and experts are  
16 separate from and not contingent upon the use of ACLDN funds, if they are determined to be  
17 available. ACLDN members have direct access to the attorneys and experts. *2<sup>nd</sup> Decl. M.*  
18 *Hayes*, p 3, ¶ 12.

19 The ACLDN's Legal Defense Fund ("Fund") is what is concerning to OIC. Contrary to  
20 those concerns, the Fund is not insurance.

21 *Whether* a member is deemed to qualify for access to the Fund is determined solely by  
22 ACLDN. There are no contractual standards or provisions which *require* any funds to be  
23 provided to a member. *IF* a member is deemed worthy of assistance from the Fund, the  
24 ACLDN web site and member benefits explain how these funds would be extended. *2<sup>nd</sup> Decl.*  
25 *M. Hayes*, p 3, ¶ 13. (The citations by OIC outline ACLDN's actions *after* a unilateral  
26 discretionary decision to provide funds to a member. OIC omits other crucial aspects of the

1 Web site and statements to members.) The Fund is never provided directly to the ACLDN  
2 member, they are paid directly to vendors assisting the ACLDN member (contrary to assertions  
3 by OIC). *2<sup>nd</sup> Decl. M. Hayes*, p 4, ¶ 15.

4 Distinct from other membership organizations selling insurance products, an ACLDN  
5 member request for a payment from the Fund undergoes a review process prior to ACLDN  
6 drawing monies from the Fund on behalf of the member. An ACLDN advisory board reviews  
7 an application to determine whether, in ACLDN’s view, there is legitimate claim of self-  
8 defense. ACLDN’s membership benefits description makes the limitation of the benefit clear,  
9 available only to those persons involved in “justifiable use of force” and there is a showing that  
10 “use of force was a legitimate case of self-defense.” *2<sup>nd</sup> Decl. M. Hayes*, p 4, ¶¶ 16-17.

11 In description of the Fund, ACLDN states:

12 “This benefit is subject to a review of facts of the case as known at the  
13 time and a determination it was a legitimate act of self-defense.”

14 *2<sup>nd</sup> Decl. M. Hayes*, p 4, ¶¶ 18-19, Ex. D.

15 This limitation is reiterated and expanded upon by the President of ACLDN<sup>1</sup>:

16 “Granting assistance is subject to the same requirement as awarding Legal  
17 Defense Funds. In other words, there must be sufficient evidence to make  
18 a reasonable argument that the use of force incident was self-defense. Just  
19 as we would not agree to fund the legal defense of someone who actually  
20 committed a murder, we would also not assist that person in gaining his or  
her freedom from jail. *We will need to be convinced* that your use of force  
was a self-defense incident.”

21 *2<sup>nd</sup> Decl. M. Hayes*, p 4, ¶¶ 20-21, Ex. E (emphasis added).

22 Moreover, if facts are learned or discovered which result in ACLDN determining a self-  
23 defense claim is not legitimate, ACLDN will immediately cease funding. *2<sup>nd</sup> Decl. M. Hayes*, p  
24 4, ¶ 22.

25 \_\_\_\_\_  
26 <sup>1</sup> This is initially discussing assistance with bail, but further clarifies any application of ACLDN Funds.

1 It is undeniably clear that Funds made available to ACLDN members is upon the *sole*  
2 *discretion* of ACLDN and its advisory board.<sup>2</sup> There is no contractual right to the Funds. Such  
3 is made further explicitly clear by ACLDN:

4 **“What We Are Not**

5 First off, we are NOT insurance! There is no insurance component in our  
6 member benefits.”

7 *2<sup>nd</sup> Decl. M. Hayes*, p 5, ¶¶ 23-24, Ex. F. It simply could not be clearer that ACLDN  
8 membership does NOT come with a *right* to the Fund, but only the right to apply for the Fund  
9 and be subject to the sole discretion of ACLDN and its advisory board.

10 Financial support for the Fund comes from five key sources: (1) Dues allocation  
11 (ACLDN commits to 25% of membership dues to donate to the Fund<sup>3</sup>); (2) Corporate  
12 Donations (some corporations make direct financial donations while others donate products and  
13 services which are auctioned off and 100% proceeds donated to the Fund); (3) Bequests (some  
14 individuals provide for donations in their estate planning); (4) Individual donations (individuals  
15 including members and member friends make direct contributions to the Fund; and (5) ACLDN  
16 donations (in addition to % of member dues, ACLDN provides additional donations to the  
17 Fund). *2<sup>nd</sup> Decl. M. Hayes*, p 5, ¶ 25.

18 Membership in ACLDN requires only three things: (1) a clean criminal history; (2)  
19 being of 18 years of age; and (3) being a legal United States resident. There is no underwriting  
20 activity or risk assessment when signing up as a member. If you are a law-abiding adult legal  
21 U.S. resident you can purchase a membership with ACLDN. *2<sup>nd</sup> Decl. M. Hayes*, p 5, ¶¶ 26-27.

22 There are no indemnification provisions of ALCDN memberships. If judgment is  
23 assessed against an ACLDN member, ACLDN does NOT pay for the judgment. *2<sup>nd</sup> Decl. M.*  
24 *Hayes*, p 5, ¶ 28.

26 <sup>2</sup> In eleven years, only 22 applications have been granted access to the Funds.

<sup>3</sup> ACLDN initial donated 20% of member dues to the Fund. Unilaterally, ACLDN increased this amount to 25%.

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### III. ARGUMENT

ACLDN asserted procedural due process, which requires a stay of the OIC Cease and Desist Order because a hearing with a neutral tribunal is required before there can be a governmental taking. In response, OIC asserted the legal standard governing a motion to stay is whether there is undue prejudice defined as a clear case of hardship in inequity in moving forward without a stay. OIC either misunderstood ACLDN's position or is intentionally avoiding the constitutional issues. The four (4) cases cited by OIC in support of its position are completely inapplicable and irrelevant as: (1) None address procedural due process, even a little; (2) None address a governmental taking; and (3) each involves a request for a stay of a court decision pending appeal from the court decision (thus *after* a neutral tribunal has made a decision on the merits). A quick review of each case makes their irrelevance clear:

- In *Virginian R. Co. v. United States*, 272 U.S. 658 (1926), the substantive issue was whether an Interstate Commerce Commission Order requiring railroad companies to establish new rates was proper (thus no governmental taking). The District Court stayed its Order upholding the Commission pending appeal. The Supreme Court addressed the power to stay a final decree (thus after a neutral tribunal has analyzed the merits). There were no due process arguments addressed.<sup>4</sup>
- In *In re Koome*, 82 Wn.2d 816, 514 P.2d 520 (1973), the Washington State Supreme Court reviewed a physician's violation of a stay order, issued after the parents filed for review of a juvenile court's permission granted to a 16 year old for a therapeutic abortion. In contradiction to the stay order, the physician performed the abortion. In finding the physician in contempt, the Court analyzed the purpose of stay orders. No due process arguments were addressed and the stay order followed a neutral tribunal finding on the merits.
- In *In re Marriage of Herridge*, 169 Wn.App. 290, 279 P.2d 956 (2012), the appellate court reviewed a trial court's denial of a stay pursuant to the Servicemembers Civil Relief Act, and thereafter entering orders during the husband's absence. It was found that the husband had not complied with the requirements of the SCRA to warrant a stay. There were no due process

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<sup>4</sup> On page 8, line 22-23, of its Response, OIC stated "[d]ue process does not include a stay as a matter of right" citing *Virginian* for support. However, there is absolutely NO language in *Virginian* which supports this contention, and the Supreme Court in *Virginian* did not address constitutional law or procedural due process.

1 arguments addressed and the stay order was decided after review of neutral  
2 tribunal.

- 3
- 4 • In *State v. Longo*, 185 Wn.App. 804, 343 P.3d 378 (2015), the prominent portion  
5 of the case was whether collateral estoppel prevented the State from using  
6 evidence in a criminal proceeding after it was excluded in a related civil  
7 forfeiture proceeding. A small portion of the opinion addressed the defendant's  
8 request for a stay on his collateral appeal while the substantive issue was being  
9 decided by the supreme court in another case. There were no due process  
10 arguments, and a neutral tribunal already reviewed the merits.

11 The cases OIC cited simply have *nothing* to do with ACLDN's arguments outlined in  
12 this motion. ACLDN argued, and such remains without applicable argument to the contrary:

- 13 • The Due Process Clause of the United States Constitution prohibits the  
14 government from depriving a person of life, liberty, and property rights without  
15 first undertaking an adequate process.
- 16 • the fundamental requirement of due process is the "opportunity to be heard at a  
17 meaningful time and in a meaningful manner."
- 18 • In the absence of extraordinary circumstances, procedural due process requires  
19 notice and opportunity to be heard *before* any governmental deprivation of a  
20 liberty or property interest.

21 See Motion, p 5, citing *Cleveland Bd. Of Educ. V. Loudermill*, 470 U.S. 532, 541, 105 S. Ct.  
22 1487, 84 L.Ed.2d 494 (1985); *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed.  
23 2d 18 (1976); *Zinerman v. Burch*, 494 U.S. 113, 127, 110 S. Ct. 975, 108 L. Ed. 2d 100  
24 (1990); *Tom Growney Equip., Inc. v. Shelley Irr. Dev., Inc.*, 834 F.2d 833, 835 (9th Cir.  
25 1987) (citing *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971)).

26 The statutes and argument presented by OIC regarding its authority do not and in fact  
cannot alter foundational constitutional requirements of procedural due process. Nonetheless,  
OIC has opted to not respond to the constitutional challenge and has failed to present any reason  
outside statutory authority for how or why procedural due process has been afforded to  
ACLDN. Law regarding procedural due process is crystal clear: absent extraordinary  
circumstances, the government may *not* take any right away without *first* providing an



1 opportunity to be heard. Extraordinary circumstances do not exist here and OIC does not  
2 attempt to argue they do.<sup>5</sup>

3 OIC essentially ignoring the constitutional challenge may be interpreted as conceding  
4 the issue. *State v. Ward*, 125 Wn. App. 138, 143-44, 104 P.3d 61 (2005). There are only two  
5 lines in OIC's response referencing due process:

6 The extent solicitation of new business of unauthorized insurance  
7 is a protected property interest, Armed Citizens has been afforded  
8 what due process requires: the ability to contest the decision in the  
9 present hearing. Due process does not include a stay as a matter of  
10 right. *Virginian*, 272 U.S. at 672

11 OIC Response, p 8, l 21-23.

12 OIC is flat out wrong to cite *Virginian* for this premise. *Virginian* did NOT address due  
13 process at all. Moreover, OIC ignores clear due process law which permits a governmental  
14 taking *before* an opportunity to be heard in *only* extraordinary circumstances.

15 Rather than address the constitutional issue, OIC focuses on statutory authority for a  
16 Cease and Desist Order and the substantive issue of whether ACLDN engaged in insurance.  
17 Statutory authority does not circumvent constitutional requirements. Moreover, OIC is wrong  
18 as ACLDN has not engaged in insurance.

19 In Washington, insurance is defined as a contract whereby one undertakes to indemnify  
20 another or pay a specified amount upon determinable contingencies. RCW 48.01.040. Neither  
21 applies to the Fund offered by ACLDN.

22 The essential elements of an insurance contract are: 1) an insurer, 2) consideration, 3) a  
23 beneficiary, and 4) a hazard or peril insured against. *Babcock v. ING Life Ins. & Annuity Co.*,  
24 No. 12-CV-5093-TOR, 2013 U.S. Dist. LEXIS 1035, at 25 (E.D. Wash. Jan. 2, 2013), citing

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25 <sup>5</sup> Any such argument would be belayed by the fact that OIC's Order permits ACLDN to continue to fulfill  
26 obligations to already existing members, which would include access to the Fund – which is what OIC believes to  
be insurance. If there were extraordinary circumstances, OIC would forbid ACLDN from fulfilling those  
obligations should they exist (they do not – access to the Fund is discretionary and not a contractual right.) Further,  
exceptional circumstances could not exist given the year long investigation without any sense of urgency.

1 *State v. Universal Service Agency*, 87 Wash. 413, 424, 151 P. 768 (1915). Thus, in order for  
2 there to be insurance, the contract must obligate ACLDN to make a payment to a beneficiary.  
3 Such does not exist here. There is no obligation for ACLDN to provide funds to any member.  
4 Such is done at the sole discretion of ACLDN, as is made clear by the terms listed on the Web  
5 site, including the President’s letter and the fact that the ACLDN member is *explicitly* told that  
6 an ACLDN membership is not insurance.<sup>6</sup> A member could not successfully sue ACLDN for  
7 access to the funds.

8 Contrary to OIC’s assertion (Response p 10, l 16-17), there is no interpretation that the  
9 Fund is indemnification. Indemnity or indemnification is defined as:

10 To reimburse (for a loss suffered because of a third party’s act or  
11 default. 2. To promise to reimburse (another) for such a loss. 3.  
12 To give (another) security for such a loss.”

13 Black’s Law Dictionary (Seventh Edition).<sup>7</sup>

14 Relating to members access to the Fund, there is no loss that is being compensated. The  
15 member is not injured and has not had property that has been damaged. The Fund is used to pay  
16 for prospective vendors providing future services for the member (and not services to repair a  
17 loss or damage). There simply is no indemnification here.<sup>8</sup>

18 In review of the second condition that qualifies as insurance, “pay a specified amount  
19 upon determinable contingencies,” it is clear that ACLDN memberships do not constitute  
20 insurance. First, there is no indication of an agreement to pay a “specified amount.” Not only

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22 <sup>6</sup> While OIC is correct that Washington case law says a statement that a relationship is not insurance does not by  
23 itself render a contract to not be insurance, the fact that the ACLDN member is specifically informed of this clarifies  
24 the relationship that there is no right to the Funds, access is unilaterally discretionary on the part of ACLDN. In  
25 examining the character of the “promise” (See *McCarty v. King County Medical Serv. Corp.*, 26 Wn.2d 660, 684  
26 (1946)), that ACLDN makes these clear statements can only mean that ACLDN does NOT promise access to the  
Funds.

<sup>7</sup> Even under OIC’s assertion of Webster dictionary definition of “indemnify,” there is no hurt, loss, or damage  
being compensated for by ACLDN.

<sup>8</sup> OIC misrepresents the facts in stating that “Armed Citizens paid a member \$2,000.” Response p 7, l 8. Such is  
demonstrably not true. Rather, ACLDN paid an attorney \$2,000 to represent a member. ACLDN never paid the  
member any money.

1 is there no “agreement” as stated above (fully discretionary by ACLDN) but there is no  
2 specified amount. To the contrary, ACLDN may offer to pay *some* attorney fees or *all* attorneys  
3 fees, regardless of the ultimate amount. There is no specified amount.

4 Second, there are no determinable contingencies for which ACLDN has agreed to cover.  
5 “Determinable” is defined as capable of being determined, definitely ascertained, or decided  
6 upon<sup>9</sup>; while “contingency” is defined as an event that may or may not occur; a possibility; the  
7 condition of being dependent upon chance, uncertainty.<sup>10</sup> In reviewing the contingency nature  
8 of an insurance contract, an insurer’s promise is conditioned upon the occurrence of an  
9 uncertain, fortuitous event, that is a chance event. *Mendoza v. Rivera-Chavez*, 140 Wn. 2d 659,  
10 999 P.2d 29 (2000), citing 1 ERIC MILLS HOLMES & MARK S. RHODES, HOLMES'S  
11 APPLEMAN ON INSURANCE, 2D § 1.3, at 13 (1996). ACLDN’s willingness to pay  
12 attorneys’ fees for a member is not conditioned upon chance, uncertainty or an event that may  
13 or may not occur. It is a request from a member after they voluntarily and intentionally used  
14 force in self-defense.<sup>11</sup>

15 The fact that an act of self-defense occurs is NOT a contingent act. Self-defense is a  
16 voluntary, intentional act to prevent injury or death to the defendant or another in his/her  
17 presence or company. A person has no obligation to act in self-defense; he or she can simply  
18 acquiesce to be a crime victim, as many people do. The fact that a person decided proactively  
19 to act in self-defense is a voluntary, intentional act, which is not a determinable contingency.  
20 Thus, without a determinable contingency, the statutory definition of insurance falls short.

21 ACLDN does not engage in insurance of any kind. ACLDN maintains a fund from  
22 which members may apply to receive assistance in paying legal fees and costs *if* ACLDN  
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26 <sup>9</sup> Webster’s Online Dictionary.

<sup>10</sup> Black’s Law Dictionary (Seventh Edition).

<sup>11</sup> ACLDN will offer assistance to a member *only* when the member has intentionally acted in self-defense.

1 decides to provide such assistance. There is no promise to provide such assistance.<sup>12</sup> As such,  
2 there cannot be a contract for insurance. There is no indemnification. There is no agreement to  
3 pay a specified amount upon determinable contingencies.

4 **IV. CONCLUSION**

5 Procedural due process requires that *prior* to a cease and desist order which takes liberty  
6 or property, unless there are extraordinary circumstances, a party *must* be provided an  
7 opportunity to be heard before a neutral tribunal. Such opportunity was not provided to  
8 ACLDN. Accordingly, a stay of the OIC Order should be imposed, thus complying with due  
9 process.  
10

11 Further, OIC's assertions that ACLDN has engaged in insurance is wrong. As such, a  
12 stay is warranted under the standards asserted by OIC.

13 Dated this 10<sup>th</sup> day of June 2020.  
14

15 **FREEMAN LAW FIRM, INC.**

16  
17 Spencer D. Freeman  
18 Spencer D. Freeman  
19 WSBA No. 25069  
20 FREEMAN LAW FIRM, INC.  
21 Attorney for Armed Citizens' Legal Defense  
22 Network, Inc.  
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26 <sup>12</sup> Any language that OIC points out regarding what ACLDN "will do" (or variations of that) explains what occurs  
*after* ACLDN exercises its sole unilateral discretion to provide access to the Funds. The ACLDN Web site and  
member information make it clear that there is no *right* to access the Funds.