NOTICE OF PUBLIC MEETING
AND POSSIBLE EXECUTIVE SESSION OF THE
STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

Location: **Citizens Clean Elections Commission**

1616 West Adams, Suite 110

Phoenix, Arizona 85007

Date: **Thursday, June 23, 2016**

Time: **9:30 a. m.**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Elections Commission and the general public that the Citizens Clean Elections Commission will hold a regular meeting, which is open to the public on June 23, 2016. This meeting will be held at 9:30 a.m., at the Citizens Clean Elections Commission, 1616 West Adams, Suite 110, Phoenix, Arizona 85007. The meeting may be available for live streaming online at www.livestream.com/cleanelections. Members of the Citizens Clean Elections Commission will attend either in person or by telephone, video, or internet conferencing.

The Commission may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item listed on the agenda, pursuant to A.R.S. § 38-431.03 (A)(3). The Commission reserves the right at its discretion to address the agenda matters in an order different than outlined below.

The agenda for the meeting is as follows:

I. Call to Order.

II. Discussion and Possible Action on Commission Minutes for May 19, 2016.

III. Discussion and Possible Action on Executive Director's Report.

IV. Discussion and Possible Action on the 5 Year Review Report submitted to the Governor's Regulatory Review Council and Related Matters in 2015.

The Commission may choose to go into executive session on this item for consultation with its attorneys regarding pending or contemplated litigation in order to consider its positions and instruct its attorneys. A.R.S. § 38-431.03(A)(4).

V. Discussion and Possible Action on Rule Amendment Proposals for the Following Rules For Public Comment:

A. A.A.C. R2-20-109

B. A.A.C. R2-20-110

C. A.A.C. R2-20-111

D. A.A.C. R2-20-114

E. A.A.C R2-20-115

F. A.A.C. R2-20-702

The Commission may choose to go into executive session on this item for consultation with its attorneys regarding pending or contemplated litigation in order to consider its positions and instruct its attorneys. A.R.S. § 38-431.03(A)(4).

VI. Discussion and Possible Action on MUR14-027 Veterans for a Strong America

Possible action on any Matter Under Review (MUR) identified in this agenda may include authorizing or entering into a conciliation agreement with subject of the MUR, in addition to any other actions, such as finding reason to believe a violation has occurred, finding probable cause to believe a violation has occurred, applying penalties, ordering the repayment of monies to the Clean Elections Fund, or terminating a proceeding.

VII. Discussion and Possible Action regarding the Secretary of State's Office Filing System and Clean Elections Reports (A.R.S. §§ 16-941, -942, 958 and Related Rules).

VIII. Discussion and Possible Action on 2016 Proposed Meeting Dates

IX. Public Comment

This is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism

X. Adjournment.

This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission's office, 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

Dated this 20th day of June, 2016.

Citizens Clean Elections Commission
Thomas M. Collins, Executive Director

Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Commission at (602) 364-3477. Requests should be made as early as possible to allow time to arrange accommodations.

THE STATE OF ARIZONA

CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

May 19, 2016

9:30 a.m.

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PUBLIC MEETING, BEFORE THE CITIZENS CLEAN ELECTIONS COMMISSION, convened at 9:30 a.m. on May 19, 2016, at the State of Arizona, Clean Elections Commission, 1616 W. Adams, Conference Room, Phoenix, Arizona, in the presence of the following Board members:

Mr. Damien Meyer, Acting Chairman
Mr. Mark S. Kimble
Mr. Steve Titla (Telephonic)

OTHERS PRESENT:

Thomas M. Collins, Executive Director
Paula Thomas, Executive Officer
Sara Larsen, Financial Affairs Officer
Gina Roberts, Voter Education Manager
Mike Becker, Policy Director
Alec Shaffer, Executive Support Specialist
James P. Driscoll-MacEachron, AAG
Rivko Knox, Arizona League of Women Voters
Joe Roth, Osborn Maledon
Lauren Coffman, R&R Partners
Miriam Swofford, R&R Partners
Samantha Pstross, AZ Advocacy Network
Rhonda Barnes, House of Representatives
Lisette Flores, Arizona Senate
MaryJo Pitzel, AZ Republic
Abbe Pyron, Arizona League of Women Voters

P R O C E E D I N G

ACTING CHAIRMAN MEYER: Good morning, everyone. We'll now call to order today's May 19th meeting of the Citizens Clean Elections Commission.

I'm Commissioner Damien Meyer. I've been asked to Chair the meeting today as our Chairperson Laird is out of the office today. We also have Commissioner Titla on the phone. Commissioner Titla, can you hear us?

COMMISSIONER TITLA: Yeah. Good morning, everyone.

ACTING CHAIRMAN MEYER: Good morning. And we also are waiting for Commissioner Paton, but we're going to go ahead and move forward at this time.

The first -- we've called the meeting to order. Second item on the agenda is discussion and possible action on Commission minutes from March 31st of 2016. Any questions or concerns on the March 31, 2016, minutes?

And if there aren't any, can we get a motion to approve them?

COMMISSIONER KIMBLE: Mr. Chairman, I move we approve the March 31 minutes.

ACTING CHAIRMAN MEYER: Any second?

COMMISSIONER TITLA: I second.

ACTING CHAIRMAN MEYER: Okay. All in favor, say

"aye."

(Chorus of ayes.)

ACTING CHAIRMAN MEYER: All opposed?

Okay. Motion carries and the minutes are approved.

Item III on the agenda, discussion and possible action on the Executive Director's report. Mr. Collins, care to give us any comments on your report? I've -- I believe we've gone through it -- I've gone through it, but...

MR. COLLINS: Sure. Mr. -- Mr. Chairman, Commissioners, just -- just the highlights are there and then we'll have a little more on -- on -- on what we did on voter education in -- later in the meeting.

I think we did want to specifically mention that -- you know, that we're preparing the -- the primary election candidate statement pamphlet, that process is underway. We've met with the -- the printer for that and we're working to take a couple extra steps, I think, to make sure that -- that we don't have any issues at all. I think that the -- based on the newspaper reporting and -- and some of the other things we've heard, I think we've -- I think some of you maybe are familiar, there was a little bit of a -- an issue with the distribution of the special

election publicity pamphlet, and so we've kept an eye on that. And I think we have a pretty good understanding of what happened there and -- and we don't have any real reason to anticipate something similar happening in -- in this circumstance.

We happen to share the same printer for this, but the issues with that were not printer related from -- they were related to other things.

So, I think we're -- I think we're -- I think we're -- I think we feel pretty comfortable about -- about -- about that, but I did want to highlight that because it's been -- you know, it's something that's -- it's an important duty and, obviously, we -- we want to make sure that we have everything go off without a hitch.

So, I'm happy to answer any questions about that or anything else in the report, but that's really the -- I thought the most important thing to hit.

Other than -- and I also want to call your attention to the budget report that's attached as an exhibit to the -- to the -- to the hard copy, an update where we are for the calendar year.

And with that, unless you have any questions, I -- that -- that would be all I would -- all I have.

ACTING CHAIRMAN MEYER: Okay. Any questions from anyone on the report?

1 Okay. With no questions, anyone move to
2 approve -- approve the Executive Director's report? Do we
3 need to do that, Tom?
4 MR. COLLINS: You don't -- you don't have to. We
5 haven't.
6 ACTING CHAIRMAN MEYER: Okay.
7 MR. COLLINS: It's just -- it's there in case you
8 for some reason wanted to, but we don't --
9 ACTING CHAIRMAN MEYER: Okay.
10 MR. COLLINS: There's no -- no -- not required.
11 ACTING CHAIRMAN MEYER: Pardon me.
12 MR. COLLINS: No, not at all.
13 ACTING CHAIRMAN MEYER: Item IV, discussion and
14 possible action on the five-year review report submitted
15 to the Governor's Regulatory Review Council and related
16 matters in 2015.
17 And it also states here on the agenda, the
18 Commission may choose to go into executive session on this
19 item for consultation with its attorneys regarding pending
20 or contemplated litigation in order to consider its
21 positions and instruct its attorneys.
22 MR. COLLINS: So --
23 ACTING CHAIRMAN MEYER: Tom, go ahead.
24 MR. COLLINS: Yeah. Sure. So -- so we had
25 the -- the -- the Governor's Regulatory Review Council,

1 which everyone may recall is a -- is a -- is a group
2 appointed by the Governor that has certain regulatory
3 responsibilities in terms of -- of -- of -- of rulemaking.
4 They also assert authority over the Commission's
5 rulemaking process, which as you all know we've -- believe
6 is not correct.
7 They -- following our last -- I guess our --
8 following our last meeting, we followed up with GRRC on
9 two issues. As you recall back in, I guess it would have
10 been January and February, they voted to say that we
11 needed -- to reject the five-year report we'd submitted
12 and they voted to say that the rules would -- would --
13 specific rules, specifically Rule -109 or a lot of it,
14 would be rescinded. They did not at that time set a date
15 for that. We got a later letter from the Council's
16 attorney saying that the date was -- for that being
17 effective was August 2nd and that the date that the new
18 report would be due would be May 31st.
19 We corresponded with them through our counsel at
20 Osborn Maledon to say, you know, a couple of things: A,
21 what -- how should we revise the report; why are the rules
22 rescinded if we have not yet had an opportunity to revise
23 the report; and why are the rules rescinded?
24 Their staff attorney responded through a memo to
25 the Commission saying: We're not -- that the Council --

1 the Council, I should say -- the Council is not obligated
2 to identify the -- any flaws in the report nor is the
3 Council required to identify any -- any -- despite the
4 terms of the statute, anyplace where the Agency's
5 analysis -- that is, the Commission's analysis --
6 demonstrates a material flaw in the rules based on the
7 factors in the statute; but, that it would be a good
8 prudential action for the Council to inform the Commission
9 of why the report was rejected, not the rules. Not the
10 rule rescinding, that was not something that ought to be
11 explained.
12 And so, we had a meeting to discuss that. Joe
13 Roth, who is here from Osborn Maledon, represented us at
14 that meeting. I was not there. I was really, really sick
15 that day, so I -- I couldn't drag myself to the GRRC
16 meeting, although I -- I would -- would otherwise have
17 been there.
18 You have the transcript of that in your
19 materials. You know, I -- I -- from what I can gather, we
20 will -- we do not know why the rules were rescinded; we do
21 not know how they arrived at the August 2nd date; we do
22 not know when the vote was taken to set the August 2nd
23 date, if one was ever taken; and we do not have any idea
24 what the material flaws that the Clean Elections
25 Commission [sic] identified that are material to the rules

1 under the factors that are in the statute are.
2 We will be told at a meeting later what the
3 reasons for the rejection of the five-year report are,
4 that will be told to us by GRRC's attorney; we were not
5 informed of that at the meeting and we do not know from
6 the Council specifically what was flawed with the report.
7 I think that is probably a fair assessment. I
8 wish I could say that that was an exaggerated or --
9 summary of what happened in terms of the amount of detail
10 that we have from the Council respecting a decision to
11 assert that basically, you know, all of the -- that many
12 of the Commission's rules are to be voided. Now, we say,
13 in fact, we don't think that's effective, but that's
14 not -- I mean, I think that's a -- it's a -- basically a
15 fair description of the proceedings that we had with them.
16 And, so, you know, there -- there are some
17 questions about, you know -- you know, we -- you know,
18 our -- our -- our -- heretofore we've said and we have on
19 our website still to this day, a statement that says that
20 regardless of the Council's purported actions, the -- the
21 rules and the statute are -- remain unchanged. And no
22 matter what you think about the rules, the Governor's
23 Regulatory Review Council cannot rewrite the Clean
24 Elections Act. It's just not something they can do.
25 So, you know, I guess, you know, we haven't --

1 you know, we haven't gotten to a place where on a -- on a
2 timeline where we need to -- to -- to change any actions
3 we've taken thus far. You know, the statement that we put
4 out I think based on all the comments we've gotten from
5 you as Commissioners over the course of the last couple
6 months remain in place. We have, I believe, done
7 everything we can to articulate to the Council,
8 notwithstanding our belief that they don't have the
9 authority they're asserting, you know, a sort of a -- what
10 I think would -- is an effort to work with them on a good
11 faith basis.
12 We have been working -- we've developed --
13 we've -- and I think I can tell -- tell you, we've
14 onboarded a -- a -- an expert for purposes of trying to
15 create further analysis within the five-year report.
16 Which, I should say, was in the same format, involved the
17 same issues, and -- and included the same materials that
18 had been routinely approved over the course of the last 10
19 years by this same Council. But we're willing to flesh
20 that out in any way that we can, if they will -- if the
21 Council staff will tell us what the Council's views are on
22 why it's -- needs to be rewritten.
23 But -- so, we're trying to work on two tracks
24 here. Both say: Look, this is not right, it's not
25 prudential, it's not correct, it shouldn't be done; and,

1 if you're going to do it, please help us do it the way in
2 which you want it done. You know, save, I guess, if
3 the -- if the issue on the -- on the report becomes: You
4 need to rewrite the report to say the rules are invalid,
5 which we won't find out until GRRC's attorneys decide to
6 tell us what the Council thinks.
7 I don't -- I don't have any -- I guess I -- I
8 feel like I've rambled a bit on this, but -- but that's
9 really -- that's the -- that's the state of play. So, we
10 -- we will find out more within the next few weeks on --
11 on what is -- is wrong if -- in their view with the
12 five-year report and -- and we'll go from there.
13 COMMISSIONER KIMBLE: Mr. Chairman? Mr. Collins,
14 I -- I don't know who to direct this to, actually, but
15 I've read these -- the minutes of the GRRC meeting, I read
16 through them twice, and I can't say that I understood a
17 whole lot of it, most of it based -- most of it was
18 discussion of the process, and I know that we clearly have
19 a difference of opinion regarding the Voter Protection
20 Act.
21 But can you tell me -- so -- so, where do we
22 stand? What is next? Do we know that? Are we just
23 waiting for the GRRC attorneys to contact our attorneys or
24 what -- what's next?
25 MR. COLLINS: We have a -- well, we have -- we'll

1 meet with -- with GRRC staff attorney, Chris Klemenich, I
2 think within the next week to find out the answer -- the
3 answer to that question in terms of the five-year report,
4 and we'll be able to report back to you on, you know, what
5 the results of that meeting are.
6 I mean, until it happens -- I think that -- I --
7 I can't recall correct- -- enough from the -- from the
8 meeting itself and the transcript what -- I think there
9 was an allusion to a couple of things, I'm not really sure
10 where that -- how -- what -- what -- how that will be
11 flushed out. But that's really the next immediate step
12 and then -- you know, I guess that's -- to answer your
13 question, that's the next immediate step.
14 COMMISSIONER KIMBLE: So, is it their position
15 that by some date we are required to repeal the rules that
16 we've adopted? And are we now debating over the date, is
17 it -- is that a fair description?
18 MR. COLLINS: I think that's a -- here's what I
19 would say about that, Mr. -- Mr. Chairman, Commissioner
20 Kimble. I -- I think that from the -- the time when they
21 made the motion to rescind the rules, they -- they --
22 they -- my -- and I -- and we have their -- their minutes
23 and we also have -- well, we have their minutes at least
24 and some other evidence of what they did -- they didn't
25 record that meeting for some reason. But, they said the

1 rules are void.
2 They -- the statute basically calls for an order
3 to the agency to amend the rules; and then upon the
4 agency's failure to amend the rules, then the rules are
5 rescinded. But that's not what they did. What they did
6 is say the rules are rescinded on the basis that the
7 member who made the motion said -- in the absence of any
8 evidence -- that the Commission would not, quote, unquote,
9 "work with the Council"; and, therefore, there was no
10 point in doing anything other than voting to repeal the
11 rules that they -- that the Secretary of State basically
12 has objected to. That's what happened.
13 Theoretically what is supposed to have happened
14 is there would have been some kind of order to repeal the
15 rules, that never happened; there would have been some
16 vote on identifying the date by which that should occur,
17 that never happened. And, instead, we got a letter from
18 Chris Klemenich, the staff attorney for GRRC, that said:
19 Your rules expire on August 2nd.
20 And, so, none of the things that are in the
21 statute contemplated -- whether it's a discussion -- you
22 know, we can take those under advisement and in the sense
23 that -- that if the Commission were to, obviously, reach
24 the conclusion that the rules ought to be repealed or
25 revoked, any of those things, that's always a decision the

1 Commission can make.
2 But in this particular case, you know, I don't
3 think that GRRC even said that. They just said: The --
4 the rules expire on August 2nd. And -- and I guess the
5 blank to fill in there is: Unless you repeal them
6 yourselves.
7 And the only reason I -- I mention that in -- in
8 part is to try to give a summation of the fact that I -- I
9 really feel like the -- that the way that the -- this
10 process has been shorthanded and -- and -- and -- and made
11 almost cryptic is -- is very difficult for the public and
12 me as a staff member, and the rest of our staff, and the
13 attorneys to understand what is happening besides an
14 expressly -- just a disagreement about a result.
15 It -- it's not the way in which most
16 administrative and legal proceedings occur. You don't
17 usually not know what the decision's basis was until after
18 the decision was made, which is what we're talking about
19 in this situation. We're talking about passing around the
20 cake and then cutting it.
21 And -- and I -- and I also think that it's
22 important to bear in mind that our statutes say that the
23 Commission cannot have a rule amendment effective within
24 the calendar year unless it's unanimous. So, it's -- it's
25 not at all the case that -- that's not true for -- for --

1 for -- for most -- I don't know -- I guess I should say I
2 don't know what most -- but I don't think that most
3 administrative agencies operate under a similar
4 limitation.
5 So, all this conversation in -- in -- in terms of
6 the way that some people who have been objecting to the
7 Commission's existence and to its rules have -- have
8 framed this is around: The Commission doesn't have enough
9 procedural hurdles, it's just nothing is done the way we
10 think it ought to be done.
11 Well, look it. The Commission, unlike other
12 agencies, can't just turn on a dime in -- in a -- in a --
13 in an election year. There's a statute that says, you
14 know, we -- that the Commission has to act unanimously.
15 So, these are all much more complicated questions than the
16 process we've been involved with in GRRC has allowed for.
17 And notwithstanding our efforts to try to lay out all of
18 these complications, they've really not amounted to
19 anything.
20 So, that's a longer answer than probably what you
21 were looking for, but it's just to kind of frame this is
22 in terms of how I think different from any other
23 administrative procedure I have personally ever seen or
24 participated in that this has been.
25 ACTING CHAIRMAN MEYER: Okay. Mr. Collins, so it

1 sounds like we have both procedural and substantive issues
2 and that both of them are unclear as to what comes next.
3 MR. COLLINS: I think that -- I mean,
4 Mr. Chairman --
5 ACTING CHAIRMAN MEYER: Trying to simplify
6 things.
7 MR. COLLINS: Yeah. No, I -- I think that's
8 exactly right. There are -- that's exactly correct.
9 And -- and, you know, the only -- the one
10 consistent thing we've concluded at previous meetings is
11 to maintain the -- and we continue to say this, that --
12 that this is not going to change the outcome of how, you
13 know, the statute and -- and rules operate because of
14 the -- the overriding VPA issue and that consistency is
15 important in this context. But -- but, yeah. So, with
16 that caveat, yeah.
17 So, I had to find a way to complicate it.
18 ACTING CHAIRMAN MEYER: I know Mr. Roth is here
19 with us.
20 MR. COLLINS: Yes.
21 ACTING CHAIRMAN MEYER: Would you like to address
22 the Commission or -- or follow up on -- on what
23 Mr. Collins has -- has indicated? I know you were at the
24 meeting and -- and he was not, so maybe you have some
25 additional thoughts or...

1 MR. ROTH: Sure. Thank you, Mr. Chairman and
2 Commissioners. I don't have a lot of detail to add to
3 what Mr. Collins stated already. I think in general it's
4 accurate. We are not left with a -- a much clearer
5 indication of what it is was considered to be inadequate
6 about the Commission's five-year report or -- and -- and
7 one thing is clear, there has been no change in the
8 Council's position. They did not take any action at the
9 meeting. Aside from the staff attorney and the Chair --
10 the chairperson, who I understand is not a Council member,
11 there was only one Council member that spoke at -- at the
12 meeting.
13 My understanding of the next steps are that
14 Mr. Collins and I will meet with Mr. Klemenich, the staff
15 attorney, because we are trying to collaborate and address
16 whatever concerns there may be with respect to the
17 five-year report. I don't think the Commission has any
18 objection to the concept of the five-year report or that
19 it maybe make sense to address whatever there is.
20 With respect to the repeal of the rules, one
21 purpose I had in -- in going there was to reassert the
22 Commission's position that -- that the Voter Protection
23 Act prohib- -- does not authorize the -- GRRC, the
24 Regulatory Review Council, to -- to command or require the
25 repeal of this -- this Commission's rules, and that was

1 one track in my mind.
2 The second track is we had concerns and Mr.
3 Collins has explained some of them, about the way in which
4 the GRRC's process -- assume it could be effective, the
5 way in which GRRC's process played out. In our view from
6 the previous meetings, we don't -- we did not understand
7 why the rule is inadequate and there was, in our view, no
8 finding of why the rules were materially flawed. Our
9 position on the statute is that GRRC has to find -- make a
10 finding that the rule is materially flawed for some
11 reason, and the statute lists some of the reasons -- and I
12 qualify before saying -- and thus it must be repealed.
13 Here what we have is -- the only evidence we have
14 of action is: I vote to repeal.
15 So, one thing I was trying to find out at that
16 meeting is: What is materially flawed about the rule?
17 Perhaps it's something that could be addressed in the
18 report.
19 One Council member, I believe -- my memory
20 escapes me but we have the transcript here -- one Council
21 member said: I think that the -- it's legally flawed,
22 that it -- and I think generally for the reasons that the
23 Secretary of State's office has -- has expressed. We
24 didn't get into further detail with respect to that at --
25 at the Council meeting.

1 With respect to the date, our view is that
2 there -- the date -- the August 2nd date is ineffective
3 because they haven't -- GRRC has not followed their own
4 statutory procedures, and because you can't just assume
5 the earliest date, I don't think that's a fair reading of
6 the statute. But, again, there was no -- there was no
7 vote on that. The Council's position and staff's position
8 there I believe is quite clear, that they believe the
9 August 2nd date is effective.
10 The way the statute works there is that if the
11 Commission were not to repeal the rule as requested, then
12 a -- that that would be sent to the Secretary of State --
13 the Secretary of State, who would remove the rules from
14 the code.
15 With respect to what the Commission should do or
16 perhaps what actions that might occur after that, that
17 discussion, I think, would have to occur in executive
18 session.
19 But in terms of next steps that we can discuss
20 here, the one -- one thing, I'm sorry. I didn't say -- I
21 said the Council took no action. One action that was
22 taken is that the due date for the revised report has been
23 extended from May 31st to June 30th. And part of that
24 understanding is we -- we would like to work
25 collaboratively with staff -- the staff attorney at GRRC,

1 and to be efficient and to address whatever concerns they
2 have to the extent we can, and we're doing that.
3 ACTING CHAIRMAN MEYER: So, the timeline is
4 June 30th, but you need to meet with the GRRC staff
5 attorney to discuss the deficiencies before we can revise
6 the report?
7 MR. ROTH: That's right. And we have a meeting
8 scheduled for next week --
9 ACTING CHAIRMAN MEYER: There is, okay.
10 MR. ROTH: -- Mr. Chairman.
11 ACTING CHAIRMAN MEYER: And then -- so then this
12 -- the report gets submitted on June 30th. And then tell
13 me how the June 30 and the August 2nd dates relate to one
14 another. If there's an approval of what's submitted on
15 June 30th, does August 2nd go away? Or --
16 MR. ROTH: Mr. Chairman, I think that's a very
17 good question.
18 ACTING CHAIRMAN MEYER: That's a -- that's a
19 theoretical question, I guess. And the actual -- I guess
20 the real-life question is: If this rule is not repealed
21 in our June 30th report, are we looking at this August 2nd
22 date where the rule gets repealed?
23 That's the cutting-away-the-fat question, I
24 guess.
25 MR. ROTH: To address the first part, that is a

1 question -- Mr. Chairman, thank you. That is a question I
2 asked at the -- the GRRC meeting, what would be the point
3 of this dual track? Because the way I view the statute is
4 if there's a problem with the report that can be revised,
5 you would do that, and then make a decision as to whether
6 there's a materially -- materially flawed rule that
7 requires repeal. I don't believe I received much of an
8 answer to the question. So, the -- the answer to the
9 first question is: I don't know. I'd -- I -- I agree
10 with you, there is a certain illogic to it.
11 With respect to the second part, I -- I think how
12 the August 2nd date is effective and how it plays out and
13 what the Commission might do is -- is something I would
14 prefer to address in executive session.
15 ACTING CHAIRMAN MEYER: Okay. I guess, is --
16 MR. COLLINS: It's -- it's really up to you if
17 you want --
18 ACTING CHAIRMAN MEYER: Does anyone want to -- I
19 mean, I think this is something we should discuss in
20 executive session. Does anyone -- I would move, if -- if
21 I can --
22 MR. COLLINS: You can.
23 ACTING CHAIRMAN MEYER: -- move to -- to convene
24 in executive session.
25 COMMISSIONER KIMBLE: I second that with the --

1 with the addition that I think Item V is -- can we go into
2 executive session for both Item IV and V together? They
3 seem to have a lot of overlap.
4 ACTING CHAIRMAN MEYER: I -- I don't have an
5 objection to that. Do -- do we need to have any -- Tom,
6 as far as procedurally, do we need to have a discussion on
7 that here in the meeting before we go into executive
8 session?
9 MR. COLLINS: I don't -- I don't actually -- I
10 guess --
11 ACTING CHAIRMAN MEYER: I'd rather not do it
12 twice.
13 MR. COLLINS: I see your point. I'll tell you
14 what, why don't we do this, if -- if -- just because
15 there's people in the public here and I know that there's
16 some interest in the discussion on Item V, would it be
17 helpful to summarize Item V and get that stuff out so we
18 have had them both. I don't think there's any reason to
19 go -- that you can't go back and forth between the items.
20 I don't think that we need to -- I mean, unless we get
21 advised otherwise, I don't think we need to -- to jump in
22 and out of executive session. But even if that was
23 something that we were advised to do, if we got the
24 discussion -- the public part of that discussion out of
25 the way first, then everything would be more --

1 ACTING CHAIRMAN MEYER: That's my -- I think
2 that's the best way to proceed.
3 MR. COLLINS: Okay.
4 ACTING CHAIRMAN MEYER: So, I'm going to withdraw
5 my motion.
6 And then we'll move to Item V now for discussion
7 and possible action on the 2016 legislative updates.
8 MR. COLLINS: And -- and --
9 ACTING CHAIRMAN MEYER: Tom, go ahead.
10 MR. COLLINS: Sure. Mr. Chairman, Commissioners,
11 I'll try to be as expeditious as I can with this. A
12 couple of different things, you know, you have in your --
13 in your materials a -- a -- a memo which was as short as I
14 could -- could make it -- it's really big font, though, in
15 my defense -- talking through some of the -- what we see
16 as the major issues respecting the -- the -- the bills
17 that have passed this session. You know, I think that --
18 and then I think that with respect to implementation of --
19 of that and other aspects of the campaign finance code, I
20 have a little bit to say about that.
21 But I think the -- the upshot is that, you know,
22 we have -- the -- the legislature has passed and the
23 Governor has now signed a -- a number of bills that --
24 that -- that have a -- a -- you know, a fairly dramatic
25 impact on the campaign finance code as -- as we know it.

1 I -- I don't think there's any way that you can
2 characterize these -- this legislation as a -- as a -- as
3 a -- a kind of a -- a -- a nuance sort of fix-it approach
4 to -- to campaign finance. It's really a campaign finance
5 deregulation set of bills.
6 And the tension that that creates is that the
7 Clean Elections Act is not a deregulatory act, it's a
8 regulatory act. And the overlay there is the Voter
9 Protection Act. And -- and the -- and the fact that
10 because of previous tinkerings with initiatives, the
11 voters back in 1998, when they passed the Clean Elections
12 Act, also passed a constitutional amendment that says
13 basically when it -- when they have spoken, they -- you
14 know, they get the -- they get the last word, essentially.
15 Now, that having been said, and -- and some of
16 the -- and -- and in -- in -- and some of these arguments,
17 as I try to allude to, relate to how things are
18 cross-references and -- cross-referenced and, you know,
19 just for -- sort of the -- to think about this is -- I'm
20 trying to figure out a way to think about this as a --
21 from a -- as a non-lawyer, and I -- and it's -- and it's
22 hard because basically the -- the -- the reason it's a
23 hard legal question is because courts might be -- the
24 implications of saying that a statute that's
25 cross-referenced in a voter protection act -- Voter

1 Protection Act protected statute are, that it kind of
2 freezes more of the code than just, you know -- you know
3 what I mean? It sort of reaches out past, you know, the
4 -- past that. That's the argument.
5 Now, I think you have the Attorney General's
6 opinion from this year that says that that's how
7 cross-references work, you do grab the underlying law.
8 And if the VPA applies to that literal statutory
9 interpretation, then these are easy questions. They
10 have -- they have consequences, of course, I might be
11 concerned about because of the -- the potential reach of
12 that. But as a -- as a -- from a legal analysis, it's
13 actually really simple. It's like, it's in, it's in. And
14 if it's in, it's VPA protected and that's it.
15 But, some of the -- on the other hand, other
16 provisions of this are less -- are -- are -- are more
17 clear-cut than that. I mean, there's one provision of a
18 bill called House Bill 2296 that, for example, says, you
19 know, you cannot require a report under the Chapter, that
20 is to say both Article 1 and Article 2 of a -501(C)(3).
21 Now, -501(C)(3)'s oughtn't be spending in
22 candidate races if they want to keep their tax status,
23 they're different than (C)(4)'s in that way. But, to
24 literally say you can repeal 16-941(D), the independent
25 expenditure report that's in the Clean Elections, you

1 know, Act body itself, that is not a cross-reference, it's
2 right there, without a three-quarters vote is a -- is a --
3 is a completely straightforward VPA issue.
4 And so that becomes then -- the question becomes,
5 as the memo alludes to, an institutional one: Do you, you
6 know -- you know, they -- they passed that bill
7 specifically in a manner that makes it retroactive to this
8 election cycle. And -- and, you know -- so, there's a
9 strong -- stronger argument than there might otherwise be,
10 that that discrepancy is not something for the Commission
11 to resolve because of the timing of the retroactive bill.
12 It's a -- it's an aggressive effort by the legislature
13 with respect to some of these -- these Voter Protection
14 Act issues. However, you know, that's a -- it's -- it's
15 -- to say that it's not a serious institutional concern
16 would be, you know, incorrect. You know, we can't be -- I
17 don't -- I just don't think we can be -- yeah.
18 So, that's sort of the upshot. And -- and what
19 we said to you at the last meeting was that we were going
20 to try to go through all of the changes that -- that we
21 could identify. The bills continue to be passed through
22 -- since that time. 2296 and -97, didn't even exist,
23 really, in their form at the last time we spoke, so. So,
24 we tried to compile that as much as we can to give you a
25 preview of where -- of where we're headed and to, you

1 know, talk about, you know, why this is a really difficult
2 question, and to try to give you an overview of some of
3 the issues are. I think we did that.
4 But that -- the goal is not have an action today
5 per se, but to really just kind of tee up, you know, here
6 are -- here are the sort of top four or five issues that
7 -- that -- that are in the bill and the -- and decisions
8 related to it.
9 The -- the other thing I'll mention related to
10 implementation and reporting under the Act is, you know,
11 we -- 16-941(D) and 16-958, expressly say that if you
12 spend -- if you're -- if you're a person, any person, who
13 spends money in a candidate election in Arizona over a
14 certain threshold, you are obligated to file a Clean
15 Elections independent expenditure report. That -- and
16 there's no -- no real question, at least I think with --
17 at least in our practice, and -- and -- and certainly in
18 our view, that that's true. Put -- puts aside the
19 political committee question, all that other stuff we
20 talked about, this is just -- just a report on spending.
21 But it -- but it's required of anybody who spends over a
22 threshold amount.
23 The Secretary of State's campaign finance
24 reporting system -- and -- and -- and, importantly, the
25 Secretary of State, is obligated to provide us a copy of

1 those reports under -- under the statute.
2 The statutes -- the -- the Secretary of State's
3 campaign finance reporting system used to have a place
4 where if you need to file a -941(D) report, you weren't a
5 political committee, you weren't a corporation or any
6 other -- had any other place you could file, you were just
7 in this sort of catch-all to file, we can't find that on
8 their website any longer, and we have not got any response
9 from the Secretary of State's office about why that's no
10 longer on their website. And we've also were told by the
11 Secretary's office we would get some outreach as they
12 develop their "see the money." They're revamping the
13 website. Sara Larson was -- you know, we were told would
14 be in the loop on that and we haven't been.
15 So, we have no -- we don't really know what's
16 going on there. I -- I want to mention that what we will
17 do administratively in the short term, probably, and we're
18 not asking for action on this, but -- but is -- is
19 probably create some kind of paper form on our website to
20 say: If you fall into this category, if people need to
21 file these Clean Elections Act reports, this is how you
22 need to do it until we figure out what's going on at the
23 Secretary of State.
24 ACTING CHAIRMAN MEYER: They can download the
25 form?

1 MR. COLLINS: Yeah. Exactly. It's a very simple
2 report. It takes very little time to do. You know, we
3 also have this exemption that if you qualify as a
4 particul- -- as a corporation, LLC, or labor union, you --
5 you aren't even going to have to file that. We have
6 had -- whereas last session -- last election we had, what,
7 twelve? Twelve fairly significantly-sized entities file
8 those exemptions; this year we've gotten none. Zero
9 exemptions.
10 So, it may be an educational issue. I tend to
11 think it's not an educational issue. I tend to think it
12 is a -- I don't mean to be cynical, but I think it is a
13 decision to not acknowledge this existence of this report
14 or the process for exempting yourself from the report,
15 which I think was a, frankly, a pretty generous way to
16 avoid any kind of legal issues. But, you know, far be it
17 for me.
18 So, that's the other thing we have going on on
19 that.
20 And then I think the other thing, Chairman,
21 Commissioners, I guess I want to mention is I don't know
22 how you want to do public comment, because we do -- I
23 think we have some people want to talk about this, and
24 then -- and then -- or if you want to wait until the end.
25 Maybe, you know, it probably might be better to get that

1 out now. And then -- but, of course, if you have
2 questions for me, obviously I'll take them, but I just
3 wanted to mention that as well.
4 ACTING CHAIRMAN MEYER: Tom, I -- I've reviewed
5 your memo and, I mean, there is some complexity to this --
6 MR. COLLINS: Sure.
7 ACTING CHAIRMAN MEYER: -- and I think we're
8 going to want to go into executive session and have some
9 questions for Mr. Roth. But, I agree, if there's any
10 public comment on these three measures: SB 1516, HB 2296,
11 and HB 2297, you know, we invite that now. So, please
12 feel free to come on up and state your name and we'd love
13 to hear from you.
14 MS. PSTROSS: Hello, Commissioners. My name is
15 Samantha Pstross. I'm the Executive Director of the
16 Arizona Advocacy Network. I think everyone knows me here.
17 Last night I actually sat at the table where the
18 Clean Elections Commission was born. It was really
19 exciting to be with a group of people who have been
20 defending Clean Elections for -- for years and years. I
21 was definitely the youngest person in the room. And I --
22 I just want to remind the Commission that -- that you are
23 a strong body here. Not a single anti-Clean Elections
24 bill was passed this session. There is a lot of support
25 for the Commission, and the Clean Elections Act was put

1 there by the people. It is voter protected and -- and
2 I -- I salute the Commission for continuing to uphold the
3 Clean Elections Act as it is. The Commission is strong,
4 supported, and you're voter protected.
5 I followed SB 1516 and the other two bills that
6 were passed this legislative session, they did not get
7 anywhere near a three-fourths vote and therefore they're
8 -- you cannot -- if there's anything in conflict with the
9 Clean Elections Act, it cannot be changed. You cannot
10 change your rules based on that, it's voter protected.
11 So, it doesn't have anything to do with the
12 merits of SB 1516, it doesn't matter how anybody
13 personally feels about these bills, which I know you know.
14 I mean, if the -- if the legislature had passed a bill
15 saying you could use Clean Elections funds to give each
16 one of you a million dollars, you still wouldn't be able
17 to change your rules without violating the constitution
18 because of the Voter Protection Act.
19 So, you have a legal obligation to uphold the
20 Clean Elections Act, as I know you know. It's voter
21 protected. And if you change any rules in violation of
22 the Clean Elections Act based on these bills, which did
23 not receive a three-fourths majority, you open yourselves
24 up to litigation. And, again, it's a violation of the
25 Constitution, so I don't think anybody wants that to

1 happen.
2 And, again, I just want to commend you for
3 upholding the Clean Elections Act, I hope that you
4 continue to do so.
5 And -- and I -- I wanted to say also, too, I've
6 been following GRRC. I've been attending those meetings.
7 And it's been -- there's been very little transparency. I
8 think that the staff here, Joe, has done a great job
9 representing the Commission. It's been very confusing for
10 the public as well as -- as the Commission, obviously.
11 But, again, I -- you know, it's the same thing.
12 The Clean Elections Act is voter protected and it was put
13 there by the people, and so I commend you to continue to
14 uphold the Clean Elections Act. Thank you.
15 ACTING CHAIRMAN MEYER: Thank you.
16 MS. PSTROSS: Do you have any questions? Sorry.
17 ACTING CHAIRMAN MEYER: Well, you mentioned
18 litigation and as a litigator I'm always interested in
19 that. What -- what type of litigation -- when you say we
20 open ourselves up to litigation, what are you envisioning
21 there?
22 MS. PSTROSS: Sure. Well, if any of the rules
23 are changed, if any of the Commission's rules are changed
24 and the change is not consistent with the Clean Elections
25 Act, then it would be a violation of the Voter Protection

1 Act, which is unconstitutional. So, you would be -- you
2 -- you could be sued for that because it's -- it's
3 unconstitutional.
4 So, the rules have to stay consistent with the
5 Clean Elections Act. Unless -- I mean, unless a bill had
6 been passed with a three-fourths majority it would be
7 different, but none of the bills passed this session had a
8 three-fourths majority.
9 ACTING CHAIRMAN MEYER: Well, the reason I ask
10 that is because, you know, frankly, I hadn't thought about
11 it in -- in those terms before where, you know, we would
12 be the defendant in a lawsuit in the scenario you're
13 talking about. We've often contemplated having to be the
14 plaintiff in a lawsuit to uphold to -- against other state
15 entities or agencies to uphold the -- the -- the VPA. So,
16 either of those results would be -- I'd prefer to avoid,
17 but I -- I appreciate your --
18 MS. PSTROSS: I agree.
19 ACTING CHAIRMAN MEYER: -- your insight.
20 MS. PSTROSS: Yeah.
21 ACTING CHAIRMAN MEYER: So, thank you.
22 MS. PSTROSS: Well, in my organization -- the
23 people who founded my organization founded the Clean
24 Elections Commission, they -- they helped write the Clean
25 Election Act, we have been long-time defenders of the

1 Commission, you know, and our -- our role is to defend the
2 Clean Elections Act and make sure that it's upheld, so.
3 COMMISSIONER KIMBLE: If I may, Mr. Chairman, let
4 me follow up on your question.
5 ACTING CHAIRMAN MEYER: Sure.
6 COMMISSIONER KIMBLE: So, as you envision it, if
7 we -- if we -- in response to these bills passed by the
8 legislature, if we then change our own rules, you would
9 see that as a violation of the Voter Protection Act?
10 MS. PSTROSS: Well, Mr. Commissioner, Mr. Kimble,
11 only if your rules are inconsistent with the Clean
12 Elections Act because the Clean Elections Act is voter
13 protected.
14 COMMISSIONER KIMBLE: Okay. But if -- if the
15 rules that we adopted several months ago, if we "unadopt"
16 those, theoretically, and I'm not suggesting we do that,
17 but if we do, you would see that as a reason that we could
18 be sued?
19 MS. PSTROSS: Well, Mr. Commissioner, the way
20 that -- that voter protection works is -- is the way that
21 the Clean Elections Act is, is your rules must be
22 consistent with the Clean Elections Act and you cannot
23 change any -- any rules that would be in violation of the
24 Clean Elections Act because it is voter protected; so,
25 yes, if -- if -- if it was inconsistent with the Clean

1 Elections Act.
2 COMMISSIONER KIMBLE: Okay. Thank you,
3 Mr. Chairman. Thank you, Ms. Pstross.
4 MS. PSTROSS: Any other questions?
5 ACTING CHAIRMAN MEYER: No. Thank you.
6 MS. PSTROSS: Thank you.
7 ACTING CHAIRMAN MEYER: Any other public comment?
8 MS. KNOX: Yes, Commissioners. My name is Rivko
9 Knox and I'm here representing the League of Women Voters
10 of Arizona. And I happened to attend the same meeting
11 last night, except I think I was the oldest person in the
12 room or close to that, I -- I didn't go around and check,
13 ask everyone for their AARP or Social Security card.
14 But, anyway, just to reiterate, and I've spoken
15 at this Commission before, but just to reiterate, the
16 League of Women Voters was very, very, very active in the
17 creation of the citizen -- of the Clean Election
18 initiative in the first place. Many of the people at the
19 meeting last night were -- had -- were involved in the
20 League. I also found out actually last night, that the
21 League of Women Voters collected the largest number of
22 volunteer signatures to pass the Clean Election Act of any
23 other organization. So, just to remind you, again, that
24 we are very strong, we're here, we'll remain here, we
25 remain very supportive of Clean Elections.

1 I am not an attorney, I do not play one on TV
2 either, and I read the memorandum that Mr. Collins wrote,
3 and I was -- I found myself kind of concerned about the
4 possibility of rules being changed merely because of other
5 legislation. The League took a position in opposition to
6 SB 1516, spoke against it. We did not have time to speak
7 against SB 2296 or -97, because it all happened, you
8 know -- you have to have a 24-hour clock to sometimes be
9 able to speak against those things.
10 But, again, we support disclosure, which I think
11 is the fundamental underlying -- one of the fundamental
12 underlying issues in what appears to be kind of a conflict
13 between SB 1516 and 2296 and the rules. We very strongly
14 support disclosure and are -- we spoke in favor of the
15 rule that you adopted last year.
16 Somewhere I believe in this memo -- and I
17 actually read it this morning because last night I was too
18 tired to read it in any kind of an intelligent way -- I
19 believe there is a reference to the fact that there is a
20 potential initiative that is -- may be in play by the end
21 of -- by the November election that would repeal a number
22 -- with strength in Clean Elections, and repeal a number
23 of the components of SB 1516 dealing with disclosure,
24 et cetera, et cetera, by the language in the new
25 initiative.

1 And so I would hope that rather than make any
2 dramatic changes in your rules, that you might consider
3 what could happen if this new initiative called the Clean
4 and Accountable Elections Act is passed. And, obviously,
5 that's all unknown at this point, but I just did want to
6 throw that into the mix.
7 And, again, the League -- the League of Arizona
8 across the state is very supportive of what you're doing,
9 so thank you for what you do. Appreciate the opportunity
10 to speak.
11 ACTING CHAIRMAN MEYER: Thank you. Thank you.
12 Any additional comment?
13 Okay. So, at this time, Tom, should we --
14 MR. COLLINS: I think you'd be -- yeah, if you
15 want to make your motion again.
16 ACTING CHAIRMAN MEYER: -- go into executive
17 session?
18 MR. COLLINS: Yeah.
19 ACTING CHAIRMAN MEYER: So, I'll -- I'll -- I'll
20 move that we go into executive session to address Items IV
21 and V on our agenda today.
22 COMMISSIONER KIMBLE: Second.
23 ACTING CHAIRMAN MEYER: All in favor?
24 (Chorus of ayes.)
25

ACTING CHAIRMAN MEYER: Mr. Titla, are you still with us?

COMMISSIONER TITLA: Aye.

ACTING CHAIRMAN MEYER: Okay. Okay. Motion carries. So, we're going to move into executive session.

(Whereupon the public retires from the meeting room.)

(Whereupon the Commission is in executive session from 10:20 a.m. until 11:03 a.m.)

* * * **

(Whereupon all members of the public are present and the Commission resumes in general session.)

(Whereupon Commissioner Titla is no longer present.)

ACTING CHAIRMAN MEYER: Okay. We are reconvening after our executive session and we no longer have a quorum, so we are not going to be taking any action, but we are going to proceed and allow any public comment and continue through the agenda, which is a presentation I think Gina is going to offer to us. So, we're going to go ahead and proceed with that. And that's on Item VI. So, we're going to move forward with that.

You are still welcome to make any public comment, but we're not going to be taking any action on that.

MR. COLLINS: So, just to re-announce, this is going to be -- Gina is going to talk to you about our -- current status of our voter education efforts and -- and recap some of the efforts we've made recently.

ACTING CHAIRMAN MEYER: We'll watch Gina wage her monthly battle with the PowerPoint wireless system.

MS. ROBERTS: Okay. Mr. Chairman, Commissioner, all right. Well -- and, hopefully, the battle shouldn't be too difficult because Sara did readjust the location of the computer so we got a little smart.

But just -- I have a very brief presentation on our efforts for the May special election that occurred on Tuesday.

So, what was the election about?

We had two ballot measures for voters to consider statewide. It was Proposition 123 which related to funding education, and Proposition 124 which related to the public retirement system. And our efforts were to get the message out to voters, one, regarding awareness of the election, that it was a special election that was called, and information on registering to vote, how to vote early; and election day information, such as locating your polling place, what to bring to the polls.

We developed a -- specifically, a new page for this election, so we had a dedicated Web page. And it had basically all the information a voter would need regarding the election, such as what it is about.

We had a special message for early voters that talked about the deadline to return your early ballot by mail, information on how to find your polling place, registering to vote, requesting an early ballot, we had some FAQ's up there, as well as the important dates regarding the election.

And we helped get this message out through -- through these mediums: We had radio ads, we had online ads, we did print ads, and we were very active on social media to, again, help get our message out.

This is just an example of the banner ad that we ran.

And some brief information on the performance of our efforts. So, for our banner ad, you can see based on the information on the screen that we were actually very successful in -- in this one, as we have been in the past, thankfully. So, if you take a look at the note at the bottom it says that the industry standard of the click-through rate -- how many times somebody actually clicks on the ad -- it's .10 percent. So, we outperformed that standard by 630 percent. So, our click-through rate

was .73 percent.

So, again, just some data here to show that our efforts were successful.

And we also had search engine marketing as well. So, basically, someone pulls up Google or Yahoo and they type in, you know, "special election," so we have an ad that pops up to give them the information they need and redirect them to our website.

Just a little bit of information about all of our ads' overall performance. So, in terms of impressions, how many times were -- was our message presented to voters across the state? You can see the total of a little over 1.3 million.

And this one I'll talk a little bit more about specifically. We had a ad that was targeted to early voters and it gave them the information on when is the last day to return your early ballot by mail, because there were some changes in First Class postage through -- through the USPS, and that deadline across the state we were trying to encourage voters that if you're going to return your early ballot by mail, that you need to do so the Wednesday prior to the election. And we did receive a comment from -- or, a request from Maricopa County to help spread that message out, because, really, if you are going to return your early ballot by mail, the deadline for

counties to receive it is 7:00 p.m. on election day. So, we wanted to make sure that folks who do take advantage of the early voting process, that they get their ballot back in the mail so that they know that it can be received in time.

And this was actually our most successful ad. So, we were very proud of that, that we were able to assist in -- in that effort.

We also had ads on Facebook, promoted posts to help people find their polling place. And both of -- I should mention, between both of these ads, we received a lot of comments from people on Facebook, and so it's a great medium for our agency to connect directly with voters and answer pretty much immediately any questions that they have about the process.

So, we definitely encourage people to follow us on Facebook because they get timely information and also it's a -- it's -- it's a medium for them to connect directly with us. So, if they have a question and, you know, it's election day, our staff, we're monitoring that, and we're able to respond practically immediately so they can get the information that they need. So, very successful on Facebook.

Just a reminder, for 2016 we have four elections. We've gone through two of them so far.

And -- and in terms of counting, counties are still tabulating ballots and the anticipation is that Friday they will be final and we'll know the final vote total.

But we have two that are upcoming. Our -- our major ones, the primary and general.

And, again, just another reminder, the tools that we are providing for voters for this year. We have our app, our online tool, which is where -- we've dubbed the "Candidate Compass."

We are -- as we've mentioned in the Executive Director report, we're underway with preparations for the debates and the Candidate Statement Pamphlet. That pamphlet will include information on the Citizens Initiative Review. Our website has tools for people to connect directly with their elected officials. We have all the information that someone needs for the election on our website and, again, our -- our media campaign.

So, with that, if anybody has any questions -- that was just a very quick, brief overview -- I'd be happy to answer.

ACTING CHAIRMAN MEYER: None for me. Commissioner Kimble?

COMMISSIONER KIMBLE: No.

ACTING CHAIRMAN MEYER: Thank you.

MS. ROBERTS: Thank you.

ACTING CHAIRMAN MEYER: And the next, No. VII, is public comment. We've already received some public comments. Are there any additional public comment?

Okay. Then we're going to go ahead and adjourn. I don't think we can -- even need to take a motion because we can't do so.

MR. COLLINS: Correct.

ACTING CHAIRMAN MEYER: So, the meeting is adjourned. Thank you.

(Whereupon the proceeding concludes at 11:10 a.m.)

C E R T I F I C A T E

I, Angela Furniss Miller, Certified Reporter, do hereby certify that the foregoing pages numbered 1 through 44, inclusive, constitute a full and accurate printed record of my stenographic notes taken at said time and place, all done to the best of my skill and ability.

DATED, at LITCHFIELD PARK, Arizona, this 23rd day of May, 2016.

_____

Angela Furniss Miller, RPR, CR
Certified Reporter (AZ50127)

CITIZENS CLEAN ELECTIONS COMMISSION

EXECUTIVE DIRECTOR REPORT

June 23, 2016

Announcements:

- The public can now view Commission meetings live via the internet at www.livestream.com/cleanelections. A link will be available on our website.

- Angela Miller has been the court reporter working with the Commission for more than decade. Due to contracting changes at the Department of Administration, we will be losing her services. We have come to rely on her for timely, accurate minutes, including when we need other items transcribed quickly. I want thank and acknowledge her work for the Commission.

Voter Education:

- Preparations for the Primary Election Candidate Statement Pamphlet are underway. The pamphlet goes to press on July 13th and will arrive in homes before the start of early voting (August 3, 2016).

- The Primary Election Debates have kicked off and the schedule is posted on the website. Debates are recorded and may be subsequently viewed on the Commission's YouTube channel.

- On June 22nd Gina presented at the Arizona Association of Counties joint Recorder and Election Officials' meeting.

- Staff has been working with the Inter Tribal Council of Arizona to partner on voter education. Gina will present at the Tribal Leaders' meeting on June 24th.

- **Candidate Information – 2016 Election Cycle:**

- Next campaign finance reports are due June 30th.

- The last day to collect $5 qualifying contributions is August 23rd (Qualifying Period ends).

- The last day to apply for funding is August 30th.

- Participating Legislative Candidates: **47**; Received Funding: **15**

- Participating Statewide Candidates: **4**

- Clean Elections Training Workshops:

    - Commission staff has conducted 18 Clean Elections workshops so far this election cycle. There are 2 workshops remaining for the election cycle.

    - 56 individuals have attended a candidate training workshop as a candidate.

    - 32 members of the public have attended a Clean Elections training workshop.

Enforcement – 2016 Election Cycle: None

Enforcement – 2014 Election Cycle:

- Complaints Pending: 3
    - MUR 14-006, -015 (consolidated/conciliated): Horne - pending completion of items in conciliation agreement.
    - MUR 14-007: Legacy Foundation Action Fund (LFAF)
    - MUR 14-027: Veterans for a Strong America (VSA) – On today's agenda.

Miscellaneous:

I want to welcome Amy Jicha, who will be interning with us this summer and fall, assisting with voter education and other programs. Amy attends Arizona State University with plans to go to law school.

The Attorney General's Office has provided us the 2016-17 Interagency Service Agreement. I plan to finalize that in the next few days. It is attached to this report.

Interagency Service Agreement
Between Citizens Clean Elections Commission and the Arizona Office of the Attorney General
AG17-0002-004

I. THIS AGREEMENT IS MADE as of July 1, 2016, between the state agencies known as Citizens Clean Elections Commission (hereinafter "the Commission") and the DEPARTMENT OF LAW, Arizona Office of the Attorney General, MARK BRNOVICH, ATTORNEY GENERAL (hereinafter referred to as the Attorney General).

A. The Commission and the Attorney General enter into this Agreement pursuant to A.R.S. § 35-148(A).

B. The Commission has the duty to enforce Title 16, Chapter 6, Article 2, Arizona Revised Statutes and to provide the public and voter education pursuant to Title 16, Chapter 6, Article 2, and has the authority to spend monies in the fund for reasonable and necessary expenses to implement Title 16, Chapter 6, Article 2 as well as the authority to pay reasonable and necessary expenses of administration and enforcement of Title 16, Chapter 6, Article 2, and the authority to make expenditures for voter education and public education under Title 16, Chapter 6, Article 2.

C. The Attorney General has the duty pursuant to A.R.S. § 41-192(A)(3) to provide and coordinate legal services for all state agencies.

II. THEREFORE, as a result of the Attorney General's duty to provide and coordinate the legal services, and the need of the Commission to receive legal services to perform its duties, the parties agree as follows:

1. This Agreement shall take effect on July 1, 2016 and terminate on June 30, 2017.

2. The Attorney General will assign to the Commission an assistant attorney general and a legal secretary whose duties shall be to provide legal services to the Commission in return for the provision of funds described in Paragraph 7. The assistant attorney general assigned to represent the Commission under this paragraph shall not, without consultation with the Commission, be temporarily assigned to represent or assist in the representation of

any other agency if the temporary assignment would involve a substantial commitment of time and have the effect of denying the Commission the legal services being agreed to pursuant to this contract.

3 . The assistant attorney general and legal secretary assigned by the Attorney General to provide legal services to the Commission pursuant to this Agreement shall be subject to the Attorney General's personnel, office management and payroll plans and all policies and procedures of the Attorney General's office. Further, the Attorney General shall have sole and exclusive responsibility for hiring, supervising, evaluating, promoting and demoting, separating from service and fixing the compensation of the assistant attorney general and legal secretary that the Attorney General assigns to provide legal services to the Commission, provided that, in hiring and separating an assigned assistant attorney general from service, the Attorney General shall consult with the Commission prior to either decision and provide an opportunity for the Commission or its staff to comment upon the proposed decision. The Attorney General shall provide resume information as to applicants for hire to the Commission.

4. The Commission acknowledges that it understands and agrees that in the exercise of its authority, the Attorney General, from time to time, at its discretion may change the assigned assistant attorney general. In that event, the Attorney General shall consult with the Commission prior to reaching or implementing a decision to exercise that discretion and provide an opportunity for the Commission or its staff to comment upon the proposed change. The Attorney General shall provide resume information as to the assistant attorney general who would be assigned pursuant to this paragraph. The Attorney General also may assign Commission matters to assistant attorneys general in addition to and other than the assistant attorney general whose primary duties are to represent the Commission.

5. Legal services provided by the Attorney General under this Agreement will support the Program specified in this Agreement according to the work priority coordinated by the Attorney General, with the Commission's input. Legal support for the client funding this Agreement shall take priority. However, the Attorney General may assign other work to the Attorney General's

office personnel paid for by this Agreement as long as the Commission priorities are met. The Commission acknowledges that it understands and agrees that the Attorney General, in the exercise of his authority, may use other office resources to assist in the representation of the Commission, including other assistant attorney generals, office administrators, paralegals and other staff, if deemed appropriate.

6. The Attorney General shall provide notice to the Commission of the following within one week of it learning of:

a. Non-conflict of interest Attorney General Opinion requests related to election law, and the interpretation of the Arizona Constitution, or the interpretation of the U.S. Constitution that may have an impact on election law issues.

b. Pending election cases involving or relevant to the State of Arizona, the Attorney General, the Secretary of State, or any political subdivision of Arizona.

c. Information relating to enforcement of election laws, including failure to file notices, and reasonable cause determinations.

d. Copies of Attorney General Opinion requests shall be provided to the Commission or its staff with the notice.

7. Pursuant to the provisions of A.R.S. § 35-148, the Commission shall pay $164,900 to the Attorney General. The Commission shall advance to the Attorney General one-half of the funds ($82,450) within 15 working days after the execution of this Agreement, and one half of the funds on or before March 31, 2016. Said funds shall be used to pay the actual salary and employee-related expenditures of the assistant attorney general and legal secretary positions identified above, and to pay for a portion of salaries or employee-related expenses for personnel identified in paragraph 2. The aforesaid monies may also be used to pay the travel and other expenses incurred through attendance at seminars, conferences or meetings by any assistant attorneys general in connection with the representation of the Commission, and may also be used to pay for other operating expenses reasonably incurred by the Attorney General and directly related to legal services to the Commission. Further, upon approval by the Commission, other travel costs, operating costs and other costs incurred by the assistant attorney general

rendering legal services to the Commission in connection with legal services provided pursuant to this Agreement may be paid by the Commission.

8. From and after the date hereof and until June 30, 2017, the Attorney General shall instruct the assistant attorney general and legal secretary assigned to provide legal services to the Commission to locate their principal office at the Office of the Attorney General.

9. Any balance of funds remaining after June 30, 2017 will be returned to the Commission.

10. In accordance with ARS § 41-2501, *et seq*., and AAC R2-7-101, *et seq.*, Contract shall be governed and interpreted by the laws of the State of Arizona and the Arizona Procurement Code.

11. In accordance with ARS § 35-154, every payment obligation of the State under the Contract is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

12. In accordance with A.R.S. § 35-214, both parties shall retain all data, books and other records ("records") relating to this Contract for a period of five years after completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce the original of any or all such records.

13. In accordance with A.R.S. § 38-511, the State may within three years after execution cancel the Contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State, at any time while the Contract is in effect, becomes an employee or agent or any other party to the

Interagency Service Agreement
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AG17-0002-004

Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.

14. In accordance with ARS § 41-1461, *et seq.*, the parties shall provide equal employment opportunities for all persons, regardless of race, color, creed, religion, sex, age, national origin, disability or political affiliation. The parties shall comply with the Americans with Disabilities Act.

15. In accordance with ARS § 41-4401, the parties warrant compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.A.C. Section A.R.S. § 23-214, Subsection A.

16. In accordance with ARS § 12-1518, the parties to agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review except as may be required by other applicable statutes.

III. IN WITNESS WHEREOF, the parties have executed this Interagency Service Agreement under the Authority of A.R.S. § 35-148(A) upon execution by signature of the parties.

Citizens Clean Elections Commission		**ARIZONA DEPARTMENT OF LAW** **Office of the Attorney General**
Thomas M. Collins		Jerry Connolly
Executive Director		Procurement Manager
Date:		Date:

FIVE YEAR REVIEW – June 30, 2016
Citizens Clean Elections Commission

This report covers all rules in Title 2, Chapter 20, all articles. The Citizens Clean Elections Commission (the "Commission") adopted these rules to further the goals of the Citizens Clean Elections Act ("Act"). The Act was passed by the voters in 1998 and created the clean elections system to diminish the influence of special-interest money, including the opportunities for and appearance of *quid pro quo* corruption, and to thereby promote the integrity of Arizona state government. The Act promotes freedom of speech under the United States and Arizona Constitutions. It also created a voluntary system wherein "participating" candidates receive public funds to finance campaigns. To qualify for funding, participating candidates must follow additional rules and reporting requirements. The Act also applies to candidates who are nonparticipating candidates and independent spenders in elections. The Rules implement the provisions of the Act. All rules created or amended prior to June 25, 2013 have been "pre-cleared" by the U.S. Department of Justice pursuant to Section Five of the Federal Voting Rights Act.

The Commission reports the following analysis of its rules in the order required by Arizona Administrative Code ("A.A.C.") R1-6-301. Pursuant to A.A.C. R1-6-301(B), Part I includes information pertaining to all, or a great number, of the rules. Part II reports information unique to the listed rules.

This report represents the third submission of the Commission's 5-year review report in the last 12 months. These submissions have been in addition to providing voluminous public comments to the Governor's Regulatory Review Council ("Council") and its staff for review, and continuing efforts to ascertain and comply with staff and Council requests, even those that are not supported by law.

<u>Efforts to Comply</u>

As noted below, the Commission provided a complete and timely 5-year review report on October 29, 2015. At the request of Council's staff, the Commission provided background documentation on rule amendments that were not in place at that time, confirmed amendments were made after the 5-year period, and on December 29, 2015, ultimately submitted an amended report which included rule amendments outside the 5-year period of the report. Additionally, the Commission provided written and oral testimony on the substance of the Commission's rules, the Act, and the decisions of Arizona Courts that control the law in this area, including the Voter Protection Act. The Commission exercised best efforts to comply with the Council's requests within the bounds permitted by law.

<u>Commission's Position</u>

The Commission's position has been clear: the Council has no authority to require the Commission to amend or repeal the Commission's rules. Amendments to the Council's

authority under A.R.S. § 41-1056 that the legislature enacted after the creation of the Commission cannot override the Commission's rulemaking authority. The Arizona Constitution's Voter Protection Act forbids such a result. It also forbids efforts to apply procedures from which the commission is otherwise exempt through later amendments to the 5-year review process. The Commission's communications to the council are attached as **Appendix A**.

Notwithstanding the Council's actions, the Commission, in continuing a good faith effort of compliance continues to submit reports to the Council, as it has in previous years. Indeed, prior Councils have approved 5-year review reports with the same or substantially the same materials. See **Appendix B**.

Regarding the Council's decision to return "in whole" the Commission's 5-year review report, there is a threshold problem that needs to be addressed by Council before the Commission submits a new report. Although the Council voted to return the report, it has not informed the Commission of "the manner in which its [five-year review] report is inadequate" as A.R.S. § 41- 1056(C) requires. The minutes from the February 2, 2016 Council meeting describe the motion to return the report but show no Council action identifying why the report is inadequate. Council needs to provide that information to the Commission to fulfill its statutory responsibility.

There are also significant procedural problems with the Council's vote to "require the Commission to repeal R2-20-109(F)(2) – (F)(12) and (G)." The Council never "voted to declare R2-20-109(F)(2)- (F)(12) and (G) materially flawed" at its February 2, 2016 meeting. See Appendix C. No such action was taken at that meeting. The minutes reflect that the Council voted to require the Commission to repeal certain rules, but there was no motion made to determine that the rules were materially flawed. Council may require an agency "to propose an amendment or repeal" a rule by a date certain only after it "determines the agency's analysis under Subsection A [of 41-1056] demonstrates that the rule is materially flawed." A.R.S. § 41-1056(E). Setting aside the Voter Protection Act issues, Council did not make that determination and needs to do so before it can set a deadline for Commission action.

The Commission raised both of these statutory defects at the Council's May meeting. The Council again declined to address either of these issues and took no action at the May meeting. The Council's staff attorney has encouraged the Commission to submit a report that indicates that the Council has concluded that there is a material flaw in R2-20-109(F) and (G). Because no such determination has been made, the Commission's inclusion of such a statement cannot relieve the Council of its obligations.

Nonetheless, in an effort to comply with the Council's request the Commission has for a third time revised the report. In addition to addressing some of the issues already discussed in previous iterations of this report, this revised report also notes that intervening legislation may have an impact on the rules that are the subject of this report. As noted below, the Commission is in the process of considering whether any rule changes are needed because of the intervening legislation.

Part I: Analysis Which Is Identical Within Groups of Rules

1. General statutes authorizing the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The Commission's general rulemaking authority is found in A.R.S. § 16-956 (C). This statute gives the Commission authority to adopt rules to carry out the purposes of the Article and to govern procedures of the Commission. A.R.S. § 16-956 (C) provides:

> The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. Commission rule making is exempt from title 41, chapter 6, article 3. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The Commission shall also file a notice of exempt rule making and the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty-day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the Secretary of State's Office for publication in the Arizona Administrative Register. Any rules adopted by the Commission shall only be applied prospectively from the date the rule was adopted.

The Commission is governed by the Act codified at Title 16, Chapter 6, Article 2. The Act includes A.R.S. §§ 16-940 through -961. A copy of the Act is attached hereto as Attachment A. Attachment B is a copy of the rules covered by this report.

2. The objective of the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The objective of each rule is to further the objective of the Act, which as stated in A.R.S. § 16-940 (A) is:

> to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions.

3. Effectiveness of the rule in achieving the objective

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

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Each rule is effective in achieving the above-stated objective.

4. Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

The rules are consistent with state statutes and in the process of preparing this report the rules have been compared against each other and A.R.S. §§ 16-940 through -961 and have been found to be consistent.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

All rules are fairly and consistently enforced by the Commission.

6. Clarity, conciseness, and understandability of the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

The Commission finds all of its rules to be clear, concise, and understandable.

7. Summary of the written criticisms of the rule received by the agency within five years

This information is provided in Part II for individual rules that were the subject of written criticism in the last five years. For rules with no entry under item 7 in Part II, the Commission did not receive any written criticism of the rule.

8. Estimated economic, small business, and consumer impact

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Economic, small business and consumer impact statement

The rules proposed and adopted by the Commission between January 2010 and October 29, 2016 create no material economic impact for small businesses or consumers provided. For small businesses or consumers who make expenditures subject to the rules' reporting requirements, compliance with the rules imposes zero economic impact because the reporting requirement is simple and may be filed without any filing fee. To the extent that the obligation to file a report itself imposes an economic impact, that impact comes from the statutory reporting requirement and not from the rules. A failure to abide by any of the statutes or

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rules may create an economic impact on those subject to the penalties the Commission may impose.

The Commission receives funds from the following sources.

- A 10 percent surcharge imposed on all civil and criminal fines and penalties collected pursuant to A.R.S. § 12-116.01;
- A $5 voluntary contribution per taxpayer ($10 when married and filing jointly) who files an Arizona state income tax return and marks an optional check-off box on the first page of the form. A taxpayer who checks this box receives a $5 reduction in tax liability and $5 goes to the Clean Elections Fund (NOTE: As of August 2, 2012, the Commission only receives $5 voluntary taxpayer contributions from individuals filing tax returns for tax years 2012 and earlier.);
- A voluntary donation to the Clean Elections Fund by designating the Fund on an income tax return form filed by the individual or business entity, or by making a payment directly to the Fund. Any taxpayer making a donation shall receive a dollar-for-dollar tax credit not to exceed 20 percent of the tax amount on the return or $680 per taxpayer, whichever is higher (NOTE: As of August 2, 2012, the Commission no longer accepts donations for the dollar-for-dollar tax credit.);
- Qualifying contributions received by participating candidates;
- Civil penalties assessed against violators of the Citizens Clean Elections Act.

9. Analysis submitted by another person on the rules' impact on competitiveness

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

No such analysis has been submitted to the Commission for any of its rules.

10. Course of Action from Last Review

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

All corrective action from the previous report was completed at the Commission meeting on July 21, 2011 and reported on the April 18, 2011 Five Year Report Progress Report.

11. Least Burden and Costs

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Each rule achieves its underlying regulatory objective with the least burden and cost possible, and the probable benefits of each rule outweigh its probable costs.

12. Determination to corresponding federal law

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

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The rules are consistent with federal law and state statutes and in the process of preparing this report the rules have been compared against each other and A.R.S. §§ 16-940 through -961 and have been found to be consistent.

13. A.R.S. § 41-1037

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Commission rules do not require the issuance of a regulatory permit, license or agency authorization.

14. Course of action the agency proposes to take regarding each rule

This information is provided in Part II for individual rules for which the Commission proposes to take action. For rules with no entry under item 10 in Part II, the Commission proposes no course of action.

Part II: Analysis of Individual Rules

ARTICLE 1 – GENERAL PROVISIONS

R2-20-101 Definitions

2. Objective

Supplement the definitions provided in A.R.S. §§16-901 and 16-961 for Chapter 20 of the Commission rules.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission struck the definition of "election cycle" from the rule because the definition is found in statute. (19 A.A.R. 3515)

On September 27, 2013, the Commission adopted final amendments to the rule that added the definitions of "person," "candidate for statewide office," and "legislative candidate." The Commission also adopted final amendments to the rule that clarified the definition of "candidate" as a person and, if not specifically stated, "candidate" includes a candidate for statewide or legislative office. The Commission also adopted final amendments to the rule that changed the definition of "expressly advocates" by removing the language from (10)(b)(ii) that states "in the 16 week period immediate preceding a general election." (19 A.A.R. 3515)

b. Action Proposed

None.

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R2-20-102 Applicability

2. Objective

Specify to which candidates the Act and rules apply.

14. Course of Action

a. Action Taken

On September 27, 2013, the Commission unanimously repealed the applicability rule to eliminate potential confusion. (19 A.A.R. 3518)

b. Action Proposed

None.

R2-20-103 Time Calculations

2. Objective

Clarify procedures for computing periods of time and methods of communicating between the candidate and the Commission.

R2-20-104 Certification as a Participating Candidate

2. Objective

Provide guidance on filing an application for certification and electronic campaign finance reports; accepting contributions and making expenditures; and requirements for a nonparticipating candidate to be eligible for participating candidate status.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final rule amendments to (C)(8) clarifying the rule by removing the language “equalizing fund payments” as the Commission no longer issued equalizing funding at that time and inserted the language “primary and general election funding” to clarify the funding type. (19 A.A.R. 1685)

On May 9, 2013, the Commission adopted final rule amendments to (D)(5) requiring participating candidates to attend a candidate training class within 60

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days of being certified or within 60 days of the beginning of the qualifying period if the candidate is certified prior to the start of the qualifying period. (19 A.A.R. 1685)

b. Action Proposed

None.

R2-20-105 Certification for Funding

2. Objective

Provide the process for certifying clean elections candidates.

14. Course of Action

a. Action Taken

On January 19, 2012, the Commission adopted final amendments to the rule adding a new subsection (C) to allow participating candidates to collect up to 50% of the number $5 qualifying contributions required to qualify for funding through a secured electronic portal maintained by the Secretary of State's Office known as E-Qual. (19 A.A.R. 1688)

On February 9, 2012, the Commission adopted final amendments to subsection (D) of the rule to clarify that solicitor information is not required for $5 qualifying contributions collected in accordance with subsection (C). (19 A.A.R. 1688)

On May 9, 2013, the Commission adopted final amendments to subsection (J) of the rule increasing the minimum number of $5 qualifying contributions required for all statewide and legislative offices. (19 A.A.R. 1688)

b. Action Proposed

None.

R2-20-106 Distribution of Funds to Certified Candidates

2. Objective

Provide the process and criteria for the Commission to evaluate a candidate's application for funding.

R2-20-107 Candidate Debates

2. Objective

Provide procedures for conducting debates, for candidates seeking to be excused from participation in the debates and the penalty for failing to participate in the debates.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to subsection (E) of the rule by removing reference to equalizing funds as the Commission no longer issued equalizing funds at that time. (19 A.A.R. 1690)

On November 21, 2013, the Commission adopted final amendments to subsections (A), (D), and (K) to outline the timelines and procedures for the Commission to invite participating and non-participating candidates to Commission sponsored debates and for allowing non-participating candidates to request a Commission sponsored debate even if there is not a participating candidate in the race. (19 A.A.R. 4213)

On July 23, 2015, the Commission adopted final amendments subsection (D)(3) to clarify the procedures in which a nonparticipating candidate may participate in a Commission sponsored debate and/or request the Commission sponsor a debate. (21 A.A.R. 1627)

b. Action Proposed

None.

R2-20-108 Termination of Participating Candidate Status

2. Objective

Provide a method for candidates to withdraw their application for certification or funding.

14. Course of Action

a. Action Taken

On May 20, 2011, the Commission adopted final amendments to the rule to permit a participating candidate to terminate the candidate's participation in the Arizona's public financing program. The Commission also removed language from subsection (A) stating that "the candidate shall immediately begin the process of returning public funds to the Fund" in order to clarify that once a candidate has received public funds, the candidate may not withdraw from participation in the program. The Commission amended subsection (C) to include language permitting a person who has withdrawn from participation to reapply provided the candidate is

in compliance with other rules relating to the certification of participating candidates. (17 A.A.R. 1950)

b. Action Proposed

None.

R2-20-109 Reporting Requirements

The analysis in Part I is applicable to all subsections of rule R2-20-109. However, in order to detail the report in regards to R2-20-109(F) and R2-20-109(G), the Commission is providing the following detailed information regarding this rule. All information has previously been provided to the Council with the October 29, 2015 and December 29, 2015 5-Year Review Reports and in responses to requests by the Council's staff attorney.

1. General statutes authorizing the rule

R2-20-109(F)-(G): A.R.S. §§ 16-940, -941, -942, -943, -955, -956, -957, -958, and -961.

2. Objective

Provide the requirements for candidates and independent expenditures committees to file campaign finance reports and limits as specified in the in the Citizens Clean Elections Act.

3. Effectiveness of the rule in achieving the objective

R2-20-109(F) and (G) are effective in achieving their objective. The rules implement the reporting requirements of the Act while also making compliance more efficient for entities subject to reporting requirements. For example, R2-20-109(F)(4)-(5) provides a mechanism for a corporation, limited liability company or labor organization to become exempt from the Act's filing requirements.
In the 2014 election cycle, the Commission received 8 Applications for Certification as an Exempt Organization. (**Appendix D**). The Commission approved all applications they received and those organizations were exempted from filing the independent expenditure reports required by A.R.S. §§ 16-941(D) and -958. Consequently, these entities filed fewer reports than the law otherwise required, reducing the filing burden they otherwise faced. Similarly, the Commission enforced Rule R2-20-109(F) and the statutes underlying it against two independent expenditure groups that failed to file reports required by law. In one instance, the matter remains on appeal. In the other the Commission, the entity and the Attorney General's Office entered a joint settlement, requiring all required reports to be filed and a single fine to be paid to the Commission.

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4. Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

In 1998, Arizona voters adopted the Act by voter initiative. The people of Arizona voted for the Act , which is codified in Title 16, Chapter 6, Article 2, A.R.S. §§ 940-961, to "improve the integrity of Arizona state government by diminishing the influence of special-interest money, [] encourage citizen participation in the political process, and [] promote freedom of speech under the U.S. and Arizona Constitutions." A.R.S. § 16-940(A). To achieve these ambitious goals, the Act, by necessity, gives the Commission express jurisdiction over both "participating" and "nonparticipating" candidates. Although the Act draws some distinctions between participating and not participating candidates, nowhere does it state that the Commission lacks authority to resolve campaign finance violations in elections that involve only nonparticipating candidates.

Rather, recognizing that all legislative and statewide elections potentially involve concerns of special-interest money, citizen participation and free speech, the Act addressed various obligations of nonparticipating candidates, including:

- Section 16-941(B) (setting campaign contribution limits)
- Section 16-941(C) (noting that nonparticipating candidates are bound by all campaign finance laws save those in direct conflict with those in the Act)
- Section 16-941(D) (imposing reporting obligations on "any person" who makes independent expenditures in excess of $500)
- Section 16-942(B) (establishing penalties for candidates who violate reporting requirements of Chapter 6, which includes non-participating candidates)
- Section 16-942(C) (creating penalty of disqualification for certain violations of campaign contribution limits)
- Section 16-943 (establishing criminal liability for knowing violations of statutes relating to contribution limits)
- Section 16-956(A)(7) (noting the Commission's mandatory obligation to enforce the Act and to monitor candidate reports filed under Chapter 6)
- Section 16-957(A) (setting fourteen day requirement for Commission to serve any person who violates the Act an order regarding the violation)

The rules at issue here concern the Commission's enforcement responsibilities, which the Arizona Supreme Court has identified as "paramount" duties. *Clean Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 244 ¶ 13, 99 P.3d 570, 574 (2004). As the Court recognized, these duties are independent of any public financing program and involve non-participating candidates and independent expenditures. *Id*. The contrary claim was recently rejected in *Horne v. Citizens Clean Elections Commission*, CV 2014-009404 (8/19/2014), when the trial court dismissed a case challenging the Commission's jurisdiction to resolve complaints against a non-participating candidate. **(Appendix E)**

R-20-109(F)(2)

A.R.S. § 16-917(A) requires persons making "independent expenditures for literature or an advertisement for any one candidate" to send a copy of that material to the named candidate within twenty-four hours of submitting it for publication. R2-20-109(F)(2) requires all persons subject to 917(A) to "also provide a copy of the literature or advertisement to the Commission at the same time."

The Act provides that "any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle" must file certain reports with the Secretary of State. A.R.S. §§ 16-941(D), 16-958. The Act further requires the Commission to "enforce this article" (A.R.S. § 16-956(A)(7)) and sets up a procedure for doing so (A.R.S. § 16-957). To enforce the provisions of A.R.S. §§ 16-941(D) and 16-958, it is reasonable to require that parties provide the Commission the very materials that may show a potential violation of those provisions of those statutes.

Further, the Commission's use of "literature or an advertisement" is intended to refer and to be limited to the exact same materials as are required to be provided under A.R.S. § 16-917(A). As such, there is no concern of extra-legislative actions or regulatory confusion.

R2-20-109(F)(3)

Various statutes, both in the Act (Article 2) and Article 1 of Title 16, Chapter 6, require the filing of reports for independent expenditures. A.R.S. §§ 16-913, -914.02, -941(D), and -958. The Commission has the authority to impose fines for "a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter . . . ." A.R.S. § 16-942(B) (emphasis added). R2-20-109(F)(3) sets forth some procedures regarding the imposition of these penalties. This rule always included references to A.R.S. §§ 16-941(D) and 16-958.

Arizona voters decided that the Commission has a role in campaign finance enforcement for legislative and statewide elections, even when there is no participating candidate involved. The voters adopted the Act with the broad intention to diminish the influence of special-interest money, promote citizen participation in the political process and promote the freedom of speech. A.R.S. § 16-940(A). Nowhere in those objectives is there any limitation to publicly-financed campaigns. Indeed, as discussed above, the Act provides for jurisdiction of the Commission over all candidates and nonparticipating candidates in a variety of ways.
As such, the United States Supreme Court's 2011 decision striking down of the matching funds provisions of the Act has no bearing on the Commission's authority over elections involving only privately-financed candidates. The Act provides clear, unequivocal jurisdiction over aspects of those races, including the reports required

to be filed under A.R.S. § 16-941(D) and A.R.S. § 16-958, as well as any other campaign finance reporting violation.

Further, A.R.S. § 16-942(B)'s provision that "the candidate and the candidate's campaign's account shall be jointly and severally liable for any penalty imposed pursuant to this subsection" does not, as has been argued, limit its application to participating candidates because the Act elsewhere uses the term "campaign accounts" to refer to accounts held by participating candidates. If this sentence was intended to be limited to participating candidates, it would have said so. The reference to a candidate's campaign account logically refers to any candidate's campaign account. All candidates who establish political committees have bank accounts for their campaigns. A.R.S. § 16-902(C). This provision of § 942(B) is intended to provide notice to candidates of their potential, individual exposure to civil fines. A.R.S. § 16-942(B) does not on its plain terms restrict the Commission's authority to impose fines for failure to file campaign reports only in races involving participating candidates. Nor would any reasonable reading of the statute allow one to reach that conclusion, as such a conclusion would render meaningless the Commission's jurisdiction over "any person" in A.R.S. § 16-941(D) ("any person who makes independent expenditures related to a particular office . . . .") and A.R.S. § 16-958 ("any person who has previously reached the dollar amount specified in § 16-941 . . . ") and would contradict the Commission's express jurisdiction over "any reporting requirement imposed by this chapter" in the same section.

Finally, there is no conflict between A.R.S. § 16-913 and A.R.S. § 16-942(B). Violations of § 16-913 are subject to a penalty of "ten dollars per day . . . up to a maximum of four hundred fifty dollars" under A.R.S. § 16-918(B). Nowhere in A.R.S. § 16-913 or A.R.S. § 16-918(B) is there a provision indicating that these are the exclusive penalties available for violations of A.R.S. § 16-913. Rather, A.R.S. § 16-942(B) makes it clear that its penalties are "in addition to any other penalties imposed by law."

Through A.R.S. § 16-942(B), the Commission has jurisdiction over conduct that violates campaign finance reporting requirements in A.R.S. § 16-913 and other reporting requirements in Chapter 6. Again, the plain terms of A.R.S. § 16-942(B) give the Commission authority to regulate any violation of any reporting requirement of Title 16, Chapter 6, including A.R.S. § 16-913. A.R.S. § 16-942(B) ("[i]n addition to any other penalties imposed by law . . . for a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter").

R2-20(F-)(4)-(11)

The Act requires that "[n]otwithstanding any law to the contrary, any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle" shall file an original report with the secretary of state "identifying the office and the candidate or group of

candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat." A.R.S. § 16-941(D) (emphasis added). Because "person" includes any corporation or association, see, e.g., Citizens United v. Federal Election Com'n, 558 U.S. 310, 342-43 (2010), those entities are, by definition, subject to the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958.

The Commission's rules have historically made clear that "person" included corporations and other associations. *See* Citizens Clean Elections Commission 5-Year Review 2005 at 65. In 2010, the Arizona Legislature enacted A.R.S. § 16-914.02(D), which, in the wake of Citizens United, added for corporations and unions reporting requirements nearly identical to those under A.R.S. § 16-941(D). Recognizing that there would be some overlap between these statutes (as well potential VPA issues), the Commission amended its rules to allow entities subject to the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) to be exempt from those requirements if they comply with A.R.S. § 16-914.02(D). *See* R2-20-109(F)(4)-(11). A.R.S. § 16-941(D) and A.R.S. § 16-958(A) give the Commission jurisdiction over "any person," including corporations and unions, making independent expenditures above certain financial thresholds. In effort to make compliance easier and more efficient, the Commission adopted a rule that reduced its power over corporations and unions that are complying with A.R.S. § 16-914.02(D).

The plain terms of A.R.S. § 16-941(D) and A.R.S. § 16-958(A), which refer to any "person," put these entities under the jurisdiction of the Commission if they are making independent expenditures. The Commission has the authority to establish a regulatory scheme for this statute, which may include filing an exemption if the organization is complying with A.R.S. § 16-914.02's reporting requirements. Indeed, the Commission's form expressly permits each entity to retain any defense it may have to a Commission action. *See* Exemption Form at http://www.azcleanelections.gov/CmsItem/File/87 ("By completing this Application for Certification as an Exempt Organization, a corporation, limited liability company, or labor organization does not waive any legal arguments it may have concerning application of the Act and Rules to entities subject to A.R.S. § 16-914.02.") As such, there is no credible argument that the provisions of R2-20-109(F)(4)-(11) may be invalid.

R2-20-109(F)(12)

R2-20-109(F)(12) sets forth terms under which the Commission will determine whether an entity is a political committee under A.R.S. § 16-901(20) subject to the reporting requirements in A.R.S. § 16-913. As stated previously, A.R.S. § 16-942(B) gives the Commission the legal authority to impose civil fines for any violation "by or on behalf of any candidate of any reporting requirement imposed by [Title 16, Chapter 6]." If a complaint is filed alleging a reporting violation of A.R.S. § 16-913, these rules will help the Commission determine whether a violation

occurred, as those reporting requirements apply only to political committees. This rule addresses complaints alleging that a "dark money" group was obligated to disclosed its contributors under A.R.S. § 16-913 but failed to do so. The history of this new rule is included in the materials provided to GRRC staff; it was fully vetted over several months with broad public input. For all of the reasons previously explained concerning the Commission's jurisdiction over reports required under this "chapter," it is a legitimate exercise of the Commission's regulatory authority.

Moreover, the rule was adopted in compliance with the Commission's rules, which require a 60-day comment period prior to adoption.

R2-20-109(G)

Rule R2-20-109(G) set forth procedures for enforcement actions against non-participating candidates for their violation of both reporting requirements and contribution limits. The Clean Elections Act gives the Commission express authority over nonparticipating candidates' contribution limits (A.R.S. § 16-941(B); A.R.S. § 16-942(C)) and reporting requirements (A.R.S. §§ 16-942(B)).

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

As of this submission, R2-20-109(F) is under review by numerous legislative changes that occurred in the 2016 legislative session. In addition, the State received a letter threatening to sue over A.R.S. § 16-917 in 2014. That statute, which will be repealed effective in November, underlies R2-20-109(F)(2). There are no other problems with respect to R2-20-109(F) or with respect to R2-20-109(G).

7. Written Criticism (Appendix F)

Prior to the September 27, 2013 Commission meeting, Sam Wercinski of Arizona Advocacy Network submitted written public comment in support of the Commission proposed rule changes. Mr. Wercinski proposed a change to subsection (B)(3)(d) to clarify that the joint expenditure should fairly allocated to the "obligated candidate" rather than "candidate."

Prior to the May 22, 2014 Commission meeting, the Commission received public comment regarding the rule. Senator Steve Pierce and the Elect Steve Pierce Committees, through their legal counsel, Michael Liburdi, submitted a petition for a rule change proposing the Commission repeal R2-20-109(G). Mr. Liburdi stated the rule "is an extra-legal exercise of the Commission's rulemaking power and established bad public policy for regulators and non-participating candidates." The Citizens Clean Elections staff recommended the Commission not repeal the provision. Robyn Prud'homme-Bauer from the League of Women Voters of

Arizona provided written public comment supporting the Commission staff's position to R2-20-109 stating the rule changes aligned with the League's positon on full disclosure. Sam Wercinski of the Arizona Advocacy Network also submitted written public comment in support of the staff recommendation of amendments to R2-20-109(G) and in opposition to the petition for a rule change submitted by Senator Pierce. Finally, Tim Hogan from the Arizona Center for Law in the Public Interest submitted written public comment in opposition to Senator Pierce's petition for a rule change for the fact that "the plain language of the Clean Elections Act does not support Pierce's interpretation."

On July 23, 2015, the Commission considered discussion and possible action on proposed amendments to the rule that were presented at the Commission's May 14, 2015 public meeting. Prior to the meeting the Commission received numerous written public comments with 152 individuals supporting the Commission proposed rule changes. The Commission received 6 public comments submitted from individuals and/or on behalf of numerous organizations that were in opposition to the proposed rule changes including Eric Wang, Senior Fellow at the Center for Competitive Politics, Americans for Prosperity, Secretary of State Michele Reagan, State Election Director, Eric Spencer, and Connie Wilhelm Garcia, President and Executive Director of the Home Builders Association of Central Arizona. Louis Hoffman, a former Commissioner, provided substantial written public comment in regard to the rule revisions. Mr. Hoffman proposed removing the A.R.S. § 16-913 citation from subsection (F)(6) and adding clarifying language regarding independent expenditures to subsection (F)(3). Mr. Hoffman's proposal also clarifies that the Commission may audit exempt entities in subsection (F)(8). He also adds additional detailed language regarding civil penalties in a new subsection (F)(12).

On August 19, 2015, the Secretary of State submitted a petition for a rule change proposing the Commission removes from R2-20-109(F)(3) entities subject to A.R.S. § 16-913 reporting requirements from being subject to penalties under A.R.S. § 16-942.

Prior to the August 20, 2015 Commission meeting, the Commission received public comment from 33 individuals. Substantive written public comments were received from the Center for Competitive Politics and their counsel, Kory Langhofer, Eric Spencer, Louis Hoffman, the Arizona Chamber of Commerce and Industry (which submitted its' comment on behalf of the the following organizations: Arizona Chamber of Commerce and Industry, Greater Phoenix Chamber of Commerce, Greater Phoenix Leadership, Arizona Small Business Association, The Realtors of Arizona Political Action Committee, Arizona Cattlemen's Association, Arizona Hospital and Healthcare Association, Arizona Chapter Associated General Contractors, Arizona Tax Research Association, Arizona Business Coalition and Valley Partnership, Greater Flagstaff Chamber of Commerce, Tucson Chamber of Commerce, Mesa Chamber of Commerce, Tempe Chamber of Commerce, Chandler Chamber of Commerce, Green Yuma County Chamber of Commerce,

Buckeye Chamber of Commerce, Prescott Valley Chamber of Commerce, Green Valley Sahuarita Chamber of Commerce, and Oro Valley Chamber of Commerce), and Saman Golestan. The Commission considered all public comment and proposed revisions to the rules.

Prior to the October 29 and 30, 2015 meetings, the Commission received public comment from 19 individuals or groups including: Glenn Hammer, President of the Arizona Chamber of Commerce, former Clean Elections Commissioners, Timothy Reckart and Louis Hoffman, Morgan Dial of Southern Arizona Sports Marketing, and Shirley Sandelands, President of the Arizona League of Women Voters. The Commission considered all public comment prior to voting on the rule. Due to the volume of the public comments submitted, the Council is encouraged to review all the public comments submitted with in report and contained in Appendix B as the individuals and organizations listed are not an exhaustive list.

8. Estimated economic, small business, and consumer impact

Nothing in Rule R2-20-109(F) or (G) has any discernable economic, small business, or consumer impact. R2-20-109(F) does not apply to any B2C, small business or other similar entity, but only to entities that make expenditures for or against candidates for state and legislative offices. R2-20-109(G) applies to candidates, who are individuals involved in running for office and raising money to run for office.

9. Analysis submitted by another person on the rules' impact on competitiveness

Neither individuals nor organizations have submitted an analysis on the impact of the rules competitiveness.

10. Course of Action from Last Review

This rule did not require any corrective action from the last review. The Commission is reviewing R2-20-109(F) in view of legislative actions in the 2016 Session.

11. Least Burden and Costs

The rule achieves its underlying regulatory objective with the least burden and cost possible, and the probable benefits of each rule outweigh its probable costs. For example, subsection F of the rule provides an option for individuals who make independent expenditures to apply for an exemption from the Commission for the filing of independent expenditure reports required by the statute, thus reducing the burden on subject entities. Similarly, subsection F provides the only public, promulgated government statement in Arizona on when political entities are

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required to report expenses and contributions. It provides clarity and predictability that would not otherwise exist, thus reducing burdens.

12. Determination to corresponding federal law

There is no corresponding federal law. The rules are consistent with federal law in general. The rules are entirely consistent with state statutes and in the process of preparing this report the rules have been compared against each other and A.R.S. §§ 16-940 through -961 and have been found to be consistent.

13. A.R.S. § 41-1037

The Commission's rule does not require the issuance of a regulatory permit, license or agency authorization.

14. Course of Action

a. Action Taken **(Appendix G, H)**

On October 6, 2011, the Commission adopted final amendments to subsection (A) of the rule clarifying campaign finance reports will be filed electronically with the Secretary of State's office and that participating candidates must have sufficient funds in their campaign accounts to pay for the total amount of the expenditure at the time it is made. The Commission also eliminated subsections (B-D), which pertained to equalizing funding and independent expenditures (subsections (E-F) were re-codified). Subsection (E) was added to clarify reporting requirements for participating candidates. (19 A.A.R. 2923)

On July 25, 2013, the Commission considered rule amendments to subsections (A) – (G) of the rule in order to clarify that the rule applies to all persons who are obligated to file the Commission's campaign finance reports and clarify the reporting requirements under the statute. The Commission approved the rule for publication for a 60-day public comment period in which to solicit feed back from the public.

On August 29, 2013, the Commission adopted final amendments to subsection (A) of the rule clarifying that participating candidate must make reimbursements to authorized agents within seven calendar days of the expenditure is deemed an in-kind contribution. In addition, the Commission added language to subsection (C) requiring candidates to maintain a travel log and reimburse mileage or air travel within seven calendar days. (19 A.A.R. 2923)

On September 27, 2013, the Commission adopted final amendments to the rule. The final adopted rule includes the following amendments:

Subsection (A) – amended to make clear the section applies to all persons obligated to file any campaign finance report subject to the Act and Rules.

Eliminates R2-20-109(A)(3)

Re-codified R2-20-109(A)(1-6) as R2-20-109(B)(1-5)

Subsection (B) - amended to further define joint expenditures and the allocation and reimbursement for joint expenditures.

Re-codified subsection(B) as subsection (C).

Subsection (C) - amended to clarify the timing of reporting expenditures for participating candidates.

Re-codified R2-20-109(C) as R2-20-109(D).

Subsection (D) - amended to clarify the transportation requirements for participating candidates.

Re-codified R2-20-109(D) as R2-20-109(E).

Subsection (E) – amended to clarify participating candidates' reports and refunds of excess monies.

Subsection (F) – added to clarify reporting requirements for independent expenditures.

Subsection (G) – added to clarify reporting requirements and campaign finance limits applicable to non-participating candidates. (19 A.A.R. 3519)

On March 20, 2014, the Commission considered a petition for a rule change submitted by Michael Liburdi on behalf of Senator Steve Pierce. The Commission discussed and proposed changes to subsection (G) of the rule to clarify contribution limits and civil penalties as applied to non-participating candidates. The Commission approved the proposed rule amendments for publication for a 60-day public comment period in which to solicit feed back from the public.

On May 22, 2014, the Commission adopted final amendments to subsection (G) of the rule to clarify the Commission's enforcement of contribution limits and reporting requirements related to non-participating candidates under the Citizens Clean Elections Act, rules, and related penalties. (20 A.A.R. 1329)

On September 11, 2014, the Commission adopted final emergency amendments to the rule. Subsection (F) was amended to clarify language related to the Commission's enforcement of reporting requirements and exceptions under the

Clean Elections Act, rules and related penalties. Subsection (F)(3)(c) was amended to clarify the penalties for amounts not reported during the election. Subsection (F)(3)(d) was added to clarify that the amounts in (a), (b), and (c) are subject to adjustment of A.R.S. § 16-959. Language was added to subsection (F)(4) to clarify that any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance or intends to comply with A.R.S. §§ 16-920 and -914.02 may seek an exemption from the reporting requirements of the Act. Subsection (F)(5) was amended by removing subsections (a) and (b) in regards to an organization's primary purpose and certification that the organization does not intend to accept donations or contributions for the purpose of influencing elections. Subsection (F)(6) was amended to clarify that organizations that do not receive an exemption from the Commission are required to file independent expenditure reports as specified in A.R.S. § 16-958. (20 A.A.R. 2804)

On May 14, 2015, the Commission approved proposed rule amendments to subsections (D) and (F) for publication with the Arizona Administrative Register a 60-day public comment period in which to solicit feed back from the public.

On July 23, 2015, the Commission considered public comment received during the 60-day public comment period for the proposed rule amendments. The Commission considered over 150 written public comments and live public comments from individuals attending the public meeting. The Commission ultimately decided to re-open the public comment period for an additional 30-day period in order to give the public additional time to review and comment on the proposed rule changes.

On August 20 and 21, 2015, the Commission approved rule amendment proposals for publication with the Arizona Administrative Register in order to solicit public comment for the revised rule proposals which included the Secretary of State's petition for a rule change and Mr. Langhofer's rule amendment proposal. The Secretary of State proposed removing a reference to A.R.S. § 16-913 from the existing rule.

The Commission sought public comment on the following proposed rule amendments:

> R2-20-109(D)(2)(a)(b) – clarifies the time period in which mileage reimbursements and expenditures must be reported. Allow for direct fuel purchases by the candidate for the candidate's automobile only and require documentation such as a travel log to be kept regarding a candidate's direct fuel purchases.
>
> R2-20-109 (F)(3) – adds language emphasizing an independent expenditure can be made on behalf of any candidate, a participating candidate or a nonparticipating candidate. Codify in rule statutory language stating an

independent expenditure against a candidate is considered an independent expenditure on behalf of the opposing candidate(s). Add language that political committees receiving contributions or making expenditures for candidate elections are subject to the penalties of the Clean Elections Act. Also updates language to clarify the definition of "political committee" in response to HB 2649 redefining the term.

R2-20-109(F)(3) – removes entities subject to A.R.S. § 16-913 reporting requirements from being subject to penalties under A.R.S. § 16-942.

R2-20-109 (F)(6) – clarifies filing requirements to reflect statutory requirements.

R2-20-109 (F)(8) – clarifies Commission's auditing authority to eliminate potentially confusing language.

R2-20-109 (F)(12) – these provisions update the Commission's rules to address the passage of HB2649, which amended the definition of political committee and to provide further clarity to the requirements applicable to those making independent expenditures. (21 A.A.R. 1977, 2043)

On September 24, 2015, the Commission provided another opportunity for the public to address this issue and placed the rule matter on the agenda for the purpose of discussion and solicitation of public comment. The agenda clearly identified the item as a discussion item and indicated that no action would be taken on the rules during the meeting. No person or group filed any public comment or took the opportunity to appear at the discussion session.

On October 29, 2015, the Commission submitted to the Governor's Regulatory Review Council the agency's 5-year review report detailing all Commission rule changes over the last five years. The Commission included possible proposed actions regarding the rule because the public comment period for the rule had not yet concluded.

On October 29, 2016, during an open and public meeting, the Commission received public comment on the rule, rule amendments, and Secretary of State's petition for a rule change.

On October 30, 2015, after more than 160 days of public comment solicitation, the Commission unanimously adopted final amendments to the rule. The final adopted rule includes the following amendments:

R2-20-109(D)(2)(a)(b) – clarifies the time period in which mileage reimbursements and expenditures must be reported. Allow for direct fuel purchases by the candidate for the candidate's automobile only and require

documentation such as a travel log to be kept regarding a candidate's direct fuel purchases.

R2-20-109 (F)(3) – adds language emphasizing an independent expenditure can be made on behalf of any candidate, a participating candidate or a nonparticipating candidate. Codify in rule statutory language stating an independent expenditure against a candidate is considered an independent expenditure on behalf of the opposing candidate(s). Add language that political committees receiving contributions or making expenditures for candidate elections are subject to the penalties of the Clean Elections Act. Also updates language to clarify the definition of "political committee" in response to HB 2649 redefining the term.

R2-20-109 (F)(6) – clarifies filing requirements to reflect statutory requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B).

R2-20-109 (F)(8) – clarifies Commission's auditing authority to eliminate potentially confusing language.

R2-20-109 (F)(12) – these provisions update the Commission's rules to address the passage of HB2649, which amended the definition of political committee and to provide further clarity to the requirements applicable to those making independent expenditures. (21 A.A.R. 3168)

The Commission did not adopt Secretary of State Reagan's petition to remove A.R.S. § 16-913 from the rule. The Secretary's Office provided no comment either during the comment period or at the hearing for the proposal.

On November 20, 2015, the Commission was notified that the 5-year review report would be considered at the Council's December 29, 2015 study session and at the January 5, 2016 Council meeting.

On December 2, 2015, the Council's staff attorney requested copies of the written criticisms and comments that were received for the rules covered in the report. The next day Commission staff provided copies of all public comments as requested.

On December 17, 2015, the Commission staff confirmed with the Council's staff attorney that the law did not support the Council staff's request that Commission amend the 5-year report to include rule amendments adopted after submission of the report. Commission staff nevertheless confirmed to the staff attorney that the amendments he had previously received information on had been adopted. Commission staff also advised the staff attorney on the limitations imposed by the law on Council. The Council staff attorney acknowledged the email and indicated that "[i]f any questions arise out [a review with the Chairwoman Nicole Ong] I will let you know."

On December 29, 2015, Commission staff attending the study session regarding the 5-year review Report. Commission staff learned that confirming the adoption of the rules was insufficient to satisfy the Council staff's request, despite the assurance on December 17, 2015, and the absence of any dispute the Council had all information related to each and every rule amendment considered and adopted during the 5-year period and afterward. The Council requested that the 5-year review report be revised to include the actions take by the Commission on October 30, 2015 in regards to the rule. Commission staff provided the Council a revised 5-year review report on December 29, 2015 along with additional information regarding the rule and any analysis provided to the Commission during the rulemaking process.

The Council did not take any action on the 5-year review report at the January 5, 2015 meeting. Instead the Council decided to move the agenda item to the Council's next meeting on February2, 2016.

On February2, 2016, the Council voted to return the 5-year review report to the Commission. The Council also voted to repeal subsections (F) and (G) of the rule. No reason for these actions was provided by the Council. The staff attorney subsequently informed the Commission that the new 5-year review report would be due May 30, 2016. At the May5, 2016 meeting the Council granted an extension to for the submission of the revised 5-year review report.

b. Action Proposed

The Commission may consider possible revisions of R2-20-109 due to 2016 legislative changes.

R2-20-110 Campaign Accounts

2. Objective

Specify the method for maintaining campaign accounts.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to the rule by removing subsection (B) which permitted the Commission to consider a nonparticipating candidate's campaign finance activity in all accounts for the purposes of equalizing funds. (19 A.A.R. 1693)

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that a single campaign account is the same as a candidate campaign bank account. (21 A.A.R. 1629)

b. Action Proposed

None.

R2-20-111 Books and Records Requirements

2. Objective

Specify the manner for keeping records and giving the public access to campaign records.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that candidates should maintain records relating to the candidate's campaign bank account. (21 A.A.R. 1631)

b. Action Proposed

None.

R2-20-112 Political Party Exceptions

2. Objective

Provide guidance on the scope of the political party exceptions to the definitions of contributions and expenditures in A.R.S. § 16-901(5), (8).

R2-20-113. Calculation of Equalizing Funds (REPEALED)

2. Objective

Provide details for calculating equalizing funds in accordance with A.R.S. § 16-952.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission repealed the rule calculating equalizing funds for participating candidates. (19 A.A.R. 1694)

b. Action Proposed

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None.

R2-20-113. Candidate Statement Pamphlet (NEW RULE)

2. Objective

Provide procedures for candidate eligibility and submission of statements for the Commission's primary and general election candidate statement pamphlets in accordance with A.R.S. § 16-956.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted a new rule to clarify which candidates are eligible to submit statements to the Commission's primary and general election candidate statement pamphlets. (21 A.A.R. 1633)

b. Action Proposed

None.

ARTICLE 2 – COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-201 Scope

2. Objective

Specify the scope of the rules.

R2-20-202 Initiation of Compliance Matters

2. Objective

Describe methods for initiating an enforcement matter.

R2-20-203 Complaints

2. Objective

Provide the process for filing a complaint.

R2-20-204 Initial Complaint Processing; Notification

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2. Objective

Specify the procedures for processing complaints.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to subsections (A) and (B) of the rule to allow the Commission greater flexibility in the method in which respondents are provided with copies of complaints filed with the Commission. (21 A.A.R. 1634)

b. Action Proposed

None.

R2-20-205 Opportunity for No Action on Complaint-Generated Matters

2. Objective

Specify the method and time period allowed for an alleged violator to respond to a complaint.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to subsection (C) of the rule to require a respondent's response to be sworn to and signed in the presence of a notary public and notarized which aligns with the requirements of complaints filed with the Commission. (21 A.A.R. 1636)

b. Action Proposed

None.

R2-20-206 Administrative Counsel's Recommendation on Complaint-Generated Matters

2. Objective

Specify the Executive Director's and complainant's role prior to bringing a reason-to-believe violation to the Commission.

7. Written Criticism

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Prior the May 22, 2014 Commission meeting, Robyn Prud'homme-Bauer from the League of Women Voters of Arizona provided a written comment supporting the rule amendments. Sam Wercinski from the Arizona Advocacy Network provided written public comment in opposition the proposed subsections (C) and (D) stating the proposals would create a separate process for initiating investigations for one group of candidates versus another and therefore creating unequal due process.

14. Course of Action

a. Action Taken

On May 22, 2014, the Commission adopted final amendments to subsection (B) clarifying that the Executive Director's recommendation is not an appealable agency action. The Commission also adopted subsections (C) and (D) to specify the procedures for initiating an inquiry regarding a nonparticipating candidate or a nonparticipating candidate's campaign committee and that the Commission's decision to authorize an inquiry is not an appealable agency action. (20 A.A.R. 1332)

On July 23, 2015, the Commission adopted final amendments to subsection (A) of the rule allow the Executive Director to close a complaint generated matter based on the respondent complying with the rule or statute on which the complaint is founded and notifying the Commission in such an instance. (21 A.A.R. 1638)

On August 20, 2015, the Commission approved a rule amendment proposal for publication with the Arizona Administrative Register in order to solicit public comment for a proposal that would require the Executive Director to first receive Commission approval to initiate an inquiry if a person making an independent expenditure in an election without a participating candidate faces penalties subject to A.R.S. § 16-942(B). (21 A.A.R. 1981)

b. Action Proposed

If given unanimous approval by the Commission, the earliest effective date of the proposed amendment would be October 29, 2015.

R2-20-207 Internally Generated Matters; Referrals

2. Objective

Provide the Executive Director with authority to generate an internal complaint.

R2-20-208 Complaint Processing; Notification

2. Objective

Provide the process for notifying the complainant and the respondent of a reason-to-believe determination.

7. Written Criticism

Prior to the August 20, 2015 Commission meeting, the Arizona Chamber of Commerce submitted a proposal to the Commission to amend the enforcement processing procedures when a complaint alleges an "Article 1" violation involving an independent expenditure.

14. Course of Action

a. Action Taken

On August 20, 2015, the Commission approved three rule amendment proposals for publication with the Arizona Administrative Register in order to solicit public comment for the proposals. (21 A.A.R. 1772, 1822, 1983)

b. Action Proposed

If given unanimous approval by the Commission, the earliest effective date of the proposed amendments would be October 29, 2015.

R2-20-209 Investigation

2. Objective

Specify the methods used by the Commission to investigate following a reason-to-believe determination.

R2-20-210 Written Questions Under Order

2. Objective

Allow the Commission to issue an order requiring any person to submit sworn, written answers to written questions.

R2-20-211 Subpoenas and Subpoenas Duces Tecum; Depositions

2. Objective

Allow the Commission to authorize the Administrative Counsel or Assistant Attorney General to issue subpoenas for a deposition or issue a subpoena *duces tecum* during its investigation.

DRAFT

R2-20-213 Motions to Quash or Modify a Subpoena

2. Objective

Allow any person to whom a subpoena is directed to apply to the Commission to quash or modify the subpoena.

R2-20-214 The Probable Cause to Believe Recommendation: Briefing Procedures

2. Objective

Specify the procedure for the Commission's determination of probable cause to believe that a violation of the statute or rule has occurred or is about to occur.

R2-20-215 The Probable Cause to Believe Finding; Notification

2. Objective

Provide the process for notifying the respondent of a probable cause finding.

R2-20-216 Conciliation

2. Objective

Provide the process for settling matters informally.

R2-20-217 Enforcement Proceedings

2. Objective

Provide the process for assessing civil penalties.

R2-20-218 Reserved

R2-20-219 Reserved

R2-20-220 Ex Parte Communications

2. Objective

Prohibit ex parte communications with the Commission staff or Commissioner.

R2-20-221 Representation by Counsel; Notification

2. Objective

DRAFT

Specify the extent of a respondent's right to be represented.

R2-20-222 Civil Penalties

2. Objective

Designate potential civil penalties.

7. Written Criticism

Prior to the September 27, 2013 meeting, Sam Wercinski from the Arizona Advocacy Network provided written public comment stating that he currently penalty structure is unfair and lacks deterrent value. Mr. Wercinski proposed a percentage based penalty for deterring campaign finance violations.

14. Course of Action

a. Action Taken

On May 9, 2013, the Commission adopted final amendments to subsections (A) and (B) which increased the maximum civil penalties for participating legislative candidate from $500 to $1,000, participating statewide candidates from $2,500 to $5,000, and for a person other than a participating candidate from $500 to $1,000. (19 A.A.R. 1697)

On September 27, 2013, the Commission adopted final amendments to the rule which struck subsection (C) of the rule which limited penalties for violations of the Act. (19 A.A.R. 3524)

b. Action Proposed

None.

R2-20-223 Notice of Appealable Agency Action

2. Objective

Specify the Commission's notice requirement after making a probable cause finding.

14. Course of Action

a. Action Taken

On July 21, 2011, the Commission amended subsection (A) to include language specifying the statute or the rule "violated and the specific facts constituting the violation." (On October 27, 2015, this rule amendment was submitted to Arizona Administrative Register for publication.)

b. Action Proposed

None.

R2-20-224 Request for Administrative Hearing

2. Objective

Designate the timeline and process for a respondent to request a hearing.

R2-20-225 Informal Settlement Conference

2. Objective

Provide the process for a respondent to request an informal settlement conference.

R2-20-226 Administrative Hearing

2. Objective

Specify the timeline and process for conducting administrative hearings.

R2-20-227 Review of Administrative Decision by Commission

2. Objective

Specify the Commission's responsibilities when it receives notice of an administrative decision.

R2-20-228 Judicial Review

2. Objective

Provide the process for exhausting administrative remedies prior to seeking judicial review.

ARTICLE 3 - STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES

R2-20-301 Purpose and Applicability

2. Objective

DRAFT

Indicate the purpose and scope of this article.

R2-20-302 Definitions

2. Objective

Define terms for this article.

R2-20-303 Notification to Commissioners and Employees

2. Objective

Specify material to be made available to each employee and Commissioner upon revision or entrance of new employment.

R2-20-304 Interpretation and Advisory Service

2. Objective

Specify the process for seeking advice on questions of conflict of interest.

R2-20-305 Reporting Suspected Violations

2. Objective

Provide the procedure for reporting suspected violations of conflict of interest requirements.

R2-20-306 Disciplinary and Other Remedial Action

2. Objective

Specify the disciplinary action for violating this Article.

R2-20-307 General Prohibited Conduct

2. Objective

Specify conduct that is prohibited for Commissioners or employees.

R2-20-308 Outside Employment or Activities

2. Objective

Specify the prohibited conduct related to employment and other activities for Commissioners or employees.

DRAFT

R2-20-309 Financial Interests

2. Objective

Specify financial conflicts of interest requirements.

R2-20-310 Political and Organizational Activity

2. Objective

Specify conflicts of interest related to express advocacy.

R2-20-311 Membership in Associations

2. Objective

Specify potential conflicts of interest related to membership in nongovernmental associations or organizations.

R2-20-312 Use of State Property

2. Objective

Specify limitations on using state property.

ARTICLE 4 – AUDITS

R2-20-401 Purpose and Scope

2. Objective

Provide the purpose and scope of the article.

13. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments removing nonparticipating candidates' campaign finances from the purpose and scope of the audits conducted by the Commission. (19 A.A.R. 1699)

b. Action Proposed

None.

R2-20-402. General

DRAFT

2. Objective

Establish the tools available to the Commission in conducting audits.

R2-20-402.01 Random Audits

2. Objective

Authorize Commission staff to conduct random audits.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to the rule removing nonparticipating candidates' campaign finances from the random audits conducted by the Commission. (19 A.A.R. 1700)

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that statewide and legislative candidates are selected for random audits rather than statewide offices and legislative districts, consistent with current practices. (21 A.A.R. 1640)

b. Action Proposed

None.

R2-20-403 Conduct of Fieldwork

2. Objective

Establish candidate responsibilities during an audit.

R2-20-404 Preliminary Audit Report

2. Objective

Provide the procedures for the first phase of the audit process.

R2-20-405 Final Audit Report

2. Objective

Provide the procedures for the final phase of the audit process.

DRAFT

R2-20-406 Release of Audit Report

2. Objective

Provide details on how an audit report is made available to the public.

ARTICLE 5 – RULEMAKING

R2-20-501 Purpose and Scope

2. Objective

Specify the purpose and scope of the Commission's rulemaking.

R2-20-502 Procedural Requirements

2. Objective

Provide the process for filing a written petition regarding the issuance, amendment or repeal of an administrative rule.

R2-20-503 Processing of Petitions

2. Objective

Provide the process for reviewing petitions related to issuing, amending, or repealing rules.

R2-20-504 Disposition of Petitions

2. Objective

Provide the process for disposition of petitions related to rulemaking.

R2-20-505 Commission Considerations

2. Objective

Specify a nonexclusive list of criteria the Commission may consider in disposing of a petition for rulemaking.

R2-20-506 Administrative Record

2. Objective

Designate which records compose the administrative record.

DRAFT

ARTICLE 6 – EX PARTE COMMUNICATIONS

R2-20-601 Purpose and Scope

2. Objective

Specify the purpose and scope of the article.

R2-20-602 Definitions

2. Objective

Define terms as used in the article.

R2-20-603 Audits, Investigations & Litigation

2. Objective

Prohibit ex parte communications with the Commission during audits, investigations or litigation.

R2-20-604 Sanctions

2. Objective

Specify the process for sanctioning those who violate this article.

ARTICLE 7 – AUDITS AND REPAYMENT

R2-20-701 Purpose and Scope

2. Objective

Specify the purpose and scope of the article.

R2-20-702 Use of Campaign Funds

2. Objective

Specify legal uses of campaign funds.

14. Course of Action

a. Action Taken

On February 17, 2011, the Commission adopted final amendments to the rule to clarify the limits on candidate expenditures for staff meals (R2-20-702(C)(2)), to clarify the personal use limitations listed are not inclusive (R2-20-702(C)(3)), and to prohibit campaign funds to be used to purchase extended warranties or other similar purchase options that extend beyond the campaign (R2-20-702(C)(3)(h)). Additionally, the amendments to the rule require "fixed assets purchased with campaign funds that can be used for non-campaign purposes with a value of $200 or more that were purchased with campaign funds shall be turned in to the Commission no later than 30 days after the primary election or the general election if the candidate was successful in the primary. A candidate may elect to reimburse the Commission for 50% of the original purchase price of the item instead of turning in the item" (R2-20-702(C)(6)). (17 A.A.R. 1267)

On October 6, 2011, the Commission adopted final amendments to the rule to clarify that candidates are prohibited from using Clean Elections funding for the cost of legal defense, any affirmative claim, or any litigation in court or before the Commission regarding a campaign (R2-20-702 (C)(1)). In addition, the Commission adopted final amendments to address disclosure of payments made by participating candidates to candidates or their family members or businesses (R2-20-702(C)(4)). (19 A.A.R. 1702)

On May 9, 2013, the Commission adopted final amendments to subsection (D) of the rule to decrease the amount of time a candidate has to return a fixed asset and increase the percentage of the cost of the item that the candidate must reimburse the Commission in the event the candidate wishes to retain the fixed asset. (19 A.A.R. 1702)

b. Action Proposed

None.

R2-20-702.01. Use of Assets

2. Objective

Provide a method for a candidate to use campaign materials from prior elections.

R2-20-703 Documentation for Direct Campaign Expenditures

2. Objective

Specify the process by which a participating candidate may ensure that campaign expenditures satisfy the direct campaign expenditure requirement.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that candidates must keep a list of fixed assets with a value of $200 or more. The amendment keeps rules regarding fixed assets consistent. (21 A.A.R. 1641)

b. Action Proposed

None.

R2-20-704 Repayment

2. Objective

Designate the process for repaying distributed funds to the Clean Elections fund and specify that the Commission may require such repayment.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule clarifying that repayment sources include the candidate's current election campaign account. (21 A.A.R. 1643)

b. Action Proposed

None.

R2-20-705 Additional Audits or Repayment Determination

2. Objective

Authorize additional audits or examinations of campaign activity when new facts are available.

DRAFT

Agency Justification: The commission proposed amending the rule to provide clarity during the 2016 election cycle due to legislative enactments related to independent expenditures. The legality of those enactments under the Arizona Constitution remains open to question. However, in the interest of consistency, the Commission proposes to adopt this rule change. Additionally, this change removes references to A.R.S. 16-917 which will become outdated and reorganizes the rule for benefit of simplicity by moving issues related to separate regulated entities to separate rules.

R2-20-109. <u>Independent Expenditure</u> Reporting Requirements

A. In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if expressly provided otherwise by another Commission rule.

~~**B.** All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:~~

~~1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.~~

~~2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.~~

~~3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:~~

~~a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;~~

~~b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and~~

~~c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.~~

~~4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:~~

~~a. Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.~~

~~b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.~~

~~c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.~~

~~d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.~~

~~5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.~~

~~**C.** Timing of reporting expenditures.~~

~~1. Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.~~

~~2. In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:~~

~~a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.~~

~~b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.~~

~~c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.~~

~~**D.** Transportation expenses.~~

~~1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.~~

~~2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:~~

~~a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be~~

~~considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.~~

~~b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.~~

~~3. Use of airplanes.~~

~~a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of $150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to $150 per hour of flying time.~~

~~b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.~~

~~4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.~~

~~**E.** Reports and Refunds of Excess Monies by Participating Candidates~~

~~1. In addition to the campaign finance reports filed pursuant to A.R.S. §16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:~~

~~a. Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.~~

~~b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.~~

~~i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.~~

~~ii. If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. §16-945(B).~~

~~Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.~~

~~2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund.~~

~~a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.~~

~~b. The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).~~

~~3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.~~

~~F~~**B.** Independent Expenditure Reporting Requirements.

1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.

~~2. Any person required to comply with A.R.S. § 16-917 shall provide a copy of the literature and advertisement to the Commission at the same time and in the same manner as prescribed by A.R.S. § 16-917(A) and (B). For purposes of this subsection (F), "literature and advertisement" includes electronic communications, including emails and social media messages or postings, sent to more than 1,000 people.~~

~~3~~2. Any person who fails to file:

a A timely campaign finance report pursuant to A.R.S. 16-941(D), A.R.S. §16-958, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B), except as provided in A.R.S. §16-922(1).

b. A timely campaign finance report pursuant A.R.S. § 16-913, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B), except as provided in A.R.S. 16-922(2)

3. ~~Any person making an independent expenditure on behalf of a candidate, participating or non-participating, and not timely filing a campaign finance report as required by A.R.S. § 16-941(D), A.R.S. § 16-958, or A.R.S. § 16-913 shall be subject to a civil penalty as described in A.R.S. § 16-942(B). An expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. This subsection and~~ A.R.S. § 16-942(B) applies to any political committee that accepts contributions or makes expenditures on behalf of any candidate~~, participating or nonparticipating,~~ regardless of any other contributions taken or expenditures made. ~~Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported~~. Any expenditure advocating against one or more candidates

shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:

a. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.
b. For an election involving a legislative candidate, the civil penalty shall be $100 per day.
c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable ~~one of the~~ adjusted primary election spending limit or adjusted general election spending limit.
d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.

4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission's Executive Director.
5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:
   a. is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and
   b. has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).
6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B).
7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption.
   a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.
   b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:
      i. The specific facts constituting the denial;
      ii. A description of the respondent's right to request a hearing and to request and informal settlement conference; and
      iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02 (A)-(J) and (b) remains in compliance with section part (2) of this subsection (F). All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit these entities.
9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in part (8) of this subsection (F); or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or parts (1), (2), or (6) of this subsection (F). Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and part (3) of this subsection (F), in addition to any other penalties applicable pursuant to rule or statute.
10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9~~9~~58 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.
~~11. Any entity that has been granted an exemption as of September 11, 2014 is deemed compliant with the requirements of subpart (5) of this subsection (F) for the election cycle ending in 2014.~~

1~~2~~1. For purposes of this rule:
   a. An entity shall not be found to be a political committee under A.R.S. §16-901(20)(f) unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity plus the total reportable expenditures made by the entity exceeds both $500 and fifty percent (50%) of the entity's total spending during the election cycle.
      i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. A contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.
      ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.
      iii. For purposes of this provision, grants to other organizations shall be treated as follows:

(1) A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.

(2) If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.

iv. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (v) of this section shall count as a reportable contribution or reportable expenditure.

v. Notwithstanding subsections (iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:

(1) The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus

(2) The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.

b. Notwithstanding section a above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.

~~**G.** Non-participating Candidate Reporting Requirements and Contribution Limits. Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:~~

~~1. Penalties under A.R.S. § 16-942(B):, for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):~~

~~a. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.~~

~~b. For an election involving a legislative candidate, the civil penalty shall be $100 per day.~~

c. ~~The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.~~
d. ~~The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.~~

2. ~~Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limits specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.~~
3. ~~Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).~~

RENUMBERED AND RECODIFIED R2-20-109(B),(C),(E).

Agency Justification: Because R2-20-109 has become a lengthy rule, breaking it down by regulated entities simplifies the rule. Accordingly, rules related to participating candidate reporting are renumbered here.

~~**R2-20-110. Campaign Accounts**~~

~~**A.** During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign account and any petty cash accounts as are permitted by law.~~

~~**B.** A candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.~~

~~**C.** During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the account for that prior campaign. A candidate shall not deposit debt-retirement contributions into current campaign accounts.~~

R2-20-110. Participating Candidate Reporting Requirements

A. All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:

1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.
2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.
3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:
   a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;
   b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and
   c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.
4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:
   a. Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint

expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.

b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.

c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.

d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.

5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.

B. Timing of reporting expenditures.

1. Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.

2. In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:

a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.

b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.

c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.

C. Reports and Refunds of Excess Monies by Participating Candidates

1. In addition to the campaign finance reports filed pursuant to A.R.S. §16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:

a. Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.

b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.
   i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
   ii. If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. §16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.

2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund.
   a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
   b. The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).

3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

RENUMBERED R2-20-109(G)

Agency Justification: Because R2-20-109 has become a lengthy rule, breaking it down by regulated entities simplifies the rule. Accordingly, rules related to non-participating candidate reporting and limits are renumbered here.

~~R2-20-111. Books and Records Requirements~~

~~A.~~ ~~All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.~~

~~B.~~ ~~All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:~~

1. ~~The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:~~
   a. ~~All contributions or other monies received by or on behalf of the candidate.~~
   b. ~~The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.~~
   c. ~~Cumulative totals contributed by each individual or political committee.~~
   d. ~~The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.~~
   e. ~~All periodic bank statements or other statements for the candidate's campaign bank account.~~
   f. ~~In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in ARS 16-948(C) for each vendor.~~
2. ~~No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.~~
3. ~~Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.~~
4. ~~All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.~~
5. ~~The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.~~
6. ~~If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.~~

~~C.~~ ~~Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the~~

~~inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.~~

1. ~~The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.~~
2. ~~The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.~~
3. ~~The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.~~
4. ~~If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:~~
   a. ~~All papers, records, or other items sought in the public inspection request;~~
   b. ~~No later than two business days after the date of the subpoena; and~~
   c. ~~To the Commission's office during regular business hours.~~
5. ~~Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.~~

R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits.

Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:

A. Penalties under A.R.S. § 16-942(B), for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):
   1. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.
   2. For an election involving a legislative candidate, the civil penalty shall be $100 per day.
   3. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
   4. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.

B. Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of

A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limit~~s~~ specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.

C. Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).

NO CHANGE

R2-20-112. Political party exception

A. Pursuant to A.R.S. §§ 16-901(5)(b)(v) and (8)(c), payment by a political party of the costs of preparation, printing, display, mailing or other distribution for slate cards, sample ballots, other written materials or listings of candidates that substantially promote three or more candidates for any public office for which an election is held, and other election activities not related to a specific candidate, shall not be considered a contribution or an expenditure for purposes of the Act or Commission rules. This exception is subject to the following limitations:

1. "Slate card" is defined as a list that contains only the names, party affiliations and offices sought by the candidates; photographs of the candidates; and general information regarding the date of the primary or general election and the location of the recipient's polling place;
2. "Sample ballot" is defined as a facsimile of a ballot listing only the names, party affiliations and offices sought by the candidates, appearing substantially as they would on an actual ballot;
3. "Other written materials or listings of candidates that substantially promote three or more candidates" are defined as materials that contain one or more of the elements of a slate card, in addition to statements and/or images describing the platform of the sponsoring party and the position of the party's candidates, and does not feature, mention, or depict a candidate or candidates of another party;
4. "Other election activities not related to a specific candidate" includes invitations to party-sponsored events, issue canvassing, and voter-registration efforts;
5. "Billboards" are defined as outdoor signs that are larger than thirty-two square feet in size.
6. The exception set forth in Subsection (A) shall not apply to materials defined in 1-3 above when distributed or displayed prior to the general election period unless each candidate featured is unopposed in the primary election.
7. The exception set forth in this Subsection (A) shall not apply to costs incurred with respect to a display of the listing of candidates made on telecommunications systems, billboards, or in newspapers, magazines or similar types of general circulation advertising.

B. This Section is intended to establish, for purposes of the Act and Commission rules, circumstances under which the payment by a political party of certain costs described herein shall be excluded from the definition of contribution pursuant to A.R.S. § 16-901(5)(b)(v) or from the definition of expenditures pursuant to A.R.S. § 16-901(8)(c), as applicable. Nothing in this Section shall be construed to prohibit a political party from making any expenditure or contribution not otherwise prohibited by Arizona law.

C. The Commission shall treat as an expenditure of de minimis value the payment by a political party of the costs of (1) preparation and display on the political party's website of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held; or (2) preparation and distribution via email, to recipients who have subscribed to receive email from the political party and whose email addresses are not rented, purchased or otherwise obtained from a third-party source, of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held. A political party that pays the costs of preparation, display and/or

distribution of a slate card, sample ballot or other printed listing of three or more candidates, as described in this subsection, and which is otherwise required to file a campaign finance report in accordance with A.R.S. § 16-913, shall disclose such payment as an expenditure with a value of zero dollars.

NO CHANGE

R2-20-113. Candidate Statement Pamphlet

A. The Commission shall publish a candidate statement pamphlet in both the primary and general elections as required by A.R.S. §16-956(A)(1). Commission staff shall send invitations for submission of a 200 word statement to every statewide and legislative candidate who has qualified for the ballot.

B. The following candidates will not be invited to submit a statement for the candidate statement pamphlet:

1. In the primary election: write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.

2. In the general election: write in candidates

Renumbered R-20-110

Agency Justification: In order to accommodate reorganizing R2-20-109, R2-20-110 is renumbered as R2-20-114.

R2-20-114. Campaign Accounts

A. During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign account and any petty cash accounts as are permitted by law.

B. A candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.

C. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the account for that prior campaign. A candidate shall not deposit debt-retirement contributions into current campaign accounts.

Renumbered R2-20-111

Agency Justification: In order to accommodate reorganizing R2-20-109, R2-20-110 is renumbered as R2-20-115.

R2-20-115. Books and Records Requirements

A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.

B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:

1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
   a. All contributions or other monies received by or on behalf of the candidate.
   b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.
   c. Cumulative totals contributed by each individual or political committee.
   d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
   e. All periodic bank statements or other statements for the candidate's campaign bank account.
   f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in ARS 16-948(C) for each vendor.
2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.
4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.

C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election,

the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.

1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
   a. All papers, records, or other items sought in the public inspection request;
   b. No later than two business days after the date of the subpoena; and
   c. To the Commission's office during regular business hours.
5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

Agency Justification: Because R2-20-109 has become a lengthy rule, breaking it down by regulated entities simplifies the rule. Accordingly, rules related to participating candidate use of funds that were in R2-20-109 are consolidated with other like rules here.

R2-20-702. Use of Campaign Funds

A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).

B. A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than $200 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.

C. A participating candidate shall not use funds in the candidate's campaign account for:

1. Costs of legal defense in any campaign law enforcement proceeding or for any affirmative claim or litigation in court or before the Commission regarding a campaign. This prohibition does not bar use of campaign funds for payments to attorneys or certified accountants for proactive compliance advice and assistance.
2. Food and beverages for staff and volunteers exceeding $11 for breakfast, $16 for lunch, and $27 for dinner, per person.
3. Personal use, which includes, but is not limited to, any item listed below:
   a. Household food items or supplies.
   b. Clothing, other than items of de minimis value that are used in the campaign, such as campaign "t-shirts" or caps with campaign slogans.
   c. Tuition payments, other than those associated with training campaign staff.
   d. Mortgage, loan, rent, lease or utility payments:
      i. For any part of any personal residence of the candidate or a member of the candidate's family; or
      ii. For real or personal property that is owned or leased by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.
   e. Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign activity.
   f. Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.
   g. Gifts or donations.
   h. Extended warranties or other similar purchase options that extend beyond the campaign.
4. Payment to a candidate or a candidate's family member, as defined in R2-20-101(13), or an enterprise owned in whole or part by a candidate or family member, for the provisions of goods or services to the extent the payments exceed the fair market value of the goods or services. All payments made to family members or to

enterprises owned in whole or part by the candidate or a family member shall be clearly itemized and indicated as such in all campaign finance reports.

D. Participating candidates may purchase fixed assets with a value not to exceed $800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of $200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at $200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80% of the original purchase price including the cost of accessories.

E. During the primary election period, a participating candidate shall not make any expenditure greater than the difference between

1. the sum of early contributions received plus public funds disbursed through the primary election period; less
2. all other expenditures made during and for the exploratory, qualifying and primary election periods.

F. During the general election period, a participating candidate shall not make any expenditure greater than the difference between

1. the amount of public funds disbursed during and for the general election period; less
2. all other expenditures made during and for the general election period.

G. Transportation expenses.

1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
   a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.
   b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
3. Use of airplanes.
   a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of $150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to $150 per hour of flying time.
   b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of

the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.

4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.

Agency Explanation: Regarding A.R.S. § 16-922 as amended by 2016 Ariz. Laws, Ch. 346, Sec. 2 (52d Legislature 2d Reg. Session). A.R.S. § 16-922 purports to restrict certain action against tax exempt entities. The section has never received a 3/4ths vote of both houses, either in its initial adoption or its subsequent amendment. Nor does this section further the purpose of the Act. Accordingly, regulated entities should be aware that the Commission cannot enforce these new terms consistent with the Clean Elections Act and the Arizona Constitution. Additionally, this change removes references to A.R.S. 16-917 which will become outdated and reorganizes the rule for benefit of simplicity by moving issues related to separate regulated entities to separate rules.

R2-20-109. Independent Expenditure Reporting Requirements

A. In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if expressly provided otherwise by another Commission rule.

~~**B.** All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:~~

~~1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.~~

~~2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7-day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.~~

~~3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:~~

~~a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;~~

~~b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and~~

c. ~~Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.~~

4. ~~A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:~~

   a. ~~Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.~~

   b. ~~Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.~~

   c. ~~If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.~~

   d. ~~If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.~~

5. ~~For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.~~

~~**C.** Timing of reporting expenditures.~~

1. ~~Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.~~

2. ~~In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:~~

   a. ~~For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.~~

   b. ~~For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.~~

   c. ~~For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.~~

~~D.~~ ~~Transportation expenses.~~

1. ~~Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.~~

2. ~~If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:~~

   a. ~~Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.~~

b. ~~Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.~~

3. ~~Use of airplanes.~~

a. ~~If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of $150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to $150 per hour of flying time.~~

b. ~~If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.~~

4. ~~If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.~~

E. ~~Reports and Refunds of Excess Monies by Participating Candidates~~

1. ~~In addition to the campaign finance reports filed pursuant to A.R.S. §16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:~~

a. ~~Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.~~

b. ~~At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.~~

~~i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.~~

~~ii. If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. §16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.~~

~~2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund.~~

~~a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.~~

~~b. The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).~~

~~3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.~~

~~F~~B. Independent Expenditure Reporting Requirements.

1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.

~~2. Any person required to comply with A.R.S. § 16-917 shall provide a copy of the literature and advertisement to the Commission at the same time and in the same manner as prescribed by A.R.S. § 16-917(A) and (B). For purposes of this subsection (F), "literature~~

~~and advertisement" includes electronic communications, including emails and social media messages or postings, sent to more than 1,000 people.~~

~~3~~2. Any person making an independent expenditure on behalf of a candidate, participating or non-participating, and not timely filing a campaign finance report as required by A.R.S. § 16-941(D), A.R.S. § 16-958, or A.R.S. § 16-913 shall be subject to a civil penalty as described in A.R.S. § 16-942(B). An expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. This subsection and A.R.S. § 16-942(B) applies to any political committee that accepts contributions or makes expenditures on behalf of any candidate, participating or nonparticipating, regardless of any other contributions taken or expenditures made. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. Penalties shall be assessed as follows:

a. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.

b. For an election involving a legislative candidate, the civil penalty shall be $100 per day.

c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.

d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.

e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.

4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission's Executive Director.

5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:

a. is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and

b. has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).

6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B).

7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption.

   a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.

   b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

      i. The specific facts constituting the denial;

      ii. A description of the respondent's right to request a hearing and to request and informal settlement conference; and

      iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02 (A)-(J) and (b) remains in compliance with section part (2) of this subsection (F). All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit these entities.

9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an

exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in part (8) of this subsection (F); or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or parts (1), (2), or (6) of this subsection (F). Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and part (3) of this subsection (F), in addition to any other penalties applicable pursuant to rule or statute.

10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9~~9~~58 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.

~~11. Any entity that has been granted an exemption as of September 11, 2014 is deemed compliant with the requirements of subpart (5) of this subsection (F) for the election cycle ending in 2014.~~

1~~2~~1. For purposes of this rule:

a. An entity shall not be found to be a political committee under A.R.S. §16-901(20)(f) unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity plus the total reportable expenditures made by the entity exceeds both $500 and fifty percent (50%) of the entity's total spending during the election cycle.

i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. A contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.

ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.

iii. For purposes of this provision, grants to other organizations shall be treated as follows:

(1) A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.

(2) If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.

iv. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (v) of this section shall count as a reportable contribution or reportable expenditure.

v. Notwithstanding subsections (iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:

(1) The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus

(2) The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.

b. Notwithstanding section a above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.

~~**G.** Non-participating Candidate Reporting Requirements and Contribution Limits. Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:~~

1. ~~Penalties under A.R.S. § 16-942(B):, for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):~~
   a. ~~For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.~~

   b. ~~For an election involving a legislative candidate, the civil penalty shall be $100 per day.~~

   c. ~~The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.~~

   d. ~~The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.~~

2. ~~Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limits specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.~~

3. ~~Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).~~

RENUMBERED AND RECODIFIED R2-20-109(B),(C),(E).

Agency Justification: Because R2-20-109 has become a lengthy rule, breaking it down by regulated entities simplifies the rule. Accordingly, rules related to participating candidate reporting are renumbered here.

~~**R2-20-110. Campaign Accounts**~~

~~**A.** During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign account and any petty cash accounts as are permitted by law.~~

~~**B.** A candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.~~

~~**C.** During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the account for that prior campaign. A candidate shall not deposit debt-retirement contributions into current campaign accounts.~~

R2-20-110. Participating Candidate Reporting Requirements

A. All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:

1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.

2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.
3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:

    a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;

    b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and

c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.

4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:

   a. Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.

   b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.

   c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.

   d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.

5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.

B. Timing of reporting expenditures.

1. Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.

2. In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:

   a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.

   b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.

   c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.

C. Reports and Refunds of Excess Monies by Participating Candidates

1. In addition to the campaign finance reports filed pursuant to A.R.S. §16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:

   a. Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.

   b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.

      i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.

      ii. If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report,

shall remit all unspent contributions to the Fund, pursuant to A.R.S. §16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.

2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund.

   a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.

   b. The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).

3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

RENUMBERED R2-20-109(G)

Agency Justification: Because R2-20-109 has become a lengthy rule, breaking it down by regulated entities simplifies the rule. Accordingly, rules related to non-participating candidate reporting and limits are renumbered here.

~~R2-20-111. Books and Records Requirements~~

~~**A.** All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.~~

~~**B.** All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:~~

1. ~~The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:~~
   a. ~~All contributions or other monies received by or on behalf of the candidate.~~
   b. ~~The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.~~
   c. ~~Cumulative totals contributed by each individual or political committee.~~
   d. ~~The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.~~
   e. ~~All periodic bank statements or other statements for the candidate's campaign bank account.~~
   f. ~~In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in ARS 16-948(C) for each vendor.~~
2. ~~No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.~~
3. ~~Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.~~
4. ~~All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.~~
5. ~~The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.~~

6. ~~If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.~~

~~**C.** Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.~~

1. ~~The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.~~
2. ~~The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.~~
3. ~~The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.~~
4. ~~If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:~~
   a. ~~All papers, records, or other items sought in the public inspection request;~~
   b. ~~No later than two business days after the date of the subpoena; and~~
   c. ~~To the Commission's office during regular business hours.~~
5. ~~Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.~~

R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits.

Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:

A. Penalties under A.R.S. § 16-942(B), for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):
   1. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.

2. For an election involving a legislative candidate, the civil penalty shall be $100 per day.

3. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.

4. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.

B. Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limit~~s~~ specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.

C. Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).

NO CHANGE

R2-20-112. Political party exception

A. Pursuant to A.R.S. §§ 16-901(5)(b)(v) and (8)(c), payment by a political party of the costs of preparation, printing, display, mailing or other distribution for slate cards, sample ballots, other written materials or listings of candidates that substantially promote three or more candidates for any public office for which an election is held, and other election activities not related to a specific candidate, shall not be considered a contribution or an expenditure for purposes of the Act or Commission rules. This exception is subject to the following limitations:

1. "Slate card" is defined as a list that contains only the names, party affiliations and offices sought by the candidates; photographs of the candidates; and general information regarding the date of the primary or general election and the location of the recipient's polling place;
2. "Sample ballot" is defined as a facsimile of a ballot listing only the names, party affiliations and offices sought by the candidates, appearing substantially as they would on an actual ballot;
3. "Other written materials or listings of candidates that substantially promote three or more candidates" are defined as materials that contain one or more of the elements of a slate card, in addition to statements and/or images describing the platform of the sponsoring party and the position of the party's candidates, and does not feature, mention, or depict a candidate or candidates of another party;
4. "Other election activities not related to a specific candidate" includes invitations to party-sponsored events, issue canvassing, and voter-registration efforts;
5. "Billboards" are defined as outdoor signs that are larger than thirty-two square feet in size.
6. The exception set forth in Subsection (A) shall not apply to materials defined in 1-3 above when distributed or displayed prior to the general election period unless each candidate featured is unopposed in the primary election.
7. The exception set forth in this Subsection (A) shall not apply to costs incurred with respect to a display of the listing of candidates made on telecommunications systems, billboards, or in newspapers, magazines or similar types of general circulation advertising.

B. This Section is intended to establish, for purposes of the Act and Commission rules, circumstances under which the payment by a political party of certain costs described herein shall be excluded from the definition of contribution pursuant to A.R.S. § 16-901(5)(b)(v) or from the definition of expenditures pursuant to A.R.S. § 16-901(8)(c), as applicable. Nothing in this Section shall be construed to prohibit a political party from making any expenditure or contribution not otherwise prohibited by Arizona law.

C. The Commission shall treat as an expenditure of de minimis value the payment by a political party of the costs of (1) preparation and display on the political party's website of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held; or (2) preparation and distribution via email, to recipients who have subscribed to receive email from the political party and whose email addresses are not rented, purchased or otherwise obtained from a third-party source, of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an

election is held. A political party that pays the costs of preparation, display and/or distribution of a slate card, sample ballot or other printed listing of three or more candidates, as described in this subsection, and which is otherwise required to file a campaign finance report in accordance with A.R.S. § 16-913, shall disclose such payment as an expenditure with a value of zero dollars.

NO CHANGE

R2-20-113. Candidate Statement Pamphlet

A. The Commission shall publish a candidate statement pamphlet in both the primary and general elections as required by A.R.S. §16-956(A)(1). Commission staff shall send invitations for submission of a 200 word statement to every statewide and legislative candidate who has qualified for the ballot.

B. The following candidates will not be invited to submit a statement for the candidate statement pamphlet:

1. In the primary election: write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
2. In the general election: write in candidates

Renumbered R-20-110

Agency Justification: In order to accommodate reorganizing R2-20-109, R2-20-110 is renumbered as R2-20-114.

R2-20-114. Campaign Accounts

A. During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign account and any petty cash accounts as are permitted by law.

B. A candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.

C. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the account for that prior campaign. A candidate shall not deposit debt-retirement contributions into current campaign accounts.

Renumbered R2-20-111

Agency Justification: In order to accommodate reorganizing R2-20-109, R2-20-110 is renumbered as R2-20-115.

R2-20-115. Books and Records Requirements

A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.

B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:

1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
   a. All contributions or other monies received by or on behalf of the candidate.
   b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.
   c. Cumulative totals contributed by each individual or political committee.
   d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
   e. All periodic bank statements or other statements for the candidate's campaign bank account.
   f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in ARS 16-948(C) for each vendor.
2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.
4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.

C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.

1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
   a. All papers, records, or other items sought in the public inspection request;
   b. No later than two business days after the date of the subpoena; and
   c. To the Commission's office during regular business hours.
5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

Agency Justification: Because R2-20-109 has become a lengthy rule, breaking it down by regulated entities simplifies the rule. Accordingly, rules related to participating candidate use of funds that were in R2-20-109 are consolidated with other like rules here.

R2-20-702. Use of Campaign Funds

A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).

B. A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than $200 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.

C. A participating candidate shall not use funds in the candidate's campaign account for:

1. Costs of legal defense in any campaign law enforcement proceeding or for any affirmative claim or litigation in court or before the Commission regarding a campaign. This prohibition does not bar use of campaign funds for payments to attorneys or certified accountants for proactive compliance advice and assistance.
2. Food and beverages for staff and volunteers exceeding $11 for breakfast, $16 for lunch, and $27 for dinner, per person.
3. Personal use, which includes, but is not limited to, any item listed below:
   a. Household food items or supplies.
   b. Clothing, other than items of de minimis value that are used in the campaign, such as campaign "t-shirts" or caps with campaign slogans.
   c. Tuition payments, other than those associated with training campaign staff.
   d. Mortgage, loan, rent, lease or utility payments:
      i. For any part of any personal residence of the candidate or a member of the candidate's family; or
      ii. For real or personal property that is owned or leased by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.
   e. Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign activity.
   f. Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.
   g. Gifts or donations.
   h. Extended warranties or other similar purchase options that extend beyond the campaign.
4. Payment to a candidate or a candidate's family member, as defined in R2-20-101(13), or an enterprise owned in whole or part by a candidate or family member, for the

provisions of goods or services to the extent the payments exceed the fair market value of the goods or services. All payments made to family members or to enterprises owned in whole or part by the candidate or a family member shall be clearly itemized and indicated as such in all campaign finance reports.

D. Participating candidates may purchase fixed assets with a value not to exceed $800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of $200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at $200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80% of the original purchase price including the cost of accessories.

E. During the primary election period, a participating candidate shall not make any expenditure greater than the difference between

1. the sum of early contributions received plus public funds disbursed through the primary election period; less
2. all other expenditures made during and for the exploratory, qualifying and primary election periods.

F. During the general election period, a participating candidate shall not make any expenditure greater than the difference between

1. the amount of public funds disbursed during and for the general election period; less
2. all other expenditures made during and for the general election period.

G. Transportation expenses.

1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.

2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:

   a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.

   b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.

3. Use of airplanes.

   a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of $150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to $150 per hour of flying time.

   b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.

4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.

Agency Explanation: Regarding A.R.S. § 16-922 as amended by 2016 Ariz. Laws, Ch. 346, Sec. 2 (52d Legislature 2d Reg. Session). A.R.S. § 16-922 purports to restrict certain action against tax exempt entities. The section has never received a 3/4ths vote of both houses, either in its initial adoption or its subsequent amendment. Nor does this section further the purpose of the Act. In deference to the legislative action and to mitigate confusion, the Commission treats such entities as subject to a presumption against penalties under this section. Additionally, this change removes references to A.R.S. 16-917 which will become outdated and reorganizes the rule for benefit of simplicity by moving issues related to separate regulated entities to separate rules.

R2-20-109. <u>Independent Expenditure</u> Reporting Requirements

A. In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if expressly provided otherwise by another Commission rule.

~~**B.** All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:~~

~~1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.~~

~~2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7-day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.~~

~~3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:~~

~~a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;~~

~~b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and~~

c. ~~Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.~~

4. ~~A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:~~

   a. ~~Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.~~

   b. ~~Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.~~

   c. ~~If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.~~

   d. ~~If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.~~

5. ~~For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.~~

~~**C.** Timing of reporting expenditures.~~

1. ~~Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.~~

2. ~~In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:~~

   a. ~~For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.~~

   b. ~~For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.~~

   c. ~~For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.~~

~~D.~~ ~~Transportation expenses.~~

1. ~~Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.~~

2. ~~If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:~~

   a. ~~Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.~~

b. ~~Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.~~

3. ~~Use of airplanes.~~

a. ~~If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of $150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to $150 per hour of flying time.~~

b. ~~If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.~~

4. ~~If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.~~

E. ~~Reports and Refunds of Excess Monies by Participating Candidates~~

1. ~~In addition to the campaign finance reports filed pursuant to A.R.S. §16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:~~

a. ~~Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.~~

b. ~~At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.~~

~~i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.~~

~~ii. If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. §16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.~~

~~2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund.~~

~~a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.~~

~~b. The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).~~

~~3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.~~

~~F~~B. Independent Expenditure Reporting Requirements.

1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.

~~2. Any person required to comply with A.R.S. § 16-917 shall provide a copy of the literature and advertisement to the Commission at the same time and in the same manner as prescribed by A.R.S. § 16-917(A) and (B). For purposes of this subsection (F), "literature~~

~~and advertisement" includes electronic communications, including emails and social media messages or postings, sent to more than 1,000 people.~~

~~3~~2. Any person making an independent expenditure on behalf of a candidate, participating or non-participating, and not timely filing a campaign finance report as required by A.R.S. § 16-941(D), A.R.S. § 16-958, or A.R.S. § 16-913 shall be subject to a civil penalty as described in A.R.S. § 16-942(B). An expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. This subsection and A.R.S. § 16-942(B) applies to any political committee that accepts contributions or makes expenditures on behalf of any candidate, participating or nonparticipating, regardless of any other contributions taken or expenditures made. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. The Commission shall make a rebuttable presumption that an entity that claims to be subject to A.R.S. § 16-922(1) is not subject to penality under A.R.S. § 16-942(B) for failure to file reports under A.R.S. §§ 16-941 and -958. The presumption may be rebutted by a prepondence of the evidence showing the entity is conducted for the purpose of influencing elections. The Commission shall make a rebuttable presumption that an entity that claims to be subject to A.R.S. § 16-922(2) is not subject to penalities under 16-922 for failure to report under A.R.S. 16-913. The presumption may be rebutted by by a prepondence of the evidence showing that the entity is conducted for the purpose of influencing elections.

Penalties shall be assessed as follows:

a. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.

b. For an election involving a legislative candidate, the civil penalty shall be $100 per day.

c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.

d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.

e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.

4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission's Executive Director.

5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:

   a. is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and

   b. has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).

6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B).

7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption.

   a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.

   b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

      i. The specific facts constituting the denial;

      ii. A description of the respondent's right to request a hearing and to request and informal settlement conference; and

      iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02 (A)-(J) and (b) remains in compliance with section part (2) of this subsection (F). All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit these entities.

9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in part (8) of this subsection (F); or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or parts (1), (2), or (6) of this subsection (F). Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and part (3) of this subsection (F), in addition to any other penalties applicable pursuant to rule or statute.

10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9958 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.

~~11. Any entity that has been granted an exemption as of September 11, 2014 is deemed compliant with the requirements of subpart (5) of this subsection (F) for the election cycle ending in 2014.~~

1~~2~~1. For purposes of this rule:

a. An entity shall not be found to be a political committee under A.R.S. §16-901(20)(f) unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity plus the total reportable expenditures made by the entity exceeds both $500 and fifty percent (50%) of the entity's total spending during the election cycle.

i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing

officer in Arizona. A contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.

ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.

iii. For purposes of this provision, grants to other organizations shall be treated as follows:

(1) A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.

(2) If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.

iv. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (v) of this section shall count as a reportable contribution or reportable expenditure.

v. Notwithstanding subsections (iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:

(1) The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus

(2) The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.

b. Notwithstanding section a above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.

~~**G.** Non-participating Candidate Reporting Requirements and Contribution Limits. Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:~~

~~1. Penalties under A.R.S. § 16-942(B):, for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):~~

~~a. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.~~

~~b. For an election involving a legislative candidate, the civil penalty shall be $100 per day.~~

~~c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.~~

~~d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.~~

~~2. Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limits specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.~~

3. ~~Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).~~

RENUMBERED AND RECODIFIED R2-20-109(B),(C),(E).

Agency Justification: Because R2-20-109 has become a lengthy rule, breaking it down by regulated entities simplifies the rule. Accordingly, rules related to participating candidate reporting are renumbered here.

~~**R2-20-110. Campaign Accounts**~~

~~**A.** During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign account and any petty cash accounts as are permitted by law.~~

~~**B.** A candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.~~

~~**C.** During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the account for that prior campaign. A candidate shall not deposit debt-retirement contributions into current campaign accounts.~~

R2-20-110. Participating Candidate Reporting Requirements

A. All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:

1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.

2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.
3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:

    a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;

    b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and

c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.

4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:

   a. Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.

   b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.

   c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.

   d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.

5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.

B. Timing of reporting expenditures.

1. Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.

2. In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:

   a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.

   b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.

   c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.

C. Reports and Refunds of Excess Monies by Participating Candidates

1. In addition to the campaign finance reports filed pursuant to A.R.S. §16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:

   a. Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.

   b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.

      i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.

      ii. If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report,

shall remit all unspent contributions to the Fund, pursuant to A.R.S. §16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.

2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund.

   a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.

   b. The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).

3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

RENUMBERED R2-20-109(G)

Agency Justification: Because R2-20-109 has become a lengthy rule, breaking it down by regulated entities simplifies the rule. Accordingly, rules related to non-participating candidate reporting and limits are renumbered here.

~~R2-20-111. Books and Records Requirements~~

~~**A.** All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.~~

~~**B.** All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:~~

1. ~~The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:~~
   a. ~~All contributions or other monies received by or on behalf of the candidate.~~
   b. ~~The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.~~
   c. ~~Cumulative totals contributed by each individual or political committee.~~
   d. ~~The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.~~
   e. ~~All periodic bank statements or other statements for the candidate's campaign bank account.~~
   f. ~~In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in ARS 16-948(C) for each vendor.~~
2. ~~No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.~~
3. ~~Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.~~
4. ~~All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.~~
5. ~~The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.~~

6. ~~If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.~~

~~**C.** Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.~~

1. ~~The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.~~
2. ~~The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.~~
3. ~~The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.~~
4. ~~If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:~~
   a. ~~All papers, records, or other items sought in the public inspection request;~~
   b. ~~No later than two business days after the date of the subpoena; and~~
   c. ~~To the Commission's office during regular business hours.~~
5. ~~Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.~~

R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits.

Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:

A. Penalties under A.R.S. § 16-942(B), for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):
   1. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.

2. For an election involving a legislative candidate, the civil penalty shall be $100 per day.

3. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.

4. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.

B. Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limit~~s~~ specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.

C. Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).

NO CHANGE

R2-20-112. Political party exception

A. Pursuant to A.R.S. §§ 16-901(5)(b)(v) and (8)(c), payment by a political party of the costs of preparation, printing, display, mailing or other distribution for slate cards, sample ballots, other written materials or listings of candidates that substantially promote three or more candidates for any public office for which an election is held, and other election activities not related to a specific candidate, shall not be considered a contribution or an expenditure for purposes of the Act or Commission rules. This exception is subject to the following limitations:

1. "Slate card" is defined as a list that contains only the names, party affiliations and offices sought by the candidates; photographs of the candidates; and general information regarding the date of the primary or general election and the location of the recipient's polling place;
2. "Sample ballot" is defined as a facsimile of a ballot listing only the names, party affiliations and offices sought by the candidates, appearing substantially as they would on an actual ballot;
3. "Other written materials or listings of candidates that substantially promote three or more candidates" are defined as materials that contain one or more of the elements of a slate card, in addition to statements and/or images describing the platform of the sponsoring party and the position of the party's candidates, and does not feature, mention, or depict a candidate or candidates of another party;
4. "Other election activities not related to a specific candidate" includes invitations to party-sponsored events, issue canvassing, and voter-registration efforts;
5. "Billboards" are defined as outdoor signs that are larger than thirty-two square feet in size.
6. The exception set forth in Subsection (A) shall not apply to materials defined in 1-3 above when distributed or displayed prior to the general election period unless each candidate featured is unopposed in the primary election.
7. The exception set forth in this Subsection (A) shall not apply to costs incurred with respect to a display of the listing of candidates made on telecommunications systems, billboards, or in newspapers, magazines or similar types of general circulation advertising.

B. This Section is intended to establish, for purposes of the Act and Commission rules, circumstances under which the payment by a political party of certain costs described herein shall be excluded from the definition of contribution pursuant to A.R.S. § 16-901(5)(b)(v) or from the definition of expenditures pursuant to A.R.S. § 16-901(8)(c), as applicable. Nothing in this Section shall be construed to prohibit a political party from making any expenditure or contribution not otherwise prohibited by Arizona law.

C. The Commission shall treat as an expenditure of de minimis value the payment by a political party of the costs of (1) preparation and display on the political party's website of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held; or (2) preparation and distribution via email, to recipients who have subscribed to receive email from the political party and whose email addresses are not rented, purchased or otherwise obtained from a third-party source, of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an

election is held. A political party that pays the costs of preparation, display and/or distribution of a slate card, sample ballot or other printed listing of three or more candidates, as described in this subsection, and which is otherwise required to file a campaign finance report in accordance with A.R.S. § 16-913, shall disclose such payment as an expenditure with a value of zero dollars.

NO CHANGE

R2-20-113. Candidate Statement Pamphlet

A. The Commission shall publish a candidate statement pamphlet in both the primary and general elections as required by A.R.S. §16-956(A)(1). Commission staff shall send invitations for submission of a 200 word statement to every statewide and legislative candidate who has qualified for the ballot.

B. The following candidates will not be invited to submit a statement for the candidate statement pamphlet:

1. In the primary election: write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
2. In the general election: write in candidates

Rules for Packet Summary

Commissioners: As indicated at the last meeting, we wanted to provide several approaches based on the evaluation in the memo distributed last month. The legislature amended § 16-922 with HB2296, and also made the legislation retroactive to June 1, 2016. HB2296 did not receive a three-fourths vote. The modifications to § 16-922 purport to exempt an entity from certain registration and reporting requirements based on the entity's federal tax registration status.

This cover sheet provides a brief explanation of three concepts we developed for possible publication.

A: This rule package adopts the standard set forth in A.R.S. § 16-922. The notice will include an explanation noting the legal issues. The result would be

1) that 501(c)(3)s would owe no reports under the Clean Elections Act.
2) that to the extent that starting a committee log in on the Secretary of State's website for the purpose of filing reports is "registration" as a political committee, persons meeting the requirements set forth in the section would not be subject to penalty under A.R.S. 16-942(B) for failure to file reports required by Chapter 6, Section 16-913.

B. This rule package declares that the A.R.S. § 16-922 is unconstitutional and notifies regulated entities of that determination. It otherwise makes recommended changes to the number and order of rules.

C. This rule packages attempts to mitigate constitutional issues around A.R.S. § 16-922 by allowing entities subject to the rule to have a presumption against penalties that may be rebutted by evidence of conduct.

MICHELE REAGAN
Secretary of State
State of Arizona

July 8, 2015

VIA REGULAR MAIL AND EMAIL

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Matter No.: Campaign Finance Complaint SOS-CF-2015-001
Complainant: David Pearsall
Respondent: Veterans for a Strong America

Dear Mssrs. Golestan and McGhan,

The Secretary of State received Mr. Pearsall's campaign finance complaint dated January 30, 2015. Mr. Pearsall alleged that Veterans for a Strong America (VSA) violated A.R.S. § 16-914.02 by failing to file independent expenditure reports with the Secretary of State. In response, VSA contends that the advertisement in question constituted issue advocacy and therefore did not trigger any reporting requirements under § 16-914.02. Alternatively, if the advertisement did constitute express advocacy under Arizona's statutory definition, A.R.S. § 16-901.01(A)(2), VSA argues that Arizona's statute is unconstitutional in light of recent United States Supreme Court precedent.

The Secretary of State's office has concluded its investigation, and hereby finds reasonable cause to believe that VSA violated Arizona law for the following reasons.

Factual Background

VSA is a South Dakota-based, non-profit corporation organized under § 501(c)(4) of the Internal Revenue Code. *See* VSA Response at 1. VSA's mission is to "educate the public, members of Congress, and the Executive Branch about the need for a strong national defense and a robust foreign policy." *Id.*

On May 28, 2014, VSA registered with the Arizona Secretary of State as a corporation that makes independent expenditures. *See* Complaint at 2, Exhibit 3; *see also* A.R.S. § 16-914.02(A) ("Any corporation . . . that makes . . . independent expenditures in an attempt to influence the outcome of a [statewide] candidate election . . . shall register" with the Secretary of State).

The same day, VSA released an advertisement critical of then-gubernatorial candidate Christine Jones entitled "What Difference?," which contrasted Ms. Jones' positive comments about Secretary of State Hillary Clinton with Secretary Clinton's response to the September 2012 attacks in Benghazi, Libya. *See* Response at 2.[1] The script for the advertisement read:

> VOICE: Four Americans were killed by terrorists. What happened? Requests for more security: denied. Talking points: altered. Our nation: lied to.
>
> HILLARY CLINTON (testifying before Congress): What difference, at this point, does it make?
>
> VOICE: It made no difference to Christine Jones. Two months later, she said "Hillary Clinton will continue to stand out as a capable, respected leader." Jones praised Clinton: "Americans will realize what an effective Secretary of State Clinton was . . . . The incredibly high standard she set." These are Christine Jones' standards. Are they yours?

The advertisement shows the photos and names of the four Americans, video of the American consulate on fire, video of Secretary Clinton's congressional testimony, and juxtaposes Ms. Jones' and Secretary Clinton's images. *See* https://www.youtube.com/watch?v=kVcEtVQ7vbI. The disclaimer states: "Paid for by Veterans for a Strong America. No political committee contributions. Not authorized by any candidate or candidate's campaign committee. www.veteransforastrongamerica.org." *Id.*

The advertisement began airing on television in Arizona. *See* Complaint at Exhibit 2. An Arizona Republic article dated May 29, 2014 stated: "[VSA's chairman Joel] Arends said the ad began running Thursday on cable stations and will 'run heavy' for up to 10 days. The ad buy was about $50,000, he said." *Id.*

VSA contemporaneously issued a press release, which read in pertinent part:

> VSA Chairman Arends: "Christine Jones lacks the judgment required to be the top official in any state, let alone a state with as pronounced a military presence as Arizona." VSA will continue to make Christine Jones' outrageous comments and views regarding Benghazi and Clinton a major theme of the upcoming election for governor throughout the primary election and into the fall if necessary.

Id.

---

[1] The advertisement first aired approximately 90 days before the August 26, 2014 primary election. *See* Complaint at 3; Response at 5.

VSA apparently posted the advertisement to YouTube as well.[2] The accompanying description read as follows:

> Christine Jones, Arizona gubernatorial candidate, lavished effusive praise on Hillary Clinton two months after the attacks in Benghazi where four Americans were killed. Now Jones wants to serve as Arizona's top elected official - Christine Jones may not want to hold Hillary Clinton to account - but Veterans for a Strong America will.

See https://www.youtube.com/watch?v=kVcEtVQ7vbI.

Despite registering with the Secretary of State as a corporation that conducts independent expenditures, VSA did not subsequently file any independent expenditure notifications with Secretary of State in accordance with A.R.S. § 16-914.02. *See* A.R.S. § 16-914.02(A) ("Any corporation . . . that makes . . . independent expenditures . . . shall . . . notify the [Secretary of State] not later than one day after making that expenditure").

VSA later issued a press release on June 27, 2014, touting the effect that "What Difference?" was having in the Republican primary race for Governor:

> For Immediate Release
> New Poll Shows Veterans for a Strong America
> Impacting Arizona Governor's Race
>
> (Sioux Falls) This week, Veterans for a Strong America and Harper Polling conducted a poll of likely Republican primary voters in Arizona.
>
> The Poll Shows that Veterans for a Strong America has had an impact on the Arizona Governor's race by driving up candidate Christine Jones['] negatives. VSA ran a statewide television ad criticizing Jones for praising Hillary Clinton after the Benghazi terrorist attack, and as a result Jones now has the highest negatives of any other top tier candidate for Governor. It also gives her the lowest net positive rating of the major candidates.
>
> . . .
>
> Joel Arends, Chairman of Veterans for a Strong America, said, "Our poll underscores the importance of veterans and the issues important to them in Arizona and other states across the county. Veterans for a Strong America will continue to hold accountable people like Christine Jones who dismissed the

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[2] "What difference?" was posted to YouTube on May 28, 2014 by "Veterans for a Strong America," along with VSA's logo. *See* https://www.youtube.com/watch?v=kVcEtVQ7vbI (last visited July 6, 2015 with 28,208 views).

attacks in Benghazi when she praised Hillary Clinton. Our members deserve better leadership."

See Complaint at Exhibit 4.

Mr. Pearsall filed a complaint against VSA on January 30, 2015.

Legal Analysis

Mr. Pearsall alleges that the "What Difference?" advertisement constituted an independent expenditure that VSA failed to report, which should therefore subject VSA to a civil penalty. VSA argues that the advertisement represented issue advocacy, not express advocacy, and therefore contends that no notification was required. Alternatively, if the advertisement did meet Arizona's definition of express advocacy, VSA contends that Arizona's statutory scheme is unconstitutional under *Wisconsin Right to Life* ("*WRTL*") and *Citizens United*, among other U.S. Supreme Court cases. *See FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007); *Citizens United v. FEC*, 558 U.S. 310 (2010).

The Secretary concurs with Mr. Pearsall's arguments.

1. The "What Difference?" Advertisement Constitutes An Independent Expenditure

a. Overview of the Statutory Scheme

A.R.S. § 16-914.02(A) requires "[a]ny corporation . . . that makes . . . independent expenditures in an attempt to influence the outcome of a candidate election . . . shall register and notify the appropriate filing officer not later than one day after making that expenditure . . . ." "The secretary of state is the filing officer for registrations and notifications for independent expenditures in statewide . . . elections." A.R.S. § 16-914.02(B).

The requisite notification(s) must include: (1) the name and address of the corporation; (2) the amount of the expenditure and the name of the vendor or other payee receiving the expenditures; (3) the name of the candidate and race in which the expenditure was made and whether the expenditure was in support or opposition to the candidate; (4) the communication medium and description of what was purchased; and (5) the date of the expenditure. A.R.S. § 16-914.02(D). "Any corporation . . . that fails to . . . notify or disclose as required by this section is liable in a civil action pursuant to section 16-924 brought by the attorney general . . . for a civil penalty of up to three times the total amount of the expenditure." A.R.S. § 16-914.02(H).

b. Defining Express Advocacy vs. Issue Advocacy

The "What Difference?" advertisement is subject to A.R.S. § 16-914.02 if it constitutes an independent expenditure.

An "independent expenditure" is defined as "an expenditure . . . that expressly advocates the election or defeat of a clearly identified candidate . . . ." A.R.S. § 16-901(15).[3,4] "Express advocacy," in turn, is defined in two ways. A.R.S. § 16-901.01; *see also Committee for Justice & Fairness v. Arizona Secretary of State's Office*, 235 Ariz. 347 (App. 2014), *review denied*, Apr. 21, 2015 ("*CJF*").

First, a communication expressly advocates if it contains a phrase such as "vote for," "elect," "reelect," "support," endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject" or a "campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates." *See* A.R.S. § 16-901.01(A)(1) (defining a "magic words" communication). Mr. Pearsall does not allege the "What Difference?" advertisement contained any magic words. *See* Complaint at 2.

Second, a communication expressly advocates if it:

1. was made through a broadcast medium, newspaper, magazine, billboard, or direct mailer;
2. referred to a clearly identified candidate;
3. was targeted to the electorate of that candidate; *and*
4. in context can have no reasonable meaning other than to advocate the election or defeat of the candidate, as evidenced by factors such as:
    a. the presentation of the candidate in a favorable or unfavorable light;
    b. the targeting, placement or timing of the communication; or
    c. the inclusion of statements of the candidate or opponents.

A.R.S. § 16-901.01(A)(2) (defining an "electioneering communication").

Mr. Pearsall alleges that "What Difference?" meets the criteria of an electioneering communication and therefore constitutes express advocacy. *See* Complaint at 2-3.

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[3] Former A.R.S. § 16-901(14) was renumbered § 16-901(15) effective July 3, 2015 as a result of HB 2415 (2015).

[4] An independent expenditure also requires that the expenditure be "made without cooperation or consultation with any candidate or committee or agent," but there is no allegation of coordination with respect to the "What Difference?" advertisement. A.R.S. § 16-901(15).

c. The "What Difference?" Advertisement Constitutes Express Advocacy Under The Arizona Court of Appeals' Interpretation of A.R.S. § 16-901.01(A)(2).

The "What Difference?" advertisement unambiguously meets the first three statutory criteria for an electioneering communication under A.R.S. § 16-901.01(A)(2). The advertisement: (1) was broadcast on television; (2) referred to Christine Jones by name and by image;[5] and (3) was targeted to gubernatorial primary voters through "statewide television ads" in Arizona. *See* Complaint at Exhibit 4 (quoting VSA press release about its "statewide" ads). The sole remaining question is whether the advertisement "in context can have no reasonable meaning" other than to advocate for Ms. Jones' defeat. *Id.* Answering this question requires consideration of: (1) the remaining contextual factors enumerated in § 16-901.01(A)(2); and (2) application of the Arizona Court of Appeals' recent decision in *CJF*.

i. Application of Statutory Factors

The statutory factors, on balance, suggest express advocacy. First, the "What Difference?" advertisement presented Ms. Jones in an unfavorable light. *See* A.R.S. § 16-901.01(A)(2) (factfinder should consider "factors such as the presentation of the candidate(s) in a favorable or unfavorable light"). Second, the advertisement includes two excerpts from Ms. Jones' previous statements regarding Hillary Clinton. *See id.* (factfinder should consider "the inclusion of statements of the candidate(s) or opponents"). Finally, the timing of advertisement is consistent with an electioneering purpose. *See id.* (factfinder should consider "the targeting, placement or timing of the communication").[6] "What Difference?" aired 90 days before the

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[5] VSA disputes what it means to be a "clearly identified candidate" under the statute, arguing (without citation to authority) that the targeted person must be specifically identified *as a candidate* in the advertisement. *See* Response at 4 ("[T]he advertisement does not identify Jones *as* a candidate, or identify the office she was running for.") (emphasis in original). The Secretary disagrees. The statute merely requires the targeted candidate to be clearly identified in some way so as to distinguish her from others. *See CJF*, 235 Ariz. at 354 (finding express advocacy under A.R.S. § 16-901.01(A)(2) because "[t]he advertisement referred by name to Tom Horne, who was by that time clearly identified as the Republican candidate for Attorney General."); *Id.* At 353 (finding express advocacy notwithstanding that "nowhere in the advertisement is there a specific reference to Horne as a candidate . . . [or] mention [of] any other candidate, election, or political party."); *see also Hispanic Leadership Fund, Inc. v. Federal Election Com'n*, 897 F.Supp.2d 407, 427 (E.D.Va. 2012) ("[T]he ordinary and unambiguous meaning of the phrase 'the identity of the candidate . . .' is that the identity of the . . . candidate would be apparent, i.e., clear to a reasonable, objective person viewing the advertisement in the context of the reference."). Since Ms. Jones was clearly identified in the "What Difference?" advertisement, the requisite "identification" prong in A.R.S. § 16-901.01(A)(2) is satisfied here.

[6] The suggestion to consider "targeting [or] placement" of the advertisement appears to be superfluous in light of the preceding requirement that the communication be "targeted to the electorate of that candidate." *See* A.R.S. § 16-901.01(A)(2) ("'Expressly advocate' means . . . [m]aking a general public communication . . . targeted to the electorate of that candidate(s) that in context can have no reasonable

August 2014 primary election, even though Ms. Jones made her comments about Secretary Clinton nearly a year-and-a-half earlier. *See* https://www.youtube.com/watch?v=kVcEtVQ7vbI (excepting statements made on December 29, 2012 and January 1, 2013). The fact that VSA waited to target Ms. Jones until after she declared her candidacy for Governor is significant.

On this point, VSA contends that "under the norms of election law, 90 days is a *very* long time before an election." *See* Response at 5 (emphasis in original). It cites the 9th Circuit's decision in *FEC v. Furgatch*, wherein the Court of Appeals stated that an independent expenditure run against President Jimmy Carter three days before the 1980 presidential election presented a "very close call." *See* Response at 4 (citing *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987)). VSA concludes that "[i]f an advertisement run three days before a presidential election . . . presents a *very close call*, then the advertisement at issue here is, *a fortiori*, nowhere near the line." *Id.* However, *Furgatch* merely noted that the district court found the *overall* advertisement as presenting a "very close call" between issue advocacy and express advocacy—without specific reference to its timing. *See Furgatch*, 807 F.2d at 861 ("As the district court noted, whether the advertisement expressly advocates the defeat of Jimmy Carter is a very close call."). The *Furgatch* court went on to "*reject* the district court's ruling that it does not expressly advocate the defeat of Jimmy Carter," expressed "no doubt" that it was indeed express advocacy, and held that "[r]easonable minds could not dispute that Furgatch's advertisement urged readers to vote against Jimmy Carter." *Id.* at 864-65 (emphasis added). Only after determining the advertisement was express advocacy did the court state its "conclusion is reinforced by consideration of the timing of the ad." *Id.* at 865. Thus, the *Furgatch* decision does not quite establish the 3-day rule-of-thumb that VSA urges here.

VSA also notes that "[u]nder federal law, by analogy, speech is only a regulated 'electioneering communication' if it airs within 30 days of a primary election." *See* Response at 5 (citing 11 C.F.R. § 100.29(a)(2)). However, this represents a policy choice under FEC regulations, not a judicial determination that provides persuasive authority.[7] *Compare CJF*, 235

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meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as . . . the targeting, placement or timing of the communication").

[7] VSA's timing argument also is belied by the Court of Appeals' recent decision in *CJF*:

> [A]s the Supreme Court noted in *WRTL*, by virtue of [the FEC's] time-sensitive statutory definition, "*[e]very* ad covered by [the electioneering communication regulation] will . . . air just before a primary or general election. . . ." Consequently, although "considering timing with respect to electioneering communications would prove redundant, a limited reference to whether, for example, **an ad runs in an election year**, would actually help limit the number of communications that are considered independent expenditures." The same is true regarding A.R.S. § 16-901.01(A)(2)(a).

Ariz. at 355 (finding express advocacy with respect to advertisement run "immediately" before the general election).

In the end, timing is but one discretionary factor to consider. For the reasons discussed above, application of the complete set of statutory factors outlined in A.R.S. § 16-901.01(A)(2) suggests—on balance—that "What Difference?" had no other reasonable meaning than to advocate for Ms. Jones' defeat.

ii. Application of the Court of Appeals' CJF Decision

VSA also argues, without reference to the statutory factors outlined in A.R.S. § 16-901.01, that "[t]he advertisement . . . can be given a 'reasonable meaning other than to advocate the election or defeat of the candidate.'" *See* Response at 3. It explains:

> One reasonable interpretation of the advertisement—indeed, the correct one—is that Secretary Clinton's response to the Benghazi attacks was inadequate, and that Jones was wrong when she praised Secretary Clinton afterward. The advertisement can also be read as (for example) encouragement for Jones herself to reconsider her praise of Secretary Clinton, or as encouragement for Jones' constituents to encourage her to do so, or as a statement that the lives lost in the Benghazi attack would not soon be forgotten, or as a call to further action by the public regarding Benghazi or national security issues generally. These and many other interpretations of the advertisement are all reasonable.

See Response at 3-4.

The Secretary agrees that at least some of the proffered explanations are, in the abstract, potentially reasonable. However, the same could be said about the advertisement run by Committee for Justice & Fairness against then-Superintendent of Public Instruction Tom Horne in 2010. *See CJF*, 235 Ariz. at 348. The advertisement in that case claimed:

> (1) when Horne was a state legislator, he had "voted against tougher penalties for statutory rape," and (2) when Horne was on the Arizona Board of Education, he used his vote to allow "back in the classroom" a teacher who had been caught by students "looking at child pornography on a school computer." The advertisement urged viewers to "[t]ell Superintendent Horne to protect children, not people who harm them[.]"

CJF, 235 Ariz. at 359 (citing *The Real Truth About Abortion, Inc. v. Federal Election Com'n*, 681 F.3d 544, 554 (4th Cir. 2012)) (italics in original; bold added).

Id. Such an ad could be interpreted as a commentary that Mr. Horne's response to issues of statutory rape and child pornography "was inadequate," and that he was "wrong" for voting as he did. It could be read as "encouragement" for Mr. Horne to "reconsider" his positions, or as encouragement for Horne's "constituents to encourage" him to do so. It could be a "statement" that the victims of statutory rape and child pornography "would not soon be forgotten," or as a "call to further action by the public" regarding children's issues generally. (Indeed, CJF claimed the advertisement "addressed the important issue of protecting Arizona['s] school children from statutory rape and from teachers who view pornographic materials in the classroom." *CJF*, 235 Ariz. at 355.) Thus the same template offered by VSA here could have equally applied in *CJF*. But the *CJF* court clearly rejected such a broad conception of what is "reasonable":

> [T]he only reasonable purpose for running an advertisement, during an election campaign, which cost approximately $1.5 million to produce and broadcast, to critique Tom Horne's past actions as a former member of the legislature and as an occupant of a post he would soon vacate, was to advocate his defeat as candidate for Attorney General.

Id. at 354 (adopting administrative law judge's findings of fact); *see also CJF* at 355 ("The *only reasonable purpose* for running such an advertisement . . . was to advocate Horne's defeat as candidate for Attorney General.") (emphasis added). "In th[at] case, reasonable minds could not differ as to whether CJF's advertisement encouraged a vote against Horne." *Id.* at 355. Clearly, therefore, what constitutes a "reasonable meaning" under Arizona law is not quite as expansive as VSA assumes.

In sum, the Court of Appeals appears to have rejected the sorts of justifications VSA advances here. Whether sufficiently protective of First Amendment speech or not, the Secretary is bound to follow the court's prescription.

2. <u>The Court of Appeals' Decision in *CJF* Forecloses VSA's Constitutional Challenge.</u>

VSA alternatively argues that if "state law were understood to classify 'What Difference?' as express advocacy, Arizona's law would be infirm under the First Amendment." *See* Response at 5-6. VSA contends this is "reason not to interpret Arizona's law as Pearsall proposes" and counsels the Secretary to "exercise [her] discretion" to avoid an unconstitutional application of A.R.S. § 16-901.01. *Id.* at 6.

Specifically, VSA argues that U.S. Supreme Court precedent—especially *WRTL* and the "functional equivalent" test for express advocacy outlined therein[8]—dictates that the "What

[8] The Supreme Court has held that an electioneering communication may be constitutionally regulated only if it constitutes the "functional equivalent" of express advocacy. *McConnell v. Fed. Election Com'n*, 540 U.S. 93, 193 (2003). The test for when an electioneering communication is deemed the "functional

Difference?" advertisement be deemed issue advocacy: "it take[s] a position on the issue," it "exhort[s] the public to adopt that position," and does "not mention an election, candidacy, political party, or challenger." *See* Response at 6 (quoting *WRTL* at 471). VSA therefore concludes that because its advertisement "is subject to a 'reasonable interpretation other than as an appeal to vote for or against a specific candidate, it is . . . not the 'functional equivalent' of express advocacy." *Id.* at 7 (quoting *WRTL* at 470).

However, in rebuffing a constitutional challenge of this sort, the *CJF* court expressly held that *WRTL's* test "closely correlates to the test set forth in A.R.S. § 16-901.01(A)(2)." *CJF*, 235 Ariz. at 357; *see id.* ("The test provided in A.R.S. § 16-901.01(A)(2)[] is certainly no broader than *WRTL's* function equivalent test."). Thus, since Arizona law and federal constitutional law are consistent with one another according to *CJF*, VSA has no basis to mount a constitutional challenge anew.

VSA also warns against utilizing any "subjective tests [that] have already been deemed unconstitutional." *See* Response at 7; *see also Citizens United*, 558 U.S. at 324 (the "functional-equivalent test is objective—the results that a speaker may wish for from his issue advocacy are not considered"). The Secretary agrees. Although the surrounding circumstances tend to corroborate Mr. Pearsall's allegations concerning VSA's motives,[9] the Secretary has only considered the four corners of the advertisement—along with very limited contextual factors—in finding "What Difference?" to be express advocacy. *See WRTL*, 551 U.S. at 468, 474 ("A test focused on the speaker's intent could lead to the bizarre result that identical ads aired at the same time could be protected speech for one speaker, while leading to . . . penalties for another. . . . [Thus] [t]he proper standard . . . must be objective, focusing on the substance of the communication rather than amorphous considerations of intent and effect. . . . [C]ontextual factors . . . should seldom play a significant role in the inquiry[,] [but] Courts need not ignore basic background information that may be necessary to put an ad in context[.]"); *CJF*, 235 Ariz. at 359 ("subjective intent is not a consideration").

Finally, VSA criticizes A.R.S. § 16-901.01 as hinging on the type of "open-ended rough-and-tumble factors" that *WRTL* found to be inappropriate when drawing a line between express and issue advocacy. *See* Response at 7 (quoting *WRTL* at 469). However *CJF* expressly

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equivalent" of express advocacy is whether "the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *WRTL*, 551 U.S. at 469-70.

[9] For example, the complaint includes various press releases where VSA boasts of the effect its advertisement had on the Republican primary voters, and notes the paradox of VSA registering as a corporate independent expenditure group only to later disclaim that it conducted any independent expenditures.

confronted this charge: "the mere fact that A.R.S. § 16-901.01(A)(2)[] identifies certain factors for consideration . . . does not mean it is inconsistent with *WRTL*." *CJF*, 235 Ariz. at 359.[10]

In short, VSA's constitutional critique is foreclosed in light of the Arizona Court of Appeals' recent decision in *CJF*. Regardless of the challenges in applying A.R.S. § 16-901.01, *CJF* counsels fidelity to the statutory process.[11]

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[10] VSA also alleges that a finding of express advocacy in this matter would potentially require VSA to register as a political committee, thereby further rendering the statutory scheme unconstitutional. *See* Response at 8. Yet there is no evidence in the record, nor any allegation by Mr. Pearsall, that VSA's independent expenditure in May 2014 would trigger registration as a political committee. *See* A.R.S. § 16-914.02(K) (only an "entity that makes an independent expenditure and that is organized *primarily* for the purpose of influencing an election . . . shall file with the filing officer as a political committee") (emphasis added). The Secretary therefore rejects VSA's contention that a reasonable cause finding necessarily subjects VSA to "compelled disclosure of its donors." *See* Response at 8.

[11] No matter how problematic to apply, the Secretary is obligated to follow *CJF*.

The *CJF* case stemmed from an October 25, 2010 reasonable cause finding by the Secretary of State's office, wherein CJF was found to have violated A.R.S. § 16-902 (registration of political committees) and § 16-912 (advertising disclaimers) after failing to answer repeated inquiries from the office. The reasonable cause finding did not contain (nor was it accompanied by) any analysis of the statutory factors found in A.R.S. § 16-901.01 or the "functional equivalent" test outlined in *WRTL*. The Maricopa County Attorney's Office assumed enforcement and litigation of the matter thereafter. *See CJF*, 235 Ariz. at 350. On appeal, the *CJF* court appeared comfortable reading *WRTL's* "functional equivalent" test into A.R.S. § 16-901.01 and applying it to the facts of that case. However, this test is not so easily applied in other circumstances. This particular case is illustrative.

Chief Justice Roberts anticipated potential vagueness concerns when he outlined the "functional equivalent" test in *WRTL*. He conceded "the imperative for clarity in this area" and therefore cautioned "that is why our test affords protection unless an ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *WRTL*, 551 U.S. at 474 n. 7. He criticized reliance on "contextual factors" and warned they "should seldom play a significant role in the inquiry." *Id.* at 473-74. And significantly, he assured that "[w]here the First Amendment is implicated, the tie goes to the speaker, not the censor." *Id.* at 474. Yet, quixotically, the *CJF* court left little room for debate, expressly validated the use of contextual factors, and issued no equivalent "tiebreaker" guidance for close situations.

Justice Scalia foresaw this potential result:

> [Conceptions of the "functional equivalent" test] ultimately depend . . . upon a judicial judgement . . . concerning "reasonable" or "plausible" import that is far from certain, that rests upon consideration of innumerable surrounding circumstances which the speaker may not even be aware of, and that lends itself to distortion by reason of the decisionmaker's subjective evaluation of the importance or unimportance of the

MICHELE REAGAN
Secretary of State
State of Arizona

Disposition

In light of the evidence and arguments presented, the Secretary of State finds reasonable cause to believe that VSA violated A.R.S. § 16-914.02(A) by failing to timely notify the Secretary of State of its independent expenditures. The above-referenced complaint is hereby referred to the Attorney General for further proceedings pursuant to A.R.S. § 16-924(A).

Very truly yours,
Eric Spencer

State Election Director
Arizona Secretary of State Michele Reagan
(602) 542-8683
espencer@azsos.gov

Attachments
CC: Jim Driscoll-MacEachron, Arizona Attorney General's Office

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> challenged speech. . . . I share the instinct that "[w]hat separates issue advocacy and political advocacy is a line in the sand drawn on a windy day." . . . But the way to indulge that instinct consistently with the First Amendment is either to eliminate restrictions on independent expenditures altogether or to *confine* them to one side of the *traditional* line—the express-advocacy line, set in concrete on a calm day by *Buckley*, several decades ago. *WRTL*, 551 U.S. at 493, 499 (Scalia, J. concurring) (emphasis in original; citations omitted).

The Chief Justice's vision became the controlling opinion, and thus the "functional equivalent" test—as particularly interpreted by the Court of Appeals in *CJF*—indisputably governs this case. As such, the Secretary is duty-bound to apply the "functional equivalent" test embodied in A.R.S. § 16-901.01(A)(2) to the best of her ability.

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SECRETARY OF S
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June 8, 2015

Via Hand Delivery and Electronic Mail (espencer@azsos.gov)

Honorable Michelle Reagan, Secretary of State
1700 W. Washington Street, Floor 7
Phoenix, AZ 85007-2808

Eric Spencer, State Elections Director
1700 W. Washington Street, Floor 7
Phoenix, AZ 85007-2808

RE: Veteransforastrongamerica.org (Veterans for a Strong America)
SOS Filer ID: 201400852

REPLY TO RESPONSE TO COMPLAINT AGAINST VETERANS FOR A STRONG AMERICA FOR FAILURE TO FILE 24 HOUR INDEPENDENT EXPENDITURE REPORTS WITH THE STATE OF ARIZONA

Dear Secretary Reagan and Director Spencer:

My firm represents David Pearsall, and on his behalf we submit this reply to your office in the matter of Veterans for a Strong America's (veteransforastrongamerica.org) ("VSA") failure to file the required 24-hour reports of independent expenditures with the Arizona Secretary of State, in violation of A.R.S. § 16-914.02(A). This letter follows the complaint filed with your office on January 30, 2015 and the response from VSA filed on May 28, 2015.[1]

Arizona's Registration and Notification Requirements for Corporations, Limited Liability Companies, and Labor Organizations Making Independent Expenditures

As a preliminary matter, Mr. Pearsall's complaint never alleged that VSA was a political committee or that any statute relating to the registration and reports of political committees was violated. Thus, VSA's discussion of the political committee statute, its constitutionality, or applicability should be disregarded by your office.

[1] We note for the record and for preservation of the objection that your office permitted VSA to file its response five days after the filing deadline.

2239 W. Baseline Rd., Tempe, AZ 85283
Office: 602.626.8805 • Fax: 602.626.8889
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Arizona's black letter law requires corporations that make independent expenditures to register with the State of Arizona and report independent expenditures over $5,000 in statewide races, within 24 hours of making those expenditures. *See* A.R.S. § 16-914.02(A). VSA registered with your office as a corporation that makes independent expenditures on May 28, 2014. *See Campaign Finance- Filer Details*, Arizona Secretary of State, http://apps.azsos.gov/apps/election/cfs/search/FilerDetail.aspx?id=201400852; *Pearsall Complaint Exhibit 3.*

The very same Arizona law requires corporations that make independent expenditures to report those expenditures within 24 hours of making them. *See* A.R.S. § 16-914.02(A). After registering as a corporation that makes independent expenditures, and airing "What Difference?" for approximately $50,000 dollars, VSA did not file any report of the expenditure with your office. *See Campaign Finance- Filer Details*, Arizona Secretary of State, http://apps.azsos.gov/apps/election/cfs/search/FilerDetail.aspx?id=201400852; *Pearsall Complaint Exhibit 3.*

VSA disregarded, or more likely overlooked, the reporting requirement in A.R.S. § 16-914.02(A) after registering with your office. VSA fails to provide any reasonable explanation as to why an entity that did not intend to make independent expenditures, would register with your office to make independent expenditures. If VSA has legitimate constitutional concerns about other sections of Title 16, upheld as constitutional by Arizona courts as discussed below, then why did VSA register with the State of Arizona as a corporation that makes independent expenditures in the first place? This reply will address the objections raised, but it is crucial to note that this is a matter of missed reporting, not constitutional crisis.

Express Advocacy Under Arizona Law

In Arizona, the black letter law contains two *clear* categories of express advocacy that trigger reporting requirements for persons, organizations, and political committees that make independent expenditures.

The first category, found in A.R.S. § 16-901.01(A)(1) that contains the list of so-called "magic words", is not at issue in this complaint. Thus, your office should disregard any discussion of the first section of the statute in VSA's response as irrelevant. *VSA Response* at 2-4. Mr. Pearsall's complaint focuses on Arizona's second clear definition of express advocacy found in A.R.S. § 16-901.01(A)(2).

The factors found in the applicable statutory framework of A.R.S. § 16-901.01(A)(2) are: 1) a general public communication; 2) referring to one or more clearly identified candidates; 3) targeted to the electorate of that candidate; and 4) in context can have no reasonable meaning other than to advocate for the election or defeat of the candidate. Evidence of one or more of the following is proof that the fourth factor exists in the ad in question: A) presentation of the candidate in a favorable or unfavorable light;

B) the targeting, placement or timing of the communication; or C) the inclusion of statements of the candidate or opponent. *See* A.R.S. § 16-901.01(A)(2).

In turn, analyzing the statutory factors reveals the VSA ad in question is an anti-Christine Jones express advocacy advertisement. VSA admits this video communication aired on cable television across Arizona. *VSA Response* at 5, 8. VSA admits the ad refers to and clearly identifies Christine Jones by name; as can been seen by the transcript VSA reproduced in its response. *VSA Response* at 2, 4 ,6. VSA clearly identifies Christine Jones via written words that appear on the screen, via voiceover narration and via images of Christine Jones herself. The ad ran exclusively in Arizona. *See Pearsall Complaint Exhibit 1.* As Christine Jones was a statewide candidate for the Governor's Office in Arizona, it follows that the targeting necessary in a statewide race for Arizona Governor's Office is the entirety of the State of Arizona. In such a race, voters all across Arizona are the electorate.

The analysis of the fourth factor and its three elements also point to VSA's ad as an express advocacy anti-Christine Jones advertisement. Candidate Christine Jones is clearly presented, and presented in a negative light. There is no subjectivity necessary to see the words the ad utilized were critical by their plain meaning dictionary definitions. The voice over and on screen text presents the death of four Americans in Benghazi Libya as a conspiracy "Our nation: lied to." The ad states "it made no difference to Christine Jones", directly criticizing Jones for her position on the Libya attack, the "altered" talking points, and the fact that the nation was "lied to." It continues to compare Candidate Jones to Hillary Clinton, a polarizing Secretary of State deeply unpopular in Republican circles for her handling of the Benghazi attack, turning next to clearly criticize Candidate Jones' "standards" because of her praise of Secretary Clinton. The ad paints Candidate Jones, her opinions, judgement, and temperament in a negative light, guiding voters to the conclusion that she is unfit for office because of her "standards" and her indifference to the alleged cover-up of the Benghazi attack.

The targeting, placement, and timing of the ad all point to finding the ad is express advocacy against Christine Jones. VSA did not target Candidate Jones with an ad *before* she was a candidate in the Arizona Gubernatorial race at the time she made the statements found in the advertisement; instead the ad aired one month after Christine Jones ceased being a private citizen and officially filed her nomination petitions for the Arizona Gubernatorial Election with your office. *See* Mary Jo Pitzl, *Goddard, Jones, 4 others file for Arizona offices*, The Arizona Republic (Apr. 29, 2014, 10:55AM), http://www.azcentral.com/story/news/arizona/politics/2014/04/29/goddard-jones-others-file-arizona-office/8464183/

The exclusive purchasing of ads targeted to Arizona and the Arizona electorate means the ad was targeted to reach and persuade Arizona voters to vote against her. The timing of the ad was within 90 days of the Arizona Primary. Within the Arizona statutory scheme and given the timing of our primary elections, an ad airing within 90 days can reasonably be found to be express advocacy. Nothing in the Arizona elections code bars this finding; nor does anything in the Arizona elections code indicate that

independent expenditures cannot be made at the time the VSA ad was aired. Lastly, the ad includes multiple statements Candidate Christine Jones made about Secretary Clinton and her opinion on Secretary Clinton's effectiveness as Secretary. All three elements are present for the fourth factor, meaning that "in context" the VSA ad "can have no reasonable meaning other than to advocate for the election or defeat of the candidate." *See* A.R.S. § 16-901.01(A)(2).

VSA attempts to dismiss the applicable statutory framework of the black letter Arizona law by resorting to both *ad hominem* attacks on Mr. Pearsall and by presenting various misleading straw man versions of Mr. Pearsall's analyses of the statute in question. VSA's response states, "instead of explaining how the advertisement comes within the applicable statutory framework, the complainant takes matters into his own hands and points to various 'factors'. . ." *VSA Response* at 4. Notably, the factors analyzed in the complaint are the factors found in plain language of the applicable statutory framework of A.R.S. § 16-901.01(A)(2).

Interestingly, VSA urges your office to focus on factors not found in the above statute. VSA states that the ad does not identify Christine Jones "*as* a candidate", that VSA does not mention the office in question or any of Christine Jones' opponents, and that the ad mentions a non-candidate Hillary Clinton. *VSA Response* at 4. None of these factors are found in A.R.S. § 16-901.01(A)(2). Nor is the absence of any of these additional non-statutory factors dispositive on the statutory factors. For example, simply because the ad doesn't *also* mention Christine Jones' opponents or because the ad *does* mention Hillary Clinton in addition to Christine Jones, does nothing to change the fact that Christine Jones is clearly identified in the advertisement. Mentioning Hillary Clinton in the ad does not magically erase Christine Jones' likeness and name from the video nor the recitation of her name from the audio.

VSA's attempt at refuting the fourth factor and its three elements also falls flat. VSA attempts to provide other reasonable interpretations that all fail, due to the statutory mandate that this factor and its elements be analyzed "in context." VSA dismissed the exclusive targeting of Arizona voters via the cable medium as "irrelevant" without any rationale. *VSA Response* at 4. Viewed in context, the exclusive payment and airing of the ad on Arizona cable television weighs only in favor of a finding of express advocacy. Viewed in context, the use of candidate Christine Jones' words against her, weigh only in favor of a finding of express advocacy. The fact that this ad did not air in any other state, other than the sole state where candidate Christine Jones was a candidate, makes any other "interpretation" VSA provides unreasonable. Had VSA wanted to air an issue unrelated to Christine Jones, it could have done so at any time between 2012 and now without directly criticizing Candidate Christine Jones, and without waiting until Christine Jones was a candidate to attempt to criticize some "issue" that is related to her.

Had VSA truly wanted to run an issue ad about Secretary Clinton or Benghazi, it could have done so anytime between 2012 and now; not just during the Arizona Primary election cycle and not just within 90 days of the primary. Had VSA wanted to run an issue ad about Benghazi or "national security generally" it could have done so in any

state, at any time, without devoting 20 out of the 30 seconds of its ad to Candidate Christine Jones within 90 days of the Arizona Primary. VSA's discussion of timing as defined by federal election law or federal election regulation has absolutely no bearing on Arizona Law or your investigation. That's because in this area, Congress has not acted clearly to pre-empt state law and state regulation.

Additionally, VSA's citation of A.R.S § 16-917 only cuts against it. Simply because *additional* reporting requirements kick in for independent expenditures made within 60 days, does not mean that other independent expenditure reporting requirements cease to exist beyond 60 days from an election. In fact, the mere fact that *additional* requirements kick in within 60 days, suggests that there are *other* requirements for independent expenditures made beyond 60 days. Those requirements are found in A.R.S. § 16-901.01(A)(2). Furthermore, A.R.S. § 16-901.01(A)(2) contains no time limiting language as found in A.R.S § 16-917. Had the Arizona Legislature intended to put a hard time cap on this statute, it could have easily done so, as it did with A.R.S § 16-917. As it stands, VSA is unable to refute the fact that its ad meets all of the factors necessary for a finding of express advocacy found in A.R.S. § 16-901.01(A)(2).

Arizona's Express Advocacy Statute is Constitutional

Arizona's statutory definition of express advocacy is constitutional. In 2014, the Arizona Court of Appeals reviewed A.R.S. § 16-901.01(A)(2) and using strict scrutiny review upheld it as constitutional, rejecting a First Amendment challenge on vagueness and over-breadth grounds. *Comm. for Justice & Fairness v. Arizona Sec'y of State's Office*, 235 Ariz. 347 (Ct. App. 2014), *review denied* (Apr. 21, 2015). The court applied the binding US Supreme Court precedents of *Wisconsin Right to Life* and *Citizens United* and upheld Arizona's functional equivalent test because the wording of the Arizona statute "so closely correlates" to the functional equivalent test the court adopted in *Wisconsin Right to Life* and again upheld in *Citizens United. Id* at 357. Thus, the Arizona Court of Appeals analyzed the very First Amendment precedent VSA presents in its response, and still, it held the statute at issue to be constitutional.

Even after reviewing *Committee for Justice and Fairness,* if your office cannot consider the intent of the ad buyer when determining the question of express advocacy as found in A.R.S. § 16-901.01(A)(2), it can permissibly do so to evaluate other language found in A.R.S. § 16-914.02(A). The statute requires a corporation making independent expenditures "in an attempt to influence the outcome of a candidate election. . . shall register. . ." *See* A.R.S. § 16-914.02(A). For this purpose, your office can review the clear evidence of intent found on VSA's own website. *See Pearsall Complaint Exhibit 1*. And it can review the clear evidence of the success of VSA's actual influencing of the candidate election also as found on VSA's website. *See Pearsall Complaint Exhibit 4.*

Even after reviewing *Committee for Justice and Fairness*, if your office has questions about the constitutionality of this statute, it cannot decide the statute is unconstitutional and refuse to enforce it based on a finding of unconstitutionality. The Arizona Constitution creates clear and distinct boundaries between the branches of

government. *See Ariz. Const. Art. III.* Finding, declaring, or holding laws to be unconstitutional is solely with the purview of the Judicial Department. One branch of government cannot act to usurp the powers designated to another branch. None of the branches of government may exercise powers granted to another branch. *See Litchfield Elementary Sch. Dist. No. 79 of Maricopa Cnty. v. Babbitt*, 125 Ariz. 215, 220, 608 P.2d 792, 797 (Ct. App. 1980).

Conclusion

An objective review of the advertisement aired against Christine Jones, when viewed in context, shows that there is no reasonable interpretation than to advocate for her defeat. This statute has been upheld as constitutional by the Arizona courts that examined the First Amendment issues presented in VSA's response. VSA's registration with your office as a corporation that makes independent expenditures, shows the clear and blatant nature of this statutory violation. VSA has been unable to provide adequate evidence to defend its clear violation of the black letter Arizona law. Your office should take action and fine VSA to the maximum allowable amount permitted under Arizona law, so the people of Arizona can know who is spending money to influence their vote when they step into the voting booth on Election Day.

Sincerely,

Saman J. Golestan

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May 28, 2015

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RECEIVED
SECRETARY OF STATE
2015 MAY 29 AM 11:52

Re: Pearsall Complaint Regarding Veterans for a Strong America

Dear Secretary Reagan and Director Spencer:

We represent Veterans for a Strong America, a non-profit, non-partisan grassroots action organization, which is organized under Section 501(c)(4) of the Internal Revenue Code. VSA's mission is to educate the public, members of Congress, and the Executive Branch about the need for a strong national defense and a robust foreign policy. I write in response to the January 30, 2015 complaint from David Pearsall regarding an advertisement aired by VSA in 2014. The Pearsall complaint argues that the advertisement was express advocacy and therefore triggered a requirement to file a record of the expenditure with the Arizona Secretary of State.

For the reasons explained below, the complaint is without merit. Under Arizona law, the advertisement is not express advocacy, and therefore did not trigger a disclosure requirement, because it is susceptible of a "reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates." Arizona Rev. Stat. §16-901.01(A). Moreover, if the complaint's characterization of Arizona law were accepted, that law would be infirm under binding Supreme Court precedent, which requires an objective assessment of speech to determine whether it is express advocacy, and which has decisively rejected open-ended "balancing" approaches to such determinations.

The complaint should therefore be dismissed without further action.

Background

On May 28, 2014, VSA released a television advertisement entitled "What Difference?", which discussed the 2012 Benghazi attack during which four Americans were killed. The script for the advertisement, in its entirety, reads:

> VOICEOVER: Four Americans were killed by terrorists. What happened? Requests for more security: denied. Talking points: altered. Our nation: lied to.
>
> HILLARY CLINTON: What difference, at this point, does it make?
>
> VOICEOVER: It made no difference to Christine Jones. Two months later, she said "Hillary Clinton will continue to stand out as a capable, respected leader." Jones praised Clinton: "Americans will realize what an effective Secretary of State Clinton was... The incredibly high standard she set." These are Christine Jones' standards. Are they yours?

The advertisement can be viewed online at http://www.veteransforastrongamerica.org/2014/05/29/az-gubernatorial-candidates-praises-hillary-clinton-benghazi/.

Over six months later, in January 30, 2015, David Pearsall filed the complaint at issue here. The complaint notes (at 2) that VSA did not "file a report" with the Secretary of State when it aired "What Difference?". The complaint argues (at 2–3) that such a report was required because the ad is "express advocacy" under Arizona law, which would trigger a further disclosure requirement. On April 24, your office forwarded the complaint to VSA and requested a response. This letter constitutes that response.

I. "What Difference?" does not constitute express advocacy under Arizona law

Arizona law defines an "independent expenditure" as one "that expressly advocates the election or defeat of a clearly identified candidate." Arizona Rev. Stat. §16-901(14). Express advocacy is, in turn, defined as a communication that uses certain explicit exhortations (such as "vote for") or "that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates." Arizona Rev. Stat. §16-901.01(A).

Classification of speech as express advocacy (and thus as an independent expenditure) has several important consequences under Arizona law. As relevant to this complaint, a group that makes an independent expenditure must notify the Secretary of State by filing a report. Arizona Rev. Stat. §16-914.02(A)–(B). That report must identify the "names, occupations, employers and amount contributed by each of the three contributors that contributed the most money within the preceding six months." Arizona Rev. Stat. §16-915(F)(5). In addition, under Arizona law, a "political committee" includes "any association or combination of persons that is organized, conducted or combined for the purpose of influencing the result of any election," including a "committee organized for the purpose of making independent expenditures." Arizona Rev. Stat. §16-901(19)(f). Classification as a "political committee," in turn, requires a group to file a regular campaign finance report, Arizona Rev. Stat. §16-913, which must include (among other things) a list of individuals that have made contributions exceeding $50, Arizona Rev. Stat. §16-915(A)(3)(a). The express-advocacy classification is, therefore, extraordinarily important (and, as explained below, has implications for the constitutionality of Arizona's scheme).

Under the plain language of the Arizona statute, "What Difference?" is not express advocacy. It is a classic issue advertisement—an advertisement, in other words, that does not expressly advocate election or defeat of a candidate, but instead seeks to discuss a specific issue relevant to public affairs (here, the Benghazi attack and Secretary Clinton's response to it). It does not contain any "phrase such as 'vote for,' 'elect,' 'reelect,' 'support,' 'endorse,' 'cast your ballot for,' '(name of candidate) in (year),' '(name of candidate) for (office),' 'vote against,' 'defeat,' 'reject' or a campaign slogan." Arizona Rev. Stat. §16-901.01(A)(1). That is the first, principal test for express advocacy under Arizona law. This is not a list of magic words—the list of phrases is introduced with "such as," and so an advertisement that encouraged voters (for example) to "on election day, pull the lever for _____" would surely count. But it is a closely circumscribed list of examples, designed to capture truly *express* advocacy. "What Difference?" contains nothing of the sort. There is no explicit campaign exhortation, and the complaint concedes as much.

The advertisement, moreover, can be given a "reasonable meaning other than to advocate the election or defeat of the candidate." Arizona Rev. Stat. §16-901(A)(2). One reasonable interpretation of the advertisement—indeed, the correct one—is that Secretary Clinton's response to the Benghazi attacks was inadequate, and that Jones was wrong when she praised Secretary Clinton afterward. The advertisement can also be read as (for example) encouragement for Jones herself to reconsider her praise of Secretary Clinton, or as encouragement for Jones' constituents to encourage her to do so, or as a statement that the lives lost in the Benghazi attack would not soon be forgotten, or as a call to further action by the public regarding Benghazi or national security issues generally. These and many other

interpretations of the advertisement are all reasonable. And again, the complaint does not dispute this.

Related case law on the express-advocacy test makes it clear that it is an extraordinarily demanding standard. In *FEC v. Furgatch*, for example, the Ninth Circuit considered an ad placed in the *Boston Globe* three days before the 1980 presidential election. 807 F.2d 857 (9th Cir. 1987). It was captioned "Don't let him do it," and criticized President Carter on a wide variety of topics, warning readers of the consequence of giving him "four more years." *Id.* at 858. The court of appeals nonetheless said that whether "the advertisement expressly advocates the defeat of Jimmy Carter is a *very close call*." *Id.* at 861 (emphasis added). The court ultimately concluded that it did, and was therefore subject to regulation and disclosure requirements, because the words "don't let him" are "a command"—they "expressly advocate action of some kind." *Id.* at 865.

If an advertisement run three days before a presidential election urging voters not to "let [the candidate] do it" and have "four more years" presents a "*very close call*," then the advertisement at issue here is, *a fortiori*, nowhere near the line. The advertisement is totally free of the sorts of exhortations that the Ninth Circuit found dispositive in *Furgatch*, and was aired nowhere near as close to the election. At any rate, "the standard for 'express advocacy' is not whether a communication might somehow be read as campaign-related, or whether such a reading is a reasonable, or perhaps even the most reasonable, interpretation." *In re Americans for Job Security, Inc.*, MURs 5694 & 5910 (F.E.C. April 27, 2009) at 8 (Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn). "What Difference?" is susceptible of a reasonable interpretation other than as an appeal to vote for or against a candidate.

Instead of explaining how the advertisement comes within the applicable statutory definitions, the complaint takes matters into its own hands and points to various "factors" that, it argues, indicate that the advertisement is express advocacy. As explained below, these "factors" (if given the treatment that the complaint suggests) are precisely the sort of *ad hoc* test that the Supreme Court has already declared unconstitutional, and application here would render Arizona's campaign-finance system unconstitutional. But even on their own terms, the identified "factors" cut against Pearsall's position. Pearsall in his complaint argues (at 3) that the advertisement "clearly identifies and refers to Christine Jones, a candidate for Arizona Governor." But the advertisement does not identify Jones *as* a candidate, or identify the office she was running for. It does not include any "statements of ... opponents," or even identify any such opponents. Arizona Rev. Stat. §16-901.01(A)(2). It discusses another person (Secretary Clinton), who was not a candidate for any office at the time, in substantially equal measure. And it does not urge listeners to do anything other than contemplate whether, on the Benghazi issue,

they agree with Jones' praise for Secretary Clinton. That Jones happened to be running for governor does not mean that all public discussion of issues on which she had taken a position became "express advocacy" under Arizona law.

Pearsall also notes (at 3) that this advertisement "aired within 90 days" of the primary election. But under the norms of election law, 90 days is a *very* long time before an election. (In August 1988, Michael Dukakis was seven points ahead in the polls.) Under federal law, by analogy, speech is only a regulated "electioneering communication" if it airs within 30 days of a primary election. 11 C.F.R. §100.29(a)(2). And under Arizona law, if a group makes even a true "independent expenditure"—that is, one containing express advocacy—more than "sixty days" before election day, there is no obligation (as there is otherwise) to send "a copy of the campaign literature or advertisement to each candidate named or otherwise referred to in the literature or advertisement." Arizona Rev. Stat. §16-917(A). The long temporal distance between the advertisement's airing and the election (judged by the standards of contemporary election law) is, in other words, positive support for its characterization as an issue ad.

The only other "factors" identified by the complaint are that the advertisement aired on Arizona cable television, and that it might have inspired voters to view Jones less favorably. The former is so commonplace as to be irrelevant. As to the latter, the same could be said of the nearly any discussion of a public issue on which people disagree—for example, it is impossible to advocate for tax cuts without subjectively inspiring listeners to view tax raisers less favorably. That is because candidates for public office are often "intimately tied to public issues involving legislative proposals and governmental actions." *Buckley v. Valeo*, 424 U.S. 1, 42 (1976). Indeed, it could fairly be said of "the vast majority" of issue ads that they have some subjective "electioneering purpose." *McConnell v. FEC*, 540 U.S. 93, 206 (2003). But as the Supreme Court has made clear time and time again, that does not mean that all discussion of public issues constitutes express advocacy.

That the Pearsall complaint does not point to any particular language contained in the advertisement that could be read as express advocacy is telling. The complaint is meritless as a matter of black-letter Arizona law. Your office need go no further to dismiss the complaint without further action.

II. "What Difference?" cannot, consistent with the First Amendment, be treated as express advocacy

As explained above, the plain language of Arizona's statute indicates that the advertisement at issue here is not express advocacy within the meaning of state law. If, however, state law were understood to classify "What Difference?" as express advocacy, Arizona's law

would be infirm under the First Amendment. That is, first and foremost, a reason not to interpret Arizona's law as Pearsall proposes—when "a statute is reasonably susceptible of two interpretations, by one of which it is unconstitutional and by the other valid," one should "prefer[] the meaning that preserves to the meaning that destroys." *Panama Refining Co. v. Ryan*, 293 U.S. 388, 439 (1935) (Cardozo, J., dissenting).[1] In addition, whatever the meaning of Arizona's statute, the constitutional dubiousness of Pearsall's interpretation counsels in favor of exercising your office's discretion, discretion which is constitutionally mandated: "validly conferred discretionary executive authority is properly excised ... to avoid serious constitutional doubt." *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2259 (2013). See also *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988) ("where an otherwise acceptable construction of a statute would raise serious constitutional problems," the statute should be construed "to avoid such problems unless such construction is plainly contrary to the intent of Congress"). But if, in the end, Arizona's statute were understood as Pearsall has proposed, and if the Secretary were to enforce it against VSA in the circumstances of this case, then that enforcement would be unconstitutional.

The line between discussing issues and expressly advocating a candidate's election or defeat is derived from the Supreme Court's campaign-finance decisions, and is required by the First Amendment. See *Buckley v. Valeo*, 424 U.S. 1 (1976); *FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007). Although "the distinction between campaign advocacy and issue advocacy" is not always easy to draw, "the law in this area requires us ... to draw such a line," because the Supreme Court "has never recognized a compelling interest in regulating ads ... that are neither express advocacy nor its functional equivalent." *Id.* at 477 (plurality opinion of Roberts, C.J.).[2]

Under the standards articulated by the Supreme Court, "What Difference?" is plainly issue advocacy. It "take[s] a position on the issue," it "exhort[s] the public to adopt that position" (by asking the listener to compare their evaluation of Secretary Clinton with Jones'), and does "not mention an election, candidacy, political party, or challenger." *Id.* at 471. The ad

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[1] This is especially true here, where the express-advocacy tests announced by the Supreme Court are plainly the ones on which Arizona law is based. See *Committee for Justice & Fairness v. Arizona Secretary of State's Office*, 235 Ariz. 347, 357 (App. Div. 1 2014) ("The test provided in A.R.S. § 16–901.01(A)(2)(a) is certainly no broader than [the Supreme Court's] functional equivalent test").

[2] Parts III and IV of the Court's opinion in *WRTL*, from which the quotations in this letter are drawn, were joined by a plurality of the Court. It is controlling because three Justices would have gone even further and invalidated restrictions even on speech that is the functional equivalent of express advocacy. 551 U.S. at 483–503 (Scalia, J., concurring in part and concurring in the judgment). See *Marks v. United States*, 430 U.S. 188, 193 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.")

nowhere uses "express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' [or] 'reject.'" *Buckley v. Valeo*, 424 U.S. at 44 n.52 (1976). And because (as discussed above) it is subject to a "reasonable interpretation other than as an appeal to vote for or against a specific candidate," it is also not the "functional equivalent" of express advocacy. *WRTL*, 551 U.S. at 470. To be sure, the Benghazi issue "may also be pertinent in an election." *Id.*, at 474. That is true of all public issues, however. "At best," this demonstrates that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application." *Ibid.* (quoting *Buckley*, 424 U.S. at 42). But "that is not enough to establish" that speech "can only reasonably be viewed as advocating or opposing a candidate." *Ibid.*

The *WRTL* functional equivalent of express-advocacy standard is also, crucially, an objective one—and subjective tests have already been deemed unconstitutional. The complaint's focus (at 3) on VSA's "intent," rather than on the content of VSA's advertisement (which it does not even bother to quote), is therefore improper. The "functional-equivalent test is objective"—the results that a speaker may wish for from his issue advocacy are not considered. *Citizens United v. FEC*, 558 U.S. 310, 324 (2010). VSA's "subjective intent in running the ads," whatever it may have been, is therefore simply "irrelevant." *WRTL*, 551 U.S. at 472. See also, *e.g.*, *The Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 552 (4th Cir. 2012) ("subjective intent is … an impermissible consideration"). The question, under the First Amendment, is whether the advertisement *objectively* advocates election or defeat, or has a reasonable meaning other than to advocate the election or defeat of the candidate. For the reasons explained above, it does, and that is the end of the matter.

The complaint also invokes a variety of what it calls (at 2–3) "express advocacy factors." As explained above, those factors favor VSA. But even if they did not, the Supreme Court has held that these sorts of vague appeals to "'contextual' factors"—such as the timing of the advertisement or the fact that the speaker was known to oppose the election of the candidate in other communications—do *not* render speech "the equivalent of express advocacy." *WRTL*, 551 U.S. at 472. To the contrary, these sorts of "contextual factors … should seldom play a significant role in the inquiry." *Id*, at 474. That is because a multi-factor "balancing test" to determine what constitutes express advocacy—"the open-ended rough-and-tumble of factors" that invite "complex argument in a trial court"—permits the government "to select what political speech is safe for public consumption by applying ambiguous tests." *Citizens United*, 558 U.S. at 335–36 (quoting *WRTL*, 551 U.S. at 469). To have government officials "pore over each word of a text to see if, in their judgment, it accords with the [multi-factor] test they have promulgated" is "an unprecedented governmental intervention into the realm of speech." *Id.* at 336. That was precisely what the FEC attempted in the wake of *WRTL*, and is precisely what

Citizens United then disapproved. The "express advocacy factors" pointed to by Pearsall should therefore be given, at most, no weight.

To make matters worse, many of the "factors" pointed to by the complaint have been specifically rejected by the Supreme Court as irrelevant. Pearsall complains, for example (at 3) that the advertisement aired on Arizona cable television. As explained above, that is incredibly commonplace, but it is also not a legally permissible basis for distinguishing among types of speech: while "some means of communication may be less effective than others at influencing the public in different contexts, any effort by the Judiciary to decide which means of communications are to be preferred for the particular type of message and speaker would raise questions as to the courts' own lawful authority." *Citizens United*, 558 U.S. at 326. Communicating in a broadcast medium therefore cannot possibly be a reason to conclude that speech is express advocacy.

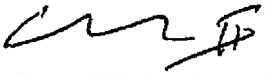
Similarly, even if one credited the complaint's appeals (at 3) to the timing of the advertisement, if proximity to an election "were enough to prove that an ad is the functional equivalent of express advocacy," then all such communications would be within the government's power to regulate. *WRTL*, 551 U.S. at 472. The Supreme Court has specifically rejected that conclusion. At any rate, this is certainly nothing like the ad in *Furgatch*, which ran three days before the presidential election. 807 F.2d at 858.

Nor does it make any difference that the advertisement here would trigger a disclosure requirement, rather than an outright ban. As explained above, treating the speech at issue as express advocacy would not just result in a disclosure about the advertisement itself—it would arguably subject VSA *itself* to the requirement to register as a political committee and disclose its donors. The Supreme Court has "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley*, 424 U.S. at 64. To "avoid questions of unconstitutionality," courts have therefore long construed federal financial disclosure requirements "to be nonapplicable" to groups "engaged purely in issue discussion." *Id.* at 79 & n.106. That is because the First Amendment permits "independent reporting requirements" on "groups that are not candidates or political committees" only when "they make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate." *Id.* at 80. If an organization's "major purpose" is not "the nomination or election of a candidate," the First Amendment forbids the compelled disclosure of its donors. *Id.* at 79. Because treating "What Difference?" as express advocacy would arguably trigger that sort of disclosure requirement under Arizona law, such treatment is therefore unconstitutional. See *Massachusetts Citizens for Life v. FEC*, 479 U.S. 238 (1986) (making clear that the non-profit group at issue was not a political committee even though it had engaged in express advocacy). And regardless, VSA lacks such an electoral purpose, and as a

non-profit organized under section 501(c)(4) of the Internal Revenue Code, cannot have such a primary purpose.

For the foregoing reasons, the Pearsall complaint is without merit and should be dismissed without further action.

Very truly yours,



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January 30, 2015

Via First Class and Electronic Mail

Honorable Michelle Reagan, Secretary of State
1700 W. Washington Street, Floor 7
Phoenix, AZ 85007-2808

Eric Spencer, State Elections Director
1700 W. Washington Street, Floor 7
Phoenix, AZ 85007-2808
espencer@azsos.gov
kkingsmore@azsos.gov

RE: Veteransforastrongamerica.org (Veterans for a Strong America)
SOS Filer ID: 201400852

COMPLAINT AGAINST VETERANS FOR A STRONG AMERICA FOR FAILURE TO FILE 24 HOUR INDEPENDENT EXPENDITURE REPORTS WITH THE STATE OF ARIZONA

Dear Secretary Reagan and Director Spencer:

My firm represents David Pearsall and on his behalf we allege that Veterans For A Strong America (veteransforastrongamerica.org) ("VSA"), a South Dakota-based organization, failed to file the required 24-hour reports of independent expenditures with the Arizona Secretary of State, in violation of A.R.S. § 16-914.02(A).

Background

VSA is an organization that participates in express advocacy for and against candidates across the United States. VSA is not registered with the Arizona Corporation Commission, nor is it registered as a corporation in its home state of South Dakota.

On May 29, 2014, VSA posted a press release to its website announcing, "VSA Launches Statewide TV Buy Against Christine Jones." VSA purchased an ad on cable television in Arizona against Christine Jones, a Republican candidate for Governor. See *Exhibit 1.* The value of this ad buy was approximately $50,000. *See Exhibit 2.* The ad in question ran for a period of approximately 10 days. *Id.* While VSA did register with the

2239 W. Baseline Rd., Tempe, AZ 85283
Office: 602.626.8805 • Fax: 602.626.8889
www.TheTorresFirm.com

Secretary of State on May 28, 2014 as a "Corp/LLC/Labor Org" entity that makes independent expenditures, VSA has not filed any reports showing it has made any expenditures in the State of Arizona. *See Exhibit 3*. VSA failed to file a report for the anti-Christine Jones ad it boldly proclaimed it launched. VSA's ad is clearly express advocacy, as discussed below.

Express Advocacy, Not Issue Advocacy

VSA will not be able to challenge the classification of its anti-Jones ad as express advocacy. VSA itself proclaims its intent was to influence the primary election for the defeat of Christine Jones. The May 2014 advertisement falls within the definition of express advocacy as provided in ARS § 16-901.01.

Under Arizona Revised Statutes Section 16-901.01, express advocacy means:

> Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the communication or the inclusion of statements of the candidate(s) or opponents.

The May 28th, 2014 Advertisement Entitled "What Difference?"

Here, VSA produced advertisements that aired for the purpose of advocating the defeat of Candidate Christine Jones. Analyzing the statutory express advocacy factors, these ads are broadcast communications that aired on cable television stations. *Supra.*

The ad clearly identifies and refers to Christine Jones, a candidate for Arizona Governor.

The ad is targeted to Arizona voters. It need not be targeted to Republicans alone. Furthermore, VSA portray Christine Jones in a negative light and recite her statements of praise of Hillary Clinton, the Democratic Secretary of State in the Obama Administration. It goes without saying that among Republican primary voters, being painted in such a light is "negative" and will only have the effect of hurting her standing with the Primary Electorate across the State of Arizona. The ad aired within 90 days of the Primary Election.

Based on the above objective factors found in the statute, the intent is clear. However, if there remains any doubt by your office of the intent to influence the election, we can easily look to the publications and words of VSA itself to find that the intent was to influence Arizona voters to oppose Christine Jones. VSA published the results of a poll it conducted with Arizona Voters to show that its own ad raised Christine Jones' "negatives." *See Exhibit 4.* The title of the page alone makes it clear, "New Poll Shows VSA's Benghazi Ad Impacting AZ Governor's Race." The subtitle makes it even more clear, "VSA Impacting the AZ Governor's Race with Candidate's Own Words."

Failure to Disclose all Independent Expenditures To Arizona Secretary of State's Office

ARS § 16-914.02(A) requires all Corporations, Unions or LLCs that make independent expenditures to influence the outcome of a candidate election to file a record of the expenditure with the Arizona Secretary of State within 24 hours of making the expenditure. VSA failed to disclose the $50,000 it spent on the anti-Jones ad in May of 2014.

As a result, it should be fined the maximum penalty permitted by law. A.R.S. § 16-914.02(H) provides for remedies of "a civil penalty of up to three times the total amount of the expenditure." In this case, the maximum penalty would be $150,000.

Conclusion

Out of state groups that wish to spend money on express advocacy against candidates in our state during election season must comply with our election laws. The Arizona Secretary of State's Office should investigate these violations of ARS § 16-914.02(A) in order to restore accountability, transparency, and integrity to elections in Arizona.

Sincerely,

Saman J. Golestan

EXHIBIT 1

VETERANS FOR A STRONG AMERICA

DESERVE JUSTICE
SIGN THE PETITION
PAID FOR BY VETERANS FOR A STRONG AMERICA

The SITREP

November 4th – A Day of Reckoning
President Obama says his policies are on the ballot

8 MONTHS AGO

VSA Launches Statewide TV Buy Against Christine Jones in Arizona

"Christine Jones' comments in support of Hillary Clinton are an insult to the victims of the Benghazi terror attacks and to every person fighting for accountability from this Administration for their role in the deaths of four Americans."

May 29, 2014

John

Press Releases

Arizona, Christine Jones

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Two Person Race in Arizona Gubernatorial Primary

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VSA's Arends Supports Benghazi Committee, Warns Against Political Gamesmanship

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Latest Video

8 MONTHS AGO

VSA Launches Statewide TV Buy Against Christine Jones in Arizona

NEWS
Veterans for a Strong America
http://www.veteransforastrongamerica.org
Contact: media@veteransforastrongamerica.org
May 29, 2014

For IMMEDIATE Release

Veterans for a Strong America Takes on Christine Jones and Her Post-Benghazi Praise for Hillary Clinton

Vets Running statewide TV ad in Arizona against Jones for calling Clinton "Effective" and Praised her "High Standards"

(SIOUX FALLS) – The nation's leading organization of conservative veterans announced today that it's taking aim at Christine Jones, a candidate for governor in the Republican primary in Arizona by releasing a television ad entitled What Difference? (http://goo.gl/jsdjjt) about Jones' outrageous lack of concern regarding Benghazi. Veterans for a Strong America is exposing Jones' exceptionally poor judgment in praising former Secretary of State Hillary Clinton and her poor judgment in the wake of the death of four Americans. On Spetember 11, 2012, under Hillary Clinton's tenure as Secretary of State, terrorists attacked the US. Consulate in Benghazi, Libya killing the United States Ambassador, the embassy's information officer and two former Navy SEALs who came to the aid of the besieged compound.

VSA Chairman Joel Arends said, "Christine Jones' comments in support of Hillary Clinton are an insult to the victims of the Benghazi terror attacks and to every person fighting for accountability from this Administration for their role in the deaths of four Americans."

The new ad gives background on the Administration's stonewalling and lies regarding the Benghazi terror attacks, and contains a clip of Secretary Clinton's infamous hearing in which she shrieked "What difference, at this point, does it make" while testifying before Congress. The ad then quotes Jones praising Clinton two months later by calling her "capable" and "respected." Jones is also quoted as referring to Clinton as "effective" and having "high standards."

VSA Chairman Arends: "Christine Jones lacks the judgment required to be the top elected official in any state, let alone a state with as pronounced a military presence as Arizona."

VSA will continue to make Christine Jones' outrageous comments and views regarding Benghazi and Clinton a major theme of the upcoming election for governor throughout the primary election and into the fall if necessary.

Added Arends: "Christine Jones may not want to hold Hillary Clinton to account, but Veterans for a Strong America will. Four men were killed serving their country and two of them were veterans who ran to the sounds of the guns when our consulate was under attack. We won't let Hillary Clinton or her supporters like Christine Jones whitewash what happened to them."

For more information about Veterans for a Strong America or to interview Joel Arends or another veteran – email media@veteransforastrongamerica.org.

#30#

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Two Person Race in Arizona Gubernatorial Primary

New Poll Shows VSA's Benghazi Ad Impacting AZ Governor's Race

VSA's Arends Supports Benghazi Committee, Warns Against Political Gamesmanship

VSA Chairman Joel Arends Joins Call for VA Secretary Shinseki Resignation

VSA Ad

@V4SA Tweets

.@AymanM: You were visibly shocked when Willie told you stop parroting the false narative re: @ChrisKyleFrog Iraqi savages comment. #tcot 6 hours ago

.@AymanM: @ChrisKyleFrog was not a racist who went on killing sprees as you suggested on @Morning_Joe today. #tcot #bedwettingleft 6 hours ago

.@BarackObama hoped you would forget about #BoweBergdahl. Let's not forget the 6 men who died searching for him. goo.gl/Q4Qdq4 23 hours ago

RT @SteveDeaceShow: Today's show: The secret to the success of #AmericanSniper with @V4SA stevedeace.com/steve-deace-li... #tcot 7 days ago

.@joniernst castrated hogs, we're counting on her to castrate #ISIS. #gopresponse #foxnewsCHAT 1 week ago

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2 thoughts on "VSA Launches Statewide TV Buy Against Christine Jones in Arizona"

1. AZ_MDavis on May 29, 2014 at 1:20 pm said:
   RT @dennis_welch: VIDEO: Dark money group launches TV ad slamming @JonesForGov for praising @HillaryClinton after #Benghazi: http://t.co/sP...
2. Pingback: cat 4 brother

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- Big Peace
- Defending Defense
- Foreign Policy
- The American Enterprise Institute
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EXHIBIT 2

Veterans group launches attack ad on Christine Jones

A VETERANS GROUP LAUNCHES AN ATTACK AD ON CHRISTINE JONES. SHE HITS BACK AND TELLS VOTERS, "DON'T BE FOOLED."

Yvonne Wingett Sanchez, The Republic | azcentral.com

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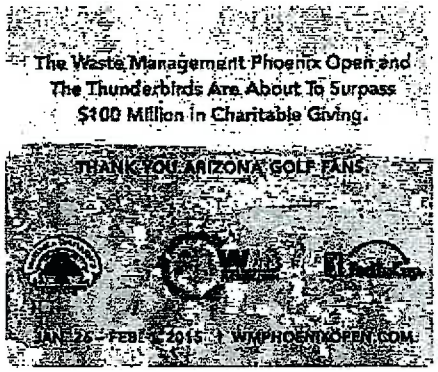
ad-christine- text=Veterans%20group%20launches%20attack%20ad%20on%20Christine%20Jones&
jones/9726491/?q=azcentral/ImACvCV Email Comment

Veterans for a Strong America, a group that calls itself "the nation's leading organization of conservative veterans," is airing a TV ad attacking Republican gubernatorial candidate Christine Jones.

The ad, called "What Difference?" (https://www.youtube.com/watch?v=kVcEtVQ7vbI&list=UU2ku94CmYzlDGHrVcQzEFhg) takes aim at Jones for saying that former Secretary of State Hillary Clinton "will continue to stand out as a capable and respected leader."

Joel Arends, chairman of Veterans for a Strong America, said DC London produced the ad.



It's not the first time the group has worked with the political consulting firm (http://dc-london.com/#portfolio) co-founded by Sean Noble, dubbed by some as the "dark- money man" (http://www.propublica.org/article/the-dark-money-man-how-sean-noble-moved-the-kochs-cash-into-politics-and-ma)who has distributed tens of millions of dollars in anonymous donations to groups supporting conservative campaigns.

Noble is an ally of Doug Ducey, the Republican state treasurer who is also running for governor.

The anti-Jones ad features footage from Clinton's testimony before Congress, where she asked, "What difference, at this point, does it make?"

Clinton's remark came during an exchange with Sen. Ron Johnson, a Republican from Wisconsin, when he said the public was told that protests had given rise to the assault on the consulate, even thought it could have been "easily ascertained that that was not the fact." Four Americans died, including a U.S. ambassador.

The ominous ad features photos of Clinton and Jones, photos of the four dead Americans, and fire building in the background.

"It made no difference to Christine Jones," the ad says. "Two months later, she said Hillary Clinton will continue to stand out as a capable and respected leader."

Arends said the ad began running Thursday on cable stations and will "run heavy" for up to 10 days. The ad buy was about $50,000, he said. Arends said his organization is funded by "grassroots donors."

Jones hit back with videos of her own.

"You've probably seen those negative ads my opponents are running against me," she speaks to the camera in one response (http://www.christinejones.com/get_the_facts). "Don't be fooled by false and misleading statements. Their personal attacks are way beneath the dignity of this race."

Jones directs people to her website (http://www.christinejones.com/home)to "get the facts for yourself."

"I know Arizonans will do their homework, and make up their own minds."

SHARE

Jones has another video response on her website about her comments to Hillary, saying her political philosophy "couldn't be more different" from Clinton's. However, Jones said, Clinton strikes her as "the adult in the room" compared to others in President Barack Obama's administration: "And that's a pretty sad commentary on the current administration," she says.

The video is accompanied with this text: "Christine's political philosophy could not be more different than Hillary Clinton's. Christine is an unapologetic conservative Republican; Hillary Clinton is a big government liberal Democrat. Any comment Christine has made in the past about Hillary Clinton was in the context of comparing her to others in the Obama Administration. Many people would agree that it's amateur hour in the White House today. When you compare Hillary Clinton to the likes of John Kerry, Eric Holder and Susan Rice, she may quite possibly be the adult in the room, and that's the most favorable thing that can be said of Hillary Clinton. It really is a sad commentary on this Presidency that its leaders just don't seem up to the job."

Arends said the South Dakota-based group targeted Jones after it became aware of remarks she made suggesting she served in the US Air Force when in fact she was in the Air Force ROTC. He also cited remarks she made on her blog, The Rudy Syndrome (http://rudysyndrome.com/), where she praised Clinton, writing last year that Americans "will begin to realize what an effective Secretary of State Hillary Clinton was, as her replacement begins to be scrutinized for failing to live up to the incredibly high standard she set."

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EXHIBIT 3

Arizona Secretary of State - Ken Bennett

Campaign Finance - Filer Details

Help

Filer Name: Veteransforastrongamerica.org			Status: Active
Filer ID: 201400852	Filer Type: Independent Expenditures (Corp/LLC/Labor Org)	Registration Date: 5/28/2014	Last Amended Date: 5/30/2014
Mailing Address: Phone: (605) 254-2624		Filer Address: P.O. Box 1246 Sioux Falls SD 57101	

This filer has no filed reports.

EXHIBIT 4

VETERANS FOR A STRONG AMERICA

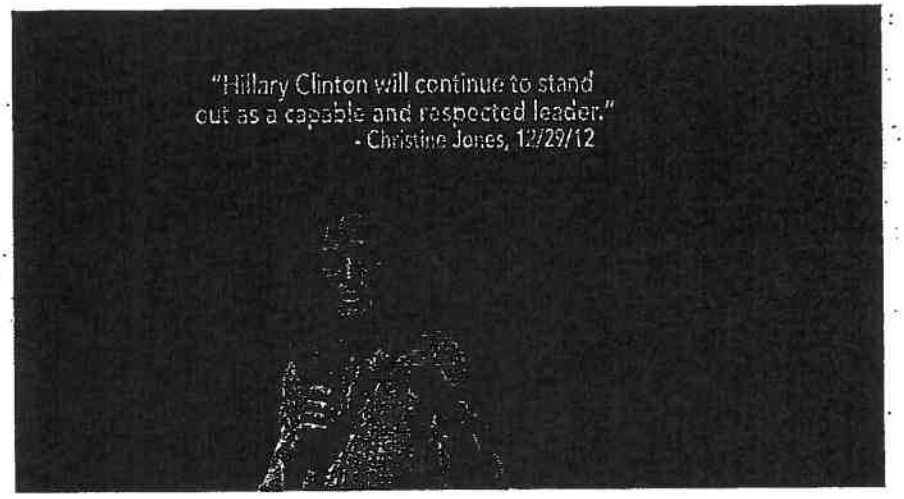
DESERVE JUSTICE
SIGN THE PETITION
PAID FOR BY VETERANS FOR A STRONG AMERICA

The SITREP

t more than a dozen...
an Us Safe

4 MONTHS AGO

New Poll Shows VSA's Benghazi Ad Impacting AZ Governor's Race



VSA Impacting the AZ Governor's Race with Candidate's Own Words +

Jun 27, 2014

John

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VA Managers Lied to Federal Investigators

NEWS
Veterans for a Strong America
http://www.veteransforastrongamerica.org
Contact: media@veteransforastrongamerica.org
June 27, 2014

For Immediate Release

New Poll Shows Veterans for a Strong America Impacting Arizona Governor's Race

(Sioux Falls) This week, Veterans for a Strong America and Harper Polling conducted a poll of likely Republican primary voters in Arizona.

The poll shows that Veterans for Strong America has had an impact on the Arizona governor's race by driving up candidate Christine Jones negatives. VSA ran a statewide television ad criticizing Jones for praising Hillary Clinton after the Benghazi terrorist attack, and as a result Jones now has the highest negatives of any other top tier candidate for Governor. It also gives her the lowest net positive rating of the major candidates.

	Fav	Unfav	Net Positive
Ducey	48%	12%	36%
Bennett	28%	9%	19%
Smith	25%	13%	12%
Jones	28%	18%	10%

The head-to-head results in the Arizona Governor's race show that Doug Ducey has a strong lead over the rest of the field.

Doug Ducey	33%
Christine Jones	15%
Scott Smith	14%
Ken Bennett	12%
Andy Thomas	3%
Frank Riggs	2%
Undecided	22%

The poll also shows that 98% of GOP primary voters believe the VA scandal is a very serious or somewhat serious issue and 80% blame Obama or his administration for the problem, while 16% blame the local VA hospitals.

Joel Arends, Chairman of Veterans for a Strong America, said, "Our poll underscores the importance of veterans and the issues important to them in Arizona and other states across the country. Veterans for a Strong America will continue to hold accountable people like Christine Jones who dismissed the attacks in Benghazi when she praised Hillary Clinton. Our members deserve better leadership."

Veterans for a Strong America is a grassroots action organization committed to ensuring that America remains a strong nation by advancing liberty, safeguarding freedom and opposing tyranny. For more information, visit www.veteransforastrongamerica.org.

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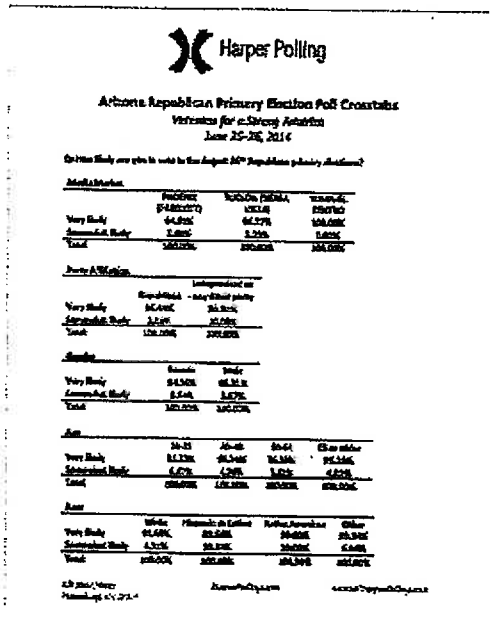
Poll Crosstabs and Toplines for AZ Governor:

1 / 32


Harper Polling

Arizona Republican Primary Election Poll Crosstabs

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VSA Ad

@V4SA Tweets

Obama praises Muslim cleric who wanted American troops killed. #disgusting freebeacon.com/national-secur... 1 month ago

Former Commandant of @USMC on President @BarackObama's plan to defeat #ISIS . goo.gl/2igd6A http://t.co/046xPkjJY4 1 month ago

The IG report on secret wait lists at the Phoenix @DeptVetAffairs goes easy on administrators. goo.gl/xkoguh http://t.co/XX4ZnGsT42 1 month ago

Managers at over a dozen @DeptVetAffairs (VA) medical facilities lied to federal investigators goo.gl/FmL4Za http://t.co/nXEpv4PfHU 2 months ago

RT @AriFleischer: Bush also told VP – and I quote – "We're at war Dick and we're going to find out who did this and we're going to kick their ass." 2 months ago

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Harper Polling

Arizona Republican Primary Election Poll Results

Veterans for a Strong America

June 25-26, 2014

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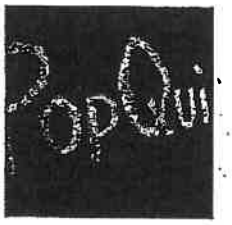

Exclusive: Steve Deace's "2014 VOTER POP QUIZ"

VA Managers Lied to Federal Investigators

Obama: I Have No Strategy to Keep Us Safe

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Last reply was 3 months ago

tangtongueled retweeted thisseannobledc retweeted this [redacted]
[redacted] ... and 9 more

1. Carol Stickel
   View 4 months ago
   SHARED!!!

2. Randy Sytsma
   View 4 months ago
   Its time to take the gloves off and fight to win!

3. Karen Lindsey
   View 4 months ago
   You know this group has been fighting against on one candidate for AZ gov. That bitch has my vote. When you choose to go after only one that shit tells me who I am voting for. And you seem to be a more liberal base than I could ever be comfortable with.

4. @AZLiveFree
   View 4 months ago
   .@V4SA If you are serious, you'd ask @JonesForGov to clarify her claim of being married to combat wounded vet. #purpleheart #freepass

5. @seannobledc
   View 4 months ago
   New #AZGOV poll has Ducey 33, Jones 15, Smith 14, Bennett 12, Und – 22. http://t.co/TQkUT176Pv
   [redacted]

6. @seannobledc
   View 4 months ago
   The @V4SA AZ primary voter poll shows @votereagan 22%, Cardon 20%, Pierce 13%, Und 44% #AZSOS http://t.co/TQkUT176Pv

7. @seannobledc
   View 4 months ago
   Whoa. @V4SA AZ primary poll shows @_dianedouglas at 27% and @HuppenthalADE at only 31%. 42% undecided. Wide open. http://t.co/TQkUT176Pv

8. @seannobledc
   View 4 months ago

AZ GOP primary voter poll by @V4SA shows 98% think #VAscandal is very/somewhat serious. 80% blame Obama & his admin. http://t.co/TQkUT176Pv

9. @seannobledc
View 4 months ago
Among AZ GOP primary voters, 63% oppose Common Core & only 15% support. Bad news for @huppenthalADE & @Mayor_Smith http://t.co/dnDucHVqd9
noprezzie2012 retweeted this

10. @seannobledc
View 4 months ago
AZ GOP poll from @V4SA shows 62% oppose Medicaid expansion and 21% support. #AZGOV http://t.co/TQkUT176Pv
[redacted]

11. @_DianeDouglas
View 4 months ago
@michellemalkin 63% of #AZ voters disapprove of #CommonCore, only 15% support. http://t.co/toYA78pnNN The people are with us!
[redacted] noprezzie2012 retweeted thisplanobymoonlite retweeted this

12. @ConservLeaderAZ
View 3 months ago
New poll in the #AZgov race shows Ducey ahead w/48% favorable, Bennett and Jones w/28%, and Smith w/25%
http://t.co/HlwzcPwK8o
[redacted]

13. @mcanallya
View 3 months ago
@MatthewWBenson @JimSmall @barrettmarson looks like while this convo was happening there was a poll in the field... http://t.co/PV6FrdrNxC

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SOURCES

- Big Peace
- Defending Defense
- Foreign Policy
- The American Enterprise Institute
- The Center for Security Policy
- The Foreign Policy Initiative
- The Heritage Foundation

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State of Arizona
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1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - www.azcleanelections.gov

NOTICE OF COMPLAINT AND OPPORTUNITY TO RESPOND
Via Federal Express and E-mail

July 14, 2015

Veterans for a Strong America
c/o Donald F. McGahn
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
dmcgahn@jonesday.com

RE: CCEC MUR #14-027

Dear Mr. McGahn:

This letter serves as an internal complaint against Veterans for a Strong America (VSA) by the Executive Director of the Arizona Citizens Clean Elections Commission.

Complaint

Recently, the Arizona Secretary of State's Office publicly released its determination of reasonable cause to believe that VSA violated A.R.S. § 16-914.02 by failing to meet that statute's reporting requirements. I have reviewed that letter as well as the supporting materials.

The Citizens Clean Elections Act (Act) and related rules provide for reports of independent expenditures. *See* A.R.S. §§ 16-941(B), (D), -942(B), -956(A)(7); -958; Ariz. Admin. Code R2-20-109; *see also Clean Elections Institute v. Brewer*, 209 Ariz. 241, 245 ¶ 13, 99 P.3d 570, 574 (2004). If an entity engages in independent expenditures in statewide and legislative races in Arizona, it is required to file campaign finance reports with the Secretary of State regarding those expenditures and may be subject to additional filing requirements, including identifying contributions and expenditures, which are subject to enforcement by provisions of the Article 2, of Chapter 6, Title 16. *See, e.g.,* A.R.S. §§ 16-913, -914.02, 920, -941(D); -942(B); -956(A)(7); -958; Ariz. Admin. Code R-2-20-109(F). The issue here is whether independent expenditure reports should have been filed but were not.

The Clean Elections Act also defines "expressly advocates" in Arizona law (in part) as follows:

[1.] Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard or direct mailer

[2.] referring to one or more clearly identified candidates and
[3.] targeted to the electorate of that candidate(s)
[4.] that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the communication or the inclusion of statements of the candidate(s) or opponents.

A.R.S. § 16-901.01(A)(2).

According to your May 28, 2015 letter to the Arizona Secretary of State, VSA ran an advertisement in Arizona beginning May 28, 2014 identifying Christine Jones, a Republican candidate for governor in Arizona, and criticizing her positive statements about former Secretary of State Hillary Clinton, a Democrat. *See* McGahn Letter at 2. That advertisement, which may have been express advocacy, is the subject of this Complaint. VSA filed no reports related to the advertisement, according to the Secretary of State. *See* Secretary of State Reasonable Cause at 3. The advertising buy was about $50,000. *Id.* at 2.

Any person making independent expenditures cumulatively exceeding $700 during the 2014 election cycle was required to file reports under the Act and rules, unless exempted. *See* Arizona Secretary of State, Clean Elections Act 2013-2014 Biennial Adjustments, http://apps.azsos.gov/election/2014/Info/CCEC_Biennial_Adjustment_Charts.htm. During the 2014 election cycle, VSA did not file as an exempt organization with the Commission. If VSA made independent expenditures and failed to file either an exemption form or campaign finance reports, it has violated A.R.S. §§ 16-941(D), -942(B), -956(A)(7); -958; and Ariz. Admin. Code R2-20-109.

Opportunity for Response

Commission rules require notification to be given to the Respondent of a Complaint. Ariz. Admin. Code R2-20-204(A). Additionally, the rules provide that you be advised of compliance procedures. Those procedures are set forth in Article 2 of the Commission's Rules (Arizona Administrative Code Sections R2-20-201 to R2-20-228) as well as the Clean Elections Act (specifically Arizona Revised Statutes §§ 16-940 to 16-961), which are available on the Commission website at www.azcleanelections.gov.

The Commission's rules provide that a Respondent "be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, *within five days from receipt of a written copy of the complaint*, a letter or memorandum setting forth reasons why the Commission should take no action." Ariz. Admin. Code R2-20-205(A). Your response must be notarized, or the Commission will not consider it. Ariz. Admin. Code R2-20-205(C). Generally, a failure to respond to a complaint within five days may be viewed as an admission to the allegations. *Id.*

The purpose of requesting a response is to determine whether VSA has violated provisions of the Citizens Clean Elections Act or rules and are subject to penalties under the Act or rules, including A.R.S. §§ 16-941(D), -942(B), -958, and the rules implementing these statutes. In addition to any other factual or legal information you wish to provide, please provide evidence that VSA is incorporated in any state, including any articles of incorporation.

Commission rules require that you be given this notice and Complaint. The issuance of this notice and Complaint do not constitute a finding related to the Complaint. A finding, if any, may be made only after the Commission has reviewed the matter. I intend to coordinate with the Arizona Attorney General's Office on this matter to ensure all compliance issues are resolved efficiently. Please contact us if you have any questions at (602) 364-3477 or by e-mail at sara.larsen@azcleanelections.gov.

Sincerely,

Thomas M. Collins
Executive Director
Citizens Clean Elections Commission

cc: James Driscoll-MacEachern (email only)
Sara Larsen, Financial Affairs & Compliance Officer (email only)

JONES DAY

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July 20, 2015

Thomas M. Collins, Executive Director
Citizens Clean Elections Commission
1616 W. Adams, Suite 110
Phoenix, AZ 85007

Re: Veterans for a Strong America (CCEC MUR #14-027)

Dear Mr. Collins,

We represent Veterans for a Strong America, a non-profit, non-partisan grassroots action organization, which is organized under Section 501(c)(4) of the Internal Revenue Code. VSA is an Iraq and Afghanistan veterans organization dedicated to mobilizing Americans to communicate the importance of a robust national defense.

I write in response to the notice of complaint, which we received from your office on July 15, 2015, regarding an advertisement aired by VSA. The complaint suggests that the advertisement was express advocacy and therefore triggered a requirement to file a record of the expenditure with the Arizona Secretary of State. The purpose of this letter is to "demonstrate that no action should be taken on the basis of [that] complaint." See Ariz. Admin. Code R2-20-205(A).

For the reasons explained below, the complaint is without merit, and no further action should be taken. Under Arizona law, the advertisement is not express advocacy, and therefore did not trigger a disclosure requirement, because it is susceptible of a "reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates." A.R.S. §16-901.01(A)(2). Moreover, if Arizona law classified this advertisement as express advocacy, the law would be infirm under binding Supreme Court precedent, which requires an objective assessment of speech to determine whether it is express advocacy, and which has decisively rejected open-ended "balancing" approaches to such determinations. Here, the Secretary of State (and the underlying complaint which gave rise to the Secretary's determination) relied heavily on the sort of intent and effect declared out-of-bounds by the U.S. Supreme Court.

The complaint should therefore be dismissed without further action.

Background

On May 28, 2014, VSA released an television advertisement entitled "What Difference?", which discussed the 2012 Benghazi attack during which four Americans were killed. The script for the advertisement, in its entirety, reads:

> VOICEOVER: Four Americans were killed by terrorists. What happened? Requests for more security: denied. Talking points: altered. Our nation: lied to.
>
> HILLARY CLINTON: What difference, at this point, does it make?
>
> VOICEOVER: It made no difference to Christine Jones. Two months later, she said "Hillary Clinton will continue to stand out as a capable, respected leader." Jones praised Clinton: "Americans will realize what an effective Secretary of State Clinton was… The incredibly high standard she set." These are Christine Jones' standards. Are they yours?

The advertisement can be viewed online at http://www.veteransforastrongamerica.org/2014/05/29/az-gubernatorial-candidates-praises-hillary-clinton-benghazi/.

The advertisement fit hand-in-glove with VSA's mission: to mobilize Americans to communicate the importance of a robust national defense. "What Difference?" criticized Secretary Clinton (and Jones' support for her) on the grounds that her actions had been inconsistent with that goal. VSA has frequently spoken up when its particular issues were relevant to the public debate, whether or not there were any immediate electoral consequences. For example, VSA's efforts regarding Secretary Clinton were not limited to one television advertisement. They made a 2014 request for her emails under the Freedom of Information Act, and having failed to obtain all the requested information, and subsequently filed a lawsuit. See Sarah Westwood, "Vets Group Sues State Department for Not Producing Clinton Benghazi Emails," *Washington Examiner* (April 3, 2015). Recently, for example, VSA (in the course of commenting upon a public disagreement by Senator John McCain and Donald Trump) emphasized its view that "what the American people are really concerned about is how 250,000 veterans … were put onto a VA death list" and "why 40,000 active troops are going to receive pink slips over the next four years." See *Statement of Support for Donald J. Trump from VSA Chairman Joel Arends*, Press Release, Veterans for a Strong America (July 19, 2015).

On January 30, 2015, David Pearsall filed a complaint with the Secretary of State. The gravamen of that complaint – filed about eight months after the ad aired -- was that, because of the alleged subjective intent of VSA in making the ad, the ad expressly advocated Jones' defeat, and that VSA was therefore required to file certain disclosures with the Secretary of State. On April 24, 2015, the Secretary of State forwarded the complaint to VSA and requested a response, which VSA did on May 28, 2015. The Secretary of State then issued a letter stating that there was reasonable cause to believe that VSA had violated Arizona law, and the complaint from your office followed on July 14, 2015 – well over a year after the ad aired.

Argument

I. Legal Background

This complaint turns on the difference between express advocacy and issue advertisements, two concepts in election law that have been developed their meaning over a decades of actions by Congress, the Federal Elections Commission and other administrative agencies, and the Supreme Court of the United States. We therefore begin with an overview of the relevant history.

The beginning of the modern era of campaign finance regulation was the Federal Election Campaign Act, which was passed in 1971 and then amended in the wake of Watergate. See Federal Election Campaign Act of 1971, as amended, Pub. L. 93-443, 88 Stat. 1263 (1974). FECA limited both campaign contributions and expenditures in an explicit attempt to equalize speech. In *Buckley v. Valeo*, the Supreme Court held that while campaign contributions could be regulated, expenditures could not be—at least, not most expenditures. 424 U.S. 1, 40 (1976). As to a narrow category of what it called "communications containing express words of advocacy of election or defeat," such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and "reject," the *Buckley* Court (while holding that such expenditures could not be capped or prohibited) upheld disclosure requirements for individuals and groups that made such communications. *Id.*, at 44 & n.52, 80.

That said, while *Buckley* approved certain disclosure requirements, it placed strict limits on how much disclosure is permissible, and severely limited mandated donor disclosure. That, said the Court, was because "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley*, 424 U.S., at 64. To "avoid questions of unconstitutionality," *Buckley* construed federal financial disclosure requirements "to be nonapplicable" to groups "engaged purely in issue discussion." *Id.*, at 79 & n.106. Because the First Amendment permits "independent reporting requirements" on "groups that are not

candidates or political committees" only when "they make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate." *Id.*, at 80. If an organization's "major purpose" is not "the nomination or election of a candidate," the First Amendment forbids the compelled disclosure of its donors. *Id.*, at 79. See also *NAACP v. Alabama*, 462 (it is hardly "a novel perception that compelled disclosure of affiliation with groups engaged in advocacy" may work a "restraint on freedom of association"); *Talley v. California*, 362 U.S. 60 (1960).

After *Buckley*, most federal courts of appeals generally understood "express advocacy" to be defined by a bright-line rule: "to include *only* those communications with explicit *words* of advocacy." *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1097 (9th Cir. 2003). See, *e.g.*, *Chamber of Commerce v. Moore*, 288 F.3d 187, 193 (5th Cir. 2002); *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174, 1187 (10th Cir. 2000); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 969 (8th Cir. 1999); *FEC v. Christian Action Network, Inc.*, 110 F.3d 1049, 1051 (4th Cir. 1997); *Faucher v. FEC*, 928 F.2d 468, 470–71 (1st Cir. 1991); *FEC v. Cent. Long Island Tax Reform Immediately Comm.*, 616 F.2d 45, 53 (2d Cir. 1980) (en banc). The Fourth Circuit, for example, struck down an FEC regulation defining "express advocacy" as "any communication that ... [w]hen taken as a whole ... could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s)." *Va. Soc'y for Human Life, Inc. v. FEC*, 263 F.3d 379, 391 (4th Cir. 2001). That, said the court of appeals, impermissibly "shifted determination of what is 'express advocacy' away from the words in and of themselves to the unpredictability of audience interpretation." *Id.*, at 392.

Congress, dissatisfied with this limitation, tried a new tack in the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (Mar. 27, 2002). The aim in BCRA was to avoid the vagueness proscribed by *Buckley* by establishing clear limits on when groups could and could not speak. BCRA thus forbade corporations and unions to run TV or radio ads within 30 days of a primary or 60 days of a general election that referred to a federal candidate in that candidate's electorate. In *McConnell v. FEC*, the Supreme Court upheld that restriction "to the extent" that such ads were "the functional equivalent of express advocacy." 540 U.S. 93, 206 (2003). Because the record indicated that a substantial portion of covered advertisements were of that character, the *McConnell* Court (without elaborating on what it meant for speech to be the "functional equivalent" of express advocacy) rejected a facial challenge to the statute.

Individual speakers covered by BCRA's prohibition retained the right to argue, however, that their *particular* speech was *not* express advocacy or its functional equivalent. Wisconsin Right to Life, which wanted to broadcast advertisements criticizing Senator Feingold for his

support for judicial filibusters, brought precisely such a challenge. *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007) (plurality opinion by Roberts, C.J.).[1] To resolve it, said the Court, required a determination of whether "the speech at issue is the functional equivalent of speech expressly advocating the election or defeat of a candidate for federal office, or instead a genuine issue ad." *Id.*, at 456.

To distinguish between the two, the *WRTL* Court rejected a test grounded in "whether the ad is intended to influence elections and has that effect." *Id.*, at 465. Such a test would "afford no security for free discussion," and any test "to distinguish constitutionally protected political speech ... should provide a safe harbor for those who wish to exercise First Amendment rights." *Id.*, at 467. "A test turning on the intent of the speaker does not remotely fit the bill." *Id.*, at 468. And a test "based on the actual effect speech will have on an election or on a particular segment of the target audience" would put "the speaker wholly at the mercy of the varied understanding of his hearers." *Ibid.*

No, said the Court: "an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Id.*, at 469–70. This inquiry "must be objective, focusing on the substance of the communication rather than amorphous considerations of intent and effect," "must entail minimal if any discovery, to allow parties to resolve disputes quickly," and it "must eschew the open-ended rough-and-tumble of factors, which invites complex argument in a trial court and a virtually inevitable appeal." *Id.*, at 469. "In short, it must give the benefit of any doubt to protecting rather than stifling speech." *Ibid.* These limits were important enough for the Court to repeat them, in response to concerns that its test would be vague:

> [O]ur test affords protection unless an ad is susceptible of *no reasonable interpretation* other than as an appeal to vote for or against a specific candidate. It is why we emphasize that (1) there can be no free-ranging intent-and-effect test; (2) there generally should be no discovery or inquiry into the sort of "contextual" factors highlighted by the FEC and intervenors;[2] (3) discussion of issues cannot be banned merely because the issues might

[1] Parts III and IV of the Court's opinion in *WRTL*, from which the quotations in this letter are drawn, were joined by a plurality of the Court. It is controlling because three Justices would have gone even further and invalidated restrictions even on speech that is the functional equivalent of express advocacy. 551 U.S., at 483–503 (Scalia, J., concurring in part and concurring in the judgment). See *Marks v. United States*, 430 U.S. 188, 193 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.").

[2] The FEC, in its brief, encouraged the Supreme Court to consider factors such as "the content of the website" of the speaker, the "timing of the advertisements," whether the speaker "had frequently and explicitly opposed [a particular officeholder's] reelection effort through other communications." Brief for Appellant Federal

> be relevant to an election; and (4) in a debatable case, the tie is resolved in favor of protecting speech.

Id., at 474 n.7.

Following *WRTL*, the FEC adopted a regulation to determine whether an advertisement was the functional equivalent of express advocacy, and came up with a two-part, eleven-factor balancing test. 11 C.F.R. §114.15. That rule enumerated "indicia of express advocacy" such as whether an advertisement mentioned "any election, candidacy, political party," or "opposing candidate"; whether it "urges the public to contact the candidate"; whether it takes "a position on any candidate's or officeholder's character"; etc. *Ibid.* See also Notice of Proposed Rulemaking, Electioneering Communications, 72 Fed. Reg. 50261 (FEC's proposal for interpreting Wisconsin Right to Life by including forty banned speech examples including Rocky the prizefighter); Explanation and Justification for Electioneering Communications, 72 Fed. Reg. 72899 (describing an elaborate two-prong, eleven-factor electioneering communications standard, but professing fealty to *WRTL*'s disapproval of an "open-ended rough-and-tumble" of factors).

In *Citizens United v. FEC*, the Supreme Court soundly rejected the FEC's approach. "As a practical matter … given the complexity of the regulations," any "speaker who wants to avoid threats of criminal liability and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak," rendering these open-ended factor-based tests "the equivalent of prior restraint by giving the FEC power analogous to licensing laws … of the sort that the First Amendment was drawn to prohibit." 558 U.S. 310, 335 (2010). "That," said the Court, "is precisely what *WRTL* sought to avoid" when it rejected "the open-ended rough-and-tumble of factors" that "invites complex argument in a trial court." *Id.*, at 336.

In the wake of all of this, many States (including Arizona) have enacted regulations on communications that are either express advocacy (as *Buckley* used that term) or the functional equivalent thereof (as *WRTL* used *that* term). But those laws were not enacted in a vacuum, and the words they use to define their reach are borrowed from elsewhere. As always, "if a word is obviously transplanted from another legal source … it brings the old soil with it." *Sekhar v. United States*, 133 S. Ct. 2720, 2724 (2013) (quoting Frankfurter, Some Reflections on the

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(continued…)

Election Commission, *FEC v. Wisconsin Right to Life*, No. 06-969 (S. Ct. Feb. 23, 2007), at 43–48. Although the Supreme Court rejected those factors, they bear a striking similarity to what the Secretary of State used here, such as reliance on a VSA press release.

Reading of Statutes, 47 Colum. L. Rev. 527, 537 (1947)). With the old soil now thoroughly tilled, we turn to the meaning of Arizona's law.

II. "What Difference?" does not constitute express advocacy under Arizona law

The most straightforward reason that the Commission should take no action on the complaint is that, under the plain terms of Arizona law, "What Difference?" does not constitute express advocacy or the functional equivalent thereof.

Arizona law defines express advocacy as a communication that either (1) uses certain *Buckley*-style explicit exhortations (such as "vote for") or (2) "that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates," a standard plainly drawn from *WRTL*. A.R.S. §16-901.01(A). Classification of speech as express advocacy (and thus as an independent expenditure) has several important consequences under Arizona law. A group that engages in express advocacy must notify the Secretary of State by filing a report. A.R.S. §16-914.02(A)–(B). That report must identify the "names, occupations, employers and amount contributed by each of the three contributors that contributed the most money within the preceding six months." A.R.S. §16-915(F)(5). In addition, under Arizona law, a "political committee" includes a "committee organized for the purpose of making independent expenditures." A.R.S. §16-901(19)(f). Classification as a "political committee," in turn, requires a group to file a regular campaign finance report, A.R.S. §16-913, which must include (among other things) a list of individuals that have made contributions exceeding $50, A.R.S. §16-915(A)(3)(a). The express-advocacy classification is, therefore, extraordinarily important (and, as explained below, has implications for the constitutionality of Arizona's scheme).

A. The statute's plain text indicates that "What Difference?" is not express advocacy

Under the plain language of the Arizona statute, "What Difference?" is not express advocacy. First, it does not use any "phrase such as 'vote for,' 'elect,' 'reelect,' 'support,' 'endorse,' 'cast your ballot for,' '(name of candidate) in (year),' '(name of candidate) for (office),' 'vote against,' 'defeat,' 'reject' or a campaign slogan." A.R.S. §16-901.01(A)(1). That is the first, principal test for express advocacy under Arizona law. This is not a list of magic words—the list of phrases is introduced with "such as," and so an advertisement that encouraged voters (for example) to "on election day, pull the lever for _____" would surely count. But it is a closely circumscribed list of examples, designed to capture truly *express* advocacy. "What Difference?" contains nothing of the sort. There is no explicit campaign exhortation, and no one has argued otherwise.

The advertisement, moreover, can be given a "reasonable meaning other than to advocate the election or defeat of the candidate." A.R.S. §16-901.01(A)(2). VSA does not dispute, to be clear, that the ad was a "general public communication ... in a broadcast medium," that it identified clearly Christine Jones (who was a "candidate[]"), and that it was aired in "the electorate of that candidate." A.R.S. §16-901.01(A)(2). But that is not enough, under Arizona law, for an advertisement to qualify as express advocacy. The language of the communication must *also* be susceptible of "*no reasonable meaning* other than to advocate the election or defeat of the candidate." A.R.S. §16-901.01(A)(2) (emphasis added).

One reasonable interpretation of "What Difference?"—indeed, the correct one—is that Secretary Clinton's response to the Benghazi attacks was inadequate, and that Jones was wrong when she praised Secretary Clinton afterward. A reasonable listener might also or alternatively understand the advertisement as (for example) encouragement for Jones herself to reconsider her praise of Secretary Clinton, or as a statement that the lives lost in the Benghazi attack would not soon be forgotten, or as a call to further action by the public regarding Benghazi or national security issues generally. A particularly reasonable interpretation of the advertisement is that it is mainly a criticism of *Secretary Clinton*, and (perhaps) an attempt to discourage others from praising her as Jones did. These and many other interpretations of the advertisement are all reasonable.[3]

To be sure, the Arizona statute directs the consideration of various "factors," giving as examples "the presentation of the candidate(s) in a favorable or unfavorable light," the "targeting, placement or timing of the communication," and the "inclusion of statements of the candidate(s) or opponents." A.R.S. §16-901.01(A)(2). As explained below, these "factors" (if treated as the Secretary of State's reasonable-cause finding suggests) bear a striking resemblance to the sort of open-ended, free-form, rough-and-tumble guidelines that the Supreme Court has repeatedly declared unacceptable.

Even on their own terms, however, the identified "factors" indicate that VSA's advertisement was *not* express advocacy. The advertisement does not identify Jones as a candidate for any office. It does not identify the office for which she was a candidate. It does not include any statements of opponents, or identify any such opponents. It discusses another

[3] The Secretary of State's reasonable-cause determination actually recognized that "at least some" of these interpretations were "potentially reasonable." Reasonable Cause Finding 8. That should have been the end of the matter. Inexplicably, it was not, because in the eyes of the Secretary of State, "the same could [have been] said" about an advertisement at issue in *Committee for Justice & Fairness v. Arizona Secretary of State's Office*, 235 Ariz. 347 (App. 2014). But this matter concerns the ad run by VSA, and one sponsored by the Committee for Justice & Fairness. The ways in which *CJF* is distinguishable from the present circumstances and also wrongly reasoned are discussed below.

person (Secretary Clinton), who was not a candidate for any office at the time, in substantially equal measure. It was aired months before the election. And it does not urge listeners to do anything other than contemplate whether, on the Benghazi issue, they agree with Jones' praise for Secretary Clinton. That Jones happened to be running for governor does not mean that all public discussion of issues on which she had taken a position became "express advocacy" under Arizona law.

Put differently: It simply cannot be enough to conclude (as the Secretary of State evidently did) that an advertisement that "presented [a candidate] in an unfavorable light" using that candidate's "previous statements" is express advocacy. Reasonable Cause Finding 6–8. The same could be said of the nearly any discussion of a public issue on which people disagree.

Candidates for public office are often "intimately tied to public issues involving legislative proposals and governmental actions," and discussion of public issues will therefore (in a great many cases) present a candidate in an unfavorable light using that candidate's prior statements. *Buckley v. Valeo*, 424 U.S. 1, 42 (1976). But as the Supreme Court has made clear time and time again, that does not mean that all discussion of public issues constitutes express advocacy. To the extent that the Secretary of State's reasonable-cause determination concluded otherwise, it was mistaken. If that is what the "factors" enumerated in Arizona law requires, then they are unconstitutional, as discussed below.

The Secretary of State's reasonable-cause letter also noted the timing of the advertisement—specifically (at 7–8) that it "aired within 90 days" of the primary election. Under the norms of election law, however, 90 days is a *very* long time before an election. (In August 1988, Michael Dukakis was seven points ahead in the polls.) That is why, under federal law, speech is only a regulated "electioneering communication" if it airs within 30 days of a primary election. 11 C.F.R. §100.29(a)(2). And that is why, under other provisions of Arizona law, if a group makes even a true "independent expenditure"—that is, one containing express advocacy—more than "sixty days" before election day, there is no obligation (as there is otherwise) to send "a copy of the campaign literature or advertisement to each candidate named or otherwise referred to in the literature or advertisement." A.R.S. §16-917(A). The Secretary of State observed (at 7) that the first of these rules is merely a "policy choice under FEC regulations." That is true, but the policy was made for a reason—as explained above, a lot can change in 90 days. Not even the FEC (not, historically, an organization that is gun-shy about its powers) believes, as the Secretary of State appears to, that it is probative that an ad merely "runs *in an election year*." Reasonable Cause Finding 7 n.7 (emphasis added). Given that there are regularly scheduled federal and state elections every two years, and given that Phoenix and Tucson hold their municipal elections in off years, there will not be many years that are not "election years" for a substantial majority of Arizonans.

By disregarding the text of the advertisement and focusing extensively on contextual factors (such as the timing of the advertisement, the other goals of the group, etc.), the Secretary of State has effectively rewritten the statute. The statute, as discussed above, calls for an evaluation of the *advertisement's* character. See A.R.S. §16-901.01(A) (standard is whether the speech itself "can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates"). But in the Secretary of State's telling, *what the advertisement says* was, more or less, the least-important thing. See Reasonable Cause Finding 6–8 (emphasizing factors such as the timing of the advertisement, what was known to be the speaker's position on other questions, etc.). In particular, by emphasizing the likely effect of the advertisement on a hypothesized "reasonable" listener, the Secretary of State committed the precise error that the Fourth Circuit rejected in *Virginia Society for Human Life*. See 263 F.3d, at 391 (inappropriate to "shift[] determination of what is 'express advocacy' away from the words in and of themselves to the unpredictability of audience interpretation"), and Chief Justice Roberts forbade in *WRTL*.

B. The Court of Appeals' Decision in Committee for Justice & Fairness *is Distinguishable on Its Facts*

The Secretary of State's statutory analysis also relied extensively on an analogy to the facts of *Committee for Justice & Fairness v. Arizona Secretary of State's Office*, 235 Ariz. 347, 357 (App. Div. 2014) ("*CFJ*"). See Reasonable Cause Finding 8–9. As discussed below, that case's reasoning is almost certainly wrong, because it cannot be squared with the Supreme Court's pronouncements in this area—as even the Secretary of State recognized. See Reasonable Cause Finding 11 n.11 (noting the "quixotic[]" inconsistency of *CFJ* with Supreme Court case law). Moreover, *CJF* is an intermediate appellate decision that, thus far, stands alone, and its analysis has never been endorsed by the Supreme Court of Arizona or any federal court. The wisest course is therefore to give *CFJ* no weight in your office's enforcement decision.[4]

But even if *CFJ* were correctly decided, it is distinguishable on its facts. The advertisement in *CFJ* concerned Tom Horne, then one of two candidates to be Attorney General. It discussed a vote Horne had made against increasing penalties for statutory rape, and a vote to reinstate a teacher who had been removed for viewing pornography at work. 235 Ariz., at 349. That is already rather different than "What Difference?": the *CFJ* ad criticized Horne's actions in two different jobs (as a member of a legislature and as an official responsible for schools), and on two issues that related to one another only in the most general sense. "What Difference?", by contrast, discusses a single issue in detail: the Benghazi attacks, and Jones' praise for Secretary

[4] Critically, *CFJ* was decided *after* VSA ran its ad, and thus cannot provide the sort of prior notice demanded by both fundamental due process and the First Amendment. See *Near v. Minnesota*, 283 U.S. 697 (1931); *Freedman v. Maryland*, 380 U.S. 51 (1965).

Clinton afterward. There is an (arguable) case to be made that the *CFJ* advertisement was susceptible of no reasonable interpretation other than as a sole attack on the candidate Tom Horne.

Additionally, as far as the decision reveals, the *CFJ* advertisement discussed only Horne. 235 Ariz., at 349. But "What Difference?" discusses Secretary Clinton in substantially equal measure, and is first and foremost an attempt to associate Jones with Clinton. Of course, there is a substantial portion of the population that would regard that association *as a good thing*—after all, Jones herself praised Clinton, and many agree with that praise. It is only by importing contextual information about VSA's other alleged goals, as the Secretary of State did, that one can conclude that the association was meant to be an exhortation to vote against Jones. On its face, however, "Christine Jones believes that Hillary Clinton is a capable, respected leader" is simply a statement that will cause some to increase their esteem of Jones and others to decrease it. By contrast, the suggestion (as in *CFJ*) that someone in favor of lenient penalties for rape and teachers viewing pornography in school is plainly not a genuine invitation to debate the finer points of penology or education policy, any more than the infamous Bill Yellowtail ad—in which Yellowtail was accused of abusing his wife, being a convicted felon, and missing child support payments—was "designed purely to discuss the issue of family values." *McConnell*, 540 U.S., at 194 n.78. But even then, the Bill Yellowtail ad was not considered express advocacy in the eyes of either Congress or the Supreme Court, but instead was an example of a communication that was beyond the reach of the test.

Finally, the *CFJ* advertisement identified Horne's current office, asked voters to contact him, and claimed explicitly that he should be told to "protect children, not people who harm them." 235 Ariz., at 349. The ad in question here contained no such exhortations. That is why the Secretary of State focuses so much on "contextual factors" like the timing of the advertisement, VSA's other positions beyond the ad, etc.—and not what even the *CFJ* court evaluated when it asked whether there were "explicit *words* of advocacy." *Id.*, at 355 n.12 (quoting *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1098 (9th Cir. 2003)). All "What Difference?" asks listeners to do is *contemplate the issue*—which is what any issue ad must by definition do. (If "go on, think about it" is express advocacy, everything is.) The Secretary of State was therefore wrong to conclude that the facts of *CFJ* could not be, in principle, distinguished from the situation here.

The complaint is therefore meritless as a matter of black-letter Arizona law. Your office need go no further to conclude that no further action should be taken.

III. "What Difference?" cannot, consistent with the First Amendment, be treated as express advocacy

If Arizona's statute treated "What Difference?" as express advocacy, however, then that law would be infirm under the First Amendment. First and foremost, that is a reason not to interpret Arizona's law as the Secretary of State did: when "a statute is reasonably susceptible of two interpretations, by one of which it is unconstitutional and by the other valid," one should "prefer[] the meaning that preserves to the meaning that destroys." *Panama Refining Co. v. Ryan*, 293 U.S. 388, 439 (1935) (Cardozo, J., dissenting).[5] By contrast, the Secretary of State's reasonable-cause determination stated (at 9) (and rather shockingly) that it *did not matter* whether the Arizona law was "*sufficiently protective of First Amendment speech or not*." It matters a great deal: any reading of the Arizona law that is not sufficiently protective of First Amendment speech should be rejected so long as there is a reasonable interpretation of the law that *is* sufficiently protective.

Moreover, quite apart from how courts have interpreted a law, your office is *required* to independently exercise its discretion not to enforce that law in a way that would call its validity into question: "validly conferred discretionary executive authority is properly excised ... to avoid serious constitutional doubt." *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2259 (2013). In other words, it is no answer to say that a court has validated a practice or interpretation of a law in the abstract: it is an abuse of discretion, *in and of itself*, for an administrator to fail to consider "serious constitutional doubt." *Id.*, at 2259.[6] See also *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988) ("where an otherwise acceptable construction of a statute would raise serious constitutional problems," the statute should be construed by executive officers "to avoid such problems unless such construction is plainly contrary to the intent of Congress"). Relatedly,

[5] This is especially true here, where the express-advocacy tests announced by the Supreme Court are plainly the ones on which Arizona law is based. See *Committee for Justice & Fairness v. Arizona Secretary of State's Office*, 235 Ariz. 347, 357 (App. 2014) ("The test provided in A.R.S. § 16–901.01(A)(2)(a) is *certainly no broader* than [the Supreme Court's] functional equivalent test") (emphasis added).

[6] Similarly, the Secretary of State incorrectly assumed that CJS has foreclosed any discussion of the constitutionality of Arizona law, either on its face or as-applied. This same mistake was made by the Federal Election Commission during the course of the *WRTL* litigation, where they argued that an as-applied challenge to the challenged statute was not allowed, as it had already been upheld in *McConnell*. The Supreme Court disagreed in a strongly worded opinion. *WRTL*, 546 U.S. 410 (2006). Thus, even if *CJS* upheld Arizona law, how that law is applied to VSA is subject to constitutional review.

every "executive … Officer[]" in Arizona—including you—is independently "bound by Oath or Affirmation, to support [the] Constitution." U.S. Const., Art. VI, cl. 3. If enforcing a given Arizona law would be insufficiently protective of First Amendment speech in a given set of circumstances, your office is obligated *by that oath* not to do so. "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

A. "What Difference" is Issue Advocacy Under the First Amendment

As discussed above, the line between discussing issues and expressly advocating a candidate's election or defeat is derived from the Supreme Court's campaign-finance decisions, and is required by the First Amendment. Although "the distinction between campaign advocacy and issue advocacy" is not always easy to draw, "the law in this area requires us … to draw such a line," because such a line cannot be vague, and the Supreme Court "has never recognized a compelling interest in regulating ads … that are neither express advocacy nor its functional equivalent." *WRTL*, 551 U.S., at 477.

Under the standards articulated by the Supreme Court, "What Difference?" is plainly issue advocacy. It identifies an issue (the Benghazi attacks), "take[s] a position on the issue" (regarding Secretary Clinton's performance), "exhort[s] the public to adopt that position" (by asking the listener to compare their evaluation of Secretary Clinton with Jones'), and does "not mention an election, candidacy, political party, or challenger." *Id.*, at 471. The ad nowhere uses "express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' [or] 'reject.'" *Buckley*, 424 U.S., at 44 n.52 (1976). And because (as discussed above) it is subject to a "reasonable interpretation other than as an appeal to vote for or against a specific candidate," it is also not the "functional equivalent" of express advocacy. *WRTL*, 551 U.S., at 470. To be sure, the Benghazi issue "may also be pertinent in an election." *Id.*, at 474. That is true of all public issues, however. "At best," this demonstrates that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application." *Ibid.* (quoting *Buckley*, 424 U.S., at 42). But "that is not enough to establish" that speech "can only reasonably be viewed as advocating or opposing a candidate." *Ibid.*

The case law on the express-advocacy test makes it clear that it is an extraordinarily demanding standard. In *FEC v. Furgatch*, for example, the Ninth Circuit considered an ad placed in the *Boston Globe* three days before the 1980 presidential election. 807 F.2d 857 (9th Cir. 1987). It was captioned "Don't let him do it," and criticized President Carter on a wide variety of topics, warning readers of the consequence of giving him "four more years." *Id.*, at 858. The court of appeals nonetheless said that whether "the advertisement expressly advocates

the defeat of Jimmy Carter is a *very close call*." *Id.*, at 861 (emphasis added). The court ultimately concluded that it did, and was therefore subject to regulation and disclosure requirements, because the words "don't let him" are "a command"—they "expressly advocate action of some kind." *Id.*, at 865. If an advertisement run three days before a presidential election urging voters not to "let [the candidate] do it" and have "four more years" presents a "*very close call*," then the advertisement at issue here is, *a fortiori*, nowhere near the line. The advertisement is totally free of the sorts of exhortations that the Ninth Circuit found necessary in *Furgatch*, and was aired nowhere near as close to the election.

A similar contrast emerges with the advertisement at issue in *Citizens United*. That case involved "a feature-length negative advertisement that urges viewers to vote against Senator Clinton for President," which asked explicitly whether she was "the most qualified to hit the ground running if elected President." 558 U.S., at 325, as explicitly said she was unfit to be Commander in Chief.[7] "What Difference?", by contrast, does not mention anything about Jones other than her praise for Secretary Clinton on a specific issue—it does not even say what Jones was running for, much less ask whether she was "the most qualified" for that office. At any rate, "the standard for 'express advocacy' is not whether a communication might somehow be read as campaign-related, or whether such a reading is a reasonable, or perhaps even the most reasonable, interpretation." *In re Americans for Job Security, Inc.*, MUR 5694 & 5910 (F.E.C. April 27, 2009), at 8 (Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn).[8] "What Difference?" is susceptible of a reasonable interpretation other than as an appeal to vote for or against a candidate, and is therefore protected issue advocacy under the First Amendment.

The *WRTL* functional equivalent of express-advocacy standard is also, crucially, "objective"—the results that a speaker may wish for from his issue advocacy are not considered. *Citizens United v. FEC*, 558 U.S. 310, 324 (2010). VSA's "subjective intent in running the ads," whatever it may have been, is simply "irrelevant." *WRTL*, 551 U.S., at 472. See also, *e.g.*, *The Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 552 (4th Cir. 2012) ("subjective intent is … an impermissible consideration"). The question, under the First Amendment, is whether the advertisement *objectively* advocates election or defeat, or has a reasonable meaning other than to

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[7] The movie began "by asking 'could [Senator Clinton] become the first female President in the history of the United States?'" and stated "a vote for Hillary is a vote to continue 20 years of a Bush or Clinton White House."

[8] Moreover, even a reference to "this November" does not convert a communication to express advocacy. See *FEC v. Christian Coalition*, 52 F. Supp. 45, 56-63 (D.D.C. 1997) (communication that said "victory will be ours," and talked about the incumbent "packing . . . in November this year," was not express advocacy; as explained by the court: "Although the implicit message is unmistakable, in explicit terms this is prophecy rather than advocacy," and "through the message is clear, it requires one inferential step too many to be unequivocally considered an explicit directive.").

advocate the election or defeat of the candidate. For the reasons explained above, it does, and that is the end of the matter. It is therefore mistaken to inquire (as the Secretary of State appeared to) as to what the "reasonable purpose" for running an advertisement might be. Reasonable Cause Finding 8. The question is whether an *interpretation of the advertisement* is reasonable, not what the speaker's purposes might have been.

The Supreme Court has also repeatedly held that vague appeals to "'contextual' factors"—such as the timing of the advertisement or the fact that the speaker was known to oppose the election of the candidate in other communications—do *not* render speech "the equivalent of express advocacy." *WRTL*, 551 U.S., at 472. To the contrary, these sorts of "contextual factors ... should seldom play a significant role in the inquiry." *Id,* at 474. That is because a multi-factor "balancing test" to determine what constitutes express advocacy—"the open-ended rough-and-tumble of factors" that invite "complex argument in a trial court"—permits the government "to select what political speech is safe for public consumption by applying ambiguous tests." *Citizens United*, 558 U.S., at 335–36 (quoting *WRTL*, 551 U.S., at 469). To have government officials "pore over each word of a text to see if, in their judgment, it accords with the [multi-factor] test they have promulgated" is "an unprecedented governmental intervention into the realm of speech." *Id.*, at 336.

That is the problem with treating the "factors" in the Arizona statute in the way that the Secretary of State suggests: the First Amendment does not allow the permissibility of political speech to turn on *ad hoc* assessments of that kind. To make matters worse, many of the "factors" relied upon have been specifically rejected as relevant by the Supreme Court. For example, even if one credited the complaint's appeals to the timing of the advertisement, if proximity to an election "were enough to prove that an ad is the functional equivalent of express advocacy," then all such communications would be within the government's power to regulate. *WRTL*, 551 U.S., at 472. The Supreme Court has specifically rejected that conclusion.

Also omitted from the Secretary of State's analysis is any acknowledgement of the four crucial limiting factors that *WRTL* announced. See 551 U.S., at 474 n.7. These are a major moving part of *WRTL*, because they form the principal response to the concurrence (which would have gone even further). The Court emphasized that "there can be *no* free-ranging intent-and-effect test," there should "generally be *no* discovery or inquiry into the sort of 'contextual' factors" of the kind given weight by the Secretary of State, "discussion of issues cannot be banned merely because the issues might be relevant to an election," and—crucially—"in a debatable case, the tie is resolved in favor of protecting speech." *Ibid.*

B. Committee for Justice & Fairness *is Wrongly Decided, and Should Not Be Relied Upon*

In rejecting VSA's constitutional argument, the Secretary of State's reasonable-cause determination relies repeatedly on *Committee for Justice & Fairness v. Arizona Secretary of State's Office*, 235 Ariz. 347 (App. 2014) ("*CJF*"). See Reasonable Cause Finding 8–11. But *CJF* only upheld Arizona's law because it understood the law to be "no broader" than what was approved in *WRTL*. 235 Ariz., at 357. As discussed above, the standards announced in *WRTL* and *Citizens United* would not cover this advertisement.[9] Therefore, per *CJF*, because VSA's ad is beyond the test of *WRTL*, the reporting obligation does not reach the ad.

Moreover, *CJF* is almost certainly wrongly decided—at a bare minimum, it is wrongly reasoned, *as the Secretary of State recognized.* In that office's reasonable-cause determination, *CJF* is described as "problematic," "quixotic[]," and "not so easily applied." Reasonable Cause Finding 11 n.11. Moreover, the reasonable-cause letter explicitly contrasts the controlling opinion in *WRTL* (which "criticized reliance on 'contextual factors'" and noted that "the tie goes to the speaker") with *CJF* (which "left little room for debate, expressly validated the use of contextual factors, and issued no equivalent 'tiebreaker' guidance for close situations"). Reasonable Cause Finding 11 n.11. That is entirely correct, although the Secretary's subsequent disinterest in whether the Arizona statute proscribes protected First Amendment speech is not.

Consider, in particular, this passage from *WRTL*: "Given the standard we have adopted for determining whether an ad is the 'functional equivalent' of express advocacy, contextual factors of the sort invoked by appellants should seldom play a significant role in the inquiry." 551 U.S., at 473–74. There is no way to square that with this, from *CJF*: "Additionally, the mere fact that A.R.S. § 16–901.01(A)(2)(a) identifies certain factors for consideration … does not mean it is inconsistent with *WRTL*." 235 Ariz., at 359. It certainly does: "Evidence of this sort is … beside the point." 551 U.S., at 472. Or consider this, from *WRTL*: Although "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application," where "the First Amendment is

[9] The Secretary of State's remark that "Arizona law and federal constitutional law are consistent with one another *according to CJF*" gets the matter exactly backward. Reasonable Cause Finding 10 (emphasis added). The argument appears to be that *CJF* announced it was consistent with *WRTL* (what would be the alternative?) and, thus, whatever *CJF* blessed is thus that all *WRTL* requires. One might have thought it went without saying that the lines of authority run in the other way, and the idea that an intermediate state court can authoritatively interpret and rewrite binding Supreme Court precedent is only slightly less wrong than *CJF* itself.

implicated, the tie goes to the speaker, not the censor." 551 U.S., at 474. In *CJF*, by contrast, "cases that fall close to the line" are evidently to be treated like any other. 235 Ariz., at 359.

CJF also goes on for pages (as does the Secretary of State's reasonable-cause letter) applying and weighing, in an entirely open-ended fashion, various "factors" under state law. 235 Ariz., at 353–55; Reasonable Cause Finding 6–9. Worst, perhaps, is when a factor (timing) is discussed at length, only to have the discussion conclude: "In the end, [this] is but one discretionary factor to consider." Reasonable Cause Finding 8. That is a recipe for the sort of arbitrary enforcement *Citizens United* forbade. Indeed, it recalls nothing so much as the FEC's now-discredited "indicia of express advocacy" such as whether an advertisement mentioned "any election, candidacy, political party," or "opposing candidate"; whether it "urges the public to contact the candidate"; whether it takes "a position on any candidate's or officeholder's character"; etc. *Ibid.* See also Notice of Proposed Rulemaking, Electioneering Communications, 72 Fed. Reg. 50261 (FEC's proposal for interpreting *WRTL* by including forty banned speech examples including Rocky the prizefighter); Explanation and Justification for Electioneering Communications, 72 Fed. Reg. 72899 (describing the two-prong, eleven-factor electioneering communications standard while honestly claiming to adhere to Chief Justice Roberts' notice that the Commission could not rely on an "open-ended rough-and-tumble" of factors).

The Secretary of State even seemed to recognize this incoherence in a lengthy footnote that describes *CJF* as "problematic to apply," "not so easily applied," "quixotic[]," and leaving "little room for debate"; quotes an entire paragraph from a concurring opinion in *WRTL* that criticized the Supreme Court for not protecting *enough* political speech; and concludes with an exasperated disclaimer that Secretary of State must attempt to apply *CJF* "to the best of her ability." Reasonable Cause Finding 11 n.11. That does not so much damn *CJF* with faint praise as damn it with no praise. And as discussed above, no state official is *obliged* to enforce a law in circumstances that would violate the First Amendment, even if an intermediate state court might bless that mistake.

Nor does it make any difference that the advertisement here would trigger a disclosure requirement rather than an outright ban. As explained above, treating the speech at issue as express advocacy would not just result in a disclosure about the advertisement itself—it raises the chilling threat of VSA *itself* being subject to a requirement to register as a political committee and disclose its donors.[10] But the Supreme Court has always "closely scrutinized disclosure requirements, including requirements governing independent expenditures made to further individuals' political speech." *Davis v. FEC*, 554 U.S. 724, 744 (2008) (striking, *inter alia*,

[10] The Secretary of State disclaimed this possibility, by emphasizing that the requirement turns on whether the entity must be "organized primarily for the purpose of influencing an election," and that VSA did not satisfy this criterion. Reasonable Cause Finding 11 n.10.

disclosure). The Supreme Court has never approved, for example, the disclosure of donors of groups "engaged purely in issue discussion." *Buckley*, 424 U.S., at 79 & n.106. That is because the First Amendment does not permit "independent reporting requirements" on "groups that are not candidates or political committees" unless "they make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate." *Id.*, at 80. Because treating "What Difference?" as express advocacy would arguably trigger that sort of disclosure requirement under Arizona law, such treatment is therefore unconstitutional. See *Massachusetts Citizens for Life v. FEC*, 479 U.S. 238 (1986) (making clear that the non-profit group at issue was not a political committee even though it had engaged in express advocacy). Regardless, VSA lacks such an electoral purpose, and as a non-profit organized under section 501(c)(4) of the Internal Revenue Code, cannot have such a primary purpose.

For the foregoing reasons, no further action should be taken on the complaint in this case.

Respectfully,

Donald F. McGahn II

Counsel, Veterans for a Strong America

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION
MUR 14-027
Veterans for a Strong America
MEMORANDUM ON JURISDICTION

The following memorandum is for the purpose of outlining the Commission's jurisdiction over this Matter. I recommend that the Commission retain jurisdiction over this matter because Veterans for a Strong America is an entity subject to the Clean Elections Act and Rules and did not file an exemption for the 2014 election cycle.

Alternatively, the Commission may choose to terminate the matter.

Addressing the jurisdictional issue now will allow VSA to know the scope of the enforcement issues it is addressing and will ensure that staff has guidance on how to proceed with respect to the Attorney General's Office.

I. Procedural Background

On July 8, 2015, the Arizona Secretary of State's Office made a determination that there was reasonable cause to believe Veterans for a Strong America (VSA) violated A.R.S. § 16-914.02 by failing to file independent expenditure reports for an advertisement. **Exhibit 1.** That determination went to the Attorney General's Office, where it remains. On July 14, 2015, the Commission's Executive Director generated in internal Complaint against VSA (Respondent) alleging that Respondent had violated the independent expenditure reports required by the Act. **Exhibit 2.**[1] On July 20, 2015, Respondent filed a Response arguing the advertisement in question was not subject to independent expenditure reporting requirements because the advertisement was not express advocacy. **Exhibit 3.** Respondent spent about $225,018.00 on the advertisements. **Exhibit 4**. It is an unincorporated association from South Dakota. **Exhibit 5.** This memorandum does not address the merits of the express advocacy issue.

II. Jurisdictional Background

The jurisdictional issues in this matter are a) whether the commission has jurisdiction over VSA and b) whether or not that jurisdiction overlaps with the Attorney General's jurisdiction.

A). The Commission has jurisdiction over the Complaint.

According to the Complaint and the Reasonable Cause Notice, VSA made expenditures against the election of Christine Jones in the 2014 primary elections. ***See*** **Exhibit 1 at 1,**

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[1] The Complaint is limited to A.A.C. R2-20-109 & A.R.S. §§ 16-941(D), -958 reports.

Exhibit 2 at 1. In its response to the Complaint, VSA describes itself as a "non-profit, non-partisan grassroots action organizations, which is organized under Section 501(c)(4) of the Internal Revenue Code." According to the articles of association provided to the Attorney General's Office on September 25, 2015, "The Association is a nonprofit unincorporated association and is not organized for the private gain of any person." **Exhibit 5**.

The Clean Elections Act applies certain reporting requirements to "any person who makes independent expenditures related to a particular office." The Commission's Rules provide that "unless stated otherwise, or having context requiring otherwise, means: A corporation, company, partnership, firm, association or society, as well as a natural person." A.A.C. R2-20-101(21). The Act and Rules provide that failure to file reports required under the Act triggers penalites under A.R.S. § 16-942(B). The Commission has jurisdiction over the Complaint.

B) The Commission's jurisdiction likely does not overlap with the Attorney General's in this matter.

As the Complaint indicates, the Commission has an interest in coordinating with other agencies, including the Attorney General's Office. At this point the Attorney General's Office has not indicated how it will proceed in this matter. However, a review of the record indicates that it is unlikely the Attorney General has authority over this matter or will exercise authority it may have.

First, neither the Attorney General, nor the Secretary of State are involved in enforcing A.R.S. 16-941. Section 16-941 is part of the Clean Elections Act, and the Commission has exclusive enforcement responsibility.

Second, The Reasonable Cause Notice stated that VSA owed reports under A.R.S. 16-914.02, which applies to independent expenditures by corporations, labor organizations, and limited liability companies (LLCs)**.** ***See*** **Exhibit 1 at 12.**[2] However, the record as it stands indicates that VSA is a "nonprofit unincorporated association." **Exhibit 5.** Thus it is reasonable to conclude, at least at this stage, that A.R.S. § 16-914.02 does not apply because the record indicates that VSA is not a corporation, labor organization or LLC.

Finally, the Attorney General's investigation does not appear to encompass an inquiry into whether VSA may have been organized, conducted, or combined as a political committee. Likewise, the Complaint also does not allege that VSA should have filed the reports required of political committees.

[2] Even if A.R.S. 16-914.02 applies, a corporation is only relieved of its obligations under the Act if it submits an exemption form to the Commission. A.A.C. R2-20-109.

Consequently, as a legal matter, based on this record, it would be reasonable to conclude the Attorney General will not ultimately enforce in this matter because the existing record does not establish that VSA is a corporation subject to the requirements of A.R.S. 16-914.02. The Attorney General's Office has not indicated yet how it will proceed, although some movement could occur. Even if the Attorney General does, however, proceed with an enforcement, the Commission's practice allows for a coordinated enforcement or conciliation if the possibility arises.[3]

Conclusion

Because this Complaint clearly alleges a violation of the Clean Elections Act and Rules and because the Attorney General's role appears limited, an actual overlap between the two agencies is unlikely. Even if both the Commission and the Attorney General proceed further, the Commission has previously successfully concluded joint matters with the Attorney General and could attempt to do so here. Because the Complaint alleges a violation of the Clean Elections Act and Rules, I would recommend the Commission exercise its jurisdiction in this matter. If the Commission would prefer to leave resolution of VSA's reporting responsibilities solely up to the Attorney General, it should vote to take no further action on the Complaint and close the matter.

Dated this 17th day of November, 2015.

By: s/Thomas M. Collins

Thomas M. Collins, Executive Director

[3] It is not clear when or if the Attorney General will move forward. However, resolving the matter, including by conciliation, requires that office to reach some conclusion on how to move forward. Given the limited complexity of the facts here, moving toward a resolution may be imminent. The purpose of the memo is advance that goal.

Key Statutory Provisions

A.R.S. § 16-941. D. Notwithstanding any law to the contrary, any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle, with the exception of any expenditure listed in section 16-920 and any independent expenditure by an organization arising from a communication directly to the organization's members, shareholders, employees, affiliated persons and subscribers, shall file reports with the secretary of state in accordance with section 16-958 so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat.

A.R.S. § 16-914.02. A. Any corporation, limited liability company or labor organization that makes cumulative independent expenditures in an attempt to influence the outcome of a andidate election and in at least the following amounts in an election cycle shall register and notify the appropriate filing officer not later than one day after making that expenditure, excluding Saturdays, Sundays and other legal holidays:

1. An aggregate of five thousand dollars or more in one or more statewide races.
2. An aggregate of two thousand five hundred dollars or more in one or more legislative races.
3. One thousand dollars or more in one or more county, city, town or other local races if the one thousand dollars is aggregated in races in a single county, city, town or other local jurisdiction.

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November 18, 2015

Thomas Collins
Arizona Citizens Clean Elections Commission
1616 W. Adams, Suite 110
Phoenix, AZ 85007

Re: CCEC MUR #14-027

Dear Mr. Collins:

We represent Veterans for a Strong America, and write in advance of the Arizona Citizens Clean Elections Commission's meeting on November 19, 2015, concerning this matter. This letter supplements our July 20, 2015 response, and responds to your recent Memorandum on Jurisdiction. For the reasons set forth below, the commission does not have the statutory authority to enforce the reporting requirement of Ariz. Rev. Stat. §16–914.02. In addition, the reporting requirement of Ariz. Rev. Stat. §16–941(D) cannot be enforced by anyone, given the Supreme Court's decision in *Arizona Free Enterprise Club's Freedom PAC v. Bennett*, 131 S. Ct. 2806 (2011). This commission should therefore terminate this matter without further action.

Title 16, Chapter 6 of the Arizona Revised Statutes governs "Campaign Contributions and Expenses." That chapter is divided into two separate articles: Article 1 ("General Provisions") and Article 2 ("Citizens Clean Elections Act"). Article 1 contains a detailed scheme for the regulation of campaign finance and expenditures within Arizona, the requirements of which are enforced by the Secretary of State (in coordination with the Attorney General, County Attorney, and City Attorney). Ariz. Rev. Stat. §16–924. One part of Article 1's scheme is a requirement to report independent expenditures. Ariz. Rev. Stat. §16–914.02. That requirement is accompanied by an extensive regulatory structure specifying (for example) what an independent expenditure is, Ariz. Rev. Stat. §16–901(14), and what it means to expressly advocate election or defeat, Ariz. Rev. Stat. §16–901.01.

Article 2, by contrast, was created by Proposition 200, an initiative measure approved by the voters of Arizona in 1998. That article creates the commission, Ariz. Rev. Stat. §16–955, and defines the boundaries of its enforcement authority. If the commission "finds that there is reason to believe that a person has violated any provision *of this article*"—that is, Article 2—then it may initiate enforcement proceedings as further defined by statute. Ariz. Rev. Stat. §16–957(A) (emphasis added). This commission therefore has no authority to enforce the general

campaign finance requirements contained in Article 1, such as its requirement to report independent expenditures.[1]

The only independent-expenditure reporting required by Article 2 is contained in Ariz. Rev. Stat. §16–941(D), which provides that "any person who makes independent expenditures … cumulatively exceeding five hundred dollars in an election cycle" shall "file reports with the secretary of state," identifying "the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat." The purpose for this requirement, however, was to enable the now-defunct public financing system created by Article 2, under which "a publicly financed candidate" received "roughly one dollar for every dollar spent" by "independent expenditure groups to support the privately financed candidate, or to oppose the publicly financed candidate." *Arizona Free Enterprise Club's Freedom PAC v. Bennett*, 131 S. Ct. 2806, 2813 (2011).

That Article 2's reporting requirement was intended to enable the matching-funds system is obvious from the text of the statute. The matching-funds system provided that whenever "a *report is filed*" indicating that a non-publicly-financed candidate had "made expenditures" (including independent expenditures) in excess of certain amounts, the commission was to "immediately pay … an amount equal" to that expenditure to the opposing candidate ("less six per cent"). Ariz. Rev. Stat. §16–952(A) (2010) (emphasis added). The reports in question were not even supposed to be filed with the commission—they were to be filed with the Secretary of State, which would then provide them to the commission to enable the disbursement of funds. Ariz. Rev. Stat. §16–941(D). This confirms that the statute was not intended to give this commission oversight authority over independent expenditures; rather, the point was to provide the information required such that this commission could provide matching funds.

The situation is therefore analogous to the reporting requirements invalidated by the Supreme Court in *Davis v. Federal Elections Commission*, 554 U.S. 724 (2008). *Davis* invalidated the so-called "Millionaires' Amendment" of the Bipartisan Campaign Reform Act (BCRA), under which a "non-self-financing candidate" could "receive individual contributions at treble the normal limit" when his opponent's "expenditure of personal funds" exceeded a certain amount. *Id.*, at 729. To enable that rule to function, BCRA required "self-financing candidates" to make certain "disclosures," including the "date and amount of each expenditure from personal funds." *Id.*, at 730. Once the Millionaires' Amendment was invalidated, however, the disclosure requirements—which "were designed to implement" that amendment—were also invalid, because the "burden imposed" by them "[could not] be justified." *Id.*, at 744. Because

[1] Although your office's memorandum regarding jurisdiction discusses the Attorney General's enforcement authority at some length, the Attorney General's exercise of discretion cannot grant this commission any jurisdiction that it would not otherwise have. Similarly, the Arizona legislature's decision not to make unincorporated associations subject to Article 1 cannot enlarge this commission's authority under Article 2.

"compelled disclosure, in itself, can seriously infringe on privacy of association and belief," disclosure requirements must have a "relevant correlation" to some strong government interest—and with the Millionaires' Amendment invalid, the interest that could justify its corresponding disclosure requirement disappeared, and the Court struck those requirements as well.

That is exactly the situation here. *Bennett* invalidated the system of "matching funds" that were triggered by "the expenditures of independent groups." 131 S. Ct., at 2814. But just as in *Davis*, "disclosure requirements" that are "designed to implement" a scheme that is unconstitutional are, themselves, unconstitutional. 554 U.S., at 744. Article 2's reporting requirements therefore cannot, consistent with *Davis*, be enforced by this commission. And the Supreme Court has made clear that agencies such as the commission must refrain from actions that are constitutionally doubtful, and should avoid such issues wherever possible. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2259 (2013) ("validly conferred discretionary executive authority is properly exercised . . . to avoid serious constitutional doubt"). There being no other source of this commission's jurisdiction over the alleged independent expenditure here, the commission should terminate this matter without further action.

Respectfully submitted,

Donald F. McGahn II
Counsel, Veterans for Strong America

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September 25, 2015

VIA E-MAIL AND REGULAR MAIL

Jim Driscoll-MacEachron
Assistant Attorney General
Office of the Arizona Attorney General
Solicitor General's Office

Re: Veterans for a Strong American Request for Information

Dear Mr. Driscoll-MacEachron:

This responds to your letter dated September 11, 2015, regarding our client, Veterans for a Strong America. As you know, we have asserted throughout this process that "What Difference?" is protected issue advocacy under both Arizona law and the First Amendment. We continue to maintain that, and we urge your office to reach that conclusion as well. Without waiving any defenses, objections, consenting to jurisdiction, or otherwise forfeiting any legal argument that our client may have, we provide the following responses:

1. Veterans for a Strong America is a South Dakota unincorporated association, and enclosed are its Articles of Association.

2. Veterans for a Strong America is the entity that paid for the television advertisement referenced in your letter, and it cost $225,018.00 to air the ad.

Thank you for your attention to this matter.

Very truly yours,

Donald F. McGahn II

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113

TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3748
DMCGAHN@JONESDAY.COM

March 18, 2016

VIA E-MAIL AND REGULAR MAIL

Jim Driscoll-MacEachron
Assistant Attorney General
Solicitor General's Office
Office of the Arizona Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926

Re: Veterans for a Strong America – March 4, 2016 letter

Dear Mr. Driscoll-MacEachron:

This responds to your letter dated March 4, 2016, regarding our client, Veterans for a Strong America. Your letter requests additional information. Enclosed please find documents responsive to your request.

I trust that this addresses your questions. Please do not hesitate to contact me with additional questions or concerns.

Very truly yours,

Donald F. McGahn II

Wells Fargo Simple Business Checking

WELLS FARGO

VETERANS FOR A STRONG AMERICA
7005 S MUSTANG AVE
SIOUX FALLS SD 57108-4120

Questions?

Available by phone 24 hours a day, 7 days a week:
1-800-CALL-WELLS (1-800-225-5935)
TTY: 1-800-877-4833
En español: 1-877-337-7454

Online: wellsfargo.com/biz

Write: Wells Fargo Bank, N.A. (083)
P.O. Box 6995
Portland, OR 97228-6995

Your Business and Wells Fargo

Wells Fargo Works for Small Business website
The Wells Fargo Works site offers free access to business information and advice through videos, articles, and other small business resources. This site offers objective information from industry experts, best practices from real business owners, as well as numerous Wells Fargo solutions that can help you run your business. Learn more about Wells Fargo Works at wellsfargoworks.com

Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wellsfargo.com/biz or call the number above if you have questions or if you would like to add new services.

Business Online Banking	☑
Online Statements	☑
Business Bill Pay	☑
Business Spending Report	☑
Overdraft Protection	☐

IMPORTANT ACCOUNT INFORMATION

Enhancements coming to your transaction descriptions including cash back detail
Over the next few months, you will notice changes to the descriptions for debit, ATM or prepaid card transactions. These enhancements provide more detail about your transactions, and include new descriptions for purchases with cash back. For debit, ATM, or prepaid card merchant purchases with a request for cash back, the transaction description will include the words "cash" or "cash back," and may include the dollar amount of cash requested.

Activity summary

Beginning balance on 8/1	$29,946.61
Deposits/Credits	63.21
Withdrawals/Debits	- 29,183.17
Ending balance on 8/31	**$826.65**
Average ledger balance this period	$8,762.05

Account number: **6758306218**
VETERANS FOR A STRONG AMERICA
South Dakota account terms and conditions apply

For Direct Deposit use
Routing Number (RTN): 091400046

For Wire Transfers use
Routing Number (RTN): 121000248

WELLS FARGO

Overdraft Protection

This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.

Transaction history

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
8/4		Campaign Service Vendorpay July 2014	63.21		30,009.82
8/6		Wire Trans Svc Charge - Sequence: 140806064102 Srf# 0005558218709577 Trn#140806064102 Rfb#		30.00	
8/6		WT Seq#64102 DC London, Inc. /Bnf=DC London, Inc. Srf# 0005558218709577 Trn#140806064102 Rfb#		17,000.00	
8/6		Online Transfer Ref #Ibexqqhtm8 to Furniture Outlets USA Xxxxxxxxxxxx1470 on 08/06/14		35.92	
8/6		Withdrawal Made In A Branch/Store		3,881.00	9,062.90
8/11		Online Transfer to Arends Law P.C. Small Business Checking xxxxxx0290 Ref #Ibettq5D94 on 08/11/14		50.00	9,012.90
8/12		Online Transfer to Veterans for a Strong Am Ref #Ibe8Gfbs5V Business Checking Via Mobile		200.00	8,812.90
8/13		Check Crd Purchase 08/12 Radioshack Cor0016 Sioux Falls SD 425908xxxxxx1391 464224616123560 ?McC=5732		19.07	
8/13		Check Crd Purchase 08/12 Qdoba Mexican Gril Sioux Falls SD 425908xxxxxx1391 304224626302456 ?McC=5814		10.04	
8/13		Online Transfer to Arends J Ref #Iben2Mhzr3 Checking Reimbursement Expenses		200.00	8,583.79
8/14		Check Crd Purchase 08/13 Bagel Boy MN Ave Sioux Falls SD 425908xxxxxx1391 304225512686221 ?McC=5814		4.16	
8/14		Check Crd Purchase 08/13 Hyvee 1638 Sioux F Sioux Falls SD 425908xxxxxx1391 284225758935449 ?McC=5411		9.80	
8/14		Check Crd Purchase 08/13 Hyvee Sioux Falls Sioux Falls SD 425908xxxxxx1391 004225761901696 ?McC=5541		2.10	8,567.73
8/15		Check Crd Purchase 08/14 Hyvee Sioux Falls Sioux Falls SD 425908xxxxxx1391 004226473320210 ?McC=5541		2.32	
8/15		Online Transfer to Arends Law P.C. Ref #Ibettrg2Lt Small Business Checking Expense Reimbursement		110.00	
8/15		Online Transfer to Enduring Freedom Investm Ref #Ibexqszy8Q Business Checking Lease Payment		1,100.00	
8/15		Online Transfer to Arends J Ref #Ibe5Kf2Kj5 Checking Expense Reimbursement		1,200.00	
8/15		Online Transfer to Arends J Ref #Ibek5Lzy8S Checking Lease Payment		2,000.00	4,155.41
8/18		Check Crd Purchase 08/14 Subway 0037 Sioux Falls SD 425908xxxxxx1391 584226595314017 ?McC=5814		7.17	
8/18		Check Crd Purchase 08/14 Tinner's Bar & Gri Sioux Falls SD 425908xxxxxx1391 384227009225232 ?McC=5812		72.08	
8/18		Check Crd Purchase 08/14 Dairy Queen #41859 Sioux Falls SD 425908xxxxxx1391 384227093501344 ?McC=5814		11.20	
8/18		Check Crd Purchase 08/15 Bagel Boy MN Ave Sioux Falls SD 425908xxxxxx1391 304227472669132 ?McC=5814		4.16	
8/18		Check Crd Purchase 08/15 Hardrock - Anthem 800-950-1292 IA 425908xxxxxx1391 584227608604239 ?McC=7922		133.76	
8/18		Check Crd Purchase 08/15 Wix.Com 800-600-09 800-6000949 NY 425908xxxxxx1391 304225721502885 ?McC=5968		24.85	
8/18		Check Crd Purchase 08/15 Pilot Sioux Falls SD 425908xxxxxx1391 304227791393840 ?McC=5542		19.64	
8/18		Check Crd Purchase 08/15 Cenex Zip Tr0704 Brookings SD 425908xxxxxx1391 284228026740666 ?McC=5542		105.50	
8/18		Check Crd Purchase 08/15 Bravo's Brookings SD 425908xxxxxx1391 384228094111080 ?McC=5812		141.93	
8/18		Check Crd Purchase 08/16 Hy Vee 1632 Sioux Falls SD 425908xxxxxx1391 164228534380552 ?McC=5411		4.56	

WELLS FARGO

Transaction history (continued)

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
8/18		Check Crd Purchase 08/16 Nybergs Ace Hardwa Sioux Falls SD 425908xxxxxx1391 384228722948763 ?McC=5251		21.91	
8/18		Check Crd Purchase 08/16 Hy Vee 1631 Sioux Falls SD 425908xxxxxx1391 284228830632748 ?McC=5411		34.99	
8/18		Check Crd Purchase 08/16 Hy Vee 1631 Sioux Falls SD 425908xxxxxx1391 284228834634936 ?McC=5411		2.68	
8/18		Withdrawal Made In A Branch/Store		200.00	3,370.98
8/19		Check Crd Purchase 08/17 Bracco Sioux Falls Sioux Falls SD 425908xxxxxx1391 384229560612895 ?McC=5812		70.50	
8/19		Recur Debit Crd Pmt08/18 Dnh*Godaddy.Com 480-5058855 AZ 425908xxxxxx1391 584230389375411 ?McC=4816		9.99	3,290.49
8/21		Online Transfer to Arends J Checking xxxxxx2353 Ref #Ibe5Kgf4Bs on 08/21/14		0.88	
8/21		Online Transfer to Arends Law P.C. Small Business Checking xxxxxx0290 Ref #Ibettssqkm on 08/21/14		240.40	
8/21		Online Transfer to Enduring Freedom Investm Business Checking xxxxxx5161 Ref #Ibeg8Lttty on 08/21/14		334.16	2,715.05
8/25		Recur Debit Crd Pmt08/22 Dropbox Db.TT/Cchelp CA 425908xxxxxx1391 384234523569053 ?McC=4816		19.99	
8/25		Online Transfer to Arends J Checking xxxxxx2353 Ref #Iben2Q9S6Q on 08/23/14		715.05	1,980.01
8/27		Check Crd Purchase 08/25 American Ai 001748 Bellevue WA 425908xxxxxx1391 164237683420809 ?McC=3001		229.10	
8/27		Check Crd Purchase 08/25 American Ai 001748 Bellevue WA 425908xxxxxx1391 084237693041312 ?McC=3001		280.10	
8/27		Check Crd Purchase 08/25 American Ai 001748 Bellevue WA 425908xxxxxx1391 084237698150316 ?McC=3001		532.60	
8/27		Check Crd Purchase 08/26 Gogoair.Com 877-350-0038 IL 425908xxxxxx1391 304238736179126 ?McC=4816		5.41	
8/27		Check Crd Purchase 08/26 Gogoair.Com 877-350-0038 IL 425908xxxxxx1391 464238755479589 ?McC=4816		5.41	927.39
8/28		Check Crd Purchase 08/26 Int*Via Business L 602-794-2700 AZ 425908xxxxxx1391 164238844154974 ?McC=7399		4.95	
8/28		Check Crd Purchase 08/27 Sq *Hamid Taxi Carpinteria CA 425908xxxxxx1391 584239822547329 ?McC=4121		79.64	
8/28		Check Crd Purchase 08/27 Chipotle 1459 Goleta CA 425908xxxxxx1391 384240127321116 ?McC=5814		16.15	826.65
Ending balance on 8/31					**826.65**
Totals			**$63.21**	**$29,183.17**	

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

Monthly service fee summary

For a complete list of fees and detailed account information, please see the Wells Fargo Fee and Information Schedule and Account Agreement applicable to your account or talk to a banker. Go to wellsfargo.com/feefaq to find answers to common questions about the monthly service fee on your account.

Fee period 08/01/2014 - 08/31/2014	Standard monthly service fee $10.00	You paid $0.00
How to reduce the monthly service fee by $5.00	Minimum required	This fee period
Have any **ONE** of the following account requirements		
· Average ledger balance	$500.00	$8,762.00 ☑

Monthly service fee discount(s) ***(applied when box is checked)***

Online only statements ($5.00 discount) ☑

C1/C1

WELLS FARGO

Account transaction fees summary

Service charge description	*Units used*	*Units included*	*Excess units*	*Service charge per excess units ($)*	*Total service charge ($)*
Transactions	1	50	0	0.50	0.00
Total service charges					**$0.00**

Did you know that you can review your safe deposit box information through Wells Fargo Business Online Banking? Sign on to business online banking at wellsfargo.com/biz and go to your account summary page to review details.

WELLS FARGO

General statement policies for Wells Fargo Bank

■ **Notice:** Wells Fargo Bank, N.A. may furnish information about accounts belonging to individuals, including sole proprietorships, to consumer reporting agencies. If this applies to you, you have the right to dispute the accuracy of information that we have reported by writing to us at: Overdraft Collections and Recovery, P.O. Box 5058, Portland, OR 97208-5058.

You must describe the specific information that is inaccurate or in dispute and the basis for any dispute with supporting documentation. In the case of information that relates to an identity theft, you will need to provide us with an identity theft report.

Account Balance Calculation Worksheet

1. Use the following worksheet to calculate your overall account balance.
2. Go through your register and mark each check, withdrawal, ATM transaction, payment, deposit or other credit listed on your statement. Be sure that your register shows any interest paid into your account and any service charges, automatic payments or ATM transactions withdrawn from your account during this statement period.
3. Use the chart to the right to list any deposits, transfers to your account, outstanding checks, ATM withdrawals, ATM payments or any other withdrawals (including any from previous months) which are listed in your register but not shown on your statement.

ENTER

A. The ending balance shown on your statement . . . . $ ____________

ADD

B. Any deposits listed in your register or transfers into your account which are not shown on your statement.
$ ____________
$ ____________
$ ____________
\+ $ ____________

. . . . TOTAL $ ____________

CALCULATE THE SUBTOTAL

(Add Parts A and B)

. . . . TOTAL $ ____________

SUBTRACT

C. The total outstanding checks and withdrawals from the chart above . . . . - $ ____________

CALCULATE THE ENDING BALANCE

(Part A + Part B - Part C)
This amount should be the same as the current balance shown in your check register . . . . $ ____________

Number	Items Outstanding	Amount
	Total amount $	

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Wells Fargo Simple Business Checking

WELLS FARGO

VETERANS FOR A STRONG AMERICA
7005 S MUSTANG AVE
SIOUX FALLS SD 57108-4120

Questions?

Available by phone 24 hours a day, 7 days a week:
1-800-CALL-WELLS (1-800-225-5935)
TTY: 1-800-877-4833
En español: 1-877-337-7454

Online: wellsfargo.com/biz

Write: Wells Fargo Bank, N.A. (083)
P.O. Box 6995
Portland, OR 97228-6995

Your Business and Wells Fargo

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Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wellsfargo.com/biz or call the number above if you have questions or if you would like to add new services.

Business Online Banking	☑
Online Statements	☑
Business Bill Pay	☑
Business Spending Report	☑
Overdraft Protection	☐

Activity summary

Beginning balance on 7/1	$29,237.86
Deposits/Credits	175,000.00
Withdrawals/Debits	- 174,291.25
Ending balance on 7/31	**$29,946.61**
Average ledger balance this period	$47,127.46

Account number: **6758306218**
VETERANS FOR A STRONG AMERICA
South Dakota account terms and conditions apply

For Direct Deposit use
Routing Number (RTN): 091400046

For Wire Transfers use
Routing Number (RTN): 121000248

Overdraft Protection
This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.

WELLS FARGO

Transaction history

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
7/16		WT Seq#79474 American Encore Inc. /Org=American Encore Srf# IN14071610164501 Trn#140716079474 Rfb# 000000066	100,000.00		
7/16		Wire Trans Svc Charge - Sequence: 140716079474 Srf# IN14071610164501 Trn#140716079474 Rfb# 000000066		15.00	129,222.86
7/17		Withdrawal Made In A Branch/Store		3,962.00	125,260.86
7/18		Wire Trans Svc Charge - Sequence: 140718036929 Srf# 0009464198920555 Trn#140718036929 Rfb#		30.00	
7/18		WT Fed#00445 Branch Banking & T /Ftr/Bnf=Smart Media Group LLC Srf# 0009464198920555 Trn#140718036929 Rfb#		65,045.00	60,185.86
7/21		Recur Debit Crd Pmt07/18 Godaddy.Com 480-5058855 AZ 425908xxxxxx1391 304199441986438 ?McC=4816		9.99	60,175.87
7/22		Wire Trans Svc Charge - Sequence: 140722086445 Srf# 0055258203709595 Trn#140722086445 Rfb#		30.00	
7/22		WT Seq#86445 DC London, Inc. /Bnf=DC London, Inc. Srf# 0055258203709595 Trn#140722086445 Rfb#		4,475.90	55,669.97
7/23		WT Seq115277 American Encore Inc. /Org=American Encore Srf# IN14072313065445 Trn#140723115277 Rfb# 000000068	75,000.00		
7/23		Wire Trans Svc Charge - Sequence: 140723115277 Srf# IN14072313065445 Trn#140723115277 Rfb# 000000068		15.00	
7/23		Recur Debit Crd Pmt07/22 Dropbox Db.TT/Cchelp CA 425908xxxxxx1391 304203523491353 ?McC=4816		19.99	130,634.98
7/25		Wire Trans Svc Charge - Sequence: 140725082503 Srf# 0005558205579336 Trn#140725082503 Rfb#		30.00	
7/25		WT Fed#07417 Jpmorgan Chase Ban /Ftr/Bnf=James R. Foster and Assoc. and Inc. Srf# 0005558205579336 Trn#140725082503 Rfb#		100,558.37	30,046.61
7/31		Recurring Transfer to Veterans for A Strong Business Checking Ref #Ope8G9Sycp xxxxxx6571		100.00	29,946.61
Ending balance on 7/31					**29,946.61**
Totals			**$175,000.00**	**$174,291.25**	

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

Monthly service fee summary

For a complete list of fees and detailed account information, please see the Wells Fargo Fee and Information Schedule and Account Agreement applicable to your account or talk to a banker. Go to wellsfargo.com/feefaq to find answers to common questions about the monthly service fee on your account.

Fee period 07/01/2014 - 07/31/2014	Standard monthly service fee $10.00	You paid $0.00

This is the final period with the fee waived. For the next fee period, you need to meet the requirement(s) to avoid the monthly service fee.

How to reduce the monthly service fee by $5.00	Minimum required	This fee period
Have any **ONE** of the following account requirements		
· Average ledger balance	$500.00	$47,127.00 ☑

Monthly service fee discount(s) ***(applied when box is checked)***

Online only statements ($5.00 discount) ☑

C1/C1

WELLS FARGO

Did you know that you can review your safe deposit box information through Wells Fargo Business Online Banking? Sign on to business online banking at wellsfargo.com/biz and go to your account summary page to review details.

General statement policies for Wells Fargo Bank

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You must describe the specific information that is inaccurate or in dispute and the basis for any dispute with supporting documentation. In the case of information that relates to an identity theft, you will need to provide us with an identity theft report.

Account Balance Calculation Worksheet

1. Use the following worksheet to calculate your overall account balance.
2. Go through your register and mark each check, withdrawal, ATM transaction, payment, deposit or other credit listed on your statement. Be sure that your register shows any interest paid into your account and any service charges, automatic payments or ATM transactions withdrawn from your account during this statement period.
3. Use the chart to the right to list any deposits, transfers to your account, outstanding checks, ATM withdrawals, ATM payments or any other withdrawals (including any from previous months) which are listed in your register but not shown on your statement.

ENTER

A. The ending balance shown on your statement . . . . $ ____________

ADD

B. Any deposits listed in your register or transfers into your account which are not shown on your statement.

$ ____________
$ ____________
$ ____________
+ $ ____________

. . . . TOTAL $ ____________

CALCULATE THE SUBTOTAL

(Add Parts A and B)

. . . . TOTAL $ ____________

SUBTRACT

C. The total outstanding checks and withdrawals from the chart above . . . . - $ ____________

CALCULATE THE ENDING BALANCE

(Part A + Part B - Part C)
This amount should be the same as the current balance shown in your check register . . . . $ ____________

Number	Items Outstanding	Amount

Total amount $ ____________

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Wells Fargo Simple Business Checking

WELLS FARGO

VETERANS FOR A STRONG AMERICA
7005 S MUSTANG AVE
SIOUX FALLS SD 57108-4120

Questions?

Available by phone 24 hours a day, 7 days a week:
1-800-CALL-WELLS (1-800-225-5935)
TTY: 1-800-877-4833
En español: 1-877-337-7454

Online: wellsfargo.com/biz

Write: Wells Fargo Bank, N.A. (083)
P.O. Box 6995
Portland, OR 97228-6995

Your Business and Wells Fargo

Wells Fargo Works for Small Business website
The Wells Fargo Works site offers free access to business information and advice through videos, articles, and other small business resources. This site offers objective information from industry experts, best practices from real business owners, as well as numerous Wells Fargo solutions that can help you run your business. Learn more about Wells Fargo Works at wellsfargoworks.com

Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wellsfargo.com/biz or call the number above if you have questions or if you would like to add new services.

Business Online Banking	☑
Online Statements	☑
Business Bill Pay	☑
Business Spending Report	☑
Overdraft Protection	☐

Activity summary

Beginning balance on 6/1	$8,608.39
Deposits/Credits	100,054.31
Withdrawals/Debits	- 79,424.84
Ending balance on 6/30	**$29,237.86**
Average ledger balance this period	$5,738.16

Account number: **6758306218**
VETERANS FOR A STRONG AMERICA
South Dakota account terms and conditions apply

For Direct Deposit use
Routing Number (RTN): 091400046

For Wire Transfers use
Routing Number (RTN): 121000248

Overdraft Protection
This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.

WELLS FARGO

Transaction history

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
6/2		Recurring Transfer to Veterans for A Strong Business Checking Ref #Opeqwzb7TN xxxxxx6571		100.00	8,508.39
6/3		Wire Trans Svc Charge - Sequence: 140603046940 Srf# 0005558153965210 Trn#140603046940 Rfb#		30.00	
6/3		WT Seq#46940 DC London, Inc. /Bnf=DC London, Inc. Srf# 0005558153965210 Trn#140603046940 Rfb#		7,500.00	978.39
6/4		Campaign Service Vendorpay May 2014	54.31		1,032.70
6/11		Online Transfer to Arends Law P.C. Small Business Checking xxxxxx0290 Ref #Ibe5Jslm46 on 06/11/14		1,000.00	32.70
6/19		Check Crd Purchase 06/18 Godaddy.Com 480-5058855 AZ 425908xxxxxx1391 384169705499119 ?McC=4816		27.15	
6/19		Online Transfer to Arends J Checking xxxxxx2353 Ref #Ibe5Jvrxlx on 06/19/14		32.70	-27.15
6/20		Overdraft Fee for A Transaction Posted on 06/19 $32.70 Online Transfer to Arends J Chec King xxxxxx2353		35.00	-62.15
6/23		Recur Debit Crd Pmt06/22 Dropbox Db.TT/Cchelp CA 425908xxxxxx1391 584173523493144 ?McC=4816		19.99	-82.14
6/24		Overdraft Fee for A Transaction Posted on 06/23 $19.99 Recur Debit Crd Pmt06/22 Dropbox Db.TT/Cchelp CA 425908xxxxxx1391 5841735234931		35.00	-117.14
6/26		WT Seq#81796 American Encore Inc. /Org=American Encore Srf# IN14062610002327 Trn#140626081796 Rfb# 000000061	100,000.00		
6/26		Wire Trans Svc Charge - Sequence: 140626112573 Srf# 0005558177786403 Trn#140626112573 Rfb#		30.00	
6/26		Wire Trans Svc Charge - Sequence: 140626081796 Srf# IN14062610002327 Trn#140626081796 Rfb# 000000061		15.00	
6/26		WT Fed#04609 Branch Banking & T /Ftr/Bnf=Smart Media Group LLC Srf# 0005558177786403 Trn#140626112573 Rfb#		70,000.00	29,837.86
6/27		Online Transfer to Arends J Ref #Ibecc2Vtzf Checking Via Mobile		500.00	29,337.86
6/30		Recurring Transfer to Veterans for A Strong Business Checking Ref #Opecc3Bygr xxxxxx6571		100.00	29,237.86
Ending balance on 6/30					**29,237.86**
Totals			**$100,054.31**	**$79,424.84**	

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

Monthly service fee summary

For a complete list of fees and detailed account information, please see the Wells Fargo Fee and Information Schedule and Account Agreement applicable to your account or talk to a banker. Go to wellsfargo.com/feefaq to find answers to common questions about the monthly service fee on your account.

Fee period 06/01/2014 - 06/30/2014	Standard monthly service fee $10.00	You paid $0.00

Your fee waiver is about to expire. You will need to meet the requirement(s) to avoid the monthly service fee.

How to reduce the monthly service fee by $5.00	Minimum required	This fee period
Have any **ONE** of the following account requirements		
· Average ledger balance	$500.00	$5,738.00 ☑

Monthly service fee discount(s) ***(applied when box is checked)***

Online only statements ($5.00 discount) ☑

C1/C1

WELLS FARGO

Account transaction fees summary

Service charge description	*Units used*	*Units included*	*Excess units*	*Service charge per excess units ($)*	*Total service charge ($)*
Transactions	1	50	0	0.50	0.00
Total service charges					**$0.00**

Did you know that you can review your safe deposit box information through Wells Fargo Business Online Banking? Sign on to business online banking at wellsfargo.com/biz and go to your account summary page to review details.

WELLS FARGO

General statement policies for Wells Fargo Bank

■ **Notice:** Wells Fargo Bank, N.A. may furnish information about accounts belonging to individuals, including sole proprietorships, to consumer reporting agencies. If this applies to you, you have the right to dispute the accuracy of information that we have reported by writing to us at: Overdraft Collections and Recovery, P.O. Box 5058, Portland, OR 97208-5058.

You must describe the specific information that is inaccurate or in dispute and the basis for any dispute with supporting documentation. In the case of information that relates to an identity theft, you will need to provide us with an identity theft report.

Account Balance Calculation Worksheet

1. Use the following worksheet to calculate your overall account balance.
2. Go through your register and mark each check, withdrawal, ATM transaction, payment, deposit or other credit listed on your statement. Be sure that your register shows any interest paid into your account and any service charges, automatic payments or ATM transactions withdrawn from your account during this statement period.
3. Use the chart to the right to list any deposits, transfers to your account, outstanding checks, ATM withdrawals, ATM payments or any other withdrawals (including any from previous months) which are listed in your register but not shown on your statement.

ENTER

A. The ending balance shown on your statement . . . . $ ____________

ADD

B. Any deposits listed in your register or transfers into your account which are not shown on your statement.

$ ____________
$ ____________
$ ____________
+ $ ____________

. . . . TOTAL $ ____________

CALCULATE THE SUBTOTAL

(Add Parts A and B)

. . . . TOTAL $ ____________

SUBTRACT

C. The total outstanding checks and withdrawals from the chart above . . . . - $ ____________

CALCULATE THE ENDING BALANCE

(Part A + Part B - Part C)
This amount should be the same as the current balance shown in your check register . . . . $ ____________

Number	Items Outstanding	Amount

Total amount $ ____________

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Wells Fargo Simple Business Checking

WELLS FARGO

VETERANS FOR A STRONG AMERICA
7005 S MUSTANG AVE
SIOUX FALLS SD 57108-4120

Questions?

Available by phone 24 hours a day, 7 days a week:
1-800-CALL-WELLS (1-800-225-5935)
TTY: 1-800-877-4833
En español: 1-877-337-7454

Online: wellsfargo.com/biz

Write: Wells Fargo Bank, N.A. (083)
P.O. Box 6995
Portland, OR 97228-6995

Your Business and Wells Fargo

The Wells Fargo Works Project is an online video series following five small business owners as they receive help and guidance from Wells Fargo for business goals that range from creating a marketing plan to positioning their business for sale. See how Wells Fargo works for these small businesses and can work for you at wellsfargoworks.com.

Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wellsfargo.com/biz or call the number above if you have questions or if you would like to add new services.

Business Online Banking	☑
Online Statements	☑
Business Bill Pay	☑
Business Spending Report	☑
Overdraft Protection	☐

Activity summary

Beginning balance on 5/1	-$27.99
Deposits/Credits	53,342.34
Withdrawals/Debits	- 44,705.96
Ending balance on 5/31	**$8,608.39**
Average ledger balance this period	$8,241.85

Account number: **6758306218**
VETERANS FOR A STRONG AMERICA
South Dakota account terms and conditions apply

For Direct Deposit use
Routing Number (RTN): 091400046

For Wire Transfers use
Routing Number (RTN): 121000248

Overdraft Protection
This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.

WELLS FARGO

Transaction history

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
5/1		Overdraft Fee for Item $19.99 04/30 Recur Debit Crd Pmt04/29 Dropbox Db.TT/Cchelp CA 425908xxxxxx1391 4641195042037		35.00	-62.99
5/7		Online Transfer From Arends Law P.C. Small Business Checking xxxxxx0290 Ref #Ibetstv6Zy on 05/07/14	62.99		0.00
5/23		WT Fed#00399 M&T Bank /Org=Mentzer Media Services Inc Srf# 140523002069000 Trn#140523041144 Rfb# MT14143000300	53,279.35		
5/23		Wire Trans Svc Charge - Sequence: 140523041144 Srf# 140523002069000 Trn#140523041144 Rfb# MT14143000300		15.00	
5/23		Recur Debit Crd Pmt05/22 Dropbox Db.TT/Cchelp CA 425908xxxxxx1391 584142521089296 ?McC=4816		19.99	
5/23		Online Transfer to Veterans for A Strong Am Business Checking xxxxxx6571 Ref #Ibek4Tkhkr on 05/23/14		24.00	
5/23		Online Transfer to Veterans for A Strong Am Business Market Rate Savings xxxxxx8298 Ref #Ibexq2Kgdp on 05/23/14		11.97	53,208.39
5/27		Wire Trans Svc Charge - Sequence: 140527148650 Srf# 0055258147967039 Trn#140527148650 Rfb#		30.00	
5/27		WT Fed#00514 Branch Banking & T /Ftr/Bnf=Smart Media Group LLC Srf# 0055258147967039 Trn#140527148650 Rfb#		44,570.00	8,608.39
Ending balance on 5/31					**8,608.39**
Totals			**$53,342.34**	**$44,705.96**	

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

Monthly service fee summary

For a complete list of fees and detailed account information, please see the Wells Fargo Fee and Information Schedule and Account Agreement applicable to your account or talk to a banker. Go to wellsfargo.com/feefaq to find answers to common questions about the monthly service fee on your account.

Fee period 05/01/2014 - 05/31/2014	Standard monthly service fee $10.00	You paid $0.00

Your fee waiver is about to expire. You will need to meet the requirement(s) to avoid the monthly service fee.

How to reduce the monthly service fee by $5.00	Minimum required	This fee period
Have any **ONE** of the following account requirements		
· Average ledger balance	$500.00	$8,242.00 ☑

Monthly service fee discount(s) ***(applied when box is checked)***

Online only statements ($5.00 discount) ☑

C1/C1

☐ Did you know that you can review your safe deposit box information through Wells Fargo Business Online Banking? Sign on to business online banking at wellsfargo.com/biz and go to your account summary page to review details.

WELLS FARGO

General statement policies for Wells Fargo Bank

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ENTER

A. The ending balance shown on your statement . . . . $ ____________

ADD

B. Any deposits listed in your register or transfers into your account which are not shown on your statement.

$ ____________
$ ____________
$ ____________
+ $ ____________

. . . . TOTAL $ ____________

CALCULATE THE SUBTOTAL

(Add Parts A and B)

. . . . TOTAL $ ____________

SUBTRACT

C. The total outstanding checks and withdrawals from the chart above . . . . - $ ____________

CALCULATE THE ENDING BALANCE

(Part A + Part B - Part C)
This amount should be the same as the current balance shown in your check register . . . . $ ____________

Number	Items Outstanding	Amount
	Total amount $	

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JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113

TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3748
DMCGAHN@JONESDAY.COM

April 14, 2016

VIA E-MAIL AND REGULAR MAIL

Jim Driscoll-MacEachron, Esquire
Assistant Attorney General
Solicitor General's Office
Office of the Arizona Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926

Re: Veterans for a Strong America – March 30, 2016 letter

Dear Mr. Driscoll-MacEachron:

This responds to your letter dated March 30, 2016, regarding our client, Veterans for a Strong America. Turning to each specific request:

1. Regarding the invoices already provided per our February 16, 2016 letter, those were paid by wire transfer, not check. These wire transfers are reflected on the bank statements already provided with our March 18, 2016 letter. In an effort to be helpful, here is a small chart that attempts to tie bank transfers to invoices:

Invoice	Invoice Date	Amount	Wire Date
Smart Media Group 2817	5/27/14	$44,570.00	5/27/14
DC London 0000599	5/28/14	$7,500.00	6/3/14
DC London 0000600	5/29/14	$324.00	8/6/14
Smart Media Group 2856	6/25/14	$70,000.00	6/26/14
Smart Media Group 2891	7/16/14	$65,045.00	7/18/14

The May 29 invoice was not paid until August, and was a small portion of a much larger transfer for other matters. Also, in responding to your most recent letter, an additional May 27, 2014 invoice was located, and is enclosed.

2. Enclosed please find origination documents for the bank account.

I trust that this addresses your questions. Please do not hesitate to contact me with additional questions or concerns.

Very truly yours,

Donald F. McGahn II

Smart Media Group, LLC
1427 Leslie Avenue
Suite 100
Alexandria, VA 22301

smartmediagroup

Invoice

Invoice #: 2817
Invoice Date: 5/27/2014
Due Date: 5/27/2014
P.O. Number:

Bill To:

Veterans for a Strong America

Client:

Description	Amount
Media:	
Broadcast Flight: 05/28/2014 - 06/10/2014	39,177.60
Wire transfer fee	25.00
Shipping fee	25.00
Media Commissions:	
Media Commission - SMG 3%	1,335.60
Media Commission - DC London 9%	4,006.80

Wire Transfer Information

Bank: Branch Banking and Trust
1717 King Street
Alexandria, VA 22314

Account Name: Smart Media Group LLC
Account No: 5239554018
Routing No: 051404260

Total	$44,570.00
Payments/Credits	$0.00
Balance Due	$44,570.00

:ustomer Record

JOEL A ARENDS

Add (/svp/mod/c...

Checking/Savings Account Detail

CUSTOMER RECORD (/SVP/MOD/CUSTOMERRECORD/151337991523217)

Wells Fargo Simple Business Checking

SOUTH DAKOTA 083

6758306218 | OPENED 11/17/2011 | 4 Years | ACTIVE

(/svp/mod/account/[redacted]/ddaStmtDetail)

None	Click for detail	Stop Pay - No Holds - No Pledges - No	Online 03/31/2016

Balance

View History (/svp/mod/account/DDA/083/6758306218/history)

Ledger Balance:	$1,488.30
Available Balance:	$1,488.30
Average Balance Last 12 Months:	$11,827.20
Insufficient Funds/Overdraft Today:	No
Balance Sweep:	None
Last ACH Direct Deposit:	03/04/2016

Account Relationships

Tax Responsible Customer: VETERANS FOR A STRONG AMERICA (/svp/mod/customerRecord/379304012026313)

Related Accounts & Convenience Services

Linked Debit/ATM Cards

None

Additional Relationships

VETERANS FOR A STRONG AMERICA (/svp/mod/customerRecord/379304012026313) Sole Owner

JOEL A ARENDS (/svp/mod/customerRecord/151337991523217) Signer

Brokerage Settlement Relationships

None

Other

PMA Relationship	No
Relationship Pricing	No

Account Title

Statement/Mailing Name: VETERANS FOR A STRONG AMERICA

Basic Information

Account TIN: EIN | xx-xxx6581 View

Certification: Certified Exempt Corporation

Line of Business: RETAIL BUSINESS

Money Services Business: No

Debit Card Overdraft Service

Debit Card Overdraft Service: Yes

Location Information

AU: 55258

Officer/Portfolio: S1787 GONZALEZ, CATHERINE K 605-330-2453

Location: 6181 SOUTH LOUISE
SOUTH LOUISE OFFICE
PO BOX 5128
SIOUX FALLS, SD 57117-5128

JOEL A ARENDS

Add (/svp/mod/c...

Server: rpvra00a0150/prod_svp_263.1.4_b

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113

TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3748
DMCGAHN@JONESDAY.COM

February 16, 2016

VIA E-MAIL AND REGULAR MAIL

Jim Driscoll-MacEachron
Assistant Attorney General
Solicitor General's Office
Office of the Arizona Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926

Re: Veterans for a Strong America – January 14, 2016 letter

Dear Mr. Driscoll-MacEachron:

This responds to your letter dated January 14, 2016, regarding our client, Veterans for a Strong America. Your letter requests additional information regarding the relationship VETERANSFORASTRONGAMERICA.ORG and Veterans for a Strong America. Turning to each request:

1. Documents demonstrating that VETERANSFORASTRONGAMERICA.ORG, INC., ceased all activity in 2012.

Enclosed are the initial formation documents for Veterans for a Strong America, including the Articles, Bylaws, and meeting minutes. The minutes make clear that Veterans for a Strong America is a new organization, and they specifically reference the prior entity, noting that the new organization "will pick up where the old VSA group left off," and explicitly calls Veterans for a Strong America "a new and different organization." This indicates that the old group was no longer operating or otherwise active.

2. Documents identifying the corporate officers and board of directors for VETERANSFORASTRONGAMERICA.ORG, INC.

Enclosed is the IRS determination letter and application for 501(c)(4) status regarding VETERANSFORASTRONGAMERICA.ORG, INC. Page 3 of the application lists officers and directors.

3. Documents identifying any officers or directors of Veterans for a Strong America not listed on the 2014 bylaws.

See response to request 1, above. No other documents regarding other directors or officers not listed on the 2014 have been located, and are not believed to exist.

4. Any documents showing a relationship between Veterans for a Strong America and VETERANSFORASTRONGAMERICA.ORG, INC. If no such documents exist, please indicate that is the case.

See response to request 1, above. No other responsive documents have been located, and are not believed to exist.

5. Documents showing the name of the organization(s) and/or individual(s) that paid for the expenditures on the advertisements run in Arizona in 2014.

Enclosed please find invoices related to production and placement of the advertising, paid for by Veterans for a Strong America.

Regarding tax returns for the year 2014, neither group has filed returns for 2014. Veterans for a Strong America's initial return is not yet due, and the group plans to file at the appropriate time.

I trust that this addresses your questions. Please do not hesitate to contact me with additional questions or concerns.

Very truly yours,

Donald F. McGahn II

ARTICLES OF ASSOCIATION
OF
VETERANS FOR A STRONG AMERICA, a South Dakota Unincorporated Association

To further common purposes, the Directors agree to organize under these articles of association.

ARTICLE I. NAME

The name of this association is and shall be: Veterans for a Strong America ("VSA").

ARTICLE II. PURPOSES AND POWERS

A. The Association is a nonprofit unincorporated association and is not organized for the private gain of any person. The Association is organized exclusively for mutual benefit purposes as an organization within the meaning of section 501(c)(4) of the Internal Revenue Code of 1986 [26 U.S.C.A. § 501(c)(4)] (or the corresponding section of any future United States internal revenue law) ("the Code"). Notwithstanding any other provision of these articles, the Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of the Association, and the Association shall not carry on any other activities not permitted to be carried on by an organization exempt from federal income taxes under section 501(c)(4) of the Code.

B. Specifically, VSA is organized and shall be operated to promote the common good and general welfare of the citizens of the United States of America through education about issues of public policy, including military, national security, foreign policy and veterans issues as contemplated and permitted by Section 501(c)(4) of the Internal Revenue Code of 1986, and, in connection therewith.

For such purposes and not otherwise, and subject always to the further provision of these Articles, VSA shall have and exercise such powers as are required by and are consistent with the foregoing purposes, including the power to acquire and receive funds and property of every kind and nature whatsoever, whether by purchase, conveyance, lease, gift, grant, bequest, legacy, devise, in trust, or otherwise, and to own, hold, manage, administer, and to make gifts, grants, and contributions of, and to expend, convey, transfer, and dispose of, any and all funds and property and the income therefrom in furtherance of the purposes of the VSA hereinabove set forth, or any of them, and to lease, mortgage, encumber, and use the same, and such other powers which are consistent with the foregoing purposes and which are afforded to VSA by the laws of the state of South Dakota. Provided, however, that all such powers of VSA shall be exercised only so that the operations of VSA shall be exclusively within the contemplation of Section 501(c)(4) of the Internal Revenue Code of 1986; and provided finally, however, that VSA shall not carry on any activity not permitted to be carried on by an association that is exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 as an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986.

ARTICLE III. AGENT FOR SERVICE OF PROCESS

The name and address in the State of South Dakota of this association's initial agent for service of process is:

Arends Law, P.C., P.O. Box 1246, Sioux Falls, SD 57101

ARTICLE IV. TAX-EXEMPT STATUS OF ASSOCIATION

VSA shall not, incidentally or otherwise, afford or pay any pecuniary gain or remuneration to its Directors or Officers, if any, and no part of the net income or net earnings of VSA shall, directly or indirectly, be distributable to or otherwise inure to the benefit of any private individual or member, as such, or any other person having a personal and private interest in the activities of, VSA; provided, however, that VSA may pay reasonable compensation for services rendered and property and supplies furnished to VSA in furtherance of its purposes described in Article II hereof.

Notwithstanding any of the above statements of purposes and powers, this association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this association.

ARTICLE V. BOARD OF DIRECTORS

The Board of Directors shall manage and direct the business and affairs of VSA. The number, qualifications, terms of office, method of appointment or election, powers, authority, and duties of the Directors of VSA, the time and place of their meetings, and such other provisions with respect to them as are not inconsistent with the express provisions of VSA's Articles of Association shall be as specified in the Bylaws of VSA.

ARTICLE VI. NO PERSONAL LIABILITY

Members, Directors, and Officers of VSA shall not be personally liable for the payment of any debts or obligations of VSA of any nature whatsoever, nor shall any of the property of the members, if any, Directors, or Officers be subject to the payment of the debts or obligations of VSA to any extent whatsoever. The liability of the Directors, Officers, and members of the association for monetary damages shall be eliminated to the fullest extent permissible under South Dakota law. The association is authorized to provide indemnification of agents for breach of duty to the association and its members through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by South Dakota law.

ARTICLE VII. DURATION

The duration of this association is perpetual, subject only to the vote of the Board of Directors as set forth in the Bylaws of VSA and Article VIII below.

ARTICLE VIII. DISSOLUTION

VSA may be dissolved in accordance with the laws of the State of South Dakota. Upon dissolution, and after the payment of all liabilities and obligations of VSA and all costs and expenses incurred by VSA in connection with such dissolution, and subject always to the further provisions of this Article VIII, all remaining assets shall be distributed to and among such one or more organizations as are then exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 as organizations described in 501(c)(4) of the Internal Revenue Code of 1986, all in such amounts or proportions as shall be determined by the Board of Directors of VSA, by the affirmative vote of at least a majority of the total number of Directors of VSA. Notwithstanding anything apparently or expressly to the contrary hereinabove contained in this Article VIII, (a) any assets then held by VSA in trust or upon condition or subject to an executory or special limitation, if the condition or limitation occurs by reason of the dissolution of VSA, shall revert or be returned, transferred, or conveyed in accordance with the terms and provisions of such trust, condition, or limitation; and (b) if the dissolution of VSA is required by the laws of the State of South Dakota then in existence to be conducted under court supervision, the dissolution of VSA shall be so conducted, and its assets not described in clause (a) of this sentence shall be transferred or conveyed to such one or more organizations described in the preceding sentence of this Article VIII as the court may determine.

ARTICLE IX. MEMBERS

VSA shall have members and classes of members whom shall have the rights, obligations and privileges from time to time provided in the Bylaws of VSA.

ARTICLE X. BYLAWS

Bylaws will be hereafter adopted. Such bylaws may be amended or repealed, in whole or in part, in the manner they provide, and the amendments to the bylaws shall be binding on all members, including those members who may have voted against them.

ARTICLE XI. REFERENCES

All reference in hereinabove to a particular section of the Internal Revenue Code of 1986 shall mean and include, as now enacted or as hereafter amended, such section and any provision of federal law as is or may hereafter be applicable, cognate to such section.

DATED: January 2, 2014

Joel A. Arends
Founding Director

Charles E. Jones
Founding Director

Joel B. Anderson
Founding Director

BYLAWS OF

VETERANS FOR A STRONG AMERICA

An unincorporated association formed in South Dakota

ARTICLE I — NAME AND PURPOSE

Section 1 — Name: The name of the organization shall be **Veterans for a Strong America.** It shall be a nonprofit unincorporated association under the laws of the State of South Dakota.

Section 2 — Purpose: **Veterans for a Strong America** is organized exclusively for non-profit purposes.

The purpose of this corporation is:

- **to support and conduct research, education, and informational activities to increase public awareness of veterans, military, national security and foreign policy issues.**
- **to ensure that members of Congress and the Executive Branch are educated, informed and aware of veterans, military, national security and foreign policy**

ARTICLE II — COMPOSITION

Section 1 — Initial Board of Directors: The original founders shall compose the Board of Directors for the first three years of the organization.

Section 2 — Quorum: A quorum must be attended by at least forty percent of board members for business transactions to take place and motions to pass.

Section 3 — Officers and Duties: There shall be four officers of the board, consisting of a chair, vice-chair, secretary and treasurer. Directors may serve as one or more officers. Their duties are as follows:

The chair shall convene regularly scheduled board meetings, shall preside or arrange for other members of the Executive Committee to preside at each meeting in the following order: vice-chair, secretary, treasurer.

The vice-chair shall chair committees on special subjects as designated by the board.

The secretary shall be responsible for keeping records of board actions, including overseeing the taking of minutes at all board meetings, sending out meeting announcements, distributing copies of minutes and the agenda to each board member, and assuring that corporate records are maintained.

The treasurer shall make a report at each board meeting. The treasurer shall chair the finance committee, assist in the preparation of the budget, help develop fundraising plans, and make financial information available to board members and the public.

Section 4 — Vacancies: When a vacancy on the board exists mid-term, the secretary must receive nominations for new members from present board members two weeks in advance of a board meeting. These nominations shall be sent out to board members with the regular board meeting announcement, to be voted upon at the next board meeting. These vacancies will be filled only to the end of the particular board member's term.

Section 5 — Resignation, termination, and absences: Resignation from the board must be in writing and received by the Secretary. A board member shall be terminated from the board due to excess absences, more than two unexcused absences from board meetings in a year. A board member may be removed for other reasons by a three-fourths vote of the remaining directors.

Section 6 — Special meetings: Special meetings of the board shall be called upon the request of the chair, or one-third of the board. Notices of special meetings shall be sent out by the secretary to each board member at least two weeks in advance.

ARTICLE III — COMMITTEES

Section 1 — Committee formation: The board may create committees as needed, such as fundraising, housing, public relations, data collection, etc. The board chair appoints all committee chairs.

Section 2 — Executive Committee: The four officers serve as the members of the Executive Committee. Except for the power to amend the Articles of Incorporation and bylaws, the Executive Committee shall have all the powers and authority of the board of directors in the intervals between meetings of the board of directors, and is subject to the direction and control of the full board.

ARTICLE VI — DIRECTOR AND STAFF

Section 1 — Executive Director: The executive director is hired by the board. The executive director has day-to-day responsibilities for the organization, including carrying out the organization's goals and policies. The executive director will attend all board meetings, report on the progress of the organization, answer questions of the board members and carry out the duties described in the job description. The board can designate other duties as necessary.

ARTICLE VII — AMENDMENTS

Section 1 — Amendments: These bylaws may be amended when necessary by two-thirds majority of the board of directors. Proposed amendments must be submitted to the Secretary to be sent out with regular board announcements.

CERTIFICATION

These bylaws were approved at a meeting of the board of directors by a two- thirds majority vote on January 2, 2015.

Veterans for a Strong America
An Unincorporated Association in
South Dakota
(Board Meeting Minutes: January 2014)

Board Members:
Present: Joel Arends, Chuck Jones, Joel Anderson
Quorum present? Yes

Proceedings:
Meeting called to order by Chair, Joel Arends

Board members are veterans of combat and formed the organization to pick up where the old VSA group left off with an emphasis on policy issues affecting national security, military, veterans and foreign policy
Formed Articles of Association and presented to Directors for signature
Discussion about organization's objectives and desired outcomes
Discussion about use of old organizations intellectual property, lists and other tangible property and transition from old board of directors to a new and different organization
Associations in South Dakota are authorized to own property and the Association shall assume the use of all property owned by the old VSA group.

Meeting adjourned.
Minutes submitted by Secretary.
Minutes drafted electronically from handwritten notes.

Internal Revenue Service
P. O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Person to Contact:
Ms Day #0110209
Toll Free Telephone Number:
877-829-5500

Date: January 8, 2014

VeteransforaStrongAmerica,Org
% Joel Arends
P O Box 1246
Sioux Falls, SD 57101-1246

Dear Sir or Madam:

This is in response to your letter of October 18, 2012 requesting copies for VeteransforaStrongAmerica,Org.

Enclosed are the copies you requested.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,

Kenneth Corbin
Acting Director,
Exempt Organizations

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

VETERANSFORASTRONGAMERICA ORG INC
PO BOX 1246
SIOUX FALLS, SD 57101-1246

Employer Identification Number:
27-3016581
DLN:
17053216354000
Contact Person:
MRS T FARR
ID# 52404
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
December 31
Form 990 Required:
Yes
Effective Date of Exemption:
May 24, 2010
Contribution Deductibility:
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax-exempt status we have determined that you are exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Please see enclosed Publication 4221-NC, Compliance Guide for Tax-Exempt Organizations (Other than 501(c)(3) Public Charities and Private Foundations), for some helpful information about your responsibilities as an exempt organization.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure: Publication 4221-NC

Letter 948 (DO/CG)

17053216354000

Form **1024**
(Rev. September 1998)
Department of the Treasury
Internal Revenue Service

Application for Recognition of Exemption Under Section 501(a)

OMB No. 1545-0057

If exempt status is approved, this application will be open for public inspection.

Read the instructions for each Part carefully. **A User Fee must be attached to this application.**
If the required information and appropriate documents are not submitted along with Form 8718 (with payment of the appropriate user fee), the application may be returned to the organization.
Complete the Procedural Checklist on page 6 of the instructions.

Part I. Identification of Applicant (Must be completed by all applicants; also complete appropriate schedule.)
Submit only the schedule that applies to your organization. Do not submit blank schedules.

Check the appropriate box below to indicate the section under which the organization is applying:

a ☐ Section 501(c)(2)—Title holding corporations (Schedule A, page 7)
b ☑ Section 501(c)(4)—Civic leagues, social welfare organizations (including certain war veterans' organizations), or local associations of employees (Schedule B, page 8)
c ☐ Section 501(c)(5)—Labor, agricultural, or horticultural organizations (Schedule C, page 9)
d ☐ Section 501(c)(6)—Business leagues, chambers of commerce, etc. (Schedule C, page 9)
e ☐ Section 501(c)(7)—Social clubs (Schedule D, page 11)
f ☐ Section 501(c)(8)—Fraternal beneficiary societies, etc., providing life, sick, accident, or other benefits to members (Schedule E, page 13)
g ☐ Section 501(c)(9)—Voluntary employees' beneficiary associations (Parts I through IV and Schedule F, page 14)
h ☐ Section 501(c)(10)—Domestic fraternal societies, orders, etc., not providing life, sick, accident, or other benefits (Schedule E, page 13)
i ☐ Section 501(c)(12)—Benevolent life insurance associations, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations (Schedule G, page 15)
j ☐ Section 501(c)(13)—Cemeteries, crematoria, and like corporations (Schedule H, page 16)
k ☐ Section 501(c)(15)—Mutual insurance companies or associations, other than life or marine (Schedule I, page 17)
l ☐ Section 501(c)(17)—Trusts providing for the payment of supplemental unemployment compensation benefits (Parts I through IV and Schedule J, page 18)
m ☐ Section 501(c)(19)—A post, organization, auxiliary unit, etc., of past or present members of the Armed Forces of the United States (Schedule K, page 19)
n ☐ Section 501(c)(25)—Title holding corporations or trusts (Schedule A, page 7)

1a Full name of organization (as shown in organizing document)
VeteransforaStrongAmerica.org, Inc.

2 Employer identification number (EIN) (if none, see **Specific Instructions** on page 2)
27 : 3016581

1b c/o Name (if applicable)

3 Name and telephone number of person to be contacted if additional information is needed
Joel A. Arends
(605) 254-2624

1c Address (number and street)
P.O. Box 1246
Room/Suite

1d City, town or post office, state, and ZIP + 4 If you have a foreign address, see **Specific Instructions** for Part I, page 2.
Sioux Falls, SD 57101-1246

1e Web site address
veteransforastrongamerica.org

4 Month the annual accounting period ends
December

5 Date incorporated or formed
May 24, 2010

6 Did the organization previously apply for recognition of exemption under this Code section or under any other section of the Code? ☐ Yes ☑ No
If "Yes," attach an explanation.

7 Has the organization filed Federal income tax returns or exempt organization information returns? . . . . . ☐ Yes ☑ No
If "Yes," state the form numbers, years filed, and Internal Revenue office where filed.

8 Check the box for the type of organization. ATTACH A CONFORMED COPY OF THE CORRESPONDING ORGANIZING DOCUMENTS TO THE APPLICATION BEFORE MAILING.

a ☑ Corporation— Attach a copy of the Articles of Incorporation (including amendments and restatements) showing approval by the appropriate state official; also attach a copy of the bylaws.
b ☐ Trust— Attach a copy of the Trust Indenture or Agreement, including all appropriate signatures and dates.
c ☐ Association— Attach a copy of the Articles of Association, Constitution, or other creating document, with a declaration (see instructions) or other evidence that the organization was formed by adoption of the document by more than one person. Also include a copy of the bylaws.

If this is a corporation or an unincorporated association that has not yet adopted bylaws, check here . . . . . ▶ ☑

PLEASE SIGN HERE
I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization, and that I have examined this application, including the accompanying schedules and attachments, and to the best of my knowledge it is true, correct, and complete.
(Signature) **Joel A. Arends** Director (Type or print name and title or authority of signer) July 12, 2010 (Date)

For Paperwork Reduction Act Notice, see page 5 of the instructions. RECEIVED Cat. No. 12343K

17152010216001 JUL 31 '10 AUG 03 '10

CINCINNATI SERVICE CENTER

Part II. Activities and Operational Information (Must be completed by all applicants)

1 Provide a detailed narrative description of all the activities of the organization—past, present, and planned. Do not merely refer to or repeat the language in the organizational document. List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following: **(a)** a detailed description of the activity including its purpose and how each activity furthers your exempt purpose; **(b)** when the activity was or will be initiated; and **(c)** where and by whom the activity will be conducted.

Veterans for a Strong America is organized to develop and advocate for legislation, regulations, and government programs concerning veterans affairs, national security matters and homeland defense issues. Veterans for a Strong America intends to develop technical and policy solutions for problems associated with veterans benefits, national security programs, homeland defense programs and criminal prosecution of terrorism related cases. Veterans for a Strong America will direct these efforts toward supporting pro-active governmental and non-governmental solutions to the administration of veterans benefits and related matters, towards increasing the American government's ability to fight terrorism at home and abroad, improving the ability of the American military to fight and win our nation's wars, and encouraging responsible national security policies.

Specifically, Veterans for a Strong America intends to initiate the following projects to accomplish these objectives. First, it will educate the general public and advocate solutions about key national security programs. This initiative will solicit funds to advance Veterans for a Strong America activities and request support, conduct letter-writing campaigns, and recruit activists for the accomplishment of Veterans for a Strong America legislative and programmatic goals. Veterans for a Strong America will also communicate with the general public through phone canvasses, online outreach and direct mail to raise funds and grassroots support for its programs.

Second, Veterans for a Strong America will lobby national, state and local public and elected officials on veterans issues, national security matters and homeland defense to address key issues. Finally, Veterans for a Strong America will prepare and distribute information to the general public about proposed legislative solutions and Congress' activities to address these issues. Veterans for a Strong America will establish a newsletter to be published regularly and sent to organizational members. In addition, Veterans for a Strong America will sponsor programs for the community, supporters, elected officials and activists on key issues and proposed solutions.

Veterans for a Strong America's initial project is the organization of an information campaign to be implemented through a canvass with national veterans and national security related organizations. This campaign, in conjunction with a national information campaign, will be the primary focus of Veterans for a Strong America research and education in the coming years.

The Corporation intends to organize coalitions of grassroots activists together with national leaders to bring about constructive solutions to the growing challenges facing national security, homeland defense and military authorities. Veterans for a Strong America will also organize task forces of experts working with activists and public officials to study and propose solutions for specific national programs. These proposals, subject to review and approval by the Board of Directors, will serve as a foundation for educating the general public, initiating reform, and implementing solutions.

2 List the organization's present and future sources of financial support, beginning with the largest source first.

The organization expects to be supported primarily by contributions from individuals, other nonprofit organizations, and corporations.

Part II. Activities and Operational Information (continued)

3 Give the following information about the organization's governing body:

a Names, addresses, and titles of officers, directors, trustees, etc.	b Annual compensation
Paul Carter, 400 Oceangate, Suite 800, Long Beach, CA 90802; Director	**0**
Jody Mortara, 18034 Ventura Boulevard, #116, Encino, CA 91316; Director	**0**
Stephan Shatynski, 678 E. Lennox Court, Brea, CA 92821; Director	**0**
Joel Arends, P.O. Box 1246, Sioux Falls, SD 57101; Director	**0**

4 If the organization is the outgrowth or continuation of any form of predecessor, state the name of each predecessor, the period during which it was in existence, and the reasons for its termination. Submit copies of all papers by which any transfer of assets was effected.

5 If the applicant organization is now, or plans to be, connected in any way with any other organization, describe the other organization and explain the relationship (e.g., financial support on a continuing basis; shared facilities or employees; same officers, directors, or trustees).

6 If the organization has capital stock issued and outstanding, state: **(1)** class or classes of the stock; **(2)** number and par value of the shares; **(3)** consideration for which they were issued; and **(4)** if any dividends have been paid or whether your organization's creating instrument authorizes dividend payments on any class of capital stock.

7 State the qualifications necessary for membership in the organization; the classes of membership (with the number of members in each class); and the voting rights and privileges received. If any group or class of persons is required to join, describe the requirement and explain the relationship between those members and members who join voluntarily. Submit copies of any membership solicitation material. Attach sample copies of all types of membership certificates issued.

Membership in the organization is attained by affirming the agreement with the organization's principles and values and by signing up online or manually by calling the organization and affirming an interest in joining.

8 Explain how your organization's assets will be distributed on dissolution.

On the happening of dissolution or final liquidation, the board of directors shall designate that the remaining assets of the corporation, after all liabilities have been paid, be distributed in a manner consistent with the applicable sections of the IRS Code and the California law applicable to non-profit corporations.

Part II. Activities and Operational Information (continued)

9 Has the organization made or does it plan to make any distribution of its property or surplus funds to shareholders or members? . . . . . ☐ Yes ☑ No

If "Yes," state the full details, including: (1) amounts or value; (2) source of funds or property distributed or to be distributed; and (3) basis of, and authority for, distribution or planned distribution.

10 Does, or will, any part of your organization's receipts represent payments for services performed or to be performed? . ☑ Yes ☐ No

If "Yes," state in detail the amount received and the character of the services performed or to be performed.

In the future, Veterans for a Strong America may provide consulting services for other nonprofit organizations exempt under Sections 501(c)(3) or 501(c)(4) that are seeking advice on how to best influence public policy. For example, other nonprofit organizations may request services to develop lobbying programs designed to protect funding for defense related programs. Any services will be related to the organization's exempt purposes under I.R.C. Section 512.

11 Has the organization made, or does it plan to make, any payments to members or shareholders for services performed or to be performed? . . . . . ☐ Yes ☑ No

If "Yes," state in detail the amount paid, the character of the services, and to whom the payments have been, or will be, made.

12 Does the organization have any arrangement to provide insurance for members, their dependents, or others (including provisions for the payment of sick or death benefits, pensions, or annuities)? . . . . . ☐ Yes ☑ No

If "Yes," describe and explain the arrangement's eligibility rules and attach a sample copy of each plan document and each type of policy issued.

13 Is the organization under the supervisory jurisdiction of any public regulatory body, such as a social welfare agency, etc.? . . . . . ☐ Yes ☑ No

If "Yes," submit copies of all administrative opinions or court decisions regarding this supervision, as well as copies of applications or requests for the opinions or decisions.

14 Does the organization now lease or does it plan to lease any property? . . . . . ☑ Yes ☐ No

If "Yes," explain in detail. Include the amount of rent, a description of the property, and any relationship between the applicant organization and the other party. Also, attach a copy of any rental or lease agreement. (If the organization is a party, as a lessor, to multiple leases of rental real property under similar lease agreements, please attach a single representative copy of the leases.)

There are no specific lease agreements to reference at this time. When it becomes necessary for the continuation of operations the organization will look into the leasing of property.

15 Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, state, or local public office or to an office in a political organization? . . ☐ Yes ☑ No

If "Yes," explain in detail and list the amounts spent or to be spent in each case.

Veterans for a Strong America has no plans to make contributions to candidates for political office or political parties, nor does it plan to make endorsements of candidates at this time. Some of the organization's resources will be directed at efforts surrounding elections that are not considered election activity by federal or state election law agencies, but that could be deemed "attempts to influence the election, selection, nomination and appointment of persons to federal, state, or local public office." Any political activity will be in accord with I.R.C. Section 501(c) et. al.

16 Does the organization publish pamphlets, brochures, newsletters, journals, or similar printed material? . . . . . ☐ Yes ☑ No

If "Yes," attach a recent copy of each.

Part III. Financial Data (Must be completed by all applicants)

*Complete the financial statements for the current year and for each of the 3 years immediately before it. If in existence less than 4 years, complete the statements for each year in existence. **If in existence less than 1 year, also provide proposed budgets for the 2 years following the current year.***

A. Statement of Revenue and Expenses

		(a) Current Tax Year From 2010 To 2011	3 Prior Tax Years or Proposed Budget for Next 2 Years (b) 2011	(c) 2012	(d)	(e) Total
	Revenue					
1	Gross dues and assessments of members	0	0	0		0
2	Gross contributions, gifts, etc.	0	5000	5000		10000
3	Gross amounts derived from activities related to the organization's exempt purpose (attach schedule) (Include related cost of sales on line 9.)	0	0	0		0
4	Gross amounts from unrelated business activities (attach schedule)	0	0	0		0
5	Gain from sale of assets, excluding inventory items (attach schedule)	0	0	0		0
6	Investment income (see page 3 of the instructions)	0	0	0		0
7	Other revenue (attach schedule)	0	0	0		0
8	Total revenue (add lines 1 through 7)	0	5000	5000		10000
	Expenses					
9	Expenses attributable to activities related to the organization's exempt purposes	0	4000	5000		9000
10	Expenses attributable to unrelated business activities	0	0	0		0
11	Contributions, gifts, grants, and similar amounts paid (attach schedule)	0	0	0		0
12	Disbursements to or for the benefit of members (attach schedule)	0	0	0		0
13	Compensation of officers, directors, and trustees (attach schedule)	0	0	0		0
14	Other salaries and wages	0	0	0		0
15	Interest	0	0	0		0
16	Occupancy	0	0	0		0
17	Depreciation and depletion	0	0	0		0
18	Other expenses (attach schedule)	0	0	0		0
19	Total expenses (add lines 9 through 18)	0	4000	5000		9000
20	Excess of revenue over expenses (line 8 minus line 19)	0	0	0		

B. Balance Sheet (at the end of the period shown)

			Current Tax Year as of 2010
	Assets		
1	Cash	1	0
2	Accounts receivable, net	2	0
3	Inventories	3	0
4	Bonds and notes receivable (attach schedule)	4	0
5	Corporate stocks (attach schedule)	5	0
6	Mortgage loans (attach schedule)	6	0
7	Other investments (attach schedule)	7	0
8	Depreciable and depletable assets (attach schedule)	8	0
9	Land	9	0
10	Other assets (attach schedule)	10	0
11	**Total assets**	11	0
	Liabilities		
12	Accounts payable	12	0
13	Contributions, gifts, grants, etc., payable	13	0
14	Mortgages and notes payable (attach schedule)	14	0
15	Other liabilities (attach schedule)	15	0
16	**Total liabilities**	16	0
	Fund Balances or Net Assets		
17	Total fund balances or net assets	17	0
18	**Total liabilities and fund balances or net assets** (add line 16 and line 17)	18	0

If there has been any substantial change in any aspect of the organization's financial activities since the end of the period shown above, check the box and attach a detailed explanation. ▶ ☐

Part IV. Notice Requirements (Sections 501(c)(9) and 501(c)(17) Organizations Only)

1 Section 501(c)(9) and 501(c)(17) organizations:

Are you filing Form 1024 within 15 months from the end of the month in which the organization was created or formed as required by section 505(c)? . . . . . ☐ Yes ☐ No

If "Yes," skip the rest of this Part.

If "No," answer question 2.

2 If you answer "No" to question 1, are you filing Form 1024 within 27 months from the end of the month in which the organization was created or formed? . . . . . ☐ Yes ☐ No

If "Yes," your organization qualifies under Regulation section 301.9100-2 for an automatic 12-month extension of the 15-month filing requirement. Do not answer questions 3 and 4.

If "No," answer question 3.

3 If you answer "No" to question 2, does the organization wish to request an extension of time to apply under the "reasonable action and good faith" and the "no prejudice to the interest of the government" requirements of Regulations section 301.9100-3? . . . . . ☐ Yes ☐ No

If "Yes," give the reasons for not filing this application within the 27-month period described in question 2. See Specific Instructions, Part IV, Line 3, page 4, before completing this item. Do not answer question 4.

If "No," answer question 4.

4 If you answer "No" to question 3, your organization's qualification as a section 501(c)(9) or 501(c)(17) organization can be recognized only from the date this application is filed. Therefore, does the organization want us to consider its application as a request for recognition of exemption as a section 501(c)(9) or 501(c)(17) organization from the date the application is received and not retroactively to the date the organization was created or formed? . . . . . ☐ Yes ☐ No

Schedule B Organizations Described in Section 501(c)(4) (Civic leagues, social welfare organizations (including posts, councils, etc., of veterans' organizations not qualifying or applying for exemption under section 501(c)(19)) or local associations of employees.)

1 Has the Internal Revenue Service previously issued a ruling or determination letter recognizing the applicant organization (or any predecessor organization listed in question 4, Part II of the application) to be exempt under section 501(c)(3) and later revoked that recognition of exemption on the basis that the applicant organization (or its predecessor) was carrying on propaganda or otherwise attempting to influence legislation or on the basis that it engaged in political activity? . . ☐ Yes ☑ No

If "Yes," indicate the earliest tax year for which recognition of exemption under section 501(c)(3) was revoked and the IRS district office that issued the revocation.

2 Does the organization perform or plan to perform (for members, shareholders, or others) services, such as maintaining the common areas of a condominium; buying food or other items on a cooperative basis; or providing recreational facilities or transportation services, job placement, or other similar undertakings? . . . . . ☐ Yes ☑ No

If "Yes," explain the activities in detail, including income realized and expenses incurred. Also, explain in detail the nature of the benefits to the general public from these activities. (If the answer to this question is explained in Part II of the application (pages 2, 3, and 4), enter the page and item number here.)

3 If the organization is claiming exemption as a homeowners' association, is access to any property or facilities it owns or maintains restricted in any way? . . . . . ☐ Yes ☑ No

If "Yes," explain.

4 If the organization is claiming exemption as a local association of employees, state the name and address of each employer whose employees are eligible for membership in the association. If employees of more than one plant or office of the same employer are eligible for membership, give the address of each plant or office.

Form **8718**
(Rev. January 2010)
Department of the Treasury
Internal Revenue Service

User Fee for Exempt Organization Determination Letter Request

▶ Attach this form to determination letter application.
(Form 8718 is NOT a determination letter application.)

For IRS Use Only — OMB No. 1545-1798
Control number
Amount paid 400
User fee screener BCM

1 Name of organization: Veterans For A Strong America
2 Employer Identification Number: 27 3016581

Caution. Do not attach Form 8718 to an application for a pension plan determination letter. Use Form 8717 instead.

3 Type of request — **Fee**

a ☒ Initial request for a determination letter for:
- An exempt organization that has had annual gross receipts averaging not more than $10,000 during the preceding 4 years or
- A new organization that anticipates gross receipts averaging not more than $10,000 during its first 4 years ▶ $400

Note. If you checked box 3a, you must complete the *Certification* below.

Certification

I certify that the annual gross receipts of Veterans for a Strong America.org, Inc. (name of organization) have averaged (or are expected to average) not more than $10,000 during the preceding 4 (or the first 4) years of operation.

Signature ▶ Title ▶ Director

b ☐ Initial request for a determination letter for:
- An exempt organization that has had annual gross receipts averaging more than $10,000 during the preceding 4 years or
- A new organization that anticipates gross receipts averaging more than $10,000 during its first 4 years . ▶ $850

c ☐ Group exemption letters . . . . . ▶ $3,000

Instructions

The law requires payment of a user fee with each application for a determination letter. The user fees are listed on line 3 above. For more information, see Rev. Proc. 2009-8; 2009-1 I.R.B. 229, or latest annual update.

Check the box or boxes on line 3 for the type of application you are submitting. If you check box 3a, you must complete and sign the certification statement that appears under line 3a.

Attach to Form 8718 a check or money order payable to the "United States Treasury" for the full amount of the user fee. If you do not include the full amount, your application will be returned. Attach Form 8718 to your determination letter application.

Generally, the user fee will be refunded only if the Internal Revenue Service declines to issue a determination.

Where To File

Send the determination letter application and Form 8718 to:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

Who Should File

Organizations applying for federal income tax exemption, other than Form 1023 filers. Organizations submitting Form 1023 should refer to the instructions in that application package.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. If you want your organization to be recognized as tax-exempt by the IRS, you are required to give us this information. We need it to determine whether the organization meets the legal requirements for tax-exempt status.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. The rules governing the confidentiality of Form 8718 are covered in section 6104.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is 5 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send this form to this address. Instead, see *Where To File* above.

TM

(IRS USE ONLY) 575E 07-12-2010 VETE O 9999999999 SS-4

IMPORTANT REMINDERS:

* Keep a copy of this notice in your permanent records. **This notice is issued only one time and the IRS will not be able to generate a duplicate copy for you.**
* Use this EIN and your name exactly as they appear at the top of this notice on all your federal tax forms.
* Refer to this EIN on your tax-related correspondence and documents.
* Provide future officers of your organization with a copy of this notice.

If you have questions about your EIN, you can call us at the phone number or write to us at the address shown at the top of this notice. If you write, please tear off the stub at the bottom of this notice and send it along with your letter. If you do not need to write us, do not complete and return the stub. Thank you for your cooperation.

Keep this part for your records. CP 575 E (Rev. 7-2007)

Return this part with any correspondence so we may identify your account. Please correct any errors in your name or address.

CP 575 E

9999999999

Your Telephone Number ( ) -

Best Time to Call

DATE OF THIS NOTICE: 07-12-2010
EMPLOYER IDENTIFICATION NUMBER: 27-3016581
FORM: SS-4 NOBOD

INTERNAL REVENUE SERVICE
CINCINNATI OH 45999-0023

VETERANSFORASTRONGAMERICAORG
% JOEL A ARENDS
PO BOX 1246
SIOUX FALLS, SD 57101

3299856

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAY 24 2010

ARTICLES OF INCORPORATION

OF

VETERANSFORASTRONGAMERICA.ORG, INC.

I

The name of this corporation is VETERANSFORASTRONGAMERICA.ORG, INC.

II

A. This corporation is a nonprofit Mutual Benefit Corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

B. The specific purpose of this corporation: The corporation is organized and will be operated exclusively for educational and social welfare purposes within the meaning of Section 501(c)(4) of the Internal Revenue Code. The purposes for the formation of this corporation include:

(a) To act and operate exclusively as a nonprofit corporation pursuant to the laws of the State of California, and to act and operate as an educational organization in educating members of the organization and public about all matters of public interest regarding veterans affairs, national security matters and homeland defense issues;

(b) To engage in any and all activities and pursuits, and to support or assist such other organizations, as may be reasonably related to the foregoing and following purposes.

(c) To engage in any and all other lawful purposes, activities and pursuits, which are substantially similar to the foregoing and which are or may hereafter be authorized by Section 501(c)(4) of the Internal Revenue Code and;

(d) To solicit and receive contributions, to make purchases, to make contracts, to invest corporate funds, to spend corporate funds for corporate purposes, and to engage in any activity in furtherance of, incidental to, or connected with any of the other purposes.

III

The name of the corporation's initial agent for service of process is Paul J. Carter, Esquire, 400 Oceangate, Suite 800, Long Beach, California, 90802.

IV

Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this corporation.

V

Upon the time of dissolution of the corporation, assets shall be distributed by the Board of Directors, after paying or making provisions for the payment of all debts, obligations, liabilities, costs and expenses of the corporation, for one or more exempt purposes within the meaning of section 501(c) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

IN WITNESS WHEREOF, THE UNDERSIGNED incorporator has executed these Articles of Incorporation on May 19, 2010.

PAUL J. CARTER

OFFICE OF THE SECRETARY OF STATE

IRS DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
CINCINNATI OH 45999-0023

Date of this notice: 07-12-2010

Employer Identification Number:
27-3016581

Form: SS-4

Number of this notice: CP 575 E

VETERANSFORASTRONGAMERICAORG
% JOEL A ARENDS
PO BOX 1246
SIOUX FALLS, SD 57101

For assistance you may call us at:
1-800-829-4933

IF YOU WRITE, ATTACH THE
STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 27-3016581. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear off stub and return it to us.

Assigning an EIN does not grant tax-exempt status to non-profit organizations. Publication 557, *Tax Exempt Status for Your Organization*, has details on the application process, as well as information on returns you may need to file. To apply for formal recognition of tax-exempt status, most organizations will need to complete either Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or Form 1024, *Application for Recognition of Exemption Under Section 501(a)*. Submit the completed form, all applicable attachments, and the required user fee to:

Internal Revenue Service
PO Box 192
Covington, KY 41012-0192

The Pension Protection Act of 2006 contains numerous changes to the tax law provisions affecting tax-exempt organizations, including an annual electronic notification requirement (Form 990-N) for organizations not required to file an annual information return (Form 990 or Form 990-EZ). Additionally, if you are required to file an annual information return, you may be required to file it electronically. Please refer to the Charities & Non-Profits page at www.irs.gov for the most current information on your filing requirements and on provisions of the Pension Protection Act of 2006 that may affect you.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at www.irs.gov. If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

Internal Revenue Service
P.O. Box 2508
Cincinnati, Ohio 45201

Department of the Treasury

Date: January 21, 2011

VeteransforaStrong America.org, Inc.
P.O. Box 1246
Sioux Falls, SD 57101-1246

Employer Identification Number:
27-3016581
Person to Contact - Group #:
Mrs. T. Farr - 7880
ID# 0000274319
Contact Telephone Numbers:
410-962-4774 Phone
410-962-0133 Fax
Response Due Date:
February 11, 2011

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosure by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration **under the signature of a principal officer**:

> *Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.*

To facilitate processing of your application, **please attach a copy of this letter to your response.** This will enable us to quickly and accurately associate the additional documents with your case file.

If we do not hear from you within that time, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Mrs. T. Farr
Exempt Organizations Specialist

Enclosure: Information Request

Letter 1312 (TEDS)

VeteransforaStrongAmerica.org Inc
27-3016581

1. Explain in detail how you will:

a) "develop and advocate for legislation, regulations, and government programs concerning veterans affairs, national security matters and homeland defense issues."

b) "Implement a national information campaign,

c) Organize coalitions of grassroots activists."

2. Provide the total percentage of the organization's time that is devoted to each activity.

Website

3. Your website differs from your application for exemption. The website states the following:

Welcome to Veterans for a Strong America -

We are a grassroots action organization committed to ensuring that America remains a strong nation by advancing liberty, safeguarding freedom and opposing tyranny.

For over two hundred years America's warfighters and veterans have sacrificed greatly to ensure that the light of liberty shines brightly throughout the world. That flame burns bright because so many have given so much. The courage and sacrifice of our American forefathers serves as our mandate.

Veterans for a Strong America has a mandate to mobilize patriotic Americans, veterans and veterans supporters in support of a unified and overarching strategy to secure America's future and keep America strong. Veterans for a Strong America will pursue five strategies necessary for a Strong America -

- Grow the world's strongest, most robust economy - America's super power status stems from its ability to project power around the world. A strong American economy allows our nation to project power, promote peace and create stability. In order to project a strong global presence we must maintain our economic superiority.

- Strengthen and modernize America's military - America's global leadership role requires modernized armed forces capable of deploying, fighting and winning present and future challenges.

- Create plentiful and diverse energy resources that allow Americans to enjoy freedom, opportunity, safety and security - A strong America needs a diverse portfolio of energy supplies from a wide range of sources that is best for the economy and at the same time addresses homeland and national security considerations.

VeteransforaStrongAmerica.org Inc
27-3016581

- Implement responsible intelligence reform - A strong America needs improved intelligence-gathering capabilities with enhanced operational effectiveness at all levels to include reliable and actionable information gathered from both foreign and domestic sources for use at all appropriate levels of governments.

- The American criminal justice system must protect Americans, not terrorists - A strong America demands a justice system which understands that wars are fought and won on the battlefield and not a courtroom. During times of war, the executive branch must assume the constitutional obligation to protect the American people instead of shifting that responsibility to the judiciary.

Please explain how you will conduct the activities listed on your website.

4. Explain in detail, how you separate the activities of your organization from those of your PAC.

5. Why have you "linked" your PAC to your website?

6. Explain in detail, how the activities of your organization are bi-partisan.

7. Submit copies of the information you will disseminate to the public.

8. Provide an executed copy of your Bylaws.

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 13163
Baltimore, MD 21203
ATT: Mrs. T. Farr
Room 1420
Group 7880

Street Address:

Internal Revenue Service
Exempt Organizations
31 Hopkins Plaza
Baltimore, MD 21201
ATT: Mrs. T. Farr
Room 1420
Group 7880

Internal Revenue Service

Department of the Treasury

Date:
February 15, 2011
Employer Identification Number:
27-3016581
Person to Contact/ID Number:
Mrs. T. Farr #000274319
Contact Telephone Number:
410-962-4774
Fax Number:
410-962-0133
Response Due Date:
February 25, 2011

VeteransforasStrongAmerican.org. Inc.
P O Box 1246
Sioux Falls, SD 57101-1246

Dear Applicant:

We sent you a letter requesting additional information we need in order to consider your application for exemption on January 21, 2011 . We also attempted to contact your designated representative by telephone to try to obtain the requested information. We have not received a response to our information request.

Please provide the information requested in the enclosure by the due date shown in the heading of this letter. If we receive the information requested by the due date, we will continue to process your application for exemption under section 501(c)(3) of the Code. If we do not receive the information requested by the due date, we will be unable to consider your application for exemption further, and will close your case.

If you have any questions or need assistance regarding our request for information, please contact me directly at the telephone number listed above.

Sincerely yours,

Mrs. T. Farr
Exempt Organizations Specialist

Enclosure:
Information Request

Letter 4423 (9-2008)
Catalog Number 52253P

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: MAY 2011

VETERANSFORASTRONGAMERICA ORG INC
PO BOX 1246
SIOUX FALLS, SD 57101-1246

Employer Identification Number:
27-3016581
DLN:
17053216354000
Contact Person:
MRS T FARR
ID# 52404
Contact Telephone Number:
(410) 962-4774
Previous Letter Date:
January 21, 2010
90-Day Response Date:

JUN 1 2011

Dear Applicant:

Our previous letter, copy enclosed, asked you to send us additional information about your application for tax-exempt status under section 501(c)(4) or section 521 of the Internal Revenue Code.

We also contacted or attempted to contact you or your designated representative by telephone to inquire about the requested information. We are unable to make a final determination on your exempt status without the additional information; therefore, we have placed your case in suspense. If you intend to submit the additional information, please send it to us at:

Internal Revenue Service
TE/GE SE:T:EO:RA:D Group 7880
P O Box 13163, Room 1420
Baltimore, MD 21203

If we receive the requested information on or before the 90-day response date above, we will reactivate your case. After the above date, we will close your case, and you will be required to submit a new application package and new user fee payment to pursue tax-exempt status.

If you decide not to submit the additional information, you will be required to file annual returns on Form 1120 and your user fee will not be refunded.

Please call us at the telephone number listed above if you have any questions regarding this matter. Have your Employer Identification Number and a copy of your most recent response available when you call.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Letter 4587 (DO/CG)

IRS - EO
Group 7880

JUN 1 2011

Received
Baltimore Md 21201

From: Veterans for a Strong America, Inc.

To: Internal Revenue Service

Date: May 27, 2011

RE: Letter dated February 21, 2011 seeking more information regarding 501c4 application

This letter is to serve as a response to the IRS seeking more information regarding the activities of the organization called Veterans for a Strong America which is seeking non-profit status.

Our responses are detailed herein:

1) Veterans for a Strong America will, "develop and advocate for legislation, regulations, and government programs concerning veterans affairs, national security matters and homeland defense issues," by engaging in the following educational programs

a. Information campaigns asking our members to contact members of congress regarding the programs discussed above
b. Seeking out media interviews in order to discuss these issues in front of much larger audiences
c. Mounting grassroots campaigns using social media sites, such as Facebook and Twitter to communicate the beliefs of the organization to its members

2) Veterans for a Strong America will, "implement a national information campaign," by

a. Reaching out to members who join the organization and asking them to serve as regional or state level coordinators who in turn will communicate the mission and values of the organization to other members.
b. Seeking out media interviews in order to discuss these issues in front of much larger audiences
c. Mounting grassroots campaigns using social media sites, such as Facebook and Twitter to communicate the beliefs of the organization to its members

3) Veterans for a Strong America will, "organize coalitions of grassroots activists," by:

a. Reaching out to similar organizations such as the American Legion, VFW and other like-minded groups to form coalitions that generally support the same issues set.
b. Reaching out to members of the public who are inclined to join Veterans for a Strong America by using social media sites and other similar social networks
c. By recruiting grassroots activist who sign up on the internet site of the organization.

4) The total percentage of the organization's time that will be devoted to each activity is the following:

a. While it is impossible to define a percentage based allocation to each of these activities we would estimate that it would break down to a significant amount of time that would be spent communicating with our membership and organizing our membership.

5) Each of the activities listed on our website is consistent with our application. However the website lists in greater detail what our membership and values philosophy is. Each of the issues we have listed on our website is a statement regarding our values towards current American government policies. We will be organizing in order to have our membership take action on each of these issues.

6) Veterans for a Strong America does not have a Political Action Committee formed with the FEC. We did create website tab and did create a fundraising mechanism, however no money was accepted for PAC activities. We would note that it is permissible for a 501c4 organization to establish a link on their website to solicit PAC contributions.
7) We have linked a yet-to-be-formed PAC to the Veterans for a Strong America website in anticipation of potentially forming a PAC if contributions are made.

8) The activities of Veterans for a Strong America are non-partisan, not "bi-partisan" as the IRS questionnaire has stated.
9) We have not developed any handouts or information that will be disseminated to the public at this point. It appears that the IRS already has copies of our website in its possession.

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

Joel A. Arends

3299856

State of California
Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUL 02 2010

Debra Bowen

DEBRA BOWEN
Secretary of State

Sec/State Form CE-109 (REV 01/2009)

07/08/2010 18:01 5629061645 ALLEN CORP SUPPLY PAGE 02/04

DC London, Inc.
1100 G Street NW
Suite 805
Washington DC 20005
United States
Phone: 202-629-3099

INVOICE

PAID

dc london inc

Veterans for a Strong America
Joel Arends
PO Box 1246
Sioux Falls South Dakota 57101-1246

Invoice #:	0000600
Date:	May 29, 2014
Balance Due USD:	$0.00

To View Your Invoice Online »	**1.** Go to: https://dclondon.freshbooks.com/code **2.** Enter this code: 3ADSgS6dDzJ94jdC

Item	Description	Unit Cost ($)	Quantity	Price ($)
Shipping	"What Difference"	324.00	1	324.00
			Subtotal:	**324.00**
			Total:	**324.00**
			Amount Paid:	**-324.00**
			Balance Due USD:	**$0.00**

Payment due upon receipt
Wire Instructions:
Wells Fargo
ABA: 121000248
Account: 6130796896

This invoice was sent using FRESHBOOKS

DC London, Inc.
1100 G Street NW
Suite 805
Washington DC 20005
United States
Phone: 202-629-3099

INVOICE

PAID

dc london INC

Veterans for a Strong America
Joel Arends
PO Box 1246
Sioux Falls South Dakota 57101-1246

Invoice #:	0000599
Date:	May 28, 2014
Balance Due USD:	$0.00

To View Your Invoice Online »	**1.** Go to: https://dclondon.freshbooks.com/code **2.** Enter this code: tsz8Gba7HFFirNU

Item	Description	Unit Cost ($)	Quantity	Price ($)
Ad Production	"What Difference"	5,000.00	1	5,000.00
Social Media		2,500.00	1	2,500.00

Subtotal:	**7,500.00**
Total:	**7,500.00**
Amount Paid:	**-7,500.00**
Balance Due USD:	**$0.00**

Payment due upon receipt
Wire Instructions:
Wells Fargo
ABA: 121000248
Account: 6130796896

This invoice was sent using FRESHBOOKS

Smart Media Group, LLC
1427 Leslie Avenue
Suite 100
Alexandria, VA 22301

smartmediagroup

Invoice

Invoice #: 2856
Invoice Date: 6/25/2014
Due Date: 6/25/2014
P.O. Number:

Bill To:

Veterans for a Strong America
Attn.: Sean
DC London, Inc.
1100 G St NW, Suite 805
Washington, DC 20005

Client: VFASA

Description	Amount
Media Cable Flight: 06/26/2014 - 07/09/2014	70,000.00

Wire Transfer Information

Bank: Branch Banking and Trust
1717 King Street
Alexandria, VA 22314

Account Name: Smart Media Group LLC
Account No: 5239554018
Routing No: 051404260

Total	$70,000.00
Payments/Credits	$0.00
Balance Due	$70,000.00

Smart Media Group, LLC
1427 Leslie Avenue
Suite 100
Alexandria, VA 22301

smartmediagroup

Invoice

Invoice #: 2891
Invoice Date: 7/16/2014
Due Date: 7/16/2014
P.O. Number:

Bill To:

Veterans for a Strong America
Attn.: Sean
DC London, Inc.
1100 G St NW, Suite 805
Washington, DC 20005

Client: VFASA

Description	Amount
Media Cable Flight: 07/18/2014 - 07/24/2014	65,045.00

Wire Transfer Information

Bank: Branch Banking and Trust
1717 King Street
Alexandria, VA 22314

Account Name: Smart Media Group LLC
Account No: 5239554018
Routing No: 051404260

Total	$65,045.00
Payments/Credits	$0.00
Balance Due	$65,045.00

Smart Media Group, LLC
1427 Leslie Avenue
Suite 100
Alexandria, VA 22301

smartmediagroup

Invoice

Invoice #: 2891
Invoice Date: 7/16/2014
Due Date: 7/16/2014
P.O. Number:

Bill To:

Veterans for a Strong America
Attn.: Sean
DC London, Inc.
1100 G St NW, Suite 805
Washington, DC 20005

Client: VFASA

Description	Amount
Media Cable Flight: 07/18/2014 - 07/24/2014	65,045.00

Wire Transfer Information

Bank: Branch Banking and Trust
1717 King Street
Alexandria, VA 22314

Account Name: Smart Media Group LLC
Account No: 5239554018
Routing No: 051404260

Total	$65,045.00
Payments/Credits	$0.00
Balance Due	$65,045.00

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION
MUR 14-027
Veterans for a Strong America
STATEMENT OF REASONS OF THE EXECUTIVE DIRECTOR

On behalf of the Citizens Clean Elections Commission ("Commission"), the Executive Director hereby provides the following Statement of Reasons why there is reason to believe that a violation of the Citizens Clean Elections Act and Commission rules (collectively, the "Act") may have occurred.

I. Procedural Background

On July 8, 2015, the Arizona Secretary of State's Office made a determination that there was reasonable cause to believe Veterans for a Strong America (VSA) violated A.R.S. § 16-914.02 by failing to file independent expenditure reports for an advertisement. **Exhibit 1.** On July 14, 2015, the Commission's Executive Director generated an internal "Complaint" against VSA (Respondent) alleging that Respondent had violated the independent expenditure reports required by the Act. **Exhibit 2.** On July 20, 2015, Respondent filed a Response arguing the advertisement in question was not subject to independent expenditure reporting requirements because the advertisement was not express advocacy. **Exhibit 3.** In November, I recommended the Commission find jurisdiction over the Complaint. **Exhibit 4.** VSA asserted the Commission lacked jurisdiction. **Exhibit 5.** The Commission moved to allow me to move forward with the matter in coordination with the Attorney General's Office on November 19, 2015. The parallel AGO matter has proceeded sufficiently that the AGO has indicated to VSA that they should seek a separate resolution from CCEC.

II. Factual Background

On May 28, 2014, Respondent registered with the Secretary of State's office as a corporation that makes independent expenditures. The same day, Respondent released a television advertisement entitled "What Difference?" which discussed the 2012 Benghazi attack and was critical of gubernatorial candidate Christine Jones. The script reads as follows:

[Voice Over]:	Four Americans were killed by terrorists. What happened? Requests for more security: denied. Talking points: altered. Our nation: lied to.
[Hillary Clinton]:	What difference, at this point, does it make?

[Voice Over]: It made no difference to Christine Jones. Two months later, she said "Hillary Clinton will continue to stand out as a capable, respected leader." Jones praised Clinton: "Americans will realize what an effective Secretary of State Clinton was… The incredibly high standard she set." These are Christine Jones' standards. Are they yours?

See https://www.youtube.com/watch?v=kVcEtVQ7vbI

On January 30, 2015, David Pearsall filed a complaint with the Secretary of State's Office alleging the Respondent failed to file an independent expenditure report for the "What Difference?" advertisement.

On May 28, 2015, VSA filed a response with the Secretary of State's Office arguing the advertisement is not express advocacy and did not trigger a disclosure requirement.

On July 8, 2015, the Secretary of State found reasonable cause to believe VSA violated A.R.S. § 16-914.02(A) by failing to timely notify the Secretary of State of its independent expenditure. The Secretary of State referred the matter to the Arizona Attorney General for further proceedings.

On September 25, 2015, in a letter to the Arizona Attorney General's Office (AGO), Respondent states they paid $225,018 to air the advertisement. **Exhibit 6.** Additional documents were provided to AGO on March 18. **Exhibit 7.**

Subsequent communication to AGO confirmed the following expenditures. These are set forth along with the applicable Clean Elections Reporting dates.

Vendor	Date	Amount	CE Date
Smart Media Group	5/27/14	44,570.00	6/1/14
DC London	5/28/14 & 5/29/14	$7.500.00 & $324.00	6/1/14
Smart Media Group	6/25/14	$70,000.00	7/1/14
Smart Media group	7/16/14	$65,045.00	7/22/14

Exhibit 8. It is not clear from the records whether these are additional expenditures or a subset to the amount identified in Exhibit 6. VSA is an entity that follows from a previous corporate entity that, according to letters provided to AGO, has since ceased operations. **Exhibit 9.**

III. Legal Analysis

Jurisdiction

As the Commission previously considered, the Commission has jurisdiction over any person who makes an independent expenditure in a state or legislative race. A.R.S. §§ 16-941(D), -942(B), -956, 958; Ariz. Admin. Code § R2-20-109; *see also Clean Elections Inst., Inc. v. Brewer*, 209 Ariz. 241, 245 ¶ 13, 99 P.3d 570, 574 (2004), *abrogated on other grounds by Save Our Vote Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 291 P.3d 242 (2013) (interpreting the Clean Elections Act and concluding that enforcement of provisions related to independent expenditures as a "paramount" duty that "do[es] not relate to the public financing of political campaigns.").

Express Advocacy

The advertisement unequivocally constitutes express advocacy under Arizona law and is an independent expenditures against Christine Jones that is required to be reported under the Clean Elections Act. A.R.S. §§ 16-901(14); -901.01; -941(D); -942(B); -958. Arizona law defines "expressly advocates" as:

> [1.] Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard or direct mailer
>
> [2.] referring to one or more clearly identified candidates and
>
> [3.] targeted to the electorate of that candidate(s)
>
> [4.] that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the communication or the inclusion of statements of the candidate(s) or opponents.

A.R.S. § 16-901.01(A)(2).

The anti-Jones advertisement satisfies these requirements. The advertisement appeared in broadcast and on the Internet and referred clearly to Jones. *See* A.R.S. § 16-901(4) (defining

clearly identified candidate as the appearance of "the name, a photograph or a drawing of the candidate."). The targets included areas that reached the Republican gubernatorial electorate. Finally, in context, the communications cannot be viewed as urging anything other than a vote against Jones.

The advertisement first aired approximately 90 days prior to the 2014 primary election (August 26, 2014). Based on a review of the text, video, voice-over, and timing of the advertisement in relation to Jones' candidacy for governor, the advertisement had no reasonable meaning other than to advocate for the defeat of Jones for governor. *See Comm. for Justice & Fairness v. Arizona Sec'y of State's Office*, 235 Ariz. 347 ¶ 26, 332 P.3d 94, 101 (App. 2014) (holding that plaintiff's advertisement constituted express advocacy under the Arizona statute).

In its responses VSA argues that the definition of express advocacy in Arizona should be limited to so-called magic words and that the term "purpose of influencing the results of an election" as used in A.R.S. § 16-901(8) defining expenditures must be limited in order to be constitutional. Exhibits 3, 4 (citing *Buckley v. Valeo*, 424 U.S. 1 (1976)). The Clean Elections Action forecloses this argument, *see* § 16-901.01, and the Court of Appeals rejected it in *Committee for Justice & Fairness*, which recognizes that Arizona is not limited to so-called magic words in providing for disclosure of election spending.

The entity VSA is not a corporation and does not appear to dispute the value of the expenditures involved.

<u>Availability of Exemption</u>

Under Commission Rule R2-20-109, certain entities may seek exemption from the Commission's filing requirements if they are a corporation, labor union, or LLC that files independent expenditure reports under A.R.S. § 16-914.02. VSA asserts that it is an unincorporated association, not a corporation, labor union or LLC. As such it is not entitled to an exemption under Ariz. Admin. Code R2-20-109. Materials submitted to AGO indicates it is an entity that emerged from another, corporate entity. However, nothing available at this point indicates that the corporate entity made the expenditures. There is evidence that VSA may have taken over the accounts of the corporate entity, but VSA maintains that the corporate entity had ceased operation. In either event, VSA would not be exempt from the Commission's filing requirements because VSA did not seek an exemption and, as a non-corporation, would not have been required to file reports under A.R.S. § 16-914.02. Accordingly, a reason to believe finding is appropriate.

IV. Recommendation

Because VSA made express advocacy communications and filed no reports, it is subject to enforcement under the Citizens Clean Elections Act and Rules for violating A.R.S. §§ 16-941(D) and -958(A) and (B). If the Commission determines by an affirmative vote of at least three of its members that it has reason to believe VSA has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify VSA of the Commission's finding setting forth: (i) the sections of the statute or rule alleged to have been violated; (ii) the alleged factual basis supporting the finding; and (iii) an order requiring compliance within fourteen (14) days. During that period, the Respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission. A.R.S. § 16-957(A) & Ariz. Admin. Code R2-20-208(A).

If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, the Commission shall conduct an investigation. Ariz. Admin. Code R2-20-209(A). The Commission may authorize the Executive Director to subpoena all of the Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit.

Upon expiration of the fourteen (14) days, if the Commission finds that the alleged violator remains out of compliance, the Commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with A.R.S. § 16-942, unless the Commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. A.R.S. § 16-957(B).

After fourteen (14) days and upon completion of the investigation, the Executive Director will recommend whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred. Ariz. Admin. Code R2-20-214(A). Upon a finding of probable cause that the alleged violator remains out of compliance, by an affirmative vote of at least three of its members, the Commission may issue of an order and assess civil penalties pursuant to A.R.S. § 16-957(B). Ariz. Admin. Code R2-20-217.

Dated this 16th day of June, 2016.

By: s/Thomas M. Collins

Thomas M. Collins, Executive Director

Doug Ducey
Governor

Thomas M. Collins
Executive Director

Mitchell C. Laird
Chair

Steve M. Titla
Damien R. Meyer
Mark S. Kimble
Galen D. Paton
Commissioners

State of Arizona
Citizens Clean Elections Commission

1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - www.azcleanelections.gov

MEMORANDUM

To: Commissioners

From: Thomas Collins

Date: June 20, 2016

Subject: Secretary of State Campaign Finance Reporting System Update

Commissioners may recall that just before you last met, staff learned the Secretary of State had removed the filing log in for Clean Elections Independent Expenditure Reports from its website. A spokesman for the Secretary informed me that this was removed because the Secretary has concluded the reports are unconstitutional. This is an act of self-help by the Secretary and lacks any judicial imprimatur. Indeed, the Secretary has sued to have the act declared unconstitutional by intervening in defense of the Legacy Foundation Action Fund, an independent spender from Iowa. But that suit was terminated when Legacy Foundation Action Fund failed to timely file its appeal. The Secretary's positon lacks a basis in law.

The same spokesman appeared to indicate that political committees, who log in separately, will still be able to file the reports. However, the Secretary's office removed our ability to use the system on the back end for quality assurance. Thus, this remains unconfirmed.

Currently, the Secretary is provided a copy of the Commission's own stop-gap form for Clean Elections Independent Expenditure Reports. These reports would be filed with the Commission. The Secretary, however, is required to provide for the filing at the Secretary's office.

For the time being the PDF works as a stop gap. We hope to approach the Secretary about accepting the PDFs at their office as required by the Clean Elections Act. The reports will also be posted on our website as they are filed.

Proposed Commission Meeting Dates for July - December 2016

Month	*Date*	*State Holiday*
July	*28th*	*Monday, July 4th, Independence Day*
August	*25th*	
September	*15th*	*Monday, Sept 5th, Labor Day*
October	*27th*	*Monday, Oct 10th, Columbus Day*
November	*17th*	*Friday, Nov 11th Veteran's Day &* *Thursday, Nov 24th, Thanksgiving Day*
December	*8th*	*Monday, Dec 26th, Christmas Holiday*

In the event additional meetings are required or changes need to be made, staff will work directly with each member to secure at least a quorum. All above proposed meeting dates are on Thursday, scheduled to begin at 9:30 a.m.

ITEM VIII