



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

REVISED

Date: Thursday, December 14, 2017

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 December 14, 2017. 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 November 16, 2017 meeting.
- III. Discussion and Possible Action on Executive Director's Report.
- IV. Discussion and Possible Action on Selection of Chairman for 2018.
- V. Discussion and Possible Action on Calendar Year 2017 & 2018 Budget and Related Matters.
 - A. Discussion and Possible Action on the 2018 Expenditure CAP
 - B. Discussion and Possible Action on the 4-Yr. Revenue Projections and Excess Monies.
 - C. Discussion and Possible Action on the Commission's 2018 Calendar Year Budget.
 - D. Discussion and Possible Action on CY 2017 Attorney General Office Interagency Service Agreement.

VI. Discussion and Possible Action on Rule Proposals:

- A. R2-20-106 – Distribution of Funds to Certified Candidates (proposed rule change)
- B. R2-20-109 – Independent Expenditure Reporting Requirements
- C. R2-20-111 – Non-participating Candidate Reporting Requirements & Contribution limits

The Commission may choose to go into executive session on Item VI for discussion or consultation with its attorneys to consider its position and instruct its attorneys regarding the public body's position regarding contracts, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation. A.R.S. § 38-431.03(A)(4).

VII. Discussion and Possible Action on *Arizona Advocacy Network, et. al v. State of Arizona, et al.*

The Commission may choose to go into executive session on Item VII for discussion or consultation with its attorneys to consider its position and instruct its attorneys regarding the public body's position regarding contracts, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation. A.R.S. § 38-431.03(A)(4).

VIII. Discussion and Possible Action on Authorization of Staff to Approve Second Payment of CY 2017 ISA with Arizona Secretary of State's Office.

IX. Discussion and Possible Action on MUR 17 -02 and 17-03 American Federation for Children.

X. 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

XI. 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 13th day of December, 2017.

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.

Reporter's Transcript of Proceedings - November 16, 2017
Public Session

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
November 16, 2017
9:34 a.m.

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ITEM II

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Page 2	Page 4
<p>1 PUBLIC MEETING BEFORE THE CITIZENS CLEAN 2 ELECTIONS COMMISSION convened at 9:34 a.m. on November 16, 3 2017, at the State of Arizona, Clean Elections Commission, 4 1616 West Adams, Conference Room, Phoenix, Arizona, in the 5 presence of the following members:</p> <p>6 Mr. Damien Meyer, Acting Chairman 7 Mr. Mark S. Kimble 8 Mr. Galen D. Paton</p> <p>9 OTHERS PRESENT:</p> <p>10 Thomas M. Collins, Executive Director 11 Paula Thomas, Executive Officer 12 Sara Larsen, Financial Affairs Officer 13 Mike Becker, Policy Director 14 Alec Shaffer, Web Content Manager 15 Stephanie Cooper, Executive Support Specialist 16 Jeanne Galvin, Assistant Attorney General 17 Joseph La Rue, Assistant Attorney General 18 Kara Karlson, Assistant Attorney General 19 Joseph A. Kanefield, Ballard Spahr, LLP 20 Joel Edman, AZ Advocacy Network 21 Morgan Dick, AZ Advocacy Network 22 Rivko Knox, LWV/AZ</p>	<p>1 (No response.)</p> <p>2 ACTING CHAIRMAN MEYER: Motion carries</p> <p>3 unanimously.</p> <p>4 Item Number III on the agenda is "Discussion</p> <p>5 and Possible Action on Executive Director's Report."</p> <p>6 Mr. Collins?</p> <p>7 MR. COLLINS: Mr. Chairman, Commissioners,</p> <p>8 we want to go through just a few things. It's a little</p> <p>9 more extensive report than we've had from time to time.</p> <p>10 But as you may or may not know, under 16-949, the Auditor</p> <p>11 General takes a look at our spending in the Clean</p> <p>12 Elections fund every four years. And as you'll see in the</p> <p>13 letter attached to the review, they found no instances of</p> <p>14 noncompliance or significant deficiencies. And Sara and</p> <p>15 Paula worked to make sure that all their questions were</p> <p>16 answered as they came up. So we're pleased with that, and</p> <p>17 that's good news.</p> <p>18 As you can see, we have a very active voter</p> <p>19 education calendar. We do have a new "ID at the Polls"</p> <p>20 tool on our website. So if you go to</p> <p>21 azcleelections.gov/idthatpoll, something -- well, I think.</p> <p>22 I should have gotten that URL, but I don't -- But it is</p> <p>23 also available on our website at our announcements. You</p> <p>24 don't need to know the URL.</p> <p>25 It's actually really a pretty cool tool.</p>
Page 3	Page 5
<p>1 PROCEEDING</p> <p>2</p> <p>3 ACTING CHAIRMAN MEYER: Good morning. We'll</p> <p>4 call to order the Citizens Clean Elections Commission</p> <p>5 meeting on Thursday, November 16th, 2017, at 9:30. I'm</p> <p>6 Commissioner Damien Meyer. I will be acting chair today</p> <p>7 due to Commissioner Titla's absence. We're down two</p> <p>8 commissioners today. Commissioner Titla and Commissioner</p> <p>9 Chan are not here, but we do have a quorum, so we will</p> <p>10 proceed.</p> <p>11 Item Number II on the agenda is "Discussion</p> <p>12 and Possible Action on Commission Minutes for the</p> <p>13 September 28, 2017, meeting."</p> <p>14 Any questions or comments on the minutes</p> <p>15 from our last meeting in September? And if not, a motion</p> <p>16 to approve.</p> <p>17 COMMISSIONER KIMBLE: Mr. Chairman, I move</p> <p>18 that we approve the minutes for the Commission meeting of</p> <p>19 September 28th, 2017.</p> <p>20 COMMISSIONER PATON: Second.</p> <p>21 ACTING CHAIRMAN MEYER: Commissioner Paton</p> <p>22 seconds that motion.</p> <p>23 All in favor say aye.</p> <p>24 (Chorus of ayes.)</p> <p>25 ACTING CHAIRMAN MEYER: All opposed?</p>	<p>1 You click through, it asks you what documents you have,</p> <p>2 whether those documents meet the requirements. And then,</p> <p>3 of course, if you don't have the documents that are there,</p> <p>4 it urges you to give us a call so we can help you figure</p> <p>5 out what you're missing and how to get it.</p> <p>6 And Gina's out today working right now on</p> <p>7 voter education stuff.</p> <p>8 So far we have 37 legislative candidates, 17</p> <p>9 statewide candidates.</p> <p>10 I want to get to the other stuff that I</p> <p>11 think is a little more substantial. Some of this stuff</p> <p>12 you may already know about.</p> <p>13 We did get sued yesterday, although I don't</p> <p>14 think we have been served. The Arizona Advocacy Network</p> <p>15 and a number of state lawmakers and a union sort of filed</p> <p>16 a lawsuit. The upshot of the lawsuit is that when the</p> <p>17 legislature passed Senate Bill 1516 back in 2015, that</p> <p>18 portions of that don't comply with the Voter Protection</p> <p>19 Act and there may be some other claims in there as well.</p> <p>20 I haven't had a chance to read the full Complaint yet.</p> <p>21 We'll be working with counsel on that presumably in time</p> <p>22 for the next meeting or if we need to talk about it</p> <p>23 sooner.</p> <p>24 I will say there's been one news story,</p> <p>25 which I'll get to you, on this in the AP, and the Speaker</p>

Page 6	Page 8
<p>1 of the House of Representatives said, "Well, there's no 2 way we could have done anything to the Clean Elections 3 Commission" -- But the headline, as you see on the thing, 4 is the press uses the advocacy organization thinks this is 5 a -- believes this is a step necessary to defend what we 6 do. The Speaker of the House said in the news story, 7 "There's no way we could have done that because we didn't 8 get a three-quarter vote for 1516." So in some sense, I 9 guess we're all in agreement, then, because, you know, 10 last year in a vote of four yeses and one abstention, you 11 know, we voted to reject language that said 12 "notwithstanding any law or rule, you shall do this" in 13 our rules. 14 So I guess the Speaker needs to call the 15 chairwoman of GRRC and we can get this all resolved 16 without any further adieu. 17 That was a joke. 18 ACTING CHAIRMAN MEYER: I smiled. 19 MR. COLLINS: You smiled. Well, you're not 20 paying me for the jokes, but, you know -- That comes 21 free. 22 I want to point out that -- I think you all 23 know this as well -- an independent investigator hired by 24 the Attorney General to look at the Secretary of State's 25 distribution of 2016 special election publicity pamphlet</p>	<p>1 is called Agency Counsel. My understanding is all the 2 election work will now be in the Agency Counsel except for 3 election-related enforcement actions, which are in another 4 section. I'll be working with Joe and Kara to figure out 5 what, if anything, about this changes the nature of their 6 work. But it's -- We've been represented by the 7 Solicitor General's office, I think, since the inception 8 of the program, in fact. So that's new. Not 9 necessarily -- you know, the impact of that is -- so far 10 has not been discernible, but just FYI. We will be 11 finding out how that changes things, if any. 12 So it's a bit longer report than usual, but 13 a lot of activity in the last two months since we -- since 14 we met. So I don't know if you have any questions about 15 any of those things. 16 COMMISSIONER KIMBLE: Mr. Chairman? 17 ACTING CHAIRMAN MEYER: Commissioner Kimble. 18 COMMISSIONER KIMBLE: Mr. Collins, I just 19 want to say that I came up to one of the training 20 workshops for participating candidates and was very 21 impressed with the program put on by Sara and Gina and 22 Stephanie. I learned a lot about what it takes to be a 23 participating candidate. But I thought they went through 24 a very complex set of rules and regulations in a way that 25 was clearly understandable to any candidates.</p>
Page 7	Page 9
<p>1 released his report. That's available for you at that 2 link. 3 The See the Money beta site is up, 4 seethemoney.gov. Folks are playing around with that and 5 we hope giving feedback to the Secretary's Office. In the 6 right corner, there's a feedback box where you can put in 7 your name, email, and that will actually send an email 8 directly to the folks who are developing the site. 9 We also had some news this month in the case 10 of the former Attorney General Horne. There were other -- 11 there were two parallel proceedings, one at Clean 12 Elections, one that had moved to the Attorney General's 13 Office and then been assigned to outside counsel. That 14 outside counsel ordered amendments onto Mr. Horne's 15 reports and essentially ratified the fine that this 16 Commission imposed on him in 2014. Because they 17 ordered some amendment of the reports under the 18 conciliation agreement that Mr. Horne reached with us, he 19 is obligated to follow through on that or appeal, so we'll 20 be getting back to you probably sometime early next year 21 if there's anything further to be done there. 22 And then I also wanted to note Joe and Kara 23 are here. I guess effective -- effective recently, would 24 be a fair word, they have been moved out of the Solicitor 25 General's section into a section of the AG's office that</p>	<p>1 ACTING CHAIRMAN MEYER: Any other comments 2 or questions? 3 Tom, is the number of participating 4 candidates -- is that up or is that -- 5 MR. COLLINS: It is up. I'm not sure -- 6 this is the time of year where folks are -- it should be 7 up around now. It may come down depending upon who 8 actually ends up filing -- 9 ACTING CHAIRMAN MEYER: Sure. 10 MR. COLLINS: -- at the end. But so far 11 it's up. I don't know what percentage, but it is up a 12 bit. 13 It's also a statewide election year, and we 14 have -- I will say the one thing -- we have a number of 15 contested primaries where -- with multiple clean 16 candidates who are planning to run clean, so that's going 17 to be -- that's going to raise the numbers there in the 18 statewide races specifically. 19 ACTING CHAIRMAN MEYER: Okay. Item 20 Number IV on the agenda is "Discussion and Possible Action 21 on MUR 17-01 Jesus Rubalcava." 22 Tom? 23 MR. COLLINS: I'm going to step down here 24 just for sake of -- you know, to address your questions 25 more easily.</p>

Page 10

1 As you all know, just to kind of bring you
2 up to speed, we have not heard from Mr. Rubalcava, to the
3 best of my knowledge.
4 MS. THOMAS: No, sir.
5 MR. COLLINS: I'm going to proceed. We
6 haven't heard from him since I filed this brief, to the
7 best of my knowledge. So just to walk you through the
8 procedure here really quickly, and then we'll get to the
9 substantive part of the penalties, we've gone through
10 essentially -- this process has gone through really four
11 phases, of which we think this is the last one. We
12 started with a random audit that Mr. Rubalcava was
13 selected for, gosh, more than a year ago now, I think was
14 the primary, right? That random audit came back with
15 enough discrepancies that we recommended a full audit of
16 all of his campaign activity, which we completed. It took
17 some time to complete, but that was finally completed. We
18 then in the spring, I think May -- I want to say May of
19 this year, we filed a reason-to-believe statement alleging
20 that there was reason to believe violations of the Act may
21 have occurred.
22 In August, we asked you to issue a repayment
23 order for the corpus of the amount of money that we
24 believed that Mr. Rubalcava owed the fund, which you did.
25 And now we're at what we think is the

Page 11

1 ultimate resolution of this issue, which is the potential
2 to find probable cause to believe that the violations
3 occurred and to impose penalties.
4 In the meantime, as we all know,
5 Mr. Rubalcava resigned his position in the legislature.
6 And that's where we are.
7 So ultimately, we did an investigation. The
8 investigation was -- we conducted it in a way that
9 attempted to be as efficient as possible to see if there
10 was any way to get, frankly, any further information from
11 Mr. Rubalcava about how he was handling his finances and
12 how he was spending his money. And as you can see as
13 outlined in the facts at page 3, we received very
14 little -- 3 and 4, we received very little in the way of
15 new information, and that new information, frankly, was
16 itself inconsistent with other information that had been
17 reported. So, you know, what we see, you know, in each of
18 these counts is -- is a real inconsistency in -- in
19 approach to reporting, to say the least. And when you get
20 behind the reports and into the actual fund -- funds in
21 his checking account, you find that there's just simply no
22 way to match those up with the applicable law.
23 So we have reached some calculations with
24 respect to penalties. Under 16-942(A), the penalties for
25 violation of the contribution and expenditures limits in

Page 12

1 941 are 10 times the amount of the violation, so what
2 we've done in each count is aggregated what we think the
3 amount of the violation is. We think those numbers are --
4 I mean, I think that the briefs outline how we reached
5 those numbers. When there was -- You know, as in Count
6 One, there was a discrepancy where he either exceeded the
7 amount by 3,900 or 3,600. We gave him the benefit of the
8 doubt there and are only asking for a penalty based on the
9 \$3,600 excess contribution.
10 But, you know, we think -- I will say that,
11 you know, as staff, we think that you have some discretion
12 to adjust these penalties. We think you can -- you can
13 certainly do that. But we do think that the brief
14 itself -- given that Mr. Rubalcava has not seen fit to
15 provide a defense, let alone a reason why the brief should
16 have been withdrawn, I don't want to belabor it, but we
17 think that there is probable cause to believe that the
18 statute -- that 941(A)(1) and 941(A)(5) and -- I'm trying
19 to find the other 940 citation here -- if we need to for
20 the record.
21 I'm sorry.
22 ACTING CHAIRMAN MEYER: Mr. Collins?
23 MR. COLLINS: Yes.
24 ACTING CHAIRMAN MEYER: I reviewed this
25 earlier. And I'm just kind of writing down numbers now.

Page 13

1 So there's, I think, six different recommended penalties
2 in here or potential penalties in here?
3 MR. COLLINS: Correct.
4 ACTING CHAIRMAN MEYER: Are those
5 cumulative, as in --
6 MR. COLLINS: No. We broke those down per
7 count, so --
8 ACTING CHAIRMAN MEYER: Right. But what I'm
9 saying is if I add up all these penalties, it's about
10 \$300,000.
11 MR. COLLINS: That's correct.
12 ACTING CHAIRMAN MEYER: Is that -- is that
13 the maximum amount of the fine?
14 MR. COLLINS: Based on our calculations,
15 based on what we've been able to put together through a
16 combination of his bank accounts, record filing, and the
17 audits and the effort to try to do some supplemental
18 investigation, yes.
19 ACTING CHAIRMAN MEYER: So remind me. How
20 much money can he not account for, and how much money was
21 not paid back to the Commission? My recollection was like
22 15- to \$17,000.
23 MR. COLLINS: Right. So, yeah, there is
24 a -- The amount that he owes the Commission is around
25 \$17,000. He qualified for approximately 15,5 in the

Page 14

1 primary election and then he received \$1,415 in the
2 general election, and he hasn't repaid any of that at this
3 point. So yes, I mean, in terms of -- Yes.
4 ACTING CHAIRMAN MEYER: Commissioner Paton?
5 COMMISSIONER PATON: But he did repay
6 something from the general election?
7 MR. COLLINS: No, he did not.
8 COMMISSIONER PATON: I thought he repaid --
9 you paid him and then --
10 MR. COLLINS: Oh, well, I'm sorry, yes,
11 that's right.
12 ACTING CHAIRMAN MEYER: Uncontested --
13 MR. COLLINS: He was issued an amount of
14 money for the general election that was a mistake, and he
15 repaid the money he was not entitled to. And he did that
16 in a relatively timely basis.
17 MS. LARSEN: 30 days.
18 MR. COLLINS: 30 days. He took as much time
19 as he had to repay it.
20 COMMISSIONER PATON: So all these different
21 things are quite -- It's amazing all the different things
22 that don't add up. My concern is like on page 3 here,
23 where you've got -- he's got these invoices that he
24 submitted. Do these not count on how much he owes?
25 MR. COLLINS: That's a good question. We

Page 15

1 have certainly considered the possibility that he could
2 have, had he appealed, asked for an offset on the
3 repayment for monies that he could have produced. He
4 hasn't done that as of yet. And that is to say he
5 never -- He didn't file a timely appeal. I would suggest
6 that -- There are two ways to look at that. If you want
7 to take that into account as a mitigating factor here in
8 this penalty, you know, there's a provision in 16-941(D)
9 which essentially says -- you know, reiterates that if you
10 violated certain parts of the statute, we take possession
11 of -- you essentially owe the entirety of the amount of
12 money you received from the Commission as a penalty. You
13 could mitigate that there on that penalty. You could
14 mitigate the penalty however you want. I mean, frankly,
15 you could -- I think that the biggest -- You know, I
16 can't do that math in my head.
17 COMMISSIONER PATON: I guess my concern --
18 and I've talked to you before. My concern is that he
19 legitimately spent money on these items, and those, to me,
20 seem like legitimate campaign expenses. And my sense
21 that -- I don't think we should penalize him if he proved
22 that he spent that on these invoices. And I don't know
23 how you do all your auditing or whatever, but, I mean,
24 obviously, he didn't do things correctly, and we have no
25 idea on some of the stuff what he spent money on. And, of

Page 16

1 course, that's wrong. But these other things, to me, seem
2 like they're legitimate campaign expenses, and I would
3 hate to penalize somebody for spending -- I mean us
4 penalizing him after he spent this money on items that are
5 legitimate campaign expenses.
6 COMMISSIONER KIMBLE: Well -- Mr. Chairman?
7 ACTING CHAIRMAN MEYER: Commissioner
8 Kimball.
9 COMMISSIONER KIMBLE: I would like to give
10 him the benefit of the doubt, but I think he has been
11 totally irresponsible in refusing to answer any questions.
12 He was on a phone call in one meeting and said he would
13 accept whatever we decided.
14 And in August, we voted to order him to
15 repay \$17,459 within 30 days of the date of this order,
16 which was August 21st -- 22nd. No one's heard from the
17 guy since then. I mean, I'd like to give him the benefit
18 of the doubt, but he's not being very helpful here. And I
19 don't know what more we can do. I think we have -- As
20 the chairman pointed out, the potential penalties are
21 huge. We asked -- we agreed that he should repay \$17,459
22 and he won't even respond to that. How much further
23 should we go in trying to work with this guy if he won't
24 even talk to us?
25 ACTING CHAIRMAN MEYER: Ms. Larsen?

Page 17

1 MS. LARSEN: Chairman, Commissioner Paton,
2 to help answer your question a little bit, we actually are
3 not able to confirm that those were campaign expenses.
4 Those transactions did not come out of his campaign bank
5 account. So we don't even know if there's a -- The
6 column on the very right of that chart says "Campaign
7 Account Transaction." There's only one that we can verify
8 actually came out of his campaign bank account and was
9 properly reported, and it was just a fraction of that
10 expenditure that was properly reported. All of those
11 transactions were not properly reported on his campaign
12 finance reports in a timely manner, and four out of those
13 five did not even come out of his campaign bank account.
14 So we can't verify that those were campaign expenditures,
15 so that's why we did not subtract those out of the
16 penalty.
17 ACTING CHAIRMAN MEYER: I'm going to suggest
18 to my fellow commissioners here that we don't relitigate
19 something we've already decided. We decided back in
20 August by unanimous vote, I believe, that he was to repay
21 the \$17,500.
22 And that would include these transactions
23 that we're looking at here. Correct, Tom?
24 MR. COLLINS: It may or may not include
25 them. We don't know.

Page 18

1 ACTING CHAIRMAN MEYER: So what I'm trying
2 to do is look at this big picture. We have ordered
3 Mr. Rubalcava to pay \$17,500, which he has not done.
4 MR. COLLINS: Right.
5 ACTING CHAIRMAN MEYER: We are sitting here
6 today at this penalty stage, I guess we would call it, and
7 what I am trying to understand is is staff recommending
8 the issuance of the \$300,000 fine or is that just a tally
9 of what the ultimate one is and you have a different
10 number you're recommending?
11 MR. COLLINS: Mr. Chairman, Commissioners,
12 that's a good question. The way I have approached it is
13 this. The first thing is we do need to establish that
14 there is probable cause to believe. So you can take that,
15 in my view -- And you have counsel of your own, if I'm
16 wrong, who will correct. I'm sure you'll do it correctly.
17 But in my view, you can find probable cause to believe
18 based on the entirety of the memo or you can break it down
19 count by count. That's just the probable cause -- these
20 are the facts that there's probable cause to believe. So
21 that's stage one of the penalty phase.
22 Assuming you were to decide that, in fact,
23 there was probable cause to believe the facts as we
24 presented them, you know, it's incumbent on us to give
25 notice to Mr. Rubalcava of the available penalties.

Page 19

1 You know, I think that in the past, the
2 Commission has sua sponte reduced penalties of even
3 violators who have -- who have shown no interest in coming
4 into compliance. For example, the Legacy Foundation
5 Action Fund, which is a 501(c)(4) group we're still
6 litigating with. But we actually reduced -- the
7 Commission sua sponte reduced their penalties even though
8 they had shown no signs of complying. They did actually
9 show up at the meetings and argue, but they didn't -- they
10 were not going to file their reports, and they haven't.
11 So my point would be I think that what you
12 need to -- you know, so if it's not improper for me to go
13 ahead and talk about the penalty prior to -- if there's no
14 objection, I'm going to go ahead head and talk about the
15 penalty.
16 MS. GALVIN: You may.
17 MR. COLLINS: You know, I think that the
18 order needs to be a deterrent and the order needs to
19 reinforce to the public that if folks are going to work
20 with the Clean Elections funding program, which is an
21 expressly anticorruption measure, and they're going to do
22 stuff that is corrupt, that we're going to take that
23 seriously as possible.
24 The reason why the fines are set at the
25 level they're set at is that is an initial deterrent.

Page 20

1 What that should do, if you read the statute together, is
2 bring someone in for an administrative conciliation. Our
3 rules provide that he can -- Mr. Rubalcava can still seek
4 that conciliation after this stage. He has an express
5 right under our rules to ask for that meeting with me to
6 work on some kind of settlement.
7 So my thought would be, you know, you
8 don't -- I guess, in my view, you don't want to minimize
9 this, but on the other hand if, you know, we're saying,
10 you know, recognizing that there may be some value in
11 showing at least some leniency, I think that -- you know,
12 I think somewhere in the nature of 3 times the amount he
13 owes in repayment is an appropriate general number. So it
14 would be -- so 17,000 times 3 is approximately --
15 ACTING CHAIRMAN MEYER: 51.
16 MR. COLLINS: Yeah. Is that right? Yeah.
17 That would bring his total owing to us to
18 77,000-ish, which I think is a pretty significant number.
19 I think it has a deterrent effect and might bring him to
20 the table.
21 On the other hand, frankly --
22 I don't have my rule book in front of me.
23 On the other hand, you're entitled to, we
24 think, issue fines in the amount we have identified.
25 COMMISSIONER KIMBLE: If I could say one

Page 21

1 thing, Mr. Chairman?
2 ACTING CHAIRMAN MEYER: Of course.
3 COMMISSIONER KIMBLE: I guess there's two
4 concerns I have. Number one, I understand that we want
5 some kind of a penalty to stress the importance of this.
6 Number two, I don't want to set a penalty so
7 high that he's going to look at this and say, "Well, I'm
8 never going to repay this. I can't possibly afford this,
9 so why even bother talking to them."
10 MR. COLLINS: Look, I think that's the issue
11 that you have. And I just wanted to note that because of
12 our compressed -- or, our limited membership, all of you
13 have to vote for this today in order for this to go
14 forward. So if this were to be under R2-20-215 and
15 R2-20-217, it requires three commissioners, and there are
16 three commissioners. So I just wanted to make clear that
17 y'all are going to have to be unanimous on this.
18 Look, I mean, the other way we could do
19 this, and I'd be willing to do this, is there's nothing in
20 the rules that precludes making a probable cause finding
21 today, you know, putting off the penalty phase until --
22 until next month or the month after; reach out to, you
23 know, Mr. Rubalcava again, make him aware of his
24 situation. You know, so we think the total would end
25 up -- you know, owing would be 52,000 -- would be 69,000

<p style="text-align: right;">Page 22</p> <p>1 total in penalties and repayments. 69,836. 2 ACTING CHAIRMAN MEYER: So that would 3 include the 17,5. 4 MR. COLLINS: Correct. 5 ACTING CHAIRMAN MEYER: Plus -- 6 MR. COLLINS: 52 -- 7 ACTING CHAIRMAN MEYER: -- three times that 8 amount. 9 MR. COLLINS: Right. 10 You know, I think that the -- I think that's 11 also -- Well, so we could do that. We have that option 12 too. 13 The other option we have is to do the 14 probable cause to believe today, make another effort to 15 reach out to Mr. Rubalcava and say, "Look, this is 16 serious, you need to take this seriously," and come back 17 with a -- with a recommendation or make even a 18 conciliation, if that's possible. I don't know if that's 19 possible, but it's possibly more efficient. 20 I mean, ultimately, what happens with these 21 cases when we've had them in the past is we issue a 22 repayment order, that repayment order goes unpaid -- or, a 23 penalty order. It goes unpaid, and until that person 24 wants to do something, like run for office again or -- 25 because you have to pay up all your fines to run for</p>	<p style="text-align: right;">Page 24</p> <p>1 somebody paid up kind of thing, which is not atypical, I 2 think, in that kind of situation. 3 COMMISSIONER KIMBLE: Mr. Chairman? 4 So, Tom, we voted for this fine in August. 5 How was Mr. Rubalcava notified of this? In other words, 6 how could he say, "Well, I didn't know about this?" 7 MR. COLLINS: I don't think there's any way 8 he could say he didn't know about this. 9 COMMISSIONER KIMBLE: So we know he was 10 notified? And how do we know he was notified? 11 ACTING CHAIRMAN MEYER: He was on the phone 12 when we did it. 13 MR. COLLINS: That's one way he knows. And 14 then we issued an order to him via -- probably via email, 15 mail. We process -- we served -- 16 MS. THOMAS: Yeah, we've done everything, 17 email, Federal Express, and even process server. 18 COMMISSIONER KIMBLE: And we've gotten some 19 kind of confirmation that it was delivered by Federal 20 Express? 21 MS. THOMAS: Yes. 22 ACTING CHAIRMAN MEYER: He was personally 23 served by the process server with this order? 24 MS. THOMAS: I think his wife was served, 25 but we have that certification.</p>
<p style="text-align: right;">Page 23</p> <p>1 office again, those kind of things. And then all of a 2 sudden, they say, "Oh, we want to pay." And it ends up 3 becoming something that gets worked out on the back end by 4 the Attorney General's collections attorneys. 5 ACTING CHAIRMAN MEYER: That was a question 6 I had for Tom or maybe Ms. Galvin. Is this like a civil 7 judgment that we can collect in that manner? I mean, how 8 do you collect on these fines? 9 MS. GALVIN: It would be referred to 10 Attorney General's Office, who has staff to collect on the 11 judgment. 12 ACTING CHAIRMAN MEYER: So it is treated 13 like a civil judgment? Like you have the remedies like 14 garnishments and foreclosures? 15 MS. GALVIN: That, I'm not sure what the 16 remedies are, but I do know that they proceed to collect. 17 ACTING CHAIRMAN MEYER: And you're saying 18 they can't run for office until they pay up all their 19 state fines, which would include this one? 20 MR. COLLINS: That is correct. And in my 21 experience -- I mean, not to overstep my bounds here, but 22 in my experience, when I was at the Attorney General's 23 Office working on resolving some of these older fine 24 cases, you know, we certainly were willing to threaten a 25 debtor's exam. Once you threatened a debtor's exam,</p>	<p style="text-align: right;">Page 25</p> <p>1 COMMISSIONER KIMBLE: And since this August 2 meeting, no one in Clean Elections has heard from him in 3 any form. Is that accurate? 4 MR. COLLINS: We did get a response to the 5 subpoena. And the subpoena specifically -- We subpoenaed 6 him. The subpoena basically said, "Give us everything 7 you've got that you can come up with." 8 COMMISSIONER KIMBLE: Recordwise. 9 THE WITNESS: Yes. 10 As you can see, it's noted in the memo, he 11 provided these copies of his campaign finance reports 12 again, and copies of these invoices were interspersed in 13 there, in no particular order. And as Sara has pointed 14 out, they're not tied to anything. 15 And then he wrote in an email that came 16 along with the subpoena, "This is all I have and 17 essentially everything else is lost." It continues to be 18 his -- the one thing -- Despite the inconsistencies in 19 accounting and the inconsistencies between campaign 20 finance reports and actual bank account records and the 21 inconsistent usage of personal accounts and campaign 22 accounts, the one thing that Mr. Rubalcava has been clear 23 about is he lost everything. 24 COMMISSIONER KIMBLE: He lost all of his 25 documents?</p>

Page 26

1 MR. COLLINS: Right. Right.
2 And, unfortunately -- and in our view, just
3 getting back to the facts as opposed to the penalty, you
4 know, that is itself evidence you can -- we believe you
5 can take an inference that those documents do not exist
6 because he had an obligation, pursuant to our rules in
7 deciding to be a candidate that participated in Clean
8 Elections funding program, to keep track of that stuff.
9 And so we think you can take an adverse inference at this
10 point. His admitted dereliction with respect to keeping
11 those records we think is evidence they don't exist.
12 COMMISSIONER KIMBLE: So since
13 September 14th, when he responded to the subpoena, we have
14 not heard from him?
15 MR. COLLINS: That's correct. Yes,
16 Mr. Chairman -- Commissioner Kimball.
17 ACTING CHAIRMAN MEYER: Commissioner Paton?
18 COMMISSIONER PATON: I don't think we should
19 go any farther with it, I mean, drag this out another
20 month. I mean, if people are taking classes now for the
21 upcoming election, whatever, this will be a good
22 reinforcer that -- I mean, it's been a year since the
23 last election, and I don't think dragging it on any longer
24 is going to be a good thing.
25 ACTING CHAIRMAN MEYER: Just for the fellow

Page 27

1 commissioners, my thoughts are I believe there's a reason
2 to believe the factual predicate is there to support
3 moving forward with this. And I am -- I like to think
4 I'm, you know, sympathetic to these types of issues, but I
5 am mindful -- and I very vividly remember that August
6 meeting, which -- I was on the phone. I remember
7 Commissioner Kimball stating and reminding us that we are,
8 as the commissioners, stewards of these funds and we're
9 responsible to make sure that they're properly accounted
10 for.
11 So it's my position that we move forward
12 with the factual findings that Tom has suggested and that
13 we issue the penalty of three times the amount owed, which
14 would put us at the 69,000 figure. That's my suggestion
15 how we move forward today. I welcome thoughts of my
16 fellow commissioners or if anyone wants to make a motion.
17 COMMISSIONER KIMBLE: Mr. Chairman, I would
18 make that motion, or you certainly can if you -- I move
19 that we -- that we impose the penalties of three times the
20 amount of \$17,459.
21 ACTING CHAIRMAN MEYER: If I could hit the
22 pause button on you, Commissioner Kimball.
23 Procedurally here, do we need to make the
24 finding of the factual issue first to then move forward to
25 the penalty phase?

Page 28

1 MS. GALVIN: That's what I recommend, that
2 you make the findings, find probable cause, and then go to
3 the penalty portion.
4 ACTING CHAIRMAN MEYER: Okay. So I will
5 make that motion.
6 MS. GALVIN: Do you withdraw your --
7 COMMISSIONER KIMBLE: I withdraw my motion.
8 ACTING CHAIRMAN MEYER: So I move that we
9 follow the staff recommendation that probable cause exists
10 for a violation of the Act, as indicated in the
11 November 3, 2014, Probable Cause Recommendation and Notice
12 of Possible Penalties prepared by Mr. Collins.
13 COMMISSIONER KIMBLE: I second that.
14 ACTING CHAIRMAN MEYER: All in favor say
15 aye.
16 (Chorus of ayes.)
17 ACTING CHAIRMAN MEYER: Any opposition?
18 (No response.)
19 ACTING CHAIRMAN MEYER: None.
20 So that motion carries three to zero, so we
21 have a quorum of all the commissioners -- or, the
22 necessary votes of all the commissioners.
23 So now we can move forward with the penalty
24 phase.
25 And we can have Commissioner Kimble's motion

Page 29

1 be heard?
2 MS. GALVIN: Yes. He's sort of argued it
3 earlier, but if he has anything additional to say.
4 ACTING CHAIRMAN MEYER: Well, I think we've
5 heard Tom's thoughts on this.
6 MR. COLLINS: Yeah, we're comfortable on
7 this.
8 ACTING CHAIRMAN MEYER: Commissioner Kimble,
9 do you want to reurge your motion at this time on the
10 penalty?
11 COMMISSIONER KIMBLE: Yes. I would move
12 that we impose penalty of three times the amount of
13 \$17,459 on Mr. Rubalcava in addition to the initial
14 amount.
15 ACTING CHAIRMAN MEYER: I will second that
16 motion.
17 MS. GALVIN: Is that clear? I thought the
18 three --
19 MR. COLLINS: From my perspective, that's
20 clear. So 3 times 17,459, which happens to be 52,377.
21 And then --
22 MS. GALVIN: Plus the initial.
23 MR. COLLINS: Plus the repayment amount.
24 MS. GALVIN: Plus --
25 MR. COLLINS: But I think from my

Page 30

1 perspective, we don't need to treat the repayment amount
2 as a penalty. I think the penalty is 52,377. It's true
3 that that is in addition, but if --
4 MS. GALVIN: I think to phrase it --
5 MR. COLLINS: As long as the record is clear
6 that the 52,377 is the penalty, I think that that would be
7 what staff recommendation would be.
8 MS. GALVIN: And in addition, the repayment
9 amount, I think, is --
10 COMMISSIONER KIMBLE: Right.
11 MS. GALVIN: Okay. Very good, then.
12 COMMISSIONER KIMBLE: Okay. So just to be
13 clear, my motion is that he be penalized three times the
14 initial amount, which would be 52,377, and also be ordered
15 to repay the initial amount of 17,459 within 30 days.
16 MS. GALVIN: Of the effective date of the
17 order. Very good.
18 ACTING CHAIRMAN MEYER: Ms. Galvin, are we
19 good with that motion?
20 MS. GALVIN: Yes.
21 ACTING CHAIRMAN MEYER: I will second that
22 motion.
23 All in favor . . .
24 I'm going to stop that based upon what I was
25 just observing. Do we need to amend this motion or --

Page 31

1 MR. COLLINS: I think, again, as I tried to
2 iterate, it would be helpful for us, for the record, to
3 have the amount of the penalty be 52,377. We don't need
4 to reiterate the repayment amount in the motion. We want
5 to --
6 COMMISSIONER PATON: Because we only
7 penalized him.
8 MR. COLLINS: Right. We want a clean record
9 on the two amounts. That would be our only request.
10 ACTING CHAIRMAN MEYER: So, Commissioner
11 Kimball, can you withdraw your prior motion?
12 COMMISSIONER KIMBLE: I will withdraw and
13 try to restate it again.
14 ACTING CHAIRMAN MEYER: Third time's the
15 charm.
16 COMMISSIONER KIMBLE: That we impose a
17 penalty of Mr. Rubalcava of three times the initial
18 amount, which is \$52,377.
19 ACTING CHAIRMAN MEYER: I will second that
20 motion.
21 All in favor say aye.
22 (Chorus of ayes.)
23 ACTING CHAIRMAN MEYER: All opposed? Nay?
24 (No response.)
25 ACTING CHAIRMAN MEYER: There are no

Page 32

1 opposition.
2 The imposition of the penalty of \$52,377
3 carries unanimously with all commissioners present.
4 MR. COLLINS: Thank you.
5 ACTING CHAIRMAN MEYER: Okay. Moving on to
6 Agenda Item V, "Discussion and Possible Action on MUR
7 17-02 and 17-03 American Federation for Children."
8 MR. COLLINS: I hope you all --
9 Mr. Chairman and Commissioners, you may have received from
10 me an email late last night. We were unable to get all of
11 the attorneys -- or, specifically AFC's attorney, who's in
12 D.C. today, to get a couple of details nailed down. We
13 had hoped -- As you can see in the proposed conciliation,
14 there's a blank. We are not -- we weren't able to fill
15 that in and we weren't able to get that done, so we are
16 holding that until next month.
17 ACTING CHAIRMAN MEYER: So move on to
18 Item VI?
19 MR. COLLINS: Please, Mr. Chairman.
20 ACTING CHAIRMAN MEYER: Item Number VI,
21 "Discussion and possible action on Clean Elections
22 Surcharge and related issues with the Arizona
23 Administrative Office of the Courts."
24 MR. COLLINS: And, Mr. Chairman, for this, I
25 would turn this over to Mr. Kanefield, who has -- update

Page 33

1 you and advise you on this issue.
2 ACTING CHAIRMAN MEYER: Good morning,
3 Mr. Kanefield.
4 MR. KANEFIELD: Good morning, Mr. Chairman,
5 members of the Commission.
6 My recommendation would be the Commission go
7 into a very short executive session for a quick update.
8 ACTING CHAIRMAN MEYER: I move that we
9 adjourn to executive session.
10 COMMISSIONER KIMBLE: Second.
11 ACTING CHAIRMAN MEYER: All in favor say
12 aye.
13 (Chorus of ayes.)
14 ACTING CHAIRMAN MEYER: There's no
15 opposition. The motion carries 3-0.
16 (The following section of the meeting
17 beginning at 10:19 a.m. is in executive session
18 and bound under separate cover.)
19 * * * * *
20 (End of executive session. Public meeting
21 resumes at 10:38 a.m.)
22 ACTING CHAIRMAN MEYER: All right. We're
23 back in open session. Thank you.
24 We are on to agenda Item Number VII,
25 discussion and possible action on Executive Director's

<p style="text-align: right;">Page 34</p> <p>1 request for authorization to enter into an IGA with 2 Maricopa County for voter and public education purposes. 3 MR. COLLINS: Yes. Mr. Chairman, 4 Commissioners, this is -- really, I'm just asking for your 5 permission to go ahead and draw up an agreement with 6 Maricopa County. What this is going to do is ensure that 7 there's a seamlessness between Maricopa County and Clean 8 Elections with respect to some of the -- some of the 9 technological things that we do to provide voters with 10 voter registration information and other information that 11 the county's providing them. The county prefers to do 12 this in the form of an intergovernmental agreement. The 13 county does not at this point -- There's no cost 14 associated with this, and so -- and then, as a matter of 15 statute, the actual document would go through the Attorney 16 General's Office as to form. 17 What you see in the memo outlines 18 essentially what we're going to put into the document in 19 addition to whatever -- in addition to sort of the formal 20 boilerplate of an IGA. That's pretty much it. If 21 something comes up where I think that I need you to look 22 at the IGA itself, I'm certainly happy to put that back on 23 the agenda, but we decided that the most efficient way to 24 get this done would be to simply ask for authorization to 25 enter into an agreement that is substantially in the terms</p>	<p style="text-align: right;">Page 36</p> <p>1 independent expenditures, but, you know, that could also 2 include traditional candidates. We are looking to see how 3 the election procedures manual gets drafted. Secretary 4 Reagan's office has been working on the elections 5 procedures manual for several years now, and one of 6 the chapters in that manual is anticipated to be about 7 campaign finance, and that may itself cause legislative 8 action. 9 And then we are aware that at the very least 10 the legislature continues to be interested in campaign 11 finance and election-related laws. We've seen in a 12 presentation that the election director did to a 13 recertification class a list of potential tweaks to his 14 campaign finance bill that he did a couple years ago, so 15 we'll need to continue to weigh in on those. The 16 principles continue to be, you know, if it's a ballot 17 measure that's misleading or illegal, we continue to 18 believe that it's our role and appropriate for us to 19 oppose those at the legislature and explain why. We 20 think, likewise, when the legislature is at risk of 21 violating the Voter Protection Act, it's appropriate to 22 advise them of that. 23 Finally, I want to note -- and this was in 24 last year's memo as well -- that we have supported efforts 25 to enhance voter education and participation, and I think</p>
<p style="text-align: right;">Page 35</p> <p>1 outlined in the memorandum and move forward from there. 2 So I'd ask for a motion to authorize me to 3 proceed to enter into an agreement on terms substantially 4 the same as those outlined in the memo dated 11-14-17. 5 ACTING CHAIRMAN MEYER: I'll make a motion 6 that we authorize Mr. Collins to move forward in entering 7 the intergovernmental agreement with the Maricopa County 8 Recorder's Office consistent with the terms set forth in 9 his memorandum of November 14, 2017. 10 Is there a second? 11 COMMISSIONER KIMBLE: Second. 12 ACTING CHAIRMAN MEYER: Okay. All in favor 13 say aye. 14 (Chorus of ayes.) 15 ACTING CHAIRMAN MEYER: Any opposition? 16 (No response.) 17 ACTING CHAIRMAN MEYER: Motion carries three 18 to zero. 19 On to Item Number VIII, "Discussion and 20 Possible Action on the 2018 Legislative Agenda." 21 MR. COLLINS: Yes, Mr. Chairman, 22 Commissioners, you'll find here a memo that Mike has 23 updated for 2018. Right now we are in a position where we 24 continue to be concerned about efforts to supersede the 25 Clean Elections Act specifically with respect to</p>	<p style="text-align: right;">Page 37</p> <p>1 we will continue to do that. As you know, you'll receive 2 starting soon -- because the first bill has actually been 3 filed in the legislature for next year already, which 4 should strike terror in the hearts of all. 5 In any event, we'll be -- Mike will be 6 keeping us abreast of those on a monthly basis, and any 7 bills we think we need your specific feedback on, we'll 8 get that. But you'll get an ongoing report, as you have 9 in the past, of all the election-related bills. And that 10 really is the memo. 11 We ask you to approve these principles 12 because -- we ask you to approve this agenda because it's 13 important to us as staff members to be able to say that 14 there are principles that the Commission has endorsed that 15 we're authorized to lobby on because I think that it's 16 important for several reasons, but most importantly, in 17 echoing the comments Commissioner Paton's made in the 18 past, you know, we are staff members, but we are staff 19 members who are responding to the Commission, and it's 20 not -- We like to make clear to the legislature as much 21 as possible that this is a unified process where staff 22 takes its direction from the legislature -- or, from the 23 Commission. And that, I think, aids our communication to 24 the legislature and keeps us on a -- usually on legal 25 terms, but on terms that we can feel very comfortable that</p>

<p style="text-align: right;">Page 38</p> <p>1 we're going to -- we represent you when we're in front of 2 legislative bodies. And so we would ask that if you agree 3 with the legislative agenda, that you approve the 2018 4 state legislative agenda that is Item VIII in your 5 materials. 6 ACTING CHAIRMAN MEYER: Any questions or 7 comments from the commissioners on the agenda? 8 COMMISSIONER KIMBLE: Mr. Chairman? 9 ACTING CHAIRMAN MEYER: Yes. 10 COMMISSIONER KIMBLE: Mr. Collins, I 11 understand that because of the political nature of the 12 current legislature, the makeup of it, that we're required 13 pretty much to play a strong defense. But is there -- is 14 there something more that we ought to be doing other than 15 seeking stronger support of our voter education efforts? 16 Even if we don't think we're going to get very far with 17 it, is there -- You know, we do a lot of sitting around 18 defending ourselves. Is there something we ought to be 19 doing to try to make this program stronger and at least 20 get out there and push it, instead of just saying "Don't 21 kill us"? 22 MR. COLLINS: Mr. Chairman, Commissioner 23 Kimball, there are two answers to that question. The 24 first is that, you know, we can -- we can certainly make 25 more statements to that effect. We have worked with</p>	<p style="text-align: right;">Page 40</p> <p>1 the counties have been asking that -- because 75 percent 2 of the folks in the state vote by mail, that we move to 3 all mail. That's something, if there was a bill 4 introduced, that we might consider weighing in on. 5 There have been discussions about -- Do you 6 mind if I mention -- 7 I mean, there have been discussions about 8 changing the way voter registration works to make it more 9 user-friendly. That would promote participation and be 10 consistent with our mandate. So those are issues that we 11 can weigh in on if -- and we would bring those to you 12 specifically because they might be more controversial. 13 But if you were to look at -- evaluate the policy and 14 conclude on a bipartisan basis that, hey, this particular 15 program really works, that would have some meaning, I 16 think. And I think it would -- I think that's where we 17 have our best opportunity to showcase the importance of 18 having a commission like this beyond just don't kill us is 19 the fact that it is bipartisan. We do have -- I hope 20 that -- and we'll try to continue to bring you materials 21 that, you know, we think are things that all five of you 22 can agree to and that would be the best place to do it. 23 I mean, I think that the thing the 24 Commission does -- and this is just my opinion, for what 25 it's worth -- that doesn't fit into the legislative</p>
<p style="text-align: right;">Page 39</p> <p>1 members, particularly in the minority party, to try to get 2 them to -- when they're drafting their bills, to recognize 3 that the Commission is a more appropriate enforcer for 4 many of their proposals than the Secretary's Office or the 5 Attorney General's Office ever would be. That's something 6 we can continue to dialogue with them about. 7 Getting a Republican sponsor on 8 enforcement-related things as far as campaign finance goes 9 is increasingly difficult because this is -- Whereas 10 20 years ago, campaign finance was not ideologically -- 11 was a have/have not issue, not an R-D issue, it's 12 increasingly an R-D issue, except here. This body is 13 unique in its ability to reach conclusions on a unanimous 14 basis -- or, generally unanimous -- often unanimous, I 15 should say. So I think that that's a harder challenge 16 finding a sponsor. It's easier to find sponsors and we 17 have found Republican sponsors on the voter education 18 front. 19 Finally, it will be interesting to see if 20 things play out in terms of other opportunities on the 21 voter participation side that develop that we might weigh 22 in on. I think that there are -- there is, you know -- 23 These will be things that are controversial, to be sure, 24 but things we may want to weigh in on. 25 Number one, you know, I think for years now,</p>	<p style="text-align: right;">Page 41</p> <p>1 narrative of the world is that we're bipartisan. And in a 2 world where, you know, where everything is partisan, I 3 think that there should be some ways in which we can make 4 that a strength, because it is -- in the end, that is one 5 of the strengths of the Commission in terms of an 6 institution. 7 So those are sort of the way -- That's kind 8 of how I see it. That's a long answer to your question. 9 The short answer is if we don't -- you know, 10 if you ask any lobbyist, if you don't have a Republican 11 sponsor for the bill, you don't have a bill, which I think 12 you probably know. So . . . 13 ACTING CHAIRMAN MEYER: Any other comments 14 or questions? 15 COMMISSIONER PATON: No. 16 ACTING CHAIRMAN MEYER: All right. There a 17 motion to adopt and approve the 2018 legislative agenda? 18 COMMISSIONER KIMBLE: So moved. 19 ACTING CHAIRMAN MEYER: I will second that 20 motion. 21 All in favor say aye. 22 (Chorus of ayes.) 23 ACTING CHAIRMAN MEYER: All opposed? 24 (No response.) 25 ACTING CHAIRMAN MEYER: Motion carries three</p>

Page 42

1 to zero.
2 Item Number IX is "Discussion and Possible
3 Action on the 2018 Commission meeting dates."
4 Can I make a motion that we adopt these
5 meeting dates? Any questions or issues with those,
6 Commissioners?
7 (No response.)
8 ACTING CHAIRMAN MEYER: All right. I'll
9 move that we adopt and approve the proposed meeting dates
10 for January through June 2018 in our materials today.
11 Is there a second?
12 COMMISSIONER KIMBLE: Second.
13 ACTING CHAIRMAN MEYER: All in favor say
14 aye.
15 (Chorus of ayes.)
16 ACTING CHAIRMAN MEYER: Any opposition?
17 (No response.)
18 ACTING CHAIRMAN MEYER: Motion carries three
19 to zero.
20 Now is the time for public comment. Do we
21 have public comment from anyone?
22 (No response.)
23 ACTING CHAIRMAN MEYER: Okay. No public
24 comment? Last chance before adjournment.
25 Gentlemen?

Page 43

1 (No response.)
2 ACTING CHAIRMAN MEYER: Okay. Motion for
3 adjourn?
4 COMMISSIONER KIMBLE: I move we adjourn.
5 COMMISSIONER PATON: Second.
6 ACTING CHAIRMAN MEYER: All right. All in
7 favor of adjourning the meeting?
8 (Chorus of ayes.)
9 ACTING CHAIRMAN MEYER: All opposed?
10 (No response.)
11 ACTING CHAIRMAN MEYER: Motion carries.
12 We are adjourned.
13 (Whereupon, the proceedings concluded at
14 10:53 a.m.)
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Page 44

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA)
3 I, Meri Coash, hereby certify that the
4 foregoing pages numbered from 1 to 44, inclusive,
5 constitute a full, true, and accurate record of the
6 proceedings had in the above matter, all done to the best
7 of my skill and ability.

8 DATED this 20th day of November, 2017.
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Meri Coash

Meri Coash

Certified Reporter #50327

	adjourn (3) 33:9;43:3,4 adjourned (1) 43:12 adjourning (1) 43:7 adjournment (1) 42:24 adjust (1) 12:12 administrative (2) 20:2; 32:23 admitted (1) 26:10 adopt (3) 41:17;42:4,9 adverse (1) 26:9 advise (2) 33:1;36:22 Advocacy (2) 5:14;6:4 AFC's (1) 32:11 afford (1) 21:8 again (6) 21:23;22:24; 23:1;25:12;31:1,13 Agency (2) 8:1,2 agenda (12) 3:11;4:4; 9:20;32:6;33:24;34:23; 35:20;37:12;38:3,4,7; 41:17 aggregated (1) 12:2 ago (3) 10:13;36:14; 39:10 agree (2) 38:2;40:22 agreed (1) 16:21 agreement (7) 6:9; 7:18;34:5,12,25;35:3,7 AG's (1) 7:25 ahead (3) 19:13,14; 34:5 aids (1) 37:23 alleging (1) 10:19 alone (1) 12:15 along (1) 25:16 although (1) 5:13 amazing (1) 14:21 amend (1) 30:25 amendment (1) 7:17 amendments (1) 7:14 American (1) 32:7 amount (23) 10:23; 12:1,3,7;13:13,24; 14:13;15:11;20:12,24; 22:8;27:13,20;29:12, 14,23;30:1,9,14,15; 31:3,4,18 amounts (1) 31:9 announcements (1) 4:23 answered (1) 4:16 anticipated (1) 36:6 anticorruption (1) 19:21 AP (1) 5:25 appeal (2) 7:19;15:5 appealed (1) 15:2 applicable (1) 11:22 approach (1) 11:19 approached (1) 18:12 appropriate (4) 20:13; 36:18,21;39:3 approve (7) 3:16,18; 37:11,12;38:3;41:17;	42:9 approximately (2) 13:25;20:14 argue (1) 19:9 argued (1) 29:2 Arizona (2) 5:14;32:22 around (4) 7:4;9:7; 13:24;38:17 assigned (1) 7:13 associated (1) 34:14 Assuming (1) 18:22 attached (1) 4:13 attempted (1) 11:9 Attorney (9) 6:24;7:10, 12;23:4,10,22;32:11; 34:15;39:5 attorneys (2) 23:4; 32:11 atypical (1) 24:1 audit (3) 10:12,14,15 auditing (1) 15:23 Auditor (1) 4:10 audits (1) 13:17 August (7) 10:22;16:14, 16;17:20;24:4;25:1; 27:5 authorization (2) 34:1, 24 authorize (2) 35:2,6 authorized (1) 37:15 available (3) 4:23;7:1; 18:25 aware (2) 21:23;36:9 aye (7) 3:23;28:15; 31:21;33:12;35:13; 41:21;42:14 ayes (8) 3:24;28:16; 31:22;33:13;35:14; 41:22;42:15;43:8 azcanelections.gov/idatpoll (1) 4:21	best (4) 10:3,7;40:17, 22 beta (1) 7:3 beyond (1) 40:18 big (1) 18:2 biggest (1) 15:15 Bill (6) 5:17;36:14; 37:2;40:3;41:11,11 bills (3) 37:7,9;39:2 bipartisan (3) 40:14,19; 41:1 bit (3) 8:12;9:12;17:2 blank (1) 32:14 bodies (1) 38:2 body (1) 39:12 boilerplate (1) 34:20 book (1) 20:22 bother (1) 21:9 bound (1) 33:18 bounds (1) 23:21 box (1) 7:6 break (1) 18:18 brief (3) 10:6;12:13,15 briefs (1) 12:4 bring (6) 10:1;20:2,17, 19;40:11,20 broke (1) 13:6 button (1) 27:22	36:7 certain (1) 15:10 certainly (6) 12:13; 15:1;23:24;27:18; 34:22;38:24 certification (1) 24:25 chair (1) 3:6 CHAIRMAN (97) 3:3, 17,21,25;4:2,7;6:18; 8:16,17;9:1,9,19;12:22, 24;13:4,8,12,19;14:4, 12;16:6,7,20,25;17:1, 17;18:1,5,11;20:15; 21:1,2;22:2,5,7;23:5, 12,17;24:3,11,22; 26:16,17,25;27:17,21; 28:4,8,14,17,19;29:4,8, 15;30:18,21;31:10,14, 19,23,25;32:5,9,17,19, 20,24;33:2,4,8,11,14, 22;34:3;35:5,12,15,17, 21;38:6,8,9,22;41:13, 16,19,23,25;42:8,13, 16,18,23;43:2,6,9,11 chairwoman (1) 6:15 challenge (1) 39:15 Chan (1) 3:9 chance (2) 5:20;42:24 changes (2) 8:5,11 changing (1) 40:8 chapters (1) 36:6 charm (1) 31:15 chart (1) 17:6 checking (1) 11:21 Children (1) 32:7 Chorus (8) 3:24;28:16; 31:22;33:13;35:14; 41:22;42:15;43:8 citation (1) 12:19 Citizens (1) 3:4 civil (2) 23:6,13 claims (1) 5:19 class (1) 36:13 classes (1) 26:20 Clean (13) 3:4;4:11; 6:2;7:11;9:15,16; 19:20;25:2;26:7;31:8; 32:21;34:7;35:25 clear (7) 21:16;25:22; 29:17,20;30:5,13; 37:20 clearly (1) 8:25 click (1) 5:1 collect (4) 23:7,8,10,16 collections (1) 23:4 Collins (52) 4:6,7;6:19; 8:18;9:5,10,23;10:5; 12:22,23;13:3,6,11,14, 23;14:7,10,13,18,25; 17:24;18:4,11;19:17; 20:16;21:10;22:4,6,9; 23:20;24:7,13;25:4; 26:1,15;28:12;29:6,19,
\$				
\$1,415 (1) 14:1 \$17,000 (2) 13:22,25 \$17,459 (4) 16:15,21; 27:20;29:13 \$17,500 (2) 17:21;18:3 \$3,600 (1) 12:9 \$300,000 (2) 13:10; 18:8 \$52,377 (2) 31:18;32:2				
A		C		
ability (1) 39:13 able (5) 13:15;17:3; 32:14,15;37:13 abreast (1) 37:6 absence (1) 3:7 abstention (1) 6:10 accept (1) 16:13 account (8) 11:21; 13:20;15:7;17:5,7,8, 13;25:20 accounted (1) 27:9 accounting (1) 25:19 accounts (3) 13:16; 25:21,22 accurate (1) 25:3 Act (5) 5:19;10:20; 28:10;35:25;36:21 ACTING (79) 3:3,6,21, 25;4:2,6;18:8;17:9,1,9, 19;12:22,24;13:4,8,12, 19;14:4,12;16:7,25; 17:17;18:1,5;20:15; 21:2;22:2,5,7;23:5,12, 17;24:11,22;26:17,25; 27:21;28:4,8,14,17,19; 29:4,8,15;30:18,21; 31:10,14,19,23,25; 32:5,17,20;33:2,8,11, 14,22;35:5,12,15,17; 38:6,9;41:13,16,19,23, 25;42:8,13,16,18,23; 43:2,6,9,11 Action (10) 3:12;4:5; 9:20;19:5;32:6,21; 33:25;35:20;36:8;42:3 actions (1) 8:3 active (1) 4:18 activity (2) 8:13;10:16 actual (3) 11:20;25:20; 34:15 actually (8) 4:25;7:7; 9:8;17:2,8;19:6,8;37:2 add (2) 13:9;14:22 addition (5) 29:13;30:3, 8;34:19,19 additional (1) 29:3 address (1) 9:24 adieu (1) 6:16	back (10) 5:17;7:20; 10:14;13:21;17:19; 22:16;23:3;26:3;33:23; 34:22 ballot (1) 36:16 bank (5) 13:16;17:4,8, 13;25:20 based (5) 12:8;13:14, 15;18:18;30:24 basically (1) 25:6 basis (4) 14:16;37:6; 39:14;40:14 becoming (1) 23:3 beginning (1) 33:17 behind (1) 11:20 belabor (1) 12:16 believes (1) 6:5 benefit (3) 12:7;16:10, 17	calculations (2) 11:23; 13:14 calendar (1) 4:19 call (5) 3:4;5:4;6:14; 16:12;18:6 called (1) 8:1 came (5) 4:16;8:19; 10:14;17:8;25:15 campaign (19) 10:16; 15:20;16:2,5;17:3,4,6, 8,11,13,14;25:11,19, 21;36:7,10,14;39:8,10 can (34) 4:18;5:4;6:15; 7:6;11:12;12:12,12; 13:20;16:19;17:7; 18:14,17,18;20:3,3; 23:7;25:7,10;26:4,5,9; 27:18;28:23,25;31:11; 32:13;37:25;38:24,24; 39:6;40:11,22;41:3; 42:4 candidate (2) 8:23;26:7 candidates (7) 5:8,9; 8:20,25;9:4,16;36:2 carries (8) 4:2;28:20; 32:3;33:15;35:17; 41:25;42:18;43:11 case (1) 7:9 cases (2) 22:21;23:24 cause (13) 11:2;12:17; 18:14,17,19,20,23; 21:20;22:14;28:2,9,11;		
	B			

<p>23,25;30:5;31:1,8; 32:4,8,19,24;34:3;35:6, 21;38:10,22 column (1) 17:6 combination (1) 13:16 comfortable (2) 29:6; 37:25 coming (1) 19:3 comment (3) 42:20,21, 24 comments (5) 3:14;9:1; 37:17;38:7;41:13 Commission (20) 3:4, 12,18;6:3;7:16;13:21, 24;15:12;19:2,7;33:5, 6;37:14,19,23;39:3; 40:18,24;41:5;42:3 Commissioner (56) 3:6, 7,8,8,17,20,21;8:16,17, 18;14:4,5,8,20;15:17; 16:6,7,9;17:1;20:25; 21:3;24:3,9,18;25:1,8, 24;26:12,16,17,18; 27:7,17,22;28:7,13,25; 29:8,11;30:10,12;31:6, 10,12,16;33:10;35:11; 37:17;38:8,10,22; 41:15,18;42:12;43:4,5 commissioners (17) 3:8;4:7;17:18;18:11; 21:15,16;27:1,8,16; 28:21,22;32:3,9;34:4; 35:22;38:7;42:6 communication (1) 37:23 Complaint (1) 5:20 complete (1) 10:17 completed (2) 10:16,17 complex (1) 8:24 compliance (1) 19:4 comply (1) 5:18 complying (1) 19:8 compressed (1) 21:12 concern (3) 14:22; 15:17,18 concerned (1) 35:24 concerns (1) 21:4 conciliation (5) 7:18; 20:2,4;22:18;32:13 conclude (1) 40:14 concluded (1) 43:13 conclusions (1) 39:13 conducted (1) 11:8 confirm (1) 17:3 confirmation (1) 24:19 consider (1) 40:4 considered (1) 15:1 consistent (2) 35:8; 40:10 contested (1) 9:15 continue (7) 35:24; 36:15,16,17;37:1;39:6; 40:20</p>	<p>continues (2) 25:17; 36:10 contribution (2) 11:25; 12:9 controversial (2) 39:23; 40:12 cool (1) 4:25 copies (2) 25:11,12 corner (1) 7:6 corpus (1) 10:23 correctly (2) 15:24; 18:16 corrupt (1) 19:22 cost (1) 34:13 counsel (6) 5:21;7:13, 14;8:1,2;18:15 count (6) 12:2,5;13:7; 14:24;18:19,19 counties (1) 40:1 counts (1) 11:18 County (6) 34:2,6,7,11, 13;35:7 county's (1) 34:11 couple (2) 32:12;36:14 course (3) 5:3;16:1; 21:2 Courts (1) 32:23 cover (1) 33:18 cumulative (1) 13:5 current (1) 38:12</p>	<p>direction (1) 37:22 directly (1) 7:8 director (1) 36:12 Director's (2) 4:5;33:25 discernible (1) 8:10 discrepancies (1) 10:15 discrepancy (1) 12:6 discretion (1) 12:11 Discussion (8) 3:11; 4:4;9:20;32:6,21; 33:25;35:19;42:2 discussions (2) 40:5,7 distribution (1) 6:25 document (2) 34:15,18 documents (5) 5:1,2,3; 25:25;26:5 done (9) 6:2,7;7:21; 12:2;15:4;18:3;24:16; 32:15;34:24 doubt (3) 12:8;16:10,18 down (7) 3:7;9:7,23; 12:25;13:6;18:18; 32:12 drafted (1) 36:3 drafting (1) 39:2 drag (1) 26:19 dragging (1) 26:23 draw (1) 34:5 due (1) 3:7</p>	<p>endorsed (1) 37:14 ends (2) 9:8;23:2 enforcement (1) 8:3 enforcement-related (1) 39:8 enforcer (1) 39:3 enhance (1) 36:25 enough (1) 10:15 ensure (1) 34:6 enter (3) 34:1,25;35:3 entering (1) 35:6 entirety (2) 15:11;18:18 entitled (2) 14:15;20:23 essentially (6) 7:15; 10:10;15:9,11;25:17; 34:18 establish (1) 18:13 evaluate (1) 40:13 even (10) 16:22,24; 17:5,13;19:2,7;21:9; 22:17;24:17;38:16 event (1) 37:5 evidence (2) 26:4,11 exam (2) 23:25,25 example (1) 19:4 exceeded (1) 12:6 except (2) 8:2;39:12 excess (1) 12:9 Executive (6) 4:5;33:7, 9,17,20,25 exist (2) 26:5,11 exists (1) 28:9 expenditure (1) 17:10 expenditures (3) 11:25; 17:14;36:1 expenses (4) 15:20; 16:2,5;17:3 experience (2) 23:21, 22 explain (1) 36:19 express (3) 20:4;24:17, 20 expressly (1) 19:21 extensive (1) 4:9</p>	<p>feel (1) 37:25 fellow (3) 17:18;26:25; 27:16 few (1) 4:8 figure (3) 5:4;8:4;27:14 file (2) 15:5;19:10 filed (4) 5:15;10:6,19; 37:3 filing (2) 9:8;13:16 fill (1) 32:14 finally (3) 10:17;36:23; 39:19 finance (8) 17:12; 25:11,20;36:7,11,14; 39:8,10 finances (1) 11:11 find (7) 11:2,21;12:19; 18:17;28:2;35:22; 39:16 finding (4) 8:11;21:20; 27:24;39:16 findings (2) 27:12;28:2 fine (5) 7:15;13:13; 18:8;23:23;24:4 finer (5) 19:24;20:24; 22:25;23:8,19 first (4) 18:13;27:24; 37:2;38:24 fit (2) 12:14;40:25 five (2) 17:13;40:21 Folks (5) 7:4,8;9:6; 19:19;40:2 follow (2) 7:19;28:9 following (1) 33:16 foreclosures (1) 23:14 form (3) 25:3;34:12,16 formal (1) 34:19 former (1) 7:10 forth (1) 35:8 forward (8) 21:14;27:3, 11,15,24;28:23;35:1,6 found (2) 4:13;39:17 Foundation (1) 19:4 four (4) 4:12;6:10; 10:10;17:12 fraction (1) 17:9 frankly (4) 11:10,15; 15:14;20:21 free (1) 6:21 front (3) 20:22;38:1; 39:18 full (2) 5:20;10:15 fund (4) 4:12;10:24; 11:20;19:5 funding (2) 19:20;26:8 funds (2) 11:20;27:8 further (4) 6:16;7:21; 11:10;16:22 FYI (1) 8:10</p>
	D	E		
<p>communication (1) 37:23 Complaint (1) 5:20 complete (1) 10:17 completed (2) 10:16,17 complex (1) 8:24 compliance (1) 19:4 comply (1) 5:18 complying (1) 19:8 compressed (1) 21:12 concern (3) 14:22; 15:17,18 concerned (1) 35:24 concerns (1) 21:4 conciliation (5) 7:18; 20:2,4;22:18;32:13 conclude (1) 40:14 concluded (1) 43:13 conclusions (1) 39:13 conducted (1) 11:8 confirm (1) 17:3 confirmation (1) 24:19 consider (1) 40:4 considered (1) 15:1 consistent (2) 35:8; 40:10 contested (1) 9:15 continue (7) 35:24; 36:15,16,17;37:1;39:6; 40:20</p>	<p>Damien (1) 3:6 date (2) 16:15;30:16 dated (1) 35:4 dates (3) 42:3,5,9 days (4) 14:17,18; 16:15;30:15 DC (1) 32:12 debtor's (2) 23:25,25 decide (1) 18:22 decided (4) 16:13; 17:19,19;34:23 deciding (1) 26:7 defend (1) 6:5 defending (1) 38:18 defense (2) 12:15; 38:13 deficiencies (1) 4:14 delivered (1) 24:19 depending (1) 9:7 dereliction (1) 26:10 Despite (1) 25:18 details (1) 32:12 deterrent (3) 19:18,25; 20:19 develop (1) 39:21 developing (1) 7:8 dialogue (1) 39:6 different (4) 13:1;14:20, 21;18:9 difficult (1) 39:9</p>	<p>earlier (2) 12:25;29:3 early (1) 7:20 easier (1) 39:16 easily (1) 9:25 echoing (1) 37:17 education (6) 4:19;5:7; 34:2;36:25;38:15; 39:17 effect (2) 20:19;38:25 effective (3) 7:23,23; 30:16 efficient (3) 11:9;22:19; 34:23 effort (2) 13:17;22:14 efforts (3) 35:24;36:24; 38:15 either (1) 12:6 election (11) 6:25;8:2; 9:13;14:1,2,6,14;26:21, 23;36:3,12 election-related (3) 8:3; 36:11;37:9 Elections (11) 3:4;4:12; 6:2;7:12;19:20;25:2; 26:8;32:21;34:8;35:25; 36:4 else (1) 25:17 email (6) 7:7,7;24:14, 17;25:15;32:10 end (5) 9:10;21:24; 23:3;33:20;41:4</p>	<p>fact (3) 8:8;18:22;40:19 factor (1) 15:7 facts (4) 11:13;18:20, 23;26:3 factual (3) 27:2,12,24 fair (1) 7:24 far (5) 5:8;8:9;9:10; 38:16;39:8 farther (1) 26:19 favor (9) 3:23;28:14; 30:23;31:21;33:11; 35:12;41:21;42:13; 43:7 Federal (2) 24:17,19 Federation (1) 32:7 feedback (3) 7:5,6;37:7</p>	<p>F</p>
			F	
				G
				GALVIN (16) 19:16;

23:6,9,15;28:1,6;29:2, 17,22,24;30:4,8,11,16, 18,20 garnishments (1) 23:14 gave (1) 12:7 General (7) 4:11;6:24; 7:10;14:2,6,14;20:13 generally (1) 39:14 General's (8) 7:12,25; 8:7;23:4,10,22;34:16; 39:5 Gentlemen (1) 42:25 gets (2) 23:3;36:3 Gina (1) 8:21 Gina's (1) 5:6 given (1) 12:14 giving (1) 7:5 goes (3) 22:22,23;39:8 Good (11) 3:3;4:17; 14:25;18:12;26:21,24; 30:11,17,19;33:2,4 gosh (1) 10:13 group (1) 19:5 GRRC (1) 6:15 guess (7) 6:9,14;7:23; 15:17;18:6;20:8;21:3 guy (2) 16:17,23	ideologically (1) 39:10 IGA (3) 34:1,20,22 II (1) 3:11 III (1) 4:4 illegal (1) 36:17 impact (1) 8:9 importance (2) 21:5; 40:17 important (2) 37:13,16 importantly (1) 37:16 impose (4) 11:3;27:19; 29:12;31:16 imposed (1) 7:16 imposition (1) 32:2 impressed (1) 8:21 improper (1) 19:12 inception (1) 8:7 include (5) 17:22,24; 22:3;23:19;36:2 inconsistencies (2) 25:18,19 inconsistency (1) 11:18 inconsistent (2) 11:16; 25:21 increasingly (2) 39:9,12 incumbent (1) 18:24 independent (2) 6:23; 36:1 indicated (1) 28:10 inference (2) 26:5,9 information (6) 11:10, 15,15,16;34:10,10 initial (6) 19:25;29:13, 22;30:14,15;31:17 instances (1) 4:13 instead (1) 38:20 institution (1) 41:6 interest (1) 19:3 interested (1) 36:10 interesting (1) 39:19 intergovernmental (2) 34:12;35:7 interspersed (1) 25:12 into (10) 7:25;11:20; 15:7;19:4;33:7;34:1, 18,25;35:3;40:25 introduced (1) 40:4 investigation (3) 11:7,8; 13:18 investigator (1) 6:23 invoices (3) 14:23; 15:22;25:12 irresponsible (1) 16:11 issuance (1) 18:8 issue (11) 10:22;11:1; 20:24;21:10;22:21; 27:13,24;33:1;39:11, 11,12 issued (2) 14:13;24:14 issues (4) 27:4;32:22; 40:10;42:5 Item (10) 3:11;4:4; 9:19;32:6,18,20;33:24;	35:19;38:4;42:2 items (2) 15:19;16:4 iterate (1) 31:2 IV (1) 9:20 IX (1) 42:2 J January (1) 42:10 Jesus (1) 9:21 Joe (2) 7:22;8:4 joke (1) 6:17 jokes (1) 6:20 judgment (3) 23:7,11, 13 June (1) 42:10 K Kanefield (3) 32:25; 33:3,4 Kara (2) 7:22;8:4 keep (1) 26:8 keeping (2) 26:10;37:6 keeps (1) 37:24 kill (2) 38:21;40:18 Kimball (6) 16:8;26:16; 27:7,22;31:11;38:23 KIMBLE (31) 3:17;8:16, 17,18;16:6,9;20:25; 21:3;24:3,9,18;25:1,8, 24;26:12;27:17;28:7, 13;29:8,11;30:10,12; 31:12,16;33:10;35:11; 38:8,10;41:18;42:12; 43:4 Kimble's (1) 28:25 kind (9) 10:1;12:25; 20:6;21:5;23:1;24:1,2, 19;41:7 knowledge (2) 10:3,7 knows (1) 24:13 L language (1) 6:11 LARSEN (3) 14:17; 16:25;17:1 last (8) 3:15;6:10;8:13; 10:11;26:23;32:10; 36:24;42:24 late (1) 32:10 law (2) 6:12;11:22 lawmakers (1) 5:15 laws (1) 36:11 lawsuit (2) 5:16,16 learned (1) 8:22 least (4) 11:19;20:11; 36:9;38:19 Legacy (1) 19:4 legal (1) 37:24 legislative (8) 5:8; 35:20;36:7;38:2,3,4;	40:25;41:17 legislature (10) 5:17; 11:5;36:10,19,20;37:3, 20,22,24;38:12 legitimate (3) 15:20; 16:2,5 legitimately (1) 15:19 leniency (1) 20:11 letter (1) 4:13 level (1) 19:25 likewise (1) 36:20 limited (1) 21:12 limits (1) 11:25 link (1) 7:2 list (1) 36:13 litigating (1) 19:6 little (5) 4:8;5:11;11:14, 14;17:2 lobby (1) 37:15 lobbyist (1) 41:10 long (2) 30:5;41:8 longer (2) 8:12;26:23 look (10) 4:11;6:24; 15:6;18:2;21:7,10,18; 22:15;34:21;40:13 looking (2) 17:23;36:2 lost (3) 25:17,23,24 lot (3) 8:13,22;38:17 M mail (3) 24:15;40:2,3 makeup (1) 38:12 making (1) 21:20 mandate (1) 40:10 manner (2) 17:12;23:7 manual (3) 36:3,5,6 many (1) 39:4 Maricopa (4) 34:2,6,7; 35:7 match (1) 11:22 materials (3) 38:5; 40:20;42:10 math (1) 15:16 matter (1) 34:14 maximum (1) 13:13 may (15) 4:10,10;5:12, 19:9;7:10;18,18,20; 17:24,24;19:16;20:10; 32:9;36:7;39:24 maybe (1) 23:6 mean (15) 12:4;14:3; 15:14,23;16:3,17; 21:18;22:20;23:7,21; 26:19,20,22;40:7,23 meaning (1) 40:15 meantime (1) 11:4 measure (2) 19:21; 36:17 meet (1) 5:2 meeting (15) 3:5,13,15, 18:5;22:16;12:20;5; 25:2;27:6;33:16,20;	42:3,5,9;43:7 meetings (1) 19:9 members (5) 33:5; 37:13,18,19;39:1 membership (1) 21:12 memo (7) 18:18;25:10; 34:17;35:4,22;36:24; 37:10 memorandum (2) 35:1, 9 mention (1) 40:6 met (1) 8:14 MEYER (79) 3:3,6,21, 25;4:2;6:18;8:17;9:1,9, 19;12:22,24;13:4,8,12, 19;14:4,12;16:7,25; 17:17;18:1,5;20:15; 21:2;22:2,5,7;23:5,12, 17;24:11,22;26:17,25; 27:21;28:4,8,14,17,19; 29:4,8,15;30:18,21; 31:10,14,19,23,25; 32:5,17,20;33:2,8,11, 14,22;35:5,12,15,17; 38:6,9;41:13,16,19,23, 25;42:8,13,16,18,23; 43:2,6,9,11 might (4) 20:19;39:21; 40:4,12 Mike (2) 35:22;37:5 mind (1) 40:6 mindful (1) 27:5 minimize (1) 20:8 minority (1) 39:1 Minutes (3) 3:12,14,18 misleading (1) 36:17 missing (1) 5:5 mistake (1) 14:14 mitigate (2) 15:13,14 mitigating (1) 15:7 Money (11) 7:3;10:23; 11:12;13:20,20;14:14, 15;15:12,19,25;16:4 monies (1) 15:3 month (5) 7:9;21:22,22; 26:20;32:16 monthly (1) 37:6 months (1) 8:13 more (11) 4:9;5:11; 9:25;10:13;16:19; 22:19;38:14,25;39:3; 40:8,12 morning (3) 3:3;33:2,4 most (2) 34:23;37:16 motion (29) 3:15,22; 4:2;27:16,18;28:5,7,20, 25;29:9,16;30:13,19, 22,25;31:4,11,20; 33:15;35:2,5,17;41:17, 20,25;42:4,18;43:2,11 move (15) 3:17;27:11, 15,18,24;28:8,23; 29:11;32:17;33:8;35:1,
H hand (3) 20:9,21,23 handling (1) 11:11 happens (2) 22:20; 29:20 happy (1) 34:22 harder (1) 39:15 hate (1) 16:3 have/have (1) 39:11 head (2) 15:16;19:14 headline (1) 6:3 heard (7) 10:2,6;16:16; 25:2;26:14;29:1,5 hearts (1) 37:4 help (2) 5:4;17:2 helpful (2) 16:18;31:2 hey (1) 40:14 high (1) 21:7 hired (1) 6:23 hit (1) 27:21 holding (1) 32:16 hope (3) 7:5;32:8; 40:19 hoped (1) 32:13 Horne (2) 7:10,18 Horne's (1) 7:14 House (2) 6:1,6 huge (1) 16:21	I ID (1) 4:19 idea (1) 15:25 identified (1) 20:24			

6;40:2;42:9;43:4 moved (3) 7:12,24; 41:18 moving (2) 27:3;32:5 much (8) 13:20,20; 14:18,24;16:22;34:20; 37:20;38:13 multiple (1) 9:15 MUR (2) 9:21;32:6	Office (15) 7:5,13,25; 8:7;22:24;23:1,10,18, 23;32:23;34:16;35:8; 36:4;39:4,5 offset (1) 15:2 often (1) 39:14 older (1) 23:23 Once (1) 23:25 one (22) 5:24;6:10; 7:11,12;8:19;9:14; 10:11;12:6;16:12;17:7; 18:9,21;20:25;21:4; 23:19;24:13;25:2,18, 22;36:5;39:25;41:4 one's (1) 16:16 ongoing (1) 37:8 only (4) 12:8;17:7;31:6, 9 onto (1) 7:14 open (1) 33:23 opinion (1) 40:24 opportunities (1) 39:20 opportunity (1) 40:17 oppose (1) 36:19 opposed (5) 3:25;26:3; 31:23;41:23;43:9 opposition (5) 28:17; 32:1;33:15;35:15; 42:16 option (2) 22:11,13 order (14) 3:4;10:23; 16:14,15;19:18,18; 21:13;22:22,22,23; 24:14,23;25:13;30:17 ordered (4) 7:14,17; 18:2;30:14 organization (1) 6:4 ought (2) 38:14,18 ourselves (1) 38:18 out (19) 5:5,6;6:22; 7:24;8:4,11;16:20; 17:4,8,12,13,15;21:22; 22:15;23:3;25:14; 26:19;38:20;39:20 outline (1) 12:4 outlined (3) 11:13;35:1, 4 outlines (1) 34:17 outside (2) 7:13,14 over (1) 32:25 overstep (1) 23:21 owe (1) 15:11 owed (2) 10:24;27:13 owes (3) 13:24;14:24; 20:13 owing (2) 20:17;21:25 own (1) 18:15	pamphlet (1) 6:25 parallel (1) 7:11 part (1) 10:9 participated (1) 26:7 participating (3) 8:20, 23;9:3 participation (3) 36:25; 39:21;40:9 particular (2) 25:13; 40:14 particularly (1) 39:1 partisan (1) 41:2 parts (1) 15:10 party (1) 39:1 passed (1) 5:17 past (4) 19:1;22:21; 37:9,18 PATON (13) 3:20,21; 14:4,5,8,20;15:17; 17:1;26:17,18;31:6; 41:15;43:5 Paton's (1) 37:17 Paula (1) 4:15 pause (1) 27:22 pay (4) 18:3;22:25; 23:2,18 paying (1) 6:20 penalize (2) 15:21;16:3 penalized (2) 30:13; 31:7 penalizing (1) 16:4 penalties (15) 10:9; 11:3,24,24;12:12;13:1, 2,9;16:20;18:25;19:2, 7;22:1;27:19;28:12 penalty (27) 12:8;15:8, 12,13,14;17:16;18:6, 21;19:13,15;21:5,6,21; 22:23;26:3;27:13,25; 28:3,23;29:10,12;30:2, 2,6;31:3,17;32:2 people (1) 26:20 per (1) 13:6 percent (1) 40:1 percentage (1) 9:11 permission (1) 34:5 person (1) 22:23 personal (1) 25:21 personally (1) 24:22 perspective (2) 29:19; 30:1 phase (4) 18:21;21:21; 27:25;28:24 phases (1) 10:11 phone (3) 16:12;24:11; 27:6 phrase (1) 30:4 picture (1) 18:2 place (1) 40:22 planning (1) 9:16 play (2) 38:13;39:20 playing (1) 7:4 Please (1) 32:19	pleased (1) 4:16 Plus (4) 22:5;29:22,23, 24 point (5) 6:22;14:3; 19:11;26:10;34:13 pointed (2) 16:20;25:13 policy (1) 40:13 political (1) 38:11 Polls (1) 4:19 portion (1) 28:3 portions (1) 5:18 position (3) 11:5;27:11; 35:23 possession (1) 15:10 possibility (1) 15:1 Possible (14) 3:12;4:5; 9:20;11:9;19:23;22:18, 19;28:12;32:6,21; 33:25;35:20;37:21; 42:2 possibly (2) 21:8;22:19 potential (4) 11:1;13:2; 16:20;36:13 precludes (1) 21:20 predicate (1) 27:2 prefers (1) 34:11 prepared (1) 28:12 present (1) 32:3 presentation (1) 36:12 presented (1) 18:24 press (1) 6:4 presumably (1) 5:21 pretty (4) 4:25;20:18; 34:20;38:13 primaries (1) 9:15 primary (2) 10:14;14:1 principles (3) 36:16; 37:11,14 prior (2) 19:13;31:11 probable (12) 11:2; 12:17;18:14,17,19,20, 23;21:20;22:14;28:2,9, 11 probably (3) 7:20; 24:14;41:12 Procedurally (1) 27:23 procedure (1) 10:8 procedures (2) 36:3,5 proceed (4) 3:10;10:5; 23:16;35:3 proceedings (2) 7:11; 43:13 process (5) 10:10; 24:15,17,23;37:21 produced (1) 15:3 program (6) 8:8,21; 19:20;26:8;38:19; 40:15 promote (1) 40:9 properly (4) 17:9,10,11; 27:9 proposals (1) 39:4 proposed (2) 32:13;	42:9 Protection (2) 5:18; 36:21 proved (1) 15:21 provide (3) 12:15;20:3; 34:9 provided (1) 25:11 providing (1) 34:11 provision (1) 15:8 public (6) 19:19;33:20; 34:2;42:20,21,23 publicity (1) 6:25 purposes (1) 34:2 pursuant (1) 26:6 push (1) 38:20 put (6) 7:6;8:21;13:15; 27:14;34:18,22 putting (1) 21:21
N		Q		
nailed (1) 32:12 name (1) 7:7 narrative (1) 41:1 nature (3) 8:5;20:12; 38:11 Nay (1) 31:23 necessarily (1) 8:9 necessary (2) 6:5; 28:22 need (13) 4:24;5:22; 12:19;18:13;19:12; 22:16;27:23;30:1,25; 31:3;34:21;36:15;37:7 needs (3) 6:14;19:18, 18 Network (1) 5:14 new (4) 4:19;8:8;11:15, 15 news (4) 4:17;5:24;6:6; 7:9 next (5) 5:22;7:20; 21:22;32:16;37:3 night (1) 32:10 noncompliance (1) 4:14 None (1) 28:19 note (3) 7:22;21:11; 36:23 noted (1) 25:10 notice (2) 18:25;28:11 notified (3) 24:5,10,10 notwithstanding (1) 6:12 November (3) 3:5; 28:11;35:9 Number (16) 3:11;4:4; 5:15;9:3,14,20;18:10; 20:13,18;21:4,6;32:20; 33:24;35:19;39:25; 42:2 numbers (4) 9:17;12:3, 5,25		qualified (1) 13:25 quick (1) 33:7 quickly (1) 10:8 quite (1) 14:21 quorum (2) 3:9;28:21		
O		R		
objection (1) 19:14 obligated (1) 7:19 obligation (1) 26:6 observing (1) 30:25 obviously (1) 15:24 occurred (2) 10:21;11:3 off (1) 21:21		R2-20-215 (1) 21:14 R2-20-217 (1) 21:15 races (1) 9:18 raise (1) 9:17 random (2) 10:12,14 ratified (1) 7:15 R-D (2) 39:11,12 reach (3) 21:22;22:15; 39:13 reached (3) 7:18; 11:23;12:4 read (2) 5:20;20:1 Reagan's (1) 36:4 real (1) 11:18 really (6) 4:25;10:8,10; 34:4;37:10;40:15 reason (4) 10:20; 12:15;19:24;27:1 reasons (1) 37:16 reason-to-believe (1) 10:19 receive (1) 37:1 received (5) 11:13,14; 14:1;15:12;32:9 recently (1) 7:23 recertification (1) 36:13 recognize (1) 39:2 recognizing (1) 20:10 recollection (1) 13:21 recommend (1) 28:1 recommendation (5) 22:17;28:9,11;30:7; 33:6 recommended (2)		
P				
page (2) 11:13;14:22 paid (3) 13:21;14:9; 24:1				

10:15;13:1 recommending (2) 18:7,10 record (5) 12:20;13:16; 30:5;31:2,8 Recorder's (1) 35:8 records (2) 25:20;26:11 Recordwise (1) 25:8 reduced (3) 19:2,6,7 referred (1) 23:9 refusing (1) 16:11 registration (2) 34:10; 40:8 regulations (1) 8:24 reinforce (1) 19:19 reinforcer (1) 26:22 reiterate (1) 31:4 reiterates (1) 15:9 reject (1) 6:11 related (1) 32:22 relatively (1) 14:16 released (1) 7:1 relitigate (1) 17:18 remedies (2) 23:13,16 remember (2) 27:5,6 remind (1) 13:19 reminding (1) 27:7 repaid (3) 14:2,8,15 repay (7) 14:5,19; 16:15,21;17:20;21:8; 30:15 repayment (9) 10:22; 15:3;20:13;22:22,22; 29:23;30:1,8;31:4 repayments (1) 22:1 Report (5) 4:5,9;7:1; 8:12;37:8 reported (4) 11:17; 17:9,10,11 reporting (1) 11:19 reports (7) 7:15,17; 11:20;17:12;19:10; 25:11,20 represent (1) 38:1 Representatives (1) 6:1 represented (1) 8:6 Republican (3) 39:7,17; 41:10 request (2) 31:9;34:1 required (1) 38:12 requirements (1) 5:2 requires (1) 21:15 resigned (1) 11:5 resolution (1) 11:1 resolved (1) 6:15 resolving (1) 23:23 respect (4) 11:24; 26:10;34:8;35:25 respond (1) 16:22 responded (1) 26:13 responding (1) 37:19 response (11) 4:1;25:4; 28:18;31:24;35:16;	41:24;42:7,17,22;43:1, 10 responsible (1) 27:9 restate (1) 31:13 resumes (1) 33:21 reurge (1) 29:9 review (1) 4:13 reviewed (1) 12:24 right (20) 5:6;7:6; 10:14;13:8,23;14:11; 17:6;18:4;20:5,16; 22:9;26:1,1;30:10; 31:8;33:22;35:23; 41:16;42:8;43:6 risk (1) 36:20 role (1) 36:18 Rubalcava (16) 9:21; 10:2,12,24;11:5,11; 12:14;18:3,25;20:3; 21:23;22:15;24:5; 25:22;29:13;31:17 rule (2) 6:12;20:22 rules (6) 6:13;8:24; 20:3,5;21:20;26:6 run (4) 9:16;22:24,25; 23:18	session (5) 33:7,9,17, 20:23 set (5) 8:24;19:24,25; 21:6;35:8 settlement (1) 20:6 several (2) 36:5;37:16 shall (1) 6:12 short (2) 33:7;41:9 show (1) 19:9 showcase (1) 40:17 showing (1) 20:11 shown (2) 19:3,8 side (1) 39:21 significant (2) 4:14; 20:18 signs (1) 19:8 simply (2) 11:21;34:24 site (2) 7:3,8 sitting (2) 18:5;38:17 situation (2) 21:24;24:2 six (1) 13:1 smiled (2) 6:18,19 Solicitor (2) 7:24;8:7 somebody (2) 16:3; 24:1 someone (1) 20:2 sometime (1) 7:20 somewhere (1) 20:12 soon (1) 37:2 sooner (1) 5:23 sorry (2) 12:21;14:10 sort (4) 5:15;29:2; 34:19;41:7 Speaker (3) 5:25;6:6, 14 special (1) 6:25 specific (1) 37:7 specifically (5) 9:18; 25:5;32:11;35:25; 40:12 speed (1) 10:2 spending (3) 4:11; 11:12;16:3 spent (4) 15:19,22,25; 16:4 sponsor (3) 39:7,16; 41:11 sponsors (2) 39:16,17 sponte (2) 19:2,7 spring (1) 10:18 staff (9) 12:11;18:7; 23:10;28:9;30:7;37:13, 18,18,21 stage (3) 18:6,21;20:4 started (1) 10:12 starting (1) 37:2 state (4) 5:15;23:19; 38:4;40:2 statement (1) 10:19 statements (1) 38:25 State's (1) 6:24 statewide (3) 5:9;9:13, 18	stating (1) 27:7 statute (4) 12:18;15:10; 20:1;34:15 step (2) 6:5;9:23 Stephanie (1) 8:22 stewards (1) 27:8 still (2) 19:5;20:3 stop (1) 30:24 story (2) 5:24;6:6 strength (1) 41:4 strengths (1) 41:5 stress (1) 21:5 strike (1) 37:4 strong (1) 38:13 stronger (2) 38:15,19 stuff (6) 5:7,10,11; 15:25;19:22;26:8 sua (2) 19:2,7 submitted (1) 14:24 subpoena (5) 25:5,5,6, 16;26:13 subpoenaed (1) 25:5 substantial (1) 5:11 substantially (2) 34:25; 35:3 substantive (1) 10:9 subtract (1) 17:15 sudden (1) 23:2 sued (1) 5:13 suggest (2) 15:5;17:17 suggested (1) 27:12 suggestion (1) 27:14 supersede (1) 35:24 supplemental (1) 13:17 support (2) 27:2;38:15 supported (1) 36:24 Surcharge (1) 32:22 sure (7) 4:15;9:5,9; 18:16;23:15;27:9; 39:23 sympathetic (1) 27:4	threaten (1) 23:24 threatened (1) 23:25 three (13) 21:15,16; 22:7;27:13,19;28:20; 29:12,18;30:13;31:17; 35:17;41:25;42:18 three-quarter (1) 6:8 Thursday (1) 3:5 tied (1) 25:14 timely (3) 14:16;15:5; 17:12 times (10) 12:1;20:12, 14;22:7;27:13,19; 29:12,20;30:13;31:17 time's (1) 31:14 Titla (1) 3:8 Titla's (1) 3:7 today (10) 3:6,8;5:6; 18:6;21:13,21;22:14; 27:15;32:12;42:10 together (2) 13:15;20:1 Tom (6) 9:3,22;17:23; 23:6;24:4;27:12 Tom's (1) 29:5 took (2) 10:16;14:18 tool (2) 4:20,25 total (3) 20:17;21:24; 22:1 totally (1) 16:11 track (1) 26:8 traditional (1) 36:2 training (1) 8:19 Transaction (1) 17:7 transactions (3) 17:4, 11,22 treat (1) 30:1 treated (1) 23:12 tried (1) 31:1 true (1) 30:2 try (5) 13:17;31:13; 38:19;39:1;40:20 trying (4) 12:18;16:23; 18:1,7 turn (1) 32:25 tweaks (1) 36:13 two (8) 3:7;7:11;8:13; 15:6;21:3,6;31:9;38:23 types (1) 27:4
	S		T	U
	sake (1) 9:24 same (1) 35:4 Sara (3) 4:14;8:21; 25:13 saying (4) 13:9;20:9; 23:17;38:20 seamlessness (1) 34:7 Second (12) 3:20; 28:13;29:15;30:21; 31:19;33:10;35:10,11; 41:19;42:11,12;43:5 seconds (1) 3:22 Secretary (2) 6:24;36:3 Secretary's (2) 7:5;39:4 section (4) 7:25,25;8:4; 33:16 seek (1) 20:3 seeking (1) 38:15 seem (2) 15:20;16:1 seethemoneygov (1) 7:4 selected (1) 10:13 Senate (1) 5:17 send (1) 7:7 sense (2) 6:8;15:20 separate (1) 33:18 September (4) 3:13,15, 19;26:13 serious (1) 22:16 seriously (2) 19:23; 22:16 served (4) 5:14;24:15, 23,24 server (2) 24:17,23		table (1) 20:20 talk (4) 5:22;16:24; 19:13,14 talked (1) 15:18 talking (1) 21:9 tally (1) 18:8 technological (1) 34:9 terms (8) 14:3;34:25; 35:3,8;37:25,25;39:20; 41:5 terror (1) 37:4 Third (1) 31:14 THOMAS (4) 10:4; 24:16,21,24 though (1) 19:7 thought (4) 8:23;14:8; 20:7;29:17 thoughts (3) 27:1,15; 29:5	ultimate (2) 11:1;18:9 ultimately (2) 11:7; 22:20 unable (1) 32:10 unanimous (5) 17:20; 21:17;39:13,14,14 unanimously (2) 4:3; 32:3 Uncontested (1) 14:12 under (6) 4:10;7:17; 11:24;20:5;21:14; 33:18

<p>understandable (1) 8:25 unfortunately (1) 26:2 unified (1) 37:21 union (1) 5:15 unique (1) 39:13 unpaid (2) 22:22,23 up (22) 4:16;7:3;8:19; 9:4,5,7,8,11,11;10:2; 11:22;13:9;14:22;19:9; 21:25;22:25;23:2,18; 24:1;25:7;34:5,21 upcoming (1) 26:21 update (2) 32:25;33:7 updated (1) 35:23 upon (2) 9:7;30:24 upshot (1) 5:16 urges (1) 5:4 URL (2) 4:22,24 usage (1) 25:21 user-friendly (1) 40:9 uses (1) 6:4 usual (1) 8:12 usually (1) 37:24</p>	<p>weigh (4) 36:15;39:21, 24;40:11 weighing (1) 40:4 welcome (1) 27:15 weren't (2) 32:14,15 Whereas (1) 39:9 Whereupon (1) 43:13 who's (1) 32:11 wife (1) 24:24 willing (2) 21:19;23:24 withdraw (4) 28:6,7; 31:11,12 withdrawn (1) 12:16 within (2) 16:15;30:15 without (1) 6:16 WITNESS (1) 25:9 word (1) 7:24 words (1) 24:5 work (5) 8:2,6;16:23; 19:19;20:6 worked (3) 4:15;23:3; 38:25 working (5) 5:6,21;8:4; 23:23;36:4 works (2) 40:8,15 workshops (1) 8:20 world (2) 41:1,2 worth (1) 40:25 writing (1) 12:25 wrong (2) 16:1;18:16 wrote (1) 25:15</p>	<p>16-949 (1) 4:10 16th (1) 3:5 17 (1) 5:8 17,000 (1) 20:14 17,459 (2) 29:20;30:15 17,5 (1) 22:3 17-01 (1) 9:21 17-02 (1) 32:7 17-03 (1) 32:7</p>	<p>941A1 (1) 12:18 941A5 (1) 12:18</p>	
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<p>value (1) 20:10 verify (2) 17:7,14 VI (2) 32:18,20 via (2) 24:14,14 view (4) 18:15,17;20:8; 26:2 VII (1) 33:24 VIII (2) 35:19;38:4 violated (1) 15:10 violating (1) 36:21 violation (4) 11:25; 12:1,3;28:10 violations (2) 10:20; 11:2 violators (1) 19:3 vividly (1) 27:5 vote (5) 6:8,10;17:20; 21:13;40:2 voted (3) 6:11;16:14; 24:4 voter (11) 4:18;5:7,18; 34:2,10;36:21,25; 38:15;39:17,21;40:8 voters (1) 34:9 votes (1) 28:22</p>	Y	<p>20 (1) 39:10 2014 (2) 7:16;28:11 2015 (1) 5:17 2016 (1) 6:25 2017 (4) 3:5,13,19;35:9 2018 (6) 35:20,23; 38:3;41:17;42:3,10 21st (1) 16:16 22nd (1) 16:16 28 (1) 3:13 28th (1) 3:19</p>		
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		<p>3 (7) 11:13,14;14:22; 20:12,14;28:11;29:20 3,600 (1) 12:7 3,900 (1) 12:7 30 (4) 14:17,18;16:15; 30:15 3-0 (1) 33:15 37 (1) 5:8</p>		
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		6		
		<p>69,000 (2) 21:25;27:14 69,836 (1) 22:1</p>		
W		7		
<p>walk (1) 10:7 wants (2) 22:24;27:16 way (14) 6:2,7;8:24; 11:8,10,14,22;18:12; 21:18;24:7,13;34:23; 40:8;41:7 ways (2) 15:6;41:3 website (2) 4:20,23</p>	<p>10 (1) 12:1 10:19 (1) 33:17 10:38 (1) 33:21 10:53 (1) 43:14 11-14-17 (1) 35:4 14 (1) 35:9 14th (1) 26:13 15- (1) 13:22 15,5 (1) 13:25 1516 (2) 5:17;6:8 16-941D (1) 15:8 16-942A (1) 11:24</p>	<p>75 (1) 40:1 77,000-ish (1) 20:18</p>		
		9		
		<p>9:30 (1) 3:5 940 (1) 12:19 941 (1) 12:1</p>		

**CITIZENS CLEAN ELECTIONS COMMISSION
EXECUTIVE DIRECTOR REPORT
December 14, 2017**

Announcements:

- The public can view Commission meetings live via the internet at www.livestream.com/cleanelections. A link is available on our website.
- Stephanie graduated cum laude from ASU with a bachelor's degree in organizational leadership. Stephanie intends to pursue a master's degree next year.

Voter Education:

- Congressman Trent Franks, Congressional District 8 (Maricopa County), resigned on December 8th. A special primary and general election will be held to fill the vacancy:
 - Special primary election: Tuesday, February 27, 2018
 - Voter registration deadline: January 29, 2018
 - Special general election: Tuesday, April 24, 2018
 - Voter registration deadline: March 26, 2018
- The 2017 voter education recap and 2018 voter education plan will be presented at the January commission meeting.
- Gina and Alec met with the Arizona Developmental Disabilities Planning Council staff to discuss voter education and plain language efforts.
- Gina and Stephanie participated in a conference call with a county recorder subcommittee on the state's participation in the Electronic Registration Information Center program and required mailers to eligible but non-registered voters.

2018 Candidate Information:

- Candidates can start applying for 2018 funding as early as January 2, 2018.
- Participating Candidates: **62**

Enforcement – 2017:

Complaints Pending: 3

- MUR 17-02 – Federation for Children, Inc. – Response Received
- MUR 17-03 – Federation for Children, Inc. – Response Received

Enforcement – 2014:

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) – Oral Argument was held Monday, September 11, 2017.
- MUR 14-027: Veterans for a Strong America (VSA)

Miscellaneous

- A Committee calling itself Outlaw Dirty Money introduced a constitutional amendment via initiative. “The measure would amend the state Constitution to require that people making expenditures to sway campaigns disclose the names of major donors,” an article in *The Arizona Republic* said. Dustin Gardiner, “Should Arizona voters end ‘dark money’ in state political campaigns?,” *The Arizona Republic*, Nov. 30, 2017, *available at* <https://www.azcentral.com/story/news/politics/arizona/2017/11/30/should-arizona-voters-decide-ending-dark-money-state-political-campaigns-2018-elections/906549001/>. The

According to the summary provided by the group:

The Stop Political Dirty Money Constitutional Amendment establishes your Right to Know the identity of all major contributors who are trying to influence the outcome of Arizona elections. Contributors will no longer be able to hide by transferring their money through intermediaries. Anyone spending more than \$10,000 to oppose or support candidates or ballot measures must disclose everyone who contributed \$2,500 or more promptly, publicly and under penalty of perjury. The money must be tracked back to its original source. Violators will be subject to fines. Rules to implement this Amendment will be written and enforced by a non-partisan commission.

Proposed Initiative C-03-2018, Stop Political Dirty Money Amendment, *available at* <http://apps.azsos.gov/election/2018/general/initiatives.htm>.

The full amendment identifies the Clean Elections Commission as the enforcing body, and allows for private suits. It is available here:
<http://apps.azsos.gov/election/2018/general/ballotmeasuretext/C-03-2018.pdf>

The Initiative must receive more than 225,000 signatures by July 5, 2018 to be eligible for the ballot.

Doug Ducey
Governor

Thomas M. Collins
Executive Director



Steve M. Titla
Chair

Damien R. Meyer
Mark S. Kimble
Galen D. Paton
Amy B. Chan
Commissioners

State of Arizona
Citizens Clean Elections Commission

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MEMORANDUM

To: Commissioners

From: Thomas Collins, Executive Director and Sara A. Larsen, Financial Affairs & Compliance Officer

Date: December 12, 2017

Subject: Proposed 2018 Calendar Year Budget

The Commission operates under system of caps that operate on a calendar year basis. We are asking the Commission to approve:

1. the 2018 expenditure cap (\$20,668,270);
2. the 2018 administration and enforcement expenditure cap (\$2,066,827);
3. the 2018 public education (paid media) expenditure cap (\$2,066,827);
4. the projection of 2018 candidate funding disbursements in the amount of \$8,973,613; and
5. the projection of no excess funds in the Clean Elections Fund in 2018.

Expenditure Cap on Total Expenses

In compliance with A.R.S. § 16-949, the Commission projects an expenditure cap for each calendar year for all expenses under the Act, including candidate funding. *Id.* That expenditure cap, in turn, may be exceeded during a four year period so long as the difference is made up by a cap reduction in a subsequent year. *Id.*

The Commission's projected expenditure cap for 2018 is \$20,668,270 (spreadsheet pg. 5).

Specific Categories of Expenses

The Commission categorizes operating expenses using four categories under the expenditure cap: Administration/Enforcement, Public Education, Voter Education and Candidate Funding. Our overhead costs are apportioned by a 50/50 split between Administration/Enforcement and Voter Education. Personal Services and Employee Related Expenses are apportioned by allocated staff-time between administration/enforcement and voter education responsibilities.

Administrative/Enforcement

The Clean Elections Act ("Act") permits the Commission to spend up to 10 percent of the calendar year expenditure cap for administrative and enforcement costs (A.R.S. §16-949 (B)). Administrative and Enforcement expenditures are projected at \$1,928,800 (93% of the overall unadjusted expenditure cap \$2,066,827). (spreadsheet pg. 2)

Public Education

The Commission may apply up to ten percent of the yearly expenditure cap for reasonable and necessary expense associated with public education, including participation and the purposes of the Act. A.R.S. §16-949 (C). Public education expenditures are projected at \$2,066,827.

Voter Education and Implementation of the Act

The Commission may make reasonable and necessary expenditures to implement the Act, including expenditures for voter education pursuant to A.R.S. 16-956(A). A.R.S. § 16-949(D) These expenditures are not subject to any cap. Id. Voter Education and Implementation Expenditures are projected at \$4,588,100. (spreadsheet pg. 3)

Candidate Funding

Section 16-954(c) provides that the Commission annually project the “amount of clean elections funding for which all candidates will have qualified. . . for the following calendar year.”

We project that 69 candidates will receive funding for the 2018 primary election and 53 candidates will receive funding for the general election for a total of \$8,973,613. All statewide offices, including two corporation commission seats, as well as all 90 legislative seats, are up for election.

Other Projections

The Act provides that the Commission make two projections each year relating to the balance of and availability of funds in the Clean Elections Fund.

Section 16-954(B) provides that the Commission shall project the amount of money that will be collected in the fund over the next four years and the availability of those funds. The statute instructs the Commission to compare that projection to projected expenditures “under the assumption that expected expenses will be at the expenditure limit in § 16-949, subsection A” to determine whether there are “excess monies” in the fund.

This year, staff recommends that the Commission determine that there are no excess monies in the fund. As detailed in the chart below, projected revenue will run about \$54,270,580 below assumed expenses over the next four years.

Calendar Year	2018	2019	2020	2021
Projected Revenue	\$7,237,500	\$7,020,000	\$7,125,000	\$7,020,000
Projected Expenses (Assuming at expenditure limit)	\$20,668,270	\$20,668,270	\$20,668,270	\$20,668,270
Difference	\$(13,430,770)	\$(13,648,270)	\$(13,543,270)	\$(13,648,270)

Section 16-954(C) also provides that the Commission shall annually “announce whether the amount that the [C]ommission plans to spend the following year pursuant to § 16-949[A] . . . exceeds the projected amount of clean elections funding.” The statute continues by stating that if the Commission “determines that the fund contains insufficient monies or the spending cap would be exceeded were all candidates’ accounts fully funded,” then the commission may take steps to adjust the funding available to candidates.

Staff believes that the fund contains sufficient monies to complete funding participating candidates fully without exceeding the expenditure cap, as adjusted for carryover funds as described above. Therefore staff does not recommend that the Commission take steps to adjust candidate funding.

**Citizens Clean Elections Commission
2018 Budget Projections**

	2014	2015	2016	2017	2018 Projection
Revenues					
Court Assessments	\$ 8,403,460	\$ 8,177,696	\$ 7,242,242	\$ 6,886,184	\$ 7,000,000
Commission Assessments	24,500	-	15,000	6,200	5,000
\$5 Tax Donations	54,986	16,569	295	135	
\$5 Candidate Qualifying Contributions	236,980		96,415	-	207,500
Miscellaneous	34,465	18,862	81,246	112,583	15,000
Total Revenues	\$ 8,754,390	\$ 8,212,887	\$ 7,435,198	\$ 7,005,103	\$ 7,227,500
Expenses					
Personal Services	\$ 372,543	\$ 499,108	\$ 523,168	\$ 519,997	\$ 700,000
ERE	120,451	165,375	164,637	169,530	230,000
Professional & Outside Services					
Public Education - Media	1,771,213	1,866,516	1,525,516	312,822	2,066,827
AG Legal Services	45,809	138,100	164,278	61,850	170,000
External Legal Services	362,711	201,618	147,368	218,873	750,000
Other Prof. Services	655,500	269,877	1,659,026	181,737	2,620,000
Travel-In State	6,361	5,195	6,763	6,031	27,500
Travel Out-of-State	745.41	745	-	745	6,000
Other Operating Expenditures	3,187,600	353,541	1,333,458	320,610	1,827,400
Aid to Individual/Organization	18,631	-	16,517	-	30,000
Capital Equipment	35,241	-	-		-
Non-Capital Equipment	26,731	59,544	8,786	11,805	46,000
Transfers (other state agencies)	16,333	-	-	-	110,000
Total Expenses	\$ 6,619,869	\$ 3,590,741	\$ 5,549,518	\$ 1,804,001	\$ 8,583,727
Candidate Funding	\$ 5,319,846	\$ -	\$ 2,150,002	\$ -	\$ 8,973,613
Total Expenses and Candidate Funding	\$ 11,939,715	\$ 3,590,741	\$ 7,699,520	\$ 1,804,001	\$ 17,557,340

*Actuals include invoices and services paid through November 2017.

ITEM V(B)

**Citizens Clean Elections Commission
2018 Admin Expenditure Projections**

	2017 Actuals	2018 Projections
<i>Expenses</i>		
Personal Services	\$ 259,300	\$ 350,000
ERE	80,132	115,000
Professional & Outside Services		
Attorney General Legal Services	30,925	85,000
External Legal Services	218,873	750,000
Other Professional Outside Services	140,358	420,000
<i>Total Professional & Outside Services</i>	<u>390,157</u>	<u>1,255,000</u>
Travel-In State	3,852	7,500
Travel Out-of-State	493	3,000
Other Operating Expenditures		
Risk Management Charges	900	900
Other External Data Processing	6,263	60,000
External Telecomm Charges	-	3,000
Other External Telecom Service	3,797	6,500
Rent Charges to State Agency	27,150	27,150
Rental of Other Machinery & Equip	-	500
Miscellaneous Rent	391	1,000
Internal Acct/Budg/Financial Services	4,250	4,250
Repair & Maintenance - Other Equip	2,337	3,500
Other Repair & Maintenance	300	500
Software Support and Maintenance	-	1,500
Office Supplies	415	3,000
Other Operating Supplies	36	100
Conference, Education & Training Reg.	70	3,000
Advertising	8,469	5,000
External Printing	6,072	5,000
Postage & Delivery	254	2,000
Awards	113	300
Dues	353	600
Books Subscriptions & Publications	6,820	10,000
Other Miscellaneous Operating	335	500
<i>Total Other Operating Expenditures</i>	<u>68,322</u>	<u>138,300</u>
Aid to Individua/Organization	-	30,000
Capital Equipment	-	-
Non-Capital Equipment	8,132	20,000
Transfers (other state agencies)	-	10,000
Total Expenses	<u>\$ 810,388</u>	<u>1,928,800</u>

**Citizens Clean Elections Commission
2018 Voter Public Education Expenditure Projections**

	2017 Actuals	2018 Projections
<i>Expenses</i>		
Personal Services	\$ 260,697	\$ 350,000
ERE	89,398	115,000
Professional & Outside Services		
Public Ed- Paid Media	247,914	2,066,827
Attorney General Legal Services	30,925	85,000
Other Professional Outside Services	41,379	2,200,000
<i>Total Professional & Outside Services</i>	<u>320,218</u>	<u>4,351,827</u>
Travel-In State	2,179	20,000
Travel Out-of-State	252	3,000
Other Operating Expenditures		
Risk Management Charges	900	900
Other External Data Processing	44,112	165,000
External Telecom Charges	-	3,000
Other External Telecom Service	3,963	6,500
Rent Charges to State Agency	27,150	27,150
Rental of Info Tech Equipment	-	300
Miscellaneous Rent	391	10,000
Internal Acct/Budg/Financial Services	4,250	4,250
Repair & Maintenance - Info Tech PCLAN	-	500
Repair & Maintenance - Buildings	-	500
Repair & Maintenance - Other Equip	2,337	3,500
Software Support and Maintenance	-	1,500
Uniforms	-	500
Office Supplies	683	2,000
Other Operating Supplies	111	1,500
Conference Education & Training Reg.	135	8,000
Advertising		4,000
External Printing	865	820,000
Postage & Delivery	105	550,000
Entertainment & Promo Items	11,950	12,000
Other Miscellaneous Operating	150,335	65,000
Dues	340	500
Books, Subscriptions & Publications	1,350	2,500
<i>Total Other Operating Expenditures</i>	<u>248,976</u>	<u>1,689,100</u>
Capital Equipment		
Non-Capital Equipment	3,673	26,000
Transfers (other state agencies)	-	100,000
Total Expenses	<u>\$ 992,239</u>	<u>6,654,927</u>

**Citizens Clean Elections Commission
Revenue Projections - 4 years**

	2017 Actuals	2018	2019	2020	2021
<i>Revenues</i>					
Court Assessments	\$ 6,886,184	\$ 7,000,000	\$ 7,000,000	\$ 7,000,000	\$ 7,000,000
Commission Assessments	6,200	15,000	5,000	15,000	5,000
\$5 Tax Donations	135	-	-	-	-
\$5 Candidate Qualifying Contributions	-	207,500	-	95,000	-
Miscellaneous	112,583	15,000	15,000	15,000	15,000
Total Revenues	\$ 7,005,103	\$ 7,237,500	\$ 7,020,000	\$ 7,125,000	\$ 7,020,000

Citizens Clean Elections Commission
2018 Expenditure Caps
A.R.S. §16-949

Expenditure Cap	Amount
Total Expenditure Cap	\$20,668,270
Public Ed Paid Media	\$2,066,827
Admin & Enforcement	\$2,066,827

2016 Tax Filers	Spending Limit Coefficient
2,952,610	\$7

Citizens Clean Elections Commission
Expenditure Cap Spending and Fund Balance Projection

Calendar Year	Beginning Fund Balance	Revenues	Expenditure Cap	Ending Fund Balance
2014	\$ 9,104,576	\$ 8,754,390	\$ 18,934,524	\$ (1,075,558)
2015	\$ (1,075,558)	\$ 8,212,887	\$ 19,583,662	\$ (12,446,333)
2016	\$ (12,446,333)	\$ 7,435,198	\$ 19,896,471	\$ (24,907,607)
2017	\$ (24,907,607)	\$ 7,227,500	\$ 20,321,063	\$ (38,001,170)
2018	\$ (38,001,170)	\$ 7,237,500	\$20,668,270	\$ (51,431,940)

Citizens Clean Elections Commission
Expenditure Cap/Excess Funds Projections - 4 years

Calendar Year	Beginning Fund Balance	Projected Revenues	Projected Expenditure Cap	Ending Fund Balance
2018	\$ 28,449,900	\$ 7,237,500	\$ 20,668,270	\$ 15,019,130
2019	\$ 15,019,130	\$ 7,020,000	\$ 20,668,270	\$ 1,370,860
2020	\$ 1,370,860	\$ 7,125,000	\$ 20,668,270	\$ (12,172,410)
2021	\$ (12,172,410)	\$ 7,020,000	\$ 20,668,270	\$ (25,820,680)

Citizens Clean Elections Commission
Anticipated Fund Balance Projections - 4 Years

Calendar Year	Beginning Fund Balance		Projected Revenues		Projected Expenditures		Ending Fund Balance
2018	\$	28,449,900	\$	7,237,500	\$	17,557,340	\$ 18,130,060
2019	\$	18,130,060	\$	7,020,000	\$	1,804,001	\$ 23,346,059
2020	\$	23,346,059	\$	7,125,000	\$	7,699,520	\$ 22,771,539
2021	\$	22,771,539	\$	7,020,000	\$	1,804,001	\$ 27,987,537

Citizens Clean Elections Commission
2018 Candidate Funding Projection

<i>Calendar Year</i>	2014	2015	2016	2017	2018 Projection
<i>Candidate Funding</i>	\$5,319,846	\$0	\$2,150,002	\$ -	\$8,973,613

Doug Ducey
Governor

Thomas M. Collins
Executive Director



Steve M. Titla
Chair

Damien R. Meyer
Mark S. Kimble
Galen D. Paton
Amy B. Chan
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.azcanelections.gov

MEMORANDUM

To: Commissioners

From: Tom Collins

Date: 12.11.2017

Subject: Request for Authorization for CY 2017 Attorney General Interagency Service Agreement

As the Commission may recall the Executive Director's Report noted that the assistant attorneys general who handle the Commission's work and other election matters had been transferred out of the Solicitor General's Office, where they had been housed since the agency's inception.

As part of that process, there will be two Interagency Service Agreements for this Fiscal Year. The first, which I am asking for authorization for today, is to deal with the first half of this Fiscal Year and closer out our calendar year.

I am including a draft ISA that was presented by SGO before the transfer as an example. I am asking for authorization to provide our attorneys' new division with \$86,600 for CY 2017. Exhibit A.

Those dollars are designated to allow the availability of the two assistant attorney general positions working on Clean Elections issues.

ITEM V(D)

EXHIBIT A

DRAFT ISA FOR FY2018

Interagency Service Agreement
Between Citizens Clean Elections Commission and the Arizona
Office of the Attorney General
AG18-0002-052

- 1) THIS AGREEMENT IS MADE as of July 1, 2017, 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.
- 2) 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:
 - a) This Agreement shall take effect on July 1, 2017 and terminate on June 30, 2018.
 - b) The Attorney General will assign to the Commission two assistant attorneys general whose duties shall be to provide legal services to the Commission in return for the provision of funds described in paragraph (g). 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.
 - c) The two assistant attorneys general 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

Interagency Service Agreement
Between Citizens Clean Elections Commission and the Arizona
Office of the Attorney General
AG18-0002-052

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.

- d) 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.
- e) 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.
- f) The Attorney General shall provide notice to the Commission of the following within one week of it learning of:
 - i) 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.
 - ii) Pending election cases involving or relevant to the State of Arizona, the Attorney General, the Secretary of State, or any political subdivision of Arizona.

Interagency Service Agreement
Between Citizens Clean Elections Commission and the Arizona
Office of the Attorney General
AG18-0002-052

- iii) Information relating to enforcement of election laws, including failure to file notices, and reasonable cause determinations.
- iv) Copies of Attorney General Opinion requests shall be provided to the Commission or its staff with the notice.
- g) Pursuant to the provisions of A.R.S. § 35-148, the Commission shall pay \$173,200 to the Attorney General. The Commission shall advance to the Attorney General one-half of the funds (\$86,600) within 15 working days after the execution of this Agreement, and one half of the funds on or before March 31, 2018. Said funds shall be used to pay the actual salary and employee-related expenditures of the two assistant attorneys general identified in 2(b) above. 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.
- h) From and after the date hereof and until June 30, 2018, the Attorney General shall instruct the two assistant attorney generals assigned to provide legal services to the Commission to locate their principal office at the Office of the Attorney General.
- i) Any balance of funds remaining after June 30, 2018 will be returned to the Commission.
- j) 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.
- k) 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.

Interagency Service Agreement
Between Citizens Clean Elections Commission and the Arizona
Office of the Attorney General
AG18-0002-052

- l) 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.
 - m) 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 Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract.
 - n) 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.
 - o) 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.
 - p) 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.
- 3) 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

Office of the Arizona Attorney General

Thomas M. Collins

Executive Director

Date:

Jerry Connolly

Procurement Manager

Date:



NOTICES OF PROPOSED EXEMPT RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Exempt Rulemaking. An agency may be exempt from rulemaking standards outlined in the Arizona Administrative Procedures Act (APA).

An agency's exemption is listed in the Preamble of the rulemaking as specified under: A.R.S. §§ 41-1005 or 41-1057; or a specific statute; or if a rule is promulgated by the Corporation Commission, it is exempt from Attorney General review under a court decision as determined by the Commission.

If an agency determines it is exempt under the law or court decision, the law may still require publication of the Proposed Exempt Rulemaking in this section to solicit and review public comments on the rulemaking.

Some agencies, even though completely exempt, may still elect to follow certain provisions of the APA, such as circulating its exempt rulemaking for comment. If an agency chooses this option, our office encourages filing the notice with our office for publication in the *Register*.

Please note, if a statute dictates that an agency is completely exempt from the rulemaking process, the agency is authorized to file a Notice of Exempt Rulemaking.

In all cases, an agency must still follow the procedures as established by our office in order to have its rulemaking package published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed exempt rule should be directed to the agency proposing them. Refer to Item #5 of the Preamble to contact the person charged with the rulemaking.

NOTICE OF PROPOSED EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R17-203]

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)**
R2-20-106
- Rulemaking Action**
Amend
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:**
Authorizing statute: A.R.S. § 16-940, *et seq.*
Implementing statute and statute authorizing the exemption: A.R.S. § 16-956(C).
The Citizens Clean Elections Commission is exempt from Executive Order 15-01.
3. **The effective date of the rule and the agency's reason it selected the effective date:**
Not applicable
4. **A list of all previous notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**
Not applicable
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Thomas M. Collins, Executive Director
Address: Citizens Clean Elections Commission
1616 W. Adams St., Suite 110
Phoenix, AZ 85007
Telephone: (602) 364-3477
Fax: (602) 364-3487
E-mail: thomas.collins@azcleelections.gov
6. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**

On September 28, 2017, the Commission approved for publication proposed amendments to Commission rule R2-20-106. Commissioners would like to solicit public feedback on the proposed amendments allowing commission staff to address bank fees candidates get charged post-election, the cost of collecting the return of funds when there are de minimis amounts owed to the fund, and how to address post-return of funds demands by participating candidates that receive late bills. The following are the proposed amendments to the rule at issue.

Amends R2-20-106 to require candidates to return funds to the Clean Elections Fund with a cashier's check, to reconcile outstanding expenditures with personal monies, and allows the Commission staff to determine and waive de minimis return of fund amounts.

ITEM VI(A-C)



7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
Not applicable
8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:
Not applicable
9. The summary of the economic, small business, and consumer impact, if applicable:
Not applicable
10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):
Not applicable
11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:
On September 28, 2017, the Commission approved the proposed amendments publication on the Commission's website and in the *Administrative Register*. The Commission is soliciting public comment for 60 days. No action has been taken on the proposed amendments.
12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include but not be limited to:
 - a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:
Not applicable
 - b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
Not applicable
 - c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitive-ness of business in this state to the impact on business in other states:
Not applicable
13. A list of any incorporated by reference material and its location in the rules:
Not applicable
14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:
The rule was not previously made, amended, repealed, or renumbered as an emergency rule.
15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 1. GENERAL PROVISIONS

Section

R2-20-106. Distribution of Funds to Certified Candidates

ARTICLE 1. GENERAL PROVISIONS

R2-20-106. Distribution of Funds to Certified Candidates

- A. No change
 1. No change
 - a. No change
 - b. No change
 2. No change
 3. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. Pursuant to A.R.S. § 16-953(A), a participating candidate shall return to the Fund:
 1. ~~at All of his or her~~ primary election funds not committed to expenditures (1) during the primary election period; and (2) for goods or services directed to the primary election. A candidate shall not be deemed to have violated A.R.S. § 16-953(A) or this subsection on account of failure to use all materials purchased with primary election funds prior to the primary election, provided such candidate exercises good faith and diligent efforts to comply with the requirement that goods and services purchased



with primary election funds be directed to the primary election. Subject to A.R.S. § 16-953(A) and this subsection, a candidate may continue to use goods purchased with primary election funds during the general election period.

2. All general funds not committed to expenditures (1) during the general election period; and (2) for goods or services directed to the general election.
- H. All funds returned to the Commission pursuant to subsection (G) of this rule, shall be returned to the Fund by a cashier's check drawn on the candidate's campaign bank account. Any fee associated with the issuance of a cashier's check shall be deemed a direct campaign expenditure and reported on the candidate's campaign finance report.
- I. If a participating candidate does not account for any outstanding expenditures in the amount of the funds returned to the Commission, the participating candidate must reconcile the outstanding expenditures with personal monies. Once funds have been returned to the Commission, no further reimbursements from the Clean Elections Fund shall be permitted. Participating candidates may not exceed the primary or general election spending limits.
- J. Commission staff may waive the return of funds if:
 1. The Commission staff determines the amount to be returned is de minimus;
 2. The Commission staff determines the cost of recovery exceeds the amount of the return;
 3. The funds to be returned shall not exceed \$25; and
 4. The Commission is notified of any waiver of the return of funds.

NOTICE OF PROPOSED EXEMPT RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R17-204]

PREAMBLE

1. **Article, Part or Section Affected (as applicable)** **Rulemaking Action**
R2-20-109 Amend
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:**
Authorizing statute: A.R.S. §§ 16-940, 16-941, 16-942, 16-956, 16-957, 16-958.
Implementing statute and statute authorizing the exemption: A.R.S. § 16-956(C).
The Citizens Clean Elections Commission is exempt from Executive Order 15-01.
3. **The effective date of the rule and the agency's reason it selected the effective date:**
The rule "proposed" herein is currently in effect. The Commission proposes to reenact and republish this for the purpose of public notice and clarity.
4. **A list of all previous notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**
Not applicable
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Thomas M. Collins, Executive Director
Address: Citizens Clean Elections Commission
1616 W. Adams St., Suite 110
Phoenix, AZ 85007
Telephone: (602) 364-3477
Fax: (602) 364-3487
E-mail: thomas.collins@azcleelections.gov
6. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**
R2-20-109. Independent Expenditure Reporting Requirements
This action is being taken because of an invalid notice from the Governor's Regulatory Review Council (GRRC). The rule, which remains in effect, provides guidance and explanation of the application of the Clean Elections Act to persons who make independent expenditures in state and legislative races. See *Clean Elections Institute v. Brewer*, 99 P. 3d 570, 574 (Ariz. 2004) (explaining that the Commission is "require[d]" to enforce laws related to independent expenditures). The rule thus:
 - provides that all persons are to file reports required subject to penalty pursuant to Chapter 6, Article 2 shall do so with the with the Arizona Secretary of State's online system.
 - provides for the Executive Director to take steps to implement a substitute reporting process for independent expenditures when the system provided by the Secretary of State is unavailable or a portion is unavailable or when directed by another Commission rule;
 - provides that persons who make independent expenditures in state and legislative races are subject to the terms of A.R.S. 16-941 and 16-942. The rule also provides explanation of how such penalties shall be applied pursuant to A.R.S. 16-957 (providing procedures for application of penalties against "persons" who are found in violation of the Clean Elections Act).



- provides explanation for the application of 16-942(B) to any entity that fails to file reports pursuant to Chapter 6 pursuant to A.R.S. 16-957 (providing procedures for application of penalties against “persons” who are found in violation of the Clean Elections Act); *see also* A.R.S. 16-901 (defining entity as “a corporation, limited liability company, labor organization, partnership, trust, association, organization, joint venture, cooperative, unincorporated organization or association or other organized group that consists of more than one individual.”)
- provides that an entity shall not be found to be a political committee unless certain criteria are met. Provides that an entity may argue that, by a preponderance of the evidence, it is not a political committee pursuant to any definition in Title 16 and that the Commission may, in such case, determine the entity is not a committee.

The Commission’s rulemakings are exempt from Title 41, Ch. 6, Article 3, pursuant to A.R.S. § 16-956. Some provisions of these rules are primarily the result of SB1516 (2016). SB 1516 contains provisions that raise serious questions under the Arizona and U.S. Constitutions. Among other things, SB 1516 includes provisions that attempt to preempt the Commission’s rulemaking authority (A.R.S. § 16-901(42)), narrow the definitions of expenditure and contribution and eliminate the definition of political committee adopted by the Clean Elections Act in 1998, raising serious constitutional questions under the Voter Protection Act of the Arizona Constitution.

The Commission does not, by adopting these rules, waive any legal objection to the enactment of laws that violate the Voter Protection Act. Rather, it adopted these rules in the interest of harmonizing the Commission’s rules with the existing statutes in order to avoid confusion within the regulated community and encourage consistency between the Commission’s rules and the policies of other election-related offices.

In addition to the VPA issues, the provisions of SB 1516 raise questions of equal protection regarding the treatment of corporations registered in Arizona that also have 501 status with the IRS and questions under Article 7, §. 16 of the Arizona Constitution regarding the publication of campaign contributions and expenditures. The Commission notes these issues for the record, but again, seeks as much as possible to harmonize its rules. The Commission retains its full authority to enforce Article 2 of Chapter 6 of Title 16 consistent with the terms of the statute, as well as the court interpretations which confirm its straightforward terms.

7. **A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
Not applicable
8. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
9. **The summary of the economic, small business, and consumer impact, if applicable:**
Not applicable
10. **A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):**
Not applicable.
11. **An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**
The Commission solicits public comment throughout the rulemaking process.
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**
 - a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**
Not applicable
 - b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of the federal law:**
Not applicable
 - c. **Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:**
Not applicable
13. **A list of any incorporated by reference material and its location in the rules:**
Not applicable
14. **Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**
The rule was not previously made, amended, repealed, or renumbered as an emergency rule.
15. **The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION



ARTICLE 1. GENERAL PROVISIONS

Section

R2-20-109. Independent Expenditure Reporting Requirements

ARTICLE 1. GENERAL PROVISIONS

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:
1. Expressly provided otherwise by another Commission rule; or
 2. That system, or the necessary function on the system, is unavailable, in which case the executive director shall implement a suitable process.
- 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 who fails to file 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). Subsection R2-20-109(B)(4) does not apply to reports pursuant to A.R.S. §§ 16-941(D) and -958 or this subsection. 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 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.
 3. A.R.S. § 16-942(B) applies to any entity including political committees that accepts contributions or makes expenditures on behalf of any candidate regardless of any other contributions taken or expenditures made and fails to timely file a campaign finance report under Chapter 6 of Title 16, Arizona Revised Statutes. 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 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. For purposes of A.A.C. R2-20-109(B)(3):
 - a. An entity shall not be found to have the predominant purpose of influencing elections unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity, in any combination, in a calendar year exceeds \$1,000 and is more than 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 par-

- 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.

NOTICE OF PROPOSED EXEMPT RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

[R17-205]

PREAMBLE

- | | |
|--|--|
| <p><u>1. Article, Part or Section Affected (as applicable)</u>
R2-20-111</p> <p><u>2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:</u>
Authorizing statute: A.R.S. §§ 16-940, 16-941, 16-942, 16-956, 16-957, 16-958.
Implementing statute and statute authorizing the exemption: A.R.S. § 16-956(C).
The Citizens Clean Elections Commission is exempt from Executive Order 15-01.</p> <p><u>3. The effective date of the rule and the agency's reason it selected the effective date:</u>
The rule "proposed" herein is currently in effect. The Commission proposes to reenact and republish this for the purpose of public notice and clarity.</p> <p><u>4. A list of all previous notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:</u>
Not applicable</p> <p><u>5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u>
Name: Thomas M. Collins, Executive Director
Address: Citizens Clean Elections Commission
1616 W. Adams St., Suite 110
Phoenix, AZ 85007
Telephone: (602) 364-3477
Fax: (602) 364-3487
E-mail: thomas.collins@azcleanelections.gov</p> <p><u>6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:</u>
R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits
This action is being taken because of an invalid notice from Governor's Regulatory Review Council (GRRC). The rule, which remains in effect, provides guidance and explanation of statutory provisions the commission is "require[d]" to enforce. <i>Clean Elections Institute v. Brewer</i>, 99 P. 3d 570, 574 (Ariz. 2004); <i>see also Horne v. Citizens Clean Elections Commission</i>, CV 2014-009404 (8/19/2014) (dismissing case challenging the Commission's jurisdiction to resolve complaints against a non-participating candidate.).</p> <ul style="list-style-type: none">• provides that complaints maybe filed with the Commission alleging violations of Commission alleging violations of A.R.S. § 16-941(B) and that penalties authorized by A.R.S. § 16-942(B) and (C) may be assessed and removes language that is superfluous to the operation of this rule;• provides that the twenty percent reduction in A.R.S. § 16-941(B) applies to all campaign contributions limits on contributions that are permitted to be accepted by candidates;• provides that contribution limits as adjusted by A.R.S. § 16-931 shall be the base level contribution limits subject to reduction pursuant to A.R.S. § 16-941(B). | <p><u>Rulemaking Action</u>
Amend</p> |
|--|--|

This rule includes provisions that are primarily the result of SB1516 (2016). SB 1516 contains provisions that raise serious questions under the Arizona and U.S. Constitutions. Among other things, SB 1516 includes provisions that attempt to preempt the Commission's rulemaking authority (A.R.S. § 16-901(42)), narrow the definitions of expenditure and contribution and eliminate the definition of political committee adopted by the Clean Elections Act in 1998, raising serious constitutional questions under the Voter Protection Act of the Arizona Constitution. The Commission does not, by adopting these rules, waive any legal objection to the enactment of laws that violate the Voter Protection Act. Rather, it adopted these rules in the interest of harmonizing the Commission's rules with the existing statutes in order to avoid confusion within the regulated community and encourage consistency between the Commission's rules and the policies of other election-related offices.

In addition to the VPA issues, the provisions of SB 1516 raise questions of equal protection regarding the treatment of corporations registered in Arizona that also have 501 status with the IRS and questions under Article 7, §. 16 of the Arizona Constitution regarding the publication of campaign contributions and expenditures. The Commission notes these issues for the record, but again, seeks as much as possible to harmonize its rules. The Commission retains its full authority to enforce Article 2 of Chapter 6 of Title 16 consistent with the terms of the statute, as well as the court interpretations which confirm its plain terms. The Commission's rulemakings are exempt from Title 41, Ch. 6, Article 3, pursuant to A.R.S. § 16-956.



7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
Not applicable
8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:
Not applicable
9. The summary of the economic, small business, and consumer impact, if applicable:
Not applicable
10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):
Not applicable
11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:
The Commission solicits public comment throughout the rulemaking process.
12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:
 - a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:
Not applicable
 - b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of the federal law:
Not applicable
 - c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:
Not applicable
13. A list of any incorporated by reference material and its location in the rule:
Not applicable
14. Whether the rule previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:
The rule was not previously made, amended, repealed, or renumbered as an emergency rule.
15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 1. GENERAL PROVISIONS

Section

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

ARTICLE 1. GENERAL PROVISIONS

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

- A. 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.
- B. 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.
- C. 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.
- D. 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 prom-



ised 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).

- E.** The twenty percent reduction in A.R.S. § 16-941(B) applies to all campaign contributions limits on contributions that are permitted to be accepted by nonparticipating candidates.
- F.** Contribution limits as adjusted by A.R.S. § 16-931 shall be the base level contribution limits subject to reduction pursuant to A.R.S. § 16-941(B).

Alec Shaffer

From: Alice <alice@karlandalice.name>
Sent: Saturday, November 11, 2017 7:39 AM
To: CCEC Mailbox
Subject: Comment on Proposed Rules R20-109 and R20-111

Hello,

Here is a supporting comment from LWVAZ.

Alice Stambaugh
co-President, LWVAZ

Comment from LWVAZ on R20-109 and R20-111:

The League of Women Voters of AZ was instrumental in the passage of the Initiatives that created the Citizens Clean Elections Commission (CCEC) and subsequently the Voters' Protection Act (VPA) because of the League's long standing position in favor of disclosure of the original source of all funds expended on behalf of candidates and ballot measures in order to allow voters to make the most informed decisions possible. During the past year or two, partially as a result of the passage of SB1516, which significantly changed various elements of the Arizona's election laws, the CCEC has revised some of its rules – with ample opportunity for public comment – in an attempt to harmonize its rules with the language in SB1516. However, the Governor's Regulatory Review Commission (GRRC) has questioned many of the CCEC's recent rules and then declared them invalid. As a result the CCEC is republishing two significant rules relating to disclosure of independent expenditures, and campaign contribution reporting and limits for nonparticipating candidates.

LWVAZ wishes to support these rules and the CCEC's decision to republish them after appropriate public comment, as a way for the CCEC to maintain its Constitutionally protected requirement to enforce specific statutes and all the provisions of the original Initiative adopted by the voters of AZ in 1998.

ITEM VI - PUBLIC COMMENT

Israel G. Torres (#020303)
James E. Barton II (#023888)
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ORIGINAL

Attorneys for Plaintiffs

ARIZONA SUPERIOR COURT
MARICOPA COUNTY

ARIZONA ADVOCACY NETWORK;
SEN. DAVID BRADLEY; SEN. OLIVIA
CAJERO-BEDFORD; SEN. LUPE
CONTRERAS; SEN. ANDREA
DALESSANDRO; SEN. STEVE
FARLEY; SEN. KATIE HOBBS; SEN.
CATHERINE MIRANDA; SEN.
MARTIN QUEZADA; SEN. ANDREW
SHERWOOD; REP. RICHARD C.
ANDRADE; REP. LELA ALSTON; REP.
MARK A. CARDENAS; REP. KEN
CLARK; REP. DIEGO ESPINOZA;
REP. CHARLENE R. FERNANDEZ;
REP. RANDALL FRIESE; REP.
ROSANNA GABALDON; REP.
ALBERT HALE; REP. STEFANIE
MACH; REP. MATTHEW KOPEC;
REP. JUAN JOSE MENDEZ; REP.
REBECCA RIOS; REP. MACARIO
SALDATE; REP. CECI VELASQUEZ;
REP. BRUCE WHEELER; and
BRICKLAYERS AND ALLIED
CRAFTWORKERS LOCAL UNION
#3 AZ-NM;

Plaintiffs,

v.

THE STATE OF ARIZONA, a body
politic; MICHELE REAGAN, in her
official capacity as Secretary of State; and
THE CITIZENS CLEAN ELECTIONS
COMMISSION; GOVERNOR'S

No. CV2017-096705

SUMMONS

If you would like legal advice from a lawyer,
Contact the Lawyer Referral Service at
602-257-4434

or

www.maricopalawyers.org

Sponsored by the
Maricopa County Bar Association

ITEM VII

REGULATORY REVIEW COUNCIL;

Defendants.

Warning: This is an official document from the court that affects your rights. Read this carefully. If you do not understand it, contact a lawyer for help.

FROM THE STATE OF ARIZONA TO:

**THE CITIZENS CLEAN ELECTIONS COMMISSION
1616 W. Adams, Suite 110
Phoenix, AZ 85007**

1. A lawsuit has been filed against you. A copy of the lawsuit and other court papers are served on you with this "Summons".
2. If you do not want a judgment or order taken against you without your input, you must file an "Answer" or a "Response" in writing with the court, and pay the filing fee. If you do not file an "Answer" or "Response" the other party may be given the relief requested in his/her Petition or Complaint. To file your "Answer" or "Response" take, or send, the "Answer" or "Response" to the Office of the Clerk of the Superior Court, 201 West Jefferson Street, Phoenix, Arizona 85003-2205 or Office of the Clerk of the Superior Court, 18380 North 40th Street, Phoenix, Arizona 85032 or Office of the Clerk of Superior Court, 222 East Javelina Drive, Mesa, Arizona 85210-6201 or
3. Office of the Clerk of Superior Court, 14264 West Tierra Buena Lane, Surprise, Arizona, 85374. Mail a copy of your "Response" or "Answer" to the other party at the address listed on the top of this Summons.
4. If this "Summons" and the other court papers were served on you by a registered process server or the Sheriff, within the State of Arizona, your "Response" or "Answer" must be filed within TWENTY (20) CALENDAR DAYS from the date you were served, not counting the day you were served. If this "Summons" and the other papers were served on you by a registered process server or the Sheriff outside the State of Arizona, your Response must be filed within THIRTY (30) CALENDAR DAYS from the date you were served, not counting the day you were served. Service by a registered process server or the Sheriff is complete when made. Service by Publication is complete thirty (30) days after the date of the first publication.
5. You can get a copy of the court papers filed in this case from the Petitioner at the address listed at the top of the preceding page, from the Clerk of the Superior Court's Customer Service Center at: 601 West Jackson, Phoenix, Arizona 85003,

or 18380 North 40th Street, Phoenix, Arizona 85032 222 East Javelina Drive,
Mesa, Arizona 85210 14264 West Tierra Buena Lane, Surprise, Arizona, 85374.

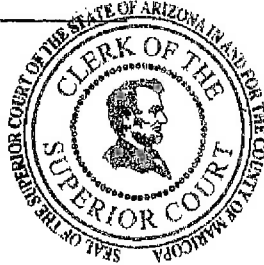
6. If this is an action for dissolution (divorce), legal separation or annulment, either or both spouses may file a Petition for Conciliation for the purpose of determining whether there is any mutual interest in preserving the marriage or for Mediation to attempt to settle disputes concerning custody and parenting time issues regarding minor children.
7. Requests for reasonable accommodation for persons with disabilities must be made to the office of the judge or commissioner assigned to the case, at least ten (10) days before your scheduled court date.

SIGNED AND SEALED this date **NOV 15 2017**

MICHAEL JEANES, CLERK OF COURT

By: T. Harney
Deputy Clerk

T. Harney
Deputy Clerk



Israel G. Torres (#020303)
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COPY

NOV 15 2017



MICHAEL K. JEANES, CLERK
T. HARNEY
DEPUTY CLERK

ARIZONA SUPERIOR COURT
MARICOPA COUNTY

No. CV2017-096705

VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

ARIZONA ADVOCACY NETWORK;
SEN. DAVID BRADLEY; SEN. OLIVIA
CAJERO-BEDFORD; SEN. LUPE
CONTRERAS; SEN. ANDREA
DALESSANDRO; SEN. STEVE
FARLEY; SEN. KATIE HOBBS; SEN.
CATHERINE MIRANDA; SEN.
MARTIN QUEZADA; SEN. ANDREW
SHERWOOD; REP. RICHARD C.
ANDRADE; REP. LELA ALSTON; REP.
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REP. JUAN JOSE MENDEZ; REP.
REBECCA RIOS; REP. MACARIO
SALDATE; REP. CECI VELASQUEZ;
REP. BRUCE WHEELER; and
BRICKLAYERS AND ALLIED
CRAFTWORKERS LOCAL UNION
#3 AZ-NM;

Plaintiffs,

v.

THE STATE OF ARIZONA, a body
politic; MICHELE REAGAN, in her
official capacity as Secretary of State; and
THE CITIZENS CLEAN ELECTIONS
COMMISSION; GOVERNOR'S
REGULATORY REVIEW COUNCIL;

Defendants.

Plaintiffs, by and through their attorneys, hereby allege as follows:

NATURE OF THE ACTION

1. This action seeks a Declaration of unconstitutionality and Injunctive Relief against enforcement of portions of Senate Bill 1516 enacted by the Fifty-second Legislature, Second Regular Session 2016 ("S.B. 1516"), which are unconstitutional because they violate the Voter Protection Act, Ariz. Const. art. IV, 1 § 1(6), the Equal Protection Clause of the United States Constitution, U.S. Const. amend. XIV, Equal Protection under the Arizona Constitution, Ariz. Const. art. II, § 13, and Article VII, § 16 of Arizona Constitution.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Arizona Advocacy Network is a non-profit organization with its principal place of business located in the State of Arizona.

3. Plaintiffs David Bradley, Olivia Cajero-Bedford, Lupe Contreras, Andrea Dalessandro, Steve Farley, Katie Hobbs, Catherine Miranda, Martin Quezada, and Andrew Sherwood, collectively known as Senate Plaintiffs, resided within the State of Arizona during the time of SB 1516's passage, and were members of the Arizona State Senate who opposed S.B. 1516 or refused to vote.

4. Plaintiffs, Richard C. Andrade, Lela Alston, Mark A. Cardenas, Ken Clark, Diego Espinoza, Charlene Fernandez, Randall Friese, Rosanna Gabaldon, Albert Hale, Matthew A. Kopec, Stefanie Mach, Juan Mendez, Rebecca Rios, Macario Saldate, Ceci Velasquez, and Bruce Wheeler, collectively, House Plaintiffs, resided within the State of Arizona during the time of the action, and were members of the Arizona House of Representatives who opposed S.B. 1516.

5. Plaintiff Bricklayers and Allied Craftworkers Local Union #3 AZ-NM ("Local 3") is a labor union organized under Section 501(c)(5) of the Internal Revenue Code and not registered with the Arizona Corporation Commission. They represent bricklayers, stonemasons, tile layers and finishers, restoration masons and caulkers, marble masons and finisher, terrazzo mechanics and finishers, and refractory bricklayers who work in the State of Arizona.

6. Defendant State of Arizona is a body politic.

7. Defendant Michele Reagan is the Secretary of State, and is named in her official capacity.

8. The Citizens Clean Elections Commission is the body tasked by the Clean Elections Act with enforcing the Act.

9. The Governor's Regulatory Review Council is a State agency.

10. This action arises under state law, the Arizona Constitution, and the U.S. Constitution. This Court has jurisdiction pursuant to A.R.S. §§ 12-123 and 12-1831 *et seq.*

11. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

STATEMENT OF FACTS

The Citizens Clean Elections Act

12. The Citizens Clean Elections Act (the "CEA") was initiated by citizens and was passed by voters in November 1998. Proposition 200, was approved at election Nov. 3, 1998, eff. Nov. 23, 1998.

13. Under the CEA:

The people of Arizona declare[d] our intent 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. Campaigns will become more issue-oriented and less negative because there will be no need to challenge the sources of campaign money.

A.R.S. § 16-940(A).

14. The CEA addressed numerous grievances against the campaign finance system at that time, including that it "[h]inder[ed] communication to voters by many qualified candidates; [e]ffectively suppress[ed] the voices and influence of the vast majority of Arizona citizens in favor of a small number of wealthy special interests; [and] [u]ndermine[d] public confidence in the integrity of public officials." A.R.S. § 16-940(B).

15. The CEA established a system for contributions made to all legislative and statewide candidates. A.R.S. § 16-941 (limiting contributions for participating and nonparticipating candidates).

16. The CEA established the new contribution limits by tying them to those from Article 1 of Chapter 6 of Arizona Revised Statutes and refers to the enforcement procedure from Article 1. *Id.* (B).

17. The CEA required and continues to require that any person who makes independent expenditures beyond a certain threshold "shall file reports with the secretary of state." A.R.S. § 16-941(D).

18. The CEA required and continues to require that "[a]ny person who has previously reached the dollar amount specified in § 16-941, subsection D for filing an original report shall file a supplemental report each time previously unreported independent expenditures specified by that subsection exceeds one thousand dollars." A.R.S. § 16-958(A).

19. The CEA incorporated several definitions by reference to A.R.S. § 16-901 as it was written in 1998, the date of CEA's enactment. A.R.S. § 16-961(A).

20. The CEA enacted these by reference, not as a component in a formula.

21. Among the definitions enacted by CEA was that of political committee as follows:

"Political committee" means a candidate or any association or combination of persons that is organized, conducted or combined for the purpose of influencing the result of any election or to determine whether an individual will become a candidate for election in this state or in any county, city, town, district or precinct in this state, that engages in political activity in behalf of or against a candidate for election or retention or in support of or opposition to an initiative, referendum or recall or any other measure or proposition and that applies for a serial number and circulates petitions and, in the case of a candidate for public office except those exempt pursuant to section 16-903, that receives contributions or makes expenditures in connection therewith, notwithstanding

that the association or combination of persons may be part of a larger association, combination of persons or sponsoring organization not primarily organized, conducted or combined for the purpose of influencing the result of any election in this state or in any county, city, town or precinct in this state. Political committee includes the following types of committees:

- (a) A candidate's campaign committee.
- (b) A separate, segregated fund established by a corporation or labor organization pursuant to section 16-920, subsection A, paragraph 3.
- (c) A committee acting in support of or opposition to the qualification, passage or defeat of a ballot measure, question or proposition.
- (d) A committee organized to circulate or oppose a recall petition or to influence the result of a recall election.
- (e) A political party.
- (f) A committee organized for the purpose of making independent expenditures.
- (g) A committee organized in support of or opposition to one or more candidates.
- (h) A political organization.
- (i) An exploratory committee.

A.R.S. § 16-901(19) (West 1998).

22. The CEA provided the Citizens Clean Elections Commission (the "Commission") with broad authority to "adopt rules to carry out the purposes of this article," which includes receiving reports on independent expenditures. A.R.S. § 16-956(B).

23. The Commission has adopted Rule R2-20-109, Independent Expenditure Reporting Requirements, which carries out the purpose of the CEA as related to independent expenditures. A.A.C. R2-20-109.

24. The Commission has adopted Rule R2-20-111, Non-participating Candidate Reporting Requirements and Contribution Limits, which carries out the purpose of the CEA as related to non-participating candidate regulation. A.A.C. R2-20-111.

25. Thus, the CEA was intended to address the statewide problems of corruption, and did so in a variety of ways directed at candidates who agreed to the limitations associated with public funding, those who did not, and any person or entity that chose to spend money to influence Arizona elections.

26. Furthermore, the Commission has taken steps to enact rules to further these purposes.

The Clean Elections Institute

27. The Clean Elections Institute has sued to protect the integrity of the Clean Elections Act. *See, e.g., Clean Elections Inst., Inc. v. Brewer*, 209 Ariz. 241, 99 P.3d 570 (2004).

28. The Clean Elections Institute has intervened to defend the act when the State sought nominal party status in challenges to the CEA. *See, e.g., Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 131 S. Ct. 2806, 2813, 180 L. Ed. 2d 664 (2011); *Ass'n of Am. Physicians & Surgeons v. Brewer*, 363 F. Supp. 2d 1197 (D. Ariz. 2005), *aff'd in part, rev'd in part and remanded*, 494 F.3d 1145 (9th Cir. 2007).

29. Arizona Advocacy Network has taken on the responsibility of protecting the CEA in the absence of the Clean Elections Institute.

Senate Bill 1516

30. On March 8, 2016, S.B. 1516 passed in the Arizona Senate with eighteen ayes, ten nays, and two members not voting.

31. On March 29, 2016, the measure passed in the Arizona House of Representatives with thirty-one ayes, twenty-seven nays, and two members not voting.

32. On March 30, 2016, the Governor signed S.B. 1516 into law.

33. The bill was chaptered as Laws 2016, ch. 79.

34. Section 12 of S.B. 1516 provided *inter alia* that “a filing officer is the sole public officer who is authorized to initiate an investigation into alleged violations of this article and articles 1, 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 of this chapter, including the alleged failure to register as a committee.” 2016 Ariz. Legis. Serv. Ch. 79, § 12 (S.B. 1516) (codified at A.R.S. § 16-938(A)).

35. S.B. 1516 provided no exceptions for reports that are required to be filed with the Secretary of State’s office by the CEA at A.R.S. §§ 16-941-958 or elsewhere.

36. S.B. 1516 created a blanket exception from the reporting requirements for certain entities from being regulated as political committees.

37. Under S.B. 1516, to be a political action committee, an entity must (a) be “organized for the primary purpose of influencing the result of an election,” and (b) receive contributions or make expenditures above a certain threshold. 2016 Ariz. Legis. Serv. Ch. 79, § 12 (S.B. 1516).

38. Section 11 of S.B. 1516 defines primary purpose as “an entity’s predominant purpose. Notwithstanding any other law or rule, an entity is not organized for the primary

purpose of influencing an election if all of the following apply at the time the contribution or expenditure is made:

- a. The entity has tax exempt status under section 501(a) of the internal revenue code.
- b. Except for a religious organization, assembly or institution, the entity has properly filed a form 1023 or form 1024 with the internal revenue service or the equivalent successor form designated by the internal revenue service.
- c. The entity's tax exempt status has not been denied or revoked by the internal revenue service.
- d. The entity remains in good standing with the corporation commission.
- e. The entity has properly filed a form 990 with the internal revenue service or the equivalent successor form designated by the internal revenue service in compliance with the most recent filing deadline established by internal revenue service regulations or policies."

2016 Ariz. Legis. Serv. Ch. 79, § 11 (S.B. 1516) (codified at A.R.S. § 16-901(43)).

39. Thus, an entity behaving in all ways as a political committee and making independent expenditures, but registered with the Arizona Corporation Commission ("ACC") and in good standing with the Internal Revenue Service cannot be regulated as a political committee.

40. S.B. 1516 does not provide for any exception for rules passed by the Commission concerning independent expenditures made by such groups.

41. S.B. 1516 limits this exemption from regulation to tax-exempt entities that are registered with the ACC.

42. S.B. 1516 originally contained sections 13 through 19 and 31 that were not enacted because (1) they amended the CEA and (2) the bill lacked sufficient votes to satisfy the VPA's requirement for supermajority in order to enact.

43. The legislature enacted the remaining sections of S.B. 1516, including those sections that attempted to indirectly amend the CEA in violation of the VPA.

44. Upon information and belief, based on its interpretation of S.B. 1516, the Governor's Regulatory Review Council ("GRRC") has determined that Rules R2-20-109 & 111 are invalid, expired or otherwise unenforceable.

45. The GRRC is a division of the Arizona Department of Administration and is responsible for reviewing proposed administrative rules and compiling reports on the rulemaking processes of various agencies.

46. In its recent Notice of Proposed Exempt Rulemaking for its re-issue of Rules 109 and 111 respectively, the Commission explained:

R2-20-109. Independent Expenditure Reporting Requirements This action is being taken because of an invalid notice from the Governor's Regulatory Review Council (GRRC). The rule, which remains in effect, provides guidance and explanation of the application of the Clean Elections Act to persons who make independent expenditures in state and legislative races. See *Clean Elections Institute v. Brewer*, 99 P. 3d 570, 574 (Ariz. 2004) (explaining that the Commission is "require[d]" to enforce laws related to independent expenditures).

....

R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits This action is being taken because of an invalid notice from Governor's Regulatory Review Council (GRRC). The rule, which remains in effect, provides guidance and explanation of statutory provisions the commission is "require[d]" to enforce. *Clean Elections Institute v. Brewer*, 99 P. 3d 570, 574 (Ariz. 2004); see also *Horne v. Citizens Clean Elections Commission*, CV 2014-009404 (8/19/2014) (dismissing case challenging the Commission's jurisdiction to resolve complaints against a non-participating candidate.).

47. The above rules published by the Commission reinforce the protections put in place by the CEA.

FIRST CLAIM FOR RELIEF
(Voter Protection Act)

48. Plaintiffs incorporate by reference the above paragraphs as though fully set forth herein.

49. Under Ariz. Const. art. IV, Pt. 1 § 1(6)(B), "The legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon, or to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure."

50. The provisions of S.B. 1516 conflict with the CEA and violate the VPA (i) by restricting the enforcement of disclosure requirements under the authority of the Clean Elections Commission as applied to certain political actors, (ii) restricting the enforcement of the CEA as applied to certain types of expenditures and contributions, and, (iii) by removing the Commission's authority to enforce certain components of the Act against anyone.

Redefining Political Committee Using "Primary Purpose"

51. S.B. 1516 excludes entities that do not have a "primary purpose" of influencing elections from the definition of "political action committee." A.R.S. §§ 16-901(43) - 905(C) as added by S.B. 1516 §§ 11, and 12.

52. It then defines "primary purpose" in such a way as to exclude a class of actors from regulation as a political action committee: those entities in good standing with the Arizona Corporation Commission and registered as a tax-exempt entity with the Internal Revenue Service. *Id.*

53. The CEA specifically requires the Commission to monitor reports made to the Secretary of State's office concerning independent expenditures.

54. A.R.S. § 16-941(D), added by the CEA, requires "any person who makes independent expenditures" to report such spending to the Secretary of State's Office.

55. The CEA requires the Commission to make rules to enable enforcing its reporting requirements for independent expenditures, including those made by political committees. A.R.S. § 16-956; *Clean Elections Institute v. Brewer*, 99 P. 3d 570, 574 (Ariz. 2004) (explaining the Commission's duty to enforce laws related to independent expenditures).

56. The Commission has adopted rules to enforce reporting requirements on those who make independent expenditures, including political committees as defined in A.R.S. § 16-961(A), enacted by the CEA.

57. Rule R2-20-109(B)(4)(b) provides: "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.”

58. S.B. 1516 deletes the definition of “political committee” from title 16, and thus amends the CEA by eliminating its cross-reference.

59. Furthermore, by amending A.R.S. § 16-901 to eliminate certain tax-exempt organizations in good standing, regardless of the entity’s actual conduct, from the definition of political action committee, A.R.S. § 16-901(43), S.B. 1516 attempts to prevent the Commission from carrying out its mandate under the CEA to monitor independent expenditure reporting required of certain political committees.

60. The CEA requires the Commission to take enforcement action against such entities that fail to comply with the Act.

61. A.R.S. § 16-957(A), added by the CEA, details the enforcement procedures the Commission follows when it “finds that there is reason to believe that a person has violated any provision of [the CEA].” S.B. 1516 purports to allow certain entities to bypass these procedures.

62. By creating a blanket exception for certain entities from being organized for the primary purpose of influencing the outcome of elections for entities exempted under A.R.S. § 16-901(43), S.B. 1516 attempts to remove such entities from regulation by state election regulators including the Commission.

Redefining “Contribution” and “Expenditure”

63. A.R.S. § 16-911(B), added by S.B. 1516, defines exemptions from the definition of contribution, one of which is “the payment by a political party to support its nominee...including [c]oordinated political party expenditures.” A.R.S. § 16-911(B)(4).

Here 'coordinated party expenditures' means those expenditures that are made by a political party to directly pay for goods or services on behalf of its nominee. A.R.S. § 16-901(14).

64. A.R.S. § 16-911(B)(5) exempts "the payment by any person to defray a political party's operating expenses or party-building activities" from the definition of contribution. Additionally, A.R.S. § 16-921 of S.B. 1516, exempts that same category of payments from the definition of expenditure.

65. These conflict with A.R.S. § 16-961 of the CEA, which relies on the former definitions of "contribution" and "expenditure."

66. Furthermore, by exempting what would otherwise be in-kind contributions from the definition of expenditure and contribution, it amends the contribution limits found in A.R.S. § 16-941, and permits unlimited contributions to political parties, who can in turn spend unlimited amounts in support of their nominees.

Restricting Enforcement

67. By limiting enforcement to only filing officers, A.R.S. § 16-938, S.B. 1516 further attempts to explicitly remove all but participating candidates from regulation by the Commission.

68. Because A.R.S. § 16-938 allows for complaints related to failures to make filings with the Secretary to be filed *only with the Secretary*, S.B. 1516 stands in conflict with A.R.S. § 16-943(C) in which the CEA establishes a violation for "[a]ny person who knowingly provides false or incomplete information on a report filed under § 16-958," to be enforced by the Commission, A.R.S. § 16-957.

69. S.B. 1516 also conflicts with A.R.S. § 16-941(D), which applies to “any person who makes independent expenditures.” This section requires the disclosure of independent expenditures cumulatively exceeding \$500 per election cycle. By preventing the Commission from enforcing this provision, and instead vesting complete authority with the Secretary of State, S.B. 1516 skirts around these requirements also.

70. The above identified sections of S.B. 1516 attempt to amend the CEA without satisfying the constitutional requirements to do so and are, therefore, unenforceable.

SECOND CLAIM FOR RELIEF

(Supermajority Requirement)

71. Plaintiffs incorporate by reference the above paragraphs as though fully set forth herein.

72. Under Ariz. Const. art. IV, Pt. 1 § 1(6)(B), “The legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon, or to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure.”

73. The above paragraph applies to S.B. 1516 because it amended the CEA, which was passed on November 3, 1998.

74. Because enough legislators, specifically House Plaintiffs, voted against S.B. 1516 in the Arizona House of Representatives to deny its passage with a three-fourths supermajority, the bill cannot become law under Ariz. Const. art. IV, Pt. 1 § 1(6)(B). The signing of S.B. 1516 into law effectively denied representation to the constituents of those legislators.

75. Because enough legislators, specifically Senate Plaintiffs, voted against S.B. 1516 in the Arizona Senate to deny its passage with a three-fourths supermajority, the bill cannot become law under Ariz. Const. art. IV, Pt. 1 § 1(6)(B). The signing of S.B. 1516 into law effectively denied representation to the constituents of those legislators.

76. Because S.B. 1516 did not further the purpose of the CEA, which it was amending, the bill cannot become law under Ariz. Const. art. IV, Pt. 1 § 1(6)(B).

77. Because S.B. 1516 was not properly approved according to Ariz. Const. art. IV, Pt. 1 § 1(6), the bill is unconstitutional.

THIRD CLAIM FOR RELIEF

(Equal Protection)

78. Plaintiffs incorporate by reference the above paragraphs as though fully set forth herein.

79. S.B. 1516 exempts some tax-exempt groups from the reporting requirements associated with activities to influence Arizona elections.

80. S.B. 1516 therefore impacts the fundamental right of free speech.

81. When an equal protection claim implicates a fundamental right, such as the First Amendment, the standard in analyzing that unequal treatment is strict scrutiny. This remains true regardless of whether or not the unequal treatment is based on membership in a protected class. *U.S. v. Hancock*, 231 F.3d 557.

82. When various 501(c) groups make expenditures to influence Arizona elections, S.B. 1516 treats those that are registered with the Arizona Corporation Commission differently than those that are not.

83. Nonprofit, 501(c) groups are exempt from being classified as "political committees" under S.B. 1516 despite the fact that the I.R.S. does not have the same exemption, as there are 501(c) groups who may still influence elections even if it is not their primary purpose.

84. For example, if an entity that was tax-exempt under I.R.C. 501(c)(4) and was registered with the Arizona Corporation Commission, spent 100% of its funds on political ads, there would be no Arizona elections regulator who could require them to register and report as a political committee.

85. In stark contrast, if a 501(c)(5) organization like Local 3, which is not registered with the Arizona Corporation Commission, spent 100% of its funds on political ads, S.B. 1516 requires it to register as a political action committee and file campaign finance reports.

86. There is no governmental interest in this unequal treatment, much less a compelling one. Thus, S.B. 1516's exemption from classification as a political action committee for some tax-exempt groups is unenforceable.

FOURTH CLAIM FOR RELIEF

(Article VII § 16 of Arizona Constitution)

87. Plaintiffs incorporate by reference the above paragraphs as though fully set forth herein.

88. The Arizona Constitution has a built-in disclosure requirement. It reads: "The legislature, at its first session, shall enact a law providing for a general publicity, before and after election, of all campaign contributions to, and expenditures of campaign committees and candidates for public office." Ariz. Const. Art 7, § 16.

89. This applies to A.R.S. § 16-911(4)-(5), A.R.S. § 16-901(43), and A.R.S. § 16-905(C) added by S.B. 1516, which respectively allow for the exemption of political party monies to candidates under expenditures and contributions, and for the allowance of PAC status for tax-exempt organizations based on tax-exempt status, both of which ultimately allow for unpublicized contributions and expenditures.

90. As a result of S.B. 1516, any non-profit corporation or similar entity will be able to make unlimited monetary contributions to a political party committee. In turn that committee may then make unlimited expenditures in support of, and in coordination with, its nominee.

91. Since the reporting of these particular contributions are not required, the built-in disclosure safeguards are broken. This essentially allows for candidates to make expenditures themselves without meeting the "general publicity" requirement of campaign contributions.

WHEREFORE, Plaintiffs request that this Court

- a. Declare that S.B. 1516 violates Article 4, Part 1, § 1(6) of the Arizona Constitution.
- b. Declare that S.B. 1516 violates the Equal Protection Clause of both the Arizona and U.S. Constitutions.
- c. Declare that S.B. 1516 violates Article 7 § 16 of the Arizona Constitution.
- d. Permanently enjoin enforcement of S.B. 1516 sections as codified at A.R.S §§ 16-901(7), -901(8), -901(43), -905(C), -911(4), -911(5), -921, and -938.

- e. Grant Plaintiffs their costs and attorneys' fees.
- f. Grant further relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED this 15th day of November, 2017

By: James E. Barton, II

James E. Barton, II (#023888)
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Attorneys for Plaintiff

COPY

NOV 15 2017



MICHAEL K. JEANES, CLERK
T. HARNEY
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Saman J. Golestan (# 031710)
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Attorneys for Plaintiffs

ARIZONA SUPERIOR COURT
MARICOPA COUNTY

ARIZONA ADVOCACY NETWORK, et
al.,

Plaintiffs,

v.

THE STATE OF ARIZONA, et al.,

Defendants.

No. CV2017-096705

Notice of Claim of Unconstitutionality
(A.R.S. § 12-1841)

Plaintiffs submit this Notice of Claim of Unconstitutionality regarding Senate Bill 1516, as detailed in the attached Verified Complaint, under Section 1841 of the Uniform Declaratory Judgments Act to Arizona Attorney General Mark Brnovich, Speaker of the House of Representatives Javan D. Mesnard, and President of the Senate Steve Yarbrough.

1. Plaintiff is represented by the following attorneys:

Israel G. Torres (#020303)
James E. Barton II (#023888)
Saman J. Golestan (# 031710)
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- 1 2. The case name, court name, caption and case number are found on the first two
2 pages of the attached Verified Complaint.
3 3. Plaintiffs filed the attached Verified Complaint on November 15, 2017.
4 4. Senate Bill 1516 amends Title 16 of Arizona Revised Statutes in such a way as to
5 remove from the Citizens Clean Election Commission enforcement authority
6 granted to the Commission by the Clean Elections Act. As the Clean Elections Act
7 was passed by voter initiative, this violates the Voter Protection Act of the Arizona
8 Constitution. Senate Bill 1516 also provides a blank exemption from the definition
9 of political committee for some but not all nonprofit, tax-exempt organizations in
10 violation of the Equal Protection Clause of the Arizona and U.S. Constitutions.
11 Finally, by permitting contributions to candidates that evade disclosure, Senate Bill
12 1516 violates Article VII § 16 of Arizona Constitution.
13 5. No next hearing is scheduled as of this notice.

14 Respectfully Submitted on November 15, 2017.

15
16 By:  s/ James E. Barton II

17 James E. Barton II (#023888)
18 Saman J. Golestan (#031710)
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21 Tempe, Arizona 85283
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23 James@TheTorresFirm.com
24 Attorneys for Plaintiffs
25
26
27
28

November 15, 2017

Today, Torres Law Group filed two verifications along with the verified complaint in CV 2017-096705. We did not obtain a conformed copy of these filings, however, copies of the signature block for Joel Edman, on behalf of Arizona Advocacy Network, and James Cahill, on behalf of the Bricklayers and Allied Craft Workers Local Union #3 AZ-NM, are attached hereto.

If you have any questions, please contact our office.

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9 ARIZONA SUPERIOR COURT
MARICOPA COUNTY
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11 ARIZONA ADVOCACY NETWORK;
SEN. DAVID BRADLEY; SEN. OLIVIA
12 CAJERO-BEDFORD; SEN. LUPE
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13 FARLEY; SEN. KATIE HOBBS; SEN.
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19 REBECCA RIOS; REP. MACARIO
SALDATE; REP. CECI VELASQUEZ;
20 REP. BRUCE WHEELER; and
BRICKLAYERS AND ALLIED
21 CRAFTWORKERS LOCAL UNION
#3 AZ-NM;

22 Plaintiffs,
23
24

v.

No.

VERIFICATION

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v.

THE STATE OF ARIZONA, a body
politic; MICHELE REAGAN, in her
official capacity as Secretary of State; and
THE CITIZENS CLEAN ELECTIONS
COMMISSION; GOVERNOR'S
REGULATORY REVIEW COUNCIL;

Defendants.

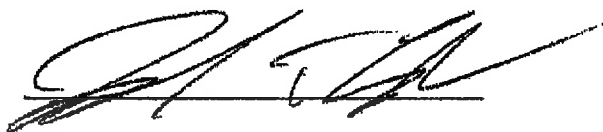
I, Joel Edman, on behalf of Arizona Advocacy Network, do state and swear under penalty of
perjury and as permitted by Rule 80(c), Ariz. R. P. Civ. P., as follows:

I am a plaintiff in this action. I have read the above captioned Verified Complaint and, to the best
of my knowledge, information and belief, the statements made therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this date:

11/7/17



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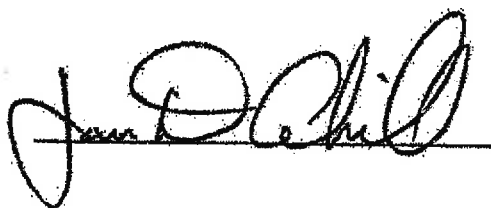
I, James Cahill, on behalf of Bricklayers and Allied Craftworkers Local Union #3 AZ-NM, do
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10 *Attorneys for Plaintiffs*
11

12 ARIZONA SUPERIOR COURT
13 MARICOPA COUNTY
14

15
16 No. CV2017-096705

17 CERTIFICATE OF
18 COMPULSORY ARBITRATION
19

20 ARIZONA ADVOCACY NETWORK;
21 SEN. DAVID BRADLEY; SEN. OLIVIA
22 CAJERO-BEDFORD; SEN. LUPE
23 CONTRERAS; SEN. ANDREA
24 DALESSANDRO; SEN. STEVE
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#3 AZ-NM;

Plaintiffs,

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official capacity as Secretary of State; and
THE CITIZENS CLEAN ELECTIONS

1 COMMISSION; GOVERNOR'S
2 REGULATORY REVIEW COUNCIL;

3
4 Defendants.
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8 Now Comes the Plaintiffs herein, by and through counsel undersigned, and hereby file their
9
10 Certificate of Compulsory Arbitration.

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12 The undersigned certifies that there is no monetary relief sought. Accordingly, this case is
13
14 not subject to the Uniform Rules of Procedure for Arbitration.
15

16
17
18 Dated: November 8, 2017
19

20 TORRES LAW GROUP, PLLC

21 By: 

22 James E. Barton II

23 Saman J. Golestan

24 2239 West Baseline Road

25 Tempe, Arizona 85283

26
27 *Attorneys for Plaintiffs*
28

November 15, 2017

Today, Torres Law Group filed two verifications along with the verified complaint in CV 2017-096705. We did not obtain a conformed copy of these filings, however, copies of the signature block for Joel Edman, on behalf of Arizona Advocacy Network, and James Cahill, on behalf of the Bricklayers and Allied Craft Workers Local Union #3 AZ-NM, are attached hereto.

If you have any questions, please contact our office.

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22 Plaintiffs,

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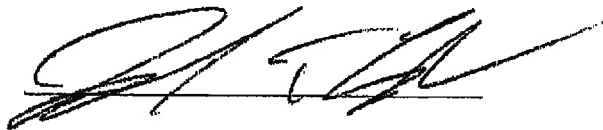
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