



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

Location: Citizens Clean Elections Commission

1616 West Adams, Suite 110

Phoenix, Arizona 85007

Date: Thursday, May 18, 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 May 18, 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 April 20, 2017 and April 27, 2017 meeting.
- III. Discussion and Possible Action on Executive Director's Report.
- IV. Discussion and Possible Action on Final Comprehensive Audit Approval of Jesus Rubalcava, Participating Candidates for the 2016 election cycle:
- V. Discussion and Possible Action on the 5 Year Review Report submitted to Governor's Regulatory Review Council and Related Matters.

The Commission may vote to go into executive session for the purpose of obtaining legal advice on Item V of the agenda, pursuant to A.R.S. § 38-431.03 (A)(3).

- VI. Discussion and Possible action on Rule Amendment Proposals approved for Public Comment on Feb. 23:
 - A. A.A.C. R2-20-702(B)

1. Option A – Ban on expenditures to political parties with clean elections funding.
 2. Option B – Limit on expenditures to political parties of clean elections funding to voter information and political event fees.
 3. Option C – Restriction of expenditures to political parties for campaign expenditures and additional documentation requirements.
- B. A.A.C. R2-20-703.01 – Regulation of payments to Campaign Consultants by Participating candidates.

The Commission may vote to go into executive session for the purpose of obtaining legal advice on Item VI of the agenda, pursuant to A.R.S. § 38-431.03 (A)(3).

- VII. Discussion and possible action on Clean Elections Surcharge and related issues with the Arizona Administrative Office of the Courts.

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 2017 Legislative Agenda and items including update on bills affecting clean elections, elections general, and administrative law.
- IX. Public Comment
This is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism
- X. Adjournment.
This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission's office, 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

Dated this 16th day of May, 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.

Transcript of Proceedings - Public Session - April 20, 2017

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

April 20, 2017

9:31 a.m.

COASH & COASH, INC.
Court Reporting, Video & Videoconferencing
1802 N. 7th Street, Phoenix, AZ 85006
602-258-1440 staff@coashandcoash.com

Prepared by:
KATHRYN A. BLACKWELDER, RPR
Certificate No. 50666

Coash & Coash, Inc.
602-258-1440 www.coashandcoash.com

<p style="text-align: right;">Page 2</p> <p>1 PUBLIC MEETING BEFORE THE CITIZENS CLEAN ELECTIONS 2 COMMISSION convened at 9:31 a.m. on April 20, 2017, 3 at the State of Arizona, Clean Elections Commission, 4 1616 West Adams, Conference Room, Phoenix, Arizona, in 5 the presence of the following Board members: 6 7 Mr. Steve M. Titla, Chairperson 8 Mr. Mark S. Kimble 9 Mr. Damien Meyer 10 Ms. Amy B. Chan 11 Mr. Galen D. Paton 12 13 OTHERS PRESENT: 14 Thomas M. Collins, Executive Director 15 Paula Thomas, Executive Officer 16 Sara Larsen, Financial Affairs Officer 17 Gina Roberts, Voter Education Manager 18 Mike Becker, Policy Director 19 Alec Shaffer, Web Content Manager 20 Amy Jicha, Legal Admin and VE Intern 21 Rivko Knox, LWV, AZ 22 Joseph N. Roth, Osborn Maledon 23 Lee Miller, SOS 24 Garrett Archer, SOS 25 Liz Atkinson, SOS Bill Maaske, SOS Joseph La Rue, AG's Office Joel Edman, AZ Advocacy Network Mirja Riester, Riester</p>	<p style="text-align: right;">Page 4</p> <p>09:32:28-09:33:57</p> <p>1 We go to the next item, discussion and 2 possible action on Executive Director's Report. 3 MR. COLLINS: Thank you, Chairman Titla, 4 Commissions. 5 A couple of things. First, I want to 6 congratulate Amy, our -- who's been with us as our 7 intern now for almost a year, I think. She will be 8 graduating from the Barrett Honors College in May, and 9 with -- summa cum laude, and she's decided she's going 10 to attend Emory Law School in the fall and has received 11 a scholarship there. So we're really pleased to be 12 able to say that, and it's been great having her work 13 with us. And it looks like she's well on her way to a 14 successful legal career, despite my best efforts to 15 persuade her otherwise. But -- so that's very -- 16 We're really very pleased and proud of Amy. 17 We did -- Sara and Gina were at the Election 18 Officials spring workshop last week and presented 19 several -- a couple of different presentations and 20 attended a number of training sessions. So all the 21 county recorders and election directors were there, as 22 well as the Secretary's office. 23 There's a -- voter registration deadline was 24 April 17th for the next consolidated election date, 25 which is May 16th.</p>
<p>09:31:42-09:32:27</p> <p style="text-align: right;">Page 3</p> <p>1 PROCEEDING 2 3 CHAIRPERSON TITLA: The Citizens Clean 4 Elections Commission meeting comes to order Thursday, 5 April 20, 2017, at 9:30 a.m. 6 The item we have on the agenda is -- the 7 first item is discussion and possible action on 8 Commission minutes for March 23rd, 2017 meeting. 9 COMMISSIONER KIMBLE: Mr. Chairman. 10 CHAIRPERSON TITLA: Commissioner Kimble. 11 COMMISSIONER KIMBLE: I move the minutes be 12 approved. 13 CHAIRPERSON TITLA: Motion by Commissioner 14 Kimble. Is there a second? 15 COMMISSIONER MEYER: Second. 16 CHAIRPERSON TITLA: Second by Commissioner 17 Meyer. 18 All in favor, say aye. 19 (Chorus of ayes.) 20 CHAIRPERSON TITLA: Opposed. 21 (No response.) 22 CHAIRPERSON TITLA: Abstain. 23 (No response.) 24 CHAIRPERSON TITLA: Motion carried 25 unanimously.</p>	<p>09:33:59-09:35:44</p> <p style="text-align: right;">Page 5</p> <p>1 The last thing I want to really hit upon -- 2 two things. One: There is, sort of behind the report, 3 the budget -- first quarter budget update. The 4 revenues, they are on track with what we saw in 2016 5 and we haven't exceeded any caps that are -- that are 6 set. 7 And then the last thing I'd like to say a 8 couple words about is the -- is the Supreme Court 9 decision to grant the petition for review in the Legacy 10 Foundation Action Fund matter. So just for -- Just to 11 sort of recapitulate, partially for you all and 12 partially for the public, this is a matter that is left 13 from the 2014 election, it involves the Legacy 14 Foundation Action Fund doing advertisements in the 15 republican gubernatorial primary advocating the defeat 16 of then Mayor Scott Smith of Mesa. They -- we went 17 through a -- our administrative process and a final 18 order issued. 19 And the Clean Elections Act provides for a 20 specific statute of limitations on those -- on appeals. 21 In fact, there's a reported Arizona Supreme Court case 22 that says that, if the statute wasn't clear enough, 23 from 2006 where this issue was challenged. Sorry. 24 COMMISSIONER KIMBLE: I apologize. 25 MR. COLLINS: No, no. No, that's fine.</p>

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1 Legacy Foundation did not meet the statute of
2 limitations. They -- The case was dismissed by the
3 Superior Court. They appealed to the Court of Appeals.
4 Unanimous Court of Appeals panel, in an unpublished
5 decision, affirmed -- affirmed the lower court
6 decision.
7 The issue in the case really is the statute
8 of limitations. And the argument that Legacy
9 Foundation Action Fund is making has to do not with the
10 merits of the Clean Elections Act or our actions, but
11 with their, we think, clearly erroneous interpretation
12 of the -- the administrative law sections at issue
13 here.
14 In effect, what they've argued is: There is
15 no statute of limitations, as long as you can somehow
16 construct an argument that challenges, quote, unquote,
17 jurisdiction. And that's -- What that really means,
18 in practical terms, is that there would be no finality
19 to administrative legal decisions ever, because you
20 would always be able to default and then come back in
21 and essentially say, you know, whatever you want.
22 And so the reason I want to point that out is
23 because, you know, obviously there's -- in addition to
24 the Clean Elections issues on the merits, which this
25 is -- to make clear, this is not a Clean Elections

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1 administrative agencies in general and much more to do
2 about whether or not, you know, after all is said and
3 done, can you ever have finality.
4 And we believe that finality is critical to
5 the functioning of the Commission, as well as the
6 functioning of any administrative legal proceeding,
7 whether you are a fan of administrative legal
8 proceedings or not.
9 So I just wanted to kind of put that out
10 there. And if you have any questions about any of
11 that, please let me know; otherwise, that concludes my
12 report.
13 CHAIRPERSON TITLA: Any questions by the
14 Commissioners?
15 (No response.)
16 CHAIRPERSON TITLA: I'd just like to also
17 congratulate Amy for her graduation from ASU. That's a
18 lot of degrees I see there in one graduation, bachelor
19 of science in psychology, bachelor of arts in political
20 science, with religious studies and social justice and
21 human rights minors. So a lot of hard work there; I
22 commend you for that. And you are to be commended for
23 the summa cum laude with highest honors also, so
24 congratulations on all that hard work. I'm sure that
25 you will do well in law school. The first year is

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1 merits issue, it's also distinct from some of the --
2 you know, there's a growing skepticism of
3 administrative law that is part of -- you know, part of
4 the -- part of the legal culture. You saw that
5 highlighted in Justice Gorsuch's confirmation hearing;
6 certainly Arizona's courts are not immune from that
7 either. But this also doesn't deal with that issue, it
8 doesn't deal with the, you know, administrative rules
9 and delegation and those kind of issues that are
10 highlighted in that context; this is not about that
11 either.
12 This is about if you have administrative
13 rules and if you have administrative hearings and if
14 you have administrative decisions, do you get finality
15 or not. And so this is a very, very narrow issue in
16 terms of the broader Clean Elections merits questions
17 and the broader administrative law questions that are
18 out there in the -- in the legal world. But it is a
19 very important issue in terms of any administrative
20 agency, city, county, town that is concerned about
21 finality of their administrative decisions.
22 So it's a -- It is of significance for
23 reasons that have less to do with the issues you'll see
24 either debated around the Commission's authority or the
25 issues you see debated around administrative law and

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1 always the hardest in law school, so hang in there and
2 I'm sure that you'll do well. Thank you.
3 Any questions by the Commissioners on the
4 report?
5 (No response.)
6 CHAIRPERSON TITLA: I also would like to
7 continue to commend the staff here for their voter
8 education efforts. I've been notified by the Director
9 that Sara and Gina attended Election Officials of
10 Arizona spring workshop on April 2nd and they presented
11 some information at the social media 101 training
12 session. They're also continuing to work on campaign
13 finance and Native American voter outreach efforts. So
14 I commend the Director and the staff for working on
15 voter outreach; it's one of the important functions of
16 our Commission, as mandated by the voters in the Clean
17 Elections Act. So we have some dates coming up here,
18 Commissioners, in the report, so I think that we should
19 keep that in mind.
20 Are there any more questions or any comments?
21 COMMISSIONER KIMBLE: Mr. Chairman.
22 CHAIRPERSON TITLA: Commissioner Kimble.
23 COMMISSIONER KIMBLE: I have one question
24 about the budget, statement of operations, where our
25 total revenues are far below what was projected because

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<p>1 of a big drop in court assessments. Where do we stand</p> <p>2 on that whole issue?</p> <p>3 MR. COLLINS: So Chairman Titla, Commissioner</p> <p>4 Kimble, there are sort of three interrelated issues</p> <p>5 there. First, with respect to the revenues we're</p> <p>6 seeing coming in right now, they are consistent with</p> <p>7 our -- with what we anticipated, which is, as you</p> <p>8 observed, lower and low -- and has been lower and off</p> <p>9 over the course of the past several years.</p> <p>10 With respect to our work in addressing some</p> <p>11 of the intricacies of the issues with the</p> <p>12 Administrative Office of the Courts, without getting</p> <p>13 too deeply into, you know, the legal aspects of it,</p> <p>14 myself and Joe Kanefield have met with the AOC director</p> <p>15 and his staff in the last week or so to try to work</p> <p>16 towards a resolution. So we're -- we are still --</p> <p>17 We're still at a stage where we are corresponding with</p> <p>18 them about the interpretations of some of the</p> <p>19 court-related statutes and the case law related to it,</p> <p>20 you know, versus ours. But so we're making, I would</p> <p>21 call it, a steady but -- you know, steady process --</p> <p>22 progress.</p> <p>23 One of the issues that I think is -- sort of</p> <p>24 was outstanding related to that was the bill, Senate</p> <p>25 Bill 1158, which you'll recall that we were able to</p>	<p>1 COMMISSIONER MEYER: Commissioner Titla.</p> <p>2 CHAIRPERSON TITLA: Commissioner Meyer.</p> <p>3 COMMISSIONER MEYER: On the budget here, on</p> <p>4 the fund balance, the 2017 actuals and the projections,</p> <p>5 there's a \$5.1 million variance there. I guess my</p> <p>6 question is: Is that \$7 million projection, is that</p> <p>7 for the entirety of 2017?</p> <p>8 MR. COLLINS: Yeah.</p> <p>9 COMMISSIONER MEYER: So we're really kind of</p> <p>10 on track, then, aren't we?</p> <p>11 MR. COLLINS: Yeah. Yeah, that's right.</p> <p>12 COMMISSIONER MEYER: 1.8 through this first</p> <p>13 quarter is 7.2 annualized, right? Okay. Okay. I just</p> <p>14 wanted to make sure I was reading that right. That's</p> <p>15 all I had. Thanks.</p> <p>16 CHAIRPERSON TITLA: Okay. Any more comments?</p> <p>17 (No response.)</p> <p>18 CHAIRPERSON TITLA: If not, why don't we go</p> <p>19 to the next item, which is discussion and possible</p> <p>20 action on interagency service agreements with the</p> <p>21 Arizona Secretary of State's office.</p> <p>22 Director.</p> <p>23 MR. COLLINS: Yes. Mr. Chairman,</p> <p>24 Commissioners, I want to say, as an introductory -- as</p> <p>25 an introductory matter, that, you know, we've had a</p>		
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<p>1 work out with the Court as part of a -- they did a</p> <p>2 bunch of amendments in the Senate, and one of them</p> <p>3 dealt with at least part of our issue. And that bill</p> <p>4 is currently not moving.</p> <p>5 There is -- it's gotten -- Just to sort of</p> <p>6 give you press reports, there's been press reports</p> <p>7 about it, it basically was held in house judiciary.</p> <p>8 Either the Republic or the -- I think the Capitol</p> <p>9 Times reported that, you know, Chairman Farnsworth had</p> <p>10 not talked to the press about, you know, his reasons</p> <p>11 for holding that bill and a couple of other</p> <p>12 court-related bills. You know, Chairman Farnsworth has</p> <p>13 very definitive views on legal issues; he is an</p> <p>14 attorney. And so, you know, it's just -- but no one</p> <p>15 knows the answer to why.</p> <p>16 That having been said, you know, once the</p> <p>17 amendment was put on it, our view was essentially that</p> <p>18 it was not really -- I mean, there's not very much else</p> <p>19 for us to do with that. But if the bill doesn't pass,</p> <p>20 then we -- you know, we do have some additional work to</p> <p>21 do with AOC on the issues that the bill would have</p> <p>22 helped solve, if that's helpful.</p> <p>23 COMMISSIONER KIMBLE: Yes, it is. Thank you.</p> <p>24 CHAIRPERSON TITLA: Any more comments,</p> <p>25 questions, Commissioners?</p>	<p>1 very productive last week in working with Secretary</p> <p>2 Reagan and Secretary Reagan's staff on this project.</p> <p>3 We -- I think the status quo is that what we -- what we</p> <p>4 did was we've exchanged drafts. I've identified, in a</p> <p>5 table that is in your packet which you received last</p> <p>6 night, which you may or may not have gotten a chance to</p> <p>7 go through, so I'll try to hit the highlights, the</p> <p>8 differences between the draft that you received in the</p> <p>9 meeting packet and the draft we received from the</p> <p>10 Secretary of State.</p> <p>11 Most of these -- If you see, the comments</p> <p>12 are in the right-hand column. I would say that the</p> <p>13 bulk of the suggestions the Secretary of State's office</p> <p>14 makes are acceptable to us and really are -- are fine.</p> <p>15 I think we have a couple of recommendations</p> <p>16 with respect to clarification to make sure we're</p> <p>17 understanding a couple of things. For example, just to</p> <p>18 give you the first one, the Secretary, and I can</p> <p>19 understand why, wants -- there was a clause that we had</p> <p>20 put in about the rules of the Clean Elections</p> <p>21 Commission. That language comes out.</p> <p>22 We want, you know, just to sort of give you</p> <p>23 an idea of what -- and the Secretary's office hasn't</p> <p>24 had a chance to review this either, so we're all --</p> <p>25 review my comments, so we're kind of all -- we're</p>		

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1 trying to sort of get to a place where we're talking
2 about terms. But we'd like to -- We just want to make
3 that clear that we're talking about additional reports
4 that are required of participating candidates by the
5 Act and the rules, we're not -- you know, we don't need
6 a blanket statement about the rules, per se, but we
7 just want to make that clear, those kinds of things.
8 I think that -- I had a brief e-mail
9 conversation with Mr. Miller this morning. Lee Miller
10 is the Deputy Secretary of State and has appeared
11 before the Commission many times as a -- when he was in
12 private practice about the pricing in the -- in the
13 program proposal that we got at the last meeting.
14 Basically he's here, if we have specific questions, but
15 we think that he -- I think there's still some room for
16 us to work out what the cost -- how the costs get
17 allocated and how the deliverables and objectives get
18 described in that project plan, I think, if I'm
19 correct.
20 So I think we have a sense of what -- The
21 critical things in this agreement draft, if we're able
22 to get this finalized over the course of the next few
23 days, is, one, it does ensure our reports are in the
24 system. We have a couple language tweaks we want to do
25 that go to that, but they're really pretty

09:51:00-09:52:08

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1 And so I guess, as far as action, I mean,
2 this is your opportunity to ask questions. I know you
3 haven't necessarily had a chance to digest everything.
4 If you have, you know, bigger picture questions about,
5 you know, the financial aspects of this or those kinds
6 of things, Mr. Miller is here and can talk through
7 those things, I think. And I appreciate him being
8 here. If you have specific legal questions that you've
9 thought of as you've been looking at this stuff or it
10 occurred to you sort of as we're talking, you know, we
11 do have the option to go into executive session and
12 Joe Roth is here and can talk to us about those things.
13 So I think the best thing, from my
14 perspective, may be to sort of -- to open the floor up
15 to -- Mr. Chairman, if you're comfortable with this, is
16 to have Mr. Miller talk a little bit about their
17 perspective, the Secretary's perspective on this, and
18 then any questions you may have. And then you may have
19 questions for me, Mr. Miller, or Joe, and then we'll
20 kind of deal with those accordingly.
21 CHAIRPERSON TITLA: Mr. Miller.
22 MR. MILLER: Thank you very much,
23 Mr. Chairman.
24 Members, my name is Lee Miller. I serve as
25 the Deputy Secretary of State. We very much appreciate

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1 insignificant.
2 Two, we think that it does identify, you
3 know, the goal of the See the Money program to allow
4 folks to be able to use -- get better access to
5 campaign finance data, which is, I think we've all -- I
6 think we all agree is a valid and important voter
7 education interest. I think that, you know, there's
8 some safeguards for the Secretary's office with respect
9 to appropriations made to them; those are very
10 reasonable, standard terms for an interagency service
11 agreement.
12 You know, we have -- so there's a lot of --
13 there's a lot of really good progress that's been made,
14 and I'm really pleased with that. So without kind of
15 -- I mean, without kind of getting -- it's a little
16 hard to figure out how to address this, per se, except
17 to say that, you know, our basic -- our basic view is
18 that, you know, we -- in my view as staff, and I think
19 staff's view in general, is that, you know, we have the
20 makings of an agreement we can finalize pretty quickly
21 with the -- and we just have a few tweaks we would like
22 to talk about with the Secretary of State's office and
23 -- but most of their suggestions are helpful and they
24 have been -- you know, there's been a lot of compromise
25 on their part that I appreciate greatly.

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1 your consideration of investing in the Secretary's See
2 the Money project.
3 We're going to build this project. It is the
4 top priority of the Secretary. Having said that, your
5 investment in the project will allow us to, frankly,
6 substantially accelerate the functionality we are able
7 to deliver to the people of Arizona. Said not like a
8 lawyer, it's going to allow us to hire a couple more
9 people who are going to -- now who are going to be able
10 to work in support, in addition to the team we already
11 have working on this. So we're going to get more of
12 the project done faster.
13 Having said that, let me also make it clear,
14 I have no intention, the Secretary has no intention to
15 ask the Commission to cut any checks until we have
16 actual technology, we have actually hit milestones, we
17 have actual deliverables to show you. I'm not asking
18 you to just give me a couple hundred thousand dollars
19 today, give me a couple hundred thousand dollars next
20 month. The dialogue I think we need to continue to
21 have with staff is to truly quantify and qualify
22 exactly what pieces and parts will be delivered and
23 exactly what schedule.
24 And similar to the experience you may have
25 had building a house, when I hit a deliverable, when I

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<p>1 pour a slab, I put in a draw request and say, see,</p> <p>2 there's a slab; so now, pursuant to the agreement, you</p> <p>3 owe me this. And when the walls go up, see, there are</p> <p>4 the walls; and now, pursuant to the agreement, when the</p> <p>5 walls are up, there's another request for funding.</p> <p>6 That is the type of relationship we seek</p> <p>7 here. I don't want you to just take it on faith that</p> <p>8 we're going to deliver a fabulous project. I know</p> <p>9 we're going to deliver a fabulous project. I want you</p> <p>10 to invest in it because it's -- I'm going to be able to</p> <p>11 do more things faster, but I'm not going to ask you for</p> <p>12 any money until I have actual things to show you.</p> <p>13 And with that, I'm available for any</p> <p>14 questions.</p> <p>15 CHAIRPERSON TITLA: Any questions,</p> <p>16 Commissioners?</p> <p>17 COMMISSIONER KIMBLE: Mr. Chairman.</p> <p>18 CHAIRPERSON TITLA: Commissioner Kimble.</p> <p>19 COMMISSIONER KIMBLE: So we will make</p> <p>20 payments on a specific schedule when specific steps are</p> <p>21 accomplished?</p> <p>22 MR. MILLER: Mr. Chairman, Mr. Kimble, yes.</p> <p>23 COMMISSIONER KIMBLE: And then what if we get</p> <p>24 to the end and it is not what both of us hope it will</p> <p>25 be? That money is spent by then, right?</p>	<p>1 agreement, is that correct?</p> <p>2 MR. MILLER: Mr. Chairman, Mr. Kimble, yes.</p> <p>3 I was at the Secretary of State's office for probably</p> <p>4 two whole weeks before I came to the conclusion that</p> <p>5 every change in law, and to highlight a comment your</p> <p>6 Director made about rules, every change in rule is a</p> <p>7 technology project. The -- What is yet to be</p> <p>8 determined is collectively how do we support this</p> <p>9 solution going forward. The information needs we would</p> <p>10 like to provide the people of Arizona, we have to</p> <p>11 provide the people of Arizona, almost certainly will</p> <p>12 evolve, and that's great. But every time they evolve,</p> <p>13 my coders have to go to work to modify the software to</p> <p>14 accommodate, and that costs money.</p> <p>15 And so the to be determined, probably perhaps</p> <p>16 not for even a year, is how do we collectively address</p> <p>17 that topic. Because if we can commit to one another,</p> <p>18 wow, this thing looks pretty good, let's just try and</p> <p>19 keep it like it is, let's try and minimize changes,</p> <p>20 then costs associated with maintenance and operation,</p> <p>21 we can keep those down. On the other hand, if we go,</p> <p>22 this is great and wouldn't it be so much greater if it</p> <p>23 was in color and HD and -- and sure, and it all costs</p> <p>24 money. Because every change -- Every change</p> <p>25 ultimately requires people modifying code, and those</p>		
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<p>1 MR. MILLER: Mr. Chairman, Mr. Kimble, yes.</p> <p>2 In point of fact, the -- your dollars and my dollars</p> <p>3 really are simply paying computer developer, computer</p> <p>4 coder salaries. And so it's -- unlike building a</p> <p>5 house, you know, I can't -- I don't have -- I'm not</p> <p>6 going to end up with anything other than computer code</p> <p>7 at the end of this project.</p> <p>8 And so the -- my risk is that -- is that we</p> <p>9 get to essentially January 1st, 2018, and it doesn't</p> <p>10 have the -- the system doesn't have the functionality,</p> <p>11 it doesn't have the capabilities we envision. I, at my</p> <p>12 expense, I've got to keep going. I've got to make it</p> <p>13 work. I have a statutory obligation, the Secretary has</p> <p>14 a statutory obligation to provide Arizona with an</p> <p>15 electronic way for political committees to report their</p> <p>16 finances. So with my dollars and at my risk, I've got</p> <p>17 to make it work. What we're simply asking you all here</p> <p>18 for is a \$200,000 investment in that project.</p> <p>19 COMMISSIONER KIMBLE: Okay. And I just want</p> <p>20 to be clear about one other point. There was a</p> <p>21 discussion about a continuing annual maintenance fee or</p> <p>22 access fee, I'm not exactly sure what it was called; we</p> <p>23 are setting that aside for a moment, that's not going</p> <p>24 to be part of this agreement. But whatever comes out</p> <p>25 of the agreement on the annual fee will not affect this</p>	<p>1 people get paid fairly well.</p> <p>2 COMMISSIONER KIMBLE: I guess -- I guess my</p> <p>3 question is: This agreement talks about continued</p> <p>4 access by the Commission staff to the See the Money</p> <p>5 project and ensures that there will be no problem with</p> <p>6 the Commission staff accessing this. That will -- If</p> <p>7 we reach agreement on this, that would not be affected</p> <p>8 if there were some failure to reach agreement on the</p> <p>9 annual maintenance fee?</p> <p>10 MR. MILLER: Mr. Chairman, Mr. Kimble,</p> <p>11 absolutely not.</p> <p>12 COMMISSIONER KIMBLE: Okay. Thank you.</p> <p>13 COMMISSIONER CHAN: Mr. Chairman. I'm sorry.</p> <p>14 CHAIRPERSON TITLA: Commissioner Chan.</p> <p>15 COMMISSIONER CHAN: Thank you, Mr. Chairman.</p> <p>16 Lee, it's really good to see you.</p> <p>17 MR. MILLER: Good morning.</p> <p>18 COMMISSIONER CHAN: I -- And excuse me,</p> <p>19 because my voice is leaving me, I think. I'm a little</p> <p>20 under the weather.</p> <p>21 Regarding the -- our agency's access to the</p> <p>22 system, I did voice my concerns last month to the</p> <p>23 Secretary about the fact that, you know, without any</p> <p>24 warning, our reports were turned off. And I know that</p> <p>25 we're addressing that in this agreement by asking that</p>		

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<p>1 those be immediately turned back on, and I know she</p> <p>2 mentioned it's not an issue right now because we're not</p> <p>3 in the middle of an election. But my understanding is</p> <p>4 that last year we were in the middle of filing, and</p> <p>5 inexplicably that happened, which I think is not good</p> <p>6 for relations between the offices. So I was happy to</p> <p>7 see that that's part of this agreement.</p> <p>8 As far as the maintenance going forward --</p> <p>9 Well, one, I just wanted to make sure that that's</p> <p>10 acceptable to you. Because I did feel that the</p> <p>11 Secretary was not willing to turn on those reports, for</p> <p>12 whatever reason, when she was here last month. Will it</p> <p>13 be a problem to turn those on once we sign this</p> <p>14 agreement?</p> <p>15 MR. MILLER: Mr. Chairman, Ms. Chan, I don't</p> <p>16 have -- Commissioner Chan, I don't have an answer for</p> <p>17 you precisely, as I stand here at the podium, only</p> <p>18 because we are at work today trying to make forward</p> <p>19 progress on See the Money, and I don't -- at this</p> <p>20 moment at the podium, I don't have -- I don't know how</p> <p>21 much time it's going to take one of those IT folks to</p> <p>22 do what needs to be done to address your immediate</p> <p>23 request.</p> <p>24 COMMISSIONER CHAN: Okay.</p> <p>25 MR. MILLER: I don't foresee that it's any</p>	<p>1 And I think that, you know, although, again,</p> <p>2 we have a couple of tweaks to the language there we</p> <p>3 want to make, Mr. Miller made some tweaks, we have some</p> <p>4 other tweaks, but I think that the principle that that</p> <p>5 will be the substance of this and that that will, going</p> <p>6 forward, regardless of the See the Money public portion</p> <p>7 of this, that infrastructure will be in place in time</p> <p>8 for the election is, I think -- at the very least, I</p> <p>9 think, all of our understanding of this. And</p> <p>10 obviously, Mr. Miller, correct me if I'm wrong, but</p> <p>11 that's certainly my --</p> <p>12 MR. MILLER: Mr. Chairman, I share the</p> <p>13 Executive Director's view about how -- you know, we</p> <p>14 will -- we will absolutely explore this afternoon how</p> <p>15 long and what the resources might be to get</p> <p>16 Commissioner Chan the information she would like now,</p> <p>17 and we'll go from there.</p> <p>18 COMMISSIONER CHAN: Thank you.</p> <p>19 COMMISSIONER MEYER: Mr. Chairman.</p> <p>20 CHAIRPERSON TITLA: Commissioner Meyer.</p> <p>21 COMMISSIONER MEYER: Mr. Miller, thanks for</p> <p>22 being here; really appreciate it. And I'm really</p> <p>23 encouraged at the progress you made with Tom the last</p> <p>24 week on this; I think it's great.</p> <p>25 One question I had, and this is a question</p>		
10:01:48-10:02:48	Page 23	10:04:05-10:05:25	Page 25
<p>1 problem. But having said that, if I go back to the</p> <p>2 office and they say, yeah, we can do that, but that's,</p> <p>3 you know, seven days of coder time to -- because we</p> <p>4 are -- we are not spending time on the campaign finance</p> <p>5 system that we used to have.</p> <p>6 COMMISSIONER CHAN: Gotcha. Okay.</p> <p>7 MR. MILLER: So I just don't have an answer</p> <p>8 for you right now.</p> <p>9 COMMISSIONER CHAN: Okay.</p> <p>10 MR. MILLER: But we will absolutely get an</p> <p>11 answer for you this afternoon, and I'll communicate</p> <p>12 that with Mr. Collins and he can share it with</p> <p>13 everyone.</p> <p>14 COMMISSIONER CHAN: Thank you.</p> <p>15 MR. COLLINS: If I may, Mr. Chairman.</p> <p>16 CHAIRPERSON TITLA: Tom.</p> <p>17 MR. COLLINS: Just to amplify that point, I</p> <p>18 think that the thing that I have had as one of my</p> <p>19 objectives in trying to, you know, make this work and</p> <p>20 get the investment set forth in a way that, I think,</p> <p>21 you know, deals with the Commissioners' concerns is</p> <p>22 really focused on -- on ensuring that both, you know,</p> <p>23 reports that we require that are in the Clean Elections</p> <p>24 Act or are required of participating candidates are</p> <p>25 there and remain available.</p>	<p>1 for you. And Tom, help me out here if I'm wrong. But</p> <p>2 I think we've kind of looked at some of the cost</p> <p>3 estimates for part of this website, and we've done some</p> <p>4 research and found some numbers that are substantially</p> <p>5 less than the quote that we're seeing from your office,</p> <p>6 from the Secretary of State's office, to complete that</p> <p>7 portion of the project. And I think it's the public</p> <p>8 website portion, if I'm understanding correctly.</p> <p>9 MR. COLLINS: Yeah. And just to -- if you</p> <p>10 want me to, I can fill in some of that. I think he --</p> <p>11 Mr. Miller knows, but I don't know if he does.</p> <p>12 COMMISSIONER MEYER: Well, my question is:</p> <p>13 Based upon the numbers, I think we've shared that --</p> <p>14 MR. COLLINS: Yeah.</p> <p>15 COMMISSIONER MEYER: -- with their office,</p> <p>16 has there been any evaluation or reassessment by the</p> <p>17 Secretary of State's office to see if this can be done</p> <p>18 cheaper?</p> <p>19 MR. MILLER: Mr. Chairman, Commissioner</p> <p>20 Meyer, I think the -- I think the most appropriate way</p> <p>21 to answer your question is to say the See the Money</p> <p>22 project is being developed entirely with personnel that</p> <p>23 work for the Secretary. I know, frankly, what those</p> <p>24 folks get paid. Our chief information officer has set</p> <p>25 sort of productivity milestones for those individuals.</p>		

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<p>1 He's also determined that to get to a fully functioning</p> <p>2 project that meets the needs of the Commission, of the</p> <p>3 Secretary, of the people of Arizona, it's going to take</p> <p>4 us until the end of the year. So my costs are simply</p> <p>5 how many hours are -- is the staff going to work times</p> <p>6 what they get paid.</p> <p>7 And the only way I can really modify my cost</p> <p>8 is to have fewer people working on the project, and</p> <p>9 that's -- that would be a significant challenge,</p> <p>10 because it is also a driver for us to have a fully</p> <p>11 functioning system live and available by January 1.</p> <p>12 Because once you get into an even numbered year, once</p> <p>13 you get into an election year with a -- where there are</p> <p>14 going to be statewide elections, candidates and the</p> <p>15 people who are interested in those elections have made</p> <p>16 it emphatically clear to us, don't be doing anything</p> <p>17 new in the middle of -- in the middle of an election.</p> <p>18 So we feel we need to hit -- we absolutely</p> <p>19 have to hit that January 1 date. There will be a</p> <p>20 learning curve for candidates, candidate committees,</p> <p>21 treasurers, all those hardworking folks, that we're</p> <p>22 going to have to work through in the first quarter of</p> <p>23 '18. And so I -- I've got to staff the project to hit</p> <p>24 that milestone.</p> <p>25 COMMISSIONER MEYER: So on the cost issue,</p>	<p>1 going out, that's where you really see who influences</p> <p>2 who, who may have obligations to who. That's a brand</p> <p>3 new piece, and I want to deliver that, the Secretary</p> <p>4 wants to deliver that analytical piece by January 1st;</p> <p>5 and with your investment, it's going to let us do so.</p> <p>6 COMMISSIONER MEYER: And it sounds like that</p> <p>7 piece you were just talking about, the analytical</p> <p>8 piece, that would be really critical for voter</p> <p>9 education and helping voters better understand who is</p> <p>10 investing in whom and how that all shakes out. Am I</p> <p>11 understanding that answer --</p> <p>12 MR. MILLER: Mr. Chairman, Commissioner</p> <p>13 Meyer, absolutely. That's exactly why I think this</p> <p>14 partnership is entirely appropriate and going to be</p> <p>15 very valuable for the people of Arizona going forward.</p> <p>16 COMMISSIONER MEYER: Thank you.</p> <p>17 CHAIRPERSON TITLA: More comments,</p> <p>18 Commissioners?</p> <p>19 COMMISSIONER PATON: Yes.</p> <p>20 CHAIRPERSON TITLA: Commissioner Paton.</p> <p>21 COMMISSIONER PATON: Thank you for coming and</p> <p>22 talking to us in person, instead of this -- just by</p> <p>23 papers and whatever. I appreciate you coming in and</p> <p>24 speaking to us.</p> <p>25 I have -- I believe in teamwork and all that</p>		
10:07:24-10:09:03	Page 27	10:10:23-10:12:19	Page 29
<p>1 your figures are just coming from straight math and how</p> <p>2 many hours it's going to take you guys to complete this</p> <p>3 and that's how you're getting your number?</p> <p>4 MR. MILLER: Mr. Chairman, Commissioner</p> <p>5 Meyer, yes.</p> <p>6 COMMISSIONER MEYER: And then a follow-up</p> <p>7 question, based on your answer there, in timing. I</p> <p>8 think you said earlier, you know, you can get this done</p> <p>9 faster with the Commission's help. Do you believe that</p> <p>10 the Secretary of State's office can have this See the</p> <p>11 Money project done by January 1 of 2018 without the</p> <p>12 Commission funds?</p> <p>13 MR. MILLER: Mr. Chairman, Commissioner</p> <p>14 Meyer, yes. It will not have the full functionality,</p> <p>15 it will not provide the level of detail to the public</p> <p>16 that we envision, that we collectively envision. Our</p> <p>17 statutory mandate is to be able to simply collect</p> <p>18 contribution information and expense information and</p> <p>19 show that to the public. That's what we do now, that's</p> <p>20 what we've all done for more than a decade. That by</p> <p>21 itself is not very insightful and not very valuable.</p> <p>22 What collectively we're investing in is the</p> <p>23 -- is the analytical capability to tie that information</p> <p>24 together to see that all of the relationships that are</p> <p>25 associated with those dollars coming in and dollars</p>	<p>1 kind of stuff and kumbaya, we should all work together,</p> <p>2 and I think this is part of our -- our mission is to</p> <p>3 educate people, have information access to everybody.</p> <p>4 I guess my -- So I'm supportive of this thing.</p> <p>5 I don't know about the maintenance ongoing,</p> <p>6 because that 50,000 a year, our income is down, and</p> <p>7 that kind of concerns me. That could be two elected --</p> <p>8 I mean, two people that are -- we're sponsoring for</p> <p>9 Clean Elections, you know, running for state office.</p> <p>10 I guess my -- Maybe I don't understand, but</p> <p>11 why is this not in your budget, this thing that you're</p> <p>12 asking for us to help you with?</p> <p>13 MR. MILLER: Mr. Chairman, Commissioner</p> <p>14 Paton, it is in the budget. We are -- As I've</p> <p>15 indicated, we are at work today developing our new</p> <p>16 version of our campaign finance reporting system and</p> <p>17 the See the Money analytical tool. We are soliciting</p> <p>18 your investment, as I said, to be able to deliver more</p> <p>19 functionality faster.</p> <p>20 The reason we are not here today to talk</p> <p>21 about a future investment in the maintenance of the</p> <p>22 site is that's a -- frankly, a completely different</p> <p>23 question and would require us to forecast, well, what</p> <p>24 -- this house is nice, but I'd really like it to be,</p> <p>25 you know, yellow instead of blue. And so we've laid</p>		

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<p>1 that question off to the future, because until you</p> <p>2 actually see -- until you see the house, until you see</p> <p>3 -- until you see the software solution, you see what</p> <p>4 functionality you're getting for the initial</p> <p>5 investment, we'd simply be guessing --</p> <p>6 COMMISSIONER PATON: Right.</p> <p>7 MR. MILLER: -- how many people, and by</p> <p>8 extension, at what cost it's going to take to continue</p> <p>9 to make the thing better.</p> <p>10 COMMISSIONER PATON: So I guess my statement,</p> <p>11 question, I don't -- I don't know which it is -- Like</p> <p>12 I said, I'm not opposed to helping you with this. I</p> <p>13 think it would be good for both of our offices to work</p> <p>14 together and so on. I just am kind of nervous about</p> <p>15 the ongoing part of it affecting our budget, and so I</p> <p>16 was just curious as to why your budget doesn't allow</p> <p>17 for you to do this in the future once we get on the</p> <p>18 ground running.</p> <p>19 MR. MILLER: Mr. Chairman, Commissioner</p> <p>20 Paton, I guess -- I guess the best example, the most</p> <p>21 appropriate level of comfort I can share with you, is</p> <p>22 the reality that, similar to this, the Secretary of</p> <p>23 State's office operates, on behalf of the 15 Arizona</p> <p>24 counties, a voter registration software solution.</p> <p>25 There is a maintenance contract with the vendor that</p>	<p>1 want me to do now?</p> <p>2 COMMISSIONER PATON: Right. I see now.</p> <p>3 MR. MILLER: And that's -- And my agreement</p> <p>4 with that voter registration software company actually</p> <p>5 runs five years. But that's why there's actually</p> <p>6 language in the back of this which says, by the way, if</p> <p>7 you don't have the money or I don't have the money,</p> <p>8 then essentially the deal is off. We all are subject</p> <p>9 to, in my case legislative appropriation, I think in</p> <p>10 the Commission's case that your revenue streams</p> <p>11 maintain. And if they don't, then the deal is off;</p> <p>12 there's nothing any of us can do about that.</p> <p>13 COMMISSIONER PATON: Okay. Thank you for</p> <p>14 flushing things out. I mean, that makes things more</p> <p>15 clear to me. Thank you.</p> <p>16 COMMISSIONER MEYER: Mr. Chairman.</p> <p>17 CHAIRPERSON TITLA: Chairman -- Commissioner</p> <p>18 Meyer.</p> <p>19 COMMISSIONER MEYER: So just so I understand</p> <p>20 this, this term of maintenance -- And I think I was</p> <p>21 mistaken. I was thinking about just general upkeep of,</p> <p>22 oh, this part of the site is not working; we've got to</p> <p>23 get a coder out there to fix that. But I think, if I</p> <p>24 understand what you're saying, the maintenance part is</p> <p>25 also going to be a component of, well, if the laws</p>		
10:14:06-10:15:48	Page 31	10:16:59-10:17:48	Page 33
<p>1 developed that solution. That contract is running us</p> <p>2 about \$850,000 a year. And essentially what that</p> <p>3 contract says is: For \$850,000 a year, we'll do all</p> <p>4 the security updates, we'll fix any obvious bugs in the</p> <p>5 system, and you get, I'm rounding off here, and you get</p> <p>6 250 hours of our programmers' time. So you just tell</p> <p>7 us what cool new things you'd like to see in the</p> <p>8 system; and if we can get it done within 250 hours,</p> <p>9 then we're all good for 800,000 bucks.</p> <p>10 If I said to them, you know what? Take the</p> <p>11 250 hours of coders' time out of that deal, you know,</p> <p>12 my price goes down. But my friends across the street</p> <p>13 here have demonstrated that every single year they make</p> <p>14 changes to the laws affecting voter registration --</p> <p>15 COMMISSIONER PATON: Sure.</p> <p>16 MR. MILLER: -- and I've used up all 250</p> <p>17 hours of those coders' time, without fail, year after</p> <p>18 year after year. So --</p> <p>19 And, here is the fun part, my budget is just</p> <p>20 year by year by year. It's entirely possible for the</p> <p>21 legislature to make substantive change in the law of</p> <p>22 voter registration, and then don't give me any money --</p> <p>23 COMMISSIONER PATON: Right.</p> <p>24 MR. MILLER: -- to implement it, and then we</p> <p>25 just all sort of go look at each other. What do you</p>	<p>1 change, then we're going to have to rework the website</p> <p>2 so it functions in a way that's consistent with the way</p> <p>3 the law has been changed by the legislature. Is that</p> <p>4 what you're saying is going to be part of this</p> <p>5 maintenance thing that you're asking --</p> <p>6 MR. MILLER: Mr. Chairman, Commissioner</p> <p>7 Meyer, absolutely.</p> <p>8 COMMISSIONER MEYER: Okay. Thank you.</p> <p>9 COMMISSIONER CHAN: Mr. Chairman.</p> <p>10 CHAIRPERSON TITLA: More questions,</p> <p>11 Commissioner Chan?</p> <p>12 COMMISSIONER CHAN: Mr. Chairman and</p> <p>13 Mr. Miller, I think, you know, that's always the way it</p> <p>14 is, right? I mean, I don't think there's ever a</p> <p>15 session that goes by that the legislature doesn't</p> <p>16 tinker with the election law. They can't help</p> <p>17 themselves. They're running using the election law,</p> <p>18 the voters, the constituents, do all that.</p> <p>19 I think, you know, the difference between</p> <p>20 what you're talking about with the counties is that the</p> <p>21 counties actually have a statutory role in, you know,</p> <p>22 being the keepers of the voter registration database in</p> <p>23 conjunction with the Secretary of State's office. And</p> <p>24 I think from my perspective as a Commissioner -- And</p> <p>25 I'm not saying I'm opposed to doing maintenance. I</p>		

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<p>1 want to hear more about it for sure. But I think the</p> <p>2 difference is that the Secretary actually has the full</p> <p>3 statutory authority to create and provide this system</p> <p>4 for the people of Arizona. And I think this is a very</p> <p>5 exciting system that the -- that your office has put</p> <p>6 together. I think that's why the Commission is</p> <p>7 interested in supporting it financially, to help it</p> <p>8 come online in time for the January -- you know, the</p> <p>9 '18 election cycle. But I believe that, you know,</p> <p>10 ongoing I would say philosophically I feel that it is</p> <p>11 the Secretary's responsibility.</p> <p>12 I know in the past there has been a burden on</p> <p>13 your office as far as the five dollar filing -- you</p> <p>14 know, five dollar -- and our office has paid for, you</p> <p>15 know, maybe a half a -- I think it was like a half an</p> <p>16 employee or something like that. And that is the type</p> <p>17 of thing that makes more sense to me than continuing to</p> <p>18 pay, unless there's a significant burden on the system.</p> <p>19 And I know that there is a piece of the system, but --</p> <p>20 Anyway, so those would be my thoughts on that subject.</p> <p>21 I don't know that that's really, you know --</p> <p>22 MR. MILLER: Mr. Chairman, Commissioner Chan,</p> <p>23 Mr. Collins has made it sort of perfectly clear to us</p> <p>24 that he has no intention of taking a proposal to the</p> <p>25 Commission and does not foresee the Commission ever</p>	<p>1 is move forward with that, and then, given that time is</p> <p>2 of the essence here, you know, when we get to a</p> <p>3 finalized agreement that Mr. Miller can live with and</p> <p>4 Secretary Reagan can live with and we're comfortable</p> <p>5 with as staff, we'd probably call, on 24 hours' notice,</p> <p>6 a conference call. We'll try to get you the -- we'll</p> <p>7 try to do it in a way that we can get you the contract</p> <p>8 and a summary of the contract ahead of the 24 hours, so</p> <p>9 you have a chance to review that.</p> <p>10 And the materials you have, I would, you</p> <p>11 know, take the time to review before that so that you</p> <p>12 are, you know, as familiar as you can be with the terms</p> <p>13 of the discussion. And then we can get a meeting</p> <p>14 together within -- really within not very much time.</p> <p>15 And I'd like to shoot for the next week or so, if</p> <p>16 possible. If that doesn't work out, you know,</p> <p>17 whatever. But I really -- I think the main point that</p> <p>18 I've heard from the Secretary's office is that because</p> <p>19 time is of the essence, we need to get this in place</p> <p>20 before the next Commission meeting, which is, I think,</p> <p>21 May 18th, 19th, or 20th.</p> <p>22 MR. MILLER: Mr. Chairman, Members, just to</p> <p>23 try and crystallize Tom's comment, we are, as we speak,</p> <p>24 soliciting resumes for more -- for coders, for</p> <p>25 developers, for more people for this project. If --</p>		
10:19:18-10:20:43	Page 35	10:22:09-10:23:23	Page 37
<p>1 supporting any type of ambiguous financial commitment.</p> <p>2 Just like what we are trying to set forth here is a</p> <p>3 articulate schedule of deliverables, and the labor</p> <p>4 associated with achieving that objective equals those</p> <p>5 amount of dollars, we would foresee the discussion</p> <p>6 about further support and maintenance going exactly</p> <p>7 that direction. If it was the pleasure of the</p> <p>8 Commission to say, wow, that looks great, don't change</p> <p>9 anything, then I don't disagree that there would be</p> <p>10 little incentive for the Commission to further invest.</p> <p>11 On the other hand, if it was the pleasure of the</p> <p>12 Commission, as I said, to, you know, want to see it in</p> <p>13 4K, okay, and here is what that costs.</p> <p>14 COMMISSIONER CHAN: Okay. Thank you.</p> <p>15 CHAIRPERSON TITLA: Any more comments,</p> <p>16 Commissioners?</p> <p>17 (No response.)</p> <p>18 CHAIRPERSON TITLA: Okay. Tom, so you'll be</p> <p>19 working on this agreement with him?</p> <p>20 MR. COLLINS: Yes. Mr. Chairman,</p> <p>21 Commissioners, what I would like to do is -- You know,</p> <p>22 we have some tweaks, as I've described them. I don't</p> <p>23 think they're really that significant, but I think</p> <p>24 they're important to talk about with Mr. Miller and</p> <p>25 Mr. Maaske and Ms. Atkinson. What I would like to do</p>	<p>1 And over the next week or two, we will move those folks</p> <p>2 through the hiring process and identify the specific</p> <p>3 individuals we would like to add to the team.</p> <p>4 If I have your commitment to the investment,</p> <p>5 we will go forward and we will add those individuals to</p> <p>6 the team. If I don't have your financial commitment at</p> <p>7 that time, candidly, I'm not going to add more staff.</p> <p>8 So the -- Frankly, so the sense of urgency here is I'm</p> <p>9 moving forward through the hiring process to identify</p> <p>10 the particular individuals to add to the team. And if</p> <p>11 I can afford it, I will do so. And if I can't afford</p> <p>12 it, then we will thank them for their interest and</p> <p>13 encourage them to seek employment elsewhere.</p> <p>14 CHAIRPERSON TITLA: Okay. Tom, well,</p> <p>15 continue working on the agreement and let us know --</p> <p>16 MR. COLLINS: Yeah, I will.</p> <p>17 CHAIRPERSON TITLA: -- ahead of time about</p> <p>18 the material and we can take a look at it. I think</p> <p>19 that this is an important project to work on with</p> <p>20 Mr. Miller and the Secretary of State's office. It's</p> <p>21 very important, so continue working on it and let us</p> <p>22 know. Thank you.</p> <p>23 MR. COLLINS: Okay.</p> <p>24 CHAIRPERSON TITLA: Why don't we go to the</p> <p>25 next item --</p>		

10:23:24-10:24:43	Page 38	10:26:20-10:27:28	Page 40
<p>1 MR. MILLER: Thank you very much.</p> <p>2 COMMISSIONER MEYER: Thank you, Mr. Miller.</p> <p>3 CHAIRPERSON TITLA: -- next item, V,</p> <p>4 discussion of rule amendment proposals approved for</p> <p>5 public comment on February 23rd: A. A.A.C</p> <p>6 R2-20-702(B). And that's to consider: 1. Option A -</p> <p>7 Ban on expenditures to political parties with Clean</p> <p>8 Elections funding. 2. Option B - Limit on</p> <p>9 expenditures to political parties of Clean Elections</p> <p>10 funding to voter information and political event fees.</p> <p>11 3. Option C - Restriction of expenditures to political</p> <p>12 parties for campaign expenditures and additional</p> <p>13 documentation requirements.</p> <p>14 Tom.</p> <p>15 MR. COLLINS: Yes, Mr. Chairman. So the main</p> <p>16 reason this is here for discussion purposes, not action</p> <p>17 purposes. The 60-day comment period is still running,</p> <p>18 and it doesn't end until May 12th, so these amendments</p> <p>19 that we've proposed won't be eligible to be voted on</p> <p>20 until the next Commission meeting.</p> <p>21 We did, however, because of the way the</p> <p>22 meetings fell, have a little bit of extra -- there's</p> <p>23 just like a -- I don't know, there's this two-week kind</p> <p>24 of -- kind of gap that allows us to sort of update you</p> <p>25 on our thinking along this -- about this, and really</p>	<p>1 going to -- we're not going to recommend the adoption</p> <p>2 of those. And we thought, since we have this sort of</p> <p>3 interstitial meeting, there was no harm in telling you</p> <p>4 that now, instead of waiting until -- until then. And</p> <p>5 that's really the purpose of having this on the agenda.</p> <p>6 And unless you have any questions about it,</p> <p>7 that's really all I have to say about it.</p> <p>8 CHAIRPERSON TITLA: Any questions by the</p> <p>9 Commissioners on this item?</p> <p>10 COMMISSIONER MEYER: Mr. Chairman, I just</p> <p>11 have a comment.</p> <p>12 CHAIRPERSON TITLA: Commissioner Meyer.</p> <p>13 COMMISSIONER MEYER: I -- I know that we did</p> <p>14 receive a comment from Brandon Dwyer, who's a former</p> <p>15 Clean Elections candidate, and I was glad to see that.</p> <p>16 I think that's -- it's great to get comments from those</p> <p>17 who participated in the system, and I'd encourage</p> <p>18 others who have to provide comments as well.</p> <p>19 MR. COLLINS: And Mr. Chairman, if I may.</p> <p>20 CHAIRPERSON TITLA: Tom.</p> <p>21 MR. COLLINS: Mr. Chairman, Commissioner</p> <p>22 Meyer, we have talked about doing some additional</p> <p>23 outreach, both informally to, you know, attorneys and</p> <p>24 consultants, who I hear from semi-regularly, and then</p> <p>25 through our social media outlets, to solicit that</p>		
10:24:48-10:26:17	Page 39	10:27:32-10:28:59	Page 41
<p>1 around one specific issue. And this is sort of bearing</p> <p>2 in mind some of the comments from Commissioners around</p> <p>3 the issue on consultants and wanting to, you know, try</p> <p>4 to make sure that we're -- that candidates are getting</p> <p>5 the documentation we think they ought to get in order</p> <p>6 to be essentially in the best position to comply and,</p> <p>7 you know, deal with any auditing and all those kinds of</p> <p>8 things, without disrupting the ability of candidates to</p> <p>9 both seek consulting services and those relationships.</p> <p>10 So in view of that, you know, we've gotten --</p> <p>11 although we have not gotten a lot of public comment on</p> <p>12 this issue, we have at least -- I've gone out and</p> <p>13 gotten some feedback from folks on both the democratic</p> <p>14 side and the republican side who do consulting to talk</p> <p>15 about that issue. And we think that, you know, that we</p> <p>16 will not, come May 18th, recommend the adoption of the</p> <p>17 second sentence that is on Item V, Page 1 about marking</p> <p>18 up and the additional requirement that the</p> <p>19 participating candidate provide us and be provided with</p> <p>20 a list of other political clients of the consultant.</p> <p>21 There's a number of reasons why we think that</p> <p>22 that's -- you know, that that's not necessary at this</p> <p>23 step. We do think that those rule proposals comport</p> <p>24 with the anti-corruption principles that undergird the</p> <p>25 Clean Elections Act, but, you know, we will -- we're</p>	<p>1 comment.</p> <p>2 CHAIRPERSON TITLA: Yes, Tom, I think it's</p> <p>3 important to get all the information, the input that we</p> <p>4 can from the public. I too read the comment by Brandon</p> <p>5 Dwyer, and he is not in favor of passing Option A on</p> <p>6 R2-20-702(B). He said that he wouldn't run in 2018 if</p> <p>7 this option was passed, which is Option A.</p> <p>8 He also made the same comment on Option B.</p> <p>9 He said that I use my normal campaign funds to purchase</p> <p>10 access to the voter file. I would have trouble running</p> <p>11 as a Clean Elections candidate again. More likely I</p> <p>12 wouldn't run in 2018 if this option passed, which is</p> <p>13 Option B that he's talking about.</p> <p>14 And then he said that on Option C he has --</p> <p>15 he calls it great starting ground rules. If these</p> <p>16 rules were -- or where -- or were in place before the</p> <p>17 2016 campaign, it would have made life easier, is what</p> <p>18 he says.</p> <p>19 But the point I'm making is that if we hear</p> <p>20 more of these comments by the public, then it's good to</p> <p>21 hear these comments so we get more public input. I</p> <p>22 think that it would be good.</p> <p>23 Any comments by Commissioners?</p> <p>24 COMMISSIONER PATON: Yes.</p> <p>25 CHAIRPERSON TITLA: Commissioner Paton.</p>		

<p>10:29:00-10:30:13 Page 42</p> <p>1 COMMISSIONER PATON: Just reading through his 2 commentary, he said he wouldn't run, but he's giving no 3 reasons why he wouldn't run for Option B. I mean, the 4 access to the voter files from the party is -- is not 5 very expensive anyway. And in Option B, they're 6 allowing you to use -- to use the party to get access 7 to those files. So I don't understand his statement 8 there. To me he's saying the exact opposite of what I 9 think B states, so I'm a tad confused. Maybe Tom could 10 talk to him and find that out --</p> <p>11 MR. COLLINS: Well, sure.</p> <p>12 COMMISSIONER PATON: -- or you can explain to 13 me that I'm reading this wrong.</p> <p>14 MR. COLLINS: Mr. Chairman, Commissioner 15 Paton, we'll follow up with -- we follow -- we can 16 follow up with anybody who comments, and we'll follow 17 up about it, but -- We'll just follow up.</p> <p>18 COMMISSIONER PATON: Okay. Because I really 19 don't understand --</p> <p>20 MR. COLLINS: Sure, sure.</p> <p>21 COMMISSIONER PATON: -- his objection to it.</p> <p>22 MR. COLLINS: Sure. I'm happy to follow up, 23 and I'm sure -- And frankly, when we do follow up, the 24 public likes that too. I mean, people like to know 25 that their comments are actually getting read.</p>	<p>10:31:27-10:33:03 Page 44</p> <p>1 And in addition, Council Member --</p> <p>2 I should note that Commissioner Chan and 3 Commissioner Kimble attended that meeting on behalf of 4 the Commission, along with myself and Sara and Mike.</p> <p>5 So -- and he tried to articulate, for our 6 purposes and -- mine and Sara's purposes in terms of 7 working on this, returning the report to them, some of 8 his views in a way that is helpful because it sort of 9 -- it sort of encapsulates, encapsures, or 10 recapitulates what his views on the Act are, which GRRC 11 staff attorney Chris Klemminich was helpful enough to 12 put together a summary of those for us so we didn't 13 have to transcribe them ourselves. So that's helpful.</p> <p>14 I would also say that I had a very productive 15 conversation with Mr. Klemminich this week about how we 16 might address the Council's concerns with respect to 17 what approval means for them and what it means in terms 18 of their own views on the statute and how we might -- 19 now that we have some more articulated sense of that, 20 how we might both acknowledge that in some way, and as 21 I've expressed to Mr. Klemminich, without being in a 22 position where we have waived some of these legal 23 issues that we have sought to preserve.</p> <p>24 So I think we've made significant headway 25 there in terms of my communication with Mr. Klemminich,</p>
<p>10:30:17-10:31:27 Page 43</p> <p>1 COMMISSIONER PATON: Maybe he's 2 misunderstanding it.</p> <p>3 MR. COLLINS: Sure. Absolutely. We'll 4 follow up with him, and I'll let you know where that 5 is.</p> <p>6 COMMISSIONER PATON: Okay.</p> <p>7 CHAIRPERSON TITLA: Okay. If there's no more 8 comments, why don't we go to Item VI, discussion and 9 possible action on the 5 Year Review Report submitted 10 to Governor's Regulatory Review Council and related 11 matters.</p> <p>12 Mr. Collins.</p> <p>13 MR. COLLINS: Yes, Mr. Chairman, 14 Commissioners, and I will try to make this brief as 15 well. Joe Roth is here in case we have, for some 16 reason, legal questions; I don't think there are any.</p> <p>17 What happened at the last GRRC meeting, I 18 think you're aware, they accepted in part -- or, 19 approved in part and returned in part the 5 Year 20 Report, which is a -- which is significant progress, 21 because that means the vast majority of our -- the vast 22 majority of the rules in the report have now been -- 23 have now been -- gone through that process. What they 24 returned was three rules, R2-20-109, R2-20-110, and 25 111.</p>	<p>10:33:04-10:34:17 Page 45</p> <p>1 the Council's decision to approve part of the report, 2 and I think we now have a potential, you know, 3 trajectory to at least put the 5 Year Report piece 4 together in a way that puts that behind us. The 5 related issues continue to be the purported -- I don't 6 know what term we're using for it.</p> <p>7 MR. ROTH: Date of purported repeal.</p> <p>8 MR. COLLINS: What?</p> <p>9 MR. ROTH: Date of purported repeal.</p> <p>10 MR. COLLINS: The date of purported repeal, 11 which is currently set at June 7. And I don't know if 12 I told Sara this yet, but we're going to try to turn 13 this report around so this will also be on the June 7 14 agenda of GRRC. Our meeting of the 18th, I have to 15 work with Chris to make sure you guys get a chance to 16 look at the report before we get it to them. But in 17 any event, that's sort of the plan. And I really think 18 we're -- I think we made some progress.</p> <p>19 And that's -- that really concludes my report 20 on that, and -- unless you have questions about it.</p> <p>21 And of course, Commissioner Kimble and Commissioner Chan 22 may have their own observations.</p> <p>23 CHAIRPERSON TITLA: Any questions, 24 Commissioners, comments? 25 (No response.)</p>

10:34:18-10:35:35	Page 46	10:36:35-10:37:21	Page 48
<p>1 CHAIRPERSON TITLA: Okay. No comments.</p> <p>2 Let's go the next item, VII, discussion and</p> <p>3 possible action on final audit approval for the</p> <p>4 following participating candidates for the 2016</p> <p>5 election cycle.</p> <p>6 Sara.</p> <p>7 MS. LARSEN: Good morning, Chairman,</p> <p>8 Commissioners.</p> <p>9 Yesterday you should have received the audit</p> <p>10 summary, the summary of the findings that we received.</p> <p>11 A few of them had minor errors in them, there were two</p> <p>12 or three that did have some significant reporting</p> <p>13 errors, so I'm going to work with Tom on going forward</p> <p>14 and trying to get some kind of resolution on those</p> <p>15 reporting errors. And then some are minor accounting</p> <p>16 errors that most likely were bank fees or things that</p> <p>17 really could be resolved fairly easily. And then we</p> <p>18 had one audit that had absolutely no findings in it at</p> <p>19 all.</p> <p>20 So if you have specific questions on any of</p> <p>21 the audits, I'm happy to answer those.</p> <p>22 CHAIRPERSON TITLA: Commissioners, questions?</p> <p>23 COMMISSIONER MEYER: Are we sending a fruit</p> <p>24 basket to Tonya MacBeth?</p> <p>25 MS. LARSEN: Chairman, Commissioner Meyer, I</p>		<p>1 obviously -- We'd ask you approve the audits and</p> <p>2 authorize Sara and I to work with the candidates that</p> <p>3 we believe need additional attention to resolve their</p> <p>4 reporting issues.</p> <p>5 CHAIRPERSON TITLA: Commissioners, does</p> <p>6 anybody want to make that motion?</p> <p>7 COMMISSIONER KIMBLE: Mr. Chairman.</p> <p>8 CHAIRPERSON TITLA: Commissioner Kimble.</p> <p>9 COMMISSIONER KIMBLE: I move that we approve</p> <p>10 the audits of the -- one, two, three, four, five, six</p> <p>11 -- the eight candidates mentioned in Item VII of the</p> <p>12 agenda.</p> <p>13 CHAIRPERSON TITLA: Motion by Commissioner</p> <p>14 Kimble to approve the audit findings. Second?</p> <p>15 COMMISSIONER CHAN: Second.</p> <p>16 CHAIRPERSON TITLA: Commissioner Chan,</p> <p>17 second.</p> <p>18 All in favor, say aye.</p> <p>19 (Chorus of ayes.)</p> <p>20 CHAIRPERSON TITLA: Opposed.</p> <p>21 (No response.)</p> <p>22 CHAIRPERSON TITLA: Abstain.</p> <p>23 (No response.)</p> <p>24 CHAIRPERSON TITLA: Motion passes</p> <p>25 unanimously.</p>	
10:35:36-10:36:32	Page 47	10:37:25-10:38:20	Page 49
<p>1 think that we should send something to all of the</p> <p>2 candidates who have clean audits. It's very -- It's</p> <p>3 wonderful to see that. Even the candidates that have</p> <p>4 minor errors, that -- you know, when you have a --</p> <p>5 COMMISSIONER PATON: Would that be against</p> <p>6 the gift clause?</p> <p>7 MS. THOMAS: Nominal.</p> <p>8 MS. LARSEN: When I feel that the candidates</p> <p>9 have, you know, a five dollar discrepancy -- We're</p> <p>10 talking about a large sum of money that they're dealing</p> <p>11 with over the course of the primary and general</p> <p>12 election period. So five dollars, 20 dollars, if you</p> <p>13 get within that range, that's -- I feel like that's</p> <p>14 better than I do with my own personal checking account.</p> <p>15 So there were some large number discrepancies</p> <p>16 in these, though, that I am going to delve deeper into</p> <p>17 from the findings from -- from the auditors.</p> <p>18 CHAIRPERSON TITLA: Any more questions,</p> <p>19 comments, Commissioners?</p> <p>20 (No response.)</p> <p>21 CHAIRPERSON TITLA: Do we need any action on</p> <p>22 this, Tom?</p> <p>23 MR. COLLINS: Mr. Chairman, yes. We'd ask</p> <p>24 that you approve the audits. And approving audits</p> <p>25 obviously doesn't complete them in the sense I'm</p>		<p>1 COMMISSIONER MEYER: Do we need to further</p> <p>2 move that you can continue --</p> <p>3 MR. COLLINS: No, I don't think. I think</p> <p>4 that's just -- Just as long as you understand we're</p> <p>5 going to do that, I think we're good.</p> <p>6 COMMISSIONER MEYER: Understood.</p> <p>7 MS. LARSEN: And Chairman, Commissioners,</p> <p>8 just to let you know that those did conclude our</p> <p>9 general election audits, so there are no random audits</p> <p>10 that are pending. So all of those audits have wrapped</p> <p>11 up. We do have one full audit review that is out, and</p> <p>12 I think Tom and I are going to work to hopefully have</p> <p>13 that to you in the next Commission meeting or two.</p> <p>14 CHAIRPERSON TITLA: Sara, thank you for all</p> <p>15 the hard work you've been doing in this area. You've</p> <p>16 been working on a timely basis and I really appreciate</p> <p>17 it. You're to be commended for that.</p> <p>18 MS. LARSEN: Thank you.</p> <p>19 CHAIRPERSON TITLA: Okay. Let's go to</p> <p>20 Item VIII, discussion and possible action on 2017</p> <p>21 legislative agenda and items including update on bills</p> <p>22 affecting Clean Elections, elections general, and</p> <p>23 administrative law.</p> <p>24 Mr. Collins.</p> <p>25 MR. COLLINS: Mr. Chairman, Commissioners, we</p>	

10:38:25-10:39:56	Page 50	10:41:42-10:43:12	Page 52
<p>1 don't really have very much to update. There are a 2 couple of bills that we've been watching that don't 3 have necessarily a dramatic impact on anything we're 4 doing. There are always going to be questions on how 5 laws related to election and administrative law come 6 out after the fact in terms of how they're going to be 7 dealt with. But right now things appear to be quiet 8 from our perspective. We're certainly conscious of the 9 fact that there are lots of bills out there that folks 10 who are generally supportive of the Clean Elections are 11 concerned with, but those are not really Clean 12 Elections issues; those are issues related to other -- 13 other things. So, you know, not to -- So we generally 14 don't and haven't gotten involved in those kinds of 15 things, and we'll continue to not.</p> <p>16 So that's really it. I mean, I think -- I 17 think there's -- You know, I do think that there's 18 going to be some changes to administrative law that 19 will pass that will potentially affect all 20 administrative agencies in terms of the standard of 21 review that courts use; however, if you look at what 22 the lower Court of Appeals judges currently do, it's 23 really not that clear to me that they are actually 24 particularly, on legal questions, bound in any 25 significant way by Title 12 as it now stands. So I</p>		<p>1 case. You know, we will see -- The intensity level 2 around our issues is lower this year, that seems to be 3 clear. Next year will be -- but I think it's been -- 4 I think it's been good.</p> <p>5 I will say this thing -- this, which I think 6 is really actually an irony of the situation we've been 7 in. You know, I think that -- I feel like myself and 8 everybody else on staff really is invested and always 9 has been invested in the success of the Commission and 10 the success of the Act. And I think that when things 11 happen that are challenges, I think that everybody on 12 staff, and this is what makes our staff, I think, the 13 best staff in state government, everybody has a 14 personal stake in the success of this. And we have 15 expectations for ourselves and for the Commission and 16 for the Act that are not reasonable, given the 17 political circumstances that the Act functions in. And 18 so when a challenge arises, we're -- you know, 19 especially, you know, I think, Mike, Gina, Sara, Paula, 20 Alec, and Amy are the best people to have to work with.</p> <p>21 So it's been a successful session, and I 22 think it's been -- so far, and again -- but, yeah, I 23 think that -- I think things worked out pretty well. 24 And I think a lot of things you said at the beginning 25 about how staff would be -- our staff would be well</p>	
10:40:00-10:41:37	Page 51	10:43:14-10:44:29	Page 53
<p>1 think that's -- I think that's gotten some attention 2 in the press and Reason.com and other places, but I 3 don't -- I think the attention it's gotten is overblown 4 if you look at what lower Court of Appeals judges are 5 actually doing in Arizona now.</p> <p>6 And that's really all I have to say about 7 legislative stuff.</p> <p>8 CHAIRPERSON TITLA: Any questions by 9 Commissioners, comments?</p> <p>10 COMMISSIONER PATON: Yes, if I may.</p> <p>11 CHAIRPERSON TITLA: Commissioner Paton.</p> <p>12 COMMISSIONER PATON: So Tom, could you 13 explain to us how this all -- this past legislative 14 thing worked without having a true lobbyist, that you 15 and Joe and the staff have seemed to have done 16 admirably without this? I would like to probably pat 17 you on the back and -- Explain to us how this has 18 worked out, in your estimation.</p> <p>19 MR. COLLINS: Well, so far, Mr. Chairman, 20 Commissioner Paton, Mike and I and Gina and -- have all 21 spent time at the legislature this year in one thing or 22 another -- on one issue or another. And the session is 23 not over, I just want to be clear, so, you know -- but, 24 you know, I think we've -- I think -- I think things 25 have been -- I think we made it through this test</p>		<p>1 equipped to deal with this turned out to be true, and 2 in a certain way this was galvanizing.</p> <p>3 COMMISSIONER PATON: Yeah. I just think that 4 having a real face, just like Mr. Miller coming to talk 5 to us, Secretary of State -- when people come and are 6 face to face with people -- you know, you're an expert 7 in your field, you're representing us, you're 8 representing the Act, instead of just for somebody 9 that's just doing this as a job, you know, the 10 lobbyist, to me I just think that that makes a big 11 difference. And of course you're invested, you're 12 vested in the whole deal. And so those legislators see 13 you face to face, and I think it probably made a big 14 difference, instead of just them thinking you're a 15 bureaucrat or whatever. You know, we all have ideas 16 about bureaucrats. But when you go there and tell them 17 your ideas straight heart to heart, I think that makes 18 a big difference. So that's enough of my commercial.</p> <p>19 MR. COLLINS: I did have to shave my beard, 20 though, so --</p> <p>21 COMMISSIONER PATON: I see that it's coming 22 back.</p> <p>23 CHAIRPERSON TITLA: Any more comments, 24 Commissioners? 25 (No response.)</p>	

10:44:29-10:44:57

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1 CHAIRPERSON TITLA: If not, let's go to next
2 item, Item IX, public comment. Is there anybody that
3 wants to make a public comment in the audience?
4 (No response.)
5 CHAIRPERSON TITLA: If not, we go to Item X,
6 adjournment. Is there a motion to adjourn?
7 COMMISSIONER KIMBLE: I move we adjourn.
8 CHAIRPERSON TITLA: Commissioner Kimble,
9 motion. Second?
10 COMMISSIONER MEYER: Second.
11 CHAIRPERSON TITLA: Commissioner Meyer,
12 second.
13 All in favor, say aye.
14 (Chorus of ayes.)
15 CHAIRPERSON TITLA: Opposed.
16 (No response.)
17 CHAIRPERSON TITLA: Abstain.
18 (No response.)
19 CHAIRPERSON TITLA: We are adjourned. Thank
20 you, Commissioners.
21 (The proceedings concluded at 10:45 a.m.)
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1 STATE OF ARIZONA)
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3 COUNTY OF MARICOPA)
4
5 BE IT KNOWN that the foregoing proceedings
6 were taken by me; that I was then and there a Certified
7 Reporter of the State of Arizona; that the proceedings
8 were taken down by me in shorthand and thereafter
9 transcribed into typewriting under my direction; that
10 the foregoing pages are a full, true, and accurate
11 transcript of all proceedings and testimony had and
12 adduced upon the taking of said proceedings, all done
13 to the best of my skill and ability.
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18 I FURTHER CERTIFY that I am in no way related
19 to nor employed by any of the parties hereto nor am I
20 in any way interested in the outcome hereof.
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Certified Reporter #50666

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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

April 27, 2017

9:39 a.m.

COASH & COASH, INC.
Court Reporting, Video & Videoconferencing
1802 North 7th Street, Phoenix, AZ 85006
602-258-1440
staff@coashandcoash.com

Prepared by:
LILIA MONARREZ, CSR, RPR
Certificate No. 50699

<p style="text-align: right;">Page 2</p> <p>1 PUBLIC MEETING BEFORE THE CITIZENS CLEAN 2 ELECTIONS COMMISSION convened at 9:39 a.m. on April 27, 3 2017, at the State of Arizona, Clean Elections 4 Commission, 1616 West Adams, Conference Room, Phoenix, 5 Arizona, in the presence of the following Board members: 6 Mr. Steve M. Titla, Chairperson (Telephonic) 7 Mr. Mark S. Kimble (Telephonic) 8 Mr. Damien Meyer (Telephonic) 9 Ms. Amy B. Chan (Telephonic) 10 Mr. Galen D. Paton (Telephonic) 11 12 OTHERS PRESENT: 13 14 Thomas M. Collins, Executive Director 15 Paula Thomas, Executive Officer 16 Sara Larsen, Financial Affairs Officer 17 Gina Roberts, Voter Education Manager 18 Mike Becker, Policy Director 19 Alec Shaffer, Web Content Manager 20 Amy Jicha, Legal Admin and VE Intern 21 Lee Miller, Secretary of State 22 Joseph Roth, Osborn Maledon (Telephonic) 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>09:40:38-09:41:55</p> <p>1 one-item agenda, right? 2 MS. THOMAS: Yes, sir. 3 CHAIRPERSON TITLA: Okay. Board -- or, 4 Commissioners, do we have a motion to approve the 5 agenda? 6 MR. COLLINS: Mr. Chairman, I'm sorry. If 7 I could interrupt you one quick second. Yeah, I just 8 want to make clear what we're -- the motion would be to 9 approve what is -- the document that is the modified 10 document that was in your materials that you were 11 emailed. That is the email -- that is the document 12 that is dated 4-21-2017 at 9:57 a.m. I'm sorry -- 13 thank you. 14 And then, Commissioners, when you speak, we 15 just need to make sure that you announce yourself for 16 the court reporter when you do speak. 17 I'm sorry, Mr. Chairman. I just needed to 18 make sure that everybody has that on the record. 19 CHAIRPERSON TITLA: Okay. Good. Yeah, 20 this is Steve Titla, Chairman of the Commission. 21 So do we need to pass the agenda, then, 22 with this one item that you mentioned, Tom? 23 MR. COLLINS: Mr. Chairman, Commissioners, 24 yes. We're looking for a motion to -- 25 THE OPERATOR: Joining the meeting.</p>
<p>09:11:24-09:40:36</p> <p style="text-align: right;">Page 3</p> <p>1 PROCEEDING 2 3 CHAIRPERSON TITLA: Okay. This is a call 4 of the meeting to order, special meeting of the Clean 5 Elections Commission, on May -- or April 27, 9:39 a.m. 6 And can we have a roll call? 7 MR. COLLINS: So, Commissioners, if you 8 could -- 9 COMMISSIONER CHAN: This is Commissioner 10 Chan. I'm here. 11 CHAIRPERSON TITLA: Okay. Can somebody 12 call the roll? 13 MR. COLLINS: Yes, I can do that, 14 Mr. Chairman. 15 CHAIRPERSON TITLA: Okay. 16 MR. COLLINS: Commissioner Kimble? 17 COMMISSIONER KIMBLE: I'm here. 18 MR. COLLINS: Commissioner Paton? 19 COMMISSIONER PATON: Here. 20 MR. COLLINS: Commissioner Chan? 21 COMMISSIONER CHAN: I'm here. 22 MR. COLLINS: And Commissioner Meyer is on 23 his way and will -- will dial in. 24 Hello? 25 CHAIRPERSON TITLA: Okay. We have a</p>	<p>09:41:56-09:43:07</p> <p style="text-align: right;">Page 5</p> <p>1 COMMISSIONER MEYER: Damien Meyer. 2 CHAIRPERSON TITLA: Okay. Commissioners, 3 this is Steve Titla. 4 Is there a motion by any of the 5 commissioners to approve this one-item agenda? 6 COMMISSIONER CHAN: Mr. Chairman, this is 7 Amy Chan, and I would -- I would so move what Tom said, 8 but may I just make a brief comment before we get a 9 second? 10 CHAIRPERSON TITLA: Okay. 11 COMMISSIONER CHAN: I am in support of the, 12 you know, modified ISA that our Staff has worked so 13 hard on with the Secretary's office. I just really 14 want to get on the record that, you know, I feel like 15 this is kind of -- this is something that has come out 16 of the Secretary's need, in my mind, to kind of bail 17 out of a situation that she's in, you know, having 18 spent half a million dollars on what should have been, 19 I think, the system. And we're, you know, singly 20 situated where we can help her so that the voters of 21 Arizona are able to be the beneficiaries of this new 22 system. 23 So I just wanted to put that out there 24 before we make our vote. I know we have a voice vote. 25 I feel like that would be more appropriate than</p>

09:43:09-09:44:04

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1 explaining my vote. I have a background at the
2 legislature where that's what we would do, but I just
3 felt like I wanted to make sure that we had that on the
4 record at this final juncture where we're voting on
5 this.
6 So having said that, I, again, would just,
7 you know, restate my motion to approve the Interagency
8 Service Agreement with the Secretary of State's office,
9 as Tom mentioned.
10 CHAIRPERSON TITLA: Okay. This is Steve
11 Titla. Again, thank you for your comments,
12 Commissioner Chan.
13 And there's a motion by Commissioner Chan
14 to approve this one-item agenda.
15 Is there a second?
16 COMMISSIONER KIMBLE: This is Mark Kimble,
17 and I second it.
18 CHAIRPERSON TITLA: Commissioner Kimble
19 seconds.
20 This is Steve Titla, again, the chairman.
21 And do we have a -- can we have a vote -- a
22 roll call vote, Tom?
23 MR. COLLINS: There's no reason why you
24 can't have a roll call vote. And given that we're all
25 on the phone, I mean, that certainly would make some

09:45:39-09:47:03

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1 I'm also somewhat concerned about the
2 amount of the payments, the first payment being
3 basically three-quarters, 75 percent of the total
4 amount that will be due at the end of one of the early
5 phases in October. So then we only have 25 percent of
6 the payment left for when the entire thing is completed
7 which I think give us limited leverage to make sure
8 that it does get completed.
9 I would have preferred to see something
10 that has more of the payment at the end than at the
11 beginning. On the other hand, I do understand that we
12 have -- we're sharing in the salary costs of getting
13 this done. So I'm not -- I understand why it's being
14 done. I just wish that there was a way to get more of
15 the payment delivered later than earlier, but other
16 than that I'm -- I'm supportive of the motion by
17 Commissioner Chan.
18 CHAIRPERSON TITLA: Okay. This is second
19 by Commissioner Kimble.
20 Thank you for your comments and --
21 COMMISSIONER MEYER: Mr. Chairman?
22 CHAIRPERSON TITLA: Can we have a vote and
23 a motion?
24 COMMISSIONER MEYER: Mr. Chairman?
25 CHAIRPERSON TITLA: Can we have a motion to

09:44:07-09:45:36

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1 sense. Although we don't usually do that, there's
2 nothing that prohibits that.
3 CHAIRPERSON TITLA: Okay. Can we get a
4 roll call?
5 COMMISSIONER KIMBLE: Mr. Chairman, this
6 is -- this is Mark Kimble.
7 Could I say one thing?
8 CHAIRPERSON TITLA: Okay.
9 COMMISSIONER KIMBLE: I do have -- I am
10 supportive of this agreement. I think the changes that
11 have been made since we initially saw it are very
12 positive. I do have a couple minor concerns. One of
13 them is on page 4 in the document we have under number
14 B where it says "The Commission and the Secretary agree
15 that the Secretary may request payment for delivering
16 some objectives of a particular phase of the project
17 without having delivered every objective of a
18 particular phase."
19 That -- I understand that there are some
20 issues with writing computer programs and that
21 unexpected things come up. I am concerned, though,
22 that we are already outlining a process by which we
23 would make a payment for something that is not
24 completed to that phase. That somewhat concerns me,
25 although I understand the reasoning for it.

09:47:06-09:48:05

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1 approve this agenda? Commissioners, this is only a
2 motion to approve the agenda. After the agenda is
3 approved, we can go to the one-item agenda and then
4 discuss the merits of the -- of the document, but now
5 it's only a motion to approve the agenda.
6 Can we have a roll call vote?
7 COMMISSIONER CHAN: Oh, I'm sorry.
8 MR. COLLINS: Okay.
9 COMMISSIONER CHAN: Mr. Chairman, this is
10 Commissioner Chan. I meant to -- my intent was to move
11 that item. I apologize if I was out of order.
12 COMMISSIONER KIMBLE: Yeah, I didn't --
13 this is Commissioner Kimble. I didn't understand that
14 either, that we were voting to approve the agenda.
15 COMMISSIONER TITLA: Yes. That's what I
16 thought we were doing was to approve the agenda.
17 MR. COLLINS: Okay. Okay. Mr. Chairman,
18 may I interrupt a moment? This is Tom Collins.
19 CHAIRPERSON TITLA: Okay.
20 MR. COLLINS: So if you want to approve the
21 agenda and then approve the merits, what we would need
22 to do is for Commissioner Kimble to withdraw his second
23 and Commissioner Chan to withdraw her motion and then a
24 new motion to approve the agenda and a second and then
25 we can -- I will call the roll on that at that point

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<p>1 and then -- then we will need a motion to approve the</p> <p>2 execution of the modified agreement dated 4-21-2017 at</p> <p>3 9:57 a.m. subsequently. So that would be the</p> <p>4 procedural -- what we need to do currently to achieve</p> <p>5 all that.</p> <p>6 So that's what I would recommend at this</p> <p>7 point. If Commissioner Kimble would withdraw his</p> <p>8 second and Commissioner Chan will withdraw her motion</p> <p>9 and a new motion was made to approve the agenda item</p> <p>10 with a second, I will call the roll and then we will</p> <p>11 move on to the -- the item -- the ISA itself.</p> <p>12 Does that -- is that clear with you,</p> <p>13 Mr. Chairman? Does that work for you?</p> <p>14 CHAIRPERSON TITLA: Yes.</p> <p>15 Is that clear with all the commissioners?</p> <p>16 COMMISSIONER KIMBLE: This is Commissioner</p> <p>17 Kimble. I withdraw my second.</p> <p>18 COMMISSIONER CHAN: This is Commissioner</p> <p>19 Chan. I'll withdraw my motion.</p> <p>20 CHAIRPERSON TITLA: Okay. The motions are</p> <p>21 withdrawn and we go to the -- what point, Tom?</p> <p>22 MR. COLLINS: So now we would need a</p> <p>23 motion. Mr. -- Chairman Titla, on your recommendation,</p> <p>24 we would need a motion to approve the agenda and a</p> <p>25 second.</p>	<p>1 votes to approve the agenda.</p> <p>2 CHAIRPERSON TITLA: Okay. We have a</p> <p>3 unanimous vote to approve the agenda. So we go to the</p> <p>4 one-item agenda now which is the IAS -- or ISA</p> <p>5 agreement.</p> <p>6 And, Tom, can you give us a summary?</p> <p>7 MR. COLLINS: Yes, Mr. Chairman,</p> <p>8 Commissioners. We have worked with the Secretary of</p> <p>9 State's office to develop a document that in the view</p> <p>10 of -- my view and as a staff member achieves a number</p> <p>11 of objectives.</p> <p>12 First, it will help ensure that the State</p> <p>13 does have the infrastructure in place to have a broader</p> <p>14 availability of public access to campaign finance</p> <p>15 information and it -- which I think is a benefit to all</p> <p>16 voters from a voter education perspective.</p> <p>17 I also believe that this document is</p> <p>18 drafted in a way that protects the Commission's</p> <p>19 downside risk which, as the Secretary of State's office</p> <p>20 is aware, was a principal priority of mine and also</p> <p>21 ensures that our -- that the Commission's own reports</p> <p>22 respecting participating candidates and certain</p> <p>23 independent expenditure reports will be part of that,</p> <p>24 the candidate finance system, which, again, will ensure</p> <p>25 that all of the filings that folks would want access to</p>		
09:49:20-09:50:04	Page 11	09:51:57-09:53:25	Page 13
<p>1 CHAIRPERSON TITLA: Okay. Is there a</p> <p>2 motion to approve the agenda?</p> <p>3 COMMISSIONER MEYER: This is Commissioner</p> <p>4 Meyer. I will move to approve the agenda.</p> <p>5 CHAIRPERSON TITLA: Commissioner Meyer</p> <p>6 moves to approve the agenda.</p> <p>7 Second?</p> <p>8 COMMISSIONER CHAN: I'll second that</p> <p>9 motion.</p> <p>10 CHAIRPERSON TITLA: Second by Commissioner</p> <p>11 Chan.</p> <p>12 Can we have a roll call vote?</p> <p>13 MR. COLLINS: Yes, Mr. Chairman.</p> <p>14 Commissioner Meyer?</p> <p>15 COMMISSIONER MEYER: Yes.</p> <p>16 MR. COLLINS: Commissioner Kimble?</p> <p>17 COMMISSIONER KIMBLE: Yes.</p> <p>18 MR. COLLINS: Commissioner Paton?</p> <p>19 COMMISSIONER PATON: Yes.</p> <p>20 MR. COLLINS: Commissioner Chan?</p> <p>21 COMMISSIONER CHAN: I vote aye.</p> <p>22 MR. COLLINS: Chairman Titla?</p> <p>23 CHAIRPERSON TITLA: Aye.</p> <p>24 MR. COLLINS: So, Mr. Chairman, you have</p> <p>25 the -- if you want to announce the vote, there are five</p>	<p>1 are in one place and folks can get access to them.</p> <p>2 So we think it's a -- it's an appropriate</p> <p>3 expenditure. We think it's -- we've worked well with</p> <p>4 the Secretary of State to do it. We're appreciate of</p> <p>5 Mr. Miller being here and his help on this. And so I</p> <p>6 recognize the comments with respect to Commissioner</p> <p>7 Kimble's comments. I think those are well taken.</p> <p>8 My observation would be twofold. I think</p> <p>9 he's correct that there does -- and I personally</p> <p>10 discussed the issue of flexibility with the Secretary's</p> <p>11 office and agree with the language that is in there</p> <p>12 that allows flexibility. It also requires them to</p> <p>13 continue to make best efforts which we think will -- is</p> <p>14 a meaningful term.</p> <p>15 And, in addition, frankly, the payment</p> <p>16 structure is -- one way to look at it is it is a large</p> <p>17 payment in October, but another way to look at that is</p> <p>18 that we're not making a payment in this fiscal -- in</p> <p>19 this Secretary of State's fiscal year or July of this</p> <p>20 fiscal year. So they will have gone, in effect, two</p> <p>21 quarters into this project before we make any payment.</p> <p>22 And so there's a -- there's actually a --</p> <p>23 from -- harking back to Deputy Secretary Miller's</p> <p>24 comments at the last meeting, the Secretary does bear</p> <p>25 some risk there that if there -- they will have paid</p>		

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1 those salaries in reliance on this without having
2 gotten that -- those initial payments as progress was
3 broken down.
4 So in that sense, although, yes, it is a
5 larger payment, it is a larger payment in the second
6 fiscal quarter of the Secretary's office. We're in the
7 fourth quarter of this fiscal year then. So there's
8 two quarters that we're not paying, and so there's a --
9 there's a balance of the -- of the risk versus the size
10 of the payment in October that I think warrants, you
11 know -- you know, that's all I would just make -- make
12 sure everybody understands that essentially the
13 Secretary of State is structuring this in a way that
14 they have to go essentially six months without payment
15 and then they get a larger payment.
16 So it's kind of a -- it does have a balance
17 to it that I -- that I think is -- puts the Secretary's
18 office in a position where they have skin in the game
19 leading up to that six-month payment, and I think
20 that's -- that's -- that's an important thing to
21 acknowledge.
22 And other than that, I would just ask that
23 you approve the execution of the agreement that is
24 dated 4-21-2017 at 9:57 a.m. and approve my execution
25 of that -- of that agreement or to -- well --

09:56:21-09:57:28

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1 COMMISSIONER MEYER: Too many versions.
2 MR. COLLINS: Right. So just so we're
3 clear that that is the version.
4 And, Joe, if that's wrong, please say the
5 word.
6 MR. ROTH: Yeah. I'm -- the most
7 up-to-date version is the one that has 4-25 at 2:15.
8 MR. COLLINS: Okay. Good.
9 So I apologize, Commissioners, but yes. So
10 now we have the right version and I apologize.
11 And, please, Mr. Chairman, I return back to
12 you the floor to just -- you know, to recognize whoever
13 you want to recognize.
14 CHAIRPERSON TITLA: Okay. Who was that
15 speaking? Commissioner Meyer?
16 COMMISSIONER MEYER: Yes, Mr. Chairman.
17 CHAIRPERSON TITLA: Okay. Go ahead.
18 COMMISSIONER MEYER: Thank you.
19 And, Tom, thank you for your comments. I
20 had a question on this -- it's page 4. It's paragraph
21 B. I think it's the same paragraph that Commissioner
22 Kimble was asking about. And I guess when I read this
23 paragraph, you know, it's essentially -- let's start
24 from the premise that we're agreeing to pay these funds
25 once we have the deliverables. And this paragraph

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1 CHAIRPERSON TITLA: Okay. Tom, thank you
2 for your comments. This is Chairman Titla.
3 Any comments or action by the
4 commissioners?
5 COMMISSIONER MEYER: Mr. Chairman, this is
6 Commissioner Meyer.
7 CHAIRPERSON TITLA: Commissioner Meyer?
8 COMMISSIONER MEYER: I had a question.
9 It's in Volume --
10 MR. COLLINS: Oh, I'm sorry. 4-25 at 2:16.
11 I'm sorry. I had the wrong date on my motion. I'm
12 sorry -- my suggestion. I'm sorry. But never mind. I
13 apologize. So -- I'm sorry.
14 COMMISSIONER MEYER: That's okay. You're
15 referring to the redline, correct, Tom?
16 MR. COLLINS: Yeah, I think I -- I think I
17 referred to the wrong document. I'm trying to now find
18 the right document. We're actually -- I'm sorry.
19 We're talking about 4-25 at 2:16 p.m. I apologize.
20 That is not 4-21 at 2:17. It's 4-25 at 2:17 which is
21 the -- that is the document that -- it is a -- it is
22 a -- it is a redline, but, you know, we'll obviously
23 accept the changes and formalize -- memorialize that
24 and then execute it, but I just -- I apologize for -- I
25 have -- I have too many pieces of paper in front of me.

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1 essentially says, you know, even if the Secretary of
2 State's office runs into an issue and can't deliver
3 every -- every objective of a particular phase of the
4 project, that they won't be in breach.
5 And I guess I want us to understand that.
6 Does this mean that the Commission is still going to
7 make -- be obligated to make their payments pursuant to
8 the schedule that's on Exhibit 1? And then I had a
9 follow-up to that.
10 MR. COLLINS: Okay. Well, Mr. Chairman,
11 Commissioner Meyer, if I can answer the first question
12 first.
13 COMMISSIONER MEYER: Sure.
14 MR. COLLINS: I would say two things about
15 that. One, the provision requires the Secretary to be
16 continuing to make their best -- their best efforts.
17 And, in addition, the agreement provides that the
18 Secretary shall -- under Section 4F, the Secretary
19 shall make an accounting of expenditures prior to
20 invoicing the Commission. So those provisions read
21 together mean that, you know, were we provided an
22 invoice that was -- that was for work that was not
23 completed, we would have an accounting of why that was
24 and also be able to talk to them about -- about what
25 reasonable efforts they are making.


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<p>1 I believe that that's appropriate</p> <p>2 protection, and especially because the alternative of a</p> <p>3 fixed date leads us to a situation where if that gets</p> <p>4 missed and we end up having to renegotiate, it's not</p> <p>5 very efficient. So I think the requirement under 4F</p> <p>6 that there's an accounting prior to invoicing and the</p> <p>7 reasonable efforts together ensure that the Secretary</p> <p>8 will be obligated to inform the Commission of its</p> <p>9 status and its progress prior to invoicing and be</p> <p>10 able -- and by that -- and by that mechanism show that</p> <p>11 it is making reasonable efforts or not making</p> <p>12 reasonable efforts. So I think it provides protection</p> <p>13 for the Commission on that issue.</p> <p>14 COMMISSIONER MEYER: And can I follow up</p> <p>15 with that, Mr. Chairman?</p> <p>16 CHAIRPERSON TITLA: Continue, Commissioner</p> <p>17 Meyer.</p> <p>18 COMMISSIONER MEYER: So I guess my question</p> <p>19 is, Tom, I think you're talking about discretion that</p> <p>20 the Commission would have.</p> <p>21 So I guess my question is if you reach the</p> <p>22 decision that, you know, you review the accounting and</p> <p>23 we determine not all -- not all the deliverables have</p> <p>24 been met, you know, you review the accounting and have</p> <p>25 some real issues as to reasonable efforts and why</p>		<p>1 commissioners' thoughts on that as well as</p> <p>2 Mr. Miller's.</p> <p>3 CHAIRPERSON TITLA: Okay. Any comments by</p> <p>4 the commissioners?</p> <p>5 COMMISSIONER KIMBLE: This is Mark Kimble.</p> <p>6 I think Commissioner Meyer reflects my concern.</p> <p>7 And, Tom, I understand what you're saying</p> <p>8 about Item F about making an accounting of the</p> <p>9 expenditure, but my concern is the same as Commissioner</p> <p>10 Meyer that they may well have -- have paid people the</p> <p>11 money to do what they said they were going to do, but</p> <p>12 our concern is we want to make sure that we're getting</p> <p>13 what -- we're getting a product they said they would</p> <p>14 produce, not just that they're paying the people to do</p> <p>15 it because that was kind of the problem with the --</p> <p>16 with the last undertaking even though we weren't</p> <p>17 involved in it. They had paid a lot of money for it</p> <p>18 but didn't have the product.</p> <p>19 So I am supportive of Commissioner Meyer's</p> <p>20 concern that we need some kind of way to make sure that</p> <p>21 as the process goes along, that there are -- there's a</p> <p>22 way for us to say the deliverables are not here.</p> <p>23 Therefore, what are we going to do about the payment?</p> <p>24 CHAIRPERSON TITLA: Any more comments,</p> <p>25 Commissioners?</p>	
10:00:17-10:01:28	Page 19	10:03:07-10:04:49	Page 21
<p>1 something isn't done at that time, what discretion, if</p> <p>2 any, does the Commission have to say, you know what,</p> <p>3 we're not sending you \$150,000 right now. We're going</p> <p>4 to send you 100, but not 150. And once you complete</p> <p>5 this other deliverable, then we'll send you the other</p> <p>6 50.</p> <p>7 Is there any type of discretion like that</p> <p>8 and does anyone think there should be if there's not?</p> <p>9 MR. COLLINS: Well, to answer your question</p> <p>10 before the commissioners discuss it, Chairman Titla,</p> <p>11 Commissioner Meyer, let me put it this way: I would</p> <p>12 anticipate that in the event that reasonable steps are</p> <p>13 being taken, that that would not come up. I don't</p> <p>14 think that the -- the terms are structured in such a</p> <p>15 way that that -- that if there are reasonable efforts</p> <p>16 there is not breach.</p> <p>17 If we determine that efforts -- reasonable</p> <p>18 efforts are not being made, then there is an argument</p> <p>19 for breach and we would raise that issue through the</p> <p>20 breach provisions of the provision which they're --</p> <p>21 and Lee Miller can speak to that. He's actually come</p> <p>22 to the podium and he may be able to speak to that, if</p> <p>23 that's helpful to you, Commissioner Meyer.</p> <p>24 COMMISSIONER MEYER: Sure. And I thank</p> <p>25 you, Tom. And I'd also like to get the other</p>		<p>1 COMMISSIONER PATON: This is Galen Paton.</p> <p>2 I would like to hear from Mr. Miller on this topic.</p> <p>3 MR. COLLINS: Mr. -- Chairman Titla, if you</p> <p>4 could recognize Mr. Miller from the Secretary's office.</p> <p>5 CHAIRPERSON TITLA: Okay. Mr. Miller?</p> <p>6 MR. MILLER: Thank you, Mr. Chairman,</p> <p>7 members of the Commission.</p> <p>8 In addition to the various paragraphs that</p> <p>9 we've been focusing on here in Section 4 of the</p> <p>10 agreement, let me also draw your attention to paragraph</p> <p>11 3A on -- on page 2 which from the Secretary's point of</p> <p>12 view, I think is the language which addresses the</p> <p>13 concerns being raised here today. We have -- as</p> <p>14 described in 3A, we have an ongoing obligation starting</p> <p>15 with the execution of this agreement to keep you-all</p> <p>16 informed how development is going.</p> <p>17 There is -- there is this project plan</p> <p>18 that's attached here today and we have every intention</p> <p>19 of achieving all those deliverables on all those dates,</p> <p>20 but it won't be on October 1st or September 30th where</p> <p>21 we come to you-all and say, hey, you know, you're going</p> <p>22 to get 90 percent of what we promised at execution on</p> <p>23 October 1st and here's the 10 percent we're still</p> <p>24 working on.</p> <p>25 We read the language in paragraph 3A and</p>	

10:04:54-10:06:43	Page 22	10:07:59-10:09:17	Page 24
<p>1 our obligation to keep you informed on a regular basis</p> <p>2 as to how we're doing and any revisions to the project</p> <p>3 plan we think are necessary and appropriate as the --</p> <p>4 as the mechanism by which you're going to have comfort</p> <p>5 that we're doing what we're supposed to do and that</p> <p>6 you're -- whatever payments are made are reasonably</p> <p>7 reflective of what is being delivered.</p> <p>8 And let me absolutely assure the Commission</p> <p>9 that if -- if we -- if we got to October 1st and I had</p> <p>10 90 percent of the functionality ready for beta testing,</p> <p>11 I would not expect \$150,000 from the Commission. I</p> <p>12 would expect 90 percent of \$150,000 from the</p> <p>13 Commission.</p> <p>14 To the extent we're going to -- we're going</p> <p>15 to have issues to work through is, you know, perhaps</p> <p>16 what's each piece and part, how much -- how much is</p> <p>17 each piece and part of the overall functionality worth,</p> <p>18 but while it is absolutely my intention to deliver 100</p> <p>19 percent of the functionality for beta testing on</p> <p>20 October 1st, rest assured that if some -- if something</p> <p>21 needs to be modified, first of all, you'll know about</p> <p>22 it as soon as I know about it and that we will be</p> <p>23 continuing to talk about how the project plan might</p> <p>24 evolve and what the payment schedule might evolve --</p> <p>25 and how the payment schedule will evolve as well.</p>		<p>1 had -- you know, obviously there's no reason for us to</p> <p>2 doubt your efforts and the Secretary's efforts, you</p> <p>3 know. I still am just a little concerned about the</p> <p>4 great amount of discretion that the Secretary's office</p> <p>5 seems to have and the more limited amount of discretion</p> <p>6 that we have in the payments.</p> <p>7 I mean, we have a black-and-white payment</p> <p>8 plan here and then there's discretion and leeway for</p> <p>9 the Secretary of State's side. And I appreciate the</p> <p>10 statement that, you know, hey, if we're 90 percent</p> <p>11 there we're going to only ask for 90 percent of the</p> <p>12 money, but if you go to page 7 and look at paragraph 10</p> <p>13 of this agreement, I mean, that's essentially an</p> <p>14 integration clause that this is the whole agreement and</p> <p>15 none of that -- and these representations aren't going</p> <p>16 to be enforceable.</p> <p>17 So I guess that's -- that's just a concern</p> <p>18 I have that I'm raising, and if there's a way to add a</p> <p>19 phrase in here -- I don't think it has to be a</p> <p>20 significant reworking of the agreement, but is there a</p> <p>21 way to add a phrase in here that's something in the</p> <p>22 lines that the Commission has the discretion to</p> <p>23 evaluate -- you know, if deliverables aren't made, that</p> <p>24 the Commission has discretion to make a payment on a</p> <p>25 pro-rata basis such as what Mr. Miller has described</p>	
10:06:47-10:07:54	Page 23	10:09:21-10:11:07	Page 25
<p>1 MR. COLLINS: And, Commissioners -- this is</p> <p>2 Tom. Mr. Chairman, if I may.</p> <p>3 CHAIRPERSON TITLA: Continue, Tom.</p> <p>4 MR. COLLINS: I would -- I think -- I think</p> <p>5 that's right, and I do think that both 3A and 4F</p> <p>6 basically taken together mean that. Essentially,</p> <p>7 because the Secretary's office is obligated to provide</p> <p>8 an accounting, you know, that accounting preceding the</p> <p>9 invoicing would mean that the invoicing would relate to</p> <p>10 the accounting. And so there's a -- there's a tie</p> <p>11 there that I think is direct and should, in combination</p> <p>12 with -- I really believe the Secretary's desire to get</p> <p>13 this done in a working order is stronger than -- well,</p> <p>14 is as strong as it could be.</p> <p>15 So I think that -- I think that we have</p> <p>16 this designed in a way that allows flexibility but does</p> <p>17 protect the downside risk of the Commission, and I</p> <p>18 do -- I do really believe that that's true.</p> <p>19 CHAIRPERSON TITLA: Any questions by the</p> <p>20 commissioners?</p> <p>21 COMMISSIONER MEYER: This is Commissioner</p> <p>22 Meyer.</p> <p>23 CHAIRPERSON TITLA: Commissioner Meyer?</p> <p>24 COMMISSIONER MEYER: One other comment. I</p> <p>25 mean, I thank Mr. Miller for his comments. And I</p>		<p>1 here?</p> <p>2 MR. COLLINS: Do you want to go first?</p> <p>3 Mr. Chairman, Mr. Miller has a response to</p> <p>4 that if you would care to recognize him.</p> <p>5 CHAIRPERSON TITLA: Mr. Miller?</p> <p>6 MR. MILLER: Mr. Chairman, Commissioner</p> <p>7 Meyer, from my perspective, I think we've already</p> <p>8 addressed the concern you're looking for in the last</p> <p>9 sentence of paragraph 3A on page 2 in that it is -- it</p> <p>10 is entirely up to the Commission working through its</p> <p>11 executive director how that -- how that project plan is</p> <p>12 changed.</p> <p>13 I don't have -- I don't the discretion.</p> <p>14 The Secretary's office doesn't have the discretion to</p> <p>15 unilaterally announce modifications, changes to the</p> <p>16 project plan. That discretion is entirely yours, and</p> <p>17 so we will have to convince you-all, especially Tom,</p> <p>18 that as a matter of fact, we are working as diligently</p> <p>19 as possible and that to the extent we request that</p> <p>20 agreement that a piece or part of the overall plan be</p> <p>21 delivered -- just to make up a date -- on October 31st</p> <p>22 instead of October 1st, that the ability to approve or</p> <p>23 disapprove that proposal is entirely yours.</p> <p>24 CHAIRPERSON TITLA: Mr. Miller, thank you</p> <p>25 for your statements. And we're looking at 3A, right,</p>	

<p>10:11:10-10:12:25 Page 26</p> <p>1 the agreement? 2 MR. MILLER: Yes, sir. 3 CHAIRPERSON TITLA: You're saying the last 4 sentence should address this concern, and the last 5 sentence, as I read it, says that "All the execution of 6 all duties and responsibilities of either the Secretary 7 or the Commission respecting See the Money shall follow 8 the See the Money Project Plan, as it may be revised 9 and modified from time to time, with the written 10 consent of the Commission or its executive director." 11 So, Mr. Miller, so you are saying that that 12 sentence to you means that if only 90 percent is 13 finished by you at a certain time, then only 90 percent 14 can be paid by the Commission for this project plan? 15 Is that what you're saying? 16 MR. MILLER: Mr. Chairman, yes. 17 CHAIRPERSON TITLA: Okay. Any -- any 18 questions by the Commission on this issue? 19 MR. COLLINS: Mr. Chairman, this is Tom, if 20 I could just get -- be recognized real briefly. 21 CHAIRPERSON TITLA: Okay, Tom. 22 MR. COLLINS: The version -- the version 23 that we're actually looking to execute, that language 24 is a little different. It's substantially the same, 25 but it actually reads "No modification to the See the</p>	<p>10:14:01-10:15:16 Page 28</p> <p>1 that, but the concern, I think, is that it doesn't 2 really say that outright clearly. And in agreements 3 that are made or in contracts that are made, it is 4 within the four corners of the document, I think is 5 what they told me in contract 101 at law school, if I 6 remember correctly. 7 MR. COLLINS: You do. 8 CHAIRPERSON TITLA: So we're saying here 9 that that means that, but it really doesn't say that is 10 what I'm saying. 11 MR. COLLINS: Mr. Chairman -- 12 CHAIRPERSON TITLA: So is there a way to 13 say what we're saying it means? 14 MR. COLLINS: Mr. Chairman and with 15 Mr. Miller in the room and everybody on the phone, I 16 think I have a suggestion for that and -- which is in 17 item -- turning back to Item 4F on page 5 of the 18 4-25-27, 2016 [sic] document, if we were to add a line 19 to Section F that says the Commission shall consider 20 this accounting in determining its payment obligation 21 pursuant to Exhibit 1 on a pro-rata basis. 22 CHAIRPERSON TITLA: Okay. Commissioners, 23 what do you think? 24 MR. COLLINS: And, Lee, what do you think? 25 COMMISSIONER MEYER: This is Commissioner</p>
<p>10:12:28-10:13:58 Page 27</p> <p>1 Money Project Plan is effective until approved in 2 writing by the executive director of the Commission or 3 its designee." So we -- we sharpened that sentence a 4 little bit in the draft that you actually were looking 5 to approve. That's -- the Secretary wrote that 6 sentence. 7 So -- and, you know, the -- so I just 8 wanted to make sure that we're all working from the 9 same version given that I created a confusion at the 10 very beginning. The -- 11 COMMISSIONER PATON: So this is the 12 comparison draft? This is Galen Paton. 13 MR. COLLINS: Right. That's right. The 14 comparison draft is -- is the correct version. 15 And I guess I'll leave it there. I just 16 want to make sure everyone is on the right draft. 17 CHAIRPERSON TITLA: Okay, Tom. Thank you 18 for the corrections. 19 Now, from what Commissioner Meyer and 20 Commissioner Kimble expressed, I can understand what 21 they're saying there because what we're saying, I 22 think, here is that if -- just for example, 23 hypothetically, if only 90 percent is done at a certain 24 time, then only 90 percent will be paid on the project. 25 And we're saying that this sentence that you read means</p>	<p>10:15:17-10:16:11 Page 29</p> <p>1 Meyer. 2 CHAIRPERSON TITLA: Commissioner Meyer? 3 COMMISSIONER MEYER: I think that is a good 4 idea. And can I make another suggestion? 5 CHAIRPERSON TITLA: Okay. Go ahead. 6 COMMISSIONER MEYER: That would be on 7 page 4 in paragraph B where we kind of all started 8 here. 9 CHAIRPERSON TITLA: Okay. 10 COMMISSIONER MEYER: And I think it's the 11 second-to-the-last sentence where it says the 12 Secretary's inability to deliver every objective of a 13 particular phase of the project, that entire sentence. 14 CHAIRPERSON TITLA: Okay. 15 COMMISSIONER MEYER: That's the sentence 16 that worries me. And that line that says discretion, 17 that's the -- that's the concern I have because I read 18 that to mean, well, the Secretary can provide, you 19 know, three out of the four deliverables but it's not 20 going to be a breach. And there's no sort of equal 21 discretion for the Commission to say, well, in that 22 instance, we'll evaluate what you've done and pay you 23 pro-rata. 24 So I think a sentence after that and before 25 the one that says "notwithstanding," maybe you could</p>

10:16:13-10:17:19	Page 30	10:18:51-10:20:15	Page 32
<p>1 add a sentence in there about the, you know, in the 2 event this takes take place, in the event the Secretary 3 fails to deliver every objective, the Commission shall 4 have -- you know, use reasonable discretion and detain 5 making a pro-rata payment for what's been delivered, 6 something along those lines. 7 MR. COLLINS: Is that the same thing? 8 Okay. 9 COMMISSIONER MEYER: Based on what Tom was 10 just suggesting, I just think it's maybe a more -- 11 MR. COLLINS: Okay. 12 COMMISSIONER MEYER: -- a more appropriate 13 location. 14 MR. COLLINS: Okay. So that's helpful. 15 Mr. Chairman, if I could have the floor for 16 one minute just to read back what I think this is and 17 then we will put Mr. Miller on the spot here a little 18 bit and ask him if this is going to work, but -- 19 CHAIRPERSON TITLA: Tom, go ahead. 20 MR. COLLINS: So that would say, then, the 21 Secretary is using reasonable efforts and diligence to 22 deliver the required objective in each phase of the 23 project, period. In the event the Secretary is unable 24 to complete an objective, the Commission shall have 25 discretion to make payment on a pro-rata basis.</p>		<p>1 is that you end that proposed sentence with some 2 language which essentially says reflective of what is 3 actually delivered. 4 MR. COLLINS: Okay. So pro-rata basis 5 reflective of what is actually delivered. 6 Is that -- okay. So, Mr. Chairman, 7 Mr. Meyer, does that -- does that sentence -- so I'll 8 read it back to you one more time just for the record 9 here. 10 So after the word "Project," new sentence: 11 In the event the Secretary is unable to complete an 12 objective, the Commission shall have discretion to make 13 payment on a pro-rata basis actually reflective of 14 the -- of the work completed. 15 MR. MILLER: Sure. 16 MR. COLLINS: Any thoughts? 17 CHAIRPERSON TITLA: Any comments by the 18 Commission? 19 COMMISSIONER MEYER: This is Commissioner 20 Meyer. I mean, I think that works. That addresses my 21 concern. I'm always hesitant to draft contractual 22 language on the fly. 23 CHAIRPERSON TITLA: Yeah. Tom, can we -- 24 COMMISSIONER MEYER: But I would -- 25 CHAIRPERSON TITLA: Can you draft this</p>	
10:17:33-10:18:51	Page 31	10:20:15-10:21:28	Page 33
<p>1 And then to -- and then to try to kind of 2 keep this consistent with where we're -- where we are, 3 but I would suggest, to make this easier for 4 Mr. Miller, that we also add a line that says but -- 5 but shall determine that some payment shall be made, 6 you know, or that -- you know, that we need to -- we 7 also need to not -- frankly, to make this deal work, I 8 don't want to put -- and this is up to Lee, to some 9 extent, whether or not he needs this or not. So if the 10 sentence is -- let me back up a second. 11 So the sentence as I understand, 12 Commissioner Meyer, would be new sentence after the 13 work "Project": In the event the Secretary is unable 14 to complete an objective, the -- the Commission shall 15 have discretion to make pro -- make payments on a 16 pro-rata basis -- to make payment on a pro-rata basis. 17 You know, so the question then becomes -- and, 18 Mr. Chairman, if I could -- if you could indulge me in 19 somewhat of a conversation with Lee about this here 20 just -- does that work or -- 21 CHAIRPERSON TITLA: Yeah, go ahead, Tom. 22 MR. COLLINS: Is there -- is there 23 additional language that would be helpful to sort of 24 balance that out if that's acceptable? 25 MR. MILLER: The only request we would make</p>		<p>1 again and then send it out to the commissioners and 2 let's have another special meeting to review final, a 3 document that we have actually read and seen and 4 reviewed? 5 MR. COLLINS: That is the Commission's -- 6 if that's the Commission's pleasure, that is something 7 we can -- we can certainly do. 8 CHAIRPERSON TITLA: Commissioners, is that 9 okay with you? 10 COMMISSIONER MEYER: Mr. Chairman, this is 11 Commissioner Meyer -- 12 COMMISSIONER KIMBLE: I quite honestly 13 don't feel that's necessary. I'm -- I'm very 14 comfortable with the language as Tom read it back. I 15 yield to the numerous lawyers involved in this process, 16 but I think that that protects the concerns that I have 17 and I think it also protects the Secretary's office. 18 And I don't know there's a need for additional 19 redrafting, but that's more of a lawyerly question 20 than -- than I think anything I can deal with. 21 COMMISSIONER CHAN: Mr. Chairman, this is 22 Commissioner Chan. I would -- I would agree with 23 Commissioner Kimble. That's just my opinion and, of 24 course, if any of the other commissioners -- 25 specifically, Commissioner Meyer, if you prefer to take</p>	

10:21:32-10:22:45	Page 34	10:24:00-10:25:29	Page 36
<p>1 some time, I understand that, but I'm comfortable, I</p> <p>2 think, based on what I've heard today from Staff and</p> <p>3 the new language.</p> <p>4 COMMISSIONER PATON: Mr. Chairman?</p> <p>5 CHAIRPERSON TITLA: Commissioner?</p> <p>6 COMMISSIONER PATON: This is Galen Paton.</p> <p>7 I would agree with Commissioner Chan. I know time is</p> <p>8 of the essence to the Secretary's office, and I</p> <p>9 think -- from what I heard from that statement, I think</p> <p>10 that it addresses the concerns of Mr. Kimble and</p> <p>11 Mr. Meyer.</p> <p>12 CHAIRPERSON TITLA: Okay. What are the</p> <p>13 wishes of the Commission on this document?</p> <p>14 COMMISSIONER MEYER: This is Commissioner</p> <p>15 Meyer. One last point.</p> <p>16 Based upon the comments of my fellow</p> <p>17 commissioners, if they're comfortable with this</p> <p>18 language and Mr. Collins is comfortable, then I don't</p> <p>19 see a need to, you know, terminate the meeting --</p> <p>20 adjourn the meeting and then reconvene at a later date.</p> <p>21 And we can just approve it today if that's -- if that's</p> <p>22 what the Commission chooses to do.</p> <p>23 And I also just want to put on the record,</p> <p>24 I'm not meaning to be a stickler on this, Mr. Miller.</p> <p>25 I'm just -- essentially what I'm trying to do is just</p>	<p>1 I think that when it comes to a motion, I</p> <p>2 would make two suggestions. One, that the motion</p> <p>3 approve the draft with the authority to both, you know,</p> <p>4 make nonsubstantive cleanups because obviously we're</p> <p>5 looking at this in a -- in a redline version and to</p> <p>6 approve the specific language: In the event that the</p> <p>7 Secretary is unable to complete an objective, the</p> <p>8 Commission shall have discretion to make payment on a</p> <p>9 pro-rata basis actually reflective of the work</p> <p>10 completed added to Section B -- actually, under "The</p> <p>11 Commission shall" in Subpart 3 of the contract.</p> <p>12 That's a little complicated as a motion,</p> <p>13 but that -- that is what we're looking for. We need</p> <p>14 authority to, you know -- you know, basically, get the</p> <p>15 document cleaned up in the final form, execute it and</p> <p>16 then put that sentence in. And those are the three</p> <p>17 things that we're looking for in a motion.</p> <p>18 COMMISSIONER CHAN: Mr. Chairman?</p> <p>19 CHAIRPERSON TITLA: Chairman Chan?</p> <p>20 COMMISSIONER CHAN: I would so move.</p> <p>21 Tom, is that acceptable?</p> <p>22 MR. COLLINS: Joe, does that work for you</p> <p>23 as a motion?</p> <p>24 CHAIRPERSON TITLA: I have a motion by</p> <p>25 Commissioner Chan -- excuse me. I said "Chairman</p>		
10:22:47-10:23:59	Page 35	10:25:31-10:26:19	Page 37
<p>1 draft into the contract, you know, what we're hearing</p> <p>2 today. And I appreciate your willingness to do that</p> <p>3 and I appreciate Tom and Staff's willingness to kind of</p> <p>4 work with us on this as well. So I hope that all makes</p> <p>5 sense why I'm requesting this provision.</p> <p>6 CHAIRPERSON TITLA: Okay. That is</p> <p>7 understandable with me, Commissioner Meyer. I think</p> <p>8 that's a good point to make here because having dealt</p> <p>9 with numerous contracts over the years of my 33 years</p> <p>10 as an attorney, what they say is that the devil is in</p> <p>11 the detail. And I find that to be true, and I'll be</p> <p>12 most comfortable if we had -- what Commissioner Meyer</p> <p>13 said, if we had another document that we reviewed.</p> <p>14 That would be my most comfort zone, but seeing that the</p> <p>15 majority of the Commission are saying that let's</p> <p>16 approve the document, then is there a motion to approve</p> <p>17 this document, Commissioners?</p> <p>18 COMMISSIONER MEYER: Mr. Chairman, one last</p> <p>19 question.</p> <p>20 CHAIRPERSON TITLA: Okay.</p> <p>21 COMMISSIONER MEYER: Tom, are you</p> <p>22 comfortable? Are you comfortable with this language?</p> <p>23 MR. COLLINS: Yeah. Mr. Chairman -- or</p> <p>24 Mr. Chairman, Commissioner Meyer, I'm comfortable with</p> <p>25 this language.</p>	<p>1 Chan," but Commissioner Chan.</p> <p>2 We have a motion to approve this document</p> <p>3 as stated by Executive Director Collins.</p> <p>4 Is there a second?</p> <p>5 COMMISSIONER KIMBLE: This is Commissioner</p> <p>6 Kimble. I second.</p> <p>7 CHAIRPERSON TITLA: Commissioner Kimble</p> <p>8 seconds.</p> <p>9 Any comments? Discussions?</p> <p>10 (No response.)</p> <p>11 CHAIRPERSON TITLA: If not, shall we have a</p> <p>12 roll call vote, Tom?</p> <p>13 MR. COLLINS: I can call the roll if you --</p> <p>14 if there's no further discussion, Mr. Chairman, if you</p> <p>15 just say the word.</p> <p>16 CHAIRPERSON TITLA: Okay. Okay. Call the</p> <p>17 roll.</p> <p>18 MR. COLLINS: Okay. Commissioner Meyer?</p> <p>19 COMMISSIONER MEYER: I vote aye.</p> <p>20 MR. COLLINS: Commissioner Kimble?</p> <p>21 COMMISSIONER KIMBLE: Aye.</p> <p>22 MR. COLLINS: Commissioner Paton?</p> <p>23 COMMISSIONER PATON: Aye.</p> <p>24 MR. COLLINS: Commissioner Chan?</p> <p>25 COMMISSIONER CHAN: I vote aye.</p>		

<p>10:26:21-10:27:06</p> <p>Page 38</p> <p>1 MR. COLLINS: And Chairman Titla?</p> <p>2 CHAIRPERSON TITLA: Yeah, aye.</p> <p>3 MR. COLLINS: Okay. Mr. Chairman, there</p> <p>4 are five aye votes.</p> <p>5 CHAIRPERSON TITLA: Okay. The motion</p> <p>6 passes. The document is passed with the changes as</p> <p>7 noted by Executive Director Collins. So it is</p> <p>8 approved.</p> <p>9 Tom, can you send us the final document?</p> <p>10 MR. COLLINS: Of course.</p> <p>11 CHAIRPERSON TITLA: Okay. Is there any</p> <p>12 more discussion on anything else?</p> <p>13 MR. COLLINS: Mr. Chairman?</p> <p>14 COMMISSIONER MEYER: Mr. Chairman,</p> <p>15 Commissioner Meyer.</p> <p>16 CHAIRPERSON TITLA: Okay. Commissioner</p> <p>17 Meyer?</p> <p>18 COMMISSIONER MEYER: I want to again thank</p> <p>19 Mr. Miller and Mr. Collins for their work on this and</p> <p>20 for their ability to work with us and their willingness</p> <p>21 to work with us today.</p> <p>22 Thank you.</p> <p>23 CHAIRPERSON TITLA: Any more comments?</p> <p>24 COMMISSIONER CHAN: Mr. Chairman, this is</p> <p>25 Commissioner Chan. I would echo Commissioner Meyer's,</p>	<p>10:27:55-10:28:21</p> <p>Page 40</p> <p>1 MR. COLLINS: No, there is not.</p> <p>2 CHAIRPERSON TITLA: If not, what's next on</p> <p>3 the agenda?</p> <p>4 MR. COLLINS: Adjourn -- motion to adjourn.</p> <p>5 CHAIRPERSON TITLA: Is there a motion to</p> <p>6 adjourn?</p> <p>7 COMMISSIONER CHAN: I move to adjourn,</p> <p>8 Mr. Chairman.</p> <p>9 COMMISSIONER MEYER: Second.</p> <p>10 CHAIRPERSON TITLA: Commissioner Chan</p> <p>11 motioned. Second by Commissioner Meyer.</p> <p>12 All in favor say aye.</p> <p>13 (Chorus of ayes.)</p> <p>14 CHAIRPERSON TITLA: Opposed?</p> <p>15 (No response.)</p> <p>16 CHAIRPERSON TITLA: Abstain?</p> <p>17 (No response.)</p> <p>18 CHAIRPERSON TITLA: We are adjourned.</p> <p>19 Thank you, Commissioners. We'll see you</p> <p>20 next time.</p> <p>21 (Whereupon, the proceedings concluded at</p> <p>22 10:28 a.m.)</p> <p>23</p> <p>24</p> <p>25</p>
<p>10:27:11-10:27:54</p> <p>Page 39</p> <p>1 you know, thanking of Mr. Miller for being so willing</p> <p>2 to be here. And, frankly, it's been very nice to have</p> <p>3 you work with us on this.</p> <p>4 And, Tom, thank you for your hard work and</p> <p>5 all the staff for getting this done.</p> <p>6 CHAIRPERSON TITLA: Okay. Any more</p> <p>7 comments by the commissioners?</p> <p>8 (No response.)</p> <p>9 CHAIRPERSON TITLA: If not, those comments</p> <p>10 are good.</p> <p>11 Good work, Tom, and Mr. Miller. Good work.</p> <p>12 Is there a motion to adjourn?</p> <p>13 MR. COLLINS: Just as a formal matter,</p> <p>14 Mr. Chairman, there is a public comment item, but there</p> <p>15 is no one --</p> <p>16 CHAIRPERSON TITLA: Okay.</p> <p>17 MR. COLLINS: There are -- no one seems</p> <p>18 willing to comment, unless we make Mike do it.</p> <p>19 CHAIRPERSON TITLA: Wait. Let me call for</p> <p>20 it.</p> <p>21 MR. COLLINS: Yes, please.</p> <p>22 CHAIRPERSON TITLA: Okay. Let's go to</p> <p>23 public comment.</p> <p>24 Is there any public comment by anyone?</p> <p>25 (No response.)</p>	<p>Page 41</p> <p>1 STATE OF ARIZONA)</p> <p>2 COUNTY OF MARICOPA)</p> <p>3 BE IT KNOWN the foregoing proceedings were</p> <p>4 taken by me; that I was then and there a Certified</p> <p>5 Reporter of the State of Arizona, and by virtue thereof</p> <p>6 authorized to administer an oath; that the proceedings</p> <p>7 were taken down by me in shorthand and thereafter</p> <p>8 transcribed into typewriting under my direction; that</p> <p>9 the foregoing pages are a full, true, and accurate</p> <p>10 transcript of all proceedings and testimony had and</p> <p>11 adduced upon the taking of said proceedings, all done to</p> <p>12 the best of my skill and ability.</p> <p>13 I FURTHER CERTIFY that I am in no way</p> <p>14 related to nor employed by any of the parties thereto</p> <p>15 nor am I in any way interested in the outcome hereof.</p> <p>16 DATED at Phoenix, Arizona, this 28th day of</p> <p>17 April, 2016.</p> <p>18</p> <p>19 </p> <p>20</p> <p>21 LILIA MONARREZ, RPR, CR #50699</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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CITIZENS CLEAN ELECTIONS COMMISSION

EXECUTIVE DIRECTOR REPORT

May 18, 2017

Announcements:

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

Voter Education:

- Tom and Gina attended the City of Mesa's Celebrate Mesa event on Saturday, April 22nd at Hohokam Stadium.
- The following jurisdictions conducted elections on May 16, 2017:
 - Whetstone Water District (Cochise County) – all mail
 - City of Douglas – all mail
 - City of Goodyear – all mail
 - City of Holbrook
 - City of Tucson – all mail
 - Town of Wellton
- The next consolidated election date is August 29, 2017. Currently, Phoenix, Prescott, Tucson, and Yuma are scheduled to have elections.
- Staff is excited to announce our keynote speaker for the July 13th roundtable event, Mr. Jaime Casap, Chief Education Evangelist for Google.

2018 Candidate Information:

- The first day to collect \$5 qualifying contributions is August 1st (Qualifying Period begins).
- Participating Legislative Candidates: 7
- Participating Statewide Candidates: 5
- Clean Elections Training Workshops will start in July.

Enforcement – 2014 Election Cycle:

- Complaints Pending: 3
 - MUR 14-006, -015 (consolidated/conciliated): Home - pending completion of items in conciliation agreement.
 - MUR 14-007: Legacy Foundation Action Fund (LFAF) – Arizona Supreme Court
 - Legacy and the Commission filed Supplemental Briefs Friday May 12. These are attached as Exhibits 1 and 2. Oral Argument is currently set for September 11, 2017
 - MUR 14-027: Veterans for a Strong America (VSA)

Miscellaneous

- According to the Arizona Republic, Maricopa County Recorder Adrian Fontes has begun processing state voter registration forms that do not provide proof of citizenship, as statute appears to require. See story at this link:
<http://www.azcentral.com/story/news/politics/elections/2017/05/02/maricopa-county-voter-registration-citizenship-adrian-fontes/308435001/>

At issue, is whether forms that do not provide evidence are to be rejected or whether the recorder may use state data bases to determine citizenship. Currently, only voters who can show citizenship are eligible to provide \$5 qualifying contributions, so a resolution of this issue will be relevant to both the Clean Funding program and voter education, in terms of registration requirements. Additionally, Recorder Fontes is exploring going to mail only elections in 2017.

SUPREME COURT OF ARIZONA

LEGACY FOUNDATION ACTION
FUND,

Plaintiff/ Appellant,

v.

CITIZENS CLEAN ELECTIONS
COMMISSION,

Defendant/ Appellee.

Arizona Supreme Court
No. CV-16-0306-PR

Court of Appeals
Division One
No. 1 CA-CV 15-0455

Maricopa County
Superior Court
No. LC2015-000172-001

DEFENDANT/APPELLEE'S SUPPLEMENTAL BRIEF

Mary R. O'Grady, No. 011434
Joseph N. Roth, No. 025725
Nathan T. Arrowsmith, No. 031165
OSBORN MALEDON, P.A.
2929 North Central Avenue, Ste. 2100
Phoenix, Arizona 85012
(602) 640-9000
mograd@omlaw.com
jroth@omlaw.com
narrowsmith@omlaw.com

Attorneys for Defendant/ Appellee

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INTRODUCTION

The Judicial Review of Administrative Decisions Act (“JRADA”) provides that, “[u]nless review is sought of an administrative decision within the time and in the manner provided . . . the parties to the proceeding . . . shall be barred from obtaining judicial review.” A.R.S. § 12-902(B). “It is well settled that the time for filing an appeal, whether by appeal or by complaint for judicial review following the conclusion of the administrative process, is jurisdictional.” *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 413 ¶ 25 (2006). In this case, Appellant Legacy Foundation Action Fund (“LFAF”), failed to timely seek judicial review of a final decision of the Citizens Clean Elections Commission, and the lower courts dismissed LFAF’s case.

The question for this Court is whether a party who fails to seek review “within the time” required may nevertheless avoid dismissal of the untimely appeal and be permitted to seek judicial review to challenge an administrative agency’s jurisdiction.

The answer is no. The right of judicial review is created by statute, and the statutory provisions authorizing judicial review here do not carve out an extension of time to appeal jurisdictional issues. Separate from the

total bar on untimely appeals, § 12-902(B) also limits the scope of judicial review to “questioning the jurisdiction of the administrative agency” when a party has defaulted at the administrative level—when the party lets an “administrative decision become[] final because of failure to file any document in the nature of an objection, protest, petition for hearing or application for administrative review.” A.R.S. § 12-902(B). LFAF and dicta from two otherwise unrelated court of appeals decisions, *Dandoy v. Phoenix*, 133 Ariz. 334 (App. 1982) and *Arkules v. Board of Adjustment*, 151 Ariz. 438 (App. 1986), misread this sentence from § 12-902(B) as allowing a party to challenge a final administrative decision on jurisdictional grounds at any time, no matter how long the party waits to seek judicial review. That reading of § 12-902(B) is unambiguously incorrect, and the Court should disapprove of the unnecessary language suggesting otherwise in *Arkules* and *Dandoy*.

Moreover, LFAF’s preferred rule would leave final administrative decisions open to question indefinitely, regardless of how long a party sits on its rights. This result would frustrate the purpose of § 12-902, which is to provide both for meaningful judicial review of administrative decisions and for finality of administrative decisions. The Court should affirm.

PERTINENT BACKGROUND

- I. **The voter-approved Clean Elections Act charges the Commission with enforcement of the Act, and makes the Commission's final enforcement decisions subject to judicial review.**

In 1998, Arizona voters approved the Citizens Clean Elections Act (the "Act"). *See* A.R.S. § 16-940. The Act created the Commission which is charged with enforcing the Act. A.R.S. § 16-956(A)(7). Among other things, the Commission is authorized to enforce the Act through the imposition of penalties for a failure to comply with reporting and disclosure requirements for campaign-related spending and advertising. *See* A.R.S. § 16-942. The enforcement process can begin with a complaint submitted to the Commission, as it did here.

The Act and the Commission's rules set out a multi-step process for the resolution of a complaint alleging violations of the Act. *See* Ariz. Admin. Code §§ R2-20-203 to -208 (CCEC rules for processing complaints). The end-product of the process is a "final administrative decision" that is

subject to judicial review as provided in JRADA.¹ See A.R.S. § 16-957(B) (providing that “violator has fourteen days from the date of issuance of the order assessing the penalty to appeal to the superior court as provided in [JRADA]”).

II. The Commission receives a complaint alleging that LFAF violated the Act and commences an enforcement proceeding that ultimately results in the March 27, 2015 final administrative decision.

In 2014, the Commission received a complaint alleging that LFAF failed to comply with the Act’s requirement that “any person who makes independent expenditures”—spending used to advocate the election or defeat of a candidate—shall file certain reports of those expenditures.² The Commission therefore commenced an enforcement proceeding to consider the allegations.³

¹ See Ariz. Admin. Code § R2-20-227 (describing procedure for when a decision is “certified as final”); Ariz. Admin. Code § R2-20-228 (noting that “a party may appeal a final administrative decision” after it “exhausts its administrative remedies by going through the . . . steps” in Ariz. Admin. Code §§ R2-20-203 to -208).

² IR-42.

³ IR-44.

After finding reason to believe that LFAF committed the violations alleged,⁴ the Commission issued a Compliance Order requiring LFAF to comply with the requirements of the Act within 14 days.⁵ LFAF objected to the compliance order.⁶ Because LFAF remained out of compliance, the Commission found probable cause to believe that LFAF violated the Act and issued an order on November 28, 2014 concluding that LFAF had violated the Act and assessing civil penalties “in accordance with § 16-942” (the “November 28 Order”).⁷ The November 28 Order provided that LFAF could “request an administrative hearing to contest [the] Order” within 30 days.⁸ LFAF did so, and a hearing was conducted by an Administrative Law Judge (“ALJ”).⁹

Under the Commission’s rules, the last step to create a final administrative decision—i.e., a decision that “terminates the proceeding

⁴ IR-52.

⁵ IR-53; *see* A.R.S. § 16-957(A) (after finding “reason to believe” a violation occurred, the commission “shall serve . . . an order . . . requiring compliance within fourteen days”).

⁶ IR-54; 55.

⁷ IR-62.

⁸ *Id.*; *see also* Ariz. Admin. Code § R2-20-224.

⁹ IR-63; 69.

before the [] agency,” A.R.S. § 12-902(A)(1)—is for the Commission to review the ALJ’s decision and “accept, reject, or modify the decision.” Ariz. Admin. Code § R2-20-227. “If the Commission accepts, rejects or modifies the decision, the Commission’s decision will be certified as final.” Ariz. Admin. Code § R2-20-227(B). This final step occurred on March 27, 2015, when the Commission accepted part and rejected part of the ALJ’s decision (the “March 27 Order”).¹⁰ The March 27 Order incorporates the findings in the November 28 Order and affirms the assessment of civil penalties based on “the Commission’s authority to impose civil penalties . . . as prescribed by . . . A.R.S. § 16-942(B).”¹¹ The March 27 Order is therefore both an order assessing a penalty and the Commission’s final administrative decision.

III. The Superior Court dismisses LFAF’s complaint seeking judicial review of the March 27 Order as untimely and the Court of Appeals affirms.

LFAF sought review of the March 27 Order under JRADA by filing a complaint for judicial review in the superior court on April 14, eighteen

¹⁰ See IR-70; Petitioner’s Appendix to Petition for Review (“APP VOL #”) at APP VOL 2 00008.

¹¹ *Id.*

days after issuance of the March 27 Order.¹² The superior court dismissed the action, however, because the Act states that a party “has fourteen days from the date of issuance of the order assessing the penalty to appeal to the superior court as provided in” JRADA. A.R.S. § 16-957(B).¹³

LFAF appealed the dismissal of its complaint, and the Court of Appeals affirmed. The court held that LFAF’s argument that its complaint was timely filed was “foreclosed by *Smith*,” and affirmed that the 14-day deadline in § 16-957(B) applies to appeals from Commission orders (Mem. Decision (“Dec.”) ¶ 8). The court also rejected LFAF’s argument that § 12-902(B) allows a party to challenge an agency’s jurisdiction at any time, holding that the “language of § 12-902(B) does not allow an appeal of an administrative decision to be heard after the allotted time for appeal has passed.” (Dec. ¶ 12.) LFAF then filed its Petition and this Court granted review.

ARGUMENT

- I. **LFAF’s complaint for judicial review is barred under § 12-902(B) because it was untimely filed after the fourteen-day deadline in**

¹² IR-1.

¹³ IR-76; APP VOL 2 00030.

§ 16-957(B), a jurisdictional deadline to appeal the Commission's final decision.

A. The scope of judicial review is defined by statute, and the statutory deadline for judicial review of a final administrative decision is jurisdictional under § 12-902(B).

"In Arizona it is settled that a right to appeal exists only when that right is specifically given by statute." *Pima Cty. v. State Dep't of Revenue, Div. of Prop. & Special Taxes*, 114 Ariz. 275, 277 (1977). This Court has held that "appeals can be taken only in the time and manner provided by law." *Lount v. Strouss*, 63 Ariz. 323, 325-26 (1945).

The same is true of appeals of administrative decisions, which are governed by JRADA, A.R.S. §§ 12-901 to -914. The Court has "said of this statute that the right of appeal exists only by force of statute, and this right is limited by the terms of the statute." *Ariz. Comm'n of Agric. & Horticulture v. Jones*, 91 Ariz. 183, 187 (1962) (internal quotation marks and citation omitted).

One of the most significant statutory limitations on the right of administrative appeal is that a party must seek judicial review within a certain amount of time. Section 12-902(B) provides that, "[u]nless review is sought of an administrative decision within the time and in the manner

provided in this article, the parties to the proceeding . . . *shall be barred* from obtaining judicial review of the decision” (emphasis added).

Because late appeals are “barred,” the appeal deadline is jurisdictional. “It is well settled that the time for filing an appeal, whether by appeal or by complaint for judicial review following the conclusion of the administrative process, is jurisdictional.” *Smith*, 212 Ariz. at 413 ¶ 25 (citing *Jones*, 91 Ariz. at 187). A jurisdictional deadline is one that cannot be waived or excused “because the failure to timely appeal deprives the court of jurisdiction to review the administrative decision.” *Id.* (internal quotation marks, alterations, and citation omitted). See *Jones*, 91 Ariz. at 187 (holding that superior court lacked jurisdiction to consider appeal of administrative decision because the decision “was determined finally and conclusively as against collateral attack by the failure to appeal within” the statutory deadline in JRADA).

Arizona is hardly alone in imposing a jurisdictional deadline on the ability to appeal administrative decisions. See *Noland Health Servs., Inc. v. State Health Planning & Dev. Agency*, 44 So. 3d 1074, 1081 (Ala. 2010) (holding that a “timely filing” of an appeal from an administrative decision is “jurisdictional”); *Rodriguez v. Sheriff’s Merit Comm’n of Kane Cty.*, 843

N.E.2d 379, 382–83 (Ill. 2006) (noting that the “parties to a proceeding . . . shall be barred from obtaining judicial review . . . unless review is sought ‘within the time and in the manner’” provided by law and holding that “[i]f the statutorily prescribed procedures are not strictly followed, ‘no jurisdiction is conferred on the circuit court’”); *Kame v. Emp’t Sec. Dep’t*, 769 P.2d 66, 68 (Nev. 1989) (“When a party seeks judicial review of an administrative decision, strict compliance with the statutory requirements for such review is a precondition to jurisdiction by the court of judicial review.”).

B. The jurisdictional deadline applicable here is the fourteen-day appeal deadline found in § 16-957(B).

In general, JRADA requires a party to commence “[a]n action to review a final administrative decision . . . within thirty-five days.” A.R.S. § 12-904. JRADA, however, “applies to and governs [e]very action to judicially review a final decision of an administrative agency except . . . if the act creating or conferring power on an agency . . . prescribes a definite procedure for the review.” A.R.S. § 12-902(A)(1). Here, “the Clean Elections Act itself contains a definite term for appeals: A.R.S. § 16-957(B) requires that appeals be taken no later than ‘fourteen days from the date of

issuance of the order assessing the penalty.” *Smith*, 212 Ariz. at 413 ¶ 29 (quoting A.R.S. § 16-957(B)). Like JRADA’s generally applicable 35-day deadline, the fourteen-day deadline in § 16-957(B) “is jurisdictional; any appeal not filed within the stated period is barred.” *Id.* (citing A.R.S. § 12-902(B)).

C. LFAF’s administrative appeal is barred under § 12-902(B) because it was not filed within fourteen days.

Here, the Commission issued its final decision assessing a penalty on March 27, 2015. LFAF was therefore required to seek judicial review of the March 27 Order within fourteen days of its issuance. A.R.S. § 16-957(B); *Smith*, 212 Ariz. at 413 ¶ 29 (appeal from Commission order must “be taken no later than fourteen days from the date of issuance” and “any appeal not filed within the stated period is barred”).

LFAF filed its appeal eighteen days after the issuance of the March 27 Order.¹⁴ Consequently, as in *Smith*, LFAF is “barred from obtaining judicial review,” A.R.S. § 12-902(B), and the superior court is without jurisdiction to consider LFAF’s complaint for judicial review. § 16-957(B); *Smith*, 212 Ariz. at 413 ¶ 25.

¹⁴ IR-1.

II. The existence of purported jurisdictional issues on appeal does not create appellate jurisdiction.

In its Petition for Review, LFAF does not contest that the fourteen-day deadline in § 16-957(B) applies, that LFAF failed to meet the deadline, or that § 12-902(B) bars judicial review of non-jurisdictional issues. Instead, LFAF argues that § 12-902(B) exempts jurisdictional challenges from its time-bar and asks the Court to issue a rule that a party to an administrative proceeding may appeal at any time—even years later—to challenge an agency’s jurisdiction. This argument is not supported by the statutory text and was correctly rejected by the Court of Appeals. A.R.S. § 12-902(B); Dec. ¶ 10.

A. The plain and unambiguous language in § 12-902(B) does not carve out an exception permitting late appeals for jurisdictional issues.

Section 12-902(B) has two sentences. Each sentence limits the right of appeal in a different way:

[1] *Unless review is sought* of an administrative decision *within the time* and in the manner provided in this article, *the parties* to the proceeding before the administrative agency *shall be barred* from obtaining judicial review.

[2] *If* under the terms of the law governing procedure before an agency an *administrative decision becomes final because of failure to file* any document in the nature of an objection, protest, petition for hearing or application for administrative

review *within the time allowed* by the law, the decision is not subject to judicial review under the provisions of this article except for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter.

A.R.S. § 12-902(B) (emphasis added). The first sentence applies to all final administrative decisions and bars review when a party to the administrative proceeding fails to timely seek judicial review as “provided in” JRADA. That is, the first sentence states what is true of most appeal deadlines: “It is well settled that the time for filing an appeal . . . is jurisdictional.” *Smith*, 212 Ariz. at 413 ¶ 25.

The second sentence applies not to late appeals to the courts (the first sentence covers that ground) but instead to tardy or missed filings at the administrative level—filings that are late “under the terms of the law governing procedure before an agency,” A.R.S. § 12-902(B). In other words, if a party defaults at the administrative level and wishes to challenge the resulting adverse final administrative decision, § 12-902(B)’s second sentence limits the party’s right of judicial review solely to issues “questioning the jurisdiction” of the agency.

Nothing in the language of the second sentence, however, modifies the total bar on late appeals in the first sentence or otherwise permits

parties to file an untimely appeal. As the Court of Appeals reasoned in this case, the second sentence “does not allow an appeal of an administrative decision to be heard after the allotted time for appeal has passed. Instead, it restricts a party who has suffered an administrative default or who has not exhausted administrative remedies from challenging the merits of the agency’s decision.” Dec. ¶ 12.

The Commission’s March 27 Order did not become final “because of the failure to file any document.” Nor did LFAF fail to exhaust its administrative remedies. Accordingly, the second sentence of § 12-902(B) has no applicability to this case.

B. LFAF’s arguments that jurisdictional challenges are exempted from § 12-902(B)’s bar depend on incorrect dicta from *Arkules* and *Dandoy* and are meritless.

LFAF contends that § 12-902(B) allows its late appeal to survive to the extent LFAF raises issues “questioning the jurisdiction” of the Commission. LFAF’s petition for review does not offer any text-based interpretation for why that is so, and given the unambiguous language, it could not. That should end the matter. *See Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 296 ¶ 8 (2007) (holding “the best and most reliable index of a

statute's meaning is its language" and that "when the language is clear and unequivocal, it is determinative of the statute's construction").

Ignoring § 12-902(B)'s text, LFAF instead relies on two cases that purport to interpret § 12-902(B) and include language seemingly favorable to LFAF's position—*Dandoy* and *Arkules*. But *Arkules* and *Dandoy* do not help LFAF. These cases are factually and procedurally distinguishable—they do not hold that a party to an administrative proceeding seeking judicial review can appeal after the applicable time has expired—and the description these cases give to § 12-902(B) is simply incorrect.

First, *Arkules* involved a special action brought by a non-party challenging the decision of a municipal board of adjustment, not a party's appeal under JRADA. 151 Ariz. at 439. There, a resident had petitioned the board for and received a variance from a regulation governing the color of his home. *Id.* The plaintiffs, who were not parties to the proceeding before the board, later filed a special action challenging the variance. *Id.* The court held that the plaintiffs were not bound by a 30-day statute of limitations set forth in A.R.S. § 9-462.06(J). *Id.* at 440. Before reaching that conclusion, the court cited § 12-902(B), mischaracterizing it as providing that "an appeal from an administrative agency may be heard even though

untimely to question the agency's" jurisdiction. *Id.* That is simply not what § 12-902(B) says, and the opinion offers no textual analysis supporting its interpretation. Moreover, the court's passing reference to § 12-902(B) was irrelevant to the case, because § 12-902(B) applies only to "*the parties to the proceeding* before the administrative agency," not non-parties who may have some separate grounds and authority to seek review.

Next, *Dandoy* involved a challenge by the City of Phoenix to an injunction entered against it based on its admitted violation of a cease-and-desist order entered by a state agency. 133 Ariz. at 335-36. The City requested an administrative hearing, but before concluding the hearing, the parties agreed to a consent order. *Dandoy*, 133 Ariz. at 336. "Some seven months later," the agency—not the City—filed suit to enjoin violations of the consent order and the superior court granted the injunction. *Id.* On appeal, the City argued that the underlying cease-and-desist order was void and could not provide a basis for an injunction. *Id.* Before reaching the City's argument, the court purported to analyze § 12-902(B) stating that it provides "an exception to [the] statutorily declared finality . . . for the purpose of questioning the jurisdiction of the administrative agency." Like

the misreading in *Arkules*, that characterization of § 12-902(B) cannot be squared with the statute's unambiguous text. The only "exception" in § 12-902(B) is that a party to an administrative proceeding may timely appeal jurisdictional issues to a court, even if the party let the administrative decision become final at the agency level by failing to timely challenge the decision during the administrative process.

And, as in *Arkules*, the court need not have cited to § 12-902(B) because the City's appeal was not an appeal of a final administrative decision under JRADA. In any event, the court went onto hold that "the City's attempt to circumvent finality . . . by an attack on . . . jurisdiction" was not "sound." *Id.* at 337.

Both *Arkules* and *Dandoy* are factually and procedurally distinguishable—neither was an appeal of a final administrative decision under JRADA. But importantly, the plain language of § 12-902(B), as discussed above, does not support the flawed interpretation of § 12-902(B) found in *Dandoy* and *Arkules*.

C. LFAF's proposed interpretation of § 12-902(B) would subvert the interests of finality that the statute is designed to serve.

The interpretation of § 12-902(B) that LFAF advances does harm to the principles of finality embodied in § 12-902(B).

LFAF's rule would open administrative decisions to unending uncertainty as to whether a "final decision" was ever truly "final." This Court long ago rejected that approach, holding that § 12-902(B) meant that the failure to timely appeal settles a decision "finally and conclusively as against collateral attack." *Jones*, 91 Ariz. at 187. "Were such an attack permissible, there would be no end to the mischief created" by the lack of finality. *Id.*

Under LFAF's proposed interpretation of § 12-902(B), finality and "certainty in legal relations" would be considerably less certain because a party would be able to file appeals at any time, so long as it couched its issues as being "jurisdictional." LFAF has identified no limit on this purported jurisdictional appeal right. Indeed, during oral argument before the Court of Appeals, LFAF's counsel argued that a party to an administrative proceeding has no deadline whatsoever to file an appeal

challenging the jurisdiction of an agency.¹⁵ Under this interpretation, “there would be no end to the mischief created.” The Legislature rejected LFAF’s position with § 12-902(B) and so should this Court.

D. The availability of possible relief under Rule 60 does not confer appellate jurisdiction.

LFAF’s Petition for Review argues (at 10-12) that its late appeal should be permitted because of a court’s authority to void its own judgment under Rule 60. Of course, that factual scenario is not this case and, for good reason, LFAF never raised this issue before its Petition for Review. But even if Rule 60 was relevant, Rule 60 would not help LFAF. Rule 60(b)(4) permits a court to relieve a party from a final judgment if “the judgment is void.” Such relief, however, “is not a substitute for a timely appeal” and is “generally . . . reserved . . . only for the exceptional case in which the court that rendered the judgment lacked even an ‘arguable basis’ for jurisdiction.” *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270-71 (2010) (applying federal Rule 60).

But even in the rare circumstances when relief under Rule 60 is possible, that possibility does not confer appellate jurisdiction and would

¹⁵ See <https://www.youtube.com/watch?v=uSiDx2f4SUI&feature=youtu.be> at 4:35.

not save a late appeal from dismissal. The hypothetical ability of a court to void its own judgment under Rule 60 does not create an exception to the longstanding rule that an appeal deadline from the final decision of an administrative agency is jurisdictional. *See Smith*, 212 Ariz. at 413. Nothing in Rule 60 expands a court's appellate jurisdiction over the supposedly void judgment and the cases cited by LFAF do not say anything different. *See Martin v. Martin*, 182 Ariz. 11, 15 (App. 1994) (holding that trial court did not err in refusing to vacate erroneous but not void judgment); *Nat'l Inv. Co. v. Estate of Bronner*, 146 Ariz. 138, 140 (App. 1985) (holding that trial court did not abuse discretion in setting aside its own default judgment); *In re Milliman's Estate*, 101 Ariz. 54, 58 (1966) (holding that "court which makes a void order may" set aside its own order).

CONCLUSION

LFAF did not file a complaint seeking judicial review of the March 27 Order within fourteen days of its issuance. LFAF's appeal is therefore barred. *See* § 12-902(B). This Court should affirm the decisions below and hold that § 12-902(B) contains no exception allowing a party to file an untimely appeal.

RESPECTFULLY SUBMITTED this 12th day of May, 2017.

OSBORN MALEDON, P.A.

By /s/ Joseph N. Roth
Mary R. O'Grady
Joseph N. Roth
Nathan T. Arrowsmith
2929 North Central Avenue, Ste. 2100
Phoenix, Arizona 85012

Attorneys for Defendant/ Appellee

IN THE ARIZONA SUPREME COURT

LEGACY FOUNDATION ACTION)	
FUND,)	Arizona Supreme Court
)	No. CV-16-0306-PR
Plaintiff/Appellant,)	
)	Court of Appeals, Division One
v.)	No. 1 CA-CV 15-0455
)	
CITIZENS CLEAN ELECTIONS)	Maricopa County Superior Court
COMMISSION,)	No. LC2015-000172-001
)	
Defendant/Appellee.))	

**PLAINTIFF/APPELLANT LEGACY FOUNDATION ACTION FUND'S
SUPPLEMENTAL BRIEF**

Brian M. Bergin (016375)
**Bergin, Frakes, Smalley & Oberholtzer,
PLLC**
4343 East Camelback Road, Suite 210
Phoenix, Arizona 85018
P: (602) 888-7857
F: (602) 888-7856
bbergin@bfsolaw.com
Co-Counsel for Plaintiff/Appellant

Jason B. Torchinsky (Pro Hac Vice)
**Holtzman Vogel Josefiak Torchinsky
PLLC**
45 North Hill Drive, Suite 100
Warrenton, Virginia 20186
P: (540) 341-8808
F: (540) 341-8809
Jtorchinsky@hvjt.law
*Co-Counsel for Plaintiff/Appellant
Admitted Pro Hac Vice*

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INTRODUCTION

The Citizens Clean Election Commission (hereafter the “Commission”) lacked jurisdiction to penalize the Legacy Foundation Action Fund (hereafter “LFAF”) for its speech. Rather than follow consistent precedent of the Court of Appeals permitting jurisdictional challenges at any time, and ignoring this Court’s precedent that a tribunal cannot accrete jurisdiction through laches, the courts below dismissed LFAF’s jurisdictional challenge as untimely. This Court should reinstate the uniformity in the Court of Appeals’ precedent that jurisdiction may be challenged at any time. This Court should likewise reaffirm its precedent that the passage of time cannot vest a tribunal with jurisdiction.

Furthermore, the Commission wrongly asserted jurisdiction over a statute that is properly confined to the enforcement authority of the Secretary of State. Additionally, when LFAF aired its advertisement in 2014, the express advocacy portion of the independent expenditure statute was void because the Maricopa County Superior Court had declared it unconstitutional.¹

Finally, the Commission’s application of its express advocacy statute to

¹ *Comm. for Justice & Fairness v. Ariz. Sec’y of State*, No. LC-2011-000734-001 (Nov. 28, 2012); *overruled and reversed by Comm. for Justice & Fairness (CJF) v. Ariz. Sec’y of State’s Office*, 235 Ariz. 347 (App. Aug. 7, 2014); *rev. denied Comm. for Justice v. Ariz. Sec’y of State*, No. CV-14-0250-PR, 2015 Ariz. LEXIS 136 (Ariz. Apr. 21, 2015).

LFAF's advertisement violates the First Amendment because it creates impermissible unconstitutional ambiguity. *See generally, Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007) (hereinafter, *WRTL II*); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 334-35 (2010) (noting that after *WRTL II* and the Court's holding, any test to determine express advocacy must be objective. The FEC adopted an 11 factor test—effectively imposing a prior restraint requiring a speaker wishing to avoid liability to first seek an advisory opinion determining whether the speaker's proposed speech constituted express advocacy).

Under the First Amendment, the advertisement could not constitute express advocacy because it was aired 134 days before the primary election—before Mayor Smith filed his statement of candidacy paperwork—discussed only issues, educated listeners about issues espoused by the organization for which Mayor Smith served as president, and urged listeners to contact Mayor Smith to express their disapproval of those issues. The advertisement did not discuss Mayor Smith's qualification for governor or mention any other candidate's name. The advertisement, therefore, is unquestionably beyond the scope of regulation under Arizona's then existing laws the Commission is empowered to enforce.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

LFAF respectfully incorporates by reference the statement of the case and statement of facts contained in LFAF's Petition for Review. *See generally*, Petition for Review ("Pet. for Rev.").

STATEMENT OF THE ISSUES

LFAF respectfully incorporates by reference the statement of the issues contained in LFAF's Petition for Review. *See generally*, Pet. for Rev.

ARGUMENT

I. THE CLEAN ELECTIONS COMMISSION DOES NOT ACCRETE JURISDICTION THROUGH LACHES.

A. Both the Superior Court and the Court of Appeals Committed an Error of Law When They Permitted the Commission to Penalize LFAF for Its Speech.

LFAF respectfully incorporates by reference the arguments made in its Petition concerning how challenges to jurisdiction can be brought at any time. *See* Pet. for Rev. at 9-10. If the Commission lacked jurisdiction in the first place, the alleged four-day delay by LFAF in challenging the Commission's jurisdiction does not then somehow vest the Commission with jurisdiction. *See, e.g., In re Milliman's Estate*, 101 Ariz. 54, 58 (1966) ("Laches of a party can not cure a judgment that is so defective as to be void; laches cannot infuse the judgment with life." (quoting 7 Moore's Federal Practice § 60.25[4] at 274 (2d ed. 1955))).

B. Motions to Set Aside Judgments as Void are Available at Any Time.

LFAF respectfully incorporates by reference the arguments made in its Petition concerning the ability to challenge judgments as void at any time. *See* Pet. for Rev. at 10-12. The Court of Appeals consistently has ruled that Rule 60 motions that attack a judgment as void for lack of jurisdiction are permissible even when brought beyond the six-month deadline and even where the movant delayed unreasonably. *See, e.g., Nat'l Inv. Co. v. Estate of Bronner*, 146 Ariz. 138, 140 (App. 1985). Similarly, the Court of Appeals has ruled that, in challenges to an administrative agency's jurisdiction, an untimely challenge brought in a special action is permissible. *See, e.g., Arkules v. Bd. of Adjustment*, 151 Ariz. 438, 440 (App. 1986) (hereinafter, *Arkules*) ("Under the provisions of A.R.S. § 12-902(B), an appeal from an administrative agency may be heard even though untimely to question the agency's personal or subject matter jurisdiction in a particular case.")²

² When the Board acts beyond the scope of its powers, "the effect of the void decision by the Board of Adjustment is the same as that of any void decision by a court: 'the mere lapse of time does not bar an attack on a void judgment.'" *Id.* at 151 Ariz. at 440 (citing *Wells v. Valley Nat'l Bank of Ariz.*, 109 Ariz. 345, 347 (1973)). "Statutes of limitation or rules of court are not applicable to void judgments." *Id.* at 151 Ariz. at 440 (citing *Preston v. Denkins*, 94 Ariz. 214 (1963)). The Court held that the plaintiff was not bound by a 30-day limit for appeal found within the agency's authorizing statute where the agency acted without jurisdiction. Further, Arizona Courts have repeatedly held that where jurisdiction is challenged, Ariz. Rev. Stat. Ann. § 12-902(B) allows such a jurisdictional challenge to be heard regardless of other administrative review

Here, LFAF asserts that the Commission had neither personal nor subject matter jurisdiction over LFAF nor its advertisement because LFAF's speech concerning the issues Smith supported did not constitute express advocacy. IR-69 ¶¶ 31-32. LFAF should have been permitted to make that jurisdictional challenge notwithstanding the status of the calendar.

C. Both the First and Second Divisions of the Arizona Court of Appeals Recognize That Challenges to an Agency's Jurisdiction are Available at Any Time.

LFAF respectfully incorporates by reference its arguments made in its Petition that challenges to an agency's jurisdiction are available at any time. *See* Pet. for Rev. at 12-15. Unlike the general rule barring untimely appeals that

process requirements. *See Collins v. State*, 166 Ariz. 409, 411 (App. 1990) ("pursuant to A.R.S. § 12-902(B), a jurisdictional challenge may be judicially reviewed without first seeking administrative review"); *Gilbert v. BOMEX*, 155 Ariz. 169, 176 (App. 1987) (acknowledging "there are other means by which an administrative judgment may be attacked collaterally. One means is where the jurisdiction of the administrative agency is questioned."); *Murphy v. BOMEX*, 190 Ariz. 441, 448 (App. 1997) ("The superior court has authority to review administrative agency proceedings only if (1) the challenged agency action constitutes a 'decision' appealable under the ARA and the challenging party has exhausted administrative avenues of appeal, or (2) *the agency's jurisdiction is being challenged.*") (emphasis added)). The court in *Arkules* noted that where a Board acts in a quasi-judicial capacity (as does the Commission insofar as it issues opinions and advisory notices interpreting the Clean Elections Act), a Superior Court may act pursuant to Ariz. Rev. Stat. Ann. § 12-902(B) in order to "control acts beyond the jurisdiction of another body . . . [and] to review . . . the judicial functions of a lower tribunal." 151 Ariz. at 440 (citing *Book Cellar, Inc. v. City of Phoenix*, 139 Ariz. 332, 335 (App. 1983)).

challenge the legal or factual content of an agency decision, both appellate divisions recognize that challenges to an agency's jurisdiction are permitted even after the time to appeal an agency order has expired. *See Dandoy v. Phoenix*, 133 Ariz. 334, 336-37 (App. 1982); *see also Guminski v. Ariz. State Veterinary Med. Examining Bd.*, 201 Ariz. 180, 184 (App. 2001).

D. As in *Dandoy* and *Arkules*, Jurisdictional Challenges Attacking an Agency Determination as Void Can Be Brought at Any Time and the Court of Appeals Was Wrong in Not Considering First LFAF's Jurisdictional Argument.

LFAF respectfully incorporates by reference its arguments made in its Petition that LFAF's jurisdictional appeal is permitted. *See* Pet. for Rev. at 15-17. As in the challenges to agency jurisdiction in *Arkules* and *Dandoy*, LFAF similarly challenged the Commission's jurisdiction. After exhausting its administrative remedies, LFAF challenged the Commission's jurisdiction in Maricopa County Superior Court, four days after the statutory deadline to file challenges to the Commission's orders. Court of Appeals Memorandum Decision at ¶ 5. Under *Dandoy* and *Arkules*, the Maricopa County Superior Court should have considered the merits of LFAF's argument that the Commission lacked jurisdiction.

The protections found in Section 12-902(B) that void judgments can be attacked anytime are consistent with administrative law at the federal level and in jurisdictions throughout the country. *See* 735 Ill. Comp. Stat. 5/3-102 ("If under the terms of the Act governing the procedure before an administrative agency an

administrative decision has become final because of the failure to file any document in the nature of objections, protests, petition for hearing or application for administrative review within the time allowed by such Act, such decision shall not be subject to judicial review hereunder *excepting only for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter.*") (emphasis added); *Bd. of Educ. of City of Chi. v. Bd. of Trs. of Pub. Sch. Teachers' Pension & Ret. Fund of Chi.*, 917 N.E.2d 527, 531 (Ill. App. 2009) ("A decision rendered by an administrative agency which lacks jurisdiction over the parties or the subject matter, or which lacks the inherent power to make or enter the decision involved, is void and may be attacked at any time or in any court, either directly or collaterally."); *State v. Wilfong*, 2001 Ohio App. LEXIS 1195, *7, at *12 (Ohio Ct. App., Clark County Mar. 16, 2001) ("[S]ubject matter jurisdictional defects may be attacked at any time, as they render the judgment void *ab initio*."); and *see King County v. Rea*, 152 P. 2d 310, 212 (Wash. 1944) ("A decree void on its face for lack of jurisdiction over the subject matter, may be attacked directly or collaterally at any time. This is because of the court's inherent power to purge its records of judgments void on their face.") (internal citation omitted).

E. The Commission's Reliance on *Smith* is Misplaced.

The Commission urges this Court to follow *Smith* and not *Arkules* or

Dandoy. Response to Petition for Review (“Resp. to Pet.”) at 15. The Commission further contends that *Arkules* and *Dandoy* are inapplicable here. *Id.* at 12-15. The Commission also contends that Ariz. Rev. Stat. Ann. § 12-902(B) only permits untimely challenges where a party suffered an administrative default. *Id.* at 13.

First, this Court’s ruling in *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407 (2006) is inapplicable here because the appellant in that case brought an untimely appeal challenging only the merits of the Commission’s determination that Smith violated public financing rules. Unlike LFAF here, appellant there did not challenge the Commission’s jurisdiction.

Second, *Arkules* and *Dandoy* do apply here. *See* Pet. for Rev. at 13-16. The Commission contends that *Dandoy* does not apply because it was a separate lawsuit and not an appeal from an administrative decision. *See* Resp. to Pet. at 14. But the Commission does not explain why this factual distinction makes a legal difference. Like this case, the jurisdictional attack in *Dandoy* came after the time to appeal had passed and yet the argument was entertained and not dismissed as untimely. *State ex rel. Dandoy v. Phoenix*, 133 Ariz. 334, 336-37 (App. 1982).

The Commission contends that *Arkules* is inapplicable because that case involved a special action by a non-party and 12-902(B) only applies to parties. Resp. to Pet. at 13-14. The Commission ignores, however, the fact that the plaintiff in *Arkules* was a non-party or that the procedural setting was a special action

played no role in the opinion. Nothing in the language of the *Arkules* opinion cabins its holding to non-parties in special actions. The opinion very clearly states, “an appeal from an administrative agency may be heard even though untimely to question the agency's personal or subject matter jurisdiction in a particular case.” *Arkules*, 151 Ariz. at 440. This was not dicta but a necessary part of the analysis to determine whether the superior court’s denial of defendant’s motion to dismiss was proper.

Third, Ariz. Rev. Stat. Ann. §12-902(B) cannot be read so narrowly as to permit tribunals who acted without jurisdiction to then accrete such jurisdiction through laches. Such a holding would run counter to settled precedent. *See In re Milliman's Estate*, 101 Ariz. at 58. In any event, statutes of limitation and rules of court are not applicable when challenging a tribunal’s jurisdiction. *See Arkules*, 151 Ariz. at 440.

II. APPLYING ARIZONA’S EXPRESS ADVOCACY STATUTE TO LFAF’S ADVERTISEMENT VIOLATES THE FIRST AMENDMENT.

The error of law in the ruling below infringed upon LFAF’s rights guaranteed under the First Amendment, such error ultimately resulting in upholding the Commission’s \$95,460 penalty on LFAF for its speech.

A. The First Amendment Requires That Tests Used to Distinguish Between Campaign Speech and Issue Speech Must Be Clear and Not Ambiguous.

The First Amendment to the United States Constitution declares, “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I. The protections of the First Amendment—through the Fourteenth Amendment—prevent the States from violating their residents’ free speech rights. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015).

The central purpose of the First Amendment “was to protect the free discussion of governmental affairs.” *First Nat’l Bank v. Bellotti*, 435 U.S. 765, 776-77 (1978). This is so because speech about issues is “indispensable to decision making in a democracy.” *See id.* at 777. Thus, the First Amendment not only guarantees a person’s right to express their opinions, but also the “right [to] afford[] the public access to discussion, debate, and the dissemination of information and ideas.” *See id.* at 783. Consequently, the First Amendment at least guarantees “the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.” *Id.* at 776. In fact, the First Amendment enshrines our nation’s national commitment “to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *WRTL II*, 551 U.S. at 467 (citing *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)).

The Supreme Court therefore has ruled that tests to determine whether speech constitutes political advocacy that may be subject to regulation must be clear and not ambiguous. *See Citizens United*, 558 U.S. at 336 (rejecting the FEC's 11 factor test and stating that this has the effect of putting the speaker in the position of either refraining from speech or putting speech at the mercy of how the FEC applies its 11 factor test to the speech). Rather, a test to distinguish between express advocacy and issue advocacy must provide "security for free discussion" and therefore cannot put the speaker "wholly at the mercy of the varied understanding of his hearers." *WRTL II*, 551 U.S. at 468-69. The test must, therefore, be objective and it "must eschew the open-ended rough-and-tumble of factors, which invit[es] complex argument in a trial court and a virtually inevitable appeal." *Id.* at 469 (internal citation and quotation marks omitted) (alteration in original). Such a test that puts the speaker at the mercy of the hearers and does not provide clear rule that provides security for free discussion "will unquestionably chill a substantial amount of political speech." *Id.* To prevent this result, an express advocacy statute can only capture that speech that "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Id.* at 470. Thus, an advertisement that focuses on an issue, exhorts the public to take a position on that issue, and urges the public to contact the official to also adopt that position on the issue, and further does not otherwise mention an

“election, candidacy, political party, or challenger; and . . . do[es] not take a position on a candidate's character, qualifications, or fitness for office” does not constitute express advocacy but is, in fact, an issue advertisement. *See id.* LFAF acknowledges that numerous states other than Arizona have enacted “electioneering communications” regulations that reach speech close in time to an election that mention or refer to candidates. Arizona, however, adopted no such statute, and the advertisement at issue was neither close in time to an election nor did it mention any person who was a candidate at the time the advertisement aired.

Because the Commission applied Arizona’s express advocacy statute to LFAF’s ads—contrary to the conclusions and judgment of Arizona’s Secretary of State and the ALJ—the Commission must prove that applications of its statute to LFAF’s advertisement satisfies strict scrutiny. *WRTL II*, 551 U.S. at 464-65 (“Especially where, as here, a prohibition is directed at speech itself, and the speech is intimately related to the process of governing, . . . ‘the burden is on the government to show the existence of [a compelling] interest.’” (citing *Bellotti*, 435 U.S. at 786) (alterations in *WRTL II*)).

B. The Commission’s Application of Arizona’s Express Advocacy Statute to LFAF’s Speech Violates the First Amendment.

The Commission violated LFAF’s First Amendment rights in three ways. *First*, the Commission overstepped its statutory authority by asserting jurisdiction over LFAF’s advertisement. As the Secretary of State has noted in this litigation, it

is the Secretary of State who enforces the “exhaustive” requirements contained in Arizona’s independent expenditure statute, including what constitutes express advocacy. Opening Brief of Arizona Secretary of State Michele Reagan; Exhibit A to IR-74 at 4.

The Secretary of State is ultimately charged with the interpretation of the terms “expressly advocates” and “independent expenditure.” The Maricopa County Board of Elections, acting for the Secretary of State, summarily dismissed the underlying complaints regarding LFAF’s failure to file reports because it found that LFAF is not a political committee and its advertisement did not constitute an independent expenditure.

Regardless of the fact the Secretary of State deemed the speech to not constitute “express advocacy” or “independent expenditures,” the Commission took it upon itself to push ahead and directly contravene the State’s chief election officer. No provision of the Clean Elections Act, however, extends the Commission’s jurisdiction to regulate LFAF. The sole hook on which the Commission is asserting jurisdiction is Ariz. Rev. Stat. Ann. § 16-941(D). But that provision provides for filing with the Secretary of State’s office. The Commission, however, contends that this provision confers upon the Commission jurisdiction over a filing statutorily required to be made with the Secretary of State. Not only unconstitutional, this premise is also contingent upon the meaning of “independent

expenditure” as defined in Ariz. Rev. Stat. Ann. § 16-901. Ultimate authority to determine what constitutes an “independent expenditure” is vested with the Secretary of State, as are other related reporting and registration rules and requirements that predate the Commission. It follows that, because the Clean Elections Act does not apply, enforcement of the deadlines found therein is wholly illogical.

Second, when LFAF acted, Arizona’s express advocacy statute was not in effect. Several months before LFAF produced and aired its advertisement, the Maricopa County Superior Court declared Arizona’s statutory definition of “expressly advocates” unconstitutional. *See* IR-28, ¶ 8; *see also Comm. for Justice & Fairness v. Ariz. Sec’y of State*, No. LC-2011-000734-001 (Nov. 28, 2012).³ While the Secretary of State appealed the Superior Court’s decision, a stay was not granted, nor was any other type of legal action imposed that stalled or reversed the Superior Court’s ruling.

³ *Overruled and reversed by Comm. for Justice & Fairness (CJF) v. Ariz. Sec’y of State’s Office*, 235 Ariz. 347 (App. Aug. 7, 2014); *rev. denied Comm. for Justice v. Ariz. Sec’y of State*, No. CV-14-0250-PR, 2015 Ariz. LEXIS 136 (Apr. 21, 2015). Again, LFAF’s advertisements aired between March and April of 2014, four months *prior* to the Arizona Court of Appeals decision. IR-28 at ¶¶ 14, 20-23. Thus, Arizona’s independent expenditure statute defining express advocacy was void when LFAF’s advertisements aired.

In reviewing a complaint filed against LFAF's advertisement in place of the Secretary of State (who was recused because at the time of the complaint the then-Secretary was a candidate for governor), the Maricopa County Division of Elections declined to take any action on the complaint. *See* IR-28 at ¶ 28. While the reasoning was not detailed, the Secretary took no action here at all.

The Commission even acknowledged the effect of the Superior Court's ruling. During its public meeting held on November 20, 2014 the Commission admitted the Superior Court's ruling controlled at the time LFAF aired its advertisement. IR-61 at 39:5-40:8 and 57:22-58:22 (attempting to diminish the effect of the Superior Court's ruling by referring to it as a "minute entry"). Then, at the same meeting the Commission inexplicably found probable cause to believe LFAF violated the Clean Elections Act. IR-28 at ¶ 41; *see generally* IR-61.

But the Commission could not enforce an unconstitutional statute defining "expressly advocates" against LFAF. LFAF's advertisements aired at least four months *prior* to the Court of Appeals decision. IR-28 at ¶¶ 14, 20-23. Thus, when LFAF aired its advertisements, Arizona's express advocacy definition in its independent expenditure statute was void and ineffective. *Norton v. Shelby County*, 118 U.S. 425, 442 (1886) ("An unconstitutional statute is not law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.").

Undaunted by the fact that the operative statute was ineffective at the time of the advertisement, the Commission proceeded to enforce the void statute anyway.

Third, the Commission's analysis applied to LFAF's advertisement was ambiguous and therefore unconstitutional. The advertisement described Smith as "Obama's Mayor" because, while Smith was serving as the President of the U.S. Conference of Mayors, the Conference supported profligate spending, limits on Second Amendment rights, Obamacare, and the regulation of carbon emissions. The advertisement says these policies are wrong for Mesa. The advertisement closes with an exhortation for the listeners to call Mayor Smith to tell him to support policies that are good for Mesa. *See* IR-28 at ¶ 13; *see also* IR-41. The advertisement discusses issues: government spending, second amendment rights, and the regulation of carbon emissions. The advertisement then informs the listeners that these policies are wrong for Mesa. The advertisement closes with an exhortation to the public to call Mayor Smith and tell him to support policies that are good for Mesa. Furthermore, the advertisement never mentions Mayor Smith as a gubernatorial candidate, as a Republican, that a primary election is approaching, or that Mayor Smith possessed bad character or was otherwise unqualified for office. *Compare* IR-28 at ¶ 13 and IR-41, with *WRTL II*, 551 U.S. at 470 (advertisement was not express advocacy where it discussed an issue, took a position on an issue, exhorted the public to adopt that position, and exhorted the

public to call their official without discussing an election, campaign, candidate, or saying that the official had a bad character or was otherwise unfit to serve office). Both the Administrative Law Judge and the Secretary of State concluded that LFAF's advertisement did not constitute express advocacy. IR-69 at Conclusions of Law Section ¶¶ 16, 21; IR-28 at ¶ 28.

Then, however, the Commission found that the advertisement constituted express advocacy because the advertisement was aired after Smith announced his candidacy for governor, portrayed Smith in what it determined was a "negative light," and discussed generic national issues and not local issues. IR-70 at 4-5.

This is precisely the type of analysis that *WRTL II* sought to avoid. If the Commission's ruling stands, it will require a case-by-case determination and mini-trials on all advertisements to determine if they constitute express advocacy. *See Citizens United*, 558 U.S. at 329. The First Amendment eschews "the open-ended rough-and-tumble of factors," *e.g.*, using the fact that an advertisement discusses national issues rather than local issues "invit[es] complex argument in a trial court and a virtually inevitable appeal." *Id.* at 336 (quoting *WRTL II*, 551 U.S. at 469) (alteration in original).

The Commission—like the FEC—applied an ambiguous test against LFAF's advertisement, aired in 2014, to determine whether LFAF's advertisement was issue advocacy or express advocacy, subject to a nearly \$100,000 fine. The First

Amendment needs breathing room to survive and it cannot tolerate case-by-case determinations. *See id.* at 329.

REQUEST FOR ATTORNEYS' FEES AND COSTS

Pursuant to Arizona Rules of Civil Appellate Procedure, Rule 23(d)(4), and Rule 21(a), LFAF hereby gives notice that under Ariz. Rev. Stat. Ann. § 12-348, LFAF respectfully requests that this Court award to it its reasonable attorneys' fees and expenses incurred herein.

CONCLUSION

For the foregoing reasons, this Court should reverse and vacate the Court of Appeals ruling that LFAF's appeal was untimely. This Court should also find that the Commission has no jurisdiction over independent expenditures. If the court finds that the Commission had jurisdiction, the Court should conclude that LFAF's advertisement did not constitute express advocacy under the First Amendment to the U.S. Constitution.

RESPECTFULLY SUBMITTED this 12th day of May, 2017.

**Bergin, Frakes, Smalley & Oberholtzer,
PLLC**

/s/ Brian M. Bergin
Brian M. Bergin (016375)
4343 East Camelback Road, Suite 210
Phoenix, Arizona 85018
P: (602) 888-7857
F: (602) 888-7856
bbergin@bfsolaw.com

Co-Counsel for Plaintiff/Appellant

**Holtzman Vogel Josefiak Torchinsky
PLLC**

/s/ Jason Torchinsky (with permission)

Jason B. Torchinsky

45 North Hill Drive, Suite 100

Warrenton, Virginia 20186

P: (540) 341-8808

F: (540) 341-8809

jtorchinsky@hvjt.law

Co-Counsel for Plaintiff/Appellant

Admitted Pro Hac Vice

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 and Thomas Collins, Executive Director
From: Sara A. Larsen, Financial Affairs & Compliance Officer
Date: May 2, 2017
Subject: Comprehensive Audit and Review for Jesus Rubalcava

Background

Jesus Rubalcava was a participating candidate for State Representative in Legislative District 4 during the 2016 election cycle. Mr. Rubalcava attended the Commission required candidate workshop on January 14, 2016. On June 10, 2016, Mr. Rubalcava was approved for primary election funding in the amount of \$16,044. Mr. Rubalcava was not contested during the general election and received \$1,415 (the amount of the \$5 qualifying contributions he collected) on August 31, 2016.¹

On September 15, 2016, Mr. Rubalcava's 2016 candidate campaign committee was randomly selected for a primary election audit.

On January 19, 2017, the Commission approved a comprehensive audit for Mr. Rubalcava based upon the completion and findings of the primary election audit. **Exhibit A – Primary Election Random Audit**

Commission staff notified Mr. Rubalcava's attorneys of the comprehensive audit on February 2, 2017. On February 16, 2017, Fester & Chapman P.C., the independent auditors conducting the audit, requested bank statements and supporting documentation for all campaign finance activity for Mr. Rubalcava's candidate campaign committee. On March 2, 2017, Mr. Rubalcava's attorneys withdrew from representation and all further communication was directed to Mr. Rubalcava.

On March 13, 2017, the auditors contacted Mr. Rubalcava for additional information that was initially requested but not provided in first response. On March 15, 2017, Mr. Rubalcava submitted two additional bank statements but ultimately declared that he had "not been able to

¹ On August 31, 2016, Mr. Rubalcava received general election funding in the amount of \$24,066. On September 1, 2016, it was determined that he was unopposed in the general election. Mr. Rubalcava was directed to return \$22,651 of general election funding to which he was not entitled. Mr. Rubalcava returned \$22,651 on September 28, 2016.

locate the box” containing his campaign documents. Mr. Rubalcava did not provide any documentation other than bank statements to the auditors.

On April 23, 2017, the auditors presented Mr. Rubalcava with the draft audit for his review. On April 28, 2017, the auditors submitted to the Commission the final comprehensive audit containing a statement to the Commission from Mr. Rubalcava. **Exhibit B – Comprehensive Audit**

Findings Summary

1. Review supporting invoice or other documentation and agree amount to the amount reported in the candidate’s finance report.

Mr. Rubalcava did not provide any supporting documentation for withdrawals made from the campaign bank account.

2. Determine that the name, address, and nature of goods or services provided agree to the information reported in the candidate’s campaign finance report.

The auditors were unable to determine if the supporting documentation matched the information on the candidate’s campaign finance report because Mr. Rubalcava did not provide any supporting documentation for expenditures.

3. Determine whether the expenditure was made for a direct campaign purpose.

The auditors were unable to determine if expenditures were made for direct campaign purposes because Mr. Rubalcava did not provide any supporting documentation for expenditures.

4. If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate’s proportionate share of the total cost.

The auditors were unable to determine if joint expenditures made in conjunction with other candidates represents the candidate’s proportionate share of the total cost because Mr. Rubalcava did not provide any supporting documentation for expenditures.

5. Determine whether a legal defense fund has been established. Was Clean funding used to pay for legal services? What is the value of legal services being provided for the comprehensive audit and review of finance activity?

Based on information provided, he did not establish a legal defense fund.

Summary of Bank Statements and Campaign Finance Reports

Since Mr. Rubalcava did not provide any documentation for expenditures related to his 2016 candidate campaign committee the independent auditors summarized the information that was available through Mr. Rubalcava’s campaign bank statements and campaign finance reports.

Deposits to Campaign Bank Account

\$	0.58	Beginning balance 01/01/16
\$	1,869.33	Transfers from separate account
\$	38,023.22	Possible campaign deposits
\$	<u>3,945.54</u>	<u>Purpose not determined</u>
\$	43,838.67	Total period deposits

Campaign Finance Report Totals:

\$	0.58	Beginning balance 01/01/16
\$	37,623.22	Included in campaign finance reports
\$	4,852.55	Not included in campaign finance reports
\$	<u>1,362.32</u>	<u>Undeterminable</u>
\$	43,838.67	Total

Total Election Cycle Withdrawals

\$	638.50	ATM withdrawals
\$	604.42	Transfers to personal account
\$	4,653.41	Non-campaign withdrawals
\$	34,261.93	Possible campaign withdrawals
\$	<u>3,635.41</u>	<u>Purpose not determined</u>
\$	43,838.67	Total

Campaign Finance Report Totals

\$	34,628.95	Included in campaign finance reports
\$	<u>9,209.72</u>	<u>Not included in campaign finance reports</u>
\$	43,838.67	Total

Potential Clean Elections Act and Commission Rule Violations**Single campaign account**

A.R.S. §16-941(A)(5) requires participating candidates to comply with A.R.S. §16-948; Subsection A of that statute requires candidates to conduct all financial activity through a single campaign account of the candidate's campaign committee and to not make any deposits into the campaign account other than limited early contributions and qualifying contributions. A.A.C. R2-20-114(A) also requires participating candidates to conduct all campaign finance activity through a single designated campaign bank account.

On June 15, 2016, Mr. Rubalcava physically received his primary election funding check. On June 17, 2016, Mr. Rubalcava transferred \$13,280.22 from a personal bank account to the campaign bank account. The primary election funding check was never deposited into the campaign bank account, rather the transfer on June 17, 2016 was a portion of the primary funding that had been originally deposited into the candidate's personal bank account. The

difference of \$2,763.78 was not transferred to the campaign bank account. The independent auditors note additional transfers from a separate account total \$1,869.33 and deposits with undeterminable purposes total \$3,945.54. Mr. Rubalcava comingled personal funds and campaign funds in both his personal and candidate campaign bank account. None of the deposits can be verified with the candidates campaign finance reports because Mr. Rubalcava failed to provide any supporting documentation.

Petty cash account

A.R.S. §16-948(C) requires participating candidates who choose to establish a petty cash account to adhere to an aggregate petty cash account limit of \$1,420 and each petty cash expenditure cannot exceed \$160. A.A.C. R2-20-115 requires candidates who choose to utilize a petty cash account to include detailed information as required by A.R.S. §16-948(C) on campaign finance reports for each petty cash expenditure.

Mr. Rubalcava failed to establish a petty cash account and provide detailed information for petty cash expenditures on his campaign finance reports. ATM withdrawals from the campaign bank account total \$683.50 and these withdrawals were not reported on Mr. Rubalcava's campaign finance reports. We cannot corroborate these expenditures because Mr. Rubalcava failed to provide any supporting documentation.

Failure to return primary election funds and using campaign funds for personal use

A.R.S. §16-953(A) requires participating candidates to return to the Clean Elections Fund all monies in the candidate's campaign account above an amount sufficient to pay any unpaid bills for expenditures made during the primary election period and for goods or services directed to the primary election.

A.A.C. R2-20-702 requires that participating candidates use Clean Elections funding to pay for goods and services for direct campaign purposes only.

The independent auditors found that Mr. Rubalcava transferred a total of \$604.42 to his personal campaign account from the campaign bank account. They also found that Mr. Rubalcava made \$4,653.41 in non-campaign withdrawals from the campaign bank account. An additional \$3,635.41 in withdrawals did not have a determinable purpose. The non-campaign withdrawals include but are not limited to:

1. Western Union (1/11/16, 3/18/16, 4/4/16, 4/18/16, 7/18/16),
2. Southwest Inflight Service (3/18/16),
3. Starbucks in Los Angeles (4/25/16),
4. Overdraft fees (numerous),
5. AT&T Bill payments (\$439.19 on 6/22/16 and \$378.84 on 8/9/16),
6. Southwest Title Loan (\$200 on 6/27/16)
7. Omni Shoreham Washington DC (\$25.17 and \$149.64 on 6/28/16)
8. Main Event/ Mountain Air California (\$110 on 7/13/16)
9. Southwest Airlines (\$186.96, \$15, \$15 on 7/14/16)
10. Hilton Advance Purchase Memphis TN (\$430.87 on 7/18/16)
11. Hilton Garden Inn San Diego, CA (\$54 on 7/19/16)

12. Coaster Saloon San Diego, CA (\$86 on 7/19/16)
13. Ticketmaster (\$197.10 on 9/13/16),
14. My Ticket Tracker (\$142.37 on 9/19/16),
15. American Air (\$25 on 6/24/16, \$44.54 on 8/29/16, \$11.20 and \$75 on 9/19/16)
16. Marriott San Jose (\$520.08 on 10/18/16)

Mr. Rubalcava was obligated to return any Clean Elections funding that was not utilized for direct campaign expenditures. Additionally, A.A.C. R2-20-702(C) specifically prohibits such expenditures for personal use.

Failure to report expenditures and receipts

A.R.S. § 16-948(C) requires candidates to report expenditures made directly from the candidate's campaign bank account. Candidates are required to identify the full name and street address of the person receiving the payment and indicate the nature of the goods or services being provided and identify the compensation being made. Additionally A.A.C. R2-20-110 requires candidates to file campaign finance reports that include all receipts and disbursements from the campaign bank account.

The independent auditors found that Mr. Rubalcava failed to report an aggregate of \$9,209.72 in expenditures on his campaign finance reports. Mr. Rubalcava also failed to report \$4,852.55 in deposits into the campaign bank account. Additionally, the independent auditors were unable to determine if \$1,362.32 was reported.

Failure to produce documentation for direct campaign expenditures

A.A.C. R2-20-703 clearly states that participating candidates have the burden of proving that any and all expenditures made by the candidate are for direct campaign purposes and that candidates must retain records for expenditures.

Mr. Rubalcava failed to provide any supporting documentation for campaign expenditures including those that were reported on the candidates campaign finance reports, so we are unable to verify if any expenditure made during the campaign election cycle is for a direct campaign purposes.

EXHIBIT A

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Jesus Rubalcava
Participating Candidate for
State Representative – District No. 4
Primary Election 2016**

**Independent Accountants' Report on
Applying Agreed-Upon Procedures**

Chairman and Members of the Commission
Citizens Clean Elections Commission
Phoenix, Arizona

We (the Contractor) have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Rubalcava for House (the Candidate) Campaign Finance Reports for both the Pre-Primary (June 1, 2016 to August 18, 2016) and the Post-Primary (August 19, 2016 to September 19, 2016) reporting periods were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Pre-Primary and Post-Primary Campaign Finance Reports. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and the associated findings are as follows:

1. Preliminary Procedures

- a) Commission Staff will obtain a copy of the candidate's campaign finance report for the reporting period and provide the records to the Contractor.

Finding

We obtained both the Pre-Primary (June 1, 2016 to August 18, 2016) and Post-Primary (August 19, 2016 to September 19, 2016) Campaign Finance Reports from the Arizona Secretary of State's website.

- b) Perform a desk review of the receipts reported in the candidate's campaign finance report as follows:

- (i) Determine whether the candidate accepted contributions only from individuals.

Finding

The contributions received during the periods reviewed appeared to be only from individuals.

- (ii) Determine whether any contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the periods reviewed did not exceed the \$160 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the periods reviewed did not exceed the \$4,011 limit for a legislative candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Early contributions received during the periods reviewed did not exceed the \$720 limit for a legislative candidate.

- c) Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted six disbursements to family members of the candidate, however the Campaign finance report did not indicate that the expenditures were made to family members. Per the Citizens Clean Elections Act & Rules Manual rule R2-20-701(C)(4), all payments made to family members or to enterprises owned in whole or part by the candidate or a family member shall be clearly itemized and indicated as such in all campaign finance reports.

In addition, there were three loans outstanding on the Post-Primary finance report that were made to the Campaign by the Candidate in December 2015, totaling \$69.93, that do not appear to have been repaid to the Candidate. In addition, supporting documentation for these loans was not maintained by the Campaign. Per the Citizens Clean Elections Act & Rule Manual rule R2-20-104(E), if the loan is to be repaid, the loans shall be repaid promptly upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. The Campaign received its Clean Elections funding on June 15, 2016.

It was further noted that the Campaign finance report had significantly fewer transactions than what was shown on the Campaign bank statements. Per discussion with the Candidate, the financial institution linked his personal bank account with the Campaign bank account, and therefore when he used his personal debit card, the Campaign bank account was debited. We noted approximately forty-one personal transactions consisting of out of state restaurant purchases, travel and other non-Campaign related items on the Campaign bank statement, totaling \$3,461.74; three ATM withdrawals, totaling \$243.50; five overdraft fees, totaling \$175.00; and three transfers from the Campaign bank account to the Candidate's personal bank account, totaling \$223.42. The Candidate indicated that he reimbursed the Campaign for these personal transactions, however deposits for these specific amounts was not provided. We noted eleven possible reimbursements to the Campaign on the bank statements, totaling \$2,270.19.

- d) Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Commission staff will contact the candidate to request the records for an agreed-upon procedures attest engagement. Candidates chosen for a Primary Election Audit shall provide records from the Pre-Primary Election Report and the Post-Primary Election Report. Candidates chosen for a General Election Audit shall provide records from the Pre-General Election Report and the Post-General Election Report.

Finding

Commission staff sent an initial notice of primary random audit selection to the Candidate and informed the Candidate that we would be contacting him. We then communicated to the Candidate in a written request, the purpose of the engagement, agreed-upon procedures to be performed, documentation needed and potential future requirements of the Candidate.

- b) Commission staff will provide the records to the Contractor upon receipt. The Contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided written bookkeeping policies and procedures utilized by the campaign committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, spouse, children, siblings and a parent or spouse of any of those persons.

Finding

We obtained and reviewed the names of the Candidate's family members.

- (ii) Review bank statements for each of the months in the reporting period and perform the following:
 - Select a sample of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected five deposits and five withdrawals from the bank statements for the periods reviewed and determined that none appeared to be properly recorded in the Candidate's campaign finance reports.

The five withdrawals tested were personal purchases, made by the Candidate, totaling \$1,454.72. Per discussion with the Candidate, the financial institution linked his personal bank account with the Campaign bank account, and therefore when he used his personal debit card, the Campaign bank account was debited. He indicated that he reimbursed the Campaign for the personal purchases, however deposits for these specific amounts was not provided. He further indicated that the errors continued after he notified the financial institution.

The five deposits tested, per discussion with the Candidate, were reimbursements to the Campaign for personal purchases made in error by the financial institution, totaling \$1,717.99.

It was further noted that the Campaign finance report included the Primary Election Commission funding totaling \$16,044.00 on 6/15/16. The Campaign bank account did not include a corresponding deposit for this amount, however it did include a transfer from the Candidate's personal bank account for \$13,280.22, which represents a variance of \$2,763.78 of Commission monies that does not appear to have been deposited into the Campaign bank account. Per the Citizens Clean Elections Act & Rules Manual rule 16-948(A), a participating candidate shall conduct all financial activity through a single campaign account of the candidate's campaign committee.

- Perform a proof of receipts and disbursements for the reporting period.

Finding

After performing proof of cash procedures, we calculated a Post-Primary ending cash balance of \$20,181.06, however the Amended Post-Primary campaign finance report reflected an ending balance of \$23,202.06, reflecting a variance of \$3,021.00, and indicating that the Campaign overspent by this amount. Per the Citizens Clean Elections Act & Rules Manual rule 16-941 (A)(3), a participating candidate: shall not make expenditures in the primary election period in excess of the adjusted primary election spending limit.

In addition, during this testwork it was noted that ten of the expenditure items in the Post-Primary campaign finance report, totaling \$2,214.50, had not cleared the bank as of September 30, 2016. Per discussion with the Candidate, he paid these vendors with cash, however no petty cash fund had been set up for the Campaign, and these expenditures were not reported as reimbursements to the Candidate on the Campaign finance report.

- d) Judgmentally select a sample of early contributions reported in the candidate's campaign finance report and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$50, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for one early contribution (total population) reported in the Candidate's campaign finance report, and determined the name of the contributor for the contribution was included on the support. For individuals who contributed greater than \$50, we determined that the contributor's address, occupation and employer were also included on the support.

- (i) For other types of cash receipts reported in the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's campaign finance reports during the periods reviewed.

- (ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's campaign finance reports during the periods reviewed.

- e) Judgmentally select a sample of cash expenditures reported in the candidate's campaign finance report and perform the following:
 - (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation and to the Candidate's finance report, with no exceptions noted.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address and nature of goods or services provided to the information reported in the Candidate's Campaign finance report with no exceptions noted, however three of the expenditures tested were made were to family members of the Candidate and the Campaign finance report did not indicate that they were family members. Per the Citizens Clean Elections Act & Rules Manual rule R2-20-701(C)(4), all payments made to family members or to enterprises owned in whole or part by the candidate or a family member shall be clearly itemized and indicated as such in all campaign finance reports.

Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the campaign account bank statements with one exception. The Campaign finance report included a \$264.50 expenditure for newspaper advertising, however this amount was not present on the Campaign bank statement. Per discussion with the Candidate, he paid this vendor in cash, however no petty cash fund had been set up for the Campaign and this expenditure was not reported as a reimbursement to the Candidate on the Campaign finance report.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and agreed the name, address and nature of goods or services provided to the information reported in the Candidate's Campaign finance report with no exceptions noted.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

- f) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,420.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the periods reviewed, however per review of the Campaign bank statement, several ATM withdrawals were made and per discussion with the Candidate, multiple vendors were paid with cash.

- (i) If applicable, judgmentally select a sample of expenditures made from the Candidate's petty cash fund(s) and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$160 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the periods reviewed.

- g) Determine whether a legal defense fund has been established.

Finding

Based on inquiry of the Candidate, the campaign did not establish a legal defense fund.

- (i) If a legal defense fund was established, how were these funds accounted for?

Finding

Based on inquiry of the Candidate, the campaign did not establish a legal defense fund.

- h) Contact the Candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the Candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We discussed our findings with the Candidate and the Candidate did not provide responses to our findings.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the Pre-Primary and Post-Primary Campaign Finance Reports of Rubalcava for House. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Citizens Clean Elections Commission, and is not intended to be and should not be used by anyone other than this specified party.

Aster & Chapman P.C.

December 13, 2016

EXHIBIT B

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Jesus Rubalcava
Participating Candidate for
State Representative – District No. 4
2016 Election Cycle Finance Activity Comprehensive Review**

**Independent Accountants' Report on
Applying Agreed-Upon Procedures**

Chairman and Members of the Commission
Citizens Clean Elections Commission
Phoenix, Arizona

We (the Contractor) have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Rubalcava for House (the Candidate), Campaign Finance Reports, Campaign bank account and corresponding documentation for expenditures and contributions for the 2016 election cycle (January 15, 2016 to January 31, 2017) were prepared or maintained in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign Finance Reports. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and the associated findings are as follows:

1. The Contractor shall review bank statements for each of the months in the election cycle and perform the following:
 - a) Select 100% of the deposits and withdrawals from the campaign bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

The Candidate provided the Campaign bank statements for all months of the election cycle, however the Candidate indicated that he was unable to identify or locate any documentation supporting the deposits and withdrawals from the Campaign bank statements. The attached Bank Statement Deposit Summary and Bank Statement Withdrawal Summary describe the deposits and withdrawals noted in the Campaign bank statements.

- b) Select 100% of cash disbursements and withdrawals from the campaign bank statement and perform the following:
 - (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

The Candidate indicated that he was unable to identify or locate any documentation supporting the withdrawals from the Campaign bank statements. The attached Bank Statement Withdrawal Summary describe the withdrawals noted in the Campaign bank statements.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

The Candidate indicated that he was unable to identify or locate any documentation supporting the withdrawals from the Campaign bank statements, therefore the name, address and nature of goods or services provided could not be agreed to the information reported in the Candidate's Campaign finance report. The attached Bank Statement Withdrawal Summary describe the withdrawals noted in the Campaign bank statements.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

The Candidate indicated that he was unable to identify or locate any documentation supporting the withdrawals from the Campaign bank statements, therefore expenditures made for a direct Campaign purpose could not be determined. The attached Bank Statement Withdrawal Summary describe the withdrawals noted in the Campaign bank statements.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

The Candidate indicated that he was unable to identify or locate any documentation supporting the withdrawals from the Campaign bank statements, therefore joint expenditures were unable to be identified. The attached Bank Statement Withdrawal Summary describe the withdrawals noted in the Campaign bank statements.

- c) Determine whether a legal defense has been established.

Finding

Based on inquiry of the Candidate, the Campaign did not establish a legal defense.

- (i) Has any Clean funding been used to pay for legal services?

Finding

Based on inquiry of the Candidate, the Campaign did not establish a legal defense.

- (ii) What is the cost or value of legal services being provided for the comprehensive audit and review of the finance activity?

Finding

Based on inquiry of the Candidate, the Campaign did not establish a legal defense.

- d) Contact the Candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this notification, the Contractor will advise the Candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We discussed our findings with the Candidate and the Candidate provided responses to our findings, which are included on pages 14-15 of this report.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the comprehensive audit and review of the finance activity of Rubalcava for House. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Citizens Clean Elections Commission, and is not intended to be and should not be used by anyone other than this specified party.

Heater F Chapman P.C.

April 28, 2017

Bank Statement Deposit Summary

January 2016			
Date	Amount	Description	On Finance Report?
1/4/2016	\$ 200.00	ATM Cash Deposit	Undeterminable, significant number of contributions noted on report
1/4/2016	\$ 3.00	ATM Cash Deposit	No
1/4/2016	\$ 200.00	ATM Cash Deposit	Undeterminable, significant number of contributions noted on report
1/11/2016	\$ 2.00	Transfer from personal bank account	No
	\$ 405.00	January Deposit Total:	

January totals from above		Campaign Finance Report Totals	
\$ 2.00	Transfers from separate account	Included in Campaign Finance Report	\$ -
\$ 400.00	Possible Campaign Deposits	Not included in Campaign Finance Report	\$ 5.00
\$ 3.00	Purpose not determinable	Undeterminable	\$ 400.00
\$ 405.00			\$ 405.00

February 2016			
Date	Amount	Description	On Finance Report?
No deposit activity noted			

March 2016			
Date	Amount	Description	On Finance Report?
3/10/2016	\$ 25.00	ATM Check Deposit	Yes
3/31/2016	\$ 100.00	ATM Cash Deposit	Yes
3/31/2016	\$ 60.00	ATM Cash Deposit	Undeterminable, significant number of contributions noted on report
	\$ 185.00	March Deposit Total:	

March totals from above		Campaign Finance Report Totals	
\$ -	Transfers from separate account	Included in Campaign Finance Report	\$ 125.00
\$ 125.00	Possible Campaign Deposits	Not included in Campaign Finance Report	\$ -
\$ 60.00	Purpose not determinable	Undeterminable	\$ 60.00
\$ 185.00			\$ 185.00

April 2016			
Date	Amount	Description	On Finance Report?
4/4/2016	\$ 70.00	ATM Cash Deposit	Undeterminable, significant number of contributions noted on report
4/15/2016	\$ 30.00	Transfer from personal account	No
4/18/2016	\$ 30.00	Transfer from personal account	No
	\$ 130.00	April Deposit Total:	

April totals from above		Campaign Finance Report Totals	
\$ 60.00	Transfers from separate account	Included in Campaign Finance Report	\$ -
\$ -	Possible Campaign Deposits	Not included in Campaign Finance Report	\$ 60.00
\$ 70.00	Purpose not determinable	Undeterminable	\$ 70.00
\$ 130.00			\$ 130.00

May 2016			
Date	Amount	Description	On Finance Report?
5/6/2016	\$ 600.00	Transfer from personal account	No
5/11/2016	\$ 607.12	eDeposit IN Branch/Store	Undeterminable
5/11/2016	\$ 75.00	ATM Check Deposit	Yes
5/12/2016	\$ 500.00	Transfer from personal account	No
5/17/2016	\$ 100.00	ATM Cash Deposit	Undeterminable, significant number of contributions noted on report
5/23/2016	\$ 25.00	ATM Check Deposit	Undeterminable, significant number of contributions noted on report
5/31/2016	\$ 90.00	Transfer from personal account	No
	\$ 1,997.12	May Deposit Total:	

May totals from above		Campaign Finance Report Totals	
\$ 1,190.00	Transfers from separate account	Included in Campaign Finance Report	\$ 75.00
\$ 75.00	Possible Campaign Deposits	Not included in Campaign Finance Report	\$ 1,190.00
\$ 732.12	Purpose not determinable	Undeterminable	\$ 732.12
\$ 1,997.12			\$ 1,997.12

June 2016			
Date	Amount	Description	On Finance Report?
6/2/2016	\$ 100.20	ATM Check Deposit	Undeterminable, significant number of contributions noted on report
6/2/2016	\$ 45.00	Transfer from personal account	No
6/9/2016	\$ 52.85	Transfer from personal account	No
6/13/2016	\$ 53.00	Transfer from personal account	No
6/17/2016	\$ 13,280.22	Transfer from personal account	This is presumed to be part of the Commission Primary Election funding. Total funding = \$16,044.00, difference of \$2,763.78.
	<u>\$ 13,531.27</u>	June Deposit Total:	

June totals from above		Campaign Finance Report Totals	
\$ 150.85	Transfers from separate account	Included in Campaign Finance Report	\$ 13,280.22
\$ 13,280.22	Possible Campaign Deposits	Not included in Campaign Finance Report	\$ 150.85
\$ 100.20	Purpose not determinable	Undeterminable	\$ 100.20
\$ 13,531.27			\$ 13,531.27

July 2016			
Date	Amount	Description	On Finance Report?
No deposit activity noted			

August 2016			
Date	Amount	Description	On Finance Report?
8/4/2016	\$ 770.14	ATM Check Deposit	No
8/8/2016	\$ 77.00	eDeposit IN Branch/Store	Yes
8/9/2016	\$ 350.00	ATM Cash Deposit	No
8/29/2016	\$ 20.00	ATM Cash Deposit	No
8/29/2016	\$ 9.00	Transfer from personal account	No
8/30/2016	\$ 50.00	Transfer from personal account	No
	<u>\$ 1,276.14</u>	August Deposit Total:	

August totals from above		Campaign Finance Report Totals	
\$ 59.00	Transfers from separate account	Included in Campaign Finance Report	\$ 77.00
\$ 77.00	Possible Campaign Deposits	Not included in Campaign Finance Report	\$ 1,199.14
\$ 1,140.14	Purpose not determinable	Undeterminable	\$ -
\$ 1,276.14			\$ 1,276.14

September 2016			
Date	Amount	Description	On Finance Report?
9/6/2016	\$ 24,066.00	eDeposit IN Branch/Store	Yes
9/6/2016	\$ 320.00	ATM Cash Deposit	No
9/19/2016	\$ 500.00	ATM Cash Deposit	No
	<u>\$ 24,886.00</u>	September Deposit Total:	

September totals from above		Campaign Finance Report Totals	
\$ -	Transfers from separate account	Included in Campaign Finance Report	\$ 24,066.00
\$ 24,066.00	Possible Campaign Deposits	Not included in Campaign Finance Report	\$ 820.00
\$ 820.00	Purpose not determinable	Undeterminable	\$ -
\$ 24,886.00			\$ 24,886.00

October 2016			
Date	Amount	Description	On Finance Report?
10/3/2016	165.00	Transfer from personal account	No
10/5/2016	115.00	Transfer from personal account	No
10/12/2016	60.00	Transfer from personal account	No
10/24/2016	500.00	ATM Cash Deposit	No
10/24/2016	520.08	ATM Check Deposit	No
10/25/2016	33.00	Transfer from personal account	No
10/27/2016	34.48	Transfer from personal account	No
	<u>\$ 1,427.56</u>	October Deposit Total:	

October totals from above		Campaign Finance Report Totals	
\$ 407.48	Transfers from separate account	Included in Campaign Finance Report	\$ -
\$ -	Possible Campaign Deposits	Not included in Campaign Finance Report	\$ 1,427.56
\$ 1,020.08	Purpose not determinable	Undeterminable	\$ -
\$ 1,427.56			\$ 1,427.56

November 2016			
Date	Amount	Description	On Finance Report?
No deposit activity noted			

December 2016			
Date	Amount	Description	On Finance Report?
No deposit activity noted			

Total Period Deposits		Campaign Finance Report Totals	
\$ 0.58	Beginning Bank Balance, 01/01/16	Beginning Bank Balance, 01/01/16	\$ 0.58
\$ 1,869.33	Transfers from separate account	Included in Campaign Finance Report	\$ 37,623.22
\$ 38,023.22	Possible Campaign Deposits	Not included in Campaign Finance Report	\$ 4,852.55
\$ 3,945.54	Purpose not determinable	Undeterminable	\$ 1,362.32
\$ 43,838.67			\$ 43,838.67

Bank Statement Withdrawal Summary

January 2016

Date	Amount	Vendor or Check #	Possible Campaign Purpose	Purpose	On Finance Report?
1/4/2016	\$ 100.00	ATM Withdrawal	Not determinable	n/a	No
1/4/2016	\$ 2.12	Family Dollar	Not determinable	n/a	No
1/4/2016	\$ 100.00	ATM Withdrawal	Not determinable	n/a	No
1/7/2016	\$ 100.00	ATM Withdrawal	Not determinable	n/a	No
1/11/2016	\$ 54.00	Transfer to personal account	No	n/a	No
1/11/2016	\$ 30.00	Western Union	No	n/a	No
1/11/2016	\$ 19.10	Pride Travel Center	Yes	Fuel	Yes
\$ 405.22 January Withdrawal Total					

January totals from above	
\$ 300.00	ATM Withdrawals
\$ 54.00	Transfers to personal account
\$ 30.00	Non-Campaign Withdrawals
\$ 19.10	Possible Campaign Withdrawals
\$ 2.12	Purpose not determinable
\$ 405.22	

Campaign Finance Report Totals	
Included in Campaign Finance Report	\$ 386.12
Not included in Campaign Finance Report	\$ 19.10
	\$ 405.22

February 2016

Date	Amount	Vendor or Check #	Possible Campaign Purpose	Purpose	On Finance Report?
No bank statement activity noted					

March 2016

Date	Amount	Vendor or Check #	Possible Campaign Purpose	Purpose	On Finance Report?
3/17/2016	\$ 2.82	Quiktrip Tolleson AZ	Not determinable	n/a	No
3/18/2016	\$ 19.99	Western Union	No	n/a	No
3/18/2016	\$ 2.00	Swa Inflight Service	No	n/a	No
\$ 24.81 March Withdrawal Total					

March totals from above	
\$ -	ATM Withdrawals
\$ -	Transfers to personal account
\$ 21.99	Non-Campaign Withdrawals
\$ -	Possible Campaign Withdrawals
\$ 2.82	Purpose not determinable
\$ 24.81	

Campaign Finance Report Totals	
Included in Campaign Finance Report	\$ -
Not included in Campaign Finance Report	\$ 24.81
	\$ 24.81

April 2016

Date	Amount	Vendor or Check #	Possible Campaign Purpose	Purpose	On Finance Report?
4/1/2016	\$ 10.25	Quiktrip Tolleson AZ	Not determinable	n/a	No
4/1/2016	\$ 60.00	ATM Withdrawal	No	n/a	No
4/4/2016	\$ 4.37	Burger King #9984 Buckeye AZ	Not determinable	n/a	No
4/4/2016	\$ 54.99	Western Union	No	n/a	No
4/6/2016	\$ 100.00	Check #101	Yes	Table fee for Yuma Co Fair	Yes
4/18/2016	\$ 10.01	Shell Service Station Gila Bend AZ	Not determinable	n/a	No
4/18/2016	\$ 27.99	Western Union	No	n/a	No
4/20/2016	\$ 4.82	Quiktrip Phoenix AZ	Not determinable	n/a	No
4/22/2016	\$ 8.00	Transfer to personal account	No	n/a	No
4/25/2016	\$ 5.41	Starbucks L3257 Los Angeles CA	No	n/a	No
\$ 285.84 April Withdrawal Total					

April totals from above	
\$ 60.00	ATM Withdrawals
\$ 8.00	Transfers to personal account
\$ 88.39	Non-Campaign Withdrawals
\$ 100.00	Possible Campaign Withdrawals
\$ 29.45	Purpose not determinable
\$ 285.84	

Campaign Finance Report Totals	
Included in Campaign Finance Report	\$ 100.00
Not included in Campaign Finance Report	\$ 185.84
	\$ 285.84

May 2016

Date	Amount	Vendor or Check #	Possible Campaign Purpose	Purpose	On Finance Report?
5/9/2016	\$ 319.00	Transfer to personal account	No	n/a	No
5/11/2016	\$ 80.00	ATM Withdrawal	No	n/a	No
5/12/2016	\$ 59.50	Sams Club	Not determinable	n/a	No
5/23/2016	\$ 20.00	Sams Club	Yes	Fuel	Yes
5/31/2016	\$ 95.69	Renaissance Hotel Phoenix AZ	Not determinable	n/a	No
	\$ 574.19	May Withdrawal Total			

May totals from above	
\$ 80.00	ATM Withdrawals
\$ 319.00	Transfers to personal account
\$ -	Non-Campaign Withdrawals
\$ 20.00	Possible Campaign Withdrawals
\$ 155.19	Purpose not determinable
\$ 574.19	

Campaign Finance Report Totals	
Included in Campaign Finance Report	\$ 20.00
Not included in Campaign Finance Report	\$ 554.19
	\$ 574.19

June 2016

Date	Amount	Vendor or Check #	Possible Campaign Purpose	Purpose	On Finance Report?
6/1/2016	\$ 52.13	Reathrey Sekon Phoenix AZ	Not determinable	n/a	No
6/1/2016	\$ 24.65	Lin's Buffet Phoenix AZ	Not determinable	n/a	No
6/2/2016	\$ 80.00	ATM Withdrawal	No	n/a	No
6/6/2016	\$ 18.91	Popeye's #10632 Phoenix AZ	Not determinable	n/a	No
6/8/2016	\$ 1,415.00	Check #102	Yes	Submittal of \$5 qualifying contributions	Yes
6/9/2016	\$ 35.00	Overdraft fee	No	n/a	No
6/13/2016	\$ 12.52	Dial Cab CO. Washington DC	No	n/a	No
6/13/2016	\$ 53.00	Cobalt Washington DC	No	n/a	No
6/13/2016	\$ 197.70	Uber	No	n/a	No
6/14/2016	\$ 35.00	Overdraft fee	No	n/a	No
6/14/2016	\$ 35.00	Overdraft fee	No	n/a	No
6/21/2016	\$ 14.97	Cracker Barrel 1780 S Yuma AZ	Yes	Meal expense	Yes
6/21/2016	\$ 23.00	Sam's Club Phoenix AZ	Not determinable	n/a	No
6/22/2016	\$ 439.19	AT&T*Bill Payment	No	n/a	No
6/22/2016	\$ 10.86	Panda Express #153 Goodyear AZ	Not determinable	n/a	No
6/23/2016	\$ 23.50	Love S Country0000 Gila Bend AZ	Not determinable	n/a	No
6/23/2016	\$ 12.41	McDonald's F1373 Washington DC	No	n/a	No
6/24/2016	\$ 25.00	American Air001028 Fort Worth TX	No	n/a	No
6/24/2016	\$ 21.80	Phx Delux Burger N Phoenix AZ	Not determinable	n/a	No
6/24/2016	\$ 28.45	Taxicharge- Washin Washington DC	No	n/a	No
6/24/2016	\$ 10.58	Dial Cab CO. Washington DC	No	n/a	No
6/24/2016	\$ 46.00	El Paso Cafe Arlington VA	No	n/a	No
6/24/2016	\$ 2,699.00	Check #103	Yes	Campaign literature & signs	Yes
6/27/2016	\$ 200.00	Southwest Title Loan	No	n/a	No
6/27/2016	\$ 63.50	ATM Withdrawal	No	n/a	No
6/27/2016	\$ 2.50	ATM fee	No	n/a	No
6/27/2016	\$ 46.00	Cafe Paradiso Washington DC	No	n/a	No
6/27/2016	\$ 12.16	Uber	No	n/a	No
6/27/2016	\$ 12.88	Uber	No	n/a	No
6/27/2016	\$ 25.00	District Kitchen L Washington DC	No	n/a	No
6/27/2016	\$ 8.80	Filiberto's Mexica Buckeye AZ	Yes	Meal expense	Yes
6/28/2016	\$ 25.17	Omni Shoreham Washington DC	No	n/a	No
6/28/2016	\$ 25.01	American Tap Room Arlington VA	No	n/a	No
6/28/2016	\$ 55.00	Sky Harbor Parking Phoenix AZ	No	n/a	No
6/28/2016	\$ 149.64	Omni Shoreham Washington DC	No	n/a	No
6/28/2016	\$ 29.00	Circle K 00225 Gila Bend AZ	Not determinable	n/a	No
6/29/2016	\$ 800.00	Check #104	Yes	VAN	Yes
6/30/2016	\$ 200.00	Check #107	Yes	Canvass	Yes
6/30/2016	\$ 104.96	Lowe's	Yes	Pounder/Wire	Yes
6/30/2016	\$ 30.43	Lowe's	Yes	Pounder	Yes
6/30/2016	\$ 3,374.91	Check #106	Yes	Signs/Lit/Paper	Yes
	\$ 10,478.63	June Withdrawal Total			

June totals from above	
\$ 143.50	ATM Withdrawals
\$ -	Transfers to personal account
\$ 1,483.21	Non-Campaign Withdrawals
\$ 8,648.07	Possible Campaign Withdrawals
\$ 203.85	Purpose not determinable
\$ 10,478.63	

Campaign Finance Report Totals	
Included in Campaign Finance Report	\$ 8,648.07
Not included in Campaign Finance Report	\$ 1,830.56
	\$ 10,478.63

July 2016

Date	Amount	Vendor or Check #	Possible Campaign Purpose	Purpose	On Finance Report?
7/1/2016	\$ 100.00	Check #108	Not determinable	n/a	No
7/1/2016	\$ 150.00	Check #111	Not determinable	n/a	No
7/5/2016	\$ 7.01	The Home Depot 402 Yuma AZ	Not determinable	n/a	No
7/5/2016	\$ 255.85	Check #105	Yes	Rebar	Yes
7/6/2016	\$ 300.00	Cashed Check #116	Yes	Canvass	Yes
7/7/2016	\$ 29.00	Shell Service Station Gila Bend AZ	Not determinable	n/a	No
7/7/2016	\$ 138.42	Transfer to personal account	No	n/a	No
7/7/2016	\$ 29.41	Lin's Buffet Phoenix AZ	Not determinable	n/a	No
7/7/2016	\$ 100.00	ATM Withdrawal	No	n/a	No
7/7/2016	\$ 200.00	Check #114	Not determinable	n/a	No
7/7/2016	\$ 200.00	Check #112	Not determinable	n/a	No
7/8/2016	\$ 281.72	Frys Food 2626 83Rd Av Phoenix AZ	Not determinable	n/a	No
7/11/2016	\$ 30.88	Marisco's MI Lindo Phoenix AZ	Not determinable	n/a	No
7/11/2016	\$ 23.00	Sam's Club Avondale AZ	Not determinable	n/a	No
7/12/2016	\$ 26.00	Sam's Club Phoenix AZ	Not determinable	n/a	No
7/13/2016	\$ 110.00	Main Event/Mty Air CA	No	n/a	No
7/13/2016	\$ 30.00	Cracker Barrel 1780 S Yuma AZ	Not determinable	n/a	No
7/14/2016	\$ 186.96	Southwest	No	n/a	No
7/14/2016	\$ 15.00	Southwest	No	n/a	No
7/14/2016	\$ 5.47	Taco Bell #23212 Buckeye AZ	Not determinable	n/a	No
7/14/2016	\$ 15.00	Southwest	No	n/a	No
7/14/2016	\$ 24.00	Arco #42258 Ampm Yuma AZ	Yes	Fuel	Yes
7/14/2016	\$ 130.00	Cashed Check #120	Yes	Canvass	Yes
7/14/2016	\$ 852.86	Check #118	Yes	Lawn signs	Yes
7/14/2016	\$ 200.00	Check #115	Yes	Canvass	Yes
7/15/2016	\$ 49.40	Michaels Stores Inc206 Goodyear AZ	Not determinable	n/a	No
7/18/2016	\$ 40.88	Hooters Yuma Yuma AZ	Not determinable	n/a	No
7/18/2016	\$ 24.99	Western Union	No	n/a	No
7/18/2016	\$ 430.87	Hilton Advance Pur Memphis TN	No	n/a	No
7/18/2016	\$ 18.95	Uber	No	n/a	No
7/18/2016	\$ 18.81	Uber	No	n/a	No
7/18/2016	\$ 15.00	Chevron 0307165 Alpine CA	No	n/a	No
7/18/2016	\$ 22.00	Frys Food & Drug 11203 Yuma AZ	Not determinable	n/a	No
7/19/2016	\$ 54.00	Hilton Garden Inn San Diego CA	No	n/a	No
7/19/2016	\$ 86.00	Coaster Saloon San Diego CA	No	n/a	No
7/19/2016	\$ 14.99	Smartfinal499 Phoenix AZ	Not determinable	n/a	No
7/19/2016	\$ 23.50	Circle K 03397 Buckeye AZ	Yes	Fuel	Yes
7/19/2016	\$ 35.00	Transfer to personal account	No	n/a	No
7/19/2016	\$ 190.00	Check #119	Yes	Tradeshelper, Salt River Project	Yes
7/20/2016	\$ 8.20	Sheraton Phoenix P Phoenix AZ	Not determinable	n/a	No
7/20/2016	\$ 29.11	Uber	No	n/a	No
7/21/2016	\$ 35.00	Overdraft Fee	No	n/a	No
7/21/2016	\$ 22.00	Barrio Cafe T43003 Phoenix AZ	Not determinable	n/a	No
7/22/2016	\$ 35.00	Overdraft Fee	No	n/a	No
\$ 4,594.28		July Withdrawal Total			

July totals from above	
\$ 100.00	ATM Withdrawals
\$ 173.42	Transfers to personal account
\$ 1,074.69	Non-Campaign Withdrawals
\$ 1,976.21	Possible Campaign Withdrawals
\$ 1,269.96	Purpose not determinable
\$ 4,594.28	

Campaign Finance Report Totals	
Included in Campaign Finance Report	\$ 1,976.21
Not included in Campaign Finance Report	\$ 2,618.07
	\$ 4,594.28

August 2016

Date	Amount	Vendor or Check #	Possible Campaign	Purpose	On Finance
			Purpose	Purpose	Report?
8/5/2016	\$ 50.00	Transfer to personal account	No	n/a	No
8/5/2016	\$ 16.50	Sam's Club Avondale AZ	Not determinable	n/a	No
8/8/2016	\$ 57.87	Wal-Mart Super Center Phoenix AZ	Not determinable	n/a	No
8/8/2016	\$ 20.00	Circle K 03397 Buckeye AZ	Not determinable	n/a	No
8/8/2016	\$ 10.93	Little Caesars #32 Buckeye AZ	Not determinable	n/a	No
8/8/2016	\$ 48.57	Target T- 1515 N Litch Goodyear AZ	Not determinable	n/a	No
8/9/2016	\$ 150.00	Venmo 855-812-4430 NY	Not determinable	n/a	No
8/9/2016	\$ 378.84	AT&T*Bill Payment	No	n/a	No
8/17/2016	\$ 200.00	Check	Not determinable	n/a	No
8/22/2016	\$ 13.00	Charlie's Phoenix Phoenix AZ	Not determinable	n/a	No
8/24/2016	\$ 20.00	Loves Cntry St Gila Bend AZ	Not determinable	n/a	No
8/29/2016	\$ 44.54	American Air	No	n/a	No
8/29/2016	\$ 25.00	LA Tasca (King Str Alexandria VA	No	n/a	No
8/29/2016	\$ 18.19	Uber	No	n/a	No
8/30/2016	\$ 12.10	Georgetown Market Arlington VA	No	n/a	No
8/30/2016	\$ 27.00	Sky Harbor Parking Phoenix AZ	No	n/a	No
8/30/2016	\$ 55.00	Pullanos Pizza Glendale AZ	Not determinable	n/a	No
\$ 1,147.54 August Withdrawal Total					

August totals from above	
\$ -	ATM Withdrawals
\$ 50.00	Transfers to personal account
\$ 505.67	Non-Campaign Withdrawals
\$ -	Possible Campaign Withdrawals
\$ 591.87	Purpose not determinable
\$ 1,147.54	

Campaign Finance Report Totals	
Included in Campaign Finance Report	\$ -
Not included in Campaign Finance Report	\$ 1,147.54
	\$ 1,147.54

September 2016

Date	Amount	Vendor or Check #	Possible Campaign	Purpose	On Finance
			Purpose	Purpose	Report?
9/7/2016	\$ 300.00	Check #192	Yes	Canvass	Yes
9/7/2016	\$ 300.00	Check #191	Yes	Canvass	Yes
9/8/2016	\$ 10.00	Quiktrip Phoenix AZ	Not determinable	n/a	No
9/12/2016	\$ 28.00	Charlie's Phoenix	Not determinable	n/a	No
9/13/2016	\$ 48.54	Pullanos Pizza Glendale AZ	Not determinable	n/a	No
9/13/2016	\$ 197.10	Tm *Sia	No	n/a	No
9/15/2016	\$ 250.00	Check #198	Not determinable	n/a	No
9/15/2016	\$ 300.00	Check #197	Not determinable	n/a	No
9/19/2016	\$ 11.20	American Air	No	n/a	No
9/19/2016	\$ 75.00	American Air	No	n/a	No
9/19/2016	\$ 36.33	Birrieria Obregon Phoenix AZ	Not determinable	n/a	No
9/19/2016	\$ 142.37	My Ticket Tracker	No	n/a	No
9/20/2016	\$ 21.00	Arco #42533 Ampm Phoenix AZ	Not determinable	n/a	No
9/23/2016	\$ 56.00	Mariscos Altata Phoenix AZ	Not determinable	n/a	No
9/23/2016	\$ 306.50	Centurylink/Speedp	No	n/a	No
9/26/2016	\$ 127.21	Fairfield Inn & Su Phoenix AZ	No	n/a	No
9/26/2016	\$ 8.28	Federicos Buckeye AZ	Not determinable	n/a	No
9/26/2016	\$ 27.00	Circle K 00225 Gila Bend AZ	Not determinable	n/a	No
9/29/2016	\$ 35.00	Arizona List Tucson AZ	Not determinable	n/a	No
9/29/2016	\$ 247.55	4Imprint	Yes	Table runner	Yes
\$ 2,527.08 September Withdrawal Total					

September totals from above	
\$ -	ATM Withdrawals
\$ -	Transfers to personal account
\$ 859.38	Non-Campaign Withdrawals
\$ 847.55	Possible Campaign Withdrawals
\$ 820.15	Purpose not determinable
\$ 2,527.08	

Campaign Finance Report Totals	
Included in Campaign Finance Report	\$ 847.55
Not included in Campaign Finance Report	\$ 1,679.53
	\$ 2,527.08

October 2016

Date	Amount	Vendor or Check #	Possible Campaign Purpose	Purpose	On Finance Report?
10/11/2016	60.00	Under Review Sport Surprise AZ	Not determinable	n/a	No
10/18/2016	520.08	Marriott San Jose San Jose CA	No	n/a	No
10/19/2016	200.00	Check	Not determinable	n/a	No
10/19/2016	300.00	Check	Not determinable	n/a	No
10/21/2016	35.00	NSF Return Item Fee	No	n/a	No
10/24/2016	22,651.00	Check	Yes	Return of CCEC funds	Yes
10/25/2016	35.00	Overdraft Fee	No	n/a	No
\$ 23,801.08 October Withdrawal Total					

October totals from above	
\$ -	ATM Withdrawals
\$ -	Transfers to personal account
\$ 590.08	Non-Campaign Withdrawals
\$ 22,651.00	Possible Campaign Withdrawals
\$ 560.00	Purpose not determinable
\$ 23,801.08	

Campaign Finance Report Totals	
Included in Campaign Finance Report	\$ 22,651.00
Not included in Campaign Finance Report	\$ 1,150.08
	\$ 23,801.08

November 2016

Date	Amount	Vendor or Check #	Possible Campaign Purpose	Purpose	On Finance Report?
No withdrawal activity noted					

December 2016

Date	Amount	Vendor or Check #	Possible Campaign Purpose	Purpose	On Finance Report?
No withdrawal activity noted					

Total Election Cycle Withdrawals	
\$ 683.50	ATM Withdrawals
\$ 604.42	Transfers to personal account
\$ 4,653.41	Non-Campaign Withdrawals
\$ 34,261.93	Possible Campaign Withdrawals
\$ 3,635.41	Purpose not determinable
\$ 43,838.67	

Campaign Finance Report Totals	
Included in Campaign Finance Report	\$ 34,628.95
Not included in Campaign Finance Report	\$ 9,209.72
	\$ 43,838.67

April 28, 2017

To: Chairman and Members of the Commission
Citizens Clean Elections Commission

From: Jesus Rubalcava, Participating Candidate
for State Representative – District No. 4

Re: 2016 Election Cycle Finance Activity Comprehensive Review

Dear Chairman and Members,

I would like to start off by thanking you for the opportunity to participate as a participating candidate in the 2016 Election Cycle. Please acknowledge that I am not by any means challenging the results of the review, nor am I denying any wrong doing. More so, this is acknowledgement that my campaign finances were not effectively run and that my lesson has been learned. Moving forward, should I be given the opportunity, I now know what to do and what not to do. This letter is to explain and clarify some questions you may have in regards to the issues and concerns brought before you.

It is important to know that this was my first time running for such position. I had never had to file full campaign accounts and never had to form a committee for the purpose of running for office. Many things I did not know. For example, I did not know that I needed to set up a petty cash account. I did not know where or how to disclose family members that worked for my campaign. I did not know that I needed to hire legal counsel. I did call the Citizens Clean Elections Commission office twice to ask for 1) what or how much to pay individuals working for the campaign and 2) where to obtain a mileage reimbursement form. I did not receive a concrete answer for either questions, rather was told to attend the CCEC Orientation again. Again, this is not justification or an excuse.

The biggest issue with my campaign was that I used my bank account that linked with my campaign account. For example, I would deposit a check into what I thought was one account and it would end up

in another. Another example, I would use my campaign debit card for a transaction and it would withdraw from my personal account. Because this was so confusing to me, I began to use the filing report with the Secretary of State as my accounting and balance.

I was not able to provide additional documentation other than my bank statements for the following reason. I am a Special Education teacher in the Buckeye Elementary School District. When going through my initial audit, I had all of my campaign documents in my classroom. Over holiday break, I was moved into different classrooms 2 times. During this time, many of my personal belongings and documents were misplaced. I still have not been able to relocate them.

I ask the commission to please consider the reasoning for such flaws in this campaign finance. I accept the report on findings as a way to acknowledge and learn from what was done incorrectly and how to do things the correct way. I am willing to accept the consequences of my wrongdoing and ask that the commission allow me to take corrective actions in order to comply; whether this be repaying back any unaccounted monies and fees set forth by the commission.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read 'JR' or 'JRH' with a stylized flourish.

Jesus A Rubalcava

FIVE YEAR REVIEW – Approved May 18, 2017
Submitted May 19, 2017
Citizens Clean Elections Commission

This report covers R2-20-109 through 111 in Title 2, Chapter 20. The Citizens Clean Elections Commission (the "Commission") adopted these rules to further the goals of the Citizens Clean Elections Act ("Act"). The Act was passed by the voters in 1998 and created the clean elections system to diminish the influence of special-interest money, including the opportunities for and appearance of *quid pro quo* corruption, and to thereby promote the integrity of Arizona state government. The Act promotes freedom of speech under the United States and Arizona Constitutions. It also created a voluntary system wherein "participating" candidates receive public funds to finance campaigns. To qualify for funding, participating candidates must follow additional rules and reporting requirements. The Act also applies to candidates who are nonparticipating candidates and independent spenders in elections. The Rules implement the provisions of the Act. All rules created or amended prior to June 25, 2013 have been "pre-cleared" by the U.S. Department of Justice pursuant to Section Five of the Federal Voting Rights Act.

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

This report is made without waiver of any of the Commission's legal positions concerning the Commission's rulemaking authority or the Governor's Regulatory Review Council's authority under A.R.S. § 41-1056.

Part I: Analysis Which Is Identical Within Groups of Rules

1. General statutes authorizing the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

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

The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. Commission rule making is exempt from title 41, chapter 6, article 3. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The Commission shall also file a notice of exempt rule making and the proposed rule in the format prescribed in section 41-1022 with the

secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty-day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the Secretary of State's Office for publication in the Arizona Administrative Register. Any rules adopted by the Commission shall only be applied prospectively from the date the rule was adopted.

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

2. The objective of the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

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

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

3. Effectiveness of the rule in achieving the objective

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

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

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

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

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

INFORMATION IDENTICAL FOR AND APPLIES TO RULE AMENDMENTS ADOPTED ON DECEMBER 15, 2016.

The Commission adopted a number of rule amendments on December 15, 2016. The December 15, 2016 rule amendments and all other rule amendments adopted since October 29, 2015 can be found in **Attachment C**. The Commission adopted the rule

amendments to harmonize the Commission's rules with recent legislative amendments to Title 16, avoid confusion within the regulated community, and promote consistency between the Commission's rules and the policies of other election-related offices. The rule amendments are primarily the result of Senate Bill 1516 (2016), legislation that substantially altered Arizona campaign finance law in some respects. Certain provisions in SB1516 raise substantial questions under the Arizona and United States Constitutions. The Commission made rule amendments without waiving any legal objection, and without any waiver of its full authority to enforce Article 2 of Chapter 6 of Title 16.

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

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

All rules are fairly and consistently enforced by the Commission.

6. **Clarity, conciseness, and understandability of the rule**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

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

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

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

8. **Estimated economic, small business, and consumer impact**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Economic, small business and consumer impact statement

The rules proposed and adopted by the Commission between January 2010 and January 17, 2017 create no discernible economic impact for small businesses or consumers provided. For small businesses or consumers who make expenditures subject to the rules' reporting requirements, compliance with the rules imposes zero economic impact because the reporting requirement is simple and may be filed without any filing fee. To the extent that the obligation to file a report itself imposes an economic impact, that impact comes from the statutory reporting requirement and not from the rules. A failure to abide by any of the statutes or rules may create an economic impact on those subject to the penalties the Commission may impose.

The Commission receives funds from the following sources.

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

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

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

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

10. **Course of Action from Last Review**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

All action described from the 5-year review report submitted on June 30, 2016-was completed at the Commission meeting in December 2016 and reported here.

11. **Least Burden and Costs**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

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

12. **Determination to corresponding federal law**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The rules are consistent with federal law.

13. **A.R.S. § 41-1037**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

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

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

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

**Part II: Analysis of Individual Rules
(R2-20-109, R2-20-110, R2-20-111)**

R2-20-109, R2-20-110, and R2-20-111 Requirements

1. General statutes authorizing the rule

A.R.S. §§ 16-940, -941, -942, -943, -955, -956, -957, -958, and -961.

2. Objective

R2-20-109 provides the requirements for the submission of independent expenditure reports. R2-20-110 provides rules for the reporting requirements of participating candidates. R2-20-111 provides rules for the reporting and contribution limits requirements of non-participating candidates. Each rule also includes requirements for the imposition of penalties for the failure to timely file a campaign finance report under Chapter 6 of Title 16 (A.R.S. § 16-901 to -961) and other penalties provided by law.

3. Effectiveness of the rule in achieving the objective

R2-20-109 is effective in achieving its objective. The rule implements the independent expenditure reporting requirements and related penalties under the of the Act. R2-20-110 provides for reporting by participating candidates. R2-20-111 provides for reporting and limits applicable to non-participating candidates. Each rule is tailored to the specific statutory provisions that support them and have been effective.

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

Please note that substantial portions of what had been R2-20-109(F)-(G) have been amended and re-codified across R2-20-109, 110, and 111.

Although the Commission's views in this report do not purport to represent the views of any council member of the Governor's Regulatory Review Council, in the Commission's view, R2-20-109 to -111 are consistent with the law. The Clean Elections Act establishes penalties for those who violate reporting requirements of Chapter 6 of Title 16 (A.R.S. § 16-901 to -961) and requires the Commission to enforce the Act. A.R.S. § 16-942(B) (providing for penalties); A.R.S. § 16-956(A)(7) (enforcement authority). Campaign finance reporting requirements exist in the Clean Elections Act itself and elsewhere in Chapter 6 of Title 16. See A.R.S. § 16-926 (reporting requirements); A.R.S. § 16-941(D) (Clean Elections Act requiring any person who makes independent expenditures over a certain dollar threshold to submit a report regarding the expenditure).

As noted, the Commission has taken significant steps to alter these rules during these proceedings. Following the passage of legislation in 2016, the Commission deleted rules including: former R2-20-109(F)(2) and 109(F)(4) through (F)(11) and reorganized new R2-20-109 (F)(2) and (F)(3). Additionally, the Commission avoided Voter Protection Act issues by expressly adopting new provisions into R-20-111 relating to campaign finance limits for state and legislative candidates, which reflect the Secretary of State's published limits. See *Ariz. Sec'y of State, Campaign Contribution Limits Per Cycle 2017-2018 Election Cycle* (January 2017), available at <https://www.azsos.gov/elections/campaign-finance-reporting/contribution-limits>.

R2-20-109 provides rules for the method of reporting independent expenditures (R2-20-109(A)) and for the consequences of a failure to file a required report, including the possibility of penalties (R2-20-109(B)). This rule provision ensures consistency with recent legislative amendments to Title 16. R2-20-110 provides rules for the reporting requirements applicable to candidates participating in the clean elections funding system. R2-20-111 provides rules regarding the reporting requirements, contribution limits, and potential penalties applicable to non-participating candidates.

The Act does not limit the Commission's authority to elections involving "participating" candidates. Arizona voters adopted the Clean Elections Act to "improve the integrity of Arizona state government by diminishing the influence of special-interest money, [] encourage citizen participation in the political process, and [] promote freedom of speech under the U.S. and Arizona Constitutions." A.R.S. § 16-940(A).

To achieve these ambitious goals, the Act, gives the Commission express jurisdiction over campaign finance reports relating to "candidates," without regard to the candidate participates in the clean elections funding system. With respect to reporting obligations, the relevant provisions of the Act use the term "candidate," without distinguishing between "participating" and "non-participating." See A.R.S. §

16-941(D) (independent expenditure reports should “identify the office and the candidate or group of candidates”); § 16-942(B) (prescribing penalties for violations “by or on behalf of any candidate of any reporting requirement”). At the same time, the Act uses the term “participating” or “nonparticipating” when it means for a provision to apply only to one or the other category of candidates. See, e.g., A.R.S. § 16-941(A) (regulating contributions and expenditures for “a participating candidate”); § 16-941(B) (prohibiting “nonparticipating candidates” from accepting contributions in excess of specified amounts); § 16-942(A) (prescribing enhanced penalties for “a violation . . . by or on behalf of a participating candidate”). The Act’s language thus clearly shows that the drafters knew how to indicate if a provision of the Act was intended to apply only to a participating candidate.

The Act recognizes that all legislative and statewide elections potentially involve concerns of special-interest money, citizen participation and free speech. The Act addresses various obligations of nonparticipating candidates, including:

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

The arguments that have been raised to contend that the Commission’s authority is restricted to participating candidates are flawed.

First, the fact that other governmental entities (such as the Secretary of State’s office) may have some parallel enforcement authority over certain campaign-finance reports does not diminish the Commission’s authority. The Commission’s enforcement authority—adopted by voters concerned with the influence of special-interest money on elected offices—is a “paramount” duty of the Commission. *Clean Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 244 ¶ 13, 99 P.3d 570, 574 (2004). As the Court recognized, these duties are independent of any public financing program and involve non-participating candidates and independent expenditures. *Id.* The contrary claim was recently rejected in *Horne v. Citizens Clean Elections Commission*, CV 2014-009404 (8/19/2014), when the trial court

dismissed a case challenging the Commission's jurisdiction to resolve complaints against a non-participating candidate.

Second, for the same reasons, the United States Supreme Court's 2011 decision in *Arizona Free Enterprise Club's Freedom PAC v. Bennett*, 131 S. Ct. 2806 (2011), does not affect the Commission's enforcement authority. That decision strikes down the "matching fund" provisions of the Act and has nothing to do with the subject matter covered in R2-20-109 to -111, just as it has nothing to do with other parts of the Act that regulate nonparticipating candidates (such as the campaign contribution limits in § 16-941(B)).

Third, A.R.S. § 16-942(B)'s provision that "the candidate and the candidate's campaign's account shall be jointly and severally liable for any penalty imposed pursuant to this subsection" does not limit that section's application to participating candidates. If this sentence was intended to be limited to participating candidates, the drafters would have included the word "participating," just as they did in other sections. The reference to a candidate's campaign account logically refers to any candidate's campaign account. All candidates who establish political committees have bank accounts for their campaigns. A.R.S. § 16-902(C). This provision of § 942(B) is intended to provide notice to candidates of their potential, individual exposure to civil fines. Reading A.R.S. § 16-942(B) to implicitly restrict the Commission's authority to races involving participating candidates would illogically require ignoring the explicit grant of jurisdiction over "any person" in A.R.S. § 16-941(D) ("any person who makes independent expenditures related to a particular office . . .") and A.R.S. § 16-958 ("any person who has previously reached the dollar amount specified in § 16-941 . . .") and would contradict the Commission's express jurisdiction over "any reporting requirement imposed by this chapter" in the same section.

Finally, there is no conflict between A.R.S. § 16-942(B) and other enforcement provisions in Title 16. A.R.S. § 16-942(B) makes it clear that its penalties are "in addition to any other penalties imposed by law."

R2-20-109(B)(4)

R2-20-109(B)(4) sets forth terms under which the Commission will determine whether an entity is a political committee under A.R.S. § 16-901(20) subject to the reporting requirements in A.R.S. § 16-926. As stated previously, A.R.S. § 16-942(B) gives the Commission the legal authority to impose civil fines for any violation "by or on behalf of any candidate of any reporting requirement imposed by [Title 16, Chapter 6]." If a complaint is filed alleging a reporting violation of A.R.S. § 16-926, these rules will help the Commission determine whether a violation occurred, as those reporting requirements apply only to political committees. This rule addresses complaints alleging that a "dark money" group was obligated to disclosed its contributors under A.R.S. § 16-926 but failed to do so. The history of this new rule is included in the materials provided to GRRC staff; it was fully vetted

over several months with broad public input. For all of the reasons previously explained concerning the Commission's jurisdiction over reports required under this "chapter," it is a legitimate exercise of the Commission's regulatory authority.

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

R2-20-111

Rule R2-20-111 sets forth rules applicable to enforcement actions against non-participating candidates for their violation of both reporting requirements and contribution limits. The Clean Elections Act gives the Commission express authority over nonparticipating candidates' contribution limits (A.R.S. § 16-941(B); A.R.S. § 16-942(C)) and reporting requirements (A.R.S. §§ 16-942(B)).

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

Rules R2-20-109 to 111 are currently being enforced. The rules were all subject to recent amendments, and the amended versions have not been in effect during an enforcement proceeding as of this submission. No problems are anticipated with the enforcement.

7. Written Criticism (Appendix D of the February 2017 Report)

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

Prior to the May 22, 2014 Commission meeting, the Commission received public comment regarding the rule. Senator Steve Pierce and the Elect Steve Pierce Committees, through their legal counsel, Michael Liburdi, submitted a petition for a rule change proposing the Commission repeal R2-20-109(G). Mr. Liburdi stated the rule "is an extra-legal exercise of the Commission's rulemaking power and established bad public policy for regulators and non-participating candidates." The Citizens Clean Elections staff recommended the Commission not repeal the provision. Robyn Prud'homme-Bauer from the League of Women Voters of Arizona provided written public comment supporting the Commission staff's position to R2-20-109 stating the rule changes aligned with the League's position on full disclosure. Sam Wercinski of the Arizona Advocacy Network also submitted written public comment in support of the staff recommendation of amendments to R2-20-109(G) and in opposition to the petition for a rule change submitted by

Senator Pierce. Finally, Tim Hogan from the Arizona Center for Law in the Public Interest submitted written public comment in opposition to Senator Pierce's petition for a rule change for the fact that "the plain language of the Clean Elections Act does not support Pierce's interpretation."

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

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

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

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

Prior to the September 15, 2016, and December 15, 2016 meetings, the Commission received public comment from Shirley Sandelands, President of the Arizona League of Women Voters; Rivko Knox; Eric Spencer, the State Elections Director for the Secretary of State; Constantin Querard of Grassroot Partners; Dr. Doris Provine, board president of the Arizona Advocacy Network; and James Barton of the Torres Law Group. The Commission considered all public comment prior to voting on the rule. The Council is urged to review the public comment received, which is contained in the Appendix.

8. Estimated economic, small business, and consumer impact

Nothing in Rule R2-20-109, 110, or 111 has any discernible economic, small business, or consumer impact. R2-20-109(B) does not apply to any B2C, small business or other similar entity, but only to entities that make expenditures for or against candidates for state and legislative offices. R2-20-110 and 111 apply to candidates, who are individuals involved in running for office and raising money to run for office. As noted above, to the extent compliance with statutory reporting requirements imposes an economic cost, the impact derives from the statute itself and not the Commission's rules. In addition, the Commission adopted several amendments to these rules on December 15, 2016, which should further streamline compliance for regulated entities. The amendments harmonize the Commission's rules with recent statutory amendments to campaign finance law. Similarly, changes which ensure or encourage where possible coordination with the Secretary of State reduce any alleged economic or consumer impact.

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

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

10. Course of Action from Last Review

This rule did not require any corrective action from the last review. The Commission amended Rule R2-20-109, 110, and 111 in light of recent legislation.

11. Least Burden and Costs

The rule achieves its underlying regulatory objective with the least burden and cost possible, and the probable benefits of each rule outweigh its probable costs. For example, R2-20-109(B)(4) provides the only public, promulgated government statement in Arizona on when an entity may be found to have the predominant purpose of influencing elections, the key factor in determining whether an entity is a political committee under A.R.S. § 16-905(B). Subsection (B)(4) also provides that, “the commission may . . . 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.” The rules also provide that the Commission may The Commission’s rules provide clarity and predictability that would not otherwise exist, thus reducing regulatory burden. Finally, by encouraging coordination where possible with the Secretary of State’s Office, further mitigates any alleged burdens or costs.

12. Determination to corresponding federal law

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

13. A.R.S. § 41-1037

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

14. Course of Action

a. Action Taken (Appendix F, G)

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

On July 25, 2013, the Commission considered rule amendments to subsections (A) – (G) of the rule in order to clarify that the rule applies to all persons who are

obligated to file the Commission's campaign finance reports and clarify the reporting requirements under the statute. The Commission approved the rule for publication for a 60-day public comment period in which to solicit feed back from the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On September 11, 2014, the Commission adopted final emergency amendments to the rule. Subsection (F) was amended to clarify language related to the Commission's enforcement of reporting requirements and exceptions under the Clean Elections Act, rules and related penalties. Subsection (F)(3)(c) was amended to clarify the penalties for amounts not reported during the election. Subsection (F)(3)(d) was added to clarify that the amounts in (a), (b), and (c) are subject to adjustment of A.R.S. § 16-959. Language was added to subsection (F)(4) to clarify that any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance or intends to comply with A.R.S. §§ 16-920 and -914.02 may seek an exemption from the reporting requirements of the Act. Subsection (F)(5) was amended by removing subsections (a) and (b) in regards to an organization's primary purpose and certification that the organization does not intend to accept donations or contributions for the purpose of influencing elections. Subsection (F)(6) was amended to clarify that organizations that do not receive an exemption from the Commission are required to file independent expenditure reports as specified in A.R.S. § 16-958. (20 A.A.R. 2804)

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

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

On August 20 and 21, 2015, the Commission approved rule amendment proposals for publication with the Arizona Administrative Register in order to solicit public comment for the revised rule proposals which included the Secretary of State's petition for a rule change and Mr. Langhofer's rule amendment proposal. The

Secretary of State proposed removing a reference to A.R.S. § 16-913 from the existing rule.

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

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

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

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

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

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

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

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

On October 28, 2015, the Commission submitted to the Governor's Regulatory Review Council the agency's 5-year review report detailing all Commission rule changes over the last five years. The Commission included possible proposed

actions regarding the rule because the public comment period for the rule had not yet concluded.

On October 29, 2015, during an open and public meeting, the Commission received public comment on the rule, rule amendments, and Secretary of State's petition for a rule change.

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

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

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

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

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

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

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

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

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

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

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

The Council did not take any action on the 5-year review report at the January 5, 2016 meeting. Instead the Council decided to move the agenda item to the Council's next meeting on February 2, 2016.

On February 2, 2016, the Council voted to return the 5-year review report to the Commission. The Council also voted to repeal subsections (F) and (G) of the rule. No reason for these actions was provided by the Council. The staff attorney subsequently informed the Commission that the new 5-year review report would be due May 30, 2016. At the May 5, 2016 meeting the Council granted an extension to for the submission of the revised 5-year review report.

On September 15, 2016, the Commission adopted final rule amendments to Rule R2-20-109. The amendments were intended to provide clarity during the 2016 cycle, and to reorganize the rule to be more logically organized and easier to understand by moving issues related to separate categories of regulated entities into separate rules. The amendments did the following:

- R2-20-109(B), (C), and (E), relating to participating candidates, were removed from the rule and renumbered as R2-20-110. R2-20-110 is renumbered as new section R2-20-114.

- R2-20-109(D), relating to transportation expenses, was removed from the rule and moved to R2-20-702(G).
- R2-20-109(F) was renumbered as R2-20-109(B).
- R2-20-109(F)(2) was deleted because the underlying statute, A.R.S. § 16-917, was repealed.
- R2-20-109(F)(3) was restructured in R2-20-109(B)(2)-(3).
- R2-20-109(F)(11) was deleted.
- R2-20-109(G) was removed from the rule and renumbered as R2-20-111.
- R2-20-110 was renumbered as R2-20-114.
- R2-20-111 was renumbered as R2-20-115.

On December 15, 2016, the Commission adopted several amendments to R2-20-109, 110, and 111. The rule amendments were made primarily to harmonize the Commission's rules with SB1516, and are made without waiver of any objections to the legal validity of SB1516 under the Arizona and United States Constitutions. The amendments did the following:

- R2-20-109:
 - 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 totally or partially unavailable. R2-20-109(A)(1)-(2).
 - Provides that campaign finance reports under A.R.S. §§ 16-941(D) and 16-958 shall be filed by all persons who make independent expenditures and details statutory penalties for failure to file such reports. R2-20-109(B)(2).
 - Clarifies that entities required to file campaign finance reports under Chapter 6 of Title 16 are subject to the Clean Elections Act unless the report is required of political committees and the entity is not a political committee. R2-20-109(B)(3)-(4).
 - Deletes R2-20-109(B)(4)-(11) related to exemptions from A.R.S. §§ 16-941 and 16-958 because the basis for those exemptions (former A.R.S. § 16-914.02) has been repealed.
- R2-20-110:
 - Updates rule to remove outdated cross-references. R2-20-110(C).
 - Reorganizes section on certain expenses into this section, moved from R2-20-703. R2-20-110(A)(4)(e).
 - Provides for a post-general election report for participating candidates to ensure monies owed to the Clean Elections Fund are returned and properly used. R2-20-110(C)(2)(b).
- R2-20-111:
 - Provides that the twenty percent reduction of contribution limits for nonparticipating candidates found in A.R.S. § 16-941(B) applies to all campaign contribution limits on contributions that the law permits candidates to accept. R2-20-111(E).

- Provides that the contribution limits as adjusted by A.R.S. § 16-931 shall be the base level contribution limits subject to reduction under A.R.S. § 16-941(B). R2-20-111(F).

b. Action Proposed

None. .

Attachments

- C- Rule amendments adopted in December 2016.

DRAFT

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.azcleanelections.gov

Nicole Ong Colyer
Chairwoman
Governor's Regulatory Review Council
100 N. 15th Ave #305
Phoenix, AZ 85007

Dear Chairwoman Ong Colyer:

Please find with this letter a resubmittal of the Arizona Citizens Clean Elections Commission's 5-year report addressing R2-20-109, 110, and 111. Following the Council's approval in part of the Commission's prior submittal, the Commission seeks approval of the remainder of its 5-year report. The Commission reserves its objections respecting the 5-year report process, including regarding Council authority over Commission rules and the Council's compliance with statute. The Commission considers approval of its 5-year report to be a finding that the report contains an "analysis of all of the" items listed in A.R.S. § 41-1056(A) and therefore "the report complies with subsection A of" A.R.S. § 41-1056. The Commission does not consider the Council's approval of the 5-year report under A.R.S. § 41-1056(C) to be an admission that the Council or any of its individual members endorses the report's substantive legal analysis or conclusions.

That said, the Commission's resubmittal of a portion of its report demonstrates substantial compliance with any decision the Council may have made to repeal commission rules. Specifically, as explained on Page 6 of the report, the Commission has eliminated substantial portions of R2-20-109, including former R2-20-109(F)(2) and (F)(4)-(11). Other provisions have been added to R2-20-111 to ensure coordination between the Commission and the Secretary of State's office where possible. *Id.* For these reasons, on behalf of the Commission, I request that the Council approve the remainder of the 5-year report and find that the prior decision relating to the repeal of rules moot.

Sincerely,

Thomas M. Collins
Executive Director

Doug Ducey
Governor

Thomas M. Collins
Executive Director



Steve M. Titla
Chair

Damien R. Meyer
Mark S. Kimble
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MEMORANDUM

To: Commissioners
From: Tom Collins
Date: 4/18/17
Subject: Update on circulating rule proposals

The current comment period for the proposed rules ends May 12. Currently, we have received very little public comment. However, as staff members, we have been reviewing and following up on reaction to certain aspects of the proposal. Based on that feedback, at the May meeting when the rules are eligible for adoption, we are likely to recommend the Commission forgo adopting to provisions of proposed R2-20-703.01. Specifically, we are likely to recommend *not adopting* the second sentence of proposed subsection 703.01(C)(2):

Only provide payment for such services as described in subsection (C)(1) of this rule upon receipt of an itemized, timely, invoice identifying the value of the services provided directly to that particular candidate. The invoice shall also identify the consultant's mark up, percentage or other additional charge above the actual cost of the service provided.

And refraining from adopting proposed subsection 703.01(E).

Any consultant engaged by a participating candidate shall provide the participating candidate and the Commission with a sworn affidavit identifying all other clients who are: candidates for any office in the state of Arizona, political committees, a person with tax exempt status under section 501(a) of the internal revenue code, or an unincorporated association, or corporations engaged independent expenditures in the state of Arizona. This affidavit shall be updated monthly beginning the first of the month of every month of the remaining election cycle. In the event the relationship is terminated a sworn affidavit so stating shall be provided to the participating candidate and the commission within 5 days.

While we think that these rule proposals are sound and comport with the anti-corruption principles animating the Act, we believe that the record keeping requirements already suggested are a better first step. We will continue to review our rules against legislation that has passed, consistent with past practice, and may consider additional audit-related rule changes in the future.

ITEM VI

R2-20-702(B) Option A:

A participating candidate's payment from a campaign bank account to a political committee or civic organization including a person with tax exempt status under section 501(a) of the internal revenue code or an unincorporated association is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing and obtaining voter or telephone lists, and payment of not more than \$200 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received. Clean elections funding shall not be used for an expenditure to any political party and such an expenditure shall be deemed an illegal contribution.

R2-20-702(B) Option B:

A participating candidate's payment from a campaign bank account to a political committee or civic organization including a person with tax exempt status under section 501(a) of the internal revenue code or an unincorporated association entity is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered such as for printing and obtaining voter or telephone lists, and payment of not more than \$200 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received. No other payments are permitted to political parties with clean elections funding.

R2-20-702(B) Option C:

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

A participating candidate may:

1. Make a payment from the candidate's campaign bank account:
 - a. To a political committee or civic organization including a person with tax exempt status under section 501(a) of the internal revenue code or an unincorporated association. The payment is not a contribution if the payment is reasonable in relation to the value received.
 - b. For customary charges for services rendered, such as for printing and obtaining voter or telephone lists, shall be considered reasonable in relation to the value received.
 - c. Of not more than \$200 per person to attend a political event open to the public or to

party members shall be considered reasonable in relation to the value received.

2. Not make an advanced payment to a political party for services such as consulting, communications, field employees, canvassers, mailers, auto-dialers, telephone town halls, electronic communications and other advertising purchases and other campaign services.
 - a. Payment for such services may be rendered only upon receipt of an itemized and timely invoice identifying the value of the service provided directly to the participating candidate.
 - b. Payment in the absence of an itemized invoice or advance payment for such services shall be deemed a contribution to the political party.
 - c. Payment may be advanced for postage upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of the postage.
 - d. Payment may be advanced for advertising that customarily requires pre-payment upon the receipt of a written estimate and

so long as any balance is returned to the candidate if the advance exceeds the actual cost of the advertisement.

e. A political party may not mark up or add any additional charge to the value of services provided to the particular candidate. All expenditures must be for the services used by the particular participating candidate.

f. The Commission shall be included in the mail batch for all mailers and invitations. The Commission shall also be provided with documentation from the mail house, printer or other original source showing the number of mailers printed and the number of households to which a mailer was sent. Failure to provide this information within 7 days after a mailer has been mailed may be considered as evidence the mailer was not for direct campaign purposes.

R2-20-703.01 Campaign Consultants (NEW RULE)

- A. For purposes of this rule “Campaign Consultant” means any person paid by a participating candidate’s campaign or who provides services that are ordinarily charged to a person, except services provided for in A.R.S. 16-911(6)(b).
- B. A participating candidate may engage campaign consultants.
- C. A participating candidate may:
 - 1. Not advance a campaign consultant for services such as consulting, communications, field employees, canvassers, mailers, auto-dialers, telephone town halls, electronic communications and other advertising purchases and other campaign services.
 - 2. Only provide payment for such services as described in subsection (C)(1) of this rule upon receipt of an itemized, timely, invoice identifying the value of the services provided directly to that particular candidate. ~~The invoice shall also identify the consultant’s mark up, percentage or other additional charge above the actual cost of the service provided.~~
 - 3. Providing payment for such services as described in subsection (C)(1) of this rule in the absence of an itemized invoice or advance

payment for such services shall be deemed not to be a direct campaign expenditure.

4. A participating candidate may advance payment for postage upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of postage.

5. A participating candidate may advance payment for advertising that customarily requires pre-payment upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of the advertisement.

D. The Commission shall be included in the mail batch for all mailers and invitations. The Commission shall also be provided with documentation from the mail house, printer or other original source showing the number of mailers printed and the number of households to which a mailer was sent. Failure to provide this information within 7 days after the mailer has been mailed may be considered as evidence the mailer was not for direct campaign purposes.

~~E. Any consultant engaged by a participating candidate shall provide the participating candidate and the Commission with a sworn affidavit identifying all~~

~~other clients who are: candidates for any office in the state of Arizona, political committees, a person with tax exempt status under section 501(a) of the internal revenue code, or an unincorporated association, or corporations engaged independent expenditures in the state of Arizona. This affidavit shall be updated monthly beginning the first of the month of every month of the remaining election cycle. In the event the relationship is terminated a sworn affidavit so stating shall be provided to the participating candidate and the commission within 5 days.~~

Bill	Title	Prime Sponsor	Summary	Committee Assignment	Support/Oppose/No	Date for Vote	Vote Outcome	COM Date	COM Outcome/Referred to Third Read	Vote Committee A Date for Vote?	Vote Outcome?	COM Date?	COM Outcome?	Third Read	Third Read Vote	Final Read		
SB 1123	State Contract Lobbyists Prohibition	Sen. Griffin	Would prohibit any state agency or commission from contracting with outside lobbyists.	Senate Gov	Oppose	25-Jan	Passed 4-3 (party lines)	23-Feb	Received a Do Pass as Amended recommendation	23-Feb	Passed 18-12	House Gov	3/9/2017	4-3 Passed	3/29/2017	Received a do pass recommendation	3/5/2017	Passed 35-23 Sent to the Governor and was signed into law
SB 1210	State Law Violations Political Subdivisions	Sen. Smith	Would allow members of the legislature to request the AG investigate any rule passed by a commission or agency they believe violates current law or the state constitution.	Senate Gov	Oppose	15-Feb	Passed 4-2-1											
SB 1372	Legislative Review of Rules	Sen. Montenegro	Would allow any standing committee of the legislature the ability to review any rule passed by an agency or commission.	Senate Gov	Oppose	15-Feb	Passed 4-3 (party lines)											
HB 2403	Clean Elections: Contributions Prohibited	Rep. Coleman	Would prohibit participating candidates from making direct or indirect payments to a political party	House Gov Held in Rules	Oppose	16-Feb	Passed 5-3 Held in Rules	23-Feb	Received a Do Pass as Amended recommendation	23-Feb	Passed 35-25 but failed to receive 3/4 vote so it does not go into effect							
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Bill	Title	Prime Sponsor	Summary	Effect on CEC	Committee Assignment	Support/Oppose/No Action	Date for Vote	Vote Outcome	COM Date	COM Outcome and Read On Third Read Vote Committee At Date (by Vote)	Vote Outcome?	COM Outcome?	COM Outcome?	Third Read	Third Read Vote?	Final Read		
									Shawn's Tracking List									
SB 1437	Agencies; Review; GRRC; Occupational Regulation	Sen. Barto	Allows a person to petition GRRC for review of a final rule that they do not believe meets specific requirements.	Allows for more intrusion into the Commission's rule making authority.	Senate Gov	Oppose	15 Feb	Passed 4-3 (party lines)	22 Feb	Received a Do Pass as Amended 27-Feb	Passed 18-12 Did not receive 3/4 vote.	House Military, Veterans, and Regulatory Affairs	13-Mar	5-4 passed	3/30/2017	Received a Do Pass recommendation	3/30/2017	Passed 34-20 sent to the Governor and was signed into law
	Shareholder Seminars for Shareholders	Sen. Barto	Requires the State Insurance Department to allow for shareholders to attend seminars for the purpose of	Requires the State Insurance Department to allow for shareholders to attend seminars for the purpose of	Senate Gov	Relatively Inert												

