STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION
MUR: Nos. 14-012 and 14-013 JOHN HUPPENTHAL
STATEMENT OF REASONS BY EXECUTIVE DIRECTOR

On behalf of the Citizens Clean Elections Commission ("Commission"), the Executive Director hereby provides the Statement of Reasons showing there is reason to believe that violations of the Citizens Clean elections Act and/or the Commission rules (collectively, the "Act") may have occurred.

I. Procedural Background

On August 14, 2014 and August 20, 2014, respectively, Linda Brinkman and James Barton II ("Complainants") filed complaints ("Brinkman Complaint" or "Barton Complaint") against John Huppenthal ("Respondent"), a participating candidate for Superintendent of Public Instruction, alleging Respondent violated Arizona's campaign finance laws by using his state office to provide a video for the purpose of influencing the primary election **(Exhibit A, B)**. Respondent submitted Responses on August 22 and September 30, 2014, respectively. **(Exhibit C, D)**.

II. Alleged Violations

Respondent recorded and distributed a video message to an email list of Arizona teachers from the Arizona Department of Education ("ADE") about his position on Arizona College and Career Ready Standards. A transcript of the disseminated video states the following:

> Hello my name is John Huppenthal, I am Arizona's Superintendent of Public Instruction. I have always supported rigorous standards that prepare our students for success in college, career and life. It is crucial that Arizona's public education system remains stable and continues to advance and support disciplined, organized classrooms with well-supported teachers. In the Arizona College and Career Ready Standards, I support sound standards like using phonics to teach reading proficiency, letter identification, and learning multiplication facts by third grade. These are excellent standards. However, I will always oppose any standard that presents an unbalanced debate on scientific topics like climate change, and I will always oppose any standard aimed at denigrating our Founding Fathers and the U.S. Constitution. I will also oppose any law that removes responsibility for curriculum choices from local school districts and boards and charter schools. Further, I intend to partner with the next governor and the education community to fully review the standards in a series of open, public forums to ensure that we are implementing standards that are best for Arizona students, and especially to ensure Arizona families have an opportunity to fully voice their concerns. Thank you.

The video was also made publically available via YouTube. It was published on August 12, 2014, two weeks before primary election day and followed a debate about Common Core that occurred the previous month. *See* Exhibit A.

By participating in the public financing portion of the Clean Elections system, Respondent has determined that he will not exceed the spending limits provided in the Act, and that he will not take contributions from any person other than an individual during the qualifying period and that he will be limited to public financing from Clean Elections thereafter. A.R.S. §§ 16-941(A), -945, -946, -947, -942(A), (C). Reporting requirements are also enforceable. A.R.S. § 16-942(B). Arizona law defines a contribution to include "any gift, subscription, loan, advance

or deposit of money or anything of value made for the purpose of influencing an election." A.R.S. § 16-961. The definition includes "[m]oney or the fair market value of anything directly or indirectly given or loaned to an elected official for the purpose of defraying the expense of communications with constituents, regardless of whether the elected official has declared his candidacy." *Id.* In contrast, "[m]oney or the value of anything directly or indirectly . . . provided by the state or a political subdivision to an elected official for communication with constituents if the elected official is engaged in the performance of the duties of his office" is not a contribution. *Id.* These provisions recognize that candidates, especially those who are also incumbent office holders, may benefit from resources that provide support for their candidacies. A similar, but distinct policy interest is recognized in other statutory provisions which prohibit the use of government resources to influence the results of elections. *See, e.g.*, A.R.S. § 16-192; *see also* Ariz. Att'y Gen. Op. I07-008 at 4 (concluding that county elected official may use their official titles when supporting ballot measures but "[r]egardless of whether county elected officials use their official titles, they may not use county public resources to fund, facilitate, or support such communications.").

Here, the allegation of the Complaint is that Respondent's communication through the ADE email list was a contribution to his campaign in violation of the Clean Elections Act and Rules. For example, Complainant Barton explains that communication uses talking points consistent across Respondent's campaign and

focuses on future actions he will take if reelected as superintendent. *Compare* Video Transcript ("I support sound standards like using phonics to teach reading proficiency, letter identification, and learning multiplication facts by third grade. These are excellent standards . . . I will also oppose any law that removes responsibility for curriculum choices from local school districts and boards and charter schools.") *with* Citizens Clean Elections Primary Election Candidate Statement Pamphlet at 20 (statement of John Huppenthal) ("Reject his opponents untruths and smears about his record. Huppenthal supports standards and local curriculum that are best for Arizona families, not standards imposed by the federal government."); *see also* Video Transcript ("I intend to partner with the next governor and the education community to fully review the standards in a series of open, public forums to ensure that we are implementing standards that are best for Arizona students, and especially to ensure Arizona families have an opportunity to fully voice their concerns").[1]

III. Response

Respondent filed two Responses. The first focuses largely on a mistaken citation in the Brinkman Complaint. The second is more substantive and addresses the merits of the Barton Complaint. In that Response, Respondent explains that Common Core had become an issue and his governmental staff urged him to make

[1] Complainant Barton cites A.R.S. § 16-901.01 for the proposition this communication was express advocacy.

a statement. Respondent asserts that his staff was "telling me that I needed to communicate with the education community to maintain a working relationship between our agency and the schools." He denies the communication had any political benefit and contends the issue was damaging because it "associated me with the Common Core standards."[2] Finally, he argues that rather than politics, his statement was a policy statement designed to address "turmoil and angst" in the education community.[3]

IV. Analysis

"Elected officials "acting in their official capacity shed no First Amendment rights in their advocacy of policies.'" Ariz. Att'y Gen. Op. I00-020 at 3 (quoting Smith v. Dorsey, 599 So. 2d 529, 541 (Miss. 1992). However, candidates do face legitimate restrictions on contributions and participating candidates agree to an even more restrictive set of campaign finance laws voluntarily in order to receive public financing. In this case, Respondent's video statement was indistinguishable from his campaign message, was presented to a key constituency two weeks prior to the election. Finally, if there as a significant doubt, Respondent unequivocally pledged to this constituency that he would undertake a policy initiative in his next

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2 For more information about Common Core, *see* http://www.corestandards.org/about-the-standards/, a website provided by the Council of Chief State School Officers and the National Governors Association Center for Best Practices.

3 Respondent refers to another video he did, but that video is not subject to the Complaints.

term to review the issue. This unambiguous campaign pledge through ADE resources represents a violation of A.R.S. § 16-941(A) as an in-kind contribution to the campaign and as a campaign expenditure.[4]

V. Investigation After Reason to Believe Finding

If the Commission determines by an affirmative vote of at least three (3) of its members that it has reason to believe a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding setting forth: (i) the sections of the statute or rule alleged to have been violated; (ii) the alleged factual basis supporting the finding; and (iii) an order requiring compliance within fourteen (14) days. A.R.S. § 16-957(A) & A.A.C. R2-20-208(A). The creation of the video and its distribution provide reason to believe there is a violation of 16-941(A), 942(A), (B).[5] To achieve compliance with the Act, Respondent must amend his campaign finance reports to accurately account for these contributions to his campaign and also pay back any such contributions that were accepted in violation of A.R.S. § 16-941(A).

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[4] This does not mean that every statement by an elected official in the course of their duties is a campaign contribution. But where, as here, the timing is close to the election, the message is identical to the campaigns, and it includes an explicit promise to a constituency to take action if reelected, there is a violation.

[5] Other penalties may be appropriate depending on the value established through further investigation.

During the fourteen (14) days after a finding of reason to believe a person has violated the Act, the Respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.

If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, the Commission shall conduct an investigation. A.A.C. R2-20-209(A). The Commission may authorize the Executive Director to subpoena all of the Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit. Upon completion of the investigation conducted pursuant to A.A.C. R2-20-209, the Executive Director shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur. The Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief. Within 5 days from receipt of the Executive Director's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case. After reviewing the respondent's brief, the Executive Director shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission

consideration. A.A.C. R2-20-214. Upon expiration of the fourteen (14) days, if the Commission finds that the alleged violator remains out of compliance, the Commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with A.R.S. § 16-942, unless the Commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. A.R.S. § 16-957(B).

After fourteen (14) days and upon completion of the investigation, the Executive Director will recommend whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred. A.A.C. R2-20-214(A). Upon a finding of probable cause that the alleged violator remains out of compliance, by an affirmative vote of at least three (3) of its members, the Commission may issue of an order and assess civil penalties pursuant to A.R.S. § 16-957(B). A.A.C. R2-20-217.

Dated this 8th day of October, 2014.

By: _____
Thomas M. Collins, Executive Director

EXHIBIT A

August 14, 2014

Executive Director Sara Larsen
Clean Elections Department
1616 W. Adams, Ste. 110
Phoenix, AZ 85007

Email: Sara.Larsen@AZCleanElections.gov

RE: Complaint against Superintendent of Public Instruction John Huppenthal
Complainant: Linda Brickman
19425 N. 36th Way,
Phoenix, AZ 85050
Cell: 602-330-9422

Dear Sara,

It has come to my attention after reviewing the Clean Elections law, attached document, R2-20-312, Use of state property, which Superintendent of Public Instruction John Huppenthal is in violation of said Rule.

Based upon information I have received from my email/phone sources, I, Linda Brickman, have attached an email that was mailed to educators by Superintendent Huppenthal on or about August 12, 2014 from his governmental office soliciting information on Arizona's College and Career Ready Standards "Common Core" and using public facilities and public equipment to get his word out to his campaign constituents. By reviewing the attached email, it clearly shows that Huppenthal used the logo from the Department of Education and sent it from his email address at his Department of Education location, as well as signed off using his title with the address below.

I have also attached an article written in the AZ Central on August 12, 2014 with Huppenthal admitting he used his office for said purposed (page 3, paragraph 3). Within this article, there is also a UTube video clearly identifying Mr. Huppenthal discussing his role in Arizona's College and Career Ready Standards.

I respectfully request that the Clean Elections Department investigate this Complaint.

Sincerely,

Linda Brickman

Linda Brickman

14AUG20 AM11:33 CCEC

LINDA S. BRICKMAN, Complainant

Sworn to and subscribed to before me on Aug. 14th, 2014, by Complainant, who is personally known to me [yes] X or [no] _____ or [ ] who produced an Arizona driver's license as identification.

Notary Public State of Arizona

(Affix Notarial Seal)

KELLY M ANTRIM
NOTARY PUBLIC, ARIZONA
MARICOPA COUNTY
My Commission Expires
March 17, 2018

http://azcleanelections.gov/docs/default-source/default-document-library/actrulesmanual-2014.pdf?sfvrsn=0

R2-20-312. Use of state property

A Commissioner or employee shall not directly or indirectly use, or allow the use of, state property of any kind, including property leased to the state, for other than officially approved activities. Commissioners and employees have a positive duty to protect and conserve state property including equipment, supplies, and other property entrusted or issued to him or her.

From: **John Huppenthal, Superintendent of Public Instruction**
<communications@azed.gov>
Date: Tue, Aug 12, 2014 at 9:19 AM
Subject: A Message from Superintendent Huppenthal
To:

Arizona
Department of Education

August 12, 2014

Good Morning,

I want to thank all of the education community for your great work in providing Arizona students with a high quality education. I am proud of your dedication and commitment, and I am particularly proud to lead such an extraordinary education system.

To those dedicated to the implementation of Arizona's College and Career Ready Standards (AZCCRS), I want to reassure you, I wholly support your work. I am making every effort to assure Arizona does not destabilize our education system by rejecting the quality work already invested in the development and implementation of these new standards.

Recently my support for Arizona's College and Career Ready Standards has been misrepresented. Therefore, I have released the following video in the hope that I can better clarify my stance on AZCCRS.

Message on Arizona's Standards

Again, thank you for your efforts in supporting the

transition to the new and better standards. To read the transcript of the video, please click here.

Sincerely,

John Huppenthal
Superintendent of Public Instruction

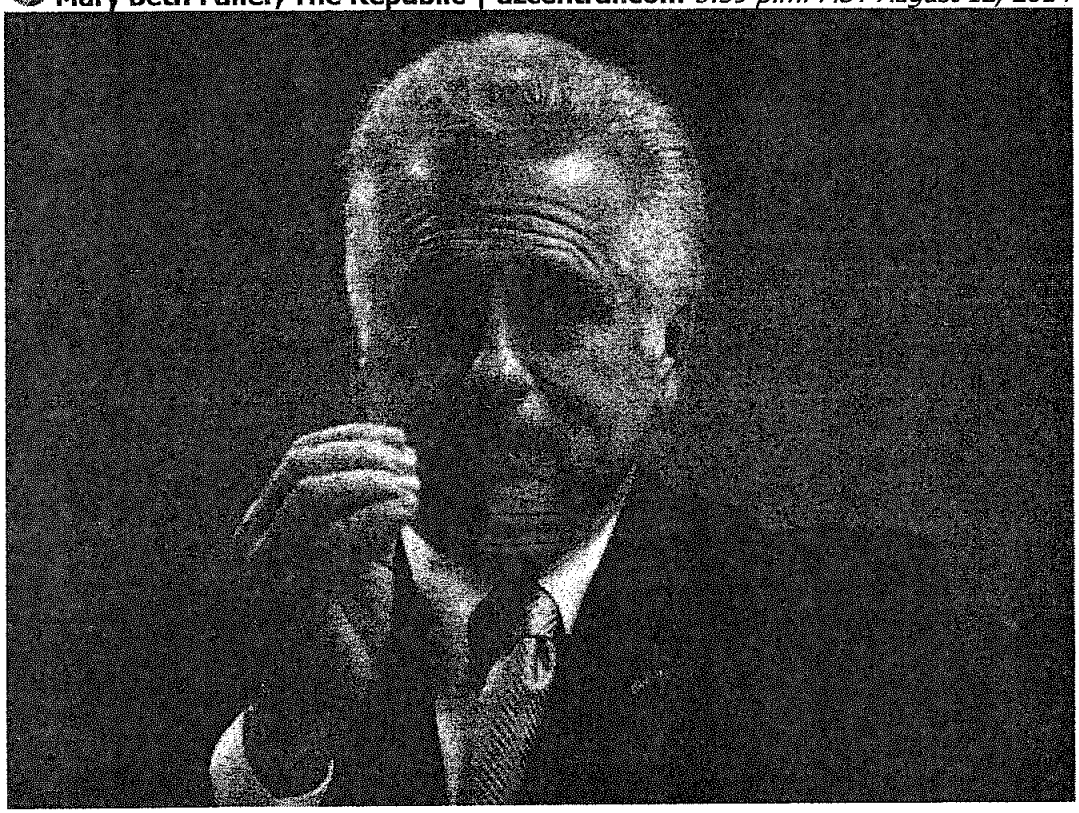
Arizona Department of Education | 1535 W. Jefferson | Phoenix | AZ | 85007

http://www.azcentral.com/story/news/arizona/politics/2014/08/12/huppenthal-posts-video-accusations-flip-flopping-common-core/13973217/

Huppenthal posts video after 'flip-flopping' accusations

The "Square Off" roundtable discusses the stunning flip-flop on Common Core standards by Arizona School Superintendent John Huppenthal. Huppenthal is locked in a tough GOP primary with Common Core foe Diane Douglas. Also: the panel's predictions.

Mary Beth Faller, The Republic | azcentral.com *5:39 p.m. MST August 12, 2014*



(Photo: Michael Chow/The Republic)

STORY HIGHLIGHTS

- **John Huppenthal, Arizona schools chief, posted a video reaffirming his support for Common Core.**
- **Last week, he said, "I never supported Common Core," and faced accusations of "flip-flopping."**
- **Huppenthal's challenger in the Republican primary has made opposition to Common Core her key issue.**

Arizona schools chief John Huppenthal posted a video Tuesday affirming his support for the state's new academic standards after accusations that he had reversed his position on the issue.

He told *TheArizona Republic* that the video clarifies which parts of the standards he supports and reiterates his plan to review them.

RELATED: Common Core central to race for Arizona superintendent

RELATED: Huppenthal, GOP challenger Douglas debate schools

Arizona's College and Career Ready Standards, also known as Common Core, has emerged as a key issue in the election for state superintendent of public instruction.

Huppenthal, who is running for re-election, spent his first term supporting and defending Common Core, a national program that Arizona adopted in 2010.

The math and English standards, which were fully in place for the 2013-14 school year, are a set of academic guidelines that determine what concepts students should know and at what grade level.

Huppenthal is facing a Republican primary opponent who has focused her entire campaign on repealing the standards. Common Core has been criticized as federal overreach by many conservatives, including Diane Douglas, the GOP candidate.

Last week during a debate with Douglas, Huppenthal said, "I never supported Common Core."

He went on to say that he never supported the entire Common Core agenda, including the proposed science standards, which have not been adopted.

Many, including David Garcia, a Democratic candidate for the office, accused Huppenthal of "flip-flopping" on the issue. Garcia and his Democratic primary opponent, Sharon Thomas, support the standards.

The 90-second video was posted to YouTube and e-mailed to the state's teachers on Arizona Department of Education letterhead Tuesday. In the e-mail message, Huppenthal said he posted the video because his message "has been misrepresented."

In the video, he says he supports "standards that prepare our students for success in college and career and life."

He goes on to address points often brought up by conservatives: "I will always oppose any standard that presents an unbalanced bait on science topics like climate change," and "I will always oppose any standard aimed at denigrating our founding fathers and the U.S. Constitution."

Huppenthal's video reiterates his plan to hold a series of forums on revising the standards.

He told *The Republic* that he is planning an elaborate, multistage hearing process that would involve the next governor and national and state experts, as well as educators, parents and community members.

"We need to separate the concerns about the standards and the concerns about the curriculum, lesson plans and textbooks," he said. "With sufficient depth, you can clear up the confusion and put policies in place that are pleasing to the entire political spectrum."

The primary election is set for Aug. 26, and early voting has been underway for a few weeks.

Huppenthal said it was appropriate to send the message using his office.

"In my view, it was necessary because to a certain extent, the political environment is destabilizing the education environment," he told *TheRepublic.* "My first priority is to stabilize the educational environment, and that was my motivation to send it out."

Douglas on Tuesday said that Huppenthal "does not address any of the serious concerns raised about the Common Core," specifically citing concerns over math education.

"I will leave it to Arizona voters to determine if, once again, Mr. Huppenthal's use of the (Arizona Department of Education) logo and taxpayer resources to send this campaign message to our education community is appropriate," Douglas said.

Both Garcia and Thomas also released statements Tuesday saying that the video was evidence that Huppenthal had again changed his stance.

EXHIBIT B

Torres Law Group, PLLC
An Arizona Law Firm

Israel G. Torres James E. Barton II

August 20, 2014

Hand Delivery

Thomas Collins, Executive Director
CITIZENS CLEAN
ELECTIONS COMMISSION
1616 W. Adams, Suite 110
Phoenix, AZ 85007

'14 AUG 20 PM 1:25 CCEC

RE: COMPLAINT AGAINST CANDIDATE JOHN HUPPENTHAL FOR ACCEPTING EXCESSIVE CONTRIBUTIONS

Mr. Collins:

The Arizona Democratic Party has become aware that candidate for Superintendent of Public Instruction John Huppenthal, on August 12 at 9:12 a.m., sent an email message to all public school teachers clearly identifying himself as a candidate and, in the given context, could have no reasonable meaning other than to advocate for his election. By this letter, and on behalf of the Arizona Democratic Party, I request that you investigate this violation of Arizona election law.

Express Advocacy

Under Arizona Revised Statutes Section 16-901.01, express advocacy means:

> Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the communication or the inclusion of statements of the candidate(s) or opponents.

Here, the communication was an email directed to every public school teacher, an important subset of the electorate for a candidate running for Superintendent of Public

2239 W. Baseline Rd., Tempe, AZ 85283
Office: 602.626.8805 • Fax: 602.626.8889
www.TheTorresFirm.com

Instruction. The audience for the communication suggests that it is express advocacy. A copy of the email message forwarded to Arizona Democratic Party Executive Director DJ Quinlan is attached as Exhibit A, with attorney client privileged communications redacted.

The YouTube video linked within this message can be viewed here: http://tinyurl.com/ka6awza (last viewed 8/20/2014). The text of the video is attached as Exhibit B. In the message, candidate Huppenthal states, "It is crucial that Arizona's public education system remains stable and continues to advance and support disciplined, organized classrooms with well-supported teachers," thus suggesting that he should remain in his current post as Superintendent.

He also includes talking points from his campaign, such as, "I will always oppose any standard that presents an unbalanced debate on scientific topics like climate change, and I will always oppose any standard aimed at denigrating our Founding Fathers and the U.S. Constitution." The number one issue from his campaign website is:

> **American History & U.S. Constitution**
>
> Superintendent Huppenthal will continue to speak with a clear voice that our Founding Fathers were heroes and that our Constitution is sacred. In his first term, Superintendent Huppenthal created the Excellence in Civics Engagement Program, an initiative dedicated to ensuring students are civically informed, historically mindful and engaged citizens.

http://huppenthal2014.com/vision-for-the-future/ (last viewed 8/20/2014).

The piece closes with a naked reference to the upcoming elections with, "Further, I intend to partner with the next governor and the education community." Thus, the content of the piece plainly advocates for his election and addresses election issues.

Finally, the piece came out in the final days of the primary election campaign. The timing of the piece solidifies this as a piece having no reasonable meaning other than to advocate for his election.

Contribution Limits

As you noted in your recommendation concerning the Secretary of State's proposed appearances in voter education campaigns, "contributions to offset the cost of constitute communications by an elected official are a campaign contribution . . . unless the money is 'provided by the state or political subdivision to an elected official for communication with constituents if the elected official is engaged in the performance of the duties of his office.'" A.R.S. § 16-901(5)(b)(ii); *cf.* A.R.S. § 16-901(5)(a)(ii). There is no such allocation of funds from the state budget to require the Superintendent to campaign for

re-election to the public school teachers. Thus, this expenditure was an in-kind contribution to Mr. Huppenthal's campaign.

As participating candidates are only permitted to take small contributions from individuals, candidate Huppenthal's accepting this in-kind contribution violates the Clean Elections Act, and I request that the Commission take action on this violation.

The contents of the above complaint are based on my personal knowledge, except where otherwise stated. I swear under penalty of perjury to the accuracy of the above statements.

Sincerely,

James E. Barton II

SUBSCRIBED AND SWORN to before me on this 20th day of August, 2014.

Notary Public

My commission expires: 2/24/2015

OFFICIAL SEAL
IVANA KOMLJENOVIC
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires Feb. 24, 2015

cc: Arizona Democratic Party

Exhibit A

Jim Barton

From: DJ Quinlan <DQuinlan@azdem.org>
Sent: Tuesday, August 12, 2014 1:32 PM
To: Jim Barton
Subject: FW: A Message from Superintendent Huppenthal

[redacted]

---------- Forwarded message ----------
FYI - look what every public school teacher just received.

---------- Forwarded message ----------
From: **John Huppenthal, Superintendent of Public Instruction** <communications@azed.gov>
Date: Tue, Aug 12, 2014 at 9:19 AM
Subject: A Message from Superintendent Huppenthal

Arizona
Department of Education

August 12, 2014

Good Morning,

I want to thank all of the education community for your great work in providing Arizona students with a high quality education. I am proud of your dedication and commitment, and I am particularly proud to lead such an extraordinary education system.

To those dedicated to the implementation of Arizona's College and Career Ready Standards (AZCCRS), I want to reassure you, I wholly support your work. I am making every effort to assure Arizona does not destabilize our education system by rejecting the quality work already invested in the development and implementation of these new standards.

Recently my support for Arizona's College and Career Ready Standards has been misrepresented. Therefore, I have released the following video in the hope that I can better clarify my stance on AZCCRS.

Message on Arizona's Standards

Again, thank you for your efforts in supporting the transition to the new and better standards. To read the transcript of the video, please click here.

Sincerely,

John Huppenthal
Superintendent of Public Instruction

Arizona Department of Education | 1535 W. Jefferson | Phoenix | AZ | 85007

Exhibit B

Hello my name is John Huppenthal, I am Arizona's Superintendent of Public Instruction.

I have always supported rigorous standards that prepare our students for success in college, career and life.

It is crucial that Arizona's public education system remains stable and continues to advance and support disciplined, organized classrooms with well-supported teachers.

In the Arizona College and Career Ready Standards, I support sound standards like using phonics to teach reading proficiency, letter identification, and learning multiplication facts by third grade. These are excellent standards.

However, I will always oppose any standard that presents an unbalanced debate on scientific topics like climate change, and I will always oppose any standard aimed at denigrating our Founding Fathers and the U.S. Constitution.

I will also oppose any law that removes responsibility for curriculum choices from local school districts and boards and charter schools.

Further, I intend to partner with the next governor and the education community to fully review the standards in a series of open, public forums to ensure that we are implementing standards that are best for Arizona students, and especially to ensure Arizona families have an opportunity to fully voice their concerns.

Thank you

EXHIBIT C

August 22, 2014

Arizona Citizens Clean Elections Commission
1616 W. Adams Suite 110
Phoenix, AZ 85007

RE: CCEC MUR No. 14-012

Dear CCEC Campaign Finance Manager Larsen and Commissioners:

I am requesting that the complaint filed by Ms. Brickman be summarily dismissed as lacking no merit. I request that the complaint be dismissed on the following grounds:

1.) The complainant specifically cites administrative law code R2-20-312 as being in violation as the basis for her complaint. R2-20-312 pertains to administrative codes that govern the conduct of *CCEC commissioners and their employees* with respect to the use of state property. Respectfully, this complaint should have been immediately dismissed upon it being filed as R2-20-312 has no legal jurisdiction beyond the conduct of CCEC commissioners and CCEC employees.

2.) **The complaint is vague and lacking specificity of alleged violation and what language purportedly constitutes electioneering using State resources.** The complaint does not specify what language used of referenced communications violates an elections state statute or administrative code governing qualifying Clean Elections candidates.

3.) **The complainant's vague assertions that state property was used for political purposes are patently false.**

The complainant, herself, references in her August 14, 2014 compliant letter to Ms. Larsen that "an email that was mailed (sic) to educators by Superintendent Huppenthal from his governmental office..." In my official capacity as Superintendent of Public Instruction, I frequently send communications to educators regarding important education topics. Educators are the direct customers of the State Department of Education, receiving important services such as: standards training, professional development, professional certifications, etcetera. Furthermore, it should come as no surprise that the state seal and Arizona Department of Education logo would be used in official communications to members of the public and Department constituents. This is an entirely appropriate and expected use of State of Arizona and Department logos.

4.) **The complainant fails to identify how the documented communications constitute political activity and a direct appeal to voters (campaign constituents), as alleged.**

Within the communications referenced in CCEC MUR No. 14-012 there is no language advocating for the election or defeat of a candidate or support/lack of support for a ballot initiative. There is no language used regarding voting, election activities, political fundraising, or any other language that would be construed as electioneering.

Based on the above assertions, I respectfully request that the Arizona Citizens Clean Election Commissioners dismiss Ms. Brickman's complaint as having no merit based on a lack of

specificity and lack of evidence that a violation took place. Furthermore, this complaint has no legal standing as R2-20-312 pertains only to the conduct of CCEC Commissioners and their staff.

Sincerely,

John Huppenthal

JOHN HUPPENTHAL, Respondent

Sworn to and subscribed to before me on 8-22, 2014, by Respondent, who is personally known to me [yes]_____ or [no] _____ or [✓] who produced an Arizona driver's license as identification.

Notary Public State of Arizona

(Affix Notarial Seal Below)

WILLIAM PARSONS
Notary Public - Arizona
Maricopa County
My Comm. Expires Sep 13, 2017

EXHIBIT D

To: Clean Elections Commission

Re: Response to Complaint against Superintendent Huppenthal

The key issue is the phrase reasonable interpretation of communication. Both issues, the Empowerment Scholarship Accounts and the Common Core Standards were subjects of great turmoil and angst within the Education community.

Both of these issues were very much education issues. My staffs, with their decades of experience and accolades in education, were telling me that I needed to communicate with the education community to maintain a working relationship between our agency and the schools.

I do not believe that I gained any political benefit from either of these communications. I know specifically that the one communication was very damaging to me because it associated me with the Common Core standards.

The phrases quoted as being political quotes, are in fact, policy quotes that moved from policy to the political realm, not the reverse.

The education system is in the fight for its life, caught in a conflict that has very little to do with education. I would ask that you exercise caution in your examination of these two small communications.

I would also point to my track record of extreme caution in using public resources to publicize my name. For example, my name and picture are not even on the front page of the department's web site that is visited 1.5 million times per year.

John Huppenthal

9/30/14

STATE OF ARIZONA
COUNTY OF Maricopa } ss.

Subscribed and sworn (or affirmed) before me this 30th day of September, 2014.

Notary Public

Sara A. Larsen

SARA A. LARSEN
Notary Public—Arizona
Maricopa County
Expires 06/01/2016

STATE OF ARIZONA

CITIZENS CLEAN ELECTIONS COMMISSION

In the Matter of: John Huppenthal and Committee(s), Respondent	MUR Nos. 14-012, -013, -026 **CONCILIATION AGREEMENT**

Pursuant to ARS § 16-957(A), the Citizens Clean Elections Commission (the "Commission") and John Huppenthal, participating candidate for Superintendent of Public Instruction ("Respondent") enter this Conciliation Agreement (the "Conciliation Agreement") in the manner described below:

1. On October 16, 2014 and March 26, 2015, the Commission adopted the Statement of Reasons (the "Statement of Reasons"), copies of which is attached hereto and incorporated herein by reference, setting forth the recommendation of the Executive Director that there is reason to believe Respondent may have committed a violation of the Citizens Clean Elections Act and Commission rules (collectively, the "Act").
2. Candidates who participate in public financing must abide by the Clean Elections Act and Rules and the Commission has authority to enforce the Act and Rules pursuant to A.R.S. § 16-956(A)(7), including reporting requirements applicable to any candidate.
3. Respondent received a contribution in violation of A.R.S. § 16-941(A) and did not report this contribution as explained in the Statement of Reasons. The Commission could establish that the value of the contribution, including the emails of teachers, staff and educators was $14,400.

4. This Conciliation Agreement concludes the Commission's enforcement proceeding respecting the facts outlined in the attached Statement of Reasons.

WHEREFORE, the Commission enters the following orders in lieu of any other action regarding this matter:

1. Respondent acknowledges that pursuant to A.R.S. § 16-942(A), a violation of A.R.S. §16-941 by a participating candidates is ten times the amount in excess of the statutorily established limit, that under A.R.S. § 16-942(B) the statutory penalty for any reporting violation is up to $860 per day up to twice the value of the unreported amount, and that under A.R.S. § 16-942(C) significant violations of A.R.S. § 16-941 shall result in disqualification or forfeiture of office.
2. Respondent acknowledges the violations set forth in the attached Statement of Reasons for MURs 14-012, 14-013, and 14-026.
3. In view of the Commission's concerns respecting the facts outlined in the Statement of Reasons, Respondents agrees to settle this matter by amending his campaign finance reports as set forth:
   a. Reporting all expenditures incurred during the primary election period including those that were made in error and refunded; and
   b. Reporting all in-kind contributions, including the contribution of e-mails set from Respondent's official government e-mail account on August 14, 2014.
4. Within one week of the execution of this Agreement, Respondent shall provide to the Commission staff copies of any and all amendments to campaign finance reports required by this Agreement. Commission staff shall review the reports. Respondent agrees to provide Commission staff with any supplemental information necessary in view of Commission staff to verify their existing, amended or proposed amended reports.
5. Respondent agree to comply with any applicable campaign finance reporting obligations respecting this contribution.

6. This Agreement shall be construed under the laws of the State of Arizona.

7. In the event that any paragraph or provision hereof shall be ruled unenforceable, all other provisions hereof shall be unaffected thereby.

8. This Agreement shall constitute the entire agreement between the parties regarding the subject matter. This Agreement shall not be modified or amended except in a writing signed by all parties hereto.

9. This Agreement shall not be subject to assignment.

10. No delay, omission or failure by the Commission to exercise any right or power hereunder shall be construed to be a waiver or consent of any breach of any of the terms of this Agreement by the Respondent.

11. Respondent has obtained independent legal advice in connection with the execution of this Agreement or have freely chosen not to do so. Any rule construing this Agreement against the drafter is inapplicable and is waived.

12. This Agreement shall be void unless executed by the Respondent and delivered to the Commission no later than March 27, 2015.

13. All proceedings commenced by the Commission in this matter will be terminated and the matter closed, upon receipt of the final payment of the civil penalty as set forth in this Agreement.

Dated this 26 day of March, 2015.

By: _____
Thomas M. Collins, Executive Director
Citizens Clean Elections Commission

By: _____
John Huppenthal, Respondent