

Thurs, Dec. 12, 2013

To: State of Arizona Citizens Clean Elections Commission

FROM: Representative Douglas Quelland

RE: Request for Administration Hearing

13 DEC 12 PM 12:43 CCEC

As mentioned in your letter of December 5, 2013, I am providing the information you requested.

I Douglas Quelland of 3746 West Monte Cristo Ave. Phoenix, Arizona 85053 am the party who is Appealing the action of the State of Arizona Citizens Clean Elections Committee in denying my request to be certified as a Clean Election Candidate and eligible to collect \$5 contributions in order to receive funding to finance my campaign for State Senator from District #20.

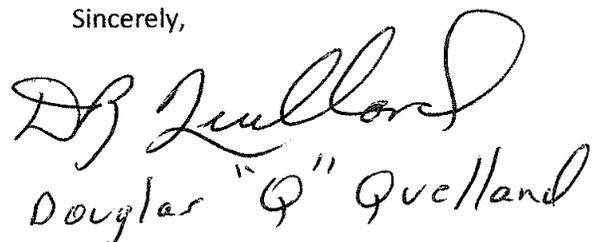
The statement of reasons for the appeal or request for hearing are as follows:

According to the U.S. Constitution and the Arizona State Constitution I must be afforded Due Process as allowed in the Amendments to the Constitution. I am being denied my rights guaranteed to me by the U.S. Civil Rights Act and by the U.S. Voting Rights Act. I have the expressed right to confront my accusers and to offer evidence. The CCEC has offered ARS 16 947 D as a statute that takes away my voting rights and my rights to funding available to other candidates. Since the CCEC was created by an initiative passed by the voters of Arizona, it can only be amended by the Legislature in a manner that improves the statute. Furthermore the addition to the Initiative amendment is limited to a single item Feature. ARS 16 947 D is a multiple addition .

Lastly, ARS 16 947 D has not been vetted by the U.S. Attorney's Office of Elections. It is unconstitutional, deprives me of my Due Process , Civil Rights and Voting Rights.

Please contact me if you have any questions at (602) 999-8748 or by e-mail at dougquelland@cox .net.

Sincerely,

  
Douglas "Q" Quelland



1           3. On or about November 23, 2013, the Commission received a handwritten  
2 letter from Mr. Quelland stating that he was appealing and requesting a hearing on the  
3 Commission's denial.<sup>4</sup>

4           4. On December 5, 2013, the Commission responded to Mr. Quelland's  
5 November 23, 2013 letter, informing him that A.R.S. § 41-1092.03(B) required "the  
6 notice of appeal and request for administrative hearing to 'identify the party, the party's  
7 address, the agency and the action being appealed or contested and shall contain a  
8 concise statement of the reasons for the appeal or request for hearing.'" The  
9 Commission's letter also informed Mr. Quelland that "[w]hile notices of appeal are due  
10 within 30 days from the date of the agency decision, you may file an adequate notice  
11 [of] appeal by Friday December 13, 2013."<sup>5</sup>

12           5. On December 13, 2013, the Commission received Mr. Quelland's request for  
13 administrative hearing that identified his address, the agency, and the action being  
14 appealed. For the concise statement of the reasons for the appeal or request for  
15 hearing, Mr. Quelland stated as follows:

16                   According to the U.S. Constitution and the Arizona State  
17                   Constitution I must be afforded Due Process as allowed in  
18                   the Amendments to the Constitution. I am being denied my  
19                   rights guaranteed to me by the U.S. Civil Rights Act and by  
20                   the U.S. Voting Rights Act. I have the expressed right to  
21                   confront my accusers and to offer evidence. The  
22                   [Commission] has offered ARS 16 947 D as a statute that  
23                   takes away my voting rights and my rights to funding  
24                   available to other candidates. Since the [Commission] was  
25                   created by an initiative passed by the voters of Arizona, it  
26                   can only be amended by the Legislature in a manner that  
27                   improves the statute. Furthermore the addition to the  
28                   initiative amendment is limited to a single item Feature.  
29                   ARS 16 947 D is a multiple addition.

30                   Lastly, ARS 16 947 D has not been vetted by the U.S.  
                  Attorney's Office of Elections. It is unconstitutional, deprives  
                  me of my Due Process, Civil Rights and Voting Rights.<sup>6</sup>

<sup>4</sup> See the Commission's Exhibit 3.

<sup>5</sup> The Commission's Exhibit 4.

<sup>6</sup> The Commission's Exhibit 5.

1           6. The Commission referred the matter to the Office of Administrative Hearings  
2 ("the OAH"), an independent state agency, for an evidentiary hearing. On December 6,  
3 2013, the Commission issued a Notice of Hearing, setting a hearing in the OAH on  
4 February 6, 2014, at 8:00 a.m.

5           7. On January 15, 2014, the Commission's attorney filed a Motion to Dismiss  
6 and Vacate February 6, 2014 Hearing ("Motion to Dismiss") because it argued that Mr.  
7 Quelland's constitutional arguments could only be decided in a judicial forum, not by an  
8 administrative law judge ("ALJ") in the OAH.

9           8. The Commission's Motion to Dismiss alleged the following facts in support of  
10 its legal arguments: (1) On November 9, 2009, ALJ Thomas Shedden OAH Case No.  
11 08-0035-CCE affirmed the Commission's decision to remove Mr. Quelland from the  
12 Arizona House of Representatives for violating various sections of the Citizens Clean  
13 Elections Act and required him to pay a total of \$31,000.00 in civil penalties<sup>7</sup>; (2) On  
14 November 19, 2009, the Commission substantially accepted ALJ Shedden's decision in  
15 Case No. 08-0035-CCE<sup>8</sup>; and (3) Although Mr. Quelland appealed the decision to the  
16 Maricopa Superior Court in Case No. 08-0035-CCE, the Superior Court affirmed the  
17 Commission's actions<sup>9</sup> and Mr. Quelland did not pursue further appellate relief.<sup>10</sup>

18           9. On January 17, 2014, the ALJ assigned to hear this matter took the  
19 Commission's Motion to Dismiss under advisement, allowed Mr. Quelland until January  
20 30, 2014, to file a response to the Motion to Dismiss, ordered that the parties could  
21 make oral argument on the Commission's Motion to Dismiss at the beginning of the  
22 February 6, 2014 hearing, and stated that she would address the Motion to Dismiss in  
23 her recommended decision to the Commission.

24 \_\_\_\_\_  
25 <sup>7</sup> See the Commission's Exhibit 6 (the Commission's Executive Director's April 30, 2009 Probable Cause  
26 Recommendation); Exhibit 7 (ALJ Shedden's Administrative Law Judge Decision in Case No. 08-0035-  
CCE).

27 <sup>8</sup> See the Commission's Exhibit 8 (Commission's November 19, 2009 Order substantially adopting ALJ  
Shedden's Decision in Case No. 08-0035-CCE).

28 <sup>9</sup> See the Commission's Exhibit 9 (Order in Maricopa County Superior Court Case No. LC2009-000886-  
001 affirming the Commission's Order).

29 <sup>10</sup> See the Commission's Exhibit 10 (Mr. Quelland's July 27, 2010 Notice of Withdrawal of Notice of  
30 Appeal with prejudice of Order in Case No. LC2009-00886-001 in Court of Appeals, Division One Case  
No. 1 CA-CV 10-0477); the Commission's Exhibit 11 (Court of Appeals August 9, 2010 Order dismissing  
appeal in Case No. 1 CA-CV 10-0477).

1           10. On January 23, 2014, Mr. Quelland requested a four-week continuance to  
2 allow him to respond to the Commission's paperwork and to line up witnesses for the  
3 hearing. The Commission's attorney did not oppose Mr. Quelland's request for a  
4 continuance.

5           11. On January 29, 2014, the ALJ issued an order continuing the hearing until  
6 February 28, 2014.

7           12. On February 7, 2014, Mr. Quelland filed a response to the Commission's  
8 Motion to Dismiss. Mr. Quelland did not dispute the facts alleged in the Motion to  
9 Dismiss, but argued that A.R.S. § 16-947(D) was unconstitutional and that proper  
10 procedures had not been followed when it was enacted.

11           13. On February 18 and 19, 2014, Mr. Quelland submitted subpoenas to the  
12 OAH for either trial testimony or documents from the following persons or entities:

13           13.1 The Arizona Department of Revenue ("ADOR");

14           13.2 Lex Koestner, a current member of the Commission;

15           13.3 Daniel Ruiz, the Commission's former Campaign Finance Manager and  
16 current Deputy Director;

17           13.4 Magdalena Jorguez, the Arizona Senate's Rules Attorney;

18           13.5 Tim Fleming, the Arizona House of Representative's Rules Attorney; and

19           13.6 Lee Miller, an attorney in private practice who regularly appears before  
20 the Commission.

21           14. On February 19, 2014, pursuant to A.A.C. R2-19-113(B), the ALJ issued an  
22 order requiring Mr. Quelland "[to] submit a brief statement of the relevance of these  
23 witnesses' testimony and the documents described in the subpoenas to the threshold  
24 issue of whether the [ALJ] at the [OAH] has jurisdiction to decide the validity and  
25 constitutionality of A.R.S. § 16-947(D)."

26           15. Mr. Quelland submitted statements of the relevance of the witnesses and  
27 documents. On February 24, 2014, the ALJ issued an order denying Mr. Quelland's  
28 subpoenas because the anticipated testimony and documents were not relevant to the  
29 issues in the Commission's denial of his application for certification as a participating  
30 candidate under A.R.S. § 16-947(D), in relevant part as follows:

1 Mr. Quelland provided the following statements of  
2 relevance:

- 3 (1) Lee Miller would provide background  
4 [information that would] "rebut the AG's  
5 submitted misinformation" regarding the hearing  
6 in case no. 08-0035-CCE;
- 7 (2) Lex Koestner would provide background  
8 information "to refute the findings" of ALJ  
9 Shedden in case no. 08-0035-CCE;
- 10 (3) Daniel Ruiz would be asked "questions  
11 pertaining to false statements and testimony"  
12 given in the hearing in case no. 08-0035-CCE  
13 four years ago; and
- 14 (4) [ADOR] would be asked to produce sales tax  
15 information and corporate tax records that "will  
16 prove that false information and perjury [were]  
17 given four years ago" in the hearing in case no.  
18 08-0035-CCE.

19 According to the OAH docket, on November 19, 2009,  
20 the Commission substantially adopted ALJ Shedden's  
21 decision in case no. 08-0035-CCE and on May 17, 2010, the  
22 Honorable Crane McClennen affirmed the Commission's  
23 final order in Mr. Quelland's appeal in Maricopa County  
24 Superior Court Case No. LC2009-000886-001 DT. It does  
25 not appear that . . . any court ever reversed the  
26 Commission's final order.

27 Because the facts and regulatory and statutory  
28 violations that the Commission found in its final order in  
29 case no. 08-0035-CCE can only be attacked in a direct  
30 appeal, not in a subsequent administrative proceeding  
under A.R.S. § 16-947(D),<sup>11</sup> the anticipated testimony of Mr.  
Miller, Mr. Koestner, and Mr. Ruiz and the ADOR documents  
are irrelevant to the issues in this proceeding. Therefore,

<sup>11</sup> See, e.g., *O'Neil v. Martin*, 66 Ariz. 78, 86, 182 P.2d 939 (1947) (Department of Revenue's finding that tax was owed for one year is res judicata as to whether tax is owed for subsequent years); *General Cable Corporation v. Arizona Corporation Commission*, 27 Ariz. App. 386-87, 388, 555 P.2d 355 (1976) (Corporation Commission's decision approving new utility rates was conclusive and could not be collaterally attacked in subsequent superior court action).

1                   **IT IS ORDERED** denying Mr. Quelland's requests for  
2 subpoenas for the testimony of Mr. Miller, Mr. Koestner, and  
3 Mr. Ruiz and documents from ADOR.

4                   Mr. Quelland stated that Ms. Jorguez and Mr.  
5 Fleming's anticipated testimony would concern "the  
6 legislative background on A.R.S. § 16-947(D) and Rules  
7 Committee findings and public hearing on testimony," as  
8 well as "the substance of citizens input and testimony" on  
9 the statute. When an Arizona statute is construed, public  
10 comments made during legislative sessions or an individual  
11 legislator's testimony concerning his intent when the full  
12 legislature's intent are not considered.<sup>12</sup> Because Ms.  
13 Jorquez's and Mr. Fleming's testimony is irrelevant to the  
14 issues in this proceeding,

15                   **IT IS FURTHER ORDERED** denying Mr. Quelland's  
16 requests for subpoenas for the testimony of Ms. Jorquez's  
17 and Mr. Fleming's testimony. [Footnotes in original.]

18                   16. Mr. Quelland did not offer any legal arguments or authorities to dispute the  
19 preclusive, collateral effect of the Commission's final order in Case No. 08-0035-CCE  
20 or the irrelevancy of Ms. Jorguez's or Mr. Fleming's testimony to the Commission's  
21 denial of his application for certification as a participating candidate.

22                   17. A hearing was held on February 28, 2014. The Commission and Mr.  
23 Quelland made oral argument on the Commission's Motion to Dismiss. Mr. Quelland  
24 submitted one exhibit and testified on his own behalf. The Commission submitted  
25 thirteen exhibits and presented the testimony of Sara Larsen, its current Campaign  
26 Finance Manager.

27                   /////  
28                   /////  
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<sup>12</sup> See *Hayes v. Continental Ins. Co.*, 178 Ariz. 264, 269-70, 872 P.2d 668, 673-74 (1994) (nonlegislator's comments made in committee hearings not considered unless there are guarantees that statements reflect legislators' views); *City of Tucson v. Woods*, 191 Ariz. 523, 528, 959 P.2d 394, 399 (App. 1997) ("[A] single member of the legislature is not able to testify regarding the intent of the legislature in passing a law."); accord *City of Tucson v. Consumers for Retail Choice Sponsored by Wal-Mart*, 197 Ariz. 600, 605; 5 P.3d 934, 938 (App. 2000).

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**HEARING EVIDENCE**

18. Mr. Quelland fully paid the \$31,000.00 in civil penalties that the Commission had assessed in Case No. 08-0035-CCE.<sup>13</sup>

19. At the times that the Commission prosecuted and issued the final decision in Case No. 08-0035-CCE, Mr. Quelland had been elected to represent the residents of Legislative District 10 in the Arizona House of Representatives.

20. On May 26, 2010, the Commission sent a letter to the Arizona Secretary of State, "pursuant to ARS Sections 38-292 and 41-1202 to notify you of a 'Vacancy in Office' in Legislative District 7."<sup>14</sup>

21. On May 27, 2010, the Speaker of the Arizona House of Representatives sent a letter to Mr. Quelland "to notify you that today I received notice from the Secretary of State that your former seat in Legislative District 10 is now vacant. Pleased be advised that the House of Representatives considers that seat vacant pursuant to A.R.S. §§ 38-291(4) and 41-1201."<sup>15</sup>

22. Ms. Larsen testified that on October 24, 2013, when she received Mr. Quelland's application for certification as a participating candidate, she consulted with the Commission's Executive Director and Deputy Director. Ms. Larsen stated that because only two officials had ever been removed from office for violations of the Citizens Clean Elections Act, it was common knowledge at the Commission that Mr. Quelland was one of those candidates. Ms. Larsen testified that the Commission's Executive Director, Thomas Collins, is an attorney. Ms. Larsen testified that after a discussion, the Executive Director, Deputy Director, and she all agreed that A.R.S. § 16-947(D) required the Commission to deny Mr. Quelland's application.

23. Mr. Quelland testified that he served six terms in the Arizona legislature. Mr. Quelland stated that because the Citizens Clean Elections Act was the result of a citizens' initiative, the initiative cannot be changed without a public debate. Mr. Quelland asserted that Mr. Ruiz, Mr. Fleming, and Ms. Jorguez could testify about

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<sup>13</sup> See the Commission's Exhibit 14 (Satisfaction of Judgment in Maricopa County Superior Court Case No. CV2011-021738).

<sup>14</sup> The Commission's Exhibit 16.

<sup>15</sup> Mr. Quelland's Exhibit A.

1 whether any public debate preceded that Legislature's enactment of A.R.S. § 16-  
2 947(D). Mr. Quelland testified that in his experience, public debate did not always  
3 occur before the Legislature's vote on every statute.

4 24. Mr. Quelland made the offer of proof that Mr. Ruiz, Mr. Fleming, and/or Ms.  
5 Jorguez would testify that proper procedures were not followed when the Legislature  
6 enacted A.R.S. § 16-947(D).

7 25. Mr. Quelland testified that he had good defenses to the Commission's  
8 charges in Case No. 08-0035-CCE, but that because he ran out of money for attorney's  
9 fees, he did not pursue his appeal of the Commission's decision to the Arizona Court of  
10 Appeals.

### 11 CONCLUSIONS OF LAW

12 1. The Commission administers the Clean Elections Act and is responsible for  
13 enforcing the Act.<sup>16</sup> The denial of Mr. Quelland's application for certification as a  
14 participating candidate lies within its jurisdiction.

15 2. Mr. Quelland bears the burden of proof to establish that he meets applicable  
16 criteria to be certified as a participating candidate by a preponderance of the  
17 evidence.<sup>17</sup> "A preponderance of the evidence is such proof as convinces the trier of  
18 fact that the contention is more probably true than not."<sup>18</sup>

19 3. Ariz. Const. art. 4 part 1 § 1 concerns legislative authority and initiatives.  
20 Number (14) of that section sets forth the legislature's authority to adopt statutes that  
21 may affect a duly passed initiative and provides as follows:

22 **Reservation of legislative power.** This section shall not be  
23 construed to deprive the legislature of the right to enact any  
24 measure except that the legislature shall not have the power  
25 to adopt any measure that supersedes, in whole or in part,  
26 any initiative measure approved by a majority of the votes  
27 cast thereon or any referendum measure decided by a  
28 majority of the votes cast thereon unless the superseding  
29 measure furthers the purposes of the initiative or  
30 referendum measure and at least three-fourths of the

<sup>16</sup> See A.R.S. § 16-955 *et seq.*

<sup>17</sup> See A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

<sup>18</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 members of each house of the legislature, by a roll call of  
2 ayes and nays, vote to supersede such initiative or  
referendum measure.

3 As noted in the Commission's Motion to Dismiss, the Commission and the OAH are  
4 executive agencies that are charged with enforcing statutes that the Legislature has  
5 duly enacted.

6 4. Under the well-established common-law authorities cited in the Commission's  
7 Motion to Dismiss, principles of judicial review and separation of powers prohibit an  
8 administrative agency from declaring that a statute violates the United States or the  
9 Arizona constitutions or that a statute is invalid due to the legislature's failure to follow  
10 proper legal procedures in enacting the statute.<sup>19</sup> Therefore, neither the OAH nor the  
11 Commission have jurisdiction to determine the constitutionality or validity of A.R.S. §  
12 16-947(D). As also noted in the Commission's Motion to Dismiss, Mr. Quelland may  
13 challenge the constitutional and procedural validity of A.R.S. § 16-947(D) in a judicial  
14 forum.

15 5. Mr. Quelland argued that the Commission's notification to the Secretary of  
16 State of a vacancy in the wrong legislative district prevented its removal of Mr.  
17 Quelland from office from taking effect. The error in the Commission's May 26, 2010  
18 letter was a scrivener's error, which was corrected in the Speaker's May 27, 2010 letter.  
19 Neither document removed Mr. Quelland from office but only gave notice of the effect  
20 of the final order of the Superior Court dismissing Mr. Quelland's appeal of the  
21 Commission's order in Case No. 08-0035-CCE removing him from office. The evidence  
22 at hearing established that the Commission removed Mr. Quelland from office for  
23 violations of the Clean Elections Act.

24 6. A.R.S. § 16-947(D) concerns certification of participating candidates under  
25 the Arizona Clean Elections Act and provides as follows:

26 A candidate shall be denied certification if that candidate  
27 was removed from office by the commission or if the

28  
29 <sup>19</sup> See, e.g., *Ariz. Corp. Comm'n v. Tucson Gas, Elec. Light & Power Co.*, 67 Ariz. 12, 14, 189 P.2d 907,  
30 908 (1948); *Estate of Bohn v. Waddell*, 174 Ariz. 239, 249, 848 P.2d 324, 334 (App. 1993); *Pena v.*  
*Indus. Comm'n*, 140 Ariz. 510, 515, 683 P.2d 309, 314 (App. 1984); *Manning v. Reilly*, 2 Ariz. App. 310,  
312, 408 P.2d 414, 416 (1965).

1 candidate is delinquent in payment of a debt to the  
2 commission. If the debt is paid in full or if the candidate is  
3 current on a payment agreement with the commission, the  
4 candidate may apply for certification as a participating  
candidate and is eligible to be certified if otherwise qualified  
by law.

5 7. The first sentence of A.R.S. § 16-947(D) provides that “[a] candidate *shall* be  
6 denied certification if that candidate was removed from office by the commission *or* if  
7 the candidate is delinquent in payment of a debt to the commission.” (Emphases  
8 added.) “The use of the word ‘shall’ indicates a mandatory intent by the legislature.”<sup>20</sup>  
9 The use of the disjunctive, “or,” indicates that a candidate cannot be certified if either of  
10 the two described events has occurred.<sup>21</sup> A fundamental canon of construction in  
11 Arizona is that “each word and phrase of a statute must be given meaning so that no  
12 part is rendered void, superfluous, contradictory or insignificant.”<sup>22</sup>

13 8. Under these canons of statutory construction, the second sentence of A.R.S.  
14 § 16-947(D), which allows a candidate to be certified if he has paid his debt to the  
15 Commission in full, applies only to the second part of the disjunctive in the first  
16 sentence. If the Commission has removed a candidate from office, like Mr. Quelland,  
17 the Commission cannot certify the candidate, even if he has paid in full a past debt.  
18 Any other construction would render a nullity the first part of the disjunctive in the first  
19 sentence of A.R.S. § 16-947(D).

20 9. Therefore, A.R.S. § 16-947(D) required the Commission to deny Mr.  
21 Quelland’s application for certification as a participating candidate.

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26 <sup>20</sup> *Ins. Co. of North America v. Santa Cruz*, 166 Ariz. 82, 85, 800 P.2d 585, 588 (1990); see also *Joshua*  
27 *J. v. Arizona Dept. of Economic Sec.*, 230 Ariz. 417, 421, ¶ 11, 286 P.3d 166, 170 (App. 2012) (“The use  
of the word ‘shall’ in a statute usually indicates the legislature intended a mandatory provision.”).

28 <sup>21</sup> See, e.g., *Sharpe v. Arizona Health Care Cost Containment System*, 220 Ariz. 488, 495-96, ¶ 23, 207  
P.3d 741, 748-49 (App. 2009).

29 <sup>22</sup> *Pinal Vista Props., L.L.C. v. Turnbull*, 208 Ariz. 188, 190, ¶ 10, 91 P.3d 1031, 1033 (App. 2004); see  
30 also *Mejak v. Granville*, 212 Ariz. 555, 557, ¶ 9, 136 P.3d 874, 876 (2006) (“We must interpret the statute  
so that no provision is rendered meaningless, insignificant, or void.”).

**RECOMMENDED ORDER**

1  
2 Based on the foregoing, it is recommended that the Commission affirm its  
3 October 29, 2013 decision to deny Mr. Quelland's application for certification as a  
4 participating candidate and dismiss this appeal.

5 *In the event of certification of the Administrative Law Judge Decision by the*  
6 *Director of the Office of Administrative Hearings, the effective date of the Order will be*  
7 *five (5) days from the date of that certification.*

8 Done this day, March 18, 2014.

9 /s/ Diane Mihalsky  
10 Administrative Law Judge

11 Transmitted electronically to:

12 Thomas Collins, Executive Director  
13 Citizens Clean Elections Commission  
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