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LAWYERS

*17OCT 2 PM 1 32 CCEC

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September 28, 2017

Thomas Collins
Executive Director
Arizona Citizens Clean Elections Commission
1616 W. Adams Street, #110
Phoenix, AZ 85007
Thomas.Collins@azcleelections.gov

Re: Complaint Against American Federation for Children, Inc.

Dear Director Collins:

I write today to file a complaint with the Arizona Citizens Clean Elections Commission ("CCEC") regarding unreported independent expenditures made by the American Federation for Children, Inc. ("AFC"). AFC violated A.R.S. §§ 19-141, 19-158, and A.A.C. § R2-20-109(B) by making independent expenditures without filing a report with CCEC.

Specifically, beginning on or about August 23, 2017, AFC sponsored "robocalls" to certain voters in Legislative District 28 advocating against candidate Christine Marsh. Indeed, AFC sent a notice to Ms. Marsh by certified mail regarding the expenditure. [See 8/23/17 Letter from AFC to C. Marsh, attached hereto as Ex. A] The text of the "robocalls," as set forth in the AFC Notice, is as follows:

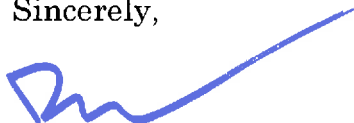
I'm calling from American Federation for Children with an alert about an elections scandal in this district. Christine Marsh, candidate for state senate, circulated a petition sheet which was later falsified and filed with the Arizona Secretary of State, a felony. Christine Marsh won't say whether it was she or someone else who broke the law by tampering with the document. Christine needs to come forward with the truth. Christine, stop hiding behind the 5th Amendment and come clean. Come clean Christine. Paid for by American Federation for Children, Inc., and not authorized by any candidate or candidate's campaign committee.

Thomas Collins
September 28, 2017
Page 2

AFC did not report this independent expenditure to CCEC by September 1, 2017, and thus is in clear violation of governing law.

I trust that you will conduct a thorough investigation, and that CCEC will impose civil penalties against AFC as authorized by Arizona law. Please feel free to contact me if you require any further information

Sincerely,




D. Andrew Gaona

DAG:slm
Enclosures

STATE OF ARIZONA)
 :ss.
County of Maricopa)

Subscribed and sworn (or affirmed) before me this 28th day of September, 2017, by D. Andrew Gaona.





Notary Public

Christine Marsh Robo Call

I'm calling from American Federation for Children with an alert about an elections scandal in this district.


Christine Marsh, candidate for state senate, circulated a petition sheet... which was later FALSIFIED... and filed with the Arizona Secretary of State, a FELONY.

Christine Marsh won't say whether it was she or someone else who broke the law by tampering with the document. Christine needs to come forward with the TRUTH. Christine, STOP hiding behind the 5th amendment and come clean.

Come clean Christine.

Paid for by American Federation for Children, Inc. and not authorized by any candidate or candidate's campaign committee.

202-280-1985



AMERICAN FEDERATION
for Children

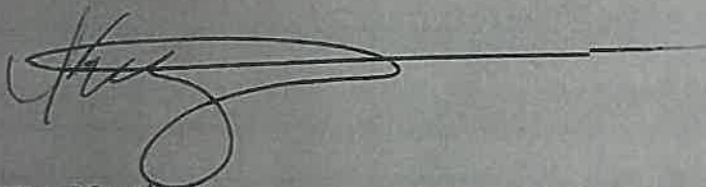
August 23, 2017

Christine Marsh
4117 E Charter Oak Rd
Phoenix, AZ 85032

Dear Christine,

The enclosed is a copy of an Independent Expenditure that is underway.

Sincerely,



Kim Martinez
Arizona Director of Communications
American Federation for Children
202-280-1990

Timothy A. La Sota, PLLC

2198 East Camelback, Suite 305

Phoenix, Arizona 85016

P 602-515-2649

tim@timlasota.com

*17NOV 8 PM12:20 CCEC

November 8, 2017

Via email and hand delivery to:

Thomas M. Collins
Executive Director
Arizona Citizens Clean Elections Commission
1616 W. Adams, Suite 110
Phoenix, Arizona 85007
Thomas.Collins@azccleanelections.gov

Re: CCEC MUR 17-002

Dear Mr. Collins:

The American Federation for Children, Inc. (Respondent) is in receipt of and has reviewed the Proposed Conciliation Agreement for MUR 17-02 (Agreement). We appreciate the expedited treatment that you've afforded this matter and we are confident that it can be resolved quickly and amenable to the Commission and the Respondent. Respondent respectfully proposes as a resolution that in lieu of any fine, Respondent agrees to file with the Commission any reports on expenditures made for the Christine Marsh robocalls and will file reports with the Commission for any expenditures that it reports to the Arizona Secretary of State. In support of this, Respondent offers the following:

1. The cost of the expenditures at issue was \$1169.10, not \$2534.50. This amount can be established by the reports that were filed with the Secretary of State.
2. It is Respondent's position that the calls at issue in the complaint did not contain express advocacy and therefore were not independent expenditures required to be reported by either reporting "scheme," that of the Secretary of State—as provided in §§ 16-922(F) and 16-926(H), or of the Commission—as provided in §§ 16-941 and 16-958. In keeping with its commitment to transparency and to avoid distracting from the force and purpose of the calls Respondent reported the expenditure and sent a copy of the calls' text to a candidate mentioned in the call, but under Arizona law, the calls were not independent expenditures. As fully explained in their Response, Respondent's calls did not include express advocacy as defined under either subpart 1 or 2 of A.R.S. § 16-901.01. The reasonable meaning of the calls—considering the statute's factors—was to call attention to apparently illegal conduct by a notable and vocal opponent of Respondent's position on school choice in Arizona. Without acknowledging Respondent's

position that the calls were not express advocacy or analyzing the calls under Arizona law, the Agreement simply concludes that the calls were independent expenditures subject to reporting.

3. Even assuming, *arguendo*, that the calls included express advocacy, Respondents timely attempted to file a report with the Secretary of State, which is the proper method of reporting under both reporting schemes. That the report was not “accepted” was the result of the settings of the Secretary of State’s automated reporting system.

4. The alternative reporting requirement that Complainant argues was not met here depends on doubtful legal authority that by its own terms and in these circumstances did not trigger the reporting that the Complaint claims was needed but not made.

a) The alternative reporting on which the Complaint is based is of dubious legal authority. R2-20-109 is the only source of an alternative to the reporting that Respondents did—filing electronically with the Secretary of State. But the online Arizona Administrative Code maintained by the Arizona Secretary of State refers to this Rule as “DISPUTED,” noting that “The Governor’s Regulatory Review Council and the Citizens Clean Elections Commission dispute whether R2-20-109 has expired. Those interested in that issue should consult counsel.” The Agreement considers Respondents’ reporting as in violation because it did not effect alternative reporting according to a Rule that the State acknowledges is disputed.

b) Even if legally valid, the alternative reporting requirement, by its terms, is required only when “expressly provided by . . . another Commission rule,” or the Secretary of State’s “Internet-based reporting system, or the necessary function on the system, is unavailable, in which case the executive director shall implement a substitute process.” Neither of these exceptions to reporting to the Secretary of State apply here. There was and is no other Commission Order requiring reporting other than to the Secretary of State, as required under A.R.S. § 16-941(D). The Secretary of State’s internet reporting system was available and Respondents effected reporting by entering the correct information into the system, in the same way and using the same system through which it had continually reported, without incident, over the last 7 years. In sum, even under the disputed Rule, no alternative reporting was required, and Respondents had no reason to know that their attempted reports did not satisfy any applicable reporting requirement.

5. In keeping with its commitment to transparency and to avoid further or future distraction from effectively pursuing its mission in Arizona, Respondent agrees to file the alternative report that Complainant argues was not filed and to file alternative reports in the future with the Commission when applicable.

Therefore, it is Respondent’s position that

6. The amount of the expenditure at issue here should be corrected in the record.

7. Respondent does not agree to a fine because

Mr. Thomas M. Collins
November 8, 2017

a) the Commission has not shown that the expenditures here contained express advocacy and were therefore required to be reported;

b) Respondents timely attempted to file a report with the Secretary of State, which is proper under the reporting scheme alleged to have been violated;

c) The additional reporting requirement to the Commission, which is the basis of the complaint here, depends on a rule of legal authority that Arizona concedes is disputed;

d) Even if valid, the disputed rule requires a separate report to the Commission only when the Commission so orders or when the Secretary of State's web-based reporting is not available and the Commission implements an alternative reporting process, and none of these conditions are applicable here;

e) Respondent had no cause to know that its attempted reporting failed to satisfy a reporting requirement that both the plain meaning of the statutes and experience advised was not applicable;

f) Respondent has nonetheless agreed to report separately to the Commission both the expenditure at issue here and future expenditures,

In summary, the agreement resolving this matter should reflect the correct value of the expenditures at issue and that Respondent does not agree that the expenditures contained express advocacy or were independent expenditures. And because Respondent does not agree that the reporting is necessary under Arizona law and maintains that the reporting attempted was timely and sufficient under Arizona law, Respondent does not agree to pay a "mitigated fine," and instead proposes that its agreement to additional and alternative reporting to the Commission as described above is a fair and just conclusion to this matter.

Very truly yours,

TIMOTHY A. LA SOTA PLC



Timothy A. La Sota

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

NOTICE OF COMPLAINT AND RESPONSE OPPORTUNITY
Via E-mail and Federal Express

November 2, 2017

Kim Martinez, American Federation for Children, Inc.
c/o Timothy A. La Sota
2198 East Camelback, Suite 305
Phoenix, AZ 85016
tim@timlasota.com

RE: CCEC MUR No. 17-003

Dear Mr. La Sota,

This letter is to notify you that on November 2, 2017, Andrew Gaona, filed a complaint against your client, American Federation for Children, Inc., (copy enclosed) with the Arizona Citizens Clean Elections Commission. The Complaint alleges American Federation for Children failed to file an independent expenditure report with the Citizens Clean Elections Commission. Arizona Revised Statute §16-941 and Arizona Administrative Code Section R2-20-109 requires any person making an independent expenditure of more than \$740 to file an independent expenditure report with the Citizens Clean Elections Commission.

Commission rules provide that upon the filing of a complaint that substantially complies with Arizona Administrative Code Section R2-20-203, notification must be given to each respondent. Ariz. Admin. Code R2-20-204(A). Additionally, the rule provides for an advisement of compliance procedures. Those procedures are set forth in Article 2 of the Commission's Rules (Arizona Administrative Code Sections R2-20-201 to R2-20-228) as well as the Clean Elections Act (specifically Arizona Revised Statutes Section 16-940 to 16-961).

The Commission's rules provide that a respondent "be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, *within five days from receipt of a written copy of the complaint*, a letter or memorandum setting forth reasons why the Commission should take no action." Ariz. Admin. Code R2-20-205(A). *Your response must be notarized, or the Commission will not consider it.* Ariz. Admin. Code R2-20-205(C). Failure to respond to this complaint within five days may be viewed as an admission to the allegations. *Id.* Please provide a response no later than Monday, November 13, 2017.

This matter is in the initial stages of review. A finding will be made only after the Commission has fully reviewed this matter. Please contact me if you have any questions at (602) 364-3477 or by e-mail at sara.larsen@azcleanelections.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara A. Larsen", with a large, sweeping flourish at the end.

Sara A. Larsen

Financial Affairs & Compliance Officer
Citizens Clean Elections Commission

Enclosures

cc: Andrew Gaona

COPPERSMITH
BROCKELMAN

LAWYERS

D. Andrew Gaona
agaona@chlawyers.com
PH. (602) 381-5486
FAX (602) 224-6020

2800 N. Central Avenue, Suite 1200
Phoenix, AZ 85004-1009
CBLAWYERS.COM

November 2, 2017

Thomas Collins
Executive Director
Arizona Citizens Clean Elections Commission
1616 W. Adams Street, #110
Phoenix, AZ 85007
Thomas.Collins@azcleanelections.gov

Re: Complaint Against American Federation for Children, Inc.

Dear Director Collins:

I write today to file a complaint with the Arizona Citizens Clean Elections Commission ("CCEC") regarding additional unreported independent expenditures made by the American Federation for Children, Inc. ("AFC"). AFC violated A.R.S. §§ 16-941, 16-958, and A.A.C. § R2-20-109(B) by making independent expenditures without filing a report with CCEC.

Specifically, beginning on or about September 29, 2017, AFC sponsored a "robocall" to certain voters in Legislative District 26 advocating against Representative Isela Blanc (the "Robocall"), who is up for re-election. Indeed, AFC sent a notice to Rep. Blanc by certified mail regarding what it admits was an "independent expenditure." [See 9/29/2017 Letter from AFC to Rep. Blanc, attached hereto as Ex. A (the "AFC Notice")] The text of the Robocall, as set forth in the AFC Notice, was as follows:

This is Johanna Ornelas, an Arizona mother and education advocate with the American Federation for Children. I'm calling about an elections scandal in this district. State Representative Isela Blanc, circulated a petition sheet . . . which was falsified . . . and filed with the Arizona Secretary of State, a felony. Isela Blanc won't say whether it was she or someone else who broke the law by tampering with the document. Now an ethics complaint has been filed against her at the legislature and the matter has been referred to the Attorney General for criminal investigation. Representative Blanc needs to stop taking the fifth and come forward with the truth. Paid for by American Federation for Children, Inc., and not authorized by any candidate or candidate's campaign committee.

Thomas Collins
November 2, 2017
Page 2

Notably, the AFC Notice included a "paid for by" disclaimer as required by state law for independent expenditures. AFC did not report this independent expenditure to CCEC by October 1, 2017 (nor has AFC reported it to date), and thus it is in clear violation of governing law.

We note that the Robocall's express advocacy is nearly-identical to that at issue in MUR 17-002, another complaint against AFC that is currently pending. The fact that AFC has now run two specifically-targeted robocalls against two current candidates for office with respect to the same subject matter should be more than sufficient to foreclose AFC's defense that the Robocall somehow does not constitute express advocacy.

I trust that you will conduct a thorough investigation, and that CCEC will impose civil penalties against AFC as authorized by Arizona law. Please feel free to contact me if you require any further information

Sincerely,

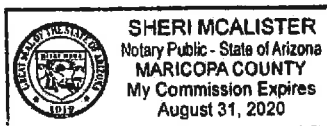


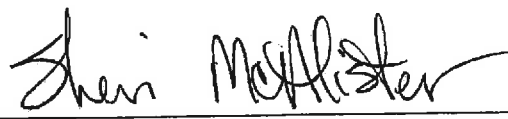
D. Andrew Gaona

DAG:slm
Enclosure
cc: Sara Larsen

STATE OF ARIZONA)
 :SS.
County of Maricopa)

Subscribed and sworn (or affirmed) before me this 2nd day of November, 2017, by D. Andrew Gaona.





Notary Public

Exhibit A

Exhibit A



**AMERICAN FEDERATION
for Children**

September 29, 2017

Isela Blanc
948 E Manhattan Dr
Tempe, AZ 85282

Dear Rep. Blanc,

The enclosed is a copy of an Independent Expenditure that is underway.

Sincerely,

Kim Martinez
Arizona Director of Communications
American Federation for Children
202-280-1990

Isela Blanc Robocal

This is Johanna Ornelas, an Arizona mother and education advocate with the American Federation for Children.

I'm calling about an elections scandal in this district.

State Representative Isela Blanc, circulated a petition sheet... which was FALSIFIED... and filed with the Arizona Secretary of State, a FELONY.

Isela Blanc won't say whether it was she or someone else who broke the law by tampering with the document.

Now an ethics complaint has been filed against her at the legislature AND the matter has been referred to the Attorney General for criminal investigation.

Representative Blanc needs to stop taking the fifth and come forward with the TRUTH.

Paid for by American Federation for Children, Inc. and not authorized by any candidate or candidate's campaign committee.

202-280-1985

Timothy A. La Sota, PLLC
2198 East Camelback, Suite 305
Phoenix, Arizona 85016
P 602-515-2649
tim@timlasota.com

November 13, 2017

Via hand delivery to:

Thomas M. Collins
Executive Director
Arizona Citizens Clean Elections Commission
1616 W. Adams, Suite 110
Phoenix, Arizona 85007

Re: CCEC MUR 17-003 (Isela Blanc Robocalls)

Dear Mr. Collins:

This firm represents the American Federation for Children ("AFC").

I write in response to your notification, dated November 2, 2017, informing my client that on November 2, Andrew Gaona filed a complaint against AFC, alleging that AFC failed to file an independent expenditure report with the Citizens Clean Elections Commission as required by Arizona Revised Statute § 16-941 and Arizona Administrative Code Section R2-20-109. Letter from Sara A. Larsen to Kim Martinez (October 6, 2017); Letter from D. Andrew Gaona to Thomas Collins (Sept. 28, 2017). The complaint alleges that AFC violated A.R.S. §§ 16-941, 19-958, and A.A.C. § R2-20-109(B).

Your original letter specified a response due no later than November 13, 2017. By counsel, AFC responds as follows.

The robocall in question is not an independent expenditure because it does not constitute express advocacy under the law. It does not, therefore, fall within the reporting required by A.R.S. §§ 16-926 or 16-941.

Even if the communication is an independent expenditure, AFC effected the reporting required by A.R.S. §§ 16-922(F) and 16-926(G) as well as by §§ 16-941 and 16-958.

Background

Isela Blanc has been active in the efforts to repeal SB 1431, the Empowerment Scholarship Accounts Bill which made all Arizona students eligible to apply for the state's school-voucher program. As part of these efforts, she gathered signatures to refer the law to the

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November 2018 ballot. That effort is a public issue, of course, that is of particular importance to AFC.

In the course of these activities, Rep. Blanc circulated Petition Sheet 08-01545. A true and correct copy of this petition sheet, as submitted to the Secretary of State, is attached as Exhibit 1. As can be seen from Exhibit 1, when the petition sheet was submitted to the Secretary of State's office, the box indicating whether the circulator was a volunteer or paid circulator had been checked.

However, the photos attached as Exhibit 2 show Petition Sheet 08-01545 in the possession of Rep. Blanc before it was submitted to the Secretary of State, with numerous signature lines already completed on the petition sheet but without a box checked indicating whether the circulator was a paid or volunteer circulator. This violates A.R.S. §19-101(D) and (E), which requires the appropriate box to be checked prior to circulating petition sheets and invalidates signatures obtained without a properly checked box. As the Arizona legislature has determined, the public is entitled to know if a petition sheet circulator is paid to circulate or is volunteering his or her efforts. But here, sometime after the signature lines had been completed, as shown in Exhibit 2, somebody tampered with the petition sheet by checking the volunteer box.

Arizona Revised Statutes § 19-119.01(A) states:

For the purposes of this title, a person commits petition signature fraud if the person does either of the following with the intent to defraud. . . . Uses any fraudulent means, method, trick, device or artifice to obtain signatures on a petition.

Marking necessary boxes and including necessary information after an individual has signed a petition sheet in an attempt to make a petition sheet appear as if it were properly circulated with all required information falls within this statute. In addition, a "person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony." A.R.S. § 39-161. In short, then, doctoring Petition Sheet 08-00823 to make it appear as if all legally required information had been included prior to circulating appears to be a criminal act.

American Federation for Children came to learn of this and reported it to the proper authorities. The Secretary of State's office has now referred this matter to the Arizona Attorney General, presumably for a criminal investigation.

To this day, Rep. Blanc has refused to shed any light on the actions above through a public comment.

The call at issue was not an independent expenditure under A.R.S. §§ 16-901(31) and 16-901.01 because the ad is susceptible to an interpretation other than as an appeal to vote against Rep. Blanc

An “independent expenditure” is “an expenditure by a person, other than a candidate committee, that complies with both of the following:

- (a) Expressly advocates the election or defeat of a clearly identified candidate.
- (b) Is not made in cooperation or consultation with or at the request or suggestion of the candidate or the candidate's agent¹.

A.R.S. § 16-901(31). The call at issue here did not expressly advocate the election or defeat of Rep. Blanc.

“Expressly advocates” means:

1. Conveying a communication containing a phrase such as “vote for,” “elect,” “reelect,” “support,” “endorse,” “cast your ballot for,” “(name of candidate) in (year),” “(name of candidate) for (office),” “vote against,” “defeat,” “reject” or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
2. 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.

A.R.S. § 16-901.01.

The call did not expressly advocate under subpart (1) because it contained none of the enumerated phrases of advocacy and, in context, the words it does contain have a reasonable meaning other than to advocate the election or defeat of Rep. Blanc. They describe serious questions raised with respect to the handling of petition sheets for gathering signatures to refer SB 1431—a hot-button issue at the core of AFC’s mission—to a ballot vote. *See infra*.

There was no express advocacy under subpart (2) because even if they fit within the type of communication that is specified, again, in context, the calls have a reasonable meaning other than to advocate the election of a candidate considering the factors specified in subpart (2). The treatment of the petition sheets is, itself, a matter of public import—it is strictly governed by statute. The issue of whether SB 1431 will be referred to the November 2018 ballot, where it can be withdrawn, and with it, the expansion of school choice for all Arizona students—is an issue at

¹ Subpart (b) defines when a qualifying expenditure is truly “independent” and is not at issue here.

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the core of AFC's mission. The most reasonable interpretation of the communication is that it is advocacy on these issues, not the candidacy of Rep. Blanc.

Now turning specifically to the factors provided in A.R.S. § 16-901.01², there are at least two reasons why the most reasonable meaning of the expenditure at issue here, then, is not to advocate the election of a candidate, but to bring attention to the hot-button issue of retracting the legislature's expansion of the voucher system in Arizona, and to point out that proponents of the referendum are not abiding by the laws governing the process—and that a high profile proponent may have information about a violation of those laws that she refused to divulge. This leads to a reasonable corollary meaning—showing the lengths to which the opponents of the legislature's expansion of vouchers to all Arizona children are willing to go to have their way.

The first factor to be considered is “the presentation of the candidate(s) in a favorable or unfavorable light.” Here, the light in which the candidate is placed depends on the views of the hearer, but more important, the light that is cast on Rep. Blanc in the call is unrelated to her candidacy.

The timing, targeting, and placement of the communication underscores that it is not Rep. Blanc the candidate that is at issue in the communications. The general election is still nearly a year away.

Finally, and most important, the United States Supreme Court has been clear in applying the “reasonable interpretation” standard—“a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 469-70 (2007). As mentioned above, there are two highly reasonable interpretations of the robocalls that do not involve an appeal to vote against Rep. Blanc and the calls specifically called on her to say what she knows about the apparent criminal activity documented in this letter and the letter sent to the Secretary of State and Attorney General. (Exhibit 3). This is clearly enough to take the ads out of the “express advocacy” rubric and out of this Commission's jurisdiction.

With a regulation of speech on matters of public concern, the First Amendment requires that the benefit of any doubt must be given to “protecting rather than stifling speech.” *Id.* at 469. Indeed, in applying the “no reasonable interpretation” test, the Court found that a focus on a legislative issue, urging the public to contact an official on the issue, the lack of mention of an election, political party, or challenger, and the lack of position on a character's character,

² Arizona law has two overlapping definitions of express advocacy. A.R.S. § 16-901.01(1) requires “magic words”—which are not present here, and as a secondary definition applies a “no other reasonable meaning” test. The alternative, § 16-901.01(2), is a rough approximation of the federal definition of an electioneering communication, said to be the “functional equivalent of express advocacy.” It begins with a limitation to certain media and targets, and includes the same “reasonable interpretation” test that is found in subpart (1). AFC does not concede that the call meets either the “media” provision (limited to broadcast, etc.) or targeting provision (requiring “targeting” of the candidate's electorate) but does not discuss them here because under the required “substance” test of either definition, there are more reasonable meanings of the communication at issue here than “to advocate for the election or defeat of . . . [a] candidate.” A.R.S. § 16-901.01.

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qualifications, or fitness for office “plainly” meant that the communication was not express advocacy or its “functional equivalent.” *Id.* at 470. The AFC call was not express advocacy under Arizona law and hence was not an independent expenditure subject to disclosure under §§ 16-922(F), 16-926(G) or by §§ 16-941 and 16-958.

AFC Effectively Fulfilled the Applicable Disclosure Provisions.

Even if AFC had engaged in express advocacy, AFC has complied with all lawful reporting requirements.

A.R.S. §16-941(D) provides:

Notwithstanding any law to the contrary, any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle, with the exception of any expenditure listed in section 16-920 and any independent expenditure by an organization arising from a communication directly to the organization's members, shareholders, employees, affiliated persons and subscribers, shall file reports with the secretary of state in accordance with section 16-958 so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat.

In addition, A.R.S. §16-958(D) provides:

The secretary of state shall immediately notify the commission of the filing of each report under this section and deliver a copy of the report to the commission, and the commission shall promptly mail or otherwise deliver a copy of each report filed pursuant to this section to all participating candidates opposing the candidate identified in section 16-941, subsection D.

Within 24 hours of placement of the robocalls, AFC reported all information relevant to these calls, to the Arizona Secretary of State. In addition, though this is not required by Arizona law, notice was provided to Rep. Blanc of the calls as was previously required under Arizona law. In short, not only has AFC met its legal obligations, it has gone above and beyond that in the interests of transparency.

AFC understands that there is a dispute as to the efficacy of Arizona Administrative Code Rule R2-20-109(A). This rule purports to require separate reporting to the Clean Elections Commission:

In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if: 1. Expressly provided otherwise by another Commission rule; or 2. That system, or the necessary function on the system, is

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unavailable, in which case the executive director shall implement a substitute process.

However, this rule has expired and is no longer in effect. In addition, even if the rule were still in effect, it conflicts with and goes beyond statutory law, which requires all reports to be made to the Secretary of State's Office under A.R.S. §§16-941 and 16-958. *See Ariz. Bd. of Regents v. Ariz. State Personnel Bd.*, 195 Ariz. 173, ¶ 9, 985 P.2d 1032, 1034 (1999) (“[I]f an agency rule conflicts with a statute, the rule must yield.”)³

In sum, then, even though not legally required to do so, AFC has complied with any laws that could possibly apply. The complaint alleging otherwise is without merit. Indeed, if the reporting scheme is as opaque and gap-ridden as the complainants' theory requires, it would be susceptible to a due process or other constitutional challenge. Free speech cannot be sacrificed because of gaps or confusing “workarounds” in regulation or reporting.⁴

One final note is that I would not concede that these calls cost enough money to come under the Clean Elections Commission's statutory jurisdiction even setting aside the arguments above⁵. As soon as I am able to complete all due diligence I will follow up with a more definitive response on this subject.

³ It should also be noted that the reporting schedule that the Clean Elections Commission has provided in its “Notice Regarding I.E. Reporting” is for 2016, and any 2017 reporting requirements as part of the Commission's purported powers under R2-20-109(A)(2) are very difficult to find on the Clean Elections Commission's website.

⁴ The official Arizona Administrative Code maintained by the Arizona Secretary of State refers to purported Rule 2-20-109 as “DISPUTED SECTION R2-20-109” and states that “The Governor's Regulatory Review Council and the Citizens Clean Elections Commission dispute whether R2-20-109 has expired. Those interested in that issue should consult counsel.”

⁵ See A.R.S. §16-941(D)(“Notwithstanding any law to the contrary, any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle, with the exception of any expenditure listed in section 16-920 and any independent expenditure by an organization arising from a communication directly to the organization's members, shareholders, employees, affiliated persons and subscribers, shall file reports with the secretary of state in accordance with section 16-958 so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat.”)

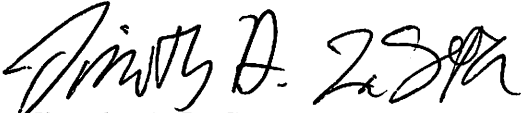
Mr. Thomas M. Collins
November 13, 2017

Conclusion

For all the reasons stated above, the Commission must dismiss this matter at this initial stage. AFC is not subject to the Clean Elections Act with regard to the robocalls at issue, and even if it were, it has met all valid legal requirements.

Very truly yours,

TIMOTHY A. LA SOTA PLC


Timothy A. La Sota

STATE OF ARIZONA)
) ss.:
County of Maricopa)

Subscribed and sworn (or affirmed) before me this 13th day of November, 2017, by
Timothy A. La Sota.





Notary Public

EXHIBIT 1

08-01545 Front

Referendum Description

"It is unlawful to sign this petition before it has a serial number"

"PAID CIRCULATOR" "X VOLUNTEER"

This petition seeks to refer 2017 Laws, Chapter 139 (SB 1431), the principal provisions of which expand eligibility for Empowerment Scholarship Accounts (ESAs), commonly referred to as school vouchers; remove the existing ESA enrollment cap, and increase it annually to 1.5% of total public school enrollment through 2022; and cap ESA enrollment in 2023. SB 1431 includes other provisions, including but not limited to the administration of the ESA Program, distribution of ESA monies, and adoption of policies and procedures.

ice: This is only a description of the measure sought to be referred prepared by the sponsor of the measure. It may not include every provision contained in the measure. Before signing, make sure the title and text of the measure are attached. You have the right to read and compare the title and text before signing.

Petition for Referendum

The undersigned citizens and qualified electors of the state of Arizona, respectfully order that the senate bill No. 1431, entitled An Act amending sections 15-2401, 15-2402, 15-2403 and 42-2003, Arizona Revised Statutes; Amending laws 2013, Chapter 250, relating to empowerment scholarship accounts, passed by the fifty-third session of the legislature of the state of Arizona, at the general session of said legislature, shall be referred to a vote of the qualified electors of the state for their approval or rejection at the next regular general election and each for himself says: I have personally signed this petition with my first and last names. I have not signed any other petition for the same measure. I am a qualified elector of the state of Arizona, county of Marijuana.

We, the undersigned citizens and qualified electors of the state of Arizona, respectfully order that the senate bill No. 1431, entitled An Act amending sections 15-2401, 15-2402, 15-2403 and 42-2003, Arizona Revised Statutes; Amending laws 2013, Chapter 250, relating to empowerment scholarship accounts, passed by the fifty-third session of the legislature of the state of Arizona, at the general session of said legislature, shall be referred to a vote of the qualified electors of the state for their approval or rejection at the next regular general election and each for himself says: I have personally signed this petition with my first and last names. I have not signed any other petition for the same measure. I am a qualified elector of the state of Arizona, county of Marijuana.

Warning

It is a class 1 misdemeanor for any person to knowingly sign an initiative or referendum petition with a name other than his own, except in a circumstance where he signs for a person, in the presence of and at the specific request of such person, who is incapable of signing his own name because of physical infirmity, or to knowingly sign his name more than once for the same measure, or to knowingly sign such petition when he is not a qualified elector."

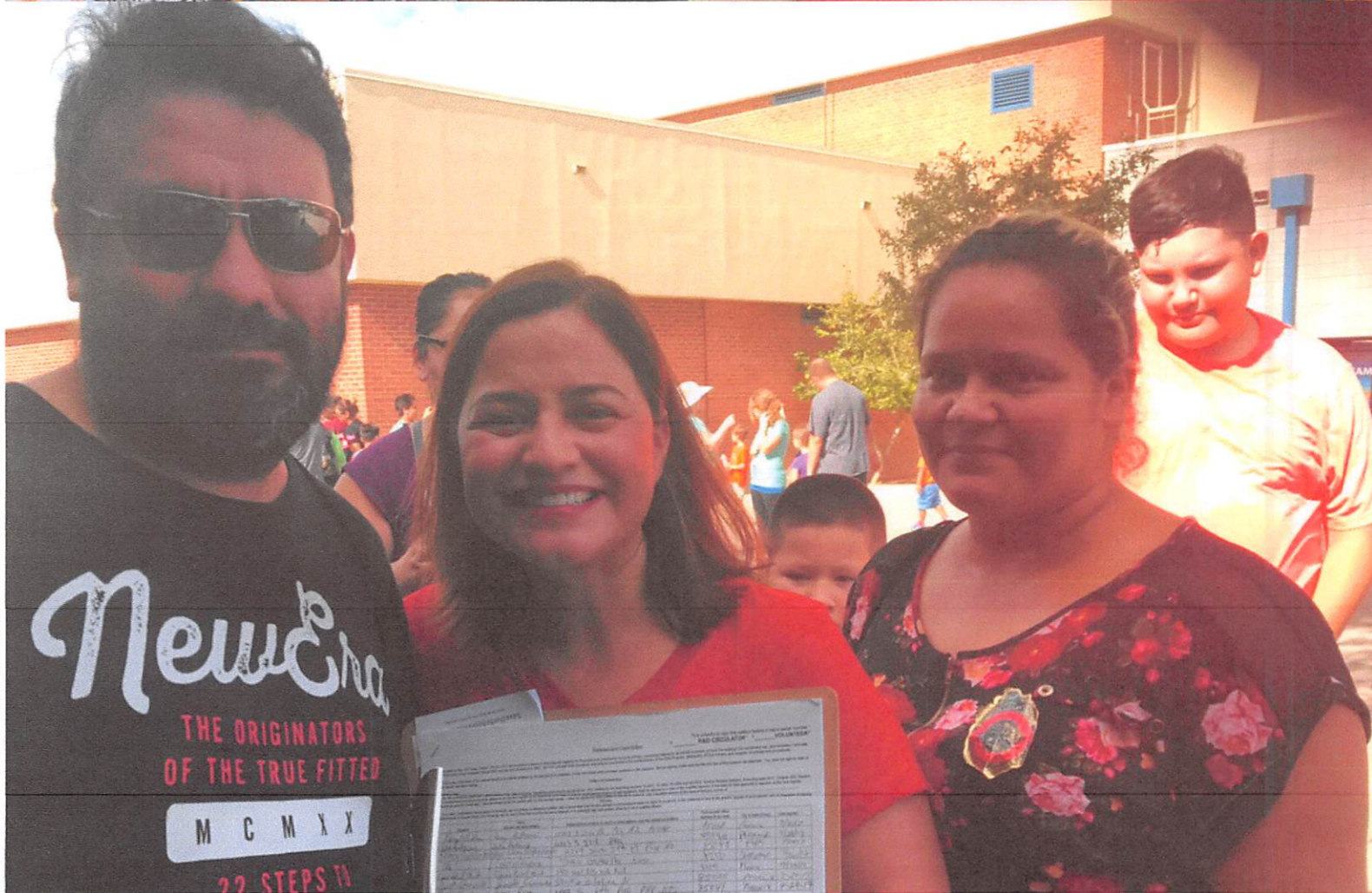
Signature	Name (first and last name printed)	Actual address (street & no. and if no street address, describe residence location)	Arizona post office address & zip code	City or town (if any)	Date signed
1. <i>Danny Andersen</i>	Danny Andersen	15419 S. 26th PL, PHX, AZ 85048	85048	Phoenix	7/25/17
2. <i>Julie Anderson</i>	Julie Anderson	16809 S 33rd PL PHX	85048	Phoenix	7/26/17
3. <i>Nancy Andersen</i>	Nancy Andersen	16219 South 39th Pl. PHX AZ	85048	PHX	7/26/17
4. <i>Crissey Camacho</i>	Crissey Camacho	7449 E. Broadway Ave Scottsdale	85250	Scottsdale	7/26/17
5. <i>Cipriano Gabriel Miranda</i>	Cipriano Gabriel Miranda	1833 West Alta Vista Road	85041	Phoenix	7/29/17
6. <i>Janeth Camacho</i>	Janeth Camacho	3908 W. Wilshire Dr.	85009	Phoenix	7-29-17
7. <i>Adam Reza</i>	Adam Reza	6842 So. 6th. Ave. PHX, AZ	85041	PHOENIX	7-29-17
8. <i>Maria Rodriguez</i>	Maria Rodriguez	514 W. Atlanta Ave PHX AZ	85041	Phoenix	7-29-17
9. <i>Roxanne Minjarez</i>	Roxanne Minjarez	514 W. Atlanta Ave Phoenix AZ	85041	Phoenix	7-29-17
10. <i>Naomi Pickett</i>	Naomi Pickett	3315 W. Fillmore St PHX AZ	85009	PHX	7-29-17
11. <i>Alejandra Garcia</i>	Alejandra Garcia	2638 N 61st Ave Phoenix	85035	Phoenix	7-29-17
12. <i>Naomi V. Bahena</i>	Naomi V. Bahena	6715 N 23rd Dr PHX Phoenix AZ 85015	85015	PHX	7/29/17
13. <i>Adriana Maltzgov</i>	Adriana Maltzgov	6838 W. Encanto Blvd.	85035	Phoenix	7/29/17
14. <i>Gloria Bustillos</i>	Gloria Bustillos	6802 N 67th Ave # 6105	85301	Glendale	7-29-17
15. <i>Liliana Lara</i>	Liliana Lara	715 E Turney Ave Apt #1	85014	Phoenix	7-29-17

Secretary of State
Revised 07/09/2015

The validity of signatures on this sheet must be sworn to by the circulator before a notary public on the form appearing on the back of the sheet.

Number R-02-2018

EXHIBIT 2



STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

'17 DEC 20 PM 12:02 CCEC

In the Matter of:

American Federation for Children, Inc.,
Respondent

MUR No. 17-02

[Proposed] CONCILIATION AGREEMENT

Pursuant to A.R.S. § 16-957(A), the Citizens Clean Elections Commission (the "Commission") and American Federation for Children, Inc. (Respondent) enter this Conciliation Agreement (the "Conciliation Agreement") in the manner described below:

- A. Respondent did not file campaign finance reports with the Clean Elections Act for spending related to particular offices., which the Commission believes are required by law. See A.R.S. § 16-941(D); -16-958. Respondent made expenditures as identified in Complaints MUR 17-02. See Exhibit 1. These expenditures were \$1,160.10 and related to a legislative candidate in District 28 and \$558.20 and related to a legislative candidate in District 26. The Commission's position is that the expenditures identified in these complaints should have been reported on September 1, 2017 and November 1, 2017 respectively, and the facts are sufficient to find reason to believe Respondent may have committed violations of the Citizens Clean Elections Act.
- B. A.R.S. § 16-941(D) states that "any person who makes independent expenditures related to a particular office" in excess of certain amounts must report such expenditures to the Secretary of State. A.R.S. § 16-956(A)(7) provides that the

ITEM IX

Commission has authority to enforce the Act and Rules, to include the assessment of penalties that apply for failure to file reports.

C. On October 2, 2017, the Commission received the Complaint in MUR 17-02 regarding Respondent's failure to file a report required by A.R.S. § 16-941, -958.

D. After receiving the Complaint the Commission Staff reviewed information related to Respondent's Campaign Finance activity provided by the Respondent who had attempted to comply with a different statute, A.R.S. § 16-926. Respondent provided information indicating it had entered the information in the Secretary of State's online filing system and would have timely reported information pursuant to A.R.S. § 16-926 had the Campaign Finance Reporting System produced an immediate report based on that information.

E. Reports pursuant to A.R.S. § 16-926 are required at different time periods and different spending levels than those required by the Act.

F. On October 13, 2017, Respondent filed a 2017 3rd Quarter report with the Secretary of State, covering expenses made from July 1, 2017 to September 30, 2017. This report included the expenses for the calls referred to in Complaints MUR 17-02 and MUR 17-03.

G. This Conciliation Agreement concludes the Commission's enforcement proceeding respecting the Complaints.

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

1. The Commission has jurisdiction over persons subject to A.R.S. §§ 16-941(D) and -958, including political committees. Respondent avows that the Campaign Finance Reporting System did not prompt it to make any reports as called for in those statutes, although the Commission's effort provides alternative electronic means of filing.
2. Pursuant to A.R.S. §§ 16-941(D) and -958 any person who makes an independent expenditure above a threshold set forth in the Clean Elections Act must file reports

required by the person and that under A.R.S. § 16-942(B) the statutory penalty for any reporting violation on behalf of a candidate is up to \$160 per day up to twice the value of the unreported amount.

3. The Commission agrees not to impose on a fine in these MURs on the following conditions:

- a. Respondent file complete expenditure reports for each MUR on the form attached as Exhibit 3 with the Commission via email by 5 p.m. Monday December 18, 2017.
- b. Respondent agrees to file complete expenditure reports regarding expenditures that identify candidates for state or legislative office on the form attached as Exhibit 3, or in the Secretary of State's Campaign Finance Reporting System if available.

4. Respondent shall be in breach of this Agreement upon the occurrence of any of the following:

- a. Respondent provides false information to the Commission, including regarding the expenditures subject to the Complaints.
- b. Respondent fails to abide by any provision of this agreement.

5. In the event of breach hereunder, at the option of the Commission, all potential penalties dating from time of each Complaint shall be immediately due and payable. In addition, interest shall accrue on the unpaid balance from the date that the payments become due and payable. Interest shall accrue at the statutory rate of ten percent (10%) pursuant to A.R.S. § 44-1201(A).


6. Nothing contained in this Agreement shall be construed to prevent any state agency which issues licenses for any profession from requiring that the debt in issue be paid in full before said agency will issue Respondent a new license.

7. The Commission may waive any condition of default without waiving any other condition of default and without waiving its rights to full, timely future performance of the conditions waived.

- 1 8. In the event legal action is necessary to enforce collection hereunder, Respondent shall
- 2 additionally pay all costs and expenses of collection, including without limitation,
- 3 reasonable attorneys' fees in an amount equal to thirty-five percent (35%) of monies
- 4 recovered.
- 5 9. This Agreement shall be construed under the laws of the State of Arizona.
- 6 10. In the event that any paragraph or provision hereof shall be ruled unenforceable, all
- 7 other provisions hereof shall be unaffected thereby.
- 8 11. This Agreement shall constitute the entire agreement between the parties regarding the
- 9 subject matter. This Agreement shall not be modified or amended except in a writing
- 10 signed by all parties hereto.
- 11 12. This Agreement shall not be subject to assignment.
- 12 13. No delay, omission or failure by the Commission to exercise any right or power
- 13 hereunder shall be construed to be a waiver or consent of any breach of any of the
- 14 terms of this Agreement by the Respondent.
- 15 14. By entering into this Agreement, the Respondent does not waive any rights, claims,
- 16 defenses or arguments in any subsequent proceeding before the Commission or any
- 17 agency, court or other tribunal. Respondent does not agree that the expenditures in
- 18 question were independent expenditures, but in the interest of transparency agrees to
- 19 the terms herein.
- 20 15. Respondent has obtained independent legal advice in connection with the execution of
- 21 this Agreement or have freely chosen not to do so. Any rule construing this Agreement
- 22 against the drafter is inapplicable and is waived.
- 23 16. This Agreement shall be void unless executed by the Respondent and delivered to the
- 24 Commission not later than 5 p.m. Monday December 18, 2017.
- 25 17. All proceedings commenced by the Commission in these two matters will be terminated
- 26 and the matter closed upon compliance with the terms set forth in this Agreement.
18. The Commission authorizes the Executive Director to sign this agreement.

Dated this 18TH day DECEMBER, 2017.

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

By: 
Respondent

COPPERSMITH
BROCKELMAN

LAWYERS

17 OCT 2 PM 1 32 CCEC

D. Andrew Gaona
agaona@cblawyers.com
PH. (602) 381-5486
FAX (602) 224-6020

2800 N. Central Avenue, Suite 1200
Phoenix, AZ 85004-1009
CBLAWYERS.COM

September 28, 2017

Thomas Collins
Executive Director
Arizona Citizens Clean Elections Commission
1616 W. Adams Street, #110
Phoenix, AZ 85007
Thomas.Collins@azcleanelections.gov

Re: Complaint Against American Federation for Children, Inc.

Dear Director Collins:

I write today to file a complaint with the Arizona Citizens Clean Elections Commission ("CCEC") regarding unreported independent expenditures made by the American Federation for Children, Inc. ("AFC"). AFC violated A.R.S. §§ 19-141, 19-158, and A.A.C. § R2-20-109(B) by making independent expenditures without filing a report with CCEC.

Specifically, beginning on or about August 23, 2017, AFC sponsored "robocalls" to certain voters in Legislative District 28 advocating against candidate Christine Marsh. Indeed, AFC sent a notice to Ms. Marsh by certified mail regarding the expenditure. [See 8/23/17 Letter from AFC to C. Marsh, attached hereto as Ex. A] The text of the "robocalls," as set forth in the AFC Notice, is as follows:

I'm calling from American Federation for Children with an alert about an elections scandal in this district. Christine Marsh, candidate for state senate, circulated a petition sheet which was later falsified and filed with the Arizona Secretary of State, a felony. Christine Marsh won't say whether it was she or someone else who broke the law by tampering with the document. Christine needs to come forward with the truth. Christine, stop hiding behind the 5th Amendment and come clean. Come clean Christine. Paid for by American Federation for Children, Inc., and not authorized by any candidate or candidate's campaign committee.

Thomas Collins
September 28, 2017
Page 2

AFC did not report this independent expenditure to CCEC by September 1, 2017, and thus is in clear violation of governing law.

I trust that you will conduct a thorough investigation, and that CCEC will impose civil penalties against AFC as authorized by Arizona law. Please feel free to contact me if you require any further information

Sincerely,

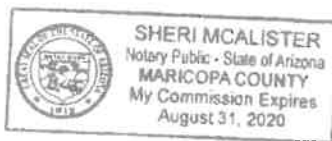



D. Andrew Gaona

DAG:slm
Enclosures

STATE OF ARIZONA)
 :ss.
County of Maricopa)

Subscribed and sworn (or affirmed) before me this 28th day of September, 2017, by D. Andrew Gaona.





Notary Public

Christine Marsh Robo Call

I'm calling from American Federation for Children with an alert about an elections scandal in this district.


Christine Marsh, candidate for state senate, circulated a petition sheet... which was later FALSIFIED... and filed with the Arizona Secretary of State, a FELONY.

Christine Marsh won't say whether it was she or someone else who broke the law by tampering with the document. Christine needs to come forward with the TRUTH. Christine, STOP hiding behind the 5th amendment and come clean.

Come clean Christine.

Paid for by American Federation for Children, Inc. and not authorized by any candidate or candidate's campaign committee.

202-280-1985



AMERICAN FEDERATION
for Children

August 23, 2017

Christine Marsh
4117 E Charter Oak Rd
Phoenix, AZ 85032

Dear Christine,

The enclosed is a copy of an Independent Expenditure that is underway.

Sincerely,



Kim Martinez
Arizona Director of Communications
American Federation for Children
202-280-1990