

Approved 1-19-17

STATE OF ARIZONA

CITIZENS CLEAN ELECTIONS COMMISSION

 ORIGINAL

In the Matter of:

Senate Victory PAC, Respondent

MUR No. 16-007


[Proposed] CONCILIATION AGREEMENT

Pursuant to ARS § 16-957(A), the Citizens Clean Elections Commission (the "Commission"), Senate Victory PAC (Respondent) enter this Conciliation Agreement (the "Conciliation Agreement") in the manner described below:

- A. Senate Victory PAC did not timely file certain reports required by the Commission related to spending on behalf certain candidates. See Exhibit A (Filings). The Commission finds that these failures demonstrate there is reason to believe Respondent may have committed a violation of the Citizens Clean Elections Act and Commission rules (collectively, the "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 Commission has authority to enforce the Act and Rules, to include the assessment of penalties that apply for failure to file reports.
- C. On November 2, 2016, the Commission received a Complaint regarding Respondent's failure to file a report required by A.R.S. § 16-941, -958. After receiving the Complaint the Commission Staff reviewed the Respondent's Campaign Finance Reports. Those

1 reports indicated other independent expenditures that the Commission maintains
2 should have been reported pursuant to the Act

3 D. In response to the Complaint and the Supplemental Complaint, Respondent has filed
4 several reports under protest.

5 E. This Conciliation Agreement concludes the Commission's enforcement proceeding
6 respecting the Complaint and additional reports that Respondent should have timely
7 filed.

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

10 1. The Commission has jurisdiction over persons subject to ARS 16-941(D) and 16-958,
11 including political committees. Respondent disputes this jurisdiction, but avows that the
12 Campaign Finance Reporting System did not prompt it to make any reports as called
13 for in those statutes, and it had no knowledge of the Commission's efforts to provide
14 alternative electronic means of filing.

15 2. Pursuant to A.R.S. §§ 16-941(D) and -958 any person who makes an independent
16 expenditure above a threshold set forth in the Clean Elections Act must file reports
17 required by the person and that under A.R.S. § 16-942(B) the statutory penalty for any
18 reporting violation on behalf of a candidate is up to \$880 per day up to twice the value
19 of the unreported amount. Respondent disputes that its expenditures were subject to
20 the reporting requirements set forth in A.R.S. §§ 16-941(D) and -958 and disputes the
21 Commission's authority under A.R.S. § 16-942(B) to assess any statutory penalty in
22 connection with such expenditures.

23 3. Respondent agrees to settle this matter for \$2,500, in addition to the other provisions
24 herein. This amount represents a mitigated fine based, in part, on the facts stated in
25 paragraph 1.

26 4. To satisfy the debt amount acknowledged above, Respondent shall pay to the
Commission \$2,500 by January 31, 2017

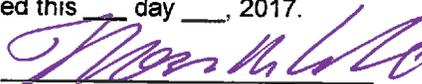
- 1 5. All payments shall be made by check or money order payable to the Citizens Clean
2 Elections Fund and delivered to the Citizens Clean Elections Commission, 1616 West
3 Adams, Suite 110, Phoenix, Arizona, 85007.
- 4 6. The Commission shall not commence any legal action against Respondent to collect
5 the claims so long as they are not in default.
- 6 7. Respondent shall be in default of this Agreement upon the occurrence of any of the
7 following:
- 8 a. Respondent fails to make any payment required hereunder within five (5) working
9 days following the date due;
- 10 b. Respondent files a petition under the bankruptcy laws or any creditor of the
11 Respondent files any petition under said laws against the Respondent;
- 12 c. Any creditor of Respondent commences a foreclosure action to foreclose (by suit
13 or trustee sale) on real property of the Respondent or commences garnishment,
14 attachment, levy or execution against the Respondent's property; or;
- 15 d. Respondent provides false information to the Commission.
- 16 e. Respondent fails to abide by any provision of this agreement.
- 17 8. In the event of default hereunder, at the option of the Commission, all unpaid amounts
18 hereunder shall be immediately due and payable and the Commission may pursue
19 additional penalties mitigated by this agreement. In addition, interest shall accrue on
20 the unpaid balance from the date that the payments become due and payable. Interest
21 shall accrue at the statutory rate of ten percent (10%) pursuant to A.R.S. § 44-1201(A).
- 22 9. Nothing contained in this Agreement shall be construed to prevent any state agency
23 which issues licenses for any profession from requiring that the debt in issue be paid in
24 full before said agency will issue Respondent a new license.
- 25 10. The Commission may waive any condition of default without waiving any other
26 condition of default and without waiving its rights to full, timely future performance of
 the conditions waived.

- 1 11. 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 12. Respondent acknowledges that all obligations payable pursuant to this Agreement
6 constitute a fine, penalty, or forfeiture payable to and for the benefit of a governmental
7 unit, and not compensation for actual pecuniary loss; and that pursuant to 11 USC §
8 523 such obligations are not subject to discharge in bankruptcy.
- 9 13. This Agreement shall be construed under the laws of the State of Arizona.
- 10 14. In the event that any paragraph or provision hereof shall be ruled unenforceable, all
11 other provisions hereof shall be unaffected thereby.
- 12 15. This Agreement shall constitute the entire agreement between the parties regarding the
13 subject matter. This Agreement shall not be modified or amended except in a writing
14 signed by all parties hereto.
- 15 16. This Agreement shall not be subject to assignment.
- 16 17. No delay, omission or failure by the Commission to exercise any right or power
17 hereunder shall be construed to be a waiver or consent of any breach of any of the
18 terms of this Agreement by the Respondent.
- 19 18. By entering into this Agreement, the Respondent does not waive any rights, claims,
20 defenses or arguments in any subsequent proceeding before the Commission or any
21 agency, court or other tribunal.
- 22 19. Respondent has obtained independent legal advice in connection with the execution of
23 this Agreement or have freely chosen not to do so. Any rule construing this Agreement
24 against the drafter is inapplicable and is waived.
- 25 20. This Agreement shall be void unless executed by the Respondent and delivered to the
26 Commission not later than January 23, 2017.

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21. 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 and compliance with the other terms set forth in this Agreement.

Dated this ___ day ___, 2017.

By:  1-19-17
Thomas M. Collins, Executive Director
Citizens Clean Elections Commission

By: _____
, Respondent



CITIZENS CLEAN ELECTIONS COMMISSION
Independent Expenditure Report

Pursuant to A.R.S. §§16-941(D), -956, -958, and A.A.C. R2-20-109(F)

OFFICIAL USE ONLY
<input type="checkbox"/> Received _____

Amended Report

Name: Senate Victory PAC				
Address: 727 E. Bethany Home Road, Suite B109		City: Phoenix	State: AZ	Zip: 85014
Telephone Number: (602) 248-0797		Fax Number:		
Name of Authorized Agent: Walter Dudley		Telephone Number: (602) 248-0797	E-mail Address: wfdudley@dhtax.net	
Authorized Agent Address (if different from above): (see above)		City:	State:	Zip:

Date of Expenditure* (i.e. 5/30/2016)	Amount of Expenditure (i.e. \$5,000.00)	Candidate Supported /Opposed	Support	Oppose
9/23/2016	\$3,400	Allen, Kais, Shope, Ackerly, Thorpe	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9/26/2016	\$10,000	Bagley	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10/7/2016	\$7,763	Bagley	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10/13/2016	\$32,500	Pratt, Kais, Allen	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10/16/2016	\$16,000	Schmuck, Brophy-McGee	<input checked="" type="checkbox"/>	<input type="checkbox"/>

All persons, including corporations, limited liability companies, and labor organizations, are required to file independent expenditure reports under A.R.S. §§ 16-941(D); -958 & Ariz. Admin. Code R2-20-109(F). Please fill out, scan and return to the Arizona Citizens Clean Elections Commission, ccec@azcleanelections.gov.

Forms received within 24 hours of the date of expenditure will be considered timely.

Failure to file the form and submit the information required subjects an entity that makes independent expenditures to penalties under the Clean Elections Act unless the entity receives an exemption from the Commission. Exemption forms are available at www.azcleanelections.gov.

Please contact ccec@azcleanelections.gov or (602) 364-3477 with questions.

*The independent expenditure date is the date when the literature or advertisement is distributed. The independent expenditure may be paid for at a later date as reported on committee campaign finance reports required by A.R.S. §16-915.

I, the undersigned, certify that the above statements are true and accurate to the best of my knowledge and belief:

Walter Dudley 12-02-16
 Signature of Authorized Agent

Senate Victory PAC submits this report under protest and subject to its position that the Arizona Citizens Clean Elections Commission lacks jurisdiction over independent expenditure committees such as Senate Victory PAC, and has no authority under Arizona law to impose reporting, disclosure or other regulatory obligations on such entities. Senate Victory PAC fully reserves all rights, claims, defenses and arguments in any proceeding before the Arizona Citizens Clean Elections Commission in connection with this report or any other matter.

ITEM VI <C> EXHIBIT A

09/2016