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STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

In the Matter of:
Veterans for a Strong America Association,
Respondent

MUR Nos. 14-027

CONCILIATION AGREEMENT

12 Pursuant to A.R.S. § 16-957(A) and A.R.S. § 16-938, the Citizens Clean Elections Commission
13 (the "Commission"), the Arizona Attorney General's Office and Veterans for a Strong American
14 Association ("VSAA" or "Respondent") enter this Conciliation Agreement (the "Conciliation Agreement")
15 as set forth below:

- 16 A. Respondent made expenditures of \$225,018 to air an advertisement during the 2014
17 Gubernatorial Primary mentioning candidate Christine Jones.
- 18 B. On January 30, 2015, David Pearsall and the Torres Law Group filed a complaint with
19 the Arizona Secretary of State alleging Respondent had failed to file certain campaign
20 finance reports.
- 21 C. On July 8, 2015, the Arizona Secretary of State determined that there was reasonable
22 cause to believe that Respondent violated Arizona law. The complaint and
23 determination were then forwarded to the Arizona Attorney General's Office.
- 24 D. On July 15, 2015, the Commission's Executive Director filed a Complaint against
25 Respondent alleging violation of the Citizens Clean Election Act and Rules.
26

1 E. On November 19, 2015, the Commission voted that it had jurisdiction over the
2 Executive Director's Complaint, but deferred further action pending the efforts of the
3 Arizona Attorney General's office to resolve the matter.

4 F. This Conciliation Agreement concludes the Commission's enforcement proceeding
5 respecting the facts outlined in the Executive Director's Complaint, the Memorandum
6 on Jurisdiction, and the Arizona Secretary of State's Reasonable Cause determination.

7 WHEREFORE, the Commission enters into the following agreement in lieu of any other action
8 regarding this matter:

- 9 1. Respondent acknowledges that pursuant to A.R.S. §§ 16-941(D) and -958 any person
10 who makes an independent expenditure related to a particular office above a threshold
11 set forth in the Clean Elections Act (and not subject to an exception therein) must file
12 reports with the Clean Elections Commission.
- 13 2. Respondent made expenditures mentioning Christine Jones during a prior election
14 cycle and filed no reports of such expenditures.
- 15 3. The Commission and Attorney General's Office believe that these expenditures, which
16 took the form of an advertisement broadcast and posted online in Arizona on May 28,
17 2014 (the deadline for filing signatures for the 2014 primary), identifying Christine
18 Jones as "Christine Jones, Arizona gubernatorial candidate" and detailing positive
19 comments Ms. Jones made about former Secretary of State Hillary Clinton, a
20 Democrat, was an independent expenditure for which reporting was required under
21 Arizona law A.R.S. 16-901.01, 914.02, -941(D), -942(B), and -958; see also
22 *Committee for Justice & Fairness v. Ariz. Sec'y of State*, 332 P.3d 94 (Ariz. App. 2014).
- 23 4. The Arizona Secretary of State ("SOS") issued a reasonable cause notice pursuant to
24 A.R.S. § 16-924 and thereby made a referral to the Arizona Attorney General's Office.
- 25 5. The Arizona Attorney General's Office agrees to be bound by this agreement and
26 thereby conclude its efforts relating to the SOS's reasonable cause notice.

1 6. Respondent agrees to make a payment to the Arizona Attorney General's Office in the
2 amount of \$2,000; such payment has already been made to the Arizona Attorney
3 General's Office and will be held (and not deposited or disbursed) until the Commission
4 votes to enter into this Conciliation Agreement.

5 7. Respondent agrees to file reports accounting for all Christine Jones-related
6 expenditures related to a particular office above a threshold set forth in the Clean
7 Elections Act (and not subject to an exception therein) in connection with prior election
8 cycles. While Respondent disputes that the expenditure relating to Christine Jones
9 constitutes political activity on behalf of or in opposition to any candidate for public
10 office for purposes of state or federal law, or an independent expenditure related to a
11 particular office above a threshold set forth in the Clean Elections Act, Respondent
12 agrees to file the report attached hereto as Exhibit A with the Commission accounting
13 for this expenditure solely to resolve this matter, including the SOS's reasonable cause
14 notice and any action taken or contemplated to be taken by the Commission; the
15 parties further agree that the filing of such a report is not an admission that the
16 Christine Jones-related expenditures constituted political activity or an independent
17 expenditure related to a particular office but rather the filing of such a report is a
18 settlement and compromise to resolve all matters involving the Attorney General's
19 Office and the Commission related to the 2014 expenditures mentioning Christine
20 Jones. The parties further agree that this Agreement will be incorporated into the filing
21 made with the Commission. Respondent agrees to make all such filing(s) detailed here
22 by no later than January 30, 2018.

23 8. The Commission shall not commence any additional legal action against Respondent
24 to collect any fines that might be collected so long as Respondent is not in default.

25 9. Each and all of the covenants, terms, provisions, and agreements herein contained
26 shall be binding upon, and inure to the benefit of, the parties hereto and, to the extent

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permitted by this Agreement, their respective heirs, legal representatives,
predecessors, successors, and assigns.

10. Respondent shall be in default of this Agreement in the event that Respondent fails to
make the above-noted filing(s) by January 30, 2018, or provides false information to the
Commission in the above-noted filing(s):

11. In the event of default hereunder, at the option of the Commission, all unpaid amounts
owed 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).

12. 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.

13. 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.

14. Respondent acknowledges that all obligations payable pursuant to this Agreement
constitute a fine, penalty, or forfeiture payable to and for the benefit of a governmental
unit, and not compensation for actual pecuniary loss; and that pursuant to 11 USC §
523 such obligations are not subject to discharge in bankruptcy.

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

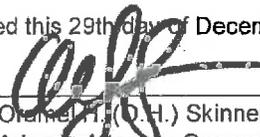
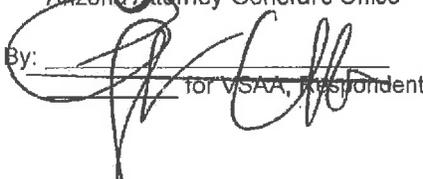
16. In the event that any paragraph or provision hereof shall be ruled unenforceable, all
other provisions hereof shall be unaffected thereby.

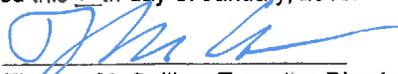
17. This Conciliation Agreement shall constitute the entire agreement between the parties
and shall not be modified or amended except in a writing signed by all parties hereto.

18. This Agreement shall not be subject to assignment.

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- 19. 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.
- 20. 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.

Dated this 29th day of December, 2017.
By:  1.2.2018
Orland H. (O.H.) Skinner, Asst. AG
Arizona Attorney General's Office
By: 
for VSA, Respondent

Dated this 1st day of January, 2018.
By: 
Thomas M. Collins, Executive Director
Citizens Clean Elections Commission

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION
MUR 14-027
Veterans for a Strong America
STATEMENT OF REASONS OF THE EXECUTIVE DIRECTOR

On behalf of the Citizens Clean Elections Commission (“Commission”), the Executive Director hereby provides the following Statement of Reasons why there is reason to believe that a violation of the Citizens Clean Elections Act and Commission rules (collectively, the “Act”) may have occurred.

I. Procedural Background

On July 8, 2015, the Arizona Secretary of State’s Office made a determination that there was reasonable cause to believe Veterans for a Strong America (VSA) violated A.R.S. § 16-914.02 by failing to file independent expenditure reports for an advertisement. **Exhibit 1.** On July 14, 2015, the Commission’s Executive Director generated an internal “Complaint” against VSA (Respondent) alleging that Respondent had violated the independent expenditure reports required by the Act. **Exhibit 2.** On July 20, 2015, Respondent filed a Response arguing the advertisement in question was not subject to independent expenditure reporting requirements because the advertisement was not express advocacy. **Exhibit 3.** In November, I recommended the Commission find jurisdiction over the Complaint. **Exhibit 4.** VSA asserted the Commission lacked jurisdiction. **Exhibit 5.** The Commission moved to allow me to move forward with the matter in coordination with the Attorney General’s Office on November 19, 2015. The parallel AGO matter has proceeded sufficiently that the AGO has indicated to VSA that they should seek a separate resolution from CCEC.

II. Factual Background

On May 28, 2014, Respondent registered with the Secretary of State’s office as a corporation that makes independent expenditures. The same day, Respondent released a television advertisement entitled “What Difference?” which discussed the 2012 Benghazi attack and was critical of gubernatorial candidate Christine Jones. The script reads as follows:

[Voice Over]: Four Americans were killed by terrorists. What happened?
 Requests for more security: denied. Talking points: altered. Our
 nation: lied to.

[Hillary Clinton]: What difference, at this point, does it make?

[Voice Over]: It made no difference to Christine Jones. Two months later, she said “Hillary Clinton will continue to stand out as a capable, respected leader.” Jones praised Clinton: “Americans will realize what an effective Secretary of State Clinton was... The incredibly high standard she set.” These are Christine Jones’ standards. Are they yours?

See <https://www.youtube.com/watch?v=kVcEtVQ7vbl>

On January 30, 2015, David Pearsall filed a complaint with the Secretary of State’s Office alleging the Respondent failed to file an independent expenditure report for the “What Difference?” advertisement.

On May 28, 2015, VSA filed a response with the Secretary of State’s Office arguing the advertisement is not express advocacy and did not trigger a disclosure requirement.

On July 8, 2015, the Secretary of State found reasonable cause to believe VSA violated A.R.S. § 16-914.02(A) by failing to timely notify the Secretary of State of its independent expenditure. The Secretary of State referred the matter to the Arizona Attorney General for further proceedings.

On September 25, 2015, in a letter to the Arizona Attorney General’s Office (AGO), Respondent states they paid \$225,018 to air the advertisement. **Exhibit 6.** Additional documents were provided to AGO on March 18. **Exhibit 7.**

Subsequent communication to AGO confirmed the following expenditures. These are set forth along with the applicable Clean Elections Reporting dates.

Vendor	Date	Amount	CE Date
Smart Media Group	5/27/14	44,570.00	6/1/14
DC London	5/28/14 & 5/29/14	\$7,500.00 & \$324.00	6/1/14
Smart Media Group	6/25/14	\$70,000.00	7/1/14
Smart Media group	7/16/14	\$65,045.00	7/22/14

Exhibit 8. It is not clear from the records whether these are additional expenditures or a subset to the amount identified in Exhibit 6. VSA is an entity that follows from a previous corporate entity that, according to letters provided to AGO, has since ceased operations. **Exhibit 9.**

III. Legal Analysis

Jurisdiction

As the Commission previously considered, the Commission has jurisdiction over any person who makes an independent expenditure in a state or legislative race. A.R.S. §§ 16-941(D), -942(B), -956, 958; Ariz. Admin. Code § R2-20-109; *see also Clean Elections Inst., Inc. v. Brewer*, 209 Ariz. 241, 245 ¶ 13, 99 P.3d 570, 574 (2004), *abrogated on other grounds by Save Our Vote Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 291 P.3d 242 (2013) (interpreting the Clean Elections Act and concluding that enforcement of provisions related to independent expenditures as a “paramount” duty that “do[es] not relate to the public financing of political campaigns.”).

Express Advocacy

The advertisement unequivocally constitutes express advocacy under Arizona law and is an independent expenditures against Christine Jones that is required to be reported under the Clean Elections Act. A.R.S. §§ 16-901(14); -901.01; -941(D); -942(B); -958. Arizona law defines “expressly advocates” as:

- [1.] Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard or direct mailer
- [2.] referring to one or more clearly identified candidates and
- [3.] targeted to the electorate of that candidate(s)
- [4.] 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(A)(2).

The anti-Jones advertisement satisfies these requirements. The advertisement appeared in broadcast and on the Internet and referred clearly to Jones. *See* A.R.S. § 16-901(4) (defining

clearly identified candidate as the appearance of “the name, a photograph or a drawing of the candidate.”). The targets included areas that reached the Republican gubernatorial electorate. Finally, in context, the communications cannot be viewed as urging anything other than a vote against Jones.

The advertisement first aired approximately 90 days prior to the 2014 primary election (August 26, 2014). Based on a review of the text, video, voice-over, and timing of the advertisement in relation to Jones’ candidacy for governor, the advertisement had no reasonable meaning other than to advocate for the defeat of Jones for governor. *See Comm. for Justice & Fairness v. Arizona Sec’y of State’s Office*, 235 Ariz. 347 ¶ 26, 332 P.3d 94, 101 (App. 2014) (holding that plaintiff’s advertisement constituted express advocacy under the Arizona statute).

In its responses VSA argues that the definition of express advocacy in Arizona should be limited to so-called magic words and that the term “purpose of influencing the results of an election” as used in A.R.S. § 16-901(8) defining expenditures must be limited in order to be constitutional. Exhibits 3, 4 (citing *Buckley v. Valeo*, 424 U.S. 1 (1976)). The Clean Elections Action forecloses this argument, *see* § 16-901.01, and the Court of Appeals rejected it in *Committee for Justice & Fairness*, which recognizes that Arizona is not limited to so-called magic words in providing for disclosure of election spending.

The entity VSA is not a corporation and does not appear to dispute the value of the expenditures involved.

Availability of Exemption

Under Commission Rule R2-20-109, certain entities may seek exemption from the Commission’s filing requirements if they are a corporation, labor union, or LLC that files independent expenditure reports under A.R.S. § 16-914.02. VSA asserts that it is an unincorporated association, not a corporation, labor union or LLC. As such it is not entitled to an exemption under Ariz. Admin. Code R2-20-109. Materials submitted to AGO indicates it is an entity that emerged from another, corporate entity. However, nothing available at this point indicates that the corporate entity made the expenditures. There is evidence that VSA may have taken over the accounts of the corporate entity, but VSA maintains that the corporate entity had ceased operation. In either event, VSA would not be exempt from the Commission’s filing requirements because VSA did not seek an exemption and, as a non-corporation, would not have been required to file reports under A.R.S. § 16-914.02. Accordingly, a reason to believe finding is appropriate.

IV. Recommendation

Because VSA made express advocacy communications and filed no reports, it is subject to enforcement under the Citizens Clean Elections Act and Rules for violating A.R.S. §§ 16-941(D) and -958(A) and (B). If the Commission determines by an affirmative vote of at least three of its members that it has reason to believe VSA has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify VSA 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. During that period, the Respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission. A.R.S. § 16-957(A) & Ariz. Admin. Code R2-20-208(A).

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. Ariz. Admin. Code 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 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. Ariz. Admin. Code 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 of its members, the Commission may issue of an order and assess civil penalties pursuant to A.R.S. § 16-957(B). Ariz. Admin. Code R2-20-217.

Dated this 16th day of June, 2016.

By: s/Thomas M. Collins

Thomas M. Collins, Executive Director



MICHELE REAGAN
Secretary of State
State of Arizona

July 8, 2015

VIA REGULAR MAIL AND EMAIL

Saman Golestan
Torres Law Group, PLLC
2239 W. Baseline Rd.
Tempe, AZ 85283
saman@thetorresfirm.com

Donald McGhan
Jones Day
51 Louisiana Avenue, N.W.
Washington D.C. 20001-2113
dmcghan@jonesday.com

Matter No.: Campaign Finance Complaint SOS-CF-2015-001
Complainant: David Pearsall
Respondent: Veterans for a Strong America

Dear Mssrs. Golestan and McGhan,

The Secretary of State received Mr. Pearsall's campaign finance complaint dated January 30, 2015. Mr. Pearsall alleged that Veterans for a Strong America (VSA) violated A.R.S. § 16-914.02 by failing to file independent expenditure reports with the Secretary of State. In response, VSA contends that the advertisement in question constituted issue advocacy and therefore did not trigger any reporting requirements under § 16-914.02. Alternatively, if the advertisement did constitute express advocacy under Arizona's statutory definition, A.R.S. § 16-901.01(A)(2), VSA argues that Arizona's statute is unconstitutional in light of recent United States Supreme Court precedent.

The Secretary of State's office has concluded its investigation, and hereby finds reasonable cause to believe that VSA violated Arizona law for the following reasons.

Factual Background

VSA is a South Dakota-based, non-profit corporation organized under § 501(c)(4) of the Internal Revenue Code. *See* VSA Response at 1. VSA's mission is to "educate the public, members of Congress, and the Executive Branch about the need for a strong national defense and a robust foreign policy." *Id.*

On May 28, 2014, VSA registered with the Arizona Secretary of State as a corporation that makes independent expenditures. *See* Complaint at 2, Exhibit 3; *see also* A.R.S. § 16-914.02(A) ("Any corporation . . . that makes . . . independent expenditures in an attempt to influence the outcome of a [statewide] candidate election . . . shall register" with the Secretary of State).



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The same day, VSA released an advertisement critical of then-gubernatorial candidate Christine Jones entitled "What Difference?," which contrasted Ms. Jones' positive comments about Secretary of State Hillary Clinton with Secretary Clinton's response to the September 2012 attacks in Benghazi, Libya. *See* Response at 2.¹ The script for the advertisement read:

VOICE: Four Americans were killed by terrorists. What happened? Requests for more security: denied. Talking points: altered. Our nation: lied to.

HILLARY CLINTON (testifying before Congress): What difference, at this point, does it make?

VOICE: It made no difference to Christine Jones. Two months later, she said "Hillary Clinton will continue to stand out as a capable, respected leader." Jones praised Clinton: "Americans will realize what an effective Secretary of State Clinton was The incredibly high standard she set." These are Christine Jones' standards. Are they yours?

The advertisement shows the photos and names of the four Americans, video of the American consulate on fire, video of Secretary Clinton's congressional testimony, and juxtaposes Ms. Jones' and Secretary Clinton's images. *See* <https://www.youtube.com/watch?v=kVcEtVQ7vbI>. The disclaimer states: "Paid for by Veterans for a Strong America. No political committee contributions. Not authorized by any candidate or candidate's campaign committee. www.veteransforstrongamerica.org." *Id.*

The advertisement began airing on television in Arizona. *See* Complaint at Exhibit 2. An Arizona Republic article dated May 29, 2014 stated: "[VSA's chairman Joel] Arends said the ad began running Thursday on cable stations and will 'run heavy' for up to 10 days. The ad buy was about \$50,000, he said." *Id.*

VSA contemporaneously issued a press release, which read in pertinent part:

VSA Chairman Arends: "Christine Jones lacks the judgment required to be the top official in any state, let alone a state with as pronounced a military presence as Arizona." VSA will continue to make Christine Jones' outrageous comments and views regarding Benghazi and Clinton a major theme of the upcoming election for governor throughout the primary election and into the fall if necessary.

Id.

¹ The advertisement first aired approximately 90 days before the August 26, 2014 primary election. *See* Complaint at 3; Response at 5.



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VSA apparently posted the advertisement to YouTube as well.² The accompanying description read as follows:

Christine Jones, Arizona gubernatorial candidate, lavished effusive praise on Hillary Clinton two months after the attacks in Benghazi where four Americans were killed. Now Jones wants to serve as Arizona's top elected official - Christine Jones may not want to hold Hillary Clinton to account - but Veterans for a Strong America will.

See <https://www.youtube.com/watch?v=kVcEtVQ7vbl>.

Despite registering with the Secretary of State as a corporation that conducts independent expenditures, VSA did not subsequently file any independent expenditure notifications with Secretary of State in accordance with A.R.S. § 16-914.02. See A.R.S. § 16-914.02(A) ("Any corporation . . . that makes . . . independent expenditures . . . shall . . . notify the [Secretary of State] not later than one day after making that expenditure").

VSA later issued a press release on June 27, 2014, touting the effect that "What Difference?" was having in the Republican primary race for Governor:

For Immediate Release
New Poll Shows Veterans for a Strong America
Impacting Arizona Governor's Race

(Sioux Falls) This week, Veterans for a Strong America and Harper Polling conducted a poll of likely Republican primary voters in Arizona.

The Poll Shows that Veterans for a Strong America has had an impact on the Arizona Governor's race by driving up candidate Christine Jones['] negatives. VSA ran a statewide television ad criticizing Jones for praising Hillary Clinton after the Benghazi terrorist attack, and as a result Jones now has the highest negatives of any other top tier candidate for Governor. It also gives her the lowest net positive rating of the major candidates.

...

Joel Arends, Chairman of Veterans for a Strong America, said, "Our poll underscores the importance of veterans and the issues important to them in Arizona and other states across the county. Veterans for a Strong America will continue to hold accountable people like Christine Jones who dismissed the

² "What difference?" was posted to YouTube on May 28, 2014 by "Veterans for a Strong America," along with VSA's logo. See <https://www.youtube.com/watch?v=kVcEtVQ7vbl> (last visited July 6, 2015 with 28,208 views).



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attacks in Benghazi when she praised Hillary Clinton. Our members deserve better leadership.”

See Complaint at Exhibit 4.

Mr. Pearsall filed a complaint against VSA on January 30, 2015.

Legal Analysis

Mr. Pearsall alleges that the “What Difference?” advertisement constituted an independent expenditure that VSA failed to report, which should therefore subject VSA to a civil penalty. VSA argues that the advertisement represented issue advocacy, not express advocacy, and therefore contends that no notification was required. Alternatively, if the advertisement did meet Arizona’s definition of express advocacy, VSA contends that Arizona’s statutory scheme is unconstitutional under *Wisconsin Right to Life* (“WRTL”) and *Citizens United*, among other U.S. Supreme Court cases. See *FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007); *Citizens United v. FEC*, 558 U.S. 310 (2010).

The Secretary concurs with Mr. Pearsall’s arguments.

1. The “What Difference?” Advertisement Constitutes An Independent Expenditure

a. Overview of the Statutory Scheme

A.R.S. § 16-914.02(A) requires “[a]ny corporation . . . that makes . . . independent expenditures in an attempt to influence the outcome of a candidate election . . . shall register and notify the appropriate filing officer not later than one day after making that expenditure” “The secretary of state is the filing officer for registrations and notifications for independent expenditures in statewide . . . elections.” A.R.S. § 16-914.02(B).

The requisite notification(s) must include: (1) the name and address of the corporation; (2) the amount of the expenditure and the name of the vendor or other payee receiving the expenditures; (3) the name of the candidate and race in which the expenditure was made and whether the expenditure was in support or opposition to the candidate; (4) the communication medium and description of what was purchased; and (5) the date of the expenditure. A.R.S. § 16-914.02(D). “Any corporation . . . that fails to . . . notify or disclose as required by this section is liable in a civil action pursuant to section 16-924 brought by the attorney general . . . for a civil penalty of up to three times the total amount of the expenditure.” A.R.S. § 16-914.02(H).

b. Defining Express Advocacy vs. Issue Advocacy

The “What Difference?” advertisement is subject to A.R.S. § 16-914.02 if it constitutes an independent expenditure.



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An “independent expenditure” is defined as “an expenditure . . . that expressly advocates the election or defeat of a clearly identified candidate . . .” A.R.S. § 16-901(15).^{3,4} “Express advocacy,” in turn, is defined in two ways. A.R.S. § 16-901.01; *see also Committee for Justice & Fairness v. Arizona Secretary of State’s Office*, 235 Ariz. 347 (App. 2014), *review denied*, Apr. 21, 2015 (“CJF”).

First, a communication expressly advocates if it contains 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.” *See* A.R.S. § 16-901.01(A)(1) (defining a “magic words” communication). Mr. Pearsall does not allege the “What Difference?” advertisement contained any magic words. *See* Complaint at 2.

Second, a communication expressly advocates if it:

1. was made through a broadcast medium, newspaper, magazine, billboard, or direct mailer;
2. referred to a clearly identified candidate;
3. was targeted to the electorate of that candidate; *and*
4. in context can have no reasonable meaning other than to advocate the election or defeat of the candidate, as evidenced by factors such as:
 - a. the presentation of the candidate in a favorable or unfavorable light;
 - b. the targeting, placement or timing of the communication; or
 - c. the inclusion of statements of the candidate or opponents.

A.R.S. § 16-901.01(A)(2) (defining an “electioneering communication”).

Mr. Pearsall alleges that “What Difference?” meets the criteria of an electioneering communication and therefore constitutes express advocacy. *See* Complaint at 2-3.

³ Former A.R.S. § 16-901(14) was renumbered § 16-901(15) effective July 3, 2015 as a result of HB 2415 (2015).

⁴ An independent expenditure also requires that the expenditure be “made without cooperation or consultation with any candidate or committee or agent,” but there is no allegation of coordination with respect to the “What Difference?” advertisement. A.R.S. § 16-901(15).



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Secretary of State
State of Arizona

c. *The "What Difference?" Advertisement Constitutes Express Advocacy Under The Arizona Court of Appeals' Interpretation of A.R.S. § 16-901.01(A)(2).*

The "What Difference?" advertisement unambiguously meets the first three statutory criteria for an electioneering communication under A.R.S. § 16-901.01(A)(2). The advertisement: (1) was broadcast on television; (2) referred to Christine Jones by name and by image;⁵ and (3) was targeted to gubernatorial primary voters through "statewide television ads" in Arizona. See Complaint at Exhibit 4 (quoting VSA press release about its "statewide" ads). The sole remaining question is whether the advertisement "in context can have no reasonable meaning" other than to advocate for Ms. Jones' defeat. *Id.* Answering this question requires consideration of: (1) the remaining contextual factors enumerated in § 16-901.01(A)(2); and (2) application of the Arizona Court of Appeals' recent decision in *CJF*.

i. *Application of Statutory Factors*

The statutory factors, on balance, suggest express advocacy. First, the "What Difference?" advertisement presented Ms. Jones in an unfavorable light. See A.R.S. § 16-901.01(A)(2) (factfinder should consider "factors such as the presentation of the candidate(s) in a favorable or unfavorable light"). Second, the advertisement includes two excerpts from Ms. Jones' previous statements regarding Hillary Clinton. See *id.* (factfinder should consider "the inclusion of statements of the candidate(s) or opponents"). Finally, the timing of advertisement is consistent with an electioneering purpose. See *id.* (factfinder should consider "the targeting, placement or timing of the communication").⁶ "What Difference?" aired 90 days before the

⁵ VSA disputes what it means to be a "clearly identified candidate" under the statute, arguing (without citation to authority) that the targeted person must be specifically identified *as a candidate* in the advertisement. See Response at 4 ("[T]he advertisement does not identify Jones *as a candidate*, or identify the office she was running for.") (emphasis in original). The Secretary disagrees. The statute merely requires the targeted candidate to be clearly identified in some way so as to distinguish her from others. See *CJF*, 235 Ariz. at 354 (finding express advocacy under A.R.S. § 16-901.01(A)(2) because "[t]he advertisement referred by name to Tom Horne, who was by that time clearly identified as the Republican candidate for Attorney General."); *Id.* At 353 (finding express advocacy notwithstanding that "nowhere in the advertisement is there a specific reference to Horne as a candidate . . . [or] mention [of] any other candidate, election, or political party."); see also *Hispanic Leadership Fund, Inc. v. Federal Election Com'n*, 897 F.Supp.2d 407, 427 (E.D.Va. 2012) ("[T]he ordinary and unambiguous meaning of the phrase 'the identity of the candidate . . . ' is that the identity of the . . . candidate would be apparent, i.e., clear to a reasonable, objective person viewing the advertisement in the context of the reference."). Since Ms. Jones was clearly identified in the "What Difference?" advertisement, the requisite "identification" prong in A.R.S. § 16-901.01(A)(2) is satisfied here.

⁶ The suggestion to consider "targeting [or] placement" of the advertisement appears to be superfluous in light of the preceding requirement that the communication be "targeted to the electorate of that candidate." See A.R.S. § 16-901.01(A)(2) ("Expressly advocate" means . . . [m]aking a general public communication . . . targeted to the electorate of that candidate(s) that in context can have no reasonable



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August 2014 primary election, even though Ms. Jones made her comments about Secretary Clinton nearly a year-and-a-half earlier. See <https://www.youtube.com/watch?v=kVcEtVQ7vbl> (excepting statements made on December 29, 2012 and January 1, 2013). The fact that VSA waited to target Ms. Jones until after she declared her candidacy for Governor is significant.

On this point, VSA contends that “under the norms of election law, 90 days is a *very* long time before an election.” See Response at 5 (emphasis in original). It cites the 9th Circuit’s decision in *FEC v. Furgatch*, wherein the Court of Appeals stated that an independent expenditure run against President Jimmy Carter three days before the 1980 presidential election presented a “very close call.” See Response at 4 (citing *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987)). VSA concludes that “[i]f an advertisement run three days before a presidential election . . . presents a *very close call*, then the advertisement at issue here is, *a fortiori*, nowhere near the line.” *Id.* However, *Furgatch* merely noted that the district court found the *overall* advertisement as presenting a “very close call” between issue advocacy and express advocacy—without specific reference to its timing. See *Furgatch*, 807 F.2d at 861 (“As the district court noted, whether the advertisement expressly advocates the defeat of Jimmy Carter is a very close call.”). The *Furgatch* court went on to “*reject* the district court’s ruling that it does not expressly advocate the defeat of Jimmy Carter,” expressed “no doubt” that it was indeed express advocacy, and held that “[r]easonable minds could not dispute that Furgatch’s advertisement urged readers to vote against Jimmy Carter.” *Id.* at 864-65 (emphasis added). Only after determining the advertisement was express advocacy did the court state its “conclusion is reinforced by consideration of the timing of the ad.” *Id.* at 865. Thus, the *Furgatch* decision does not quite establish the 3-day rule-of-thumb that VSA urges here.

VSA also notes that “[u]nder federal law, by analogy, speech is only a regulated ‘electioneering communication’ if it airs within 30 days of a primary election.” See Response at 5 (citing 11 C.F.R. § 100.29(a)(2)). However, this represents a policy choice under FEC regulations, not a judicial determination that provides persuasive authority.⁷ Compare *CJF*, 235

meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as . . . the targeting, placement or timing of the communication”).

⁷ VSA’s timing argument also is belied by the Court of Appeals’ recent decision in *CJF*:

[A]s the Supreme Court noted in *WRTL*, by virtue of [the FEC’s] time-sensitive statutory definition, “[e]very ad covered by [the electioneering communication regulation] will . . . air just before a primary or general election. . . .” Consequently, although “considering timing with respect to electioneering communications would prove redundant, a limited reference to whether, for example, an ad runs in an election year, would actually help limit the number of communications that are considered independent expenditures.” The same is true regarding A.R.S. § 16-901.01(A)(2)(a).



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Ariz. at 355 (finding express advocacy with respect to advertisement run “immediately” before the general election).

In the end, timing is but one discretionary factor to consider. For the reasons discussed above, application of the complete set of statutory factors outlined in A.R.S. § 16-901.01(A)(2) suggests—on balance—that “What Difference?” had no other reasonable meaning than to advocate for Ms. Jones’ defeat.

ii. Application of the Court of Appeals’ CJF Decision

VSA also argues, without reference to the statutory factors outlined in A.R.S. § 16-901.01, that “[t]he advertisement . . . can be given a ‘reasonable meaning other than to advocate the election or defeat of the candidate.’” See Response at 3. It explains:

One reasonable interpretation of the advertisement—indeed, the correct one—is that Secretary Clinton’s response to the Benghazi attacks was inadequate, and that Jones was wrong when she praised Secretary Clinton afterward. The advertisement can also be read as (for example) encouragement for Jones herself to reconsider her praise of Secretary Clinton, or as encouragement for Jones’ constituents to encourage her to do so, or as a statement that the lives lost in the Benghazi attack would not soon be forgotten, or as a call to further action by the public regarding Benghazi or national security issues generally. These and many other interpretations of the advertisement are all reasonable.

See Response at 3-4.

The Secretary agrees that at least some of the proffered explanations are, in the abstract, potentially reasonable. However, the same could be said about the advertisement run by Committee for Justice & Fairness against then-Superintendent of Public Instruction Tom Horne in 2010. See *CJF*, 235 Ariz. at 348. The advertisement in that case claimed:

(1) when Horne was a state legislator, he had “voted against tougher penalties for statutory rape,” and (2) when Horne was on the Arizona Board of Education, he used his vote to allow “back in the classroom” a teacher who had been caught by students “looking at child pornography on a school computer.” The advertisement urged viewers to “[t]ell Superintendent Horne to protect children, not people who harm them[.]”

CJF, 235 Ariz. at 359 (citing *The Real Truth About Abortion, Inc. v. Federal Election Com’n*, 681 F.3d 544, 554 (4th Cir. 2012)) (italics in original; bold added).



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Id. Such an ad could be interpreted as a commentary that Mr. Horne’s response to issues of statutory rape and child pornography “was inadequate,” and that he was “wrong” for voting as he did. It could be read as “encouragement” for Mr. Horne to “reconsider” his positions, or as encouragement for Horne’s “constituents to encourage” him to do so. It could be a “statement” that the victims of statutory rape and child pornography “would not soon be forgotten,” or as a “call to further action by the public” regarding children’s issues generally. (Indeed, CJF claimed the advertisement “addressed the important issue of protecting Arizona[’s] school children from statutory rape and from teachers who view pornographic materials in the classroom.” *CJF*, 235 Ariz. at 355.) Thus the same template offered by VSA here could have equally applied in *CJF*. But the *CJF* court clearly rejected such a broad conception of what is “reasonable”:

[T]he only reasonable purpose for running an advertisement, during an election campaign, which cost approximately \$1.5 million to produce and broadcast, to critique Tom Horne’s past actions as a former member of the legislature and as an occupant of a post he would soon vacate, was to advocate his defeat as candidate for Attorney General.

Id. at 354 (adopting administrative law judge’s findings of fact); *see also CJF* at 355 (“The *only reasonable purpose* for running such an advertisement . . . was to advocate Horne’s defeat as candidate for Attorney General.”) (emphasis added). “In th[at] case, reasonable minds could not differ as to whether CJF’s advertisement encouraged a vote against Horne.” *Id.* at 355. Clearly, therefore, what constitutes a “reasonable meaning” under Arizona law is not quite as expansive as VSA assumes.

In sum, the Court of Appeals appears to have rejected the sorts of justifications VSA advances here. Whether sufficiently protective of First Amendment speech or not, the Secretary is bound to follow the court’s prescription.

2. The Court of Appeals’ Decision in *CJF* Forecloses VSA’s Constitutional Challenge.

VSA alternatively argues that if “state law were understood to classify ‘What Difference?’ as express advocacy, Arizona’s law would be infirm under the First Amendment.” *See Response* at 5-6. VSA contends this is “reason not to interpret Arizona’s law as Pearsall proposes” and counsels the Secretary to “exercise [her] discretion” to avoid an unconstitutional application of A.R.S. § 16-901.01. *Id.* at 6.

Specifically, VSA argues that U.S. Supreme Court precedent—especially *WRTL* and the “functional equivalent” test for express advocacy outlined therein⁸—dictates that the “What

⁸ The Supreme Court has held that an electioneering communication may be constitutionally regulated only if it constitutes the “functional equivalent” of express advocacy. *McCormell v. Fed. Election Com’n*, 540 U.S. 93, 193 (2003). The test for when an electioneering communication is deemed the “functional



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Difference?” advertisement be deemed issue advocacy: “it take[s] a position on the issue,” it “exhort[s] the public to adopt that position,” and does “not mention an election, candidacy, political party, or challenger.” See Response at 6 (quoting *WRTL* at 471). VSA therefore concludes that because its advertisement “is subject to a ‘reasonable interpretation other than as an appeal to vote for or against a specific candidate, it is . . . not the ‘functional equivalent’ of express advocacy.” *Id.* at 7 (quoting *WRTL* at 470).

However, in rebuffing a constitutional challenge of this sort, the *CJF* court expressly held that *WRTL*’s test “closely correlates to the test set forth in A.R.S. § 16-901.01(A)(2).” *CJF*, 235 Ariz. at 357; see *id.* (“The test provided in A.R.S. § 16-901.01(A)(2)[] is certainly no broader than *WRTL*’s function equivalent test.”). Thus, since Arizona law and federal constitutional law are consistent with one another according to *CJF*, VSA has no basis to mount a constitutional challenge anew.

VSA also warns against utilizing any “subjective tests [that] have already been deemed unconstitutional.” See Response at 7; see also *Citizens United*, 558 U.S. at 324 (the “functional-equivalent test is objective—the results that a speaker may wish for from his issue advocacy are not considered”). The Secretary agrees. Although the surrounding circumstances tend to corroborate Mr. Pearsali’s allegations concerning VSA’s motives,⁹ the Secretary has only considered the four corners of the advertisement—along with very limited contextual factors—in finding “What Difference?” to be express advocacy. See *WRTL*, 551 U.S. at 468, 474 (“A test focused on the speaker’s intent could lead to the bizarre result that identical ads aired at the same time could be protected speech for one speaker, while leading to . . . penalties for another. . . . [Thus] [t]he proper standard . . . must be objective, focusing on the substance of the communication rather than amorphous considerations of intent and effect. . . . [C]ontextual factors . . . should seldom play a significant role in the inquiry[,] [but] Courts need not ignore basic background information that may be necessary to put an ad in context[.]”); *CJF*, 235 Ariz. at 359 (“subjective intent is not a consideration”).

Finally, VSA criticizes A.R.S. § 16-901.01 as hinging on the type of “open-ended rough-and-tumble factors” that *WRTL* found to be inappropriate when drawing a line between express and issue advocacy. See Response at 7 (quoting *WRTL* at 469). However *CJF* expressly

equivalent” of express advocacy is whether “the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *WRTL*, 551 U.S. at 469-70.

⁹ For example, the complaint includes various press releases where VSA boasts of the effect its advertisement had on the Republican primary voters, and notes the paradox of VSA registering as a corporate independent expenditure group only to later disclaim that it conducted any independent expenditures.



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confronted this charge: “the mere fact that A.R.S. § 16-901.01(A)(2)[] identifies certain factors for consideration . . . does not mean it is inconsistent with *WRTL*.” *CJF*, 235 Ariz. at 359.¹⁰

In short, VSA’s constitutional critique is foreclosed in light of the Arizona Court of Appeals’ recent decision in *CJF*. Regardless of the challenges in applying A.R.S. § 16-901.01, *CJF* counsels fidelity to the statutory process.¹¹

¹⁰ VSA also alleges that a finding of express advocacy in this matter would potentially require VSA to register as a political committee, thereby further rendering the statutory scheme unconstitutional. See Response at 8. Yet there is no evidence in the record, nor any allegation by Mr. Pearsall, that VSA’s independent expenditure in May 2014 would trigger registration as a political committee. See A.R.S. § 16-914.02(K) (only an “entity that makes an independent expenditure and that is organized *primarily* for the purpose of influencing an election . . . shall file with the filing officer as a political committee”) (emphasis added). The Secretary therefore rejects VSA’s contention that a reasonable cause finding necessarily subjects VSA to “compelled disclosure of its donors.” See Response at 8.

¹¹ No matter how problematic to apply, the Secretary is obligated to follow *CJF*.

The *CJF* case stemmed from an October 25, 2010 reasonable cause finding by the Secretary of State’s office, wherein *CJF* was found to have violated A.R.S. § 16-902 (registration of political committees) and § 16-912 (advertising disclaimers) after failing to answer repeated inquiries from the office. The reasonable cause finding did not contain (nor was it accompanied by) any analysis of the statutory factors found in A.R.S. § 16-901.01 or the “functional equivalent” test outlined in *WRTL*. The Maricopa County Attorney’s Office assumed enforcement and litigation of the matter thereafter. See *CJF*, 235 Ariz. at 350. On appeal, the *CJF* court appeared comfortable reading *WRTL*’s “functional equivalent” test into A.R.S. § 16-901.01 and applying it to the facts of that case. However, this test is not so easily applied in other circumstances. This particular case is illustrative.

Chief Justice Roberts anticipated potential vagueness concerns when he outlined the “functional equivalent” test in *WRTL*. He conceded “the imperative for clarity in this area” and therefore cautioned “that is why our test affords protection unless an ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *WRTL*, 551 U.S. at 474 n. 7. He criticized reliance on “contextual factors” and warned they “should seldom play a significant role in the inquiry.” *Id.* at 473-74. And significantly, he assured that “[w]here the First Amendment is implicated, the tie goes to the speaker, not the censor.” *Id.* at 474. Yet, quixotically, the *CJF* court left little room for debate, expressly validated the use of contextual factors, and issued no equivalent “tiebreaker” guidance for close situations.

Justice Scalia foresaw this potential result:

[Conceptions of the “functional equivalent” test] ultimately depend . . . upon a judicial judgement . . . concerning “reasonable” or “plausible” import that is far from certain, that rests upon consideration of innumerable surrounding circumstances which the speaker may not even be aware of, and that lends itself to distortion by reason of the decisionmaker’s subjective evaluation of the importance or unimportance of the



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Disposition

In light of the evidence and arguments presented, the Secretary of State finds reasonable cause to believe that VSA violated A.R.S. § 16-914.02(A) by failing to timely notify the Secretary of State of its independent expenditures. The above-referenced complaint is hereby referred to the Attorney General for further proceedings pursuant to A.R.S. § 16-924(A).

Very truly yours,
Eric Spencer

A handwritten signature in blue ink, appearing to read "Eric Spencer", written over a horizontal line.

State Election Director
Arizona Secretary of State Michele Reagan
(602) 542-8683
espencer@azsos.gov

Attachments

CC: Jim Driscoll-MacEachron, Arizona Attorney General's Office

challenged speech. . . . I share the instinct that “[w]hat separates issue advocacy and political advocacy is a line in the sand drawn on a windy day.” . . . But the way to indulge that instinct consistently with the First Amendment is either to eliminate restrictions on independent expenditures altogether or to *confine* them to one side of the *traditional* line—the express-advocacy line, set in concrete on a calm day by *Buckley*, several decades ago. *WRTL*, 551 U.S. at 493, 499 (Scalia, J. concurring) (emphasis in original; citations omitted).

The Chief Justice’s vision became the controlling opinion, and thus the “functional equivalent” test—as particularly interpreted by the Court of Appeals in *CJF*—indisputably governs this case. As such, the Secretary is duty-bound to apply the “functional equivalent” test embodied in A.R.S. § 16-901.01(A)(2) to the best of her ability.



MICHELE REAGAN
Secretary of State
State of Arizona

1700 W. Washington Street, Fl. 7
Phoenix, Arizona 85007-2808
Telephone (602) 542-4285 Fax (602) 542-1575
www.azsos.gov

Torres Group Law, PLLC

An Arizona Law Firm

Israel G. Torres
James E. Barton II
Jessica J. Fotinos
Saman J. Golestan

SECRETARY OF STATE
2015 JUN -8 PM 3:

June 8, 2015

Via Hand Delivery and Electronic Mail (espencer@azsos.gov)

Honorable Michelle Reagan, Secretary of State
1700 W. Washington Street, Floor 7
Phoenix, AZ 85007-2808

Eric Spencer, State Elections Director
1700 W. Washington Street, Floor 7
Phoenix, AZ 85007-2808

RE: Veteransforstrongamerica.org (Veterans for a Strong America)
SOS Filer ID: 201400852

**REPLY TO RESPONSE TO COMPLAINT AGAINST VETERANS FOR A
STRONG AMERICA FOR FAILURE TO FILE 24 HOUR INDEPENDENT
EXPENDITURE REPORTS WITH THE STATE OF ARIZONA**

Dear Secretary Reagan and Director Spencer:

My firm represents David Pearsall, and on his behalf we submit this reply to your office in the matter of Veterans for a Strong America's (veteransforstrongamerica.org) ("VSA") failure to file the required 24-hour reports of independent expenditures with the Arizona Secretary of State, in violation of A.R.S. § 16-914.02(A). This letter follows the complaint filed with your office on January 30, 2015 and the response from VSA filed on May 28, 2015.¹

Arizona's Registration and Notification Requirements for Corporations, Limited Liability Companies, and Labor Organizations Making Independent Expenditures

As a preliminary matter, Mr. Pearsall's complaint never alleged that VSA was a political committee or that any statute relating to the registration and reports of political committees was violated. Thus, VSA's discussion of the political committee statute, its constitutionality, or applicability should be disregarded by your office.

¹ We note for the record and for preservation of the objection that your office permitted VSA to file its response five days after the filing deadline.

Arizona's black letter law requires corporations that make independent expenditures to register with the State of Arizona and report independent expenditures over \$5,000 in statewide races, within 24 hours of making those expenditures. See A.R.S. § 16-914.02(A). VSA registered with your office as a corporation that makes independent expenditures on May 28, 2014. See *Campaign Finance- Filer Details*, Arizona Secretary of State, <http://apps.azsos.gov/apps/election/cfs/search/FilerDetail.aspx?id=201400852>; *Pearsall Complaint Exhibit 3*.

The very same Arizona law requires corporations that make independent expenditures to report those expenditures within 24 hours of making them. See A.R.S. § 16-914.02(A). After registering as a corporation that makes independent expenditures, and airing "What Difference?" for approximately \$50,000 dollars, VSA did not file any report of the expenditure with your office. See *Campaign Finance- Filer Details*, Arizona Secretary of State, <http://apps.azsos.gov/apps/election/cfs/search/FilerDetail.aspx?id=201400852>; *Pearsall Complaint Exhibit 3*.

VSA disregarded, or more likely overlooked, the reporting requirement in A.R.S. § 16-914.02(A) after registering with your office. VSA fails to provide any reasonable explanation as to why an entity that did not intend to make independent expenditures, would register with your office to make independent expenditures. If VSA has legitimate constitutional concerns about other sections of Title 16, upheld as constitutional by Arizona courts as discussed below, then why did VSA register with the State of Arizona as a corporation that makes independent expenditures in the first place? This reply will address the objections raised, but it is crucial to note that this is a matter of missed reporting, not constitutional crisis.

Express Advocacy Under Arizona Law

In Arizona, the black letter law contains two *clear* categories of express advocacy that trigger reporting requirements for persons, organizations, and political committees that make independent expenditures.

The first category, found in A.R.S. § 16-901.01(A)(1) that contains the list of so-called "magic words", is not at issue in this complaint. Thus, your office should disregard any discussion of the first section of the statute in VSA's response as irrelevant. *VSA Response* at 2-4. Mr. Pearsall's complaint focuses on Arizona's second clear definition of express advocacy found in A.R.S. § 16-901.01(A)(2).

The factors found in the applicable statutory framework of A.R.S. § 16-901.01(A)(2) are: 1) a general public communication; 2) referring to one or more clearly identified candidates; 3) targeted to the electorate of that candidate; and 4) in context can have no reasonable meaning other than to advocate for the election or defeat of the candidate. Evidence of one or more of the following is proof that the fourth factor exists in the ad in question: A) presentation of the candidate in a favorable or unfavorable light;

B) the targeting, placement or timing of the communication; or C) the inclusion of statements of the candidate or opponent. See A.R.S. § 16-901.01(A)(2).

In turn, analyzing the statutory factors reveals the VSA ad in question is an anti-Christine Jones express advocacy advertisement. VSA admits this video communication aired on cable television across Arizona. *VSA Response* at 5, 8. VSA admits the ad refers to and clearly identifies Christine Jones by name; as can be seen by the transcript VSA reproduced in its response. *VSA Response* at 2, 4, 6. VSA clearly identifies Christine Jones via written words that appear on the screen, via voiceover narration and via images of Christine Jones herself. The ad ran exclusively in Arizona. See *Pearsall Complaint Exhibit 1*. As Christine Jones was a statewide candidate for the Governor's Office in Arizona, it follows that the targeting necessary in a statewide race for Arizona Governor's Office is the entirety of the State of Arizona. In such a race, voters all across Arizona are the electorate.

The analysis of the fourth factor and its three elements also point to VSA's ad as an express advocacy anti-Christine Jones advertisement. Candidate Christine Jones is clearly presented, and presented in a negative light. There is no subjectivity necessary to see the words the ad utilized were critical by their plain meaning dictionary definitions. The voice over and on screen text presents the death of four Americans in Benghazi Libya as a conspiracy "Our nation: lied to." The ad states "it made no difference to Christine Jones", directly criticizing Jones for her position on the Libya attack, the "altered" talking points, and the fact that the nation was "lied to." It continues to compare Candidate Jones to Hillary Clinton, a polarizing Secretary of State deeply unpopular in Republican circles for her handling of the Benghazi attack, turning next to clearly criticize Candidate Jones' "standards" because of her praise of Secretary Clinton. The ad paints Candidate Jones, her opinions, judgement, and temperament in a negative light, guiding voters to the conclusion that she is unfit for office because of her "standards" and her indifference to the alleged cover-up of the Benghazi attack.

The targeting, placement, and timing of the ad all point to finding the ad is express advocacy against Christine Jones. VSA did not target Candidate Jones with an ad *before* she was a candidate in the Arizona Gubernatorial race at the time she made the statements found in the advertisement; instead the ad aired one month after Christine Jones ceased being a private citizen and officially filed her nomination petitions for the Arizona Gubernatorial Election with your office. See Mary Jo Pitzl, *Goddard, Jones, 4 others file for Arizona offices*, The Arizona Republic (Apr. 29, 2014, 10:55AM), <http://www.azcentral.com/story/news/arizona/politics/2014/04/29/goddard-jones-others-file-arizona-office/8464183/>

The exclusive purchasing of ads targeted to Arizona and the Arizona electorate means the ad was targeted to reach and persuade Arizona voters to vote against her. The timing of the ad was within 90 days of the Arizona Primary. Within the Arizona statutory scheme and given the timing of our primary elections, an ad airing within 90 days can reasonably be found to be express advocacy. Nothing in the Arizona elections code bars this finding; nor does anything in the Arizona elections code indicate that

independent expenditures cannot be made at the time the VSA ad was aired. Lastly, the ad includes multiple statements Candidate Christine Jones made about Secretary Clinton and her opinion on Secretary Clinton's effectiveness as Secretary. All three elements are present for the fourth factor, meaning that "in context" the VSA ad "can have no reasonable meaning other than to advocate for the election or defeat of the candidate." See A.R.S. § 16-901.01(A)(2).

VSA attempts to dismiss the applicable statutory framework of the black letter Arizona law by resorting to both *ad hominem* attacks on Mr. Pearsall and by presenting various misleading straw man versions of Mr. Pearsall's analyses of the statute in question. VSA's response states, "instead of explaining how the advertisement comes within the applicable statutory framework, the complainant takes matters into his own hands and points to various 'factors' . . ." *VSA Response* at 4. Notably, the factors analyzed in the complaint are the factors found in plain language of the applicable statutory framework of A.R.S. § 16-901.01(A)(2).

Interestingly, VSA urges your office to focus on factors not found in the above statute. VSA states that the ad does not identify Christine Jones "as a candidate", that VSA does not mention the office in question or any of Christine Jones' opponents, and that the ad mentions a non-candidate Hillary Clinton. *VSA Response* at 4. None of these factors are found in A.R.S. § 16-901.01(A)(2). Nor is the absence of any of these additional non-statutory factors dispositive on the statutory factors. For example, simply because the ad doesn't *also* mention Christine Jones' opponents or because the ad *does* mention Hillary Clinton in addition to Christine Jones, does nothing to change the fact that Christine Jones is clearly identified in the advertisement. Mentioning Hillary Clinton in the ad does not magically erase Christine Jones' likeness and name from the video nor the recitation of her name from the audio.

VSA's attempt at refuting the fourth factor and its three elements also falls flat. VSA attempts to provide other reasonable interpretations that all fail, due to the statutory mandate that this factor and its elements be analyzed "in context." VSA dismissed the exclusive targeting of Arizona voters via the cable medium as "irrelevant" without any rationale. *VSA Response* at 4. Viewed in context, the exclusive payment and airing of the ad on Arizona cable television weighs only in favor of a finding of express advocacy. Viewed in context, the use of candidate Christine Jones' words against her, weigh only in favor of a finding of express advocacy. The fact that this ad did not air in any other state, other than the sole state where candidate Christine Jones was a candidate, makes any other "interpretation" VSA provides unreasonable. Had VSA wanted to air an issue unrelated to Christine Jones, it could have done so at any time between 2012 and now without directly criticizing Candidate Christine Jones, and without waiting until Christine Jones was a candidate to attempt to criticize some "issue" that is related to her.

Had VSA truly wanted to run an issue ad about Secretary Clinton or Benghazi, it could have done so anytime between 2012 and now; not just during the Arizona Primary election cycle and not just within 90 days of the primary. Had VSA wanted to run an issue ad about Benghazi or "national security generally" it could have done so in any

state, at any time, without devoting 20 out of the 30 seconds of its ad to Candidate Christine Jones within 90 days of the Arizona Primary. VSA's discussion of timing as defined by federal election law or federal election regulation has absolutely no bearing on Arizona Law or your investigation. That's because in this area, Congress has not acted clearly to pre-empt state law and state regulation.

Additionally, VSA's citation of A.R.S § 16-917 only cuts against it. Simply because *additional* reporting requirements kick in for independent expenditures made within 60 days, does not mean that other independent expenditure reporting requirements cease to exist beyond 60 days from an election. In fact, the mere fact that *additional* requirements kick in within 60 days, suggests that there are *other* requirements for independent expenditures made beyond 60 days. Those requirements are found in A.R.S. § 16-901.01(A)(2). Furthermore, A.R.S. § 16-901.01(A)(2) contains no time limiting language as found in A.R.S § 16-917. Had the Arizona Legislature intended to put a hard time cap on this statute, it could have easily done so, as it did with A.R.S § 16-917. As it stands, VSA is unable to refute the fact that its ad meets all of the factors necessary for a finding of express advocacy found in A.R.S. § 16-901.01(A)(2).

Arizona's Express Advocacy Statute is Constitutional

Arizona's statutory definition of express advocacy is constitutional. In 2014, the Arizona Court of Appeals reviewed A.R.S. § 16-901.01(A)(2) and using strict scrutiny review upheld it as constitutional, rejecting a First Amendment challenge on vagueness and over-breadth grounds. *Comm. for Justice & Fairness v. Arizona Sec'y of State's Office*, 235 Ariz. 347 (Ct. App. 2014), *review denied* (Apr. 21, 2015). The court applied the binding US Supreme Court precedents of *Wisconsin Right to Life* and *Citizens United* and upheld Arizona's functional equivalent test because the wording of the Arizona statute "so closely correlates" to the functional equivalent test the court adopted in *Wisconsin Right to Life* and again upheld in *Citizens United*. *Id* at 357. Thus, the Arizona Court of Appeals analyzed the very First Amendment precedent VSA presents in its response, and still, it held the statute at issue to be constitutional.

Even after reviewing *Committee for Justice and Fairness*, if your office cannot consider the intent of the ad buyer when determining the question of express advocacy as found in A.R.S. § 16-901.01(A)(2), it can permissibly do so to evaluate other language found in A.R.S. § 16-914.02(A). The statute requires a corporation making independent expenditures "in an attempt to influence the outcome of a candidate election. . . shall register. . ." See A.R.S. § 16-914.02(A). For this purpose, your office can review the clear evidence of intent found on VSA's own website. See *Pearsall Complaint Exhibit 1*. And it can review the clear evidence of the success of VSA's actual influencing of the candidate election also as found on VSA's website. See *Pearsall Complaint Exhibit 4*.

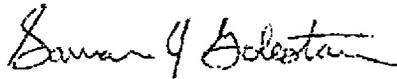
Even after reviewing *Committee for Justice and Fairness*, if your office has questions about the constitutionality of this statute, it cannot decide the statute is unconstitutional and refuse to enforce it based on a finding of unconstitutionality. The Arizona Constitution creates clear and distinct boundaries between the branches of

government. *See Ariz. Const. Art. III.* Finding, declaring, or holding laws to be unconstitutional is solely with the purview of the Judicial Department. One branch of government cannot act to usurp the powers designated to another branch. None of the branches of government may exercise powers granted to another branch. *See Litchfield Elementary Sch. Dist. No. 79 of Maricopa Cnty. v. Babbitt*, 125 Ariz. 215, 220, 608 P.2d 792, 797 (Ct. App. 1980).

Conclusion

An objective review of the advertisement aired against Christine Jones, when viewed in context, shows that there is no reasonable interpretation than to advocate for her defeat. This statute has been upheld as constitutional by the Arizona courts that examined the First Amendment issues presented in VSA's response. VSA's registration with your office as a corporation that makes independent expenditures, shows the clear and blatant nature of this statutory violation. VSA has been unable to provide adequate evidence to defend its clear violation of the black letter Arizona law. Your office should take action and fine VSA to the maximum allowable amount permitted under Arizona law, so the people of Arizona can know who is spending money to influence their vote when they step into the voting booth on Election Day.

Sincerely,



Saman J. Golestan



MICHELE REAGAN
Secretary of State
State of Arizona

1700 W. Washington Street, Fl. 7
Phoenix, Arizona 85007-2808
Telephone (602) 542-4285 Fax (602) 542-1575
www.azsos.gov

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51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3748
DMCGAHNE@JONESDAY.COM

May 28, 2015

Honorable Michelle Reagan, Secretary of State
1700 W. Washington Street, Floor 7
Phoenix, AZ 85007-2808

Eric Spencer, State Elections Director
1700 W. Washington Street, Floor 7
Phoenix, AZ 85007-2808
espencer@azsos.gov
kkingmore@azsos.gov

Re: Pearsall Complaint Regarding Veterans for a Strong America

Dear Secretary Reagan and Director Spencer:

We represent Veterans for a Strong America, a non-profit, non-partisan grassroots action organization, which is organized under Section 501(c)(4) of the Internal Revenue Code. VSA's mission is to educate the public, members of Congress, and the Executive Branch about the need for a strong national defense and a robust foreign policy. I write in response to the January 30, 2015 complaint from David Pearsall regarding an advertisement aired by VSA in 2014. The Pearsall complaint argues that the advertisement was express advocacy and therefore triggered a requirement to file a record of the expenditure with the Arizona Secretary of State.

For the reasons explained below, the complaint is without merit. Under Arizona law, the advertisement is not express advocacy, and therefore did not trigger a disclosure requirement, because it is susceptible of a "reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates." Arizona Rev. Stat. §16-901.01(A). Moreover, if the complaint's characterization of Arizona law were accepted, that law would be infirm under binding Supreme Court precedent, which requires an objective assessment of speech to determine whether it is express advocacy, and which has decisively rejected open-ended "balancing" approaches to such determinations.

The complaint should therefore be dismissed without further action.

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SECRETARY OF STATE
2015 MAY 29 AM 11:52

Honorable Michelle Reagan, Secretary of State
Eric Spencer, State Elections Director
May 28, 2015
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Background

On May 28, 2014, VSA released a television advertisement entitled "What Difference?", which discussed the 2012 Benghazi attack during which four Americans were killed. The script for the advertisement, in its entirety, reads:

VOICEOVER: Four Americans were killed by terrorists. What happened? Requests for more security: denied. Talking points: altered. Our nation: lied to.

HILLARY CLINTON: What difference, at this point, does it make?

VOICEOVER: It made no difference to Christine Jones. Two months later, she said "Hillary Clinton will continue to stand out as a capable, respected leader." Jones praised Clinton: "Americans will realize what an effective Secretary of State Clinton was... The incredibly high standard she set." These are Christine Jones' standards. Are they yours?

The advertisement can be viewed online at
<http://www.veteransforastrongamerica.org/2014/05/29/az-gubernatorial-candidates-praises-hillary-clinton-benghazi/>.

Over six months later, in January 30, 2015, David Pearsall filed the complaint at issue here. The complaint notes (at 2) that VSA did not "file a report" with the Secretary of State when it aired "What Difference?". The complaint argues (at 2-3) that such a report was required because the ad is "express advocacy" under Arizona law, which would trigger a further disclosure requirement. On April 24, your office forwarded the complaint to VSA and requested a response. This letter constitutes that response.

I. "What Difference?" does not constitute express advocacy under Arizona law

Arizona law defines an "independent expenditure" as one "that expressly advocates the election or defeat of a clearly identified candidate." Arizona Rev. Stat. §16-901(14). Express advocacy is, in turn, defined as a communication that uses certain explicit exhortations (such as "vote for") or "that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates." Arizona Rev. Stat. §16-901.01(A).

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Classification of speech as express advocacy (and thus as an independent expenditure) has several important consequences under Arizona law. As relevant to this complaint, a group that makes an independent expenditure must notify the Secretary of State by filing a report. Arizona Rev. Stat. §16-914.02(A)–(B). That report must identify the “names, occupations, employers and amount contributed by each of the three contributors that contributed the most money within the preceding six months.” Arizona Rev. Stat. §16-915(F)(5). In addition, under Arizona law, a “political committee” includes “any association or combination of persons that is organized, conducted or combined for the purpose of influencing the result of any election,” including a “committee organized for the purpose of making independent expenditures.” Arizona Rev. Stat. §16-901(19)(f). Classification as a “political committee,” in turn, requires a group to file a regular campaign finance report, Arizona Rev. Stat. §16-913, which must include (among other things) a list of individuals that have made contributions exceeding \$50, Arizona Rev. Stat. §16-915(A)(3)(a). The express-advocacy classification is, therefore, extraordinarily important (and, as explained below, has implications for the constitutionality of Arizona’s scheme).

Under the plain language of the Arizona statute, “What Difference?” is not express advocacy. It is a classic issue advertisement—an advertisement, in other words, that does not expressly advocate election or defeat of a candidate, but instead seeks to discuss a specific issue relevant to public affairs (here, the Benghazi attack and Secretary Clinton’s response to it). It does not contain any “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.” Arizona Rev. Stat. §16-901.01(A)(1). That is the first, principal test for express advocacy under Arizona law. This is not a list of magic words—the list of phrases is introduced with “such as,” and so an advertisement that encouraged voters (for example) to “on election day, pull the lever for _____” would surely count. But it is a closely circumscribed list of examples, designed to capture truly *express* advocacy. “What Difference?” contains nothing of the sort. There is no explicit campaign exhortation, and the complaint concedes as much.

The advertisement, moreover, can be given a “reasonable meaning other than to advocate the election or defeat of the candidate.” Arizona Rev. Stat. §16-901(A)(2). One reasonable interpretation of the advertisement—indeed, the correct one—is that Secretary Clinton’s response to the Benghazi attacks was inadequate, and that Jones was wrong when she praised Secretary Clinton afterward. The advertisement can also be read as (for example) encouragement for Jones herself to reconsider her praise of Secretary Clinton, or as encouragement for Jones’ constituents to encourage her to do so, or as a statement that the lives lost in the Benghazi attack would not soon be forgotten, or as a call to further action by the public regarding Benghazi or national security issues generally. These and many other

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interpretations of the advertisement are all reasonable. And again, the complaint does not dispute this.

Related case law on the express-advocacy test makes it clear that it is an extraordinarily demanding standard. In *FEC v. Furgatch*, for example, the Ninth Circuit considered an ad placed in the *Boston Globe* three days before the 1980 presidential election. 807 F.2d 857 (9th Cir. 1987). It was captioned “Don’t let him do it,” and criticized President Carter on a wide variety of topics, warning readers of the consequence of giving him “four more years.” *Id.* at 858. The court of appeals nonetheless said that whether “the advertisement expressly advocates the defeat of Jimmy Carter is a *very close call*.” *Id.* at 861 (emphasis added). The court ultimately concluded that it did, and was therefore subject to regulation and disclosure requirements, because the words “don’t let him” are “a command”—they “expressly advocate action of some kind.” *Id.* at 865.

If an advertisement run three days before a presidential election urging voters not to “let [the candidate] do it” and have “four more years” presents a “*very close call*,” then the advertisement at issue here is, *a fortiori*, nowhere near the line. The advertisement is totally free of the sorts of exhortations that the Ninth Circuit found dispositive in *Furgatch*, and was aired nowhere near as close to the election. At any rate, “the standard for ‘express advocacy’ is not whether a communication might somehow be read as campaign-related, or whether such a reading is a reasonable, or perhaps even the most reasonable, interpretation.” *In re Americans for Job Security, Inc.*, MURs 5694 & 5910 (F.E.C. April 27, 2009) at 8 (Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn). “What Difference?” is susceptible of a reasonable interpretation other than as an appeal to vote for or against a candidate.

Instead of explaining how the advertisement comes within the applicable statutory definitions, the complaint takes matters into its own hands and points to various “factors” that, it argues, indicate that the advertisement is express advocacy. As explained below, these “factors” (if given the treatment that the complaint suggests) are precisely the sort of *ad hoc* test that the Supreme Court has already declared unconstitutional, and application here would render Arizona’s campaign-finance system unconstitutional. But even on their own terms, the identified “factors” cut against Pearsall’s position. Pearsall in his complaint argues (at 3) that the advertisement “clearly identifies and refers to Christine Jones, a candidate for Arizona Governor.” But the advertisement does not identify Jones *as* a candidate, or identify the office she was running for. It does not include any “statements of ... opponents,” or even identify any such opponents. Arizona Rev. Stat. §16-901.01(A)(2). It discusses another person (Secretary Clinton), who was not a candidate for any office at the time, in substantially equal measure. And it does not urge listeners to do anything other than contemplate whether, on the Benghazi issue,

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they agree with Jones' praise for Secretary Clinton. That Jones happened to be running for governor does not mean that all public discussion of issues on which she had taken a position became "express advocacy" under Arizona law.

Pearsall also notes (at 3) that this advertisement "aired within 90 days" of the primary election. But under the norms of election law, 90 days is a *very* long time before an election. (In August 1988, Michael Dukakis was seven points ahead in the polls.) Under federal law, by analogy, speech is only a regulated "electioneering communication" if it airs within 30 days of a primary election. 11 C.F.R. §100.29(a)(2). And under Arizona law, if a group makes even a true "independent expenditure"—that is, one containing express advocacy—more than "sixty days" before election day, there is no obligation (as there is otherwise) to send "a copy of the campaign literature or advertisement to each candidate named or otherwise referred to in the literature or advertisement." Arizona Rev. Stat. §16-917(A). The long temporal distance between the advertisement's airing and the election (judged by the standards of contemporary election law) is, in other words, positive support for its characterization as an issue ad.

The only other "factors" identified by the complaint are that the advertisement aired on Arizona cable television, and that it might have inspired voters to view Jones less favorably. The former is so commonplace as to be irrelevant. As to the latter, the same could be said of the nearly any discussion of a public issue on which people disagree—for example, it is impossible to advocate for tax cuts without subjectively inspiring listeners to view tax raisers less favorably. That is because candidates for public office are often "intimately tied to public issues involving legislative proposals and governmental actions." *Buckley v. Valeo*, 424 U.S. 1, 42 (1976). Indeed, it could fairly be said of "the vast majority" of issue ads that they have some subjective "electioneering purpose." *McConnell v. FEC*, 540 U.S. 93, 206 (2003). But as the Supreme Court has made clear time and time again, that does not mean that all discussion of public issues constitutes express advocacy.

That the Pearsall complaint does not point to any particular language contained in the advertisement that could be read as express advocacy is telling. The complaint is meritless as a matter of black-letter Arizona law. Your office need go no further to dismiss the complaint without further action.

II. "What Difference?" cannot, consistent with the First Amendment, be treated as express advocacy

As explained above, the plain language of Arizona's statute indicates that the advertisement at issue here is not express advocacy within the meaning of state law. If, however, state law were understood to classify "What Difference?" as express advocacy, Arizona's law

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 Eric Spencer, State Elections Director
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would be infirm under the First Amendment. That is, first and foremost, a reason not to interpret Arizona's law as Pearsall proposes—when “a statute is reasonably susceptible of two interpretations, by one of which it is unconstitutional and by the other valid,” one should “prefer[] the meaning that preserves to the meaning that destroys.” *Panama Refining Co. v. Ryan*, 293 U.S. 388, 439 (1935) (Cardozo, J., dissenting).¹ In addition, whatever the meaning of Arizona's statute, the constitutional dubiousness of Pearsall's interpretation counsels in favor of exercising your office's discretion, discretion which is constitutionally mandated: “validly conferred discretionary executive authority is properly excised ... to avoid serious constitutional doubt.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2259 (2013). See also *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988) (“where an otherwise acceptable construction of a statute would raise serious constitutional problems,” the statute should be construed “to avoid such problems unless such construction is plainly contrary to the intent of Congress”). But if, in the end, Arizona's statute were understood as Pearsall has proposed, and if the Secretary were to enforce it against VSA in the circumstances of this case, then that enforcement would be unconstitutional.

The line between discussing issues and expressly advocating a candidate's election or defeat is derived from the Supreme Court's campaign-finance decisions, and is required by the First Amendment. See *Buckley v. Valeo*, 424 U.S. 1 (1976); *FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007). Although “the distinction between campaign advocacy and issue advocacy” is not always easy to draw, “the law in this area requires us ... to draw such a line,” because the Supreme Court “has never recognized a compelling interest in regulating ads ... that are neither express advocacy nor its functional equivalent.” *Id.* at 477 (plurality opinion of Roberts, C.J.).²

Under the standards articulated by the Supreme Court, “What Difference?” is plainly issue advocacy. It “take[s] a position on the issue,” it “exhort[s] the public to adopt that position” (by asking the listener to compare their evaluation of Secretary Clinton with Jones'), and does “not mention an election, candidacy, political party, or challenger.” *Id.* at 471. The ad

¹ This is especially true here, where the express-advocacy tests announced by the Supreme Court are plainly the ones on which Arizona law is based. See *Committee for Justice & Fairness v. Arizona Secretary of State's Office*, 235 Ariz. 347, 357 (App. Div. 1 2014) (“The test provided in A.R.S. § 16-901.01(A)(2)(a) is certainly no broader than [the Supreme Court's] functional equivalent test”).

² Parts III and IV of the Court's opinion in *WRTL*, from which the quotations in this letter are drawn, were joined by a plurality of the Court. It is controlling because three Justices would have gone even further and invalidated restrictions even on speech that is the functional equivalent of express advocacy. 551 U.S. at 483-503 (Scalia, J., concurring in part and concurring in the judgment). See *Marks v. United States*, 430 U.S. 188, 193 (1977) (“When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.”)

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nowhere uses “express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ [or] ‘reject.’” *Buckley v. Valeo*, 424 U.S. at 44 n.52 (1976). And because (as discussed above) it is subject to a “reasonable interpretation other than as an appeal to vote for or against a specific candidate,” it is also not the “functional equivalent” of express advocacy. *WRTL*, 551 U.S. at 470. To be sure, the Benghazi issue “may also be pertinent in an election.” *Id.*, at 474. That is true of all public issues, however. “At best,” this demonstrates that “the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application.” *Ibid.* (quoting *Buckley*, 424 U.S. at 42). But “that is not enough to establish” that speech “can only reasonably be viewed as advocating or opposing a candidate.” *Ibid.*

The *WRTL* functional equivalent of express-advocacy standard is also, crucially, an objective one—and subjective tests have already been deemed unconstitutional. The complaint’s focus (at 3) on VSA’s “intent,” rather than on the content of VSA’s advertisement (which it does not even bother to quote), is therefore improper. The “functional-equivalent test is objective”—the results that a speaker may wish for from his issue advocacy are not considered. *Citizens United v. FEC*, 558 U.S. 310, 324 (2010). VSA’s “subjective intent in running the ads,” whatever it may have been, is therefore simply “irrelevant.” *WRTL*, 551 U.S. at 472. See also, e.g., *The Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 552 (4th Cir. 2012) (“subjective intent is ... an impermissible consideration”). The question, under the First Amendment, is whether the advertisement *objectively* advocates election or defeat, or has a reasonable meaning other than to advocate the election or defeat of the candidate. For the reasons explained above, it does, and that is the end of the matter.

The complaint also invokes a variety of what it calls (at 2–3) “express advocacy factors.” As explained above, those factors favor VSA. But even if they did not, the Supreme Court has held that these sorts of vague appeals to “‘contextual’ factors”—such as the timing of the advertisement or the fact that the speaker was known to oppose the election of the candidate in other communications—do *not* render speech “the equivalent of express advocacy.” *WRTL*, 551 U.S. at 472. To the contrary, these sorts of “contextual factors ... should seldom play a significant role in the inquiry.” *Id.* at 474. That is because a multi-factor “balancing test” to determine what constitutes express advocacy—“the open-ended rough-and-tumble of factors” that invite “complex argument in a trial court”—permits the government “to select what political speech is safe for public consumption by applying ambiguous tests.” *Citizens United*, 558 U.S. at 335–36 (quoting *WRTL*, 551 U.S. at 469). To have government officials “pore over each word of a text to see if, in their judgment, it accords with the [multi-factor] test they have promulgated” is “an unprecedented governmental intervention into the realm of speech.” *Id.* at 336. That was precisely what the FEC attempted in the wake of *WRTL*, and is precisely what

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Citizens United then disapproved. The “express advocacy factors” pointed to by Pearsall should therefore be given, at most, no weight.

To make matters worse, many of the “factors” pointed to by the complaint have been specifically rejected by the Supreme Court as irrelevant. Pearsall complains, for example (at 3) that the advertisement aired on Arizona cable television. As explained above, that is incredibly commonplace, but it is also not a legally permissible basis for distinguishing among types of speech: while “some means of communication may be less effective than others at influencing the public in different contexts, any effort by the Judiciary to decide which means of communications are to be preferred for the particular type of message and speaker would raise questions as to the courts’ own lawful authority.” *Citizens United*, 558 U.S. at 326. Communicating in a broadcast medium therefore cannot possibly be a reason to conclude that speech is express advocacy.

Similarly, even if one credited the complaint’s appeals (at 3) to the timing of the advertisement, if proximity to an election “were enough to prove that an ad is the functional equivalent of express advocacy,” then all such communications would be within the government’s power to regulate. *WRTL*, 551 U.S. at 472. The Supreme Court has specifically rejected that conclusion. At any rate, this is certainly nothing like the ad in *Furgatch*, which ran three days before the presidential election. 807 F.2d at 858.

Nor does it make any difference that the advertisement here would trigger a disclosure requirement, rather than an outright ban. As explained above, treating the speech at issue as express advocacy would not just result in a disclosure about the advertisement itself—it would arguably subject VSA *itself* to the requirement to register as a political committee and disclose its donors. The Supreme Court has “repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.” *Buckley*, 424 U.S. at 64. To “avoid questions of unconstitutionality,” courts have therefore long construed federal financial disclosure requirements “to be nonapplicable” to groups “engaged purely in issue discussion.” *Id.* at 79 & n.106. That is because the First Amendment permits “independent reporting requirements” on “groups that are not candidates or political committees” only when “they make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate.” *Id.* at 80. If an organization’s “major purpose” is not “the nomination or election of a candidate,” the First Amendment forbids the compelled disclosure of its donors. *Id.* at 79. Because treating “What Difference?” as express advocacy would arguably trigger that sort of disclosure requirement under Arizona law, such treatment is therefore unconstitutional. See *Massachusetts Citizens for Life v. FEC*, 479 U.S. 238 (1986) (making clear that the non-profit group at issue was not a political committee even though it had engaged in express advocacy). And regardless, VSA lacks such an electoral purpose, and as a

JONES DAY

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non-profit organized under section 501(c)(4) of the Internal Revenue Code, cannot have such a primary purpose.

For the foregoing reasons, the Pearsall complaint is without merit and should be dismissed without further action.

Very truly yours,

A handwritten signature in black ink, appearing to read 'DMG II', written over a horizontal line.

Donald F. McGahn II



MICHELE REAGAN
Secretary of State
State of Arizona

1700 W. Washington Street, Fl. 7
Phoenix, Arizona 85007-2808
Telephone (602) 542-4285 Fax (602) 542-1575
www.azsos.gov

January 30, 2015

Via First Class and Electronic Mail

Honorable Michelle Reagan, Secretary of State
1700 W. Washington Street, Floor 7
Phoenix, AZ 85007-2808

Eric Spencer, State Elections Director
1700 W. Washington Street, Floor 7
Phoenix, AZ 85007-2808
espencer@azsos.gov
kkingmore@azsos.gov

RE: Veteransforstrongamerica.org (Veterans for a Strong America)
SOS Filer ID: 201400852

**COMPLAINT AGAINST VETERANS FOR A STRONG AMERICA FOR
FAILURE TO FILE 24 HOUR INDEPENDENT EXPENDITURE REPORTS
WITH THE STATE OF ARIZONA**

Dear Secretary Reagan and Director Spencer:

My firm represents David Pearsall and on his behalf we allege that Veterans For A Strong America (veteransforstrongamerica.org) ("VSA"), a South Dakota-based organization, failed to file the required 24-hour reports of independent expenditures with the Arizona Secretary of State, in violation of A.R.S. § 16-914.02(A).

Background

VSA is an organization that participates in express advocacy for and against candidates across the United States. VSA is not registered with the Arizona Corporation Commission, nor is it registered as a corporation in its home state of South Dakota.

On May 29, 2014, VSA posted a press release to its website announcing, "VSA Launches Statewide TV Buy Against Christine Jones." VSA purchased an ad on cable television in Arizona against Christine Jones, a Republican candidate for Governor. See *Exhibit 1*. The value of this ad buy was approximately \$50,000. See *Exhibit 2*. The ad in question ran for a period of approximately 10 days. *Id.* While VSA did register with the

Secretary of State on May 28, 2014 as a "Corp/LLC/Labor Org" entity that makes independent expenditures, VSA has not filed any reports showing it has made any expenditures in the State of Arizona. *See Exhibit 3.* VSA failed to file a report for the anti-Christine Jones ad it boldly proclaimed it launched. VSA's ad is clearly express advocacy, as discussed below.

Express Advocacy, Not Issue Advocacy

VSA will not be able to challenge the classification of its anti-Jones ad as express advocacy. VSA itself proclaims its intent was to influence the primary election for the defeat of Christine Jones. The May 2014 advertisement falls within the definition of express advocacy as provided in ARS § 16-901.01.

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.

The May 28th, 2014 Advertisement Entitled "What Difference?"



Here, VSA produced advertisements that aired for the purpose of advocating the defeat of Candidate Christine Jones. Analyzing the statutory express advocacy factors, these ads are broadcast communications that aired on cable television stations. *Supra.*

The ad clearly identifies and refers to Christine Jones, a candidate for Arizona Governor.

The ad is targeted to Arizona voters. It need not be targeted to Republicans alone. Furthermore, VSA portray Christine Jones in a negative light and recite her statements of praise of Hillary Clinton, the Democratic Secretary of State in the Obama Administration. It goes without saying that among Republican primary voters, being painted in such a light is "negative" and will only have the effect of hurting her standing with the Primary Electorate across the State of Arizona. The ad aired within 90 days of the Primary Election.

Based on the above objective factors found in the statute, the intent is clear. However, if there remains any doubt by your office of the intent to influence the election, we can easily look to the publications and words of VSA itself to find that the intent was to influence Arizona voters to oppose Christine Jones. VSA published the results of a poll it conducted with Arizona Voters to show that its own ad raised Christine Jones' "negatives." See Exhibit 4. The title of the page alone makes it clear, "New Poll Shows VSA's Benghazi Ad Impacting AZ Governor's Race." The subtitle makes it even more clear, "VSA Impacting the AZ Governor's Race with Candidate's Own Words."

Failure to Disclose all Independent Expenditures To Arizona Secretary of State's Office

ARS § 16-914.02(A) requires all Corporations, Unions or LLCs that make independent expenditures to influence the outcome of a candidate election to file a record of the expenditure with the Arizona Secretary of State within 24 hours of making the expenditure. VSA failed to disclose the \$50,000 it spent on the anti-Jones ad in May of 2014.

As a result, it should be fined the maximum penalty permitted by law. A.R.S. § 16-914.02(H) provides for remedies of "a civil penalty of up to three times the total amount of the expenditure." In this case, the maximum penalty would be \$150,000.

Conclusion

Out of state groups that wish to spend money on express advocacy against candidates in our state during election season must comply with our election laws. The Arizona Secretary of State's Office should investigate these violations of ARS § 16-914.02(A) in order to restore accountability, transparency, and integrity to elections in Arizona.

Sincerely,



Saman J. Golestan

EXHIBIT 1



DESERVE JUSTICE

SIGN THE PETITION

PAID FOR BY VETERANS FOR A STRONG AMERICA

The SITREP

November 4th - A Day of Reckoning
President Obama says his policies are on the ballot

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MISSION

VSA IN THE NEWS

PRESS RELEASES

ACTION

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8 MONTHS AGO

VSA Launches Statewide TV Buy Against Christine Jones in Arizona

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"Christine Jones' comments in support of Hillary Clinton are an insult to the victims of the Benghazi terror attacks and to every person fighting for accountability from this Administration for their role in the deaths of four Americans." ♦

May 29, 2014

John

Press Releases

Arizona, Christine Jones



Related

Two Person Race in Arizona Gubernatorial Primary

New Poll Shows VSA's Benghazi Ad Impacting AZ Governor's Race

VSA's Arends Supports Benghazi Committee, Warns Against Political Gamesmanship

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8 MONTHS AGO

VSA Launches Statewide TV Buy Against Christine Jones in Arizona

NEWS

Veterans for a Strong America

<http://www.veteransforstrongamerica.org>

Contact: media@veteransforstrongamerica.org

May 29, 2014

For IMMEDIATE Release

VSA Ad

Veterans for a Strong America Takes on Christine Jones and Her Post-Benghazi Praise for Hillary Clinton

Vets Running statewide TV ad in Arizona against Jones for calling Clinton "Effective" and Praised her "High Standards"

(SIOUX FALLS) – The nation's leading organization of conservative veterans announced today that it's taking aim at Christine Jones, a candidate for governor in the Republican primary in Arizona by releasing a television ad entitled What Difference? (<http://goo.gl/jsdjtt>) about Jones' outrageous lack of concern regarding Benghazi. Veterans for a Strong America is exposing Jones' exceptionally poor judgment in praising former Secretary of State Hillary Clinton and her poor judgment in the wake of the death of four Americans. On September 11, 2012, under Hillary Clinton's tenure as Secretary of State, terrorists attacked the US Consulate in Benghazi, Libya killing the United States Ambassador, the embassy's information officer and two former Navy SEALs who came to the aid of the besieged compound.

VSA Chairman Joel Arends said, "Christine Jones' comments in support of Hillary Clinton are an insult to the victims of the Benghazi terror attacks and to every person fighting for accountability from this Administration for their role in the deaths of four Americans."

The new ad gives background on the Administration's stonewalling and lies regarding the Benghazi terror attacks, and contains a clip of Secretary Clinton's infamous hearing in which she shrieked "What difference, at this point, does it make" while testifying before Congress. The ad then quotes Jones praising Clinton two months later by calling her "capable" and "respected." Jones is also quoted as referring to Clinton as "effective" and having "high standards."

VSA Chairman Arends: "Christine Jones lacks the judgment required to be the top elected official in any state, let alone a state with as pronounced a military presence as Arizona."

VSA will continue to make Christine Jones' outrageous comments and views regarding Benghazi and Clinton a major theme of the upcoming election for governor throughout the primary election and into the fall if necessary.

Added Arends: "Christine Jones may not want to hold Hillary Clinton to account, but Veterans for a Strong America will. Four men were killed serving their country and two of them were veterans who ran to the sounds of the guns when our consulate was under attack. We won't let Hillary Clinton or her supporters like Christine Jones whitewash what happened to them."

For more information about Veterans for a Strong America or to interview Joel Arends or another veteran – email media@veteransforstrongamerica.org.

#30#

@V4SA Tweets

.@AymanM: You were visibly shocked when Willie told you stop parroting the false narrative re: @ChrisKyleFrog Iraq savages comment. #tcot 6 hours ago

.@AymanM: @ChrisKyleFrog was not a racist who went on killing sprees as you suggested on @Morning_Joe today. #tcot #bedwettingleft 6 hours ago

.@BarackObama hoped you would forget about #BoweBergdahl. Let's not forget the 6 men who died searching for him. goo.gl/Q4Qdq4 23 hours ago

RT @SteveDeaceShow: Today's show: The secret to the success of #AmericanSniper with @V4SA stevedeace.com/stevedeace-ll... #tcot 7 days ago

.@JonIernst castrated hogs, we're counting on her to castrate #ISIS. #gopresponse #foxnewsCHAT 1 week ago

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Two Person Race in Arizona Gubernatorial Primary

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VSA Chairman Joel Arends Joins Call for VA Secretary Shinseki Resignation

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2 thoughts on "VSA Launches Statewide TV Buy Against Christine Jones in Arizona"

1. AZ_MDavis on May 29, 2014 at 1:20 pm said:
RT @dennis_welch: VIDEO: Dark money group launches TV ad slamming @JonesForGov for praising @HillaryClinton after #Benghazi: <http://t.co/sP...>
2. Pingback: cat 4 brother



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---------------------------------	---	--	---

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Google+

EXHIBIT 2

Veterans for a Strong America, a group that calls itself "the nation's leading organization of conservative veterans," is airing a TV ad attacking Republican gubernatorial candidate Christine Jones.

The ad, called "What Difference?" (<https://www.youtube.com/watch?v=KVcEtVQ7vbl&list=UU2ku84CmYziDGHrVcQzEFhg>) takes aim at Jones for saying that former Secretary of State Hillary Clinton "will continue to stand out as a capable and respected leader."

Joel Arends, chairman of Veterans for a Strong America, said DC London produced the ad.

It's not the first time the group has worked with the political consulting firm (<http://dc-london.com/#portfolio>) co-founded by Sean Noble, dubbed by some as the "dark-money man" (<http://www.propublica.org/article/the-dark-money-man-how-sean-noble-moved-the-kochs-cash-into-politics-and-more>) who has distributed tens of millions of dollars in anonymous donations to groups supporting conservative campaigns.

Noble is an ally of Doug Ducey, the Republican state treasurer who is also running for governor.

The anti-Jones ad features footage from Clinton's testimony before Congress, where she asked, "What difference, at this point, does it make?"

Clinton's remark came during an exchange with Sen. Ron Johnson, a Republican from Wisconsin, when he said the public was told that protests had given rise to the assault on the consulate, even though it could have been "easily ascertained that that was not the fact." Four Americans died, including a U.S. ambassador.

The ominous ad features photos of Clinton and Jones, photos of the four dead Americans, and fire building in the background.

"It made no difference to Christine Jones," the ad says. "Two months later, she said Hillary Clinton will continue to stand out as a capable and respected leader."

Arends said the ad began running Thursday on cable stations and will "run heavy" for up to 10 days. The ad buy was about \$50,000, he said. Arends said his organization is funded by "grassroots donors."

Jones hit back with videos of her own.

"You've probably seen those negative ads my opponents are running against me," she speaks to the camera in one response (http://www.christinejones.com/get_the_facts). "Don't be fooled by false and misleading statements. Their personal attacks are way beneath the dignity of this race."

Jones directs people to her website (<http://www.christinejones.com/home>) to "get the facts for yourself."

"I know Arizonans will do their homework, and make up their own minds."

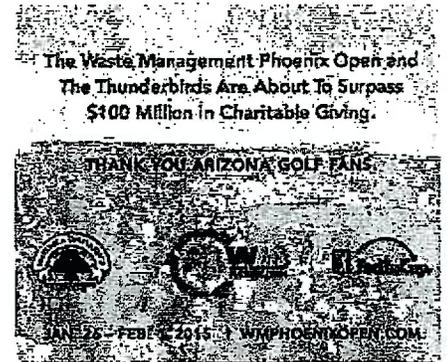


EXHIBIT 3

Arizona Secretary of State - Ken Bennett

Campaign Finance - Filer Details

[Help](#)

Filer Name: Veteransforstrongamerica.org			Status: Active
Filer ID: 201400852	Filer Type: Independent Expenditures (Corp/LLC/Labor Org)	Registration Date: 5/28/2014	Last Amended Date: 5/30/2014
Mailing Address: Phone: (605) 254-2624		Filer Address: P.O. Box 1246 StouxFalls SD 57101	

This filer has no filed reports.

EXHIBIT 4



DESERVE JUSTICE

SIGN THE PETITION

PAID FOR BY VETERANS FOR A STRONG AMERICA

The SITREP

More than a dozen...

Keep Us Safe

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MISSION

VSA IN THE NEWS

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ACTION

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CONTACT

VIDEOS

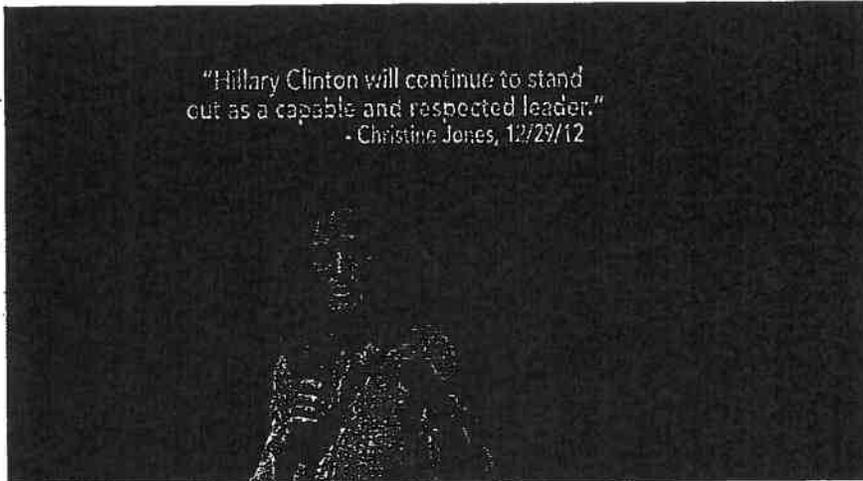
BENGHAZI

SEQUESTRATION

MENU

4 MONTHS AGO

New Poll Shows VSA's Benghazi Ad Impacting AZ Governor's Race



VSA Impacting the AZ Governor's Race with Candidate's Own Words +

Jun 27, 2014

John

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Arizona, benghazi, Governor

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Veterans for a Strong America

http://www.veteransforstrongamerica.org

Contact: media@veteransforstrongamerica.org

June 27, 2014

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For Immediate Release

New Poll Shows Veterans for a Strong America Impacting Arizona Governor's Race

(Sioux Falls) This week, Veterans for a Strong America and Harper Polling conducted a poll of likely Republican primary voters in Arizona.

The poll shows that Veterans for Strong America has had an impact on the Arizona governor's race by driving up candidate Christine Jones negatives. VSA ran a statewide television ad criticizing Jones for praising Hillary Clinton after the Benghazi terrorist attack, and as a result Jones now has the highest negatives of any other top tier candidate for Governor. It also gives her the lowest net positive rating of the major candidates.

VSA Ad

	Fav	Unfav	Net Positive
Ducey	48%	12%	36%
Bennett	28%	9%	19%
Smith	25%	13%	12%
Jones	28%	18%	10%

The head-to-head results in the Arizona Governor's race show that Doug Ducey has a strong lead over the rest of the field.

Doug Ducey	33%
Christine Jones	15%
Scott Smith	14%
Ken Bennett	12%
Andy Thomas	3%
Frank Riggs	2%
Undecided	22%

The poll also shows that 98% of GOP primary voters believe the VA scandal is a very serious or somewhat serious issue and 80% blame Obama or his administration for the problem, while 16% blame the local VA hospitals.

Joel Arends, Chairman of Veterans for a Strong America, said, "Our poll underscores the importance of veterans and the issues important to them in Arizona and other states across the country. Veterans for a Strong America will continue to hold accountable people like Christine Jones who dismissed the attacks in Benghazi when she praised Hillary Clinton. Our members deserve better leadership."

Veterans for a Strong America is a grassroots action organization committed to ensuring that America remains a strong nation by advancing liberty, safeguarding freedom and opposing tyranny. For more information, visit www.veteransforstrongamerica.org.

###

Poll Crosstabs and Toplines for AZ Governor:

1 / 32

@V4SA Tweets

Obama praises Muslim cleric who wanted American troops killed. #disgusting [freebeacon.com/national-security...](http://freebeacon.com/national-security/) 1 month ago

Former Commandant of @USMC on President @BarackObama's plan to defeat #ISIS. goo.gl/2igd6A <http://t.co/046xPkjY4> 1 month ago

The IG report on secret wait lists at the Phoenix @DeptVetAffairs goes easy on administrators. goo.gl/xkoguh <http://t.co/XX4ZnGst42> 1 month ago

Managers at over a dozen @DeptVetAffairs (VA) medical facilities lied to federal investigators goo.gl/FmL4Za <http://t.co/nXEpv4PftHU> 2 months ago

RT @ArifFleischer: Bush also told VP - and I quote - "We're at war Dick and we're going to find out who did this and we're going to kick their ass." 2 months ago

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Arizona Republican Primary Election Poll Crosstabs
 Veterans for a Strong America
 June 25-26, 2014

(This study was given to the August 2014 Republican primary election)

Issue/Statement	Favorable	Unfavorable	Net Positive
Very Favorable	64.8%	12.1%	52.7%
Favorable	14.2%	8.3%	6.9%
Unfavorable	1.0%	17.6%	-16.6%
Very Unfavorable	1.0%	1.0%	-0.0%
Total	81.0%	39.0%	42.0%

Party Affiliation	Favorable	Unfavorable	Net Positive
Very Favorable	64.8%	12.1%	52.7%
Favorable	14.2%	8.3%	6.9%
Unfavorable	1.0%	17.6%	-16.6%
Very Unfavorable	1.0%	1.0%	-0.0%
Total	81.0%	39.0%	42.0%

Gender	Favorable	Unfavorable	Net Positive
Very Favorable	64.8%	12.1%	52.7%
Favorable	14.2%	8.3%	6.9%
Unfavorable	1.0%	17.6%	-16.6%
Very Unfavorable	1.0%	1.0%	-0.0%
Total	81.0%	39.0%	42.0%

Age	Favorable	Unfavorable	Net Positive
Very Favorable	64.8%	12.1%	52.7%
Favorable	14.2%	8.3%	6.9%
Unfavorable	1.0%	17.6%	-16.6%
Very Unfavorable	1.0%	1.0%	-0.0%
Total	81.0%	39.0%	42.0%

Race	Favorable	Unfavorable	Net Positive
Very Favorable	64.8%	12.1%	52.7%
Favorable	14.2%	8.3%	6.9%
Unfavorable	1.0%	17.6%	-16.6%
Very Unfavorable	1.0%	1.0%	-0.0%
Total	81.0%	39.0%	42.0%

AR 2014/06/27
 HarperPolling.com
 4800170000000000

Download (PDF, 281KB)



Arizona Republican Primary Election Poll Results
Veterans for a Strong America
June 25-26, 2014

Q: How likely are you to vote in the August 18th Republican primary election?

Very likely 55%
Somewhat likely 36%

How likely are you to vote if you are a veteran? Please indicate whether you have a service or non-service member of rank.

Service Members

Extremely 54%
Somewhat 38%
Not sure 8%

Non-Service Members

Extremely 46%
Somewhat 37%
Not sure 17%

Control Panel

Extremely 50%
Somewhat 38%
Not sure 12%

Demographics

Extremely 7%
Somewhat 13%
Not sure 80%

125 South Street
Phoenix, AZ 85022

Phone: 602.496.1000

Web: www.harperpolling.com

[Download \(PDF, 110KB\)](#)

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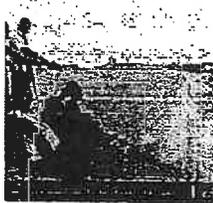
Share Post

Like **36**

Share

Tweet **44**

Recommended



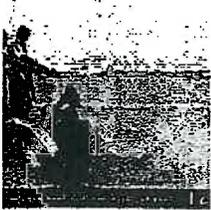
Clear as Mud: The War Against ISIS / ISIL



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47 Replies

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... and 9 more

1. Carol Stickle
View 4 months ago
SHARED!!!
2. Randy Sytsma
View 4 months ago
Its time to take the gloves off and fight to win!
3. Karen Lindsey
View 4 months ago
You know this group has been fighting against on one candidate for AZ gov. That bitch has my vote. When you choose to go after only one that shit tells me who I am voting for. And you seem to be a more liberal base than I could ever be comfortable with.
4. @AZLiveFree
View 4 months ago
.@V4SA If you are serious, you'd ask @JonesForGov to clarify her claim of being married to combat wounded vet. #purpleheart #freepass
5. @seannoblede
View 4 months ago
New #AZGOV poll has Ducey 33, Jones 15, Smith 14, Bennett 12, Und - 22. <http://t.co/TQkUT176Pv>
6. @seannoblede
View 4 months ago
The @V4SA AZ primary voter poll shows @votereagan 22%, Cardon 20%, Pierce 13%, Und 44% #AZSOS <http://t.co/TQkUT176Pv>
7. @seannoblede
View 4 months ago
Whoa. @V4SA AZ primary poll shows @_dianedouglas at 27% and @HuppenthalADE at only 31%. 42% undecided. Wide open. <http://t.co/TQkUT176Pv>
8. @seannoblede
View 4 months ago

AZ GOP primary voter poll by @V4SA shows 98% think #VAscandal is very/somewhat serious. 80% blame Obama & his admin. <http://t.co/TQkUT176Pv>

9. @seannoblecd

View 4 months ago

Among AZ GOP primary voters, 63% oppose Common Core & only 15% support. Bad news for @huppenthalADE & @Mayor_Smith <http://t.co/dnDuchHVqd9>
noprezzie2012 retweeted this

10. @seannoblecd

View 4 months ago

AZ GOP poll from @V4SA shows 62% oppose Medicaid expansion and 21% support. #AZGOV <http://t.co/TQkUT176Pv>

11. @_DianeDouglas

View 4 months ago

@michellemaikln 63% of #AZ voters disapprove of #CommonCore, only 15% support. <http://t.co/toYA78pnNN> The people are with us!

noprezzie2012 retweeted this pianobymoonlite retweeted this

12. @ConservLeaderAZ

View 3 months ago

New poll in the #AZgov race shows Ducey ahead w/48% favorable, Bennett and Jones w/28%, and Smith w/25%

<http://t.co/HlwzcPwK8o>

13. @mcanallya

View 3 months ago

@MatthewWBenson @JimSmall @barrettmanson looks like while this convo was happening there was a poll in the field... <http://t.co/PV6FrdrNxC>



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Doug Ducey
Governor

Thomas M. Collins
Executive Director



Thomas J. Koester
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Steve M. Titla
Damien Meyer
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 OPPORTUNITY TO RESPOND
Via Federal Express and E-mail

July 14, 2015

Veterans for a Strong America
c/o Donald F. McGahn
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
dmcgahn@jonesday.com

RE: CCEC MUR #14-027

Dear Mr. McGahn:

This letter serves as an internal complaint against Veterans for a Strong America (VSA) by the Executive Director of the Arizona Citizens Clean Elections Commission.

Complaint

Recently, the Arizona Secretary of State's Office publicly released its determination of reasonable cause to believe that VSA violated A.R.S. § 16-914.02 by failing to meet that statute's reporting requirements. I have reviewed that letter as well as the supporting materials.

The Citizens Clean Elections Act (Act) and related rules provide for reports of independent expenditures. See A.R.S. §§ 16-941(B), (D), -942(B), -956(A)(7); -958; Ariz. Admin. Code R2-20-109; see also *Clean Elections Institute v. Brewer*, 209 Ariz. 241, 245 ¶ 13, 99 P.3d 570, 574 (2004). If an entity engages in independent expenditures in statewide and legislative races in Arizona, it is required to file campaign finance reports with the Secretary of State regarding those expenditures and may be subject to additional filing requirements, including identifying contributions and expenditures, which are subject to enforcement by provisions of the Article 2, of Chapter 6, Title 16. See, e.g., A.R.S. §§ 16-913, -914.02, 920, -941(D); -942(B); -956(A)(7); -958; Ariz. Admin. Code R-2-20-109(F). The issue here is whether independent expenditure reports should have been filed but were not.

The Clean Elections Act also defines "expressly advocates" in Arizona law (in part) as follows:

- [1.] Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard or direct mailer

- [2.] referring to one or more clearly identified candidates and
- [3.] targeted to the electorate of that candidate(s)
- [4.] 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(A)(2).

According to your May 28, 2015 letter to the Arizona Secretary of State, VSA ran an advertisement in Arizona beginning May 28, 2014 identifying Christine Jones, a Republican candidate for governor in Arizona, and criticizing her positive statements about former Secretary of State Hillary Clinton, a Democrat. *See* McGahn Letter at 2. That advertisement, which may have been express advocacy, is the subject of this Complaint. VSA filed no reports related to the advertisement, according to the Secretary of State. *See* Secretary of State Reasonable Cause at 3. The advertising buy was about \$50,000. *Id.* at 2.

Any person making independent expenditures cumulatively exceeding \$700 during the 2014 election cycle was required to file reports under the Act and rules, unless exempted. *See* Arizona Secretary of State, Clean Elections Act 2013-2014 Biennial Adjustments, http://apps.azsos.gov/election/2014/Info/CCEC_Biennial_Adjustment_Charts.htm. During the 2014 election cycle, VSA did not file as an exempt organization with the Commission. If VSA made independent expenditures and failed to file either an exemption form or campaign finance reports, it has violated A.R.S. §§ 16-941(D), -942(B), -956(A)(7); -958; and Ariz. Admin. Code R2-20-109.

Opportunity for Response

Commission rules require notification to be given to the Respondent of a Complaint. Ariz. Admin. Code R2-20-204(A). Additionally, the rules provide that you be advised 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 §§ 16-940 to 16-961), which are available on the Commission website at www.azcleelections.gov.

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). Generally, a failure to respond to a complaint within five days may be viewed as an admission to the allegations. *Id.*

The purpose of requesting a response is to determine whether VSA has violated provisions of the Citizens Clean Elections Act or rules and are subject to penalties under the Act or rules, including A.R.S. §§ 16-941(D), -942(B), -958, and the rules implementing these statutes. In addition to any other factual or legal information you wish to provide, please provide evidence that VSA is incorporated in any state, including any articles of incorporation.

Commission rules require that you be given this notice and Complaint. The issuance of this notice and Complaint do not constitute a finding related to the Complaint. A finding, if any, may be made only after the Commission has reviewed the matter. I intend to coordinate with the Arizona Attorney General's Office on this matter to ensure all compliance issues are resolved efficiently. Please contact us 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 "Tom Collins", written in a cursive style.

Thomas M. Collins
Executive Director
Citizens Clean Elections Commission

cc: James Driscoll-MacEachern (email only)
Sara Larsen, Financial Affairs & Compliance Officer (email only)

JONES DAY

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TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3748
DMCGAHN@JONESDAY.COM

July 20, 2015

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

Re: Veterans for a Strong America (CCEC MUR #14-027)

Dear Mr. Collins,

We represent Veterans for a Strong America, a non-profit, non-partisan grassroots action organization, which is organized under Section 501(c)(4) of the Internal Revenue Code. VSA is an Iraq and Afghanistan veterans organization dedicated to mobilizing Americans to communicate the importance of a robust national defense.

I write in response to the notice of complaint, which we received from your office on July 15, 2015, regarding an advertisement aired by VSA. The complaint suggests that the advertisement was express advocacy and therefore triggered a requirement to file a record of the expenditure with the Arizona Secretary of State. The purpose of this letter is to “demonstrate that no action should be taken on the basis of [that] complaint.” See Ariz. Admin. Code R2-20-205(A).

For the reasons explained below, the complaint is without merit, and no further action should be taken. Under Arizona law, the advertisement is not express advocacy, and therefore did not trigger a disclosure requirement, because it is susceptible of a “reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.” A.R.S. §16-901.01(A)(2). Moreover, if Arizona law classified this advertisement as express advocacy, the law would be infirm under binding Supreme Court precedent, which requires an objective assessment of speech to determine whether it is express advocacy, and which has decisively rejected open-ended “balancing” approaches to such determinations. Here, the Secretary of State (and the underlying complaint which gave rise to the Secretary’s determination) relied heavily on the sort of intent and effect declared out-of-bounds by the U.S. Supreme Court.

The complaint should therefore be dismissed without further action.

Thomas M. Collins, Executive Director
Citizens Clean Elections Commission
July 20, 2015
Page 2

Background

On May 28, 2014, VSA released an television advertisement entitled “What Difference?”, which discussed the 2012 Benghazi attack during which four Americans were killed. The script for the advertisement, in its entirety, reads:

VOICEOVER: Four Americans were killed by terrorists. What happened? Requests for more security: denied. Talking points: altered. Our nation: lied to.

HILLARY CLINTON: What difference, at this point, does it make?

VOICEOVER: It made no difference to Christine Jones. Two months later, she said “Hillary Clinton will continue to stand out as a capable, respected leader.” Jones praised Clinton: “Americans will realize what an effective Secretary of State Clinton was... The incredibly high standard she set.” These are Christine Jones’ standards. Are they yours?

The advertisement can be viewed online at
<http://www.veteransforstrongamerica.org/2014/05/29/az-gubernatorial-candidates-praises-hillary-clinton-benghazi/>.

The advertisement fit hand-in-glove with VSA’s mission: to mobilize Americans to communicate the importance of a robust national defense. “What Difference?” criticized Secretary Clinton (and Jones’ support for her) on the grounds that her actions had been inconsistent with that goal. VSA has frequently spoken up when its particular issues were relevant to the public debate, whether or not there were any immediate electoral consequences. For example, VSA’s efforts regarding Secretary Clinton were not limited to one television advertisement. They made a 2014 request for her emails under the Freedom of Information Act, and having failed to obtain all the requested information, and subsequently filed a lawsuit. See Sarah Westwood, “Vets Group Sues State Department for Not Producing Clinton Benghazi Emails,” *Washington Examiner* (April 3, 2015). Recently, for example, VSA (in the course of commenting upon a public disagreement by Senator John McCain and Donald Trump) emphasized its view that “what the American people are really concerned about is how 250,000 veterans ... were put onto a VA death list” and “why 40,000 active troops are going to receive pink slips over the next four years.” See *Statement of Support for Donald J. Trump from VSA Chairman Joel Arends*, Press Release, Veterans for a Strong America (July 19, 2015).

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On January 30, 2015, David Pearsall filed a complaint with the Secretary of State. The gravamen of that complaint – filed about eight months after the ad aired -- was that, because of the alleged subjective intent of VSA in making the ad, the ad expressly advocated Jones' defeat, and that VSA was therefore required to file certain disclosures with the Secretary of State. On April 24, 2015, the Secretary of State forwarded the complaint to VSA and requested a response, which VSA did on May 28, 2015. The Secretary of State then issued a letter stating that there was reasonable cause to believe that VSA had violated Arizona law, and the complaint from your office followed on July 14, 2015 – well over a year after the ad aired.

Argument

I. Legal Background

This complaint turns on the difference between express advocacy and issue advertisements, two concepts in election law that have been developed their meaning over a decades of actions by Congress, the Federal Elections Commission and other administrative agencies, and the Supreme Court of the United States. We therefore begin with an overview of the relevant history.

The beginning of the modern era of campaign finance regulation was the Federal Election Campaign Act, which was passed in 1971 and then amended in the wake of Watergate. See Federal Election Campaign Act of 1971, as amended, Pub. L. 93-443, 88 Stat. 1263 (1974). FECA limited both campaign contributions and expenditures in an explicit attempt to equalize speech. In *Buckley v. Valeo*, the Supreme Court held that while campaign contributions could be regulated, expenditures could not be—at least, not most expenditures. 424 U.S. 1, 40 (1976). As to a narrow category of what it called “communications containing express words of advocacy of election or defeat,” such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Congress,” “vote against,” “defeat,” and “reject,” the *Buckley* Court (while holding that such expenditures could not be capped or prohibited) upheld disclosure requirements for individuals and groups that made such communications. *Id.*, at 44 & n.52, 80.

That said, while *Buckley* approved certain disclosure requirements, it placed strict limits on how much disclosure is permissible, and severely limited mandated donor disclosure. That, said the Court, was because “compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.” *Buckley*, 424 U.S., at 64. To “avoid questions of unconstitutionality,” *Buckley* construed federal financial disclosure requirements “to be nonapplicable” to groups “engaged purely in issue discussion.” *Id.*, at 79 & n.106. Because the First Amendment permits “independent reporting requirements” on “groups that are not

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candidates or political committees” only when “they make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate.” *Id.*, at 80. If an organization’s “major purpose” is not “the nomination or election of a candidate,” the First Amendment forbids the compelled disclosure of its donors. *Id.*, at 79. See also *NAACP v. Alabama*, 462 (it is hardly “a novel perception that compelled disclosure of affiliation with groups engaged in advocacy” may work a “restraint on freedom of association”); *Talley v. California*, 362 U.S. 60 (1960).

After *Buckley*, most federal courts of appeals generally understood “express advocacy” to be defined by a bright-line rule: “to include *only* those communications with explicit words of advocacy.” *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1097 (9th Cir. 2003). See, e.g., *Chamber of Commerce v. Moore*, 288 F.3d 187, 193 (5th Cir. 2002); *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174, 1187 (10th Cir. 2000); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 969 (8th Cir. 1999); *FEC v. Christian Action Network, Inc.*, 110 F.3d 1049, 1051 (4th Cir. 1997); *Faucher v. FEC*, 928 F.2d 468, 470–71 (1st Cir. 1991); *FEC v. Cent. Long Island Tax Reform Immediately Comm.*, 616 F.2d 45, 53 (2d Cir. 1980) (en banc). The Fourth Circuit, for example, struck down an FEC regulation defining “express advocacy” as “any communication that ... [w]hen taken as a whole ... could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s).” *Va. Soc'y for Human Life, Inc. v. FEC*, 263 F.3d 379, 391 (4th Cir. 2001). That, said the court of appeals, impermissibly “shifted determination of what is ‘express advocacy’ away from the words in and of themselves to the unpredictability of audience interpretation.” *Id.*, at 392.

Congress, dissatisfied with this limitation, tried a new tack in the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. 107-155, 116 Stat. 81 (Mar. 27, 2002). The aim in BCRA was to avoid the vagueness proscribed by *Buckley* by establishing clear limits on when groups could and could not speak. BCRA thus forbade corporations and unions to run TV or radio ads within 30 days of a primary or 60 days of a general election that referred to a federal candidate in that candidate’s electorate. In *McConnell v. FEC*, the Supreme Court upheld that restriction “to the extent” that such ads were “the functional equivalent of express advocacy.” 540 U.S. 93, 206 (2003). Because the record indicated that a substantial portion of covered advertisements were of that character, the *McConnell* Court (without elaborating on what it meant for speech to be the “functional equivalent” of express advocacy) rejected a facial challenge to the statute.

Individual speakers covered by BCRA’s prohibition retained the right to argue, however, that their *particular* speech was *not* express advocacy or its functional equivalent. Wisconsin Right to Life, which wanted to broadcast advertisements criticizing Senator Feingold for his

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support for judicial filibusters, brought precisely such a challenge. *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007) (plurality opinion by Roberts, C.J.).¹ To resolve it, said the Court, required a determination of whether “the speech at issue is the functional equivalent of speech expressly advocating the election or defeat of a candidate for federal office, or instead a genuine issue ad.” *Id.*, at 456.

To distinguish between the two, the *WRTL* Court rejected a test grounded in “whether the ad is intended to influence elections and has that effect.” *Id.*, at 465. Such a test would “afford no security for free discussion,” and any test “to distinguish constitutionally protected political speech ... should provide a safe harbor for those who wish to exercise First Amendment rights.” *Id.*, at 467. “A test turning on the intent of the speaker does not remotely fit the bill.” *Id.*, at 468. And a test “based on the actual effect speech will have on an election or on a particular segment of the target audience” would put “the speaker wholly at the mercy of the varied understanding of his hearers.” *Ibid.*

No, said the Court: “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.” *Id.*, at 469–70. This inquiry “must be objective, focusing on the substance of the communication rather than amorphous considerations of intent and effect,” “must entail minimal if any discovery, to allow parties to resolve disputes quickly,” and it “must eschew the open-ended rough-and-tumble of factors, which invites complex argument in a trial court and a virtually inevitable appeal.” *Id.*, at 469. “In short, it must give the benefit of any doubt to protecting rather than stifling speech.” *Ibid.* These limits were important enough for the Court to repeat them, in response to concerns that its test would be vague:

[O]ur test affords protection unless an ad is susceptible of *no reasonable interpretation* other than as an appeal to vote for or against a specific candidate. It is why we emphasize that (1) there can be no free-ranging intent-and-effect test; (2) there generally should be no discovery or inquiry into the sort of “contextual” factors highlighted by the FEC and intervenors;² (3) discussion of issues cannot be banned merely because the issues might

¹ Parts III and IV of the Court’s opinion in *WRTL*, from which the quotations in this letter are drawn, were joined by a plurality of the Court. It is controlling because three Justices would have gone even further and invalidated restrictions even on speech that is the functional equivalent of express advocacy. 551 U.S., at 483–503 (Scalia, J., concurring in part and concurring in the judgment). See *Marks v. United States*, 430 U.S. 188, 193 (1977) (“When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.”).

² The FEC, in its brief, encouraged the Supreme Court to consider factors such as “the content of the website” of the speaker, the “timing of the advertisements,” whether the speaker “had frequently and explicitly opposed [a particular officeholder’s] reelection effort through other communications.” Brief for Appellant Federal

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be relevant to an election; and (4) in a debatable case, the tie is resolved in favor of protecting speech.

Id., at 474 n.7.

Following *WRTL*, the FEC adopted a regulation to determine whether an advertisement was the functional equivalent of express advocacy, and came up with a two-part, eleven-factor balancing test. 11 C.F.R. §114.15. That rule enumerated “indicia of express advocacy” such as whether an advertisement mentioned “any election, candidacy, political party,” or “opposing candidate”; whether it “urges the public to contact the candidate”; whether it takes “a position on any candidate’s or officeholder’s character”; etc. *Ibid.* See also Notice of Proposed Rulemaking, Electioneering Communications, 72 Fed. Reg. 50261 (FEC’s proposal for interpreting Wisconsin Right to Life by including forty banned speech examples including Rocky the prizefighter); Explanation and Justification for Electioneering Communications, 72 Fed. Reg. 72899 (describing an elaborate two-prong, eleven-factor electioneering communications standard, but professing fealty to *WRTL*’s disapproval of an “open-ended rough-and-tumble” of factors).

In *Citizens United v. FEC*, the Supreme Court soundly rejected the FEC’s approach. “As a practical matter ... given the complexity of the regulations,” any “speaker who wants to avoid threats of criminal liability and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak,” rendering these open-ended factor-based tests “the equivalent of prior restraint by giving the FEC power analogous to licensing laws ... of the sort that the First Amendment was drawn to prohibit.” 558 U.S. 310, 335 (2010). “That,” said the Court, “is precisely what *WRTL* sought to avoid” when it rejected “the open-ended rough-and-tumble of factors” that “invites complex argument in a trial court.” *Id.*, at 336.

In the wake of all of this, many States (including Arizona) have enacted regulations on communications that are either express advocacy (as *Buckley* used that term) or the functional equivalent thereof (as *WRTL* used *that* term). But those laws were not enacted in a vacuum, and the words they use to define their reach are borrowed from elsewhere. As always, “if a word is obviously transplanted from another legal source ... it brings the old soil with it.” *Sekhar v. United States*, 133 S. Ct. 2720, 2724 (2013) (quoting Frankfurter, *Some Reflections on the*

(continued...)

Election Commission, *FEC v. Wisconsin Right to Life*, No. 06-969 (S. Ct. Feb. 23, 2007), at 43–48. Although the Supreme Court rejected those factors, they bear a striking similarity to what the Secretary of State used here, such as reliance on a VSA press release.

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Reading of Statutes, 47 Colum. L. Rev. 527, 537 (1947)). With the old soil now thoroughly tilled, we turn to the meaning of Arizona's law.

II. "What Difference?" does not constitute express advocacy under Arizona law

The most straightforward reason that the Commission should take no action on the complaint is that, under the plain terms of Arizona law, "What Difference?" does not constitute express advocacy or the functional equivalent thereof.

Arizona law defines express advocacy as a communication that either (1) uses certain *Buckley*-style explicit exhortations (such as "vote for") or (2) "that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates," a standard plainly drawn from *WRTL*. A.R.S. §16-901.01(A). Classification of speech as express advocacy (and thus as an independent expenditure) has several important consequences under Arizona law. A group that engages in express advocacy must notify the Secretary of State by filing a report. A.R.S. §16-914.02(A)–(B). That report must identify the "names, occupations, employers and amount contributed by each of the three contributors that contributed the most money within the preceding six months." A.R.S. §16-915(F)(5). In addition, under Arizona law, a "political committee" includes a "committee organized for the purpose of making independent expenditures." A.R.S. §16-901(19)(f). Classification as a "political committee," in turn, requires a group to file a regular campaign finance report, A.R.S. §16-913, which must include (among other things) a list of individuals that have made contributions exceeding \$50, A.R.S. §16-915(A)(3)(a). The express-advocacy classification is, therefore, extraordinarily important (and, as explained below, has implications for the constitutionality of Arizona's scheme).

A. *The statute's plain text indicates that "What Difference?" is not express advocacy*

Under the plain language of the Arizona statute, "What Difference?" is not express advocacy. First, it does not use any "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." A.R.S. §16-901.01(A)(1). That is the first, principal test for express advocacy under Arizona law. This is not a list of magic words—the list of phrases is introduced with "such as," and so an advertisement that encouraged voters (for example) to "on election day, pull the lever for _____" would surely count. But it is a closely circumscribed list of examples, designed to capture truly *express* advocacy. "What Difference?" contains nothing of the sort. There is no explicit campaign exhortation, and no one has argued otherwise.

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The advertisement, moreover, can be given a “reasonable meaning other than to advocate the election or defeat of the candidate.” A.R.S. §16-901.01(A)(2). VSA does not dispute, to be clear, that the ad was a “general public communication ... in a broadcast medium,” that it identified clearly Christine Jones (who was a “candidate[.]”), and that it was aired in “the electorate of that candidate.” A.R.S. §16-901.01(A)(2). But that is not enough, under Arizona law, for an advertisement to qualify as express advocacy. The language of the communication must *also* be susceptible of “no reasonable meaning other than to advocate the election or defeat of the candidate.” A.R.S. §16-901.01(A)(2) (emphasis added).

One reasonable interpretation of “What Difference?”—indeed, the correct one—is that Secretary Clinton’s response to the Benghazi attacks was inadequate, and that Jones was wrong when she praised Secretary Clinton afterward. A reasonable listener might also or alternatively understand the advertisement as (for example) encouragement for Jones herself to reconsider her praise of Secretary Clinton, or as a statement that the lives lost in the Benghazi attack would not soon be forgotten, or as a call to further action by the public regarding Benghazi or national security issues generally. A particularly reasonable interpretation of the advertisement is that it is mainly a criticism of *Secretary Clinton*, and (perhaps) an attempt to discourage others from praising her as Jones did. These and many other interpretations of the advertisement are all reasonable.³

To be sure, the Arizona statute directs the consideration of various “factors,” giving as examples “the presentation of the candidate(s) in a favorable or unfavorable light,” the “targeting, placement or timing of the communication,” and the “inclusion of statements of the candidate(s) or opponents.” A.R.S. §16-901.01(A)(2). As explained below, these “factors” (if treated as the Secretary of State’s reasonable-cause finding suggests) bear a striking resemblance to the sort of open-ended, free-form, rough-and-tumble guidelines that the Supreme Court has repeatedly declared unacceptable.

Even on their own terms, however, the identified “factors” indicate that VSA’s advertisement was *not* express advocacy. The advertisement does not identify Jones as a candidate for any office. It does not identify the office for which she was a candidate. It does not include any statements of opponents, or identify any such opponents. It discusses another

³ The Secretary of State’s reasonable-cause determination actually recognized that “at least some” of these interpretations were “potentially reasonable.” Reasonable Cause Finding 8. That should have been the end of the matter. Inexplicably, it was not, because in the eyes of the Secretary of State, “the same could [have been] said” about an advertisement at issue in *Committee for Justice & Fairness v. Arizona Secretary of State’s Office*, 235 Ariz. 347 (App. 2014). But this matter concerns the ad run by VSA, and one sponsored by the Committee for Justice & Fairness. The ways in which *CJF* is distinguishable from the present circumstances and also wrongly reasoned are discussed below.

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person (Secretary Clinton), who was not a candidate for any office at the time, in substantially equal measure. It was aired months before the election. And it does not urge listeners to do anything other than contemplate whether, on the Benghazi issue, they agree with Jones' praise for Secretary Clinton. That Jones happened to be running for governor does not mean that all public discussion of issues on which she had taken a position became "express advocacy" under Arizona law.

Put differently: It simply cannot be enough to conclude (as the Secretary of State evidently did) that an advertisement that "presented [a candidate] in an unfavorable light" using that candidate's "previous statements" is express advocacy. Reasonable Cause Finding 6–8. The same could be said of the nearly any discussion of a public issue on which people disagree.

Candidates for public office are often "intimately tied to public issues involving legislative proposals and governmental actions," and discussion of public issues will therefore (in a great many cases) present a candidate in an unfavorable light using that candidate's prior statements. *Buckley v. Valeo*, 424 U.S. 1, 42 (1976). But as the Supreme Court has made clear time and time again, that does not mean that all discussion of public issues constitutes express advocacy. To the extent that the Secretary of State's reasonable-cause determination concluded otherwise, it was mistaken. If that is what the "factors" enumerated in Arizona law requires, then they are unconstitutional, as discussed below.

The Secretary of State's reasonable-cause letter also noted the timing of the advertisement—specifically (at 7–8) that it "aired within 90 days" of the primary election. Under the norms of election law, however, 90 days is a *very* long time before an election. (In August 1988, Michael Dukakis was seven points ahead in the polls.) That is why, under federal law, speech is only a regulated "electioneering communication" if it airs within 30 days of a primary election. 11 C.F.R. §100.29(a)(2). And that is why, under other provisions of Arizona law, if a group makes even a true "independent expenditure"—that is, one containing express advocacy—more than "sixty days" before election day, there is no obligation (as there is otherwise) to send "a copy of the campaign literature or advertisement to each candidate named or otherwise referred to in the literature or advertisement." A.R.S. §16-917(A). The Secretary of State observed (at 7) that the first of these rules is merely a "policy choice under FEC regulations." That is true, but the policy was made for a reason—as explained above, a lot can change in 90 days. Not even the FEC (not, historically, an organization that is gun-shy about its powers) believes, as the Secretary of State appears to, that it is probative that an ad merely "runs in an election year." Reasonable Cause Finding 7 n.7 (emphasis added). Given that there are regularly scheduled federal and state elections every two years, and given that Phoenix and Tucson hold their municipal elections in off years, there will not be many years that are not "election years" for a substantial majority of Arizonans.

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By disregarding the text of the advertisement and focusing extensively on contextual factors (such as the timing of the advertisement, the other goals of the group, etc.), the Secretary of State has effectively rewritten the statute. The statute, as discussed above, calls for an evaluation of the *advertisement's* character. See A.R.S. §16-901.01(A) (standard is whether the speech itself “can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates”). But in the Secretary of State’s telling, *what the advertisement says* was, more or less, the least-important thing. See Reasonable Cause Finding 6–8 (emphasizing factors such as the timing of the advertisement, what was known to be the speaker’s position on other questions, etc.). In particular, by emphasizing the likely effect of the advertisement on a hypothesized “reasonable” listener, the Secretary of State committed the precise error that the Fourth Circuit rejected in *Virginia Society for Human Life*. See 263 F.3d, at 391 (inappropriate to “shift[] determination of what is ‘express advocacy’ away from the words in and of themselves to the unpredictability of audience interpretation”), and Chief Justice Roberts forbade in *WRTL*.

B. The Court of Appeals’ Decision in Committee for Justice & Fairness is Distinguishable on Its Facts

The Secretary of State’s statutory analysis also relied extensively on an analogy to the facts of *Committee for Justice & Fairness v. Arizona Secretary of State’s Office*, 235 Ariz. 347, 357 (App. Div. 2014) (“*CFJ*”). See Reasonable Cause Finding 8–9. As discussed below, that case’s reasoning is almost certainly wrong, because it cannot be squared with the Supreme Court’s pronouncements in this area—as even the Secretary of State recognized. See Reasonable Cause Finding 11 n.11 (noting the “quixotic[]” inconsistency of *CFJ* with Supreme Court case law). Moreover, *CJF* is an intermediate appellate decision that, thus far, stands alone, and its analysis has never been endorsed by the Supreme Court of Arizona or any federal court. The wisest course is therefore to give *CFJ* no weight in your office’s enforcement decision.⁴

But even if *CFJ* were correctly decided, it is distinguishable on its facts. The advertisement in *CFJ* concerned Tom Horne, then one of two candidates to be Attorney General. It discussed a vote Horne had made against increasing penalties for statutory rape, and a vote to reinstate a teacher who had been removed for viewing pornography at work. 235 Ariz., at 349. That is already rather different than “What Difference?”: the *CFJ* ad criticized Horne’s actions in two different jobs (as a member of a legislature and as an official responsible for schools), and on two issues that related to one another only in the most general sense. “What Difference?”, by contrast, discusses a single issue in detail: the Benghazi attacks, and Jones’ praise for Secretary

⁴ Critically, *CFJ* was decided *after* VSA ran its ad, and thus cannot provide the sort of prior notice demanded by both fundamental due process and the First Amendment. See *Near v. Minnesota*, 283 U.S. 697 (1931); *Freedman v. Maryland*, 380 U.S. 51 (1965).

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Clinton afterward. There is an (arguable) case to be made that the *CFJ* advertisement was susceptible of no reasonable interpretation other than as a sole attack on the candidate Tom Horne.

Additionally, as far as the decision reveals, the *CFJ* advertisement discussed only Horne. 235 Ariz., at 349. But “What Difference?” discusses Secretary Clinton in substantially equal measure, and is first and foremost an attempt to associate Jones with Clinton. Of course, there is a substantial portion of the population that would regard that association *as a good thing*—after all, Jones herself praised Clinton, and many agree with that praise. It is only by importing contextual information about VSA’s other alleged goals, as the Secretary of State did, that one can conclude that the association was meant to be an exhortation to vote against Jones. On its face, however, “Christine Jones believes that Hillary Clinton is a capable, respected leader” is simply a statement that will cause some to increase their esteem of Jones and others to decrease it. By contrast, the suggestion (as in *CFJ*) that someone in favor of lenient penalties for rape and teachers viewing pornography in school is plainly not a genuine invitation to debate the finer points of penology or education policy, any more than the infamous Bill Yellowtail ad—in which Yellowtail was accused of abusing his wife, being a convicted felon, and missing child support payments—was “designed purely to discuss the issue of family values.” *McConnell*, 540 U.S., at 194 n.78. But even then, the Bill Yellowtail ad was not considered express advocacy in the eyes of either Congress or the Supreme Court, but instead was an example of a communication that was beyond the reach of the test.

Finally, the *CFJ* advertisement identified Horne’s current office, asked voters to contact him, and claimed explicitly that he should be told to “protect children, not people who harm them.” 235 Ariz., at 349. The ad in question here contained no such exhortations. That is why the Secretary of State focuses so much on “contextual factors” like the timing of the advertisement, VSA’s other positions beyond the ad, etc.—and not what even the *CFJ* court evaluated when it asked whether there were “explicit words of advocacy.” *Id.*, at 355 n.12 (quoting *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1098 (9th Cir. 2003)). All “What Difference?” asks listeners to do is *contemplate the issue*—which is what any issue ad must by definition do. (If “go on, think about it” is express advocacy, everything is.) The Secretary of State was therefore wrong to conclude that the facts of *CFJ* could not be, in principle, distinguished from the situation here.

The complaint is therefore meritless as a matter of black-letter Arizona law. Your office need go no further to conclude that no further action should be taken.

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III. “What Difference?” cannot, consistent with the First Amendment, be treated as express advocacy

If Arizona’s statute treated “What Difference?” as express advocacy, however, then that law would be infirm under the First Amendment. First and foremost, that is a reason not to interpret Arizona’s law as the Secretary of State did: when “a statute is reasonably susceptible of two interpretations, by one of which it is unconstitutional and by the other valid,” one should “prefer[] the meaning that preserves to the meaning that destroys.” *Panama Refining Co. v. Ryan*, 293 U.S. 388, 439 (1935) (Cardozo, J., dissenting).⁵ By contrast, the Secretary of State’s reasonable-cause determination stated (at 9) (and rather shockingly) that it *did not matter* whether the Arizona law was “*sufficiently protective of First Amendment speech or not.*” It matters a great deal: any reading of the Arizona law that is not sufficiently protective of First Amendment speech should be rejected so long as there is a reasonable interpretation of the law that *is* sufficiently protective.

Moreover, quite apart from how courts have interpreted a law, your office is *required* to independently exercise its discretion not to enforce that law in a way that would call its validity into question: “validly conferred discretionary executive authority is properly excised ... to avoid serious constitutional doubt.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2259 (2013). In other words, it is no answer to say that a court has validated a practice or interpretation of a law in the abstract: it is an abuse of discretion, *in and of itself*, for an administrator to fail to consider “serious constitutional doubt.” *Id.*, at 2259.⁶ See also *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988) (“where an otherwise acceptable construction of a statute would raise serious constitutional problems,” the statute should be construed by executive officers “to avoid such problems unless such construction is plainly contrary to the intent of Congress”). Relatedly,

⁵ This is especially true here, where the express-advocacy tests announced by the Supreme Court are plainly the ones on which Arizona law is based. See *Committee for Justice & Fairness v. Arizona Secretary of State’s Office*, 235 Ariz. 347, 357 (App. 2014) (“The test provided in A.R.S. § 16–901.01(A)(2)(a) is *certainly no broader* than [the Supreme Court’s] functional equivalent test”) (emphasis added).

⁶ Similarly, the Secretary of State incorrectly assumed that CJS has foreclosed any discussion of the constitutionality of Arizona law, either on its face or as-applied. This same mistake was made by the Federal Election Commission during the course of the *WRTL* litigation, where they argued that an as-applied challenge to the challenged statute was not allowed, as it had already been upheld in *McConnell*. The Supreme Court disagreed in a strongly worded opinion. *WRTL*, 546 U.S. 410 (2006). Thus, even if *CJS* upheld Arizona law, how that law is applied to VSA is subject to constitutional review.

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every “executive ... Officer[]” in Arizona—including you—is independently “bound by Oath or Affirmation, to support [the] Constitution.” U.S. Const., Art. VI, cl. 3. If enforcing a given Arizona law would be insufficiently protective of First Amendment speech in a given set of circumstances, your office is obligated *by that oath* not to do so. “No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.” *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

A. “What Difference” is Issue Advocacy Under the First Amendment

As discussed above, the line between discussing issues and expressly advocating a candidate’s election or defeat is derived from the Supreme Court’s campaign-finance decisions, and is required by the First Amendment. Although “the distinction between campaign advocacy and issue advocacy” is not always easy to draw, “the law in this area requires us ... to draw such a line,” because such a line cannot be vague, and the Supreme Court “has never recognized a compelling interest in regulating ads ... that are neither express advocacy nor its functional equivalent.” *WRTL*, 551 U.S., at 477.

Under the standards articulated by the Supreme Court, “What Difference?” is plainly issue advocacy. It identifies an issue (the Benghazi attacks), “take[s] a position on the issue” (regarding Secretary Clinton’s performance), “exhort[s] the public to adopt that position” (by asking the listener to compare their evaluation of Secretary Clinton with Jones’), and does “not mention an election, candidacy, political party, or challenger.” *Id.*, at 471. The ad nowhere uses “express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ [or] ‘reject.’” *Buckley*, 424 U.S., at 44 n.52 (1976). And because (as discussed above) it is subject to a “reasonable interpretation other than as an appeal to vote for or against a specific candidate,” it is also not the “functional equivalent” of express advocacy. *WRTL*, 551 U.S., at 470. To be sure, the Benghazi issue “may also be pertinent in an election.” *Id.*, at 474. That is true of all public issues, however. “At best,” this demonstrates that “the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application.” *Ibid.* (quoting *Buckley*, 424 U.S., at 42). But “that is not enough to establish” that speech “can only reasonably be viewed as advocating or opposing a candidate.” *Ibid.*

The case law on the express-advocacy test makes it clear that it is an extraordinarily demanding standard. In *FEC v. Furgatch*, for example, the Ninth Circuit considered an ad placed in the *Boston Globe* three days before the 1980 presidential election. 807 F.2d 857 (9th Cir. 1987). It was captioned “Don’t let him do it,” and criticized President Carter on a wide variety of topics, warning readers of the consequence of giving him “four more years.” *Id.*, at 858. The court of appeals nonetheless said that whether “the advertisement expressly advocates

Thomas M. Collins, Executive Director
 Citizens Clean Elections Commission
 July 20, 2015
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the defeat of Jimmy Carter is a *very close call*.” *Id.*, at 861 (emphasis added). The court ultimately concluded that it did, and was therefore subject to regulation and disclosure requirements, because the words “don’t let him” are “a command”—they “expressly advocate action of some kind.” *Id.*, at 865. If an advertisement run three days before a presidential election urging voters not to “let [the candidate] do it” and have “four more years” presents a “*very close call*,” then the advertisement at issue here is, *a fortiori*, nowhere near the line. The advertisement is totally free of the sorts of exhortations that the Ninth Circuit found necessary in *Furgatch*, and was aired nowhere near as close to the election.

A similar contrast emerges with the advertisement at issue in *Citizens United*. That case involved “a feature-length negative advertisement that urges viewers to vote against Senator Clinton for President,” which asked explicitly whether she was “the most qualified to hit the ground running if elected President.” 558 U.S., at 325, as explicitly said she was unfit to be Commander in Chief.⁷ “What Difference?”, by contrast, does not mention anything about Jones other than her praise for Secretary Clinton on a specific issue—it does not even say what Jones was running for, much less ask whether she was “the most qualified” for that office. At any rate, “the standard for ‘express advocacy’ is not whether a communication might somehow be read as campaign-related, or whether such a reading is a reasonable, or perhaps even the most reasonable, interpretation.” *In re Americans for Job Security, Inc.*, MUR 5694 & 5910 (F.E.C. April 27, 2009), at 8 (Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn).⁸ “What Difference?” is susceptible of a reasonable interpretation other than as an appeal to vote for or against a candidate, and is therefore protected issue advocacy under the First Amendment.

The *WRTL* functional equivalent of express-advocacy standard is also, crucially, “objective”—the results that a speaker may wish for from his issue advocacy are not considered. *Citizens United v. FEC*, 558 U.S. 310, 324 (2010). VSA’s “subjective intent in running the ads,” whatever it may have been, is simply “irrelevant.” *WRTL*, 551 U.S., at 472. See also, *e.g.*, *The Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 552 (4th Cir. 2012) (“subjective intent is ... an impermissible consideration”). The question, under the First Amendment, is whether the advertisement *objectively* advocates election or defeat, or has a reasonable meaning other than to

⁷ The movie began “by asking ‘could [Senator Clinton] become the first female President in the history of the United States?’” and stated “a vote for Hillary is a vote to continue 20 years of a Bush or Clinton White House.”

⁸ Moreover, even a reference to “this November” does not convert a communication to express advocacy. See *FEC v. Christian Coalition*, 52 F. Supp. 45, 56-63 (D.D.C. 1997) (communication that said “victory will be ours,” and talked about the incumbent “packing . . . in November this year,” was not express advocacy; as explained by the court: “Although the implicit message is unmistakable, in explicit terms this is prophecy rather than advocacy,” and “through the message is clear, it requires one inferential step too many to be unequivocally considered an explicit directive.”).

Thomas M. Collins, Executive Director
Citizens Clean Elections Commission
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advocate the election or defeat of the candidate. For the reasons explained above, it does, and that is the end of the matter. It is therefore mistaken to inquire (as the Secretary of State appeared to) as to what the “reasonable purpose” for running an advertisement might be. Reasonable Cause Finding 8. The question is whether an *interpretation of the advertisement* is reasonable, not what the speaker’s purposes might have been.

The Supreme Court has also repeatedly held that vague appeals to “‘contextual’ factors”—such as the timing of the advertisement or the fact that the speaker was known to oppose the election of the candidate in other communications—do *not* render speech “the equivalent of express advocacy.” *WRTL*, 551 U.S., at 472. To the contrary, these sorts of “contextual factors ... should seldom play a significant role in the inquiry.” *Id.*, at 474. That is because a multi-factor “balancing test” to determine what constitutes express advocacy—“the open-ended rough-and-tumble of factors” that invite “complex argument in a trial court”—permits the government “to select what political speech is safe for public consumption by applying ambiguous tests.” *Citizens United*, 558 U.S., at 335–36 (quoting *WRTL*, 551 U.S., at 469). To have government officials “pore over each word of a text to see if, in their judgment, it accords with the [multi-factor] test they have promulgated” is “an unprecedented governmental intervention into the realm of speech.” *Id.*, at 336.

That is the problem with treating the “factors” in the Arizona statute in the way that the Secretary of State suggests: the First Amendment does not allow the permissibility of political speech to turn on *ad hoc* assessments of that kind. To make matters worse, many of the “factors” relied upon have been specifically rejected as relevant by the Supreme Court. For example, even if one credited the complaint’s appeals to the timing of the advertisement, if proximity to an election “were enough to prove that an ad is the functional equivalent of express advocacy,” then all such communications would be within the government’s power to regulate. *WRTL*, 551 U.S., at 472. The Supreme Court has specifically rejected that conclusion.

Also omitted from the Secretary of State’s analysis is any acknowledgement of the four crucial limiting factors that *WRTL* announced. See 551 U.S., at 474 n.7. These are a major moving part of *WRTL*, because they form the principal response to the concurrence (which would have gone even further). The Court emphasized that “there can be *no* free-ranging intent-and-effect test,” there should “generally be *no* discovery or inquiry into the sort of ‘contextual’ factors” of the kind given weight by the Secretary of State, “discussion of issues cannot be banned merely because the issues might be relevant to an election,” and—crucially—“in a debatable case, the tie is resolved in favor of protecting speech.” *Ibid.*

Thomas M. Collins, Executive Director
 Citizens Clean Elections Commission
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B. Committee for Justice & Fairness is Wrongly Decided, and Should Not Be Relied Upon

In rejecting VSA's constitutional argument, the Secretary of State's reasonable-cause determination relies repeatedly on *Committee for Justice & Fairness v. Arizona Secretary of State's Office*, 235 Ariz. 347 (App. 2014) ("*CJF*"). See Reasonable Cause Finding 8–11. But *CJF* only upheld Arizona's law because it understood the law to be "no broader" than what was approved in *WRTL*. 235 Ariz., at 357. As discussed above, the standards announced in *WRTL* and *Citizens United* would not cover this advertisement.⁹ Therefore, per *CJF*, because VSA's ad is beyond the test of *WRTL*, the reporting obligation does not reach the ad.

Moreover, *CJF* is almost certainly wrongly decided—at a bare minimum, it is wrongly reasoned, *as the Secretary of State recognized*. In that office's reasonable-cause determination, *CJF* is described as "problematic," "quixotic[]," and "not so easily applied." Reasonable Cause Finding 11 n.11. Moreover, the reasonable-cause letter explicitly contrasts the controlling opinion in *WRTL* (which "criticized reliance on 'contextual factors'" and noted that "the tie goes to the speaker") with *CJF* (which "left little room for debate, expressly validated the use of contextual factors, and issued no equivalent 'tiebreaker' guidance for close situations"). Reasonable Cause Finding 11 n.11. That is entirely correct, although the Secretary's subsequent disinterest in whether the Arizona statute proscribes protected First Amendment speech is not.

Consider, in particular, this passage from *WRTL*: "Given the standard we have adopted for determining whether an ad is the 'functional equivalent' of express advocacy, contextual factors of the sort invoked by appellants should seldom play a significant role in the inquiry." 551 U.S., at 473–74. There is no way to square that with this, from *CJF*: "Additionally, the mere fact that A.R.S. § 16–901.01(A)(2)(a) identifies certain factors for consideration ... does not mean it is inconsistent with *WRTL*." 235 Ariz., at 359. It certainly does: "Evidence of this sort is ... beside the point." 551 U.S., at 472. Or consider this, from *WRTL*: Although "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application," where "the First Amendment is

⁹ The Secretary of State's remark that "Arizona law and federal constitutional law are consistent with one another *according to CJF*" gets the matter exactly backward. Reasonable Cause Finding 10 (emphasis added). The argument appears to be that *CJF* announced it was consistent with *WRTL* (what would be the alternative?) and, thus, whatever *CJF* blessed is thus that all *WRTL* requires. One might have thought it went without saying that the lines of authority run in the other way, and the idea that an intermediate state court can authoritatively interpret and rewrite binding Supreme Court precedent is only slightly less wrong than *CJF* itself.

Thomas M. Collins, Executive Director
 Citizens Clean Elections Commission
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implicated, the tie goes to the speaker, not the censor.” 551 U.S., at 474. In *CJF*, by contrast, “cases that fall close to the line” are evidently to be treated like any other. 235 Ariz., at 359.

CJF also goes on for pages (as does the Secretary of State’s reasonable-cause letter) applying and weighing, in an entirely open-ended fashion, various “factors” under state law. 235 Ariz., at 353–55; Reasonable Cause Finding 6–9. Worst, perhaps, is when a factor (timing) is discussed at length, only to have the discussion conclude: “In the end, [this] is but one discretionary factor to consider.” Reasonable Cause Finding 8. That is a recipe for the sort of arbitrary enforcement *Citizens United* forbade. Indeed, it recalls nothing so much as the FEC’s now-discredited “indicia of express advocacy” such as whether an advertisement mentioned “any election, candidacy, political party,” or “opposing candidate”; whether it “urges the public to contact the candidate”; whether it takes “a position on any candidate’s or officeholder’s character”; etc. *Ibid.* See also Notice of Proposed Rulemaking, Electioneering Communications, 72 Fed. Reg. 50261 (FEC’s proposal for interpreting *WRTL* by including forty banned speech examples including Rocky the prizefighter); Explanation and Justification for Electioneering Communications, 72 Fed. Reg. 72899 (describing the two-prong, eleven-factor electioneering communications standard while honestly claiming to adhere to Chief Justice Roberts’ notice that the Commission could not rely on an “open-ended rough-and-tumble” of factors).

The Secretary of State even seemed to recognize this incoherence in a lengthy footnote that describes *CJF* as “problematic to apply,” “not so easily applied,” “quixotic[,]” and leaving “little room for debate”; quotes an entire paragraph from a concurring opinion in *WRTL* that criticized the Supreme Court for not protecting *enough* political speech; and concludes with an exasperated disclaimer that Secretary of State must attempt to apply *CJF* “to the best of her ability.” Reasonable Cause Finding 11 n.11. That does not so much damn *CJF* with faint praise as damn it with no praise. And as discussed above, no state official is *obliged* to enforce a law in circumstances that would violate the First Amendment, even if an intermediate state court might bless that mistake.

Nor does it make any difference that the advertisement here would trigger a disclosure requirement rather than an outright ban. As explained above, treating the speech at issue as express advocacy would not just result in a disclosure about the advertisement itself—it raises the chilling threat of VSA *itself* being subject to a requirement to register as a political committee and disclose its donors.¹⁰ But the Supreme Court has always “closely scrutinized disclosure requirements, including requirements governing independent expenditures made to further individuals’ political speech.” *Davis v. FEC*, 554 U.S. 724, 744 (2008) (striking, *inter alia*,

¹⁰ The Secretary of State disclaimed this possibility, by emphasizing that the requirement turns on whether the entity must be “organized primarily for the purpose of influencing an election,” and that VSA did not satisfy this criterion. Reasonable Cause Finding 11 n.10.

Thomas M. Collins, Executive Director
Citizens Clean Elections Commission
July 20, 2015
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disclosure). The Supreme Court has never approved, for example, the disclosure of donors of groups “engaged purely in issue discussion.” *Buckley*, 424 U.S., at 79 & n.106. That is because the First Amendment does not permit “independent reporting requirements” on “groups that are not candidates or political committees” unless “they make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate.” *Id.*, at 80. Because treating “What Difference?” as express advocacy would arguably trigger that sort of disclosure requirement under Arizona law, such treatment is therefore unconstitutional. See *Massachusetts Citizens for Life v. FEC*, 479 U.S. 238 (1986) (making clear that the non-profit group at issue was not a political committee even though it had engaged in express advocacy). Regardless, VSA lacks such an electoral purpose, and as a non-profit organized under section 501(c)(4) of the Internal Revenue Code, cannot have such a primary purpose.

For the foregoing reasons, no further action should be taken on the complaint in this case.

Respectfully,



Donald F. McGahn II

Counsel, Veterans for a Strong America

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION
MUR 14-027
Veterans for a Strong America
MEMORANDUM ON JURISDICTION

The following memorandum is for the purpose of outlining the Commission's jurisdiction over this Matter. I recommend that the Commission retain jurisdiction over this matter because Veterans for a Strong America is an entity subject to the Clean Elections Act and Rules and did not file an exemption for the 2014 election cycle.

Alternatively, the Commission may choose to terminate the matter.

Addressing the jurisdictional issue now will allow VSA to know the scope of the enforcement issues it is addressing and will ensure that staff has guidance on how to proceed with respect to the Attorney General's Office.

I. Procedural Background

On July 8, 2015, the Arizona Secretary of State's Office made a determination that there was reasonable cause to believe Veterans for a Strong America (VSA) violated A.R.S. § 16-914.02 by failing to file independent expenditure reports for an advertisement. **Exhibit 1.** That determination went to the Attorney General's Office, where it remains. On July 14, 2015, the Commission's Executive Director generated an internal Complaint against VSA (Respondent) alleging that Respondent had violated the independent expenditure reports required by the Act. **Exhibit 2.**¹ On July 20, 2015, Respondent filed a Response arguing the advertisement in question was not subject to independent expenditure reporting requirements because the advertisement was not express advocacy. **Exhibit 3.** Respondent spent about \$225,018.00 on the advertisements. **Exhibit 4.** It is an unincorporated association from South Dakota. **Exhibit 5.** This memorandum does not address the merits of the express advocacy issue.

II. Jurisdictional Background

The jurisdictional issues in this matter are a) whether the commission has jurisdiction over VSA and b) whether or not that jurisdiction overlaps with the Attorney General's jurisdiction.

A). The Commission has jurisdiction over the Complaint.

According to the Complaint and the Reasonable Cause Notice, VSA made expenditures against the election of Christine Jones in the 2014 primary elections. *See Exhibit 1 at 1,*

¹ The Complaint is limited to A.A.C. R2-20-109 & A.R.S. §§ 16-941(D), -958 reports.

Exhibit 2 at 1. In its response to the Complaint, VSA describes itself as a “non-profit, non-partisan grassroots action organizations, which is organized under Section 501(c)(4) of the Internal Revenue Code.” According to the articles of association provided to the Attorney General’s Office on September 25, 2015, “The Association is a nonprofit unincorporated association and is not organized for the private gain of any person.” **Exhibit 5.**

The Clean Elections Act applies certain reporting requirements to “any person who makes independent expenditures related to a particular office.” The Commission’s Rules provide that “unless stated otherwise, or having context requiring otherwise, means: A corporation, company, partnership, firm, association or society, as well as a natural person.” A.A.C. R2-20-101(21). The Act and Rules provide that failure to file reports required under the Act triggers penalties under A.R.S. § 16-942(B). The Commission has jurisdiction over the Complaint.

B) The Commission’s jurisdiction likely does not overlap with the Attorney General’s in this matter.

As the Complaint indicates, the Commission has an interest in coordinating with other agencies, including the Attorney General’s Office. At this point the Attorney General’s Office has not indicated how it will proceed in this matter. However, a review of the record indicates that it is unlikely the Attorney General has authority over this matter or will exercise authority it may have.

First, neither the Attorney General, nor the Secretary of State are involved in enforcing A.R.S. 16-941. Section 16-941 is part of the Clean Elections Act, and the Commission has exclusive enforcement responsibility.

Second, The Reasonable Cause Notice stated that VSA owed reports under A.R.S. 16-914.02, which applies to independent expenditures by corporations, labor organizations, and limited liability companies (LLCs). *See Exhibit 1 at 12.*² However, the record as it stands indicates that VSA is a “nonprofit unincorporated association.” **Exhibit 5.** Thus it is reasonable to conclude, at least at this stage, that A.R.S. § 16-914.02 does not apply because the record indicates that VSA is not a corporation, labor organization or LLC.

Finally, the Attorney General’s investigation does not appear to encompass an inquiry into whether VSA may have been organized, conducted, or combined as a political committee. Likewise, the Complaint also does not allege that VSA should have filed the reports required of political committees.

² Even if A.R.S. 16-914.02 applies, a corporation is only relieved of its obligations under the Act if it submits an exemption form to the Commission. A.A.C. R2-20-109.

Consequently, as a legal matter, based on this record, it would be reasonable to conclude the Attorney General will not ultimately enforce in this matter because the existing record does not establish that VSA is a corporation subject to the requirements of A.R.S. 16-914.02. The Attorney General's Office has not indicated yet how it will proceed, although some movement could occur. Even if the Attorney General does, however, proceed with an enforcement, the Commission's practice allows for a coordinated enforcement or conciliation if the possibility arises.³

Conclusion

Because this Complaint clearly alleges a violation of the Clean Elections Act and Rules and because the Attorney General's role appears limited, an actual overlap between the two agencies is unlikely. Even if both the Commission and the Attorney General proceed further, the Commission has previously successfully concluded joint matters with the Attorney General and could attempt to do so here. Because the Complaint alleges a violation of the Clean Elections Act and Rules, I would recommend the Commission exercise its jurisdiction in this matter. If the Commission would prefer to leave resolution of VSA's reporting responsibilities solely up to the Attorney General, it should vote to take no further action on the Complaint and close the matter.

Dated this 17th day of November, 2015.

By: s/Thomas M. Collins

Thomas M. Collins, Executive Director

³ It is not clear when or if the Attorney General will move forward. However, resolving the matter, including by conciliation, requires that office to reach some conclusion on how to move forward. Given the limited complexity of the facts here, moving toward a resolution may be imminent. The purpose of the memo is advance that goal.

Key Statutory Provisions

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.

A.R.S. § 16-914.02. A. Any corporation, limited liability company or labor organization that makes cumulative independent expenditures in an attempt to influence the outcome of a candidate election and in at least the following amounts in an election cycle shall register and notify the appropriate filing officer not later than one day after making that expenditure, excluding Saturdays, Sundays and other legal holidays:

1. An aggregate of five thousand dollars or more in one or more statewide races.
2. An aggregate of two thousand five hundred dollars or more in one or more legislative races.
3. One thousand dollars or more in one or more county, city, town or other local races if the one thousand dollars is aggregated in races in a single county, city, town or other local jurisdiction.

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3748
DMCGAHN@JONESDAY.COM

November 18, 2015

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

Re: CCEC MUR #14-027

Dear Mr. Collins:

We represent Veterans for a Strong America, and write in advance of the Arizona Citizens Clean Elections Commission's meeting on November 19, 2015, concerning this matter. This letter supplements our July 20, 2015 response, and responds to your recent Memorandum on Jurisdiction. For the reasons set forth below, the commission does not have the statutory authority to enforce the reporting requirement of Ariz. Rev. Stat. §16-914.02. In addition, the reporting requirement of Ariz. Rev. Stat. §16-941(D) cannot be enforced by anyone, given the Supreme Court's decision in *Arizona Free Enterprise Club's Freedom PAC v. Bennett*, 131 S. Ct. 2806 (2011). This commission should therefore terminate this matter without further action.

Title 16, Chapter 6 of the Arizona Revised Statutes governs "Campaign Contributions and Expenses." That chapter is divided into two separate articles: Article 1 ("General Provisions") and Article 2 ("Citizens Clean Elections Act"). Article 1 contains a detailed scheme for the regulation of campaign finance and expenditures within Arizona, the requirements of which are enforced by the Secretary of State (in coordination with the Attorney General, County Attorney, and City Attorney). Ariz. Rev. Stat. §16-924. One part of Article 1's scheme is a requirement to report independent expenditures. Ariz. Rev. Stat. §16-914.02. That requirement is accompanied by an extensive regulatory structure specifying (for example) what an independent expenditure is, Ariz. Rev. Stat. §16-901(14), and what it means to expressly advocate election or defeat, Ariz. Rev. Stat. §16-901.01.

Article 2, by contrast, was created by Proposition 200, an initiative measure approved by the voters of Arizona in 1998. That article creates the commission, Ariz. Rev. Stat. §16-955, and defines the boundaries of its enforcement authority. If the commission "finds that there is reason to believe that a person has violated any provision *of this article*"—that is, Article 2—then it may initiate enforcement proceedings as further defined by statute. Ariz. Rev. Stat. §16-957(A) (emphasis added). This commission therefore has no authority to enforce the general

Thomas Collins
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Page 2

campaign finance requirements contained in Article 1, such as its requirement to report independent expenditures.¹

The only independent-expenditure reporting required by Article 2 is contained in Ariz. Rev. Stat. §16-941(D), which provides that “any person who makes independent expenditures ... cumulatively exceeding five hundred dollars in an election cycle” shall “file reports with the secretary of state,” 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.” The purpose for this requirement, however, was to enable the now-defunct public financing system created by Article 2, under which “a publicly financed candidate” received “roughly one dollar for every dollar spent” by “independent expenditure groups to support the privately financed candidate, or to oppose the publicly financed candidate.” *Arizona Free Enterprise Club’s Freedom PAC v. Bennett*, 131 S. Ct. 2806, 2813 (2011).

That Article 2’s reporting requirement was intended to enable the matching-funds system is obvious from the text of the statute. The matching-funds system provided that whenever “a report is filed” indicating that a non-publicly-financed candidate had “made expenditures” (including independent expenditures) in excess of certain amounts, the commission was to “immediately pay ... an amount equal” to that expenditure to the opposing candidate (“less six per cent”). Ariz. Rev. Stat. §16-952(A) (2010) (emphasis added). The reports in question were not even supposed to be filed with the commission—they were to be filed with the Secretary of State, which would then provide them to the commission to enable the disbursement of funds. Ariz. Rev. Stat. §16-941(D). This confirms that the statute was not intended to give this commission oversight authority over independent expenditures; rather, the point was to provide the information required such that this commission could provide matching funds.

The situation is therefore analogous to the reporting requirements invalidated by the Supreme Court in *Davis v. Federal Elections Commission*, 554 U.S. 724 (2008). *Davis* invalidated the so-called “Millionaires’ Amendment” of the Bipartisan Campaign Reform Act (BCRA), under which a “non-self-financing candidate” could “receive individual contributions at treble the normal limit” when his opponent’s “expenditure of personal funds” exceeded a certain amount. *Id.*, at 729. To enable that rule to function, BCRA required “self-financing candidates” to make certain “disclosures,” including the “date and amount of each expenditure from personal funds.” *Id.*, at 730. Once the Millionaires’ Amendment was invalidated, however, the disclosure requirements—which “were designed to implement” that amendment—were also invalid, because the “burden imposed” by them “[could not] be justified.” *Id.*, at 744. Because

¹ Although your office’s memorandum regarding jurisdiction discusses the Attorney General’s enforcement authority at some length, the Attorney General’s exercise of discretion cannot grant this commission any jurisdiction that it would not otherwise have. Similarly, the Arizona legislature’s decision not to make unincorporated associations subject to Article 1 cannot enlarge this commission’s authority under Article 2.

Thomas Collins
November 18, 2015
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“compelled disclosure, in itself, can seriously infringe on privacy of association and belief,” disclosure requirements must have a “relevant correlation” to some strong government interest—and with the Millionaires’ Amendment invalid, the interest that could justify its corresponding disclosure requirement disappeared, and the Court struck those requirements as well.

That is exactly the situation here. *Bennett* invalidated the system of “matching funds” that were triggered by “the expenditures of independent groups.” 131 S. Ct., at 2814. But just as in *Davis*, “disclosure requirements” that are “designed to implement” a scheme that is unconstitutional are, themselves, unconstitutional. 554 U.S., at 744. Article 2’s reporting requirements therefore cannot, consistent with *Davis*, be enforced by this commission. And the Supreme Court has made clear that agencies such as the commission must refrain from actions that are constitutionally doubtful, and should avoid such issues wherever possible. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247, 2259 (2013) (“validly conferred discretionary executive authority is properly exercised . . . to avoid serious constitutional doubt”). There being no other source of this commission’s jurisdiction over the alleged independent expenditure here, the commission should terminate this matter without further action.

Respectfully submitted,



Donald F. McGahn II
Counsel, Veterans for Strong America

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3748
DMCGAHN@JONESDAY.COM

September 25, 2015

VIA E-MAIL AND REGULAR MAIL

Jim Driscoll-MacEachron
Assistant Attorney General
Office of the Arizona Attorney General
Solicitor General's Office

Re: Veterans for a Strong American Request for Information

Dear Mr. Driscoll-MacEachron:

This responds to your letter dated September 11, 2015, regarding our client, Veterans for a Strong America. As you know, we have asserted throughout this process that "What Difference?" is protected issue advocacy under both Arizona law and the First Amendment. We continue to maintain that, and we urge your office to reach that conclusion as well. Without waiving any defenses, objections, consenting to jurisdiction, or otherwise forfeiting any legal argument that our client may have, we provide the following responses:

1. Veterans for a Strong America is a South Dakota unincorporated association, and enclosed are its Articles of Association.
2. Veterans for a Strong America is the entity that paid for the television advertisement referenced in your letter, and it cost \$225,018.00 to air the ad.

Thank you for your attention to this matter.

Very truly yours,



Donald F. McGahn II

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3748
DMCGAHN@JONESDAY.COM

March 18, 2016

VIA E-MAIL AND REGULAR MAIL

Jim Driscoll-MacEachron
Assistant Attorney General
Solicitor General's Office
Office of the Arizona Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926

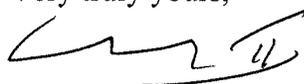
Re: Veterans for a Strong America – March 4, 2016 letter

Dear Mr. Driscoll-MacEachron:

This responds to your letter dated March 4, 2016, regarding our client, Veterans for a Strong America. Your letter requests additional information. Enclosed please find documents responsive to your request.

I trust that this addresses your questions. Please do not hesitate to contact me with additional questions or concerns.

Very truly yours,



Donald F. McGahn II

Wells Fargo Simple Business Checking

Account number: 6758306218 ■ August 1, 2014 - August 31, 2014 ■ Page 1 of 5



VETERANS FOR A STRONG AMERICA
7005 S MUSTANG AVE
SIOUX FALLS SD 57108-4120

Questions?

Available by phone 24 hours a day, 7 days a week:

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En español: 1-877-337-7454

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Write: Wells Fargo Bank, N.A. (083)
P.O. Box 6995
Portland, OR 97228-6995

Your Business and Wells Fargo

Wells Fargo Works for Small Business website

The Wells Fargo Works site offers free access to business information and advice through videos, articles, and other small business resources. This site offers objective information from industry experts, best practices from real business owners, as well as numerous Wells Fargo solutions that can help you run your business. Learn more about Wells Fargo Works at wellsfargoworks.com

Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wellsfargo.com/biz or call the number above if you have questions or if you would like to add new services.

Business Online Banking
Online Statements
Business Bill Pay
Business Spending Report
Overdraft Protection



IMPORTANT ACCOUNT INFORMATION

Enhancements coming to your transaction descriptions including cash back detail

Over the next few months, you will notice changes to the descriptions for debit, ATM or prepaid card transactions. These enhancements provide more detail about your transactions, and include new descriptions for purchases with cash back. For debit, ATM, or prepaid card merchant purchases with a request for cash back, the transaction description will include the words "cash" or "cash back," and may include the dollar amount of cash requested.

Activity summary

Beginning balance on 8/1	\$29,946.61
Deposits/Credits	63.21
Withdrawals/Debits	- 29,183.17
Ending balance on 8/31	\$826.65
Average ledger balance this period	\$8,762.05

Account number: 6758306218

VETERANS FOR A STRONG AMERICA

South Dakota account terms and conditions apply

For Direct Deposit use

Routing Number (RTN): 091400046

For Wire Transfers use

Routing Number (RTN): 121000248

**Overdraft Protection**

This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.

Transaction history

<i>Date</i>	<i>Check Number</i>	<i>Description</i>	<i>Deposits/ Credits</i>	<i>Withdrawals/ Debits</i>	<i>Ending daily balance</i>
8/4		Campaign Service Vendorpay July 2014	63.21		30,009.82
8/6		Wire Trans Svc Charge - Sequence: 140806064102 Sr## 0005558218709577 Trn#140806064102 Rfb#		30.00	
8/6		WT Seq#64102 DC London, Inc. /Bnf=DC London, Inc. Sr## 0005558218709577 Trn#140806064102 Rfb#		17,000.00	
8/6		Online Transfer Ref #lbexqghtm8 to Furniture Outlets USA XXXXXXXXXXXX1470 on 08/06/14		35.92	
8/6		Withdrawal Made In A Branch/Store		3,881.00	9,062.90
8/11		Online Transfer to Arends Law P.C. Small Business Checking xxxxx0290 Ref #lbtqt5D94 on 08/11/14		50.00	9,012.90
8/12		Online Transfer to Veterans for a Strong Am Ref #lbe8Gfbs5V Business Checking Via Mobile		200.00	8,812.90
8/13		Check Crd Purchase 08/12 Radioshack Cor0016 Sioux Falls SD 425908xxxxx1391 464224616123560 ?McC=5732		19.07	
8/13		Check Crd Purchase 08/12 Qdoba Mexican Gril Sioux Falls SD 425908xxxxx1391 304224626302456 ?McC=5814		10.04	
8/13		Online Transfer to Arends J Ref #lben2Mh3r3 Checking Reimbursement Expenses		200.00	8,583.79
8/14		Check Crd Purchase 08/13 Bagel Boy MN Ave Sioux Falls SD 425908xxxxx1391 304225512686221 ?McC=5814		4.16	
8/14		Check Crd Purchase 08/13 Hyvee 1638 Sioux F Sioux Falls SD 425908xxxxx1391 284225758935449 ?McC=5411		9.80	
8/14		Check Crd Purchase 08/13 Hyvee Sioux Falls Sioux Falls SD 425908xxxxx1391 004225761901696 ?McC=5541		2.10	8,567.73
8/15		Check Crd Purchase 08/14 Hyvee Sioux Falls Sioux Falls SD 425908xxxxx1391 004226473320210 ?McC=5541		2.32	
8/15		Online Transfer to Arends Law P.C. Ref #lbttrg2Ll Small Business Checking Expense Reimbursement		110.00	
8/15		Online Transfer to Enduring Freedom Investm Ref #lbexqsy8Q Business Checking Lease Payment		1,100.00	
8/15		Online Transfer to Arends J Ref #lbe5Kf2Kj5 Checking Expense Reimbursement		1,200.00	
8/15		Online Transfer to Arends J Ref #lbe5Lzy8S Checking Lease Payment		2,000.00	4,155.41
8/18		Check Crd Purchase 08/14 Subway 0037 Sioux Falls SD 425908xxxxx1391 584226595314017 ?McC=5814		7.17	
8/18		Check Crd Purchase 08/14 Tinner's Bar & Gri Sioux Falls SD 425908xxxxx1391 384227009225232 ?McC=5812		72.08	
8/18		Check Crd Purchase 08/14 Dairy Queen #41859 Sioux Falls SD 425908xxxxx1391 384227093501344 ?McC=5814		11.20	
8/18		Check Crd Purchase 08/15 Bagel Boy MN Ave Sioux Falls SD 425908xxxxx1391 304227472669132 ?McC=5814		4.16	
8/18		Check Crd Purchase 08/15 Hardrock - Anthem 800-950-1292 IA 425908xxxxx1391 584227608604239 ?McC=7922		133.76	
8/18		Check Crd Purchase 08/15 Wix.Com 800-600-09 800-6000949 NY 425908xxxxx1391 304225721502885 ?McC=5968		24.85	
8/18		Check Crd Purchase 08/15 Pilot Sioux Falls SD 425908xxxxx1391 304227791393840 ?McC=5542		19.64	
8/18		Check Crd Purchase 08/15 Cenex Zip Tr0704 Brookings SD 425908xxxxx1391 284228026740666 ?McC=5542		105.50	
8/18		Check Crd Purchase 08/15 Bravo's Brookings SD 425908xxxxx1391 384228094111080 ?McC=5812		141.93	
8/18		Check Crd Purchase 08/16 Hy Vee 1632 Sioux Falls SD 425908xxxxx1391 164228534380552 ?McC=5411		4.56	



Transaction history (continued)

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
8/18		Check Crd Purchase 08/16 Nybergs Ace Hardwa Sioux Falls SD 425908xxxxxx1391 384228722948763 ?McC=5251		21.91	
8/18		Check Crd Purchase 08/16 Hy Vee 1631 Sioux Falls SD 425908xxxxxx1391 284228830632748 ?McC=5411		34.99	
8/18		Check Crd Purchase 08/16 Hy Vee 1631 Sioux Falls SD 425908xxxxxx1391 284228834634936 ?McC=5411		2.68	
8/18		Withdrawal Made In A Branch/Store		200.00	3,370.98
8/19		Check Crd Purchase 08/17 Bracco Sioux Falls Sioux Falls SD 425908xxxxxx1391 384229560612895 ?McC=5812		70.50	
8/19		Recur Debit Crd Pmt08/18 Dnh*Godaddy.Com 480-5058855 AZ 425908xxxxxx1391 584230389375411 ?McC=4816		9.99	3,290.49
8/21		Online Transfer to Arends J Checking xxxxxx2353 Ref #lbe5Kgf4Bs on 08/21/14		0.88	
8/21		Online Transfer to Arends Law P.C. Small Business Checking xxxxxx0290 Ref #lbtettssqkm on 08/21/14		240.40	
8/21		Online Transfer to Enduring Freedom Investm Business Checking xxxxxx5161 Ref #lbeg8Llty on 08/21/14		334.16	2,715.05
8/25		Recur Debit Crd Pmt08/22 Dropbox Db.TT/Cchelp CA 425908xxxxxx1391 384234523569053 ?McC=4816		19.99	
8/25		Online Transfer to Arends J Checking xxxxxx2353 Ref #lben2Q9S6Q on 08/23/14		715.05	1,980.01
8/27		Check Crd Purchase 08/25 American Ai 001748 Bellevue WA 425908xxxxxx1391 164237683420809 ?McC=3001		229.10	
8/27		Check Crd Purchase 08/25 American Ai 001748 Bellevue WA 425908xxxxxx1391 084237693041312 ?McC=3001		280.10	
8/27		Check Crd Purchase 08/25 American Ai 001748 Bellevue WA 425908xxxxxx1391 084237698150316 ?McC=3001		532.60	
8/27		Check Crd Purchase 08/26 Gogoair.Com 877-350-0038 IL 425908xxxxxx1391 304238736179126 ?McC=4816		5.41	
8/27		Check Crd Purchase 08/26 Gogoair.Com 877-350-0038 IL 425908xxxxxx1391 464238755479589 ?McC=4816		5.41	927.39
8/28		Check Crd Purchase 08/26 Int*Via Business L 602-794-2700 AZ 425908xxxxxx1391 164238844154974 ?McC=7399		4.95	
8/28		Check Crd Purchase 08/27 Sq *Hamid Taxi Carpinteria CA 425908xxxxxx1391 584239822547329 ?McC=4121		79.64	
8/28		Check Crd Purchase 08/27 Chipotle 1459 Goleta CA 425908xxxxxx1391 384240127321116 ?McC=5814		16.15	826.65
Ending balance on 8/31					826.65
Totals			\$63.21	\$29,183.17	

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

Monthly service fee summary

For a complete list of fees and detailed account information, please see the Wells Fargo Fee and Information Schedule and Account Agreement applicable to your account or talk to a banker. Go to wellsfargo.com/feefaq to find answers to common questions about the monthly service fee on your account.

Fee period 08/01/2014 - 08/31/2014	Standard monthly service fee \$10.00	You paid \$0.00
How to reduce the monthly service fee by \$5.00	Minimum required	This fee period
Have any ONE of the following account requirements		
· Average ledger balance	\$500.00	\$8,762.00 <input checked="" type="checkbox"/>

Monthly service fee discount(s) (applied when box is checked)

Online only statements (\$5.00 discount)
C1/C1



Account transaction fees summary

<i>Service charge description</i>	<i>Units used</i>	<i>Units included</i>	<i>Excess units</i>	<i>Service charge per excess units (\$)</i>	<i>Total service charge (\$)</i>
Transactions	1	50	0	0.50	0.00
Total service charges					\$0.00



Did you know that you can review your safe deposit box information through Wells Fargo Business Online Banking? Sign on to business online banking at wellsfargo.com/biz and go to your account summary page to review details.

Wells Fargo Simple Business Checking

Account number: 6758306218 ■ July 1, 2014 - July 31, 2014 ■ Page 1 of 4



VETERANS FOR A STRONG AMERICA
7005 S MUSTANG AVE
SIOUX FALLS SD 57108-4120

Questions?

Available by phone 24 hours a day, 7 days a week:

1-800-CALL-WELLS (1-800-225-5935)

TTY: 1-800-877-4833

En español: 1-877-337-7454

Online: wellsfargo.com/biz

Write: Wells Fargo Bank, N.A. (083)
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Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wellsfargo.com/biz or call the number above if you have questions or if you would like to add new services.

Business Online Banking	<input checked="" type="checkbox"/>
Online Statements	<input checked="" type="checkbox"/>
Business Bill Pay	<input checked="" type="checkbox"/>
Business Spending Report	<input checked="" type="checkbox"/>
Overdraft Protection	<input type="checkbox"/>

Activity summary

Beginning balance on 7/1	\$29,237.86
Deposits/Credits	175,000.00
Withdrawals/Debits	- 174,291.25
Ending balance on 7/31	\$29,946.61
 Average ledger balance this period	 \$47,127.46

Account number: 6758306218

VETERANS FOR A STRONG AMERICA

South Dakota account terms and conditions apply

For Direct Deposit use

Routing Number (RTN): 091400046

For Wire Transfers use

Routing Number (RTN): 121000248

Overdraft Protection

This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.



Transaction history

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
7/16		WT Seq#79474 American Encore Inc. /Org=American Encore Srf# IN14071610164501 Trn#140716079474 Rfb# 000000066	100,000.00		
7/16		Wire Trans Svc Charge - Sequence: 140716079474 Srf# IN14071610164501 Trn#140716079474 Rfb# 000000066		15.00	129,222.86
7/17		Withdrawal Made In A Branch/Store		3,962.00	125,260.86
7/18		Wire Trans Svc Charge - Sequence: 140718036929 Srf# 0009464198920555 Trn#140718036929 Rfb#		30.00	
7/18		WT Fed#00445 Branch Banking & T /Ftr/Bnf=Smart Media Group LLC Srf# 0009464198920555 Trn#140718036929 Rfb#		65,045.00	60,185.86
7/21		Recur Debit Crd Pmt07/18 Godaddy.Com 480-5058855 AZ 425908xxxxx1391 304199441986438 ?McC=4816		9.99	60,175.87
7/22		Wire Trans Svc Charge - Sequence: 140722086445 Srf# 0055258203709595 Trn#140722086445 Rfb#		30.00	
7/22		WT Seq#86445 DC London, Inc. /Bnf=DC London, Inc. Srf# 0055258203709595 Trn#140722086445 Rfb#		4,475.90	55,669.97
7/23		WT Seq#115277 American Encore Inc. /Org=American Encore Srf# IN14072313065445 Trn#140723115277 Rfb# 000000068	75,000.00		
7/23		Wire Trans Svc Charge - Sequence: 140723115277 Srf# IN14072313065445 Trn#140723115277 Rfb# 000000068		15.00	
7/23		Recur Debit Crd Pmt07/22 Dropbox Db.TT/Cchelp CA 425908xxxxx1391 304203523491353 ?McC=4816		19.99	130,634.98
7/25		Wire Trans Svc Charge - Sequence: 140725082503 Srf# 0005558205579336 Trn#140725082503 Rfb#		30.00	
7/25		WT Fed#07417 Jpmorgan Chase Ban /Ftr/Bnf=James R. Foster and Assoc. and Inc. Srf# 0005558205579336 Trn#140725082503 Rfb#		100,558.37	30,046.61
7/31		Recurring Transfer to Veterans for A Strong Business Checking Ref #Ope8G9Sycp xxxxxx6571		100.00	29,946.61
Ending balance on 7/31					29,946.61
Totals			\$175,000.00	\$174,291.25	

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

Monthly service fee summary

For a complete list of fees and detailed account information, please see the Wells Fargo Fee and Information Schedule and Account Agreement applicable to your account or talk to a banker. Go to wellsfargo.com/feefaq to find answers to common questions about the monthly service fee on your account.

Fee period 07/01/2014 - 07/31/2014	Standard monthly service fee \$10.00	You paid \$0.00
This is the final period with the fee waived. For the next fee period, you need to meet the requirement(s) to avoid the monthly service fee.		
How to reduce the monthly service fee by \$5.00	Minimum required	This fee period
Have any ONE of the following account requirements		
· Average ledger balance	\$500.00	\$47,127.00 <input checked="" type="checkbox"/>

Monthly service fee discount(s) (applied when box is checked)

Online only statements (\$5.00 discount)



Did you know that you can review your safe deposit box information through Wells Fargo Business Online Banking? Sign on to business online banking at wellsfargo.com/biz and go to your account summary page to review details.

Wells Fargo Simple Business Checking

Account number: 6758306218 ■ June 1, 2014 - June 30, 2014 ■ Page 1 of 4



VETERANS FOR A STRONG AMERICA
7005 S MUSTANG AVE
SIOUX FALLS SD 57108-4120

Questions?

Available by phone 24 hours a day, 7 days a week:

1-800-CALL-WELLS (1-800-225-5935)

TTY: 1-800-877-4833

En español: 1-877-337-7454

Online: wellsfargo.com/biz

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Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wellsfargo.com/biz or call the number above if you have questions or if you would like to add new services.

Business Online Banking	<input checked="" type="checkbox"/>
Online Statements	<input checked="" type="checkbox"/>
Business Bill Pay	<input checked="" type="checkbox"/>
Business Spending Report	<input checked="" type="checkbox"/>
Overdraft Protection	<input type="checkbox"/>

Activity summary

Beginning balance on 6/1	\$8,608.39
Deposits/Credits	100,054.31
Withdrawals/Debits	- 79,424.84
Ending balance on 6/30	\$29,237.86
Average ledger balance this period	\$5,738.16

Account number: 6758306218

VETERANS FOR A STRONG AMERICA

South Dakota account terms and conditions apply

For Direct Deposit use

Routing Number (RTN): 091400046

For Wire Transfers use

Routing Number (RTN): 121000248

Overdraft Protection

This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.



Account transaction fees summary

<i>Service charge description</i>	<i>Units used</i>	<i>Units included</i>	<i>Excess units</i>	<i>Service charge per excess units (\$)</i>	<i>Total service charge (\$)</i>
Transactions	1	50	0	0.50	0.00
Total service charges					\$0.00



Did you know that you can review your safe deposit box information through Wells Fargo Business Online Banking? Sign on to business online banking at wellsfargo.com/biz and go to your account summary page to review details.

Wells Fargo Simple Business Checking

Account number: 6758306218 ■ May 1, 2014 - May 31, 2014 ■ Page 1 of 3



VETERANS FOR A STRONG AMERICA
7005 S MUSTANG AVE
SIOUX FALLS SD 57108-4120

Questions?

Available by phone 24 hours a day, 7 days a week:

1-800-CALL-WELLS (1-800-225-5935)

TTY: 1-800-877-4833

En español: 1-877-337-7454

Online: wellsfargo.com/biz

Write: Wells Fargo Bank, N.A. (083)
P.O. Box 6995
Portland, OR 97228-6995

Your Business and Wells Fargo

The Wells Fargo Works Project is an online video series following five small business owners as they receive help and guidance from Wells Fargo for business goals that range from creating a marketing plan to positioning their business for sale. See how Wells Fargo works for these small businesses and can work for you at wellsfargoworks.com.

Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to wellsfargo.com/biz or call the number above if you have questions or if you would like to add new services.

Business Online Banking	<input checked="" type="checkbox"/>
Online Statements	<input checked="" type="checkbox"/>
Business Bill Pay	<input checked="" type="checkbox"/>
Business Spending Report	<input checked="" type="checkbox"/>
Overdraft Protection	<input type="checkbox"/>

Activity summary

Beginning balance on 5/1	- \$27.99
Deposits/Credits	53,342.34
Withdrawals/Debits	- 44,705.96
Ending balance on 5/31	\$8,608.39
Average ledger balance this period	\$8,241.85

Account number: 6758306218

VETERANS FOR A STRONG AMERICA

South Dakota account terms and conditions apply

For Direct Deposit use

Routing Number (RTN): 091400046

For Wire Transfers use

Routing Number (RTN): 121000248

Overdraft Protection

This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.



Transaction history

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
5/1		Overdraft Fee for Item \$19.99 04/30 Recur Debit Crd Pmt04/29 Dropbox Db.TT/Cchelp CA 425908xxxxx1391 4641195042037		35.00	-62.99
5/7		Online Transfer From Arends Law P.C. Small Business Checking xxxxxx0290 Ref #lbetstv6Zy on 05/07/14	62.99		0.00
5/23		WT Fed#00399 M&T Bank /Org=Mentzer Media Services Inc Srf# 140523002069000 Trn#140523041144 Rfb# MT14143000300	53,279.35		
5/23		Wire Trans Svc Charge - Sequence: 140523041144 Srf# 140523002069000 Trn#140523041144 Rfb# MT14143000300		15.00	
5/23		Recur Debit Crd Pmt05/22 Dropbox Db.TT/Cchelp CA 425908xxxxx1391 584142521089296 ?McC=4816		19.99	
5/23		Online Transfer to Veterans for A Strong Am Business Checking xxxxxx6571 Ref #lbek4Tkhkr on 05/23/14		24.00	
5/23		Online Transfer to Veterans for A Strong Am Business Market Rate Savings xxxxxx8298 Ref #lbexq2Kgdp on 05/23/14		11.97	53,208.39
5/27		Wire Trans Svc Charge - Sequence: 140527148650 Srf# 0055258147967039 Trn#140527148650 Rfb#		30.00	
5/27		WT Fed#00514 Branch Banking & T /Ftr/Bnf=Smart Media Group LLC Srf# 0055258147967039 Trn#140527148650 Rfb#		44,570.00	8,608.39
Ending balance on 5/31					8,608.39
Totals			\$53,342.34	\$44,705.96	

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

Monthly service fee summary

For a complete list of fees and detailed account information, please see the Wells Fargo Fee and Information Schedule and Account Agreement applicable to your account or talk to a banker. Go to wellsfargo.com/feefaqs to find answers to common questions about the monthly service fee on your account.

Fee period 05/01/2014 - 05/31/2014	Standard monthly service fee \$10.00	You paid \$0.00
Your fee waiver is about to expire. You will need to meet the requirement(s) to avoid the monthly service fee.		
How to reduce the monthly service fee by \$5.00	Minimum required	This fee period
Have any ONE of the following account requirements		
· Average ledger balance	\$500.00	\$8,242.00 <input checked="" type="checkbox"/>
Monthly service fee discount(s) (applied when box is checked)		
Online only statements (\$5.00 discount)	<input checked="" type="checkbox"/>	

Did you know that you can review your safe deposit box information through Wells Fargo Business Online Banking? Sign on to business online banking at wellsfargo.com/biz and go to your account summary page to review details.

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3748
DMCGAHN@JONESDAY.COM

April 14, 2016

VIA E-MAIL AND REGULAR MAIL

Jim Driscoll-MacEachron, Esquire
Assistant Attorney General
Solicitor General's Office
Office of the Arizona Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926

Re: Veterans for a Strong America – March 30, 2016 letter

Dear Mr. Driscoll-MacEachron:

This responds to your letter dated March 30, 2016, regarding our client, Veterans for a Strong America. Turning to each specific request:

1. Regarding the invoices already provided per our February 16, 2016 letter, those were paid by wire transfer, not check. These wire transfers are reflected on the bank statements already provided with our March 18, 2016 letter. In an effort to be helpful, here is a small chart that attempts to tie bank transfers to invoices:

<u>Invoice</u>	<u>Invoice Date</u>	<u>Amount</u>	<u>Wire Date</u>
Smart Media Group 2817	5/27/14	\$44,570.00	5/27/14
DC London 0000599	5/28/14	\$7,500.00	6/3/14
DC London 0000600	5/29/14	\$324.00	8/6/14
Smart Media Group 2856	6/25/14	\$70,000.00	6/26/14
Smart Media Group 2891	7/16/14	\$65,045.00	7/18/14

The May 29 invoice was not paid until August, and was a small portion of a much larger transfer for other matters. Also, in responding to your most recent letter, an additional May 27, 2014 invoice was located, and is enclosed.

2. Enclosed please find origination documents for the bank account.

Jim Driscoll-MacEachron
April 14, 2016
Page 2

I trust that this addresses your questions. Please do not hesitate to contact me with additional questions or concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "DMG II", written in a cursive style.

Donald F. McGahn II



Smart Media Group, LLC
 1427 Leslie Avenue
 Suite 100
 Alexandria, VA 22301

Invoice

Invoice #: 2817
Invoice Date: 5/27/2014
Due Date: 5/27/2014
P.O. Number:

Bill To:
 Veterans for a Strong America

Client:

Description	Amount
Media:	
Broadcast Flight: 05/28/2014 - 06/10/2014	39,177.60
Wire transfer fee	25.00
Shipping fee	25.00
Media Commissions:	
Media Commission - SMG 3%	1,335.60
Media Commission - DC London 9%	4,006.80

Wire Transfer Information

Bank: Branch Banking and Trust
 1717 King Street
 Alexandria, VA 22314

Account Name: Smart Media Group LLC
Account No: 5239554018
Routing No: 051404260

Total	\$44,570.00
Payments/Credits	\$0.00
Balance Due	\$44,570.00

Line of Business: RETAIL BUSINESS

Money Services: No

Business:

Debit Card Overdraft Service

Debit Card Overdraft: Yes

Service:

Location Information

AU: 55258

Officer/Portfolio: S1787 GONZALEZ, CATHERINE
K 605-330-2453

Location: 6181 SOUTH LOUISE
SOUTH LOUISE OFFICE
PO BOX 5128
SIOUX FALLS, SD 57117-5128

JOEL A ARENDS

Add (/svp/mod/c...

Server: rpvra00a0150/prod_svp_263.1.4_b

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3748
DMCGAHN@JONESDAY.COM

February 16, 2016

VIA E-MAIL AND REGULAR MAIL

Jim Driscoll-MacEachron
Assistant Attorney General
Solicitor General's Office
Office of the Arizona Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926

Re: Veterans for a Strong America – January 14, 2016 letter

Dear Mr. Driscoll-MacEachron:

This responds to your letter dated January 14, 2016, regarding our client, Veterans for a Strong America. Your letter requests additional information regarding the relationship VETERANSFORASTRONGAMERICA.ORG and Veterans for a Strong America. Turning to each request:

1. Documents demonstrating that VETERANSFORASTRONGAMERICA.ORG, INC., ceased all activity in 2012.

Enclosed are the initial formation documents for Veterans for a Strong America, including the Articles, Bylaws, and meeting minutes. The minutes make clear that Veterans for a Strong America is a new organization, and they specifically reference the prior entity, noting that the new organization “will pick up where the old VSA group left off,” and explicitly calls Veterans for a Strong America “a new and different organization.” This indicates that the old group was no longer operating or otherwise active.

2. Documents identifying the corporate officers and board of directors for VETERANSFORASTRONGAMERICA.ORG, INC.

Enclosed is the IRS determination letter and application for 501(c)(4) status regarding VETERANSFORASTRONGAMERICA.ORG, INC. Page 3 of the application lists officers and directors.

3. Documents identifying any officers or directors of Veterans for a Strong America not listed on the 2014 bylaws.

Jim Driscoll-MacEachron
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Page 2

See response to request 1, above. No other documents regarding other directors or officers not listed on the 2014 have been located, and are not believed to exist.

4. Any documents showing a relationship between Veterans for a Strong America and VETERANSFORASTRONGAMERICA.ORG, INC. If no such documents exist, please indicate that is the case.

See response to request 1, above. No other responsive documents have been located, and are not believed to exist.

5. Documents showing the name of the organization(s) and/or individual(s) that paid for the expenditures on the advertisements run in Arizona in 2014.

Enclosed please find invoices related to production and placement of the advertising, paid for by Veterans for a Strong America.

Regarding tax returns for the year 2014, neither group has filed returns for 2014. Veterans for a Strong America's initial return is not yet due, and the group plans to file at the appropriate time.

I trust that this addresses your questions. Please do not hesitate to contact me with additional questions or concerns.

Very truly yours,



Donald F. McGahn II

ARTICLES OF ASSOCIATION
OF
VETERANS FOR A STRONG AMERICA, a South Dakota Unincorporated Association

To further common purposes, the Directors agree to organize under these articles of association.

ARTICLE I. NAME

The name of this association is and shall be: Veterans for a Strong America ("VSA").

ARTICLE II. PURPOSES AND POWERS

A. The Association is a nonprofit unincorporated association and is not organized for the private gain of any person. The Association is organized exclusively for mutual benefit purposes as an organization within the meaning of section 501(c)(4) of the Internal Revenue Code of 1986 [26 U.S.C.A. § 501(c)(4)] (or the corresponding section of any future United States internal revenue law) ("the Code"). Notwithstanding any other provision of these articles, the Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of the Association, and the Association shall not carry on any other activities not permitted to be carried on by an organization exempt from federal income taxes under section 501(c)(4) of the Code.

B. Specifically, VSA is organized and shall be operated to promote the common good and general welfare of the citizens of the United States of America through education about issues of public policy, including military, national security, foreign policy and veterans issues as contemplated and permitted by Section 501(c)(4) of the Internal Revenue Code of 1986, and, in connection therewith.

For such purposes and not otherwise, and subject always to the further provision of these Articles, VSA shall have and exercise such powers as are required by and are consistent with the foregoing purposes, including the power to acquire and receive funds and property of every kind and nature whatsoever, whether by purchase, conveyance, lease, gift, grant, bequest, legacy, devise, in trust, or otherwise, and to own, hold, manage, administer, and to make gifts, grants, and contributions of, and to expend, convey, transfer, and dispose of, any and all funds and property and the income therefrom in furtherance of the purposes of the VSA hereinabove set forth, or any of them, and to lease, mortgage, encumber, and use the same, and such other powers which are consistent with the foregoing purposes and which are afforded to VSA by the laws of the state of South Dakota. Provided, however, that all such powers of VSA shall be exercised only so that the operations of VSA shall be exclusively within the contemplation of Section 501(c)(4) of the Internal Revenue Code of 1986; and provided finally, however, that VSA shall not carry on any activity not permitted to be carried on by an association that is exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 as an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986.

ARTICLE III. AGENT FOR SERVICE OF PROCESS

The name and address in the State of South Dakota of this association's initial agent for service of process is:

Arends Law, P.C., P.O. Box 1246, Sioux Falls, SD 57101

ARTICLE IV. TAX-EXEMPT STATUS OF ASSOCIATION

VSA shall not, incidentally or otherwise, afford or pay any pecuniary gain or remuneration to its Directors or Officers, if any, and no part of the net income or net earnings of VSA shall, directly or indirectly, be distributable to or otherwise inure to the benefit of any private individual or member, as such, or any other person having a personal and private interest in the activities of, VSA; provided, however, that VSA may pay reasonable compensation for services rendered and property and supplies furnished to VSA in furtherance of its purposes described in Article II hereof.

Notwithstanding any of the above statements of purposes and powers, this association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this association.

ARTICLE V. BOARD OF DIRECTORS

The Board of Directors shall manage and direct the business and affairs of VSA. The number, qualifications, terms of office, method of appointment or election, powers, authority, and duties of the Directors of VSA, the time and place of their meetings, and such other provisions with respect to them as are not inconsistent with the express provisions of VSA's Articles of Association shall be as specified in the Bylaws of VSA.

ARTICLE VI. NO PERSONAL LIABILITY

Members, Directors, and Officers of VSA shall not be personally liable for the payment of any debts or obligations of VSA of any nature whatsoever, nor shall any of the property of the members, if any, Directors, or Officers be subject to the payment of the debts or obligations of VSA to any extent whatsoever. The liability of the Directors, Officers, and members of the association for monetary damages shall be eliminated to the fullest extent permissible under South Dakota law. The association is authorized to provide indemnification of agents for breach of duty to the association and its members through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by South Dakota law.

ARTICLE VII. DURATION

The duration of this association is perpetual, subject only to the vote of the Board of Directors as set forth in the Bylaws of VSA and Article VIII below.

ARTICLE VIII. DISSOLUTION

VSA may be dissolved in accordance with the laws of the State of South Dakota. Upon dissolution, and after the payment of all liabilities and obligations of VSA and all costs and expenses incurred by VSA in connection with such dissolution, and subject always to the further provisions of this Article VIII, all remaining assets shall be distributed to and among such one or more organizations as are then exempt from federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 as organizations described in 501(c)(4) of the Internal Revenue Code of 1986, all in such amounts or proportions as shall be determined by the Board of Directors of VSA, by the affirmative vote of at least a majority of the total number of Directors of VSA. Notwithstanding anything apparently or expressly to the contrary hereinabove contained in this Article VIII, (a) any assets then held by VSA in trust or upon condition or subject to an executory or special limitation, if the condition or limitation occurs by reason of the dissolution of VSA, shall revert or be returned, transferred, or conveyed in accordance with the terms and provisions of such trust, condition, or limitation; and (b) if the dissolution of VSA is required by the laws of the State of South Dakota then in existence to be conducted under court supervision, the dissolution of VSA shall be so conducted, and its assets not described in clause (a) of this sentence shall be transferred or conveyed to such one or more organizations described in the preceding sentence of this Article VIII as the court may determine.

ARTICLE IX. MEMBERS

VSA shall have members and classes of members whom shall have the rights, obligations and privileges from time to time provided in the Bylaws of VSA.

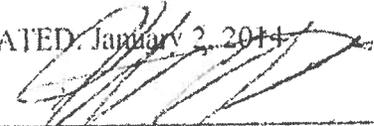
ARTICLE X. BYLAWS

Bylaws will be hereafter adopted. Such bylaws may be amended or repealed, in whole or in part, in the manner they provide, and the amendments to the bylaws shall be binding on all members, including those members who may have voted against them.

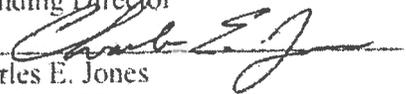
ARTICLE XI. REFERENCES

All reference in hereinabove to a particular section of the Internal Revenue Code of 1986 shall mean and include, as now enacted or as hereafter amended, such section and any provision of federal law as is or may hereafter be applicable, cognate to such section.

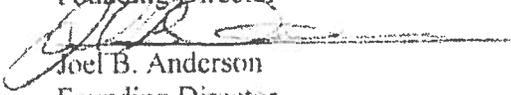
DATED: January 2, 2014



Joel A. Arends
Founding Director



Charles E. Jones
Founding Director



Joel B. Anderson
Founding Director

BYLAWS OF
VETERANS FOR A STRONG AMERICA

An unincorporated association formed in South Dakota

ARTICLE I — NAME AND PURPOSE

Section 1 — Name: The name of the organization shall be **Veterans for a Strong America**. It shall be a nonprofit unincorporated association under the laws of the State of South Dakota.

Section 2 — Purpose: **Veterans for a Strong America** is organized exclusively for non-profit purposes.

The purpose of this corporation is:

- **to support and conduct research, education, and informational activities to increase public awareness of veterans, military, national security and foreign policy issues.**
- **to ensure that members of Congress and the Executive Branch are educated, informed and aware of veterans, military, national security and foreign policy**

ARTICLE II — COMPOSITION

Section 1 — Initial Board of Directors: The original founders shall compose the Board of Directors for the first three years of the organization.

Section 2 — Quorum: A quorum must be attended by at least forty percent of board members for business transactions to take place and motions to pass.

Section 3 — Officers and Duties: There shall be four officers of the board, consisting of a chair, vice-chair, secretary and treasurer. Directors may serve as one or more officers. Their duties are as follows:

The chair shall convene regularly scheduled board meetings, shall preside or arrange for other members of the Executive Committee to preside at each meeting in the following order: vice-chair, secretary, treasurer.

The vice-chair shall chair committees on special subjects as designated by the board.

The secretary shall be responsible for keeping records of board actions, including overseeing the taking of minutes at all board meetings, sending out meeting announcements, distributing copies of minutes and the agenda to each board member, and assuring that corporate records are maintained.

The treasurer shall make a report at each board meeting. The treasurer shall chair the finance committee, assist in the preparation of the budget, help develop fundraising plans, and make financial information available to board members and the public.

Section 4 — Vacancies: When a vacancy on the board exists mid-term, the secretary must receive nominations for new members from present board members two weeks in advance of a board meeting. These nominations shall be sent out to board members with the regular board meeting announcement, to be voted upon at the next board meeting. These vacancies will be filled only to the end of the particular board member's term.

Section 5 — Resignation, termination, and absences: Resignation from the board must be in writing and received by the Secretary. A board member shall be terminated from the board due to excess absences, more than two unexcused absences from board meetings in a year. A board member may be removed for other reasons by a three-fourths vote of the remaining directors.

Section 6 — Special meetings: Special meetings of the board shall be called upon the request of the chair, or one-third of the board. Notices of special meetings shall be sent out by the secretary to each board member at least two weeks in advance.

ARTICLE III — COMMITTEES

Section 1 — Committee formation: The board may create committees as needed, such as fundraising, housing, public relations, data collection, etc. The board chair appoints all committee chairs.

Section 2 — Executive Committee: The four officers serve as the members of the Executive Committee. Except for the power to amend the Articles of Incorporation and bylaws, the Executive Committee shall have all the powers and authority of the board of directors in the intervals between meetings of the board of directors, and is subject to the direction and control of the full board.

ARTICLE VI — DIRECTOR AND STAFF

Section 1 — Executive Director: The executive director is hired by the board. The executive director has day-to-day responsibilities for the organization, including carrying out the organization's goals and policies. The executive director will attend all board meetings, report on the progress of the organization, answer questions of the board members and carry out the duties described in the job description. The board can designate other duties as necessary.

ARTICLE VII — AMENDMENTS

Section 1 — Amendments: These bylaws may be amended when necessary by two-thirds majority of the board of directors. Proposed amendments must be submitted to the Secretary to be sent out with regular board announcements.

CERTIFICATION

These bylaws were approved at a meeting of the board of directors by a two- thirds majority vote on January 2, 2015.

Veterans for a Strong America
An Unincorporated Association in
South Dakota
(Board Meeting Minutes: January 2014)

Board Members:

Present: Joel Arends, Chuck Jones, Joel Anderson

Quorum present? Yes

Proceedings:

Meeting called to order by Chair, Joel Arends

Board members are veterans of combat and formed the organization to pick up where the old VSA group left off with an emphasis on policy issues affecting national security, military, veterans and foreign policy

Formed Articles of Association and presented to Directors for signature

Discussion about organization's objectives and desired outcomes

Discussion about use of old organizations intellectual property, lists and other tangible property and transition from old board of directors to a new and different organization

Associations in South Dakota are authorized to own property and the Association shall assume the use of all property owned by the old VSA group.

Meeting adjourned.

Minutes submitted by Secretary.

Minutes drafted electronically from handwritten notes.

**Internal Revenue Service
P. O. Box 2508
Cincinnati, OH 45201**

Department of the Treasury

Date: January 8, 2014

**Person to Contact:
Ms Day #0110209
Toll Free Telephone Number:
877-829-5500**

VeteransforaStrongAmerica.Org
% Joel Arends
P O Box 1246
Sioux Falls, SD 57101-1246

Dear Sir or Madam:

This is in response to your letter of October 18, 2012 requesting copies for VeteransforaStrongAmerica.Org.

Enclosed are the copies you requested.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,



**Kenneth Corbin
Acting Director,
Exempt Organizations**

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

Employer Identification Number:
27-3016581

DLN:

17053216354000

VETERANSFORASTRONGAMERICA ORG INC
PO BOX 1246
SIOUX FALLS, SD 57101-1246

Contact Person:

MRS T FARR

ID# 52404

Contact Telephone Number:

(877) 829-5500

Accounting Period Ending:

December 31

Form 990 Required:

Yes

Effective Date of Exemption:

May 24, 2010

Contribution Deductibility:

No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax-exempt status we have determined that you are exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Please see enclosed Publication 4221-NC, Compliance Guide for Tax-Exempt Organizations (Other than 501(c)(3) Public Charities and Private Foundations), for some helpful information about your responsibilities as an exempt organization.

Sincerely,



Lois G. Lerner
Director, Exempt Organizations

Enclosure: Publication 4221-NC

Letter 948 (DO/CG)

17053216354000

Form **1024**
(Rev. September 1998)
Department of the Treasury
Internal Revenue Service

Application for Recognition of Exemption Under Section 501(a)

OMB No. 1545-0057

If exempt status is approved,
this application will be open
for public inspection.

Read the instructions for each Part carefully. A User Fee must be attached to this application. If the required information and appropriate documents are not submitted along with Form 8718 (with payment of the appropriate user fee), the application may be returned to the organization. Complete the Procedural Checklist on page 6 of the instructions.

Part I. Identification of Applicant (Must be completed by all applicants; also complete appropriate schedule.) Submit only the schedule that applies to your organization. Do not submit blank schedules.

Check the appropriate box below to indicate the section under which the organization is applying:

- a Section 501(c)(2)—Title holding corporations (Schedule A, page 7)
- b Section 501(c)(4)—Civic leagues, social welfare organizations (including certain war veterans' organizations), or local associations of employees (Schedule B, page 8)
- c Section 501(c)(5)—Labor, agricultural, or horticultural organizations (Schedule C, page 9)
- d Section 501(c)(6)—Business leagues, chambers of commerce, etc. (Schedule C, page 9)
- e Section 501(c)(7)—Social clubs (Schedule D, page 11)
- f Section 501(c)(8)—Fraternal beneficiary societies, etc., providing life, sick, accident, or other benefits to members (Schedule E, page 13)
- g Section 501(c)(9)—Voluntary employees' beneficiary associations (Parts I through IV and Schedule F, page 14)
- h Section 501(c)(10)—Domestic fraternal societies, orders, etc., not providing life, sick, accident, or other benefits (Schedule E, page 13)
- i Section 501(c)(12)—Benevolent life insurance associations, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations (Schedule G, page 15)
- j Section 501(c)(13)—Cemeteries, crematoria, and like corporations (Schedule H, page 16)
- k Section 501(c)(15)—Mutual insurance companies or associations, other than life or marine (Schedule I, page 17)
- l Section 501(c)(17)—Trusts providing for the payment of supplemental unemployment compensation benefits (Parts I through IV and Schedule J, page 18)
- m Section 501(c)(19)—A post, organization, auxiliary unit, etc., of past or present members of the Armed Forces of the United States (Schedule K, page 19)
- n Section 501(c)(25)—Title holding corporations or trusts (Schedule A, page 7)

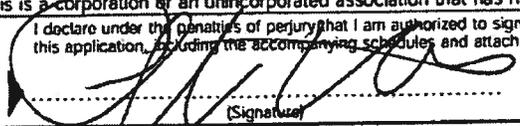
1a Full name of organization (as shown in organizing document) VeteransforaStrongAmerica.org, Inc.		2 Employer identification number (EIN) (if none, see Specific Instructions on page 2) 27-3016581
1b c/o Name (if applicable)		3 Name and telephone number of person to be contacted if additional information is needed Joel A. Arends (605) 254-2624
1c Address (number and street) P.O. Box 1246	Room/Suite	
1d City, town or post office, state, and ZIP + 4 If you have a foreign address, see Specific Instructions for Part I, page 2. Sioux Falls, SD 57101-1246		
1e Web site address veteransforastrongamerica.org	4 Month the annual accounting period ends December	5 Date incorporated or formed May 24, 2010
6 Did the organization previously apply for recognition of exemption under this Code section or under any other section of the Code? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," attach an explanation.		
7 Has the organization filed Federal income tax returns or exempt organization information returns? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," state the form numbers, years filed, and Internal Revenue office where filed.		

8 Check the box for the type of organization. ATTACH A CONFORMED COPY OF THE CORRESPONDING ORGANIZING DOCUMENTS TO THE APPLICATION BEFORE MAILING.

- a Corporation— Attach a copy of the Articles of Incorporation (including amendments and restatements) showing approval by the appropriate state official; also attach a copy of the bylaws.
- b Trust— Attach a copy of the Trust Indenture or Agreement, including all appropriate signatures and dates.
- c Association— Attach a copy of the Articles of Association, Constitution, or other creating document, with a declaration (see instructions) or other evidence that the organization was formed by adoption of the document by more than one person. Also include a copy of the bylaws.

If this is a corporation or an unincorporated association that has not yet adopted bylaws, check here

I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization, and that I have examined this application, including the accompanying schedules and attachments, and to the best of my knowledge it is true, correct, and complete.

PLEASE SIGN HERE  (Signature) **Joel A. Arends** (Type or print name and title or authority of signer) **Director** **July 12, 2010** (Date)

For Paperwork Reduction Act Notice, see page 5 of the instructions. RECEIVED Cat. No. 12343K

17152010216001

JUL 31 '10

AUG 03 '10

CINCINNATI
SERVICE CENTER



Part II. Activities and Operational Information (Must be completed by all applicants)

- 1 Provide a detailed narrative description of all the activities of the organization—past, present, and planned. Do not merely refer to or repeat the language in the organizational document. List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following: (a) a detailed description of the activity including its purpose and how each activity furthers your exempt purpose; (b) when the activity was or will be initiated; and (c) where and by whom the activity will be conducted.

Veterans for a Strong America is organized to develop and advocate for legislation, regulations, and government programs concerning veterans affairs, national security matters and homeland defense issues. Veterans for a Strong America intends to develop technical and policy solutions for problems associated with veterans benefits, national security programs, homeland defense programs and criminal prosecution of terrorism related cases. Veterans for a Strong America will direct these efforts toward supporting pro-active governmental and non-governmental solutions to the administration of veterans benefits and related matters, towards increasing the American government's ability to fight terrorism at home and abroad, improving the ability of the American military to fight and win our nation's wars, and encouraging responsible national security policies.

Specifically, Veterans for a Strong America intends to initiate the following projects to accomplish these objectives. First, it will educate the general public and advocate solutions about key national security programs. This initiative will solicit funds to advance Veterans for a Strong America activities and request support, conduct letter-writing campaigns, and recruit activists for the accomplishment of Veterans for a Strong America legislative and programmatic goals. Veterans for a Strong America will also communicate with the general public through phone canvasses, online outreach and direct mail to raise funds and grassroots support for its programs.

Second, Veterans for a Strong America will lobby national, state and local public and elected officials on veterans issues, national security matters and homeland defense to address key issues. Finally, Veterans for a Strong America will prepare and distribute information to the general public about proposed legislative solutions and Congress' activities to address these issues. Veterans for a Strong America will establish a newsletter to be published regularly and sent to organizational members. In addition, Veterans for a Strong America will sponsor programs for the community, supporters, elected officials and activists on key issues and proposed solutions.

Veterans for a Strong America's initial project is the organization of an information campaign to be implemented through a canvass with national veterans and national security related organizations. This campaign, in conjunction with a national information campaign, will be the primary focus of Veterans for a Strong America research and education in the coming years.

The Corporation intends to organize coalitions of grassroots activists together with national leaders to bring about constructive solutions to the growing challenges facing national security, homeland defense and military authorities. Veterans for a Strong America will also organize task forces of experts working with activists and public officials to study and propose solutions for specific national programs. These proposals, subject to review and approval by the Board of Directors, will serve as a foundation for educating the general public, initiating reform, and implementing solutions.

- 2 List the organization's present and future sources of financial support, beginning with the largest source first.
The organization expects to be supported primarily by contributions from individuals, other nonprofit organizations, and corporations.

Part II. Activities and Operational Information (continued)

3 Give the following information about the organization's governing body:

a Names, addresses, and titles of officers, directors, trustees, etc.	b Annual compensation
Paul Carter, 400 Oceangate, Suite 800, Long Beach, CA 90802; Director	0
Jody Mortara, 18034 Ventura Boulevard, #116, Encino, CA 91316; Director	0
Stephan Shatynski, 678 E. Lennox Court, Brea, CA 92821; Director	0
Joel Arends, P.O. Box 1246, Sioux Falls, SD 57101; Director	0

4 If the organization is the outgrowth or continuation of any form of predecessor, state the name of each predecessor, the period during which it was in existence, and the reasons for its termination. Submit copies of all papers by which any transfer of assets was effected.

5 If the applicant organization is now, or plans to be, connected in any way with any other organization, describe the other organization and explain the relationship (e.g., financial support on a continuing basis; shared facilities or employees; same officers, directors, or trustees).

6 If the organization has capital stock issued and outstanding, state: (1) class or classes of the stock; (2) number and par value of the shares; (3) consideration for which they were issued; and (4) if any dividends have been paid or whether your organization's creating instrument authorizes dividend payments on any class of capital stock.

7 State the qualifications necessary for membership in the organization; the classes of membership (with the number of members in each class); and the voting rights and privileges received. If any group or class of persons is required to join, describe the requirement and explain the relationship between those members and members who join voluntarily. Submit copies of any membership solicitation material. Attach sample copies of all types of membership certificates issued.

Membership in the organization is attained by affirming the agreement with the organization's principles and values and by signing up online or manually by calling the organization and affirming an interest in joining.

8 Explain how your organization's assets will be distributed on dissolution.

On the happening of dissolution or final liquidation, the board of directors shall designate that the remaining assets of the corporation, after all liabilities have been paid, be distributed in a manner consistent with the applicable sections of the IRS Code and the California law applicable to non-profit corporations.

Part II. Activities and Operational Information (continued)

- 9 Has the organization made or does it plan to make any distribution of its property or surplus funds to shareholders or members? Yes No
 If "Yes," state the full details, including: (1) amounts or value; (2) source of funds or property distributed or to be distributed; and (3) basis of, and authority for, distribution or planned distribution.

- 10 Does, or will, any part of your organization's receipts represent payments for services performed or to be performed? Yes No
 If "Yes," state in detail the amount received and the character of the services performed or to be performed.
In the future, Veterans for a Strong America may provide consulting services for other nonprofit organizations exempt under Sections 501(c)(3) or 501(c)(4) that are seeking advice on how to best influence public policy. For example, other nonprofit organizations may request services to develop lobbying programs designed to protect funding for defense related programs. Any services will be related to the organization's exempt purposes under I.R.C. Section 512.

- 11 Has the organization made, or does it plan to make, any payments to members or shareholders for services performed or to be performed? Yes No
 If "Yes," state in detail the amount paid, the character of the services, and to whom the payments have been, or will be, made.

- 12 Does the organization have any arrangement to provide insurance for members, their dependents, or others (including provisions for the payment of sick or death benefits, pensions, or annuities)? Yes No
 If "Yes," describe and explain the arrangement's eligibility rules and attach a sample copy of each plan document and each type of policy issued.

- 13 Is the organization under the supervisory jurisdiction of any public regulatory body, such as a social welfare agency, etc.? Yes No
 If "Yes," submit copies of all administrative opinions or court decisions regarding this supervision, as well as copies of applications or requests for the opinions or decisions.

- 14 Does the organization now lease or does it plan to lease any property? Yes No
 If "Yes," explain in detail. Include the amount of rent, a description of the property, and any relationship between the applicant organization and the other party. Also, attach a copy of any rental or lease agreement. (If the organization is a party, as a lessor, to multiple leases of rental real property under similar lease agreements, please attach a single representative copy of the leases.)
There are no specific lease agreements to reference at this time. When it becomes necessary for the continuation of operations the organization will look into the leasing of property.

- 15 Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, state, or local public office or to an office in a political organization? Yes No
 If "Yes," explain in detail and list the amounts spent or to be spent in each case.
Veterans for a Strong America has no plans to make contributions to candidates for political office or political parties, nor does it plan to make endorsements of candidates at this time. Some of the organization's resources will be directed at efforts surrounding elections that are not considered election activity by federal or state election law agencies, but that could be deemed "attempts to influence the election, selection, nomination and appointment of persons to federal, state, or local public office." Any political activity will be in accord with I.R.C. Section 501(c) et. al.

- 16 Does the organization publish pamphlets, brochures, newsletters, journals, or similar printed material? Yes No
 If "Yes," attach a recent copy of each.

Part III. Financial Data (Must be completed by all applicants)

Complete the financial statements for the current year and for each of the 3 years immediately before it. If in existence less than 4 years, complete the statements for each year in existence. If in existence less than 1 year, also provide proposed budgets for the 2 years following the current year.

A. Statement of Revenue and Expenses

	(a) Current Tax Year	3 Prior Tax Years or Proposed Budget for Next 2 Years			(e) Total
	From 2010 To 2011	(b) 2011	(c) 2012	(d) 2013	
Revenue					
1	0	0	0		0
2	0	5000	5000		10000
3	0	0	0		0
4	0	0	0		0
5	0	0	0		0
6	0	0	0		0
7	0	0	0		0
8	0	5000	5000		10000
Expenses					
9	0	4000	5000		9000
10	0	0	0		0
11	0	0	0		0
12	0	0	0		0
13	0	0	0		0
14	0	0	0		0
15	0	0	0		0
16	0	0	0		0
17	0	0	0		0
18	0	0	0		0
19	0	4000	5000		9000
20	0	0	0		0

B. Balance Sheet (at the end of the period shown)

		Current Tax Year as of 2010
Assets		
1	Cash	0
2	Accounts receivable, net	0
3	Inventories	0
4	Bonds and notes receivable (attach schedule)	0
5	Corporate stocks (attach schedule)	0
6	Mortgage loans (attach schedule)	0
7	Other investments (attach schedule)	0
8	Depreciable and depletable assets (attach schedule)	0
9	Land	0
10	Other assets (attach schedule)	0
11	Total assets	0
Liabilities		
12	Accounts payable	0
13	Contributions, gifts, grants, etc., payable	0
14	Mortgages and notes payable (attach schedule)	0
15	Other liabilities (attach schedule)	0
16	Total liabilities	0
Fund Balances or Net Assets		
17	Total fund balances or net assets	0
18	Total liabilities and fund balances or net assets (add line 16 and line 17)	0

If there has been any substantial change in any aspect of the organization's financial activities since the end of the period shown above, check the box and attach a detailed explanation.

Part IV. Notice Requirements (Sections 501(c)(9) and 501(c)(17) Organizations Only)

1 Section 501(c)(9) and 501(c)(17) organizations:

Are you filing Form 1024 within 15 months from the end of the month in which the organization was created or formed as required by section 505(c)? Yes No

If "Yes," skip the rest of this Part.

If "No," answer question 2.

2 If you answer "No" to question 1, are you filing Form 1024 within 27 months from the end of the month in which the organization was created or formed? Yes No

If "Yes," your organization qualifies under Regulation section 301.9100-2 for an automatic 12-month extension of the 15-month filing requirement. Do not answer questions 3 and 4.

If "No," answer question 3.

3 If you answer "No" to question 2, does the organization wish to request an extension of time to apply under the "reasonable action and good faith" and the "no prejudice to the interest of the government" requirements of Regulations section 301.9100-3? Yes No

If "Yes," give the reasons for not filing this application within the 27-month period described in question 2. See Specific Instructions, Part IV, Line 3, page 4, before completing this item. Do not answer question 4.

If "No," answer question 4.

4 If you answer "No" to question 3, your organization's qualification as a section 501(c)(9) or 501(c)(17) organization can be recognized only from the date this application is filed. Therefore, does the organization want us to consider its application as a request for recognition of exemption as a section 501(c)(9) or 501(c)(17) organization from the date the application is received and not retroactively to the date the organization was created or formed? Yes No

Schedule B

Organizations Described in Section 501(c)(4) (Civic leagues, social welfare organizations (including posts, councils, etc., of veterans' organizations not qualifying or applying for exemption under section 501(c)(19)) or local associations of employees.)

- 1 Has the Internal Revenue Service previously issued a ruling or determination letter recognizing the applicant organization (or any predecessor organization listed in question 4, Part II of the application) to be exempt under section 501(c)(3) and later revoked that recognition of exemption on the basis that the applicant organization (or its predecessor) was carrying on propaganda or otherwise attempting to influence legislation or on the basis that it engaged in political activity? . . . Yes No

If "Yes," indicate the earliest tax year for which recognition of exemption under section 501(c)(3) was revoked and the IRS district office that issued the revocation.

- 2 Does the organization perform or plan to perform (for members, shareholders, or others) services, such as maintaining the common areas of a condominium; buying food or other items on a cooperative basis; or providing recreational facilities or transportation services, job placement, or other similar undertakings? . . . Yes No

If "Yes," explain the activities in detail, including income realized and expenses incurred. Also, explain in detail the nature of the benefits to the general public from these activities. (If the answer to this question is explained in Part II of the application (pages 2, 3, and 4), enter the page and item number here.)

- 3 If the organization is claiming exemption as a homeowners' association, is access to any property or facilities it owns or maintains restricted in any way? . . . Yes No

If "Yes," explain.

- 4 If the organization is claiming exemption as a local association of employees, state the name and address of each employer whose employees are eligible for membership in the association. If employees of more than one plant or office of the same employer are eligible for membership, give the address of each plant or office.

**User Fee for Exempt Organization
 Determination Letter Request**

▶ Attach this form to determination letter application.
 (Form 8718 is NOT a determination letter application.)

For IRS Use Only	OMB No. 1545-1798
	Control number
	Amount paid <u>400</u> User fee screener <u>BCM</u>

1 Name of organization Veterans For A Strong America 2 Employer Identification Number 27-3016581
 Caution. Do not attach Form 8718 to an application for a pension plan determination letter. Use Form 8717 instead. Fee

- 3 Type of request
- a Initial request for a determination letter for:
- An exempt organization that has had annual gross receipts averaging not more than \$10,000 during the preceding 4 years or
 - A new organization that anticipates gross receipts averaging not more than \$10,000 during its first 4 years ▶ \$400
- Note. If you checked box 3a, you must complete the Certification below.

I certify that the annual gross receipts of Veterans For A Strong America org., Inc.
name of organization
 have averaged (or are expected to average) not more than \$10,000 during the preceding 4 (or the first 4) years of operation.
 Signature [Signature] Title ▶ Director

- b Initial request for a determination letter for:
- An exempt organization that has had annual gross receipts averaging more than \$10,000 during the preceding 4 years or
 - A new organization that anticipates gross receipts averaging more than \$10,000 during its first 4 years ▶ \$850
- c Group exemption letters ▶ \$3,000

Instructions

The law requires payment of a user fee with each application for a determination letter. The user fees are listed on line 3 above. For more information, see Rev. Proc. 2009-8; 2009-1 I.R.B. 229, or latest annual update.

Check the box or boxes on line 3 for the type of application you are submitting. If you check box 3a, you must complete and sign the certification statement that appears under line 3a.

Attach to Form 8718 a check or money order payable to the "United States Treasury" for the full amount of the user fee. If you do not include the full amount, your application will be returned. Attach Form 8718 to your determination letter application.

Generally, the user fee will be refunded only if the Internal Revenue Service declines to issue a determination.

Where To File

Send the determination letter application and Form 8718 to:

Internal Revenue Service
 P.O. Box 12192
 Covington, KY 41012-0192

Who Should File

Organizations applying for federal income tax exemption, other than Form 1023 filers. Organizations submitting Form 1023 should refer to the instructions in that application package.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. If you want your organization to be recognized as tax-exempt by the IRS, you are required to give us this information. We need it to determine whether the organization meets the legal requirements for tax-exempt status.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating

to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. The rules governing the confidentiality of Form 8718 are covered in section 6104.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is 5 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send this form to this address. Instead, see *Where To File* above.



TM

3299856

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

MAY 24 2010

ARTICLES OF INCORPORATION
OF
VETERANSFORASTRONGAMERICA.ORG, INC.

I

The name of this corporation is VETERANSFORASTRONGAMERICA.ORG,
INC.

II

A. This corporation is a nonprofit Mutual Benefit Corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

B. The specific purpose of this corporation: The corporation is organized and will be operated exclusively for educational and social welfare purposes within the meaning of Section 501(c)(4) of the Internal Revenue Code. The purposes for the formation of this corporation include:

(a) To act and operate exclusively as a nonprofit corporation pursuant to the laws of the State of California, and to act and operate as an educational organization in educating members of the organization and public about all matters of public interest regarding veterans affairs, national security matters and homeland defense issues;

(b) To engage in any and all activities and pursuits, and to support or assist such other organizations, as may be reasonably related to the foregoing and following purposes.

(c) To engage in any and all other lawful purposes, activities and pursuits, which are substantially similar to the foregoing and which are or may hereafter be authorized by Section 501(c)(4) of the Internal Revenue Code and;

(d) To solicit and receive contributions, to make purchases, to make contracts, to invest corporate funds, to spend corporate funds for corporate purposes, and to engage in any activity in furtherance of, incidental to, or connected with any of the other purposes.

III

The name of the corporation's initial agent for service of process is Paul J. Carter, Esquire, 400 OceanGate, Suite 200, Long Beach, California, 90802.

IV

Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this corporation.

V

Upon the time of dissolution of the corporation, assets shall be distributed by the Board of Directors, after paying or making provisions for the payment of all debts, obligations, liabilities, costs and expenses of the corporation, for one or more exempt purposes within the meaning of section 501(c) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

IN WITNESS WHEREOF, THIS UNDERSIGNED incorporator has executed these Articles of Incorporation on May 19, 2010.


PAUL J. CARTER



 DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
CINCINNATI OH 45999-0023

Date of this notice: 07-12-2010

Employer Identification Number:
27-3016581

Form: SS-4

Number of this notice: CP 575 E

VETERANSFORASTRONGAMERICAORG
% JOEL A ARENDS
PO BOX 1246
SIOUX FALLS, SD 57101

For assistance you may call us at:
1-800-829-4933

IF YOU WRITE, ATTACH THE
STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 27-3016581. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear off stub and return it to us.

Assigning an EIN does not grant tax-exempt status to non-profit organizations. Publication 557, *Tax Exempt Status for Your Organization*, has details on the application process, as well as information on returns you may need to file. To apply for formal recognition of tax-exempt status, most organizations will need to complete either Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or Form 1024, *Application for Recognition of Exemption Under Section 501(a)*. Submit the completed form, all applicable attachments, and the required user fee to:

Internal Revenue Service
PO Box 192
Covington, KY 41012-0192

The Pension Protection Act of 2006 contains numerous changes to the tax law provisions affecting tax-exempt organizations, including an annual electronic notification requirement (Form 990-N) for organizations not required to file an annual information return (Form 990 or Form 990-EZ). Additionally, if you are required to file an annual information return, you may be required to file it electronically. Please refer to the Charities & Non-Profits page at www.irs.gov for the most current information on your filing requirements and on provisions of the Pension Protection Act of 2006 that may affect you.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at www.irs.gov. If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

Internal Revenue Service
P.O. Box 2508
Cincinnati, Ohio 45201

Department of the Treasury

Date: January 21, 2011

VeteransforaStrong America.org, Inc.
P.O. Box 1246
Sioux Falls, SD 57101-1246

Employer Identification Number:
27-3016581

Person to Contact - Group #:
Mrs. T. Farr - 7880
ID# 0000274319

Contact Telephone Numbers:
410-962-4774 Phone
410-962-0133 Fax

Response Due Date:
February 11, 2011

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosure by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration **under the signature of a principal officer:**

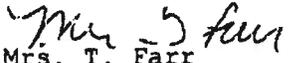
Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

To facilitate processing of your application, **please attach a copy of this letter to your response.** This will enable us to quickly and accurately associate the additional documents with your case file.

If we do not hear from you within that time, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,


Mrs. T. Farr
Exempt Organizations Specialist

Enclosure: Information Request

Letter 1312 (TEDS)

VeteransforaStrongAmerica.org Inc
27-3016581

1. Explain in detail how you will:

- a) "develop and advocate for legislation, regulations, and government programs concerning veterans affairs, national security matters and homeland defense issues."
- b) "Implement a national information campaign,
- c) Organize coalitions of grassroots activists."

2. Provide the total percentage of the organization's time that is devoted to each activity.

Website

3. Your website differs from your application for exemption. The website states the following:

Welcome to Veterans for a Strong America -

We are a grassroots action organization committed to ensuring that America remains a strong nation by advancing liberty, safeguarding freedom and opposing tyranny.

For over two hundred years America's warfighters and veterans have sacrificed greatly to ensure that the light of liberty shines brightly throughout the world. That flame burns bright because so many have given so much. The courage and sacrifice of our American forefathers serves as our mandate.

Veterans for a Strong America has a mandate to mobilize patriotic Americans, veterans and veterans supporters in support of a unified and overarching strategy to secure America's future and keep America strong. Veterans for a Strong America will pursue five strategies necessary for a Strong America -

- Grow the world's strongest, most robust economy - America's super power status stems from its ability to project power around the world. A strong American economy allows our nation to project power, promote peace and create stability. In order to project a strong global presence we must maintain our economic superiority.
- Strengthen and modernize America's military - America's global leadership role requires modernized armed forces capable of deploying, fighting and winning present and future challenges.
- Create plentiful and diverse energy resources that allow Americans to enjoy freedom, opportunity, safety and security - A strong America needs a diverse portfolio of energy supplies from a wide range of sources that is best for the economy and at the same time addresses homeland and national security considerations.

VeteransforaStrongAmerica.org Inc
27-3016581

- Implement responsible intelligence reform - A strong America needs improved intelligence-gathering capabilities with enhanced operational effectiveness at all levels to include reliable and actionable information gathered from both foreign and domestic sources for use at all appropriate levels of governments.
- The American criminal justice system must protect Americans, not terrorists - A strong America demands a justice system which understands that wars are fought and won on the battlefield and not a courtroom. During times of war, the executive branch must assume the constitutional obligation to protect the American people instead of shifting that responsibility to the judiciary.

Please explain how you will conduct the activities listed on your website.

4. Explain in detail, how you separate the activities of your organization from those of your PAC.
5. Why have you "linked" your PAC to your website?
6. Explain in detail, how the activities of your organization are bi-partisan.
7. Submit copies of the information you will disseminate to the public.
8. Provide an executed copy of your Bylaws.

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 13163
Baltimore, MD 21203
ATT: Mrs. T. Farr
Room 1420
Group 7880

Street Address:

Internal Revenue Service
Exempt Organizations
31 Hopkins Plaza
Baltimore, MD 21201
ATT: Mrs. T. Farr
Room 1420
Group 7880

Internal Revenue Service

Department of the Treasury

VeteransforaStrongAmerican.org. Inc.
P O Box 1246
Sioux Falls, SD 57101-1246

Date:
February 15, 2011
Employer Identification Number:
27-3016581
Person to Contact/ID Number:
Mrs. T. Farr #000274319
Contact Telephone Number:
410-962-4774
Fax Number:
410-962-0133
Response Due Date:
February 25, 2011

Dear Applicant:

We sent you a letter requesting additional information we need in order to consider your application for exemption on January 21, 2011 . We also attempted to contact your designated representative by telephone to try to obtain the requested information. We have not received a response to our information request.

Please provide the information requested in the enclosure by the due date shown in the heading of this letter. If we receive the information requested by the due date, we will continue to process your application for exemption under section 501(c)(3) of the Code. If we do not receive the information requested by the due date, we will be unable to consider your application for exemption further, and will close your case.

If you have any questions or need assistance regarding our request for information, please contact me directly at the telephone number listed above.

Sincerely yours,


Mrs. T. Farr
Exempt Organizations Specialist

Enclosure:
Information Request

Letter 4423 (9-2008)
Catalog Number 52253P

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: ~~MAY~~ 1 2011

VETERANSFORASTRONGAMERICA ORG INC
PO BOX 1246
SIOUX FALLS, SD 57101-1246

Employer Identification Number:
27-3016581
DLN:
17053216354000
Contact Person:
MRS T FARR ID# 52404
Contact Telephone Number:
(410) 962-4774
Previous Letter Date:
January 21, 2010
90-Day Response Date:

Dear Applicant:

JUN 1 2011

Our previous letter, copy enclosed, asked you to send us additional information about your application for tax-exempt status under section 501(c)(4) or section 521 of the Internal Revenue Code.

We also contacted or attempted to contact you or your designated representative by telephone to inquire about the requested information. We are unable to make a final determination on your exempt status without the additional information; therefore, we have placed your case in suspense. If you intend to submit the additional information, please send it to us at:

Internal Revenue Service
TE/GE SE:T:EO:RA:D Group 7880
P O Box 13163, Room 1420
Baltimore, MD 21203

If we receive the requested information on or before the 90-day response date above, we will reactivate your case. After the above date, we will close your case, and you will be required to submit a new application package and new user fee payment to pursue tax-exempt status.

If you decide not to submit the additional information, you will be required to file annual returns on Form 1120 and your user fee will not be refunded.

Please call us at the telephone number listed above if you have any questions regarding this matter. Have your Employer Identification Number and a copy of your most recent response available when you call.

Sincerely,



Lois G. Lerner
Director, Exempt Organizations

Letter 4587 (DO/CG)

IRS - EO
Group 7880

JUN 1 2011

Received
Baltimore Md 21201

From: Veterans for a Strong America, Inc.

To: Internal Revenue Service

Date: May 27, 2011

RE: Letter dated February 21, 2011 seeking more information regarding 501c4 application

This letter is to serve as a response to the IRS seeking more information regarding the activities of the organization called Veterans for a Strong America which is seeking non-profit status.

Our responses are detailed herein:

- 1) Veterans for a Strong America will, "develop and advocate for legislation, regulations, and government programs concerning veterans affairs, national security matters and homeland defense issues," by engaging in the following educational programs
 - a. Information campaigns asking our members to contact members of congress regarding the programs discussed above
 - b. Seeking out media interviews in order to discuss these issues in front of much larger audiences
 - c. Mounting grassroots campaigns using social media sites, such as Facebook and Twitter to communicate the beliefs of the organization to its members

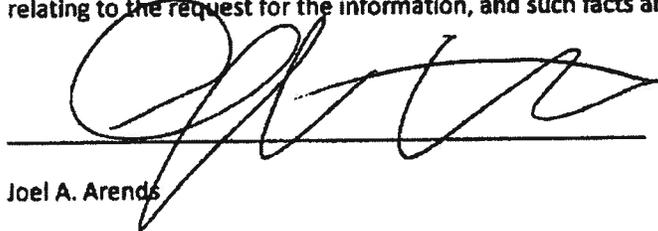
- 2) Veterans for a Strong America will, "implement a national information campaign," by
 - a. Reaching out to members who join the organization and asking them to serve as regional or state level coordinators who in turn will communicate the mission and values of the organization to other members.
 - b. Seeking out media interviews in order to discuss these issues in front of much larger audiences
 - c. Mounting grassroots campaigns using social media sites, such as Facebook and Twitter to communicate the beliefs of the organization to its members

- 3) Veterans for a Strong America will, "organize coalitions of grassroots activists," by:
 - a. Reaching out to similar organizations such as the American Legion, VFW and other like-minded groups to form coalitions that generally support the same issues set.
 - b. Reaching out to members of the public who are inclined to join Veterans for a Strong America by using social media sites and other similar social networks
 - c. By recruiting grassroots activist who sign up on the internet site of the organization.

- 4) The total percentage of the organization's time that will be devoted to each activity is the following:
 - a. While it is impossible to define a percentage based allocation to each of these activities we would estimate that it would break down to a significant amount of time that would be spent communicating with our membership and organizing our membership.

- 5) Each of the activities listed on our website is consistent with our application. However the website lists in greater detail what our membership and values philosophy is. Each of the issues we have listed on our website is a statement regarding our values towards current American government policies. We will be organizing in order to have our membership take action on each of these issues.
- 6) Veterans for a Strong America does not have a Political Action Committee formed with the FEC. We did create website tab and did create a fundraising mechanism, however no money was accepted for PAC activities. We would note that it is permissible for a 501c4 organization to establish a link on their website to solicit PAC contributions.
- 7) We have linked a yet-to-be-formed PAC to the Veterans for a Strong America website in anticipation of potentially forming a PAC if contributions are made.
- 8) The activities of Veterans for a Strong America are non-partisan, not "bi-partisan" as the IRS questionnaire has stated.
- 9) We have not developed any handouts or information that will be disseminated to the public at this point. It appears that the IRS already has copies of our website in its possession.

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.



Joel A. Arends

3299856



State of California Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) is a full, true and correct copy of the original record in the custody of this office.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of



JUL 02 2010

DEBRA BOWEN
Secretary of State

Sec/State Form CE-109 (REV 01/2009)

PAGE 02/04

ALLEN CORP SUPPLY

5629061645

07/08/2010 10:01
CSP 00 113040



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

MEMORANDUM FOR THE DIRECTOR, FBI

DATE: 10/15/64

TO: SAC, NEW YORK (100-100000)

FROM: SAC, NEW YORK (100-100000)

SUBJECT: [Illegible]

[The following text is extremely faint and largely illegible due to the quality of the scan.]



100-100000

NEW YORK

100-100000

10/15/64

DC London, Inc.
 1100 G Street NW
 Suite 805
 Washington DC 20005
 United States
 Phone: 202-629-3099

INVOICE



PAID

Veterans for a Strong America
 Joel Arends
 PO Box 1246
 Sioux Falls South Dakota 57101-1246

Invoice #:	0000600
Date:	May 29, 2014
Balance Due USD:	\$0.00

To View Your Invoice Online »

1. Go to: <https://dclondon.freshbooks.com/code>
2. Enter this code: 3ADSgS6dDzJ94jdC

Item	Description	Unit Cost (\$)	Quantity	Price (\$)
Shipping	"What Difference"	324.00	1	324.00
Subtotal:				324.00
Total:				324.00
Amount Paid:				-324.00
Balance Due USD:				\$0.00
<p>Payment due upon receipt Wire Instructions: Wells Fargo ABA: 121000248 Account: 6130796896</p>				

This invoice was sent using FRESHBOOKS

DC London, Inc.
 1100 G Street NW
 Suite 805
 Washington DC 20005
 United States
 Phone: 202-629-3099

INVOICE



Veterans for a Strong America
 Joel Arends
 PO Box 1246
 Sioux Falls South Dakota 57101-1246

Invoice #:	0000599
Date:	May 28, 2014
Balance Due USD:	\$0.00

To View Your Invoice Online »

1. Go to: <https://dclondon.freshbooks.com/code>
2. Enter this code: tsz8Gba7HFFirNU

Item	Description	Unit Cost (\$)	Quantity	Price (\$)
Ad Production	"What Difference"	5,000.00	1	5,000.00
Social Media		2,500.00	1	2,500.00
Subtotal:				7,500.00
Total:				7,500.00
Amount Paid:				-7,500.00
Balance Due USD:				\$0.00
Payment due upon receipt Wire Instructions: Wells Fargo ABA: 121000248 Account: 6130796896				

This invoice was sent using FRESHBOOKS



Smart Media Group, LLC
 1427 Leslie Avenue
 Suite 100
 Alexandria, VA 22301

Invoice

Invoice #: 2856
Invoice Date: 6/25/2014
Due Date: 6/25/2014
P.O. Number:

Bill To:

Veterans for a Strong America
 Attn.: Sean
 DC London, Inc.
 1100 G St NW, Suite 805
 Washington, DC 20005

Client: VFASA

Description	Amount
Media Cable Flight: 06/26/2014 - 07/09/2014	70,000.00

Wire Transfer Information

Bank: Branch Banking and Trust
 1717 King Street
 Alexandria, VA 22314

Account Name: Smart Media Group LLC
Account No: 5239554018
Routing No: 051404260

Total	\$70,000.00
Payments/Credits	\$0.00
Balance Due	\$70,000.00



Smart Media Group, LLC
 1427 Leslie Avenue
 Suite 100
 Alexandria, VA 22301

Invoice

Invoice #: 2891
Invoice Date: 7/16/2014
Due Date: 7/16/2014
P.O. Number:

Bill To:

Veterans for a Strong America
 Attn.: Sean
 DC London, Inc.
 1100 G St NW, Suite 805
 Washington, DC 20005

Client: VFASA

Description	Amount
Media Cable Flight: 07/18/2014 - 07/24/2014	65,045.00

Wire Transfer Information

Bank: Branch Banking and Trust
 1717 King Street
 Alexandria, VA 22314

Account Name: Smart Media Group LLC
Account No: 5239554018
Routing No: 051404260

Total	\$65,045.00
Payments/Credits	\$0.00
Balance Due	\$65,045.00



Smart Media Group, LLC
 1427 Leslie Avenue
 Suite 100
 Alexandria, VA 22301

Invoice

Invoice #: 2891
Invoice Date: 7/16/2014
Due Date: 7/16/2014
P.O. Number:

Bill To:

Veterans for a Strong America
 Attn.: Sean
 DC London, Inc.
 1100 G St NW, Suite 805
 Washington, DC 20005

Client: VFASA

Description	Amount
Media Cable Flight: 07/18/2014 - 07/24/2014	65,045.00

Wire Transfer Information

Bank: Branch Banking and Trust
 1717 King Street
 Alexandria, VA 22314

Account Name: Smart Media Group LLC
Account No: 5239554018
Routing No: 051404260

Total	\$65,045.00
Payments/Credits	\$0.00
Balance Due	\$65,045.00