



## **NOTICE OF PUBLIC MEETING AND POSSIBLE EXECUTIVE SESSION OF THE STATE OF ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION**

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**Location:**       Citizens Clean Elections Commission  
                      1616 West Adams, Suite 110  
                      Phoenix, Arizona 85007

**Date:**            Thursday, November 8, 2018

**Time:**           9:30 a. m.

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Elections Commission and the general public that the Citizens Clean Elections Commission will hold a regular meeting, which is open to the public on November 8, 2018. This meeting will be held at 9:30 a.m., at the Citizens Clean Elections Commission, 1616 West Adams, Suite 110, Phoenix, Arizona 85007. The meeting may be available for live streaming online at [www.livestream.com/cleanelections](http://www.livestream.com/cleanelections). Members of the Citizens Clean Elections Commission will attend either in person or by telephone, video, or internet conferencing.

The Commission may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item listed on the agenda, pursuant to A.R.S. § 38-431.03 (A)(3). The Commission reserves the right at its discretion to address the agenda matters in an order different than outlined below.

**All matters on the agenda may be discussed, considered and are subject to action by the Commission.**

**Possible action on any Matter Under Review (MUR) identified in this agenda may include authorizing or entering into a conciliation agreement with subject of the MUR, in addition to any other actions, such as finding reason to believe a violation has occurred, finding probable cause to believe a violation has occurred, applying penalties, ordering the repayment of monies to the Clean Elections Fund, or terminating a proceeding.**

The agenda for the meeting is as follows:

- I.       Call to Order.
- II.      Discussion and Possible Action on Commission Minutes for September 27, 2018 meeting.
- III.     Discussion and Possible Action on Executive Director's Report.
- IV.     Discussion and Possible Action on Calendar Year 2019 Budget and Related Matters.
- V.      Discussion and Possible Action on MUR 18-14, US Term Limits.
- VI.     Discussion and Possible Action on 2019 Legislative Agenda.

VII. Discussion and Possible Action on Selection of Chairman for 2019

VIII. Public Comment

This is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism

IX. Adjournment.

This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission's office, 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

Dated this 2<sup>nd</sup> day of November, 2018.

Citizens Clean Elections Commission

Thomas M. Collins, Executive Director

Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Commission at (602) 364-3477. Requests should be made as early as possible to allow time to arrange accommodations.

**CITIZENS CLEAN ELECTIONS COMMISSION  
EXECUTIVE DIRECTOR REPORT  
November 8, 2018**

**Announcements:**

- The public can view Commission meetings live via the internet at [www.livestream.com/cleanelections](http://www.livestream.com/cleanelections). A link is available on our website.
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**Voter Education:**

- Post-election updates:
  - Ballots are still being processed and tabulated by the counties.
  - The governing body holding an election shall meet and canvass the election not less than six days no more than twenty days following the election.  
A.R.S. § 16-642
  - The Morrison Institute State of our State will be held on November 19th. Research on the Voter Crisis that was part of the Commission's voter education efforts will be discussed.
  - Tom and Alec met with two election observers from the Organization for Security and Co-Operation in Europe (OSCE) on October 16th and discussed Arizona Elections.
  - Gina and Tom have made televised appearances in conjunction with students from the Arizona School for the Arts, a Phoenix high school, related to our #18in2018 voter education initiative.

**2018 Candidate Information:**

- General Legislative Candidates: **44**; Received Funding: **44**
- Participating Statewide Candidates: **5**; Received Funding: **5**

**Enforcement – 2018:**

- MUR 18-07- One Arizona- RTB prior meeting. Pending further action, likely at next meeting.
- MUR 18-13- Kiana Sears – Closed pursuant to R2-20-206(A)(3).
- MUR 18-14 US Term Limits – Pending

NOTE: Two complaints were filed against Ken Bennett. However, because he failed to qualify and is no longer a participating candidate, we do not anticipate further Commission action on those complaints, barring some status change by court order.

## **Miscellaneous**

- **State Propositions**

- Proposition 306
  - Voters passed Proposition 306, which amends two provisions of the Clean Elections Act, one having to do with candidate expenditures of clean funding directed to parties and 501(c) organizations and another removing a provision that exempted the Commission from certain rulemaking requirements.
  - Staff will be reviewing each section to determine next steps. For example, Section 1 of the Proposition requires the Commission to examine both direct and indirect expenditures to parties. We expect to work with counsel and financial analysts to determine what kind of statements may be required to determine the accounts and accounting processes of political parties in Arizona.
  - Please see Exhibit A for a recent news story related to Prop. 306
- Other statewide measures include:
  - Proposition 125- Pension related
  - Proposition 126- Constitutional Ban on service taxes.
  - Proposition 127- Constitutional requirements for renewable energy.
  - Proposition 305- Empowerment Scholarship accounts/vouchers.

For results please see [azsos.gov](http://azsos.gov).

- **Local Propositions of Interest**

- The City of Phoenix passed Proposition 419, imposing new disclosure requirements on spenders in city elections. This charter amendment will need to be signed by the governor and, like the Tempe Charter Amendment from earlier this year, will likely see litigation on a number of fronts.

- **Legacy Foundation Action Fund**

- Remains pending
- The Superior Court in Maricopa County granted our motion to dismiss LFAF's effort to block our collection suit and denied LFAF's motion to dismiss. LFAF wants to expedite Superior Court resolution for appeal and we are working on that.

- **AZAN v. Reagan et. al.**

- Ruling on Summary Judgment remains pending.
- Oral Argument on motions for summary judgment were postponed after a Superior Court judge disqualified herself. A new judge has been assigned and oral argument is now set for October 3 at 9:30 AM. Let me know if you would like more details.

- **Bennett v. Reagan et al.**

- Former Secretary Bennett raises a number of challenges including effort to 1) change outcome of review of qualifying contribution, 2) seek participating status.
- The Attorney General filed a motion to dismiss. Exhibit B.

# Prop. 306 may not scrap disputed Clean Elections rules

By **Jeremy Duda** - November 1, 2018



*Illustration courtesy Arizona Citizens Clean Elections Commission/Facebook*

The controversial Clean Elections rules that led Republican lawmakers to attempt to curb the agency's authority through Proposition 306 may be here to stay, even if voters approve the measure.

Prop. 306 would subject the Arizona Citizens Clean Elections Commission, which administers the state's public campaign financing system, to the same regulatory rulemaking restrictions as other state agencies, including oversight by the Governor's Regulatory Review Council (GRRC), whose members are appointed by the governor.

Republican lawmakers included that provision in the measure in response to a years-long fight between the Secretary of State's Office and the commission over the extent of its regulatory authority over outside independent expenditure groups that spend money in Arizona elections.

Under state law, "dark money" groups and other outside campaign committees must file campaign finance reports for each quarter and for other designated reporting periods during election years. However, the Arizona Citizens Clean Elections Commission requires them to report that spending more promptly: within 24 hours during the two weeks before an election, and by the following Tuesday outside that two-week window.

Late in the election season, the Clean Elections reports are the only way the public can track campaign spending by outside groups in a timely manner. The last campaign finance reports of the 2018 election cycle were due Oct. 29, and covered the reporting period that ended on Oct. 20.

So, without the Clean Elections reports, voters would know little about independent expenditures during the critical last weeks of the election. The Legislature in 2016 eliminated similar “trigger reports” that independent expenditure groups had to submit to the Secretary of State’s Office, which left Clean Elections as the only entity requiring spending-driven reporting by independent expenditures.

But the commission’s enforcement of those disclosure requirements has generated controversy.

At the heart of the dispute is not just the reporting requirements — those are part of the statutes approved by voters in 1998 when they created the Clean Election system — but the commission’s authority to enforce them. Arizona Secretary of State Michele Reagan and other Republican critics have argued that the Clean Elections Commission is acting beyond the scope of its jurisdiction and has usurped the secretary of state’s authority, creating a confusing and dual enforcement system for campaign finance laws where groups that spend money in elections can be punished for alleged violations, even if other election officials have determined that they didn’t break the rules.

Clean Elections advocates, however, tout the commission as the only truly independent entity regulating campaign finance, and argue that its independence will be hindered if it’s subject to the whims of GRRC, whose members are appointed by the governor.

In at least one high-profile case, the Clean Elections Commission took action on a campaign finance enforcement matter after other elections officials have declined to do so when it levied a \$96,000 fine against Legacy Foundation Action Fund, a dark money group that aided Gov. Doug Ducey during the 2014 election with television ads against one of his rivals in the Republican primary. Legacy Foundation challenged the commission’s authority in a lawsuit, but lost after courts ruled that it missed a key deadline.

Secretary of State Michele Reagan’s office [filed a complaint with GRRC](#), which vets and approves regulations by state agencies, in a bid to overturn the Clean Elections rules governing reporting by independent expenditure groups and traditionally funded candidates, which includes civil penalties for those that don’t comply. The council ultimately ordered Clean Elections to rescind the rules, but the commission refused, saying the council lacked the authority to do so.

Prop. 306 would place the commission explicitly under GRRC’s authority, which could preempt future fights over how far Clean Elections’ authority extends.

It would also prohibit Clean Elections candidates from giving any of their public campaign funding to political parties. That became a controversial issue after the commission in 2017 passed a new rule clarifying publicly funded candidates’ ability to make payments to political parties and nonprofit organizations, and imposing new reporting standards for such payments.

Advocates of Prop. 306 cite that rule as the primary impetus behind the ballot measure, while [critics describe it as a Trojan horse](#) meant to secure voter approval for the regulatory overhaul.

The fate of that rule if Prop. 306 passes is unambiguous, since the measure will ban outright any such payments to parties. But it’s unclear exactly what, if anything, would happen to Clean Elections rules on independent expenditure reporting in a post-Prop. 306 world.

Tom Collins, the executive director of the Clean Elections Commission, emphasized that the disputed reporting requirements are in state statute, and that the commission’s authority to enforce those requirements emanates from that. Because of that, Collins questioned whether the commission even needs specific rules to authorize its enforcement of those laws.

"They're not amending that part of the statute," Collins said of Prop. 306.

State Election Director Eric Spencer, who wrote the GRRC complaint from the Secretary of State's Office against the Clean Elections Commission, took a similar view. He said his understanding is that Prop. 306 will apply to future issues, and he said he would be surprised if it resurrected the feud over Clean Elections' reporting rules.

"I have never assumed that, if Prop. 306 passes, it will put that controversy back on the front burner. I just have assumed that it will apply going forward. But I don't know. I really don't know," Spencer said.

The Arizona Department of Administration, which is GRRC's parent agency, declined to comment.

"Saying anything prior to the election would be speculation. I'm sure there will be additional clarity after Nov. 6," ADOA spokeswoman Megan Rose said.

GRRC member Frank Thorwald also declined to make any predictions about what would become of the disputed rules.

"I'm not going to speculate on anything at this point. We'll see what happens," he said.

The Clean Elections spending reports can be a timely source of information about election spending for members of the public. But finding those reports can be a challenge.

During the 2016 election cycle, those reports appeared exclusively on the commission's website, but not on the secretary of state's website because of its dispute with Clean Elections over the extent of the commission's authority. Since then, Clean Elections and Reagan's administration put their differences aside and agreed to put the reports on the secretary of state's new campaign finance website, known as [See the Money](#).

But Collins said the secretary of state's system is unreliable, and recently resumed posting independent expenditure reports on the [Clean Elections website](#).

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### Jeremy Duda

Associate Editor Jeremy Duda is a Phoenix native and began his career in journalism in 2003 after graduating from the University of Arizona. Prior to joining the Arizona Mirror, he worked at the Arizona Capitol Times, where he spent eight years covering the Governor's Office and two years as editor of the Yellow Sheet Report. Before that, he wrote for the Hobbs News-Sun of Hobbs, NM, and the Daily Herald of Provo, Utah. Jeremy is also the author of the history book "If This Be Treason: the American Rogues and Rebels Who Walked the Line Between Dissent and Betrayal."



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*Attorneys for Defendants Arizona Secretary of State  
8 Michele Reagan, Arizona Citizens Clean Elections Commission,  
and Thomas Collins, Executive Director of  
9 Arizona Citizens Clean Elections Commission*

10 **ARIZONA SUPERIOR COURT**  
11 **COUNTY OF MARICOPA**

12 KENNETH R. BENNETT, an  
13 individual,

14 Plaintiff,

15 v.

16 MICHELE REAGAN, in her official  
capacity as the Secretary of State of  
17 Arizona; ARIZONA CITIZENS CLEAN  
ELECTIONS COMMISSION;  
18 THOMAS COLLINS, Executive  
Director of Arizona Citizens Clean  
19 Elections Commission; DAVID W.  
20 STEVENS, in his official capacity as  
Cochise County Recorder; PATTY  
21 HANSEN, in her official capacity as  
Coconino County Recorder; ADRIAN  
22 FONTES, in his official capacity as  
Maricopa County Recorder; F. ANN  
23 RODRIGUEZ, in her official capacity as  
Pima County Recorder; LESLIE M.  
24 HOFFMAN, in her official capacity as  
Yavapai County Recorder; and ROBYN  
25 STALLWORTH POUQUETTE, in her  
26 official capacity as Yuma County  
Recorder,  
27

28 Defendants,

Case No: CV2018-013258

**STATE DEFENDANTS'  
MOTION TO DISMISS**

(Assigned to the Honorable Teresa Sanders)



1 **MOTION TO DISMISS**

2 Pursuant to Ariz. R. Civ. P. 12(b)(6), Defendants Michele Reagan, in her official  
3 capacity as Arizona Secretary of State (the “Secretary”), the Arizona Citizens Clean  
4 Elections Commission (the “Commission”) and Thomas Collins, Executive Director of  
5 the Commission (together, the “State Defendants”) move to dismiss Plaintiff Kenneth R.  
6 Bennett’s (“Plaintiff”) Complaint because Plaintiff has failed to state a claim upon which  
7 relief can be granted.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **INTRODUCTION**

10 Plaintiff unsuccessfully ran for the Republican nomination for governor during  
11 the preceding primary election as a “participating candidate” eligible to apply for public  
12 funding. Compl. ¶ 5. To receive funding, participating candidates must first gather a  
13 certain number of qualifying five-dollar contributions. A.R.S. §§ 16-946; 16-950. These  
14 qualifying contributions must come from registered voters and be accompanied by  
15 reporting slips signed by the contributor and identifying the date on which the  
16 contribution was made. *Id.* § 16-950(C). Because Plaintiff was a candidate for  
17 governor, he needed four thousand valid qualifying contributions. *Id.* § 16-950(D)(5).

18 Plaintiff did not receive that many. Rather, after the vetting process, during which  
19 the county recorders determine whether the qualifying contributions meet the statutory  
20 requirements, *id.* § 16-950(C), it was determined that Plaintiff was one hundred twenty  
21 contributions short. Compl. ¶ 6. Plaintiff now asks the Court to “analyze new evidence”  
22 purportedly showing that Plaintiff received a sufficient number of valid contributions to  
23 qualify for public funding; and then, order the Secretary to certify the contributions and  
24 order the Commission to provide him with public funding. But it is too late: the  
25 statutory deadline for attempting to cure defects related to qualifying contributions has  
26 long since passed, and no authority authorizes this Court to grant the extraordinary relief  
27 that Plaintiff seeks. Accordingly, this Court should grant the State Defendants’ Motion  
28 to Dismiss.

## ARGUMENT

### STANDARD OF REVIEW

Courts considering motions to dismiss should “assume the truth of the allegations in the complaint” and “dismiss[] only if plaintiff[] would not be entitled to relief under any facts susceptible of proof in the stated claim.” *Menendez v. Paddock Pool Const. Co.*, 172 Ariz. 258, 261 (Ct. App. 1991). Courts should grant motions to dismiss for failure to state a claim upon which relief can be granted when “it appears certain that the plaintiff would not be entitled to relief under any state of facts susceptible of proof under the claim stated.” *Sun World Corp. v. Pennysaver, Inc.*, 130 Ariz. 585, 586 (Ct. App. 1981). To survive a motion to dismiss, there must be some basis in law to allow Plaintiff to prevail. *Sensing v. Harris*, 217 Ariz. 261, 262 ¶¶ 2 and 13-17 (Ct. App. 2007); *see also Stuart v. Castro*, 76 Ariz. 147, 151 (1953) (explaining that “if, upon the whole case as it then stands, a reasonable mind may infer the facts to be such that under the applicable law the plaintiff is entitled to no relief, then the trial court as trier of fact may properly infer such state of fact and grant the motion to dismiss”).

#### **I. Plaintiff’s Claims Fail as a Matter of Law.**

No legal authority provides for this Court to grant the incredible relief that Plaintiff requests. Rather, the law expressly sets forth the applicable deadline to seek to cure qualifying contributions defects. That statutory deadline has long since passed. As a result, Arizona law forecloses Plaintiff’s request for relief.

##### **A. The Citizens Clean Elections Act Establishes the Framework for Public Financing of Elections.**

Arizona’s voters enacted the Citizens Clean Elections Act, codified within Title 16 at A.R.S. §§ 16-940 et seq. Among other things, the Act establishes a public financing system by which candidates can choose to avail themselves of funds from the Clean Elections Fund to pay for direct campaign expenses. Such “participating candidates” must pledge to abide by certain limitations on their spending and fundraising. A.R.S. § 16-941(A). In return, participating candidates become eligible to

1 qualify to receive public funding from the Commission. A.R.S. § 16-951.

2 In order to qualify for funding, participating candidates must first collect the  
3 requisite number of valid, five-dollar qualifying contributions. A.R.S. §§ 16-946; 16-  
4 950(D). Because Plaintiff was campaigning for the office of Governor, Plaintiff needed  
5 to receive 4,000 such contributions. *Id.* § 16-950(D)(5). Qualifying contributions must  
6 be “[a]ccompanied by a three-part reporting slip that includes the printed name,  
7 registration address and signature of the contributor, the name of the candidate for whom  
8 the contribution is made, the date and the printed name and signature of the solicitor.”  
9 *Id.* § 16-946(B)(6). All qualifying contributions must be received during the qualifying  
10 period, *id.* § 16-946(A) and (B), which is defined as “the period beginning on the first  
11 day of August in a year preceding an election and ending one week before the primary  
12 election.” *Id.* § 16-961(B)(3). So, the qualifying period for the primary election held on  
13 August 28, 2018, began on August 1, 2017 and ended on August 21, 2018.

14 At any time during the qualifying period and up until one week after the end of  
15 the qualifying period, candidates may present to the Secretary a list of those who made  
16 qualifying contributions along with the accompanying reporting slips. *Id.* § 16-950(B).  
17 The Secretary then selects a five per cent sample of the reporting slips<sup>1</sup> and forwards  
18 them to the county recorders for verification. *Id.* § 16-950(C). Within ten days, the  
19 county recorders must “provide a report to the secretary of state identifying as  
20 disqualified any slips that are unsigned or undated or that the recorder is unable to verify  
21 as matching a person who is registered to vote in the electoral district of the office the  
22 candidate is seeking on the date specified on the slip.” *Id.* The Secretary then multiplies  
23 the number of slips not disqualified by twenty. *Id.* “[I]f the result is greater than one  
24 hundred ten percent of the quantity required”—i.e., for the Plaintiff, greater than 4,400—

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25  
26 <sup>1</sup> The statute provides that the Secretary selects a five percent sample for candidates for  
27 statewide office, and a twenty percent sample for candidates for legislative office.  
28 A.R.S. § 16-950(C). Because Plaintiff was a candidate for governor, the law required  
the Secretary to select a five percent sample. Throughout this memorandum, the State  
Defendants describe the requirements of the law as they pertain to Plaintiff.

1 the Secretary approves the candidate for funding. “[I]f the result is less than one hundred  
2 ten per cent of the quantity required, the secretary of state shall forward facsimiles of all  
3 of the slips to the county recorders for verification, and the county recorders shall check  
4 all slips in accordance with the process above.” *Id.* If that additional check reveals that  
5 the candidate gathered a sufficient number of qualifying contributions, the Secretary  
6 shall approve the candidate for funding. *Id.*

7 **B. Candidates Must Cure Qualifying Contribution Deficiencies Before**  
8 **the End of the Qualifying Period, Which Has Already Concluded.**

9 Just like other administrative rules, the Commission’s Rules, set forth in Chapter  
10 20 of Arizona’s Administrative Code, have the same effect and force as laws within the  
11 statutes that they interpret. *Goodman v. Superior Court in and For Maricopa County*,  
12 136 Ariz. 201, 203 (1983). *See also Austin v. Barrett*, 41 Ariz. 138, 144 (1932)  
13 (recognizing the “custom of administrative officers being of great weight in determining  
14 the meaning of a statute” and stating that “it cannot be doubted” “[t]hat such is the  
15 general rule”). The Commission’s Rules provide a process by which candidates may  
16 cure deficiencies regarding their qualifying contributions. Specifically, if after the  
17 vetting process described above a candidate has too few valid qualifying contributions to  
18 qualify for Clean Elections funding, the candidate may make an additional submission of  
19 new qualifying contributions to *replace* ones deemed invalid. Ariz. Admin. Code R2-  
20 20-105(F). The candidate must do so, however, before the end of the qualifying period.  
21 *Id.* (H)(3). After that, it is too late. *Id.*

22 There is no authority in the Commission’s Rules or the applicable statutes for  
23 *rehabilitating* disqualified contributions. Instead, Plaintiff hopes the court will create  
24 Arizona law to allow him to do just that, in contravention to the process established by  
25 Arizona’s voters through the initiative process and codified in statute. Existing Arizona  
26 law is clear and makes sense because the county recorders’ determination of validity  
27 results from the answers to three binary, yes/no questions that are not readily given to  
28 subjective interpretation. First, is the reporting slip accompanying the qualifying

1 contribution signed? A.R.S. § 16-950(C). Second, is the reporting slip dated? *Id.*  
2 Third, does the name of the contributor match a registered voter? *Id.* To answer this last  
3 question, the recorder searches the voter registration database for a voter matching the  
4 contributor's printed name and address on the reporting slip. If a match is located, the  
5 recorder compares the signature on the reporting slip to the signature in the voter's  
6 registration file. If the signatures match—as determined by a senior staff member—the  
7 signature is validated on a first check. If the signatures do not match, the file goes  
8 through a second check by a different senior staff member.

9 If the answer to all three questions is “yes,” the contribution is deemed valid. *Id.*  
10 § 16-950(C). If the answer to any of the questions is “no,” the contribution is required  
11 by law to be disqualified. *Id.* Because there is so little room for subjectivity in the  
12 process, there is no need for a rehabilitation procedure for individual qualifying  
13 contribution slips and the law does not provide one.

14 Even if that were not so, rehabilitation of signatures could only occur within the  
15 period allowed by law for candidates to submit their qualifying contributions for review.  
16 The Commission's Rules are clear: candidates who fail to submit a sufficient number of  
17 qualifying contributions may make “one supplemental filing of additional qualifying  
18 contribution slips and qualifying contributions[,]” but *only if* “[t]he period for filing  
19 qualifying contributions slips has not expired.” Ariz. Admin. Code R2-20-105 (H)  
20 (emphasis added). That period ended on August 21, 2018, one week before the August  
21 28, 2018 primary election.<sup>2</sup> *Id.* § 16-961(B)(3). It is too late for Plaintiff to submit new  
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23 <sup>2</sup> The 2018 Primary Election was conducted on August 28, 2018. *See* State of Arizona  
24 Official Canvass, available at [https://azsos.gov/sites/default/files/-](https://azsos.gov/sites/default/files/-2018%200910%20Signed%20Statewide%20Canvass.pdf)  
25 [2018%200910%20Signed%20Statewide%20Canvass.pdf](https://azsos.gov/sites/default/files/-2018%200910%20Signed%20Statewide%20Canvass.pdf). Courts may take judicial  
26 notice of such facts. Ariz. R. Evid. 201(b). Motions to dismiss are not transformed into  
27 motions for summary judgment merely because the court takes judicial notice of facts  
28 necessary to adjudicate the motion. *See Mirchandani v. BMO Harris Bank, N.A.*, 235  
Ariz. 68, 70 ¶¶ 5-6 (Ct. App. 2014) (affirming trial court's grant of a motion to dismiss,  
based on res judicata principles, and noting without disapproval that the trial court took  
judicial notice of the previous court case that led to res judicata).

signatures or seek to rehabilitate the ones he already submitted.

**C. Candidates Must Strictly Comply With Statutorily-Prescribed Time Requirements.**

The Arizona Supreme Court has articulated the principle that “election contests are purely statutory and dependent upon statutory provisions for their conduct.” *Donaghey v. Attorney Gen.*, 120 Ariz. 93, 95 (1978). So “the requirements as to the time within which the contest must be brought are regarded as mandatory, and unless strictly complied with the court is without jurisdiction to proceed.” *Id.* (internal quotations omitted). The rationale for this rule is “the strong public policy favoring stability and finality of election results.” *Id.*

Plaintiff’s challenge is not an election contest, but the same principles apply in challenges involving candidate and election-related matters governed by Title 16. So, for example, the statutory deadline by which ballots had to be delivered—“not less than thirty days prior to a primary election”—was to be strictly construed, even when the deadline fell on a Sunday. *Bd. of Sup’rs of Maricopa Cty. v. Superior Court, Maricopa Cty.*, 103 Ariz. 502, 504 (1968). The court recognized that, “[n]ormally, when the last day to do an act falls on a Sunday, A.R.S. §§ 1-243 and 1-303 provide that it may be performed on the next ensuing business day.” *Id.* But, the court said, “[i]f we allow an additional day to deliver the ballots because the last day falls upon a Sunday, the delivery will no longer be ‘thirty days prior.’” *Id.* Rather, the “statute is to be strictly construed” and so “the phrase ‘not less than thirty days’ is to be followed strictly.” *Id.*

To take another example: there is a five-day statutory deadline for filing an appeal related to challenges to a candidate’s nomination petitions. A.R.S. § 16-351(A). The Arizona Supreme Court was asked to decide whether the five-day period excluded weekends and holidays. *Bohart v. Hanna*, 213 Ariz. 480 (2006). The supreme court ruled that it did not; the “five days” in the five-day deadline must be taken literally as five calendar days. *Id.* at 482 ¶ 6. It reached this decision because such a “reading not only comports with legislative intent, *but also with the requirement that time elements in*

1 *election statutes be strictly construed.” Id. at 482 ¶ 6 (emphasis added).*

2 Plaintiff nonetheless asks this Court to create a new process, construct a new,  
3 artificial timeline, and then analyze “new evidence”—all despite an existing statutory  
4 and administrative law framework—in the hope he can show that at least one hundred  
5 twenty of his qualifying contributions were improperly disqualified. Plaintiff wants to  
6 do this so that he can receive Clean Elections funding for an election that is long since  
7 passed, and in which Plaintiff lost his bid for his party’s nomination for governor.  
8 Plaintiff is simply too late, and this Court should not legislate a new process. The law  
9 establishes the time-period during which Plaintiff could fix his signature deficiencies,  
10 and that law is to be strictly construed. This Court’s duty is to apply the law. *Fuentes v.*  
11 *Fuentes*, 209 Ariz. 51, 58 ¶ 32 (Ct. App. 2004) (stating that “trial judges are presumed to  
12 know the law and to apply it in making their decisions”). Plaintiff could have chosen to  
13 submit his qualifying contributions before the deadline, in order to allow time to cure  
14 any deficiencies. Plaintiff chose not to do so, and instead asks this Court to disregard the  
15 law and allow him more time to attempt to qualify for Clean Elections funding. This  
16 Court should not do so. Rather, it should grant the State Defendants’ motion to dismiss.

### 17 **CONCLUSION**

18 For the foregoing reasons, the State Defendants ask this Court for an order  
19 dismissing Plaintiff’s claims with prejudice.

20 RESPECTFULLY SUBMITTED this 6th day of November, 2018.

21 Mark Brnovich  
22 Attorney General

23 /s/ Joseph E. La Rue  
24 Joseph E. La Rue  
25 Kara M. Karlson  
26 Assistant Attorneys General  
27 Attorneys for State Defendants  
28

1 I hereby certify that the foregoing document  
2 was electronically filed through AZTurboCourt  
and a copy e-mailed this 6th day of  
November, 2018, to:

3 Kenneth R. Bennett  
4 2150 Ewin Dr.  
5 Prescott, AZ 86305  
[kbazos@gmail.com](mailto:kbazos@gmail.com)  
6 *Plaintiff pro se*

7 /s/ Maureen Riordan

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THE STATE OF ARIZONA

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CITIZENS CLEAN ELECTIONS COMMISSION

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REPORTER'S TRANSCRIPT OF PUBLIC MEETING

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Phoenix, Arizona

15

September 27, 2018

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9:32 a.m.

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## **ITEM II - MINUTES**

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<p style="text-align: right;">Page 2</p> <p>1 PUBLIC MEETING BEFORE THE CITIZENS CLEAN 2 ELECTIONS COMMISSION convened at 9:32 a.m. on September 3 27, 2018, at the State of Arizona, Clean Elections 4 Commission, 1616 West Adams, Conference Room, Phoenix, 5 Arizona, in the presence of the following Board members: 6 Mr. Mark S. Kimble, Acting Chairperson 7 Mr. Damien R. Meyer (Telephonic) 8 Ms. Amy B. Chan 9 Mr. Galen D. Paton 10 11 OTHERS PRESENT: 12 Thomas M. Collins, Executive Director 13 Paula Thomas, Executive Officer 14 Gina Roberts, Voter Education Director 15 Mike Becker, Policy Director 16 Alec Shaffer, Web Content Manager 17 Stephanie Cooper, Executive Support Specialist 18 Fanessa Salazar, Administrative Assistant 19 Mary O'Grady, AZ Attorney General's Office 20 Rivko Knox, AZ League of Women Voters 21 Talei Hornback, RIESTER 22 Ryan Wheelock, RIESTER 23 James Barton, One Arizona 24 Morgan Dick, AZAN 25 Lindsay Cheatham, RIESTER Mike Liburdi, Greenberg Traurig Zack Dean, AZ Senate</p>	<p style="text-align: right;">Page 4</p> <p>09:33:26-09:34:48</p> <p>1 unanimously. 2 Number III, discussion and possible action 3 on the executive director's report. 4 Mr. Collins? 5 MR. COLLINS: Yes. Mr. Chairman, 6 Commissioners, real quick, the first thing I wanted to 7 mention and -- you know, is that we'll be losing 8 Stephanie on October 5th, but Stephanie has gotten an 9 excellent new position at the -- with the Pinal County 10 elections department where she'll be the elections 11 supervisor. 12 She'll be working directly with the 13 elections director there, Michele Forney, who some 14 of -- some of you know was a longtime assistant AG in 15 elections. And she'll oversee the administration 16 elections, including ballot creation, tabulation, 17 managing the permanent staff and ensuring compliance 18 with election laws and procedures. 19 So this is a really great opportunity for 20 Stephanie. We're sad to see her go, but we're really 21 proud to see that she's going to have the opportunity 22 to move up and into such a great role in Pinal County. 23 So, you know, we have -- so I just wanted you to be 24 aware. We will hopefully be -- we'll hopefully make it 25 from October 5th to November -- sometime in November,</p>
<p>09:32:21-09:33:24</p> <p style="text-align: right;">Page 3</p> <p>1 PROCEEDING 2 3 ACTING CHAIRMAN KIMBLE: Good morning. I'm 4 going to call to order the September 27th, 2018, 5 meeting of the Citizens Clean Elections Commission. 6 I'm Commissioner Mark Kimble. Chairman Damien Meyer 7 is -- has a conflict. He may be calling in later 8 today, later during the meeting. Until then, we'll 9 carry on with Commissioner Paton and Commissioner Chan. 10 Item II on the agenda, discussion and 11 possible action on Commission minutes for the 12 July 19th, 2018 meeting. 13 Are there any corrections or additions to 14 the minutes? If not, can we have a motion? 15 COMMISSIONER CHAN: I would move that we 16 approve the minutes as written. 17 COMMISSIONER PATON: Second. 18 ACTING CHAIRMAN KIMBLE: It's been moved 19 and seconded that we approve the minutes for the 20 meeting of July 19th, 2018. 21 All in favor, say aye. 22 (Chorus of ayes.) 23 ACTING CHAIRMAN KIMBLE: Any opposed? 24 (No response.) 25 ACTING CHAIRMAN KIMBLE: Passed</p>	<p>09:34:52-09:35:54</p> <p style="text-align: right;">Page 5</p> <p>1 but we'll be sad to see her go. And I don't know if 2 anyone -- if any of you have any comments about that, 3 obviously. 4 ACTING CHAIRMAN KIMBLE: Well, just 5 speaking for myself, I'm very sorry to see you go, 6 Stephanie. I know this is an outstanding career 7 opportunity, but nonetheless, it's going to be very 8 difficult to replace you here at Clean Elections. 9 COMMISSIONER CHAN: Mr. Chairman, I'd just 10 like to echo that. It's been wonderful having you in 11 the office, and it was too short of a time, but I'm 12 really happy for you to go out and really get some 13 hands-on election experience. And, I guess, I can 14 understand the timing. I think that's the entire early 15 voting period is what they're bringing you in for. So 16 it will be a very exciting time for you. So best 17 wishes. 18 MS. COOPER: Thank you. 19 ACTING CHAIRMAN KIMBLE: Commissioner 20 Paton? 21 COMMISSIONER PATON: And thank you for all 22 your help. You personally helped me and my harebrained 23 ideas to go to Tucson a lot, and I appreciate it. And 24 good luck to you in the future. 25 MS. COOPER: Thank you.</p>

<p>09:35:55-09:37:03 Page 6</p> <p>1 ACTING CHAIRMAN KIMBLE: Thank you and best 2 of luck. 3 Tom? 4 MR. COLLINS: The Voter Education Guide is 5 arriving beginning October 4th. We got our bulk 6 mailing yesterday. The digital version is available on 7 the Clean Elections website and, of course, if voters 8 want to tailor their viewing to their -- to their own 9 district, they can go to our Voter Dashboard on the 10 website and use their address and get their candidate 11 information that way. 12 We're in the process of still -- we're in 13 the height of debate season. We've had debates both 14 statewide and local legislative this week and last week 15 and next week and next week after that. Gina will talk 16 some more about debates in the voter education 17 discussion. So I don't want to dwell too much on that. 18 Now -- although we did have the gubernatorial debate on 19 Monday, and I thought that was -- I thought that was -- 20 I thought it was a very successful event. 21 We participated in the National Voter 22 Registration Day -- 23 COMMISSIONER CHAN: Can I -- 24 MR. COLLINS: Sure. 25 COMMISSIONER CHAN: Mr. Chairman, can I</p>	<p>09:38:00-09:39:02 Page 8</p> <p>1 was a really nice way to, kind of, break it down. And 2 I even posted on my Facebook page if you didn't have an 3 hour to watch the governor's debate, check it out; this 4 is a ten-minute breakdown with some seasoned 5 professionals. 6 So thank you for doing that. 7 MR. COLLINS: No problem. 8 COMMISSIONER CHAN: I think that was a 9 fabulous idea. And I think being an election nerd, to 10 me that's just as good as any sporting event would be 11 for an athletic, you know, sporting aficionado. So I 12 hope it will pull some more people into the election 13 nerd world who maybe wouldn't normally participate. 14 MR. COLLINS: Well, thank you. 15 ACTING CHAIRMAN KIMBLE: Okay. 16 MR. COLLINS: Meanwhile, I mean, we -- just 17 as you can see through the voter education section 18 here, I mean, we're throughout -- we're around the 19 state. You know, we have the Take Flight mural which 20 is -- which has really become more -- has already taken 21 on, I think, more significance than -- timeless 22 significance than the 18 in 2018 Campaign of which that 23 is part of. You know, I think it's been launched in 24 the -- at MCC and SCC. We have a portal version we 25 displayed in Flagstaff yesterday.</p>
<p>09:37:03-09:37:58 Page 7</p> <p>1 just interrupt? 2 I'm sorry, Tom. 3 MR. COLLINS: Yeah, sure. 4 COMMISSIONER CHAN: I don't want to disrupt 5 your flow, but I just wanted to say that sometimes I 6 can't watch the debates just when they're happening. 7 And so I really appreciate having them online, but I 8 know for the -- and I don't know if it happened for any 9 of the other debates, but definitely for the 10 gubernatorial debate, we had a preshow on our Facebook 11 Live. I think it was -- and I don't know. Maybe on 12 our website. I was looking at it on Facebook, I think, 13 and a post show as well. 14 So Tom gave everybody, kind of, a tour of 15 the PBS studio just for a few minutes. It wasn't too 16 long. And I was very impressed with his television 17 presence, actually, a very nice job. So I wanted to 18 just let everybody know that; that if you missed it, it 19 was fabulous. And then the post show was with a 20 gentleman named Billy? 21 MR. COLLINS: Yes, Billy Robb. 22 COMMISSIONER CHAN: -- Billy Robb, who has 23 a podcast, and he and Tom, kind of, did a postmortem of 24 the gubernatorial debate. So it was a 10-minute 25 breakdown of the hour-long session, and I thought it</p>	<p>09:39:04-09:40:42 Page 9</p> <p>1 Gina and Alec have been to -- we were out 2 at Glendale and then everybody was out at ASU or Alec 3 and Gina and Steff were out at ASU. I was in Flagstaff 4 yesterday. The -- so we're -- and then we're out at 5 the debates. So it's a very busy voter education 6 schedule, and -- and Gina will talk, as I say, more 7 about the details of that in the next agenda item. 8 The last thing I want -- the last two 9 things I wanted to note, one, former Secretary Bennett 10 failed to qualify for Clean Elections funding, and 11 under our rules, he's not a participating candidate at 12 this point. He had a couple of complaints filed 13 against him. We don't, at this point, anticipate 14 further action on those complaints because -- because 15 they relate to issues that, you know, while they might 16 exist for other folks, wouldn't -- wouldn't be of any 17 issue to us, him having failed to qualify. 18 I will say that since I wrote this part of 19 the report, we got an email from Mr. Bennett indicating 20 he's exploring the options he -- whatever options he 21 thinks may exist to talk to the Secretary and the 22 County Recorders about remedy to be -- remedying his -- 23 his shortfall, but just to give you a sense, he filed 24 slightly less than 100 more than the minimum and he 25 came in at, I think, 38/78 in terms of qualified</p>

09:40:51-09:42:14	Page 10	09:43:31-09:44:24	Page 12
<p>1 contributions that were verified by the county</p> <p>2 recorders around the state. It's actually a really</p> <p>3 good percentage, but given the number of how low the</p> <p>4 amount of qualifying contributions he had obtained in</p> <p>5 the first place, it was a -- it was an uphill battle.</p> <p>6 The last two things, just in case you</p> <p>7 didn't -- it seemed kind of buried, we're working with</p> <p>8 the Legacy Foundation Action Fund to resolve things at</p> <p>9 the Superior Court level so that they can appeal</p> <p>10 following the dismissal of their action against us and</p> <p>11 the denial of their motion to dismiss our collections</p> <p>12 suit.</p> <p>13 And then on October 3rd, next week, the</p> <p>14 Arizona Advocacy Network, et al.'s, lawsuit against</p> <p>15 Secretary Reagan, the Commission and the Governor's</p> <p>16 Regulatory Review Council will have oral arguments.</p> <p>17 Those were originally set for -- I think they were set</p> <p>18 for the 13th and they -- we have a new judge now, and</p> <p>19 now the oral argument is set for October 3rd. So let</p> <p>20 me know if you want other details about that.</p> <p>21 You also have -- Mike has put together an</p> <p>22 update on where we are in terms of our budget through</p> <p>23 September 1st. Let me know if you have any questions</p> <p>24 about -- about that. And -- or, actually, let Mike</p> <p>25 know.</p>		<p>1 as you can see, we've -- the number has gone down, but</p> <p>2 it always goes down during election season.</p> <p>3 COMMISSIONER PATON: Right, because you're</p> <p>4 putting --</p> <p>5 MR. BECKER: Because we're putting out over</p> <p>6 \$3 million for candidates.</p> <p>7 COMMISSIONER PATON: Okay.</p> <p>8 MR. BECKER: So the numbers are fine. In</p> <p>9 the second -- when it comes to the revenues, the</p> <p>10 average monthly revenue is actually above where we had</p> <p>11 anticipated it being. So that's a good sign. And we</p> <p>12 didn't have the number of candidates in terms of the</p> <p>13 statewide candidates -- Governor, Secretary of State,</p> <p>14 Attorney General -- that we thought we might have. So</p> <p>15 that has saved us some funds as well. So we're in fine</p> <p>16 shape.</p> <p>17 COMMISSIONER PATON: So -- can I continue?</p> <p>18 ACTING CHAIRMAN KIMBLE: Yes.</p> <p>19 COMMISSIONER PATON: So the thing -- the</p> <p>20 thing about the courts, our deal with the courts, has</p> <p>21 that made things better? Is that why it's gone up a</p> <p>22 little bit, our revenues?</p> <p>23 MR. BECKER: Commissioner -- Mr. Chairman,</p> <p>24 Commissioner Paton, that I don't know. I don't know</p> <p>25 the exact numbers. Those come sporadically throughout</p>	
09:42:18-09:43:26	Page 11	09:44:28-09:46:12	Page 13
<p>1 And so that's, kind of -- that's, kind</p> <p>2 of -- that's, kind of -- that's it, unless you have</p> <p>3 questions on the executive director's report.</p> <p>4 ACTING CHAIRMAN KIMBLE: Any questions for</p> <p>5 Tom?</p> <p>6 COMMISSIONER PATON: So you're going to --</p> <p>7 Mike is going to speak about the budget?</p> <p>8 MR. COLLINS: Well, he's available for</p> <p>9 questions if you have any. We try to keep the memo</p> <p>10 pretty short and -- short and sweet.</p> <p>11 MR. PATON: I was just wondering, could you</p> <p>12 just speak? I know before we had somebody explain, you</p> <p>13 know, how those budgets work. And I just want to know,</p> <p>14 basically, are we in danger of depleting this too much</p> <p>15 and all that.</p> <p>16 MR. COLLINS: No.</p> <p>17 COMMISSIONER PATON: I guess I didn't</p> <p>18 really have a specific question. Could you explain</p> <p>19 this to a laymen, really?</p> <p>20 COMMISSIONER CHAN: Mr. Chairman, that is a</p> <p>21 good question, actually, since that has been a concern.</p> <p>22 MR. BECKER: Mr. Chairman, Commissioner</p> <p>23 Paton, no, we -- the budget is fine. We're in -- we're</p> <p>24 in good shape. As you can see, in the first example,</p> <p>25 we talk -- we're talking about the fund balance. And</p>		<p>1 the year. So it's hard to figure out exactly where we</p> <p>2 are versus where we were last year until the end of the</p> <p>3 year when we can really assemble everything and look at</p> <p>4 it as a whole.</p> <p>5 COMMISSIONER PATON: Okay.</p> <p>6 MR. BECKER: So -- and we're working with</p> <p>7 several other people in the department of</p> <p>8 administration that helps us with the budget, and so</p> <p>9 we'll be working with them at the end of the year to</p> <p>10 get a full view of everything that's been going on.</p> <p>11 COMMISSIONER PATON: Okay. Thank you.</p> <p>12 ACTING CHAIRMAN KIMBLE: Any other</p> <p>13 questions on the executive director's report?</p> <p>14 (No response.)</p> <p>15 ACTING CHAIRMAN KIMBLE: Thank you, Mike</p> <p>16 and Tom.</p> <p>17 Item IV, discussion and possible action on</p> <p>18 Clean Elections Voter Education.</p> <p>19 Gina?</p> <p>20 MS. ROBERTS: Do you see the clicker over</p> <p>21 there, Paula?</p> <p>22 MS. THOMAS: Is this the one?</p> <p>23 MS. ROBERTS: Yeah, I'll try that.</p> <p>24 Okay. Mr. Chairman, Commissioners, good</p> <p>25 morning.</p>	

<p>09:46:13-09:47:23 Page 14</p> <p>1 What we have for you today is a recap of 2 the efforts that the Commission has undertaken with 3 regards to the primary election, specifically about 4 voter education and outreach. 5 Okay. Let's see. Let's just do this. 6 Okay. 7 So to start off, I'll go over some numbers 8 of the turnout from the primary, which was held on 9 August 28th. So you can see the voter registration 10 figures, those are the number of voters who were 11 actually eligible to participate in the primary. So we 12 had about 3.3 million voters, and the turnout ended up 13 being 33.26 percent. So if you take a look at the 14 graph over on the right, that's a graph that we pulled 15 from our voter crisis summary and, basically, it just 16 breaks down the percentage of turnouts over the years. 17 And, you know, while 33 percent may not 18 seem like a great number, it actually broke records. 19 So we are very proud that the -- you know, we're in the 20 right direction in terms of voter turnout. So it's 21 really exciting to see that, you know, it was a 22 22 percent increase from the 2016 primary. So definitely 23 headed in the right direction, plus, you know, we are 24 also in the midterms. So you would typically see the 25 turnout even less than, you know, in a presidential</p>	<p>09:48:43-09:49:44 Page 16</p> <p>1 and running. 2 So that has been receiving some news 3 coverage. I just wanted to bring that point out to the 4 Commission to let you know that's one of the issues 5 that voters experienced on election day. Our staff, we 6 did receive inquiries and phone calls about that. So 7 we assisted voters as best we could. 8 COMMISSIONER CHAN: Mr. Chairman? 9 ACTING CHAIRMAN KIMBLE: Commissioner Chan. 10 COMMISSIONER CHAN: Gina, I just wanted to 11 ask -- and I don't know if you have this information, 12 but this is anecdotal. It was just one of my friends, 13 but she posted on Facebook on election day that she was 14 actually turned away from a voting location in Maricopa 15 County, even though they were open, because they were 16 having technical equipment -- which I was surprised to 17 hear because I thought there was always a backup plan. 18 And I wasn't sure if that was correct, if we had any 19 information about whether that was true, that people 20 were actually turned away from voting. 21 MS. ROBERTS: Sure. So, Chairman and 22 Commissioner Chan, I can let you know that on election 23 day, I personally received phone calls from voters who 24 have said that they were turned away. At that point, 25 we assisted them in directing them to a vote center.</p>
<p>09:47:27-09:48:41 Page 15</p> <p>1 election year. 2 So, you know, a few things there, as we 3 mentioned, we broke some records with that turnout. 4 Seven of fifteen counties actually broke voter turnout 5 record, which is exciting. Just -- you know, it's a 6 good direction. And, you know, we're really excited to 7 see that, and we -- you know, as you'll see throughout 8 the rest of this presentation, the Commission had 9 significant efforts in educating voters across the 10 state about the primary election, about how to 11 participate and become informed on what's on the 12 ballot. And we had specific campaigns that I'll go in 13 more detail on but, you know, I think it's safe to say 14 that we had a hand in seeing that turnout increase. 15 Just a brief overview, if you've been 16 watching the news or maybe you've heard a few things on 17 Primary Election Day, Maricopa County did experience 18 some difficulties, and they have released a report, an 19 internal report. And the Maricopa County Board of 20 Supervisors has authorized an audit to look into some 21 of the issues that they experienced, but the gist of it 22 is that on election day, polls are supposed to open 23 at 6:00 a.m. And approximately, I think, 63 polling 24 locations did not open on time, but by 11:30 that day, 25 the county did have all of their voting locations up</p>	<p>09:49:47-09:50:47 Page 17</p> <p>1 So a little bit more information is 2 Maricopa County had a hybrid election day voting system 3 where they had assigned polling places. So when you 4 have an assigned polling place, as a voter, you have to 5 go to that polling location, but they also had an 6 additional 40 vote centers and vote centers where any 7 voter can go to get their ballot. 8 One of the things Maricopa County 9 references -- the Recorder's office references in their 10 report is that the backup plan was to direct the voters 11 to the vote center in the event that there were any 12 issues at the specific polling locations. So when 13 staff received any of those phone calls of questions or 14 concerns -- you know, and we were in communication with 15 the county that day, as well, who they were giving us 16 some information about, yes, there was a delay in some 17 of the polling locations being opened up -- we did our 18 best to direct them to vote centers and to let them 19 know that, you know, at the end of the day, you can go 20 to a vote center -- well, not at the end of the day, 21 but no matter what, you can go to a vote center and 22 you -- 23 COMMISSIONER CHAN: Until 7 p.m. 24 MS. ROBERTS: Yes. And you can receive a 25 ballot and, you know, even if there's any issues, you</p>

09:50:49-09:51:51	Page 18	09:53:08-09:54:10	Page 20
<p>1 should always be afforded the right to vote a</p> <p>2 provisional ballot. So that's, kind of, the experience</p> <p>3 that we have a little bit. I believe there are -- you</p> <p>4 know, a full report is coming from the auditor's</p> <p>5 office. And we can -- staff is happy to share the</p> <p>6 internal report from Maricopa County and the</p> <p>7 preliminary report from the auditors if the Commission</p> <p>8 is interested in reading that in detail.</p> <p>9 COMMISSIONER CHAN: Thank you.</p> <p>10 Mr. Chairman, I just -- that just really</p> <p>11 concerned me because even though the voting center was</p> <p>12 a possibility, I just don't know if it's realistic to</p> <p>13 expect voters to make that -- I mean, it's important</p> <p>14 enough that I think they should, but I just don't know</p> <p>15 if it's realistic to expect voters to go to a different</p> <p>16 location. And I don't know how far away those voting</p> <p>17 centers were, and I just -- it just hurts me, my heart,</p> <p>18 a little bit to hear what happened.</p> <p>19 And I'm really hoping that on the general,</p> <p>20 they'll have all of this addressed and that -- and that</p> <p>21 it will go much, much smoother for everybody,</p> <p>22 especially because we're going to have much more</p> <p>23 turnout for the general.</p> <p>24 So thank you for the information, Gina.</p> <p>25 ACTING CHAIRMAN KIMBLE: Gina, if I can ask</p>	<p>1 you, there should be some increase in the number of</p> <p>2 registered voters out of that population, but I think</p> <p>3 we'll have to -- we would have to -- we'll need more</p> <p>4 time to get that analysis produced because that</p> <p>5 requires a little bit of extrapolation.</p> <p>6 ACTING CHAIRMAN KIMBLE: Okay. So -- but</p> <p>7 it's probably accurate to say that maybe 16, 17, 18</p> <p>8 percent of the eligible voters voted?</p> <p>9 MR. COLLINS: It could be. I mean, we</p> <p>10 could nail that down with Morrison --</p> <p>11 ACTING CHAIRMAN KIMBLE: Okay. But if</p> <p>12 that's a ballpark.</p> <p>13 MR. COLLINS: -- in terms of their</p> <p>14 analysis. I mean, based on -- based on the total</p> <p>15 potential voting population versus how many people cast</p> <p>16 ballot, that seems like that's a logical extrapolation</p> <p>17 from the numbers we have.</p> <p>18 ACTING CHAIRMAN KIMBLE: Okay. Thank you.</p> <p>19 MS. ROBERTS: And, Chairman Kimble, I would</p> <p>20 estimate that as well. That sounds like it's in the</p> <p>21 ballpark. And, also, once we get more in detail, too,</p> <p>22 in the information, we can then look out what the</p> <p>23 independent voter turnout rate was as well. We just</p> <p>24 don't have that level yet of those figures, but we will</p> <p>25 be looking forward to that.</p>		
09:51:54-09:53:04	Page 19	09:54:11-09:55:10	Page 21
<p>1 one question just to make something clear.</p> <p>2 The turnout is based on the percent of</p> <p>3 registered voters?</p> <p>4 MS. ROBERTS: Mr. Chairman, yes, that is</p> <p>5 correct.</p> <p>6 ACTING CHAIRMAN KIMBLE: And do we have any</p> <p>7 idea or do you have a ballpark estimate of how many --</p> <p>8 what percent of eligible voters are registered.</p> <p>9 MS. ROBERTS: Off the top --</p> <p>10 ACTING CHAIRMAN KIMBLE: And firm.</p> <p>11 MS. ROBERTS: Sure. Mr. Chairman, I'm</p> <p>12 referring back to our voter crisis report.</p> <p>13 And, Tom, maybe you can help me with this</p> <p>14 number, but off the top of my head, I believe we were</p> <p>15 reporting that it would be about half. It was close to</p> <p>16 half.</p> <p>17 MR. COLLINS: Yeah. The total number of</p> <p>18 folks who didn't participate, for example, in 2016 who</p> <p>19 either were registered and didn't participate or were</p> <p>20 not registered but could have participated, we set it</p> <p>21 at about 48 percent in the -- in the 2016 general. So</p> <p>22 there's still a substantial number of unregistered</p> <p>23 potential voters out there. You know, there's always</p> <p>24 in the run up to election and, perhaps, you know, based</p> <p>25 on voter -- voter registration drives and what have</p>	<p>1 ACTING CHAIRMAN KIMBLE: Okay. Thank you.</p> <p>2 MS. ROBERTS: All right. So what I'd like</p> <p>3 to go over today is -- basically, is highlights of the</p> <p>4 education campaigns that we've had throughout the</p> <p>5 primary.</p> <p>6 So the first was our Connections Campaign</p> <p>7 and then, of course, the Voter Education Guide and</p> <p>8 debates, and we did a specific education campaign to</p> <p>9 independent voters, and then I'll talk a little bit</p> <p>10 more about our 18 in 2018 Campaign, which Tom spoke a</p> <p>11 little bit, too, in the ED report.</p> <p>12 So for Connections, if you'll recall, the</p> <p>13 research that we have done in the past, we knew that we</p> <p>14 needed to really showcase to voters how they connect</p> <p>15 directly with the elections so they would be more</p> <p>16 likely to participate, and this campaign just really</p> <p>17 took on that look and feel. And we did a significant</p> <p>18 effort to, again, showcase, you know, we're in the</p> <p>19 midterms. We're in the local elections. We understand</p> <p>20 this is not necessarily the Super Bowl of the</p> <p>21 presidential elections, but these elections are</p> <p>22 important. They're local. They can have a direct</p> <p>23 impact on your life. And so the campaign was geared</p> <p>24 towards really showcasing that connection to voters in</p> <p>25 the hopes that it would encourage them to want to</p>		

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<p>1 participate more.</p> <p>2 And so one of the things that we've</p> <p>3 highlighted, of course, are the logistics of voting, as</p> <p>4 well. So we highlighted key dates and deadlines, such</p> <p>5 as voter registration deadline. You know, hey, don't</p> <p>6 forget; you need to mail in your early ballot today,</p> <p>7 that type of thing. So we made sure that we were</p> <p>8 always informing voters of those key dates and</p> <p>9 deadlines.</p> <p>10 This is just some examples of what that</p> <p>11 creative looked like. So we were in print and, again,</p> <p>12 you know, we made use of, well, if you're in Maricopa</p> <p>13 County, then you connect an arrow. I believe most</p> <p>14 other counties use, you know, fill in the dot -- a</p> <p>15 bubble, but again, we just wanted to show how the</p> <p>16 actual person connects to the election.</p> <p>17 And I'll just quickly go through some of</p> <p>18 these creative examples through digital just so you can</p> <p>19 see -- you know, hopefully you actually have seen these</p> <p>20 yourself as voters, but just so you can see what the</p> <p>21 voter was seeing. And we're on social and, you know, a</p> <p>22 very clear voter registration deadline, July 30th. You</p> <p>23 know, early voting. It's happening now. Very clearcut</p> <p>24 messaging to connect with the voters. We were on TV.</p> <p>25 We had several TV spots that were running.</p>	<p>1 effect just so, you know, when it comes to a voter's</p> <p>2 mailbox, it won't be intimidating and they won't want</p> <p>3 actually look through it.</p> <p>4 So we've received really great feedback on</p> <p>5 the design from it, and we provide alternate formats.</p> <p>6 We automatically send it out in English and Spanish,</p> <p>7 but we also have large print. We translated certain</p> <p>8 districts in the introduction into Navajo and, of</p> <p>9 course, all the statewides. And we partnered with Sun</p> <p>10 Sounds. So this is a partnership that the Commission</p> <p>11 has had for several years now, and we partnered with</p> <p>12 Sun Sounds of Arizona to provide an audio version of</p> <p>13 the booklet. And this way folks who maybe have low</p> <p>14 vision or, you know, difficulty seeing or are just</p> <p>15 blind, they can actually call into this toll-free</p> <p>16 number and have the guide read to them.</p> <p>17 So we're really proud of that partnership,</p> <p>18 and I'm just -- you know, it provides the voter guide</p> <p>19 in a more accessible fashion. And, of course, we</p> <p>20 provide plain text on our website, as well, for folks</p> <p>21 that are using a screen reader.</p> <p>22 The key messaging that we were putting out</p> <p>23 there in our campaign was to let folks know when the</p> <p>24 guide will be dropping, when it will be hitting their</p> <p>25 households and what's in it. So you have, you know,</p>		
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<p>1 So that's really just a high-level overview</p> <p>2 of what the campaign looked like. Towards the end of</p> <p>3 this presentation, I have statistics on the</p> <p>4 performance, but I just wanted to go through briefly</p> <p>5 and give you an idea, spark your memory of what these</p> <p>6 campaigns looked like.</p> <p>7 So for our Voter Education Guide, hopefully</p> <p>8 everybody received theirs in the mail, but the goal of</p> <p>9 this was to let people know this is coming. So our --</p> <p>10 our education campaign was to let people know this tool</p> <p>11 exists for you. You can hear directly from the</p> <p>12 candidates. And we actually continued with our</p> <p>13 district-specific method of mailing these out, which we</p> <p>14 found to be very beneficial to voters but also served</p> <p>15 as a cost-savings measure. And we emailed out over two</p> <p>16 million pieces, so a guide went out to every household</p> <p>17 with a registered voter.</p> <p>18 So we're really, you know, happy to see</p> <p>19 that most candidates participated in doing a</p> <p>20 submission. And in terms of the format of the guide, I</p> <p>21 believe I shared with the Commission that we were in</p> <p>22 works with the Center for Civic Design to take a look</p> <p>23 at how we can improve the layout, the format of the</p> <p>24 guide, just to make it easier to read, you know, look</p> <p>25 at using more plain language style, everything to that</p>	<p>1 not only information in the introduction about the</p> <p>2 logistics of voting and key dates and deadlines, but</p> <p>3 this is your opportunity to hear directly from the</p> <p>4 candidates.</p> <p>5 I'm sure, you know, as voters, we all get</p> <p>6 our campaign materials in the mail. We see those</p> <p>7 glassy mailers. You know, things come out from the</p> <p>8 parties. And so this guide, we really try to let</p> <p>9 people know that it's coming from the Commission and</p> <p>10 the candidates themselves are the ones who are making</p> <p>11 this Commission. You are hearing directly from them.</p> <p>12 It's your direct connection to the candidates.</p> <p>13 And that's an example of the cover, which I</p> <p>14 believe you have the general election guide in front of</p> <p>15 you, so the same cover. We just updated the date.</p> <p>16 And just briefly, I'll go through some of</p> <p>17 the examples of the creative. So we have digital. We</p> <p>18 have banner ads. On social medial, one of the things</p> <p>19 that we did was we highlighted the fact that -- so</p> <p>20 ballots go out 45 days before the election to our UOCAV</p> <p>21 voters. These are our military and overseas voters.</p> <p>22 So ballots go out a little bit earlier to them than</p> <p>23 they do to everybody else. We also make sure that our</p> <p>24 guide goes out ahead of time for these specific voters,</p> <p>25 as well, so they get their guide before they get their</p>		

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<p>1 ballot.</p> <p>2 So we ran some ads just to let folks know,</p> <p>3 hey, if you have a loved one who is serving or, you</p> <p>4 know, is living overseas, please help us reach them and</p> <p>5 give them a heads up that this guide is on its way to</p> <p>6 them. And, of course, we let folks know, too, about</p> <p>7 our partnership with Sun Sounds. Just some more</p> <p>8 examples of the creative.</p> <p>9 Debates. So debates is kind of, like, our</p> <p>10 bread and butter, along with the Voter Education Guide.</p> <p>11 We had a campaign to let folks know about when debates</p> <p>12 will be coming to them in their district, what the</p> <p>13 schedule is, when they can view the statewide debates</p> <p>14 and how they can participate in them. So that was the</p> <p>15 overall, you know, messaging of the campaign was to let</p> <p>16 folks know about debates and, hopefully, we wanted to</p> <p>17 drive that participation rate, increase attendance.</p> <p>18 And as, I think, Commissioner Chan noted</p> <p>19 earlier, we have these videos on our website, as well.</p> <p>20 So if you can't attend in person, you can watch them</p> <p>21 online.</p> <p>22 So briefly, I wanted to go through some of</p> <p>23 the partnerships and the pilot programs that we</p> <p>24 instituted this year and talk about the numbers.</p> <p>25 So for the primary election, we hosted 22</p>	<p>1 one of the things that we were able to do for our</p> <p>2 gubernatorial debate -- and Tom was able to host a pre</p> <p>3 and post debate analyst on Facebook Live. And so we</p> <p>4 thought that went really well. We were seeing great</p> <p>5 turnout and views on Facebook for that, and it's right</p> <p>6 up Tom's alley. He's very charismatic when he's on</p> <p>7 camera. So it worked really well. And we --</p> <p>8 MR. COLLINS: Exclusively.</p> <p>9 MS. ROBERTS: But in addition to that</p> <p>10 statewide and preview of the debate, Tom also recorded</p> <p>11 some videos with "Arizona Capitol Times," the associate</p> <p>12 editor there, Luige del Puerto, for specific districts</p> <p>13 to also give a heads up. And this is really geared at,</p> <p>14 you know, promoting interest in the debates and getting</p> <p>15 voters to not only be informed about when the debate</p> <p>16 was occurring but wanting to actually participate.</p> <p>17 And so that leads me into our partnership</p> <p>18 that we have with the "Arizona Capitol Times." We --</p> <p>19 earlier this year, we had a meeting with them, and we</p> <p>20 came to a partnership where both Luige and another one</p> <p>21 of their journalists, Ben Giles, would host or act as</p> <p>22 moderators for a handful of our district debates. And</p> <p>23 we felt that that would be really great for voters</p> <p>24 because both of these individuals, they are very well</p> <p>25 versed in the issues that are affecting the state</p>		
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<p>1 legislative debates. So that's 22 out of 30, and we</p> <p>2 had eight statewide debates. And from the videos that</p> <p>3 we posted on our website, we had about 4,500 views.</p> <p>4 And then from the statewide debates that were both</p> <p>5 posted online and broadcast live, you can see the</p> <p>6 online views, they were about 93,000, and then</p> <p>7 broadcast was close to 91,000.</p> <p>8 And then, in terms of the on-the-ground</p> <p>9 legislative debates, we had approximately 500 folks</p> <p>10 attend in person. So the broadcast capability, that is</p> <p>11 facilitated through our partnership with Arizona PBS.</p> <p>12 Again, for several years now the Commission has</p> <p>13 partnered with AZ PBS to broadcast live our statewide</p> <p>14 debates on the Arizona Horizon segment, which is</p> <p>15 moderated by Ted Simons. And, you know, the Commission</p> <p>16 and staff, we have been able to do that for several</p> <p>17 years.</p> <p>18 And the reason why we -- we appreciate this</p> <p>19 partnership so much is because it's public television,</p> <p>20 but, also, Ted is a veteran journalist. And we just --</p> <p>21 we appreciate his ability to interact with the</p> <p>22 candidates and pull out the information during those</p> <p>23 debates, and we just think it's a great benefit to</p> <p>24 voters.</p> <p>25 As Commissioner Chan noted earlier, too,</p>	<p>1 capitol and what legislators have to deal with.</p> <p>2 And so we thought it would be a benefit for</p> <p>3 voters where if we had a moderator who had that</p> <p>4 information, they could really, again, drive that</p> <p>5 discussion during the debates and, you know, kind of,</p> <p>6 pull some -- maybe a little bit more information out of</p> <p>7 the candidates and some of their responses to get the</p> <p>8 information that voters were looking for. We thought</p> <p>9 those went off well. We were very happy with their</p> <p>10 skills and abilities as moderators. So we were very</p> <p>11 proud of that partnership, and we will be continuing</p> <p>12 that through the general election as well.</p> <p>13 Another component of that partnership</p> <p>14 included the Commission sponsoring the Meet the</p> <p>15 Candidates event. We felt that this was another</p> <p>16 opportunity to engage voters directly with the</p> <p>17 candidates, and the "Capitol Times" had about 222 folks</p> <p>18 register for this event. So it was a great turnout</p> <p>19 there.</p> <p>20 MR. COLLINS: Yeah. And that was an</p> <p>21 opportunity we saw because previously the "Capitol</p> <p>22 Times" had made that an event where they charge</p> <p>23 admissions, and it was -- and, essentially, that made</p> <p>24 it an opportunity for lobbyists to meet candidates.</p> <p>25 And so by, essentially, sponsoring it, we were able to</p>		



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<p>1 opening it to the public. And we think that that</p> <p>2 provided a unique opportunity to be meet with the</p> <p>3 candidates, and it's the kind of thing we could start</p> <p>4 to do, in addition to debates, around the state because</p> <p>5 we were -- I mean, that was something we were, again,</p> <p>6 playing around with, but it seemed like it was a</p> <p>7 success.</p> <p>8 MS. ROBERTS: And, finally, I wanted to</p> <p>9 discuss our pilots that we've had with our high</p> <p>10 schools, which was really spearheaded and championed by</p> <p>11 Commissioner Paton.</p> <p>12 The -- so for three of our legislative</p> <p>13 district debates specific to Legislative District 2, 10</p> <p>14 and 14, we worked with schools to host the debates on</p> <p>15 the ground at their facilities and to really</p> <p>16 communicate with the parents and the teachers and the</p> <p>17 students that this event is occurring in your community</p> <p>18 and, you know, come out and participate and how can we</p> <p>19 further engage the students wanting to support, you</p> <p>20 know, encouraging that student participation in our</p> <p>21 next generation of voters but, also, you know, to make</p> <p>22 the debates more inviting in that they're here in the</p> <p>23 community and to really promote that attendance to get</p> <p>24 folks to come out and want to participate and be</p> <p>25 engaged and ask the candidates the questions.</p>		<p>1 And then with the legislative districts --</p> <p>2 at both LD 10 and 14, staff was there, and we had a</p> <p>3 voter education booth available where we had the voter</p> <p>4 guides available. You know, we were accepting voter</p> <p>5 registration forms, and we provided all of our voter</p> <p>6 education materials at that time.</p> <p>7 So that's a, you know, quick run-through of</p> <p>8 what we've done for debates in the primary.</p> <p>9 COMMISSIONER PATON: Mr. Chairman?</p> <p>10 ACTING CHAIRMAN KIMBLE: Yes, Mr. Paton --</p> <p>11 Commissioner Paton?</p> <p>12 COMMISSIONER PATON: I just would like to</p> <p>13 commend the staff for those debates. If you haven't</p> <p>14 been to them, they're very well run. It's a little</p> <p>15 disheartening to see so few people attend some of them.</p> <p>16 That's what I'm really committed to try to do is</p> <p>17 improve the attendance. I mean, if you want to be</p> <p>18 involved and know the -- know the issues and the</p> <p>19 candidates, it's -- you know, it's -- we really need</p> <p>20 more attendance at those.</p> <p>21 And I think we've, kind of, seen some bugs</p> <p>22 working with the schools. It is hard because they</p> <p>23 either just start school or they're in the summer</p> <p>24 during the primary. So there's some things that we</p> <p>25 need to work out a little better. I would like to try</p>	
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<p>1 So with our Legislative District 2 debate,</p> <p>2 we held that at Sahuarita High School. That ended up</p> <p>3 being a 30-minute Q and A session. So one thing I</p> <p>4 should note about our primary debates, those</p> <p>5 typically -- we don't have as many as we do in the</p> <p>6 general election. And, similar to how we see the</p> <p>7 turnout rates, you know, it can be a little bit more</p> <p>8 difficult to get people to attend the primary debates,</p> <p>9 but the general election debates, we do see greater</p> <p>10 participation.</p> <p>11 And then with Legislative District 10, we</p> <p>12 partnered with Sahuarito High School, which I believe was</p> <p>13 Commissioner Paton's alma matter. And so we were</p> <p>14 seeing a high number of views there with the online</p> <p>15 video, and we had about 80 to 90 folks participate in</p> <p>16 person. We saw a few reporters there, I believe.</p> <p>17 And then with Legislative District 14, we</p> <p>18 partnered with Empire High School, which is in Vail.</p> <p>19 And that was, you know, great attendance there, about</p> <p>20 130. At LD 14, we actually hosted a meet-and-greet</p> <p>21 afterwards where we partnered with the local chamber</p> <p>22 and the parent networks and the school districts. So</p> <p>23 the meet-and-greet, when the debate was over, it really</p> <p>24 allowed the candidates and the voters to continue to</p> <p>25 engage and speak one on one.</p>		<p>1 to do some of them during school time, like, with</p> <p>2 juniors and seniors and their parents and the community</p> <p>3 that can come in during the day. That way, obviously,</p> <p>4 you'd get hundreds of people and expose the students to</p> <p>5 how government operates and so on.</p> <p>6 So that's, kind of, what I would like to</p> <p>7 do, but everybody worked hard to try to improve all of</p> <p>8 that. And I'm really impressed with the</p> <p>9 professionalism.</p> <p>10 ACTING CHAIRMAN KIMBLE: Well, and I think,</p> <p>11 Commissioner Paton, that was -- it was an excellent</p> <p>12 idea to partner with high schools. The one I went to</p> <p>13 at Sahuarita with Tom, the attendance of ten, I think,</p> <p>14 is a little generous, unless you're counting the</p> <p>15 candidate and the moderator and the TV person, but</p> <p>16 there was only one person there. So -- and I think</p> <p>17 that's somewhat understandable, but I think it's -- it</p> <p>18 was really a good idea. And I hope that it's something</p> <p>19 that we can continue working on to develop,</p> <p>20 particularly with an eye to get more young people</p> <p>21 involved.</p> <p>22 MS. ROBERTS: Mr. Chairman and Commissioner</p> <p>23 Paton, so we send out surveys at every on-the-ground</p> <p>24 debate to all of those who participate, and what we do</p> <p>25 is at the end of the year, we take a look at those</p>	

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<p>1 surveys in detail. And we ask them questions about,</p> <p>2 how did you hear about this debate? You know, what can</p> <p>3 we improve? And, you know, similar things to that that</p> <p>4 you would expect on a survey.</p> <p>5 We did a preliminary review at the primary</p> <p>6 surveys, and the things that we hear the most -- we</p> <p>7 always hear in all the surveys are when -- you know,</p> <p>8 more advertising of the debate schedule and, also, they</p> <p>9 wished that more candidates would participate. And so</p> <p>10 the thing to remember is in the primary, you know,</p> <p>11 we're only hosting a debate if there is a candidate</p> <p>12 who's in a contested election. And then, if they are a</p> <p>13 participating candidate, they're required to, but</p> <p>14 traditional candidates, it's upon their request.</p> <p>15 So -- but one positive thing I would note</p> <p>16 from the reviews is we ask them, how did you hear about</p> <p>17 this? And in the past, it's typically been we heard</p> <p>18 from the candidate, directly from the candidate. You</p> <p>19 know, the candidate is getting their supporters out</p> <p>20 there, which is great, but this year we're really</p> <p>21 seeing a wide range of they heard it from the</p> <p>22 newspaper. They heard it from the radio. They heard</p> <p>23 it from, you know, a banner ad. So -- and social</p> <p>24 media.</p> <p>25 So I think that's, you know, a positive</p>	<p>1 involved in the issues.</p> <p>2 COMMISSIONER PATON: And during the</p> <p>3 primaries, a lot of the people running, they're not</p> <p>4 really engaging each other, I mean. And so it's a tad</p> <p>5 dull. So, I mean, we kind of have the -- we need to</p> <p>6 have something like Must See TV, as I was saying. By</p> <p>7 the end of the fourth person, they would say, ditto, I</p> <p>8 agree with those people. And so somehow we need to</p> <p>9 have a real debate instead of just you answer the</p> <p>10 question; you answer the question; you answer the</p> <p>11 question.</p> <p>12 We need some more engagement between the</p> <p>13 people. I mean, we won't -- we don't want fist fights</p> <p>14 or anything, but it needs to be -- we need to see the</p> <p>15 difference between these people, not just, oh, we all</p> <p>16 agree. No, you -- no, you don't. You don't all agree.</p> <p>17 So to make it more interesting for everybody and to be</p> <p>18 more incisive to see what the differences are. Then we</p> <p>19 need more incisive questions and more engagement</p> <p>20 between the two people, I mean, the people involved.</p> <p>21 And then, finally, some of these people</p> <p>22 don't want to be involved that are the candidates, and</p> <p>23 that is very aggravating. And, I mean, that's part of</p> <p>24 American culture is to debate your opponent in politics</p> <p>25 going back to the Lincoln/Douglas debates and so on, on</p>		
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<p>1 marker there in the fact that the comprehensive</p> <p>2 campaign that we have to inform people about the</p> <p>3 schedule, we're reaching folks. And so we will</p> <p>4 continue to look at ways that we can further increase</p> <p>5 attendance, but I do appreciate the suggestions from</p> <p>6 the Commission because it's thinking outside of the box</p> <p>7 a little bit, if you will, about how can we really</p> <p>8 connect with the community to, you know, spark this</p> <p>9 interest and promote that attendance.</p> <p>10 So we'll definitely be looking, at the end</p> <p>11 of the general election, about how can we improve these</p> <p>12 debates and get the attendance up.</p> <p>13 ACTING CHAIRMAN KIMBLE: Well, one</p> <p>14 suggestion I've made -- and I've made this to Tom after</p> <p>15 one of the debates -- is I think the debates are far</p> <p>16 better when there is a media moderator or a moderator</p> <p>17 who has some idea of what's going on, as opposed to the</p> <p>18 other people, I guess, the professional moderators who</p> <p>19 read a question and then wait for an answer and then</p> <p>20 just read the next question without any follow-up or</p> <p>21 anything. It -- it doesn't make for a very engaging</p> <p>22 debate that way.</p> <p>23 And I know you're limited by who you can</p> <p>24 get to moderate them, but I noticed a big difference</p> <p>25 when there's a media moderator or someone who's heavily</p>	<p>1 the stump, the actual stump that they were standing on</p> <p>2 and so on. And I don't know how we can get everybody</p> <p>3 involved. I guess they feel like it's not -- nobody is</p> <p>4 holding their heels to the fire or something. I don't</p> <p>5 know, but somehow we need to get more involvement with</p> <p>6 those candidates.</p> <p>7 MS. ROBERTS: Thank you.</p> <p>8 ACTING CHAIRMAN KIMBLE: Thanks, Gina.</p> <p>9 MS. ROBERTS: All right. Let's see here.</p> <p>10 So these are just some examples of the creative that we</p> <p>11 use to inform people that debates are occurring and,</p> <p>12 again, you'll continue to see that connection the same,</p> <p>13 as well.</p> <p>14 I'll skip through this pretty quickly. Oh,</p> <p>15 one thing I should note is that for every debate that</p> <p>16 we held, we did create a Facebook event, and that was</p> <p>17 really geared towards letting folks know this is</p> <p>18 happening in your community. We would do it targeted</p> <p>19 to those specific districts, and that helped in terms</p> <p>20 of the share of set folks who view on social media and,</p> <p>21 you know, discussion boards where we're available. So</p> <p>22 it was really great to create those for each event.</p> <p>23 These are just some examples of those, you</p> <p>24 know, pre-debates videos that we mentioned that Tom and</p> <p>25 Luige were able to record.</p>		

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<p>1 All right. We'll now jump in the</p> <p>2 independent voters. So our goal here was to let</p> <p>3 independent voters know that Arizona has an open</p> <p>4 primary. So we really started out with -- you know,</p> <p>5 that would -- that would be our target audience and,</p> <p>6 again, the goal was to let them know that they can</p> <p>7 participate in the primary.</p> <p>8 And the way we did that was -- the message</p> <p>9 that we put out there was, first and foremost, did you</p> <p>10 know? Did you know that you can participate in the</p> <p>11 primary? And now that you know, this is how. This is</p> <p>12 the how-to. And we focused on that message, but then,</p> <p>13 of course, we'd let them know, you know, certain key</p> <p>14 dates, as well.</p> <p>15 And two that I wanted to talk about a</p> <p>16 little bit more would be the early ballot request</p> <p>17 deadline for an independent voter. That deadline was</p> <p>18 really important because, if you're an independent</p> <p>19 voter and you're on the permanent early voting list,</p> <p>20 you have to actively tell your county recorder which</p> <p>21 party ballot you want mailed to you. And that was</p> <p>22 important for voters to understand because sometimes</p> <p>23 we'd hear from folks who said, well, I didn't get my</p> <p>24 ballot; it wasn't mailed to me.</p> <p>25 Well, are you an independent? And we would</p>		<p>1 participate and this is -- this is the process? And we</p> <p>2 ran those through digital. And we were on social, but</p> <p>3 we were really trying to be, you know, eye-catching</p> <p>4 here.</p> <p>5 We had infographics available on our</p> <p>6 website, but again, we just really pushed that message</p> <p>7 through independent voters.</p> <p>8 And our final --</p> <p>9 COMMISSIONER PATON: I have a question.</p> <p>10 ACTING CHAIRMAN KIMBLE: Yes, Commissioner</p> <p>11 Paton.</p> <p>12 COMMISSIONER PATON: So who -- where is</p> <p>13 the -- who decides how independents can vote in this?</p> <p>14 Would it -- is it -- I mean, who decides whether they</p> <p>15 can't just get both votes in the mail and just choose</p> <p>16 one or the other and send it in? Why couldn't that</p> <p>17 happen?</p> <p>18 MS. ROBERTS: Sure. Mr. Chairman,</p> <p>19 Commissioner Paton, so we say Arizona has an open</p> <p>20 primary, but it's technically a semiopen primary, if</p> <p>21 you will. So I believe it was in 1998 in which voters</p> <p>22 approved this method of voting. So it was a -- it was</p> <p>23 a citizens' initiative in 1998 and, basically, it</p> <p>24 allowed an independent voter, someone who is</p> <p>25 nonaffiliated, the option to pick the party ballot.</p>	
10:15:24-10:16:21	Page 39	10:17:38-10:18:43	Page 41
<p>1 go through that conversation with them. This is what</p> <p>2 you have to do, the steps you need to take. That date</p> <p>3 was very highly publicized across the state from -- you</p> <p>4 know, from our efforts but also from the media and</p> <p>5 other election official offices.</p> <p>6 We just really saw that date being pushed</p> <p>7 out there, which is great, but one of the things that</p> <p>8 the Commission started to see -- maybe there's a little</p> <p>9 bit of confusion from some folks -- is that once that</p> <p>10 date passed, we were hearing that maybe independents</p> <p>11 thought, oh, I missed that date; I can't participate in</p> <p>12 the primary anymore. So we made sure that we continued</p> <p>13 our messaging, of course, all the way up through</p> <p>14 election day.</p> <p>15 If you're an independent voter and you</p> <p>16 didn't get an early ballot, if you missed the deadline</p> <p>17 to request one, it's okay. You still can come to the</p> <p>18 polls. You can still tell your poll worker which party</p> <p>19 ballot that you'd like to vote.</p> <p>20 So that was the messaging that we</p> <p>21 undertook, and this is an example of the creative.</p> <p>22 You'll see it's a little bit different than what we've</p> <p>23 done so far, but I kind of liken this to a street</p> <p>24 caution sign. You know, it really captures their</p> <p>25 attention. Stop. You know, did you know you can</p>		<p>1 So in our primary, it's a partisan</p> <p>2 election, and the purpose of the primary is to -- for</p> <p>3 the voters within that political party to select their</p> <p>4 nominees that will advance to the general election. So</p> <p>5 ballots are created, you know, in accordance with</p> <p>6 statute, but they're created by party type. So you</p> <p>7 have a -- one ballot for Republican -- for the</p> <p>8 Republican party candidates and then you have one</p> <p>9 ballot for the Democratic party, you know, and so on.</p> <p>10 And so you only get one ballot as a voter,</p> <p>11 and so you have to pick which one you want. And</p> <p>12 oftentimes the feedback that we get from independent</p> <p>13 voters are, well, why isn't there one ballot that has</p> <p>14 who all the candidates are? Well, in the general</p> <p>15 election, you'll get that, but the primary -- the</p> <p>16 purpose of the primary is for the voters that belong to</p> <p>17 that political party to select their nominees to</p> <p>18 advance to the general election.</p> <p>19 And then, of course, as we know, sometimes</p> <p>20 in the primary that's really when the candidate is</p> <p>21 elected because there's maybe not another opponent in</p> <p>22 the other party. So that is something that independent</p> <p>23 voters need to consider as they want to participate.</p> <p>24 The other factor to consider there is so</p> <p>25 Arizona, at the statewide level, we have four</p>	

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<p>1 recognized political parties. We have the Democrats, 2 the Republicans, the Greens and the Libertarians. The 3 Libertarians actually have a closed primary, which 4 means an independent cannot request a Libertarian party 5 ballot in 2018. In 2016, the Libertarians opened their 6 primary. So then an independent voter could have 7 selected that party ballot.</p> <p>8 So, you know, it's a constant -- we need to 9 know the rules for this election and communicate that 10 to the voters. And so that's part of the struggle is 11 that voters say, well, I don't remember doing it that 12 way or, you know, we're having to constantly share with 13 them these are the rules now.</p> <p>14 COMMISSIONER PATON: So this would be the 15 early ballots because when they go to the polls, they 16 can just choose one or the other. So it's not that big 17 of a deal. So it's really the early balloting which 18 makes things so much easier for the rest of us.</p> <p>19 Thank you, Gina.</p> <p>20 MS. ROBERTS: Mr. Chairman, Commissioner, 21 correct. That's why that deadline was so critical to 22 inform independent voters about that you're going to 23 have to actively contact your recorder if you want to 24 select a party ballot. And there are some local 25 nonpartisan ballots available, too. So if maybe --</p>		<p>1 participation from this age group, we can't expect them 2 to come to us looking for this information. We've got 3 to find them. We've got to go to them and we have to 4 connect with them.</p> <p>5 And so, you know -- and I'm sorry. I 6 should have actually mentioned this earlier at the very 7 beginning of this presentation, but of course, all of 8 this was done in conjunction with our partnership with 9 RIESTER. They are our agency, our trusted partners 10 that we've worked with to really get all of these 11 campaigns off the ground. And so when RIESTER came up 12 with this -- this idea, we were all very excited about 13 it.</p> <p>14 So the goal, again, was to encourage our 15 next generation of voters to get registered and to 16 really activate their political power by registering 17 and to take flight and to actually get out there and 18 vote, and these are some examples of our logos and our 19 creative campaign that we did here. You'll see it's a 20 little bit different than maybe our other artwork that 21 we've had, a little bit more bolder, something to 22 actually connect with this age group.</p> <p>23 And I'll jump through those pretty quickly, 24 but I want to showcase the mural itself. So the mural 25 was installed -- we hired a local artist, and it was</p>	
10:19:53-10:21:03	Page 43	10:22:08-10:23:17	Page 45
<p>1 there's maybe, like, a city or town election and if an 2 independent just doesn't want to vote in any of those 3 partisan elections but maybe their local city council 4 race is happening, they can select a local nonpartisan 5 ballot only.</p> <p>6 Okay. Our 18 in 2018 Campaign, this is the 7 last campaign I'll go through and then I'll highlight 8 very quickly some stats, but this is my favorite 9 campaign, if I could just have an opinion on that. It 10 was very fun, and I think we were all very surprised 11 and excited about how much this campaign has grown.</p> <p>12 And so our 18 in 2018 Campaign was geared 13 at motivating Arizona youth to participate in the 14 electoral process, to get them to register to vote.</p> <p>15 And so we were looking at our, you know, potential 16 voters, the folks who would be 18, you know, by the 17 next general election who could actually preregister 18 now and our, you know 18- to 24-year-olds, so this 19 younger demographic.</p> <p>20 If you'll recall from our roundtable that 21 we had in 2017, that kind of helps spark this 22 discussion a little bit where our keynote speaker, 23 Jamie Kasper, talked about how, you know, for this 24 demographic, we have got to go to them, this Gen Z. If 25 we want to encourage them and promote this</p>		<p>1 painted on a wall down on Roosevelt Row in downtown 2 Phoenix. And we didn't just stop there. We took 3 another layer of adding augmented reality.</p> <p>4 And the purpose for this was now that we 5 have this digital component to it, when someone goes 6 out and they scan the QR code through the Shazam 7 application, not only do they get to have fun and 8 interact with the mural, but we present them, through 9 that application, a register-to-vote button. So right 10 then and there, they can click register to vote and 11 they can, you know, go through the minute or two it 12 takes to go through the screens and get registered.</p> <p>13 So with this mural, the original 14 installation was done on Roosevelt Row. We brought a 15 wheat pasting to Tucson, and as we mentioned in the ED 16 report, we had installations done at Scottsdale 17 Community College and Mesa Community College. And, you 18 know, those -- they reach out directly to us. We are 19 hearing positive feedback from the community about this 20 is amazing. We love its purpose. That is really 21 inspiring folks to get registered.</p> <p>22 We have a partnership right now that we're 23 working with with the School for the Arts in downtown 24 Phoenix where we are going to be hosting a voter 25 registration drive on October 5th, which is going to be</p>	

10:23:19-10:24:21	Page 46	10:25:31-10:26:31	Page 48
<p>1 right before the deadline down here on Roosevelt Row at</p> <p>2 the mural, and it's going to be our first Friday. And</p> <p>3 the School for the Arts, they are coming out. These</p> <p>4 are students here, and they are very excited about this</p> <p>5 campaign. And they are creating their own materials to</p> <p>6 help promote this registration event and get their</p> <p>7 classmates out here.</p> <p>8 They're coming out with a video. I think</p> <p>9 they're going to be singing in it. It's really</p> <p>10 exciting to see the positive reaction from, you know,</p> <p>11 not only the students but the community members. We've</p> <p>12 heard from -- we've heard from the arts community.</p> <p>13 We've heard from other government organizations. I've</p> <p>14 heard from government organizations from California.</p> <p>15 People have been really taking interest in this mural</p> <p>16 and really utilizing this street art to promote that</p> <p>17 civic participation.</p> <p>18 So, again, it kind of goes back to that</p> <p>19 maybe thinking outside of the box a little bit about</p> <p>20 how can we connect with the community and inspire</p> <p>21 people to get registered to vote.</p> <p>22 Just, again, I'll go quickly through some</p> <p>23 of the examples. You know, we had digital ads. We</p> <p>24 were on social just to further encourage people to go</p> <p>25 out and interact with the mural.</p>		<p>1 positive and it showcases the success of the website</p> <p>2 redesign, but it also speaks to the content that we're</p> <p>3 putting out there. You know, Alec's job is primarily</p> <p>4 to manage the website and our social media accounts.</p> <p>5 So it is a full-time job to keep this information up</p> <p>6 and current for voters.</p> <p>7 And, you know, anecdotal, we hear from</p> <p>8 people all the time we love your website. It's great.</p> <p>9 We link to it on our site. Staff is hearing that from</p> <p>10 the community. So we're very proud of the website</p> <p>11 itself.</p> <p>12 Just some visual charts to, again, showcase</p> <p>13 the performance improvement from the website, and our</p> <p>14 top pages were the 18 in 2018 Campaign, which is great,</p> <p>15 and folks are interested in the debates and our voter</p> <p>16 guide, of course, our home page and then looking for</p> <p>17 their candidates.</p> <p>18 One thing I wanted to show here, you can</p> <p>19 see the spike in that graph on election day. People</p> <p>20 are looking at our website and, also, when key items</p> <p>21 hit. So maybe when the voter education is available or</p> <p>22 when debates are commencing, we'll see those spikes on</p> <p>23 our website.</p> <p>24 The Dashboard. The Dashboard is a tool</p> <p>25 that we launched earlier this year, and the Dashboard</p>	
10:24:25-10:25:28	Page 47	10:26:33-10:27:31	Page 49
<p>1 All right. So I can -- very quickly, I</p> <p>2 just want to highlight a few things on performance</p> <p>3 that, I think, are important to share with the</p> <p>4 Commission.</p> <p>5 Our website. We launched a new website</p> <p>6 earlier this year, and the reasoning behind that was</p> <p>7 because our previous platform, it just did not support</p> <p>8 the amount of content that we were producing and</p> <p>9 supplying to voters. And with our new website, I</p> <p>10 wanted to showcase that the average time on our website</p> <p>11 is almost two minutes. And if you really think about</p> <p>12 it, two minutes is a long time to sit there, you know,</p> <p>13 and interact with a web page for two minutes.</p> <p>14 And this is higher than what we've seen on</p> <p>15 any of our other websites before in terms of</p> <p>16 engagement. So we really are proud to see that number</p> <p>17 go up, and it shows that people are engaging with the</p> <p>18 site. And the other thing to note is that 73 percent</p> <p>19 of people are visiting our website from their mobile</p> <p>20 applications, and that's important because, when we did</p> <p>21 the redesign, we really invested a lot of time and</p> <p>22 energy in ensuring that our website was responsive so</p> <p>23 it looked well on any of the platforms and screen sizes</p> <p>24 that folks may be using to get to our site.</p> <p>25 So we think that this number is very</p>		<p>1 was really geared towards, as a voter, you have to go</p> <p>2 to so many different places to capture the information</p> <p>3 that you're looking for, whether it's the logistics of</p> <p>4 voting or finding out what's on your ballot or</p> <p>5 understanding, you know, what the idea of the poll's</p> <p>6 requirements are or even how to run for office or what</p> <p>7 does this office that I am voting on for actually do?</p> <p>8 What's the responsibility of it? So how government</p> <p>9 works.</p> <p>10 We have all of that information on our</p> <p>11 website, but, you know, we really wanted to capture</p> <p>12 everything in a one-stop shop application where a voter</p> <p>13 either enters in their address or they just hit the</p> <p>14 location pin and then we provide them everything they</p> <p>15 need to know. We've demoed the Dashboard before for</p> <p>16 the Commission, but just a brief overview.</p> <p>17 We show them the candidates that are</p> <p>18 specific to their districts. We can show them their</p> <p>19 legislative district, their congressional district,</p> <p>20 their school board district if they're in Maricopa</p> <p>21 County. We can all the way -- go all the way to</p> <p>22 justice of the peace. And, again, we show them those</p> <p>23 specific candidates that are, you know, in their</p> <p>24 district and then we show them their debates. Here's</p> <p>25 your debate schedule. Here's all of the statewide's.</p>	

10:27:34-10:28:36	Page 50	10:29:49-10:30:57	Page 52
<p>1 Here's your Legislative District 15 debate, when it's</p> <p>2 occurring, and if you already missed it, here's the</p> <p>3 video.</p> <p>4 And then we show them -- you know, we</p> <p>5 partner with Maricopa County where we can, through our</p> <p>6 website, show them their voter registration</p> <p>7 information. So if somebody wanted to confirm whether</p> <p>8 they're registered, we have links to verify, or track</p> <p>9 your early ballot and your provisional ballot. All of</p> <p>10 that is housed in the Dashboard, and it's really</p> <p>11 promising to see the fact that 32,000 people used this</p> <p>12 tool, you know, this year for the primary, which we've</p> <p>13 just talked about the number -- you know, the time that</p> <p>14 people are interacting on the site, that two minutes,</p> <p>15 and folks are interacting the Dashboard for four and a</p> <p>16 half minutes. And we think that's really great because</p> <p>17 it shows that they are absorbing the information that</p> <p>18 we're providing.</p> <p>19 Let's see. One more stat that I'll share</p> <p>20 from our website. We allow people to connect with</p> <p>21 Service Arizona so they can get registered, and then</p> <p>22 we, also -- again, I mentioned for our 18 in 2018</p> <p>23 Campaign, we had our Shazam application. So for the</p> <p>24 primary, we saw about 3,000 clicks to get registered to</p> <p>25 vote, which is exciting to see.</p>		<p>1 giving a presentation to Glendale Community College</p> <p>2 students or, you know, maybe it's traveling up to</p> <p>3 Prescott and talking to a specific group there. Staff</p> <p>4 is constantly being sought after to provide this voter</p> <p>5 education directly to the communities. So I wanted to</p> <p>6 share that.</p> <p>7 All right. And then, you know, a lot of</p> <p>8 the things that we've done so far have been highlighted</p> <p>9 in the media. We talked about the 18 in 2018, and one</p> <p>10 thing I would like to note is I appreciate how the</p> <p>11 Commission has been available to support these efforts.</p> <p>12 You know, whether that's giving an interview or</p> <p>13 providing an op-ed, we think that really helps connect</p> <p>14 all of that information that we're putting out there to</p> <p>15 the public.</p> <p>16 So, for the most part, again, these are</p> <p>17 just really detailed stats. Unless the Commission has</p> <p>18 any questions on those, I'm happy to take questions if</p> <p>19 you have further questions about our performance for</p> <p>20 the primary.</p> <p>21 ACTING CHAIRMAN KIMBLE: Well, I just want</p> <p>22 to say that I think a lot of people forget that voter</p> <p>23 education is one of the most important things that we</p> <p>24 do, and all of this data really shows that a lot of</p> <p>25 people are considering the Clean Elections website and</p>	
10:28:39-10:29:47	Page 51	10:31:00-10:32:12	Page 53
<p>1 You know, I think the rest of this</p> <p>2 information is very detailed that you have in your</p> <p>3 report, if you're really interested in the statistics</p> <p>4 and the performance. I'll skip through most of that.</p> <p>5 One thing I did want to highlight from the</p> <p>6 PR side, one of the things that the Commission has</p> <p>7 done -- and, of course, with Tom's background and with</p> <p>8 our partnering with RIESTER, we've -- you know, all of</p> <p>9 the efforts that we take to inform people about the</p> <p>10 debates and the voter guide, you know, that's important</p> <p>11 and it's helpful to get that information out there, but</p> <p>12 it's also great to partner with the media to, again,</p> <p>13 further this message.</p> <p>14 And, also, this -- I'm going to include in</p> <p>15 here our grassroots efforts. One thing that I didn't</p> <p>16 have, really, maybe the time or the space to put into</p> <p>17 this presentation is how often Commission staff is</p> <p>18 contacted to go out and give speeches or talk to folks</p> <p>19 about, you know, the upcoming elections and to really</p> <p>20 engage one on one with the community. And I think that</p> <p>21 showcases that the Commission is being positioned as a</p> <p>22 thought leader and an expert on elections where we are</p> <p>23 a neutral nonpartisan agency.</p> <p>24 So folks are connecting and reaching out</p> <p>25 directly to us to come out and, you know, maybe it's</p>		<p>1 the Clean Elections personnel and the Clean Elections</p> <p>2 Guide as their go-to source for independent, unbiased</p> <p>3 information on issues and on how to vote, where to vote</p> <p>4 and all that kind of stuff. And I'm very impressed</p> <p>5 with what you and what RIESTER has done in all these</p> <p>6 things. There's some very, very innovative ideas</p> <p>7 there, and I'm really in awe.</p> <p>8 Thank you.</p> <p>9 Any other commissioners want to say</p> <p>10 anything?</p> <p>11 COMMISSIONER CHAN: Mr. Chairman, if I</p> <p>12 could just add, I wanted to thank Gina and Tom and</p> <p>13 Stephanie and Alec and Mike because I actually -- I</p> <p>14 think I've been inspired by the voter outreach that you</p> <p>15 guys as staff do, and I reached out to both of my sons'</p> <p>16 schools to just see if there were any faculty or staff</p> <p>17 that would be interested in me coming and just giving</p> <p>18 an overview of how to get registered and what to expect</p> <p>19 to see on your ballot for the general.</p> <p>20 And so they supported me in giving me some,</p> <p>21 you know, folders with -- and a little bit of swag --</p> <p>22 to hand out and make sure that people can get</p> <p>23 registered if they want to. And I -- I say that I</p> <p>24 think it was inspirational to me because it's so much</p> <p>25 easier to go out and do that kind of outreach for your</p>	

<p>10:32:15-10:33:23 Page 54</p> <p>1 own, small, you know, piece of your community because 2 of the resources that you guys and RIESTER have made 3 our website become. 4 I included in -- I made my own little 5 handout and just put a screenshot of the Voter 6 Dashboard and explained to them exactly how helpful 7 that is with regard to seeing, what are your issues? 8 Where are you located? What are your deadlines for 9 your election? 10 And so I think that I just can't overstate 11 it enough how impressed I am with you guys -- you, Tom, 12 the whole staff. I mean, you guys have really done an 13 excellent job. And especially when I think back to 14 being at the Secretary of State's Office so long ago, I 15 mean, the best we could do -- and it was wonderful and 16 it still is wonderful -- was we've got online voter 17 registration, but other than that, it's not that you're 18 on your own. We get a publicity pamphlet, but it 19 wasn't really -- there was no one-stop shop. 20 And I feel like our website has really done 21 that for people, and the more outreach we can get out 22 there to let the public know, I think we'll continue to 23 see ourselves as a Commission and the website enhance 24 and encourage people to participate in our democracy. 25 ACTING CHAIRMAN KIMBLE: Thank you.</p>	<p>10:34:36-10:36:26 Page 56</p> <p>1 to how they filed their -- accounted for their 2 independent expenditures through their standard 3 campaign finance reports, and then they didn't timely 4 file their Clean Elections reports. 5 We -- there's a newer version of the 6 conciliation agreement draft that you got in the packet 7 that cleans up some non-substantial issues and adds 8 some language that -- but it doesn't change any of the 9 substance of it, in effect. We are asking for a minor 10 financial consequence, but we did get the reports once 11 we notified the PAC very quickly, as the conciliation 12 agreement notes. So this all went very smoothly. 13 And so I just would ask your approval of 14 the conciliation agreement that -- that was on top of 15 your packet this morning. I -- Brad Lyon, who is the 16 chairman of the committee, can't -- wasn't able to 17 appear by phone today, but I personally didn't think it 18 was necessary. The process and communicating with them 19 has been very smooth, and they've been very responsive. 20 And -- and so unless you have questions 21 about that, either the complaint or the conciliation, I 22 would just simply ask that you approve the conciliation 23 that I'm recommending. 24 ACTING CHAIRMAN KIMBLE: Okay. Any 25 commissioners have any questions or comments on the</p>
<p>10:33:24-10:34:33 Page 55</p> <p>1 COMMISSIONER CHAN: So thank you. 2 ACTING CHAIRMAN KIMBLE: Commissioner 3 Paton, anything else? 4 COMMISSIONER PATON: And I already said I 5 thank you for all your help and innovations and being 6 willing to try something new. And we all have 7 different perspectives and you have to deal with all of 8 our little idiosyncrasies and so on, but I'm really 9 impressed by all your efforts and professionalism. And 10 the voters are being informed. 11 ACTING CHAIRMAN KIMBLE: Very well said. 12 MS. ROBERTS: Thank you. 13 ACTING CHAIRMAN KIMBLE: Thank you very 14 much, Gina. 15 Does anyone need a break before we move on? 16 (No response.) 17 ACTING CHAIRMAN KIMBLE: Okay. Item V, 18 discussion and possible action on MUR 18-12 American 19 Strong PAC. 20 Tom? 21 MR. COLLINS: Yes. Commissioners, we 22 should be able to move very quickly through this item. 23 The American Strong PAC is a -- is a PAC 24 that made expenditures in the LD 23 primary. They had 25 some difficulties with their filings, both with respect</p>	<p>10:36:29-10:37:20 Page 57</p> <p>1 American Strong issue? 2 COMMISSIONER PATON: Mr. Commissioner -- I 3 mean, Chairman. 4 ACTING CHAIRMAN KIMBLE: Commissioner 5 Paton. 6 COMMISSIONER PATON: I would just say they 7 emailed you back within 23 minutes and that for some of 8 these other people that just stall us and stall us for 9 years, I would certainly agree to this conciliation. 10 ACTING CHAIRMAN KIMBLE: Thank you. 11 Is there anyone here who wants to be heard 12 on this matter? 13 (No response.) 14 ACTING CHAIRMAN KIMBLE: Okay. Anyone else 15 want to make a comment or a motion? 16 COMMISSIONER CHAN: Mr. Chairman, I would 17 move that we accept -- approve or accept? 18 MR. COLLINS: Approve for me to sign. 19 COMMISSIONER CHAN: Okay. Mr. Chairman, I 20 would move that we approve the conciliation agreement 21 as drafted for our executive director to sign. 22 ACTING CHAIRMAN KIMBLE: Okay. Is there a 23 second? 24 COMMISSIONER PATON: I second. 25 ACTING CHAIRMAN KIMBLE: Okay. There's</p>

10:37:21-10:38:40	Page 58	10:39:34-10:40:47	Page 60
<p>1 been a motion made and a second to approve the</p> <p>2 agreement with American Strong MUR 18-12.</p> <p>3 All those in favor say aye.</p> <p>4 (Chorus of ayes.)</p> <p>5 ACTING CHAIRMAN KIMBLE: Anyone opposed?</p> <p>6 (No response.)</p> <p>7 ACTING CHAIRMAN KIMBLE: Approved</p> <p>8 unanimously. Thank you.</p> <p>9 Item VI, discussion and possible action on</p> <p>10 MUR 18-07 One Arizona dba Sunlight Arizona.</p> <p>11 Tom?</p> <p>12 MR. COLLINS: Yes. Commissioners, with</p> <p>13 your -- with your indulgence, what I'd like to do is we</p> <p>14 have both the complainants' attorney, Mike Liburdi, is</p> <p>15 here, and the respondent's attorney, Jim Barton, is</p> <p>16 here. What I thought I'd do is -- and you have my memo</p> <p>17 on reason to believe. You have -- you should have</p> <p>18 Jim's response to that memo, as well as the complaint</p> <p>19 and the initial response.</p> <p>20 What I thought I'd do is outline some of</p> <p>21 the legal standards and, then, unless you have further</p> <p>22 questions for me at that time, you know, ask Mike to</p> <p>23 present, you know, his -- the complainants' argument</p> <p>24 and then give Jim an opportunity to respond. And,</p> <p>25 then -- and, then, if you have -- and, then, if you</p>		<p>1 COMMISSIONER MEYER: I can hear you. Thank</p> <p>2 you.</p> <p>3 MR. COLLINS: Okay.</p> <p>4 ACTING CHAIRMAN KIMBLE: Okay.</p> <p>5 Commissioner, just as a point of information, we're on</p> <p>6 Item VI now. We've just got started on that.</p> <p>7 COMMISSIONER MEYER: Okay. Thank you. My</p> <p>8 apologies for -- for being late to the meeting.</p> <p>9 ACTING CHAIRMAN KIMBLE: No worries.</p> <p>10 MR. COLLINS: So the first -- the first</p> <p>11 issue -- the first way to look at this is there are</p> <p>12 levels of disclosure required or levels of restrictions</p> <p>13 on -- and levels of burden on political actors that are</p> <p>14 different across different cases. So, you know, in</p> <p>15 the -- in the materials, you'll see a case referenced a</p> <p>16 lot called Wisconsin Right to Life. That dealt with an</p> <p>17 absolute ban on a corporation making expenditures</p> <p>18 during a blackout period that then existed for those</p> <p>19 advertisements. So that had the highest level of</p> <p>20 scrutiny.</p> <p>21 The CJF case, the Committee for Justice and</p> <p>22 Fairness case, dealt with when a requirement for a</p> <p>23 political committee to register as a political</p> <p>24 committee kicked in, which requires that group to then</p> <p>25 not only report their expenditures but their donors.</p>	
10:38:43-10:39:32	Page 59	10:40:51-10:42:25	Page 61
<p>1 have questions for them, obviously, they'll -- I think</p> <p>2 they'll be available for those. And, then, if you have</p> <p>3 any other further questions for me after that, I'm</p> <p>4 happy to -- I'm happy to answer those.</p> <p>5 So that's how I recommend we proceed --</p> <p>6 ACTING CHAIRMAN KIMBLE: Okay. That sounds</p> <p>7 good.</p> <p>8 MR. COLLINS: -- without any objection from</p> <p>9 anybody.</p> <p>10 So just to put this in context, this is</p> <p>11 a -- sort of a three-level analysis. The first is what</p> <p>12 is the context of the 16-940(d) report --</p> <p>13 (Whereupon, Commissioner Meyer joins the</p> <p>14 meeting at 10:39 a.m.)</p> <p>15 THE OPERATOR: Joining the meeting.</p> <p>16 MR. COLLINS: Oh, and I think we may</p> <p>17 have --</p> <p>18 COMMISSIONER MEYER: Damien Meyer.</p> <p>19 MR. COLLINS: And Commissioner Meyer is now</p> <p>20 on the phone.</p> <p>21 MS. THOMAS: Hello, sir. We have you on.</p> <p>22 I actually have you on the speakerphone, so hopefully</p> <p>23 you can hear us. We've got you on a smaller</p> <p>24 speakerphone.</p> <p>25 MR. COLLINS: So can you hear us?</p>		<p>1 And then the 16-940(d) standard is merely spending</p> <p>2 report. So it's the most minimal burden that you can</p> <p>3 place on someone who may or may not be engaged in</p> <p>4 political activity that's reportable.</p> <p>5 The standard is whether or not under -- and</p> <p>6 the statutory standard that applies across CJF and</p> <p>7 16-940(d) is whether or not the communication in</p> <p>8 context has no reasonable meaning, other than to</p> <p>9 advocate for or against a candidate for election taken</p> <p>10 in context.</p> <p>11 The Commission is entitled to consider the</p> <p>12 timing. We know from Mortal that the courts are not</p> <p>13 required to ignore basic background facts, including</p> <p>14 whether the ad describes a legislative issue currently</p> <p>15 subject to legislative scrutiny or likely to be in the</p> <p>16 future. And we also are entitled to look at the</p> <p>17 favorable or unfavorable light in which the candidate</p> <p>18 is -- is presented.</p> <p>19 So that's kind of the -- that's the broad</p> <p>20 strokes of the framework here. One, the minimal -- the</p> <p>21 burden here is merely spending. So it's the most</p> <p>22 minimal burden of reporting that could be required.</p> <p>23 Second, under the statute 16-901, which is part of the</p> <p>24 Clean Elections Act, it's no reasonable meaning,</p> <p>25 other -- other than to advocate for or against the</p>	



<p>10:42:27-10:43:38 Page 62</p> <p>1 candidate, but that is a contextual or fact-specific 2 determination. And timing context and favorability or 3 unfavorability light of the advertisements are all 4 factors that the Commission can consider in reaching a 5 determination. 6 In this context, it's only -- the standard 7 is whether or not there's reason to believe a violation 8 may have occurred. So that's the -- that's the 9 framework. So this is a preliminary inquiry, not a 10 final inquiry. And I think I'll leave it there for 11 now, unless anyone has specific questions about my memo 12 now, and kick it over to Mr. Liburdi, if he's -- if 13 he's ready to -- or if he wants to present. 14 ACTING CHAIRMAN KIMBLE: Okay. Do any of 15 the commissioners have questions of Mr. Collins? 16 COMMISSIONER CHAN: Mr. Chairman, I just 17 have a quick question. 18 ACTING CHAIRMAN KIMBLE: Commissioner Chan. 19 COMMISSIONER CHAN: I was just reviewing, 20 while you were talking, Tom, so I may have missed 21 something, but I just wanted to make sure. 22 So this is for us to -- when we take a vote 23 on this, we'll be voting on whether you proceed with an 24 investigation? 25 MR. COLLINS: Yes. That's correct. Yes.</p>	<p>10:44:47-10:46:19 Page 64</p> <p>1 affiliation for the record? 2 MR. LIBURDI: Good morning, Mr. Chairman 3 and commissioners. My name is Michael Liburdi. I am a 4 lawyer at the firm of Greenberg Traurig, and it's an 5 honor to be with you here this morning. It's nice to 6 see some of you again and to meet some new faces. 7 I represent the complainants here, Brett 8 Moll and Michael Francis. They are the ones who 9 submitted the complaint to you, and we thank staff and 10 you for giving us this opportunity. 11 We agree with the executive director's 12 analysis and recommendation. This matter does meet the 13 threshold for a reason to believe finding under the -- 14 under both the facts, circumstances and the law as it 15 applies to this case. 16 I would begin by asking this one question 17 to all of you: If -- if Sunlight Arizona wished to 18 influence legislation, then they should have exercised 19 their right to influence legislation during the 20 legislative session while -- while the actual 21 legislation was pending. Instead, they chose to wait 22 until after the legislature had adjourned by a month, 23 after legislation had been voted on and passed by a 24 month, a couple of months, and then target certain 25 legislators in reelection campaigns in competitive</p>
<p>10:43:41-10:44:44 Page 63</p> <p>1 COMMISSIONER CHAN: Even though there's 2 already quite a bit of information from both sides? 3 MR. COLLINS: That's correct. And I don't 4 think it's -- I mean, I don't think there's any -- any 5 ball to hide here. The investigation phase here would 6 be focused on establishing the amount of the 7 expenditure. We don't -- 8 COMMISSIONER CHAN: Thank you. 9 MR. COLLINS: -- we don't have an intention 10 to go into, you know, intent. You know, this is an 11 objective test. So we don't plan discovery into the 12 subject of intent of the -- of the Speaker, if he were 13 to agree with my recommendation, for example, but we 14 don't know what the amount of the expenditure is. So, 15 yes, that would be a subject of further inquiry if you 16 were to agree with my recommendation. 17 COMMISSIONER CHAN: Thank you. 18 ACTING CHAIRMAN KIMBLE: Any more questions 19 from any of the commissioners? 20 (No response.) 21 ACTING CHAIRMAN KIMBLE: Okay. 22 MR. COLLINS: We're going to have Mike go 23 first and then Jim. 24 ACTING CHAIRMAN KIMBLE: Okay. Sir, could 25 you come up to the podium and state your name and</p>	<p>10:46:24-10:47:54 Page 65</p> <p>1 districts. 2 And based on the information that we have 3 been able to ascertain, their targeting was specific to 4 high-propensity voters, to voters in competitive 5 districts. And as a result, it is our belief that One 6 Arizona sought to influence, perhaps, the primary 7 election and, most certainly, the general election in a 8 way that favors their preferred candidates. 9 We are fortunate to have a statute that 10 applies here. The statute is Section 16-901.01, which 11 is identified in the executive director's report. This 12 statute was part of the Clean Elections Act when it was 13 enacted in 1998, and it applies to the Act's reporting 14 requirements. And that's the basis of our complaint. 15 So I think that there can be no dispute 16 that the first three factors apply, and what we're 17 looking at here is whether the fourth factor applies, 18 whether, in this context, there's no other reasonable 19 meaning than to advocate for or against the election of 20 certain clearly identified candidates. 21 The respondents rely heavily on a case 22 called Wisconsin vs. -- Wisconsin Right to Life. That 23 was a U.S. Supreme Court case decided in 2007. That 24 case is wholly distinguishable from what we have in 25 play here. In Wisconsin Right to Life, a group was</p>

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<p>1 seeking to get certain senators, the two senators from</p> <p>2 the state of Wisconsin, to hold hearings on President</p> <p>3 Bush's judicial nominees.</p> <p>4 Now, that was a fact back in those days</p> <p>5 that the Senate was not moving forward on the</p> <p>6 President's judicial nominees, and it's also a fact</p> <p>7 that United States Congress is in session all year. So</p> <p>8 they may go out of session and return to their</p> <p>9 districts, but the congressional session usually lasts</p> <p>10 from early January of an odd-numbered year to the next</p> <p>11 odd-numbered year.</p> <p>12 So the Senate is continually doing business</p> <p>13 during that two-year period and nominations for</p> <p>14 judicial vacancies are continually submitted to the</p> <p>15 Senate for confirmation and, you know, if we weren't</p> <p>16 here today, I think most of us would be watching a</p> <p>17 Senate confirmation proceeding right now.</p> <p>18 The Arizona legislature is different. The</p> <p>19 Arizona legislature convenes on the second Monday of</p> <p>20 every year -- in January and then adjourns usually</p> <p>21 after 100 days, plus or minus. And then during that,</p> <p>22 legislators may work on interim committees or, in</p> <p>23 even-numbered years, like this year, they campaign.</p> <p>24 They run for office, and that's what's going on here.</p> <p>25 So -- so I feel like respondent's reliance</p>		<p>1 Representatives. And Kate Brophy McGee is a senator,</p> <p>2 and she isn't -- she wasn't even eligible to vote for</p> <p>3 that, and neither was Senator Sylvia Allen, neither was</p> <p>4 Senator Frank Pratt, who were also targeted by this</p> <p>5 advertisement.</p> <p>6 So when you think about the timing, when</p> <p>7 you think about the way that the -- these candidates</p> <p>8 were presented, when you think about the way that, you</p> <p>9 know, we've just -- the minimal amount of evidence that</p> <p>10 we've been able to uncover about the targeted</p> <p>11 electorate, there is no reasonable explanation, other</p> <p>12 than this was intended to influence the result of</p> <p>13 elections by bringing these candidates in disfavorable</p> <p>14 light.</p> <p>15 Now, as the executive director mentioned,</p> <p>16 Mr. Collins mentioned, this is one step in the process.</p> <p>17 We feel like if the Commission were to vote, we think</p> <p>18 it would be appropriately so to find that reasonable --</p> <p>19 the reasonable belief to move forward.</p> <p>20 If the Commission chose, the Commission</p> <p>21 could look at more data. It could figure out, well,</p> <p>22 did they plan on doing -- when did they begin planning</p> <p>23 these communications? Did One Arizona begin planning</p> <p>24 these communications in early January or early</p> <p>25 February? Because that certainly would be more</p>	
10:49:25-10:51:14	Page 67	10:52:40-10:53:43	Page 69
<p>1 on Wisconsin Right to Life is wholly misplaced for</p> <p>2 those reasons, legally speaking, but drilling down on</p> <p>3 the facts here -- more facts -- these -- the</p> <p>4 legislation that was referenced, again, passed or</p> <p>5 defeated months prior to the mailers, the mailers</p> <p>6 criticized all of the legislators who were targeted.</p> <p>7 And we put all of the -- as many as we could find --</p> <p>8 all of the communications in our document.</p> <p>9 You have mailers. You have Facebook</p> <p>10 advertisements that the members were all criticized.</p> <p>11 They were criticized on issues that are hot-button</p> <p>12 issues in those districts, in those races. And the</p> <p>13 call to action -- in fact, in one of them, what the</p> <p>14 call to action is: Vote for lower class sizes in 2019.</p> <p>15 The year is wrong, but I think our casual reader,</p> <p>16 somebody who reads it quickly, vote for limited class</p> <p>17 sizes, that is something that would apply to the</p> <p>18 impending elections.</p> <p>19 The other matter that I would refer you to</p> <p>20 is -- and this is exhibit -- I'm going to refer</p> <p>21 specifically to one of our exhibits here -- Exhibit 3,</p> <p>22 targeting Senator Kate Brophy McGee: Smaller class</p> <p>23 sizes equal better education. And it cites an</p> <p>24 amendment proposed for House Bill 2663. Well, that was</p> <p>25 an amendment proposed in the Arizona House of</p>		<p>1 evidence that they timed it in a way that would</p> <p>2 influence the result of an election. Or is this</p> <p>3 something that they planned on later? Why did they</p> <p>4 choose to do it at that time?</p> <p>5 If they planned it later, why didn't they</p> <p>6 plan on doing it in the next legislative session? Why</p> <p>7 didn't they contact the governor's office to seek a</p> <p>8 veto of any of these bills? Why didn't they contact</p> <p>9 any legislators to see if they could offer amendments</p> <p>10 or, you know, actually during the time that the</p> <p>11 legislation was under consideration? So these are all</p> <p>12 questions that could be asked at the next stage to see</p> <p>13 if a violation had occurred and to determine whether a</p> <p>14 monetary penalty is appropriate.</p> <p>15 So, Mr. Chairman and members, that's our</p> <p>16 position. We support moving forward with this</p> <p>17 complaint, and I'd be more than happy to answer any</p> <p>18 questions that you might have.</p> <p>19 ACTING CHAIRMAN KIMBLE: Thank you.</p> <p>20 Do any Commission members have questions</p> <p>21 for Mr. Liburdi?</p> <p>22 COMMISSIONER CHAN: Mr. Chairman, I just</p> <p>23 have --</p> <p>24 ACTING CHAIRMAN KIMBLE: Commissioner Chan.</p> <p>25 COMMISSIONER CHAN: -- one question.</p>	

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<p>1 I was just curious -- hi, Mike.</p> <p>2 MR. LIBURDI: Hi, Commissioner Chan.</p> <p>3 COMMISSIONER CHAN: -- whether you had also</p> <p>4 filed a complaint with the Secretary of State's Office</p> <p>5 and, if so, had that office taken any action on it at</p> <p>6 this point. I was just looking at the date to make</p> <p>7 sure -- I don't know -- to see if it was filed too</p> <p>8 recently, but was there a complaint also filed with the</p> <p>9 Secretary's Office?</p> <p>10 MR. LIBURDI: So, Mr. Chairman and</p> <p>11 Commissioner Chan, the answer to that question is yes.</p> <p>12 There was a complaint filed with the Secretary's Office</p> <p>13 at about the same time that the complaint was filed</p> <p>14 with the Commission. I am not aware of any action</p> <p>15 taken by the Secretary of State. I am -- I can tell</p> <p>16 you I am aware that the Secretary asked for a response</p> <p>17 from One Arizona's counsel, and I believe it was</p> <p>18 provided. However, I'm sure Mr. Barton or Mr. Collins</p> <p>19 could provide you with more up-to-date information.</p> <p>20 COMMISSIONER CHAN: Okay. Mr. Chairman and</p> <p>21 Mr. Liburdi, that doesn't influence, really, my</p> <p>22 decision here today. I was just curious whether it had</p> <p>23 only been filed with our Commission or if it had been</p> <p>24 filed in both places. I know in the past when I was at</p> <p>25 the Secretary's office, we had done some global</p>		<p>1 501(c)(3), and its mission is to improve the lives of</p> <p>2 Latinos, young people and single women by building a</p> <p>3 culture of civic participation.</p> <p>4 And that was the purpose of these ads was</p> <p>5 to encourage civic participation. It was not lobbying</p> <p>6 against any particular legislation. If it was</p> <p>7 lobbying, it was doing lobbying, then actually they</p> <p>8 would have another set of reporting requirements they</p> <p>9 would have to make. It wasn't lobbying against</p> <p>10 legislation. It certainly wasn't trying to get someone</p> <p>11 elected or stop getting someone elected. It was</p> <p>12 reaching out to voters and saying here's an issue that</p> <p>13 is important to you. You need to contact this</p> <p>14 representative -- I said voters. I should say</p> <p>15 constituents.</p> <p>16 It's really reaching out to constitutes and</p> <p>17 saying, you need to contact your represented official.</p> <p>18 It gave the phone number. It reached out to talk to</p> <p>19 them. And the point of One Arizona is it's not good</p> <p>20 enough to just get people elected. It's not good</p> <p>21 enough to just give people money. You also have to</p> <p>22 stay connected, and so they're encouraging -- the</p> <p>23 reason that they're established and the reason they're</p> <p>24 established as a 501(c)(3) is that they aren't about</p> <p>25 campaigning or even primarily lobbying. They're about</p>	
10:54:53-10:55:43	Page 71	10:56:54-10:58:00	Page 73
<p>1 conciliation agreements in cases with the -- you know,</p> <p>2 the Secretary and Clean Elections. I was just</p> <p>3 wondering about the posture there. So thank you.</p> <p>4 MR. LIBURDI: Thank you.</p> <p>5 ACTING CHAIRMAN KIMBLE: Thank you,</p> <p>6 Commissioner Chan.</p> <p>7 Any other questions from the Commission for</p> <p>8 Mr. Liburdi?</p> <p>9 (No response.)</p> <p>10 ACTING CHAIRMAN KIMBLE: Commissioner</p> <p>11 Meyer, do you have anything?</p> <p>12 COMMISSIONER MEYER: No questions.</p> <p>13 ACTING CHAIRMAN KIMBLE: Okay. Thank you.</p> <p>14 Thank you, Mr. Liburdi.</p> <p>15 MR. LIBURDI: Thank you, Mr. Chairman.</p> <p>16 ACTING CHAIRMAN KIMBLE: Yes, sir. Could</p> <p>17 you state your name and affiliation for the record,</p> <p>18 please?</p> <p>19 MR. BARTON: Thank you, Mr. Chair. My name</p> <p>20 is Jim Barton. I'm an attorney with the Torres Law</p> <p>21 Group, and I'm here today on behalf of One Arizona.</p> <p>22 I think it's important to give you a frame</p> <p>23 of the mission of One Arizona. One Arizona is an</p> <p>24 Arizona nonprofit corporation. It has tax-exempt</p> <p>25 status from the Internal Revenue Service as a</p>		<p>1 encouraging engagement.</p> <p>2 And, in fact, what this group saw was that</p> <p>3 sometimes, you know, folks get elected and they forget</p> <p>4 about you and that we need to make sure that the</p> <p>5 community stays engaged. And so they stay engaged with</p> <p>6 our elected representatives, and that's why this mailer</p> <p>7 had a call to action. It gave you the phone number.</p> <p>8 It said reach out to this elected official because it's</p> <p>9 important.</p> <p>10 So I want to talk now about the specific</p> <p>11 details, and first I want to talk about the timing</p> <p>12 because I think the timing is really important in this</p> <p>13 matter. These -- this mailer was 60 days before the</p> <p>14 primary. So surely they can tell constitutes to</p> <p>15 contact their elected officials 60 days before. It</p> <p>16 was -- the whole program was finished 60 days before.</p> <p>17 If 60 days before is too close -- and these aren't --</p> <p>18 these are -- I think all these people are going to get</p> <p>19 reelected, by the way, but I mean, it's pretty far away</p> <p>20 from -- that's 60 days ahead of their primary.</p> <p>21 So how far out do they have to go? I think</p> <p>22 I heard the complainants' counsel say, geez, even if we</p> <p>23 were planning in January, that would be too close.</p> <p>24 When do we -- when can they communicate to the</p> <p>25 electorate and not be accused of campaigning, if not 60</p>	

<p>10:58:03-10:59:09 Page 74</p> <p>1 days before?</p> <p>2 I will point out that the example we have</p> <p>3 in Arizona is the Committee for Justice and Fairness</p> <p>4 case, and that was a case of where there was an ad</p> <p>5 which admittedly did try to masquerade as an issue ad.</p> <p>6 They tried to dress it up to say contact Horne as --</p> <p>7 Mr. Horne in his capacity as the superintendent of</p> <p>8 public instruction even though he was running for AG.</p> <p>9 And the timing on that case in Committee for Justice</p> <p>10 and Fairness was days before the election.</p> <p>11 This is what the case says: Shortly before</p> <p>12 the November general election. Another place, it calls</p> <p>13 it immediately before the general election. It was</p> <p>14 right up against the general election. This is 60 days</p> <p>15 before. So, for example, I mean, I think Wisconsin</p> <p>16 Right to Life is a pretty close case.</p> <p>17 I understand it's not -- it is -- as</p> <p>18 Mr. Collins said, it is dealing with a different</p> <p>19 situation. It's dealing with a -- a blackout that has</p> <p>20 since been overruled by other supreme court cases, but</p> <p>21 in that Wisconsin Right to Life case, that was -- it</p> <p>22 was done well ahead of the August 15 blackout. It was</p> <p>23 done on July 26. So it was done ahead. Well, that's</p> <p>24 the Wisconsin Right to Life case. Our case deals with</p> <p>25 timing 60 days in advance of the primary.</p>	<p>11:00:16-11:01:27 Page 76</p> <p>1 interim committees happen, too. I mean, there's</p> <p>2 other -- you know, when you want to tell your</p> <p>3 legislator we share this value, you represent me and</p> <p>4 this is my value, there are all ways that can manifest</p> <p>5 other than casting a vote in a bill. I mean, there's</p> <p>6 all kinds of ways that can manifest.</p> <p>7 So the timing, I think, is very strongly in</p> <p>8 favor of finding this to not be express advocacy and</p> <p>9 that there's no reason to believe it is.</p> <p>10 The next component is -- what I think is</p> <p>11 really important is the content, okay? And, you know,</p> <p>12 if you look at these ads and they are -- you know,</p> <p>13 they've done a good job, I think, in the complaint,</p> <p>14 that's Exhibit 30 forward -- or page 30 forward in the</p> <p>15 exhibits. You know, these are important issues:</p> <p>16 education, predatory lending, the environment. I mean,</p> <p>17 these are all real issues that One Arizona wants to</p> <p>18 tell constituents contact your voter about.</p> <p>19 And I want to say something, too, that</p> <p>20 there seems to be some confusion. In the call to</p> <p>21 action, it tells you to call the senator or the</p> <p>22 representative, whoever, you know, and tell them to</p> <p>23 vote -- you know, tell them to support our values. So</p> <p>24 when you tell Brophy McGee vote to reduce class sizes</p> <p>25 in 2019, that's evidently assuming she's going to be in</p>
<p>10:59:12-11:00:13 Page 75</p> <p>1 Another -- and, again, this is why in</p> <p>2 analogy, it's very hard sometimes to say what's a long</p> <p>3 time, what's a little time. The Federal Elections</p> <p>4 Commission regulates electioneering communication when</p> <p>5 you're broadcasting, and they use a rule of 30 days</p> <p>6 ahead of the primary. So if you mention a candidate at</p> <p>7 all 30 days ahead of a primary, within 30 days of the</p> <p>8 primary or within 60 days of the general, that converts</p> <p>9 it to election communication, electioneering. It's</p> <p>10 different, understandingly, but my point is that the</p> <p>11 timing of this, one of the things you consider strongly</p> <p>12 demonstrates that this was not express advocacy 60 days</p> <p>13 ahead of the primary.</p> <p>14 Also, yeah, it's true that there wasn't --</p> <p>15 this is -- this is about values. It's about issues</p> <p>16 and, no, there weren't any bills being considered.</p> <p>17 They were out of session, but again, that's the same</p> <p>18 thing as we had in the federal election case with the</p> <p>19 Wisconsin Right to Life. There were no judges being</p> <p>20 filibustered at the time. If you look at the case,</p> <p>21 you'll see there were no judges being filibustered.</p> <p>22 You know, the Supreme Court said, well,</p> <p>23 they're allowed to advocate against filibustering even</p> <p>24 if there isn't an active filibuster going on at that</p> <p>25 minute. And so, you know, we -- I mean, we heard that</p>	<p>11:01:31-11:02:28 Page 77</p> <p>1 office in 2019. That's telling her. It's not</p> <p>2 saying -- it's not telling the recipient to vote. It's</p> <p>3 telling Brophy McGee to vote.</p> <p>4 So I don't -- I mean, this is assuming that</p> <p>5 this -- these people are going to be in office. So, in</p> <p>6 any case, it's certainly not saying vote against it,</p> <p>7 but that's the -- that's part of the content is that it</p> <p>8 sort of shows these important issues and it asks you to</p> <p>9 connect to the representative.</p> <p>10 So now let's talk about is this closer to</p> <p>11 what we saw in the Committee for Justice and Fairness</p> <p>12 or is this closer to the kind of ad that we saw in</p> <p>13 Wisconsin Right to Life? And I'd like to, just because</p> <p>14 I think it's helpful to just to look at it, to show the</p> <p>15 ad from the Committee on Justice and Fairness. And I</p> <p>16 understand that that's running in the background</p> <p>17 someplace.</p> <p>18 Do you guys know how I can --</p> <p>19 MR. COLLINS: Anyone have it? I think we</p> <p>20 have it set up.</p> <p>21 MR. BARTON: Oops. I messed it up.</p> <p>22 MS. ROBERTS: You got it? You want to try?</p> <p>23 MR. BARTON: I'll let you try.</p> <p>24 MS. ROBERTS: Is this --</p> <p>25 MR. BARTON: That's it. If you click the</p>

<p>11:02:38-11:04:25 Page 78</p> <p>1 box? What if we click the green box? I think that's 2 it, then play. Awesome. 3 (Video playing.) 4 MR. BARTON: Okay. So what's the issue in 5 that ad? Anti-statutory rape and child -- I mean, 6 that's a straight hit piece against Tom Horne and was 7 launched days before his election, and he was no longer 8 going to be superintendent of public instruction. Our 9 ads are about issues that are real issues that are up 10 for this conversation right now. When of our ads say 11 call this legislator, that's a legislator who's going 12 to be in office when they went out for a long time and 13 they're addressing -- and they're real, honest ads 14 addressing honest issues that are important to One 15 Arizona as a 501(c)(3). 16 So I think that when you talk about that 17 ad, I mean, that is a ridiculous hit piece that sort 18 of -- obviously, sort of tags on at the end, in a very 19 cynical way, call Tom Horne. These ads are doing just 20 what the committee is supposed to do, which is to 21 advocate and to encourage civic participation, to 22 encourage constituents to contact their elected 23 officials. 24 So here's the ad in Wisconsin Right to 25 Life. In Wisconsin -- I don't have a video of it, but</p>	<p>11:05:35-11:06:34 Page 80</p> <p>1 Folks who supported Senator Feingold said, 2 this is nonsense. You're just trying to attack Senator 3 Feingold. That's what you're really doing with this. 4 And the Supreme Court said, no, that's not how you do 5 it. What did the ad say? The ad has an important 6 issue. The ad has a call to action. This is not 7 express advocacy. That's what the United States 8 Supreme Court said, and I think that's what you have to 9 look at in this case when you look at these ads. 10 Now, maybe, you know, Senator McGee and 11 others felt that they were being attacked and -- okay. 12 I would rather they feel like this is your constituent 13 reaching out and it's talking about an issue and maybe 14 think about you need to change your positions on that 15 issue, in general, but what we do as regulators is you 16 have to look at the image. You have to think about 17 things like the content and the timing. 18 I think the content of this is plainly more 19 like the Wisconsin Right to Life ad. I mean, it's 20 talking about a real issue and it's asking for 21 really -- it's making a sincere ask. We give the phone 22 number to make it a sincere ask to contact the elected 23 official. 24 Also, I think the timing is plainly in our 25 favor, and I think it's important, finally, that the</p>
<p>11:04:27-11:05:32 Page 79</p> <p>1 I tried and couldn't find it. So they have a radio ad, 2 and this is how this ad runs. 3 Pastor: Who gives this woman to be married 4 to this man? 5 Bride's father: Well, as farther of the 6 bride, I certainly could, but instead, I'd like to 7 share a few tips on how to properly drywall. Now, you 8 put the drywall up -- and then that sort of trails off. 9 And then, voiceover, sometimes it's just not fair to 10 delay an important decision but Washington -- in 11 Washington it's happening. A group of senators' 12 filibuster tactic is delaying and blocking the federal 13 judicial nominees from a simple yes or no vote so 14 qualified candidates don't get a chance to serve. It's 15 politics at work causing gridlock and backing up some 16 of our courts to a state of emergency. Contact 17 Senators Feingold and Cole and tell them to oppose the 18 filibuster. Visit befair.org. 19 So it was an important issue to Wisconsin 20 Right to Life, which was to get these judges a fair 21 hearing. They said in the ad contact the senators 22 because it was important to them. There was no 23 filibuster going on when this ad was running. That's 24 important, and that's in the opinion. There was no 25 filibuster going on in the ad.</p>	<p>11:06:36-11:07:30 Page 81</p> <p>1 Commission vote now to find no reason to believe 2 because if we get into a situation where we can't make 3 this kind of communication even 60 days ahead of the 4 primary, I mean, it makes it very difficult for me to 5 advise my clients. 6 That's my concern about -- that's my 7 concern about giving any -- any slack to this -- to 8 this attack at all is because I'm very worried about 9 the chilling effect that happens if even making an ad 10 60 days out, even making an ad as a plain call to 11 action that states an issue, if that's not good enough 12 to keep you on the safe side of things, I think it 13 really makes it -- you know, and a group -- a 501(c)(3) 14 doesn't do politics. And so it makes it very difficult 15 for them to, you know, do what their purpose is, I'm 16 afraid. 17 ACTING CHAIRMAN KIMBLE: Okay. Mr. Barton, 18 let me make sure I understand the timing right. So 19 this ad was done -- what? Late June? Something like 20 that? 21 MR. BARTON: The last ads were finished 22 late June. 23 ACTING CHAIRMAN KIMBLE: Okay. So it's 24 your point that you were not trying to influence an 25 election that was 60 days away but were trying to</p>

11:07:34-11:08:25	Page 82	11:09:38-11:10:45	Page 84
<p>1 influence the next legislative session, which was seven</p> <p>2 months away?</p> <p>3 MR. BARTON: We were trying to influence</p> <p>4 the legislator. We were trying to connect the</p> <p>5 legislator to its constituents.</p> <p>6 ACTING CHAIRMAN KIMBLE: Right, but the</p> <p>7 legislature was not going to be in session until</p> <p>8 January.</p> <p>9 MR. BARTON: Sure.</p> <p>10 ACTING CHAIRMAN KIMBLE: So they should</p> <p>11 call now to influence their legislator about an issue</p> <p>12 seven months --</p> <p>13 MR. BARTON: The legislator does work other</p> <p>14 than just vote on legislation. I mean, you know,</p> <p>15 there's interim committees. There's other work that</p> <p>16 they do. The legislator can -- they could have come</p> <p>17 out for or against Red for Ed. They could have done --</p> <p>18 there's all kinds of things that a legislator does</p> <p>19 besides influence. This isn't lobbying for a specific</p> <p>20 piece of legislation. It's connecting it. It's trying</p> <p>21 to promote civic engagement and asking the constituents</p> <p>22 to contact their elected.</p> <p>23 So I guess I understand what you're saying,</p> <p>24 Commissioner -- Mr. Chair, but -- that the legislature</p> <p>25 wouldn't come back into session until January, but</p>		<p>1 more with the complainants' position on this, and I'll</p> <p>2 tell you why and you can disagree with me.</p> <p>3 And I wanted to -- I did check with Tom</p> <p>4 because if I -- if we do take a vote and we do vote to</p> <p>5 go forward with allowing an investigation or</p> <p>6 authorizing an investigation, I just wanted to make</p> <p>7 sure that at the end of the day when that's complete,</p> <p>8 if the Commission as a whole decides there's not, you</p> <p>9 know, reason to believe there was a violation, you</p> <p>10 know, could we vote today to go forward with an</p> <p>11 investigation and then, at the ultimate end of the day,</p> <p>12 decide there's not reasonable cause. And Tom said yes.</p> <p>13 So --</p> <p>14 MR. COLLINS: Probable cause.</p> <p>15 COMMISSIONER CHAN: Probable cause.</p> <p>16 So I just wanted to mention that because I</p> <p>17 don't want to cement us in unfairly depending on what</p> <p>18 comes out. If we -- I don't know how these guys are</p> <p>19 going to vote, but a couple of things.</p> <p>20 You mentioned, you know, the group is a</p> <p>21 501(c)(3), but that doesn't exempt a group from</p> <p>22 registering as a political committee if that group does</p> <p>23 engage in express advocacy, does it?</p> <p>24 MR. BARTON: Well, an entity that's a</p> <p>25 501 -- or any 501(c) that's in good standing with the</p>	
11:08:27-11:09:34	Page 83	11:10:48-11:11:52	Page 85
<p>1 legislators do things other than when they're not in</p> <p>2 session. The point of this is to connect the</p> <p>3 constituents with the elected official.</p> <p>4 ACTING CHAIRMAN KIMBLE: Okay.</p> <p>5 Any questions from commissioners?</p> <p>6 COMMISSIONER CHAN: Mr. Chairman, I have</p> <p>7 some questions for Jim.</p> <p>8 It's very nice to see you.</p> <p>9 MR. BARTON: Nice to see you.</p> <p>10 COMMISSIONER CHAN: And I hate to tell you</p> <p>11 that I disagree with your position, but I do -- having</p> <p>12 said that, I do want to ask you some questions about</p> <p>13 it. And I really hate to be on the opposite side from</p> <p>14 you because -- Jim used to represent the Secretary of</p> <p>15 State's Office, and I think you might have been there</p> <p>16 when we did the Committee for Justice and Fairness ad.</p> <p>17 And I don't disagree with you that there</p> <p>18 are always differences with regard to, you know, the</p> <p>19 timing of that ad. And, you know, I don't -- I can't</p> <p>20 refute your point with regard to that ad versus these,</p> <p>21 but I'll just, kind of, lay out for you where I am.</p> <p>22 I'm just reading it from the perspective</p> <p>23 of -- even though I'm a lawyer, I try to read things</p> <p>24 from the perspective of me as a regular person, as</p> <p>25 well, because I think I'm both. And I think I agree</p>		<p>1 IRS right now is exempt from the definition of</p> <p>2 political action committee under Arizona -- current</p> <p>3 Arizona law. However, we're not talking about -- no</p> <p>4 one said we had to register for anything. We're saying</p> <p>5 that we -- that we had to disclose this.</p> <p>6 The committee's concern is a 501(c)(3)</p> <p>7 can't make a political speech. They can't engage in</p> <p>8 political speech, and so the -- we could not -- we</p> <p>9 strongly believe this is not a political speech but --</p> <p>10 based on our exemption. So if this kind of speech is</p> <p>11 forbidden, if this kind of speech is political speech,</p> <p>12 then 501(c)(3)s can't do it. They would be completely</p> <p>13 barred from doing it. Just -- I mean, it would be a</p> <p>14 complete bar from a 501(c)(3) engaging in that, if this</p> <p>15 kind of thing, asking someone to contact their</p> <p>16 legislator, is political -- is express advocacy.</p> <p>17 So it's not really a registration issue.</p> <p>18 It has to do with the fact that --</p> <p>19 COMMISSIONER CHAN: Just the speech?</p> <p>20 MR. BARTON: -- what they can use, yeah.</p> <p>21 COMMISSIONER CHAN: Okay. The timing being</p> <p>22 60 days before the primary, I appreciated</p> <p>23 Mr. Chairman's question about that because I don't find</p> <p>24 that it being 60 days before the primary is</p> <p>25 dispositive, even though, obviously, if it was two days</p>	

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<p>1 before the primary, it would probably be a more</p> <p>2 clearcut case. I still find that 60 days before the</p> <p>3 primary is still -- and particularly, perhaps, you</p> <p>4 know, because it was after the legislative session and</p> <p>5 it does seem to paint, you know, the targeted members</p> <p>6 in a -- in a negative light, I mean, just reading the</p> <p>7 plain language.</p> <p>8 So I think the fact that, you know, it does</p> <p>9 highlight issues that are important issues almost maybe</p> <p>10 works against the position of the Sunlight 501(c)(3).</p> <p>11 So -- and now I think I'm understanding more about what</p> <p>12 you said, you know, if your clients can't do this as a</p> <p>13 501(c)(3). I'm not super familiar with how 501(c)(3)s</p> <p>14 work. My understanding was that -- and maybe they have</p> <p>15 to be a 501(c)(4) or something, but how do these -- if</p> <p>16 they can't engage in political speech, then what are we</p> <p>17 even doing with the independent expenditures? I guess</p> <p>18 maybe I'm missing something.</p> <p>19 MR. BARTON: So --</p> <p>20 COMMISSIONER CHAN: Am I missing something?</p> <p>21 MR. BARTON: Mr. Chair, Commissioner Chan,</p> <p>22 so, yes, C(4)s -- any corporation can do a political</p> <p>23 speech now but not a 501(c)(3). A 501(c)(3)</p> <p>24 corporation, under its -- in order to maintain its</p> <p>25 tax-exempt status, cannot engage in political speech.</p>	<p>1 us turning over to Tom this is how much we spent, and</p> <p>2 then we'll say we don't agree. And we'll have to --</p> <p>3 you know, we'll have to do the process or whatever.</p> <p>4 So, I mean, that's why I think this is a</p> <p>5 vote. I think all the -- all the issues that you</p> <p>6 mentioned -- how brief it is. I mean, all of the</p> <p>7 issues that are of interest that you're going to have</p> <p>8 to actually decide are out before you. So as I'm</p> <p>9 sitting here thinking how do I tell a client if I don't</p> <p>10 know how far out it is and I -- and if you can't just</p> <p>11 say these ads are important to us; call your senator</p> <p>12 about it.</p> <p>13 This is not lobbying. There's no</p> <p>14 legislation identified here. That's not the point of</p> <p>15 it. The point of it is to encourage civic engagement.</p> <p>16 So --</p> <p>17 COMMISSIONER CHAN: And maybe this --</p> <p>18 MR. BARTON: I don't know how far we've had</p> <p>19 to go. I mean, I'm not sure. I don't know how far I</p> <p>20 would have to go, and I guess we're almost saying you</p> <p>21 can't mention the name of an elected official, which I</p> <p>22 don't think is a great standard.</p> <p>23 COMMISSIONER CHAN: And, Mr. Chairman,</p> <p>24 Mr. Barton, I guess I feel where you are coming from.</p> <p>25 I just -- again, just looking at it from the plain</p>		
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<p>1 So that's really, kind of, an our-problem, not a</p> <p>2 your-problem thing.</p> <p>3 I mean -- but it is -- it is a fact that</p> <p>4 when we -- when we take the definition of "express</p> <p>5 advocacy" and we let it grow all the way out to now</p> <p>6 encompass calling your senator, calling your</p> <p>7 representative, that does -- as we expand the</p> <p>8 definition of express advocacy, that does push (c)(3)</p> <p>9 organizations out of it because they cannot engage in</p> <p>10 express advocacy. And so, again, that's really more of</p> <p>11 an our-problem thing than a your-problem thing.</p> <p>12 I'm not sure -- so it sounds to me that</p> <p>13 what we're -- what we are moving towards is a ruling</p> <p>14 that I don't know what -- so any mention of -- I'm</p> <p>15 trying to construct the rule now. I mean, this is --</p> <p>16 this is an issue that's important to them. They're</p> <p>17 trying to connect the voter with the representative,</p> <p>18 and if we're saying that even 60 days -- I mean, I</p> <p>19 don't know how far in advance you have to do it now.</p> <p>20 And I guess what we're saying is that you're not</p> <p>21 allowed to use the name of an elected official.</p> <p>22 I mean, I'm honestly trying to think about</p> <p>23 if I went back to this -- and this is why -- this is</p> <p>24 why I think that the vote is now and not afterwards. I</p> <p>25 mean, the investigation is just going to be a matter of</p>	<p>1 language of the mailers. And having been briefed on</p> <p>2 the law by the executive director -- I know Mr. Liburdi</p> <p>3 and you both, you know, made your arguments -- that's</p> <p>4 just, kind of, where I'm at right now, but I feel your</p> <p>5 pain. I do, because I know it's, like -- it's, like, a</p> <p>6 nightmare law school exam question, right, with these</p> <p>7 facts, perhaps, that it's kind of somewhere maybe in</p> <p>8 the middle. It's not as clearcut as CJF. I don't know</p> <p>9 that it's quite Wisconsin Right to Life either.</p> <p>10 So, Mr. Chairman, thank you.</p> <p>11 ACTING CHAIRMAN KIMBLE: Thank you,</p> <p>12 Commissioner Chan.</p> <p>13 Any other questions from Commission</p> <p>14 members?</p> <p>15 (No response.)</p> <p>16 ACTING CHAIRMAN KIMBLE: Commissioner</p> <p>17 Meyer, do you have any questions?</p> <p>18 COMMISSIONER MEYER: I do not. Thank you.</p> <p>19 ACTING CHAIRMAN KIMBLE: Mr. Collins, is</p> <p>20 there anything you want to add?</p> <p>21 MR. COLLINS: I mean, I have a couple quick</p> <p>22 things I wanted to -- I wanted to, kind of, address, I</p> <p>23 guess, that go to the -- that go to the response to the</p> <p>24 reason to believe memo. I've been in -- I mean, I</p> <p>25 guess I'll say these and, Jim, if you want to respond</p>		

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<p>1 to them, that's obviously fine.</p> <p>2 MR. BARTON: Okay.</p> <p>3 MR. COLLINS: I mean, I think there's a --</p> <p>4 I mean, as I said earlier, I think that part of the</p> <p>5 question here is what's the burden, and the burden in</p> <p>6 the -- in the context here is what's the state law</p> <p>7 burden. And the state law burden under 16-940(d) is</p> <p>8 just not just very significant.</p> <p>9 So I don't -- so in order to get to the</p> <p>10 position that I understood the response to the reason</p> <p>11 to believe memo to take that this is, in effect, a</p> <p>12 moratorium, you'd have to -- you'd have to take</p> <p>13 16-940(d) and 16-901.01 and read them together with</p> <p>14 what standards apply to 501(c)(3)s, but when you get</p> <p>15 into what the IRS looks at in terms of its factors in</p> <p>16 determining whether or not something is a political</p> <p>17 campaign in intervention, you know, they have a sort of</p> <p>18 non- -- a non- -- an inclusive, kind of, list that's</p> <p>19 also multifactor that includes, you know, whether the</p> <p>20 statement identifies one or more candidates for a given</p> <p>21 office, whether the statement expresses approval or</p> <p>22 disapproval of one of the candidate's positions or</p> <p>23 actions.</p> <p>24 It does consider the closeness in time of</p> <p>25 the election. It does consider whether the statement</p>	<p>1 different -- a different timeframe. So I don't know.</p> <p>2 Those are a couple of reasons why I, in considering</p> <p>3 your response to the reason to believe memo, didn't</p> <p>4 find myself persuaded to change the recommendations.</p> <p>5 One, I think that the IRS is looking at --</p> <p>6 to the extent the IRS looks at any of these things at</p> <p>7 all, which is the ultimate question, it seems to be</p> <p>8 saying tread cautiously here and to identify some</p> <p>9 factors that are narrow factors, like timing, and some</p> <p>10 factors that are even broader with respect to the</p> <p>11 purposes of legislation pending that are -- that would</p> <p>12 not -- that are not necessarily wordal issues -- you</p> <p>13 know, wordal issues. And wordal -- I don't think it's</p> <p>14 more fact-specific than that.</p> <p>15 And then -- and then -- and then the issue</p> <p>16 of, really, when did -- when did the election begin for</p> <p>17 purposes of the timing? If you think it begins on</p> <p>18 August -- does the election begin the day it ends or</p> <p>19 does it begin the day that voting begins?</p> <p>20 ACTING CHAIRMAN KIMBLE: Before --</p> <p>21 Mr. Barton, I apologize, but before we go into this,</p> <p>22 could we take a five-minute break for our court</p> <p>23 reporter, please?</p> <p>24 MR. COLLINS: Oh, yeah.</p> <p>25 ACTING CHAIRMAN KIMBLE: And then we'll</p>		
11:17:41-11:19:04	Page 91	11:20:27-11:29:32	Page 93
<p>1 makes reference to voting or election, you know,</p> <p>2 whether it's an ongoing series of communication by an</p> <p>3 organization on the same issue that are made</p> <p>4 independent of the timing of the election and</p> <p>5 whether -- or whether the timing of the communication</p> <p>6 are related to a non-electoral event such as a</p> <p>7 scheduled vote on specific legislation.</p> <p>8 So there are similar factors. The point</p> <p>9 being that a 501(c)(3) that gets into identifying</p> <p>10 candidates, you know, from the -- from the job, whether</p> <p>11 it's in the voter guide or a mailer or whatever is</p> <p>12 already in a place where the IRS is sort of saying, you</p> <p>13 know, there's -- there's some warning lights there.</p> <p>14 And it's not necessarily clear as the VIN diagram of</p> <p>15 what the IRS would do and what campaign -- state</p> <p>16 campaign finance will do is identical, but it's</p> <p>17 certainly not outside of the realm of caution for a</p> <p>18 501(c)(3) to -- when candidates are the subject of the</p> <p>19 communication.</p> <p>20 You know, the other thing I think is worth</p> <p>21 noting on the timing is that with respect to the time</p> <p>22 from the primary -- and we've talked about this in</p> <p>23 other context. The election, for all intents and</p> <p>24 purposes, ends -- ended on August 28th, but it began,</p> <p>25 you know, essentially, on August 1st, which is a</p>	<p>1 come back and you can address these issues that</p> <p>2 Mr. Collins brought up.</p> <p>3 Okay. We're going to take a five-minute</p> <p>4 break.</p> <p>5 (Whereupon, a recess was taken in the</p> <p>6 proceedings.)</p> <p>7 ACTING CHAIRMAN KIMBLE: Okay. We'll be</p> <p>8 back in session.</p> <p>9 I apologize, Mr. Barton, for -- for</p> <p>10 interrupting your response to Mr. Collins.</p> <p>11 MR. COLLINS: And if you want me to, I can</p> <p>12 kind of restate the question. The basic questions</p> <p>13 were, one, you know, how do you -- how do you reconcile</p> <p>14 with the IRS's guidance to 501(c)(3)s with respect to</p> <p>15 candidate-related statements with -- you know, with</p> <p>16 what 16-901 says and does that really create a</p> <p>17 moratorium? And, two, you know, what do you see as the</p> <p>18 election period here? Does the fact that the</p> <p>19 election -- does the election begin and end on August</p> <p>20 28th or does the election begin on the day of, really,</p> <p>21 voting and end on August 28th for purposes of the</p> <p>22 timing assertion were the two questions I had.</p> <p>23 MR. BARTON: Sure. So, first off, the</p> <p>24 standard that you're evaluating -- and by the way, this</p> <p>25 doesn't matter what the penalty is. The standard is</p>		



11:29:34-11:30:44	Page 94	11:31:57-11:32:51	Page 96
<p>1 the same no matter how weak or strong the penalty is.</p> <p>2 The standard is that the communication referring to one</p> <p>3 or more clearly identified candidates and targeted to</p> <p>4 the electorate of the candidates in context can have no</p> <p>5 reasonable meaning other than to advocate the election</p> <p>6 or defeat of the candidates.</p> <p>7 So, first off, the standard is a high</p> <p>8 standard as put in place by the legislature. It's not</p> <p>9 a judicial document. It's not about district</p> <p>10 compliance versus substantial compliance. The</p> <p>11 legislature said this can have no reasonable meaning</p> <p>12 other than to advocate the election or defeat. So</p> <p>13 that's the standard we're talking about. That's what</p> <p>14 you would have to find reason to believe is you would</p> <p>15 have to find this does that.</p> <p>16 So to answer the executive director's</p> <p>17 question, if a communication literally can have no</p> <p>18 reasonable meaning other than to advocate or defeat the</p> <p>19 election of a candidate, well, then, that is absolutely</p> <p>20 with -- under the umbrella of the 501(c) prohibition.</p> <p>21 The 501(c) prohibition is -- the conventional wisdom is</p> <p>22 a 501(c) political activity prohibition is more broad</p> <p>23 than express advocacy. So, in other words, all express</p> <p>24 advocacy is political activity. Not all political</p> <p>25 activity is express advocacy.</p>		<p>1 in any communication because we don't have another end</p> <p>2 of when the -- I mean, 30 to 60 days before the primary</p> <p>3 election. That's -- if I'm trying to find a number for</p> <p>4 somebody, that's the number I can find for them.</p> <p>5 So I don't know what number I would say</p> <p>6 because, I guess -- I don't know. I would have to have</p> <p>7 some deep thoughts on it. And, frankly, if we're</p> <p>8 saying this kind of communication -- these ads</p> <p>9 literally can have no reasonable meaning, other than to</p> <p>10 advocate, I don't know what -- I mean, I just don't</p> <p>11 think you can mention a legislator. And so if at the</p> <p>12 end of the day that gets -- that's the standard, that</p> <p>13 this kind of ad satisfies that requirement, then we</p> <p>14 just -- then in Arizona, we would just -- 501(c)(3)s</p> <p>15 wouldn't be able to safely do these communications.</p> <p>16 So I think that's, kind of, how I would</p> <p>17 remedy those two.</p> <p>18 ACTING CHAIRMAN KIMBLE: Okay. Thank you,</p> <p>19 Mr. Barton.</p> <p>20 Any other questions from Commission</p> <p>21 members?</p> <p>22 COMMISSIONER PATON: I have a question for</p> <p>23 Tom.</p> <p>24 MR. COLLINS: Commissioner?</p> <p>25 COMMISSIONER PATON: So, I mean, I have a</p>	
11:30:46-11:31:55	Page 95	11:32:54-11:34:16	Page 97
<p>1 So if the Commission is to find that this</p> <p>2 satisfies that, then, I mean, I don't think that</p> <p>3 finding is necessarily binding on the IRS. I don't</p> <p>4 know how it works, but I mean, just logically, if it's</p> <p>5 true that this can have no reasonable meaning other</p> <p>6 than to advocate for the election or defeat of the</p> <p>7 candidate, if it meets that high bar, then it clearly</p> <p>8 is -- satisfies 501(c)(3) restriction on political</p> <p>9 activity. So that's how those two jive.</p> <p>10 As far as whether you go by the date when</p> <p>11 the election is finalized or whether you go by the date</p> <p>12 of early mailing, obviously, when we were saying 60</p> <p>13 days, we were counting from the day of the election.</p> <p>14 If you count from the day of early mailing, I guess</p> <p>15 it's 30 days. I think in either -- I mean, that's</p> <p>16 interesting that the 30-day requirement -- just, again,</p> <p>17 for reference, the FEC uses that as when naming a</p> <p>18 candidate makes it electioneering communication, the 30</p> <p>19 days from a primary.</p> <p>20 In any case, I think my concern in both</p> <p>21 cases is that if we get done with all the process here</p> <p>22 and it's determined that a communication like this done</p> <p>23 at this time satisfies express advocacy, then it would</p> <p>24 mean that in Arizona 501(c)(3)s would not be -- it</p> <p>25 would be reckless for them to even mention candidates</p>		<p>1 problem with the fact that they have the picture, the</p> <p>2 name of the candidate. And this is from your thing</p> <p>3 that you handed out, Tom, on page 6.</p> <p>4 MR. COLLINS: Yeah.</p> <p>5 COMMISSIONER PATON: And it says, State</p> <p>6 Senator Brophy McGee voted for a budget that failed to</p> <p>7 cap class sizes and then asked the recipient of the</p> <p>8 mail piece to vote to reduce class sizes in 2019. To</p> <p>9 me that is -- would this be different, in your</p> <p>10 opinion -- I'm not a lawyer, but I'm just -- but it</p> <p>11 seems to advocate if she's not going to do it, then to</p> <p>12 vote for somebody else. And that -- it's got her</p> <p>13 picture on it and so on.</p> <p>14 And if her picture wasn't on there and her</p> <p>15 name and phone number wasn't on it and they're just</p> <p>16 advocating to reduce class sizes in 2019, to me that</p> <p>17 would be much different. I'm asking your opinion on</p> <p>18 that.</p> <p>19 MR. COLLINS: Sure.</p> <p>20 COMMISSIONER PATON: Since you are a</p> <p>21 lawyer.</p> <p>22 MR. COLLINS: Right. So I think that -- I</p> <p>23 think that there's -- there's a couple of different</p> <p>24 things going on in the context of just the four corners</p> <p>25 of the -- of the -- of the Brophy McGee -- Senator</p>	

<p>11:34:21-11:36:01</p> <p>Page 98</p> <p>1 Brophy McGee-related mailer that -- we focused in on 2 one of them. I think -- but I think they're -- one, 3 Mr. Liburdi has already mentioned which is they're -- 4 in making an objective determination of this, we're not 5 required to ignore legitimate background facts such as 6 how this session in Arizona works, which is different 7 from how it works in the congressional level, which may 8 be different from how it works in other states. 9 So I think that -- I think that -- you 10 know, I think that that is an issue. I -- we didn't 11 highlight the reason to believe, but -- but the 12 citation that Mike mentioned being to an amendment that 13 wasn't offered in the Senate gets into an issue of, you 14 know -- you know, when you're talking about whether or 15 not something is issue advocacy or whether something is 16 a form of, you know, electioneering, you know, the fact 17 that this amendment wasn't offered for her to vote on 18 casts the whole ad in a different light. In other 19 words, you are asking her to do something that she 20 didn't have an opportunity to do which, you know -- 21 COMMISSIONER PATON: Because it was a House 22 bill, not a Senate. 23 MR. COLLINS: Right. So I think that 24 that's -- and I think that that goes, again, to the -- 25 to the question of, you know, are you addressing her</p>	<p>11:37:39-11:39:11</p> <p>Page 100</p> <p>1 legislative -- our legislative session is run, taken 2 together, it's difficult for me to see how a reasonable 3 person would conclude that this is not expressly 4 advocating for this person's defeat, you know. 5 I mean, you're basically saying this 6 candidate who is on the ballot for the primary is not 7 representing the interests of the state. You're saying 8 it 30 to 60 days before the election, depending upon 9 what clock you want to -- where you want to start the 10 clock, and you're presenting it, you know, in -- and 11 just putting the contact number on there is not -- is 12 not a get out of -- is not a get-out-of-disclosure-free 13 card. And so that's how I analyzed it. 14 COMMISSIONER PATON: So if the person is 15 not identified and they just -- they just said, you 16 know, this is -- this is -- this is the way you should 17 be interested in; some people are against this, but if 18 you're interested in this, you know, this is something 19 that you can do something about, basically. 20 MR. COLLINS: Well, in fact, the Act -- I 21 need the statutory -- the Act says that -- the Clean 22 Elections Act, in fact, says that a communication that 23 would otherwise be expressly advocating is not when it 24 presents information about the voting record or 25 position on a campaign issue of three or more</p>
<p>11:36:05-11:37:35</p> <p>Page 99</p> <p>1 record or are you addressing -- are you -- or are you 2 addressing -- are you addressing just throwing out 3 there that this person doesn't support the class sizes? 4 And that coupled with the -- I think one of the key 5 statements is the fact that state lawmakers should 6 represent our interests. 7 I feel -- I know that the response from 8 the -- the post reason to believe memo response, you 9 know, sort of dismisses the state lawmakers should 10 represent our interests part of this as -- as being 11 not -- not meaningful, but I think that the implication 12 of the fact that you say that Senator Brophy McGee 13 voted for a budget that failed to cap class sizes and 14 state lawmakers should represent our interests, that 15 comes very close to a clear call to action to vote 16 against this person for election. 17 And -- and, I mean, it gets very close -- I 18 should say very close to an express -- very close to a 19 magic words type call to vote against this person, and 20 that's the functional equivalent test we're dealing 21 with. I think if you say Senator X voted against this 22 or voted for this budget that failed to do these things 23 and state lawmakers should do what we tell them to do 24 or what represents our interest and there's no way for 25 this lawmaker to do that in the context of the way our</p>	<p>11:39:12-11:40:35</p> <p>Page 101</p> <p>1 candidates so long as it's not made in coordination 2 with a candidate, political party, agent of the party 3 or person who is coordinating with the candidate or 4 candidate's agent. 5 So to your point, you could identify a 6 number of candidates who are -- who are -- perhaps, you 7 think need to be informed by their constituents about 8 this and the law. I think 16-901 allows for that, 9 expressly allows for that in Subsection B. So it's 10 just not the case that there's a -- that there would be 11 a moratorium. 12 What it would -- what it -- I guess, if you 13 accept Mr. Barton's argument, which I'm still not 14 convinced by, at worst a 501(c)(3) would have to 15 identify more than one candidate in a mailing but, you 16 know, the whole point is that if they're targeting the 17 constituency of the vote of the -- of that candidacy -- 18 of that candidate, you know, 30 to 60 days before 19 election in a negative light where there's no 20 likelihood of a vote and, perhaps, a vote -- on a vote 21 that the person to even take, you know -- you know, you 22 get to -- you can see how there's no reasonable 23 meaning. 24 So there's no way out for these 501(c)(3)s, 25 if they want -- if they want to play in this arena,</p>

11:40:39-11:42:10	Page 102	11:43:36-11:45:00	Page 104
<p>1 that even -- even if a different ad -- even if a</p> <p>2 different ad with Senator Brophy McGee would have not</p> <p>3 been express advocacy, there's an even easier way,</p> <p>4 which is an express exemption for certain</p> <p>5 communications, provided they are designed to reach,</p> <p>6 you know, a broader set of candidates. I mean, we have</p> <p>7 an express exemption for that.</p> <p>8 So it's not -- it's just not as simple as,</p> <p>9 I think, that -- as if this is -- if this can be -- if</p> <p>10 this is -- has no other reasonable meaning, then</p> <p>11 501(c)(3)s can't weigh in on communicating to</p> <p>12 constituents at all. That's not true.</p> <p>13 COMMISSIONER PATON: Okay.</p> <p>14 ACTING CHAIRMAN KIMBLE: I'm sorry. Were</p> <p>15 you going to say anything, Commissioner Paton?</p> <p>16 One of the things I wanted to say is I</p> <p>17 guess I would also be more persuaded if this was done</p> <p>18 differently. As opposed to educating people about an</p> <p>19 issue, we're educating people about how a specific</p> <p>20 legislator voted on three specific issues, which makes</p> <p>21 it seem a lot more focused on the person than on any</p> <p>22 one issue. And it just -- it does not really seem like</p> <p>23 it is genuinely looking for a way to tell people to</p> <p>24 contact your elected officials.</p> <p>25 But is there anyone else who wants to</p>	<p>1 would have been there to actually influence the</p> <p>2 legislation instead of influencing an election. And</p> <p>3 why say things like is in our Exhibit 4, the Kate</p> <p>4 Brophy McGee ad about, quote, predatory lenders? Why</p> <p>5 use -- why say things -- call Kate Brophy McGee and</p> <p>6 tell her to stop putting Arizona's families future at</p> <p>7 risk? Why -- why target in that manner?</p> <p>8 And then I would also like to just end on</p> <p>9 this point. These mailers were being sent out in</p> <p>10 sequence. They weren't all done at one time. They</p> <p>11 were done in a sequence. The Facebook ads were put up</p> <p>12 and on for a while. I would ask but for this complaint</p> <p>13 and but for the Commission taking this seriously, would</p> <p>14 that have continued? So, you know, it very well could</p> <p>15 have gone later and closer to the election, but this</p> <p>16 complaint was filed. The Commission took it seriously,</p> <p>17 and it stopped.</p> <p>18 So unless there's any further questions,</p> <p>19 Mr. Chairman, thank you for this opportunity.</p> <p>20 ACTING CHAIRMAN KIMBLE: Okay. Thank you.</p> <p>21 Any questions for Mr. Liburdi?</p> <p>22 (No response.)</p> <p>23 ACTING CHAIRMAN KIMBLE: Is there anyone</p> <p>24 else who wants to be heard on this matter?</p> <p>25 (No response.)</p>		
11:42:12-11:43:33	Page 103	11:45:00-11:46:03	Page 105
<p>1 address this?</p> <p>2 Mr. Liburdi, did you -- is there anything</p> <p>3 else you felt you should say about this?</p> <p>4 MR. LIBURDI: Thank you, Mr. Chairman.</p> <p>5 I'll be very brief and to the point here because I feel</p> <p>6 like the Commission understands the issues.</p> <p>7 What I would just focus on is the statutory</p> <p>8 test. There's no other reasonable meaning for -- for</p> <p>9 these advertisements, and when you look -- you know,</p> <p>10 it's helpful to look at federal law for precedent</p> <p>11 for -- it's helpful to look at federal law, but it is</p> <p>12 not dispositive because this is an Arizona issue. It's</p> <p>13 helpful to look at past advertisements, but that's not</p> <p>14 dispositive because every advertisement is going to be</p> <p>15 different, but if you look at the Wisconsin Right to</p> <p>16 Life advertisement that's been talked about, the two</p> <p>17 United States senators that were targeted were one</p> <p>18 Democrat, Russ Feingold, and one Republican, Herb Cole.</p> <p>19 And it was on an issue that was continually before the</p> <p>20 United States Senate.</p> <p>21 So I would ask here why target four</p> <p>22 Republicans in four competitive legislative races by</p> <p>23 targeting high-propensity voters on issues that are</p> <p>24 front and center on this election campaign and doing it</p> <p>25 after the legislative session when the opportunity</p>	<p>1 ACTING CHAIRMAN KIMBLE: Do we have any</p> <p>2 more comments from commissioners or a motion on MUR</p> <p>3 18-07 One Arizona dba Sunlight Arizona?</p> <p>4 Commissioner Chan?</p> <p>5 COMMISSIONER CHAN: Mr. Chairman, I'll make</p> <p>6 a motion that we find reason to believe that there was</p> <p>7 a violation of a statute or rule over which we have</p> <p>8 jurisdiction and authorize the executive director to</p> <p>9 conduct an investigation.</p> <p>10 COMMISSIONER PATON: Second.</p> <p>11 ACTING CHAIRMAN KIMBLE: A motion has been</p> <p>12 made and seconded.</p> <p>13 Any discussion on the motion?</p> <p>14 (No response.)</p> <p>15 ACTING CHAIRMAN KIMBLE: All those in</p> <p>16 favor, say aye.</p> <p>17 (Chorus of ayes.)</p> <p>18 ACTING CHAIRMAN KIMBLE: Anyone opposed?</p> <p>19 (No response.)</p> <p>20 ACTING CHAIRMAN KIMBLE: Motion carries 4</p> <p>21 to 0. Thank you.</p> <p>22 Item VII, public comment, anyone want to</p> <p>23 comment on anything we haven't discussed yet?</p> <p>24 MR. COLLINS: I don't know if I'm allowed</p> <p>25 to take a point of personal privilege here, but Rivko,</p>		

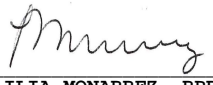
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1 who often publicly comments, has been given an award by  
2 the Protecting Arizona's Families Coalition, which --  
3 as, I think, advocate of the year is, I think the  
4 award.  
5 MS. KNOX: Yeah, more or less.  
6 MR. COLLINS: Yeah. And so I'd just -- as  
7 a matter of my public comment, I just would  
8 congratulate Rivko for her award. And we're always  
9 happy to see her here and proud that she's been  
10 recognized for her advocacy.  
11 MS. KNOX: Thank you.  
12 ACTING CHAIRMAN KIMBLE: Thank you and  
13 congratulations.  
14 MS. KNOX: Thank you.  
15 ACTING CHAIRMAN KIMBLE: Anyone else want  
16 to make any comments?  
17 (No response.)  
18 ACTING CHAIRMAN KIMBLE: Do I hear a motion  
19 to adjourn?  
20 COMMISSIONER CHAN: I'll move that we  
21 adjourn, Mr. Chairman.  
22 COMMISSIONER PATON: I will second.  
23 ACTING CHAIRMAN KIMBLE: Anyone object?  
24 (No response.)  
25 ACTING CHAIRMAN KIMBLE: Okay. We are

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1 adjourned.  
2 Thank you.  
3 (Whereupon, the proceedings concluded at  
4 11:46 a.m.)  
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1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA )  
3 BE IT KNOWN the foregoing proceedings were  
4 taken by me; that I was then and there a Certified  
5 Reporter of the State of Arizona, and by virtue thereof  
6 authorized to administer an oath; that the proceedings  
7 were taken down by me in shorthand and thereafter  
8 transcribed into typewriting under my direction; that  
9 the foregoing pages are a full, true, and accurate  
10 transcript of all proceedings and testimony had and  
11 adduced upon the taking of said proceedings, all done to  
12 the best of my skill and ability.  
13 I FURTHER CERTIFY that I am in no way  
14 related to nor employed by any of the parties thereto  
15 nor am I in any way interested in the outcome hereof.  
16 DATED at Phoenix, Arizona, this 29th day of  
17 September, 2018.  
18   
19  
20 LILIA MONARREZ, RPR, CR #50699  
21  
22  
23  
24  
25

\$				
\$3 (1) 12:6				
A				
abilities (1) 29:10 ability (1) 27:21 able (10) 27:16;28:1,2; 29:25;37:25;55:22; 56:16;65:3;68:10; 96:15 above (1) 12:10 absolute (1) 60:17 absolutely (1) 94:19 absorbing (1) 50:17 accept (3) 57:17,17; 101:13 accepting (1) 32:4 accessible (1) 24:19 accordance (1) 41:5 accounted (1) 56:1 accounts (1) 48:4 accurate (1) 20:7 accused (1) 73:25 across (4) 15:9;39:3; 60:14;61:6 act (6) 28:21;61:24; 65:12;100:20,21,22 ACTING (78) 3:3,18,23, 25;5:4,19;6:1;8:15; 11:4;12:18;13:12,15; 16:9;18:25;19:6,10; 20:6,11,18;21:1,32:10; 33:10;35:13;37:8; 40:10;52:21;54:25; 55:2,11,13,17;56:24; 57:4,10,14,22,25;58:5, 7:59;6:60;4:9;62:14, 18;63:18,21,24;69:19, 24;71:5,10,13,16; 81:17,23;82:6,10;83:4; 89:11,16,19;92:20,25; 93:7;96:18;102:14; 104:20,23;105:1,11,15, 18,20;106:12,15,18,23, 25 action (18) 3:11;4:2; 9:14;10:8,10;13:17; 55:18;58:9;67:13,14; 70:5,14;73:7;76:21; 80:6;81:11;85:2;99:15 actions (1) 90:23 activate (1) 44:16 active (1) 75:24 actively (2) 38:20;42:23 activity (5) 61:4;94:22, 24,25;95:9 actors (1) 60:13 Act's (1) 65:13 actual (3) 22:16;37:1; 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Citizens Clean Elections Commission**

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***MEMORANDUM***

**To: Commissioners**

**From: Thomas Collins, Executive Director and Mike Becker, Policy Director**

**Date: November 8, 2018**

**Subject: Proposed 2019 Calendar Year Budget**

The Commission operates under system of caps that operate on a calendar year basis. We are asking the Commission to approve:

1. the 2019 expenditure cap (\$20,932,604);
2. the 2019 administration and enforcement expenditure cap (\$2,093,260);
3. the 2019 public education (paid media) expenditure cap (\$2,093,260);
4. the projection of 2019 candidate funding disbursements (\$0); and
5. the projection of no excess funds in the Clean Elections Fund in 2019.

**Expenditure Cap on Total Expenses**

In compliance with A.R.S. § 16-949, the Commission projects an expenditure cap for each calendar year for all expenses under the Act, including candidate funding. *Id.* That expenditure cap, in turn, may be exceeded during a four year period so long as the difference is made up by a cap reduction in a subsequent year. *Id.*

**The Commission's projected expenditure cap for 2019 is \$20,932,604 .**

**Specific Categories of Expenses**

The Commission categorizes operating expenses using four categories under the expenditure cap: Administration/Enforcement, Public Education, Voter Education and Candidate Funding. Our overhead costs are apportioned by a 50/50 split between Administration/Enforcement and Voter Education. Personal Services and Employee Related Expenses are apportioned by allocated staff-time between administration/enforcement and voter education responsibilities.

**Administrative/Enforcement**

*The Clean Elections Act ("Act") permits the Commission to spend up to 10 percent of the calendar year expenditure cap for administrative and enforcement costs (A.R.S. §16-949 (B)).* Administrative and Enforcement expenditures are projected at \$1,478,300, 71% of the expenditure cap (\$2,093,260).

**Public Education**

*The Commission may apply up to ten percent of the yearly expenditure cap for reasonable and necessary expense associated with public education, including participation and the purposes of the Act. A.R.S. §16-949 (C).* Public education expenditures are projected at \$2,093,260.

**Voter Education and Implementation of the Act**

*The Commission may make reasonable and necessary expenditures to implement the Act, including expenditures for voter education pursuant to A.R.S. 16-956(A). A.R.S. § 16-949(D) These expenditures are not subject to any cap. Id.* Voter Education and Implementation Expenditures are projected at \$1,213,100.

**Candidate Funding**

Section 16-954(c) provides that the Commission annually project the “amount of clean elections funding for which all candidates will have qualified. . . for the following calendar year.”

There will be no candidate funding in calendar year 2019.

**Other Projections**

The Act provides that the Commission make two projections each year relating to the balance of and availability of funds in the Clean Elections Fund.

Section 16-954(B) provides that the Commission shall project the amount of money that will be collected in the fund over the next four years and the availability of those funds. The statute instructs the Commission to compare that projection to projected expenditures “under the assumption that expected expenses will be at the expenditure limit in § 16-949, subsection A” to determine whether there are “excess monies” in the fund.

This year, staff recommends that the Commission determine that there are no excess monies in the fund. As detailed in the chart below, projected revenue will run about \$54,488,080 below assumed expenses over the next four years.

Calendar Year	2019	2020	2021	2022
Projected Revenue	\$7,013,000	\$7,106,000	\$7,013,000	\$7,166,000
Projected Expenses (Assuming at expenditure limit)	\$20,932,604	\$20,932,604	\$20,932,604	\$20,932,604
Difference	\$(13,919,604)	\$(13,826,604)	\$(13,919,604)	\$(13,766,604)

Section 16-954(C) also provides that the Commission shall annually “announce whether the amount that the [C]ommission plans to spend the following year pursuant to § 16-949[A] . . . exceeds the projected amount of clean elections funding.” The statute continues by stating that if the Commission “determines that the fund contains insufficient monies or the spending cap would be exceeded were all candidates’ accounts fully funded,” then the commission may take steps to adjust the funding available to candidates.

Staff believes that the fund contains sufficient monies to complete funding participating candidates fully without exceeding the expenditure cap, as adjusted for carryover funds as described above. Therefore staff does not recommend that the Commission take steps to adjust candidate funding.

**Citizens Clean Elections Commission  
2019 Admin Expenditure Projections**

1

	2018 Actuals (as of Oct. 1)	2019 Projections
<i>Expenses:</i>		
Personal Services	\$ 213,841	\$ 400,000
ERE	72,188	150,000
Professional & Outside Services		
Attorney General Legal Services	79,150	86,000
External Legal Services	173,801	500,000
Other Professional Outside Services	16,613	200,000
<i>Total Professional &amp; Outside Services</i>	<u>269,564</u>	<u>786,000</u>
Travel-In State	2,103	6,000
Travel Out-of-State	0	3,000
Other Operating Expenditures		
Risk Management Charges	900	900
Other External Data Processing	14,612	60,000
External Telecomm Charges	5,121	3,000
Other External Telecom Service		6,500
Rent Charges to State Agency		27,150
Rental of Other Machinery & Equip		500
Miscellaneous Rent	98	1,000
Internal Acct/Budg/Financial Services	4,250	4,250
Repair & Maintenance - Other Equip	1,885	3,500
Other Repair & Maintenance	1,512	500
Software Support and Maintenance		1,500
Office Supplies	857	3,000
Other Operating Supplies	105	100
Conference, Education & Training Reg.	1,240	3,000
Advertising		5,000
External Printing	126	5,000
Postage & Delivery	508	2,000
Awards	297	300
Dues	308	600
Books Subscriptions & Publications	7,710	10,000
Other Miscellaneous Operating	2	500
<i>Total Other Operating Expenditures</i>	<u>39,531</u>	<u>138,300</u>
Aid to Individual/Organization	1,647	15,000
Capital Equipment		-
Non-Capital Equipment	9,803	20,000
Transfers (other state agencies)	1,648	10,000
<b>Total Expenses</b>	<u><b>\$ 610,325</b></u>	<u><b>1,528,300</b></u>



**Citizens Clean Elections Commission  
2019 Voter Public Education Expenditure Projections**

1

	2018 Actuals(as of Oct. 1)	2019 Projections
<i>Expenses</i>		
Personal Services	\$ 205,777	\$ 400,000
ERE	71,636	150,000
Professional & Outside Services		
Public Ed- Paid Media	341,425	2,093,260
VE - Reister PO 3 ECA 18030	32,831	-
Attorney General Legal Services	76,450	86,000
Other Professional Outside Services	556,672	200,000
<i>Total Professional &amp; Outside Services</i>	<u>1,007,378</u>	<u>2,379,260</u>
Travel-In State	1,773	10,000
Travel Out-of-State	-	5,000
Other Operating Expenditures		
Risk Management Charges	900	900
Other External Data Processing	93,574	150,000
AFIS Usage and Development	857	
External Telecom Charges	5,636	3,000
Other External Telecom Service	-	6,500
Rent Charges to State Agency	-	27,150
Rental of Info Tech Equipment	-	300
Rental of Other Machinery and Equipment	1,590	
Miscellaneous Rent	-	10,000
Internal Acct/Budg/Financial Services	4,250	4,250
Repair & Maintenance - Info Tech PCLAN	-	500
Repair & Maintenance - Buildings	-	500
Repair & Maintenance - Other Equip	1,983	3,500
Other Repair & Maintenance	1,512	
Software Support and Maintenance	-	1,500
Uniforms	-	500
Office Supplies	1,062	2,000
Computer Supplies	102	
Other Operating Supplies	251	1,500
Conference Education & Training Reg.	665	10,000
Advertising	4,800	4,000
External Printing	513,697	15,000
Postage & Delivery	401,538	5,000
Awards	297	
Entertainment & Promo Items	4,695	12,000
Other Miscellaneous Operating	50,187	50,000
Dues	308	500
Books, Subscriptions & Publications	748	2,500

Citizens Clean Elections Commission  
2019 Voter Public Education Expenditure Projections

2

<i>Total Other Operating Expenditures</i>	<u>1,088,652</u>	<u>311,100</u>
Capital Equipment		
Non-Capital Equipment	10,509	26,000
Transfers (other state agencies)	<u>-</u>	<u>25,000</u>
<b>Total Expenses</b>	<b><u>\$ 2,382,891</u></b>	<b><u>3,306,360</u></b>

**Citizens Clean Elections Commission  
Revenue Projections - 4 years**

	2018 Actuals	2019	2020	2021	2022
<b>Revenues</b>					
Court Assessments	\$ 5,856,660	\$ 7,000,000	\$ 7,000,000	\$ 7,000,000	\$ 7,000,000
Commission Assessments	-	3,000	8,000	3,000	8,000
\$5 Tax Donations	-	-	-	-	-
\$5 Candidate Qualifying Contributions	164,605	-	90,000	-	150,000
Miscellaneous	6,903	10,000	8,000	10,000	8,000
<b>Total Revenues</b>	<b>\$ 6,028,168</b>	<b>\$ 7,013,000</b>	<b>\$ 7,106,000</b>	<b>\$ 7,013,000</b>	<b>\$ 7,166,000</b>





Citizens Clean Elections Commission  
 2019 Expenditure Caps  
 A.R.S. §16-949

Expenditure Cap	Amount
Total Expenditure Cap	\$20,932,604
Public Ed Paid Media	\$2,093,260
Admin & Enforcement	\$2,093,260

2018 Tax Filers	Spending Limit Coefficient
2,990,372	\$7



Citizens Clean Elections Commission  
Expenditure Cap Spending and Fund Balance Projection

Calendar Year	Beginning Fund Balance	Revenues	Expenditure Cap	Ending Fund Balance
2015	\$ 24,277,334	\$ 8,212,887	\$ 19,583,662	\$ 12,906,559
2016	\$ 12,906,559	\$ 7,435,198	\$ 19,896,471	\$ 445,285
2017	\$ 445,285	\$ 7,237,500	\$ 20,321,063	\$ (12,638,278)
2018	\$ (12,638,278)	\$ 7,237,500	\$ 20,668,270	\$ (26,069,048)
2019	\$ (26,069,048)	\$ 7,013,000	\$ 20,932,604	\$ (39,988,652)



Citizens Clean Elections Commission  
Expenditure Cap/Excess Funds Projections - 4 years

Calendar Year	Beginning Fund Balance	Projected Revenues	Projected Expenditure Cap	Ending Fund Balance
2019	\$26,808,067	\$7,013,000	\$20,932,604	\$12,888,463
2020	\$12,888,463	\$7,106,000	\$20,932,604	(\$938,141)
2021	(\$938,141)	\$7,013,000	\$20,932,604	(\$14,857,745)
2022	(\$14,857,745)	\$7,166,000	\$20,932,604	(\$28,624,349)



**Citizens Clean Elections Commission**  
**Anticipated Fund Balance Projections - 4 Years**

Calendar Year	Beginning Fund Balance	Projected Revenues	Projected Expenditures	Ending Fund Balance
2019	\$26,808,067	\$7,013,000	\$2,669,400	\$31,151,667
2020	\$31,151,667	\$7,106,000	\$7,435,403	\$30,822,264
2021	\$30,822,264	\$7,013,000	\$2,669,400	\$35,165,864
2022	\$35,165,864	\$7,166,000	\$17,952,764	\$24,379,100





COPPERSMITH  
BROCKELMAN

LAWYERS

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PH. (602) 381-5486  
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2800 North Central Avenue, Suite 1900  
Phoenix, AZ 85004  
CBLAWYERS.COM

September 11, 2018

**Via Email & U.S. Mail**

Eric Spencer  
State Elections Director  
Arizona Secretary of State's Office  
1700 W. Washington Street, 7<sup>th</sup> Floor  
Phoenix, AZ 85007  
[espencer@azsos.gov](mailto:espencer@azsos.gov)

Thomas Collins  
Executive Director  
Arizona Citizens Clean Elections Commission  
1616 W. Adams, Suite 110  
Phoenix, AZ 85007  
[Thomas.Collins@azcleelections.gov](mailto:Thomas.Collins@azcleelections.gov)

**Re: Campaign Finance Complaint Against U.S. Term Limits, Inc.**

Dear Eric & Tom:

On behalf of Chad Campbell, a registered voter in Legislative District 24 ("LD 24"), we write today to file a campaign finance complaint against U.S. Term Limits, Inc. ("U.S. Term Limits"). Specifically, U.S. Term Limits violated A.R.S. §§ 16-925(C), 16-941(D), 16-958, and A.A.C. § R2-20-109(B) by making independent expenditures related to a candidate race in LD 24 without: (1) including the required disclosure on mailers sent to LD 24 voters, and (2) filing independent expenditure reports as required by the Arizona Citizens Clean Elections Act (the "Act").

Based on the facts detailed below, Mr. Campbell respectfully requests that the Secretary of State make a reasonable cause determination against U.S. Term Limits, and further, that the Arizona Citizens Clean Elections Commission (the "Commission") find reason to believe that U.S. Term Limits violated the Act and its implementing regulations.

**Background**

The facts relevant to this Complaint are simple. U.S. Term Limits is a nonprofit corporation registered in the District of Columbia (file number 903439), and its website

**ITEM V - Complaint**

indicates that Suzette Meyers serves as its “Arizona State Director.”<sup>1</sup> As of the date of this letter, it has not filed an independent expenditure report with the Secretary.

On August 25, 2018 – mere days before the primary election – U.S. Term Limits had a series of mailers delivered to voters in LD 24 related to its mission of imposing term limits on members of the United States Congress. The first mailer (the “Pro-Ferrell Mailer”) states that “MARCUS FERRELL AND PRESIDENT OBAMA AGREE” with respect to term limits and urged LD 24 voters to “PLEASE CALL MARCUS FERRELL at (904) 300-6112 and say ‘Thank you for protecting our democracy. THANK YOU FOR SUPPORTING TERM LIMITS.’” [Exhibit 1] The Pro-Ferrell Mailer is clearly sent by U.S. Term Limits, and does not contain a “paid for by” disclosure in any form. [*Id.*]

The second mailer does not mention Mr. Ferrell, but instead attacks Representative Ken Clark, who was one of Mr. Ferrell’s opponents in the Democratic Party’s primary election for representative in LD 24 (the “Anti-Clark Mailer”). [Exhibit 2] It also does not contain a “paid for by” disclosure in any form.

### Discussion

Both the Pro-Ferrell Mailer and Anti-Clark Mailer violate several provisions of Arizona law.

**First**, U.S. Term Limits clearly violated A.R.S. § 16-925(C) by failing to include the disclosure required by A.R.S. § 16-925(A) on either the Pro-Ferrell Mailer or the Anti-Clark Mailer. Both constitute “advertisement[s],” A.R.S. § 16-901(1), given their reference to clearly-identified candidates, their targeting of voters in LD 24, their presentation of those candidates in a favorable or unfavorable light, and the fact that they were mailed and received just three days before the primary election. Cf. A.R.S. § 16-901.01(A)(2).<sup>2</sup>

**Second**, U.S. Term Limits also violated A.R.S. §§ 16-941(D), 16-958, and A.A.C. § R2-20-109(B) by making independent expenditures in a legislative race without filing an independent expenditure report as required by the Act and its implementing regulations. For the reasons described above, both the Pro-Ferrell Mailer and Anti-Clark Mailer constitute “express advocacy” as defined by A.R.S. § 16-901.01(A)(2), and these mass mailings (either individually or collectively) surely exceeded the \$740 threshold that triggered U.S. Term Limits’ obligation to file an independent expenditure report.

---

<sup>1</sup> <https://www.termlimits.com/about/team/>.

<sup>2</sup> With respect to the Pro-Ferrell Mailer, any argument that it was a mere “issue ad” would be nonsensical because Mr. Ferrell did not hold elected office.

Eric Spencer  
Thomas Collins  
September 11, 2018  
Page 3

### Conclusion

We trust that the Secretary and Commission will diligently investigate this matter and agree that U.S. Term Limits violated Arizona law. Please let us know if we can provide any further information as your respective investigations proceed.

Sincerely,

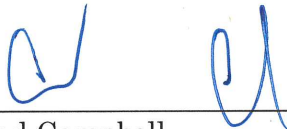


D. Andrew Gaona

DAG:slm  
Enclosures

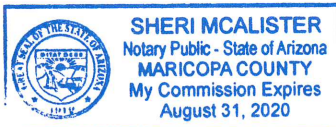
## VERIFICATION

I, Chad Campbell, state that I have read the foregoing "Campaign Finance Complaint Against U.S. Term Limits, Inc. and Marcus Ferrell" (the "Complaint"). To the best of my knowledge, information and belief, the statements made in the Complaint are true and correct.

  
\_\_\_\_\_  
Chad Campbell

STATE OF ARIZONA       )  
                                      :SS.  
County of Maricopa       )

Subscribed and sworn before me this 29th day of August, 2018, by Chad Campbell.



  
\_\_\_\_\_  
Notary Public

# **Exhibit 1**



# MARCUS FERRELL AND PRESIDENT OBAMA AGREE.

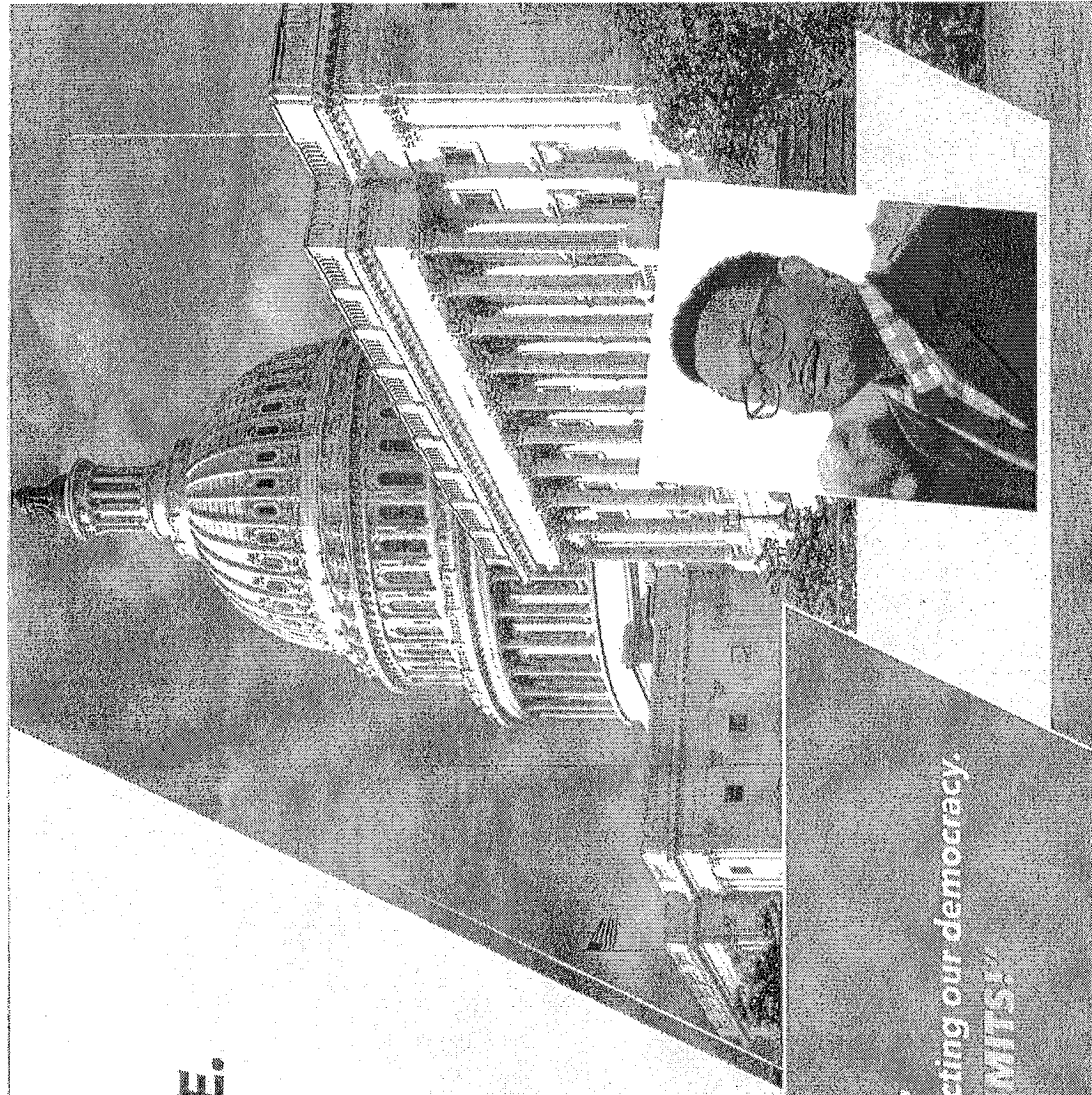
Leaders like President Obama know that politicians who stay in Washington too long can let the people down.

That's why Marcus Ferrell will support legislation to put term limits on members of Congress.

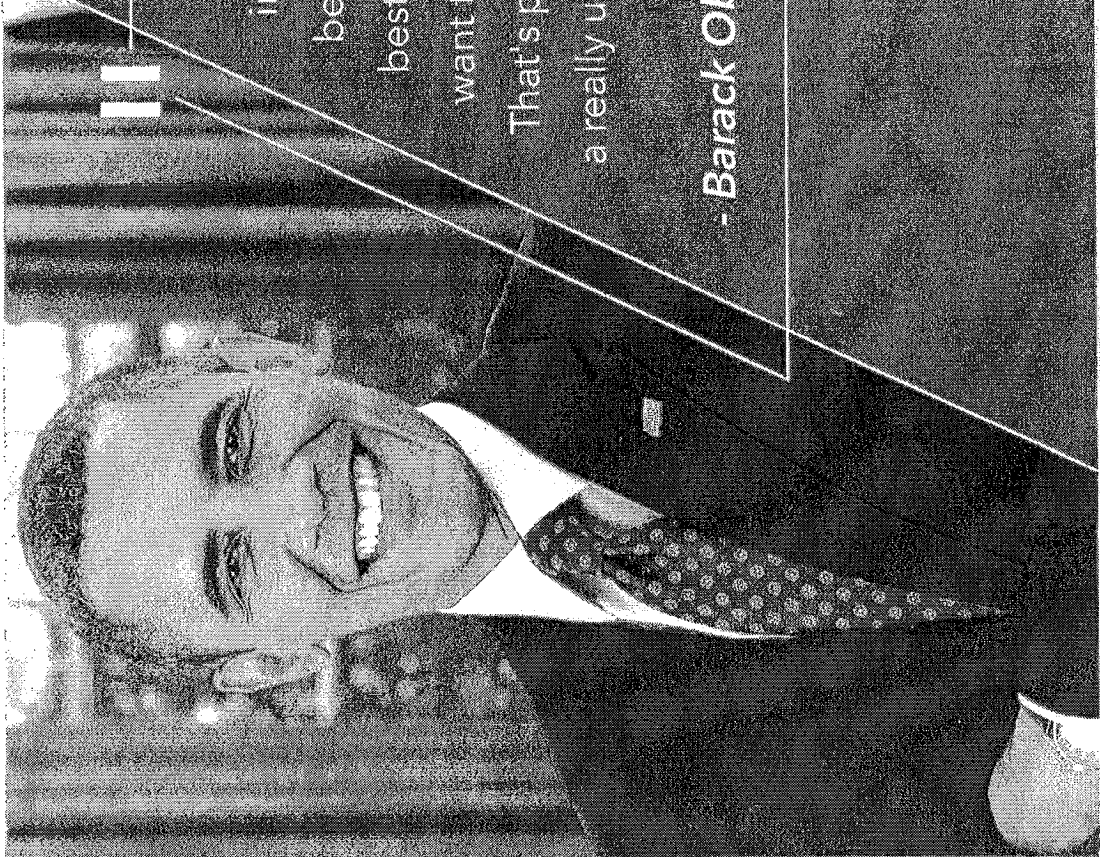
**PLEASE CALL MARCUS FERRELL**

*at (904) 300-6112 and say "Thank you for protecting our democracy.*

**THANK YOU FOR SUPPORTING TERM LIMITS!"**







If you're in power for too long, even with the best of intentions, you become stale and your government becomes stale. Over time, you will not do what's best for the country and the country will suffer. We want to see new voices and new ideas emerge. That's part of the reason why I think term limits are a really useful thing.


- Barack Obama

U.S. Term Limits  
3270 Suntree Blvd, Ste. 201  
Melbourne, FL 32940

Non Profit Org  
US POSTAGE  
PAID  
TSG



# **Exhibit 2**



**“Politicians and diapers  
must be changed often.”**

**- MARK TWAIN**

**U.S. Term Limits**  
3270 Suntree Blvd, Ste. 201  
Melbourne, FL 32940

Non Profit Org  
US POSTAGE  
**PAID**  
TSG



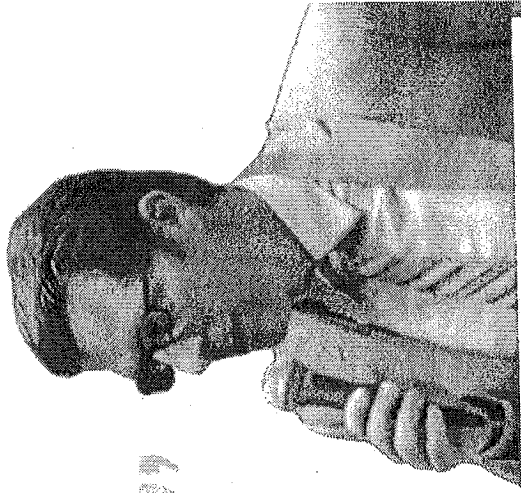
# ...and for the same reason."

We have seen the dysfunction in Washington, DC created by career politicians who are more intent on keeping their seats than finding solutions. We can't afford that broken system any longer.

Ken Clark VOTED AGAINST term limits for Congress, which a scientific poll conducted recently by McLaughlin & Associates found that 82% of Arizona voters support.

Tell Ken Clark: Stop siding with DC career politicians over the people of Arizona. Stop opposing term limits!

Call Ken Clark, let him know you've had enough of career politicians.  
(602) 926-3108      [kenc Clark@azleg.gov](mailto:kenc Clark@azleg.gov)



Roll Call: AZ HCR2024 | 2018

## Term Limits for Congress

Name	Yea	Nay
Rep. Ken Clark [D]		<input checked="" type="checkbox"/>

**STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION**

MUR 18-14

US TERM LIMITS

**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. Background**

On September 11, Chad Campbell (Complainant) filed a Complaint against U.S. Term Limits, Inc., a Washington D.C. based nonprofit (Respondent). The Complaint alleges that on August 25, 2018 Respondent “delivered a series of mailers to voters in LD24 related to its mission of imposing term limits on members of the United States Congress.” Exhibit 1 (Complaint) at 2. One mailer stated that Candidate 1 was for term limits and encouraged recipients to call that Candidate and thank him for supporting term limits. Another mailer was critical of Candidate 2, an incumbent representative seeking reelection for failing to support term limits. It urged recipients to call Candidate 2 at his legislative office and share their disagreement. *Id.* The Complaint alleges, among other things, that Respondent should have filed Clean Elections Independent Expenditure Reports under A.R.S. § 16-941(D) because the mailers were “express advocacy” under A.R.S. § 16-901.01 and cost more than the threshold requiring spending disclosure.

Respondent filed a timely response arguing that the mailers in question were not express advocacy, but rather “classic issue advocacy,” because they have a meaning other than to advocate for or against a candidate. Exhibit 2, (Response) at 3-4.

## II. Legal Background

### *a. Relevant Evidentiary Standard*

At this preliminary stage in Commission proceedings, the Commission need only find that there may be reason to believe that the Respondent has committed a violation of the Act or Rules. Ariz. Admin. Code R2-20-208(A).

### *b. Relevant Legal Standard*

The Clean Elections Act defines expressly advocates, in relevant part as an advertisement

[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).

However, such a communication “shall not be considered as one that expressly advocates merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party or a person who is coordinating with a candidate or candidate's agent.” *Id.* § 16-901.01(B).

The controlling case for reporting under this standard is *Committee for Justice in Fairness v. Arizona Secretary of State's Office (CJF)*, 235 Ariz. 347 (App. 2014). There, the Court held that an advertisement, targeted at the general electorate of a candidate who, while not identified as a candidate for the office sought, was nevertheless unambiguously a candidate for the office sought, run immediately before the election, but criticizing prior actions, did expressly advocate defeat. *Id.* at 354-55 (citing A.R.S. § 16-901(9)).

The U.S. Supreme Court case *Federal Election Commission v. Wisconsin Right to Life (WRTL)*, 551 U.S. 449 (2007) is persuasive authority here. That case dealt with when an absolute ban on express advocacy could be imposed, in the context of the greater scrutiny that absolute bans require. *Id.* at 464-65. That case held that, in order to impose a ban on express advocacy under the then-existing federal standard, the advertisement in question must, objectively be 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 470.

### III. Application

Respondent’s principle argument is based on *WRTL*. In essence, they argue that because the call to action here was to call the two candidates, that is the reasonable alternative meaning of the mailers. Moreover, they argue that they could not have foreseen the results of the primary and that the mailer serves as a “thank you” “and also as a way of potentially buttressing an issue position with the person who may soon hold office” reasons, they argue that have nothing to do with winning the election. Response at 3-4.

The statute, however, requires that there be no other reasonable meaning in “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 opponent” A.R.S. § 16-901(A)(2). Here, both mailers present the candidates in favorable (Candidate 1) and unfavorable (Candidate 2) light. They were targeted at the district, timed close to the election and included statements of the candidates through their positions. Thus under the statute and *CJF* there is not a reasonable alternative meaning. *CJF* at 354-55 Accordingly, under the statute, the

expenditures constituted express advocacy, likely over the threshold reporting amount.<sup>1</sup>

## **Recommendation**

**I recommend the Commission find reason to believe a violation may have been committed.**

After 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).

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<sup>11</sup> Respondent argues, Response at 3-5, that Arizona legislators did not include an electioneering communication definition similar to federal law in the statute. The voters of Arizona who actually approved A.R.S. § 16-901.01 did, however. The legislature later removed it with a 3/4ths vote. Laws 2012, Ch. 257, § 1. While this measure received a 3/4ths vote of the legislature, whether the amendment furthered the purpose of the Clean Elections Act is an open legal question.



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 (3) 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 30th day of October, 2018.

By: S/Thomas M. Collins

---

Thomas M. Collins, Executive Director

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2800 North Central Avenue, Suite 1900  
Phoenix, AZ 85004  
CBLAWYERS.COM

October 10, 2018

**Via Email & U.S. Mail**

Eric Spencer  
State Elections Director  
Arizona Secretary of State's Office  
1700 W. Washington Street, 7<sup>th</sup> Floor  
Phoenix, AZ 85007  
[espencer@azsos.gov](mailto:espencer@azsos.gov)

Thomas Collins  
Executive Director  
Arizona Citizens Clean Elections Commission  
1616 W. Adams, Suite 110  
Phoenix, AZ 85007  
[Thomas.Collins@azccleanelections.gov](mailto:Thomas.Collins@azccleanelections.gov)

18 OCT 12 PM 3:29 CCEC

**Re: CCEC MUR 18-14, Arizona Secretary of State CF-2017-020  
Campaign Finance Complaint Against U.S. Term Limits, Inc.**

Dear Eric & Tom:

Thank you for the opportunity to submit a brief reply in support of Mr. Campbell's campaign finance complaint ("Complaint") against U.S. Term Limits, Inc. ("U.S. Term Limits"). For the reasons set forth in the Complaint and below, we continue to urge the Secretary and the Commission to take enforcement action against U.S. Term Limits, an out-of-state entity that made independent expenditures in Arizona without complying with its laws.

Cathartic as it may be for U.S. Term Limits to label the Complaint as "baseless," "meritless," and "sour grapes," those unnecessary adjectives do nothing to change the undisputed facts. That is, the Pro-Ferrell Mailer and Anti-Clark Mailer (and other mailers sent by U.S. Term Limits in the days leading up to the primary election): (1) related exclusively to primary election candidates, (2) were sent exclusively to voters who were eligible to cast ballots in favor of (or against) those primary election candidates, and (3) were delivered mere days before the August 28, 2018 primary election. And on these facts, U.S. Term Limits' mailers constituted "express advocacy" under A.R.S. § 16-901.01(A)(2).

**ITEM V - Response Gaona**

Under Arizona law, a person or entity engages in “express advocacy” by

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

A.R.S. § 16-901.01(A)(2) (emphasis added). U.S. Term Limits’ response focuses myopically on the “no reasonable meaning other than to advocate the election or defeat of the candidate(s)” language of the statute, all-the-while ignoring the factors that actually inform the analysis of that language. Its silence is telling and dispositive.

The first factor requires an examination of “the presentation of the candidate[] in a favorable or unfavorable light,” and a review of the Pro-Ferrell Mailer and Anti-Clark Mailer in tandem plainly demonstrates that candidate Ferrell was portrayed in a “favorable” light for his apparent support of term limits, and candidate Clark was portrayed in an “unfavorable” light given his opposing view on that issue. Here, the fact that candidate Ferrell was **not** a current officeholder is extremely relevant; after all, there would be **no** need whatsoever for U.S. Term Limits to engage in “issue advocacy” for someone with **no** present authority to effect change on an issue. The mailer was clearly intended to sway voters prior to the election.

The second factor turns on the “targeting, placement or timing of the communication,” all of which weigh in favor of the conclusion that U.S. Term Limits’ mailers are independent expenditures. U.S. Term Limits does not dispute that both mailers were targeted exclusively at voters in LD24 (the district in which both candidates Ferrell and Clark were primary election candidates), and that the mailers were delivered days before the August 28, 2018 primary election. As a consequence, this factor also weighs strongly against U.S. Term Limits. *See Comm. for Justice & Fairness v. Ariz. Sec’y of State’s Office (“CJF”),* 235 Ariz. 347, 354 ¶ 27 (App. 2014) (finding that an ad targeted at a “major portion of the electorate” for a particular office satisfies this factor).

In short, the “only reasonable purpose” for U.S. Term Limits to send these targeted mailers days before the primary elections was to advocate for the election of candidate Ferrell, and the defeat of candidate Clark. *CJF*, 235 Ariz. at 354 ¶ 26. Both mailers were thus “independent expenditures” as defined by Title 16 and the Commission’s rules, and U.S. Term Limits’ failure to include a disclosure statement or file independent expenditure reports violated Arizona law.

Eric Spencer  
Thomas Collins  
October 10, 2018  
Page 3

### Conclusion

We thank the Secretary and the Commission for their careful consideration of this matter, and respectfully request that both pursue enforcement action against U.S. Term Limits to ensure that Arizona's campaign finance laws are dutifully followed by out-of-state interest groups that seek to influence elections in our state.

Sincerely,



D. Andrew Gaona

DAG:slm

cc: Tim La Sota ([tim@timlasota.com](mailto:tim@timlasota.com))  
Attorney for U.S. Term Limits, Inc.

## VERIFICATION

I, D. Andrew Gaona, state that I have read the foregoing Reply in CCEC MUR 18-14 and Arizona Secretary of State CF-2017-020 (the "Reply"). To the best of my knowledge, information and belief, the statements made in the Reply are true and correct.



\_\_\_\_\_  
D. Andrew Gaona

STATE OF ARIZONA       )  
                                      :ss.  
County of Maricopa       )

Subscribed and sworn before me this 10th day of October, 2018, by D. Andrew Gaona.



\_\_\_\_\_  
Notary Public

*Timothy A. La Sota, PLLC*

2198 East Camelback, Suite 305

Phoenix, Arizona 85016

P 602-515-2649

[tim@timlasota.com](mailto:tim@timlasota.com)

September 27, 2018

18 OCT 1 PM 12:04 CCEC

**Via email and U.S. mail to:**

Thomas M. Collins  
Executive Director  
Citizens Clean Elections Commission  
1616 W. Adams, Suite 110  
Phoenix, Arizona 85007  
[thomas.collins@azcleelections.gov](mailto:thomas.collins@azcleelections.gov)

Eric Spencer  
Arizona State Elections Director  
Arizona Secretary of State's Office  
1700 West Washington Street  
Phoenix, Arizona 85007  
[espencer@azsos.gov](mailto:espencer@azsos.gov)

**Re: CCEC MUR 18-14, Arizona Secretary of State CF-2017-020 (U.S. Term Limits)**

Dear Messrs. Collins and Spencer:

This firm represents U.S. Term Limits.

I write in response to the complaint filed on September 11, 2018 against U.S. Term Limits. The complaint was filed by Andrew Gaona on behalf of Chad Campbell and was addressed to both of you.

Mr. Gaona's letter alleged that U.S. Term Limits failed to file a required independent expenditure report with the Citizens Clean Elections Commission and that U.S. Term Limits failed to include required disclosure statements on mailers that it sent out, in violation of A.R.S. §§ 16-925, 16-941, 19-958, and A.A.C. § R2-20-109(B). [Letter from D. Andrew Gaona to Thomas Collins and Eric Spencer, September 11, 2018].

U.S. Term Limits responds as follows to these baseless allegations. In short, the mailers do not trigger reports and are not required to have a statutorily prescribed disclaimer because they do not constitute express advocacy under the law.

**Background**

Because it is relevant in the context of the complaint that has been filed, as well as this response, I wanted to provide you with some background on U.S. Term Limits.

U.S. Term Limits has been recognized as a tax-exempt organization by the Internal Revenue Service since 1991. It is not an entity that sprung up yesterday. U.S. Term Limits exists for one reason—to enact term limits for elected officials at every level of government in the United

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States. U.S. Term Limits does not try to elect Republicans or Democrats. As if to underscore the nonpartisan nature of U.S. Term Limits, in the mailers that Mr. Campbell filed his complaint about, one Democrat is mentioned who supports term limits, and another Democrat is mentioned who does not support term limits.

U.S. Term Limits' efforts in Arizona, and elsewhere, are limited to issue advocacy.

**The mailers at issue were not independent expenditures under A.R.S. §§ 16-901(31) and 16-901.01 because the mailers are clearly susceptible to an interpretation other than as an appeal to vote for Mr. Ferrell or against Mr. Clark**

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

- (a) Expressly advocates the election or defeat of a clearly identified candidate.
- (b) Is not made in cooperation or consultation with or at the request or suggestion of the candidate or the candidate's agent"<sup>1</sup>.

A.R.S. § 16-901(31).

Under Arizona law, "expressly advocates" is defined as:

1. Conveying a communication containing a phrase such as "vote for," "elect," "reelect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject" or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
2. Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the communication or the inclusion of statements of the candidate(s) or opponents.

A.R.S. § 16-901.01.

The mailers did not expressly advocate under the first part of subsection (1) because they contained none of the enumerated phrases of advocacy for election or defeat.

Both the second part of subsection (1), and subsection (2), describe communications "that in context can have no reasonable meaning other than to advocate the election or defeat of" a candidate. And the mailers do not constitute express advocacy under this part of the statute

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<sup>1</sup> Subpart (b) defines when a qualifying expenditure is truly "independent" and is not at issue here.



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because the mailers clearly have a reasonable meaning other than to advocate the election of a candidate. That is, they are classic issue advocacy—they advocate for the issue of imposing term limits on politicians.

The United States Supreme Court case of *FEC v. Wisconsin Right to Life* is on point. 127 S.Ct. 2652, 2667, 551 U.S. 449, 470 (2007). *Wisconsin Right to Life* dealt with an ad that the FEC claimed was express advocacy, but Wisconsin Right to Life claimed was issue advocacy. The Supreme Court proceeded to enunciate the legal standard for determining if an ad is express advocacy, and examine whether the ad met this standard:

In light of these considerations, a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. Under this test, WRTL's [Wisconsin Right to Life's] three ads are plainly not the functional equivalent of express advocacy. First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.

127 S.Ct. at 2667, 551 U.S. at 470.

Turning to the mailers produced by U.S. Term Limits, the Supreme Court could just as easily have been talking about U.S. Term Limits' mailers in the block quote above—the ads “focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter.” In addition, the mailers’ “content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.”

It is true that one of the persons mentioned, Ken Clark, is a member of the Legislature and was a candidate for reelection at the August primary. But election time is when elected officials listen to constituents the most, when the public pays the most attention, and when issue ads are most effective. *McConnell v. Federal Election Commission*, 251 F.Supp.2d 176, 306. (D.D.C. 2003).

It is also true that Mr. Ferrell was not an elected official at the time the mailer was sent, a point that Mr. Gaona made in the complaint letter. But the Arizona statutes cited above, in defining “expressly advocate”, all speak in terms of “candidates”, not elected officials. Mr. Gaona cites no law for why a line should be drawn between what is said about an elected official-candidate, and what is said about a non-elected official candidate. Nor could he—there is no legal support for this distinction.



In addition, U.S. Term Limits is not a soothsayer and did not know in advance of the primary election which candidates would emerge victorious. It is also true that candidates have been known to forget their promises after securing election—providing a reminder of a promise serves both as a thank you and also as a way of potentially buttressing an issue position with the actual candidate who may soon hold office—two things that have nothing to do with actually winning an election.

It should also be noted that with a regulation of speech on matters of public concern, the First Amendment requires that the benefit of any doubt must be given to “protecting rather than stifling speech.” *Wisconsin Right to Life, Inc.*, 551 U.S. at 469. The mailers here share all of the specific hallmarks mentioned by the Supreme Court in finding that the ad at issue in *Wisconsin Right to Life* was not express advocacy. As such, the mailers do not constitute “express advocacy”, and thus are not subject to disclosure and reporting requirements.

**Arizona has declined to follow the federal government and other states in regulating anything constituting an “electioneering communication.”**

While U.S. Term Limits’ mailers clearly fall into the category of issue advocacy, in some cases it can be difficult to distinguish between issue and express advocacy. For this reason, the United States Congress, as well as some states, have adopted a regulation that applies not just to “express advocacy”, but to any “electioneering communication.” *See, e.g.*, 52 United States Code Annotated § 30104; Montana Code Annotated § 13–1–101 *et seq.*, Colorado Revised Statutes §§1-45-1-101 to 118. In these jurisdictions, “electioneering communications” are subject to disclosure requirements and reporting.

The federal law on this point defines “electioneering communication” as:

any broadcast, cable, or satellite communication which--  
(I) refers to a clearly identified candidate for Federal office;  
(II) is made within--  
(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or  
(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and  
(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

52 U.S.C.A. § 30104(f)(3)(A)(i).

These “electioneering communication” statutes were clearly enacted “[t]o capture...issue ads.” *Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 299 F.Supp.3d 83, 87 (D.D.C. 2018). And the power of a governmental entity to impose reporting and disclosure requirements has been upheld by the United State Supreme Court. *Citizens United v. Federal Election Commission*, 558 U.S. 310, 369, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010).

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In Arizona, our elected leaders have decided not to pass something requiring all “electioneering communications” to be regulated. Had they adopted the federal definition, U.S. Term Limits’ mailers might fall into it. But they have not adopted this approach. In Arizona, the line between express advocacy and issue advocacy remains the line between what is regulated and what is not. There is no category for “electioneering communications,” and U.S. Term Limits’ mailers clearly fall into the category of issue advocacy.

#### **Subsequent issue advocacy in Arizona**

U.S. Term Limits may well engage in further issue advocacy in Arizona. To avoid frivolous complaints such as the one filed by Mr. Campbell, we may choose to adhere to campaign finance disclosure and reporting laws in the future. This should not be construed as admission that these legal requirements apply.

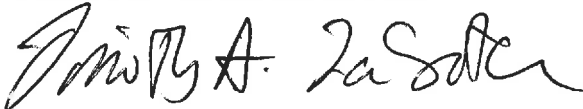
#### **Conclusion**

The complaint submitted against U.S. Term Limits is simply sour grapes emanating from an ally of an unsuccessful candidate for office. The mailers are clearly susceptible the interpretation that they are intended to advocate for the “issue” of term limits, and that ends the inquiry. The fact that someone might also draw a negative or positive view of a candidate is immaterial.

For these reasons, we ask that you take no enforcement action.

Very truly yours,

**TIMOTHY A. LA SOTA PLC**

A handwritten signature in black ink, appearing to read "Timothy A. La Sota". The signature is fluid and cursive, with the first name "Timothy" and last name "La Sota" clearly distinguishable.

Timothy A. La Sota

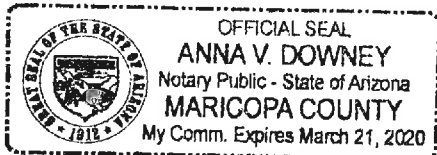
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### VERIFICATION

I, Timothy A. La Sota, state that I have read the foregoing Response to Chad Campbell's Complaint against U.S. Term Limits, Inc. To the best of my knowledge, information and belief, the statements made in the Response are true and correct.

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

Subscribed and sworn before me this 27<sup>th</sup> day of September, by Timothy A. La Sota.



  
Notary Public

## **Citizens Clean Elections Commission Report**

To: Commissioners

From: Clean Elections Staff

Subject: 2019 State Legislative Agenda

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The purpose of this report is to outline the Commission's legislative agenda for the 2019 Arizona State Legislature Regular Session. After approval by the Commission, the agenda will provide guidance to Commission staff respecting the Commission's goals for the session. The session begins in January.

Staff will continue to brief the Commission, as it has in the past, on developments in the Legislature during the session. The Commission is expressly authorized to make recommendations on changes in law. A.R.S. § 16-956.

### **Principles and Priorities**

Staff recommends that the Commission endorse the following principles and priorities for the session.

Oppose efforts to defund, eliminate or limit the Citizens Clean Elections Act and/or the Commission. Over several sessions, members of the legislature have proposed measures that seek to defund, eliminate or limit the authority of the Act or the Commission itself. The Commission has historically opposed these efforts on the grounds that they are typically poorly constructed, misleading or otherwise ill-considered. Staff recommends the Commission oppose legislation (in whatever

form) that seeks to defund, eliminate, or limit the CCEA and/or Commission.

This session, staff anticipates one or more bills that will invade the Commission's authority and likely violate the Voter Protection Act's terms requiring that amendments to the Act advance the purpose of the underlying Act.

- Superseding 16-941(D), -942(B) and 16-901.01: Legislation may be considered that requires independent expenditure reports virtually identical to those in 16-941(D) at all levels, including a redundant report at the state level. Likewise a supervening of A.R.S. 16-901.01 is possible. The VPA expressly prohibits superseding legislation without a three-fourths vote and without furthering the purpose of the act. Ariz. Const. Art. 1, Pt. 1, § 1(14).
- Limiting enforcement: The Legislature cannot, consistent with the Constitution, enact legislation that limits the power of the Commission to enforce the Act or purport to make portions of the Act ineffective. This includes the power of the Commission to make rules governing the enforcement of the Act and production, distribution and development of Voter Education and other Clean Elections programs.
- Monitor Expanding the Elections Procedures Manual: We will closely and carefully monitor the development of the next Elections Procedures Manual. It is not clear (and will not be for some time) whether an upcoming draft of the manual will lead to potential legislative changes or their scope.

- Monitor Proposed Legislation Regarding Current Campaign and Election Laws: The Legislature continues to expand, contract, and tweak current campaign finance and election related laws. Staff will continue to monitor and support and/or oppose each action as it is introduced.

Support Improvements to Voter Education and Access. The Commission has supported efforts to enhance voter education and participation through legislation that advances the anti-corruption and public participation values that undergird the Act. Staff recommends the Commission express its support for legislation that advances these aims.



## **NOTICE OF PUBLIC MEETING AND POSSIBLE EXECUTIVE SESSION OF THE STATE OF ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION**

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**Location:**       Citizens Clean Elections Commission  
                      1616 West Adams, Suite 110  
                      Phoenix, Arizona 85007

**Date:**            Thursday, November 8, 2018

**Time:**           9:30 a. m.

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Elections Commission and the general public that the Citizens Clean Elections Commission will hold a regular meeting, which is open to the public on November 8, 2018. This meeting will be held at 9:30 a.m., at the Citizens Clean Elections Commission, 1616 West Adams, Suite 110, Phoenix, Arizona 85007. The meeting may be available for live streaming online at [www.livestream.com/cleanelections](http://www.livestream.com/cleanelections). Members of the Citizens Clean Elections Commission will attend either in person or by telephone, video, or internet conferencing.

The Commission may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item listed on the agenda, pursuant to A.R.S. § 38-431.03 (A)(3). The Commission reserves the right at its discretion to address the agenda matters in an order different than outlined below.

**All matters on the agenda may be discussed, considered and are subject to action by the Commission.**

**Possible action on any Matter Under Review (MUR) identified in this agenda may include authorizing or entering into a conciliation agreement with subject of the MUR, in addition to any other actions, such as finding reason to believe a violation has occurred, finding probable cause to believe a violation has occurred, applying penalties, ordering the repayment of monies to the Clean Elections Fund, or terminating a proceeding.**

The agenda for the meeting is as follows:

- I.       Call to Order.
- II.      Discussion and Possible Action on Commission Minutes for September 27, 2018 meeting.
- III.     Discussion and Possible Action on Executive Director's Report.
- IV.     Discussion and Possible Action on Calendar Year 2019 Budget and Related Matters.
- V.      Discussion and Possible Action on MUR 18-14, US Term Limits.
- VI.     Discussion and Possible Action on 2019 Legislative Agenda.

VII. Discussion and Possible Action on Selection of Chairman for 2019

VIII. Public Comment

This is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism

IX. Adjournment.

This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission's office, 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

Dated this 2<sup>nd</sup> day of November, 2018.

Citizens Clean Elections Commission

Thomas M. Collins, Executive Director

Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Commission at (602) 364-3477. Requests should be made as early as possible to allow time to arrange accommodations.



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THE STATE OF ARIZONA

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CITIZENS CLEAN ELECTIONS COMMISSION

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REPORTER'S TRANSCRIPT OF PUBLIC MEETING

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Phoenix, Arizona

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September 27, 2018

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9:32 a.m.

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## **ITEM II - MINUTES**

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COASH & COASH, INC.

22

Court Reporting, Video & Videoconferencing  
1802 North 7th Street, Phoenix, AZ 85006  
602-258-1440      staff@coashandcoash.com

23

24

Prepared by:

25

LILIA MONARREZ, CSR, RPR  
Certificate No. 50699

**Coash & Coash, Inc.**

**602-258-1440**

**www.coashandcoash.com**

<p style="text-align: right;">Page 2</p> <p>1 PUBLIC MEETING BEFORE THE CITIZENS CLEAN 2 ELECTIONS COMMISSION convened at 9:32 a.m. on September 3 27, 2018, at the State of Arizona, Clean Elections 4 Commission, 1616 West Adams, Conference Room, Phoenix, 5 Arizona, in the presence of the following Board members: 6 Mr. Mark S. Kimble, Acting Chairperson 7 Mr. Damien R. Meyer (Telephonic) 8 Ms. Amy B. Chan 9 Mr. Galen D. Paton 10 11 OTHERS PRESENT: 12 Thomas M. Collins, Executive Director 13 Paula Thomas, Executive Officer 14 Gina Roberts, Voter Education Director 15 Mike Becker, Policy Director 16 Alec Shaffer, Web Content Manager 17 Stephanie Cooper, Executive Support Specialist 18 Fanessa Salazar, Administrative Assistant 19 Mary O'Grady, AZ Attorney General's Office 20 Rivko Knox, AZ League of Women Voters 21 Talei Hornback, RIESTER 22 Ryan Wheelock, RIESTER 23 James Barton, One Arizona 24 Morgan Dick, AZAN 25 Lindsay Cheatham, RIESTER Mike Liburdi, Greenberg Traurig Zack Dean, AZ Senate</p>	<p style="text-align: right;">Page 4</p> <p>09:33:26-09:34:48</p> <p>1 unanimously. 2 Number III, discussion and possible action 3 on the executive director's report. 4 Mr. Collins? 5 MR. COLLINS: Yes. Mr. Chairman, 6 Commissioners, real quick, the first thing I wanted to 7 mention and -- you know, is that we'll be losing 8 Stephanie on October 5th, but Stephanie has gotten an 9 excellent new position at the -- with the Pinal County 10 elections department where she'll be the elections 11 supervisor. 12 She'll be working directly with the 13 elections director there, Michele Forney, who some 14 of -- some of you know was a longtime assistant AG in 15 elections. And she'll oversee the administration 16 elections, including ballot creation, tabulation, 17 managing the permanent staff and ensuring compliance 18 with election laws and procedures. 19 So this is a really great opportunity for 20 Stephanie. We're sad to see her go, but we're really 21 proud to see that she's going to have the opportunity 22 to move up and into such a great role in Pinal County. 23 So, you know, we have -- so I just wanted you to be 24 aware. We will hopefully be -- we'll hopefully make it 25 from October 5th to November -- sometime in November,</p>
<p>09:32:21-09:33:24</p> <p style="text-align: right;">Page 3</p> <p>1 PROCEEDING 2 3 ACTING CHAIRMAN KIMBLE: Good morning. I'm 4 going to call to order the September 27th, 2018, 5 meeting of the Citizens Clean Elections Commission. 6 I'm Commissioner Mark Kimble. Chairman Damien Meyer 7 is -- has a conflict. He may be calling in later 8 today, later during the meeting. Until then, we'll 9 carry on with Commissioner Paton and Commissioner Chan. 10 Item II on the agenda, discussion and 11 possible action on Commission minutes for the 12 July 19th, 2018 meeting. 13 Are there any corrections or additions to 14 the minutes? If not, can we have a motion? 15 COMMISSIONER CHAN: I would move that we 16 approve the minutes as written. 17 COMMISSIONER PATON: Second. 18 ACTING CHAIRMAN KIMBLE: It's been moved 19 and seconded that we approve the minutes for the 20 meeting of July 19th, 2018. 21 All in favor, say aye. 22 (Chorus of ayes.) 23 ACTING CHAIRMAN KIMBLE: Any opposed? 24 (No response.) 25 ACTING CHAIRMAN KIMBLE: Passed</p>	<p>09:34:52-09:35:54</p> <p style="text-align: right;">Page 5</p> <p>1 but we'll be sad to see her go. And I don't know if 2 anyone -- if any of you have any comments about that, 3 obviously. 4 ACTING CHAIRMAN KIMBLE: Well, just 5 speaking for myself, I'm very sorry to see you go, 6 Stephanie. I know this is an outstanding career 7 opportunity, but nonetheless, it's going to be very 8 difficult to replace you here at Clean Elections. 9 COMMISSIONER CHAN: Mr. Chairman, I'd just 10 like to echo that. It's been wonderful having you in 11 the office, and it was too short of a time, but I'm 12 really happy for you to go out and really get some 13 hands-on election experience. And, I guess, I can 14 understand the timing. I think that's the entire early 15 voting period is what they're bringing you in for. So 16 it will be a very exciting time for you. So best 17 wishes. 18 MS. COOPER: Thank you. 19 ACTING CHAIRMAN KIMBLE: Commissioner 20 Paton? 21 COMMISSIONER PATON: And thank you for all 22 your help. You personally helped me and my harebrained 23 ideas to go to Tucson a lot, and I appreciate it. And 24 good luck to you in the future. 25 MS. COOPER: Thank you.</p>

09:35:55-09:37:03	Page 6	09:38:00-09:39:02	Page 8
<p>1 ACTING CHAIRMAN KIMBLE: Thank you and best</p> <p>2 of luck.</p> <p>3 Tom?</p> <p>4 MR. COLLINS: The Voter Education Guide is</p> <p>5 arriving beginning October 4th. We got our bulk</p> <p>6 mailing yesterday. The digital version is available on</p> <p>7 the Clean Elections website and, of course, if voters</p> <p>8 want to tailor their viewing to their -- to their own</p> <p>9 district, they can go to our Voter Dashboard on the</p> <p>10 website and use their address and get their candidate</p> <p>11 information that way.</p> <p>12 We're in the process of still -- we're in</p> <p>13 the height of debate season. We've had debates both</p> <p>14 statewide and local legislative this week and last week</p> <p>15 and next week and next week after that. Gina will talk</p> <p>16 some more about debates in the voter education</p> <p>17 discussion. So I don't want to dwell too much on that.</p> <p>18 Now -- although we did have the gubernatorial debate on</p> <p>19 Monday, and I thought that was -- I thought that was --</p> <p>20 I thought it was a very successful event.</p> <p>21 We participated in the National Voter</p> <p>22 Registration Day --</p> <p>23 COMMISSIONER CHAN: Can I --</p> <p>24 MR. COLLINS: Sure.</p> <p>25 COMMISSIONER CHAN: Mr. Chairman, can I</p>		<p>1 was a really nice way to, kind of, break it down. And</p> <p>2 I even posted on my Facebook page if you didn't have an</p> <p>3 hour to watch the governor's debate, check it out; this</p> <p>4 is a ten-minute breakdown with some seasoned</p> <p>5 professionals.</p> <p>6 So thank you for doing that.</p> <p>7 MR. COLLINS: No problem.</p> <p>8 COMMISSIONER CHAN: I think that was a</p> <p>9 fabulous idea. And I think being an election nerd, to</p> <p>10 me that's just as good as any sporting event would be</p> <p>11 for an athletic, you know, sporting aficionado. So I</p> <p>12 hope it will pull some more people into the election</p> <p>13 nerd world who maybe wouldn't normally participate.</p> <p>14 MR. COLLINS: Well, thank you.</p> <p>15 ACTING CHAIRMAN KIMBLE: Okay.</p> <p>16 MR. COLLINS: Meanwhile, I mean, we -- just</p> <p>17 as you can see through the voter education section</p> <p>18 here, I mean, we're throughout -- we're around the</p> <p>19 state. You know, we have the Take Flight mural which</p> <p>20 is -- which has really become more -- has already taken</p> <p>21 on, I think, more significance than -- timeless</p> <p>22 significance than the 18 in 2018 Campaign of which that</p> <p>23 is part of. You know, I think it's been launched in</p> <p>24 the -- at MCC and SCC. We have a portal version we</p> <p>25 displayed in Flagstaff yesterday.</p>	
09:37:03-09:37:58	Page 7	09:39:04-09:40:42	Page 9
<p>1 just interrupt?</p> <p>2 I'm sorry, Tom.</p> <p>3 MR. COLLINS: Yeah, sure.</p> <p>4 COMMISSIONER CHAN: I don't want to disrupt</p> <p>5 your flow, but I just wanted to say that sometimes I</p> <p>6 can't watch the debates just when they're happening.</p> <p>7 And so I really appreciate having them online, but I</p> <p>8 know for the -- and I don't know if it happened for any</p> <p>9 of the other debates, but definitely for the</p> <p>10 gubernatorial debate, we had a preshow on our Facebook</p> <p>11 Live. I think it was -- and I don't know. Maybe on</p> <p>12 our website. I was looking at it on Facebook, I think,</p> <p>13 and a post show as well.</p> <p>14 So Tom gave everybody, kind of, a tour of</p> <p>15 the PBS studio just for a few minutes. It wasn't too</p> <p>16 long. And I was very impressed with his television</p> <p>17 presence, actually, a very nice job. So I wanted to</p> <p>18 just let everybody know that; that if you missed it, it</p> <p>19 was fabulous. And then the post show was with a</p> <p>20 gentleman named Billy?</p> <p>21 MR. COLLINS: Yes, Billy Robb.</p> <p>22 COMMISSIONER CHAN: -- Billy Robb, who has</p> <p>23 a podcast, and he and Tom, kind of, did a postmortem of</p> <p>24 the gubernatorial debate. So it was a 10-minute</p> <p>25 breakdown of the hour-long session, and I thought it</p>		<p>1 Gina and Alec have been to -- we were out</p> <p>2 at Glendale and then everybody was out at ASU or Alec</p> <p>3 and Gina and Steff were out at ASU. I was in Flagstaff</p> <p>4 yesterday. The -- so we're -- and then we're out at</p> <p>5 the debates. So it's a very busy voter education</p> <p>6 schedule, and -- and Gina will talk, as I say, more</p> <p>7 about the details of that in the next agenda item.</p> <p>8 The last thing I want -- the last two</p> <p>9 things I wanted to note, one, former Secretary Bennett</p> <p>10 failed to qualify for Clean Elections funding, and</p> <p>11 under our rules, he's not a participating candidate at</p> <p>12 this point. He had a couple of complaints filed</p> <p>13 against him. We don't, at this point, anticipate</p> <p>14 further action on those complaints because -- because</p> <p>15 they relate to issues that, you know, while they might</p> <p>16 exist for other folks, wouldn't -- wouldn't be of any</p> <p>17 issue to us, him having failed to qualify.</p> <p>18 I will say that since I wrote this part of</p> <p>19 the report, we got an email from Mr. Bennett indicating</p> <p>20 he's exploring the options he -- whatever options he</p> <p>21 thinks may exist to talk to the Secretary and the</p> <p>22 County Recorders about remedy to be -- remedying his --</p> <p>23 his shortfall, but just to give you a sense, he filed</p> <p>24 slightly less than 100 more than the minimum and he</p> <p>25 came in at, I think, 38/78 in terms of qualified</p>	

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<p>1 contributions that were verified by the county</p> <p>2 recorders around the state. It's actually a really</p> <p>3 good percentage, but given the number of how low the</p> <p>4 amount of qualifying contributions he had obtained in</p> <p>5 the first place, it was a -- it was an uphill battle.</p> <p>6 The last two things, just in case you</p> <p>7 didn't -- it seemed kind of buried, we're working with</p> <p>8 the Legacy Foundation Action Fund to resolve things at</p> <p>9 the Superior Court level so that they can appeal</p> <p>10 following the dismissal of their action against us and</p> <p>11 the denial of their motion to dismiss our collections</p> <p>12 suit.</p> <p>13 And then on October 3rd, next week, the</p> <p>14 Arizona Advocacy Network, et al.'s, lawsuit against</p> <p>15 Secretary Reagan, the Commission and the Governor's</p> <p>16 Regulatory Review Council will have oral arguments.</p> <p>17 Those were originally set for -- I think they were set</p> <p>18 for the 13th and they -- we have a new judge now, and</p> <p>19 now the oral argument is set for October 3rd. So let</p> <p>20 me know if you want other details about that.</p> <p>21 You also have -- Mike has put together an</p> <p>22 update on where we are in terms of our budget through</p> <p>23 September 1st. Let me know if you have any questions</p> <p>24 about -- about that. And -- or, actually, let Mike</p> <p>25 know.</p>		<p>1 as you can see, we've -- the number has gone down, but</p> <p>2 it always goes down during election season.</p> <p>3 COMMISSIONER PATON: Right, because you're</p> <p>4 putting --</p> <p>5 MR. BECKER: Because we're putting out over</p> <p>6 \$3 million for candidates.</p> <p>7 COMMISSIONER PATON: Okay.</p> <p>8 MR. BECKER: So the numbers are fine. In</p> <p>9 the second -- when it comes to the revenues, the</p> <p>10 average monthly revenue is actually above where we had</p> <p>11 anticipated it being. So that's a good sign. And we</p> <p>12 didn't have the number of candidates in terms of the</p> <p>13 statewide candidates -- Governor, Secretary of State,</p> <p>14 Attorney General -- that we thought we might have. So</p> <p>15 that has saved us some funds as well. So we're in fine</p> <p>16 shape.</p> <p>17 COMMISSIONER PATON: So -- can I continue?</p> <p>18 ACTING CHAIRMAN KIMBLE: Yes.</p> <p>19 COMMISSIONER PATON: So the thing -- the</p> <p>20 thing about the courts, our deal with the courts, has</p> <p>21 that made things better? Is that why it's gone up a</p> <p>22 little bit, our revenues?</p> <p>23 MR. BECKER: Commissioner -- Mr. Chairman,</p> <p>24 Commissioner Paton, that I don't know. I don't know</p> <p>25 the exact numbers. Those come sporadically throughout</p>	
09:42:18-09:43:26	Page 11	09:44:28-09:46:12	Page 13
<p>1 And so that's, kind of -- that's, kind</p> <p>2 of -- that's, kind of -- that's it, unless you have</p> <p>3 questions on the executive director's report.</p> <p>4 ACTING CHAIRMAN KIMBLE: Any questions for</p> <p>5 Tom?</p> <p>6 COMMISSIONER PATON: So you're going to --</p> <p>7 Mike is going to speak about the budget?</p> <p>8 MR. COLLINS: Well, he's available for</p> <p>9 questions if you have any. We try to keep the memo</p> <p>10 pretty short and -- short and sweet.</p> <p>11 MR. PATON: I was just wondering, could you</p> <p>12 just speak? I know before we had somebody explain, you</p> <p>13 know, how those budgets work. And I just want to know,</p> <p>14 basically, are we in danger of depleting this too much</p> <p>15 and all that.</p> <p>16 MR. COLLINS: No.</p> <p>17 COMMISSIONER PATON: I guess I didn't</p> <p>18 really have a specific question. Could you explain</p> <p>19 this to a laymen, really?</p> <p>20 COMMISSIONER CHAN: Mr. Chairman, that is a</p> <p>21 good question, actually, since that has been a concern.</p> <p>22 MR. BECKER: Mr. Chairman, Commissioner</p> <p>23 Paton, no, we -- the budget is fine. We're in -- we're</p> <p>24 in good shape. As you can see, in the first example,</p> <p>25 we talk -- we're talking about the fund balance. And</p>		<p>1 the year. So it's hard to figure out exactly where we</p> <p>2 are versus where we were last year until the end of the</p> <p>3 year when we can really assemble everything and look at</p> <p>4 it as a whole.</p> <p>5 COMMISSIONER PATON: Okay.</p> <p>6 MR. BECKER: So -- and we're working with</p> <p>7 several other people in the department of</p> <p>8 administration that helps us with the budget, and so</p> <p>9 we'll be working with them at the end of the year to</p> <p>10 get a full view of everything that's been going on.</p> <p>11 COMMISSIONER PATON: Okay. Thank you.</p> <p>12 ACTING CHAIRMAN KIMBLE: Any other</p> <p>13 questions on the executive director's report?</p> <p>14 (No response.)</p> <p>15 ACTING CHAIRMAN KIMBLE: Thank you, Mike</p> <p>16 and Tom.</p> <p>17 Item IV, discussion and possible action on</p> <p>18 Clean Elections Voter Education.</p> <p>19 Gina?</p> <p>20 MS. ROBERTS: Do you see the clicker over</p> <p>21 there, Paula?</p> <p>22 MS. THOMAS: Is this the one?</p> <p>23 MS. ROBERTS: Yeah, I'll try that.</p> <p>24 Okay. Mr. Chairman, Commissioners, good</p> <p>25 morning.</p>	

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<p>1 What we have for you today is a recap of</p> <p>2 the efforts that the Commission has undertaken with</p> <p>3 regards to the primary election, specifically about</p> <p>4 voter education and outreach.</p> <p>5 Okay. Let's see. Let's just do this.</p> <p>6 Okay.</p> <p>7 So to start off, I'll go over some numbers</p> <p>8 of the turnout from the primary, which was held on</p> <p>9 August 28th. So you can see the voter registration</p> <p>10 figures, those are the number of voters who were</p> <p>11 actually eligible to participate in the primary. So we</p> <p>12 had about 3.3 million voters, and the turnout ended up</p> <p>13 being 33.26 percent. So if you take a look at the</p> <p>14 graph over on the right, that's a graph that we pulled</p> <p>15 from our voter crisis summary and, basically, it just</p> <p>16 breaks down the percentage of turnouts over the years.</p> <p>17 And, you know, while 33 percent may not</p> <p>18 seem like a great number, it actually broke records.</p> <p>19 So we are very proud that the -- you know, we're in the</p> <p>20 right direction in terms of voter turnout. So it's</p> <p>21 really exciting to see that, you know, it was a 22</p> <p>22 percent increase from the 2016 primary. So definitely</p> <p>23 headed in the right direction, plus, you know, we are</p> <p>24 also in the midterms. So you would typically see the</p> <p>25 turnout even less than, you know, in a presidential</p>		<p>1 and running.</p> <p>2 So that has been receiving some news</p> <p>3 coverage. I just wanted to bring that point out to the</p> <p>4 Commission to let you know that's one of the issues</p> <p>5 that voters experienced on election day. Our staff, we</p> <p>6 did receive inquiries and phone calls about that. So</p> <p>7 we assisted voters as best we could.</p> <p>8 COMMISSIONER CHAN: Mr. Chairman?</p> <p>9 ACTING CHAIRMAN KIMBLE: Commissioner Chan.</p> <p>10 COMMISSIONER CHAN: Gina, I just wanted to</p> <p>11 ask -- and I don't know if you have this information,</p> <p>12 but this is anecdotal. It was just one of my friends,</p> <p>13 but she posted on Facebook on election day that she was</p> <p>14 actually turned away from a voting location in Maricopa</p> <p>15 County, even though they were open, because they were</p> <p>16 having technical equipment -- which I was surprised to</p> <p>17 hear because I thought there was always a backup plan.</p> <p>18 And I wasn't sure if that was correct, if we had any</p> <p>19 information about whether that was true, that people</p> <p>20 were actually turned away from voting.</p> <p>21 MS. ROBERTS: Sure. So, Chairman and</p> <p>22 Commissioner Chan, I can let you know that on election</p> <p>23 day, I personally received phone calls from voters who</p> <p>24 have said that they were turned away. At that point,</p> <p>25 we assisted them in directing them to a vote center.</p>	
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<p>1 election year.</p> <p>2 So, you know, a few things there, as we</p> <p>3 mentioned, we broke some records with that turnout.</p> <p>4 Seven of fifteen counties actually broke voter turnout</p> <p>5 record, which is exciting. Just -- you know, it's a</p> <p>6 good direction. And, you know, we're really excited to</p> <p>7 see that, and we -- you know, as you'll see throughout</p> <p>8 the rest of this presentation, the Commission had</p> <p>9 significant efforts in educating voters across the</p> <p>10 state about the primary election, about how to</p> <p>11 participate and become informed on what's on the</p> <p>12 ballot. And we had specific campaigns that I'll go in</p> <p>13 more detail on but, you know, I think it's safe to say</p> <p>14 that we had a hand in seeing that turnout increase.</p> <p>15 Just a brief overview, if you've been</p> <p>16 watching the news or maybe you've heard a few things on</p> <p>17 Primary Election Day, Maricopa County did experience</p> <p>18 some difficulties, and they have released a report, an</p> <p>19 internal report. And the Maricopa County Board of</p> <p>20 Supervisors has authorized an audit to look into some</p> <p>21 of the issues that they experienced, but the gist of it</p> <p>22 is is that on election day, polls are supposed to open</p> <p>23 at 6:00 a.m. And approximately, I think, 63 polling</p> <p>24 locations did not open on time, but by 11:30 that day,</p> <p>25 the county did have all of their voting locations up</p>		<p>1 So a little bit more information is</p> <p>2 Maricopa County had a hybrid election day voting system</p> <p>3 where they had assigned polling places. So when you</p> <p>4 have an assigned polling place, as a voter, you have to</p> <p>5 go to that polling location, but they also had an</p> <p>6 additional 40 vote centers and vote centers where any</p> <p>7 voter can go to get their ballot.</p> <p>8 One of the things Maricopa County</p> <p>9 references -- the Recorder's office references in their</p> <p>10 report is that the backup plan was to direct the voters</p> <p>11 to the vote center in the event that there were any</p> <p>12 issues at the specific polling locations. So when</p> <p>13 staff received any of those phone calls of questions or</p> <p>14 concerns -- you know, and we were in communication with</p> <p>15 the county that day, as well, who they were giving us</p> <p>16 some information about, yes, there was a delay in some</p> <p>17 of the polling locations being opened up -- we did our</p> <p>18 best to direct them to vote centers and to let them</p> <p>19 know that, you know, at the end of the day, you can go</p> <p>20 to a vote center -- well, not at the end of the day,</p> <p>21 but no matter what, you can go to a vote center and</p> <p>22 you --</p> <p>23 COMMISSIONER CHAN: Until 7 p.m.</p> <p>24 MS. ROBERTS: Yes. And you can receive a</p> <p>25 ballot and, you know, even if there's any issues, you</p>	

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<p>1 should always be afforded the right to vote a</p> <p>2 provisional ballot. So that's, kind of, the experience</p> <p>3 that we have a little bit. I believe there are -- you</p> <p>4 know, a full report is coming from the auditor's</p> <p>5 office. And we can -- staff is happy to share the</p> <p>6 internal report from Maricopa County and the</p> <p>7 preliminary report from the auditors if the Commission</p> <p>8 is interested in reading that in detail.</p> <p>9 COMMISSIONER CHAN: Thank you.</p> <p>10 Mr. Chairman, I just -- that just really</p> <p>11 concerned me because even though the voting center was</p> <p>12 a possibility, I just don't know if it's realistic to</p> <p>13 expect voters to make that -- I mean, it's important</p> <p>14 enough that I think they should, but I just don't know</p> <p>15 if it's realistic to expect voters to go to a different</p> <p>16 location. And I don't know how far away those voting</p> <p>17 centers were, and I just -- it just hurts me, my heart,</p> <p>18 a little bit to hear what happened.</p> <p>19 And I'm really hoping that on the general,</p> <p>20 they'll have all of this addressed and that -- and that</p> <p>21 it will go much, much smoother for everybody,</p> <p>22 especially because we're going to have much more</p> <p>23 turnout for the general.</p> <p>24 So thank you for the information, Gina.</p> <p>25 ACTING CHAIRMAN KIMBLE: Gina, if I can ask</p>	<p>1 you, there should be some increase in the number of</p> <p>2 registered voters out of that population, but I think</p> <p>3 we'll have to -- we would have to -- we'll need more</p> <p>4 time to get that analysis produced because that</p> <p>5 requires a little bit of extrapolation.</p> <p>6 ACTING CHAIRMAN KIMBLE: Okay. So -- but</p> <p>7 it's probably accurate to say that maybe 16, 17, 18</p> <p>8 percent of the eligible voters voted?</p> <p>9 MR. COLLINS: It could be. I mean, we</p> <p>10 could nail that down with Morrison --</p> <p>11 ACTING CHAIRMAN KIMBLE: Okay. But if</p> <p>12 that's a ballpark.</p> <p>13 MR. COLLINS: -- in terms of their</p> <p>14 analysis. I mean, based on -- based on the total</p> <p>15 potential voting population versus how many people cast</p> <p>16 ballot, that seems like that's a logical extrapolation</p> <p>17 from the numbers we have.</p> <p>18 ACTING CHAIRMAN KIMBLE: Okay. Thank you.</p> <p>19 MS. ROBERTS: And, Chairman Kimble, I would</p> <p>20 estimate that as well. That sounds like it's in the</p> <p>21 ballpark. And, also, once we get more in detail, too,</p> <p>22 in the information, we can then look out what the</p> <p>23 independent voter turnout rate was as well. We just</p> <p>24 don't have that level yet of those figures, but we will</p> <p>25 be looking forward to that.</p>		
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<p>1 one question just to make something clear.</p> <p>2 The turnout is based on the percent of</p> <p>3 registered voters?</p> <p>4 MS. ROBERTS: Mr. Chairman, yes, that is</p> <p>5 correct.</p> <p>6 ACTING CHAIRMAN KIMBLE: And do we have any</p> <p>7 idea or do you have a ballpark estimate of how many --</p> <p>8 what percent of eligible voters are registered.</p> <p>9 MS. ROBERTS: Off the top --</p> <p>10 ACTING CHAIRMAN KIMBLE: And firm.</p> <p>11 MS. ROBERTS: Sure. Mr. Chairman, I'm</p> <p>12 referring back to our voter crisis report.</p> <p>13 And, Tom, maybe you can help me with this</p> <p>14 number, but off the top of my head, I believe we were</p> <p>15 reporting that it would be about half. It was close to</p> <p>16 half.</p> <p>17 MR. COLLINS: Yeah. The total number of</p> <p>18 folks who didn't participate, for example, in 2016 who</p> <p>19 either were registered and didn't participate or were</p> <p>20 not registered but could have participated, we set it</p> <p>21 at about 48 percent in the -- in the 2016 general. So</p> <p>22 there's still a substantial number of unregistered</p> <p>23 potential voters out there. You know, there's always</p> <p>24 in the run up to election and, perhaps, you know, based</p> <p>25 on voter -- voter registration drives and what have</p>	<p>1 ACTING CHAIRMAN KIMBLE: Okay. Thank you.</p> <p>2 MS. ROBERTS: All right. So what I'd like</p> <p>3 to go over today is -- basically, is highlights of the</p> <p>4 education campaigns that we've had throughout the</p> <p>5 primary.</p> <p>6 So the first was our Connections Campaign</p> <p>7 and then, of course, the Voter Education Guide and</p> <p>8 debates, and we did a specific education campaign to</p> <p>9 independent voters, and then I'll talk a little bit</p> <p>10 more about our 18 in 2018 Campaign, which Tom spoke a</p> <p>11 little bit, too, in the ED report.</p> <p>12 So for Connections, if you'll recall, the</p> <p>13 research that we have done in the past, we knew that we</p> <p>14 needed to really showcase to voters how they connect</p> <p>15 directly with the elections so they would be more</p> <p>16 likely to participate, and this campaign just really</p> <p>17 took on that look and feel. And we did a significant</p> <p>18 effort to, again, showcase, you know, we're in the</p> <p>19 midterms. We're in the local elections. We understand</p> <p>20 this is not necessarily the Super Bowl of the</p> <p>21 presidential elections, but these elections are</p> <p>22 important. They're local. They can have a direct</p> <p>23 impact on your life. And so the campaign was geared</p> <p>24 towards really showcasing that connection to voters in</p> <p>25 the hopes that it would encourage them to want to</p>		

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<p>1 participate more.</p> <p>2 And so one of the things that we've</p> <p>3 highlighted, of course, are the logistics of voting, as</p> <p>4 well. So we highlighted key dates and deadlines, such</p> <p>5 as voter registration deadline. You know, hey, don't</p> <p>6 forget; you need to mail in your early ballot today,</p> <p>7 that type of thing. So we made sure that we were</p> <p>8 always informing voters of those key dates and</p> <p>9 deadlines.</p> <p>10 This is just some examples of what that</p> <p>11 creative looked like. So we were in print and, again,</p> <p>12 you know, we made use of, well, if you're in Maricopa</p> <p>13 County, then you connect an arrow. I believe most</p> <p>14 other counties use, you know, fill in the dot -- a</p> <p>15 bubble, but again, we just wanted to show how the</p> <p>16 actual person connects to the election.</p> <p>17 And I'll just quickly go through some of</p> <p>18 these creative examples through digital just so you can</p> <p>19 see -- you know, hopefully you actually have seen these</p> <p>20 yourself as voters, but just so you can see what the</p> <p>21 voter was seeing. And we're on social and, you know, a</p> <p>22 very clear voter registration deadline, July 30th. You</p> <p>23 know, early voting. It's happening now. Very clearcut</p> <p>24 messaging to connect with the voters. We were on TV.</p> <p>25 We had several TV spots that were running.</p>	<p>1 effect just so, you know, when it comes to a voter's</p> <p>2 mailbox, it won't be intimidating and they won't want</p> <p>3 actually look through it.</p> <p>4 So we've received really great feedback on</p> <p>5 the design from it, and we provide alternate formats.</p> <p>6 We automatically send it out in English and Spanish,</p> <p>7 but we also have large print. We translated certain</p> <p>8 districts in the introduction into Navajo and, of</p> <p>9 course, all the statewide. And we partnered with Sun</p> <p>10 Sounds. So this is a partnership that the Commission</p> <p>11 has had for several years now, and we partnered with</p> <p>12 Sun Sounds of Arizona to provide an audio version of</p> <p>13 the booklet. And this way folks who maybe have low</p> <p>14 vision or, you know, difficulty seeing or are just</p> <p>15 blind, they can actually call into this toll-free</p> <p>16 number and have the guide read to them.</p> <p>17 So we're really proud of that partnership,</p> <p>18 and I'm just -- you know, it provides the voter guide</p> <p>19 in a more accessible fashion. And, of course, we</p> <p>20 provide plain text on our website, as well, for folks</p> <p>21 that are using a screen reader.</p> <p>22 The key messaging that we were putting out</p> <p>23 there in our campaign was to let folks know when the</p> <p>24 guide will be dropping, when it will be hitting their</p> <p>25 households and what's in it. So you have, you know,</p>		
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<p>1 So that's really just a high-level overview</p> <p>2 of what the campaign looked like. Towards the end of</p> <p>3 this presentation, I have statistics on the</p> <p>4 performance, but I just wanted to go through briefly</p> <p>5 and give you an idea, spark your memory of what these</p> <p>6 campaigns looked like.</p> <p>7 So for our Voter Education Guide, hopefully</p> <p>8 everybody received theirs in the mail, but the goal of</p> <p>9 this was to let people know this is coming. So our --</p> <p>10 our education campaign was to let people know this tool</p> <p>11 exists for you. You can hear directly from the</p> <p>12 candidates. And we actually continued with our</p> <p>13 district-specific method of mailing these out, which we</p> <p>14 found to be very beneficial to voters but also served</p> <p>15 as a cost-savings measure. And we emailed out over two</p> <p>16 million pieces, so a guide went out to every household</p> <p>17 with a registered voter.</p> <p>18 So we're really, you know, happy to see</p> <p>19 that most candidates participated in doing a</p> <p>20 submission. And in terms of the format of the guide, I</p> <p>21 believe I shared with the Commission that we were in</p> <p>22 works with the Center for Civic Design to take a look</p> <p>23 at how we can improve the layout, the format of the</p> <p>24 guide, just to make it easier to read, you know, look</p> <p>25 at using more plain language style, everything to that</p>	<p>1 not only information in the introduction about the</p> <p>2 logistics of voting and key dates and deadlines, but</p> <p>3 this is your opportunity to hear directly from the</p> <p>4 candidates.</p> <p>5 I'm sure, you know, as voters, we all get</p> <p>6 our campaign materials in the mail. We see those</p> <p>7 glassy mailers. You know, things come out from the</p> <p>8 parties. And so this guide, we really try to let</p> <p>9 people know that it's coming from the Commission and</p> <p>10 the candidates themselves are the ones who are making</p> <p>11 this Commission. You are hearing directly from them.</p> <p>12 It's your direct connection to the candidates.</p> <p>13 And that's an example of the cover, which I</p> <p>14 believe you have the general election guide in front of</p> <p>15 you, so the same cover. We just updated the date.</p> <p>16 And just briefly, I'll go through some of</p> <p>17 the examples of the creative. So we have digital. We</p> <p>18 have banner ads. On social media, one of the things</p> <p>19 that we did was we highlighted the fact that -- so</p> <p>20 ballots go out 45 days before the election to our UOCAV</p> <p>21 voters. These are our military and overseas voters.</p> <p>22 So ballots go out a little bit earlier to them than</p> <p>23 they do to everybody else. We also make sure that our</p> <p>24 guide goes out ahead of time for these specific voters,</p> <p>25 as well, so they get their guide before they get their</p>		

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<p>1 ballot.</p> <p>2 So we ran some ads just to let folks know,</p> <p>3 hey, if you have a loved one who is serving or, you</p> <p>4 know, is living overseas, please help us reach them and</p> <p>5 give them a heads up that this guide is on its way to</p> <p>6 them. And, of course, we let folks know, too, about</p> <p>7 our partnership with Sun Sounds. Just some more</p> <p>8 examples of the creative.</p> <p>9 Debates. So debates is kind of, like, our</p> <p>10 bread and butter, along with the Voter Education Guide.</p> <p>11 We had a campaign to let folks know about when debates</p> <p>12 will be coming to them in their district, what the</p> <p>13 schedule is, when they can view the statewide debates</p> <p>14 and how they can participate in them. So that was the</p> <p>15 overall, you know, messaging of the campaign was to let</p> <p>16 folks know about debates and, hopefully, we wanted to</p> <p>17 drive that participation rate, increase attendance.</p> <p>18 And as, I think, Commissioner Chan noted</p> <p>19 earlier, we have these videos on our website, as well.</p> <p>20 So if you can't attend in person, you can watch them</p> <p>21 online.</p> <p>22 So briefly, I wanted to go through some of</p> <p>23 the partnerships and the pilot programs that we</p> <p>24 instituted this year and talk about the numbers.</p> <p>25 So for the primary election, we hosted 22</p>	<p>1 one of the things that we were able to do for our</p> <p>2 gubernatorial debate -- and Tom was able to host a pre</p> <p>3 and post debate analyst on Facebook Live. And so we</p> <p>4 thought that went really well. We were seeing great</p> <p>5 turnout and views on Facebook for that, and it's right</p> <p>6 up Tom's alley. He's very charismatic when he's on</p> <p>7 camera. So it worked really well. And we --</p> <p>8 MR. COLLINS: Exclusively.</p> <p>9 MS. ROBERTS: But in addition to that</p> <p>10 statewide and preview of the debate, Tom also recorded</p> <p>11 some videos with "Arizona Capitol Times," the associate</p> <p>12 editor there, Luige del Puerto, for specific districts</p> <p>13 to also give a heads up. And this is really geared at,</p> <p>14 you know, promoting interest in the debates and getting</p> <p>15 voters to not only be informed about when the debate</p> <p>16 was occurring but wanting to actually participate.</p> <p>17 And so that leads me into our partnership</p> <p>18 that we have with the "Arizona Capitol Times." We --</p> <p>19 earlier this year, we had a meeting with them, and we</p> <p>20 came to a partnership where both Luige and another one</p> <p>21 of their journalists, Ben Giles, would host or act as</p> <p>22 moderators for a handful of our district debates. And</p> <p>23 we felt that that would be really great for voters</p> <p>24 because both of these individuals, they are very well</p> <p>25 versed in the issues that are affecting the state</p>		
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<p>1 legislative debates. So that's 22 out of 30, and we</p> <p>2 had eight statewide debates. And from the videos that</p> <p>3 we posted on our website, we had about 4,500 views.</p> <p>4 And then from the statewide debates that were both</p> <p>5 posted online and broadcast live, you can see the</p> <p>6 online views, they were about 93,000, and then</p> <p>7 broadcast was close to 91,000.</p> <p>8 And then, in terms of the on-the-ground</p> <p>9 legislative debates, we had approximately 500 folks</p> <p>10 attend in person. So the broadcast capability, that is</p> <p>11 facilitated through our partnership with Arizona PBS.</p> <p>12 Again, for several years now the Commission has</p> <p>13 partnered with AZ PBS to broadcast live our statewide</p> <p>14 debates on the Arizona Horizon segment, which is</p> <p>15 moderated by Ted Simons. And, you know, the Commission</p> <p>16 and staff, we have been able to do that for several</p> <p>17 years.</p> <p>18 And the reason why we -- we appreciate this</p> <p>19 partnership so much is because it's public television,</p> <p>20 but, also, Ted is a veteran journalist. And we just --</p> <p>21 we appreciate his ability to interact with the</p> <p>22 candidates and pull out the information during those</p> <p>23 debates, and we just think it's a great benefit to</p> <p>24 voters.</p> <p>25 As Commissioner Chan noted earlier, too,</p>	<p>1 capitol and what legislators have to deal with.</p> <p>2 And so we thought it would be a benefit for</p> <p>3 voters where if we had a moderator who had that</p> <p>4 information, they could really, again, drive that</p> <p>5 discussion during the debates and, you know, kind of,</p> <p>6 pull some -- maybe a little bit more information out of</p> <p>7 the candidates and some of their responses to get the</p> <p>8 information that voters were looking for. We thought</p> <p>9 those went off well. We were very happy with their</p> <p>10 skills and abilities as moderators. So we were very</p> <p>11 proud of that partnership, and we will be continuing</p> <p>12 that through the general election as well.</p> <p>13 Another component of that partnership</p> <p>14 included the Commission sponsoring the Meet the</p> <p>15 Candidates event. We felt that this was another</p> <p>16 opportunity to engage voters directly with the</p> <p>17 candidates, and the "Capitol Times" had about 222 folks</p> <p>18 register for this event. So it was a great turnout</p> <p>19 there.</p> <p>20 MR. COLLINS: Yeah. And that was an</p> <p>21 opportunity we saw because previously the "Capitol</p> <p>22 Times" had made that an event where they charge</p> <p>23 admissions, and it was -- and, essentially, that made</p> <p>24 it an opportunity for lobbyists to meet candidates.</p> <p>25 And so by, essentially, sponsoring it, we were able to</p>		



<p>10:04:21-10:05:33 Page 30</p> <p>1 opening it to the public. And we think that that 2 provided a unique opportunity to be meet with the 3 candidates, and it's the kind of thing we could start 4 to do, in addition to debates, around the state because 5 we were -- I mean, that was something we were, again, 6 playing around with, but it seemed like it was a 7 success. 8 MS. ROBERTS: And, finally, I wanted to 9 discuss our pilots that we've had with our high 10 schools, which was really spearheaded and championed by 11 Commissioner Paton. 12 The -- so for three of our legislative 13 district debates specific to Legislative District 2, 10 14 and 14, we worked with schools to host the debates on 15 the ground at their facilities and to really 16 communicate with the parents and the teachers and the 17 students that this event is occurring in your community 18 and, you know, come out and participate and how can we 19 further engage the students wanting to support, you 20 know, encouraging that student participation in our 21 next generation of voters but, also, you know, to make 22 the debates more inviting in that they're here in the 23 community and to really promote that attendance to get 24 folks to come out and want to participate and be 25 engaged and ask the candidates the questions.</p>	<p>10:06:42-10:07:52 Page 32</p> <p>1 And then with the legislative districts -- 2 at both LD 10 and 14, staff was there, and we had a 3 voter education booth available where we had the voter 4 guides available. You know, we were accepting voter 5 registration forms, and we provided all of our voter 6 education materials at that time. 7 So that's a, you know, quick run-through of 8 what we've done for debates in the primary. 9 COMMISSIONER PATON: Mr. Chairman? 10 ACTING CHAIRMAN KIMBLE: Yes, Mr. Paton -- 11 Commissioner Paton? 12 COMMISSIONER PATON: I just would like to 13 commend the staff for those debates. If you haven't 14 been to them, they're very well run. It's a little 15 disheartening to see so few people attend some of them. 16 That's what I'm really committed to try to do is 17 improve the attendance. I mean, if you want to be 18 involved and know the -- know the issues and the 19 candidates, it's -- you know, it's -- we really need 20 more attendance at those. 21 And I think we've, kind of, seen some bugs 22 working with the schools. It is hard because they 23 either just start school or they're in the summer 24 during the primary. So there's some things that we 25 need to work out a little better. I would like to try</p>
<p>10:05:35-10:06:40 Page 31</p> <p>1 So with our Legislative District 2 debate, 2 we held that at Sahuarita High School. That ended up 3 being a 30-minute Q and A session. So one thing I 4 should note about our primary debates, those 5 typically -- we don't have as many as we do in the 6 general election. And, similar to how we see the 7 turnout rates, you know, it can be a little bit more 8 difficult to get people to attend the primary debates, 9 but the general election debates, we do see greater 10 participation. 11 And then with Legislative District 10, we 12 partnered with Sahuarito High School, which I believe was 13 Commissioner Paton's alma matter. And so we were 14 seeing a high number of views there with the online 15 video, and we had about 80 to 90 folks participate in 16 person. We saw a few reporters there, I believe. 17 And then with Legislative District 14, we 18 partnered with Empire High School, which is in Vail. 19 And that was, you know, great attendance there, about 20 130. At LD 14, we actually hosted a meet-and-greet 21 afterwards where we partnered with the local chamber 22 and the parent networks and the school districts. So 23 the meet-and-greet, when the debate was over, it really 24 allowed the candidates and the voters to continue to 25 engage and speak one on one.</p>	<p>10:07:55-10:09:09 Page 33</p> <p>1 to do some of them during school time, like, with 2 juniors and seniors and their parents and the community 3 that can come in during the day. That way, obviously, 4 you'd get hundreds of people and expose the students to 5 how government operates and so on. 6 So that's, kind of, what I would like to 7 do, but everybody worked hard to try to improve all of 8 that. And I'm really impressed with the 9 professionalism. 10 ACTING CHAIRMAN KIMBLE: Well, and I think, 11 Commissioner Paton, that was -- it was an excellent 12 idea to partner with high schools. The one I went to 13 at Sahuarita with Tom, the attendance of ten, I think, 14 is a little generous, unless you're counting the 15 candidate and the moderator and the TV person, but 16 there was only one person there. So -- and I think 17 that's somewhat understandable, but I think it's -- it 18 was really a good idea. And I hope that it's something 19 that we can continue working on to develop, 20 particularly with an eye to get more young people 21 involved. 22 MS. ROBERTS: Mr. Chairman and Commissioner 23 Paton, so we send out surveys at every on-the-ground 24 debate to all of those who participate, and what we do 25 is at the end of the year, we take a look at those</p>

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<p>1 surveys in detail. And we ask them questions about,</p> <p>2 how did you hear about this debate? You know, what can</p> <p>3 we improve? And, you know, similar things to that that</p> <p>4 you would expect on a survey.</p> <p>5 We did a preliminary review at the primary</p> <p>6 surveys, and the things that we hear the most -- we</p> <p>7 always hear in all the surveys are when -- you know,</p> <p>8 more advertising of the debate schedule and, also, they</p> <p>9 wished that more candidates would participate. And so</p> <p>10 the thing to remember is in the primary, you know,</p> <p>11 we're only hosting a debate if there is a candidate</p> <p>12 who's in a contested election. And then, if they are a</p> <p>13 participating candidate, they're required to, but</p> <p>14 traditional candidates, it's upon their request.</p> <p>15 So -- but one positive thing I would note</p> <p>16 from the reviews is we ask them, how did you hear about</p> <p>17 this? And in the past, it's typically been we heard</p> <p>18 from the candidate, directly from the candidate. You</p> <p>19 know, the candidate is getting their supporters out</p> <p>20 there, which is great, but this year we're really</p> <p>21 seeing a wide range of they heard it from the</p> <p>22 newspaper. They heard it from the radio. They heard</p> <p>23 it from, you know, a banner ad. So -- and social</p> <p>24 media.</p> <p>25 So I think that's, you know, a positive</p>	<p>1 involved in the issues.</p> <p>2 COMMISSIONER PATON: And during the</p> <p>3 primaries, a lot of the people running, they're not</p> <p>4 really engaging each other, I mean. And so it's a tad</p> <p>5 dull. So, I mean, we kind of have the -- we need to</p> <p>6 have something like Must See TV, as I was saying. By</p> <p>7 the end of the fourth person, they would say, ditto, I</p> <p>8 agree with those people. And so somehow we need to</p> <p>9 have a real debate instead of just you answer the</p> <p>10 question; you answer the question; you answer the</p> <p>11 question.</p> <p>12 We need some more engagement between the</p> <p>13 people. I mean, we won't -- we don't want fist fights</p> <p>14 or anything, but it needs to be -- we need to see the</p> <p>15 difference between these people, not just, oh, we all</p> <p>16 agree. No, you -- no, you don't. You don't all agree.</p> <p>17 So to make it more interesting for everybody and to be</p> <p>18 more incisive to see what the differences are. Then we</p> <p>19 need more incisive questions and more engagement</p> <p>20 between the two people, I mean, the people involved.</p> <p>21 And then, finally, some of these people</p> <p>22 don't want to be involved that are the candidates, and</p> <p>23 that is very aggravating. And, I mean, that's part of</p> <p>24 American culture is to debate your opponent in politics</p> <p>25 going back to the Lincoln/Douglas debates and so on, on</p>		
10:10:19-10:11:26	Page 35	10:13:12-10:14:23	Page 37
<p>1 marker there in the fact that the comprehensive</p> <p>2 campaign that we have to inform people about the</p> <p>3 schedule, we're reaching folks. And so we will</p> <p>4 continue to look at ways that we can further increase</p> <p>5 attendance, but I do appreciate the suggestions from</p> <p>6 the Commission because it's thinking outside of the box</p> <p>7 a little bit, if you will, about how can we really</p> <p>8 connect with the community to, you know, spark this</p> <p>9 interest and promote that attendance.</p> <p>10 So we'll definitely be looking, at the end</p> <p>11 of the general election, about how can we improve these</p> <p>12 debates and get the attendance up.</p> <p>13 ACTING CHAIRMAN KIMBLE: Well, one</p> <p>14 suggestion I've made -- and I've made this to Tom after</p> <p>15 one of the debates -- is I think the debates are far</p> <p>16 better when there is a media moderator or a moderator</p> <p>17 who has some idea of what's going on, as opposed to the</p> <p>18 other people, I guess, the professional moderators who</p> <p>19 read a question and then wait for an answer and then</p> <p>20 just read the next question without any follow-up or</p> <p>21 anything. It -- it doesn't make for a very engaging</p> <p>22 debate that way.</p> <p>23 And I know you're limited by who you can</p> <p>24 get to moderate them, but I noticed a big difference</p> <p>25 when there's a media moderator or someone who's heavily</p>	<p>1 the stump, the actual stump that they were standing on</p> <p>2 and so on. And I don't know how we can get everybody</p> <p>3 involved. I guess they feel like it's not -- nobody is</p> <p>4 holding their heels to the fire or something. I don't</p> <p>5 know, but somehow we need to get more involvement with</p> <p>6 those candidates.</p> <p>7 MS. ROBERTS: Thank you.</p> <p>8 ACTING CHAIRMAN KIMBLE: Thanks, Gina.</p> <p>9 MS. ROBERTS: All right. Let's see here.</p> <p>10 So these are just some examples of the creative that we</p> <p>11 use to inform people that debates are occurring and,</p> <p>12 again, you'll continue to see that connection the same,</p> <p>13 as well.</p> <p>14 I'll skip through this pretty quickly. Oh,</p> <p>15 one thing I should note is that for every debate that</p> <p>16 we held, we did create a Facebook event, and that was</p> <p>17 really geared towards letting folks know this is</p> <p>18 happening in your community. We would do it targeted</p> <p>19 to those specific districts, and that helped in terms</p> <p>20 of the share of set folks who view on social media and,</p> <p>21 you know, discussion boards where we're available. So</p> <p>22 it was really great to create those for each event.</p> <p>23 These are just some examples of those, you</p> <p>24 know, pre-debates videos that we mentioned that Tom and</p> <p>25 Luige were able to record.</p>		

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<p>1 All right. We'll now jump in the</p> <p>2 independent voters. So our goal here was to let</p> <p>3 independent voters know that Arizona has an open</p> <p>4 primary. So we really started out with -- you know,</p> <p>5 that would -- that would be our target audience and,</p> <p>6 again, the goal was to let them know that they can</p> <p>7 participate in the primary.</p> <p>8 And the way we did that was -- the message</p> <p>9 that we put out there was, first and foremost, did you</p> <p>10 know? Did you know that you can participate in the</p> <p>11 primary? And now that you know, this is how. This is</p> <p>12 the how-to. And we focused on that message, but then,</p> <p>13 of course, we'd let them know, you know, certain key</p> <p>14 dates, as well.</p> <p>15 And two that I wanted to talk about a</p> <p>16 little bit more would be the early ballot request</p> <p>17 deadline for an independent voter. That deadline was</p> <p>18 really important because, if you're an independent</p> <p>19 voter and you're on the permanent early voting list,</p> <p>20 you have to actively tell your county recorder which</p> <p>21 party ballot you want mailed to you. And that was</p> <p>22 important for voters to understand because sometimes</p> <p>23 we'd hear from folks who said, well, I didn't get my</p> <p>24 ballot; it wasn't mailed to me.</p> <p>25 Well, are you an independent? And we would</p>		<p>1 participate and this is -- this is the process? And we</p> <p>2 ran those through digital. And we were on social, but</p> <p>3 we were really trying to be, you know, eye-catching</p> <p>4 here.</p> <p>5 We had infographics available on our</p> <p>6 website, but again, we just really pushed that message</p> <p>7 through independent voters.</p> <p>8 And our final --</p> <p>9 COMMISSIONER PATON: I have a question.</p> <p>10 ACTING CHAIRMAN KIMBLE: Yes, Commissioner</p> <p>11 Paton.</p> <p>12 COMMISSIONER PATON: So who -- where is</p> <p>13 the -- who decides how independents can vote in this?</p> <p>14 Would it -- is it -- I mean, who decides whether they</p> <p>15 can't just get both votes in the mail and just choose</p> <p>16 one or the other and send it in? Why couldn't that</p> <p>17 happen?</p> <p>18 MS. ROBERTS: Sure. Mr. Chairman,</p> <p>19 Commissioner Paton, so we say Arizona has an open</p> <p>20 primary, but it's technically a semiopen primary, if</p> <p>21 you will. So I believe it was in 1998 in which voters</p> <p>22 approved this method of voting. So it was a -- it was</p> <p>23 a citizens' initiative in 1998 and, basically, it</p> <p>24 allowed an independent voter, someone who is</p> <p>25 nonaffiliated, the option to pick the party ballot.</p>	
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<p>1 go through that conversation with them. This is what</p> <p>2 you have to do, the steps you need to take. That date</p> <p>3 was very highly publicized across the state from -- you</p> <p>4 know, from our efforts but also from the media and</p> <p>5 other election official offices.</p> <p>6 We just really saw that date being pushed</p> <p>7 out there, which is great, but one of the things that</p> <p>8 the Commission started to see -- maybe there's a little</p> <p>9 bit of confusion from some folks -- is that once that</p> <p>10 date passed, we were hearing that maybe independents</p> <p>11 thought, oh, I missed that date; I can't participate in</p> <p>12 the primary anymore. So we made sure that we continued</p> <p>13 our messaging, of course, all the way up through</p> <p>14 election day.</p> <p>15 If you're an independent voter and you</p> <p>16 didn't get an early ballot, if you missed the deadline</p> <p>17 to request one, it's okay. You still can come to the</p> <p>18 polls. You can still tell your poll worker which party</p> <p>19 ballot that you'd like to vote.</p> <p>20 So that was the messaging that we</p> <p>21 undertook, and this is an example of the creative.</p> <p>22 You'll see it's a little bit different than what we've</p> <p>23 done so far, but I kind of liken this to a street</p> <p>24 caution sign. You know, it really captures their</p> <p>25 attention. Stop. You know, did you know you can</p>		<p>1 So in our primary, it's a partisan</p> <p>2 election, and the purpose of the primary is to -- for</p> <p>3 the voters within that political party to select their</p> <p>4 nominees that will advance to the general election. So</p> <p>5 ballots are created, you know, in accordance with</p> <p>6 statute, but they're created by party type. So you</p> <p>7 have a -- one ballot for Republican -- for the</p> <p>8 Republican party candidates and then you have one</p> <p>9 ballot for the Democratic party, you know, and so on.</p> <p>10 And so you only get one ballot as a voter,</p> <p>11 and so you have to pick which one you want. And</p> <p>12 oftentimes the feedback that we get from independent</p> <p>13 voters are, well, why isn't there one ballot that has</p> <p>14 who all the candidates are? Well, in the general</p> <p>15 election, you'll get that, but the primary -- the</p> <p>16 purpose of the primary is for the voters that belong to</p> <p>17 that political party to select their nominees to</p> <p>18 advance to the general election.</p> <p>19 And then, of course, as we know, sometimes</p> <p>20 in the primary that's really when the candidate is</p> <p>21 elected because there's maybe not another opponent in</p> <p>22 the other party. So that is something that independent</p> <p>23 voters need to consider as they want to participate.</p> <p>24 The other factor to consider there is so</p> <p>25 Arizona, at the statewide level, we have four</p>	

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<p>1 recognized political parties. We have the Democrats, 2 the Republicans, the Greens and the Libertarians. The 3 Libertarians actually have a closed primary, which 4 means an independent cannot request a Libertarian party 5 ballot in 2018. In 2016, the Libertarians opened their 6 primary. So then an independent voter could have 7 selected that party ballot.</p> <p>8 So, you know, it's a constant -- we need to 9 know the rules for this election and communicate that 10 to the voters. And so that's part of the struggle is 11 that voters say, well, I don't remember doing it that 12 way or, you know, we're having to constantly share with 13 them these are the rules now.</p> <p>14 COMMISSIONER PATON: So this would be the 15 early ballots because when they go to the polls, they 16 can just choose one or the other. So it's not that big 17 of a deal. So it's really the early balloting which 18 makes things so much easier for the rest of us.</p> <p>19 Thank you, Gina.</p> <p>20 MS. ROBERTS: Mr. Chairman, Commissioner, 21 correct. That's why that deadline was so critical to 22 inform independent voters about that you're going to 23 have to actively contact your recorder if you want to 24 select a party ballot. And there are some local 25 nonpartisan ballots available, too. So if maybe --</p>		<p>1 participation from this age group, we can't expect them 2 to come to us looking for this information. We've got 3 to find them. We've got to go to them and we have to 4 connect with them.</p> <p>5 And so, you know -- and I'm sorry. I 6 should have actually mentioned this earlier at the very 7 beginning of this presentation, but of course, all of 8 this was done in conjunction with our partnership with 9 RIESTER. They are our agency, our trusted partners 10 that we've worked with to really get all of these 11 campaigns off the ground. And so when RIESTER came up 12 with this -- this idea, we were all very excited about 13 it.</p> <p>14 So the goal, again, was to encourage our 15 next generation of voters to get registered and to 16 really activate their political power by registering 17 and to take flight and to actually get out there and 18 vote, and these are some examples of our logos and our 19 creative campaign that we did here. You'll see it's a 20 little bit different than maybe our other artwork that 21 we've had, a little bit more bolder, something to 22 actually connect with this age group.</p> <p>23 And I'll jump through those pretty quickly, 24 but I want to showcase the mural itself. So the mural 25 was installed -- we hired a local artist, and it was</p>	
10:19:53-10:21:03	Page 43	10:22:08-10:23:17	Page 45
<p>1 there's maybe, like, a city or town election and if an 2 independent just doesn't want to vote in any of those 3 partisan elections but maybe their local city council 4 race is happening, they can select a local nonpartisan 5 ballot only.</p> <p>6 Okay. Our 18 in 2018 Campaign, this is the 7 last campaign I'll go through and then I'll highlight 8 very quickly some stats, but this is my favorite 9 campaign, if I could just have an opinion on that. It 10 was very fun, and I think we were all very surprised 11 and excited about how much this campaign has grown.</p> <p>12 And so our 18 in 2018 Campaign was geared 13 at motivating Arizona youth to participate in the 14 electoral process, to get them to register to vote.</p> <p>15 And so we were looking at our, you know, potential 16 voters, the folks who would be 18, you know, by the 17 next general election who could actually preregister 18 now and our, you know 18- to 24-year-olds, so this 19 younger demographic.</p> <p>20 If you'll recall from our roundtable that 21 we had in 2017, that kind of helps spark this 22 discussion a little bit where our keynote speaker, 23 Jamie Kasper, talked about how, you know, for this 24 demographic, we have got to go to them, this Gen Z. If 25 we want to encourage them and promote this</p>		<p>1 painted on a wall down on Roosevelt Row in downtown 2 Phoenix. And we didn't just stop there. We took 3 another layer of adding augmented reality.</p> <p>4 And the purpose for this was now that we 5 have this digital component to it, when someone goes 6 out and they scan the QR code through the Shazam 7 application, not only do they get to have fun and 8 interact with the mural, but we present them, through 9 that application, a register-to-vote button. So right 10 then and there, they can click register to vote and 11 they can, you know, go through the minute or two it 12 takes to go through the screens and get registered.</p> <p>13 So with this mural, the original 14 installation was done on Roosevelt Row. We brought a 15 wheat pasting to Tucson, and as we mentioned in the ED 16 report, we had installations done at Scottsdale 17 Community College and Mesa Community College. And, you 18 know, those -- they reach out directly to us. We are 19 hearing positive feedback from the community about this 20 is amazing. We love its purpose. That is really 21 inspiring folks to get registered.</p> <p>22 We have a partnership right now that we're 23 working with with the School for the Arts in downtown 24 Phoenix where we are going to be hosting a voter 25 registration drive on October 5th, which is going to be</p>	

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<p>1 right before the deadline down here on Roosevelt Row at</p> <p>2 the mural, and it's going to be our first Friday. And</p> <p>3 the School for the Arts, they are coming out. These</p> <p>4 are students here, and they are very excited about this</p> <p>5 campaign. And they are creating their own materials to</p> <p>6 help promote this registration event and get their</p> <p>7 classmates out here.</p> <p>8 They're coming out with a video. I think</p> <p>9 they're going to be singing in it. It's really</p> <p>10 exciting to see the positive reaction from, you know,</p> <p>11 not only the students but the community members. We've</p> <p>12 heard from -- we've heard from the arts community.</p> <p>13 We've heard from other government organizations. I've</p> <p>14 heard from government organizations from California.</p> <p>15 People have been really taking interest in this mural</p> <p>16 and really utilizing this street art to promote that</p> <p>17 civic participation.</p> <p>18 So, again, it kind of goes back to that</p> <p>19 maybe thinking outside of the box a little bit about</p> <p>20 how can we connect with the community and inspire</p> <p>21 people to get registered to vote.</p> <p>22 Just, again, I'll go quickly through some</p> <p>23 of the examples. You know, we had digital ads. We</p> <p>24 were on social just to further encourage people to go</p> <p>25 out and interact with the mural.</p>	<p>1 positive and it showcases the success of the website</p> <p>2 redesign, but it also speaks to the content that we're</p> <p>3 putting out there. You know, Alec's job is primarily</p> <p>4 to manage the website and our social media accounts.</p> <p>5 So it is a full-time job to keep this information up</p> <p>6 and current for voters.</p> <p>7 And, you know, anecdotal, we hear from</p> <p>8 people all the time we love your website. It's great.</p> <p>9 We link to it on our site. Staff is hearing that from</p> <p>10 the community. So we're very proud of the website</p> <p>11 itself.</p> <p>12 Just some visual charts to, again, showcase</p> <p>13 the performance improvement from the website, and our</p> <p>14 top pages were the 18 in 2018 Campaign, which is great,</p> <p>15 and folks are interested in the debates and our voter</p> <p>16 guide, of course, our home page and then looking for</p> <p>17 their candidates.</p> <p>18 One thing I wanted to show here, you can</p> <p>19 see the spike in that graph on election day. People</p> <p>20 are looking at our website and, also, when key items</p> <p>21 hit. So maybe when the voter education is available or</p> <p>22 when debates are commencing, we'll see those spikes on</p> <p>23 our website.</p> <p>24 The Dashboard. The Dashboard is a tool</p> <p>25 that we launched earlier this year, and the Dashboard</p>		
10:24:25-10:25:28	Page 47	10:26:33-10:27:31	Page 49
<p>1 All right. So I can -- very quickly, I</p> <p>2 just want to highlight a few things on performance</p> <p>3 that, I think, are important to share with the</p> <p>4 Commission.</p> <p>5 Our website. We launched a new website</p> <p>6 earlier this year, and the reasoning behind that was</p> <p>7 because our previous platform, it just did not support</p> <p>8 the amount of content that we were producing and</p> <p>9 supplying to voters. And with our new website, I</p> <p>10 wanted to showcase that the average time on our website</p> <p>11 is almost two minutes. And if you really think about</p> <p>12 it, two minutes is a long time to sit there, you know,</p> <p>13 and interact with a web page for two minutes.</p> <p>14 And this is higher than what we've seen on</p> <p>15 any of our other websites before in terms of</p> <p>16 engagement. So we really are proud to see that number</p> <p>17 go up, and it shows that people are engaging with the</p> <p>18 site. And the other thing to note is that 73 percent</p> <p>19 of people are visiting our website from their mobile</p> <p>20 applications, and that's important because, when we did</p> <p>21 the redesign, we really invested a lot of time and</p> <p>22 energy in ensuring that our website was responsive so</p> <p>23 it looked well on any of the platforms and screen sizes</p> <p>24 that folks may be using to get to our site.</p> <p>25 So we think that this number is very</p>	<p>1 was really geared towards, as a voter, you have to go</p> <p>2 to so many different places to capture the information</p> <p>3 that you're looking for, whether it's the logistics of</p> <p>4 voting or finding out what's on your ballot or</p> <p>5 understanding, you know, what the idea of the poll's</p> <p>6 requirements are or even how to run for office or what</p> <p>7 does this office that I am voting on for actually do?</p> <p>8 What's the responsibility of it? So how government</p> <p>9 works.</p> <p>10 We have all of that information on our</p> <p>11 website, but, you know, we really wanted to capture</p> <p>12 everything in a one-stop shop application where a voter</p> <p>13 either enters in their address or they just hit the</p> <p>14 location pin and then we provide them everything they</p> <p>15 need to know. We've demoed the Dashboard before for</p> <p>16 the Commission, but just a brief overview.</p> <p>17 We show them the candidates that are</p> <p>18 specific to their districts. We can show them their</p> <p>19 legislative district, their congressional district,</p> <p>20 their school board district if they're in Maricopa</p> <p>21 County. We can all the way -- go all the way to</p> <p>22 justice of the peace. And, again, we show them those</p> <p>23 specific candidates that are, you know, in their</p> <p>24 district and then we show them their debates. Here's</p> <p>25 your debate schedule. Here's all of the statewide's.</p>		

<p>10:27:34-10:28:36 Page 50</p> <p>1 Here's your Legislative District 15 debate, when it's 2 occurring, and if you already missed it, here's the 3 video. 4 And then we show them -- you know, we 5 partner with Maricopa County where we can, through our 6 website, show them their voter registration 7 information. So if somebody wanted to confirm whether 8 they're registered, we have links to verify, or track 9 your early ballot and your provisional ballot. All of 10 that is housed in the Dashboard, and it's really 11 promising to see the fact that 32,000 people used this 12 tool, you know, this year for the primary, which we've 13 just talked about the number -- you know, the time that 14 people are interacting on the site, that two minutes, 15 and folks are interacting the Dashboard for four and a 16 half minutes. And we think that's really great because 17 it shows that they are absorbing the information that 18 we're providing. 19 Let's see. One more stat that I'll share 20 from our website. We allow people to connect with 21 Service Arizona so they can get registered, and then 22 we, also -- again, I mentioned for our 18 in 2018 23 Campaign, we had our Shazam application. So for the 24 primary, we saw about 3,000 clicks to get registered to 25 vote, which is exciting to see.</p>	<p>10:29:49-10:30:57 Page 52</p> <p>1 giving a presentation to Glendale Community College 2 students or, you know, maybe it's traveling up to 3 Prescott and talking to a specific group there. Staff 4 is constantly being sought after to provide this voter 5 education directly to the communities. So I wanted to 6 share that. 7 All right. And then, you know, a lot of 8 the things that we've done so far have been highlighted 9 in the media. We talked about the 18 in 2018, and one 10 thing I would like to note is I appreciate how the 11 Commission has been available to support these efforts. 12 You know, whether that's giving an interview or 13 providing an op-ed, we think that really helps connect 14 all of that information that we're putting out there to 15 the public. 16 So, for the most part, again, these are 17 just really detailed stats. Unless the Commission has 18 any questions on those, I'm happy to take questions if 19 you have further questions about our performance for 20 the primary. 21 ACTING CHAIRMAN KIMBLE: Well, I just want 22 to say that I think a lot of people forget that voter 23 education is one of the most important things that we 24 do, and all of this data really shows that a lot of 25 people are considering the Clean Elections website and</p>
<p>10:28:39-10:29:47 Page 51</p> <p>1 You know, I think the rest of this 2 information is very detailed that you have in your 3 report, if you're really interested in the statistics 4 and the performance. I'll skip through most of that. 5 One thing I did want to highlight from the 6 PR side, one of the things that the Commission has 7 done -- and, of course, with Tom's background and with 8 our partnering with RIESTER, we've -- you know, all of 9 the efforts that we take to inform people about the 10 debates and the voter guide, you know, that's important 11 and its helpful to get that information out there, but 12 it's also great to partner with the media to, again, 13 further this message. 14 And, also, this -- I'm going to include in 15 here our grassroots efforts. One thing that I didn't 16 have, really, maybe the time or the space to put into 17 this presentation is how often Commission staff is 18 contacted to go out and give speeches or talk to folks 19 about, you know, the upcoming elections and to really 20 engage one on one with the community. And I think that 21 showcases that the Commission is being positioned as a 22 thought leader and an expert on elections where we are 23 a neutral nonpartisan agency. 24 So folks are connecting and reaching out 25 directly to us to come out and, you know, maybe it's</p>	<p>10:31:00-10:32:12 Page 53</p> <p>1 the Clean Elections personnel and the Clean Elections 2 Guide as their go-to source for independent, unbiased 3 information on issues and on how to vote, where to vote 4 and all that kind of stuff. And I'm very impressed 5 with what you and what RIESTER has done in all these 6 things. There's some very, very innovative ideas 7 there, and I'm really in awe. 8 Thank you. 9 Any other commissioners want to say 10 anything? 11 COMMISSIONER CHAN: Mr. Chairman, if I 12 could just add, I wanted to thank Gina and Tom and 13 Stephanie and Alec and Mike because I actually -- I 14 think I've been inspired by the voter outreach that you 15 guys as staff do, and I reached out to both of my sons' 16 schools to just see if there were any faculty or staff 17 that would be interested in me coming and just giving 18 an overview of how to get registered and what to expect 19 to see on your ballot for the general. 20 And so they supported me in giving me some, 21 you know, folders with -- and a little bit of swag -- 22 to hand out and make sure that people can get 23 registered if they want to. And I -- I say that I 24 think it was inspirational to me because it's so much 25 easier to go out and do that kind of outreach for your</p>

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<p>1 own, small, you know, piece of your community because</p> <p>2 of the resources that you guys and RIESTER have made</p> <p>3 our website become.</p> <p>4 I included in -- I made my own little</p> <p>5 handout and just put a screenshot of the Voter</p> <p>6 Dashboard and explained to them exactly how helpful</p> <p>7 that is with regard to seeing, what are your issues?</p> <p>8 Where are you located? What are your deadlines for</p> <p>9 your election?</p> <p>10 And so I think that I just can't overstate</p> <p>11 it enough how impressed I am with you guys -- you, Tom,</p> <p>12 the whole staff. I mean, you guys have really done an</p> <p>13 excellent job. And especially when I think back to</p> <p>14 being at the Secretary of State's Office so long ago, I</p> <p>15 mean, the best we could do -- and it was wonderful and</p> <p>16 it still is wonderful -- was we've got online voter</p> <p>17 registration, but other than that, it's not that you're</p> <p>18 on your own. We get a publicity pamphlet, but it</p> <p>19 wasn't really -- there was no one-stop shop.</p> <p>20 And I feel like our website has really done</p> <p>21 that for people, and the more outreach we can get out</p> <p>22 there to let the public know, I think we'll continue to</p> <p>23 see ourselves as a Commission and the website enhance</p> <p>24 and encourage people to participate in our democracy.</p> <p>25 ACTING CHAIRMAN KIMBLE: Thank you.</p>	<p>1 to how they filed their -- accounted for their</p> <p>2 independent expenditures through their standard</p> <p>3 campaign finance reports, and then they didn't timely</p> <p>4 file their Clean Elections reports.</p> <p>5 We -- there's a newer version of the</p> <p>6 conciliation agreement draft that you got in the packet</p> <p>7 that cleans up some non-substantial issues and adds</p> <p>8 some language that -- but it doesn't change any of the</p> <p>9 substance of it, in effect. We are asking for a minor</p> <p>10 financial consequence, but we did get the reports once</p> <p>11 we notified the PAC very quickly, as the conciliation</p> <p>12 agreement notes. So this all went very smoothly.</p> <p>13 And so I just would ask your approval of</p> <p>14 the conciliation agreement that -- that was on top of</p> <p>15 your packet this morning. I -- Brad Lyon, who is the</p> <p>16 chairman of the committee, can't -- wasn't able to</p> <p>17 appear by phone today, but I personally didn't think it</p> <p>18 was necessary. The process and communicating with them</p> <p>19 has been very smooth, and they've been very responsive.</p> <p>20 And -- and so unless you have questions</p> <p>21 about that, either the complaint or the conciliation, I</p> <p>22 would just simply ask that you approve the conciliation</p> <p>23 that I'm recommending.</p> <p>24 ACTING CHAIRMAN KIMBLE: Okay. Any</p> <p>25 commissioners have any questions or comments on the</p>		
10:33:24-10:34:33	Page 55	10:36:29-10:37:20	Page 57
<p>1 COMMISSIONER CHAN: So thank you.</p> <p>2 ACTING CHAIRMAN KIMBLE: Commissioner</p> <p>3 Paton, anything else?</p> <p>4 COMMISSIONER PATON: And I already said I</p> <p>5 thank you for all your help and innovations and being</p> <p>6 willing to try something new. And we all have</p> <p>7 different perspectives and you have to deal with all of</p> <p>8 our little idiosyncrasies and so on, but I'm really</p> <p>9 impressed by all your efforts and professionalism. And</p> <p>10 the voters are being informed.</p> <p>11 ACTING CHAIRMAN KIMBLE: Very well said.</p> <p>12 MS. ROBERTS: Thank you.</p> <p>13 ACTING CHAIRMAN KIMBLE: Thank you very</p> <p>14 much, Gina.</p> <p>15 Does anyone need a break before we move on?</p> <p>16 (No response.)</p> <p>17 ACTING CHAIRMAN KIMBLE: Okay. Item V,</p> <p>18 discussion and possible action on MUR 18-12 American</p> <p>19 Strong PAC.</p> <p>20 Tom?</p> <p>21 MR. COLLINS: Yes. Commissioners, we</p> <p>22 should be able to move very quickly through this item.</p> <p>23 The American Strong PAC is a -- is a PAC</p> <p>24 that made expenditures in the LD 23 primary. They had</p> <p>25 some difficulties with their filings, both with respect</p>	<p>1 American Strong issue?</p> <p>2 COMMISSIONER PATON: Mr. Commissioner -- I</p> <p>3 mean, Chairman.</p> <p>4 ACTING CHAIRMAN KIMBLE: Commissioner</p> <p>5 Paton.</p> <p>6 COMMISSIONER PATON: I would just say they</p> <p>7 emailed you back within 23 minutes and that for some of</p> <p>8 these other people that just stall us and stall us for</p> <p>9 years, I would certainly agree to this conciliation.</p> <p>10 ACTING CHAIRMAN KIMBLE: Thank you.</p> <p>11 Is there anyone here who wants to be heard</p> <p>12 on this matter?</p> <p>13 (No response.)</p> <p>14 ACTING CHAIRMAN KIMBLE: Okay. Anyone else</p> <p>15 want to make a comment or a motion?</p> <p>16 COMMISSIONER CHAN: Mr. Chairman, I would</p> <p>17 move that we accept -- approve or accept?</p> <p>18 MR. COLLINS: Approve for me to sign.</p> <p>19 COMMISSIONER CHAN: Okay. Mr. Chairman, I</p> <p>20 would move that we approve the conciliation agreement</p> <p>21 as drafted for our executive director to sign.</p> <p>22 ACTING CHAIRMAN KIMBLE: Okay. Is there a</p> <p>23 second?</p> <p>24 COMMISSIONER PATON: I second.</p> <p>25 ACTING CHAIRMAN KIMBLE: Okay. There's</p>		

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<p>1 been a motion made and a second to approve the</p> <p>2 agreement with American Strong MUR 18-12.</p> <p>3 All those in favor say aye.</p> <p>4 (Chorus of ayes.)</p> <p>5 ACTING CHAIRMAN KIMBLE: Anyone opposed?</p> <p>6 (No response.)</p> <p>7 ACTING CHAIRMAN KIMBLE: Approved</p> <p>8 unanimously. Thank you.</p> <p>9 Item VI, discussion and possible action on</p> <p>10 MUR 18-07 One Arizona dba Sunlight Arizona.</p> <p>11 Tom?</p> <p>12 MR. COLLINS: Yes. Commissioners, with</p> <p>13 your -- with your indulgence, what I'd like to do is we</p> <p>14 have both the complainants' attorney, Mike Liburdi, is</p> <p>15 here, and the respondent's attorney, Jim Barton, is</p> <p>16 here. What I thought I'd do is -- and you have my memo</p> <p>17 on reason to believe. You have -- you should have</p> <p>18 Jim's response to that memo, as well as the complaint</p> <p>19 and the initial response.</p> <p>20 What I thought I'd do is outline some of</p> <p>21 the legal standards and, then, unless you have further</p> <p>22 questions for me at that time, you know, ask Mike to</p> <p>23 present, you know, his -- the complainants' argument</p> <p>24 and then give Jim an opportunity to respond. And,</p> <p>25 then -- and, then, if you have -- and, then, if you</p>		<p>1 COMMISSIONER MEYER: I can hear you. Thank</p> <p>2 you.</p> <p>3 MR. COLLINS: Okay.</p> <p>4 ACTING CHAIRMAN KIMBLE: Okay.</p> <p>5 Commissioner, just as a point of information, we're on</p> <p>6 Item VI now. We've just got started on that.</p> <p>7 COMMISSIONER MEYER: Okay. Thank you. My</p> <p>8 apologies for -- for being late to the meeting.</p> <p>9 ACTING CHAIRMAN KIMBLE: No worries.</p> <p>10 MR. COLLINS: So the first -- the first</p> <p>11 issue -- the first way to look at this is there are</p> <p>12 levels of disclosure required or levels of restrictions</p> <p>13 on -- and levels of burden on political actors that are</p> <p>14 different across different cases. So, you know, in</p> <p>15 the -- in the materials, you'll see a case referenced a</p> <p>16 lot called Wisconsin Right to Life. That dealt with an</p> <p>17 absolute ban on a corporation making expenditures</p> <p>18 during a blackout period that then existed for those</p> <p>19 advertisements. So that had the highest level of</p> <p>20 scrutiny.</p> <p>21 The CJF case, the Committee for Justice and</p> <p>22 Fairness case, dealt with when a requirement for a</p> <p>23 political committee to register as a political</p> <p>24 committee kicked in, which requires that group to then</p> <p>25 not only report their expenditures but their donors.</p>	
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<p>1 have questions for them, obviously, they'll -- I think</p> <p>2 they'll be available for those. And, then, if you have</p> <p>3 any other further questions for me after that, I'm</p> <p>4 happy to -- I'm happy to answer those.</p> <p>5 So that's how I recommend we proceed --</p> <p>6 ACTING CHAIRMAN KIMBLE: Okay. That sounds</p> <p>7 good.</p> <p>8 MR. COLLINS: -- without any objection from</p> <p>9 anybody.</p> <p>10 So just to put this in context, this is</p> <p>11 a -- sort of a three-level analysis. The first is what</p> <p>12 is the context of the 16-940(d) report --</p> <p>13 (Whereupon, Commissioner Meyer joins the</p> <p>14 meeting at 10:39 a.m.)</p> <p>15 THE OPERATOR: Joining the meeting.</p> <p>16 MR. COLLINS: Oh, and I think we may</p> <p>17 have --</p> <p>18 COMMISSIONER MEYER: Damien Meyer.</p> <p>19 MR. COLLINS: And Commissioner Meyer is now</p> <p>20 on the phone.</p> <p>21 MS. THOMAS: Hello, sir. We have you on.</p> <p>22 I actually have you on the speakerphone, so hopefully</p> <p>23 you can hear us. We've got you on a smaller</p> <p>24 speakerphone.</p> <p>25 MR. COLLINS: So can you hear us?</p>		<p>1 And then the 16-940(d) standard is merely spending</p> <p>2 report. So it's the most minimal burden that you can</p> <p>3 place on someone who may or may not be engaged in</p> <p>4 political activity that's reportable.</p> <p>5 The standard is whether or not under -- and</p> <p>6 the statutory standard that applies across CJF and</p> <p>7 16-940(d) is whether or not the communication in</p> <p>8 context has no reasonable meaning, other than to</p> <p>9 advocate for or against a candidate for election taken</p> <p>10 in context.</p> <p>11 The Commission is entitled to consider the</p> <p>12 timing. We know from Mortal that the courts are not</p> <p>13 required to ignore basic background facts, including</p> <p>14 whether the ad describes a legislative issue currently</p> <p>15 subject to legislative scrutiny or likely to be in the</p> <p>16 future. And we also are entitled to look at the</p> <p>17 favorable or unfavorable light in which the candidate</p> <p>18 is -- is presented.</p> <p>19 So that's kind of the -- that's the broad</p> <p>20 strokes of the framework here. One, the minimal -- the</p> <p>21 burden here is merely spending. So it's the most</p> <p>22 minimal burden of reporting that could be required.</p> <p>23 Second, under the statute 16-901, which is part of the</p> <p>24 Clean Elections Act, it's no reasonable meaning,</p> <p>25 other -- other than to advocate for or against the</p>	



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<p>1 candidate, but that is a contextual or fact-specific</p> <p>2 determination. And timing context and favorability or</p> <p>3 unfavorability light of the advertisements are all</p> <p>4 factors that the Commission can consider in reaching a</p> <p>5 determination.</p> <p>6 In this context, it's only -- the standard</p> <p>7 is whether or not there's reason to believe a violation</p> <p>8 may have occurred. So that's the -- that's the</p> <p>9 framework. So this is a preliminary inquiry, not a</p> <p>10 final inquiry. And I think I'll leave it there for</p> <p>11 now, unless anyone has specific questions about my memo</p> <p>12 now, and kick it over to Mr. Liburdi, if he's -- if</p> <p>13 he's ready to -- or if he wants to present.</p> <p>14 ACTING CHAIRMAN KIMBLE: Okay. Do any of</p> <p>15 the commissioners have questions of Mr. Collins?</p> <p>16 COMMISSIONER CHAN: Mr. Chairman, I just</p> <p>17 have a quick question.</p> <p>18 ACTING CHAIRMAN KIMBLE: Commissioner Chan.</p> <p>19 COMMISSIONER CHAN: I was just reviewing,</p> <p>20 while you were talking, Tom, so I may have missed</p> <p>21 something, but I just wanted to make sure.</p> <p>22 So this is for us to -- when we take a vote</p> <p>23 on this, we'll be voting on whether you proceed with an</p> <p>24 investigation?</p> <p>25 MR. COLLINS: Yes. That's correct. Yes.</p>	<p>1 affiliation for the record?</p> <p>2 MR. LIBURDI: Good morning, Mr. Chairman</p> <p>3 and commissioners. My name is Michael Liburdi. I am a</p> <p>4 lawyer at the firm of Greenberg Traurig, and it's an</p> <p>5 honor to be with you here this morning. It's nice to</p> <p>6 see some of you again and to meet some new faces.</p> <p>7 I represent the complainants here, Brett</p> <p>8 Moll and Michael Francis. They are the ones who</p> <p>9 submitted the complaint to you, and we thank staff and</p> <p>10 you for giving us this opportunity.</p> <p>11 We agree with the executive director's</p> <p>12 analysis and recommendation. This matter does meet the</p> <p>13 threshold for a reason to believe finding under the --</p> <p>14 under both the facts, circumstances and the law as it</p> <p>15 applies to this case.</p> <p>16 I would begin by asking this one question</p> <p>17 to all of you: If -- if Sunlight Arizona wished to</p> <p>18 influence legislation, then they should have exercised</p> <p>19 their right to influence legislation during the</p> <p>20 legislative session while -- while the actual</p> <p>21 legislation was pending. Instead, they chose to wait</p> <p>22 until after the legislature had adjourned by a month,</p> <p>23 after legislation had been voted on and passed by a</p> <p>24 month, a couple of months, and then target certain</p> <p>25 legislators in reelection campaigns in competitive</p>		
10:43:41-10:44:44	Page 63	10:46:24-10:47:54	Page 65
<p>1 COMMISSIONER CHAN: Even though there's</p> <p>2 already quite a bit of information from both sides?</p> <p>3 MR. COLLINS: That's correct. And I don't</p> <p>4 think it's -- I mean, I don't think there's any -- any</p> <p>5 ball to hide here. The investigation phase here would</p> <p>6 be focused on establishing the amount of the</p> <p>7 expenditure. We don't --</p> <p>8 COMMISSIONER CHAN: Thank you.</p> <p>9 MR. COLLINS: -- we don't have an intention</p> <p>10 to go into, you know, intent. You know, this is an</p> <p>11 objective test. So we don't plan discovery into the</p> <p>12 subject of intent of the -- of the Speaker, if he were</p> <p>13 to agree with my recommendation, for example, but we</p> <p>14 don't know what the amount of the expenditure is. So,</p> <p>15 yes, that would be a subject of further inquiry if you</p> <p>16 were to agree with my recommendation.</p> <p>17 COMMISSIONER CHAN: Thank you.</p> <p>18 ACTING CHAIRMAN KIMBLE: Any more questions</p> <p>19 from any of the commissioners?</p> <p>20 (No response.)</p> <p>21 ACTING CHAIRMAN KIMBLE: Okay.</p> <p>22 MR. COLLINS: We're going to have Mike go</p> <p>23 first and then Jim.</p> <p>24 ACTING CHAIRMAN KIMBLE: Okay. Sir, could</p> <p>25 you come up to the podium and state your name and</p>	<p>1 districts.</p> <p>2 And based on the information that we have</p> <p>3 been able to ascertain, their targeting was specific to</p> <p>4 high-propensity voters, to voters in competitive</p> <p>5 districts. And as a result, it is our belief that One</p> <p>6 Arizona sought to influence, perhaps, the primary</p> <p>7 election and, most certainly, the general election in a</p> <p>8 way that favors their preferred candidates.</p> <p>9 We are fortunate to have a statute that</p> <p>10 applies here. The statute is Section 16-901.01, which</p> <p>11 is identified in the executive director's report. This</p> <p>12 statute was part of the Clean Elections Act when it was</p> <p>13 enacted in 1998, and it applies to the Act's reporting</p> <p>14 requirements. And that's the basis of our complaint.</p> <p>15 So I think that there can be no dispute</p> <p>16 that the first three factors apply, and what we're</p> <p>17 looking at here is whether the fourth factor applies,</p> <p>18 whether, in this context, there's no other reasonable</p> <p>19 meaning than to advocate for or against the election of</p> <p>20 certain clearly identified candidates.</p> <p>21 The respondents rely heavily on a case</p> <p>22 called Wisconsin vs. -- Wisconsin Right to Life. That</p> <p>23 was a U.S. Supreme Court case decided in 2007. That</p> <p>24 case is wholly distinguishable from what we have in</p> <p>25 play here. In Wisconsin Right to Life, a group was</p>		

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<p>1 seeking to get certain senators, the two senators from 2 the state of Wisconsin, to hold hearings on President 3 Bush's judicial nominees. 4 Now, that was a fact back in those days 5 that the Senate was not moving forward on the 6 President's judicial nominees, and it's also a fact 7 that United States Congress is in session all year. So 8 they may go out of session and return to their 9 districts, but the congressional session usually lasts 10 from early January of an odd-numbered year to the next 11 odd-numbered year. 12 So the Senate is continually doing business 13 during that two-year period and nominations for 14 judicial vacancies are continually submitted to the 15 Senate for confirmation and, you know, if we weren't 16 here today, I think most of us would be watching a 17 Senate confirmation proceeding right now. 18 The Arizona legislature is different. The 19 Arizona legislature convenes on the second Monday of 20 every year -- in January and then adjourns usually 21 after 100 days, plus or minus. And then during that, 22 legislators may work on interim committees or, in 23 even-numbered years, like this year, they campaign. 24 They run for office, and that's what's going on here. 25 So -- so I feel like respondent's reliance</p>		<p>1 Representatives. And Kate Brophy McGee is a senator, 2 and she isn't -- she wasn't even eligible to vote for 3 that, and neither was Senator Sylvia Allen, neither was 4 Senator Frank Pratt, who were also targeted by this 5 advertisement. 6 So when you think about the timing, when 7 you think about the way that the -- these candidates 8 were presented, when you think about the way that, you 9 know, we've just -- the minimal amount of evidence that 10 we've been able to uncover about the targeted 11 electorate, there is no reasonable explanation, other 12 than this was intended to influence the result of 13 elections by bringing these candidates in disfavorable 14 light. 15 Now, as the executive director mentioned, 16 Mr. Collins mentioned, this is one step in the process. 17 We feel like if the Commission were to vote, we think 18 it would be appropriately so to find that reasonable -- 19 the reasonable belief to move forward. 20 If the Commission chose, the Commission 21 could look at more data. It could figure out, well, 22 did they plan on doing -- when did they begin planning 23 these communications? Did One Arizona begin planning 24 these communications in early January or early 25 February? Because that certainly would be more</p>	
10:49:25-10:51:14	Page 67	10:52:40-10:53:43	Page 69
<p>1 on Wisconsin Right to Life is wholly misplaced for 2 those reasons, legally speaking, but drilling down on 3 the facts here -- more facts -- these -- the 4 legislation that was referenced, again, passed or 5 defeated months prior to the mailers, the mailers 6 criticized all of the legislators who were targeted. 7 And we put all of the -- as many as we could find -- 8 all of the communications in our document. 9 You have mailers. You have Facebook 10 advertisements that the members were all criticized. 11 They were criticized on issues that are hot-button 12 issues in those districts, in those races. And the 13 call to action -- in fact, in one of them, what the 14 call to action is: Vote for lower class sizes in 2019. 15 The year is wrong, but I think our casual reader, 16 somebody who reads it quickly, vote for limited class 17 sizes, that is something that would apply to the 18 impending elections. 19 The other matter that I would refer you to 20 is -- and this is exhibit -- I'm going to refer 21 specifically to one of our exhibits here -- Exhibit 3, 22 targeting Senator Kate Brophy McGee: Smaller class 23 sizes equal better education. And it cites an 24 amendment proposed for House Bill 2663. Well, that was 25 an amendment proposed in the Arizona House of</p>		<p>1 evidence that they timed it in a way that would 2 influence the result of an election. Or is this 3 something that they planned on later? Why did they 4 choose to do it at that time? 5 If they planned it later, why didn't they 6 plan on doing it in the next legislative session? Why 7 didn't they contact the governor's office to seek a 8 veto of any of these bills? Why didn't they contact 9 any legislators to see if they could offer amendments 10 or, you know, actually during the time that the 11 legislation was under consideration? So these are all 12 questions that could be asked at the next stage to see 13 if a violation had occurred and to determine whether a 14 monetary penalty is appropriate. 15 So, Mr. Chairman and members, that's our 16 position. We support moving forward with this 17 complaint, and I'd be more than happy to answer any 18 questions that you might have. 19 ACTING CHAIRMAN KIMBLE: Thank you. 20 Do any Commission members have questions 21 for Mr. Liburdi? 22 COMMISSIONER CHAN: Mr. Chairman, I just 23 have -- 24 ACTING CHAIRMAN KIMBLE: Commissioner Chan. 25 COMMISSIONER CHAN: -- one question.</p>	

<p>10:53:43-10:54:51 Page 70</p> <p>1 I was just curious -- hi, Mike. 2 MR. LIBURDI: Hi, Commissioner Chan. 3 COMMISSIONER CHAN: -- whether you had also 4 filed a complaint with the Secretary of State's Office 5 and, if so, had that office taken any action on it at 6 this point. I was just looking at the date to make 7 sure -- I don't know -- to see if it was filed too 8 recently, but was there a complaint also filed with the 9 Secretary's Office? 10 MR. LIBURDI: So, Mr. Chairman and 11 Commissioner Chan, the answer to that question is yes. 12 There was a complaint filed with the Secretary's Office 13 at about the same time that the complaint was filed 14 with the Commission. I am not aware of any action 15 taken by the Secretary of State. I am -- I can tell 16 you I am aware that the Secretary asked for a response 17 from One Arizona's counsel, and I believe it was 18 provided. However, I'm sure Mr. Barton or Mr. Collins 19 could provide you with more up-to-date information. 20 COMMISSIONER CHAN: Okay. Mr. Chairman and 21 Mr. Liburdi, that doesn't influence, really, my 22 decision here today. I was just curious whether it had 23 only been filed with our Commission or if it had been 24 filed in both places. I know in the past when I was at 25 the Secretary's office, we had done some global</p>	<p>10:55:46-10:56:52 Page 72</p> <p>1 501(c)(3), and its mission is to improve the lives of 2 Latinos, young people and single women by building a 3 culture of civic participation. 4 And that was the purpose of these ads was 5 to encourage civic participation. It was not lobbying 6 against any particular legislation. If it was 7 lobbying, it was doing lobbying, then actually they 8 would have another set of reporting requirements they 9 would have to make. It wasn't lobbying against 10 legislation. It certainly wasn't trying to get someone 11 elected or stop getting someone elected. It was 12 reaching out to voters and saying here's an issue that 13 is important to you. You need to contact this 14 representative -- I said voters. I should say 15 constituents. 16 It's really reaching out to constitutes and 17 saying, you need to contact your represented official. 18 It gave the phone number. It reached out to talk to 19 them. And the point of One Arizona is it's not good 20 enough to just get people elected. It's not good 21 enough to just give people money. You also have to 22 stay connected, and so they're encouraging -- the 23 reason that they're established and the reason they're 24 established as a 501(c)(3) is that they aren't about 25 campaigning or even primarily lobbying. They're about</p>
<p>10:54:53-10:55:43 Page 71</p> <p>1 conciliation agreements in cases with the -- you know, 2 the Secretary and Clean Elections. I was just 3 wondering about the posture there. So thank you. 4 MR. LIBURDI: Thank you. 5 ACTING CHAIRMAN KIMBLE: Thank you, 6 Commissioner Chan. 7 Any other questions from the Commission for 8 Mr. Liburdi? 9 (No response.) 10 ACTING CHAIRMAN KIMBLE: Commissioner 11 Meyer, do you have anything? 12 COMMISSIONER MEYER: No questions. 13 ACTING CHAIRMAN KIMBLE: Okay. Thank you. 14 Thank you, Mr. Liburdi. 15 MR. LIBURDI: Thank you, Mr. Chairman. 16 ACTING CHAIRMAN KIMBLE: Yes, sir. Could 17 you state your name and affiliation for the record, 18 please? 19 MR. BARTON: Thank you, Mr. Chair. My name 20 is Jim Barton. I'm an attorney with the Torres Law 21 Group, and I'm here today on behalf of One Arizona. 22 I think it's important to give you a frame 23 of the mission of One Arizona. One Arizona is an 24 Arizona nonprofit corporation. It has tax-exempt 25 status from the Internal Revenue Service as a</p>	<p>10:56:54-10:58:00 Page 73</p> <p>1 encouraging engagement. 2 And, in fact, what this group saw was that 3 sometimes, you know, folks get elected and they forget 4 about you and that we need to make sure that the 5 community stays engaged. And so they stay engaged with 6 our elected representatives, and that's why this mailer 7 had a call to action. It gave you the phone number. 8 It said reach out to this elected official because it's 9 important. 10 So I want to talk now about the specific 11 details, and first I want to talk about the timing 12 because I think the timing is really important in this 13 matter. These -- this mailer was 60 days before the 14 primary. So surely they can tell constitutes to 15 contact their elected officials 60 days before. It 16 was -- the whole program was finished 60 days before. 17 If 60 days before is too close -- and these aren't -- 18 these are -- I think all these people are going to get 19 reelected, by the way, but I mean, it's pretty far away 20 from -- that's 60 days ahead of their primary. 21 So how far out do they have to go? I think 22 I heard the complainants' counsel say, geez, even if we 23 were planning in January, that would be too close. 24 When do we -- when can they communicate to the 25 electorate and not be accused of campaigning, if not 60</p>

<p>10:58:03-10:59:09</p> <p>Page 74</p> <p>1 days before?</p> <p>2 I will point out that the example we have</p> <p>3 in Arizona is the Committee for Justice and Fairness</p> <p>4 case, and that was a case of where there was an ad</p> <p>5 which admittedly did try to masquerade as an issue ad.</p> <p>6 They tried to dress it up to say contact Horne as --</p> <p>7 Mr. Horne in his capacity as the superintendent of</p> <p>8 public instruction even though he was running for AG.</p> <p>9 And the timing on that case in Committee for Justice</p> <p>10 and Fairness was days before the election.</p> <p>11 This is what the case says: Shortly before</p> <p>12 the November general election. Another place, it calls</p> <p>13 it immediately before the general election. It was</p> <p>14 right up against the general election. This is 60 days</p> <p>15 before. So, for example, I mean, I think Wisconsin</p> <p>16 Right to Life is a pretty close case.</p> <p>17 I understand it's not -- it is -- as</p> <p>18 Mr. Collins said, it is dealing with a different</p> <p>19 situation. It's dealing with a -- a blackout that has</p> <p>20 since been overruled by other supreme court cases, but</p> <p>21 in that Wisconsin Right to Life case, that was -- it</p> <p>22 was done well ahead of the August 15 blackout. It was</p> <p>23 done on July 26. So it was done ahead. Well, that's</p> <p>24 the Wisconsin Right to Life case. Our case deals with</p> <p>25 timing 60 days in advance of the primary.</p>	<p>11:00:16-11:01:27</p> <p>Page 76</p> <p>1 interim committees happen, too. I mean, there's</p> <p>2 other -- you know, when you want to tell your</p> <p>3 legislator we share this value, you represent me and</p> <p>4 this is my value, there are all ways that can manifest</p> <p>5 other than casting a vote in a bill. I mean, there's</p> <p>6 all kinds of ways that can manifest.</p> <p>7 So the timing, I think, is very strongly in</p> <p>8 favor of finding this to not be express advocacy and</p> <p>9 that there's no reason to believe it is.</p> <p>10 The next component is -- what I think is</p> <p>11 really important is the content, okay? And, you know,</p> <p>12 if you look at these ads and they are -- you know,</p> <p>13 they've done a good job, I think, in the complaint,</p> <p>14 that's Exhibit 30 forward -- or page 30 forward in the</p> <p>15 exhibits. You know, these are important issues:</p> <p>16 education, predatory lending, the environment. I mean,</p> <p>17 these are all real issues that One Arizona wants to</p> <p>18 tell constituents contact your voter about.</p> <p>19 And I want to say something, too, that</p> <p>20 there seems to be some confusion. In the call to</p> <p>21 action, it tells you to call the senator or the</p> <p>22 representative, whoever, you know, and tell them to</p> <p>23 vote -- you know, tell them to support our values. So</p> <p>24 when you tell Brophy McGee vote to reduce class sizes</p> <p>25 in 2019, that's evidently assuming she's going to be in</p>
<p>10:59:12-11:00:13</p> <p>Page 75</p> <p>1 Another -- and, again, this is why in</p> <p>2 analogy, it's very hard sometimes to say what's a long</p> <p>3 time, what's a little time. The Federal Elections</p> <p>4 Commission regulates electioneering communication when</p> <p>5 you're broadcasting, and they use a rule of 30 days</p> <p>6 ahead of the primary. So if you mention a candidate at</p> <p>7 all 30 days ahead of a primary, within 30 days of the</p> <p>8 primary or within 60 days of the general, that converts</p> <p>9 it to election communication, electioneering. It's</p> <p>10 different, understandingly, but my point is that the</p> <p>11 timing of this, one of the things you consider strongly</p> <p>12 demonstrates that this was not express advocacy 60 days</p> <p>13 ahead of the primary.</p> <p>14 Also, yeah, it's true that there wasn't --</p> <p>15 this is -- this is about values. It's about issues</p> <p>16 and, no, there weren't any bills being considered.</p> <p>17 They were out of session, but again, that's the same</p> <p>18 thing as we had in the federal election case with the</p> <p>19 Wisconsin Right to Life. There were no judges being</p> <p>20 filibustered at the time. If you look at the case,</p> <p>21 you'll see there were no judges being filibustered.</p> <p>22 You know, the Supreme Court said, well,</p> <p>23 they're allowed to advocate against filibustering even</p> <p>24 if there isn't an active filibuster going on at that</p> <p>25 minute. And so, you know, we -- I mean, we heard that</p>	<p>11:01:31-11:02:28</p> <p>Page 77</p> <p>1 office in 2019. That's telling her. It's not</p> <p>2 saying -- it's not telling the recipient to vote. It's</p> <p>3 telling Brophy McGee to vote.</p> <p>4 So I don't -- I mean, this is assuming that</p> <p>5 this -- these people are going to be in office. So, in</p> <p>6 any case, it's certainly not saying vote against it,</p> <p>7 but that's the -- that's part of the content is that it</p> <p>8 sort of shows these important issues and it asks you to</p> <p>9 connect to the representative.</p> <p>10 So now let's talk about is this closer to</p> <p>11 what we saw in the Committee for Justice and Fairness</p> <p>12 or is this closer to the kind of ad that we saw in</p> <p>13 Wisconsin Right to Life? And I'd like to, just because</p> <p>14 I think it's helpful to just to look at it, to show the</p> <p>15 ad from the Committee on Justice and Fairness. And I</p> <p>16 understand that that's running in the background</p> <p>17 someplace.</p> <p>18 Do you guys know how I can --</p> <p>19 MR. COLLINS: Anyone have it? I think we</p> <p>20 have it set up.</p> <p>21 MR. BARTON: Oops. I messed it up.</p> <p>22 MS. ROBERTS: You got it? You want to try?</p> <p>23 MR. BARTON: I'll let you try.</p> <p>24 MS. ROBERTS: Is this --</p> <p>25 MR. BARTON: That's it. If you click the</p>

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<p>1 box? What if we click the green box? I think that's</p> <p>2 it, then play. Awesome.</p> <p>3 (Video playing.)</p> <p>4 MR. BARTON: Okay. So what's the issue in</p> <p>5 that ad? Anti-statutory rape and child -- I mean,</p> <p>6 that's a straight hit piece against Tom Horne and was</p> <p>7 launched days before his election, and he was no longer</p> <p>8 going to be superintendent of public instruction. Our</p> <p>9 ads are about issues that are real issues that are up</p> <p>10 for this conversation right now. When of our ads say</p> <p>11 call this legislator, that's a legislator who's going</p> <p>12 to be in office when they went out for a long time and</p> <p>13 they're addressing -- and they're real, honest ads</p> <p>14 addressing honest issues that are important to One</p> <p>15 Arizona as a 501(c)(3).</p> <p>16 So I think that when you talk about that</p> <p>17 ad, I mean, that is a ridiculous hit piece that sort</p> <p>18 of -- obviously, sort of tags on at the end, in a very</p> <p>19 cynical way, call Tom Horne. These ads are doing just</p> <p>20 what the committee is supposed to do, which is to</p> <p>21 advocate and to encourage civic participation, to</p> <p>22 encourage constituents to contact their elected</p> <p>23 officials.</p> <p>24 So here's the ad in Wisconsin Right to</p> <p>25 Life. In Wisconsin -- I don't have a video of it, but</p>	<p>1 Folks who supported Senator Feingold said,</p> <p>2 this is nonsense. You're just trying to attack Senator</p> <p>3 Feingold. That's what you're really doing with this.</p> <p>4 And the Supreme Court said, no, that's not how you do</p> <p>5 it. What did the ad say? The ad has an important</p> <p>6 issue. The ad has a call to action. This is not</p> <p>7 express advocacy. That's what the United States</p> <p>8 Supreme Court said, and I think that's what you have to</p> <p>9 look at in this case when you look at these ads.</p> <p>10 Now, maybe, you know, Senator McGee and</p> <p>11 others felt that they were being attacked and -- okay.</p> <p>12 I would rather they feel like this is your constituent</p> <p>13 reaching out and it's talking about an issue and maybe</p> <p>14 think about you need to change your positions on that</p> <p>15 issue, in general, but what we do as regulators is you</p> <p>16 have to look at the image. You have to think about</p> <p>17 things like the content and the timing.</p> <p>18 I think the content of this is plainly more</p> <p>19 like the Wisconsin Right to Life ad. I mean, it's</p> <p>20 talking about a real issue and it's asking for</p> <p>21 really -- it's making a sincere ask. We give the phone</p> <p>22 number to make it a sincere ask to contact the elected</p> <p>23 official.</p> <p>24 Also, I think the timing is plainly in our</p> <p>25 favor, and I think it's important, finally, that the</p>		
11:04:27-11:05:32	Page 79	11:06:36-11:07:30	Page 81
<p>1 I tried and couldn't find it. So they have a radio ad,</p> <p>2 and this is how this ad runs.</p> <p>3 Pastor: Who gives this woman to be married</p> <p>4 to this man?</p> <p>5 Bride's father: Well, as farther of the</p> <p>6 bride, I certainly could, but instead, I'd like to</p> <p>7 share a few tips on how to properly drywall. Now, you</p> <p>8 put the drywall up -- and then that sort of trails off.</p> <p>9 And then, voiceover, sometimes it's just not fair to</p> <p>10 delay an important decision but Washington -- in</p> <p>11 Washington it's happening. A group of senators'</p> <p>12 filibuster tactic is delaying and blocking the federal</p> <p>13 judicial nominees from a simple yes or no vote so</p> <p>14 qualified candidates don't get a chance to serve. It's</p> <p>15 politics at work causing gridlock and backing up some</p> <p>16 of our courts to a state of emergency. Contact</p> <p>17 Senators Feingold and Cole and tell them to oppose the</p> <p>18 filibuster. Visit befair.org.</p> <p>19 So it was an important issue to Wisconsin</p> <p>20 Right to Life, which was to get these judges a fair</p> <p>21 hearing. They said in the ad contact the senators</p> <p>22 because it was important to them. There was no</p> <p>23 filibuster going on when this ad was running. That's</p> <p>24 important, and that's in the opinion. There was no</p> <p>25 filibuster going on in the ad.</p>	<p>1 Commission vote now to find no reason to believe</p> <p>2 because if we get into a situation where we can't make</p> <p>3 this kind of communication even 60 days ahead of the</p> <p>4 primary, I mean, it makes it very difficult for me to</p> <p>5 advise my clients.</p> <p>6 That's my concern about -- that's my</p> <p>7 concern about giving any -- any slack to this -- to</p> <p>8 this attack at all is because I'm very worried about</p> <p>9 the chilling effect that happens if even making an ad</p> <p>10 60 days out, even making an ad as a plain call to</p> <p>11 action that states an issue, if that's not good enough</p> <p>12 to keep you on the safe side of things, I think it</p> <p>13 really makes it -- you know, and a group -- a 501(c)(3)</p> <p>14 doesn't do politics. And so it makes it very difficult</p> <p>15 for them to, you know, do what their purpose is, I'm</p> <p>16 afraid.</p> <p>17 ACTING CHAIRMAN KIMBLE: Okay. Mr. Barton,</p> <p>18 let me make sure I understand the timing right. So</p> <p>19 this ad was done -- what? Late June? Something like</p> <p>20 that?</p> <p>21 MR. BARTON: The last ads were finished</p> <p>22 late June.</p> <p>23 ACTING CHAIRMAN KIMBLE: Okay. So it's</p> <p>24 your point that you were not trying to influence an</p> <p>25 election that was 60 days away but were trying to</p>		

11:07:34-11:08:25	Page 82	11:09:38-11:10:45	Page 84
<p>1 influence the next legislative session, which was seven</p> <p>2 months away?</p> <p>3 MR. BARTON: We were trying to influence</p> <p>4 the legislator. We were trying to connect the</p> <p>5 legislator to its constituents.</p> <p>6 ACTING CHAIRMAN KIMBLE: Right, but the</p> <p>7 legislature was not going to be in session until</p> <p>8 January.</p> <p>9 MR. BARTON: Sure.</p> <p>10 ACTING CHAIRMAN KIMBLE: So they should</p> <p>11 call now to influence their legislator about an issue</p> <p>12 seven months --</p> <p>13 MR. BARTON: The legislator does work other</p> <p>14 than just vote on legislation. I mean, you know,</p> <p>15 there's interim committees. There's other work that</p> <p>16 they do. The legislator can -- they could have come</p> <p>17 out for or against Red for Ed. They could have done --</p> <p>18 there's all kinds of things that a legislator does</p> <p>19 besides influence. This isn't lobbying for a specific</p> <p>20 piece of legislation. It's connecting it. It's trying</p> <p>21 to promote civic engagement and asking the constituents</p> <p>22 to contact their elected.</p> <p>23 So I guess I understand what you're saying,</p> <p>24 Commissioner -- Mr. Chair, but -- that the legislature</p> <p>25 wouldn't come back into session until January, but</p>		<p>1 more with the complainants' position on this, and I'll</p> <p>2 tell you why and you can disagree with me.</p> <p>3 And I wanted to -- I did check with Tom</p> <p>4 because if I -- if we do take a vote and we do vote to</p> <p>5 go forward with allowing an investigation or</p> <p>6 authorizing an investigation, I just wanted to make</p> <p>7 sure that at the end of the day when that's complete,</p> <p>8 if the Commission as a whole decides there's not, you</p> <p>9 know, reason to believe there was a violation, you</p> <p>10 know, could we vote today to go forward with an</p> <p>11 investigation and then, at the ultimate end of the day,</p> <p>12 decide there's not reasonable cause. And Tom said yes.</p> <p>13 So --</p> <p>14 MR. COLLINS: Probable cause.</p> <p>15 COMMISSIONER CHAN: Probable cause.</p> <p>16 So I just wanted to mention that because I</p> <p>17 don't want to cement us in unfairly depending on what</p> <p>18 comes out. If we -- I don't know how these guys are</p> <p>19 going to vote, but a couple of things.</p> <p>20 You mentioned, you know, the group is a</p> <p>21 501(c)(3), but that doesn't exempt a group from</p> <p>22 registering as a political committee if that group does</p> <p>23 engage in express advocacy, does it?</p> <p>24 MR. BARTON: Well, an entity that's a</p> <p>25 501 -- or any 501(c) that's in good standing with the</p>	
11:08:27-11:09:34	Page 83	11:10:48-11:11:52	Page 85
<p>1 legislators do things other than when they're not in</p> <p>2 session. The point of this is to connect the</p> <p>3 constituents with the elected official.</p> <p>4 ACTING CHAIRMAN KIMBLE: Okay.</p> <p>5 Any questions from commissioners?</p> <p>6 COMMISSIONER CHAN: Mr. Chairman, I have</p> <p>7 some questions for Jim.</p> <p>8 It's very nice to see you.</p> <p>9 MR. BARTON: Nice to see you.</p> <p>10 COMMISSIONER CHAN: And I hate to tell you</p> <p>11 that I disagree with your position, but I do -- having</p> <p>12 said that, I do want to ask you some questions about</p> <p>13 it. And I really hate to be on the opposite side from</p> <p>14 you because -- Jim used to represent the Secretary of</p> <p>15 State's Office, and I think you might have been there</p> <p>16 when we did the Committee for Justice and Fairness ad.</p> <p>17 And I don't disagree with you that there</p> <p>18 are always differences with regard to, you know, the</p> <p>19 timing of that ad. And, you know, I don't -- I can't</p> <p>20 refute your point with regard to that ad versus these,</p> <p>21 but I'll just, kind of, lay out for you where I am.</p> <p>22 I'm just reading it from the perspective</p> <p>23 of -- even though I'm a lawyer, I try to read things</p> <p>24 from the perspective of me as a regular person, as</p> <p>25 well, because I think I'm both. And I think I agree</p>		<p>1 IRS right now is exempt from the definition of</p> <p>2 political action committee under Arizona -- current</p> <p>3 Arizona law. However, we're not talking about -- no</p> <p>4 one said we had to register for anything. We're saying</p> <p>5 that we -- that we had to disclose this.</p> <p>6 The committee's concern is a 501(c)(3)</p> <p>7 can't make a political speech. They can't engage in</p> <p>8 political speech, and so the -- we could not -- we</p> <p>9 strongly believe this is not a political speech but --</p> <p>10 based on our exemption. So if this kind of speech is</p> <p>11 forbidden, if this kind of speech is political speech,</p> <p>12 then 501(c)(3)s can't do it. They would be completely</p> <p>13 barred from doing it. Just -- I mean, it would be a</p> <p>14 complete bar from a 501(c)(3) engaging in that, if this</p> <p>15 kind of thing, asking someone to contact their</p> <p>16 legislator, is political -- is express advocacy.</p> <p>17 So it's not really a registration issue.</p> <p>18 It has to do with the fact that --</p> <p>19 COMMISSIONER CHAN: Just the speech?</p> <p>20 MR. BARTON: -- what they can use, yeah.</p> <p>21 COMMISSIONER CHAN: Okay. The timing being</p> <p>22 60 days before the primary, I appreciated</p> <p>23 Mr. Chairman's question about that because I don't find</p> <p>24 that it being 60 days before the primary is</p> <p>25 dispositive, even though, obviously, if it was two days</p>	

11:11:55-11:13:14	Page 86	11:14:20-11:15:13	Page 88
<p>1 before the primary, it would probably be a more</p> <p>2 clearcut case. I still find that 60 days before the</p> <p>3 primary is still -- and particularly, perhaps, you</p> <p>4 know, because it was after the legislative session and</p> <p>5 it does seem to paint, you know, the targeted members</p> <p>6 in a -- in a negative light, I mean, just reading the</p> <p>7 plain language.</p> <p>8 So I think the fact that, you know, it does</p> <p>9 highlight issues that are important issues almost maybe</p> <p>10 works against the position of the Sunlight 501(c)(3).</p> <p>11 So -- and now I think I'm understanding more about what</p> <p>12 you said, you know, if your clients can't do this as a</p> <p>13 501(c)(3). I'm not super familiar with how 501(c)(3)s</p> <p>14 work. My understanding was that -- and maybe they have</p> <p>15 to be a 501(c)(4) or something, but how do these -- if</p> <p>16 they can't engage in political speech, then what are we</p> <p>17 even doing with the independent expenditures? I guess</p> <p>18 maybe I'm missing something.</p> <p>19 MR. BARTON: So --</p> <p>20 COMMISSIONER CHAN: Am I missing something?</p> <p>21 MR. BARTON: Mr. Chair, Commissioner Chan,</p> <p>22 so, yes, C(4)s -- any corporation can do a political</p> <p>23 speech now but not a 501(c)(3). A 501(c)(3)</p> <p>24 corporation, under its -- in order to maintain its</p> <p>25 tax-exempt status, cannot engage in political speech.</p>	<p>1 us turning over to Tom this is how much we spent, and</p> <p>2 then we'll say we don't agree. And we'll have to --</p> <p>3 you know, we'll have to do the process or whatever.</p> <p>4 So, I mean, that's why I think this is a</p> <p>5 vote. I think all the -- all the issues that you</p> <p>6 mentioned -- how brief it is. I mean, all of the</p> <p>7 issues that are of interest that you're going to have</p> <p>8 to actually decide are out before you. So as I'm</p> <p>9 sitting here thinking how do I tell a client if I don't</p> <p>10 know how far out it is and I -- and if you can't just</p> <p>11 say these ads are important to us; call your senator</p> <p>12 about it.</p> <p>13 This is not lobbying. There's no</p> <p>14 legislation identified here. That's not the point of</p> <p>15 it. The point of it is to encourage civic engagement.</p> <p>16 So --</p> <p>17 COMMISSIONER CHAN: And maybe this --</p> <p>18 MR. BARTON: I don't know how far we've had</p> <p>19 to go. I mean, I'm not sure. I don't know how far I</p> <p>20 would have to go, and I guess we're almost saying you</p> <p>21 can't mention the name of an elected official, which I</p> <p>22 don't think is a great standard.</p> <p>23 COMMISSIONER CHAN: And, Mr. Chairman,</p> <p>24 Mr. Barton, I guess I feel where you are coming from.</p> <p>25 I just -- again, just looking at it from the plain</p>		
11:13:16-11:14:18	Page 87	11:15:18-11:16:26	Page 89
<p>1 So that's really, kind of, an our-problem, not a</p> <p>2 your-problem thing.</p> <p>3 I mean -- but it is -- it is a fact that</p> <p>4 when we -- when we take the definition of "express</p> <p>5 advocacy" and we let it grow all the way out to now</p> <p>6 encompass calling your senator, calling your</p> <p>7 representative, that does -- as we expand the</p> <p>8 definition of express advocacy, that does push (c)(3)</p> <p>9 organizations out of it because they cannot engage in</p> <p>10 express advocacy. And so, again, that's really more of</p> <p>11 an our-problem thing than a your-problem thing.</p> <p>12 I'm not sure -- so it sounds to me that</p> <p>13 what we're -- what we are moving towards is a ruling</p> <p>14 that I don't know what -- so any mention of -- I'm</p> <p>15 trying to construct the rule now. I mean, this is --</p> <p>16 this is an issue that's important to them. They're</p> <p>17 trying to connect the voter with the representative,</p> <p>18 and if we're saying that even 60 days -- I mean, I</p> <p>19 don't know how far in advance you have to do it now.</p> <p>20 And I guess what we're saying is that you're not</p> <p>21 allowed to use the name of an elected official.</p> <p>22 I mean, I'm honestly trying to think about</p> <p>23 if I went back to this -- and this is why -- this is</p> <p>24 why I think that the vote is now and not afterwards. I</p> <p>25 mean, the investigation is just going to be a matter of</p>	<p>1 language of the mailers. And having been briefed on</p> <p>2 the law by the executive director -- I know Mr. Liburdi</p> <p>3 and you both, you know, made your arguments -- that's</p> <p>4 just, kind of, where I'm at right now, but I feel your</p> <p>5 pain. I do, because I know it's, like -- it's, like, a</p> <p>6 nightmare law school exam question, right, with these</p> <p>7 facts, perhaps, that it's kind of somewhere maybe in</p> <p>8 the middle. It's not as clearcut as CJF. I don't know</p> <p>9 that it's quite Wisconsin Right to Life either.</p> <p>10 So, Mr. Chairman, thank you.</p> <p>11 ACTING CHAIRMAN KIMBLE: Thank you,</p> <p>12 Commissioner Chan.</p> <p>13 Any other questions from Commission</p> <p>14 members?</p> <p>15 (No response.)</p> <p>16 ACTING CHAIRMAN KIMBLE: Commissioner</p> <p>17 Meyer, do you have any questions?</p> <p>18 COMMISSIONER MEYER: I do not. Thank you.</p> <p>19 ACTING CHAIRMAN KIMBLE: Mr. Collins, is</p> <p>20 there anything you want to add?</p> <p>21 MR. COLLINS: I mean, I have a couple quick</p> <p>22 things I wanted to -- I wanted to, kind of, address, I</p> <p>23 guess, that go to the -- that go to the response to the</p> <p>24 reason to believe memo. I've been in -- I mean, I</p> <p>25 guess I'll say these and, Jim, if you want to respond</p>		

11:16:30-11:17:38	Page 90	11:19:06-11:20:25	Page 92
<p>1 to them, that's obviously fine.</p> <p>2 MR. BARTON: Okay.</p> <p>3 MR. COLLINS: I mean, I think there's a --</p> <p>4 I mean, as I said earlier, I think that part of the</p> <p>5 question here is what's the burden, and the burden in</p> <p>6 the -- in the context here is what's the state law</p> <p>7 burden. And the state law burden under 16-940(d) is</p> <p>8 just not just very significant.</p> <p>9 So I don't -- so in order to get to the</p> <p>10 position that I understood the response to the reason</p> <p>11 to believe memo to take that this is, in effect, a</p> <p>12 moratorium, you'd have to -- you'd have to take</p> <p>13 16-940(d) and 16-901.01 and read them together with</p> <p>14 what standards apply to 501(c)(3)s, but when you get</p> <p>15 into what the IRS looks at in terms of its factors in</p> <p>16 determining whether or not something is a political</p> <p>17 campaign in intervention, you know, they have a sort of</p> <p>18 non- -- a non- -- an inclusive, kind of, list that's</p> <p>19 also multifactor that includes, you know, whether the</p> <p>20 statement identifies one or more candidates for a given</p> <p>21 office, whether the statement expresses approval or</p> <p>22 disapproval of one of the candidate's positions or</p> <p>23 actions.</p> <p>24 It does consider the closeness in time of</p> <p>25 the election. It does consider whether the statement</p>		<p>1 different -- a different timeframe. So I don't know.</p> <p>2 Those are a couple of reasons why I, in considering</p> <p>3 your response to the reason to believe memo, didn't</p> <p>4 find myself persuaded to change the recommendations.</p> <p>5 One, I think that the IRS is looking at --</p> <p>6 to the extent the IRS looks at any of these things at</p> <p>7 all, which is the ultimate question, it seems to be</p> <p>8 saying tread cautiously here and to identify some</p> <p>9 factors that are narrow factors, like timing, and some</p> <p>10 factors that are even broader with respect to the</p> <p>11 purposes of legislation pending that are -- that would</p> <p>12 not -- that are not necessarily wordal issues -- you</p> <p>13 know, wordal issues. And wordal -- I don't think it's</p> <p>14 more fact-specific than that.</p> <p>15 And then -- and then -- and then the issue</p> <p>16 of, really, when did -- when did the election begin for</p> <p>17 purposes of the timing? If you think it begins on</p> <p>18 August -- does the election begin the day it ends or</p> <p>19 does it begin the day that voting begins?</p> <p>20 ACTING CHAIRMAN KIMBLE: Before --</p> <p>21 Mr. Barton, I apologize, but before we go into this,</p> <p>22 could we take a five-minute break for our court</p> <p>23 reporter, please?</p> <p>24 MR. COLLINS: Oh, yeah.</p> <p>25 ACTING CHAIRMAN KIMBLE: And then we'll</p>	
11:17:41-11:19:04	Page 91	11:20:27-11:29:32	Page 93
<p>1 makes reference to voting or election, you know,</p> <p>2 whether it's an ongoing series of communication by an</p> <p>3 organization on the same issue that are made</p> <p>4 independent of the timing of the election and</p> <p>5 whether -- or whether the timing of the communication</p> <p>6 are related to a non-electoral event such as a</p> <p>7 scheduled vote on specific legislation.</p> <p>8 So there are similar factors. The point</p> <p>9 being that a 501(c)(3) that gets into identifying</p> <p>10 candidates, you know, from the -- from the job, whether</p> <p>11 it's in the voter guide or a mailer or whatever is</p> <p>12 already in a place where the IRS is sort of saying, you</p> <p>13 know, there's -- there's some warning lights there.</p> <p>14 And it's not necessarily clear as the VIN diagram of</p> <p>15 what the IRS would do and what campaign -- state</p> <p>16 campaign finance will do is identical, but it's</p> <p>17 certainly not outside of the realm of caution for a</p> <p>18 501(c)(3) to -- when candidates are the subject of the</p> <p>19 communication.</p> <p>20 You know, the other thing I think is worth</p> <p>21 noting on the timing is that with respect to the time</p> <p>22 from the primary -- and we've talked about this in</p> <p>23 other context. The election, for all intents and</p> <p>24 purposes, ends -- ended on August 28th, but it began,</p> <p>25 you know, essentially, on August 1st, which is a</p>		<p>1 come back and you can address these issues that</p> <p>2 Mr. Collins brought up.</p> <p>3 Okay. We're going to take a five-minute</p> <p>4 break.</p> <p>5 (Whereupon, a recess was taken in the</p> <p>6 proceedings.)</p> <p>7 ACTING CHAIRMAN KIMBLE: Okay. We'll be</p> <p>8 back in session.</p> <p>9 I apologize, Mr. Barton, for -- for</p> <p>10 interrupting your response to Mr. Collins.</p> <p>11 MR. COLLINS: And if you want me to, I can</p> <p>12 kind of restate the question. The basic questions</p> <p>13 were, one, you know, how do you -- how do you reconcile</p> <p>14 with the IRS's guidance to 501(c)(3)s with respect to</p> <p>15 candidate-related statements with -- you know, with</p> <p>16 what 16-901 says and does that really create a</p> <p>17 moratorium? And, two, you know, what do you see as the</p> <p>18 election period here? Does the fact that the</p> <p>19 election -- does the election begin and end on August</p> <p>20 28th or does the election begin on the day of, really,</p> <p>21 voting and end on August 28th for purposes of the</p> <p>22 timing assertion were the two questions I had.</p> <p>23 MR. BARTON: Sure. So, first off, the</p> <p>24 standard that you're evaluating -- and by the way, this</p> <p>25 doesn't matter what the penalty is. The standard is</p>	



11:29:34-11:30:44	Page 94	11:31:57-11:32:51	Page 96
<p>1 the same no matter how weak or strong the penalty is.</p> <p>2 The standard is that the communication referring to one</p> <p>3 or more clearly identified candidates and targeted to</p> <p>4 the electorate of the candidates in context can have no</p> <p>5 reasonable meaning other than to advocate the election</p> <p>6 or defeat of the candidates.</p> <p>7 So, first off, the standard is a high</p> <p>8 standard as put in place by the legislature. It's not</p> <p>9 a judicial document. It's not about district</p> <p>10 compliance versus substantial compliance. The</p> <p>11 legislature said this can have no reasonable meaning</p> <p>12 other than to advocate the election or defeat. So</p> <p>13 that's the standard we're talking about. That's what</p> <p>14 you would have to find reason to believe is you would</p> <p>15 have to find this does that.</p> <p>16 So to answer the executive director's</p> <p>17 question, if a communication literally can have no</p> <p>18 reasonable meaning other than to advocate or defeat the</p> <p>19 election of a candidate, well, then, that is absolutely</p> <p>20 with -- under the umbrella of the 501(c) prohibition.</p> <p>21 The 501(c) prohibition is -- the conventional wisdom is</p> <p>22 a 501(c) political activity prohibition is more broad</p> <p>23 than express advocacy. So, in other words, all express</p> <p>24 advocacy is political activity. Not all political</p> <p>25 activity is express advocacy.</p>		<p>1 in any communication because we don't have another end</p> <p>2 of when the -- I mean, 30 to 60 days before the primary</p> <p>3 election. That's -- if I'm trying to find a number for</p> <p>4 somebody, that's the number I can find for them.</p> <p>5 So I don't know what number I would say</p> <p>6 because, I guess -- I don't know. I would have to have</p> <p>7 some deep thoughts on it. And, frankly, if we're</p> <p>8 saying this kind of communication -- these ads</p> <p>9 literally can have no reasonable meaning, other than to</p> <p>10 advocate, I don't know what -- I mean, I just don't</p> <p>11 think you can mention a legislator. And so if at the</p> <p>12 end of the day that gets -- that's the standard, that</p> <p>13 this kind of ad satisfies that requirement, then we</p> <p>14 just -- then in Arizona, we would just -- 501(c)(3)s</p> <p>15 wouldn't be able to safely do these communications.</p> <p>16 So I think that's, kind of, how I would</p> <p>17 remedy those two.</p> <p>18 ACTING CHAIRMAN KIMBLE: Okay. Thank you,</p> <p>19 Mr. Barton.</p> <p>20 Any other questions from Commission</p> <p>21 members?</p> <p>22 COMMISSIONER PATON: I have a question for</p> <p>23 Tom.</p> <p>24 MR. COLLINS: Commissioner?</p> <p>25 COMMISSIONER PATON: So, I mean, I have a</p>	
11:30:46-11:31:55	Page 95	11:32:54-11:34:16	Page 97
<p>1 So if the Commission is to find that this</p> <p>2 satisfies that, then, I mean, I don't think that</p> <p>3 finding is necessarily binding on the IRS. I don't</p> <p>4 know how it works, but I mean, just logically, if it's</p> <p>5 true that this can have no reasonable meaning other</p> <p>6 than to advocate for the election or defeat of the</p> <p>7 candidate, if it meets that high bar, then it clearly</p> <p>8 is -- satisfies 501(c)(3) restriction on political</p> <p>9 activity. So that's how those two jive.</p> <p>10 As far as whether you go by the date when</p> <p>11 the election is finalized or whether you go by the date</p> <p>12 of early mailing, obviously, when we were saying 60</p> <p>13 days, we were counting from the day of the election.</p> <p>14 If you count from the day of early mailing, I guess</p> <p>15 it's 30 days. I think in either -- I mean, that's</p> <p>16 interesting that the 30-day requirement -- just, again,</p> <p>17 for reference, the FEC uses that as when naming a</p> <p>18 candidate makes it electioneering communication, the 30</p> <p>19 days from a primary.</p> <p>20 In any case, I think my concern in both</p> <p>21 cases is that if we get done with all the process here</p> <p>22 and it's determined that a communication like this done</p> <p>23 at this time satisfies express advocacy, then it would</p> <p>24 mean that in Arizona 501(c)(3)s would not be -- it</p> <p>25 would be reckless for them to even mention candidates</p>		<p>1 problem with the fact that they have the picture, the</p> <p>2 name of the candidate. And this is from your thing</p> <p>3 that you handed out, Tom, on page 6.</p> <p>4 MR. COLLINS: Yeah.</p> <p>5 COMMISSIONER PATON: And it says, State</p> <p>6 Senator Brophy McGee voted for a budget that failed to</p> <p>7 cap class sizes and then asked the recipient of the</p> <p>8 mail piece to vote to reduce class sizes in 2019. To</p> <p>9 me that is -- would this be different, in your</p> <p>10 opinion -- I'm not a lawyer, but I'm just -- but it</p> <p>11 seems to advocate if she's not going to do it, then to</p> <p>12 vote for somebody else. And that -- it's got her</p> <p>13 picture on it and so on.</p> <p>14 And if her picture wasn't on there and her</p> <p>15 name and phone number wasn't on it and they're just</p> <p>16 advocating to reduce class sizes in 2019, to me that</p> <p>17 would be much different. I'm asking your opinion on</p> <p>18 that.</p> <p>19 MR. COLLINS: Sure.</p> <p>20 COMMISSIONER PATON: Since you are a</p> <p>21 lawyer.</p> <p>22 MR. COLLINS: Right. So I think that -- I</p> <p>23 think that there's -- there's a couple of different</p> <p>24 things going on in the context of just the four corners</p> <p>25 of the -- of the -- of the Brophy McGee -- Senator</p>	

<p>11:34:21-11:36:01</p> <p>Page 98</p> <p>1 Brophy McGee-related mailer that -- we focused in on 2 one of them. I think -- but I think they're -- one, 3 Mr. Liburdi has already mentioned which is they're -- 4 in making an objective determination of this, we're not 5 required to ignore legitimate background facts such as 6 how this session in Arizona works, which is different 7 from how it works in the congressional level, which may 8 be different from how it works in other states. 9 So I think that -- I think that -- you 10 know, I think that that is an issue. I -- we didn't 11 highlight the reason to believe, but -- but the 12 citation that Mike mentioned being to an amendment that 13 wasn't offered in the Senate gets into an issue of, you 14 know -- you know, when you're talking about whether or 15 not something is issue advocacy or whether something is 16 a form of, you know, electioneering, you know, the fact 17 that this amendment wasn't offered for her to vote on 18 casts the whole ad in a different light. In other 19 words, you are asking her to do something that she 20 didn't have an opportunity to do which, you know -- 21 COMMISSIONER PATON: Because it was a House 22 bill, not a Senate. 23 MR. COLLINS: Right. So I think that 24 that's -- and I think that that goes, again, to the -- 25 to the question of, you know, are you addressing her</p>	<p>11:37:39-11:39:11</p> <p>Page 100</p> <p>1 legislative -- our legislative session is run, taken 2 together, it's difficult for me to see how a reasonable 3 person would conclude that this is not expressly 4 advocating for this person's defeat, you know. 5 I mean, you're basically saying this 6 candidate who is on the ballot for the primary is not 7 representing the interests of the state. You're saying 8 it 30 to 60 days before the election, depending upon 9 what clock you want to -- where you want to start the 10 clock, and you're presenting it, you know, in -- and 11 just putting the contact number on there is not -- is 12 not a get out of -- is not a get-out-of-disclosure-free 13 card. And so that's how I analyzed it. 14 COMMISSIONER PATON: So if the person is 15 not identified and they just -- they just said, you 16 know, this is -- this is -- this is the way you should 17 be interested in; some people are against this, but if 18 you're interested in this, you know, this is something 19 that you can do something about, basically. 20 MR. COLLINS: Well, in fact, the Act -- I 21 need the statutory -- the Act says that -- the Clean 22 Elections Act, in fact, says that a communication that 23 would otherwise be expressly advocating is not when it 24 presents information about the voting record or 25 position on a campaign issue of three or more</p>
<p>11:36:05-11:37:35</p> <p>Page 99</p> <p>1 record or are you addressing -- are you -- or are you 2 addressing -- are you addressing just throwing out 3 there that this person doesn't support the class sizes? 4 And that coupled with the -- I think one of the key 5 statements is the fact that state lawmakers should 6 represent our interests. 7 I feel -- I know that the response from 8 the -- the post reason to believe memo response, you 9 know, sort of dismisses the state lawmakers should 10 represent our interests part of this as -- as being 11 not -- not meaningful, but I think that the implication 12 of the fact that you say that Senator Brophy McGee 13 voted for a budget that failed to cap class sizes and 14 state lawmakers should represent our interests, that 15 comes very close to a clear call to action to vote 16 against this person for election. 17 And -- and, I mean, it gets very close -- I 18 should say very close to an express -- very close to a 19 magic words type call to vote against this person, and 20 that's the functional equivalent test we're dealing 21 with. I think if you say Senator X voted against this 22 or voted for this budget that failed to do these things 23 and state lawmakers should do what we tell them to do 24 or what represents our interest and there's no way for 25 this lawmaker to do that in the context of the way our</p>	<p>11:39:12-11:40:35</p> <p>Page 101</p> <p>1 candidates so long as it's not made in coordination 2 with a candidate, political party, agent of the party 3 or person who is coordinating with the candidate or 4 candidate's agent. 5 So to your point, you could identify a 6 number of candidates who are -- who are -- perhaps, you 7 think need to be informed by their constituents about 8 this and the law. I think 16-901 allows for that, 9 expressly allows for that in Subsection B. So it's 10 just not the case that there's a -- that there would be 11 a moratorium. 12 What it would -- what it -- I guess, if you 13 accept Mr. Barton's argument, which I'm still not 14 convinced by, at worst a 501(c)(3) would have to 15 identify more than one candidate in a mailing but, you 16 know, the whole point is that if they're targeting the 17 constituency of the vote of the -- of that candidacy -- 18 of that candidate, you know, 30 to 60 days before 19 election in a negative light where there's no 20 likelihood of a vote and, perhaps, a vote -- on a vote 21 that the person to even take, you know -- you know, you 22 get to -- you can see how there's no reasonable 23 meaning. 24 So there's no way out for these 501(c)(3)s, 25 if they want -- if they want to play in this arena,</p>

11:40:39-11:42:10	Page 102	11:43:36-11:45:00	Page 104
<p>1 that even -- even if a different ad -- even if a</p> <p>2 different ad with Senator Brophy McGee would have not</p> <p>3 been express advocacy, there's an even easier way,</p> <p>4 which is an express exemption for certain</p> <p>5 communications, provided they are designed to reach,</p> <p>6 you know, a broader set of candidates. I mean, we have</p> <p>7 an express exemption for that.</p> <p>8 So it's not -- it's just not as simple as,</p> <p>9 I think, that -- as if this is -- if this can be -- if</p> <p>10 this is -- has no other reasonable meaning, then</p> <p>11 501(c)(3)s can't weigh in on communicating to</p> <p>12 constituents at all. That's not true.</p> <p>13 COMMISSIONER PATON: Okay.</p> <p>14 ACTING CHAIRMAN KIMBLE: I'm sorry. Were</p> <p>15 you going to say anything, Commissioner Paton?</p> <p>16 One of the things I wanted to say is I</p> <p>17 guess I would also be more persuaded if this was done</p> <p>18 differently. As opposed to educating people about an</p> <p>19 issue, we're educating people about how a specific</p> <p>20 legislator voted on three specific issues, which makes</p> <p>21 it seem a lot more focused on the person than on any</p> <p>22 one issue. And it just -- it does not really seem like</p> <p>23 it is genuinely looking for a way to tell people to</p> <p>24 contact your elected officials.</p> <p>25 But is there anyone else who wants to</p>	<p>1 would have been there to actually influence the</p> <p>2 legislation instead of influencing an election. And</p> <p>3 why say things like is in our Exhibit 4, the Kate</p> <p>4 Brophy McGee ad about, quote, predatory lenders? Why</p> <p>5 use -- why say things -- call Kate Brophy McGee and</p> <p>6 tell her to stop putting Arizona's families future at</p> <p>7 risk? Why -- why target in that manner?</p> <p>8 And then I would also like to just end on</p> <p>9 this point. These mailers were being sent out in</p> <p>10 sequence. They weren't all done at one time. They</p> <p>11 were done in a sequence. The Facebook ads were put up</p> <p>12 and on for a while. I would ask but for this complaint</p> <p>13 and but for the Commission taking this seriously, would</p> <p>14 that have continued? So, you know, it very well could</p> <p>15 have gone later and closer to the election, but this</p> <p>16 complaint was filed. The Commission took it seriously,</p> <p>17 and it stopped.</p> <p>18 So unless there's any further questions,</p> <p>19 Mr. Chairman, thank you for this opportunity.</p> <p>20 ACTING CHAIRMAN KIMBLE: Okay. Thank you.</p> <p>21 Any questions for Mr. Liburdi?</p> <p>22 (No response.)</p> <p>23 ACTING CHAIRMAN KIMBLE: Is there anyone</p> <p>24 else who wants to be heard on this matter?</p> <p>25 (No response.)</p>		
11:42:12-11:43:33	Page 103	11:45:00-11:46:03	Page 105
<p>1 address this?</p> <p>2 Mr. Liburdi, did you -- is there anything</p> <p>3 else you felt you should say about this?</p> <p>4 MR. LIBURDI: Thank you, Mr. Chairman.</p> <p>5 I'll be very brief and to the point here because I feel</p> <p>6 like the Commission understands the issues.</p> <p>7 What I would just focus on is the statutory</p> <p>8 test. There's no other reasonable meaning for -- for</p> <p>9 these advertisements, and when you look -- you know,</p> <p>10 it's helpful to look at federal law for precedent</p> <p>11 for -- it's helpful to look at federal law, but it is</p> <p>12 not dispositive because this is an Arizona issue. It's</p> <p>13 helpful to look at past advertisements, but that's not</p> <p>14 dispositive because every advertisement is going to be</p> <p>15 different, but if you look at the Wisconsin Right to</p> <p>16 Life advertisement that's been talked about, the two</p> <p>17 United States senators that were targeted were one</p> <p>18 Democrat, Russ Feingold, and one Republican, Herb Cole.</p> <p>19 And it was on an issue that was continually before the</p> <p>20 United States Senate.</p> <p>21 So I would ask here why target four</p> <p>22 Republicans in four competitive legislative races by</p> <p>23 targeting high-propensity voters on issues that are</p> <p>24 front and center on this election campaign and doing it</p> <p>25 after the legislative session when the opportunity</p>	<p>1 ACTING CHAIRMAN KIMBLE: Do we have any</p> <p>2 more comments from commissioners or a motion on MUR</p> <p>3 18-07 One Arizona dba Sunlight Arizona?</p> <p>4 Commissioner Chan?</p> <p>5 COMMISSIONER CHAN: Mr. Chairman, I'll make</p> <p>6 a motion that we find reason to believe that there was</p> <p>7 a violation of a statute or rule over which we have</p> <p>8 jurisdiction and authorize the executive director to</p> <p>9 conduct an investigation.</p> <p>10 COMMISSIONER PATON: Second.</p> <p>11 ACTING CHAIRMAN KIMBLE: A motion has been</p> <p>12 made and seconded.</p> <p>13 Any discussion on the motion?</p> <p>14 (No response.)</p> <p>15 ACTING CHAIRMAN KIMBLE: All those in</p> <p>16 favor, say aye.</p> <p>17 (Chorus of ayes.)</p> <p>18 ACTING CHAIRMAN KIMBLE: Anyone opposed?</p> <p>19 (No response.)</p> <p>20 ACTING CHAIRMAN KIMBLE: Motion carries 4</p> <p>21 to 0. Thank you.</p> <p>22 Item VII, public comment, anyone want to</p> <p>23 comment on anything we haven't discussed yet?</p> <p>24 MR. COLLINS: I don't know if I'm allowed</p> <p>25 to take a point of personal privilege here, but Rivko,</p>		


11:46:05-11:46:51 Page 106

1 who often publicly comments, has been given an award by  
2 the Protecting Arizona's Families Coalition, which --  
3 as, I think, advocate of the year is, I think the  
4 award.  
5 MS. KNOX: Yeah, more or less.  
6 MR. COLLINS: Yeah. And so I'd just -- as  
7 a matter of my public comment, I just would  
8 congratulate Rivko for her award. And we're always  
9 happy to see her here and proud that she's been  
10 recognized for her advocacy.  
11 MS. KNOX: Thank you.  
12 ACTING CHAIRMAN KIMBLE: Thank you and  
13 congratulations.  
14 MS. KNOX: Thank you.  
15 ACTING CHAIRMAN KIMBLE: Anyone else want  
16 to make any comments?  
17 (No response.)  
18 ACTING CHAIRMAN KIMBLE: Do I hear a motion  
19 to adjourn?  
20 COMMISSIONER CHAN: I'll move that we  
21 adjourn, Mr. Chairman.  
22 COMMISSIONER PATON: I will second.  
23 ACTING CHAIRMAN KIMBLE: Anyone object?  
24 (No response.)  
25 ACTING CHAIRMAN KIMBLE: Okay. We are

11:46:52-11:46:53 Page 107

1 adjourned.  
2 Thank you.  
3 (Whereupon, the proceedings concluded at  
4 11:46 a.m.)  
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1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA )  
3 BE IT KNOWN the foregoing proceedings were  
4 taken by me; that I was then and there a Certified  
5 Reporter of the State of Arizona, and by virtue thereof  
6 authorized to administer an oath; that the proceedings  
7 were taken down by me in shorthand and thereafter  
8 transcribed into typewriting under my direction; that  
9 the foregoing pages are a full, true, and accurate  
10 transcript of all proceedings and testimony had and  
11 adduced upon the taking of said proceedings, all done to  
12 the best of my skill and ability.  
13 I FURTHER CERTIFY that I am in no way  
14 related to nor employed by any of the parties thereto  
15 nor am I in any way interested in the outcome hereof.  
16 DATED at Phoenix, Arizona, this 29th day of  
17 September, 2018.  
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20 LILIA MONARREZ, RPR, CR #50699  
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\$3 (1) 12:6				
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**CITIZENS CLEAN ELECTIONS COMMISSION  
EXECUTIVE DIRECTOR REPORT  
November 8, 2018**

**Announcements:**

- The public can view Commission meetings live via the internet at [www.livestream.com/cleanelections](http://www.livestream.com/cleanelections). A link is available on our website.
- 

**Voter Education:**

- Post-election updates:
  - Ballots are still being processed and tabulated by the counties.
  - The governing body holding an election shall meet and canvass the election not less than six days no more than twenty days following the election.  
A.R.S. § 16-642
  - The Morrison Institute State of our State will be held on November 19th. Research on the Voter Crisis that was part of the Commission's voter education efforts will be discussed.
  - Tom and Alec met with two election observers from the Organization for Security and Co-Operation in Europe (OSCE) on October 16th and discussed Arizona Elections.
  - Gina and Tom have made televised appearances in conjunction with students from the Arizona School for the Arts, a Phoenix high school, related to our #18in2018 voter education initiative.

**2018 Candidate Information:**

- General Legislative Candidates: **44**; Received Funding: **44**
- Participating Statewide Candidates: **5**; Received Funding: **5**

**Enforcement – 2018:**

- MUR 18-07- One Arizona- RTB prior meeting. Pending further action, likely at next meeting.
- MUR 18-13- Kiana Sears – Closed pursuant to R2-20-206(A)(3).
- MUR 18-14 US Term Limits – Pending

NOTE: Two complaints were filed against Ken Bennett. However, because he failed to qualify and is no longer a participating candidate, we do not anticipate further Commission action on those complaints, barring some status change by court order.

## **Miscellaneous**

- **Legacy Foundation Action Fund**
  - Remains pending
  - The Superior Court in Maricopa County granted our motion to dismiss LFAF's effort to block our collection suit and denied LFAF's motion to dismiss. LFAF wants to expedite Superior Court resolution for appeal and we are working on that.
- **AZAN v. Reagan et. al.**
  - Ruling on Summary Judgment remains pending.
  - Oral Argument on motions for summary judgment were postponed after a Superior Court judge disqualified herself. A new judge has been assigned and oral argument is now set for October 3 at 9:30 AM. Let me know if you would like more details.
- **Bennett v. Reagan et al.**
  - Former Secretary Bennet raises a number of challenges including effort to 1) change outcome of review of qualifying contribution, 2) seek participating status.
  - Further filings pending.

Doug Ducey  
Governor

Thomas M. Collins  
Executive Director



Damien R. Meyer  
Chair

Steve M. Titla  
Mark S. Kimble  
Galen D. Paton  
Amy B. Chan  
Commissioners

**State of Arizona  
Citizens Clean Elections Commission**

1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - [www.azcleanelections.gov](http://www.azcleanelections.gov)

***MEMORANDUM***

**To: Commissioners**

**From: Thomas Collins, Executive Director and Mike Becker, Policy Director**

**Date: November 8, 2018**

**Subject: Proposed 2019 Calendar Year Budget**

The Commission operates under system of caps that operate on a calendar year basis. We are asking the Commission to approve:

1. the 2019 expenditure cap (\$20,932,604);
2. the 2019 administration and enforcement expenditure cap (\$2,093,260);
3. the 2019 public education (paid media) expenditure cap (\$2,093,260);
4. the projection of 2019 candidate funding disbursements (\$0); and
5. the projection of no excess funds in the Clean Elections Fund in 2019.

**Expenditure Cap on Total Expenses**

In compliance with A.R.S. § 16-949, the Commission projects an expenditure cap for each calendar year for all expenses under the Act, including candidate funding. *Id.* That expenditure cap, in turn, may be exceeded during a four year period so long as the difference is made up by a cap reduction in a subsequent year. *Id.*

**The Commission's projected expenditure cap for 2019 is \$20,932,604 .**

**Specific Categories of Expenses**

The Commission categorizes operating expenses using four categories under the expenditure cap: Administration/Enforcement, Public Education, Voter Education and Candidate Funding. Our overhead costs are apportioned by a 50/50 split between Administration/Enforcement and Voter Education. Personal Services and Employee Related Expenses are apportioned by allocated staff-time between administration/enforcement and voter education responsibilities.

**Administrative/Enforcement**

*The Clean Elections Act ("Act") permits the Commission to spend up to 10 percent of the calendar year expenditure cap for administrative and enforcement costs (A.R.S. §16-949 (B)).* Administrative and Enforcement expenditures are projected at \$1,478,300, 71% of the expenditure cap (\$2,093,260).

**Public Education**

*The Commission may apply up to ten percent of the yearly expenditure cap for reasonable and necessary expense associated with public education, including participation and the purposes of the Act. A.R.S. §16-949 (C).* Public education expenditures are projected at \$2,093,260.

**Voter Education and Implementation of the Act**

*The Commission may make reasonable and necessary expenditures to implement the Act, including expenditures for voter education pursuant to A.R.S. 16-956(A). A.R.S. § 16-949(D) These expenditures are not subject to any cap. Id.* Voter Education and Implementation Expenditures are projected at \$1,213,100.

### **Candidate Funding**

Section 16-954(c) provides that the Commission annually project the “amount of clean elections funding for which all candidates will have qualified. . . for the following calendar year.”

There will be no candidate funding in calendar year 2019.

### **Other Projections**

The Act provides that the Commission make two projections each year relating to the balance of and availability of funds in the Clean Elections Fund.

Section 16-954(B) provides that the Commission shall project the amount of money that will be collected in the fund over the next four years and the availability of those funds. The statute instructs the Commission to compare that projection to projected expenditures “under the assumption that expected expenses will be at the expenditure limit in § 16-949, subsection A” to determine whether there are “excess monies” in the fund.

This year, staff recommends that the Commission determine that there are no excess monies in the fund. As detailed in the chart below, projected revenue will run about \$54,488,080 below assumed expenses over the next four years.

<b>Calendar Year</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Projected Revenue	\$7,013,000	\$7,106,000	\$7,013,000	\$7,166,000
Projected Expenses (Assuming at expenditure limit)	\$20,932,604	\$20,932,604	\$20,932,604	\$20,932,604
Difference	\$(13,919,604)	\$(13,826,604)	\$(13,919,604)	\$(13,766,604)

Section 16-954(C) also provides that the Commission shall annually “announce whether the amount that the [C]ommission plans to spend the following year pursuant to § 16-949[A] . . . exceeds the projected amount of clean elections funding.” The statute continues by stating that if the Commission “determines that the fund contains insufficient monies or the spending cap would be exceeded were all candidates’ accounts fully funded,” then the commission may take steps to adjust the funding available to candidates.

Staff believes that the fund contains sufficient monies to complete funding participating candidates fully without exceeding the expenditure cap, as adjusted for carryover funds as described above. Therefore staff does not recommend that the Commission take steps to adjust candidate funding.

**Citizens Clean Elections Commission  
2019 Admin Expenditure Projections**

1

	2018 Actuals (as of Oct. 1)	2019 Projections
<i>Expenses:</i>		
Personal Services	\$ 213,841	\$ 400,000
ERE	72,188	150,000
Professional & Outside Services		
Attorney General Legal Services	79,150	86,000
External Legal Services	173,801	500,000
Other Professional Outside Services	16,613	200,000
<i>Total Professional &amp; Outside Services</i>	<u>269,564</u>	<u>786,000</u>
Travel-In State	2,103	6,000
Travel Out-of-State	0	3,000
Other Operating Expenditures		
Risk Management Charges	900	900
Other External Data Processing	14,612	60,000
External Telecomm Charges	5,121	3,000
Other External Telecom Service		6,500
Rent Charges to State Agency		27,150
Rental of Other Machinery & Equip		500
Miscellaneous Rent	98	1,000
Internal Acct/Budg/Financial Services	4,250	4,250
Repair & Maintenance - Other Equip	1,885	3,500
Other Repair & Maintenance	1,512	500
Software Support and Maintenance		1,500
Office Supplies	857	3,000
Other Operating Supplies	105	100
Conference, Education & Training Reg.	1,240	3,000
Advertising		5,000
External Printing	126	5,000
Postage & Delivery	508	2,000
Awards	297	300
Dues	308	600
Books Subscriptions & Publications	7,710	10,000
Other Miscellaneous Operating	2	500
<i>Total Other Operating Expenditures</i>	<u>39,531</u>	<u>138,300</u>
Aid to Individual/Organization	1,647	15,000
Capital Equipment		-
Non-Capital Equipment	9,803	20,000
Transfers (other state agencies)	1,648	10,000
<b>Total Expenses</b>	<u><b>\$ 610,325</b></u>	<u><b>1,528,300</b></u>



**Citizens Clean Elections Commission  
2019 Voter Public Education Expenditure Projections**

1

	2018 Actuals(as of Oct. 1)	2019 Projections
<i>Expenses</i>		
Personal Services	\$ 205,777	\$ 400,000
ERE	71,636	150,000
Professional & Outside Services		
Public Ed- Paid Media	341,425	2,093,260
VE - Reister PO 3 ECA 18030	32,831	-
Attorney General Legal Services	76,450	86,000
Other Professional Outside Services	556,672	200,000
<i>Total Professional &amp; Outside Services</i>	<u>1,007,378</u>	<u>2,379,260</u>
Travel-In State	1,773	10,000
Travel Out-of-State	-	5,000
Other Operating Expenditures		
Risk Management Charges	900	900
Other External Data Processing	93,574	150,000
AFIS Usage and Development	857	
External Telecom Charges	5,636	3,000
Other External Telecom Service	-	6,500
Rent Charges to State Agency	-	27,150
Rental of Info Tech Equipment	-	300
Rental of Other Machinery and Equipment	1,590	
Miscellaneous Rent	-	10,000
Internal Acct/Budg/Financial Services	4,250	4,250
Repair & Maintenance - Info Tech PCLAN	-	500
Repair & Maintenance - Buildings	-	500
Repair & Maintenance - Other Equip	1,983	3,500
Other Repair & Maintenance	1,512	
Software Support and Maintenance	-	1,500
Uniforms	-	500
Office Supplies	1,062	2,000
Computer Supplies	102	
Other Operating Supplies	251	1,500
Conference Education & Training Reg.	665	10,000
Advertising	4,800	4,000
External Printing	513,697	15,000
Postage & Delivery	401,538	5,000
Awards	297	
Entertainment & Promo Items	4,695	12,000
Other Miscellaneous Operating	50,187	50,000
Dues	308	500
Books, Subscriptions & Publications	748	2,500



Citizens Clean Elections Commission  
2019 Voter Public Education Expenditure Projections

2

<i>Total Other Operating Expenditures</i>	<u>1,088,652</u>	<u>311,100</u>
Capital Equipment		
Non-Capital Equipment	10,509	26,000
Transfers (other state agencies)	<u>-</u>	<u>25,000</u>
<b>Total Expenses</b>	<b><u>\$ 2,382,891</u></b>	<b><u>3,306,360</u></b>

**Citizens Clean Elections Commission  
Revenue Projections - 4 years**

	2018 Actuals	2019	2020	2021	2022
<b>Revenues</b>					
Court Assessments	\$ 5,856,660	\$ 7,000,000	\$ 7,000,000	\$ 7,000,000	\$ 7,000,000
Commission Assessments	-	3,000	8,000	3,000	8,000
\$5 Tax Donations	-	-	-	-	-
\$5 Candidate Qualifying Contributions	164,605	-	90,000	-	150,000
Miscellaneous	6,903	10,000	8,000	10,000	8,000
<b>Total Revenues</b>	<b>\$ 6,028,168</b>	<b>\$ 7,013,000</b>	<b>\$ 7,106,000</b>	<b>\$ 7,013,000</b>	<b>\$ 7,166,000</b>



Citizens Clean Elections Commission  
 2019 Expenditure Caps  
 A.R.S. §16-949

Expenditure Cap	Amount
Total Expenditure Cap	\$20,932,604
Public Ed Paid Media	\$2,093,260
Admin & Enforcement	\$2,093,260

2018 Tax Filers	Spending Limit Coefficient
2,990,372	\$7



Citizens Clean Elections Commission  
Expenditure Cap Spending and Fund Balance Projection

Calendar Year	Beginning Fund Balance	Revenues	Expenditure Cap	Ending Fund Balance
2015	\$ 24,277,334	\$ 8,212,887	\$ 19,583,662	\$ 12,906,559
2016	\$ 12,906,559	\$ 7,435,198	\$ 19,896,471	\$ 445,285
2017	\$ 445,285	\$ 7,237,500	\$ 20,321,063	\$ (12,638,278)
2018	\$ (12,638,278)	\$ 7,237,500	\$ 20,668,270	\$ (26,069,048)
2019	\$ (26,069,048)	\$ 7,013,000	\$ 20,932,604	\$ (39,988,652)



Citizens Clean Elections Commission  
Expenditure Cap/Excess Funds Projections - 4 years

Calendar Year	Beginning Fund Balance	Projected Revenues	Projected Expenditure Cap	Ending Fund Balance
2019	\$26,808,067	\$7,013,000	\$20,932,604	\$12,888,463
2020	\$12,888,463	\$7,106,000	\$20,932,604	(\$938,141)
2021	(\$938,141)	\$7,013,000	\$20,932,604	(\$14,857,745)
2022	(\$14,857,745)	\$7,166,000	\$20,932,604	(\$28,624,349)





**Citizens Clean Elections Commission**  
**Anticipated Fund Balance Projections - 4 Years**

Calendar Year	Beginning Fund Balance	Projected Revenues	Projected Expenditures	Ending Fund Balance
2019	\$26,808,067	\$7,013,000	\$2,669,400	\$31,151,667
2020	\$31,151,667	\$7,106,000	\$7,435,403	\$30,822,264
2021	\$30,822,264	\$7,013,000	\$2,669,400	\$35,165,864
2022	\$35,165,864	\$7,166,000	\$17,952,764	\$24,379,100



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September 11, 2018

**Via Email & U.S. Mail**

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Arizona Citizens Clean Elections Commission  
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Phoenix, AZ 85007  
[Thomas.Collins@azcleelections.gov](mailto:Thomas.Collins@azcleelections.gov)

**Re: Campaign Finance Complaint Against U.S. Term Limits, Inc.**

Dear Eric & Tom:

On behalf of Chad Campbell, a registered voter in Legislative District 24 ("LD 24"), we write today to file a campaign finance complaint against U.S. Term Limits, Inc. ("U.S. Term Limits"). Specifically, U.S. Term Limits violated A.R.S. §§ 16-925(C), 16-941(D), 16-958, and A.A.C. § R2-20-109(B) by making independent expenditures related to a candidate race in LD 24 without: (1) including the required disclosure on mailers sent to LD 24 voters, and (2) filing independent expenditure reports as required by the Arizona Citizens Clean Elections Act (the "Act").

Based on the facts detailed below, Mr. Campbell respectfully requests that the Secretary of State make a reasonable cause determination against U.S. Term Limits, and further, that the Arizona Citizens Clean Elections Commission (the "Commission") find reason to believe that U.S. Term Limits violated the Act and its implementing regulations.

**Background**

The facts relevant to this Complaint are simple. U.S. Term Limits is a nonprofit corporation registered in the District of Columbia (file number 903439), and its website

**ITEM V - Complaint**

indicates that Suzette Meyers serves as its “Arizona State Director.”<sup>1</sup> As of the date of this letter, it has not filed an independent expenditure report with the Secretary.

On August 25, 2018 – mere days before the primary election – U.S. Term Limits had a series of mailers delivered to voters in LD 24 related to its mission of imposing term limits on members of the United States Congress. The first mailer (the “Pro-Ferrell Mailer”) states that “MARCUS FERRELL AND PRESIDENT OBAMA AGREE” with respect to term limits and urged LD 24 voters to “PLEASE CALL MARCUS FERRELL at (904) 300-6112 and say ‘Thank you for protecting our democracy. THANK YOU FOR SUPPORTING TERM LIMITS.’” [Exhibit 1] The Pro-Ferrell Mailer is clearly sent by U.S. Term Limits, and does not contain a “paid for by” disclosure in any form. [*Id.*]

The second mailer does not mention Mr. Ferrell, but instead attacks Representative Ken Clark, who was one of Mr. Ferrell’s opponents in the Democratic Party’s primary election for representative in LD 24 (the “Anti-Clark Mailer”). [Exhibit 2] It also does not contain a “paid for by” disclosure in any form.

### Discussion

Both the Pro-Ferrell Mailer and Anti-Clark Mailer violate several provisions of Arizona law.

**First**, U.S. Term Limits clearly violated A.R.S. § 16-925(C) by failing to include the disclosure required by A.R.S. § 16-925(A) on either the Pro-Ferrell Mailer or the Anti-Clark Mailer. Both constitute “advertisement[s],” A.R.S. § 16-901(1), given their reference to clearly-identified candidates, their targeting of voters in LD 24, their presentation of those candidates in a favorable or unfavorable light, and the fact that they were mailed and received just three days before the primary election. Cf. A.R.S. § 16-901.01(A)(2).<sup>2</sup>

**Second**, U.S. Term Limits also violated A.R.S. §§ 16-941(D), 16-958, and A.A.C. § R2-20-109(B) by making independent expenditures in a legislative race without filing an independent expenditure report as required by the Act and its implementing regulations. For the reasons described above, both the Pro-Ferrell Mailer and Anti-Clark Mailer constitute “express advocacy” as defined by A.R.S. § 16-901.01(A)(2), and these mass mailings (either individually or collectively) surely exceeded the \$740 threshold that triggered U.S. Term Limits’ obligation to file an independent expenditure report.

---

<sup>1</sup> <https://www.termlimits.com/about/team/>.

<sup>2</sup> With respect to the Pro-Ferrell Mailer, any argument that it was a mere “issue ad” would be nonsensical because Mr. Ferrell did not hold elected office.

Eric Spencer  
Thomas Collins  
September 11, 2018  
Page 3

### Conclusion

We trust that the Secretary and Commission will diligently investigate this matter and agree that U.S. Term Limits violated Arizona law. Please let us know if we can provide any further information as your respective investigations proceed.

Sincerely,

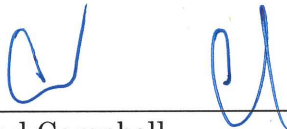


D. Andrew Gaona

DAG:slm  
Enclosures

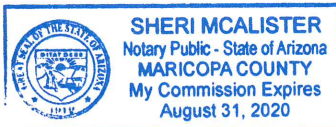
## VERIFICATION

I, Chad Campbell, state that I have read the foregoing "Campaign Finance Complaint Against U.S. Term Limits, Inc. and Marcus Ferrell" (the "Complaint"). To the best of my knowledge, information and belief, the statements made in the Complaint are true and correct.

  
\_\_\_\_\_  
Chad Campbell

STATE OF ARIZONA       )  
                                      :SS.  
County of Maricopa       )

Subscribed and sworn before me this 29th day of August, 2018, by Chad Campbell.



  
\_\_\_\_\_  
Notary Public

# **Exhibit 1**



# MARCUS FERRELL AND PRESIDENT OBAMA AGREE.

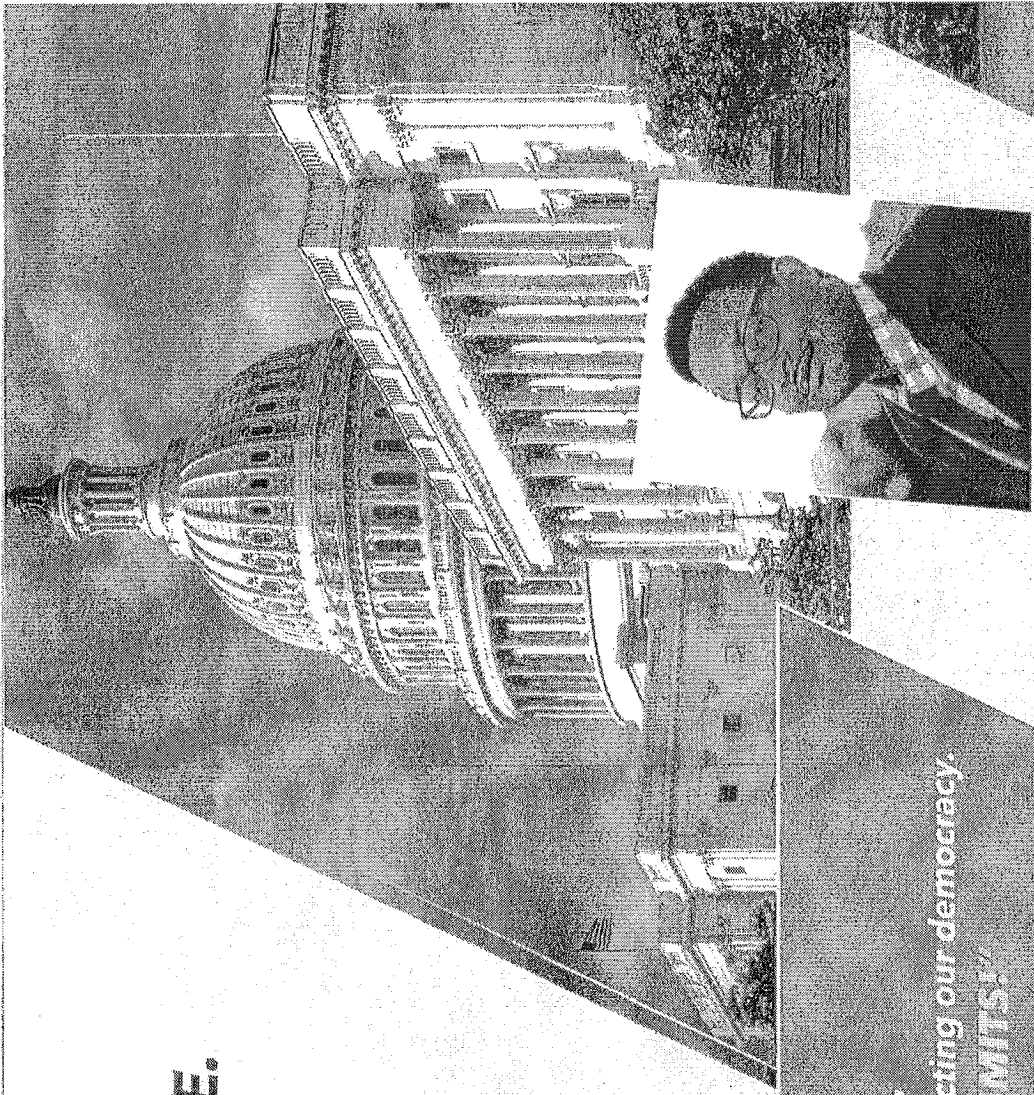
Leaders like President Obama know that politicians who stay in Washington too long can let the people down.

That's why Marcus Ferrell will support legislation to put term limits on members of Congress.

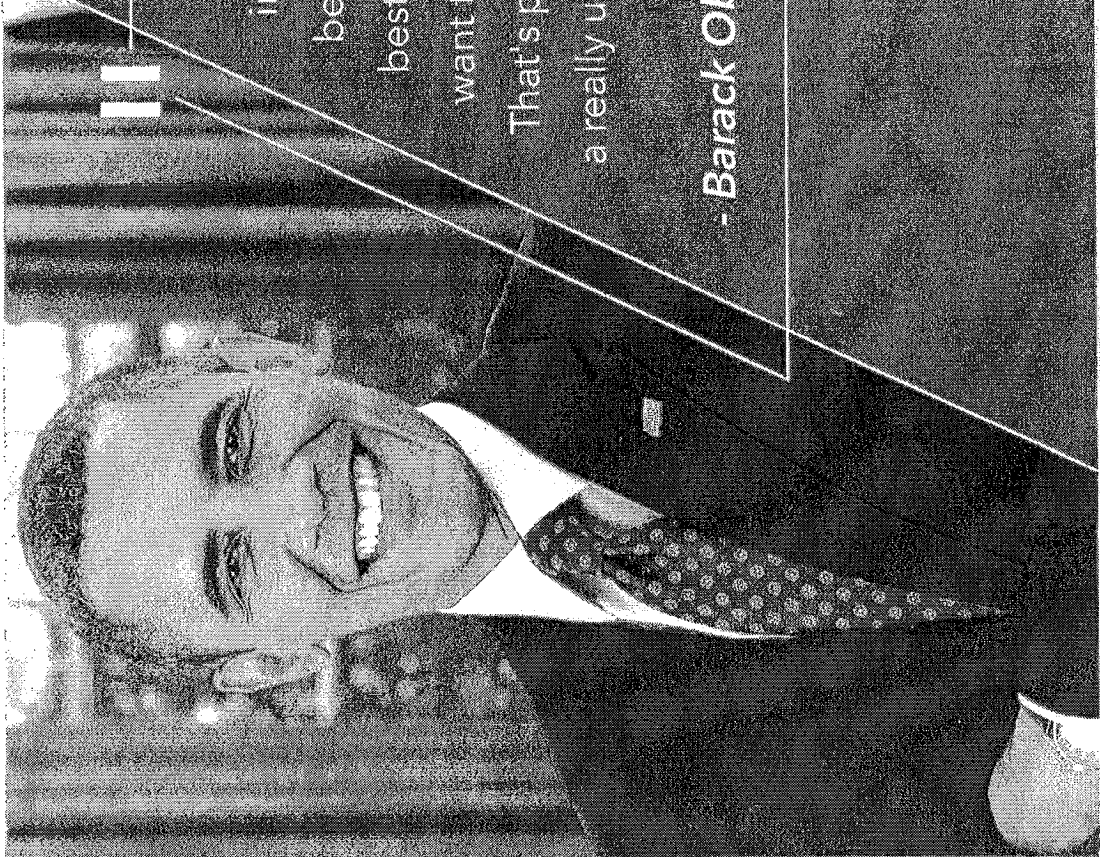
**PLEASE CALL MARCUS FERRELL**

at (904) 300-6112 and say "Thank you for protecting our democracy."

**THANK YOU FOR SUPPORTING TERM LIMITS!"**







If you're in power for too long, even with the best of intentions, you become stale and your government becomes stale. Over time, you will not do what's best for the country and the country will suffer. We want to see new voices and new ideas emerge. That's part of the reason why I think term limits are a really useful thing.

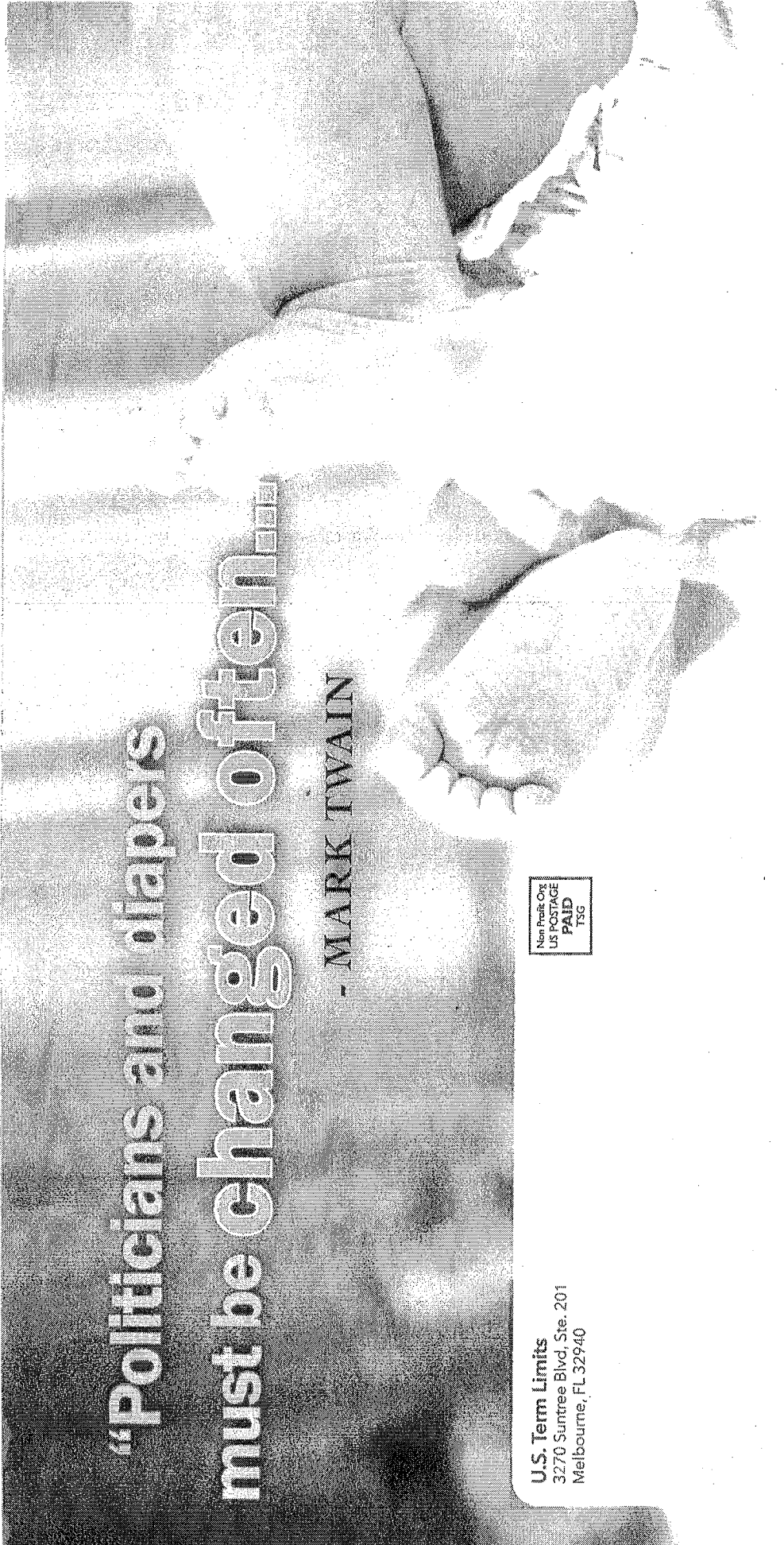
- Barack Obama

U.S. Term Limits  
3270 Suntree Blvd, Ste. 201  
Melbourne, FL 32940

Non Profit Org  
US POSTAGE  
PAID  
TSG



# **Exhibit 2**



**"Politicians and diapers  
must be changed often."**

**- MARK TWAIN**

**U.S. Term Limits**  
3270 Suntree Blvd, Ste. 201  
Melbourne, FL 32940

Non Profit Org  
US POSTAGE  
**PAID**  
TSG



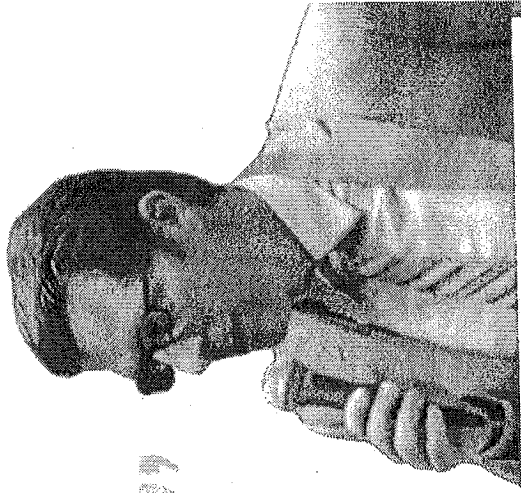
# ...and for the same reason."

We have seen the dysfunction in Washington, DC created by career politicians who are more intent on keeping their seats than finding solutions. We can't afford that broken system any longer.

Ken Clark VOTED AGAINST term limits for Congress, which a scientific poll conducted recently by McLaughlin & Associates found that 82% of Arizona voters support.

Tell Ken Clark: Stop siding with DC career politicians over the people of Arizona. Stop opposing term limits!

Call Ken Clark, let him know you've had enough of career politicians.  
(602) 926-3108      [kenc Clark@azleg.gov](mailto:kenc Clark@azleg.gov)



Roll Call: AZ HCR2024 | 2018

## Term Limits for Congress

Name	Yea	Nay
Rep. Ken Clark [D]		<input checked="" type="checkbox"/>

**STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION**

MUR 18-14

US TERM LIMITS

**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. Background**

On September 11, Chad Campbell (Complainant) filed a Complaint against U.S. Term Limits, Inc., a Washington D.C. based nonprofit (Respondent). The Complaint alleges that on August 25, 2018 Respondent “delivered a series of mailers to voters in LD24 related to its mission of imposing term limits on members of the United States Congress.” Exhibit 1 (Complaint) at 2. One mailer stated that Candidate 1 was for term limits and encouraged recipients to call that Candidate and thank him for supporting term limits. Another mailer was critical of Candidate 2, an incumbent representative seeking reelection for failing to support term limits. It urged recipients to call Candidate 2 at his legislative office and share their disagreement. *Id.* The Complaint alleges, among other things, that Respondent should have filed Clean Elections Independent Expenditure Reports under A.R.S. § 16-941(D) because the mailers were “express advocacy” under A.R.S. § 16-901.01 and cost more than the threshold requiring spending disclosure.

Respondent filed a timely response arguing that the mailers in question were not express advocacy, but rather “classic issue advocacy,” because they have a meaning other than to advocate for or against a candidate. Exhibit 2, (Response) at 3-4.

## II. Legal Background

### *a. Relevant Evidentiary Standard*

At this preliminary stage in Commission proceedings, the Commission need only find that there may be reason to believe that the Respondent has committed a violation of the Act or Rules. Ariz. Admin. Code R2-20-208(A).

### *b. Relevant Legal Standard*

The Clean Elections Act defines expressly advocates, in relevant part as an advertisement

[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).

However, such a communication “shall not be considered as one that expressly advocates merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party or a person who is coordinating with a candidate or candidate's agent.” *Id.* § 16-901.01(B).

The controlling case for reporting under this standard is *Committee for Justice in Fairness v. Arizona Secretary of State's Office (CJF)*, 235 Ariz. 347 (App. 2014). There, the Court held that an advertisement, targeted at the general electorate of a candidate who, while not identified as a candidate for the office sought, was nevertheless unambiguously a candidate for the office sought, run immediately before the election, but criticizing prior actions, did expressly advocate defeat. *Id.* at 354-55 (citing A.R.S. § 16-901(9)).

The U.S. Supreme Court case *Federal Election Commission v. Wisconsin Right to Life (WRTL)*, 551 U.S. 449 (2007) is persuasive authority here. That case dealt with when an absolute ban on express advocacy could be imposed, in the context of the greater scrutiny that absolute bans require. *Id.* at 464-65. That case held that, in order to impose a ban on express advocacy under the then-existing federal standard, the advertisement in question must, objectively be 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 470.

### III. Application

Respondent’s principle argument is based on *WRTL*. In essence, they argue that because the call to action here was to call the two candidates, that is the reasonable alternative meaning of the mailers. Moreover, they argue that they could not have foreseen the results of the primary and that the mailer serves as a “thank you” “and also as a way of potentially buttressing an issue position with the person who may soon hold office” reasons, they argue that have nothing to do with winning the election. Response at 3-4.

The statute, however, requires that there be no other reasonable meaning in “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 opponent” A.R.S. § 16-901(A)(2). Here, both mailers present the candidates in favorable (Candidate 1) and unfavorable (Candidate 2) light. They were targeted at the district, timed close to the election and included statements of the candidates through their positions. Thus under the statute and *CJF* there is not a reasonable alternative meaning. *CJF* at 354-55 Accordingly, under the statute, the

expenditures constituted express advocacy, likely over the threshold reporting amount.<sup>1</sup>

## **Recommendation**

**I recommend the Commission find reason to believe a violation may have been committed.**

After 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).

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<sup>11</sup> Respondent argues, Response at 3-5, that Arizona legislators did not include an electioneering communication definition similar to federal law in the statute. The voters of Arizona who actually approved A.R.S. § 16-901.01 did, however. The legislature later removed it with a 3/4ths vote. Laws 2012, Ch. 257, § 1. While this measure received a 3/4ths vote of the legislature, whether the amendment furthered the purpose of the Clean Elections Act is an open legal question.

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 (3) 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 30th day of October, 2018.

By: S/Thomas M. Collins

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Thomas M. Collins, Executive Director

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October 10, 2018

**Via Email & U.S. Mail**

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[espencer@azsos.gov](mailto:espencer@azsos.gov)

Thomas Collins  
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[Thomas.Collins@azccleanelections.gov](mailto:Thomas.Collins@azccleanelections.gov)

18 OCT 12 PM 3:29 CCEC

**Re: CCEC MUR 18-14, Arizona Secretary of State CF-2017-020  
Campaign Finance Complaint Against U.S. Term Limits, Inc.**

Dear Eric & Tom:

Thank you for the opportunity to submit a brief reply in support of Mr. Campbell's campaign finance complaint ("Complaint") against U.S. Term Limits, Inc. ("U.S. Term Limits"). For the reasons set forth in the Complaint and below, we continue to urge the Secretary and the Commission to take enforcement action against U.S. Term Limits, an out-of-state entity that made independent expenditures in Arizona without complying with its laws.

Cathartic as it may be for U.S. Term Limits to label the Complaint as "baseless," "meritless," and "sour grapes," those unnecessary adjectives do nothing to change the undisputed facts. That is, the Pro-Ferrell Mailer and Anti-Clark Mailer (and other mailers sent by U.S. Term Limits in the days leading up to the primary election): (1) related exclusively to primary election candidates, (2) were sent exclusively to voters who were eligible to cast ballots in favor of (or against) those primary election candidates, and (3) were delivered mere days before the August 28, 2018 primary election. And on these facts, U.S. Term Limits' mailers constituted "express advocacy" under A.R.S. § 16-901.01(A)(2).

**ITEM V - Response Gaona**

Under Arizona law, a person or entity engages in “express advocacy” by

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

A.R.S. § 16-901.01(A)(2) (emphasis added). U.S. Term Limits’ response focuses myopically on the “no reasonable meaning other than to advocate the election or defeat of the candidate(s)” language of the statute, all-the-while ignoring the factors that actually inform the analysis of that language. Its silence is telling and dispositive.

The first factor requires an examination of “the presentation of the candidate[] in a favorable or unfavorable light,” and a review of the Pro-Ferrell Mailer and Anti-Clark Mailer in tandem plainly demonstrates that candidate Ferrell was portrayed in a “favorable” light for his apparent support of term limits, and candidate Clark was portrayed in an “unfavorable” light given his opposing view on that issue. Here, the fact that candidate Ferrell was **not** a current officeholder is extremely relevant; after all, there would be **no** need whatsoever for U.S. Term Limits to engage in “issue advocacy” for someone with **no** present authority to effect change on an issue. The mailer was clearly intended to sway voters prior to the election.

The second factor turns on the “targeting, placement or timing of the communication,” all of which weigh in favor of the conclusion that U.S. Term Limits’ mailers are independent expenditures. U.S. Term Limits does not dispute that both mailers were targeted exclusively at voters in LD24 (the district in which both candidates Ferrell and Clark were primary election candidates), and that the mailers were delivered days before the August 28, 2018 primary election. As a consequence, this factor also weighs strongly against U.S. Term Limits. *See Comm. for Justice & Fairness v. Ariz. Sec’y of State’s Office (“CJF”),* 235 Ariz. 347, 354 ¶ 27 (App. 2014) (finding that an ad targeted at a “major portion of the electorate” for a particular office satisfies this factor).

In short, the “only reasonable purpose” for U.S. Term Limits to send these targeted mailers days before the primary elections was to advocate for the election of candidate Ferrell, and the defeat of candidate Clark. *CJF*, 235 Ariz. at 354 ¶ 26. Both mailers were thus “independent expenditures” as defined by Title 16 and the Commission’s rules, and U.S. Term Limits’ failure to include a disclosure statement or file independent expenditure reports violated Arizona law.

Eric Spencer  
Thomas Collins  
October 10, 2018  
Page 3

### Conclusion

We thank the Secretary and the Commission for their careful consideration of this matter, and respectfully request that both pursue enforcement action against U.S. Term Limits to ensure that Arizona's campaign finance laws are dutifully followed by out-of-state interest groups that seek to influence elections in our state.

Sincerely,



D. Andrew Gaona

DAG:slm

cc: Tim La Sota ([tim@timlasota.com](mailto:tim@timlasota.com))  
Attorney for U.S. Term Limits, Inc.

## VERIFICATION

I, D. Andrew Gaona, state that I have read the foregoing Reply in CCEC MUR 18-14 and Arizona Secretary of State CF-2017-020 (the "Reply"). To the best of my knowledge, information and belief, the statements made in the Reply are true and correct.



\_\_\_\_\_  
D. Andrew Gaona

STATE OF ARIZONA        )  
                                      :ss.  
County of Maricopa        )

Subscribed and sworn before me this 10th day of October, 2018, by D. Andrew Gaona.



\_\_\_\_\_  
Notary Public

*Timothy A. La Sota, PLLC*

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Phoenix, Arizona 85016

P 602-515-2649

[tim@timlasota.com](mailto:tim@timlasota.com)

September 27, 2018

18 OCT 1 PM 12:04 CCEC

**Via email and U.S. mail to:**

Thomas M. Collins  
Executive Director  
Citizens Clean Elections Commission  
1616 W. Adams, Suite 110  
Phoenix, Arizona 85007  
[thomas.collins@azcleelections.gov](mailto:thomas.collins@azcleelections.gov)

Eric Spencer  
Arizona State Elections Director  
Arizona Secretary of State's Office  
1700 West Washington Street  
Phoenix, Arizona 85007  
[espencer@azsos.gov](mailto:espencer@azsos.gov)

**Re: CCEC MUR 18-14, Arizona Secretary of State CF-2017-020 (U.S. Term Limits)**

Dear Messrs. Collins and Spencer:

This firm represents U.S. Term Limits.

I write in response to the complaint filed on September 11, 2018 against U.S. Term Limits. The complaint was filed by Andrew Gaona on behalf of Chad Campbell and was addressed to both of you.

Mr. Gaona's letter alleged that U.S. Term Limits failed to file a required independent expenditure report with the Citizens Clean Elections Commission and that U.S. Term Limits failed to include required disclosure statements on mailers that it sent out, in violation of A.R.S. §§ 16-925, 16-941, 19-958, and A.A.C. § R2-20-109(B). [Letter from D. Andrew Gaona to Thomas Collins and Eric Spencer, September 11, 2018].

U.S. Term Limits responds as follows to these baseless allegations. In short, the mailers do not trigger reports and are not required to have a statutorily prescribed disclaimer because they do not constitute express advocacy under the law.

**Background**

Because it is relevant in the context of the complaint that has been filed, as well as this response, I wanted to provide you with some background on U.S. Term Limits.

U.S. Term Limits has been recognized as a tax-exempt organization by the Internal Revenue Service since 1991. It is not an entity that sprung up yesterday. U.S. Term Limits exists for one reason—to enact term limits for elected officials at every level of government in the United



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States. U.S. Term Limits does not try to elect Republicans or Democrats. As if to underscore the nonpartisan nature of U.S. Term Limits, in the mailers that Mr. Campbell filed his complaint about, one Democrat is mentioned who supports term limits, and another Democrat is mentioned who does not support term limits.

U.S. Term Limits' efforts in Arizona, and elsewhere, are limited to issue advocacy.

**The mailers at issue were not independent expenditures under A.R.S. §§ 16-901(31) and 16-901.01 because the mailers are clearly susceptible to an interpretation other than as an appeal to vote for Mr. Ferrell or against Mr. Clark**

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

- (a) Expressly advocates the election or defeat of a clearly identified candidate.
- (b) Is not made in cooperation or consultation with or at the request or suggestion of the candidate or the candidate's agent"<sup>1</sup>.

A.R.S. § 16-901(31).

Under Arizona law, "expressly advocates" is defined as:

1. Conveying a communication containing a phrase such as "vote for," "elect," "reelect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject" or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
2. Making a general public communication, such as in a broadcast medium, newspaper, magazine, billboard or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the communication or the inclusion of statements of the candidate(s) or opponents.

A.R.S. § 16-901.01.

The mailers did not expressly advocate under the first part of subsection (1) because they contained none of the enumerated phrases of advocacy for election or defeat.

Both the second part of subsection (1), and subsection (2), describe communications "that in context can have no reasonable meaning other than to advocate the election or defeat of" a candidate. And the mailers do not constitute express advocacy under this part of the statute

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<sup>1</sup> Subpart (b) defines when a qualifying expenditure is truly "independent" and is not at issue here.

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because the mailers clearly have a reasonable meaning other than to advocate the election of a candidate. That is, they are classic issue advocacy—they advocate for the issue of imposing term limits on politicians.

The United States Supreme Court case of *FEC v. Wisconsin Right to Life* is on point. 127 S.Ct. 2652, 2667, 551 U.S. 449, 470 (2007). *Wisconsin Right to Life* dealt with an ad that the FEC claimed was express advocacy, but Wisconsin Right to Life claimed was issue advocacy. The Supreme Court proceeded to enunciate the legal standard for determining if an ad is express advocacy, and examine whether the ad met this standard:

In light of these considerations, a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. Under this test, WRTL's [Wisconsin Right to Life's] three ads are plainly not the functional equivalent of express advocacy. First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.

127 S.Ct. at 2667, 551 U.S. at 470.

Turning to the mailers produced by U.S. Term Limits, the Supreme Court could just as easily have been talking about U.S. Term Limits' mailers in the block quote above—the ads “focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter.” In addition, the mailers’ “content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.”

It is true that one of the persons mentioned, Ken Clark, is a member of the Legislature and was a candidate for reelection at the August primary. But election time is when elected officials listen to constituents the most, when the public pays the most attention, and when issue ads are most effective. *McConnell v. Federal Election Commission*, 251 F.Supp.2d 176, 306. (D.D.C. 2003).

It is also true that Mr. Ferrell was not an elected official at the time the mailer was sent, a point that Mr. Gaona made in the complaint letter. But the Arizona statutes cited above, in defining “expressly advocate”, all speak in terms of “candidates”, not elected officials. Mr. Gaona cites no law for why a line should be drawn between what is said about an elected official-candidate, and what is said about a non-elected official candidate. Nor could he—there is no legal support for this distinction.

In addition, U.S. Term Limits is not a soothsayer and did not know in advance of the primary election which candidates would emerge victorious. It is also true that candidates have been known to forget their promises after securing election—providing a reminder of a promise serves both as a thank you and also as a way of potentially buttressing an issue position with the actual candidate who may soon hold office—two things that have nothing to do with actually winning an election.

It should also be noted that with a regulation of speech on matters of public concern, the First Amendment requires that the benefit of any doubt must be given to “protecting rather than stifling speech.” *Wisconsin Right to Life, Inc.*, 551 U.S. at 469. The mailers here share all of the specific hallmarks mentioned by the Supreme Court in finding that the ad at issue in *Wisconsin Right to Life* was not express advocacy. As such, the mailers do not constitute “express advocacy”, and thus are not subject to disclosure and reporting requirements.

**Arizona has declined to follow the federal government and other states in regulating anything constituting an “electioneering communication.”**

While U.S. Term Limits’ mailers clearly fall into the category of issue advocacy, in some cases it can be difficult to distinguish between issue and express advocacy. For this reason, the United States Congress, as well as some states, have adopted a regulation that applies not just to “express advocacy”, but to any “electioneering communication.” *See, e.g.*, 52 United States Code Annotated § 30104; Montana Code Annotated § 13–1–101 *et seq.*, Colorado Revised Statutes §§1-45-1-101 to 118. In these jurisdictions, “electioneering communications” are subject to disclosure requirements and reporting.

The federal law on this point defines “electioneering communication” as:

- any broadcast, cable, or satellite communication which--
- (I) refers to a clearly identified candidate for Federal office;
- (II) is made within--
  - (aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or
  - (bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and
- (III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

52 U.S.C.A. § 30104(f)(3)(A)(i).

These “electioneering communication” statutes were clearly enacted “[t]o capture...issue ads.” *Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 299 F.Supp.3d 83, 87 (D.D.C. 2018). And the power of a governmental entity to impose reporting and disclosure requirements has been upheld by the United State Supreme Court. *Citizens United v. Federal Election Commission*, 558 U.S. 310, 369, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010).

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In Arizona, our elected leaders have decided not to pass something requiring all “electioneering communications” to be regulated. Had they adopted the federal definition, U.S. Term Limits’ mailers might fall into it. But they have not adopted this approach. In Arizona, the line between express advocacy and issue advocacy remains the line between what is regulated and what is not. There is no category for “electioneering communications,” and U.S. Term Limits’ mailers clearly fall into the category of issue advocacy.

#### **Subsequent issue advocacy in Arizona**

U.S. Term Limits may well engage in further issue advocacy in Arizona. To avoid frivolous complaints such as the one filed by Mr. Campbell, we may choose to adhere to campaign finance disclosure and reporting laws in the future. This should not be construed as admission that these legal requirements apply.

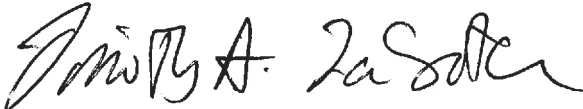
#### **Conclusion**

The complaint submitted against U.S. Term Limits is simply sour grapes emanating from an ally of an unsuccessful candidate for office. The mailers are clearly susceptible the interpretation that they are intended to advocate for the “issue” of term limits, and that ends the inquiry. The fact that someone might also draw a negative or positive view of a candidate is immaterial.

For these reasons, we ask that you take no enforcement action.

Very truly yours,

**TIMOTHY A. LA SOTA PLC**

A handwritten signature in black ink, appearing to read "Timothy A. La Sota". The signature is fluid and cursive, with the first name and last name clearly legible.

Timothy A. La Sota

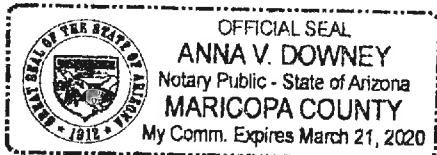
Messrs. Collins and Spencer  
September 27, 2018

### VERIFICATION

I, Timothy A. La Sota, state that I have read the foregoing Response to Chad Campbell's Complaint against U.S. Term Limits, Inc. To the best of my knowledge, information and belief, the statements made in the Response are true and correct.

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

Subscribed and sworn before me this 27<sup>th</sup> day of September, by Timothy A. La Sota.



  
Notary Public

## **Citizens Clean Elections Commission Report**

To: Commissioners

From: Clean Elections Staff

Subject: 2019 State Legislative Agenda

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The purpose of this report is to outline the Commission's legislative agenda for the 2019 Arizona State Legislature Regular Session. After approval by the Commission, the agenda will provide guidance to Commission staff respecting the Commission's goals for the session. The session begins in January.

Staff will continue to brief the Commission, as it has in the past, on developments in the Legislature during the session. The Commission is expressly authorized to make recommendations on changes in law. A.R.S. § 16-956.

### **Principles and Priorities**

Staff recommends that the Commission endorse the following principles and priorities for the session.

Oppose efforts to defund, eliminate or limit the Citizens Clean Elections Act and/or the Commission. Over several sessions, members of the legislature have proposed measures that seek to defund, eliminate or limit the authority of the Act or the Commission itself. The Commission has historically opposed these efforts on the grounds that they are typically poorly constructed, misleading or otherwise ill-considered. Staff recommends the Commission oppose legislation (in whatever

form) that seeks to defund, eliminate, or limit the CCEA and/or Commission.

This session, staff anticipates one or more bills that will invade the Commission's authority and likely violate the Voter Protection Act's terms requiring that amendments to the Act advance the purpose of the underlying Act.

- Superseding 16-941(D), -942(B) and 16-901.01: Legislation may be considered that requires independent expenditure reports virtually identical to those in 16-941(D) at all levels, including a redundant report at the state level. Likewise a supervening of A.R.S. 16-901.01 is possible. The VPA expressly prohibits superseding legislation without a three-fourths vote and without furthering the purpose of the act. Ariz. Const. Art. 1, Pt. 1, § 1(14).
- Limiting enforcement: The Legislature cannot, consistent with the Constitution, enact legislation that limits the power of the Commission to enforce the Act or purport to make portions of the Act ineffective. This includes the power of the Commission to make rules governing the enforcement of the Act and production, distribution and development of Voter Education and other Clean Elections programs.
- Monitor Expanding the Elections Procedures Manual: We will closely and carefully monitor the development of the next Elections Procedures Manual. It is not clear (and will not be for some time) whether an upcoming draft of the manual will lead to potential legislative changes or their scope.

- Monitor Proposed Legislation Regarding Current Campaign and Election Laws: The Legislature continues to expand, contract, and tweak current campaign finance and election related laws. Staff will continue to monitor and support and/or oppose each action as it is introduced.

Support Improvements to Voter Education and Access. The Commission has supported efforts to enhance voter education and participation through legislation that advances the anti-corruption and public participation values that undergird the Act. Staff recommends the Commission express its support for legislation that advances these aims.