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January 21, 2016

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Re: Response to January 4, 2016 Letter from State Elections Director Eric Spencer

Dear Council Members:

I write in response to State Elections Director Eric Spencer's January 5, 2016 letter requesting that the Governor's Regulatory Review Council (GRRC or Council) return the Citizens Clean Elections Commission's 5-Year Report, declare Rules R2-20-109(F) & (G) materially flawed and order the Commission to repeal them. Mr. Spencer's requests are without merit and should be rejected. Significantly, his request that you order the Commission to repeal these rules would require GRRC to exceed its legal authority over the Commission and its rule-making process. GRRC should reject Mr. Spencer's recommendation, adopt its staff recommendation and approve the Commission's report.

Moreover, as specified in the Commission's 5-year-report, none of the factors in A.R.S. § 41-1056(E) support the action Mr. Spencer requests. Specifically:

- 1) As detailed throughout, each and every commission rule is authorized by the Clean Elections Act. Indeed, the Rules only implement the statutes' plain terms, which the

courts continue to recognize impose duties on the Commission. Thus, absent a rule, commission action is authorized.

- 2) There is no inconsistency with other statutes, rules or agency enforcement policies. Indeed, nowhere has any person cited a statute, policy or rule with which the Commission's rules are inconsistent. For instance, there are no examples of where the Secretary made a determination about the status of an entity as a "political committee" with which the Commission disagreed.
- 3) No person has identified a probable cost associated with any Commission rule.
- 4) No person has identified a corresponding federal law and there is none.
- 5) No person has alleged the rules are not clear, concise and understandable.
- 6) No permit is at issue.
- 7) The rules, which implement the statute's plain terms, impose no additional burden beyond those statutes' terms.
- 8) No scientific issues are involved.

Mr. Spencer glibly asserts that the "Clean Elections Commission is intended to function as a PayPal service" in that it collects and distributes monies to statewide and legislative candidates ("participating candidates") who chose to run their campaigns with Clean Elections funding. (Spencer Ltr. at 1.) Relying on this mischaracterization of a significant citizen's initiative, Mr. Spencer argues throughout his letter that the Commission's authority is limited to elections involving participating candidates. In so doing, Mr. Spencer asks this Council to ignore judicial decisions and the plain terms of the Clean Elections Act, which on its face grants the Clean Elections Commission significant campaign finance enforcement authority in all elections, including those without participating candidates.

As this Council knows, Arizona voters adopted in 1998 via voter initiative the Citizens Clean Elections Act (Act). The people of Arizona voted for the Act, which is codified in Title 16, Chapter 6, Article 2, A.R.S. §§ 940-961, to "improve the integrity of Arizona state government by diminishing the influence of special-interest money, [] encourage citizen participation in the political process, and [] promote freedom of speech under the U.S. and Arizona Constitutions." A.R.S. § 16-940(A). To achieve these ambitious goals, the Act, by necessity, gives the Commission express jurisdiction over both "participating" and "nonparticipating" candidates. Although the Act draws some distinctions between participating and not participating candidates, nowhere does it state that the Commission lacks authority to resolve campaign finance violations in elections that involve only nonparticipating candidates.

Rather, recognizing that all legislative and statewide elections potentially involve concerns of special-interest money, citizen participation and free speech, the Act addressed various obligations of nonparticipating candidates, including:

- Section 16-941(B) (setting campaign contribution limits)
- Section 16-941(C) (noting that nonparticipating candidates are bound by all campaign finance laws save those in direct conflict with those in the Act)
- Section 16-941(D) (imposing reporting obligations on "any person" who makes independent expenditures in excess of \$500)

- Section 16-942(B) (establishing penalties for candidates who violate reporting requirements of Chapter 6, which includes non-participating candidates)
- Section 16-942(C) (creating penalty of disqualification for certain violations of campaign contribution limits)
- Section 16-943 (establishing criminal liability for knowing violations of statutes relating to contribution limits)
- Section 16-956(A)(7) (noting the Commission’s mandatory obligation to enforce the Act and to monitor candidate reports filed under Chapter 6)
- Section 16-957(A) (setting fourteen day requirement for Commission to serve any person who violates the Act an order regarding the violation)

The rules at issue here concern the Commission’s enforcement responsibilities, which the Arizona Supreme Court has identified as “paramount” duties. *Clean Elections Institute, Inc. v. Brewer*, 209 Ariz. 241, 244 ¶ 13, 99 P.3d 570, 574 (2004), *abrogated on other grounds by Save Our Vote Opposing C-03-2012 v. Bennett*, 231 Ariz. 145, 291 P.3d 242 (2013). As the Court recognized, these duties are independent of any public financing program and involve non-participating candidates and independent expenditures. *Id.* Mr. Spencer’s argument was recently rejected in *Horne v. Citizens Clean Elections Commission*, CV 2014-009404 (8/19/2014), when the trial court dismissed a case challenging the Commission’s jurisdiction to resolve complaints against a non-participating candidate. These decisions, attached as Exhibits 1 and 2 hereto, hold that the Commission has authority to enforce the plain terms of the statutes, including A.R.S. §§ 16-941, -942, and -957. See, e.g., *Horne* at 2, (“The Commission has authority to investigate and impose penalties for violations of the CCEA by privately funded candidates in accordance with A.R.S. §§ 16-941(B), -942(B), -942(C), -956, and -957.”) Following the terms of the statute cannot render a rule materially flawed or conflicting with other statutes.<sup>1</sup>

Contrary to Mr. Spencer’s assertion, these rules do not represent “regulatory mission creep”. Rather, the Commission established the rules at issue here consistent with its statutory responsibilities concerning campaign finance enforcement. Mr. Spencer’s fundamental disagreement is not with the rules, but with the scope of the Commission’s jurisdiction under the Clean Elections Act. GRRC should not join the Election Director’s battle to undercut the Commission’s exercise of its statutory authority. That is not GRRC’s function. The Commission’s report meets all statutory requirements and should be approved.

**The Voter Protection Act Limits the Council’s Authority under A.R.S. § 41-1056(E) to Require the Commission to Repeal or Amend Its Rules.**

To the extent the Commission is subject to the five-year review process described in A.R.S. § 41-1056, the Voter Protection Act (VPA) limits GRRC’s authority in some important ways. As an initiative approved in 1998, the Act is subject to the VPA’s protections, which generally prohibits the Legislature from amending, repealing or superseding voter-approved measures. Ariz. Const. art. IV, Pt 1, §1(6), (14). Legislation altering voter-approved initiatives

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<sup>1</sup> Notably, 16-942(B) specifically calls for penalties “in addition” to those otherwise authorized by law.

is constitutional only if it furthers the purpose of the initiative and receives the support of three-fourths of the House and Senate.

These limitations are important because Mr. Spencer is asking GRRC to exercise its authority under A.R.S. § 41-1056(E) and declare the rules “materially flawed” and “require” the Commission to amend or repeal the rule(s) on or after July 2016. Under A.R.S. § 41-1056(G), if the agency fails to amend or repeal the rules by the deadline that GRRC may set and any approved extensions, “the rule automatically expires.” These statutes governing the five-year review process did not exist when the Clean Elections Act was approved. The Legislature added them in 2012. 2012 Ariz. Sess. Laws, ch. 352, § 17. There is no question that this expansion of GRRC authority may generally apply to state agencies, but it cannot apply to the Commission if it violates the VPA.

It is settled law that the VPA applies to subsequent legislation that has the effect of amending, repealing or superseding an initiative, even if it does not directly change the initiative’s text. *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 7 ¶¶ 23-34, 308 P.3d 1152, 1158 (2013). Giving GRRC the authority to repeal Commission rules through the five-year review process effectively amends or supersedes the rulemaking requirements established in the Act itself. A.R.S. § 16-956(C) exclusively governs the Commission’s rule-making process. The Act gave no other agency the authority to require the Commission to repeal or amend its rules or impose orders that would result in the expiration of a Commission rule at a date selected by that other agency. Under the Act, rules can be amended or repealed only in the discretion of the Commission following the procedures set out in A.R.S. § 16-956(C).

Subsequent legislation changing these rule-making requirements does not comply with the VPA unless it “furthers the purposes” of the Act and receives the support of three fourths of both the House and Senate. There is no question that giving a separate state agency authority to repeal Clean Elections rules does not “further the purposes” of the Clean Elections Act, which vests rulemaking authority exclusively in the Commission. Therefore, the Legislature cannot give GRRC the authority to require the Commission to amend or repeal its rules, and the Commission’s failure to abide by such directives will not cause any Commission rule to “automatically expir[e]” as provided by A.R.S. § 41-1056(G). Such an order is ineffective under the VPA.

Even if this statute applied to the Commission, no orders to amend or repeal are appropriate because the Commission’s rules are not “materially flawed.”

### **Rules R2-20-109(F) & (G) are Valid**

#### *1. R2-20-109(F)(2) is Valid under Every Factor*

A.R.S. § 16-917(A) requires persons making “independent expenditures for literature or an advertisement for any one candidate” to send a copy of that material to the named candidate within twenty-four hours of submitting it for publication. R2-20-109(F)(2) requires all persons subject to 917(A) to “also provide a copy of the literature or advertisement to the Commission at the same time.” Mr. Spencer argues that Rule R2-20-109(F)(2) is invalid because “it improperly piggy backs off A.R.S. § 16-917(A).” More specifically, he alleges that (1) this rule is outside

the scope of the Clean Elections Act, (2) that the Commission's expansive definition of "literature and advertisement" requires the production of materials not intended by the Legislature and creates regulatory confusion, and (3) A.R.S. § 917(A) was found to be unconstitutional by the Ninth Circuit Court of Appeals. (Spencer Ltr. at 4-5.) Each of these is without merit.

The Clean Elections Act provides that "any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle" must file certain reports with the Secretary of State. A.R.S. §§ 16-941(D), 16-958. The Act further requires the Commission to "enforce this article" (A.R.S. § 16-956(A)(7)) and sets up a procedure for doing so (A.R.S. § 16-957). To enforce the provisions of A.R.S. §§ 16-941(D) and 16-958, it is reasonable to require that parties provide the Commission the very materials that may show a potential violation of those provisions of those statutes.

Further, the Commission's use of "literature or an advertisement" is intended to refer and to be limited to the exact same materials as are required to be provided under A.R.S. § 16-917(A). As such, there is no concern of extra-Legislative actions or regulatory confusion.

Finally, as Mr. Spencer is well aware, the Ninth Circuit struck down in *Ariz. Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002 (9th Cir. 2003) a prior version of A.R.S. § 16-917(A) on the grounds that it was an impermissible prior restraint. The Arizona Legislature amended that statute three times since that decision, removing the offensive limitations, and there is no challenge to the present statute that would call into question this rule. There have been no concerns raised about the rule based on any other factor relevant to GRRC's review.

## 2. R2-20-109(F)(3) is Valid under Every Factor

Various statutes, both in the Clean Elections Act (Article 2) and Article 1 of Title 16, Chapter 6, require the filing of reports for independent expenditures. A.R.S. §§ 16-913, -914.02, -941(D), and -958. The Commission has the authority to impose fines for "a violation by or on behalf of any candidate *of any reporting requirement imposed by this chapter . . .*" A.R.S. § 16-942(B) (emphasis added). R2-20-109(F)(3) sets forth some procedures regarding the imposition of these penalties. This rule always included references to A.R.S. §§ 16-941(D) and 16-958.

Mr. Spencer's argues that R2-20-109(F)(3) "unlawfully expands the Clean Elections Commission's jurisdiction over persons that make independent expenditures exclusive in privately-financed races" because (1) the underlying rationale for these reports -- matching funds -- has been deemed unconstitutional, (2) the use of the phrase "candidate's campaign account" in A.R.S. § 16-942(B) is intended to limit the Commission's power to participating candidates as only those candidates have "campaign accounts," and (3) the enforcement provisions of A.R.S. § 16-913 and § 16-942(B) are in conflict. None of these is meritorious. (Spencer Ltr. at 5-8.)

Contrary to Mr. Spencer's assertion, the Arizona voters decided that the Commission has a role in campaign finance enforcement for legislative and statewide elections, even when there is no participating candidate involved. The voters adopted the Clean Elections Act with the broad intention to diminish the influence of special-interest money, promote citizen participation

in the political process and promote the freedom of speech. A.R.S. § 16-940(A). Nowhere in those objectives is there any limitation to publicly-financed campaigns. Indeed, as discussed above, the Act provides for jurisdiction of the Commission over all candidates and nonparticipating candidates in a variety of ways. Much as he may not like it, Mr. Spencer cannot wish these statutes away.

As such, the United States Supreme Court's 2011 decision striking down of the matching funds provisions of the Clean Elections Act has no bearing on the Commission's authority over elections involving only privately-financed candidates. The Act provides clear, unequivocal jurisdiction over aspects of those races, including the reports required to be filed under A.R.S. § 16-941(D) and A.R.S. § 16-958, as well as any other campaign finance reporting violation.

Further, A.R.S. § 16-942(B)'s provision that "the candidate and the candidate's campaign's account shall be jointly and severally liable for any penalty imposed pursuant to this subsection" does not, as Mr. Spencer argues, limit its application to participating candidates because the Act elsewhere uses the term "campaign accounts" to refer to accounts held by participating candidates. Mr. Spencer reads too much into the term "campaign account." If this sentence was intended to be limited to participating candidates, it would have said so. The reference to a candidate's campaign account logically refers to any candidate's campaign account. All candidates who establish political committees have bank accounts for their campaigns. A.R.S. § 16-902(C). This provision of § 942(B) is intended to provide notice to candidates of their potential, individual exposure to civil fines. A.R.S. § 16-942(B) does not on its plain terms restrict the Commission's authority to impose fines for failure to file campaign reports only in races involving participating candidates. Nor would any reasonable reading of the statute allow one to reach that conclusion, as such a conclusion would render meaningless conference of jurisdiction over "any person" in A.R.S. § 16-941(D) ("*any person* who makes independent expenditures related to a particular office . . .") and A.R.S. § 16-958 ("*any person* who has previously reached the dollar amount specified in § 16-941 . . .") and would contradict the Commission's express jurisdiction over "any reporting requirement imposed by this chapter" in the same section.

Finally, there is no conflict between A.R.S. § 16-913 and A.R.S. § 16-942(B). Violations of § 16-913 are subject to a penalty of "ten dollars per day . . . up to a maximum of four hundred fifty dollars" under A.R.S. § 16-918(B). Nowhere in A.R.S. § 16-913 or A.R.S. § 16-918(B) is there a provision indicating that these are the exclusive penalties available for violations of A.R.S. § 16-913. Rather, A.R.S. § 16-942(B) makes it clear that its penalties are "in addition to any other penalties imposed by law." Consequently there is no statutory conflict and, as a result, no rule conflict.

Through A.R.S. § 16-942(B), the Commission has jurisdiction over conduct that violates campaign finance reporting requirements in A.R.S. § 16-913 and other reporting requirements in Chapter 6. Again, the plain terms of A.R.S. § 16-942(B) give the Commission authority to regulate any violation of any reporting requirement of Title 16, Chapter 6, including A.R.S. § 16-913. A.R.S. § 16-942(B) ("*[i]*n addition to any other penalties imposed by law . . . for a violation by or on behalf of any candidate of *any reporting requirement* imposed by this

chapter”).<sup>2</sup> The restrictions on Commission authority that Mr. Spencer advocates for contradict this plain statutory language.

Finally, Mr. Spencer’s letter nowhere identifies any other statute, rule or policy conflict to which the Commission can respond and no comment has brought up any additional conflict.

Given the Commission’s jurisdiction over all campaign finance reporting violations in statewide and legislative elections, the reference to A.R.S. § 16-913 in its rule is appropriate. In addition, the reference to “participating or non-participating candidates” in the rule is appropriate because the independent expenditure reporting requirements apply regardless of whether they are made on behalf of a participating or non-participating candidate.

### 3. *R2-20-109(F)(4)-(11) Are Valid under Every Factor*

The Clean Elections Act requires that “[n]otwithstanding any law to the contrary, *any person* who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle” shall file an original report with the secretary of state “identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat.” A.R.S. § 16-941(D) (emphasis added). Because “person” includes any corporation or association, *see, e.g., Citizens United v. Federal Election Com’n*, 558 U.S. 310, 342-43 (2010), those entities are, by definition, subject to the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958.

Commission rules had historically made clear that “person” included corporations and other associations. *See* Citizens Clean Elections Commission 5-Year Review 2005 at 65. In 2010, the Arizona Legislature enacted A.R.S. § 16-914.02(D), which, in the wake of *Citizens United*, added for corporations and unions reporting requirements nearly identical to those under A.R.S. § 16-941(D). Recognizing that there would be some overlap between these statutes (as well potential VPA issues), the Commission amended its rules to allow entities subject to the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) to be exempt from those requirements if they comply with A.R.S. § 16-914.02(D). *See* R2-20-109(F)(4)-(11). In other words, A.R.S. § 16-941(D) and A.R.S. § 16-958(A) give the Commission jurisdiction over “any person,” including corporations and unions, making independent expenditures above certain financial thresholds. Wanting to make compliance easier and more efficient, the Commission adopted a rule that reduced its power over corporations and unions that are complying with A.R.S. § 16-914.02(D).

Remarkably, Mr. Spencer describes the Commission’s act as one “designed to entice (bully) [corporations and labor unions] into preemptively submitting to the Clean Election Commission’s jurisdiction.” (Spencer Ltr. at 9.) The plain terms of A.R.S. § 16-941(D) and A.R.S. § 16-958(A), which refer to any “person,” put these entities under the jurisdiction of the Commission if they are making independent expenditures. The Commission has the authority to

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<sup>2</sup> No other agency is authorized to enforce this statute or any other provision of Article 2. A.R.S. § 16-924.

establish a regulatory scheme for this statute, which may include filing an exemption if the organization is complying with A.R.S. § 16-914.02's reporting requirements. Indeed, the Commission's form expressly permits each entity to retain any defense it may have to a Commission action. *See* Exemption Form at <http://www.azcleelections.gov/CmsItem/File/87> ("By completing this Application for Certification as an Exempt Organization, a corporation, limited liability company, or labor organization does not waive any legal arguments it may have concerning application of the Clean Elections Act and Rules to entities subject to A.R.S. § 16-914.02.") As such, there is no credible argument as to why the provisions of R2-20-109(F)(4)-(11) may be invalid.

We will nonetheless respond to Mr. Spencer's specific objections to these rules. First, Mr. Spencer is wrong that the Commission's jurisdiction is limited to races involving "participating candidates." There is no provision of the Clean Elections Act -- or any other statute -- that limits the Commission's jurisdiction to those elections involving at least one participating candidate. To the contrary, there are numerous provisions of the Clean Elections Act that give the Commission the power to regulate certain aspects of all legislative and statewide elections, including the specific reporting requirements under A.R.S. § 16-941(D) and A.R.S. § 16-958(A), regardless of public financing. *See Clean Elections Institute*, 209 Ariz. at 244 ¶ 13, 99 P.3d at 574.

Mr. Spencer's second objection is that Commission's Executive Director will have "a direct role . . . in determining which corporations are 'legitimate' or not." Contrary to Mr. Spencer's allegation of unfettered discretion, Rule R2-20-109(F)(7) (emphasis added) makes clear the Executive Director "*shall* grant the exemption" for anyone whose application is complete and accurate. Even if the Executive Director had discretion here, that does not fit within any of the enumerated bases under A.R.S. § 41-1056(E)(1)-(8) under which the Council can determine that a rule is "materially flawed."

Mr. Spencer is simply incorrect that Rules R2-20-109(F)(4)-(11) *bring corporations and unions under the Commission's jurisdiction*, potentially subjecting them to the Commission's subpoena power under R2-20-211 or to Commission audits under R2-20-109(F)(8). As stated above, the Commission has jurisdiction over those entities when they engage in political speech that is governed by A.R.S. § 16-941(D) and A.R.S. § 16-958(A). The plain terms of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) give the Commission jurisdiction over them, as it does any person, to the extent they engage in this speech.

Finally, Mr. Spencer alleges that R2-20-109(F)(9) creates "an incentive for 'any person' to file a complaint alleging that a corporation should be treated as a PAC." In fact, R2-20-109(F)(9) allows persons to file complaints with the Commission alleging that (1) an exemption application includes false information, (2) an entity has violated the terms of its exemption, or (3) that an entity subject to A.R.S. § 16-941(D) and A.R.S. § 16-958(A) has neither applied for nor received an exemption. Paragraph (9) does explicitly address determinations of whether a corporation should, in fact, be reporting as political committee based on A.R.S. § 16-914.02(K). If the Commission receives a complaint that an organization that has received an exemption should be filing reports as a political committee, but is not, the Commission would have



jurisdiction to address that issue because of the Commission's jurisdiction over any reporting requirements in "this chapter." A.R.S. § 16-942(B).

The exemption is intended to be a simple process through which corporations and unions can file independent expenditure reports solely with the Secretary of State and bypass the Clean Elections independent expenditure reporting requirement by filing a short form. It is within the Commission's jurisdiction because of its authority over independent expenditure reporting in A.R.S. §§ 16-941(D), 16-958, and its general authority over violations of reporting requirements.

4. *R2-20-109(F)(12) is Valid under every factor.*

R2-20-109(F)(12) sets forth terms under which the Commission will determine whether an entity is a political committee under A.R.S. § 16-901(20) subject to the reporting requirements in A.R.S. § 16-913. As stated previously, A.R.S. § 16-942(B) gives the Commission the legal authority to impose civil fines for any violation "by or on behalf of any candidate of any reporting requirement imposed by [Title 16, Chapter 6]." If a complaint is filed alleging a reporting violation of A.R.S. § 16-913, these rules will help the Commission determine whether a violation occurred, as those reporting requirements apply only to political committees. This rule addresses complaints alleging that a "dark money" group was obligated to disclose its contributors under A.R.S. § 16-913 but failed to do so. The history of this new rule is included in the materials provided to GRRC staff; it was fully vetted over several months with broad public input. For all of the reasons previously explained concerning the Commission's jurisdiction over reports required under this "chapter," it is a legitimate exercise of the Commission's regulatory authority.

Moreover, the rule was adopted in compliance with the Commission's rules, which require a 60-day comment period prior to adoption. Mr. Spencer appears to argue that no amendments may be made to the rule following the initiation of the 60-day comment period, even technical changes. That is incorrect. The Commission must "propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed." A.R.S. § 16-956(C). The Commission may adopt the rule "[a]fter consideration of the public comments received in the sixty day comment period." There is no requirement for an additional public comment period before final adoption if changes are made to the rule during the 60-day comment period.<sup>3</sup> To address the specific changes please see Exhibits 3-4. As you can see, the Commission made insignificant changes, and, in one case, did not adopt language relating to the confidentiality of records at all.<sup>4</sup>

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<sup>3</sup> Even the standard rule-making statute, which does not apply to the Commission, requires an additional public comment period only if rules are "substantially different" from the initial proposal. A.R.S. § 41-1025.

<sup>4</sup> To the extent that former Chairman Hoffman made additional suggestions for rule changes, there is no evidence any other person sought to add those additional changes, nor that the Secretary or others preferred them.

5. *R2-20-109(G) is Valid*

Rule R2-20-109(G) set forth procedures for enforcement actions against non-participating candidates for their violation of both reporting requirements and contribution limits. The Clean Elections Act gives the Commission express authority over nonparticipating candidates' contribution limits (A.R.S. § 16-941(B); A.R.S. § 16-942(C)) and reporting requirements (A.R.S. §§ 16-942(B)). Mr. Spencer objects to the rule's provisions relating to contribution limits and then asks that the rule be stricken "in its entirety," even though he makes no argument as to why the provisions of the rule that relate to reporting requirements are materially flawed. There is no basis to strike down either part of this rule.

For those provisions relating to contribution limits, Mr. Spencer relies only on the language in A.R.S. § 16-941(B), which notes that violations are subject to "the civil penalties and procedures set forth in § 16-905, subsections J through M and § 16-924." Mr. Spencer omits any reference to A.R.S. § 16-942(C) which provides additional penalties for certain violations of A.R.S. § 16-941(B). The same argument Mr. Spencer is making to the Council was rejected specifically *Horne v. CCEC* in 2014, while *Clean Elections Institute* expressly recognizes that it is the Commission's "duty" to enforce 16-941(B).

### **Conclusion**

The Clean Elections Act is designed to improve the integrity of the Arizona state government by "diminishing the influence of special-interest money, [] encourage citizen participation in the political process, [] and promote freedom of speech under the U.S. and Arizona Constitutions." A.R.S. § 16-940(A). As such, the Act grants to the Clean Elections Commission authority over aspects of all legislative and statewide elections, including elections that include only non-participating candidates. The statute is plain on its face and the duties imposed on the Commission have been recognized by Arizona Courts.

If there was any doubt as to the statute's terms, the Commission adopted rules R2-20-109(F) & (G) pursuant to the statutory authority given to it to enforce campaign finance regulations governing campaign contributions, independent expenditures and reporting requirements. There is no basis, including under A.R.S. § 41-1056(E) to suggest any provisions of these rules is "materially flawed." Moreover, as explained above, because of the VPA's protections, taking the action requested by the Mr. Spencer is without effect.

The Council should accept its staff recommendation and approve the Commission's report.

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Thomas Collins  
Executive Director

# **EXHIBIT 1**

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5 *Attorneys for Defendant Arizona*  
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6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF MARICOPA**

8 TOM HORNE, individually,

No. CV2014-009404

9 Plaintiff,

**FINAL JUDGMENT**

(Assigned to the Honorable Dawn Bergin)

10 v.

11 ARIZONA CITIZENS CLEAN  
12 ELECTIONS COMMISSION, a public  
13 entity.

14 Defendant.

15 On August 11, 2014, the Court heard oral argument on Plaintiff's application for  
16 order to show cause and for preliminary and permanent injunctive relief. On August 20,  
17 the Court entered its under advisement ruling, in which it denied all relief sought by  
18 Plaintiff. That ruling is attached as Exhibit A and incorporated by reference as if fully set  
19 forth herein. On August 22, 2014, Plaintiff filed a motion for reconsideration.

20 It is **ORDERED, ADJUDGED, AND DECREED** as follows.

21 1. Pursuant to Rule 65(a)(2) of the Rules of Civil Procedure and the parties'  
22 September 4, 2014 stipulation, trial on the merits was consolidated with the August 11,  
23 2014 hearing on the application for preliminary injunction.

24 2. Plaintiff's request for injunctive relief is denied for the following reasons:

25 a. Plaintiff has not demonstrated a strong likelihood of success on the  
26 merits because:

27 i. The authority of the Citizens Clean Elections Commission (the  
28 "Commission") to investigate and impose penalties under the

Citizens Clean Election Act (“CCEA”) is not limited to candidates participating in public financing. The Commission has authority to investigate and impose penalties for violations of the CCEA by privately funded candidates in accordance with A.R.S. §§ 16-941(B), -942(B), -942(C), -956, and -957.

- ii. The disqualification and/or forfeiture of office provision, § 16-942(C), expressly references § 16-941(B), which contains contribution limits for privately funded candidates. This reference shows the voters’ intent to provide the Commission with jurisdiction to investigate non-participating candidates who violate the contribution limits set forth in § 16-941(B). The last sentence of § 16-941(B) does not divest the Commission of jurisdiction to investigate violations of that subsection.
  - iii. The recent amendment adding § 16-905(O) likewise does not divest the Commission of jurisdiction in this case because it is not retroactive and the alleged conduct by Plaintiff predated the effective date of the amendment. In addition, § 16-905(O) does not divest the Commission of jurisdiction to investigate non-participating candidates who violate the contribution limits and reporting requirements set forth in §§ 16-941(B), -942(B) and -942(C) because § 16-905(O) is limited to violations of Article 1 of Chapter 6, Title 16, whereas § 16-941(B), -942(B) and -942(C) are codified in the CCEA, which is contained in Article 2 of Chapter 6, Title 16.
- b. Plaintiff has not established the possibility of irreparable harm given the fact that there are investigations being conducted by other agencies, and any injury to Plaintiff from additional media coverage due to the Commission’s investigation is speculative.

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- c. The balance of harms neither tips in favor of Plaintiff nor Defendant because any harm to Plaintiff if injunctive relief is denied is speculative and any harm to the Commission if injunctive relief is granted is negligible given that it may reinitiate the investigation if the injunction is later dissolved; and
- d. Public policy favors denial of injunctive relief because this matter involves giving effect to the intent of Arizona voters in enacting the CCEA.

3. Each side shall bear its own attorneys' fees and costs.

4. No further matters remain pending and judgment is entered pursuant to Rule 54(c) of the Rules of Civil Procedure.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge Dawn Bergin

# eSignature Page 1 of 1

Filing ID: 6201398 Case Number: CV2014-009404  
Original Filing ID: 6096778

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**Granted with Modifications**



/S/ Dawn Bergin Date: 10/28/2014  
Judicial Officer of Superior Court

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**ENDORSEMENT PAGE**

CASE NUMBER: CV2014-009404

SIGNATURE DATE: 10/28/2014

E-FILING ID #: 6201398

FILED DATE: 10/31/2014 8:00:00 AM

JOSEPH KANEFIELD

TIMOTHY A LASOTA



## **EXHIBIT 2**

209 Ariz. 241

**CLEAN ELECTIONS INSTITUTE, INC.,  
an Arizona non-profit corporation; Mi-  
chael J. Valder; and Lydia Guzman,  
Plaintiffs/Appellees/Cross-Appellants,**

v.

**Janice BREWER, in her official capacity  
as Secretary of State for the State of Ari-  
zona, Defendant/Appellant/Cross-Appellee,**

**No Taxpayer Money for Politicians, an  
unincorporated association; Eric  
Crown, in his capacity as chairman of  
the association; Lettie Phillips, in her  
capacity as treasurer of the association,  
Real Parties in Interest/Appel-  
lants/Cross-Appellees.**

No. CV-04-0263-AP/EL.

Supreme Court of Arizona,  
En Banc.

Oct. 7, 2004.

**Background:** Opponents of a voter initia-  
tive brought an action to enjoin the Secre-  
tary of State from certifying the proposi-  
tion for the general election ballot. The  
Superior Court, Maricopa County, No.  
CV-2004-012699, Margaret H. Downie, J.,  
ordered that the proposition not be certi-  
fied and placed on the ballot because it  
violated the separate amendment rule.

**Holding:** On appeal, the Supreme Court,  
McGregor, V.C.J., held that the proposi-  
tion violated the separate amendment rule.  
Affirmed.

Hurwitz, J., filed a concurring opinion.

### 1. Appeal and Error ⇨893(1)

Whether an initiative violates the sepa-  
rate amendment rule presents a question of  
law, which the Supreme Court reviews de  
novo.

### 2. Statutes ⇨105(1)

The purpose of the single subject rule is  
to prevent surprise and the evils of surrepti-  
tious or hodgepodge legislation, including the  
practice known as “logrolling.” A.R.S.  
Const. Art. 4, Pt. 2, § 13.

### 3. Statutes ⇨109.3

Although the single subject rule does not  
require that the title of an act should be a  
complete index to the legislation contained  
therein, the title should not be so meager as  
to mislead or tend to avert inquiry as to the  
context thereof. A.R.S. Const. Art. 4, Pt. 2,  
§ 13.

### 4. Statutes ⇨105(1)

To allow the legislature freedom to act,  
while enforcing the command of the single  
subject rule, the court’s interpretation of the  
single subject rule must be not so narrowly  
technical on the one side so as to substitute  
the letter for the spirit, or so foolishly liberal  
on the other as to render the constitutional  
provision nugatory. A.R.S. Const. Art. 4, Pt.  
2, § 13.

### 5. Statutes ⇨105(1)

Under this single subject rule, courts  
construe legislation liberally in favor of its  
constitutionality. A.R.S. Const. Art. 4, Pt. 2,  
§ 13.

### 6. Statutes ⇨64(10)

If one portion of a statute violates the  
single subject rule, only that part which is  
objectionable will be eliminated and the bal-  
ance left intact. A.R.S. Const. Art. 4, Pt. 2,  
§ 13.

### 7. Statutes ⇨64(10)

To determine whether the court can sev-  
er the offending portion of a statute that fails  
to comply with the single subject rule, the  
court considers whether the valid portion can  
operate without the unconstitutional provi-  
sion and, if so, the court will uphold it unless  
the result is so absurd or irrational that one  
would not have been adopted without the  
other. A.R.S. Const. Art. 4, Pt. 2, § 13.

### 8. Constitutional Law ⇨9(1)

The import of the separate amendment  
rule is that voters must be allowed to express  
their separate opinion as to each proposed  
constitutional amendment. A.R.S. Const.  
Art. 21, § 1.

### 9. Constitutional Law ⇨9(1)

The separate amendment rule differs  
from the single subject rule in two important

respects: first, although statutes comply with the single subject rule if they embrace but one subject and matters properly connected therewith, the separate amendment rule requires that each proposed amendment shall be presented in a manner that allows the voters to consider and vote for or against each amendment separately, and second, unlike the single subject rule, the separate amendment rule does not permit the court to sever an offending provision from a multiple proposal constitutional amendment. A.R.S. Const. Art. 4, Pt. 2, § 13; A.R.S. Const. Art. 21, § 1.

#### 10. Constitutional Law ⇨9(1)

When a proposed amendment consists of multiple provisions, the proposal constitutes one amendment under the terms of the constitution only if its provisions are sufficiently related to a common purpose or principle that the proposal can be said to constitute a consistent and workable whole on the general topic embraced, that, logically speaking, should stand or fall as a whole. A.R.S. Const. Art. 21, § 1.

#### 11. Constitutional Law ⇨9(1)

Under the common purpose or principle test, if any one of multiple voter propositions, although not directly contradicting the others, does not refer to such matters, or if it is not such that the voter supporting it would be expected to support the principle of the others, then there are in reality two or more constitutional amendments to be submitted, and the proposed amendment is constitutionally prohibited. A.R.S. Const. Art. 21, § 1.

#### 12. Constitutional Law ⇨9(1)

To determine whether the provisions of a proposed amendment meet the common purpose or principle test, the court considers objective factors such as whether various provisions are facially related, whether all the matters addressed by an initiative concern a single section of the constitution, whether the voters or the legislature historically has treated the matters addressed as one subject, and whether the various provisions are qualitatively similar in their effect on either procedural or substantive law. A.R.S. Const. Art. 21, § 1.

#### 13. Constitutional Law ⇨9(1)

Voter initiative violated the separate amendment rule of the state Constitution, inasmuch as it incorporated two separate constitutional amendments under the common purpose or principle test; one section of the proposition sought to eliminate public funding of political campaigns, while a different section sought both to strip the election commission of its independence and render it subject to legislative control of its budgeting decisions, and to impose a surcharge on civil and criminal fines to support the general fund. A.R.S. Const. Art. 21, § 1.

---

Perkins Coie Brown & Bain P.A. by Charles A. Blanchard, Michael S. Mandell, Michael T. Liburdi, Phoenix, Attorneys for Clean Elections Institute Inc., Michael J. Valder and Lydia Guzman.

James P. Walsh, Acting Attorney General by Jessica G. Funkhouser, Special Counsel, Diana L. Varela, Assistant Attorney General, Phoenix, Attorneys for Janice Brewer.

Gammage & Burnham by Lisa T. Hauser, Cameron C. Artigue, Phoenix, Attorneys for No Taxpayer Money For Politicians, Eric Crown and Lettie Phillips.

Coppersmith Gordon Schermer Owens & Nelson P.L.C. by Andrew S. Gordon, Phoenix, Attorneys for Amicus Curiae Arizona Corporation Commissioners/Candidates for the Arizona Corporation Commission.

Irvine Law Firm, P.A. by Thomas K. Irvine, Phoenix, Attorneys for Amicus Curiae Hon. Raul H. Castro.

#### OPINION

McGREGOR, Vice Chief Justice.

¶1 In November 1998, the voters of Arizona adopted the Citizens Clean Elections Act (the Act), later codified as Arizona Revised Statutes (A.R.S.) §§ 16-940 to 16-961 (Supp.2003). In June 2004, a group known as No Taxpayer Money for Politicians filed initiative petition signature sheets seeking to qualify Proposition 106 for the 2004 general election ballot. The plaintiffs brought this action to enjoin the Secretary of State from

certifying Proposition 106. Following a hearing, the superior court concluded that Proposition 106 violated the “separate amendment rule”<sup>1</sup> of Article 21, Section 1, of the Arizona Constitution because it incorporates two separate constitutional amendments. For that reason, the court ordered that the matter not be certified and placed on the ballot. On August 12, 2004, we entered an order affirming the judgment of the superior court, with this opinion to follow.

### I.

[1] ¶2 Whether an initiative violates the separate amendment rule presents a question of law, which we review *de novo*. See *Hohokam Irrigation & Drainage Dist. v. Ariz. Pub. Serv. Co.*, 204 Ariz. 394, 397 ¶5, 64 P.3d 836, 839 (2003).

### A.

¶3 The Arizona Constitution includes two provisions often loosely referred to as adopting a “single subject rule.” The first, Article 4, Part 2, Section 13, sets out the rule that applies uniquely to statutes enacted by the legislature.<sup>2</sup> That provision states:

Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title.

Ariz. Const. art. 4, pt. 2, § 13.

[2–5] ¶4 The purpose of this single subject provision is to prevent surprise and the evils of surreptitious or hodgepodge legisla-

tion, including the practice known as logrolling. *Taylor v. Frohmler*, 52 Ariz. 211, 215–16, 79 P.2d 961, 963 (1938). Although this provision does not require that the “title of the act should be a complete index to the legislation contained therein,” *id.* at 216, 79 P.2d 961, the title of an act “should not be so meager as to mislead or tend to avert inquiry as to the context thereof...” *Dennis v. Jordan*, 71 Ariz. 430, 439, 229 P.2d 692, 697–98 (1951). To allow the legislature freedom to act, while enforcing the command of this provision, our interpretation of the single subject rule must be not “so narrowly technical on the one side so as to substitute the letter for the spirit, or so foolishly liberal on the other as to render the constitutional provision nugatory...” *Taylor*, 52 Ariz. at 217, 79 P.2d at 964. Under this provision, we construe legislation liberally in favor of its constitutionality. See *White v. Kaibab Rd. Improvement Dist.*, 113 Ariz. 209, 212, 550 P.2d 80, 83 (1976).

[6, 7] ¶5 The constitutional language also directs that “if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be embraced in the title.” Ariz. Const. art. 4, pt. 2, § 13. Thus, if one portion of a statute violates the single subject rule, “only that part which is objectionable will be eliminated and the balance left intact.”<sup>3</sup> *State v. Coursey*, 71 Ariz. 227, 236, 225 P.2d 713, 719 (1951); see also *Citizens Clean Elections Comm’n v. Myers*, 196 Ariz. 516, 522, 1 P.3d 706, 712 (2000) (stating that unconstitutional provision of act was severable from remainder of act).<sup>4</sup>

uphold it unless the result is so absurd or irrational that one would not have been adopted without the other.” *Citizens Clean Elections Comm’n*, 196 Ariz. at 522, 1 P.3d at 712.

1. Although this Court has referred to Article 21 as setting out a “single subject rule,” its language can better be described as setting out a “separate amendment rule,” and we will use that term in this opinion.

2. Article 4 does not apply to laws adopted by initiative. *Citizens Clean Elections Comm’n v. Myers*, 196 Ariz. 516, 524 ¶35, 1 P.3d 706, 714 (2000).

3. To determine whether the court can sever the offending portion of a statute, we consider “whether the valid portion can operate without the unconstitutional provision and, if so, we will

4. The saving measure of severance responded to the concern, as expressed by some framers of the Arizona Constitution, that the single-subject provision established “a handle or a string upon every law by which the court can declare it unconstitutional.” Statement of Fred L. Ingraham (Nov. 23, 1910), in *The Records of the Arizona Constitutional Convention of 1910*, at 590 (John S. Goff ed.).

## B.

¶ 6 In contrast, the Arizona Constitution establishes a stricter test for determining whether a proposal involves more than one constitutional amendment. See Ariz. Const. art. 21, § 1 (Article 21). In language distinguishable from that used to describe the single-subject rule, the constitution provides:

If more than one proposed amendment shall be submitted at any election, such proposed amendments shall be submitted in such manner that the electors may vote for or against such proposed amendments separately.

Ariz. Const. art. 21, § 1.

[8, 9] ¶ 7 The clear import of this provision is that voters must be allowed to express their separate opinion as to each proposed constitutional amendment. The separate amendment rule of Article 21 differs from the single-subject rule of Article 4 in two important respects. First, although statutes comply with the single-subject rule if they “embrace but one subject *and matters properly connected therewith*,” Article 21 includes no reference to matters “connected with” a proposed constitutional amendment. Simply showing that several sections of a proposed amendment relate to the same general subject as that expressed in the title of the proposed amendment does not satisfy the requirements of Article 21. Instead, Article 21 requires that each proposed amendment “shall be” presented in a manner that allows the voters to consider and vote for or against each amendment separately.

¶ 8 Second, unlike the single-subject provision of Article 4, Article 21 does not permit the court to sever an offending provision from a multiple-proposal constitutional amendment. See *Taxpayers Prot. Alliance v. Arizonans Against Unfair Tax Schemes*, 199 Ariz. 180, 182 ¶ 7, 16 P.3d 207, 209 (2001) (holding that court has no authority to sever sections of a proposed amendment to the constitution). Instead, if a proposal includes more than one amendment, the entire proposal falls within the constitutional prohibition.

¶ 9 The distinctions between Article 4 and Article 21 reflect the unique position and

importance of the Arizona Constitution in state governance. The constitution provides a statement of basic principles that inform and define the foundation of the state’s laws. See *Miller v. Heller*, 68 Ariz. 352, 357, 206 P.2d 569, 573 (1949) (“The constitution of this state, second only to the constitution of the United States, is the supreme law of Arizona.”); see also *Cecil v. Gila County*, 71 Ariz. 320, 322, 227 P.2d 217, 218 (1951) (stating that the Arizona Constitution is basic law); see also John D. Leshy, *The Making of the Arizona Constitution*, 20 Ariz. St. L.J. 1, 112 (Spring 1988) (“[O]ne thing about the intent of the framers of the Arizona Constitution is absolutely clear—they fully expected the document they crafted to be the primary charter of state government and the primary check on it.”). If the principles set out in this fundamental document are to be changed by a vote of the people, the voters must receive the opportunity to express their opinion clearly as to *each* proposed change.

[10] ¶ 10 When a proposed amendment consists of multiple provisions, the proposal constitutes one amendment under the terms of the constitution only if its provisions “are sufficiently related to a *common purpose or principle* that the proposal can be said to constitute a consistent and workable whole on the general topic embraced, that, logically speaking, should stand or fall as a whole.” *Kerby v. Luhrs*, 44 Ariz. 208, 221, 36 P.2d 549, 554 (1934) (emphasis added).

[11] ¶ 11 Under the “common purpose or principle test,”

[i]f any one of the propositions, although not directly contradicting the others, does not refer to such matters, or if it is not such that the voter supporting it would be expected to support the principle of the others, then there are in reality two or more amendments to be submitted, and the proposed amendment falls within the constitutional prohibition.

*Id.*

[12] ¶ 12 To determine whether the provisions of a proposed amendment meet the common purpose or principle test, we consider objective factors such as

whether various provisions are facially related; whether all the matters addressed by an initiative concern a single section of the constitution; whether the voters or the legislature historically has treated the matters addressed as one subject; and whether the various provisions are qualitatively similar in their effect on either procedural or substantive law.

*Korte v. Bayless*, 199 Ariz. 173, 177 ¶ 11, 16 P.3d 200, 204 (2001) (citations omitted).

## II.

### A.

¶ 13 To measure Proposition 106 against the dictate of Article 21, we first describe briefly the Clean Elections Act, which Proposition 106 is intended to affect. The Act established the Citizens Clean Election Commission (the Commission). A.R.S. § 16-955. The Act assigns the Commission many duties related to the conduct of public elections, but three are paramount. First, the Commission administers the public funding provided under the Act for the campaigns of participating candidates. *Id.* § 16-951. Second, it administers a voter education program and provides for debates among candidates.<sup>5</sup> *Id.* § 16-956.A.1 and A.2. Third, the Commission enforces the provisions of Title 16, Chapter 6, Article 2, dealing with administration and enforcement.<sup>6</sup> *Id.* § 16-956.A.7. The latter two categories do not relate to the public financing of political campaigns. Rather, they address voter education and require that the Commission enforce measures such as (1) statutory limits on acceptance of campaign contributions, which limits apply to candidates not receiving public funding, § 16-941.B.1, (2) requirements concerning

reporting of contributions by candidates who do not receive public funding, § 16-941.B.2, (3) requirements that those making independent expenditures file periodic reports, § 16-941.D, and (4) provisions allowing candidates to agree jointly to restrict campaign expenditures, § 19-941.C.1. Nothing in Proposition 106 alters these statutory duties. The Commission, therefore, would retain full enforcement authority and responsibility as to these provisions even if the voters abolished public financing of political campaigns.

¶ 14 Under the Act, campaign funding for participating candidates, as well as funding for the Commission to carry out its various duties, comes not from the general fund, but rather from the Clean Elections Fund (the Fund), which receives monies from a variety of explicitly dedicated sources. Any taxpayer may contribute five dollars to the Fund by marking an optional check-off box on his or her Arizona income tax form. Taxpayers who do so receive an equal tax credit.<sup>7</sup> *Id.* § 16-954.A. Taxpayers also may donate taxes owed the state to the Fund, in an amount up to twenty percent of the tax owed, or five hundred dollars per taxpayer, whichever is higher.<sup>8</sup> *Id.* § 16-954.B. Finally, the Act imposes a surcharge of ten percent on all criminal and civil fines and penalties, the proceeds of which are deposited into the Fund.<sup>9</sup> *Id.* § 16-954.C.

¶ 15 The Act also places limits on monies that the Commission may spend and defines the expenditures that the Commission must or may make. The Act caps the total amount the Commission may spend each year at five dollars for each state personal income tax return filed by an Arizona resident during the previous calendar year. *Id.*

5. According to the record in this case, the Commission will spend \$1,258,541.25 in 2004 to publish and distribute voter guides. In 2002, the last complete election cycle, the Commission spent \$1,601,437 for voter education. See *2002 Annual Report of the Clean Elections Commission*, at 34, available at [http://www.ccec.state.az.us/ccecsr/pub/pdfPub.asp?docName=2002AnnualReport&docFile=ccec\\_ar2002.pdf](http://www.ccec.state.az.us/ccecsr/pub/pdfPub.asp?docName=2002AnnualReport&docFile=ccec_ar2002.pdf).

6. In 2002, the Commission spent \$845,141 on administration and enforcement. See *2002 Annual Report* at 34.

7. In 2002, the Commission received \$3,254,258 from such check-offs. See *2002 Annual Report* at 32.

8. In 2002, the Commission received \$98,688 from such donations. See *2002 Annual Report* at 32.

9. In 2002, the Commission received \$6,252,944 in fines, forfeitures and penalties. See *2002 Annual Report* at 32.

§ 16-949.A. The Commission “may use” up to ten percent of this amount for administrative and regulatory expenses. *Id.* § 16-949.B. Any portion of the ten percent not used for these purposes remains in the Fund. *Id.* The Act also instructs that the Commission “shall apply” ten percent of the money collected pursuant to section 16-949.A to voter education. *Id.* § 16-949.C.

¶ 16 At least once each year, the Commission must project the amount of money it will collect over the next four years. *Id.* § 16-954.D. Then, assuming it will spend the maximum amount allowed by section 16-949.A, the Commission designates any projected surplus as excess funds, which return to the state’s general fund. *Id.* § 16-954.D.

## B.

[13] ¶ 17 We apply the common purpose or principle test of *Korte* and *Kerby* to the operative sections of Proposition 106. If we cannot conclude that the provisions should stand or fall together or that a voter supporting one would reasonably be expected to support the principle of the other, we are obliged to find that Proposition 106 violates the separate amendment rule of Article 21.

¶ 18 Section A of Proposition 106 states that “[n]o taxpayer money<sup>10</sup> shall be used to fund any political candidate or campaign for statewide office or the office of a member of the legislature.” The purpose underlying section A seems clear: this provision seeks to end public funding of statewide and legislative campaigns. The section uses clear and sufficient language to accomplish its purpose: If the voters were to adopt this language, the Arizona Constitution would forbid public funding of campaigns, and those portions of the Clean Elections Act that require such funding would violate the Constitution and, hence, be unenforceable. Voters who agree with the principle that Arizona should not provide public funding for campaigns presumably would support this provision.

10. Section B of Proposition 106 broadly defines “taxpayer money” as “any tax, fee, assessment, surcharge, forfeiture, penalty, fine, other revenue or funds collected by the state, a political subdivision, department, agency or instrumentality of the state, city or town” or “any contribution,

¶ 19 Section C of Proposition 106 provides that “all money in [the Clean Elections Fund], on and after the effective date of this section, shall be deposited in the general fund of the state.” This language dramatically changes the funding source for the Clean Elections Commission by sweeping funds dedicated by the voters to the Commission into the state’s general fund. Under the Act as adopted in 1998, and subject only to its limitations, the Commission independently decides how to spend the monies in the Fund and how much to spend on particular activities. *See* ¶ 15, *supra*. By virtue of section C of Proposition 106, the Commission, rather than being funded from an established, dedicated source, will become dependent upon legislative appropriations from the general fund to support all Commission duties unrelated to public campaign financing. In short, section C strips the Commission of its independence from legislative appropriation and renders it subject to legislative control of its budgeting decisions.

¶ 20 No facial relationship exists between sections A and C, and the sections advance no common purpose or principle. The purpose of section C, unlike that of section A, cannot be to eliminate public funding of political campaigns: Section A accomplishes that purpose. Nor can the purpose of section C be simply to assure that dollars no longer used for public funding of political campaigns be returned to the general fund. Section 16-954.D of the Act as it presently exists already requires the periodic return of excess funds to the general fund and, in addition, the impact of section C is not limited to funds that previously might have been used for political campaigns. Rather, section C reverts the entirety of all monies deposited in the Fund to the general fund.

¶ 21 One purpose of section C must be to deprive the Commission of its authority to make independent budgeting decisions by changing the funding source for the Commission and, concomitantly, to increase the

donation or expenditure that is eligible for a state tax reduction, deduction, exemption, exclusion, credit, donation, check-off or other tax feature.” The definition effectively includes all money currently used to fund the Commission, regardless whether it comes from taxpayers.

amount of monies that go into the general fund.<sup>11</sup> Therefore, no common purpose joins sections A and C. Nor can we conceive of a common principle that underlies the two provisions. The question posed by section C, whether Arizona's voters would choose to change the funding source for the Commission and make the Commission dependent upon a legislative appropriation to carry out its remaining duties, involves a principle quite different from the question posed by section A, whether the voters would choose to end public funding for political campaigns.

¶ 22 The proponents of Proposition 106 argue that, whatever the language of section C, the effect of that section will be negligible. They point out that the Clean Elections Act mandates that the Commission devote ten percent of the amount derived under A.R.S. § 16-949.A to its duties of voter education. *Id.* § 16-949.C. Therefore, the proponents conclude, the legislature could not appropriate less than the mandated amount for the Commission's voter education activity. Even assuming *arguendo* that the proponents are correct, the fact remains that section C changes the funding source for the Commission's enforcement and administrative duties. Under the terms of the Act, the Commission may use "up to ten percent" of the amount defined by section 16-949.A for its administrative and enforcement duties. *Id.* § 16-949.B. As adopted by the voters, the Act gave the Commission discretion to decide how much to spend for administration and enforcement, subject only to the limitation that the amount could not exceed ten percent of the available monies.

¶ 23 Section C transfers that decision to the legislature, thereby divesting the Commission of its authority to make independent funding decisions. It thus represents an important change to the existing statutory scheme: Whereas the Commission now can itself decide how much to spend on enforce-

ment of election laws, under Proposition 106 the Commission would be required to apply to the legislature for funds to fulfill its enforcement duties, even though the members of the legislature are always potential targets of such enforcement efforts. Arizona's voters surely could adopt such an approach. But because the proposition advanced by section C rests upon a principle quite different from that advanced by section A, Article 21 requires that the voters be afforded the opportunity to consider a constitutional amendment that presents only that decision, not an amendment that joins the separate question of whether Arizona should publicly fund political campaigns.

### C.

¶ 24 Section C of Proposition 106 furthers yet another purpose, also unrelated to the purpose and principle underlying section A. When the voters adopted the Clean Elections Act, they approved a surcharge on all criminal and civil fines and penalties and dedicated those funds to specific purposes defined in the Act.<sup>12</sup> A.R.S. § 16-954.C. As noted above, section C would transfer those previously dedicated funds to the state general fund. Article 21 requires that we ask whether a common principle supports both the proposition that Arizona should prohibit public financing for political campaigns and the proposition that Arizona should impose a significant surcharge on civil and criminal fines to support the general fund.

¶ 25 We cannot conclude from any objective factor that voters favoring one proposition would likely favor the other. No common principle makes it likely that one who votes to abolish public financing of political campaigns also would vote to retain a surcharge that provided taxpayer money, as de-

11. The initiative description prepared by the proponents of Proposition 106 suggests that increasing the general fund is at least one purpose of section C. The description, after setting out the amount of money spent under the Clean Elections Act in 2002, stated: "With severe budget cutbacks an unfortunate reality, this \$13 million is better spent on education, healthcare for seniors, and other essential services." *Petition Sig-*

*nature Sheets for Proposition 106*, filed with the Arizona Secretary of State.

12. During 2002, the surcharge accounted for approximately sixty-two percent of the dedicated funds that the Commission received. *See 2002 Annual Report* at 34.



fined in Proposition 106, for those campaigns.<sup>13</sup>

¶ 26 The voters, of course, retain the right to continue the surcharge and to allow the funds previously dedicated to the Commission to be diverted to the general fund. If the voters are to be asked to approve the use of this surcharge to increase the general fund, however, they must be given the opportunity to express their opinion through a separate proposed amendment.

### III.

¶ 27 For the forgoing reasons, we affirm the judgment of the Superior Court.

CONCURRING: CHARLES E. JONES, Chief Justice, REBECCA WHITE BERCH, MICHAEL D. RYAN and ANDREW D. HURWITZ, Justices.

HURWITZ, Justice, concurring.

¶ 28 The opinion of the Court faithfully summarizes and correctly applies our precedents concerning the “separate amendment rule” in Article 21, Section 1 of the Arizona Constitution. The opinion is particularly useful in emphasizing the differences between this constitutional provision and the “single subject” rule applicable to legislation in Article 4, Part 2, Section 13. Op. ¶¶ 3–9.<sup>14</sup>

¶ 29 While I join the Court’s opinion, I have substantial doubts about the continued utility of the “common principle or purpose test” derived from *Kerby v. Luhrs*, 44 Ariz. 208, 36 P.2d 549 (1934), and its progeny. Because that test in part turns on a judicial determination of whether a voter supporting one part of a proposed amendment would “be expected to support the principle of the oth-

ers,” *id.* at 221, 36 P.2d at 554, it involves the Court in a prediction of voter preferences and behavior that is often somewhat subjective and that will subject most proposed multi-faceted constitutional amendments to attack.

¶ 30 It may well be that a different approach to the separate amendment rule would provide greater certainty in interpretation while still achieving the critical goal of Article 21, Section 1—making sure that when voters are asked to amend the Constitution, what is before them is a single amendment, not several distinct proposals lumped under one heading. For example, an approach that focused on such objective factors as whether one proposal *logically* follows from another and is *necessary* for the practical implementation of the first might well provide more predictable adjudication.

¶ 31 The parties to this case, however, did not argue that we should apply anything but the traditional *Kerby* test, and I am reluctant to consider altering our traditional approach in the absence of briefing and argument on the subject. For the reasons stated by the Court, Proposition 106 fails the *Kerby* test, and I therefore leave for another day whether that test should continue to govern our separate amendment jurisprudence.



13. A previous initiative measure adopted by Arizona’s voters strongly suggests that this state’s voters prefer to directly express their views concerning the use of dedicated funds established by the voters. In 1998, the voters amended the Arizona Constitution to provide that the legislature may “appropriate or divert funds allocated to a specific purpose by an initiative measure approved by a majority of the votes cast thereon” only if the diversion or appropriation of funds furthers the purposes of the initiative and only if approved by a vote of three-fourths of the members of the legislature. Ariz. Const. art. 4, pt. 1, § 1(6)(D).

14. Because even the more lenient “single subject” rule of Article 4, Part 2, Section 13 does not apply to legislation proposed by initiative, *Citizens Clean Elections Comm’n v. Myers*, 196 Ariz. 516, 524 ¶ 35, 1 P.3d 706, 714 (2000), it is clear that if Proposition 106 had offered legislation, rather than a constitutional amendment, the multiple subjects in the proposal would not have barred its placement on the general election ballot.

## **EXHIBIT 3**

**R2-20-109. Reporting Requirements**

- A.** No change.
- B.** No change.
- C.** No change.
- D.** Transportation expenses.
  - 1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
  - 2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
    - a. use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.
    - b. use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
  - 3. Use of airplanes.
    - a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
    - b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.
  - 4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.
- E.** No change.
- F.** Independent Expenditure Reporting Requirements.
  - 1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
  - 2. Any person required to comply with A.R.S. § 16-917 shall provide a copy of the literature and advertisement to the Commission at the same time and in the same manner as prescribed by A.R.S. § 16-917(A) and (B). For purposes of this subsection (F), "literature and advertisement" includes electronic communications, including emails and social media messages or postings, sent to more than 1,000 people.
  - 3. Any person making an independent expenditure on behalf of a candidate, participating or non-participating, and not timely filing a campaign finance report as required by A.R.S. § 16-941(D), A.R.S. § 16-958, or A.R.S. § 16-913 shall be subject to a civil penalty as described in A.R.S. § 16-942(B). An expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing

candidate or candidates. This subsection and A.R.S. § 16-942(B) applies to any political committee that accepts contributions or makes expenditures on behalf of any candidate, participating or nonparticipating, regardless of any other contributions taken or expenditures made. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. Penalties shall be assessed as follows:

- a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
  - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
  - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
  - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission's Executive Director.
  5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:
    - a. is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and
    - b. has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).
  6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B).
  7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption.
    - a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.
    - b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:
      - i. The specific facts constituting the denial;
      - ii. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
      - iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.
  8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02 (A)-(J) and (b) remains in compliance with section part (2) of this subsection (F). All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit these entities.
  9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in part (8) of this subsection (F); or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or parts (1), (2), or (6) of this subsection (F). Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and part (3) of this subsection (F), in addition to any other penalties applicable pursuant to rule or statute.

10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9958 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.
11. Any entity that has been granted an exemption as of September 11, 2014 is deemed compliant with the requirements of subpart (5) of this subsection (F) for the election cycle ending in 2014.
12.
  - a. An entity shall not be found to be a political committee under A.R.S. §16-901(20)(f) unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity plus the total reportable expenditures made by the entity exceeds both \$500 and fifty percent (50%) of the entity's total spending during the election cycle.
    - i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. a contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.
    - ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.
    - iii. For purposes of this provision, grants to other organizations shall be treated as follows:
      - a. A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.
      - b. If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.
    - iv. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (v) of this section shall count as a reportable contribution or reportable expenditure.
    - v. Notwithstanding subsections (iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:
      - a. The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus
      - b. The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.
  - b. Notwithstanding section a above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.

G. No Change

## **EXHIBIT 4**

## **R2-20-109. Reporting Requirements**

- A.** No change.
- B.** No change.
- C.** No change.
- D.** Transportation expenses.
  - 1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
  - 2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
    - a. use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.
    - b. use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
  - 3. Use of airplanes.
    - a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
    - b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.
  - 4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.
- E.** No change.
- F.** Independent Expenditure Reporting Requirements.
  - 1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
  - 2. Any person required to comply with A.R.S. § 16-917 shall provide a copy of the literature and advertisement to the Commission at the same time and in the same manner as prescribed by A.R.S. § 16-917(A) and (B). For purposes of this subsection (F), "literature and advertisement" includes electronic communications, including emails and social media messages or postings, sent to more than 1,000 people.
  - 3. Any person making an independent expenditure on behalf of a candidate, participating or non-participating, and not timely filing a campaign finance report as required by A.R.S. § 16-941(D), A.R.S. § 16-958, or A.R.S. § 16-913 shall be subject to a civil penalty as described in A.R.S. § 16-942(B). An expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing

candidate or candidates. This subsection and A.R.S. § 16-942(B) applies to any political committee that accepts contributions or makes expenditures on behalf of any candidate, participating or nonparticipating, regardless of any other contributions taken or expenditures made. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. Penalties shall be assessed as follows:

- a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
  - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
  - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
  - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission's Executive Director.
  5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:
    - a. is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and
    - b. has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).
  6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B), and comply with the requirements of A.R.S. § 16-913.
  7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption.
    - a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.
    - b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:
      - i. The specific facts constituting the denial;
      - ii. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
      - iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.
  8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02 (A)-(J) and (b) remains in compliance with section part (2) of this subsection (F). All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit these entities, any exempt entity pursuant to Article 4 of these rules.
  9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in part (8) of this subsection (F); or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or parts (1), (2), or (6) of this subsection (F). Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and part (3) of this subsection (F), in addition to any other penalties applicable pursuant to rule or statute.



10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9958 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.

11. Any entity that has been granted an exemption as of September 11, 2014 is deemed compliant with the requirements of subpart (5) of this subsection (F) for the election cycle ending in 2014.

~~12. a. the commission shall bear the burden of proving by a preponderance of evidence that an entity is a political committee.~~

~~a.b.~~ An entity shall not be found to be a political committee under A.R.S. § 16-901(20)(f) unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity plus the total reportable expenditures made by the entity exceeds both \$500 and fifty percent (50%) of the entity's total spending during the election cycle.

i. ~~F~~or purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. a contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.

ii. ~~F~~or purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.

iii. ~~F~~or purposes of this provision, grants to other organizations shall be treated as follows:

a. ~~A~~a grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.

b. ~~I~~f the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.

iv. ~~I~~f the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the such relevant portion of the grant as set forth in subsection (v) of this section shall count as a reportable contribution or reportable expenditure.

v. ~~N~~otwithstanding subsections (iii) and (iv) ~~iii(e)(1)-(3)~~, the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:

a. ~~T~~he amount that the recipient organization spends on reportable contributions and reportable expenditures, plus

b. ~~T~~he amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.

~~be.~~ Notwithstanding section a in the event that an entity fails to qualify for the safe harbor provided in section ii above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes would be inequitable or

~~unreasonable to determine~~ that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.

~~d. the commission shall not compel an entity to identify its sources of funding unless the commission has determined that the entity is a political committee and such determination is upheld after any timely appeals. Any information gathered in the course of the commission's investigation of an entity's political committee status shall remain confidential until the final disposition of any appeal.~~

G. No Change