

COPPERSMITH
BROCKELMAN

LAWYERS

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September 11, 2018

Via Email & U.S. Mail

Eric Spencer
State Elections Director
Arizona Secretary of State's Office
1700 W. Washington Street, 7th Floor
Phoenix, AZ 85007
espencer@azsos.gov

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

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

Dear Eric & Tom:

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

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

Background

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

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

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

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

Discussion

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

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

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

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

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

Eric Spencer
Thomas Collins
September 11, 2018
Page 3

Conclusion

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

Sincerely,

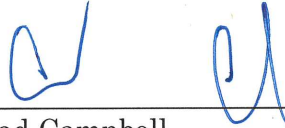


D. Andrew Gaona

DAG:slm
Enclosures

VERIFICATION

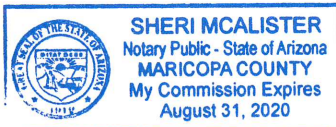
I, Chad Campbell, state that I have read the foregoing "Campaign Finance Complaint Against U.S. Term Limits, Inc. and Marcus Ferrell" (the "Complaint"). To the best of my knowledge, information and belief, the statements made in the Complaint are true and correct.



Chad Campbell

STATE OF ARIZONA)
 :SS.
County of Maricopa)

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



Notary Public

Exhibit 1

MARCUS FERRELL AND PRESIDENT OBAMA AGREE.

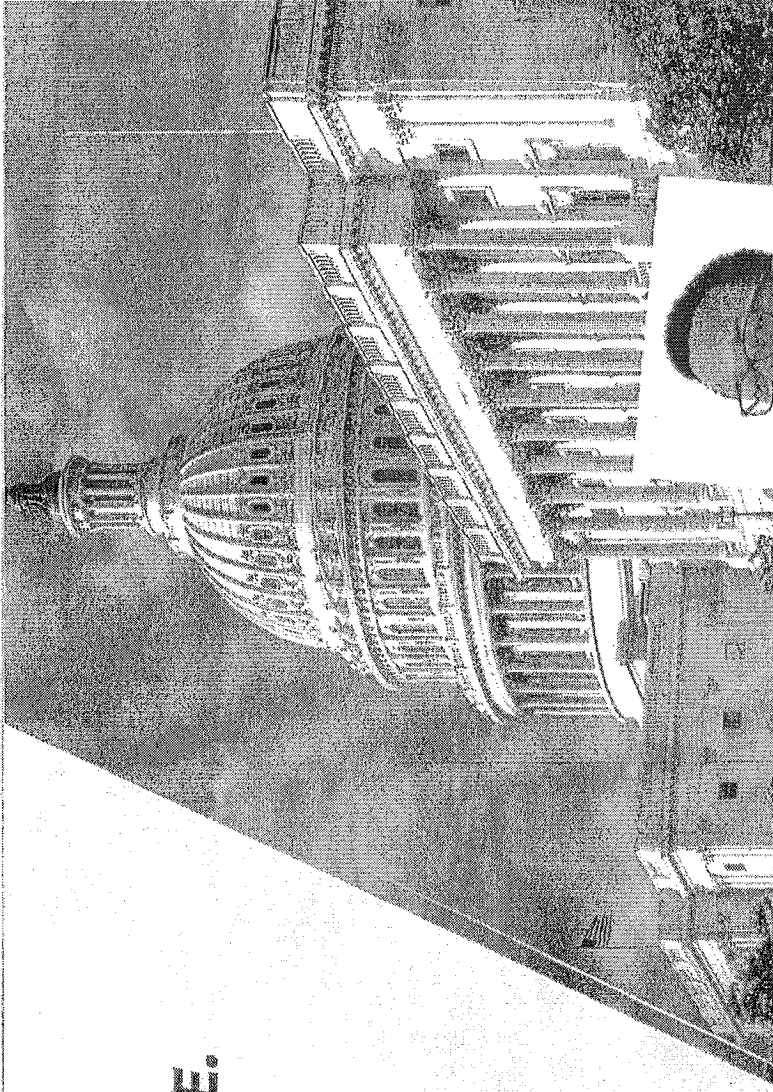
Leaders like President Obama know that politicians who stay in Washington too long can let the people down.

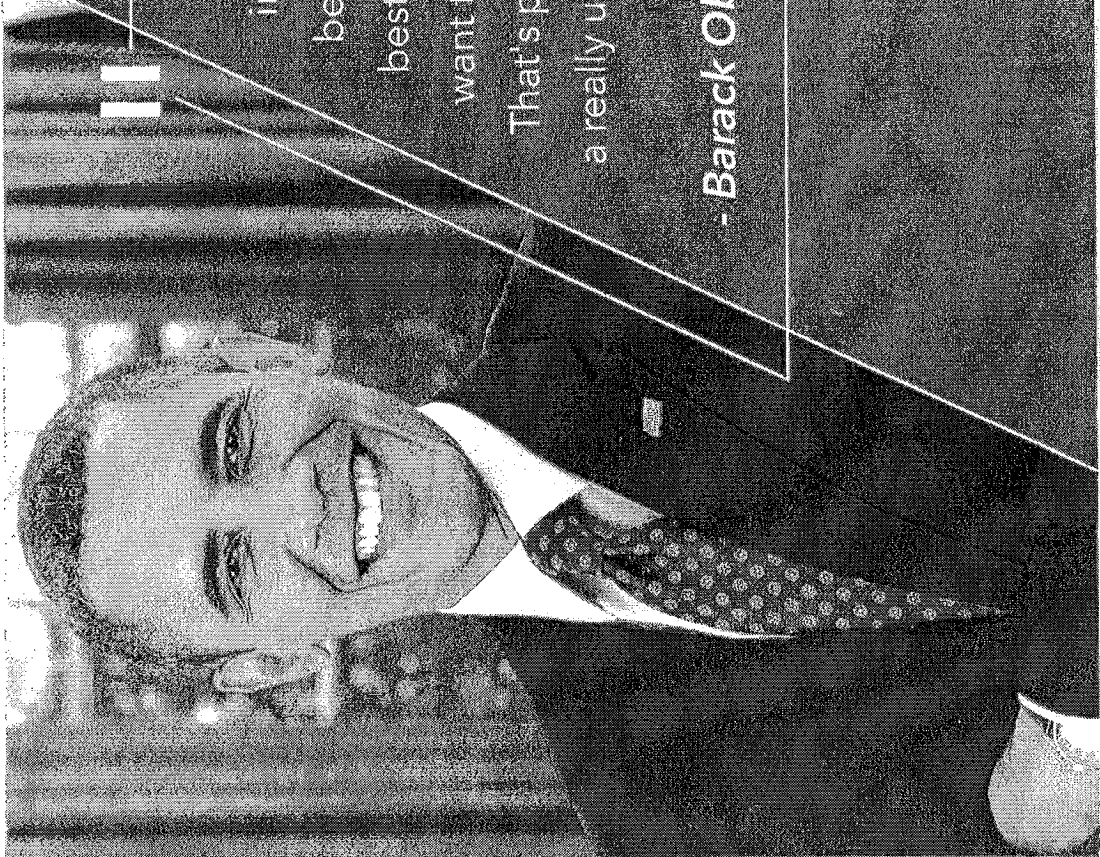
That's why Marcus Ferrell will support legislation to put term limits on members of Congress.

PLEASE CALL MARCUS FERRELL

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

THANK YOU FOR SUPPORTING TERM LIMITS!"





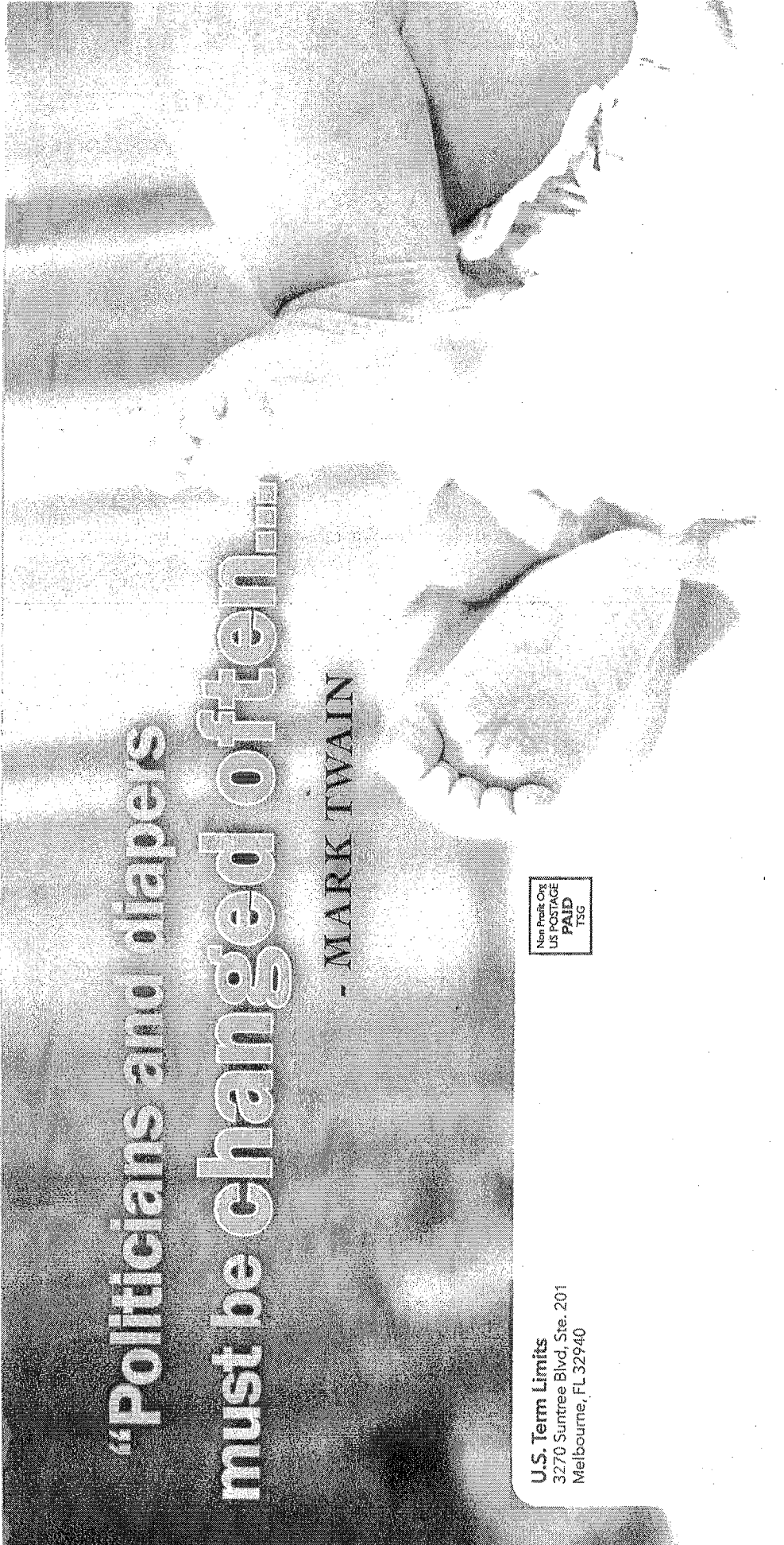
If you're in power for too long, even with the best of intentions, you become stale and your government becomes stale. Over time, you will not do what's best for the country and the country will suffer. We want to see new voices and new ideas emerge. That's part of the reason why I think term limits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

- Barack Obama

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

Non Profit Org
US POSTAGE
PAID
TSG

Exhibit 2



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

- MARK TWAIN

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

Non Profit Org
US POSTAGE
PAID
TSG

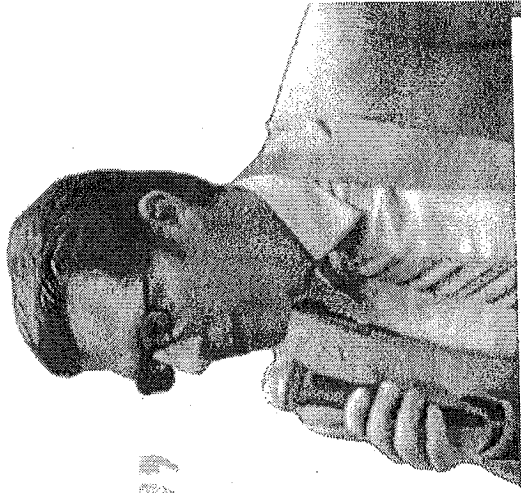
...and for the same reason."

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

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

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

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



Roll Call: AZ HCR2024 | 2018

Term Limits for Congress

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

Doug Ducey
Governor

Thomas M. Collins
Executive Director



Damien R. Meyer
Chair

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

State of Arizona
Citizens Clean Elections Commission

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

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

September 14, 2018

Nick Tomboulides
Executive Director
U.S. Term Limits
1250 Connecticut Ave. NW
Suite 200
Washington D.C. 20036
ntomboulides@termlimits.org

RE: CCEC MUR #18-14

Dear Mr. Tomboulides:

This letter is to notify you that on September 13, 2018, Chad Campbell, through his attorney D. Andrew Gaona, filed a complaint against U.S. Term Limits (copy enclosed) with the Arizona Citizens Clean Elections Commission for failure to file independent expenditure reports.

The Citizens Clean Elections Act (Act) and related rules provide for reports of independent expenditures. See A.R.S. §§ 16-941(D), -942(B), -956(A)(7); -958; Ariz. Admin. Code R2-20-109; *see also Clean Elections Institute v. Brewer*, 209 Ariz. 241, 245 ¶ 13, 99 P.3d 570, 574 (2004).

Any person making independent expenditures cumulatively exceeding \$740 during the 2018 election cycle is required to file reports under the Act and rules. See Arizona Secretary of State, Clean Elections Act 2017-2019 Biennial Adjustments, available at <https://storageccec.blob.core.usgovcloudapi.net/public/docs/292-20172018-Clean-Elections-Act-Biennial-Adjustments.pdf>. If U.S. Term Limits made independent expenditures and failed to file Clean Elections Reports, it is in violation of A.R.S. §§ 16-941(D), -942(B), -956(A)(7); -958; and Ariz. Admin. Code R2-20-109.

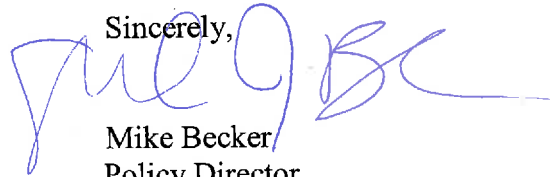
Commission rules provide that upon the filing of a complaint that substantially complies with Arizona Administrative Code Section R2-20-203, notification must be given to each respondent. Ariz. Admin. Code R2-20-204(A). Additionally, the rule provides for an advisement of compliance procedures. Those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

The Commission's rules provide that a respondent "be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within five days from receipt of a written copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action." Ariz. Admin. Code R2-20-205(A). Your

response must be notarized, or the Commission will not consider it. Ariz. Admin. Code R2-20-205(C). Failure to respond to this complaint within five days may be viewed as an admission to the allegations. Id. Please provide a response no later than **Monday, September 24, 2018**.

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

Sincerely,



Mike Becker
Policy Director
Citizens Clean Elections Commission

Enclosures

Cc: Suzette Meyers, Arizona State Director
D. Andrew Gaona, Attorney

Timothy A. La Sota, PLLC

2198 East Camelback, Suite 305

Phoenix, Arizona 85016

P 602-515-2649

tim@timlasota.com

September 27, 2018

18 OCT 1 PM 12:04 CCEC

Via email and U.S. mail to:

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

Eric Spencer
Arizona State Elections Director
Arizona Secretary of State's Office
1700 West Washington Street
Phoenix, Arizona 85007
espencer@azsos.gov

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

Dear Messrs. Collins and Spencer:

This firm represents U.S. Term Limits.

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

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

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

Background

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

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

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

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

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

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

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

A.R.S. § 16-901(31).

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

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

A.R.S. § 16-901.01.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 U.S.C.A. § 30104(f)(3)(A)(i).

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

Messrs. Collins and Spencer
September 27, 2018

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

Subsequent issue advocacy in Arizona

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

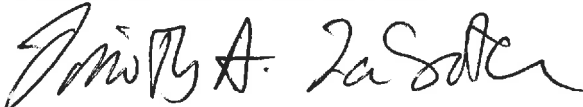
Conclusion

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

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

Very truly yours,

TIMOTHY A. LA SOTA PLC

A handwritten signature in black ink, appearing to read "Timothy A. La Sota", written in a cursive style.

Timothy A. La Sota

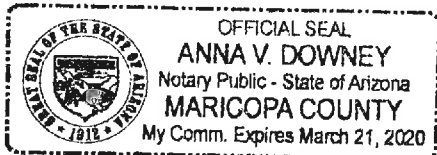
Messrs. Collins and Spencer
September 27, 2018

VERIFICATION

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

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

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





Notary Public

COPPERSMITH
BROCKELMAN
LAWYERS

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

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

October 10, 2018

Via Email & U.S. Mail

Eric Spencer
State Elections Director
Arizona Secretary of State's Office
1700 W. Washington Street, 7th Floor
Phoenix, AZ 85007
espencer@azsos.gov

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

18 OCT 12 PM 3:29 CCEC

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

Dear Eric & Tom:

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

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

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

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

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

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

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

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

Eric Spencer
Thomas Collins
October 10, 2018
Page 3

Conclusion

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

Sincerely,



D. Andrew Gaona

DAG:slm

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

VERIFICATION

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



D. Andrew Gaona

STATE OF ARIZONA)
 :SS.
County of Maricopa)

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



Notary Public

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION
MUR 18-14
US TERM LIMITS

STATEMENT OF REASONS OF THE EXECUTIVE DIRECTOR

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

I. Background

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

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

II. Legal Background

a. Relevant Evidentiary Standard

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

b. Relevant Legal Standard

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

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

[2.] referring to one or more clearly identified candidates and

[3.] targeted to the electorate of that candidate(s)

[4.] that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the communication or the inclusion of statements of the candidate(s) or opponents. A.R.S. § 16-901.01(A)(2).

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

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

The U.S. Supreme Court case *Federal Election Commission v. Wisconsin Right to Life (WRTL)*, 551 U.S. 449 (2007) is persuasive authority here. That case dealt with when an absolute ban on express advocacy could be imposed, in the context of the greater scrutiny that absolute bans require. *Id.* at 464-65. That case held that, in order to impose a ban on express advocacy under the then-existing federal standard, the advertisement in question must, objectively be the functional equivalent of express advocacy “only if the ad is susceptible of no reasonable

interpretation other than as an appeal to vote for or against a specific candidate.”

Id. at 470.

III. Application

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

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

expenditures constituted express advocacy, likely over the threshold reporting amount.¹

Recommendation

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

After the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, the Commission shall conduct an investigation. Ariz. Admin. Code R2-20-209(A). The Commission may authorize the Executive Director to subpoena all of the Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit.

Upon expiration of the fourteen (14) days, if the Commission finds that the alleged violator remains out of compliance, the Commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with A.R.S. § 16-942, unless the Commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. A.R.S. § 16-957(B).

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

After fourteen (14) days and upon completion of the investigation, the Executive Director will recommend whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred. Ariz. Admin. Code R2-20-214(A). Upon a finding of probable cause that the alleged violator remains out of compliance, by an affirmative vote of at least three (3) of its members, the Commission may issue of an order and assess civil penalties pursuant to A.R.S. § 16-957(B). Ariz. Admin. Code R2-20-217.

Dated this 30th day of October, 2018.

By: S/Thomas M. Collins

Thomas M. Collins, Executive Director

Doug Ducey
Governor

Thomas M. Collins
Executive Director



Mark S. Kimble
Chair

Steve M. Titla
Damien R. Meyer
Galen D. Paton
Amy B. Chan
Commissioners

State of Arizona
Citizens Clean Elections Commission

1616 W. Adams - Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - www.azcanelections.gov

ORDER REQUIRING COMPLIANCE
A.R.S. § 16-957 & A.A.C. R2-20-208(A)

Via Electronic Mail and Over Night Delivery

Feb 12, 2019

U.S. Term Limits, Inc.
C/O Tim La Sota
tim@timlasota.com
Tim La Sota PLC
2198 E Camelback Rd Ste 305
Phoenix AZ 85016-4747

RE: CCEC File No.: #18-14- – U.S. Term Limits, Inc.

Dear Mr. LaSota:

On January 31, 2019, the Citizens Clean Elections Commission (“Commission”) found **reason to believe** that U.S. Term Limits, Inc (USTL) may have violated the Citizens Clean Elections Act and Rules.

Violation & Factual Basis Supporting The Finding

Failure to Report Independent Expenditures

Section 16-941(D) of the Arizona Revised Statutes and Arizona Administrative Code Section R2-20-109 provide that all persons shall file reports of independent expenditures above a threshold set forth in the Act. The Commission has reason to believe that in the 2018 election cycle USTL made independent expenditures that expressly advocated the election or defeat of candidates for legislative office in Arizona, including Legislative District 24. A.R.S. §§ 16-941(D); -958; -901.01. It filed no reports of the expenditure in LD24 and may have failed to file other reports during the election. The attached Reason to Believe recommendation provides factual and legal support for this conclusion. Attachment A. It is incorporated by reference.

14 Day Period to Comply

You are hereby ordered to comply with A.R.S. §§ 16-941(D); -958 and A.A.C. R2-20-109 within **14 days** of the date of this order. During that period, you may provide any explanation to the

Commission, comply with the order, or enter into a public administrative settlement with the Commission. A.R.S. § 16-957(A) and A.A.C. R2-20-208(A).

After the 14 days, if the Commission finds that you remain out of compliance, the Commission shall make a public finding to that effect and issue an order assessing a civil penalty, unless the Commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. A.R.S. § 16-957(B).

If you have any questions, please call (602) 364-3477 or toll free (877) 631-8891.

Issued this 12th day of February, 2019
Citizens Clean Elections Commission

Thomas M. Collins, Executive Director

Attachment

19 JUN 10 PM 12:51 CCEC

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION
OFFICE OF THE ATTORNEY GENERAL

In the Matter of:

U.S. Term Limits, Inc., a Washington, D.C.
corporation, Respondent

MUR No. 18-14
SOS-CF-2018-020

CONCILIATION AGREEMENT

Pursuant to ARS §§ 16-938 and 16-957(A), the Citizens Clean Elections Commission (the "Commission"), the Arizona Attorney General's Office, (the "AGO"), and U.S Term Limits, Inc. a Washington D.C. corporation, (Respondent) enter this Conciliation Agreement (the "Conciliation Agreement") in the manner described below.

The Commission and Respondent:

- A. Respondent did not file certain reports required by the Commission related to spending on behalf of or against certain candidates for the Legislature. The Commission found that these failures demonstrate there is reason to believe Respondent may have committed a violation of the Citizens Clean Elections Act and Commission rules (collectively, the "Act").
- B. A.R.S. § 16-941(D) states that "any person who makes independent expenditures related to a particular office" in excess of certain amounts must report such expenditures to the Secretary of State. A.R.S. § 16-956(A)(7) provides that the Commission has authority to enforce the Act and to assess penalties that apply for failure to file reports.

1 C. The Commission received a Complaint regarding Respondent's failure to file a report
2 required by A.R.S. § 16-941, -958.

3 D. Following the Complaint, Respondent filed three reports in the general election. The
4 remaining reports pertain to 6 candidates. The total cost was \$26,896.96.

5 E. In response to the Reason to Believe determination, Respondent complied voluntarily
6 with requests for information, while reserving its right to appeal whether the
7 expenditures involved constituted "express advocacy" requiring reports under the Act
8 and Rules. See A.R.S. § 16-901.01.

9 The AGO and Respondent:

10 F. On December 10, 2018, the Arizona Secretary of State (the "SOS") found reasonable
11 cause to believe that Respondent violated A.R.S. § 16-925 (the "Reasonable Cause
12 Notice") by failing to include a "paid for" disclaimer on mailers it distributed in the
13 Legislative District 24 House race and referred the Reasonable Cause Notice together
14 with the underlying administrative record to the AGO.

15 G. A.R.S. § 16-925(A) states in relevant part that advertising expenditures shall include
16 "the words 'paid for by', followed by the name of the person making the expenditure for
17 the advertisement." In its exercise of its enforcement authority pursuant to A.R.S. § 16-
18 938, the AGO has given due consideration to the facts and law implicated by the
19 Reasonable Cause Notice. H. The AGO asserts that Respondent violated A.R.S. §
20 16-925(A) by failing to include a "paid for" disclaimer on mailers it distributed in the
21 Legislative District 24 House race. However, to conserve the time and resources
22 required to further enforce this matter, the AGO joins this Conciliation Agreement to
23 resolve the AGO's asserted violation.

24 This Conciliation Agreement concludes the Commission and the AGO's enforcement proceedings
25 respecting the Complaints based on the conditions below and constitutes a waiver of the Respondent's
26 right to appeal, including under A.R.S. § 16-938. Respondent does not admit liability or necessarily
agree with legal conclusions stated in the settlement

1 WHEREFORE, the Commission and the AGO enter the following agreement in lieu of any other action
2 regarding this matter:

- 3 1. The Commission has jurisdiction over persons subject to A.R.S. §§ 16-941(D) and 16-
4 958, including political committees.
- 5 2. The AGO has jurisdiction over persons subject to A.R.S. §16-938.
- 6 3. Pursuant to A.R.S. §§ 16-941(D) and -958 any person who makes an independent
7 expenditure above a threshold set forth in the Clean Elections Act must file reports
8 required by the person and that under A.R.S. § 16-942(B) the statutory penalty for any
9 reporting violation on behalf of a candidate is up to \$320 per day up to twice the value
10 of the unreported amount.
- 11 4. Pursuant to A.R.S. § 16-925, any person who makes an expenditure for an
12 advertisement must include certain disclosures in the advertisement and that under
13 A.R.S. § 16-938 failure to do so is subject to enforcement.
- 14 5. Respondent agrees to settle this matter for \$5,374.00, in addition to the other
15 provisions herein. This amount represents a combined mitigated penalty by the
16 Commission and the AGO based, in part, on the facts stated in paragraphs A –H.
- 17 6. To satisfy the debt amount acknowledged in paragraph 5 above, Respondent shall
18 render payment for \$2,687.00 to the Commission within three weeks of the execution of
19 this document by check or money order payable to the Citizens Clean Elections Fund
20 and delivered to the Citizens Clean Elections Commission, 1616 West Adams, Suite
21 110, Phoenix, Arizona, 85007.
- 22 7. To satisfy the debt amount acknowledged in paragraph 5 above, Respondent shall
23 render payment for \$2,687.00 to the Office of the Attorney General within three weeks
24 of the execution of this document by check or money order payable to the Office of the
25 Arizona Attorney General, and delivered to the Arizona Attorney General's Office, c/o
26 Government Accountability Unit, 2005 N. Central Ave., Phoenix, Arizona, 85004.

- 1 8. Respondent shall file completed Independent Expenditure Reports with the
2 Commission within two week of the execution of this agreement.
- 3 9. The Commission and the AGO shall not commence any legal action(s) against
4 Respondent to collect the claims so long as the Respondent is not in default.
- 5 10. Respondent shall be in default of this Agreement upon the occurrence of any of the
6 following:
- 7 a. Respondent fails to make any payment required hereunder within five (5) working
8 days following the date due, including being returned by the financial institution for
9 any reason, including insufficient funds and closed accounts;
- 10 b. Respondent files a petition under the bankruptcy laws or any creditor of the
11 Respondent files any petition under said laws against the Respondent;
- 12 c. Any creditor of Respondent commences a foreclosure action to foreclose (by suit
13 or trustee sale) on real property of the Respondent or commences garnishment,
14 attachment, levy or execution against the Respondent's property; or;
- 15 d. Respondent provides false information to the Commission, the AGO or any other
16 agent of the State.
- 17 e. Respondent fails to abide by any provision of this agreement.
- 18 11. In the event of default hereunder, at the option of the Commission and the AGO, all
19 unpaid amounts hereunder shall be immediately due and payable and the Commission
20 or the State may pursue additional penalties mitigated by this agreement. In addition,
21 interest shall accrue on the unpaid balance from the date that the payments become
22 due and payable. Interest shall accrue at the statutory rate of ten percent (10%)
23 pursuant to A.R.S. § 44-1201(A).
- 24 12. Nothing contained in this Agreement shall be construed to prevent any state agency
25 which issues licenses for any profession from requiring that the debt in issue be paid in
26 full before said agency will issue Respondent a new license.

- 1 13. The Commission and the AGO may waive any condition of default without waiving any
2 other condition of default and without waiving its rights to full, timely future performance
3 of the conditions waived.
- 4 14. In the event legal action is necessary to enforce collection hereunder, Respondent shall
5 additionally pay all costs and expenses of collection, including without limitation,
6 reasonable attorneys' fees in an amount equal to thirty-five percent (35%) of monies
7 recovered.
- 8 15. Respondent acknowledges that all obligations payable pursuant to this Agreement
9 constitute a fine, penalty, or forfeiture payable to and for the benefit of a governmental
10 unit, and not compensation for actual pecuniary loss; and that pursuant to 11 USC §
11 523 such obligations are not subject to discharge in bankruptcy.
- 12 16. This Agreement shall be construed under the laws of the State of Arizona.
- 13 17. In the event that any paragraph or provision hereof shall be ruled unenforceable, all
14 other provisions hereof shall be unaffected thereby.
- 15 18. This Agreement shall constitute the entire agreement between the parties regarding the
16 subject matter. This Agreement shall not be modified or amended except in a writing
17 signed by all parties hereto.
- 18 19. This Agreement shall not be subject to assignment.
- 19 20. No delay, omission or failure by the Commission or the AGO to exercise any right or
20 power hereunder shall be construed to be a waiver or consent of any breach of any of
21 the terms of this Agreement by the Respondent.
- 22 21. By entering into this Agreement, the Respondent does not waive any rights, claims,
23 defenses or arguments in any subsequent proceeding before the Commission, the
24 AGO, or any agency, court or other tribunal.
- 25 22. Respondent has obtained independent legal advice in connection with the execution of
26 this Agreement or has freely chosen not to do so. Any rule construing this Agreement
 against the drafter is inapplicable and is waived.

1 23. This Agreement shall be void unless executed by the Respondent and delivered to the
2 Commission and the AGO not later than June 7, 2019, or such other time as agreed
3 between the Respondent, the AGO, and the Executive Director of the Commission and
4 confirmed in a writing.

5 24. All proceedings commenced by the Commission and the AGO in this matter will be
6 terminated and the matter closed upon receipt of the final payment of the civil penalty
7 and compliance with the other terms set forth in this Agreement.

8
9 Dated this 30 day of May, 2019.

10 By: [Signature]
11 Thomas M. Collins, Executive Director
12 Citizens Clean Elections Commission

13 *See Attd, signed by Beau Royden
14 AG's OTC
15 By: [Signature] / Received on 6/13/19 page
16 Evan Daniels, Unit Chief Counsel
17 Government Accountability Unit
18 Arizona Attorney General's Office

19
20 By: [Signature]
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26 Respondent

CEC Signed
✓ 2019 ASmt
via email
4/13/19
2:11:56 AM
paula

- 1 23. This Agreement shall be void unless executed by the Respondent and delivered to the
2 Commission and the AGO not later than _____, 2019, or such other time as agreed
3 between the Respondent, the AGO, and the Executive Director of the Commission and
4 confirmed in a writing.
- 5 24. All proceedings commenced by the Commission and the AGO in this matter will be
6 terminated and the matter closed upon receipt of the final payment of the civil penalty
7 and compliance with the other terms set forth in this Agreement.

8
9 Dated this 30 day May, 2019.

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

12
13 ✓ By: Evan Daniels
Evan Daniels, Unit Chief Counsel
14 Government Accountability Unit
Arizona Attorney General's Office

15
16 By: _____
17 Respondent
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