



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

Location: Citizens Clean Elections Commission

1616 West Adams, Suite 110

Phoenix, Arizona 85007

Date: Thursday, January 28, 2021

Time: 9:30 a. m.

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Elections Commission and the general public that the Citizens Clean Elections Commission will hold a regular meeting, which is open to the public on January 28, 2021. This meeting will be held at 9:30 a.m., at the Citizens Clean Elections Commission, 1616 West Adams, Suite 110, Phoenix, Arizona 85007. The meeting may be available for live streaming online at <https://www.youtube.com/c/AZCCEC/live>. You can also visit <https://www.azcleelections.gov/clean-elections-commission-meetings>. Members of the Citizens Clean Elections Commission will attend either in person or by telephone, video, or internet conferencing. **This meeting will be held virtually.** Instructions on how the public may participate in this meeting are below. For additional information, please call (602) 364-3477 or contact Commission staff at ccec@azcleelections.gov.

Join Zoom Meeting

<https://us02web.zoom.us/j/82206073831?pwd=SzEvNDI2amlGQ1ZPb2w0WXJicnNhUT09>

Meeting ID: 822 0607 3831

Passcode: 638364

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Please note that members of the public that choose to use the Zoom video link must keep their microphone muted for the duration of the meeting. If a member of the public wishes to speak, they may use the Zoom raise hand feature and once called on, unmute themselves on Zoom once the meeting is open for public comment. Members of the public may participate via Zoom by computer, tablet or telephone (dial in only option is available but you will not be able to use the Zoom raise hand feature, meeting administrator will assist phone attendees). Please keep yourself muted unless you are prompted to speak. The Commission allows time for public comment on any item on the agenda. Council members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action

taken as a result of public comment will be limited to directing Council staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.

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

The agenda for the meeting is as follows:

- I. Call to Order.
- II. Discussion and Possible Action on Commission Minutes for December 17, 2020.
- III. Discussion and Possible Action on Executive Director’s Report and Legislative Update, including election and administrative bills such as HB2014 and HB2110.
- IV. Discussion and Possible Action on 2021 Voter Education Plan.
- V. Discussion and Possible Action on the following 2020 Primary Election Candidate Audits.
 - A. Anna Tovar, Corporation Commission
 - B. Lea Marquez Peterson, Corporation Commission
 - C. Eric Sloan, Corporation Commission
 - D. Ryan Starzyk, State Senate, LD24
 - E. Ed Cocchiola, State Rep, LD1
- VI. Discussion and Possible Action on MUR20-03, Arizona Education Association.
- VII. Discussion and Possible Action on Proposed Meeting Dates for February – July 2021.
- VIII. Recognition and Appreciation to Commissioner and Past Chairman, Galen D. Paton, for his service to the Commission and the State of Arizona.
- IX. Public Comment
This is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism
- X. Adjournment.
This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission’s office, 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

Dated this 26th day of January, 2021

Citizens Clean Elections Commission

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

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THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC VIRTUAL MEETING

Phoenix, Arizona

December 17, 2020

9:31 a.m.

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

Prepared by:
LILIA MONARREZ, CSR, RPR
Certificate No. 50699

<p style="text-align: right;">Page 2</p> <p>1 PUBLIC VIRTUAL MEETING BEFORE THE CITIZENS CLEAN 2 ELECTIONS COMMISSION convened at 9:31 a.m. on 3 December 17, 2020, at the State of Arizona, Clean 4 Elections Commission, 1616 West Adams, Phoenix, Arizona, 5 in the presence of the following Board members: 6 7 Mr. Galen D. Paton, Chairperson 8 Ms. Amy B. Chan 9 Mr. Mark S. Kimble 10 11 OTHERS PRESENT: 12 13 Thomas M. Collins, Executive Director 14 Paula Thomas, Executive Officer 15 Gina Roberts, Voter Education Director 16 Mike Becker, Policy Director 17 Alec Shaffer, Web Content Manager 18 Avery Oliver, Voter Education Specialist 19 Julian Arndt, Executive Support Specialist 20 Kara Karlson, Assistant Attorney General 21 Jeanne Galvin, Assistant Attorney General 22 Kyle Cummings, Assistant Attorney General 23 Leo Miller, Wilenchik & Bartness 24 Joshua Offenhartz, Wilenchik & Bartness 25 William Fischbach, Tiffany & Bosco 26 Dr. Bob Branch, Power of Fives 27 Leezah Sun, Candidate 28 Bob Christie, AP</p>	<p style="text-align: right;">Page 4</p> <p>09:33:14-09:34:14</p> <p>1 COMMISSIONER CHAN: I move that we adopt 2 the minutes as written. 3 CHAIRMAN PATON: Do I have a second? 4 COMMISSIONER KIMBLE: Commissioner Kimble. 5 Second. 6 CHAIRMAN PATON: Okay. So, was that for 7 both August and October meetings? 8 COMMISSIONER CHAN: Oh, I'm sorry, 9 Mr. Chairman. On the agenda, it just says the 10 Commission minutes for November 19th, 2020. 11 CHAIRMAN PATON: Okay. But my notes say 12 something different. So, we'll just go with that, 13 then. 14 So, we are -- we have a motion and a second 15 to adopt the minutes for November 19th, 2020, and we'll 16 start voting. 17 Commissioner Chan, how do you vote? 18 COMMISSIONER CHAN: I vote aye. 19 CHAIRMAN PATON: Commissioner Kimble? 20 COMMISSIONER KIMBLE: Aye. 21 CHAIRMAN PATON: And this is Commissioner 22 Paton, and I vote aye, as well. The motion passes. 23 Item III: Discussion and possible action 24 on Executive Director's report. 25 Mr. Collins?</p>
<p>09:31:01-09:33:13</p> <p style="text-align: right;">Page 3</p> <p>1 P R O C E E D I N G 2 3 CHAIRMAN PATON: Okay. This is 4 Commissioner Galen Paton, and I will call the meeting 5 to order. Agenda I is to call the order. It is 9:30 6 on December 17th, and I call this meeting of the 7 Citizens Clean Elections Commission to order. 8 And we will go through the roll call, and 9 let me know if you are here. 10 Commissioner Chan? 11 COMMISSIONER CHAN: This is Commissioner 12 Chan. I am here. 13 CHAIRMAN PATON: Welcome. I see you. 14 Commissioner Kimble? 15 COMMISSIONER KIMBLE: I am here. 16 CHAIRMAN PATON: And I believe Commissioner 17 Meyer and Commissioner Titla are not present. And so, 18 I'm Commissioner Galen Paton, the chairman, and I'm 19 here. 20 So, Item II: Discussion and possible 21 action on minutes for the November 19th, 2020 meeting. 22 Any discussion? 23 COMMISSIONER CHAN: Mr. Chairman, this is 24 Commissioner Chan. 25 CHAIRMAN PATON: Yes. Go ahead.</p>	<p>09:34:16-09:35:46</p> <p style="text-align: right;">Page 5</p> <p>1 MR. COLLINS: Yes, Commissioner -- Chairman 2 Paton, Commissioners. So, I will -- I'm going to get 3 through the agenda fairly -- through this part of the 4 agenda fairly quickly. 5 Just a quick preview with respect to the 6 rest of the meeting and those of who you are waiting 7 for the Item -- I think it's VI, I think we should be 8 able to get there fairly quickly. 9 So, we had -- the electors met on 10 December 14th and, you know, you can see in the report 11 some of the activities that happened leading up to 12 that, in terms of the canvass and other aspects. 13 You know, we did a -- as you all know, we 14 did a letter, you know, thanking the voting community 15 and the election officials and others for their efforts 16 in this election and, you know, we do continue to 17 follow up on many of those -- those kinds of 18 educational and informational opportunities. 19 You know -- and, as you can see, working 20 through this month, the Voter Education team will be 21 plugging away really right through the end of the month 22 and has been. 23 A couple of quick points for us, I just 24 want to make -- if I can figure out how to use my mouse 25 here for a second.</p>

<p>09:36:21-09:37:56 Page 6</p> <p>1 The one other thing I wanted to really 2 mention, you know, we are -- as far as our regulatory 3 agenda, you'll see there that we've identified, you 4 know, what we think is going to be our main regulatory 5 agenda for the coming year. That's something that we 6 will post on our -- on our website, and part of that is 7 just the -- part of the process of some of the things 8 that we -- boxes, frankly, that we need to check off in 9 terms of notice for purposes of the rule-making process 10 now. 11 And right now, as we look at things, we 12 think the main thing will be to make sure that we need 13 to evaluate and determine if there's any rules that we 14 need to update because of the Court of -- Court of 15 Appeals' decision that we got in October, I want to 16 say, and we know that some of those things we were 17 ahead of the game on in terms of the rules we adopted 18 in, like, 2017. Other things will definitely have to 19 change. 20 So -- and then -- and I hope to get in 21 contact with the Governor's Regulatory Review Council 22 staff, hopefully, soon in the new year to make sure 23 we're on track there. 24 So, you know, really not a lot to report, 25 other than our ongoing, you know, Voter Education</p>	<p>09:39:22-09:41:06 Page 8</p> <p>1 And, then, because the statute sets up our budgeting -- 2 sets those caps around calendar years, you know, it 3 follows from that that our budget follows the calendar 4 year. 5 So, what we have done here, as we had in 6 prior years, is identified those things that are 7 calculations that are required to be done by statute 8 and, then, included in that, also, our anticipated 9 budget for the coming calendar year. 10 A couple of things that I would note, 11 first, you know, obviously, there's not going to be 12 candidate funding in this calendar year because 13 we're -- candidates cannot file for 2022 until January 14 of 2022 for their funding. 15 And, then, I think the other thing I 16 just -- I just want to make a quick point about is 17 that -- you know, there's two things. One, as we 18 always see on this memo, there is a structural, if you 19 will -- well, "structural" is not the right word. 20 There is a projection we have to do that will -- that 21 continues to show the funded deficit if we spent at the 22 maximum allowable under law. You know, that projection 23 is required by statute, but you know, that's not a -- 24 that's not a true deficit because we don't spend at 25 that level. It's just, you know, if we were -- if we</p>
<p>09:37:59-09:39:15 Page 7</p> <p>1 activities, but if you have any questions, 2 Commissioners, I'm happy to answer them. 3 Thank you. 4 I'm sorry, Mr. Chairman. I think you're on 5 mute. 6 CHAIRMAN PATON: I was on mute. 7 Any comments from the audience on this 8 item? You can signal the moderator if you have any 9 comments. 10 (No response.) 11 CHAIRMAN PATON: If not, then, moving on to 12 Item IV: Discussion and possible action on 2021 13 calendar year budget. 14 And Mr. Collins is going to begin our 15 discussion and Mike is on hand if you have any 16 additional questions. 17 Go ahead, Tom. 18 MR. COLLINS: Yes. Thank you, 19 Mr. Chairman. 20 We are -- so every year, as I think all 21 of -- all of you have gone through this for at least 22 four years. Basically, what we do is we -- the statute 23 obligates us to make some projections about, you know, 24 what the fund looks like, what our projected expenses 25 are, and make those calculations on a formula basis.</p>	<p>09:41:10-09:42:46 Page 9</p> <p>1 spent at the statutory capacity. 2 And, then, the other, you know, point, I 3 think, is worth stressing is that this is not a 4 calendar year appropriation that rolls over; rather, 5 the way that the statute operates is that the surcharge 6 that funds the Act is collected. The treasurer is 7 directed to place that -- to place those dollars in 8 the -- into the Clean Elections fund, you know, where 9 they remain because they are appropriated explicitly by 10 the statute, by the voters. 11 So, with that background, you know, I think 12 that -- you know, other than, obviously, in these 13 off-years, we have a reduction in our overall spending. 14 We don't have any -- anything that we think is 15 necessarily -- I mean, basically, I'd turn it over to 16 you all for -- to any commissioner that has questions 17 or comments. 18 You know, I, also, note that 19 programmatically, you know, we anticipate coming to the 20 Commission with the voter -- with our voter education 21 plans for the coming year in the coming year. So, once 22 we have -- once we've made this determination about the 23 budget, you know, then Gina and her team will -- and 24 Paula will work on that process. 25 So, you know -- so, at that point,</p>

<p>09:42:52-09:44:08 Page 10</p> <p>1 Mr. Chairman, if you have any questions or comments, 2 we're happy to answer them. 3 CHAIRMAN PATON: Any questions for 4 Mr. Collins from the Commission? 5 COMMISSIONER KIMBLE: Yes, Mr. Chairman. 6 This is Commissioner Kimble. 7 CHAIRMAN PATON: Yes, Commissioner Kimble, 8 go ahead. 9 COMMISSIONER KIMBLE: Mr. Collins, I don't 10 want to get too much into the weeds on the budget, but 11 looking through it, the total expenses are up 12 substantially, more than twice what they were last 13 year. And I can see personnel services are going up 14 substantially, data processing. 15 Could you just talk about some of the 16 reasons for going from total expenses of about 670,000 17 to about 1.4 million? 18 MR. COLLINS: I would -- well, I'm going to 19 ask Mike to rescue me on this. 20 MR. BECKER: Mr. Chairman, Commissioner 21 Kimble, a couple of reasons the numbers are a little 22 bit off. One, the full amount that the Commission has 23 spent in 2020 has not come in yet. So, when you are 24 looking at the actual numbers and comparing it to what 25 we're budgeting, the actual numbers are going to</p>	<p>09:45:32-09:47:01 Page 12</p> <p>1 thing, candidate funding projections. In 2018, it was 2 close to \$9 million to candidates. 2020, it was \$2.9 3 million. 4 Is that, substantially, because there were 5 no -- outside the Corporation Commission, no statewide 6 races or are fewer people signing up to be Clean 7 Elections candidates? 8 MR. BECKER: Mr. Chairman, Commissioner 9 Kimble, it's both. We do expect more candidates 10 because there's going to be another statewide race for 11 the Governor and Secretary of State. We do expect the 12 numbers to increase a bit, but not where it was several 13 years ago. And we don't have the numbers that we used 14 to have, and this year was only the Corporation 15 Commission for the statewide. So, that's why. 16 COMMISSIONER KIMBLE: So, is it right to 17 say there's been, like, a -- there's been a steady 18 decline in interest in being a so-called clean 19 candidate? 20 MR. BECKER: Mr. Chairman, Commissioner 21 Kimble, when matching funds went away several election 22 cycles ago, we had a dramatic decline. Now we've seen 23 a steady -- a steady rate of, roughly, somewhere 24 between 28 and 35 candidates running through the Clean 25 Elections. That may go up a bit with more statewide</p>
<p>09:44:10-09:45:29 Page 11</p> <p>1 increase. We did not -- we do not have those numbers 2 for December, and we will have more numbers in January. 3 So, that number will increase. 4 As far as your external data processing, 5 that number has increased quite a bit for both the 6 voter ed side and the admin side, and the reason for 7 that is we are -- there are a couple of reasons. One, 8 we're moving from the way we handle our system and 9 things like that, we're going to a Cloud basis through 10 the State. And there's a lot of detail that has been 11 worked out by our IT group and a lot of work on that. 12 So, we are -- we are budgeting quite a bit more than we 13 think is going to actually be needed so that we don't 14 have to come back to you time and time again. 15 Secondly, we are, also, having to update 16 our systems, our individual computers, as well as our 17 laptops, to do security upgrades and to get more 18 software that are more compatible with what we're doing 19 in the state. So, that's why those numbers have 20 increased, but overall, you will see our actual numbers 21 will go up at the end of this month and in January, 22 when we get final numbers for what we put the 23 Commission spent for 2020. 24 COMMISSIONER KIMBLE: Okay. And one other 25 question I had, the last page of this -- of this budget</p>	<p>09:47:04-09:48:42 Page 13</p> <p>1 offices open in 2022, but we expect in that range 2 again. 3 MR. COLLINS: And, if I could, 4 Mr. Chairman, Commissioner Kimble, just add a little to 5 Mike's point about that, with respect to participation, 6 I think there's two other issues that we don't -- you 7 know, we don't know -- I think Mike is right that we 8 have reached a point of stability. What we don't know, 9 in a given year -- and we've had now -- just in 2016, 10 we had the 2016 election cycle, 2018 election cycle and 11 the 2020 election cycle. 12 Those election cycles have all been under 13 different regimes, campaign finance-wise, as applied to 14 the Clean Elections Act. The first being in 2018, we 15 were under the same rules as we now will be under 16 following the Court of Appeals' decision. And, then, 17 in 2020, it was our first year under Prop 306, and we 18 know for a fact that there have been wild 19 misconceptions about the effect of that Act and active 20 discouragement of folks running clean because of it. 21 You know, whether that's -- and, you know, 22 that is -- that is a true statement that those things 23 have occurred. Whether or not those inaccurate 24 portrayals of the law will change -- as they're 25 corrected, you know, will change people's behavior and</p>

<p>09:48:44-09:50:10 Page 14</p> <p>1 now that the Court of Appeals has settled, you know, 2 one of the -- a couple of the major outstanding issues 3 related to that, you know, I mean, we may see some 4 changes in 2022 one way or another, but it's -- you 5 know, we have not had a stable legal regime in place 6 under Clean Elections or under the campaign finance 7 system as a whole since 2016. 8 It's changed every -- every cycle. So, it 9 just makes it a little harder for consultants and 10 attorneys who, you know, have -- you know, to make the 11 kind of decisions and advice that they might otherwise. 12 So that's just my two cents. The facts are the facts. 13 That's my inference and subject to your own point of 14 view. 15 COMMISSIONER KIMBLE: Well, I guess -- and 16 I don't want to get too much into it today, but it 17 seems like a topic for future discussions about are 18 there things we can and should be doing to -- to 19 encourage more candidates to consider running as Clean 20 Elections candidates. 21 MR. COLLINS: Yeah. Mr. Chairman, 22 Commissioner Kimble, I agree. I think -- I think 23 that -- I think that in this off year or off nine 24 months, if you will, I do think there will be some 25 opportunities to -- with the -- with the Court of</p>	<p>09:51:33-09:52:39 Page 16</p> <p>1 further discussion, I'll entertain a motion to adopt 2 the memorandum at pages 1 and 2 of Item IV, setting 3 forth Commission's progressions -- projections for the 4 calendar year. 5 COMMISSIONER CHAN: Mr. Chairman? 6 CHAIRMAN PATON: Yes, Commissioner Chan. 7 COMMISSIONER CHAN: I'll make the motion to 8 adopt the projections set forth on pages 1 and 2. Is 9 that what you said? 10 CHAIRMAN PATON: Yes, 1 and 2 of Item IV. 11 COMMISSIONER CHAN: Of Item IV. Thank you, 12 Mr. Chairman. 13 COMMISSIONER KIMBLE: I will second that. 14 CHAIRMAN PATON: Okay. So, we have a 15 motion and a second to adopt the memorandum of pages 1 16 and 2 of Item IV, and I will call the roll. 17 Commissioner Chan? 18 COMMISSIONER CHAN: Aye. 19 CHAIRMAN PATON: Commissioner Kimble? 20 COMMISSIONER KIMBLE: Aye. 21 CHAIRMAN PATON: And this is Commissioner 22 Paton, and I vote aye, as well. The motion carries. 23 Moving on to Item V: Discussion and 24 possible action on Primary Election candidate audits. 25 Mr. Collins?</p>
<p>09:50:12-09:51:31 Page 15</p> <p>1 Appeals' decision and with the rule-makings we'll have 2 to do, as I mentioned in the Executive Director report, 3 and then with the year under Prop 306 -- the cycle 4 under Prop 306 is done, I think that we will be in a 5 position to start to address some of those things on 6 a -- on a -- by communicating them, in part, to, you 7 know, the folks who are involved in this process on a, 8 sort of, day-to-day basis. That's fairly easy. 9 COMMISSIONER KIMBLE: Thank you, 10 Mr. Chairman. 11 CHAIRMAN PATON: Sure. 12 I might add that maybe we could do 13 education to prospective candidates to -- before -- 14 well before planning for this could start for them to 15 let them know that we're available and how Clean 16 Elections can help them with their campaign. Just as 17 we've been doing voter education, maybe we could do 18 candidate education. 19 MR. COLLINS: I agree. 20 CHAIRMAN PATON: Any other comment? 21 (No response.) 22 CHAIRMAN PATON: Any comments from the 23 public? 24 (No response.) 25 CHAIRMAN PATON: Okay. If there's no</p>	<p>09:52:41-09:54:06 Page 17</p> <p>1 MR. COLLINS: Yes, Mr. Chairman. Thank 2 you. 3 I'm going to -- these are Primary Election 4 audits. We are in the process of -- you know, 5 obviously, we'll be endeavoring to finish the primary 6 and then we'll move on to the general. You know, my 7 understanding with these audits is there's no -- no 8 significant findings, and so the rules require that we 9 approve them, frankly, regardless of if there's 10 findings or not. 11 This is simply an opportunity for the 12 Commission to, you know, review and -- and if you have 13 any questions or comments on the issues -- on those 14 reports, obviously, Mike or I can answer them. 15 Otherwise, like I said, we're open for questions or 16 comments from you, Mr. Chairman. 17 CHAIRMAN PATON: Okay. Any discussion from 18 the Commission? 19 (No response.) 20 CHAIRMAN PATON: And any discussion from 21 the public? 22 (No response.) 23 CHAIRMAN PATON: If not, I'll entertain a 24 motion to approve the audits identified in Item V of 25 the agenda.</p>

<p>09:54:10-09:55:11 Page 18</p> <p>1 COMMISSIONER KIMBLE: Mr. Chairman? 2 CHAIRMAN PATON: Yes, Commissioner Kimble. 3 COMMISSIONER KIMBLE: I move that we 4 approve the audits in Item V of today's agenda. 5 CHAIRMAN PATON: Okay. We have a motion. 6 Do we have a second? 7 COMMISSIONER CHAN: Mr. Chairman, I second 8 the motion. 9 CHAIRMAN PATON: Commissioner Chan seconds 10 the motion, and so we will have a vote. 11 Commissioner Chan, how do you vote? 12 COMMISSIONER CHAN: I vote aye. 13 CHAIRMAN PATON: Commissioner Kimble? 14 COMMISSIONER KIMBLE: Aye. 15 CHAIRMAN PATON: And this is Commissioner 16 Paton. I vote aye, as well. 17 Item VI: Discussion and possible action on 18 MUR 20-04, Eric Sloan. This is an enforcement-related 19 item. Since we're meeting virtually, I'd like to Tom 20 to introduce the item and give an overview of the 21 recommendation, then have time for Commission 22 questions. Following that, I would like to hear from 23 Mr. Miller, the attorney for Mr. Sloan, then 24 Mr. Fischbach, who represents Dr. Branch, and 25 Mr. Miller again, if necessary.</p>	<p>09:57:04-09:58:26 Page 20</p> <p>1 point, Mr. Chairman, and -- 2 COMMISSIONER CHAN: Mr. Chairman? 3 MR. COLLINS: Sure. 4 COMMISSIONER CHAN: Tom, you know, just 5 looking at this last night, frankly, there was just 6 such a dichotomy between the two parties', kind of, 7 versions of events. And so, just to refresh my 8 recollection, since we do this, kind of, every two 9 years, if we find that there is -- if we agree with 10 your recommendation that there is reason to believe 11 that there may have been a violation, that doesn't put 12 a penalty on Mr. Sloan. 13 Does that just proceed to an additional 14 investigation? Is that how this works? 15 MR. COLLINS: Yeah. 16 COMMISSIONER CHAN: Can you just, kind of, 17 refresh my recollection, please? 18 MR. COLLINS: Sure, of course. 19 Mr. -- Mr. Chairman, Commissioner Chan, the 20 rules lay out the process here. So, if there are three 21 members of the Commission who determine that there's 22 reason to believe a violation may have occurred, we do 23 undertake an investigation. We have outlined in the -- 24 in the memo some of the tools we think may be necessary 25 to do that.</p>
<p>09:55:13-09:57:01 Page 19</p> <p>1 So, Mr. Collins, you're up. 2 MR. COLLINS: Yes. Thank you, Mr. Chairman 3 Commissioners. 4 I'm not sure if we'll end up having Lee 5 Miller, or someone else from his firm, but at any rate, 6 I don't want to put too much gloss on the 7 recommendation. We do believe that there is reason to 8 believe a violation may have occurred. We've outlined 9 what we think are the issues that are -- that we've 10 been able to identify by evaluating the complaint, the 11 response and campaign finance reports. 12 I just want to stress that -- that this is 13 a determination that is preliminary and, as you can see 14 from the memo and the two -- and the response and the 15 complaint, there are substantial issues of fact around 16 the issues we've identified that there are -- that 17 there's reason to believe a violation may have 18 occurred, so just to put this in perspective. 19 And, then, additionally, if you have 20 questions related to procedure here, we do have an 21 attorney from the Attorney General's Office who is 22 there to answer your questions on those, just to ensure 23 that there's an appropriate buffer, but other than 24 that, you know, unless you have questions or 25 comments -- I mean, I'm open to your questions at this</p>	<p>09:58:30-10:00:18 Page 21</p> <p>1 So, you know -- so, the big -- the 2 distinction to your point about penalties and those 3 kinds of things, this determination is the functional 4 equivalent of a reasonable cause determination by 5 the -- by the Secretary of State's Office. And so, as 6 you probably recall, obviously, once the Secretary of 7 State does that, they pass the case to the Attorney 8 General's Office. 9 In our situation, once this determination 10 is made, we go forth and do an investigation to try to 11 determine, from Staff's perspective, what the -- what 12 the facts are. There are then -- you know, there 13 are -- there are provisions related to administrative 14 settlement in the rules that we are -- you know, we 15 have to abide by and, then, there are, also, rules 16 related to the briefing of the determination of 17 probable cause to believe, and then -- and, then, the 18 penalty question. 19 So, those are all -- and just to be candid, 20 obviously, those are not, in every matter, steps that 21 we reach. In other words, you know, we -- you know, we 22 have often come back to the Commission with a 23 conciliation agreement, you know, prior to that, but 24 our -- were the Commission to determine reason to 25 believe a violation may have occurred, it would be our</p>

<p>10:00:21-10:01:46 Page 22</p> <p>1 goal to try to determine what -- you know, to try to -- 2 try to determine what we think the -- how we would -- 3 be able to be in a position to make a recommendation to 4 the Commission on, you know, what we believe the 5 preponderance of the evidence is on those disputed 6 issues of fact. 7 COMMISSIONER CHAN: Mr. Chairman -- and I'm 8 happy, of course, to give time to Commissioner Kimble 9 and yourself, but I am anxious to hear from the parties 10 involved from their own mouths. I know, you know, 11 obviously, there's a lot of paperwork here documenting 12 their claims, but just to hear from them today is going 13 to be something I'm interested in because of the 14 different stories they have to tell -- not stories in 15 the sense that they're not true, but just the 16 difference between them -- 17 CHAIRMAN PATON: Certainly. 18 COMMISSIONER CHAN: -- is what I'm saying. 19 CHAIRMAN PATON: Certainly. 20 MS. KARLSON: Mr. Chairman? 21 CHAIRMAN PATON: Yes, Kara. 22 MS. KARLSON: I just wanted to make clear 23 that, for purposes of this decision item, Jeanne Galvin 24 is the Attorney General -- or Assistant Attorney 25 General who will be representing the Commission. So,</p>	<p>10:03:01-10:04:20 Page 24</p> <p>1 Members. My name is Lee Miller. We are with 2 Wilenchik & Bartness, here today on behalf of the 3 Respondent, Sloan 2020 Campaign Committee and the 4 candidate, Eric Sloan. 5 Frankly, at this point, all I wanted to 6 convey to you and your colleagues is that we stand by 7 our response, note that we received a clean audit 8 report for our primary period activities, and look 9 forward to working with Mr. Collins and his colleagues 10 at the Commission to resolve this matter as rapidly as 11 we possibly can. 12 And with that, Mr. Chairman, I'm available 13 for any questions. 14 CHAIRMAN PATON: Okay. Any questions for 15 Mr. Miller from the Commission? 16 COMMISSIONER CHAN: Mr. Chairman? 17 CHAIRMAN PATON: Yes, Commissioner Chan. 18 COMMISSIONER CHAN: Hi -- Hi, Lee. It's 19 Amy, obviously. Can you just, kind of, go over for 20 us -- I know, obviously, you know, you probably feel 21 like you don't want to repeat ad nauseam what you 22 already put in paper, but can you, please, just go over 23 for us, boil it down, simple terms, what happened? 24 What is the story here? Why is there this difference 25 of facts? What happened, according to Sloan, and</p>
<p>10:01:49-10:03:00 Page 23</p> <p>1 to the extent the Commission has any questions, they 2 should be directed to Jeanne. And I just wanted to say 3 thank you to her for stepping into this role and being 4 able to provide any advice you may need. 5 MS. GALVIN: Good morning, and you're 6 welcome. 7 CHAIRMAN PATON: Thank you, Ms. Galvin. 8 Any other questions or discussion before we 9 have Mr. Miller speak? 10 COMMISSIONER KIMBLE: Mr. Chairman? 11 CHAIRMAN PATON: Yes, Commissioner Kimble. 12 COMMISSIONER KIMBLE: I agree with 13 Commissioner Chan that I'd like to hear from the 14 parties. There's just such substantial disagreement 15 on -- on what the facts are that I'd like to hear from 16 them. I've read this all over several times, and I 17 really would like to hear them talk about it in their 18 own words. 19 CHAIRMAN PATON: Certainly. I agree. 20 Any other questions? Discussion? 21 (No response.) 22 CHAIRMAN PATON: Okay. Mr. Miller, if 23 you're available, you have the floor to speak to the 24 Commission. 25 MR. MILLER: Thank you, Mr. Chairman,</p>	<p>10:04:24-10:06:31 Page 25</p> <p>1 what's the deal here? 2 MR. MILLER: Certainly, Mr. Chairman, 3 Commissioner Chan. I guess, to try and summarize, 4 Mr. Sloan and the Sloan 2020 Committee entered into -- 5 you know, we'll call it a consulting agreement with a, 6 quote/unquote, consulting firm known as the Power of 7 Fives and that The Power of Fives would work closely 8 with Sloan 2020 and with Candidate Sloan and would 9 assist them with both gathering \$5 contributions 10 qualifying for Clean Elections and, when they were 11 qualified, frankly, with figuring out a spending plan, 12 how The Power of Fives was going to facilitate 13 Mr. Sloan being elected to the Corporation Commission. 14 I think -- I think the most fundamental 15 difference in perspective here is that Sloan 2020 16 believed -- believes that having -- having qualified 17 for Clean Elections funding, it's, at that point, that 18 it would engage with its consultant and, you know, put 19 together a budget, put together a plan, you know, 20 \$50,000 on World Radio, \$25,000 for social media, 21 things that you would customarily see in any political 22 campaign. 23 What we experienced was -- as soon as Sloan 24 2020 qualified for Clean Elections funding, was that it 25 received an invoice from The Power of Fives that simply</p>

<p>10:06:36-10:08:22 Page 26</p> <p>1 said, you know, pay us over 100 percent of the funding 2 that you're entitled to. You know, we're happy to chat 3 about how that money is going to be spent, but The 4 Power of Fives' view of things is that they earned the 5 entire \$115,000 and, I think, change as soon as Sloan 6 2020 qualified for Clean Elections funding. 7 Within days of that -- within days of 8 qualifying for Clean Elections funding, there was, 9 we'll call it, robust dialogue between the Sloan 10 Campaign and The Power of Fives over how the money was 11 to be spent. Ultimately, Sloan 2020, Eric Sloan, came 12 to the conclusion that the spending plans -- that the 13 services being offered by The Power of Fives were not 14 services that he believed were going to create a 15 victory in the campaign. 16 And so, pursuant to the contract, Sloan 17 2020 terminated The Power of Fives. And, then, three 18 or four weeks later, you all received this complaint, 19 and I think that's -- that's our summary. 20 COMMISSIONER CHAN: Thank you so much for 21 going over it for us again like that. Thank you. 22 CHAIRMAN PATON: Thank you. 23 Any other questions for Mr. Miller? 24 (No response.) 25 CHAIRMAN PATON: If not, then we will hear</p>	<p>10:09:46-10:11:14 Page 28</p> <p>1 elections to multiple candidates, one of which happened 2 to be Sloan who, also, at one point, used to work for 3 The Power of Fives. 4 Mr. Sloan signed an agreement that is clear 5 as day as to what the obligation was in that through 6 Phase 1 and 2 of the campaign, which is, essentially, 7 through the Primary Election. He was obligated to pay 8 the entire statutory amount allotted for the Primary 9 Election campaign, which Mr. Miller is correct, it's 10 \$116,000 -- \$116,600. We provided the support, and 11 under that, the terms of that contract, Sloan was 12 obligated to pay it. 13 In addition, The Power of Fives paid 14 \$23,000 to an attorney by the name of Tim LaSota to 15 both challenge Sloan's opposition during the Primary 16 Election, but also, to defend Sloan himself when 17 Sloan's own signatures were challenged. And the notion 18 that Mr. Sloan was unaware of this expenditure or that 19 he didn't authorize it is ludicrous. 20 At one point, Tim LaSota was representing 21 Mr. Sloan, and Mr. Sloan can't deny it. There's -- 22 Mr. LaSota appeared to defend Mr. Sloan in the primary 23 challenge lawsuit against Mr. Sloan, and in terms of 24 the engagement between The Power of Fives, Mr. LaSota 25 made it clear that Mr. Sloan was obligated to pay for</p>
<p>10:08:28-10:09:43 Page 27</p> <p>1 from Mr. Fischbach, if Mr. Fischbach is available to 2 speak to the Commission. 3 MR. FISCHBACH: Yes. Good morning, members 4 of the Commission. My name is Will Fischbach. I'm a 5 partner with the law firm of Tiffany & Bosco. Seated 6 to my right is my client, Dr. Bob Branch, who is the 7 principal of The Power of Fives. I'd like to make a 8 brief statement and have my client make one, as well, 9 and then -- and, then, I'm happy to answer any 10 questions. 11 Relative to the -- I think, the inquiry 12 from Commissioner Chan, we agree with the Chairman's 13 position that it is up to this Commission to decide 14 today whether or not probable cause exists to move 15 forward with an investigation. We are not asking you 16 and I don't believe the chairman is asking you to pass 17 judgment at this point in time, nor would that be 18 prudent of you to do so, unless and until you have all 19 of the facts at your disposal. 20 Of course, it's not unusual, in a 21 circumstance like this, for there to be dual narratives 22 of what happened, but succinctly put, The Power of 23 Fives is not, as Mr. Miller put it, a political 24 consulting company. The Power of Fives offered turnkey 25 election support in both the primary and general</p>	<p>10:11:20-10:12:17 Page 29</p> <p>1 Mr. LaSota's fees. 2 And he would have done so, but, as alleged 3 in our complaint, I believe, roughly -- was it July of 4 this year? Mr. Sloan approached Mr. Branch and asked 5 him to advance that additional sum of money of \$23,000, 6 to pay Mr. -- Mr. LaSota's bills. 7 Now, I'm sure that my colleague, Lee 8 Miller, disagrees with that. I'm sure that Mr. Sloan 9 disagrees with that summary, but that is why it is 10 incumbent on you, as the Clean Elections Commission, to 11 conduct a thorough investigation, utilize your subpoena 12 power and get your arms around what happened here. And 13 I am confident and Mr. Branch is confident that when 14 you do that, you will find that the facts align with 15 our version of the events. 16 I would like to see if Mr. Branch -- 17 Dr. Branch, rather, has anything to add to that 18 summary. 19 DR. BRANCH: I would and -- 20 CHAIRMAN PATON: Yes. Go ahead, 21 Dr. Branch. 22 DR. BRANCH: Yes. Sorry, sir. 23 CHAIRMAN PATON: Go ahead. 24 DR. BRANCH: Commissioner and Chairman, 25 thank you very much for letting us be here today.</p>

<p>10:12:23-10:14:03 Page 30</p> <p>1 In July of 2019, Eric Sloan and I entered 2 into an agreement that he would be our first candidate 3 that The Power of Fives, LLC would represent. In 4 August, we executed that, and in September of last 5 year -- now, I know that Mr. Miller wants you to 6 believe that nothing happened until Eric Sloan received 7 his funding, but understand Eric Sloan received his 8 funding about a week and a half prior to the Primary 9 Election. We were actually running his entire campaign 10 since a year ago September is when we had our first 11 expenditures. 12 We started gathering signatures for him per 13 his request. We started having events for him per his 14 request. And in November of last year, 2019, he asked 15 me for a job. I told him that it was problematic since 16 he was my candidate. And he said, well, hire my wife's 17 firm. And he says, that's perfectly legal; you can do 18 that. So, I agreed to pay his wife's firm \$4,000 a 19 month. So, when Mr. Evans wants -- I mean, Miller 20 wants you to believe that we had no expenditures, 21 that's not the case. 22 Also, working on his campaign I had former 23 Secretary of State Ken Bennett working on his campaign, 24 my management staff working on his campaign, and a 25 whole host of people that were front people at events</p>	<p>10:15:54-10:17:28 Page 32</p> <p>1 away from qualifying. Now, understand The Power of 2 Fives was spending all of this money before he 3 qualified. We made agreements, since Sloan and Lea 4 Marquez Peterson were the only two Republican 5 candidates. I entered into agreements with the 6 Republican Party to help get behind them, those two 7 candidates. 8 We created -- again, with, you know, former 9 Secretary of State Ken Bennett and a few other people, 10 plus the Republican Party, we had mass mailings. We 11 had the calls all set up to convince people to give \$5 12 contributions. These are expenditures that The Power 13 of Fives paid. 14 So, when Eric Sloan -- when it came up 15 to -- when he got his funding, at that time, it was 16 over. He won the primary. He got his funding. All of 17 the effort was because of The Power of Fives and the 18 money that we had expended and, according to the 19 contract, nothing more and nothing less is what we 20 asked for. 21 Now, the \$23,000 for the legal fees, when 22 they came to me and -- when Sloan came to me and asked 23 me for them, this was after everything was -- 24 challenges were all done. I said, listen -- after his 25 attorney and he convinced me that this was legal, I</p>
<p>10:14:08-10:15:49 Page 31</p> <p>1 for Mr. Sloan gathering signatures. In fact, when the 2 signatures were ultimately challenged, Eric Sloan was 3 the only signature that was challenged that came 4 through victorious because we funded and we funded the 5 people to help go get those signatures. So, the only 6 reason why he is on the ballot was because of our 7 efforts. 8 A little correction from my attorney here, 9 in May of last -- of this year, after all of the court 10 cases -- now, understand Eric Sloan went out and got 11 Tim LaSota. I didn't even know Tim LaSota -- Attorney 12 Tim LaSota. He negotiated the price for Tim LaSota on 13 the challenges, the signature challenges, and he 14 negotiated the price with Tim LaSota on his own 15 defense. 16 After all of those challenges and after all 17 of the defenses, that's when Tim LaSota -- I mean, 18 that's when Eric Sloan and Tim LaSota both came to me 19 and asked me, The Power of Fives, to advance him 20 \$23,000 that was negotiated by Sloan. So, throughout 21 the entire process, The Power of Fives was expending a 22 lot of money. 23 Now, when April came around and his 24 signature challenge was successful, he defended it, we 25 still -- we were still over a thousand \$5 contributions</p>	<p>10:17:32-10:18:48 Page 33</p> <p>1 said this is a campaign expenditure. It has to be. It 2 has to be because my company is not in the business to 3 loan money. We are your turnkey campaign. This is a 4 campaign expenditure. 5 So, when I've seen that he did not put that 6 on his filing, that's when I contacted my attorney and 7 I said, listen, this is -- 8 MR. FISCHBACH: Don't. What we talked 9 about is privileged. 10 DR. BRANCH: Oh, I'm sorry. That's when I 11 filed the complaint. That's when I contacted 12 Mr. Collins. 13 And I want to thank you very much, 14 Mr. Collins. It was over a weekend, and you responded 15 to me in this COVID world. And that's when I submitted 16 my complaint. 17 CHAIRMAN PATON: Okay. Any questions by 18 the Commission for the two -- the two men on the 19 screen? 20 (No response.) 21 COMMISSIONER KIMBLE: Mr. Chairman? 22 CHAIRMAN PATON: Yes, Commissioner Kimble. 23 COMMISSIONER KIMBLE: Tom, I wonder if you 24 could get into, briefly, a discussion of why what, on 25 the face of it is a contract dispute between these two</p>

<p>10:18:52-10:20:58 Page 34</p> <p>1 parties, is now a Clean Elections matter. 2 MR. COLLINS: Mr. Chairman, Commissioner 3 Kimble, that's a good question. I would say this about 4 that. The Act provides for what to do in the event of 5 a contract dispute of this nature and, you know, 6 Mr. Miller contacted me about that. And they -- and 7 under the terms of that provision, as the response 8 notes, there's some amount of money -- I'm not going 9 to rely on my memory to state what it is, but there's 10 some amount of money held back from the primary to deal 11 with that. There's, also, a pending arbitration 12 schedule. 13 My view on this is that we have a -- there 14 are two interests here. One, there's an enforcement 15 issue that I believe there's reason to believe a 16 violation may have occurred and, then, secondly, 17 because of the substantial issues of fact, there are 18 questions -- there's an overall question about whether 19 or not -- and we want to develop to examine, I should 20 say, you know, some of the expenditures here. 21 Now, it may be that the arbitration, you 22 know, purports to resolve some of those issues. I 23 think that my viewpoint is that rather than deferring 24 this determination until after the arbitration is 25 completed, the determination here on its face would</p>	<p>10:23:10-10:24:44 Page 36</p> <p>1 arbitration take its course and then whatever comes out 2 of that, we'll deal with. The reason being that, you 3 know -- you know, there's -- there's a -- because 4 without the authorization, I just -- I don't -- I don't 5 know how to engage with that process in a way that can 6 ensure whatever the Commission's interests -- whatever 7 we sort of think the Commission's interests may turn 8 out to be are taken care of. 9 So, I guess, what I'm trying to say is 10 that, obviously, but for the complaint, we wouldn't be 11 here; but that having been said, again, I think that 12 because this is a preliminary determination, you know, 13 I think that in order for us to feel, you know, 14 comfortably empowered within the rules of the 15 Commission to get in -- to be aware of and to, 16 potentially, have to take actions in this situation, we 17 just -- we would -- we would recommend not waiting 18 until the arbitration results. 19 I hope that answers your question. I know 20 it's a long answer to a -- because the answer is -- the 21 real answer is I don't know yet, but I don't want to 22 wait -- or my recommendation is not to wait until then 23 to determine probable cause -- or not probable cause -- 24 to determine whether there's reason to believe a 25 violation may have occurred.</p>
<p>10:21:08-10:23:05 Page 35</p> <p>1 empower the staff to ensure that the Commission's 2 interests, which are separate from the party, are 3 looked after. 4 Whether or not and how we would -- how we 5 address that in the context of this arbitration, I'm 6 not -- I'm not, frankly, in a position to tell you. 7 That is something that I think that we would 8 anticipate, you know, talking to both sides about that 9 issue once we're empowered to ensure that the 10 Commission interest here has -- you know, has the -- 11 essentially, that my actions and the actions that, you 12 know, other staff members or attorneys might take are 13 authorized under the Commission's rules. 14 So, it's really out of a sense of prudence, 15 from my perspective, that we recommend the 16 determination be made now on this preliminary question 17 because it will give us an opportunity to evaluate, you 18 know, how we ascertain the necessary facts and how the 19 arbitration proceeding would fit into those -- would 20 fit into those -- fit into that. 21 I'm not prepared today, for example, to 22 say -- because this would be the effect of not making a 23 determination, I think. What I'm not prepared to do is 24 say or to recommend -- and this is, obviously, your 25 decision, not mine, but mine is to say let's let the</p>	<p>10:24:45-10:26:29 Page 37</p> <p>1 COMMISSIONER KIMBLE: So, could you talk a 2 little bit about what kind of timeline you envision 3 this taking? Is this something that you would come 4 back with -- if we were to move forward, would you come 5 back with a recommendation in a month, or is this a 6 very lengthy process? 7 MR. COLLINS: Mr. Chairman, Commissioner 8 Kimble, I would say this about that. We're -- you 9 know, as you -- as you -- as Kara noted, you know, 10 helpfully, for the record, you know, we have -- we have 11 things set up in such a way where, you know, you'll 12 have counsel on the -- on the proceedings and we will 13 have counsel on our investigation. Those would be 14 separate, and that's in order to ensure, you know, that 15 everybody has ample process. 16 I -- you know, I think that with this 17 authorization, we'll be able to engage a little bit 18 more in that evaluation. I will say this. Unless 19 there's a contrary rule -- and I don't think that there 20 is provided that, you know, ex parte and other things 21 are dealt with -- you know, we could, obviously, update 22 you on where the arbitration question gets us once, you 23 know, we have -- we -- you know, staff and Kara have an 24 opportunity to be engaged in the process. 25 I don't -- I think that -- I think that we</p>

<p>10:26:31-10:27:47 Page 38</p> <p>1 can work with the parties to -- with the Respondent, 2 really, ultimately, and then -- and then, obviously, 3 we'll -- we'll be working with the Complainant, as 4 well, to -- you know, to make sure that there's -- that 5 appropriate communication of our progress is made 6 subject to all the -- the due process considerations 7 that go into that. 8 MS. GALVIN: If I may -- this is Jeanne 9 Galvin -- Chairman Paton, members of the Commission, I 10 would suggest that you make your decision on whether to 11 move forward separate and apart from the status of the 12 arbitration. You clearly have jurisdiction over the 13 campaign issues, and I would recommend that, that you 14 evaluate what you have in front of you, decide whether 15 there is merit in the findings and whether the 16 investigation should continue and, at this point, not 17 worry so much about the arbitration. Let the parties 18 do that part of it, and then you exercise your 19 authority with respect to the material that you have in 20 front of you. 21 COMMISSIONER CHAN: Mr. Chairman? 22 CHAIRMAN PATON: Yes, Commissioner Chan. 23 COMMISSIONER CHAN: Mr. Chairman, 24 Ms. Galvin, I'm so disappointed to hear you say that 25 because, frankly, hearing Commissioner Kimble's --</p>	<p>10:29:01-10:30:03 Page 40</p> <p>1 CHAIRMAN PATON: Yes. Go ahead. 2 MR. FISCHBACH: The arbitration hearing is 3 scheduled for, I believe, January 13th of next year, 4 but it is -- it is coming up. However, I would agree 5 with Jeanne Galvin that there are two separate things 6 and one doesn't necessarily, you know, govern the 7 outcome of the other. And, you know, it is -- you've 8 heard the phrase sunlight is the best disinfectant. 9 The origin of that phrase is from a collection of 10 essays by Louis Brandeis called "Other People's Money 11 and How the Bankers Use It." 12 And the question for this Commission is the 13 citizens money, the citizens of Arizona, and how 14 Mr. Sloan used it. And that is certainly within your 15 purview regardless of what happens in the Triple A 16 arbitration. 17 CHAIRMAN PATON: Thank you, sir. 18 COMMISSIONER CHAN: Thank you. 19 CHAIRMAN PATON: Any other questions or 20 comments? 21 COMMISSIONER CHAN: Mr. Chairman, I'll just 22 make some comment. 23 CHAIRMAN PATON: Yes. 24 COMMISSIONER CHAN: I mean, I'm inclined to 25 go with Tom's recommendation just with the caveat that</p>
<p>10:27:50-10:29:00 Page 39</p> <p>1 Chairman -- question, I should say, I actually had that 2 same thought, which was, you know, one, I wanted to ask 3 the parties -- and forgive me if it's in the 4 paperwork -- have they proceeded to arbitration and are 5 they planning to, if they haven't. 6 Because if we get involved or -- I mean, I 7 do think there are substantial issues of fact, 8 obviously. I mean, this is a contract dispute that 9 needs to be sorted out for us to determine -- I mean, I 10 don't disagree that there is reason to believe a 11 violation may have occurred, depending on which way the 12 contract dispute goes. For us to get involved in 13 trying to figure that out, when there's an arbitration 14 clause between the parties, seems like a lot of 15 duplication of work if there's going to be an 16 arbitration. 17 That's what I'm concerned about. Not that 18 that's not our role, but if there's going to be that 19 already, should we be getting involved there. So, I 20 guess, that's more of a comment, but that's why my 21 thought process was, also, going to the arbitration. 22 Can one of the parties, maybe, jump in and 23 let us know? Is that going forward? 24 MR. FISCHBACH: This is Will Fischbach 25 here, counsel for The Power of Fives.</p>	<p>10:30:07-10:31:21 Page 41</p> <p>1 because -- there's to caveat. I don't think there's 2 any harm in going forward. I mean, I think, you know, 3 if there's no "there" there, then there's nothing that 4 will come of it. I think, obviously, we've kind of 5 erred this out. We've gotten a lot of information from 6 the parties, both on paper and today here at the 7 meeting, on the record. 8 I just hate to see, you know, what happens 9 between parties that originally started out as friends, 10 so to speak, or colleagues. So, I guess, I would just 11 put that forward. 12 And thank you, Ms. Galvin, for stepping in 13 today and for your advice. 14 MS. GALVIN: You are very welcome. 15 CHAIRMAN PATON: Commissioner Kimble, 16 anything else? 17 COMMISSIONER KIMBLE: Mr. Chairman, I would 18 make a motion that we determine that there is reason to 19 believe that violations of the Clean Elections Act and 20 rules may have occurred and that the executive director 21 is empowered to move forward with a further 22 investigation. 23 I hope I worded that correctly, Tom. 24 CHAIRMAN PATON: Before we get that far, I 25 just -- I want to say something myself. You know, I'm</p>

10:31:26-10:32:56 Page 42

1 a layperson, and this is something that, I think, a
2 light needs to be shined. Obviously, there's two
3 widely divergent sides to this, and myself, I feel like
4 I need somebody to go through this step by step. And
5 this is -- this is State money that we are entrusted
6 with and we have to -- we have a responsibility to make
7 sure that it's used correctly and in line with the law
8 and to give us credibility with the electorate.
9 And so, I certainly believe that we should
10 proceed on with this. There may not be anything there,
11 but that way we will know exactly what's going on.
12 So, going back to your motion, I accept
13 that motion.
14 Do we have a second?
15 COMMISSIONER CHAN: I second the motion,
16 Mr. Chairman.
17 CHAIRMAN PATON: So, Commissioner Chan
18 seconds the motion.
19 So, we are going to vote on whether we
20 proceed with the reason -- reason to believe that there
21 was a violation here.
22 Commissioner Chan, how do you vote?
23 COMMISSIONER CHAN: I vote aye.
24 CHAIRMAN PATON: Commissioner Kimble?
25 COMMISSIONER KIMBLE: Aye.

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1 CHAIRMAN PATON: And this is Commissioner
2 Paton, and I vote aye, as well. So the motion carries
3 and -- let's see where are we going.
4 And Item VII, does any member of the public
5 wish to make comments at this time? You may, also,
6 send comments to the Commission by mail or email at
7 ccec.cleanelections.gov.
8 If we don't have -- go ahead. Yes,
9 Commissioner Chan.
10 COMMISSIONER CHAN: I don't know if there's
11 any other public comment, but I wanted to give a shout
12 out to my children who are watching on YouTube. They
13 found out I was going to be on YouTube and they got
14 very excited about it. So, shout out to my six- and
15 eight-year-old watching us on YouTube.
16 CHAIRMAN PATON: You're famous.
17 Okay. Item VIII: Motion to adjourn.
18 Do I have a motion to adjourn?
19 COMMISSIONER CHAN: Mr. Chairman, I move
20 that we adjourn the meeting.
21 CHAIRMAN PATON: All right. We have a
22 motion to adjourn.
23 Do we have a second?
24 COMMISSIONER KIMBLE: Second.
25 CHAIRMAN PATON: Second by Commissioner

10:34:12-10:34:28 Page 44

1 Kimble, and we will vote.
2 Commissioner Chan?
3 COMMISSIONER CHAN: I vote aye.
4 CHAIRMAN PATON: Commissioner Kimble?
5 COMMISSIONER KIMBLE: Aye.
6 CHAIRMAN PATON: And Commissioner Paton, I
7 vote I, as well.
8 Thank you, and have a safe rest of
9 December.
10 (Whereupon, the proceedings concluded at
11 10:34 a.m.)
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Page 45

1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA)
3 BE IT KNOWN the foregoing proceedings were
4 taken by me; that I was then and there a Certified
5 Reporter of the State of Arizona, and by virtue thereof
6 authorized to administer an oath; that the proceedings
7 were taken down by me in shorthand and thereafter
8 transcribed into typewriting under my direction; that
9 the foregoing pages are a full, true, and accurate
10 transcript of all proceedings and testimony had and
11 adduced upon the taking of said proceedings, all done to
12 the best of my skill and ability.
13 I FURTHER CERTIFY that I am in no way
14 related to nor employed by any of the parties thereto
15 nor am I in any way interested in the outcome hereof.
16 DATED at Phoenix, Arizona, this 18th day of
17 December, 2020.
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19 
20 LILLIA MONAREZ, RPR, CR #50699
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**CITIZENS CLEAN ELECTIONS COMMISSION
EXECUTIVE DIRECTOR REPORT
January 28, 2021**

Announcements:

- The Legislature has begun its 1st Regular Session.
- President Biden was sworn in January 20.

Voter Education:

- Avery continues to represent Clean Elections in Arizona African American Legislative Leadership Conference Committee Planning Meetings
- Avery is currently on the Youth Committee with the Arizona African American Legislative Leadership Conference Committee and is assisting planning a virtual Youth Day at the Capitol.
- The Voter Ed team attended the virtual AZ Independent Redistricting Commission- Inaugural Meeting. January 14, 2021
- Avery continues to represent Clean Elections at Opportunities for Youth's Youth Leadership and Development meetings.
- Avery represented Clean Elections at the 36th Annual Dr. Martin Luther King, Jr. Celebration (Virtual) January 21,2020
- The Voter Ed team is scheduled meet with Arizona Commission of the Deaf and Hard of Hearing (ACDHH) to discuss collaborations on January 25
- The Voter Ed team will attend the virtual Morning Scoop with Legislative Leaders: The 2021 Session on January 26, 2021
- On January 26th, Avery is scheduled to meet with Sebastian Blackwell of One N Ten to discuss our agencies.
- Tom, Mike and Gina met with the Maricopa County Recorder regarding voter education. Staff intends to reach out to all County Recorders and Election Directors and discuss voter education and outreach efforts.

Administration:

- In order to reduce exposure to COVID-19, staff continues to practice social distancing, CDC recommendations, wear masks and electronic changes have been implemented to reduce incoming traffic. DHS info re covid test and vaccine sites has been shared with CEC and staff.

Miscellaneous

- **Outstanding legal matters**
 - Legacy Foundation Action Fund
 - Awaiting decision
 - Election cases involving Arizona

- **Appointments**
 - No additional information at this time.

- **Enforcement**
 - MUR 20-01, Starzyk, closed
 - MUR 20-02, Parra, pending action by the Secretary of State.
 - MUR 20-03, Ariz. Educ Ass'n, this agenda
 - MUR 20-04, Sloan, pending
 - MUR 20-05, Starzyk 2, next agenda (anticipated)

Regulatory Agenda

Staff continues to review rules on an ongoing basis for purposes of clarity, concision and understandability.

- R2-20-101, definitions, for compliance with Arizona Advocacy Network v. State
- R2-20-109, independent expenditures, for compliance with Arizona Advocacy Network v. State.

We are awaiting the Governor's annual rule-making moratorium. We have been exempted in prior years, however, we do not have insight into that decision.

Legislative Agenda

House Bill 2014 and House Bill 2110, both bills that will in my view amend or supersede the act or re-appropriate monies appropriated in the act are sponsored by Rep. Leo Biasiucci, R-Lake Havasu. Both measures cleared their committees of reference and passed rules on January 25. They are set for full action on the floor any time and then will move to the senate.

Bill	Sponsor	Assigned to	What it does	Direct effect on CCEC	Status	Notes
HB2014: GRRC, petition to request review	Rep. Biasiucci(R)	House: Government & Elections, Rules	Allows a person to petition GRRC to review an agency's rule or interpretation of a rule of an agency established under Title 16, Chapter 6.	Would allow anyone to request that GRRC review Clean Elections adopted rules, policy statements, or final rules.	Passed Government & Elections 7-6. Passed House Rules 5-3.	Last year passed Reg. Affairs 4-3, Passed Rules 5-3, Passed the Floor 33-27, and was transmitted to Senate. House Rules attorney did suggest adding a Prop 105 clause.
HB2039: elections; hand counts; five percent	Rep. Griffin (R)	House: Government & Elections, Rules	The number of precincts in each county that must be randomly selected for a hand count after each election is increased to five percent of the precincts in the county or five precincts, whichever is greater, from two percent or two precincts. Voting centers are deemed to be a precinct for the purposes of the hand counts.	None		
HB2054: voter registration database; death records	Rep. Kaiser (R)	House: Government & Elections, Rules	Requires rather than suggests the Secretary of State (SOS) to compare the death records with the statewide voter registration database.	None.	Passed Government & Elections 8-5. Passed House Rules.	
HB2073: records; confidentiality; eligible individuals	Rep. Pratt (R)	House: Judiciary, Rules	For the purpose of statute allowing eligible persons to file an affidavit to request county officers and state agencies prohibit access to that person's information contained in certain public records, the definition of "eligible person" is expanded to include former county attorneys, former municipal prosecutors, former attorneys general, former U.S. Attorneys, commissioners of the municipal court, hearing officers appointed for civil traffic violations, and members of the Commission on Appellate Court Appointments. Persons whose residential address is protected from public disclosure are not required to disclose their address when making campaign contributions and are instead required to provide an alternate mailing address.	None.		
HB2088: technical correction; ballot; presidential candidates	Rep. Bolick (R)		Minor change in Title 16 (Elections) related to presentation of presidential candidates on the ballot.			Possible Striker
HB2110: civil penalties; traffic; mitigation; restitution	Rep. Biasiucci(R)	House: Transportation, Rules	If a "monetary obligation" (defined) is imposed on a person at sentencing, the court is authorized to order the person to perform community restitution in lieu of the payment of the monetary obligation. The court is required to credit any community restitution performed at a rate of \$12 per hour.	Waiving civil penalties would directly effect CCEC funding.	Passed Transportation 6-2-1 (present); 3(absent). Passed House Rules 5-3.	Except for fees under 12-116. House Rules attorney did not suggest a Prop 105 clause for this bill based on "formula argument".
HB2180: online content; publishers; liability; fee	Rep. Finchem (R)		A person engaged in the business of allowing online users to upload publicly accessible content on the internet and that exercises a level of "control" (defined) over the uploaded content for politically biased reasons is deemed to be a "publisher" (defined as a person that curates and distributes content on the internet) and not be a "platform" (defined as a person that enables the content and distribution of information on the internet), and is liable for damages suffered by an online user because of the person's actions. The Attorney General or the online user who claims to have suffered the damages may bring an action to recover the damages. Does not apply to pornographic or libelous content or content that advocates or promotes violence toward a person or group of persons. A publisher is required to pay to the Attorney General an annual fee as determined by the Attorney General for each online user in Arizona that is authorized to upload publicly accessible content to the publisher's interactive computer service. The Attorney General is required to deposit the fees in the Antitrust Enforcement Revolving Fund.	The intent seems to be geared toward social media and we expect it to be implemented as such but it is one to keep an eye on to see how it actually gets implemented.		
HB2181: write-ins; residency; filing deadline	Rep. Kavanaugh (R)	House: Government & Elections, Rules	Would require write-in candidates be a resident of the filing location for 120 days before the date of the Election. Change nomination filing to 76 days before, instead of 14 days.	Change in candidate training information.		
HB2265: rulemaking; expedited process; rule expiration	Rep. Kavanaugh (R)		A state agency that seeks to expire a rule or rules is authorized to file a notice of intent to expire with the Governor's Regulatory Review Council (GRRC). GRRC is required to place the notice on the agenda for the next scheduled meeting for consideration. If a quorum of GRRC approves the notice, GRRC is required to cause a notice of rule expiration to be prepared and provide the notice of rule expiration to the agency for filing with the Secretary of State.	Would allow for an expedited process of striking a rule.		
HB2302: election lawsuits; settlements; approvals	Rep. Blackman (R)		If a proposed settlement of an election-related civil action by the Secretary of State materially affects a county recorder, the Secretary of State cannot settle or otherwise compromise that civil action without consulting the county recorders. A county recorder is authorized to object to the settlement based on the difficulty or impracticability of its requirements, and is authorized to demonstrate or otherwise provide evidence regarding that difficulty or impracticability. If the county recorder's evidence is sufficient, the Secretary of State's settlement cannot be approved without the consent of the county recorder. A county recorder is authorized to join in any election-related civil action that materially affects the county recorder.	Geared toward the Secretary of State however one provision of the bill states, "A county recorder is authorized to join in any election-related civil action that materially affects the county recorder".		
HB2307: voting equipment; overvote notice	Rep. Kavanaugh (R)	House: Government & Elections, Rules	County Board of Supervisors must provide signage that if a voter is to cast a vote on any other irregularity, the vote for that office will not count.	This is just not true, if the machine had an error reading the ballot or spit it out, it would be sent to the bi-partisan election board where they would try and identify voter intent. If they could not create a duplicate ballot, in this instance, the vote would not count.		
HB2308: recall petitions and elections; revisions	Rep. Kavanaugh (R)		Numerous changes to statute relating to recall petitions and signature gathering.	None.		
HB2314: presidential electors; ballots	Rep. Kavanaugh (R)	House: Government & Elections, Rules	Names of presidential electors may (not required now) to be printed on the ballot.	None.		
HB2342: recalls; city elections; signatures required	Rep. Salman (D)		For an officer elected at a nonpartisan election, the "last preceding general election" for the purpose of calculating the number of signatures required on a recall petition is the last preceding election at which the public officer who is the subject of the recall was declared elected.	None.		

Bill	Sponsor	Assigned to	What it does	Direct effect on CCEC	Status	Notes
HB2343:voting centers; board of supervisors	Rep. Salman (D)		Only on a specific resolution of the county board of supervisors, the board is permitted to authorize the use of additional types of voting locations by using voting centers and early voting drop-off centers. A voting center is deemed to be a polling place on election day, and may be used as an early voting location. When an election is ordered and voting centers are used, the county board of supervisors is required to appoint a voting center election board for each voting center consisting of at least one inspector, one marshal and as many judges or clerks as needed. Requires there to be an equal number of inspectors in the various voting centers in the county who are members of the two largest political parties. The board may also appoint a minor, at least 16 to serve as Clerk of Elections. Schools cannot penalize a student for missing class due to serving as Clerk of Elections. County recorders are authorized to make changes to the approved early voting locations and are required to notify the public as soon as practicable. Also, change "one central location" for replacement ballots to "one or more locations".	Updates to voter education. Possible outreach to let kids know they can be hired for this position. Sounds like a nice opportunity to get involved.		
HB2344:early voting; weekend hours	Rep. Salman (D)		On-site early voting locations, including the locations at the county recorder's office, are required to be open until 7:00PM on the Saturday, Sunday and Monday immediately preceding election day.	Voter Ed. changes to reflect change in early emergency voting.		
HB2345: early ballot collection; limitations; repeal	Rep. Salman (D)		Would no longer be a class (6) felony to knowingly collect voted or unvoted early ballots.	Small update to website.		
HB2358:voter registration update; address change	Rep. Kavanaugh (R)		By May 1 of each year, the County Recorder shall use the National Change of Address system from USPS to remove voters who have moved out of the County or State. They are also no longer required to provide information to the voter on how to continue to be eligible to vote.	None.		
HB2359:election equipment; access; locks	Rep. Kavanaugh (R)		For a voting machine; any open plug, port, access port will be locked with a tamper proof device.	None.		
HB2360: driver license voter registrations; committee	Rep. Kavanaugh (R)		The Secretary of State is required to operate and maintain the driver license voter registration system in conjunction with a committee of county recorders that is selected by a statewide county recorder membership group.	None.		
HB2361: write-ins; early ballots; processing	Rep. Kavanaugh (R)	House: Government & Elections, Rules	The deadline for filing a nomination paper to be a write-in candidate is moved to 5PM on the 70th day before the election, from 5PM on the 40th day before the election. Tallying of early ballots is permitted to begin immediately after the envelope and completed affidavit are processed and delivered to the early election board, and the prohibition on early ballots being tallied any early than 14 days before election day is deleted.	Slight update to candidate training regarding nomination papers for write-ins.		
HB2362: elections; ballot privacy folders	Rep.Kavanaugh (R)		A voter is to be given a privacy envelope along with their ballot when voting.	None.		
HB2363: municipal election officers; certification training	Rep. Kavanaugh (R)	House: Government & Elections, Rules	For municipal employees who work on elections, the municipality is authorized to train its own employees if the municipal training program is approved by the Secretary of State.	None.		
HB2364: election pamphlet submittals; identification required	Rep.Kavanaugh (R)		Arguments in favor of or against a ballot measure, which are printed in the informational pamphlet, must contain a sworn, notarized statement of the person submitting it. If the argument is submitted by an organization, it must contain the sworn statement of two executive officers of the organization. The names of persons and entities submitting written arguments is required to be included in the informational pamphlet. Persons signing the argument must identify themselves by giving their residence address and telephone number, which cannot appear in the pamphlet. Any argument submitted that does not comply with these requirements cannot be included in the pamphlet.	None.		
HB2369:early ballots; notarization; identification	Rep. Payne (R)		Requires a voter's signature on an early ballot return envelope to be notarized. The voter is required to present identification to the election board worker when dropping off an early ballot as required for in-person voting. A family member and a household member are removed from the list of persons authorized to collect an early ballot on behalf of a voter.	Update to voter education regarding early ballots.		
HB2370: permanent early voting list; repeal	Rep. Payne (R)		Repeals the PEVL.	Update to voter education regarding early voting.		Would require that you request an early ballot for each election.
HB2371: hand count; voting centers; total	Rep. Payne (R)		For a county that uses voting centers, at least two percent of the total number of ballots cast in the county must be randomly selected for a hand count after each election, from a pool consisting of at least two percent of the voting centers or two voting centers, whichever is greater. Voting centers are deemed to be a precinct for the purposes of the hand counts.	None.		
HB2373: voter registration groups; forms; identifiers	Rep. Dunn (R)		Any person or group that request 10 or more voter registration forms from the County must put their unique identifier on said form collected or distributed by them.	We would likely need to add the Clean Elections symbol to voter registration forms (stamp, printed).		
HB2378: ranked choice voting; presidential preference	Rep.Dunn (R)		Notwithstanding any other statute, the PPE shall be conducted by ranked choice voting when 3 or more candidates qualify for a political party's ballot. Establishes requirements for how to conduct tabulation. The SoS shall conduct a voter education outreach campaign to familiarize electors with ranked choice voting.	Would require an update to voter education and likely a joint campaign with the SoS's office.		"Election threshold" means the number of votes that are sufficient for a candidate to be elected in a multi-winner contest which is determined by calculating the total votes to be counted for active candidates in the first round of tabulation, dividing by the sum of one plus the number of offices to be filled, then adding one, disregarding any fractions.
HB2426:presidential electors; congressional districts; at-large	Rep. Carrol (R)		Would change Arizona from a winner take all state to a state who casts their Electoral College votes by Congressional District. The 2 remaining votes would voted on by the Legislature. If a tie vote occurs, the remaining electors would be split among the respective candidates.	Update to voter education, specifically how the Electoral College would function in Arizona.		

Bill	Sponsor	Assigned to	What it does	Direct effect on CCEC	Status	Notes
HB2430:publicity pamphlet; submittal dates	Rep. Bolick (R)		Emergency clause to change arguments for publicity pamphlet dates. Legislative Council has till 30 days before the primary to submit analysis instead of 60 days, a person filing has till 27 days before the primary instead of 48 days.	None.		
HB2443:certificate of election; technical correction	Rep. Nutt (R)		Technical change. Apparent striker.	None.		
HB2444: judges; election; technical correction	Rep. Nutt (R)		Technical change. Apparent striker.	None.		
HB2468:elections; special districts; technical correction	Rep. Barton (R)		Technical change. Apparent striker.	None.		
HB2469: mail ballot elections; technical correction	Rep. Barton (R)		PDF links to HB2468, not HB2469. However, it is likely another striker bill.	None.		
HB2529: early ballots; address; return	Rep. Dunn (R)		Early ballots shall have a "return to sender" marking for those who receive a ballot by mail for someone who does not reside at that address.	None.		
HB2560: removal; permanent early voting list	Rep. Dunn (R)		If a voter fails to vote using an early ballot in a General Election, they shall be removed from the PEVL.	Would require an update to voter education.		The way it is written, even if someone chooses to vote in person on Election Day, they would still be removed from PEVL.
HB2569: elections; private funding; prohibition	Rep. Hoffman (R)		Notwithstanding any other law, the state, city, town, county, school district, or other public body that conducts or administers elections may not receive or expend private monies for preparing for administering or conducting an election, including registering voters.	None.		Would allow for only appropriated money to be spent on administering elections.
HB2613: ballots measure amendments	Rep. Salman (D)		Would allow for a person or organization to submit the proposed description for an initiative petition or referendum petition to the Attorney General for determination of whether or not the description is lawful and sufficient. AG has 10 days to approve or reject. If rejected must provide reasoning. If accepted, those wishing to challenge the description have 10 days.	None.		In response to lawsuits filed against Prop 208's description not being sufficient.
HB2616: election data; legislative review authority	Rep. Biasiucci(R)		After tabulation but before the official canvass, the county recorder and county board of supervisors shall provide to designated representatives of the legislature access to or copies of election data, including results and other election records, equipment, systems and facilities. On written request, the Speaker of the House or the Senate President shall receive access as described above whether in session or not.	None.		
HB2686: candidate signs; prohibition; primary	Rep. Fillmore (R)		Extends the period in which signs cannot be altered with from 45 days before the Primary to 150 days before the General Election which would work out to approximately 65 days before the Primary.	None.		
SB1002: early voting envelopes; party affiliation	Sen. Ugenti-Rita (R)	Senate: Government, Rules	Ensure ballot return envelope does not indicate party affiliation.	None		
SB1003: early voting; signature required; notice	Sen. Ugenti-Rita (R)	Senate: Government, Rules	Ballots without signatures will not be counted, voter has until 7 p.m. on Election Day to cure their signature. County will make the effort to contact the voter.	None.		
SB1010: recount requests; amount; bond; procedure	Sen. Mesnard (R)	Senate: Government, Rules	Changes post Election audit from 2% to 5%, vote centers are not interchangeable with precincts by definition, anyone may request a recount if they front the cost.	None	Passed Senate Government 5-3.	We may want to lobby to add some limitations as to avoid lengthy elections.
SB1020: voting locations; electioneering	Sen. Ugenti-Rita (R)	Senate: Government, Rules	Counties are no longer allowed to restrict electioneering outside of a vote center or polling location based on emergency designation.	None		
SB1023: elections; county supervisors; ballots; markers	Sen. Townsend (R)	Senate: Government, Rules	Counties can not provide a marking pen that can damage, and/or bleed through. No specific pen may be required either.	Could require voter education efforts to inform voters that bringing their own pen will likely require it going straight to the duplication board.		Depending on interpretation, could cause a lot of issues with vote machines not being able to read certain pens.
SB1025: elections; polls; override notification	Sen. Townsend (R)	Senate: Government, Rules	If a ballot is rejected due to an overvote or irregularity,		Passed Senate Government 4-3-1.	
SB1036: voting systems technology study committee	Sen. Townsend (R)	Senate: Government, Rules	Forms a committee to study Election Integrity, voting system technologies, and form best practices.	None		Worrisome clause: On request of the committee, an agency of this state or a political subdivision of this state shall provide the committee with access to its equipment, documents, personnel and facilities to the extent possible and without cost to the committee.
SB1068: elections manual; legislative council; GRRC	Sen. Ugenti-Rita (R)	Senate: Government, Rules	The official election instructions and procedures manual prepared by the Secretary of State is required to be approved by the Legislative Council and the Governor's Regulatory Review Council, instead of the Governor and the Attorney General.	None		
SB1069: permanent early voting list; eligibility	Sen. Ugenti-Rita (R)	Senate: Government, Rules	If a voter fails to vote an early ballot in both the primary election and the general election for two consecutive primary and general elections for which there was a federal, statewide or legislative race on the ballot, the county recorder is required to remove the voter from the permanent early voting list and the voter will no longer be sent an early ballot by mail automatically. By December 1 of each even-numbered year, the county recorder or other officer in charge of elections is required to send a notice to each voter who is removed under this provision informing the voter that if the voter wishes to remain on the permanent early voting list, the voter must confirm that in writing, sign the notice, and return the completed notice within 30 days after the notice is sent.	We would need to make adjustments to voter education and stress the importance of voting/returning the notice of the county.	Passed Senate Government 5-3.	
SB1071: voting irregularities; report; legislative review	Sen. Townsend (R)	Senate: Government, Rules	The county recorder or other officer in charge of elections is required to maintain a record of all voting irregularities that occur during early voting, emergency voting and election day voting. Information that must be described in the record is listed. Within 30 days after election day, the county recorder or other officer in charge of elections is required to provide the record to the Legislature.	None.		
SB1072: election contests; filing deadline	Sen. Townsend (R)	Senate: Government, Rules	The deadline for a voter to contest an election is moved from 5 days after the certification of the canvass to 30 days.	None.		
SB1083: elections; recount margin	Sen. Ugenti-Rita (R)	Senate: Government, Rules	Would change the margin of recount from 1/10 of 1% to half of 1% and strikes the criteria for a recount on specific offices.	None	Passed Senate Government 5-3.	

Bill	Sponsor	Assigned to	What it does	Direct effect on CCEC	Status	Notes
SB1103: lieutenant governor; duties; ballot	Sen. Mesnard (R)	Senate: Government, Rules	No later than 60 days before the date of the general election, a candidate for Governor is required to submit to the Secretary of State the name of a person who will be the joint candidate for Lieutenant Governor with that gubernatorial candidate and whose name will appear on the general election ballot jointly with that candidate. Applies beginning with elections for the term of office that starts in 2027	Refer to SCR1004		
SB1104: campaign finance; contributions; disclosures; itemization	Sen. Mesnard (R)	Senate: Government, Rules	The information that must be included in campaign finance reports is expanded to include contributions from out-of-state individuals, including identification of the contributor's occupation and employer. After receiving a combined total of \$5,000 from in-state contributors who each contributed an individual aggregate of \$50 or less to a political committee during an election cycle, the campaign finance report is required to identify every subsequent individual in-state contributor, and the amount and date of each contribution.	Would effect reporting for out of state contributions to Clean Candidates		
SB1106: voting residency; intent to remain	Sen. Mesnard (R)	Senate: Government, Rules	A person who knowingly causes or allows himself to be registered as a voter in Arizona solely for the purpose of voting in an election in Arizona without the intent to remain as prescribed in statute is guilty of a class 6 (lowest) felony.	None.		
SB1107: redistricting; petition signatures; 2022 candidates	Sen. Mesnard (R)	Senate: Government, Rules	If a candidate for the legislature or congressional race's districts are changed per the 2021 redistricting panel, their nomination petition and nomination paper will still be valid.	Should be none.		
SB1156: forfeiture of office; technical correction	Sen. Mesnard (R)	Senate: Rules	Minor change in Title 41 (State Government) related to forfeiture of office. Apparent striker	None.		
SB1203: presidential candidates; electors; tax returns	Sen. Mendez (D)	Senate: Government, Rules	A candidate for President of the U.S. is required to submit to the Secretary of State a copy of the candidate's federal and state income tax returns for the immediately preceding five years. A candidate who fails to provide the copies by September 15 immediately preceding the general election is ineligible to appear on the general election ballot and the candidates for presidential elector for that candidate's political party are ineligible to appear on the general election ballot.	None.		
SB1240: hand counts; precincts; procedures manual	Sen. Townsend (R)	Senate: Government, Rules	States if a provision in the instructions of the Election Manual conflict with state statute, the state statute prevails. For a county that uses voting centers, ballots shall be separated by precinct for the random selection. A vote center is not deemed a precinct for the random audit.	None.		
SB1241: voting equipment; ballots; receipt	Sen. Townsend (R)	Senate: Government, Rules	Voter shall receive a receipt upon voting stating whether their ballot was tabulated or rejected. Does not apply to early ballots.	None.		
SB1242: election equipment; security; legislative review	Sen. Townsend (R)	Senate: Government, Rules	Beginning in 2021 and every two years thereafter, the committee appointed by the Secretary of State to investigate and test the various types of vote recording or tabulating machines or devices is required to provide for a detailed review of election equipment security for counties with a population of more than 500,000 persons that focuses on the actual equipment, software and other systems used in the most recent general election. An additional person who is an expert in election equipment security must assist with the review. On completion, the review must be presented to the standing committees of the Legislature with jurisdiction over election issues at a public meeting that is held by August 1 following the general election.	None.		
SB1304: state elections; contest; technical correction	Sen. Ugenti-Rita (R)		Technical change. Apparent striker.	None.		
SB1305: statement of contest; technical correction	Sen. Ugenti-Rita (R)		Technical change. Apparent striker.	None.		
SB1313: countywide elections; vote by mail	Sen. Bowie (D)		If a county has at least 60% of its registered voters on the PEVL and the Board of Supervisors votes to approve, a county can host an all mail election for elections hosted by the county including state and federal races. Counties would also be required to report to the Legislature January 1 following the election(16-409.C).	None		
SB1358: recorders; voter registrations; public buildings	Sen. Ugenti-Rita (R)		A county recorder may only conduct a voter registration drive at a government owned building.	None.		
SCR1004: lieutenant governor; joint ticket	Sen. Mesnard (R)	Senate: Government, Rules	Forms the office of Lieutenant Governor for 2027.	Could be another office to fund, however it would be a joint ticket with the Governor.		
SCR1005: legislature; ninety house districts	Sen. Mesnard (R)	Senate: Appropriations, Government, Rules	The 2022 general election ballot is to carry the question of whether to amend the state Constitution to require one member of the House of Representatives to be elected from each of 90 House districts, 3 of which must be contained within the boundaries of each of the 30 Senate districts. Applies to legislative terms of office that begin in 2033 and later	Would require CCEC to provide funding to 30 more legislative districts in 2033.		

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Anna Tovar
Participating Candidate for
Corporation Commissioner
Primary Election 2020**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We (the Contractor) have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Anna Tovar's (the Candidate)'s Campaign finance reports between the 2020 Q1 Report, starting January 1, 2020, through the 2020 Primary Recap Report, which ended August 4, 2020 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The summary of procedures and associated findings are presented on the subsequent pages.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Anna Tovar. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

December 21, 2020

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Commission Staff will obtain a copy of the candidate's campaign finance report for the reporting period and provide the records to the Contractor.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2020 Q1 Report, starting January 1, 2020, through the 2020 Primary Recap Report, which ended August 4, 2020.

- b) Perform a desk review of the receipts reported in the candidate's campaign finance report as follows:
 - (i) Determine whether the candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) Determine whether any contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$170 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$29,004 limit for a corporation commission candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$1,520 limit for a corporation commission candidate

- c). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Commission staff will contact the candidate to request the records for agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) Commission staff will provide the records to the Contractor upon receipt. The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

(ii) Review bank statements for each of the months in the reporting period and perform the following:

- Select a sample of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected five deposits and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period.

Finding

Proof of receipts and disbursements was performed for the reporting period and no exceptions were noted.

d) Judgmentally select a sample of early contributions reported in the candidate's campaign finance report and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$50, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report, and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

(i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

(ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

e) Judgmentally select a sample of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

f) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,520.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, judgmentally select a sample of expenditures made from the candidate's petty cash fund(s) and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$170 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- g) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We discussed our findings with the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Marquez Lea Peterson
Participating Candidate for
Corporation Commissioner
Primary Election 2020**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We (the Contractor) have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Marquez Lea Peterson's (the Candidate)'s Campaign finance reports between the 2020 Q1 Report, starting January 1, 2020, through the 2020 Primary Recap Report, which ended August 4, 2020 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The summary of procedures and associated findings are presented on the subsequent pages.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Marquez Lea Peterson. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

December 17, 2020

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Commission Staff will obtain a copy of the candidate's campaign finance report for the reporting period and provide the records to the Contractor.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2020 Q1 Report, starting January 1, 2020, through the 2020 Primary Recap Report, which ended August 4, 2020.

- b) Perform a desk review of the receipts reported in the candidate's campaign finance report as follows:
 - (i) Determine whether the candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) Determine whether any contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$170 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$29,004 limit for a corporation commission candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$1,520 limit for a corporation commission candidate

- c). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Commission staff will contact the candidate to request the records for agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) Commission staff will provide the records to the Contractor upon receipt. The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

(ii) Review bank statements for each of the months in the reporting period and perform the following:

- Select a sample of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected five deposits and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period.

Finding

Proof of receipts and disbursements was performed for the reporting period and no exceptions were noted.

d) Judgmentally select a sample of early contributions reported in the candidate's campaign finance report and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$50, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report, and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

(i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

(ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

e) Judgmentally select a sample of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

f) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,520.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, judgmentally select a sample of expenditures made from the candidate's petty cash fund(s) and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$170 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- g) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We discussed our findings with the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Eric Sloan
Participating Candidate for
Corporation Commissioner
Primary Election 2020**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We (the Contractor) have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Eric Sloan's (the Candidate)'s Campaign finance reports between the 2020 Q1 Report, starting January 1, 2020, through the 2020 Primary Recap Report, which ended August 4, 2020 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The summary of procedures and associated findings are presented on the subsequent pages.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Eric Sloan. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

December 23, 2020

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Commission Staff will obtain a copy of the candidate's campaign finance report for the reporting period and provide the records to the Contractor.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2020 Q1 Report, starting January 1, 2020, through the 2020 Primary Recap Report, which ended August 4, 2020.

- b) Perform a desk review of the receipts reported in the candidate's campaign finance report as follows:
 - (i) Determine whether the candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) Determine whether any contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$170 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$29,004 limit for a corporation commission candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$1,520 limit for a corporation commission candidate

- c). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Commission staff will contact the candidate to request the records for agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) Commission staff will provide the records to the Contractor upon receipt. The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

(ii) Review bank statements for each of the months in the reporting period and perform the following:

- Select a sample of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected five deposits and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period.

Finding

Proof of receipts and disbursements was performed for the reporting period and no exceptions were noted.

d) Judgmentally select a sample of early contributions reported in the candidate's campaign finance report and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$50, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report, and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

(i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

(ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

We tested two in-kind contributions totaling \$1,011.99, and based upon the supporting documentation tested, the value of the contributions appeared reasonable.

e) Judgmentally select a sample of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements with the following exception: a check dated 8/3/2020 for \$67,730.94 had not cleared the bank as of the date of testing, November 18, 2020.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

f) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,520.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, judgmentally select a sample of expenditures made from the candidate's petty cash fund(s) and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$170 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- g) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We discussed our findings with the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Ryan Starzyk
Participating Candidate for
State Senator - District 24
Primary Election 2020**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We (the Contractor) have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Ryan Starzyk's (the Candidate)'s Campaign finance reports between the 2020 Q1 Report, starting January 1, 2020, through the 2020 Primary Recap Report, which ended August 4, 2020 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The summary of procedures and associated findings are presented on the subsequent pages.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Ryan Starzyk. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

December 20, 2020

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Commission Staff will obtain a copy of the candidate's campaign finance report for the reporting period and provide the records to the Contractor.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2020 Q1 Report, starting January 1, 2020, through the 2020 Primary Recap Report, which ended August 4, 2020.

- b) Perform a desk review of the receipts reported in the candidate's campaign finance report as follows:
 - (i) Determine whether the candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) Determine whether any contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$170 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$4,530 limit for a legislative candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$770 limit for a legislative candidate.

- c). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Commission staff will contact the candidate to request the records for agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) Commission staff will provide the records to the Contractor upon receipt. The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

(ii) Review bank statements for each of the months in the reporting period and perform the following:

- Select a sample of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected five deposits and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period.

Finding

Proof of receipts and disbursements was performed for the reporting period and no exceptions were noted.

d) Judgmentally select a sample of early contributions reported in the candidate's campaign finance report and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$50, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for five early contributions reported in the Candidate's Campaign finance report, and determined the name of the contributors for the contributions was included on the support. For individuals who contributed over \$50, we determined that the contributor's address, occupation, and employer were also included on the support.

(i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

(ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

e) Judgmentally select a sample of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

f) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,520.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, judgmentally select a sample of expenditures made from the candidate's petty cash fund(s) and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$170 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- g) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We discussed our findings with the Candidate and the Candidate did not provide responses to our findings.

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

**Ed Cocchiola
Participating Candidate for
State Representative - District 1
Primary Election 2020**



Independent Accountants' Report on
Applying Agreed-Upon Procedures

To the Chairman and Members of the
Citizens Clean Elections Commission
Phoenix, Arizona

We (the Contractor) have performed the procedures enumerated below, which were specified and agreed to by the State of Arizona Citizens Clean Elections Commission (the Commission), solely to assist the Commission in evaluating whether Ed Cocchiola's (the Candidate)'s Campaign finance reports between the 2020 Q1 Report, starting January 1, 2020, through the 2020 Primary Recap Report, which ended August 4, 2020 (the reporting period) were prepared in compliance with Title 16, Articles 1 and 2 of the Arizona Revised Statutes, Campaign Contributions and Expenses, and the Citizens Clean Elections Act, and whether the reports complied with the rules of the Citizens Clean Elections Commission. The Candidate's management is responsible for the Campaign finance reports during the reporting period. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The summary of procedures and associated findings are presented on the subsequent pages.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the Campaign finance reports during the reporting period of Ed Cocchiola. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the parties listed in the first paragraph, and is not intended to be and should not be used by anyone other than those specified parties.

Fester & Chapman, PLLC

December 17, 2020

Summary of Procedures and Findings

1. Preliminary Procedures

- a) Commission Staff will obtain a copy of the candidate's campaign finance report for the reporting period and provide the records to the Contractor.

Finding

We obtained the Campaign finance reports from the Arizona Secretary of State's Website for the reporting period between the 2020 Q1 Report, starting January 1, 2020, through the 2020 Primary Recap Report, which ended August 4, 2020.

- b) Perform a desk review of the receipts reported in the candidate's campaign finance report as follows:
 - (i) Determine whether the candidate accepted contributions only from individuals.

Finding

The contributions received during the reporting period appeared to be only from individuals.

- (ii) Determine whether any contributions received from individuals exceed the early contribution limit.

Finding

Contributions received from individuals during the reporting period did not exceed the \$170 early contribution limit.

- (iii) Check compliance with the maximum early contribution limits.

Finding

Early contributions received during the reporting period did not exceed the \$4,530 limit for a legislative candidate.

- (iv) Check compliance with the maximum personal contribution limits.

Finding

Personal contributions received during the reporting period did not exceed the \$770 limit for a legislative candidate.

- c). Perform a desk review of the disbursements reported in the candidate's campaign finance report to identify any unusual items requiring follow-up during fieldwork.

Finding

We noted no unusual disbursements during our review.

- d). Contact the candidate or the campaign treasurer, as appropriate, to schedule a date to perform fieldwork. Discuss the nature of the documentation, which will be needed to perform the engagement and ascertain the location of the necessary documentation.

Finding

We contacted the Candidate to discuss the agreed-upon procedures, the timing of our procedures, and the documentation needed.

2. Fieldwork Procedures

- a) Commission staff will contact the candidate to request the records for agreed-upon procedures attest engagement. Candidates receiving audits after the Primary Election shall provide records from the election cycle through the 3rd Quarter Report. Candidates receiving audits after the General Election shall provide records from the election cycle through the 4th Quarter Report.

Finding

Commission staff sent an initial notice to the Candidate and informed the Candidate that we would be contacting them. We then communicated to the Candidate in a written request, the purpose of the request, agreed-upon procedures to be performed, documentation needed, and potential future requirements of the Candidate.

- b) Commission staff will provide the records to the Contractor upon receipt. The contractor shall contact the candidate and/or his or her representative(s) to discuss the purpose of the engagement, the general procedures to be performed and potential future requirements of the candidate, such as possible repayments to the Fund.

Finding

See comment in a) above.

- c) The Contractor shall contact or conduct an interview with the candidate and/or his or her representative(s) to discuss the bookkeeping policies and procedures utilized by the campaign committee.

Finding

The Candidate provided a description of bookkeeping policies and procedures utilized by the Campaign Committee.

- (i) Review the names of the candidate's family members. Family members include parents, grandparents, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members regardless of whether the relation is established by marriage or adoption.

Finding

We obtained and reviewed the names of the Candidate's family members.

(ii) Review bank statements for each of the months in the reporting period and perform the following:

- Select a sample of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

We selected five deposits and five withdrawals from the bank statements for the reporting period and determined that they appeared to be properly recorded in the Candidate's Campaign finance reports.

- Perform a proof of receipts and disbursements for the reporting period.

Finding

Proof of receipts and disbursements was performed for the reporting period and no exceptions were noted.

d) Judgmentally select a sample of early contributions reported in the candidate's campaign finance report and agree to supporting documentation, which reflects the name of the contributor (for all contributions) and for individuals who contributed greater than \$50, which reflects the contributor's address, occupation and employer.

Finding

We reviewed the supporting documentation for three early contributions reported in the Candidate's Campaign finance report, and determined the name of the contributors for the contributions was included on the support with the following exception: (a) the Candidate was unable to provide supporting documentation for a \$20 contribution from the Candidate himself; however, this item was correctly classified as a personal contribution in the Campaign finance report.

(i) For other types of cash receipts reported on the candidate's campaign finance report, review supporting documentation and review for compliance with regulatory rules and laws and agree the receipt to inclusion in the campaign account bank statement.

Finding

No other types of cash receipts were reported in the Candidate's Campaign finance reports during the reporting period.

(ii) For in-kind contributions, review the supporting documentation and determine the methodology utilized to value the contribution and assess the reasonableness.

Finding

No in-kind contributions were reported in the Candidate's Campaign finance reports during the reporting period.

e) Judgmentally select a sample of cash expenditures reported in the candidate's campaign finance report and perform the following:

- (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

We reviewed five expenditures and agreed amounts to supporting invoices or other documentation to the Candidate's Campaign finance report.

- (ii) Determine that the name, address and nature of goods or services provided agree to the information reported in the candidate's campaign finance report.

Finding

We reviewed five expenditures and agreed the name, address, and nature of goods or services provided in the Candidate's Campaign finance report.

- Agree the amount of the expenditure to the campaign account bank statement.

Finding

We reviewed five expenditures and agreed amounts to the Campaign account bank statements without exception.

- (iii) Determine whether the expenditure was made for a direct campaign purpose. Direct campaign purpose includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of the candidate.

Finding

We reviewed five expenditures and determined that all appeared to have been made for direct campaign purposes.

- If the expenditure is a joint expenditure made in conjunction with other candidates, determine that the amount paid represents the candidate's proportionate share of the total cost.

Finding

None of the expenditures we tested appeared to be for joint expenditures.

f) Determine whether any petty cash funds have been established and, if so, determine how expenditures from these funds have been reflected in the accounting records. Determine whether aggregate petty cash funds exceed the limit of \$1,520.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- (i) If applicable, judgmentally select a sample of expenditures made from the candidate's petty cash fund(s) and obtain supporting documentation for the expenditure. Determine whether the expenditure was for a direct campaign expense and whether the expenditure was in excess of the \$170 limit on petty cash expenditures.

Finding

Based on inquiry of the Candidate, the Candidate did not establish a petty cash fund during the reporting period.

- g) Contact the candidate and/or his or her representative(s) to discuss the preliminary engagement findings and recommendations that the Contractor anticipates presenting to the CCEC. During this conference, the Contractor will advise the candidate and/or his or her representative(s) of their right to respond to the preliminary findings and the projected timetable for the issuance of the final issuance of the report.

Finding

We discussed our findings with the Candidate and the Candidate did not provide responses to our findings.

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION
MUR 20-03

Arizona Education Association
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 may be reason to believe that a violation of the Citizens Clean Elections Act and Commission rules (collectively, the “Act”) may have occurred.

I. Procedural Background

On or about September 30, 2020, Charles Joiner (Complainant) filed a Complaint against the Arizona Education Association, an Arizona Non-Profit Corporation (Respondent) alleging the Respondent violated the Clean Elections Act, namely A.R.S. §§ 16-941(D) and 16-958. Exhibit 1. The Complaint alleges that Respondent expressly advocated against the election or reelection of four Republican candidates for the Arizona State Legislature: former Sen. Kate Brophy-McGee, Rep. Jeff Weninger, Sen. J.D. Mesnard, Rep. Kevin Payne, former Rep. Anthony Kern, Rep. Shawna Bolick, Rep. Walter Blackman, and Sen. Paul Boyer, but failed to file reports required by the Arizona Citizens Clean Elections Act.¹ On November 9, 2020, through its attorney, Daniel A. Arellano of Ballard Spahr, Respondent submitted a response to the Complaint. Exhibit 2.

¹ All but Sen. Brophy-McGee and Rep. Kern retained their legislative seats.

II. Alleged Violations

The Complaint alleges that the Respondent expressly advocated for the defeat of the above-mentioned legislative candidates in two ways:

Respondent issued mail pieces on or around August 24 that targeted Sen. Brophy-McGee and Rep. Weninger, respectively, in a communication to their district residents. Complaint at 1. NOTE: Respondent observes that the mailers and digital ads “ran exclusively in August 2020. Response at 3.

Second, the Complaint alleges that Respondent targeted at least Sen. Brophy-McGee, Rep. Weninger, Sen. Mesnard, Rep. Payne, Rep. Kern, Rep. Bolick, Rep. Blackman, and Sen. Boyer. *Id.* at 1-2. Complainant alleges that each of these advertisements required reports under A.R.S. §§ 16-941 and -958.

The mailers in the Complaint both feature a charge against Sen. Brophy-McGee and Rep. Weninger on the front side. On the reverse, the Sen. Brophy-McGee mailer states that recipients should call on her to call a special session “to fund public schools and keep students and educators safe.” The Rep. Weninger mailer states “Contact Rep. Jeff Weninger and ask him to call for a special session.”

The Facebook advertisements contain variation on four kinds of taglines, according to the Complaint. *See* Exhibit C of the Complaint (*Ex.1*).

Politicians like _____ refuse to fund public schools. Now, as Arizona is considering reopening schools, that decision puts us all at risk. Contact

_____ and tell ____ to call for a special session to fund our public schools and keep students and educators safe.

Politicians like _____ refuse to fund public schools. Now as Arizona considers reopening schools, that decision puts us all at risk, Contact _____ and tell ____ to call for a special session [to] fund public schools. (Number).

Contact __ (Lawmaker) __ (Number) to call for a special session to fund public schools to keep our students and educators safe.

Contact (Lawmaker) (number). And tell him it's time to fund public schools and keep our students and educators safe.

Id.

III. Analysis

A. Relevant Evidentiary Standard

At this preliminary stage in Commission proceedings, the Commission need only determine 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).

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 in Arizona 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.

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 464-65.2 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.

C. Application

Respondent recognizes that the mailers and advertisements in question were directed at the constituencies of lawmakers running for office, Response at 4. Nevertheless, Respondent proposes several distinctions from the prevailing cases.

First, Respondent notes that the advertisements concluded in August, more than 60 days from the day of the General Election. Respondent notes that the advertisements in CJF ran “immediately” before the election, while Federal law defining “electioneering communication” applies for communications that run 60 days before the election. Response at 4. In Arizona, the legislature repealed the state’s corollary definition in 2012, which was triggered at 16 weeks prior to the

2 Because WRTL dealt with an absolute ban, the burden imposed under Federal law at that time is significantly greater than the burden imposed by the Clean Elections Act.

election. Laws 2012, Ch. 257, § 1 (2d reg. sess. 2012). Consequently, mere distance from the election is not determinant of whether a communication is reportable under the Clean Elections Act. Unlike *WRTL*, where the FEC attempted to double count the timing of an expenditure already within the statutory window, here the Act, as revised, does not create such a problem. Rather, the Act lays out a schedule beginning prior to the primary and running through the entire remaining election period. A.R.S. § 16-958(B):

B. Any person who must file an original report pursuant to section 16-941, subsection D or who must file a supplemental report for previously unreported amounts pursuant to subsection A of this section shall file as follows:

1. Before the beginning of the primary election period, the person shall file a report on the first of each month, unless the person has not reached the dollar amount for filing an original or supplemental report on that date.
2. Thereafter, except as stated in paragraph 3 of this subsection, the person shall file a report on any Tuesday by which the person has reached the dollar amount for filing an original or supplemental report.
3. During the last two weeks before the primary election and the last two weeks before the general election, the person shall file a report

within one business day of reaching the dollar amount for filing an original or supplemental report.

Respondent argues that the advertisements are, in WRTL's terms, a "genuine issue ad" because it focuses on a legislative issue, communicates that issue to the "public" and urge the "public" to contact elected officials. Response at 4. The advertisement in *CJF*, Respondent argues, "merely" urged voters to contact an elected official running for a different office urging viewers to tell that person to protect children not those who might harm them. However, under analysis, the gravamen of the political advertisements is not different. In *CJF*, the Court of Appeals explained that an Administrative Law Judge's determination was sufficient to meet the express advocacy definition where:

The advertisement referred by name to Tom Horne, who was by that time clearly identified as the Republican candidate for Attorney General. It was aired on Channel 12, which broadcasts in the greater Phoenix metropolitan area and beyond, and thus may be presumed to have targeted the electorate for such a statewide office. Although the advertisement only referred to Tom Horne in his then[-] position of Superintendent of Public Instruction and called upon viewers to contact him at his office in the Department of Education, the only reasonable purpose for running an advertisement, during an election campaign, which cost approximately \$1.5 million to produce and broadcast, to

critique Tom Horne's past actions as a former member of the legislature and as an occupant of a post he would soon vacate, was to advocate his defeat as candidate for Attorney General.

CJF, 235 Ariz. at 352 ¶¶ 26-27. Likewise, here, the mailers and electronic advertisements criticize the incumbents of an office and ask voters to call them in the midst of the election and urge them to call for a special session.

Similarly, Respondent's effort to distinguish IRS non-profit guidance is unavailing. Response at 4. Like the example Respondent purports to distinguish, here to: the advertisement does not identify any specific legislation . . . is not timed to coincide with a legislative voter or other major legislative action on that issue. Internal Revenue Service, Internal Revenue Bulletin No. 2004-4 at 331 (January 26, 2004) Exhibit 3. Nor, despite Respondent's contention, is this an advertisement "substantially similar" to other efforts. At best the record suggests that AEA made a one-off communication in July and whatever the value of the letter drive it observes, Response at 2, the drive is specifically referenced in the mailers and is "not part of an ongoing series of substantially similar advocacy communications by [Respondent] on the same issue." IRB at 331. After the legislative session adjourns in an election year, unless the Governor calls the Legislature back into special session to address specific topics or a supermajority of the legislature acts formally, legislators will not propose or vote on any further

legislation unless they are re-elected to serve another term. Thus, it falls within the example in the IRS guidance, rather than in contrast.

Other material within the context of the pieces confirms this analysis. The mail piece that was directed at State Senator Brophy-McGee clearly states “State Senator Brophy-McGee voted to cut public school funding” on the front, while the mailer regarding Rep. Weninger states “Rep. Jeff Weninger failed to keep us safe.” Additionally, as noted above, the mail pieces and the social media posts were delivered and posted in August, long after the State Legislature had adjourned sine die. Similarly, the Facebook ads are premised on the prior records of the lawmakers clearly identified in a negative light.

Based on the definition of express advocacy and the facts stated above, I recommend the Commission determine reason to believe that violations may have occurred.

Recommendation

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

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

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

Dated this 25th day of January, 2021.

S/Thomas M. Collins
Thomas M. Collins, Executive Director

Charles L. Joiner
730 E. Villa Rita Dr.
Phoenix, Arizona 85022

September 25, 2020

Arizona Citizens Clean Elections Commission
Attn: Thomas Collins, Executive Director
1616 West Adams Street, Suite 110
Phoenix, Arizona 85007
thomas.collins@azcleelections.gov

Re: Campaign Finance Complaint Against Arizona Education Association

Dear Director Collins:

I write to call the Commission's attention to serial and serious violations of the Citizens Clean Elections Act by the Arizona Education Association ("AEA"), a non-committee labor organization purportedly operated pursuant to section 501(c)(5) of the Internal Revenue Code of 1986, as amended.

As detailed below, the AEA has sponsored thousands of dollars in mailers and digital advertisements advocating the defeat of Representatives Jeff Weninger, Kevin Payne, Anthony Kern, Shawna Bolick, and Walt Blackman, and Senators Kate Brophy-McGee, Paul Boyer, and J.D. Mesnard (collectively, the "Candidates"), all of whom are candidates for legislative office in the November 3, 2020 general election. None of these independent expenditures has been disclosed to the Commission and to the public, as mandated by Ariz. Rev. Stat. §§ 16-941(D), -958 and Ariz. Admin. Code R2-20-109. Accordingly, I respectfully request that the Commission initiate an investigation and impose appropriate civil penalties, pursuant to Ariz. Rev. Stat. § 16-957 and the Commission's regulations.

FACTUAL BACKGROUND

On or around August 24, 2020, AEA disseminated a mailer in Legislative District 28, a copy of which is attached hereto as Exhibit A. The mailer attacked Senator Brophy-McGee, asserting that she "voted to cut public school funding." The reverse side of the mailer "demand[ed]" a special session of the legislature to ostensibly address school funding. AEA adopted a similar tack in Legislative District 17, distributing on or around September 4, 2020 a mailer (a copy of which is attached hereto as Exhibit B) claiming that Representative Weninger "failed to keep us safe," and indicating that the legislator had received a grade of "F" in AEA's so-called "Legislative Report Card." The reverse side depicts a photograph of Representative Weninger adjacent to the statement that "Arizona can't afford to keep failing our students and educators." It appears that each of the mailers was distributed in a targeted manner to registered voters within the respective legislative districts.

From approximately August 12, 2020 to the present, AEA has launched targeted Facebook ads criticizing each of the Candidates for "refus[ing] to fund public schools." A spreadsheet itemizing each of the known Facebook ads is attached hereto as Exhibit C.

As of the date of this complaint, there is no record in the Secretary of State's campaign finance database of any reported independent expenditures attributed to the AEA.

LEGAL VIOLATIONS

Section 16-941(D) of the Arizona Revised Statutes provides that "any person who makes independent expenditures related to a particular office cumulatively exceeding [\$770] in an election cycle. . .shall file reports with the secretary of state. . .so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat." *See also* Ariz. Rev. Stat. § 16-959(A). The reporting requirement is retriggered each time the person makes additional cumulative independent expenditures in excess of \$1,000. *Id.* § 16-958(A). Independent expenditures that are made during the two-week period immediately preceding an election must be reported within one business day after the reporting threshold is surpassed; expenditures made prior to this interval (but after the start of the primary election period) must be disclosed no later than the following Tuesday. *See id.* § 16-958(B). Failure to properly and timely comply with the reporting mandate results in civil penalties that accrue daily, totaling up to twice the sum of the unreported expenditure. *Id.* § 16-942(B); Ariz. Admin. Code R9-20-109(B)(3).

Arizona law defines an "independent expenditure" as one not coordinated with any candidate "that expressly advocates the election or defeat of a clearly identified candidate." Ariz. Rev. Stat. § 16-901(31). The concept of "express advocacy" is in turn defined as follows:

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.

Ariz. Rev. Stat. § 16-901.01(A). The AEA's mailers and Facebook ads (collectively, the "Advertisements") do not contain any of the specific phrases enumerated in subsection (A)(1). When viewed through the prism of the statutorily prescribed factors set forth in subsection (A)(2),¹ however, the Advertisements unquestionably bear all the features of express advocacy, *i.e.*, they "can have no reasonable meaning other than to advocate the . . . defeat of" the Candidates.

¹ In the parlance of the case law and regulatory guidance, this portion of the definition is sometimes denominated the "functional equivalent of express advocacy."

A. Content

As an initial matter, the Candidates are presented as “clearly identified candidates” for the State Legislature. For example, each of the mailers features a prominently placed photograph of Sen. Brophy-McGee and Rep. Weninger, respectively, and reference them repeatedly by name. *See Comm. for Justice & Fairness (“CJF”) v. Arizona Sec’y of State’s Office*, 235 Ariz. 347, 354, ¶ 28 (App. 2014) (finding advertisement to be the functional equivalent of express advocacy where the candidate “was identified through his name, photographs, and his prior and then-current public offices”).

More importantly, the Advertisements plainly aspire to portray the Candidates in an “unfavorable light.” They explicitly and mendaciously attack the Candidates for supposedly “refus[ing] to fund public schools,” *see* Ex. C, and assail Rep. Weninger in particular as “fail[ing] to keep us safe,” *see* Ex. B. Such gratuitous and *ad hominem* denigrations of a candidate’s record or qualifications are the hallmark of express advocacy, and they belie any contention that the Advertisements merely advocated for or against certain public policies. *See Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 325 (2010) (movie that focused on “Senator Clinton’s qualifications and fitness for office, and policies the commentators predict she would pursue if elected President” was the functional equivalent of express advocacy); Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35292-01, 35295 (July 6, 1995) (“Communications discussing or commenting on a candidate’s character, qualifications, or accomplishments” can qualify as express advocacy)²; *Real Truth About Obama, Inc. v. Fed. Elec. Comm’n*, 796 F. Supp. 2d 736, 739, 749-50 (E.D. Va. 2011) (advertisements criticizing candidate’s position on abortion were the functional equivalent of express advocacy, even though they did not explicitly reference voting or the election); Fed. Elec. Comm’n MUR 5440 (The Media Fund), Conciliation Agreement at ¶¶ 27-29 (ads that criticized or praised candidates’ respective military service records were express advocacy).

Nor does the Advertisements’ reference to demanding a special legislative session somehow negate their explicitly electoral character. The obvious thrust of the Advertisements is to malign the Candidates’ (supposed) prior voting records and platforms; these aspersions have no discernible relevance whatsoever to any prospective special legislative session. *See CJF*, 235 Ariz. at 349, 354-55, ¶¶ 4, 29 (advertisement criticizing candidate’s past actions and urging viewers to “tell Superintendent Horne to protect children, not people who harm them” was express advocacy, notwithstanding its issue-based veneer).

The Commission itself has recognized that pretextual invocations of putative policy issues do not inoculate a communication from express advocacy status. Evaluating an advertisement that criticized Mesa Mayor and gubernatorial candidate Scott Smith’s tenure as president of the U.S. Conference of Mayors and urged viewers to “tell [the candidate] to make his organization more like Mesa, not the other way around,” the Commission concluded that “in context,” “the advertisement’s only reasonable

² The FEC’s pronouncements are highly persuasive authority in the interpretation of Arizona campaign finance law, *see* Ariz. Att’y Gen. Adv. Op. I11-006 (R11-010) (Sept. 21, 2011), particularly where, as here, the corresponding federal regulatory definition is substantively identical to its Arizona counterpart. *Compare* Ariz. Rev. Stat. § 16-901.01 with 11 C.F.R. § 100.122.

meaning is to advocate for the defeat of [the candidate] in the 2014 Republican primary for Governor.” *In re Legacy Foundation Action Fund*, MUR 15F-001-CCE, Final Administrative Decision, March 27, 2015. As in *CJF* and *LFAF*, the Advertisements are fundamentally besmirchments of the Candidates, not issue advocacy communications.

B. Targeting

When assessing whether a communication constitutes express advocacy, “[a] consideration of the context in which speech is uttered may clarify ideas that are not perfectly articulated, or supply necessary premises that are unexpressed but widely understood by readers or viewers.” *Fed. Election Comm’n v. Furgatch*, 807 F.2d 857, 863–64 (9th Cir. 1987). If the Advertisements truly were lobbying for a special legislative session—which can be convened only by a two-thirds majority of each legislative house, *see* Ariz. Const. art. IV, pt. 2, § 1(2)—they would have been disseminated to a broad audience across a geographically and politically diverse spectrum of legislative districts. In reality, however, the Advertisements were targeted solely at select Republican incumbents in legislative districts that are widely perceived as featuring competitive races. Further, it appears that the Advertisements were directed exclusively or primarily to only subsets of registered voters, rather than all constituents within a given jurisdiction. This opportunistic targeting of the Advertisements underscores that they are reasonably interpreted only as efforts to promote the fortunes of Democrat challengers and undermine Republican incumbents in select legislative districts perceived as key to a Democrat takeover of the Legislature. *See CJF*, 235 Ariz. at 354, ¶ 27 (finding TV ad to be express advocacy where “[t]he broadcast medium utilized by CJF for its public communication, Phoenix television Channel 12, which broadcasts in the greater Phoenix metropolitan area and beyond, clearly targeted a major portion of the electorate for the statewide office of Attorney General).

C. Timing

Finally, the timing of the Advertisements’ publication bespeaks their electioneering character. Although the Legislature suspended its session in March and formally adjourned in May, AEA did not evince any apparent concern with the supposed urgency of a special legislative session until election season. Launched at the inception of the general election campaign and just weeks before early ballots will be mailed out, the Advertisements’ timing and content cannot be attributed to an independent event that could lend them a plausible non-electoral cast. *See CJF*, 235 Ariz. at 354–55, ¶ 29 (finding that ad run immediately prior to the election that criticized Attorney General candidate’s performance in offices he had previously held was express advocacy); *Real Truth About Obama*, 796 F. Supp. 2d at 739 (ads deemed express advocacy were released within sixty days prior to general election); *cf.* Internal Revenue Service Rev. Rul. 2004-6, 2004-04 I.R.B., Situation 4 (ad airing shortly before gubernatorial election that urged viewers to “tell Governor E what you think about our under-funded schools” was political campaign intervention, not genuine issue advocacy).

In sum, a holistic assessment of the Advertisements confirms that they were carefully timed and strategically tailored to advance an electoral objective. Because they can be plausibly interpreted by recipients only as advocating the defeat of the targeted Republican candidates, the Advertisements are “express advocacy” within the meaning of Ariz. Rev. Stat. § 16-901.01(A)(2). Funds associated with their development and distribution hence are independent expenditures that the AEA was required to

timely disclose to the Commission and to the general public, pursuant to Ariz. Rev. Stat. §§ 16-941(D) and -958(A).

AEA stands in continuing violation of its reporting obligations, and the Commission should accordingly levy appropriate civil penalties.

Thank you for your consideration of this important matter.

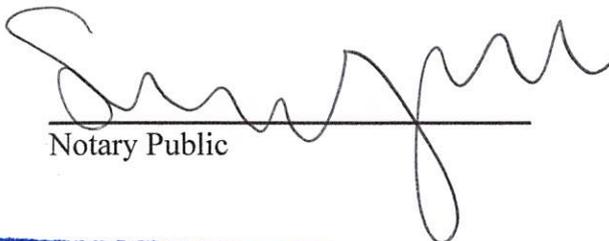
CERTIFICATION

I declare under penalty of perjury that the facts alleged in the foregoing complaint are true and correct to the best of my knowledge.



Charles L. Joiner
730 E. Villa Rita Dr.
Phoenix, Arizona 85022
cljoiner@aol.com

Subscribed and sworn to before me this 30th day of September, 2020.



Notary Public

My Commission Expires:
June 7, 2023



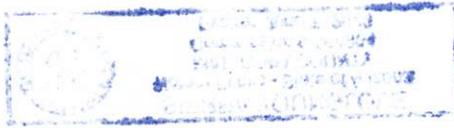
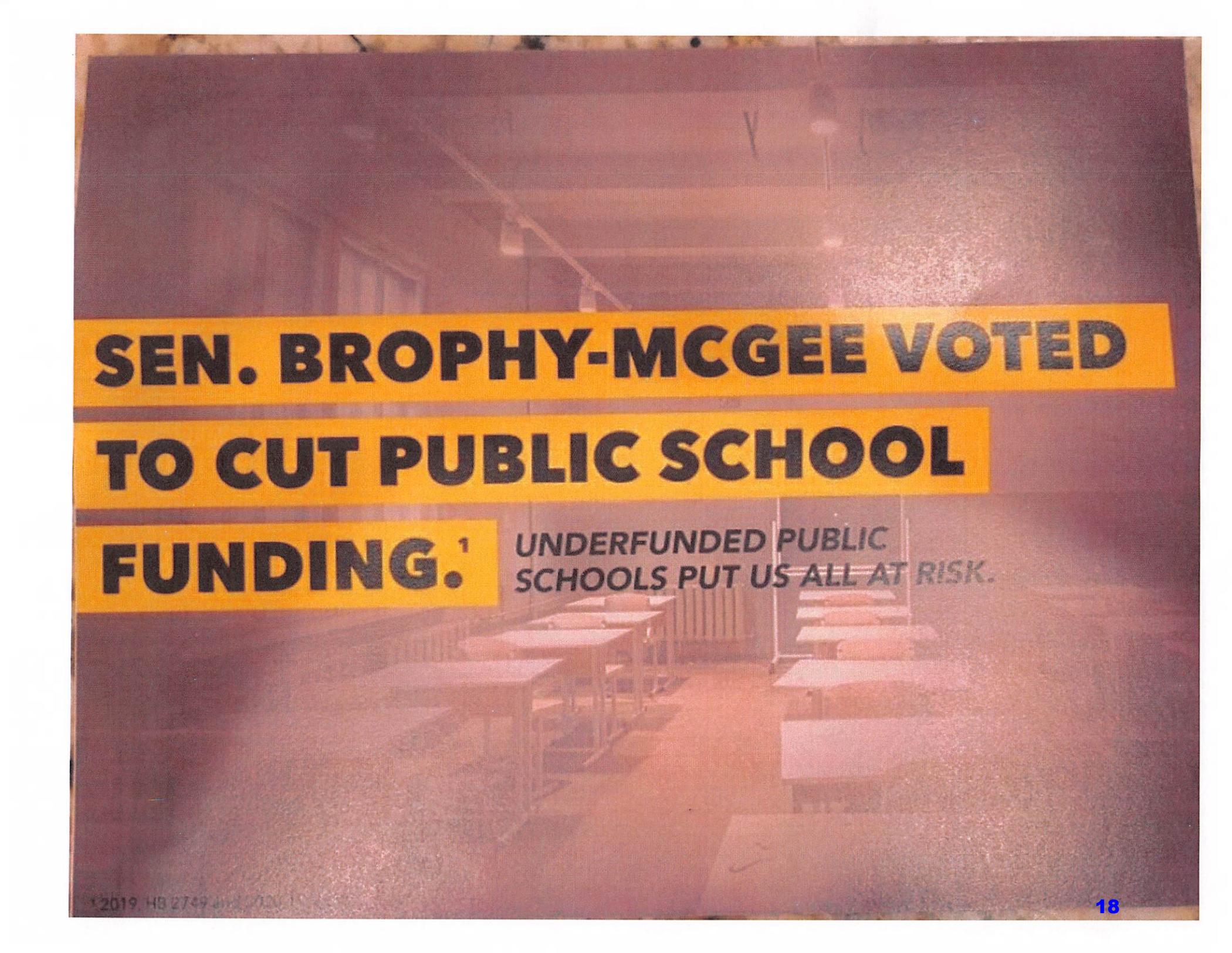


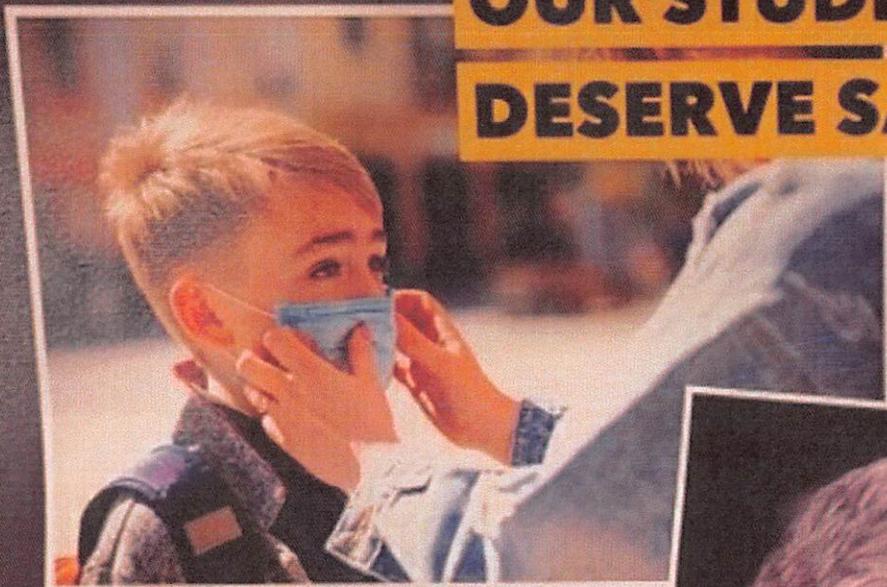
Exhibit A



**SEN. BROPHY-MCGEE VOTED
TO CUT PUBLIC SCHOOL
FUNDING.¹**

*UNDERFUNDED PUBLIC
SCHOOLS PUT US ALL AT RISK.*

OUR STUDENTS AND EDUCATORS DESERVE SAFE CLASSROOMS.



**DEMAND SEN. KATE
BROPHY-MCGEE CALL
FOR A SPECIAL SESSION
TO FUND PUBLIC
SCHOOLS AND KEEP
STUDENTS AND
EDUCATORS SAFE.**



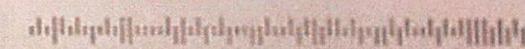
**CONTACT SEN.
BROPHY-MCGEE TODAY:**

☎ (602) 926-4486

🌐 www.actionnetwork.org/letters/specialsession

Arizona Education Association
345 E Palm Ln,
Phoenix, AZ 85004

NON-PROFIT ORG.
US POSTAGE
PAID
PHOENIX, AZ
PERMIT NO. 1



Paid for by the Arizona Education Association.

Exhibit B

REP. JEFF WENINGER

FAILED TO KEEP

US SAFE.



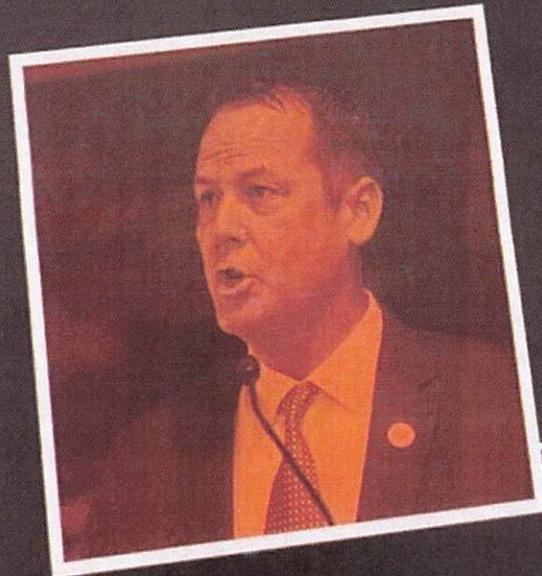
Source: 2019-2020 AEA Legislative Report Card

Arizona can't afford to keep failing our students and educators.

Arizona's Surge In Coronavirus Cases Has Been "The Worst In The Entire Country," Health Expert Says
- CBS News

7/13/20

Contact **Rep. Jeff Weninger** and ask him to call for a special session.



CONTACT REP. JEFF WENINGER TODAY:



(602) 926-3092



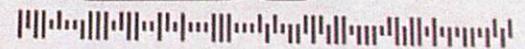
www.actionnetwork.org/letters/specialsession

Arizona deserves safe classrooms

Arizona Education Association
345 E Palm Ln,
Phoenix, AZ 85004

NON-PROFIT ORG
US POSTAGE
PAID
PHOENIX, AZ
PERMIT NO. 1

*****ECRWSH**R018



5927

Paid for by Arizona Education Association

Exhibit C

1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
TEL 602.798.5400
FAX 602.798.5595
www.ballardspahr.com

Daniel A. Arellano
Tel: 602.798.5436
Fax: 602.798.5595
arellanod@ballardspahr.com

November 6, 2020

Via E-mail (mike.becker@azcleaselections.gov) and U.S. Mail

Mike Becker
Policy Director
Citizens Clean Elections Commission
1616 West Adams Street
Suite 110
Phoenix, Arizona 85007

Re: CCEC MUR No. 20-03

Dear Mr. Becker:

This firm represents the Arizona Education Association (“AEA”), a non-profit organization organized under Section 501(c)(6) of the Internal Revenue Code of 1986, as amended. In that capacity, we are in receipt of your October 28, 2020 letter enclosing a campaign finance complaint by Charles Joiner, which alleges that AEA has made certain unreported independent expenditures. Mr. Joiner’s complaint is wrong: the communications to which he points constitute issue advocacy that did not contain express candidate advocacy. As a result, the ads were not independent expenditures, and AEA was under no reporting obligation under Arizona campaign finance law.

Background

A. The Public Calls for a Special Session.

The Arizona Legislature suspended its regular session abruptly on March 23, 2020, amid the COVID-19 pandemic.¹ When the Legislature formally adjourned on May 26, 2020,² it did so while, in AEA’s view, leaving critical issues of school funding and safety

¹ Arren Kimbel-Sannit & Julia Shumway, *Legislature Passes \$11.8B Budget, \$50M for COVID-19 Aid*, ARIZ. CAPITOL TIMES (Mar. 23, 2020), <https://azcapitoltimes.com/news/2020/03/23/legislature-passes-11-8b-budget-50m-for-covid-19-aid/>.

² Joanna Allhands, *Arizona Senate Ends the Session with a Clear Message to the House: Nope*, ARIZ. REPUBLIC (May 26, 2020), <https://www.azcentral.com/story/opinion/op->

unaddressed. As soon as the Legislature adjourned, several of its members began planning for a potential special session.³ As a result, AEA publicly advocated, as early as June 24, 2020, for the Legislature to convene a special session to address school funding and safety. A report published that day by AEA advocated, in relevant part:

The Arizona Legislature must immediately convene in special session to ensure schools receive appropriate funding to meet the increased costs districts will encounter in providing safe and healthy learning environments for Arizona students. Funding must adequately cover the training needed to ensure quality distance learning and the staffing levels required to support social distancing. Funding must be sufficient to provide students and staff the Personal Protective Equipment, cleaning supplies, and all safety supplies needed for instruction.

See Ariz. Education Ass'n, *New Vision for Arizona Schools* (June 24, 2020) at 5, available at <https://www.arizonaaea.org/newvision?cpssessionid=SID-8AC70E67-F29F0BA8>. On August 12, 2020, AEA again publicly called for a special session and urged members to “ask legislators to convene special session to fund our schools.” See Ariz. Education Ass'n, <https://actionnetwork.org/letters/specialsession/>. These calls were made amid publicly reported discussions among the public and legislative leaders of the possibility of convening a special session well into 2020. See *Yellow Sheet Report* (Aug. 11, 2020) (reporting that “it’s still possible lawmakers return for a special session this year”).

B. The Targeted Advocacy for a Special Session in August 2020.

Amid this public discussion, and in furtherance of its ongoing public advocacy for a special session, AEA engaged in more targeted communications in August 2020. These took the form of mailers and social media ads noting the positions on school funding and safety that certain legislators had taken, and urging constituents to contact their legislator and ask that they call a special session. For example, the mailer attached as Exhibit A to Mr. Joiner’s complaint notes that “Sen. Brophy-McGee voted to cut public school funding,” and it urges recipients to contact Sen. Brophy-McGee’s office to “demand Sen. Kate Brophy-McGee call for a special session to fund public schools and keep students and educators safe.”

The communications were targeted to the constituents of legislators who, in AEA’s judgment, were most likely, as a legislative matter, to be most influential in bringing a

[ed/joannaallhands.com/2020/05/26/arizona-senate-sine-die-without-hearing-house-bills-fallout/5262115002/](https://joannaallhands.com/2020/05/26/arizona-senate-sine-die-without-hearing-house-bills-fallout/5262115002/).

³ Julia Shumway, *Senate Abruptly Adjourns, House Bills Go Down Without Vote*, ARIZ. CAPITOL TIMES (May 26, 2020), <https://azcapitoltimes.com/news/2020/05/26/senate-abruptly-adjourns-house-bills-go-down-without-vote/>.

special session into fruition. Importantly, and contrary to Mr. Joiner’s assertion, these mailers and digital ads ran exclusively in August 2020.

Discussion

A message “expressly advocates” for a candidate—and is therefore subject to reporting if it meets certain monetary thresholds—if it (1) contains “magic words” advocacy (such as “vote for,” and the like) or (2) is the “functional equivalent” of express advocacy. Mr. Joiner concedes that the communications at issue do not contain “magic words” advocacy, and so only “functional equivalent” advocacy is at issue. Under the applicable statute, to expressly advocate under the functional equivalent test means:

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

A.R.S. § 16-901.01(A)(2) (emphasis added).

The “functional equivalent” test in the statute is drawn nearly verbatim from the U.S. Supreme Court’s opinion in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 469–70 (2007) (“*WRTL*”), which held that “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.” The Court held that the ads at issue in that case were “plainly not the functional equivalent of express advocacy,” *id.* at 470, for two reasons:

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.

Id.

Applying the relevant factors from A.R.S. § 16-901.01(A)(2) and *WRTL* here, it is evident that the ads are not the functional equivalent of express advocacy. Most notable is

the timing factor: the ads were distributed exclusively in August 2020, more than 60 days before the November 3, 2020 general election. *Cf. Comm. for Justice & Fairness (CJF) v. Ariz. Sec’y of State*, 235 Ariz. 347, 355 ¶ 35 (App. 2014) (finding that message constituted express advocacy when it was run “immediately before the election”); 52 U.S.C. § 30104(f)(3)(A)(i)(II)(aa) (defining an “electioneering communication” as one that is made 60 days before the election). Even if, as Mr. Joiner contends, certain digital ads ran into September 2020, that would still be more than one month before the general election.

The content of the ads here also “is consistent with that of a genuine issue ad.” *WRTL*, 551 U.S. at 470. As with the ads in *WRTL*, the ads here “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.” *Id.* This is unlike the ad in *Committee for Justice and Fairness* that merely urged viewers to “tell Superintendent Horne to protect children, not people who harm them,” 235 Ariz. at 349 ¶ 4, or the hypothetical ad, discussed in Internal Revenue Service Rev. Rul. 2004-6, that exhorts viewers to “tell Governor E what you think about our under-funded schools.” 2004-04 I.R.B., Situation 4. Rather than tell recipients to merely express a general opinion with their representatives as a pretext to candidate advocacy, the ads here urged a specific position on a concrete legislative issue that was the subject of active deliberation: the calling of a special session by the Legislature to address school funding and safety.

That exhortation was not pretextual. It was, rather, part of an ongoing and well-documented effort conducted in good faith by AEA to advocate for the calling of a special session. Indeed, had it been AEAs intention expressly to persuade recipients to vote for or against the legislators in question, it would have made little sense for the communications to have been sent months before the election.

Notably, while the ads stated the legislators’ past votes, they did not reference the election or otherwise frame the issue as one of fitness for office. Like the ads in *WRTL*, the ones here “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.” 551 U.S. at 470; *cf. Citizens United v. FEC*, 558 U.S. 310, 325 (2010) (finding that documentary about Hillary Clinton was the functional equivalent of express advocacy because “[t]he movie’s consistent emphasis is on the relevance of [historical] events to Senator Clinton’s candidacy for President”).

Finally, the fact that the ads were targeted to recipients in the districts corresponding to the legislators in question is of no moment: it was consistent with genuine issue advocacy to target the very constituents whose views those legislators were most likely to heed in deciding whether to call for a special session. Given the discrete number of legislators whom AEA was attempting to persuade, it would make little sense to blanket the entire state with ads or to target districts the legislators did not represent.

Mike Becker
November 6, 2020
Page 5

Again, the test is whether the communication “in context can have *no reasonable meaning other than* to advocate the election or defeat of the candidate(s).” A.R.S. § 16-901.01(A)(2) (emphasis added). Here, a reasonable meaning other than candidate advocacy is readily apparent: the ads were intended to persuade constituents to urge their legislators to call for a special session. This was classic issue advocacy on a discrete, patently legislative issue that was the subject of contemporaneous public consideration and ongoing advocacy by AEA.

Conclusion

Simply put, the messages did not expressly advocate the election or defeat of a clearly identified candidate. AEA has not violated any reporting obligation under Arizona campaign finance law, and Mr. Joiner’s complaint should be summarily dismissed.

Very truly yours,



Daniel A. Arellano

State of Arizona)
)
County of Maricopa)

Subscribed and sworn before me this 6th day of November, 2020 by Daniel A. Arellano



Notary Public

My Commission Expires:

January 08, 2023



HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2004-7, page 327.

LIFO; price indexes; department stores. The November 2003 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, November 30, 2003.

Announcement 2004-7, page 365.

This document contains corrections to proposed regulations (REG-146893-02 and REG-115037-00, 2003-44 I.R.B. 967) under section 482 of the Code that provide guidance regarding the treatment of controlled services transactions and the allocation of income from intangibles.

EMPLOYEE PLANS

Notice 2004-8, page 333.

Roth IRAs; abuses; listed transactions. This notice describes certain transactions that are being entered into by individuals, their Roth IRAs, and their businesses. The Service and the Treasury have determined that these transactions are abusive, that they may result in the disallowance of one or more deductions or the application of an excise tax, and that the applicable transactions must be listed as tax-shelters.

EXEMPT ORGANIZATIONS

Rev. Rul. 2004-6, page 328.

Public advocacy; public policy issues. This ruling concerns certain public advocacy activities conducted by social welfare organizations, unions, and trade associations. The guidance clarifies the tax implications of advocacy that meets the definition of political campaign activity.

EMPLOYMENT TAX

Rev. Rul. 2004-1, page 325.

Mileage allowance; accountable plans. This ruling clarifies when a mileage allowance for local transportation expenses computed on a basis similar to that used in computing a courier's compensation may be treated as paid under an accountable plan.

ADMINISTRATIVE

Notice 2004-9, page 334.

This notice announces the extension of certain 2004 deadlines under revised regulations sections 1.6043-4T and 1.6045-3T for filing Form 8806 and furnishing Form 1099-CAP to clearing organizations. This notice also provides information to filers of Forms 1099-CAP and 1099-B to assist in complying with the reporting requirements set forth in revised sections 1.6043-4T and 1.6045-3T.

(Continued on the next page)

Actions Relating to Court Decisions is on the page following the Introduction.
Announcements of Disbarments and Suspensions begin on page 362.
Finding Lists begin on page ii.
Index for January begins on page iv.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

Groups	Nov. 2002	Nov. 2003	Percent Change from Nov. 2002 to Nov. 2003 ¹
1. Piece Goods	473.3	480.5	1.5
2. Domestic and Draperies	571.3	548.6	-4.0
3. Women's and Children's Shoes	652.4	649.8	-0.4
4. Men's Shoes	899.2	845.3	-6.0
5. Infants' Wear	622.7	598.3	-3.9
6. Women's Underwear	551.8	514.2	-6.8
7. Women's Hosiery	345.3	343.3	-0.6
8. Women's and Girls' Accessories	559.1	555.8	-0.6
9. Women's Outerwear and Girls' Wear	373.5	375.7	0.6
10. Men's Clothing	572.1	549.5	-4.0
11. Men's Furnishings	603.6	598.3	-0.9
12. Boys' Clothing and Furnishings	461.3	451.0	-2.2
13. Jewelry	871.7	866.8	-0.6
14. Notions	793.1	797.2	0.5
15. Toilet Articles and Drugs	972.5	976.2	0.4
16. Furniture and Bedding	622.2	612.9	-1.5
17. Floor Coverings	600.6	594.5	-1.0
18. Housewares	738.6	712.6	-3.5
19. Major Appliances	221.6	210.0	-5.2
20. Radio and Television	47.5	44.3	-6.7
21. Recreation and Education ²	84.6	82.2	-2.8
22. Home Improvements ²	125.2	124.9	-0.2
23. Automotive Accessories ²	111.7	112.0	0.3
Groups 1-15: Soft Goods	575.9	567.7	-1.4
Groups 16-20: Durable Goods	404.5	388.9	-3.9
Groups 21-23: Misc. Goods ²	95.4	93.9	-1.6
Store Total ³	513.0	503.1	-1.9

¹Absence of a minus sign before the percentage change in this column signifies a price increase.

²Indexes on a January 1986 = 100 base.

³The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622-7924 (not a toll-free call).

Section 527.—Political Organizations

*26 CFR 1.527-2: Definitions.
(Also § 501.)*

Public advocacy; public policy issues. This ruling concerns certain public advocacy activities conducted by social welfare organizations, unions and trade associations. The guidance clarifies the tax implications of advocacy that meets the definition of political campaign activity.

Rev. Rul. 2004-6

Organizations that are exempt from federal income tax under § 501(a) as organiza-

tions described in § 501(c)(4), § 501(c)(5), or § 501(c)(6) may, consistent with their exempt purpose, publicly advocate positions on public policy issues. This advocacy may include lobbying for legislation consistent with these positions. Because public policy advocacy may involve discussion of the positions of public officials who are also candidates for public office, a public policy advocacy communication may constitute an exempt function within the meaning of § 527(e)(2). If so, the organization would be subject to tax under § 527(f).

ISSUE

In each of the six situations described below, has the organization exempt from federal income tax under § 501(a) as an organization described in § 501(c)(4), § 501(c)(5), or § 501(c)(6) that engages in public policy advocacy expended funds for an exempt function as described in § 527(e)(2)?

LAW

Section 501(c)(4) provides exemption from taxation for civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1 of the Income Tax Regulations states an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

Section 501(c)(5) provides exemption from taxation for labor, agricultural, or horticultural organizations.

Section 1.501(c)(5)-1 requires that labor, agricultural, or horticultural organizations have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Section 501(c)(6) provides exemption from taxation for business leagues, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. A business league's activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Section 527 generally provides that political organizations that collect and expend monies for exempt function purposes as described in § 527(e)(2) are exempt

from Federal income tax except on their investment income.

Section 527(e)(1) defines a political organization as a party, committee, association, fund or other organization (whether or not incorporated), organized and operated primarily for the purpose of accepting contributions or making expenditures, or both, for an exempt function.

Section 527(e)(2) provides that the term "exempt function" for purposes of § 527 means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. By its terms, § 527(e)(2) includes all attempts to influence the selection, nomination, election, or appointment of the described officials.

Section 527(f)(1) provides that an organization described in § 501(c) and exempt from tax under § 501(a) is subject to tax on any amount expended for an exempt function described in § 527(e)(2) at the highest tax rate specified in § 11(b). The tax is imposed on the lesser of the net investment income of the organization for the taxable year or the amount expended on an exempt function during the taxable year. A § 501(c) organization is taxed under § 527(f)(1) only if the expenditure is from its general treasury rather than from a separate segregated fund described in § 527(f)(3).

Section 527(f)(3) provides that if an organization described in § 501(c) and exempt from tax under § 501(a) sets up a separate segregated fund (which segregates monies for § 527(e)(2) exempt function purposes) that fund will be treated as a separate political organization described in § 527 and, therefore, be subject to tax as a political organization under § 527.

Section 527(i) provides that, in order to be tax-exempt, a political organization is required to give notice that it is a political organization described in § 527, unless excepted. An organization described in § 501(c) that does not set up a separate segregated fund, but makes exempt function expenditures subject to tax under § 527(f) is not subject to this requirement. § 527(i)(5)(A).

Section 527(j) provides that, unless excepted, a tax-exempt political organization that has given notice under § 527(i) and does not timely make periodic reports of contributions and expenditures, or that fails to include the information required, must pay an amount calculated by multiplying the amount of contributions and expenditures that are not disclosed by the highest corporate tax rate. An organization described in § 501(c) that does not set up a separate segregated fund, but makes exempt function expenditures subject to tax under § 527(f), is not subject to the reporting requirements under § 527(j).

Section 1.527-2(c)(1) provides that the term "exempt function" includes all activities that are directly related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization. Whether an expenditure is for an exempt function depends on all the facts and circumstances.

Section 1.527-6(f) provides that an organization described in § 501(c) that is exempt under § 501(a) may, if it is consistent with its exempt status, establish and maintain a separate segregated fund to receive contributions and make expenditures in a political campaign.

Rev. Rul. 2003-49, 2003-20 I.R.B. 903 (May 19, 2003), discusses the reporting and disclosure requirements for political organizations in question and answer format. In Q&A-6, the ruling holds that while a § 501(c) organization that makes an expenditure for an exempt function under § 527(e)(2) is not required to file the notice required under § 527(i), if the § 501(c) organization establishes a separate segregated fund under § 527(f)(3), that fund is required to file the notice in order to be tax-exempt unless it meets one of the other exceptions to filing.

Certain broadcast, cable, or satellite communications that meet the definition of "electioneering communications" are regulated by the Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81. An exempt organization that violates the regulatory requirements of BCRA may well jeopardize its exemption or be subject to other tax consequences.

ANALYSIS OF FACTUAL SITUATIONS

An organization exempt from federal income tax under § 501(a) as an organization described in § 501(c) that, consistent with its tax-exempt status, wishes to engage in an exempt function within the meaning of § 527(e)(2) may do so with its own funds or by setting up a separate segregated fund under § 527(f)(3). If the organization chooses to establish a separate segregated fund, that fund, unless excepted, must give notice under § 527(i) in order to be tax-exempt. A separate segregated fund that has given notice under § 527(i) is then subject to the reporting requirements under § 527(j). See Rev. Rul. 2003-49. If the organization chooses to use its own funds, the organization is not subject to the notice requirements under § 527(i) and the reporting requirements under § 527(j), but is subject to tax under § 527(f)(1) on the lesser of its investment income or the amount of the exempt function expenditure.

All the facts and circumstances must be considered to determine whether an expenditure for an advocacy communication relating to a public policy issue is for an exempt function under § 527(e)(2). When an advocacy communication explicitly advocates the election or defeat of an individual to public office, the expenditure clearly is for an exempt function under § 527(e)(2). However, when an advocacy communication relating to a public policy issue does not explicitly advocate the election or defeat of a candidate, all the facts and circumstances need to be considered to determine whether the expenditure is for an exempt function under § 527(e)(2).

In facts and circumstances such as those described in the six situations, factors that tend to show that an advocacy communication on a public policy issue is for an exempt function under § 527(e)(2) include, but are not limited to, the following:

- a) The communication identifies a candidate for public office;
- b) The timing of the communication coincides with an electoral campaign;
- c) The communication targets voters in a particular election;
- d) The communication identifies that candidate's position on the public policy issue that is the subject of the communication;

e) The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and

f) The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

In facts and circumstances such as those described in the six situations, factors that tend to show that an advocacy communication on a public policy issue is not for an exempt function under § 527(e)(2) include, but are not limited to, the following:

- a) The absence of any one or more of the factors listed in a) through f) above;
- b) The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;
- c) The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);
- d) The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and
- e) The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

In all of the situations, the advocacy communication identifies a candidate in an election, appears shortly before that election, and targets the voters in that election. Even though these factors are present, the remaining facts and circumstances must be analyzed in each situation to determine whether the advocacy communication is for an exempt function under § 527(e)(2).

Each of the situations assumes that:

1. All payments for the described activity are from the general treasury of the organization rather than from a separate segregated fund under § 527(f)(3);
2. The organization would continue to be exempt under § 501(a), even if the described activity is not a § 501(c) exempt activity, because the organization's

primary activities are described in the appropriate subparagraph of § 501(c); and

3. All advocacy communications described also include a solicitation of contributions to the organization.

Situation 1. *N*, a labor organization recognized as tax exempt under § 501(c)(5), advocates for the betterment of conditions of law enforcement personnel. Senator *A* and Senator *B* represent State *U* in the United States Senate. In year 200x, *N* prepares and finances full-page newspaper advertisements supporting increased spending on law enforcement, which would require a legislative appropriation. These advertisements are published in several large circulation newspapers in State *U* on a regular basis during year 200x. One of these full-page advertisements is published shortly before an election in which Senator *A* (but not Senator *B*) is a candidate for re-election. The advertisement published shortly before the election stresses the importance of increased federal funding of local law enforcement and refers to numerous statistics indicating the high crime rate in State *U*. The advertisement does not mention Senator *A*'s or Senator *B*'s position on law enforcement issues. The advertisement ends with the statement "Call or write Senator *A* and Senator *B* to ask them to support increased federal funding for local law enforcement." Law enforcement has not been raised as an issue distinguishing Senator *A* from any opponent. At the time this advertisement is published, no legislative vote or other major legislative activity is scheduled in the United States Senate on increased federal funding for local law enforcement.

Under the facts and circumstances in *Situation 1*, the advertisement is not for an exempt function under § 527(e)(2). Although *N*'s advertisement identifies Senator *A*, appears shortly before an election in which Senator *A* is a candidate, and targets voters in that election, it is part of an ongoing series of substantially similar advocacy communications by *N* on the same issue during year 200x. The advertisement identifies both Senator *A* and Senator *B*, who is not a candidate for re-election, as the representatives who would vote on this issue. Furthermore, *N*'s advertisement does not identify Senator *A*'s position on the issue, and law enforcement has not been raised as an issue distinguishing Senator *A* from any

opponent. Therefore, there is nothing to indicate that Senator *A*'s candidacy should be supported or opposed based on this issue. Based on these facts and circumstances, the amount expended by *N* on the advertisement is not an exempt function expenditure under § 527(e)(2) and, therefore, is not subject to tax under § 527(f)(1).

Situation 2. *O*, a trade association recognized as tax exempt under § 501(c)(6), advocates for increased international trade. Senator *C* represents State *V* in the United States Senate. *O* prepares and finances a full-page newspaper advertisement that is published in several large circulation newspapers in State *V* shortly before an election in which Senator *C* is a candidate for nomination in a party primary. The advertisement states that increased international trade is important to a major industry in State *V*. The advertisement states that S. 24, a pending bill in the United States Senate, would provide manufacturing subsidies to certain industries to encourage export of their products. The advertisement also states that several manufacturers in State *V* would benefit from the subsidies, but Senator *C* has opposed similar measures supporting increased international trade in the past. The advertisement ends with the statement "Call or write Senator *C* to tell him to vote for S. 24." International trade concerns have not been raised as an issue distinguishing Senator *C* from any opponent. S. 24 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers.

Under the facts and circumstances in *Situation 2*, the advertisement is not for an exempt function under § 527(e)(2). *O*'s advertisement identifies Senator *C*, appears shortly before an election in which Senator *C* is a candidate, and targets voters in that election. Although international trade issues have not been raised as an issue distinguishing Senator *C* from any opponent, the advertisement identifies Senator *C*'s position on the issue as contrary to *O*'s position. However, the advertisement specifically identifies the legislation *O* is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator *C*, is a government official who is in a position to take action on the public policy issue in connection with the

specific event. Based on these facts and circumstances, the amount expended by *O* on the advertisement is not an exempt function expenditure under § 527(e)(2) and, therefore, is not subject to tax under § 527(f)(1).

Situation 3. *P*, an entity recognized as tax exempt under § 501(c)(4), advocates for better health care. Senator *D* represents State *W* in the United States Senate. *P* prepares and finances a full-page newspaper advertisement that is published repeatedly in several large circulation newspapers in State *W* beginning shortly before an election in which Senator *D* is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *P* on the same issue. The advertisement states that a public hospital is needed in a major city in State *W* but that the public hospital cannot be built without federal assistance. The advertisement further states that Senator *D* has voted in the past year for two bills that would have provided the federal funding necessary for the hospital. The advertisement then ends with the statement "Let Senator *D* know you agree about the need for federal funding for hospitals." Federal funding for hospitals has not been raised as an issue distinguishing Senator *D* from any opponent. At the time the advertisement is published, a bill providing federal funding for hospitals has been introduced in the United States Senate, but no legislative vote or other major legislative activity on that bill is scheduled in the Senate.

Under the facts and circumstances in *Situation 3*, the advertisement is for an exempt function under § 527(e)(2). *P*'s advertisement identifies Senator *D*, appears shortly before an election in which Senator *D* is a candidate, and targets voters in that election. Although federal funding of hospitals has not been raised as an issue distinguishing Senator *D* from any opponent, the advertisement identifies Senator *D*'s position on the hospital funding issue as agreeing with *P*'s position, and is not part of an ongoing series of substantially similar advocacy communications by *P* on the same issue. Moreover, the advertisement does not identify any specific legislation and is not timed to coincide with a legislative vote or other major legislative action on the hospital funding issue. Based on these facts and circumstances, the amount expended by *P* on the adver-

tisement is an exempt function expenditure under § 527(e)(2) and, therefore, is subject to tax under § 527(f)(1).

Situation 4. *R*, an entity recognized as tax exempt under § 501(c)(4), advocates for improved public education. Governor *E* is the governor of State *X*. *R* prepares and finances a radio advertisement urging an increase in state funding for public education in State *X*, which requires a legislative appropriation. The radio advertisement is first broadcast on several radio stations in State *X* beginning shortly before an election in which Governor *E* is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *R* on the same issue. The advertisement cites numerous statistics indicating that public education in State *X* is under-funded. While the advertisement does not say anything about Governor *E*'s position on funding for public education, it ends with "Tell Governor *E* what you think about our under-funded schools." In public appearances and campaign literature, Governor *E*'s opponent has made funding of public education an issue in the campaign by focusing on Governor *E*'s veto of an income tax increase the previous year to increase funding of public education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State *X* legislature on state funding of public education.

Under the facts and circumstances in *Situation 4*, the advertisement is for an exempt function under § 527(e)(2). *R*'s advertisement identifies Governor *E*, appears shortly before an election in which Governor *E* is a candidate, and targets voters in that election. Although the advertisement does not explicitly identify Governor *E*'s position on the funding of public schools issue, that issue has been raised as an issue in the campaign by Governor *E*'s opponent. The advertisement does not identify any specific legislation, is not part of an ongoing series of substantially similar advocacy communications by *R* on the same issue, and is not timed to coincide with a legislative vote or other major legislative action on that issue. Based on these facts and circumstances, the amount expended by *R* on the advertisement is an exempt function expenditure under § 527(e)(2) and, therefore, is subject to tax under § 527(f)(1).

Situation 5. *S*, an entity recognized as tax exempt under § 501(c)(4), advocates to abolish the death penalty in State *Y*. Governor *F* is the governor of State *Y*. *S* regularly prepares and finances television advertisements opposing the death penalty. These advertisements appear on several television stations in State *Y* shortly before each scheduled execution in State *Y*. One such advertisement opposing the death penalty appears on State *Y* television stations shortly before the scheduled execution of *G* and shortly before an election in which Governor *F* is a candidate for re-election. The advertisement broadcast shortly before the election provides statistics regarding developed countries that have abolished the death penalty and refers to studies indicating inequities related to the types of persons executed in the United States. Like the advertisements appearing shortly before other scheduled executions in State *Y*, the advertisement notes that Governor *F* has supported the death penalty in the past and ends with the statement “Call or write Governor *F* to demand that he stop the upcoming execution of *G*.”

Under the facts and circumstances in *Situation 5*, the advertisement is not for an exempt function under § 527(e)(2). *S*'s advertisement identifies Governor *F*, appears shortly before an election in which Governor *F* is a candidate, targets voters in that election, and identifies Governor *F*'s position as contrary to *S*'s position. However, the advertisement is part of an ongoing series of substantially similar advocacy communications by *S* on the same issue and the advertisement identifies an event outside the control of the organization (the scheduled execution) that the organization hopes

to influence. Further, the timing of the advertisement coincides with this specific event that the organization hopes to influence. The candidate identified is a government official who is in a position to take action on the public policy issue in connection with the specific event. Based on these facts and circumstances, the amount expended by *S* on the advertisements is not an exempt function expenditure under § 527(e)(2) and, therefore, is not subject to tax under § 527(f)(1).

Situation 6. *T*, an entity recognized as tax exempt under § 501(c)(4), advocates to abolish the death penalty in State *Z*. Governor *H* is the governor of State *Z*. Beginning shortly before an election in which Governor *H* is a candidate for re-election, *T* prepares and finances a television advertisement broadcast on several television stations in State *Z*. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *T* on the same issue. The advertisement provides statistics regarding developed countries that have abolished the death penalty, and refers to studies indicating inequities related to the types of persons executed in the United States. The advertisement calls for the abolishment of the death penalty. The advertisement notes that Governor *H* has supported the death penalty in the past. The advertisement identifies several individuals previously executed in State *Z*, stating that Governor *H* could have saved their lives by stopping their executions. No executions are scheduled in State *Z* in the near future. The advertisement concludes with the statement “Call or write Governor *H* to demand a moratorium on the death penalty in State *Z*.”

Under the facts and circumstances in *Situation 6*, the advertisement is for an exempt function under § 527(e)(2). *T*'s advertisement identifies Governor *H*, appears shortly before an election in which Governor *H* is a candidate, targets the voters in that election, and identifies Governor *H*'s position as contrary to *T*'s position. The advertisement is not part of an ongoing series of substantially similar advocacy communications by *T* on the same issue. In addition, the advertisement does not identify and is not timed to coincide with a specific event outside the control of the organization that it hopes to influence. Based on these facts and circumstances, the amount expended by *T* on the advertisement is an exempt function expenditure under § 527(e)(2) and, therefore, is subject to tax under § 527(f)(1).

HOLDINGS

In Situations 1, 2, and 5, the amounts expended by *N*, *O*, and *S* are not exempt function expenditures under § 527(e)(2) and, therefore, are not subject to tax under § 527(f)(1). In Situations 3, 4, and 6, the amounts expended by *P*, *R* and *T* are exempt function expenditures under § 527(e)(2) and, therefore, are subject to tax under § 527(f)(1).

DRAFTING INFORMATION

The principal author of this revenue ruling is Judith E. Kindell of Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, contact Judith E. Kindell at (202) 283-8964 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Abusive Roth IRA Transactions

Notice 2004-8

The Internal Revenue Service and the Treasury Department are aware of a type of transaction, described below, that taxpayers are using to avoid the limitations on contributions to Roth IRAs. This notice alerts taxpayers and their representatives that these transactions are tax avoidance transactions and identifies these transactions, as well as substantially similar transactions, as listed transactions for purposes of § 1.6011-4(b)(2) of the Income Tax Regulations and §§ 301.6111-2(b)(2) and 301.6112-1(b)(2) of the Procedure and Administration Regulations. This notice also alerts parties involved with these transactions of certain responsibilities that may arise from their involvement with these transactions.

Background

Section 408A was added to the Internal Revenue Code by section 302 of the Taxpayer Relief Act of 1997, Pub. L. 105-34, 105th Cong., 1st Sess. 40 (1997). This section created Roth IRAs as a new type of nondeductible individual retirement arrangement (IRA). The maximum annual contribution to Roth IRAs is the same maximum amount that would be allowable as a deduction under § 219 with respect to the individual for the taxable year over the aggregate amount of contributions for that taxable year to all other IRAs. Neither the contributions to a Roth IRA nor the earnings on those contributions are subject to tax on distribution, if distributed as a qualified distribution described in § 408A(d)(2).

A contribution to a Roth IRA above the statutory limits generates a 6-percent excise tax described in § 4973. The excise tax is imposed each year until the excess contribution is eliminated.

Facts

In general, these transactions involve the following parties: (1) an individual (the Taxpayer) who owns a pre-existing business such as a corporation or a sole

proprietorship (the Business), (2) a Roth IRA within the meaning of § 408A that is maintained for the Taxpayer, and (3) a corporation (the Roth IRA Corporation), substantially all the shares of which are owned or acquired by the Roth IRA. The Business and the Roth IRA Corporation enter into transactions as described below. The acquisition of shares, the transactions or both are not fairly valued and thus have the effect of shifting value into the Roth IRA.

Examples include transactions in which the Roth IRA Corporation acquires property, such as accounts receivable, from the Business for less than fair market value, contributions of property, including intangible property, by a person other than the Roth IRA, without a commensurate receipt of stock ownership, or any other arrangement between the Roth IRA Corporation and the Taxpayer, a related party described in § 267(b) or 707(b), or the Business that has the effect of transferring value to the Roth IRA Corporation comparable to a contribution to the Roth IRA.

Analysis

The transactions described in this notice have been designed to avoid the statutory limits on contributions to a Roth IRA contained in § 408A. Because the Taxpayer controls the Business and is the beneficial owner of substantially all of the Roth IRA Corporation, the Taxpayer is in the position to shift value from the Business to the Roth IRA Corporation. The Service intends to challenge the purported tax benefits claimed for these arrangements on a number of grounds.

In challenging the purported tax benefits, the Service will, in appropriate cases, assert that the substance of the transaction is that the amount of the value shifted from the Business to the Roth IRA Corporation is a payment to the Taxpayer, followed by a contribution by the Taxpayer to the Roth IRA and a contribution by the Roth IRA to the Roth IRA Corporation. In such cases, the Service will deny or reduce the deduction to the Business; may require the Business, if the Business is a corporation, to recognize gain on the transfer under § 311(b); and may require inclu-

sion of the payment in the income of the Taxpayer (for example, as a taxable dividend if the Business is a C corporation). See *Sammons v. United States*, 433 F.2d 728 (5th Cir. 1970); *Worcester v. Commissioner*, 370 F.2d 713 (1st Cir. 1966).

Depending on the facts of the specific case, the Service may apply § 482 to allocate income from the Roth IRA Corporation to the Taxpayer, Business, or other entities under the control of the Taxpayer. Section 482 provides the Secretary with authority to allocate gross income, deductions, credits or allowances among persons owned or controlled directly or indirectly by the same interests, if such allocation is necessary to prevent evasion of taxes or clearly to reflect income. The § 482 regulations provide that the standard to be applied is that of a person dealing at arm's length with an uncontrolled person. See generally § 1.482-1(b) of the Income Tax Regulations. To the extent that the consideration paid or received in transactions between the Business and the Roth IRA Corporation is not in accordance with the arm's length standard, the Service may apply § 482 as necessary to prevent evasion of taxes or clearly to reflect income. In the event of a § 482 allocation between the Roth IRA Corporation and the Business or other parties, correlative allocations and other conforming adjustments would be made pursuant to § 1.482-1(g). Also see, Rev. Rul. 78-83, 1978-1 C.B. 79.

In addition to any other tax consequences that may be present, the amount treated as a contribution as described above is subject to the excise tax described in § 4973 to the extent that it is an excess contribution within the meaning of § 4973(f). This is an annual tax that is imposed until the excess amount is eliminated.

Moreover, under § 408(e)(2)(A), the Service may take the position in appropriate cases that the transaction gives rise to one or more prohibited transactions between a Roth IRA and a disqualified person described in § 4975(e)(2). For example, the Department of Labor¹ has advised the Service that, to the extent that the Roth IRA Corporation constitutes a plan asset under the Department of La-

¹ Under section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of Labor has interpretive jurisdiction over § 4975 of the Internal Revenue Code.

***Proposed Commission Meeting Dates
February - July 2021***

Month	<i>Date</i>	<i>State Holiday – Office Closed</i>
February	<i>25th</i>	<i>President's Day, Feb 15th</i>
March	<i>25th</i>	
April	<i>29th</i>	
May	<i>20th</i>	<i>Memorial Day, May 31st</i>
June	<i>17th</i>	
July	<i>29th</i>	<i>Independence Day, July 5th</i>



During the months of February – July 2021, staff estimates commission meetings will be held once a month. All meeting dates are on Thursday and scheduled to begin at 9:30 a.m.

In the event additional meetings are required, Staff will work individually with each Commissioner to determine availability and ensure we have a quorum for the meeting.

ITEM VII