



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: Friday, October 29, 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 Friday, October 29, 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.azcanelections.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@azcanelections.gov.

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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 July 29, 2021.
- III. Discussion and Possible Action on Executive Director's Report, Enforcement and Regulatory Updates and Legislative Update.
- IV. Discussion and Possible Action on Amendment to R2-20-101, Definitions, Final Rule Making.
- V. Discussion and Possible Action on MUR 21-01, The Power of Fives LLC.

The Commission may choose to go into executive session for discussion or consultation with its attorneys to consider its position and instruct its attorneys regarding the public body's position regarding contracts, in pending or contemplated litigation or in settlement discussions conducted to avoid or resolve litigation. A.R.S. § 38-431.03(A)(4).

- VI. Discussion and Possible action on The Power of Fives LLC v. Citizens Clean Elections Commission, Arizona Sup. Ct. for Maricopa.

The Commission may choose to go into executive session for discussion or consultation with its attorneys to consider its position and instruct its attorneys regarding the public body's position regarding contracts, in pending or contemplated litigation or in settlement discussions conducted to avoid or resolve litigation. A.R.S. § 38-431.03(A)(4).

- VII. 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.

- VIII. 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 27th day of October, 2021
Citizens Clean Elections Commission
Thomas M. Collins, Executive Director

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

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THE STATE OF ARIZONA

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CITIZENS CLEAN ELECTIONS COMMISSION

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REPORTER'S TRANSCRIPT OF VIRTUAL PUBLIC MEETING

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Phoenix, Arizona

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July 29, 2021

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9:30 a.m.

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COASH & COASH, INC.

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Court Reporting, Video & Videoconferencing
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Prepared by:

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LILIA MONARREZ, CSR, RPR
Certificate No. 50699

<p style="text-align: right;">Page 2</p> <p>1 VIRTUAL PUBLIC MEETING BEFORE THE CITIZENS 2 CLEAN ELECTIONS COMMISSION convened at 9:30 a.m. on 3 July 29, 2021, at the State of Arizona, Clean Elections 4 Commission, 1616 West Adams, Conference Room, Phoenix, 5 Arizona, in the presence of the following Board members: 6 7 Ms. Amy B. Chan, Chairwoman 8 Mr. Galen D. Paton 9 Mr. Mark S. Kimble 10 Mr. Damien Meyer 11 12 OTHERS PRESENT: 13 14 Thomas M. Collins, Executive Director 15 Paula Thomas, Executive Officer 16 Gina Roberts, Voter Education Director 17 Alec Shaffer, Web Content Manager 18 Avery Kola, Voter Education Specialist 19 Julian Arndt, Executive Support Specialist 20 Kara Karlson, Assistant Attorney General 21 Kyle Cummings, Assistant Attorney General 22 Mary O'Grady, Osborn Maledon 23 Cathy Herring, Staff 24 Rivko Knox 25 Mary Ganapol</p>	<p style="text-align: right;">Page 4</p> <p>09:32:12-09:33:01</p> <p>1 CHAIRWOMAN CHAN: Commissioner Kimble. 2 COMMISSIONER KIMBLE: I move that we 3 approve the minutes for the Commission meeting of 4 June 17th, 2021. 5 CHAIRWOMAN CHAN: Thank you. 6 Do I have a second? 7 COMMISSIONER MEYER: This is Commissioner 8 Meyer. I'll second. 9 CHAIRWOMAN CHAN: Thank you. All right. 10 I'm going to call the roll. We can vote on that. 11 Commissioner Meyer? 12 COMMISSIONER MEYER: Aye. 13 CHAIRWOMAN CHAN: Commissioner Kimble? 14 COMMISSIONER KIMBLE: Aye. 15 CHAIRWOMAN CHAN: Commissioner Paton? 16 COMMISSIONER PATON: Aye. 17 CHAIRWOMAN CHAN: And I vote eye, as well. 18 By a vote of four to zero, we have approved the 19 minutes. 20 Moving on to Agenda Item III: Discussion 21 and possible action on Executive Director's report, 22 enforcement and regulatory updates and legislative 23 updates. 24 So, Tom, you're going to present this, as 25 always. I'll turn it over to you.</p>
<p>09:30:54-09:32:10</p> <p style="text-align: right;">Page 3</p> <p>1 P R O C E E D I N G 2 3 CHAIRWOMAN CHAN: All right. Good morning, 4 everyone. It is 9:30 a.m. We are here for the monthly 5 meeting of the Citizens Clean Elections Commission, and 6 Item I on the agenda today is the call to order. And 7 it is 9:30 a.m. on July 29th, 2021, so I will go ahead 8 and call the meeting to order. 9 I'd like to ask the audience members to 10 please keep their microphones on mute so that we can 11 hear everybody when they're speaking clearly and for 12 the record. And with that, we will take attendance. 13 Commissioners, please identify yourselves 14 for the record. 15 COMMISSIONER MEYER: Good morning. 16 Damien Meyer. 17 COMMISSIONER KIMBLE: Mark Kimble. 18 COMMISSIONER PATON: Galen Paton. 19 CHAIRWOMAN CHAN: And I am Amy Chan. And 20 with that, we can move on to Agenda Item II, which is 21 discussion and possible action on minutes for the 22 June 17th, 2021 meeting. 23 Is there any discussion on the minutes? 24 And, if not, do I have a motion to approve the minutes? 25 COMMISSIONER KIMBLE: Madam Chair?</p>	<p>09:33:09-09:34:59</p> <p style="text-align: right;">Page 5</p> <p>1 MR. COLLINS: Okay. Commissioners, thank 2 you very much. Commissioner -- Chairwoman Chan and 3 Commissioners, you know, I'm sure you've had a chance 4 to look at the report. I think the big announcement, 5 for purposes of our next few months -- maybe the next 6 18 months -- is the -- on August 1st, the qualifying 7 period for participating candidates to collect 8 qualifying contributions. 9 As many of you know -- and some of the 10 audience may not -- the way that the Clean Elections 11 Funding Program works is that candidates for statewide 12 or legislative office collect nominal \$5 qualifying 13 contributions from folks in their district or in the 14 state or registered voters and, by showing that support 15 and then foregoing PAC donations, large individual 16 donations and the like, the Clean Elections Funds 17 provides an amount of money to go towards that election 18 campaign. It's an old concept, a concept that's been 19 in law since at least the early 1970s, and I don't know 20 the history of when the idea was developed before that. 21 One of the, you know, complicating issues 22 this year is -- as it was ten years ago -- is 23 redistricting. You know, as a staff, we have our views 24 on what kinds of district should apply for purposes of 25 signing those qualifying slips; in other words, if</p>

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<p>1 you -- you have to be a resident of the district. No</p> <p>2 one who is running for office right now who's running</p> <p>3 for the legislature knows what district they are in,</p> <p>4 but because the legislature has passed a law saying</p> <p>5 that the district you would have been in or could have</p> <p>6 been in -- and that's not the precise little -- little</p> <p>7 language, but there's a -- there are a variety of</p> <p>8 locations within a district that can count for</p> <p>9 signatures -- for petition signatures.</p> <p>10 We believe that that's true for qualifying</p> <p>11 contributions, as well, because there's no separate</p> <p>12 definition of "district." We have had some meetings</p> <p>13 with the Secretary of State's Office on that issue. We</p> <p>14 are hopeful to have some formal confirmation that this</p> <p>15 Secretary of State shares the views of the prior -- of</p> <p>16 the Secretary of State's Office from 2012. When we get</p> <p>17 that confirmation, I will let you all know if you want</p> <p>18 to know and, certainly, we'll let candidates and folks</p> <p>19 involved in the election community know that. We had</p> <p>20 hoped to have that in place by now, but as you know,</p> <p>21 the Secretary's Office is very busy.</p> <p>22 The -- we have an election date coming up</p> <p>23 on August 3rd -- Tucson, Prescott, Dewey Humboldt and</p> <p>24 the Oatman Fire District. And so, obviously, the last</p> <p>25 day to mail back -- the recommended last day was two</p>		<p>1 given that it's an otherwise off year.</p> <p>2 We're really -- we're hopeful that -- you</p> <p>3 know, the Governor's office has released a primer on a</p> <p>4 veterans workforce initiative they're doing. You know,</p> <p>5 Avery was recommended as a potential candidate for the</p> <p>6 veterans success story, which is -- as part of the</p> <p>7 outreach efforts for this initiative. We're really</p> <p>8 excited for that, you know. As you know, Avery is a</p> <p>9 veteran and, also, has been, you know, really</p> <p>10 instrumental in recognizing and creating opportunities</p> <p>11 for outreach in ways that -- you know, that really, I</p> <p>12 think, enhance what the Agency can do to serve the</p> <p>13 public.</p> <p>14 On the usual election law stuff -- and</p> <p>15 anyone can stop me if you have questions or if you're</p> <p>16 tired of listening to me, as you may have read it but,</p> <p>17 you know, we're still waiting for this -- a case called</p> <p>18 the Legacy Foundation Action Fund. That decision has</p> <p>19 now been -- that decision was conferenced in December.</p> <p>20 It's now July. So -- you know, hopefully.</p> <p>21 There are two public records cases on the</p> <p>22 audit in various stages at Superior Court. I think</p> <p>23 there may be a notice of appeal at least in one of</p> <p>24 them. There's a new lawsuit filed in the context of</p> <p>25 election law. The Free Enterprise Club filed a lawsuit</p>	
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<p>1 days ago.</p> <p>2 Gina and Avery are working with the</p> <p>3 Secretary of State's Office on exploring a virtual</p> <p>4 event with community-based organizations, and Gina has</p> <p>5 continued to be a valued resource for the press and in</p> <p>6 describing accurately what the -- and informatively,</p> <p>7 you know, what is going on with various election issues</p> <p>8 that keep doubling up and has continued her efforts to</p> <p>9 develop her resume and skill set through the</p> <p>10 educational efforts she's undertaken.</p> <p>11 We did have a Morning Scoop segment we've</p> <p>12 been sponsoring with "The Cap Times" and the discussion</p> <p>13 on new election laws that Chairwoman Chan participated</p> <p>14 in, Gina Roberts participated in, and some public</p> <p>15 lawmakers and the lobbyist for the Secretary of State.</p> <p>16 We've got website updates that -- where</p> <p>17 we're enhancing the terminology and issues there to</p> <p>18 make sure those are up to speed. We're working on just</p> <p>19 a variety of different things. I don't think -- I</p> <p>20 guess you need to read the list, but I think that Avery</p> <p>21 and Gina and Alec continue to be focused on the voter</p> <p>22 education thing -- voter education duties; meanwhile,</p> <p>23 you know, Mike and Paula and Julian are, you know,</p> <p>24 getting ready for the beginning of the qualifying</p> <p>25 period. So it's a, you know, relatively busy time,</p>		<p>1 against the Secretary of State and the Invest in Ed, I</p> <p>2 believe, group, basically saying that the legislation</p> <p>3 that in the legislature's view changed the -- may have</p> <p>4 changed the tax rate, but it, in their view, keeps the</p> <p>5 funding there from Prop 306; that that -- because it's</p> <p>6 a tax and funding bill, it would be immune from</p> <p>7 referendum under the State Constitution. I don't know</p> <p>8 that any hearing has been set for that.</p> <p>9 There is a provision in the Constitution</p> <p>10 that says that those -- basically, what amounts to an</p> <p>11 appropriation bill, but the language is for the</p> <p>12 maintenance of State institutions, et cetera. That</p> <p>13 does not give the 90 days. So the three referendums</p> <p>14 pulled, but on the -- the argument is that under the</p> <p>15 Constitution, because these are akin to or are part of</p> <p>16 the appropriations and maintenance and operations</p> <p>17 process, they're just not subject to the 90 days.</p> <p>18 So we are, also, waiting for -- I think,</p> <p>19 from an elections and constitutional law perspective,</p> <p>20 for case of Fan versus State, which is -- essentially,</p> <p>21 has to do with the legality of different parts of</p> <p>22 prop -- of prop -- of the Invest in Ed proposition, and</p> <p>23 those issues are laid out there. That argument was,</p> <p>24 again, in April. So we hope they get some -- you know,</p> <p>25 those are things that are off in the offing.</p>	

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<p>1 And, then, with -- finally, I just wanted</p> <p>2 to, again, thank the -- you know, we have one rule</p> <p>3 amendment on this agenda, and we're working with the</p> <p>4 Governor's Regulatory Review Council and staff on</p> <p>5 another amendment we have pending with them. So I just</p> <p>6 want to thank the Governor's Regulatory Review Council</p> <p>7 and its staff for their continued efforts to help us</p> <p>8 do -- provide them the information that we need and,</p> <p>9 frankly, to provide some pretty good notes on how to --</p> <p>10 how we might, in some cases, make our rules a little</p> <p>11 clearer.</p> <p>12 And so that's -- and that's great. It's a</p> <p>13 good example of that system working. So that's a --</p> <p>14 that concludes the report. I guess I did, basically,</p> <p>15 read the whole thing, but I'm sure I editorialized in</p> <p>16 there somewhere. So if you have questions -- any</p> <p>17 questions -- I'm sorry.</p> <p>18 CHAIRWOMAN CHAN: Does anyone have</p> <p>19 questions or just -- or discussion? Sorry.</p> <p>20 And, Tom, I think it's helpful for the</p> <p>21 audience to go over it. I know that's a lot for you to</p> <p>22 do but, you know, for folks who are attending, I think</p> <p>23 it's wonderful for you to go over it.</p> <p>24 MR. COLLINS: Yeah. No, I know. I just</p> <p>25 don't -- you know, I worry about the -- being -- being,</p>		<p>1 interview and, basically, it was an interview where I</p> <p>2 went over my service in the Air Force and connected it</p> <p>3 to my employment with the State. So, I guess, they</p> <p>4 were using it for, like, a retention, kind of,</p> <p>5 marketing campaign, but it was really cool. I enjoyed</p> <p>6 it, and it was almost talking like -- like I was</p> <p>7 talking to a younger version of myself. So it was</p> <p>8 interesting.</p> <p>9 CHAIRWOMAN CHAN: Thank you so much.</p> <p>10 Again, sorry to put you on the spot.</p> <p>11 Gina, did you want to add to that?</p> <p>12 MS. ROBERTS: If I could, Madam Chair,</p> <p>13 Commissioners. I do want to, also, note, too,</p> <p>14 obviously, we are all very grateful and appreciative of</p> <p>15 Avery's service, and it's -- you know, it impacts</p> <p>16 voters directly, too, by having his expertise here.</p> <p>17 Avery actually created a video for us, for Clean</p> <p>18 Elections and for the voters, about UOCAVA voting, our</p> <p>19 uniformed and overseas voters. And so it was really</p> <p>20 helpful to have his experience about voting overseas</p> <p>21 and how it can further help us connect with our</p> <p>22 military and overseas voters because they have a</p> <p>23 special setup, voting laws and protections that cover</p> <p>24 them.</p> <p>25 And so, you know, we have just found that</p>	
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<p>1 you know, a little too boring.</p> <p>2 CHAIRWOMAN CHAN: We can't help that</p> <p>3 sometimes. Not that you were boring, but I mean,</p> <p>4 sometimes the stuff we talk about is just -- the nature</p> <p>5 of it might be a little bit, but that's why we're all</p> <p>6 here, right?</p> <p>7 MR. COLLINS: Yeah, yeah.</p> <p>8 CHAIRWOMAN CHAN: So don't even worry about</p> <p>9 it.</p> <p>10 All right. So I don't see any discussion</p> <p>11 or questions from the Commission. I just want to say</p> <p>12 to Avery, congratulations. That's so exciting that,</p> <p>13 you know, you were recommended for that program or -- I</p> <p>14 don't even know if I really understand, but -- and I</p> <p>15 don't want to put Avery on the spot. I don't know if</p> <p>16 he wants to kind of tell us a little bit about that,</p> <p>17 but that sounds very exciting.</p> <p>18 And, Avery, do you mind? Could you tell us</p> <p>19 a little bit about the program that you were</p> <p>20 recommended for?</p> <p>21 MR. XOLA: Yeah. Sure.</p> <p>22 CHAIRWOMAN CHAN: I'm so sorry to put you</p> <p>23 on the spot.</p> <p>24 MR. XOLA: Yeah. No problem, Madam Chair,</p> <p>25 Commissioners. Paula had recommended me for the</p>		<p>1 Avery's service to our country has been very helpful as</p> <p>2 we reach and connect voters. So, again, we're very</p> <p>3 grateful for him and that -- of course, his service,</p> <p>4 but, also, his expertise that he's able to share with</p> <p>5 us as we reach voters.</p> <p>6 CHAIRWOMAN CHAN: Thank you. I just --</p> <p>7 this is so exciting, so wonderful. Thank you so much,</p> <p>8 Avery. Thank you, Gina, and thank you, Tom.</p> <p>9 Do we have any comment? If any member of</p> <p>10 the public has comments on this item, you can signal</p> <p>11 the Zoom moderator, I think, in the chat.</p> <p>12 (No response.)</p> <p>13 CHAIRWOMAN CHAN: Okay. I don't -- I don't</p> <p>14 see anything. So, for now, we can move on to the next</p> <p>15 item, which is discussion and possible action on</p> <p>16 amendments to R-20-101, and the Commission may vote to</p> <p>17 begin a new public comment period for rulemaking</p> <p>18 related to this item.</p> <p>19 And, Tom, I hope you'll forgive me, but</p> <p>20 when I was looking at the packet, I felt like we had</p> <p>21 already opened this? Can you --</p> <p>22 MR. COLLINS: Yes, yes, yes.</p> <p>23 CHAIRWOMAN CHAN: Okay. Go ahead.</p> <p>24 MR. COLLINS: Precisely. Yeah, Madam</p> <p>25 Chair, Commissioners. So this is an example of, I</p>	

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<p>1 think -- I think really positive work with the</p> <p>2 Governor's Regulatory Review Council staff. So, you</p> <p>3 know, we did initiate public comment on this rule, on a</p> <p>4 rule like this. What we did in that was we simply</p> <p>5 omitted a definition that was there. When we submitted</p> <p>6 that, you know, the feedback we got, which, again, I</p> <p>7 think was really spot on was, look, you know, you use</p> <p>8 this terminology throughout the rules; it probably</p> <p>9 would be a better practice to state what the new</p> <p>10 criteria are.</p> <p>11 In other words, the upshot of this is that</p> <p>12 the definition of "family contribution" in law changed.</p> <p>13 As a result, there's a correlating change in -- in how</p> <p>14 the Commission would have to treat that under the Clean</p> <p>15 Elections Act, and we want the rules to reflect that</p> <p>16 change. The GRRC council staff's recommendation was,</p> <p>17 look, you know, since people may not realize the</p> <p>18 implication of that change without it being there,</p> <p>19 let's just put in the new terminology which, basically,</p> <p>20 it has to do with expanding, for that purpose, to aunts</p> <p>21 and uncles and spouses and -- aunts and uncles and</p> <p>22 spouses. So it's a broadening of who constitutes a</p> <p>23 family member. I think that was a good idea.</p> <p>24 Now, because we think that was true -- and</p> <p>25 this is just to back up and explain why we're here.</p>		<p>1 the -- so that's the context there.</p> <p>2 The -- in order to do that, obviously, that</p> <p>3 means that the rulemaking we had would be terminated.</p> <p>4 I personally don't -- I think we can -- I think the way</p> <p>5 this is set up, by starting the new rulemaking, if you</p> <p>6 were to so approve, you would be inherently terminating</p> <p>7 the old rulemaking and I would file a termination</p> <p>8 notice with that.</p> <p>9 If we need to have two separate votes on</p> <p>10 termination and -- I mean, it seems to me this is a</p> <p>11 binary thing. By opening a new docket, you're</p> <p>12 inherently closing out the old one, but -- you know, so</p> <p>13 I think you can just -- I believe that that could be a</p> <p>14 sufficient motion but, you know, I'm open to</p> <p>15 suggestions on how that -- you know, from Kara, if you</p> <p>16 would like that more effectively communicated, but the</p> <p>17 bottom line is all we're asking is to formally --</p> <p>18 instead of formally remove the definition, we want to</p> <p>19 make sure that -- we want to leave the definition in</p> <p>20 place but explain, you know, specifically what the</p> <p>21 changes are.</p> <p>22 CHAIRWOMAN CHAN: Okay. Thank you, Tom,</p> <p>23 for explaining that for us.</p> <p>24 So do -- are there any questions from the</p> <p>25 Commissioners? I think that was a wonderful job of</p>	
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<p>1 Now -- and I think the council staff view -- and I</p> <p>2 think they're not wrong about this -- is that because</p> <p>3 that was the intent of the rule, you know, the change,</p> <p>4 we could have worked in this new language at GRRC,</p> <p>5 right, and then said, well, no substantial change. It</p> <p>6 was my decision to say -- and I'm only saying mine, not</p> <p>7 to brag, just to know where the accountability is</p> <p>8 supposed to be on this.</p> <p>9 It was my decision to say, look, I</p> <p>10 understand that, but I would prefer to have a more</p> <p>11 transparent record so that nobody thinks that we</p> <p>12 changed the meaning of terms or how they were used.</p> <p>13 So, you know, this is one of those things that's a</p> <p>14 wrap-up thing. I think this issue of that definition</p> <p>15 has been an issue, has been sort of not litigated</p> <p>16 directly, but it's implicated. So we've worked around</p> <p>17 this issue for quite some time. I don't think another</p> <p>18 60 days, you know, plus GRRC's review is going to cost</p> <p>19 us that much.</p> <p>20 And I just think it's -- my personal view</p> <p>21 is that it's the better course to do it that way,</p> <p>22 simply do the 60 days, make sure everybody looks at the</p> <p>23 new language, you know, makes their own determination</p> <p>24 if it's different, if they need to comment, if they</p> <p>25 don't and then go from there. So what this -- what</p>		<p>1 explaining why we're revisiting this.</p> <p>2 Thank you, Tom.</p> <p>3 (No response.)</p> <p>4 CHAIRWOMAN CHAN: Okay. It does not look</p> <p>5 like we have any questions from the Commissioners and</p> <p>6 so in that regard, would one of you like to make a</p> <p>7 motion regarding opening public comment on the</p> <p>8 amendment to R-2-20-101? Can one of you make a motion</p> <p>9 to open public comment on R-2-20-101?</p> <p>10 COMMISSIONER KIMBLE: Madam Chair?</p> <p>11 CHAIRWOMAN CHAN: Thank you. Yes.</p> <p>12 COMMISSIONER KIMBLE: This is Commissioner</p> <p>13 Kimble. I move that we open public comment on</p> <p>14 R2-20-101.</p> <p>15 CHAIRWOMAN CHAN: Thank you.</p> <p>16 COMMISSIONER MEYER: This is Commissioner</p> <p>17 Meyer. I'll second the motion.</p> <p>18 CHAIRWOMAN CHAN: All right. Thank you,</p> <p>19 Commissioner Meyer.</p> <p>20 Thank you, Mr. Paton. I see you, also,</p> <p>21 were going to help me out here. You guys left me</p> <p>22 hanging for a while here.</p> <p>23 All right. With that, I'll take the roll.</p> <p>24 I'll call the roll.</p> <p>25 Commissioner Meyer, how do you vote?</p>	

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<p>1 COMMISSIONER MEYER: Aye.</p> <p>2 CHAIRWOMAN CHAN: Commissioner Kimble?</p> <p>3 COMMISSIONER KIMBLE: Aye.</p> <p>4 CHAIRWOMAN CHAN: Commissioner Paton?</p> <p>5 COMMISSIONER PATON: Aye.</p> <p>6 CHAIRWOMAN CHAN: I vote aye, as well. So</p> <p>7 by your vote of four to zero, we have opened public</p> <p>8 comment on the amendment to R-2-20-101. Thank you.</p> <p>9 And with that, we can move on to our next</p> <p>10 item: Discussion and possible action on legal issues</p> <p>11 with election budget and procedural measures from the</p> <p>12 2021 session, including discussion and possible action</p> <p>13 on House Bill 2110 and Senate Bill 1819.</p> <p>14 So with that, Tom has some additional</p> <p>15 background to provide, I think.</p> <p>16 MR. COLLINS: Right. So -- thank you,</p> <p>17 Madam Chair, Commissioners. So, look, you know, these</p> <p>18 two bills so far are the two bills that came out of the</p> <p>19 session that we have the most concerns about. You</p> <p>20 know, I spent a lot of time reviewing these. I've</p> <p>21 talked to our attorneys. I've talked to other folks</p> <p>22 looking at this, and I think that, for present</p> <p>23 purposes, you know, this item -- this action -- this</p> <p>24 item here is not for action today. It's here to really</p> <p>25 just kind of give you all an opportunity to interact</p>		<p>1 effective yet, et cetera, you know, our view is within</p> <p>2 at least that year time frame, depending on how you</p> <p>3 look at the statute of limitations issue, we monitor;</p> <p>4 we don't need to act immediately.</p> <p>5 That's -- that's sort of the -- that's my</p> <p>6 recommendation, okay, just to make that distinguished</p> <p>7 from anything that might be disclosing a legal</p> <p>8 confidence. That's -- so that's 2110.</p> <p>9 Senate Bill 1819 -- you know, a couple of</p> <p>10 things. Number 1, you know, when the legislature</p> <p>11 passed this bill, it was -- this is part of the Budget</p> <p>12 Procedures Act. So it's not the main budget. It's not</p> <p>13 the -- I'm going to get this wrong, but I think the</p> <p>14 Feed Bill is the main budget. The feed-bill has some</p> <p>15 stuff about elections. The Budget Reconciliation</p> <p>16 Procedures Act does -- also does.</p> <p>17 Some of those changes do have an impact on</p> <p>18 the Commission. GRRC's expanded power to self-petition</p> <p>19 itself, that's one; two, despite the fact that we can</p> <p>20 still intervene in and challenge the Act, this</p> <p>21 statute -- the new statute says that at least until</p> <p>22 2023, the Attorney General is the sole decider of how</p> <p>23 to deal with election litigation. So there's tension</p> <p>24 there, and that tension carries on through the case</p> <p>25 law.</p>	
09:52:36-09:54:05	Page 19	09:55:36-09:56:59	Page 21
<p>1 about what -- you know, what I'm about to lay out,</p> <p>2 which is what I recommend to do going forward.</p> <p>3 We do have some scheduling issues with OM.</p> <p>4 So if there's an executive session issue, I would -- I</p> <p>5 would prefer to hold that until another meeting. If</p> <p>6 there's not, I just want to say upfront my goal is not</p> <p>7 to put this item on the next agenda unless something</p> <p>8 were to change.</p> <p>9 So HB2110 has to do with Comission's</p> <p>10 funding. It has to do with the way that the</p> <p>11 legislature made changes to how surcharges on civil and</p> <p>12 criminal penalties are assessed and who assesses them</p> <p>13 and on what basis they assess them on. There are -- so</p> <p>14 there are legal issues with respect to injury, but</p> <p>15 there are, also, going to be factual issues that simply</p> <p>16 won't develop until after September 29th, when this</p> <p>17 bill becomes effective, if they do at all.</p> <p>18 So, in other words, there's a fact -- so,</p> <p>19 you know -- so just to bracket this decision and where</p> <p>20 we are, we know there's a one-year statute of</p> <p>21 limitations. We know that this law, in our view,</p> <p>22 violates the Voter Protection Act as applied to the</p> <p>23 Clean Elections Commission. We, also, don't know if</p> <p>24 this will actually have a practical effect on the Clean</p> <p>25 Elections Commission's revenue. So given that it's not</p>		<p>1 And one of the cases that we dealt with</p> <p>2 last year is a case called Arizona Advocacy Network v.</p> <p>3 State. In that case, you know, a lot of people pay</p> <p>4 attention to the fact that, you know, yes, we lost on</p> <p>5 some issues where there's some cross-references, but</p> <p>6 the Court rejected the argument that the enforcement --</p> <p>7 I'm sorry -- the filing officer could be given 100</p> <p>8 percent say over how to do campaign finance law, you</p> <p>9 know, and supervene the Clean Elections Act, Clean</p> <p>10 Elections Commission's authority, right? That's what</p> <p>11 the Court held.</p> <p>12 Similarly here, as soon as you put sole</p> <p>13 state officer in charge, we have a case from the Court</p> <p>14 of Appeals that says that's a Clean Elections -- that's</p> <p>15 a VPA issue. So my view is that this -- that whatever</p> <p>16 the -- I mean, the legislature does not -- has an issue</p> <p>17 here that has nothing to do with us, but nevertheless,</p> <p>18 the language is written in a way that it might. That</p> <p>19 said, I think the key here for us and why we don't need</p> <p>20 to take action immediately is will this come up in any</p> <p>21 kind of context that matters?</p> <p>22 In other words, the critical issues that</p> <p>23 would have to come up where this would be -- you know,</p> <p>24 whether or not there's a legal injury, again, that's a</p> <p>25 statute of limitations issue. That's an analysis that</p>	

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<p>1 has to be taken at some point but not today. In the</p> <p>2 short term, you know, the kinds of factual scenarios</p> <p>3 that would come up that might trigger an issue here are</p> <p>4 things like if there was a direct challenge to the Act</p> <p>5 and the Attorney General's Office sought to settle that</p> <p>6 case by saying the Act is unconstitutional. This</p> <p>7 statute doesn't deal very well with that situation</p> <p>8 because all we can do is intervene.</p> <p>9 So, you know, but -- but realistically, is</p> <p>10 that going to happen? You know, I don't think we're</p> <p>11 the highest target on the -- on anybody's list. So,</p> <p>12 again, it's sloppily drafted, and there are other</p> <p>13 compromises that we can make and we've made in the</p> <p>14 budget, and I understand that. So what I'm trying to</p> <p>15 say is I'm concerned about this language. We can</p> <p>16 monitor this language, but the kind of, like, DEFCON 5</p> <p>17 situations that might trigger this being a real issue,</p> <p>18 I think we should wait and see if they get -- if that</p> <p>19 actually happens before we would jump in preemptively,</p> <p>20 you know.</p> <p>21 As we get closer to what we think the</p> <p>22 statute -- one of the dates a statute of limitations</p> <p>23 might run from, we may have to make -- re-review that</p> <p>24 decision, but for the time being, I think we keep -- we</p> <p>25 have the -- we know the legal issues. We know the</p>		<p>1 and not doing that. I don't know if that would be</p> <p>2 helpful to circulate, but it's, basically, a triage of</p> <p>3 here's what the -- here's what the law says in theory;</p> <p>4 here's what we know about the law in fact; we need to</p> <p>5 know -- so we need to let the law and fact -- the law</p> <p>6 and action -- for lack of a better way of putting it --</p> <p>7 play out a little more before we determine whether or</p> <p>8 not we want to get involved in a -- in a -- not</p> <p>9 necessarily -- I don't mean theory in the sense of no</p> <p>10 standing. I mean theory in the sense of the most</p> <p>11 prophylactic response.</p> <p>12 CHAIRWOMAN CHAN: Thank you, Tom.</p> <p>13 Do any of the commissioners have questions</p> <p>14 or comments on this item?</p> <p>15 COMMISSIONER KIMBLE: Madam Chair?</p> <p>16 CHAIRWOMAN CHAN: Commissioner Kimble?</p> <p>17 COMMISSIONER KIMBLE: Tom, I just want to</p> <p>18 be clear. So the -- on the statute of limitations</p> <p>19 issue --</p> <p>20 MR. COLLINS: Yes.</p> <p>21 COMMISSIONER KIMBLE: -- these provisions</p> <p>22 take place -- or take effect in late September.</p> <p>23 MR. COLLINS: Yeah.</p> <p>24 COMMISSIONER KIMBLE: And that starts the</p> <p>25 clock on the statute of limitations?</p>	
09:58:30-09:59:58	Page 23	10:01:09-10:02:30	Page 25
<p>1 things we want to -- we want to monitor. And so from</p> <p>2 an executive perspective, again, not a legal advice</p> <p>3 perspective, my recommendation is we just -- we monitor</p> <p>4 these things; we make sure people understand that</p> <p>5 they're there, but I'm not -- I'm not planning to come</p> <p>6 back to the Commission with more until we have</p> <p>7 either -- you know, something -- before we have some</p> <p>8 event that triggers that or we reach a point where we</p> <p>9 need to make a final decision about what constitutes an</p> <p>10 injury here.</p> <p>11 That's, basically, a long way of summing up</p> <p>12 what -- I mean, we've had this on the agenda for two or</p> <p>13 three months. We've been working in the background to</p> <p>14 try to -- to try to assess the risk versus -- you know,</p> <p>15 the risk of not getting involved in something versus</p> <p>16 getting involved in something, and right now I think</p> <p>17 that -- I think that the -- I think there are -- there</p> <p>18 are a lot of separate acts by other folks and separate</p> <p>19 information we may be able to obtain that would -- that</p> <p>20 we would need before we would need to revisit this. So</p> <p>21 that's where we are.</p> <p>22 If anybody has any questions about that,</p> <p>23 obviously, I'm happy to take them. I thought about</p> <p>24 putting together kind of a flowchart about this</p> <p>25 decisionmaking. I ended up kind of going against that</p>		<p>1 MR. COLLINS: To be -- I mean, and we've</p> <p>2 already discussed this in open session. So it's really</p> <p>3 not -- I mean, I don't -- I'm not giving -- you know,</p> <p>4 this isn't -- you know, the idea of the statute of</p> <p>5 limitations. My view is that the most conservative</p> <p>6 view of the statute of limitations issue is the</p> <p>7 effective date. There's -- and then -- and then</p> <p>8 there's some -- there's several different issues about</p> <p>9 what the latest date to file would be, but yeah, a</p> <p>10 conservative -- small c -- conservative view would be a</p> <p>11 year from September 29th.</p> <p>12 COMMISSIONER KIMBLE: There is no -- no one</p> <p>13 could make a -- could make a claim that the statute of</p> <p>14 limitations started when the legislation was approved</p> <p>15 or signed by the governor or anything?</p> <p>16 MR. COLLINS: No. I don't think so. We've</p> <p>17 never -- certainly, in our experience -- now -- and</p> <p>18 people can make laches arguments all they want, and the</p> <p>19 State makes laches arguments no matter whether or not</p> <p>20 it's been a week or a year. It doesn't -- the State's</p> <p>21 view, essentially -- and I'm being mildly sarcastic,</p> <p>22 but the State's view, basically, is if you don't sue</p> <p>23 the day after they decided you should have sued, it's</p> <p>24 latched, but that having been said, I don't see a</p> <p>25 laches issue here -- laches being you waited too long</p>	

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<p>1 to sue, you know.</p> <p>2 I don't see -- the injury -- for the</p> <p>3 purposes, for example, the funding, the injury</p> <p>4 literally can't accrue until the law changes because</p> <p>5 right now judges simply can't deal with things that --</p> <p>6 they simply can't do the thing that the bill will allow</p> <p>7 them to do until that day.</p> <p>8 COMMISSIONER KIMBLE: Okay. I just -- I</p> <p>9 guess, I just want to make sure that we have a</p> <p>10 substantive discussion about this well before the</p> <p>11 statute of limitations expires, in any one's view,</p> <p>12 because I would hate for the limitation to come up and</p> <p>13 we haven't even talked about it because I do think we</p> <p>14 have a lot to talk about here.</p> <p>15 MR. COLLINS: Okay. Well, I -- that's a --</p> <p>16 I think -- and, Madam Chair, Commissioner Kimble, I</p> <p>17 mean, I think that's a fair point. And I think -- I</p> <p>18 mean, I think we can -- I think -- I think what we</p> <p>19 should do and what I think I will do, just to be fully</p> <p>20 transparent, we can reconnoiter with Mary and talk</p> <p>21 about when to have that conversation. We -- you know,</p> <p>22 and we'll need to have some -- I think we'll need to</p> <p>23 have some written guidance to help us with that</p> <p>24 analysis.</p> <p>25 I think that -- I think we just need to</p>	<p>1 were thinking about Clean Elections. And then they</p> <p>2 added in the exception for our ability to intervene.</p> <p>3 They recognize that.</p> <p>4 So, now, on the other hand, could you get</p> <p>5 through a legislative body constituted as ours is with</p> <p>6 some -- with a kind of a more expansive definition of</p> <p>7 who is excluded that is comprehensive as the Clean</p> <p>8 Elections interest? I mean, we know that -- we know</p> <p>9 that's a very difficult undertaking; otherwise, we</p> <p>10 wouldn't be in the situation we are with 2110 and some</p> <p>11 other stuff. So, from a legislative perspective, I do</p> <p>12 want to emphasize this is as good as we could have</p> <p>13 asked for.</p> <p>14 So the question really does become, you</p> <p>15 know, we should see what the situation is and then --</p> <p>16 and then -- with the timeline that Commissioner Kimble</p> <p>17 bears in mind. Yeah. I just -- it just seems like the</p> <p>18 most logical thing to do. I don't -- I raise these</p> <p>19 things and I think we all as staff raise these things</p> <p>20 on the basis of we want to make sure that things aren't</p> <p>21 surprising. And I think that having a plan, as</p> <p>22 Commissioner Kimble articulated to, you know, have,</p> <p>23 firmer thoughts on this is important, but that's really</p> <p>24 the point here is to say, look, this is the lay of the</p> <p>25 land today. That can change.</p>		
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<p>1 look at scheduling that out to when the best -- the</p> <p>2 best time to do it is. And I think we can certainly</p> <p>3 get you feedback on, you know, when the best time to do</p> <p>4 that would be from Mary's perspective, and we'll make</p> <p>5 it happen.</p> <p>6 COMMISSIONER KIMBLE: Okay. Thank you.</p> <p>7 CHAIRWOMAN CHAN: Thank you, Commissioner</p> <p>8 Kimble, and Tom.</p> <p>9 Anyone else? Any other commissioners want</p> <p>10 to ask questions or make comments on this item?</p> <p>11 (No response.)</p> <p>12 CHAIRWOMAN CHAN: I appreciate everything</p> <p>13 you've said, Tom, and I think I agree. I mean, I think</p> <p>14 we just need to see what actually happens, if I'm</p> <p>15 understanding you correctly.</p> <p>16 MR. COLLINS: Yeah. I mean -- yeah. I</p> <p>17 mean, you can't -- I mean, look, you know, some of this</p> <p>18 Voter Protection Act stuff is, to me, pretty simple.</p> <p>19 Some of it is so simple, it may not even -- if people</p> <p>20 make -- I mean, 1819 is a perfect example, right, the</p> <p>21 one that says, okay, the Attorney General can be the</p> <p>22 sole decider of things. Yet, I mean, I just don't</p> <p>23 think that anybody -- of election cases -- I can -- I</p> <p>24 can say with some confidence that I don't think people</p> <p>25 who initially started to put that language together</p>	<p>1 You know, I'll give you an example, and</p> <p>2 I've used this example in describing this bill to other</p> <p>3 people. You know, some people routinely, whenever they</p> <p>4 file a response to a complaint against us -- so we</p> <p>5 don't get complaints in the volume we once did -- they</p> <p>6 will say and, by the way, the Clean Elections Act is</p> <p>7 unconstitutional for eight, nine, ten reasons or</p> <p>8 whatever they thought of.</p> <p>9 Now, you know, is that person then going to</p> <p>10 try to, you know, go -- you know, forward their</p> <p>11 response to the Attorney General and say, hey, we</p> <p>12 challenge the basis of the Clean Elections Act and now</p> <p>13 you have to come in here and decide this complaint? Is</p> <p>14 that possible under this language? It's not</p> <p>15 impossible. Do I think it's a great argument? No,</p> <p>16 but, you know, we live in a world where I think that</p> <p>17 things that people did not think were good arguments or</p> <p>18 plausible arguments or -- you know, my judgment of</p> <p>19 what's plausible and good and appropriate as a claim is</p> <p>20 probably not the same as, you know, somebody who's got</p> <p>21 a client who wants to, you know -- you know, avoid the</p> <p>22 regulatory scheme.</p> <p>23 So, you know, it's just -- that's a --</p> <p>24 that's just the most salient example, I mean, of</p> <p>25 something that we know comes up regularly in responses</p>		

10:08:26-10:09:29	Page 30	10:10:25-10:11:42	Page 32
<p>1 that this language and -- you know, could be used to</p> <p>2 try the leverage, and that then -- but that -- even</p> <p>3 that, you know, that would be a situation where we</p> <p>4 would have, you know, some real -- some potential real</p> <p>5 stuff, you know.</p> <p>6 I hope that example is salient to</p> <p>7 everybody.</p> <p>8 CHAIRWOMAN CHAN: I think it is.</p> <p>9 If there's no further question or comment,</p> <p>10 we don't need to take action on this.</p> <p>11 MR. COLLINS: Absolutely not.</p> <p>12 CHAIRWOMAN CHAN: Okay. In that case, I</p> <p>13 will move us ahead to Item VI, which is discussion and</p> <p>14 possible action on proposed meeting dates for August</p> <p>15 through November of 2021.</p> <p>16 You probably all noted that we're going to</p> <p>17 have to be flexible for November because we had some</p> <p>18 conflicts that prevented quorums on, I think, both</p> <p>19 dates that were presented, but if somebody -- if I</p> <p>20 could get someone to make a motion, we can -- well,</p> <p>21 unless there is any discussion.</p> <p>22 Is there any discussion on this item?</p> <p>23 (No response.)</p> <p>24 CHAIRWOMAN CHAN: Okay. If not, let's go</p> <p>25 ahead, and I'll entertain a motion to approve the</p>	<p>1 Executive Director compensation, and the Commission may</p> <p>2 vote to adjust the Executive Director's salary and may</p> <p>3 vote to discuss this matter in executive session</p> <p>4 pursuant to A.R.S. 38-431.03(A)(1). And with that,</p> <p>5 this is the time set for us to discuss Tom's</p> <p>6 compensation.</p> <p>7 Kara, I think you're going to go over the</p> <p>8 process for discussion, executive session and voting on</p> <p>9 this. Hopefully I'm not putting you too much on the</p> <p>10 spot.</p> <p>11 MS. KARLSON: Well, I mean, it's the</p> <p>12 typical procedure -- Chairman -- Chairwoman Chan,</p> <p>13 Commissioners, this is the typical procedure. To the</p> <p>14 extent that you want to discuss salary and performance,</p> <p>15 because it's a personnel matter, it's covered under the</p> <p>16 statutes and can be discussed in executive session.</p> <p>17 Mr. Collins has been notified of his right to call for</p> <p>18 it to be an open session if he wants to. I have not</p> <p>19 received any indication that he wanted it to be done in</p> <p>20 open session; otherwise, it can be done in closed</p> <p>21 session.</p> <p>22 So sorry to put you on the spot, Tom.</p> <p>23 CHAIRWOMAN CHAN: Thank you.</p> <p>24 MR. COLLINS: No, no, no. I mean,</p> <p>25 honestly, I'll be honest with you, I have no -- I</p>		
10:09:33-10:10:19	Page 31	10:11:46-10:12:53	Page 33
<p>1 proposed meeting dates for August through November</p> <p>2 2021.</p> <p>3 COMMISSIONER MEYER: Madam Chair?</p> <p>4 CHAIRWOMAN CHAN: Yes, Commissioner Meyer.</p> <p>5 COMMISSIONER MEYER: I move that we approve</p> <p>6 the meeting dates from August to December 2021</p> <p>7 identified in the materials today.</p> <p>8 CHAIRWOMAN CHAN: Thank you.</p> <p>9 Do I have a second?</p> <p>10 COMMISSIONER KIMBLE: Commissioner Kimble.</p> <p>11 Second.</p> <p>12 CHAIRWOMAN CHAN: Thank you.</p> <p>13 All right. I will call the roll.</p> <p>14 Commissioner Meyer, how do you vote?</p> <p>15 COMMISSIONER MEYER: Aye.</p> <p>16 CHAIRWOMAN CHAN: Commissioner Kimble?</p> <p>17 COMMISSIONER KIMBLE: Aye.</p> <p>18 CHAIRWOMAN CHAN: Commissioner Paton?</p> <p>19 COMMISSIONER PATON: Aye.</p> <p>20 CHAIRWOMAN CHAN: All right. And I vote</p> <p>21 aye, as well. By a vote of four to zero, we have</p> <p>22 approved the proposed meeting dates for August through</p> <p>23 December.</p> <p>24 And with that, we can move on to Agenda</p> <p>25 Item VII. This is discussion and possible action on</p>	<p>1 have -- I have no opinion about executive session or</p> <p>2 not executive session.</p> <p>3 CHAIRWOMAN CHAN: Okay.</p> <p>4 MR. COLLINS: I really -- my bigger -- I</p> <p>5 have a -- I have a technical question about in terms of</p> <p>6 the agenda item -- well, but I'll leave it to Kara to</p> <p>7 decide whether or not -- you know, what constitutes a</p> <p>8 discussion apropos compensation and if that's a</p> <p>9 limitation on what we can talk about, but I have</p> <p>10 nothing to -- I'm happy to -- I'm happy to answer</p> <p>11 questions and I'm happy to do that in open session. If</p> <p>12 I don't know the answer to a question that's key to any</p> <p>13 of your decisions, obviously, I'm happy to -- I'm happy</p> <p>14 to get that.</p> <p>15 And if we need to -- not if we need to make</p> <p>16 this -- if we have to, you know, table this or do this</p> <p>17 another time, that's all fine, too. So I'm at your</p> <p>18 disposal, really. My predisposition is to do it in</p> <p>19 open session only because we do a lot of stuff in open</p> <p>20 session.</p> <p>21 CHAIRWOMAN CHAN: I think personnel matters</p> <p>22 are good for executive session, frankly.</p> <p>23 MR. COLLINS: Okay. All right. And, then,</p> <p>24 really --</p> <p>25 CHAIRWOMAN CHAN: It's up to you.</p>		

10:12:54-10:13:53	Page 34	10:14:50-10:15:36	Page 36
<p>1 MR. COLLINS: I defer to --</p> <p>2 CHAIRWOMAN CHAN: You have the right to --</p> <p>3 MR. COLLINS: I have the right.</p> <p>4 CHAIRWOMAN CHAN: Yeah.</p> <p>5 MR. COLLINS: I have the right.</p> <p>6 CHAIRWOMAN CHAN: Yeah.</p> <p>7 MR. COLLINS: So if I were to -- all right.</p> <p>8 Well, let's go into executive session, then, because</p> <p>9 that way you can -- and, then, I guess, Kara can keep</p> <p>10 us monitored on if we get too far afield, right?</p> <p>11 MS. KARLSON: Yes.</p> <p>12 CHAIRWOMAN CHAN: Perfect.</p> <p>13 MR. COLLINS: Okay.</p> <p>14 CHAIRWOMAN CHAN: And, then, I'm going</p> <p>15 to -- I'll entertain a motion to go into executive</p> <p>16 session, but prior to that, I just want to make sure we</p> <p>17 communicate to Cathy Herring, who is our Zoom</p> <p>18 coordinator -- I hope that's the right title -- you</p> <p>19 know, which people go into the executive session with</p> <p>20 us. So maybe we can just make that clear. Before -- I</p> <p>21 remember there were some questions last time. So I</p> <p>22 know, obviously, all the commissioners and Kara,</p> <p>23 obviously, you know. I think, Tom and -- anyone else</p> <p>24 need to be there or -- I mean, the court reporter,</p> <p>25 obviously.</p>		<p>1 MS. KARLSON: -- but Kyle should also be --</p> <p>2 Kyle Cummings.</p> <p>3 CHAIRWOMAN CHAN: Oh, apologize.</p> <p>4 Mr. Cummings, of course. Thank you so much, Kara.</p> <p>5 This is exactly what I needed for Cathy's -- you know,</p> <p>6 to make sure Cathy knows who to let in.</p> <p>7 Okay. With that, unless Commissioners have</p> <p>8 questions for Kara, we can go ahead and I'll entertain</p> <p>9 a motion to go into executive session.</p> <p>10 COMMISSIONER KIMBLE: Madam Chair?</p> <p>11 CHAIRWOMAN CHAN: Commissioner Kimble.</p> <p>12 COMMISSIONER KIMBLE: I move we go into</p> <p>13 executive session for Item VII: Discussion and</p> <p>14 possible action on Executive Director compensation.</p> <p>15 CHAIRWOMAN CHAN: Thank you.</p> <p>16 Do I have a second?</p> <p>17 COMMISSIONER MEYER: Second.</p> <p>18 CHAIRWOMAN CHAN: Thank you. All right.</p> <p>19 And I have to call the roll, right, Kara, for this, or</p> <p>20 do we just -- okay.</p> <p>21 Commissioner Meyer, how do you vote?</p> <p>22 COMMISSIONER MEYER: Aye.</p> <p>23 CHAIRWOMAN CHAN: Commissioner Kimble?</p> <p>24 COMMISSIONER KIMBLE: Aye.</p> <p>25 CHAIRWOMAN CHAN: Commissioner Paton?</p>	
10:13:59-10:14:46	Page 35	10:15:37-10:41:22	Page 37
<p>1 MS. KARLSON: The court reporter.</p> <p>2 MR. COLLINS: Is Paula --</p> <p>3 CHAIRWOMAN CHAN: I was wondering if Paula</p> <p>4 could be there just to provide any historical context,</p> <p>5 but is that acceptable?</p> <p>6 MS. THOMAS: I'm happy to be there if you</p> <p>7 wish.</p> <p>8 CHAIRWOMAN CHAN: I would appreciate it.</p> <p>9 MS. THOMAS: Okay.</p> <p>10 COMMISSIONER MEYER: Do we need to log out</p> <p>11 or do we just stay right where we're at?</p> <p>12 CHAIRWOMAN CHAN: You're going to stay</p> <p>13 right where you're at, I think, and Cathy is going to</p> <p>14 take of everything for us.</p> <p>15 MS. HERRING: Yes. So those invited to</p> <p>16 executive session will receive an invite to join a</p> <p>17 breakout room, and there is no limit on the time of the</p> <p>18 breakout room. And participants are allowed to return</p> <p>19 to this main session at any time, and so -- and it will</p> <p>20 not be live streamed, but those staying in this meeting</p> <p>21 and not joining executive session, the live stream will</p> <p>22 continue.</p> <p>23 MS. KARLSON: And I'm sorry to interrupt,</p> <p>24 Commissioner Chan and Commissioners --</p> <p>25 CHAIRWOMAN CHAN: Sure.</p>		<p>1 COMMISSIONER PATON: Aye.</p> <p>2 CHAIRWOMAN CHAN: And I vote aye, as well.</p> <p>3 So by a vote of four to zero, we have voted to go into</p> <p>4 executive session on Item VII.</p> <p>5 Thank you.</p> <p>6 (The following section of the meeting is in</p> <p>7 executive session and bound under separate cover.)</p> <p>8 * * * * *</p> <p>9</p> <p>10 (End of executive session. Public meeting</p> <p>11 resumes at 10:41 a.m.)</p> <p>12 CHAIRWOMAN CHAN: I would like to entertain</p> <p>13 a motion to raise our Executive Director's</p> <p>14 compensation -- annual compensation to \$150,000 a year.</p> <p>15 COMMISSIONER MEYER: Madam Chair, this is</p> <p>16 Commissioner Meyer.</p> <p>17 CHAIRWOMAN CHAN: Commissioner Meyer?</p> <p>18 COMMISSIONER MEYER: So moved.</p> <p>19 CHAIRWOMAN CHAN: Thank you.</p> <p>20 Is there a second?</p> <p>21 COMMISSIONER KIMBLE: Commissioner Kimble,</p> <p>22 second.</p> <p>23 CHAIRWOMAN CHAN: Thank you, Commissioner</p> <p>24 Kimble.</p> <p>25 With that, I will call the roll.</p>	


10:41:25-10:42:20	Page 38	10:43:51-10:45:13	Page 40
<p>1 Commissioner Meyer, how do you vote?</p> <p>2 COMMISSIONER MEYER: Aye.</p> <p>3 CHAIRWOMAN CHAN: Okay. Commissioner</p> <p>4 Kimble?</p> <p>5 COMMISSIONER KIMBLE: Aye.</p> <p>6 CHAIRWOMAN CHAN: Commissioner Paton?</p> <p>7 COMMISSIONER PATON: Aye.</p> <p>8 CHAIRWOMAN CHAN: And I vote aye, as well.</p> <p>9 And by our votes of four ayes and zero nays, we have</p> <p>10 voted to raise our Executive Director's compensation to</p> <p>11 \$150,000 a year. Thank you very much.</p> <p>12 And with that, we can move on to public</p> <p>13 comment.</p> <p>14 This is the time for consideration of</p> <p>15 comments and suggestions from the public. Action taken</p> <p>16 as a result of public comment will be limited to</p> <p>17 directing staff to study the matter or rescheduling the</p> <p>18 matter for further consideration and decision at a</p> <p>19 later date or responding to criticism.</p> <p>20 Does any member of the public wish to make</p> <p>21 comments at this time? I do see that Rivko has her</p> <p>22 hand raised. Let me just comment or make the -- give</p> <p>23 out the information that you can also send comments to</p> <p>24 the Commission by mail or email at</p> <p>25 ccec@azcleelections.gov.</p>		<p>1 Thank you very much and have a good day.</p> <p>2 CHAIRWOMAN CHAN: Thank you so much, Rivko.</p> <p>3 Yeah, Gina, you know, coordinates all of</p> <p>4 our voter outreach, and the Morning Scoop sponsorship</p> <p>5 is part of that. And she did a fantastic job</p> <p>6 coordinating it. I was lucky enough to be on the panel</p> <p>7 this morning and just really enjoyed the discussion. I</p> <p>8 thought it was really wonderful, and it would have been</p> <p>9 nice, actually, to have Kelly Townsend there. She,</p> <p>10 unfortunately, had an emergency that prevented her from</p> <p>11 attending. It would have been a nice conversation,</p> <p>12 but -- the people who attended, as well, were very</p> <p>13 active with their questions, which was wonderful to see</p> <p>14 all the engagement. So I would encourage everybody who</p> <p>15 has an opportunity to attend more of those. Those are</p> <p>16 pretty nice events.</p> <p>17 So anybody else from the public have</p> <p>18 comments or -- let's see. Oh, we have a comment from</p> <p>19 Mary Ganapol. She wishes Townsend had sent a</p> <p>20 replacement. Maybe next time. I don't know. I guess</p> <p>21 if the nature of the emergency prevented it, I suppose,</p> <p>22 but -- okay. If there's no further comments or</p> <p>23 questions for the Commission, I will go ahead and move</p> <p>24 on to Item VII -- no, Item VIII. Sorry -- no, I</p> <p>25 apologize -- Item IX: Adjournment. We had a few more</p>	
10:42:25-10:43:50	Page 39	10:45:17-10:45:55	Page 41
<p>1 And with that, Rivko.</p> <p>2 MS. KNOX: Yeah. Thank you very much. I</p> <p>3 am not dressed for public view, and that's the great</p> <p>4 thing about Zoom is it allows me to speak, anyway.</p> <p>5 I just wanted to compliment the</p> <p>6 commissioners and Staff on hosting another very</p> <p>7 interesting morning Zoom -- morning Zoom -- yeah,</p> <p>8 Morning Scoop. What am I saying? I've got my Zooms</p> <p>9 mixed up -- Morning Scoop this morning, and it pointed</p> <p>10 out, more than almost anything else, how important</p> <p>11 voter education is going to be. We have no way of</p> <p>12 knowing, as was discussed this morning, how many of the</p> <p>13 voting changes will actually go into effect because of</p> <p>14 referendums that are being circulated, but there are</p> <p>15 already some changes that went into effect and</p> <p>16 certainly people will be hearing and reading and --</p> <p>17 et cetera -- about changes.</p> <p>18 And so I just want to commend you for</p> <p>19 hosting that. I hope you will do more of them, of</p> <p>20 election issues, which are continuing to move along.</p> <p>21 And, then, it just reiterates the tremendous importance</p> <p>22 of voter education and clarification that the Clean</p> <p>23 Elections Commission does, and that's all. That's all</p> <p>24 I wanted to say, but I feel it's important that that be</p> <p>25 said and be on the record.</p>		<p>1 items than usual today. So I will entertain a motion</p> <p>2 to adjourn at this time.</p> <p>3 COMMISSIONER MEYER: Madam Chair, I move we</p> <p>4 adjourn the meeting.</p> <p>5 CHAIRWOMAN CHAN: Thank you, Commissioner</p> <p>6 Meyer.</p> <p>7 COMMISSIONER KIMBLE: I second.</p> <p>8 Commissioner Kimble, second.</p> <p>9 CHAIRWOMAN CHAN: Thank you, Commissioner</p> <p>10 Kimble.</p> <p>11 With that, let me call the roll.</p> <p>12 Commissioner Meyer, how do you vote?</p> <p>13 COMMISSIONER MEYER: Aye.</p> <p>14 CHAIRWOMAN CHAN: Commissioner Kimble?</p> <p>15 COMMISSIONER KIMBLE: Aye.</p> <p>16 CHAIRWOMAN CHAN: Commissioner Paton?</p> <p>17 COMMISSIONER PATON: Aye.</p> <p>18 CHAIRWOMAN CHAN: All right. And I vote</p> <p>19 aye, as well. And by your votes of four to zero, we</p> <p>20 are adjourning the meeting. So the meeting is</p> <p>21 adjourned. We'll see you next time.</p> <p>22 Thank you, all.</p> <p>23 (Whereupon, the proceedings concluded at</p> <p>24 10:45 a.m.)</p> <p>25 ///</p>	

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 30th day of
17 July, 2021.

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19 LILIA MONARREZ, RPR, CR #50699
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**CITIZENS CLEAN ELECTIONS COMMISSION
EXECUTIVE DIRECTOR REPORT
October 29, 2021**

Announcements:

The next consolidated election day is November 2nd. Local elections are occurring in 10 counties across the state, including many school district elections. Voters can find details on the Commission's website.

Congratulations to Chairwoman Chan and Julian Arndt for completing Election Officer Certification Training!

Voter Education:

- Commissioner Titla, Avery and Gina attended the Secretary of State's Tribal Conference on September 29th. Gina participated in a panel discussion on the 2020 election cycle.
- Gina presented to the Junior League of Phoenix on October 26th.
- Gina presented to the Flinn-Brown fellows at the Arizona Center for Civic Leadership on October 29th about voting demographics, election administration and misinformation.
- The Commission's Civics Curriculum was launched during civics week, along with a Civics Storytelling Project. Chairwoman Chan read the Story of John Lewis.
- Gina participated in the SOS's statewide election security and communications meetings.
- The first part of the voter education video series launched on National Voter Registration Day – [How to Register to Vote](#). The remaining videos will cover early voting, voting at the polls, election security and official election information.
- Alec completed a restructuring of the Commission's website to improve user experience.
- Avery continues his partnership with the Mesa Community College's Civic Engagement Team by attending weekly meetings.
- Avery attended the monthly Arizona African American Legislative Committee meetings
- Avery meets monthly with the Secretary of State's Voter Outreach Advisory Council
- Avery continues to serve with Secretary of State's Youth Committee
- Avery meets monthly on the fourth Thursday with the Arizona Commission of African American Affairs.
- Avery met with Victoria Grijalva with One Arizona to discuss Arizona redistricting on August 16th.
- Avery attended the Arizona Disability Voter Coalition (AzDVC) Meeting prepare for the 2022 Election on August 17th.
- Avery met with Erik Cole, Director at the Design Studio for Community Solutions at ASU on August 18th.
- Gina, Alec and Avery attended the NASED Conference on August 10th and August 19th.
- Gina and Avery continue to serve on the Arizona Department of Education's CE2 committee.
- Avery attended Design Studio For Community Solutions staff meeting to present civic education resources to their committee on Aug 23rd.

- Gina and Avery met with the Arizona Independent Redistricting outreach team on August 26th.
- Gina and Avery met with The Arizona Center for Disability Law (ACDL) to discuss outreach for voters without a permanent address on August 27th.
- Avery met with Marie Chapple Camacho with the Arizona Independent Redistricting Commission to discuss outreach strategies on August 31st.
- Avery connected with the New Voters Club at Arizona State University, on September 10th, to discuss collaborations in the fall.
- On September 10th, Avery met with Alex Pena with the Arizona Independent Redistricting Commission and was updated on independent redistricting mapping process.
- Gina and Avery met with The Arizona Commission of the Deaf and Hard of Hearing (ACDHH) to discuss upcoming projects on September 15th.
- On September 16th, Avery collaborated with Deanna Villanueva-Saucedo with Maricopa Community Colleges and Dr. Brian Dille with Mesa Community College to present to students on the mechanics of voting for Constitution Week.
- On National Voter Registration Day, September 28th, Avery was a vendor on campus at Mesa Community College to provide voter information and voter registration.
- Avery presented to Mesa Community College students on October 6th, for Civic Action hour.
- Avery participated in the Opportunities for Youth (OFY) Educational Momentum Action Team Meeting on October 12th.
- Avery attended the initial partner meeting for Maryvale Youth Leadership Program on October 18th.
- On October 20th, Avery met with Kyrah Hughley with the Coalition of Black Organizations (COBO) and Kai Leigh Harriott with the Black Student Union at U of A to discuss outreach solutions and potential events in 2022.
- On October 28th, Avery was a vendor at an open house event at Linda Abril Educational Academy to inform parents and educators about Clean Elections resources and Civics curriculum.

Administration:

- The October 29th commission meeting will be the last meeting for our long-standing court reporter, Lilia Monarrez. Please join me in thanking Lilia for her outstanding service and job well done over the years. We wish Lilia the best in all her future endeavors!

Miscellaneous:

- **Outstanding legal matters**
 - Legacy Foundation Action Fund
 - Awaiting decision
 - Election cases involving Arizona including:
 - Audit related cases including public records rulings.
- **Appointments**
 - No additional information at this time

- **Enforcement**
 - MUR 20-04, Sloan, pending

Regulatory Agenda

We have one rule amendment items on this agenda.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)** **Rulemaking Action**
R2-20-101 Amend.
2. **Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute:

Implementing statute:
3. **The effective date of the rule:**
 - a. **If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

An immediate effective date is necessary to ensure the rules are made consistent with statute and court decisions as soon as possible during the qualifying period set forth in the Clean Elections Act.
 - b. **If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
4. **Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 27 A.A.R. 1334

Notice of Proposed Rulemaking: 27 A.A.R.1297
5. **The agency's contact person who can answer questions about the rulemaking:**

Name: Thomas M. Collins

Address: Arizona Citizens Clean Elections Commission
 1616 W. Adams, Suite 110
 Phoenix, AZ 85007

Telephone: (602) 364-3477

E-mail: ccec@azcleelections.gov

Web site: azcleelections.gov
6. **An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

This amendment clarifies that the terms for family members defined in A.R.S. 16-901 also applies to restrict the pool of potential family members who may provide early contributions to

participating candidates in the state's Clean Elections funding program. . In 2016 Ariz. Sess. Laws Ch. 79 (Senate Bill 1516 (2016)) the Legislature broadened the definitions of family members in Article 1, Chapter 6 of Title 16, Arizona Revised Statutes. The result of this is that the narrower definition in the Commission rules should be stricken as inconsistent with existing law. The Clean Elections Act uses this definition as a limitation on contributions while Title 16, Chapter 6, Article 1 uses it to expand contributions not subject to campaign contribution limits. Nevertheless, this seems to reflect the intent of the Court of Appeals in *Arizona Advocacy Network v. State*, 475 P.3d 1149 (Ariz. App. 2020), that the Legislature may reverse and alter certain definitions without "amending" the Clean Elections Act. This action seeks to amend the rule to clarify that the Clean Elections Rules definition of the term "family member" in the same terms that A.R.S § 16-901 seeks to define family contribution and that family member will have that meaning throughout the Clean Elections Rules.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. A summary of the economic, small business, and consumer impact:

The amendment seeks to resolve potential confusion between statutory definitions and preexisting rule definitions of the Commission. The impact on participating candidates and donors is to limit their ability to take or give contributions depending on the family relationship of the candidate and the donor. However, the overall impact will be to standardize definitions across candidates and other entities, which lowers compliance costs.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Not applicable.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Agency received no comments related to this docket.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

No.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None.

- 14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

- 15. The full text of the rules follows:**

(Editor's Note: Rule text begins per R1-1-502(B)(18).)

Doug Ducey
Governor

Thomas M. Collins
Executive Director



State of Arizona
Citizens Clean Elections Commission

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

MEMORANDUM

To: Governor's Regulatory Review Council

From: Thomas M. Collins

Date: 10.26.2021

Subject: Economic, Small Business and Consumer Impact Statement R2-20-101

1. An identification of the proposed rule making.

R2-20-101. Amended.

2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.

Candidates for state and legislative office are directly affected, as are individual donors who may be related to candidates who, under this rule, will be limited by this rule amendment.

Other entities making expenditures or contributions in state or legislative elections are indirectly effected insofar as their decisions consider participating candidate activities.

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

Agency probable costs: The agency does not anticipate any additional FTEs, nor additional costs. The agency's view is that this rule change is a necessary to align the Commission's rule with state statute and court rulings and not one that can or will increase any agency cost.

Agency probable benefits: The rule amendment is intended to ensure consistency across legal definitions where required by state law. This reinforces the statutory change and may provide a benefit by eliminating a definition that can cause confusion and increase compliance costs.

No other agency is directly affected.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

No political subdivision of this state is directly affected by the implementation and enforcement of this amended rule.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

Because this rule amendment ensures clarity of definitions, any business directly affected will benefit and incur no costs from the change. The benefit arises directly from the amendment, which can reduce compliance costs.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

The agency did and does not anticipate any impact on private or public employment in any of the directly affected communities.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

To the best of the agency's knowledge no small businesses are subject to its amended rule.

(b) The administrative and other costs required for compliance with the proposed rule making.

If there was a small business impact, it would be an decrease in compliance costs as indicated above.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

The agency would be open to any of the methods prescribed in section 41-1035. However, any anticipated impact is de minimis.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

There is a probable cost to participating candidates, as well as donors too those candidates. On the other hand, the amendment ensures there is no conflict in the application of the extant statute to those individuals.

6. A statement of the probable effect on state revenues.

This rule amendment does not have a probable impact on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The amendment proposes the least intrusive, least burdensome and least costly way of achieving the statute and rules goals based on the assessment that amending the rule to ensure the statute's application to affected parties is necessary.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable.

Not applicable.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

The Commission amended this rule as a result of the passage of legislation in 2016 and a 2020 recent court of appeals decision.

Thomas M. Collins
Executive Director



**State of Arizona
Citizens Clean Elections Commission**

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

September 17, 2021
Dr. Bob Branch
The Power of Fives, LLC.
C/O William Fischbach
Tiffany & Bosco
Camelback Esplanade II
Seventh Floor
2525 East Camelback Road
Phoenix, Arizona 85016-9240

Via Electronic Mail and U.S. Mail

Dear Dr. Branch:

This letter serves as an internally-generated complaint against you by the Executive Director of the Arizona Citizens Clean Elections Commission. Ariz. Admin. Code R2-20-207.

Complaint

As you know, on October 23, 2020, you, as the managing member of The Power of Fives, LLC, submitted a complaint against Eric Sloan, a candidate for Corporation Commissioner. The Commission found Reason to Believe that a violation exists against Mr. Sloan, and we pursued an investigation against Mr. Sloan. Around the same time, you pursued an action in arbitration against Mr. Sloan and his wife, to collect the monies allegedly owed to the Power of Fives, LLC pursuant to the contract. Your complaint and the facts as they have been developed through the investigation of Mr. Sloan has provided evidence that you may have violated a number of provisions of the Clean Elections Act and Rules. *See* A.R.S. § 19-957(A) (providing the Commission the authority to determine if “a person has violated any provision of this article”).

I. Relevant Facts

The Power of Fives (“TPOF”) is an Arizona limited liability company, formed by Dr. Bob Branch in 2019 to “identify and support conservative candidates to run for public

office in Arizona.” Ex. 1, TPOF Post-Hearing Stmt. at 2. “TPOF ran 22 clean elections candidates throughout Arizona for the 2020 election cycle.” *Id.* When TPOF recruited a candidate, the candidate and TPOF executed a service agreement. “All of TPOF’s candidates signed an identical agreement.” *Id.*

A. The Sloan Campaign, September 2019-July 2020

In August of 2019, Eric Sloan (the “Candidate”) and TPOF “entered into an agreement where The Power of Fives, for the sum of \$116,016 for the Primary Elections (*sic*) would provide Mr. Sloan with a complete turnkey campaign[.]” Ex. 2, Sloan Complaint at 1. This agreement purports to have been committed to writing and signed by both the Candidate and Dr. Bob Branch as the Manager of TPOF on January 1, 2020. Ex. 3, TPOF Service Agreement at 1, 6. Despite the fact that the parties had not entered into a written agreement for services, Dr. Branch asserted that:

The Power of Fives LLC’s expenditures for Sloan began in September of 2019, when Mr. Sloan requested that The Power of Fives LLC start buying nomination petition signatures . . . [and] hire campaign support staff for his Primary campaign. Additionally, The Power of Fives LLC started holding joint campaign functions for Mr. Sloan’s campaign. Ex. 2 at 1.

While the Service Agreement between TPOF and Sloan was not signed until January 1, 2020, TPOF agreed to hire the Sloan Lyons Public Affairs LLC to provide “business consulting services to the CLIENT.” Ex. 4, Sloan Lyons Agreement at 1. In his October 2020 complaint, Dr. Branch stated that:

Mr. Sloan asked The Power of Fives LLC to hire him. He asked for a job, but that would be problematic since he was one of The Power of Fives LLC’s candidates. Mr. Sloan then asked that we hire his wife’s company; (*sic*) “Sloan Lyons Public Affairs LLC” and that we pay Sloan Lyons Public Affairs LLC \$4,000/month; The Power of Fives LLC agreed and hired Sloan Lyons Public Affairs LLC. Ex. 2 at 2.

However, the statement that TPOF would not hire Mr. Sloan conflicts with a statement made by TPOF on February 16, 2021, which states that both “Sloan and his wife Alyssa Sloan Lyons had been working as ‘consultants’ for TPOF” and that “Sloan signed up other TPOF candidates to the agreement . . . and even prepared a PowerPoint slideshow on clean elections law.” Ex. 1 at 4. The agreement with the Sloan Lyons LLC was eventually suspended, and based on the record has not resumed. *Id.* at 4-5.

On at least one occasion, Dr. Branch directly solicited \$5 contributions for at least one candidate, Mr. Sloan. Ex. 5, Email from Bob Branch, “Rep. Candidates in the Arizona Corp Comm race needs your help ASAP” (June 18, 2020). On Thursday, June 18, 2020, Dr.

Branch sent an email to the Arizona State Republican Delegates. Dr. Branch said that as “a State Delegate, you are a leader in the Republican Party; and, we are counting on your leadership abilities.” *Id.* He goes on to explain that there are three open seats for the Arizona Corporation Commission, that Eric Sloan is on the ballot and will win his primary election, but that Eric Sloan is “not yet funded. You cannot run a campaign when not funded.” *Id.* Dr. Branch goes on:

We must get [Eric Sloan and Lea Marquez Peterson] funded. So, I am asking that if you have not already done so, please go to the Secretary of State’s website and contribute to them. . . . Remember that your individual \$5 contribution, less than a cup of coffee, will give the candidate over \$193 in funding for this election cycle. . . . There is Power in those \$5 bills. . . Fill out your voter information, and give a \$5 contribution to each of the three candidates: Eric Sloan . . .

Id.

Mr. Sloan qualified for funding on July 17, 2020, after surviving a challenge to remove him from the ballot and pursuing challenges to remove rival candidates. In the Sloan Complaint, Dr. Branch alleges Mr. Sloan informed him that Mr. Sloan’s nomination petitions had been challenged and that Mr. Sloan was planning on challenging the petitions of his competitors: Boyd Dunn, David Farnsworth, and Kim Owens. Ex. 2 at 2. Dr. Branch alleges this challenge strategy was communicated by Mr. Sloan to Dr. Branch in April after Mr. Sloan was certified as eligible for the ballot. “At that time, [TPOF] made no agreement to pay for those challenges, and [TPOF] made no agreement to defend Mr. Sloan’s own signatures. Simply put, legal services were not services to be provided for in the contractual agreement between Sloan and [TPOF.]” *Id.* Dr. Branch alleges that it was not until May 20, 2020, that Mr. Sloan asked TPOF to advance him \$23,000 in legal fees that had accrued in April.

These statements, however, differ from other statements made by Dr. Branch and contemporaneous documents. For example, the engagement agreement between Mr. LaSota and Dr. Branch—which identifies Dr. Branch as the “Client”—indicates it will be paid by Mr. Sloan, and was signed and dated by Dr. Branch on April 16, 2020. Ex. 6, LaSota engagement agreement. Ultimately, Mr. Sloan survived the challenge, his competitors were removed from the ballot, and he won his primary election.

Around this time, the relationship between Mr. Sloan and Dr. Branch was souring. Mr. Sloan’s wife demanded an invoice from TPOF that included only “the time and effort Power of Fives has already expended to date” and “not include[ing] budget items for the remainder of the primary period.” Ex. 1 at 5. Dr. Branch takes the position that “there was

no basis for such a demand, as the Agreement called for a fixed fee of \$116,016.00 for Phase I and Phase II, regardless of what was spent by TPOF.” *Id.* On July 25, 2020, before the primary election had taken place, “Branch emailed Sloan the invoice for Phase III—the general election—noting it was due 10 days after receipt of general election funding.” *Id.* at 6. However, the Service Agreement provides that the invoices for Phase II and III shall be tendered after “the completion of some or all of the Services set forth in a respective payment period,” and then the candidate has thirty days from the receipt of the invoice in which to pay. Ex. 3 at 1. Following the submission of the invoice, Mr. Sloan tendered checks for less than the full primary allotment. Dr. Branch did not accept the partial payments, and instead filed the Sloan Complaint with the Commission and brought a claim for arbitration, in which he was awarded \$116,016 and attorney’s fees and costs.

B. The TPOF Service Agreement

TPOF’s Service Agreement is between the LLC and a candidate. TPOF asserts that it is an independent contractor that will provide the services “described in in Exhibit A,” which is discussed below. Ex. 3 at 1, ¶ 1. The Service Agreement further states that TPOF:

Represents that the Company has the special skill, professional competence, expertise and experience to undertake the obligations imposed by this Agreement, and will perform the Services in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the Company’s profession and in compliance with all applicable laws.

Id. Additionally, TPOF acknowledges it owes a duty to “act in the best interests of the Candidate.” *Id.* During the term of the Service Agreement, the candidate “will not engage any other consultant or contractor that provides services that are competitive to the Services provided by the Company.” *Id.*

The Service Agreement breaks a campaign into three phases. Phase I is dubbed the “prefunding” phase and purports to entitle TPOF to 40% of the total primary election allocation. Ex. 3 at 7. Phase II is the “funded primary” phase, beginning after the candidate qualifies for funding and lasting to the primary election, purports to entitle TPOF to the remainder of the primary election allocation. *Id.* Finally, Phase III, or the “funded general election” phase, begins after the candidate wins the primary election and ends upon the general election, and allegedly entitles TPOF to 100% of the general election allocation. *Id.* Pursuant to the Service Agreement, TPOF would invoice the candidate for Phase I within ten days of the Service Agreement’s execution. *Id.* at 1. Payment for services provided in the “prefunding” phase, before the candidate has qualified for or received any funds from the Commission, are due “within thirty (30) days of the earlier of: (a) the termination of this Agreement, or (b) once the Candidate qualifies for public financing for the Primary

Election.” *Id.* Conversely, TPOF could provide an invoice for the services in Phase II or III “following the completion of some or all of the Services.” *Id.*

The Service Agreement could be terminated in four ways. Either party could give written notice to terminate for any reason, and the agreement would terminate thirty days later. Ex. 3 at 2, ¶ 4. Mutual written agreement would terminate the Service Agreement immediately. *Id.* The Service Agreement would also terminate at the beginning of Phase II if the candidate fails to qualify for public funding, and the beginning of Phase III if the candidate “does not win his or her Primary Election.” *Id.* at 7 (labeled “Exhibit A”) (identifying in the Notes to Phase II and Phase III that the agreement terminates immediately if the prerequisite to begin that phase is not satisfied). Regardless of the manner of termination, “the Candidate shall pay the Company all amounts previously invoiced and/or incurred by the Company in connection with the Services.” *Id.* at 2.

II. Legal Arguments

The Commission has legal authority to investigate and prosecute violations of both Article 1 and Article 2 of Chapter 6, which are the statutes that govern campaign finance in Arizona. A.R.S. §§ 16-941(D), -947(B)(2), -957(A)(7); *Ariz. Advocacy Network Found. v. State*, 250 Ariz. 109, ¶¶53-56 (App. 2020). We have reason to believe, based on the facts presently before us, that the following violations of campaign finance law have occurred. Additional facts may require amendments or supplements to this Complaint.

A. Title 16, Chapter 6, Article 1

Based upon the facts provided herein, it appears that TPOF is operating as a political action committee and has failed to register as required by Arizona law. “An entity *shall* register as a political action committee” if it is “organized for the primary purpose of influencing the result of an election” and “knowingly receives contributions or makes expenditures, in any combination, of at least one thousand dollars in connection with any election in a calendar year.” A.R.S. § 16-905(C) (emphasis added). An LLC, like TPOF, is an “entity” for the purposes of political action committee registration. A.R.S. § 16-901(22). There is no record that TPOF registered as a political action committee.

Furthermore, an LLC like TPOF is prohibited from making a contribution to a candidate committee. A.R.S. § 16-916(A). “Contribution” is defined as “any money, advance, deposit or other thing of value that is made to a person for the purpose of influencing an election.” A.R.S. § 16-901(11). It appears that TPOF provided an advance or other thing of value of at least \$116,016 to the Sloan campaign in the form of the various services outlined above. Additionally, to the extent identical agreements were made with

twenty-two other candidates, additional undisclosed and/or excess contributions may have been made.

If TPOF argues it was not making a contribution to the campaign because it intended to collect payment from Mr. Sloan for TPOF's services, it was likely making an unreported expenditure. Expenditures by committees must be accounted for. *See, e.g.*, A.R.S. § 16-926(B)(3)(o), Ariz. Admin. Code R2-20-109(B)(3). An expenditure is "any purchase, payment or other thing of value that is made by a person for the purpose of influencing an election." A.R.S. § 16-901(25). "Person" includes an "individual, candidate, [or] limited liability company." A.R.S. § 16-901(39). The provision of services contemplated by TPOF's Service Agreement and Exhibit A are not exempt from the definition of expenditure, A.R.S. § 16-921, and were required to be reported. Additionally, the categories of expenses provided on TPOF's invoice are too broad to provide the meaningful transparency required by Arizona law. *E.g.*, A.R.S. § 16-948(C), -956(A)(7), Ariz. Admin. Code R2-20-101(7), R2-20-104(C), (D)

B. Title 16, Chapter 6, Article 2

The Commission is empowered to enforce the provisions of Article 2 if it finds that "there is reason to believe that a person has violated any provision of this article." A.R.S. § 16-957(A). A "person" includes a limited liability company, like TPOF. A.R.S. § 16-901(39); Ariz. Admin. Code R2-20-101(21). Furthermore, a "candidate" includes not only the candidate themselves, but also "any agents or personnel" authorized to act on the candidate's behalf. Ariz. Admin. Code R2-20-101(4). The Commission therefore has the authority to proceed to an enforcement action against Dr. Branch and TPOF because, as demonstrated by the Service Agreement, they are both "persons" authorized to conduct business on a candidate's behalf. Civil penalties for violating contribution and expenditure limits in A.R.S. § 16-941, and the reporting requirements for candidates, apply to their agents as well. A.R.S. § 16-942(A), (B) (providing that penalties may be assessed against a candidate or a person acting on their behalf).

Based on the facts provided, TPOF's terms of service violate the Clean Elections Act and Rules. Specifically, participating candidates "shall not incur debt, or make an expenditure in excess of the amount of cash on hand" prior to qualifying for funding from the Commission. Ariz. Admin. Code R2-20-104(D)(6). Once a candidate qualifies for funding, that candidate may "incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit." *Id.* "[A] candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services." Ariz. Admin. Code R2-20-110(A)(5).

Dr. Branch and TPOF acknowledge in the complaint against Mr. Sloan that expenses were incurred for the Sloan campaign in 2019, long before the campaign qualified for funding. The Service Agreement was dated January 1, 2020, but “[t]he Power of Fives LLC’s expenditures for Sloan began in September of 2019, when Mr. Sloan requested that The Power of Fives LLC start buying nomination petition signatures . . . [and] hire campaign support staff for his Primary campaign. Additionally, The Power of Fives LLC started holding joint campaign functions for Mr. Sloan’s campaign.” Ex. 2 at 1. However, Mr. Sloan’s campaign did not qualify and obtain the funding required to pay the Service Agreement until July 17, 2020. In other words, the TPOF Service Agreement contemplated the expenditure of campaign funds long before they were in the candidate’s account, in violation of the Clean Elections Act and Rules. And because TPOF claims it used identical Service Agreements for all of its candidates, it is very likely that this violation occurred repeatedly.

Exhibit A to the Service Agreement states “At no time will [TPOF] spend more than the total Candidate’s clean elections funding allotment for any phase.” Ex. 3 at 7. However, given the financing of the litigation as represented by Dr. Branch in his October 2020 Complaint, this appears to be inaccurate. TPOF claims it “made no agreement to pay” for court challenges to the signatures of Mr. Sloan’s competitors. Ex. 2 at 2. Additionally, TPOF claims it “made no agreement to defend Mr. Sloan’s own signatures” and that “legal services were not services to be provided for in the contractual agreement.” *Id.* Despite this position, Dr. Branch paid \$23,000 for legal services for Mr. Sloan, while alleging that he was entitled to 100% of Mr. Sloan’s primary election allotment. *See id.* (“Mr. Sloan signed a contract with [TPOF] and agreed to pay \$116,016 to [TPOF] for his 2020 Primary race.”). In short, the facts appear to demonstrate that Dr. Branch, in his personal capacity, knowingly incurred debt on behalf of a clean elections candidate in excess of the spending limits.

TPOF’s invoicing and accounting system makes compliance with the Clean Elections Act impossible. Participating candidates are required to maintain their records of accounts and transactions in a specific, transparent manner as required by state law applicable to candidate committees and Ariz. Admin. Code R2-20-115. *See also* A.R.S. § 16-942(B), (C). For example, the Primary Election Invoice provided in the Sloan Complaint indicates \$45,235.92 was spent for “candidate field support.” Ex. 7, Primary Election Invoice at 1. However, there is no additional information that would enable a person to understand how that \$45,000 was spent. *See, e.g.,* Ariz. Admin. Code R2-20-110(A)(1) (requiring that “[e]xpenditures for consulting advising, or other such services to a candidate shall include a detailed description of what is included in the service.”). Additionally, while Dr. Branch indicates TPOF paid for signatures and campaign staff for

Sloan beginning in September 2019, Ex. 2 at 1, there is not a corresponding line on the invoice for either signatures or staff, *see generally* Ex. 7.

Even if TPOF and Dr. Branch argue that they were not acting on behalf of Mr. Sloan, the above-stated facts demonstrate that TPOF and Dr. Branch were still required to file reports with the Secretary of State. Specifically, “any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle . . . shall file reports with the secretary of state” as an independent expenditure. A.R.S. § 16-941(D). An independent expenditure is “an expenditure by a person, other than a candidate committee,” which expressly advocates for or against a candidate and was not done in consultation with or at the suggestion of the candidate. A.R.S. § 16-901(31). No such reports were filed.

Additionally, Dr. Branch violated A.R.S. § 16-946(B)(4) when he sent a targeted email solicitation for \$5 contributions on behalf of Mr. Sloan, while Dr. Branch was employed as Mr. Sloan’s campaign consultant. The email was targeted to state Republican Committeemen, exactly the people who are most likely to contribute to the campaign of a Republican candidate. The language of the email was a clear solicitation for \$5 contributions: “Please go to: <https://apps.azsos.gov/apps/election/eps/qc/> Fill out your voter information, and give a \$5 contribution to . . . Eric Sloan.” This email was sent on June 18, 2020, during the time period the Service Agreement was active. State law prohibits soliciting qualifying contribution by a person “employed or retained by the candidate.” A.R.S. § 16-946(B)(4). Furthermore, this email and any other solicitation during the period of the Service Agreement would be an “expense[] associated with obtaining the qualifying contributions” that must be reported. Ariz. Admin. Code R2-20-105(B)

Opportunity for Response

Commission rules require notification to be given to the Respondent of a Complaint. Ariz. Admin. Code R2-20-204(A). Additionally, the rules provide that you be advised of Commission compliance procedures. *Id.* Those procedures are set forth in Article 2 of the Commission’s Rules (Ariz. Admin. Code. R2-20-201 to R2-20-228) as well as the Clean Elections Act (A.R.S. §§ 16-940 to 16-961), which are available at <https://storage.googleapis.com/core.usgovcloudapi.net/public/docs/554-ACRulesManual-2020.pdf>.

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

205(C). Generally, for the purposes of the Commission's "reason to believe" finding, a failure to respond to a complaint within five days may be viewed as an admission to the allegations. *Id.*

The issuance of this notice and Complaint do not constitute a finding related to the Complaint. A finding, if any, may be made only after the Commission has reviewed the matter. *See* Ariz. Admin. Code R2-20-215(A). Additionally, it is recommended that you seek legal counsel, as the Commission and its staff cannot provide legal advice. Because you have retained counsel in the arbitration matter that concerning the same general facts, we have copied your attorney in that matter, William Fischbach, out of an abundance of caution and to expedite matters if you ultimately choose him to represent you in this matter.

Please contact us if you have any questions at (602) 364-3477 or by email at ccec@azcleelections.gov.

Sincerely,

Thomas M. Collins

Thomas M. Collins,
Executive Director
Arizona Clean Elections Commission

cc: William Fischbach, Tiffany and Bosco by email at wmf@tblaw.com;
Ryan Hogan, Tiffany and Bosco by email at rph@tblaw.com;
Kara Karlson, Arizona Attorney General's Office at Kara.Karlson@azag.gov; and
Kyle Cummings, Arizona Attorney General's Office at Kyle.Cummings@azag.gov

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

MUR 21-01

The Power of Fives, LLC (TPOF)

STATEMENT OF REASONS OF THE EXECUTIVE DIRECTOR

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

Background

On August 10, 2020, participating candidate Eric Sloan (Sloan), a candidate for Arizona Corporation Commission, notified Clean Elections Commission staff of a dispute between the Sloan campaign and a vendor of the Sloan Campaign, a Limited Liability Company called The Power of Fives. See A.R.S. § 16-953(C)(providing procedures in the event of a vendor dispute.). In a letter dated October 23, 2020, Dr. Bob Branch (Branch or Complainant), the managing member of TPOF, filed a complaint with the Commission alleging failure to report expenditures, exceeding the primary spending cap and other issues. The Commission determined in December 2020 that there was reason to believe a violation had occurred. In April the Commission ordered Sloan to provide about \$90,000 in repayment to the Clean Elections Fund, which Sloan promptly did. That investigation, while ongoing, gave rise to the Staff Complaint here.

The Power of Fives is an Arizona limited liability company created in 2019. The purpose of TPOF is “identifying and supporting candidates to run for public office” and it provides a “turnkey” or ready-made campaign to candidates with whom it “partners.” The Power of Fives LLC v. Ariz. Citizens Clean Elections Comm’n. Et al., First Amended Complaint, Arizona Superior Court for Maricopa County, CV2021-15826, DKT 10/26/2021; but

see A.R.S. 16-901(3) (defining agent as “any person who has actual authority, either express or implied, to represent or make decisions on behalf of another person.”).

Sloan and TPOF entered a Service Agreement. Complaint at 4-5. The Service Agreement breaks a campaign into three phases. Phase I is dubbed the “prefunding” phase and purports to entitle TPOF to 40% of the total primary election allocation. *Id.* Phase II is the “funded primary” phase, beginning after the candidate qualifies for funding and lasting to the primary election, purports to entitle TPOF to the remainder of the primary election allocation. *Id.* Finally, Phase III, or the “funded general election” phase, begins after the candidate wins the primary election and ends upon the general election, and allegedly entitles TPOF to 100% of the general election allocation. *Id.* Pursuant to the Service Agreement, TPOF would invoice the candidate for Phase I within ten days of the Service Agreement’s execution. *Id.* Payment for services provided in the “prefunding” phase, before the candidate has qualified for or received any funds from the Commission, are due “within thirty (30) days of the earlier of: (a) the termination of this Agreement, or (b) once the Candidate qualifies for public financing for the Primary 5 Election.” *Id.* Conversely, TPOF could provide an invoice for the services in Phase II or III “following the completion of some or all of the Services.” *Id.*

The Service Agreement could be terminated in four ways. Either party could give written notice to terminate for any reason, and the agreement would terminate thirty days later. Mutual written agreement would terminate the Service Agreement immediately. *Id.* The Service Agreement would also terminate at the beginning of Phase II if the candidate fails to qualify for public funding, and the beginning of Phase III if the candidate “does not win his or her Primary Election.” *Id.* Regardless of the manner of termination, “the Candidate shall pay the Company all amounts previously invoiced and/or incurred by the Company in connection with the Services.” *Id.*

Analysis

The Commission is vested with broad jurisdiction to investigate campaign finance matters including TPOF’s activity in 2020.

State law requires entities formed for the purposes of influencing elections and raising and spending a little more than \$1,000 on elections and are not federally recognized non-profits to register with the State and file periodic

reports. *E.g.*, A.R.S. § 16-905. TPOF admits its purpose is to identify and support candidates for office in Arizona, in other words, it was formed to influence the results of elections. See *The Power of Fives First Amended Complaint*. Nor is there a serious question the entity spent and raised more than the threshold to register.

TPOF argues in its response that the Complaint is functionally the same as blaming a law firm on its clients. This is a poor analogy as law firms are not created to identify and support candidates, nor may law firms themselves finance political campaigns and obscure the source of financial support. The services contemplated by TPOF's Service Agreement are not exempt from the definitions of either expenditure or contribution and were therefore likely *required* to be reported. Further, the categories of expenses provided on TPOF's invoice are too broad to provide the meaningful transparency required by Arizona law. *E.g.*, A.R.S. § 16-948(C), -956(A)(7), Ariz. Admin. Code R2-20-101(7), R2-20-104(C), (D). See Complaint at 5-8. The fact that TPOF acted in apparent violation on prohibitions on LLC direct participation in candidate campaigns exacerbates the issue. See Complaint at 5.

In its response, TPOF asserts that, contrary to the plain meaning of the Act and the reported decisions regarding it, the Commission has no jurisdiction over questions arising in relation to Article 1 of Chapter 6 of Title 16. The voters who passed the Clean Elections Act wanted to limit the Commission's efforts to determine whether candidates and their partners and agents participated in the Clean Funding Program legally, the Response explains. TPOF Response (10/13/2021). However, what the Response does is confuse a heading in the Complaint for its analysis.

"Under the [Clean Elections] Act's express language, the Commission has broad enforcement authority," and its "duties and powers include investigating potential violations of articles 1 through 1.7 to the extent they would identify a violation of the Act—violations the Commission alone is empowered to enforce" including failure to file reports. *Ariz. Advocacy Network v. State*, 250 Ariz. 109 (App. 2020). What the court calls "exclusive" remedies that Commission enforces apply to filings throughout Chapter 6, not only to Article 2. See, *e.g.*, A.R.S. § 16-942 (providing penalties for reporting violations throughout the entire chapter). Consequently, the enforcement of the Act includes those terms within it—both Article 1 and Article 2. There is reason to believe that TPOF may have violated reporting requirements imposed upon it by Chapter 6.

There is reason to believe TPOF's financial involvement with the Sloan campaign was reportable under multiple theories.

As detailed in the Complaint, commission rules preclude participating candidates from taking on debt in an amount greater than their cash on hand and the date the charge is incurred is the date of the promise. Ariz. Admin. Code R2-20-104(D)(6); *id.* at R2-20-110(A)(5)

TPOF argues that the Commission's rules do not preclude a contract where payment is conditioned on a successful application for Clean Elections funding because no obligation to pay for goods or services has arisen. However, this not a defense. Instead TPOF admits that it provided services for later payment. In other words, it extended a loan to finance the services provided and Sloan incurred those charges.

Nor could TPOF finance Mr. Sloan's legal expenses via an extension of the financing terms included in the service agreement. While Sloan's receipt of the value of legal services may not have been an expenditure by TPOF, see A.R.S. § 16-921, nothing in the statute allows TPOF to make a loan for that value. As noted above, loans are contributions to the candidate. A.R.S. 16-901(11)(d) (contribution includes "A loan that is made to a committee for the purpose of influencing an election, to the extent the loan remains outstanding."). Accordingly, there remains reason to believe that a violation may have occurred regarding the legal fees associated with TPOF's services.

Alternatively, if TPOF spent independently of Sloan on certain items, the LLC was still required to file reports with the Secretary of State. Specifically, "any person who makes independent expenditures related to a particular office cumulatively . . . in an election cycle . . . shall file reports with the secretary of state" as an independent expenditure. A.R.S. § 16-941(D). An independent expenditure is "an expenditure by a person, other than a candidate committee," which expressly advocates for or against a candidate and was not done in consultation with or at the suggestion of the candidate. A.R.S. § 16-901(31); see *also* A.R.S. § 16-901.01. No such reports were filed.

TPOF's solicitation of qualifying contributions under the Clean Elections Act under the service agreement was not legal.

TPOF sent an email soliciting qualifying contributions during the Service Agreement. TPOF claims that any issue with that email relates to the results of the email—the qualifying contributions received. Not so. The issue is that Dr. Branch solicited them for payment by Mr. Sloan. There is no dispute on this point. Consequently, there is reason to believe a violation may have occurred.

Conclusion

Based on the Complaint, the Response, and the analysis above, the Executive Director recommends the commission determine reason to believe violations of the Clean Elections Act and Rules may have occurred.

If the Commission determines by an affirmative vote of at least three of its members that it has reason to believe TPOF has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify Respondent of the Commission's finding setting forth: (i) the sections of the statute or rule alleged to have been violated; (ii) the alleged factual basis supporting the finding; and (iii) an order requiring compliance within fourteen (14) days. During that period, the Respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission. A.R.S. § 16-957(A) & Ariz. Admin. Code R2-20-208(A).

If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, the Commission shall conduct an investigation. Ariz. Admin. Code R2-20-209(A). The staff seeks authorization for the Executive Director or the Commission's attorneys to subpoena all the Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit, and require persons with information to sit for depositions or other sworn testimony.

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 unless good cause of reduction is shown. A.R.S. § 16-957(B).

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

Dated this 27th day of October, 2021

By: S/Thomas M. Collins, Executive Director

Timothy A. La Sota, PLLC

2198 East Camelback, Suite 305

Phoenix, Arizona 85016

P 602-515-2649

tim@timlasota.com

October 13, 2021

Via email to:

Thomas M. Collins
Executive Director
Citizens Clean Elections Commission
1616 West Adams Street, Suite 110
Phoenix, Arizona 85007

Re: Complaint against The Power of Fives, LLC

Dear Mr. Collins:

This firm represents The Power of Fives, LLC and Dr. Bob Branch. This letter serves as my clients' formal response to your "internally-generated complaint" against them, pursuant to Arizona Administrative Code R2-20-205(A).

Your complaint contains a number of legal and factual errors. For the reasons stated below, this matter should proceed no further.

A. ALLEGATIONS BASED ON TITLE 16, CHAPTER 6, ARTICLE 1

As an initial matter, the Citizens Clean Elections Commission's enforcement powers stem from Title 16, Chapter 6, Article 2, **not** Title 16, Chapter 6, Article 1. That is, whatever enforcement authority you have stems from Article 2. The CCEC does not have general enforcement authority over Article 1. For statewide candidates, such complaints are filed with the Secretary of State, who decides whether there is reasonable cause to believe a violation has occurred. Arizona Revised Statutes § 16-938. If the Secretary of State finds reasonable cause, the matter proceeds to the Attorney General for enforcement. *Id.*

It is true that the Arizona Court of Appeals did find A.R.S. § 16-938 unconstitutional to the extent it "to the extent it limits the Commission's investigative authority under the [Citizens Clean Elections] Act." *Arizona Advocacy Network Foundation v. State*, 475 P.3d 1149, 1160 (App. 2020). But the Court of Appeals also made clear that your enforcement

authority is only derived through Article 2. *Id.* at 1160 (“The Act obligates the Commission to ‘[e]nforce *this article*’—article 2.”)(emphasis in original). The Court goes on to describe, in particularity, the extent of your regulatory authority:

The Act also imposes reporting obligations on “any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle.” See A.R.S. § 16-941.D (emphasis added). The Commission is charged with enforcing this provision, which includes investigating alleged violations by reviewing any campaign-finance reports the entity may have filed under articles 1 through 1.7—for example, as a “political action committee.

Id.

Simply put, you have no legal authority to require The Power of Fives, LLC to register as a political action committee, even if you were correct in your assertion that The Power of Fives, LLC is a political action committee. Similarly, you have no enforcement authority with regard to an alleged violation of A.R.S. § 16-916, the statute prohibiting direct contributions from corporations and limited liability companies to candidates.

As it is, The Power of Fives is no more a political action committee than is this law firm. It is a company that provides services to candidates and potential candidates. The services it provides are not independent expenditures. Under Arizona law, “[a]n entity shall register as a political action committee if...[t]he entity is organized for the primary purpose of influencing the result of an election.” A.R.S. § 16-905(C). Like other entities that provide services to candidates, including this law firm, The Power of Fives, LLC is organized for the primary purpose of making money. It is simply not a political committee.

B. ALLEGATIONS BASED ON ARTICLE 2

1. THE CCEC LACKS JURISDICTION OVER MUCH OF THE ALLEGED VIOLATIVE CONDUCT

As a threshold matter, my clients disagree with your threshold assertion of broad regulatory authority over almost anyone having anything to do with a campaign. The Act was never intended to make you the general “campaign cop” over all matters related to campaign finance. You have authority over campaigns and candidates as prescribed in Article 2. You do not have authority over vendors.

In your internally generated complaint, you try to get around this lack of jurisdiction in two ways. The first way you attempt this is by trying to characterize a vendor as a

political action committee. You are simply wrong on the law on this—The Power of Fives, LLC is simply not a political action committee, for the reasons stated above.

You also point to Ariz. Admin. Code R2-20-101(4) as encompassing agents of a candidate as well. But to the extent that this Rule goes beyond the actual authority in the Citizens Clean Elections Act (and you are contorting it to do just that), it is invalid. *Ariz. Dept. of Revenue v. Superior Court*, 189 Ariz. 49, 938 P.2d 98 (App. 1997) (“Because agencies are creatures of statute, the degree to which they can exercise any power depends upon the legislature's grant of authority to the agency.”) The CCEC is clearly a creature of statute, and dependent upon the electorate, acting in their legislative function when passing the Act. It can not expand its powers beyond the Act. And the Act was meant to apply to candidates, give you general regulatory authority over anyone involved in campaigns.

2. BY THE EXPRESS TERMS OF THE CONTRACT, A CANDIDATE DOES NOT “PROMISE, AGREE, CONTRACT OR OTHERWISE INCUR AN OBLIGATION TO PAY FOR GOODS AND SERVICES” UNTIL THE CANDIDATE QUALIFIES FOR FUNDING

Resolution of this issue is simple and one need only resort to the plain language of the contract and the Rule that you cite. Under the contract, when the contract is initially signed, the candidate does not promise to pay for anything. At that time, there is no obligation to the candidate. The candidate need not even remain as a candidate. Any obligation only arises when the candidate qualifies for funding. If there is no obligation, there can be no debt.

Your own Rule, cited in your legal brief, belies your position. Rule R2-20-110(A)(5) states that “[A] candidate or campaign shall be deemed to have made an expenditure as of the state upon which the candidate or campaign promises, agrees, contracts, or otherwise incurs an obligation to pay for goods and services.” But on the say of the signing of the contract, the candidate has zero obligation to pay for anything. And such obligation only arises later, at qualification for funding, if at all.

3. FUNDS SPENT ON A CHALLENGE TO A CANDIDATE’S NOMINATION PETITION SHEETS, OR TO DEFEND AGAINST SUCH A CHALLENGE, ARE NEITHER CONTRIBUTIONS NOT EXPENDITURES, AND ARE COMPLETELY BEYOND YOUR REGULATORY AUTHORITY

In Arizona, funds spent on attorney’s fees are exempted from both the definition of “contribution” and “expenditure”. A.R.S. §§ 16-911 and 16-921. You have no regulatory authority whatsoever on monies spent on legal fees, and surely you must know this. The

CCEC was part of the failed lawsuit that attempted to invalidate these exemptions. There can be no violation of Article 1 or Article 2 with regard to attorney's fees.

In addition, in Arizona, as in most campaign finance schemes, the critical definitions that basically trigger all enforcement authority center on the words "contribution" and "expenditure". A.R.S. § 16-901. Similarly, Arizona uses the same language used in most such schemes, defining this terms with the phrase "made by a person for the purpose of influencing an election." *Id.*

Dating all the way back to the seminal *Buckley* case, courts have interpreted "for the purpose of ... influencing" to mean "communications that expressly advocate the election or defeat of a clearly identified candidate..." *Buckley v. Valeo*, 424 U.S. 1, 79-80 (1980); *see also Yamada v. Snipes*, 786 F.3d 1182, 1189 (9th Cir. 2015) ("*Buckley*...construed the phrase 'for the purpose of ... influencing' to mean 'communications that expressly advocate the election or defeat of a clearly identified candidate...'""); *Wisconsin Right To Life, Inc. v. Barland*, 751 F.3d 804, 832-34 (7th Cir.2014) (limiting "for the purpose of influencing the election or nomination for election of any individual to state or local office" to express advocacy and its functional equivalent); *McKee*, 649 F.3d at 66-67 (construing "influencing" and "influence" in Maine campaign finance statutes to include only communications that constitute express advocacy or its functional equivalent).

Even the language of the Act belies your position. A.R.S. § 16-901.01, titled "Limitations on certain unreported expenditures and contributions", provides:

A. For the purposes of this chapter, "expressly advocates" means:

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.

The language used by the drafters of the Act was no coincidence. It was a nod to the limits on any state's regulatory authority imposed by the United States Supreme Court in the realm of campaign finance laws. And clearly funds spent on a lawsuit to determine if an individual gathered enough signatures to have the person's name printed on the ballot, pursuant to minimum signature requirements in statute, does not meet the statutory definition. Any payment of funds by anyone for such fees is completely irrelevant and beyond your jurisdiction.

4. GENERAL COMPLAINTS THAT "TPOF'S INVOICING AND ACCOUNTING SYSTEM MAKES COMPLIANT WITH THE CLEAN ELECTIONS ACT IMPOSSIBLE" ARE HYPOTHETICALS AND CANNOT SUPPORT A FINDING OF A VIOLATION

Mr. Sloan's campaign finance reports are his responsibility alone. As stated above, The Power of Fives, LLC is not a political action committee and is not otherwise required to file campaign finance reports. Any claim that Mr. Sloan's campaign finance report lacked proper clarity must be taken up with Mr. Sloan. Certainly it is hardly a rare occurrence that a consultant does not provide sufficient detail in an invoice. But if that is the case, it is incumbent upon the candidate to secure additional information. Failing that, it is simply beyond your jurisdiction for you to target a vendor because you do not like his "invoicing and accounting system."

6. DR. BRANCH'S JUNE 18, 2020 EMAIL DOES NOT CONSTITUTE A "VIOLATION" OF A.R.S. § 16-946

Finally, you claim that Dr. Branch "violated A.R.S. § 16-946(B)(4) when he sent a targeted email solicitation for \$5 contributions on behalf of Mr. Sloan." This assertion represents a gross misunderstanding of the statute in itself. This statute merely defines what is a "qualifying contribution." That statute states that "[t]o qualify as a qualifying contribution, a contribution must meet" the six elements stated in the statute. If a contribution does not meet all six of the criteria, it is not a qualifying contribution. That's all—there is no such thing as a "violation" of this statute. At worst, it is simply not a qualifying contribution, but that issue is clearly moot and not an issue for my client in any event.

In addition, even if there could be a violation, the only consequence is the contribution does not count as a qualifying contribution.

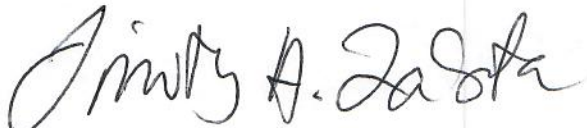
C. CONCLUSION

The nine-page "internally generated" complaint is baseless. Its assertions quickly fall apart upon any scrutiny. One other major reason why the complaint lacks merit is there is no penalty prescribed for the alleged violations. *See* A.R.S. §§ 16-941-43. A review of the three statutes pertaining to penalties reveals nothing applicable to the alleged violative conduct here. Of course that is because the Act was never meant to be applied in the manner you have applied it.

I urge that this matter, which is clearly a creation of yours, be dismissed.

Very truly yours,

TIMOTHY A. LA SOTA PLC



Timothy A. La Sota

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

Subscribed and sworn (or affirmed) before me this 12th day of October, by Timothy A. La Sota.



Notary Public

William M. Fischbach, SBN# 019769
Ryan P. Hogan, SBN# 36169



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Attorneys for The Power of Fives, LLC

AMERICAN ARBITRATION ASSOCIATION

THE POWER OF FIVES, LLC, an Arizona
limited liability company,

Claimant,

vs.

ERIC SLOAN and ALISA SLOAN LYONS,
husband and wife,

Respondents.

Post-Hearing Statement

I. INTRODUCTION

Sloan had attempted repeatedly to transform this Arbitration from a simple breach of contract dispute into a full-blown election compliance hearing. Facing financial pressure from both this proceeding and proceedings before the Citizens Clean Elections Committee (“CCEC” or the “Commission”), it is hardly surprising that Sloan would resort to such tactics. Nevertheless, Sloan’s arguments should find no purchase here.

Sloan’s illegality arguments are wrong on the law twice over. First, Arizona law only voids a contract when it is made for an illegal purpose. Thus, if the services contracted for are not themselves illegal, then the contract is not void. Second, Sloan’s assertion that the Agreement at issue is an illegal expenditure relies exclusively on regulations governing his own reporting requirements. Under the definitions used in the statute, however, the Agreement is not an expenditure and the reporting requirements have nothing to do with TPOF. Sloan’s remaining arguments are equally without merit. Sloan’s

1 equity argument depends on the Agreement being void as illegal, and it plainly is not.
2 Similarly, Sloan alleges no factual basis to support the existence of a fiduciary duty, let
3 alone a breach of one.

4 Accordingly, TPOF respectfully requests that the Arbitrator reject Sloan's illegality
5 defenses and grant an award in TPOF's favor.

6 **II. FACTUAL BACKGROUND**

7 TPOF is an Arizona Limited Liability Company formed by Dr. Bob Branch to
8 identify and support conservative candidates to run for public office in Arizona. TPOF ran
9 22 clean elections candidates throughout Arizona for the 2020 election cycle. Eric Sloan
10 was the first candidate TPOF identified. Sloan was not new to politics or to clean elections.
11 As Sloan himself testified to, he attempted to run for Corporation Commission in 2016 as
12 a clean elections candidate but never qualified for public funding. He thereafter ran a
13 traditional campaign and lost in the 2016 general election.

14 TPOF and Sloan entered into an agreement dated January 1, 2020, whereby TPOF
15 agreed to provide certain election services to Sloan's clean election candidacy ("the
16 Agreement"). **Claimant's Exhibit ("CEX") 1.** All of TPOF's candidates signed an
17 identical agreement. The intent and purpose of the Agreement was for TPOF to provide
18 Sloan, and all other TPOF candidates, "turnkey" campaign support throughout the primary
19 election and, if the candidate prevailed in the primary, the general election. Per Branch's
20 testimony, those services began in September of 2019 when Sloan asked TPOF to start
21 obtaining petition signatures and paying for campaign staff for Sloan's campaign.

22 Compensation under the Agreement was based on three campaign phases: Phase I
23 - Prefunding, Phase II - Funded Primary, and Phase III - Funded General Election. *Id.* at
24 TPOF000007. Phase I ran from the effective date of the Agreement through the date the
25 candidate qualified for clean elections funding. Phase II commenced after the candidate
26 qualified for clean elections funding and ran through the August 4, 2020 primary election.
27 TPOF's compensation for Phase I and Phase II was to be 40% and 60%, respectively, of
28 the "Primary Fund Distribution." *Id.* By statute, the Primary Fund Distribution amount

1 was \$116,016.00. *See* A.R.S. §§ 16-959(A) and 16-961(G)(3). Simply stated, TPOF was
2 to receive a fixed amount of \$116,016.00 for Phase I and Phase II collectively.

3 The Agreement had several key provisions that are relevant here. First, if the
4 candidate failed to qualify for clean elections funding, the Agreement would terminate
5 automatically. **CEX 1** at TPOF000007 (“If the Candidate does not qualify for public under
6 the Act, this Agreement shall immediately terminate”). Second, Paragraph 4 of the
7 Agreement contained a cancellation clause allowing any party to terminate the Agreement
8 with 30 days’ notice. Paragraph 4 states specifically, “Upon termination, the Candidate
9 shall pay the Company all amounts previously invoiced and/or incurred by the Company
10 in connection with the Services. . . .” *Id.* at TPOF000004 ¶ 4. Third, TPOF would invoice
11 the candidate for the various phases. Payment for Phase I was due within 30 days of the
12 candidate qualifying for clean election funding. *Id.* at TPOF000002 ¶ 2. Finally, while
13 TPOF promised to comply with all applicable laws, the candidate assumed responsibility
14 “for all required campaign reporting and adhering to the [Citizens Clean Elections] Act.”
15 *Id.* at TPOF000007.

16 Per the testimony of Branch and attorney Timothy A. LaSota, Sloan first broached
17 the idea of bringing a primary petition challenge lawsuit against his opponent Boyd Dunn,
18 and Sloan introduced Branch to LaSota for this purpose. Under Arizona law, “[a]ny
19 qualified elector may challenge a candidate’s petitions.” *Jenkins v. Hale*, 218 Ariz. 561,
20 562, ¶ 8 (2008) (citing). For optics reasons, it was decided that Branch rather than Sloan
21 would serve as the nominal plaintiff in the lawsuit against Dunn. As such, Branch entered
22 into a client engagement agreement with LaSota for this express purpose. **CEX 7**. The
23 engagement agreement stated specifically, “Client shall not be responsible for any legal
24 fees or costs billed by [LaSota]. Client understands that Sloan for Corporation
25 Commission will be paying all fees and costs.” *Id.* at 1. LaSota would eventually bring
26 two similar suits against Sloan’s other primary opponents, Kim Owens, and Eddie
27 Farnsworth, and would also defend Sloan in a petition challenge suit filed against Sloan
28 by one Mary Halford. Sloan prevailed in the petition challenge by Halford, and Sloan’s

1 three opponents were either removed from the ballot or dropped out of the race. This left
2 only two Republicans, including Sloan, on the primary ticket for three open seats. Short
3 of Sloan dropping out of the race, he was effectively guaranteed to win the primary thanks
4 to LaSota's efforts—and regardless of whether he qualified for public funding.

5 LaSota charged a \$23,000.00 flat fee for all of the primary litigation. Again, per
6 LaSota's testimony, it was "probably" Sloan that negotiated that amount. On May 20,
7 2020 Sloan represented to Branch that if TPOF advanced \$23,000.00 to pay LaSota's fee
8 then he (Sloan) would repay TPOF upon Sloan's receipt of the Primary Fund Distribution.
9 Based on this representation, TPOF paid LaSota's fee. **CEX 8.**

10 On July 17, 2020, Sloan qualified for clean elections funding and would therefore
11 receive the \$116,016 Primary Distribution Fund. **Respondent's Exhibit ("REX") 2.**
12 According to Sloan's testimony, he received the \$116,016 from the CCEC around July
13 27, 2020, but Sloan acknowledged in writing that the funds were received on July 24,
14 2020. *Id.* (Sloan signature at the bottom of page). Branch testified that Sloan qualified for
15 clean elections funding extremely late in the primary season because the COVID-19
16 pandemic had eliminated TPOF's ability to hold public events where Sloan could gather
17 signatures and \$5 contributions. Sloan's last minute qualification for clean elections
18 funding was the catalyst for this dispute because it triggered Sloan's financial obligation
19 under the Agreement. Which is precisely why Sloan and his wife were set scrambling to
20 find ways to avoid or minimize that obligation.

21 Since November 2019, in addition to being a TPOF candidate, Sloan and his wife
22 Alyssa Sloan Lyons had been working as "consultants" for TPOF through his wife's
23 company Sloan Lyons, LLC. **CEX 2, CEX 3.** In this capacity, Sloan signed up other TPOF
24 candidates to the agreement Sloan now claims is illegal, and even prepared a PowerPoint
25 slideshow on clean elections law. **CEX 23.** TPOF paid Sloan Lyons, LLC \$4,000 monthly
26 for consulting services from November 2019 through June 2020. **CEX. 4.** According to
27 Sloan, after he qualified for clean elections funding, he asked TPOF to "suspend" the
28 consulting contract to avoid any "appearance of impropriety." Accordingly, on July 21,

1 2020 TPOF executed an addendum to the consulting agreement that suspended all
2 consulting services and payments. The suspension was backdated to June 30, 2020. **CEX**
3 **10; CEX 11** at TPOF000062. This begs the question: why didn't Sloan have any concern
4 about an "appearance of impropriety" for the previous eight months while his wife's
5 company collected a total of \$32,000.00 in consulting fees from TPOF? The answer is
6 self-evident: *Sloan never expected to qualify for clean elections funding*. Sloan had failed
7 to qualify for public funding in 2016 and COVID had destroyed TPOF's ability to hold
8 the public events it had planned—by April of 2020, only 3 of TPOF's 22 candidates were
9 still in the running, including Sloan. But he qualified. Barely. And with \$116,016.00 in
10 public money coming his way and a primary weeks away, Sloan and his wife hatched
11 plan to terminate the Agreement and avoid paying the entire \$116,016.00 to TPOF.

12 On July 20, 2020, Alyssa Sloan Lyons—purportedly in her capacity as a
13 "consultant"—e-mailed Branch a "sample invoice" for TPOF to use with its candidates,
14 of which there were only three left. **CEX 9** at TPOF000060. The "sample invoice" listed
15 six general categories of "campaign consulting" services. *Id.* On July 23, 2020, Alyssa
16 Sloan Lyons asked when she and Sloan could expect to receive TPOF's invoice, as they
17 "expect[ed] the Clean Elections check to be received [the following day] and plan[ed] to
18 pay the Power of Fives invoice very soon thereafter." **CEX 11** at TPOF000068. Later that
19 same day, Alyssa Sloan Lyons demanded that TPOF provide an invoice by 9AM the
20 following day and instructed that the invoice "not include anything but the time and effort
21 Power of Fives has already expended to date" and "not include budget items for the
22 remainder of the primary period." *Id.* at TPOF000067. Of course, there was no basis for
23 such a demand, as the Agreement called for a fixed fee of \$116,016.00 for Phase I and
24 Phase II, regardless of what was spent by TPOF. But Alyssa Sloan Lyons was laying the
25 groundwork to pay less than the full contractual amount by tying payment to TPOF 's
26 costs expended rather than the agreed upon contract price. And if she could pin TPOF to
27 a lower number, it freed up more of the \$116,016 for Sloan to spend before the primary.

28 On July 24, 2020, per Alyssa Sloan Lyons' request, Branch e-mailed Sloan a

1 “preliminary invoice” for \$115,980.94 for Phase I and Phase II. *Id.* at TPOF000072-73.
2 The preliminary invoice included a \$25,000 category for “Strategic campaign
3 development” and a \$23,000 category for “Signature Challenge Strategy,” the latter being
4 LaSota’s \$23,000 fee. The preliminary invoice congratulated Sloan on a successful
5 primary because, as noted *supra*, Sloan’s victory at that point was a certainty.

6 At 11:34 AM on July 25, 2020, Branch e-mailed Sloan the invoice for Phase III—
7 the general election—noting it was due 10 days after receipt of general election funding.

8 **CEX 13.** Sloan put the next step of his plan into action via an e-mail sent that same day
9 at 1:29 P.M., purporting to cancel the Agreement and offering to pay only \$90,730.94:

10 Bob: Thank you for sending your preliminary invoice.

11 Attached are modified, consolidated line items that more closely comply with Exhibit A of our
12 contract, and reflect costs expended to date. The gross cost remains the same, minus costs for future
13 expenses related to candidate field support, media pre-buys and signs. The attached has been reviewed
14 by my counsel and is the final invoice.

15 As the fiscal agent of Clean Elections dollars for the Sloan2020 campaign, I direct you to not spend or
16 commit to spend the \$25,250 included in your preliminary invoice for candidate field support, media
17 pre-buys and signs, or any other expenses.

18 In accordance with our contract, I will be sending you a formal 30 day notice of contract termination
19 and a check for \$90,730.94. When you cash the check, we are mutually agreed that the contract is
20 terminated.

21 **CEX 15** at TPOF000079. Attached to Sloan’s email was a “revised” invoice for
22 \$90,730.94. *Id.* at TPOF000080. The “revised invoice” had eliminated the \$23,000
23 category for LaSota’s fee, and instead rolled that same amount into the “Strategic
24 campaign development” category, bringing it up to \$48,000 from \$25,000. TPOF
25 subsequently received a cancellation letter along with a check for \$90,730.94 with a
26 “FINAL PAYMENT” endorsement. **CEX 12; CEX 14.** The letter stated, “Should you
27 choose to cash this check now, we will consider our contract immediately terminated by
28 mutual consent.” **CEX 12.** Sloan admitted at the hearing that his purpose here was to
terminate the Agreement immediately by having TPOF cash the \$90,730.94 check.
Otherwise, under the 30-day cancellation provision, Sloan’s cancellation would not be
effective until August 24, 2020, i.e., after the primary and Phase II, thereby obligating

1 Sloan to pay the full amount of the Phases I and II invoices. **CEX 1** at TPOF000004 ¶ 4.

2 TPOF did not cash the \$90,730.94 check, and on July 31, 2020, sent Sloan a final
3 invoice for the full \$116,016.00 for Phase I and Phase II. **CEX 16**. In response, Sloan
4 contended that the \$23,000 for LaSota's fee was prohibited under the clean elections law,
5 cancelled the \$90,730.94 check, and issued a new check for \$67,730.94. **CEX 17** at
6 TPOF000083. TPOF never cashed the \$67,730.94 check, but Sloan listed \$67,730.94 to
7 TPOF on his Amended 2020 Primary Recap Report filed with the CCEC. **CEX 19**. Sloan
8 boasted at the hearing that this report and his other financial reports survived the scrutiny
9 of the Commission's audit, so the Commission was ostensibly unconcerned with any
10 supposed lack of detail in TPOF's invoice.

11 It is also important to note that, despite claiming during these exchanges that he
12 had been consulting with counsel, Sloan never asserted that the Agreement was invalid or
13 illegal. Instead, Sloan simply asserted that he should not have to pay the full \$116,016.
14 Additionally, Sloan never denied that he promised to repay TPOF the \$23,000 for
15 LaSota's fee. Sloan instead asserted that he should not have to repay that amount because
16 it was a supposed violation of clean elections law. **CEX 17** at TPOF000083.

17 On October 21, 2020, Branch filed a complaint with the CCEC against Sloan,
18 alleging that the \$116,016 owed to TPOF plus other funds spent by Sloan exceeded the
19 permissible spending threshold. **CEX 21**. Sloan responded on November 5, 2020, arguing
20 to the Commission that he did not overspend because he only owed TPOF the \$67,730.94.
21 **CEX 22**. Once again, Sloan's response said nothing about the Agreement being "illegal."

22 **III. ARGUMENT**

23 The centerpiece of Sloan's defense is his "illegality" argument, and it fails on a
24 number of levels. "[P]arties have the legal right to make such contracts as they desire to
25 make, provided only that the contract shall not be for illegal purposes or against public
26 policy." *S.H. Kress & Co. v. Evans*, 21 Ariz. 442, 449 (1920). "[N]ot all contracts
27 involving a violation of a statute are void;" rather, only those that *require* performance of
28 illegal acts are void. *White v. Mattox*, 127 Ariz. 181, 184 (1980). In other words, "per se

1 illegal” purposes void a contract, performance failing to comply with “conditions and . . .
2 standards prescribed by the State” does not. *Id.* At bottom, when “the legislature has not
3 clearly demonstrated its intent to prohibit a maintenance of a cause of action,” recovery is
4 allowed. *Gaertner v. Sommer*, 148 Ariz. 421, 424 (App. 1986) (quoting *Mountain States*
5 *Bolt, Nut & Screw Co. v. Best-Way Trans.*, 116 Ariz. 123, 124 (App. 1977)).

6 In this context, the legislature must demonstrate its intent to bar the action with
7 emphatic clarity. That clarity is lacking when the legislature could have barred actions for
8 work done without a proper license—as it chose to do with contractors—but has not
9 extended that rule to the circumstances at issue. *E & S Insulation Co. of Ariz., Inc. v. E.L.*
10 *Jones Const. Co.*, 121 Ariz. 468, 470 (App. 1979); *Mountain States*, 116 Ariz. at 125. It
11 is also lacking when legislation merely attaches strings to conduct but stops short of
12 declaring that conduct illegal. *White*, 127 Ariz. at 184.

13 The Agreement was made for one simple, legal, purpose—campaign consulting
14 services. As the Arizona Attorney General argued in its Motion to Quash, hiring campaign
15 consultants is not itself illegal or contrary to public policy. Motion to Quash Subpoena to
16 Third-Party Witness at 8–9. Indeed, there can be no argument such a purpose is illegal
17 because it is expressly allowed. “A participating candidate may engage campaign
18 consultants.” A.A.C. R2-20-703.01. Far from precluding actions to recover on a contract
19 when a campaign-finance violation is also present, violations of campaign-finance laws
20 result in decertification, misdemeanor, or a financial penalty. A.R.S. §§ 16-942, -943;
21 A.A.C. R2-20-222. This remedial scheme does not, however, include voiding an
22 underlying contract. Because the legislature could have chosen to expressly preclude
23 recovery but attached other consequences to noncompliance instead, it did not clearly
24 intended to preclude recovery under the circumstances.

25 Sloan has failed to identify any statute or regulation declaring such a purpose
26 illegal. Likewise, he has not even suggested (nor could he) that an “immoral or
27 reprehensible motive” drove him to hire TPOF for campaign consulting services. Instead,
28 Sloan plucks out isolated regulations of the CCEC in a strained attempt to explain why

1 certain aspects of the parties' follow-through on the Agreement might have fallen afoul of
2 what the Commission requires.

3 As an initial matter, Sloan's focus is too granular. A contract is void only if it was
4 entered into for an illegal purpose, an illegal act during performance is insufficient. *White*,
5 127 Ariz. at 184 (“[N]ot all contracts involving a violation of a statute are void.”); *see also*
6 *Trap-Zap Env'tl. Sys. Inc. v. FacilitySource Ne. Services LLC*, 2019 WL 3798488, at *3 ¶
7 14 (App. Aug. 13, 2019) (rejecting illegality defense because the contract was for
8 “collecting waste and cleaning grease” which was not itself “immoral, illegal, or
9 reprehensible,” regardless of whether the waste collector acted illegally by failing to
10 obtain a required license). Even Sloan cannot deny that the purpose of the contract was
11 for campaign services, stating just that on the first page of his pre-hearing statement.
12 Because Sloan's illegality arguments focus on mere follow-through, as opposed to
13 purposes, they necessarily fail.

14 Even assuming that Sloan's arguments were directed to the appropriate level of
15 generality, they still fail. He cannot succeed in his illegality defense unless he shows that
16 the Agreement would require him to violate the laws he cites. *E & S Insulation*, 121 Ariz.
17 at 470 (“[A] contract which cannot be performed without violating applicable law is illegal
18 and void.”). Sloan has not done so. As discussed *infra*, Sloan either greatly obfuscates the
19 law or relies on reporting requirements binding on only candidates, not consultants.

20 Sloan first claims that the Agreement was a violation of law because it was an
21 expenditure that exceeded the amount of cash his campaign had on hand before he
22 qualified for funding on July 17, 2020. To be sure, once certified, a candidate cannot
23 “incur debt, or make an expenditure in excess of the amount of cash on hand” before
24 receiving funding. A.A.C. R2-20-104(D)(6). An expenditure, however, is “any purchase,
25 payment or other thing of value that is made by a person for the purpose of influencing an
26 election.” A.R.S. § 16-901(25). Sloan's argument ignores this definition and the nature of
27 the Agreement. The Agreement was not itself an expenditure and Sloan incurred no debt
28 just by signing it.

1 The Agreement did not create an immediately binding and specific obligation on
2 Sloan to pay TPOF. Rather, under the Agreement, Sloan's obligation to pay TPOF
3 anything arose only after satisfaction of two conditions precedent. First, Sloan had to
4 qualify for public financing. If he didn't qualify, the Agreement automatically terminated.
5 **CEX 1** at TPOF000007. Second, if Sloan qualified, only then would TPOF invoice Sloan
6 for its services, with payment due within 30 days of qualifying. *Id.* at TPOF000001 ¶ 2.
7 Thus, Sloan did not "incur a debt" or "make a purchase, payment or other thing of value"
8 simply by entering into the Agreement. Accordingly, the Agreement did not violate
9 A.A.C. R2-20-104(D)(6).

10 Even assuming that the Agreement amounted to a "purchase, payment or other
11 thing of value that is made by a person for the purpose of influencing an election" when
12 it was signed, it would still fall within the statutory exclusions from the definition of
13 expenditure. Section 16-921(B) lists items that the legislature has explicitly excluded from
14 the definition of "expenditure" under A.R.S. § 16-901(25). "An extension of credit for
15 goods and services on a committee's behalf by a creditor" is not an expenditure if it is
16 substantially similar to extensions of credit in the nonpolitical context. A.R.S. § 16-
17 921(B)(4)(d). Since the Agreement did not require Sloan to pay TPOF for TPOF's services
18 unless and until he qualified for public funding, it is (at worst) an extension of credit to
19 Sloan. Accordingly, it is not expenditure even if it was seen as something of value for the
20 purpose of influencing an election.

21 Sloan's proposed interpretation creates unnecessary conflict in the regulations. He
22 contends that an agreement conditioning repayment on the occurrence of a future event
23 "incurs debt" or is "an expenditure" under A.A.C. R2-20-104(D)(6) and is forbidden when
24 the value of the services to be provided is greater than cash on hand. But during the
25 exploratory and qualifying periods of the election, a participating candidate is allowed to
26 accept contributions in the form of a loan. A.A.C. R2-20-104(E). Therefore, Sloan's
27 reading of subsection (D)(6) runs headlong into subsection (E). The more harmonious
28 reading is that loan-like agreements, such as the Agreement, are not an expenditure and

1 do not incur debt until the obligation becomes due and owing. *UNUM Life Ins. Co. of Am.*
2 *v. Craig*, 200 Ariz. 327, 329 ¶ 11 (2001) (“When two statutes appear to conflict, we will
3 attempt to harmonize their language to give effect to each.”).

4 In his effort to show that just signing the Agreement was an expenditure, Sloan
5 cites regulations that govern his reporting obligations as a candidate and that do not dictate
6 what an “expenditure” includes. First, he turns to A.A.C. R2-20-110(A)(3)(b) to state that
7 a candidate cannot authorize an agent to purchase goods and services on behalf of the
8 candidate unless the candidate has enough funds to cover the agent’s transactions. Even if
9 that provision governed matters beyond reporting requirements, it has no bearing here.
10 TPOF was not an agent authorized “to purchase goods or services on behalf of” Sloan.
11 Sloan hired TPOF to perform campaign services, not acquire them. As Sloan himself says
12 “TPOF unquestionably was *to provide* consulting, advising, and similar services.” Sloan
13 Pre-Hearing Statement at 7. There is no basis to conclude the contract is illegal on this
14 slender reed.

15 Second, Sloan relies on A.A.C. R2-20-110(A)(5), which states “a candidate or
16 campaign shall be deemed to have made an expenditure as of the date upon which the
17 candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay
18 for goods or services.” Like the other provisions, subsection (A)(5) is simply an instruction
19 for filling out the quarterly financial reports required under A.R.S. § 16-927. Other
20 subsections of R2-20-110 confirm that it merely provides instructions for how to fill out
21 the required campaign reports. Most pertinent, (B)(5) outlines alternative times for
22 candidates to “report a contract, promise or agreement to make an expenditure resulting
23 in an extension of credit,” allowing candidates to defer reporting until the general election.
24 Thus, nothing about R2-20-110 prevents a candidate from entering into a contract for
25 services before receiving clean election funding, with the services to be invoiced later and
26 then paid on the candidate’s receipt of clean elections funding.

27 In fact, subsection (A)(5) only shows no expenditure occurred until Sloan was
28 obligated to pay. The canon “[n]oscitur a sociis—a word’s meaning cannot be determined

1 in isolation, but must be drawn from the context in which it is used—is appropriate when
2 several terms are associated in a context suggesting the terms have some quality in
3 common.” *City of Surprise v. Arizona Corp. Comm’n*, 246 Ariz. 206, 211 ¶ 13 (2019).
4 The presence of the phrase “otherwise incurs an obligation to pay for goods or services”
5 in subsection (A)(5) makes clear that an “obligation to pay” is the obvious commonality
6 shared by the preceding terms in that subsection. Thus, there can be no expenditure unless
7 and until an obligation to pay exists. Under the Agreement, no such obligation existed
8 unless and until Sloan received his public financing. **CEX 1** at TPOF000007 (“If the
9 Candidate does not qualify for public under the Act, this Agreement shall immediately
10 terminate”). Accordingly, Sloan fails to show that even signing the Agreement was a
11 violation of law.

12 Sloan’s next theory of illegality is that “TPOF’s invoices do not comply with the
13 CCEC reporting requirements” because A.A.C. R2-20-110(A)(1) requires Sloan to
14 include “a detailed description of what is included in the service.” This argument can be
15 safely brushed aside. Again, Sloan relies exclusively on reporting requirements applicable
16 to “participating candidates” found in R2-20-110. Obviously, these regulations do not
17 apply to TPOF, which functioned as the campaign consultant, not a participating
18 candidate. *See* A.R.S. § 16-961(C)(1) (“‘Participating candidate’ means a candidate who
19 becomes certified as a participating candidate pursuant to § 16-947.”). CCEC regulations
20 do not govern TPOF’s invoices just as the invoices do not control whether Sloan’s
21 subsequent quarterly reports comply with CCEC regulations. Certainly, nothing in the
22 Agreement requires Sloan to simply copy TPOF’s invoices in his quarterly campaign
23 reports—even though Sloan did just that when he filed his Amended 2020 Primary Recap
24 Report filed with the CCEC, which listed a single \$67,730.94 line item for TPOF. **CEX**
25 **19**. Because TPOF’s invoices did not require Sloan to violate CCEC regulations, he has
26 not shown the Agreement could not be completed without violating applicable law.

27 Sloan’s final theory of illegality is that the Agreement empowered TPOF to make
28 expenditures on his behalf without his campaign treasurer’s authorization, in violation of

1 A.A.C. R2-20-115(B)(2) and A.R.S. § 16-907(A). This argument is a complete red
2 herring. Sloan entered into the Agreement and Sloan was the treasurer. Despite this, Sloan
3 suggests language in the Agreement clarifying that TPOF was not an agent who could
4 bind Sloan to third-party agreements somehow supports his illegality defense. Sloan is
5 again mistaken. Even a cursory review of TPOF's invoice reveals that TPOF was the one
6 providing campaign services and billing for them, not some third-party.

7 The thrust of Sloan's argument appears focused on the signature challenge strategy
8 and his outrage at having to pay for a lawyer who successfully kept Sloan on the ballot
9 and got his opponents tossed off. It defies credulity for Sloan to suggest that he never
10 authorized Branch or LaSota to initiate the primary challenge lawsuits against his
11 opponents. Regardless, as Sloan himself acknowledges, "legal services are not
12 expenditures" under A.R.S. § 16-921(B)(7). Sloan Pre-Hearing Statement at 9 n.4. Sloan
13 attempts to argue that reality favors him, asserting that CCEC regulations require funds to
14 be used on expenditures. The pertinent regulation does not say that. A.A.C. R2-20-702(A)
15 says that "[a] participating candidate shall use funds in the candidate's current campaign
16 account to pay for goods and services for direct campaign purposes only." Whether the
17 funds are also an "expenditure" is irrelevant.

18 Sloan's remaining defenses have no merit. Citing *Landi v. Arkules*, 172 Ariz. 126
19 (App. 1992), Sloan quizzically asserts that "TPOF cannot now rely on equity to claim
20 they deserve compensation for services that were not approved by Sloan." Sloan's
21 pronouncement is puzzling because *Landi* merely held that "equitable relief is not
22 available when recovery at law is forbidden because the contract is void." 172 Ariz. at
23 136. TPOF has no quarrel with that legal principle but, as has already been shown, the
24 Agreement is not void for illegality and *Landi* is inapplicable.

25 Sloan also contends TPOF and Branch owed Sloan fiduciary duties "by purporting
26 to provide 'turnkey' campaign services" and breached that duty by "incurring
27 unapproved expenses, entering into an illegal contract, and by incurring expenses TPOF
28 should have known could not be paid for by the funds in Sloan's account." "Establishing

1 a fiduciary duty requires either peculiar intimacy or an express agreement to serve as a
2 fiduciary.” *Shepherd v. Costco Wholesale Corp.*, 246 Ariz. 470, 475 ¶ 15 (App. 2019)
3 (citing *Cook v. Orkin Exterminating Co.*, 227 Ariz. 331, 334 ¶ 15 (App. 2011)). Mere trust
4 is not enough, the relationship must be characterized by “great intimacy, disclosure of
5 secrets, [or] intrusting [sic] of power.” *Standard Chartered PLC v. Price Waterhouse*, 190
6 Ariz. 6, 24 (App. 1996). Reliance on knowledge alone does not suffice, “unless the
7 knowledge is of a kind beyond the fair and reasonable reach of the alleged beneficiary and
8 inaccessible to the alleged beneficiary through the exercise of reasonable diligence.” *Id.*
9 at 25. Sloan has no evidence to show such a relationship existed and, as an experienced
10 candidate, Sloan knew precisely what he was doing when he entered the Agreement.

11 **IV. TPOF’S CLAIMS.**

12 Once Sloan’s defenses are swept aside, the success and validity of TPOF’s claims
13 cannot be seriously disputed. TPOF’s primary claim is for breach of contract. The
14 elements are a beach of contact claim are “the existence of the contract, its breach and the
15 resulting damages.” *Thomas v. Montelucia Villas, LLC*, 232 Ariz. 92, 96, ¶ 16 (2013). The
16 Agreement required Sloan to pay TPOF \$116,016 for Phase I and Phase II collectively.
17 Period. It is clear that even Sloan knew that his July 25, 2020 cancellation would not be
18 effective until after the completion of Phase II, which is precisely why Sloan attempted to
19 cajole Branch into terminating the agreement earlier by cashing the \$90,730.94 and
20 \$67,730.94 check. By refusing the pay the full \$116,016 due under the Agreement, Sloan
21 has committed a textbook breach of contract.

22 Sloan has contended that the \$23,000 payment to LaSota was outside the scope of
23 the Agreement, and therefore outside the scope of the breach of contract claim. Even if
24 true, that won’t stop TPOF from recovering under theories of fraudulent inducement,
25 promissory estoppel, or unjust enrichment. Sloan represented to Branch that if TPOF paid
26 LaSota’s fee then he (Sloan) would repay TPOF upon Sloan’s receipt of the Primary Fund
27 Distribution. Typically, a fraud claim cannot be “predicated on unfulfilled promises,
28 expressions of intention or statements concerning future events unless such were made

1 with the present intention not to perform.” *Staheli v. Kauffman*, 122 Ariz. 380, 383 (1979).
2 As discussed above, Sloan never expected the qualify for clean election funding anyway,
3 so in his mind, his promise to repay the \$23,000 with clean election funding was
4 completely hollow. Once Sloan did unexpectedly qualify just weeks before the primary,
5 Sloan refused to repay the \$23,000. It also cannot be disputed that TPOF relied on Sloan’s
6 promise to its detriment. *See, e.g., Higginbottom v. State*, 203 Ariz. 139, 144, ¶ 18 (App.
7 2002) (“To prove promissory estoppel, [plaintiff] must show that the defendants made a
8 promise and should have reasonably foreseen that he would rely on that promise;
9 [plaintiff] must also show that he actually relied on the promise to his detriment.”).
10 Further, it cannot be disputed that Sloan was enriched by at least \$90,730.94, which even
11 Sloan admitted was the value of TPOF’s services through July 25, 2020. **CEX 15** at
12 TPOF000079. *Span v. Maricopa County Treasurer*, 246 Ariz. 222, 227, ¶ 15 (App. 2019)
13 (unjust enrichment requires (1) an enrichment, (2) an impoverishment, (3) a connection
14 between the enrichment and impoverishment, (4) the absence of justification for the
15 enrichment and impoverishment, and (5) the absence of a remedy at law).

16 Finally, Under paragraph 6 of the Agreement, all “Work Product” that is
17 “conceived, created, made, developed, or acquired by or for” by TPOF under the
18 Agreement “shall remain the property of [TPOF].” **CEX 1** at TPOF000002; *see also* CEX
19 20 (Notice to Sloan regarding “Work Product”). TPOF is entitled to a permanent
20 injunction directing Sloan to destroy or deliver to TPOF all Work Product, as defined
21 under the Agreement, and enjoining Sloan from utilizing any Work Product on his
22 website, social media platforms, campaign literature, or any other medium.

23 **V. CONCLUSION.**

24 For these reasons, TPOF requests that the Arbitrator enter an award in TPOF’s
25 favor for: (1) the \$116,000 due under the Agreement plus the \$23,000 paid to LaSota; (2)
26 TPOF’s costs and attorney fees under A.R.S. §§ 12-341, 341.01, and Section 17 of the
27 Agreement, including fees and costs incurred in collection; (3) TPOF’s arbitration costs
28 and expenses; and (4) pre- and post-judgment interest under A.R.S. § 44-1201.

1 RESPECTFULLY SUBMITTED this 16th day of February, 2021.



3
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By: /s/ Jessica Cebalt



Complaint against Eric Sloan,
Candidate for Corporation Commissioner,
for Clean Election Violations.
10/23/2020

I am Dr. Bob Branch, Managing Member of The Power of Fives, LLC. After reading Clean Elections' Candidate, Eric Sloan's recent campaign finance report, we contend that Mr. Sloan is in violation of Clean Election Laws for over spending in the Primary Election, and is in violation of Campaign Finance Law for not fully disclosing the entire invoice that The Power of Fives, LLC billed to Mr. Sloan. Therefore, we, at The Power of Fives, LLC think that it is our civic duty to report these violations to Clean Elections.

In August of 2019, Mr. Sloan and The Power of Fives LLC entered into an agreement where The Power of Fives, for the sum of \$116, 016 for the Primary Elections would provide Mr. Sloan with a complete turnkey campaign; this agreement was later memorialized in a contract signed by Mr. Sloan and The Power of Fives LLC. A copy of the contract is attached (see Exhibit 1). Compensation under the contract was based on three phases of the campaign: Phase I - Prefunding, Phase II - Funded Primary, and Phase III - Funded General Election. Phase I and II ran through the August 4, 2020 primary election. Under the contract, compensation for Phase I was 40% of the amount equal to the Primary Fund Distribution and compensation for Phase II was 60% of the amount equal to the Primary Fund Distribution. Accordingly, completion of Phase I and Phase II entitled The Power of Fives LLC to 100% of the amount equal to the Primary Fund Distribution. The Primary Fund Distribution amount is \$116,016.00 under A.R.S. §§ 16-959(A) and 16-961(G)(3).

The Power of Fives LLC's expenditures for Sloan began in September of 2019, when Mr. Sloan requested that The Power of Fives LLC start buying nomination petition signatures for his campaign for Corporation Commissioner, and requested that The Power of Fives LLC hire campaign support staff for his Primary campaign. Additionally, The Power of Fives LLC started holding joint campaign functions for Mr. Sloan's campaign.

In November, Mr. Sloan asked The Power of Fives LLC to hire him. He asked for a job, but that would be problematic since he was one of The Power of Fives LLC's candidates. Mr. Sloan then asked that we hire his wife's company; "Sloan Lyons Public Affairs LLC" and that we pay Sloan Lyons Public Affairs LLC \$4,000/month; The Power of Fives LLC agreed and hired Sloan Lyons Public Affairs LLC (A copy of the contract is attached (see Exhibit II).

Having successfully secured the petition signatures for Mr. Sloan, in April, Mr. Sloan filed his nomination paperwork. Mr. Sloan informed The Power of Fives LLC that he was going to challenge the signatures of Boyd Dunn, David Farnsworth, and Kim Owens. Mr. Sloan further informed The Power of Fives that his signatures were also being challenged. At that time, The Power of Fives LLC made no agreement to pay for those challenges, and The Power of Fives LLC made no agreement to defend Mr. Sloan's own signatures. Simply put, legal services were not services to be provided for in the contractual agreement between Sloan and The Power of Fives LLC. Mr. Sloan was successful in his attempt to remove Dunn, Farnsworth, and Owens from the ballot, and he was successful in defending his signatures that The Power of Fives LLC secured for him. A copy of the Tim La Sota's engagement letter showing that Sloan would pay for the legal fees (see Exhibit III).

On May 20, 2020, Eric Sloan asked The Power of Fives LLC to advance his campaign the \$23,000 in legal fees that he had amassed in April for the signature challenges of Dunn, Farnsworth, and Owens, and for the defense of his own signatures in the Superior Court and the Supreme Court. After being assured by Sloan and his attorney that it was legal for The Power of Fives LLC to do this, The Power of Fives LLC agreed. Sloan knew that his campaign would be billed \$23,000 for providing the service of funding his legal challenges. Sloan has never repaid this amount. (see Exhibit IV: La Sota's invoice, and Exhibit V: La Sota's revised itemized invoice),

The Power of Fives LLC successfully took Mr. Sloan to a victory in the 2020 Primary Election. When presented with the \$116, 016 invoice for his successful Primary Elections, Mr. Sloan refused to pay the invoice in full. A copy of the invoice is attached (see Exhibit VI).

Mr. Sloan signed a contract with The Power of Fives LLC and agreed to pay \$116, 016 to The Power of Fives LLC for his 2020 Primary race. Mr. Sloan did not pay The Power of Fives LLC; and furthermore, Mr. Sloan did not declare the full \$116, 016 in expenditures owed to The Power of Fives LLC in his campaign finance report; The Power of Fives LLC believes this is in violation of Campaign Finance Law.

Contractually, Eric Sloan owes \$116, 016 to The Power of Fives LLC for his Primary Campaign, and the full invoice should have been reported on his campaign finance report, not the \$67,731 that he did report.

The Power of Fives, 7000 N. Cotton Lane, Suite #443, Waddell, AZ 85355

Now, after reviewing Sloan's July 29 –Aug 4, 2020 campaign Finance Report (assuming that all of the other activity that Sloan reported is true and accurate), Sloan's YTD expenditures, with The Power of Fives LLC total invoice, should have been \$153,468. Sloan's Primary Income (assuming that all of the other activity that Sloan reported is true and accurate) is \$130,412. This would mean that Sloan over spent on his Primary campaign in by at least \$23,056. The Power of Fives LLC believes this is significant violation of Clean Election Law.

Thank you for allowing The Power of Fives LLC to perform its civic duty by reporting these violations to you.

I swear that the information provided in the above complaint is true and accurate to the best of my knowledge.

Blessings,

Dr. Bob Branch
Managing Member

The Power of Fives LLC

Attachments: Exhibits I, Exhibit II, Exhibit III, Exhibit IV, Exhibit V, Exhibit VI

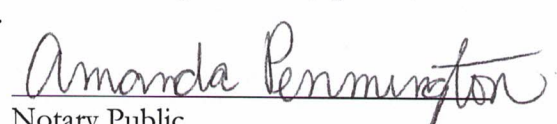
STATE OF ARIZONA)
)ss.
County of Maricopa)

Robert Branch aka Bob Branch, being duly sworn, states as follows:

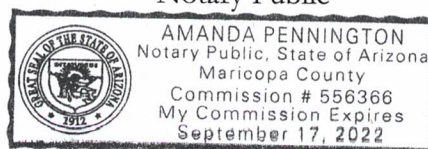
That he is the complainant in the foregoing complaint; and that the statements in the complaint are accurate and complete to the best of his knowledge and belief.


ROBERT BRANCH, Applicant

SUBSCRIBED AND SWORN TO before me, the undersigned notary public, this 24th day of October, 2020, by Robert Branch aka Bob Branch.


Notary Public

Seal & Commission Expiration Date:



The Power of Fives, 7000 N. Cotton Lane, Suite #443, Waddell, AZ 85355

Exhibit 1

Signed Contract between Eric Sloan and The Power of Fives LLC



SERVICE AGREEMENT

THIS SERVICE AGREEMENT (this "Agreement"), is entered into and effective as of Jan 1, 2019, by and between The Power of Fives, LLC, an Arizona limited liability company (the "Company"), and Erin Slown, an individual (the "Candidate").

1. Services. The Candidate hereby engages the Company as an independent contractor and the Company hereby accepts such engagement upon the terms and conditions contained in this Agreement. During the term of this Agreement, the Company agrees to provide to the Candidate the services described in Exhibit A (the "Services"). The Company represents that the Company has the special skill, professional competence, expertise and experience to undertake the obligations imposed by this Agreement, and will perform the Services in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the Company's profession and in compliance with all applicable laws. The Company shall commit such time as is necessary to perform the Services. The Company acknowledges and agrees that the Company owes a duty while performing the Services under this Agreement to act in the best interests of the Candidate so as to maintain and increase the goodwill and reputation of the Candidate. The Company agrees to not make any statement, oral or written, intended to injure the business, interests or reputation of the Candidate. The Candidate agrees that during the term of this Agreement, without the Company's prior written consent, the Candidate will not engage any other consultant or contractor that provides services that are competitive to the Services provided by the Company.

2. Compensation; Expenses. The Company will be compensated for rendering the Services in the amounts set forth on Exhibit A. For the Services provided in Phase I of Exhibit A, the Company shall submit to the Candidate, not later than ten (10) days following the date hereof, an invoice setting forth the payment owed for Phase I. The Candidate shall pay all undisputed amounts on such invoice within thirty (30) days of the earlier of: (a) the termination of this Agreement, or (b) once the Candidate qualifies for public financing for the Primary Election. For the Services provided in Phase II or III of Exhibit A, the Company shall submit to the Candidate following the completion of some or all of the Services set forth in a respective payment period, an invoice setting forth the payment owed for such payment period. The Candidate shall pay all undisputed amounts on such invoices within thirty (30) days of receipt.

3. Term. The term of this Agreement shall commence upon the date first written above and shall continue until the Services have been completed, or as otherwise set forth in Exhibit A, unless earlier terminated as provided herein. The term of this Agreement may be shortened or extended upon the mutual written agreement of both parties.

4. Termination. Either party may terminate this Agreement for any reason by giving the other party written notice of the termination at least thirty (30) days in advance of the date of termination. This Agreement may also be terminated upon mutual written agreement of the parties. Upon termination, the Candidate shall pay the Company all amounts previously invoiced and/or incurred by the Company in connection with the Services and both parties shall immediately return to the other parties all Confidential Information (as defined below) and information and products of whatever nature or kind and in whatever format. If either party fails to promptly return any products to the other party after the termination of this Agreement, the party in violation of this Section 4 shall pay the other party, or the other party shall have the right to retain such amounts from any compensation owed under Section 2, an amount equal to the manufacturer's suggested retail price of such products.

5. Independent Contractor Status. The Company's relationship to the Candidate shall be that of an independent contractor. Nothing in this Agreement is intended to make the Company or its employees an employee or agent of the Candidate or confer on the Company or its employees any rights, privileges or benefits as an employee of the Candidate. The Company shall have no right, power or authority (and shall not hold itself out as having any such right, power or authority) to bind the Candidate in any manner or to any agreement or undertaking with any third party except as specifically provided in this Agreement.

6. Ownership and Return of Creations. All Work Product (as defined below), conceived, created, made, developed, or acquired by or for the Company used to perform the Services shall remain the property of the Company. "Work Product" shall include, without limitation, all designs, documents, manuals, videos, drawings, logos, improvements, plans, developments, processes, business methods, trade secrets, and any and all copyrightable expression, all copyrightable works, and all patentable subject matter, in all media (whether existing now or to be invented), whether or not protected by statute, including all derivative works. At the Company's request and no later than five (5) days after such request, the Candidate shall destroy or deliver to the Company, at the Company's sole option, (i) all Work Product, (ii) all tangible media of expression in the Candidate's possession or control which incorporate or in which are fixed any Confidential Information of the Company, and (iii) written certification of the Candidate's compliance with the Candidate's obligations under this Section 6.

7. Work Shall Not Infringe Third Party Rights. The Company represents and warrants to the Candidate that all Work Product used in connection with the Services shall not infringe upon or violate any rights (whether patent, copyright, trademark or otherwise) of any third party.

8. Confidentiality. In the course of its performance under this Agreement, each of the parties hereto may have access to and contact with certain confidential and proprietary information relating to the other party's business including, but not limited to, business strategy, marketing strategy, financial, pricing, customer and dealer information, product designs, drawings, specifications, processes, techniques, and other similar information, documents or materials, which are hereinafter referred to collectively as "Confidential Information." Each party agrees, throughout the term of this Agreement and at all times following the termination of this Agreement for any reason whatsoever, to neither disclose, use (except in connection with the provision of Services), communicate, reveal, transfer, nor make available to any third party in any manner whatsoever, any Confidential Information of the other party. The foregoing shall not prevent either party from disclosing Confidential Information necessary to enforce the provisions of this Agreement.

9. Indemnification. The Candidate will indemnify and hold harmless the Company, its officers, managers, members, agents, contractors and employees, if any, from any and all claims, losses, liabilities, damages, expenses and costs (including attorney's fees and court costs) (collectively, "Claims"), which result from (i) any breach or alleged breach of any misrepresentation of any warranty or representation made by the Candidate in or pursuant to this Agreement, (ii) failure by the Candidate to perform or comply with any covenant or agreement made by it in or pursuant to this Agreement, or (iii) any Claim brought by, through or under the Candidate's employees, officers, directors, principals, members, agents, subconsultants or subcontractors and/or anyone for whom any of them may be responsible, and all losses in connection with such Claims, arising out of, or resulting from, or in any manner connected with the Services. The rights and obligations of the parties under this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. Release. In consideration of the Services provided in Section 1, the Candidate hereby freely and voluntarily releases, waives, relinquishes and forever discharges on behalf of itself, its heirs, executors, administrators, officers, employees, agents or any other person claiming on its behalf, any and all claims, liabilities, obligations, demands or causes of action whatsoever (including those caused or alleged to be caused in whole or part by the negligence of the Company) (collectively, the "Releasees"), including, without limitation, claims for personal injury; wrongful death; property loss or damage; direct, indirect, punitive or consequential damages; lost profits; costs; charges; attorneys' fees; court costs; and other expenses of any kind arising, directly or indirectly, from the Services against the Company or its respective officers, employees, subsidiaries, affiliates, shareholders, members, directors, agents, successors and assigns.

11. Picture/Media Release and Waiver. The Candidate hereby irrevocably grants to the Company, its directors, officers, agents, employees and volunteers, and those acting with its authority with respect to the photographs, films, tape or other images taken of me by or on behalf of the Company (the "Images"), the unrestricted, absolute, perpetual, worldwide right to:

(a) reproduce, copy, modify, create derivatives in whole or in part, or otherwise use and exploit the Images or any versions or portions thereof and my performance in connection with the Images, including my image, likeness, own or fictitious name, or reproduction thereof, biography, photograph, words, utterances, gestures and recorded voice, or

any part thereof in combination with or as a composite of other matter, including, but not limited to, text, data, images, photographs, illustrations, animation and graphics, video or audio segments of any nature, and any information, including but not limited to remarks, suggestions, ideas, graphics or other submissions, communicated to the Company, in all languages, in color or black & white, in any media or embodiment, now known or hereafter to become known, including, but not limited to, any and all forms of print, pay television, free television, network broadcasting, over the air subscription television systems, theatrical, non-theatrical, DVD, CD and all formats of computer readable electronic magnetic, digital, laser or optical based media (the "Works"). The Candidate also consents to the use of any film, printed, video or voice-over matter in conjunction therewith,

(b) use and permit to be used the Candidate's name, image, likeness, biography, words, utterances and gestures, whether in original or modified form, in connection with the Works as the Company may choose, and

(c) display, perform, exhibit, distribute, transmit or broadcast the Works by any means now known or hereafter to become known.

The Candidate hereby waives all rights and releases Releasees from, and shall neither sue nor bring any proceeding against any such parties for, any claim or cause of action, whether now known or unknown, for defamation, invasion of right to privacy, publicity or personality or any similar matter, or based upon or related to the use and exploitation of the Images, including, but not limited to, any act of blurring, computer imaging, distortion, alteration, optical illusion, or use in composite form, whether intentional or otherwise, that may occur or be produced in the taking of such Images or in any subsequent processing thereof, as well as any publication thereof. The Candidate agrees that there shall be no obligation to utilize the authorization granted to the Candidate hereunder. The terms of this authorization shall commence on the date hereof and are without limitation.

12. Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each such counterpart shall be deemed an original.

13. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties with respect to its subject matter; any other oral or written agreements entered into with respect thereto are revoked and superseded by this Agreement; and no representations, warranties or inducements have been made by either of the parties except as expressly set forth herein. This Agreement cannot be amended except by a written instrument signed by both parties.

14. Severability. If any provision of this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

15. Assignability. This Agreement may not be assigned by the Candidate without the prior written consent of the other.

16. Arbitration. The parties shall attempt, in good faith, to resolve any dispute, claim or controversy regarding this Agreement and if a resolution is not reached within thirty (30) days, the dispute, claim or controversy shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules for expedited arbitration. The parties agree that the arbitration will be conducted in Phoenix, Arizona. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The parties agree that any dispute shall be heard and determined by one arbitrator appointed in accordance with the Commercial Arbitration Rules. Unless the parties agree otherwise, pre-hearing discovery shall be limited to the exchange of information and the production of documents required by the arbitrator from the parties.

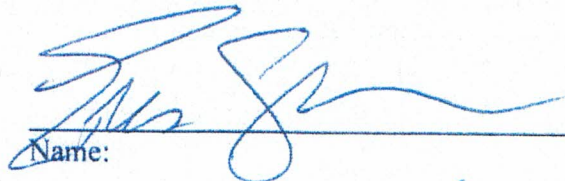
17. Governing Law; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona, without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Arizona. Should any litigation be commenced under this Agreement, the successful party in such litigation shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such litigation.

18. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written or electronic verification of receipt. All notices shall be sent to the parties at the addresses set forth below their signatures to this Agreement or at such other address as a party may designate by ten (10) days' advance written notice to the other party.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

CANDIDATE:


Name: _____

8645 E Holly St
Scottsdale AZ 85257

[Address]

COMPANY:

THE POWER OF FIVES, LLC


By: _____

Name: Robert Branch

Title: Manager

7000 North Cotton Lane, Suite 443,
Waddell, Arizona, 85355

EXHIBIT A

SERVICES AND COMPENSATION

Note: The Company will not directly solicit qualifying \$5 contributions and the Candidate at no time will pressure the Company to break any laws under the Citizens Clean Elections Act, A.R.S. § 16-940 *et seq.* (the "Act"). At no time will the Company spend more than the total Candidate's clean elections funding allotment for any phase (the "Fund Distribution"). The Candidate will be responsible for all required campaign reporting and adhering to the Act.

Phase	Services Provided / Term	Compensation
<u>Phase I:</u> Prefunding	Phase I will commence on the effective date of this Agreement and will end once the Candidate qualifies for public financing under the Act for the Primary Election. During Phase I, the Company will provide the following services: <ul style="list-style-type: none">• Develop the campaign strategy for the Candidate, develop the Candidate's brand, develop the strategy to collect nomination petition signatures, and develop the strategy to collect qualifying \$5 contributions.• Groom the Candidate, help develop the Candidate's message and start branding the Candidate as a "The Power of Fives Candidate."• Organize forums that the Candidate can attend to collect qualifying \$5 contributions for the Primary Election.	[40% of the Primary Fund Distribution.]
<u>Phase II:</u> Funded Primary	Phase II will commence after the Candidate qualifies for public financing for the Primary Election and will end following the Primary Election, which is on Aug 4 th , 2020 (<u>Note:</u> If the Candidate does not qualify for public financing under the Act, this Agreement shall immediately terminate). During Phase II, the Company will provide the following turn-key services: <ul style="list-style-type: none">• Continue to groom and train the Candidate.• Manage the Candidate's campaign with a campaign management team.• Continue branding the Candidate as a "The Power of Five Candidate" and develop the Candidate's message.• Handle all print and radio advertising during Phase II, including (number based on the office sought) yards signs, and (number based on the office sought) of large highway signs.• Provide support as needed to support the strategic plan of the campaign, as determined by the Company.	[60% of the Primary Fund Distribution.]
<u>Phase III:</u> Funded General Election	Phase III will commence if the Candidate win the Primary Election and will end following the General Election, which is on Nov 3 rd , 2020 (<u>Note:</u> If the Candidate does not win his or her Primary Election, this Agreement shall immediately terminate). During Phase III, the Company will provide the following turn-key services: <ul style="list-style-type: none">• Tailor the campaign with the Candidate to run against his or her new opponent.• All campaign management will be provided, as well as any support that is needed based on the campaign plan and as determined by the Company.• All print and radio ads will be provided by the Company as needed to support the campaign plan.	[100% of the General Election Fund Distribution.]

Exhibit 1I

Sloan Lyons Public Affairs LLC contract with The Power
of Fives LLC

**AGREEMENT BETWEEN
SLOAN LYONS LLC and THE POWER OF FIVES LLC**

This Agreement is made and entered into this 13th day of November, 2019, between SLOAN LYONS LLC with its principal place of business located at 10450 North 74th Street, Scottsdale, Arizona (hereinafter "**CONSULTANT**") and THE POWER OF FIVES LLC with their principal place of business located at 7000 North Cotton Lane, Suite 443, Waddell, Arizona (hereinafter "**CLIENT**").

For and in consideration of the mutual promises set forth herein, **CLIENT** and **CONSULTANT** agree as follows:

RESPONSIBILITIES OF CONSULTANT

The **CLIENT** hereby contracts with the **CONSULTANT** to provide business consulting services to **CLIENT**.

RETAINER FEE FOR WORK PERFORMED

The **CLIENT** shall pay to the **CONSULTANT** a monthly retainer fee of \$4,000.00 upon receipt of invoice for work to be performed as detailed in **RESPONSIBILITIES OF CONSULTANT** above. Invoices shall be submitted in advance via email the month prior to services being provided. **CLIENT** shall pay **Consultant** by check within 15 days upon receipt of the invoice.

TERM OF AGREEMENT

This Agreement shall begin on November 13, 2019 and will continue until terminated by either party with 30 days written notice. The terms of the Agreement can be renegotiated one year after the Agreement begins, and subsequently on the anniversary of the Agreement, unless terminated by either party.

LABOR AND EQUIPMENT

The **CONSULTANT** shall be responsible for furnishing all supervision, labor, and office equipment required to perform the responsibilities and duties herein. Tools and supplies approved by and purchased for the **CLIENT** will be reimbursed at the full purchase price with no markup.

INDEPENDENT CONTRACTOR STATUS

The **CONSULTANT** is an independent contractor, not an employee of the **CLIENT**. Nothing in this Agreement shall be construed to create any agency or employment relationship between the **CLIENT** or any of its employees and the **CONSULTANT** or any of its employees. The **CONSULTANT** has the right to perform services for others during the term of this Agreement. Neither the **CONSULTANT** nor its employees shall be required by the **CLIENT** to devote full time to the performance of the services required by this Agreement. The **CONSULTANT** acknowledges that it is fully responsible for its taxes, insurance, keeping financial records and filing all federal, state and local tax returns.

WORKERS' COMPENSATION INSURANCE

The **CLIENT** shall make no Workers Compensation payments on behalf of the **CONSULTANT**. The **CONSULTANT** is not entitled to Workers Compensation benefits in connection with work performed under this Agreement.

CONFIDENTIAL OR PROPRIETARY INFORMATION

CONSULTANT acknowledges that it may be necessary for **CLIENT** to disclose certain confidential and proprietary information to **CONSULTANT** in order for **CONSULTANT** to perform duties under this Agreement. **CONSULTANT** acknowledges that disclosure to a third party or misuse of this confidential or proprietary information would irreparably harm **CLIENT**. Accordingly, **CONSULTANT** will not disclose or

use, either during or after the term of this Agreement, any confidential or proprietary information of CLIENT without CLIENT's prior written permission except to the extent necessary to perform services on CLIENT's behalf. Confidential and proprietary information includes but is not limited to the written, printed, graphic, or electronically recorded materials furnished by CLIENT for CONSULTANT to use; any written or tangible information stamped "confidential," "proprietary," or with a similar legend, or any information that CLIENT makes reasonable efforts to maintain the secrecy of; business or marketing plans or strategies, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, curricula, computer programs, inventories, discoveries, and improvements of any kind, sales projections, pricing information; information belonging to customers and suppliers of CLIENT about whom CONSULTANT gained knowledge as a result of CONSULTANT's services to CLIENT. Upon termination of CONSULTANT's services to CLIENT, or at CLIENT's request, CONSULTANT shall deliver to CLIENT all materials in CONSULTANT's possession relating to CLIENT's business.

CONFLICT OF INTEREST:

CONSULTANT hereby represents that CONSULTANT does not have, and will not have, any actual or potential conflict of interest in connection with performing and fulfilling CONSULTANT'S obligations under this Agreement. In the event that CONSULTANT learns of any actual or potential conflict of interest inconsistent with the foregoing representation, CONSULTANT shall notify CLIENT immediately, and CLIENT shall then have the right, in its sole discretion, to mandate the management of any such conflict or unilaterally change the Scope of Work in response thereto, or to terminate this Agreement.

ENTIRE AGREEMENT

The within Agreement shall be construed in accordance with Arizona law and shall constitute the entire Agreement between the parties.

SLOAN LYONS LLC and THE POWER OF FIVES LLC have approved and executed this Agreement the date and year set forth above.

SLOAN LYONS LLC


BY: Alisa Lyons Sloan, Member Date

THE POWER OF FIVES LLC

 11/15/19
BY: Robert Branch, Member Date

Exhibit III

Tim La Sota's Engagement letter showing that Sloan
would pay for the legal challenges

Timothy A. La Sota, PLC
2198 E. Camelback Rd., Suite 305
Phoenix, Arizona 85016
P 602-515-2649
tim@timlasota.com

ENGAGEMENT AGREEMENT

April 16, 2020

Dr. Robert "Bob" Branch

Dear Dr. Branch:

This letter is a proposal for Timothy A. La Sota, PLC ("TAL") to represent you ("Client"). TAL proposes the following.

1. Description of Services. TAL will perform legal services as follows:

TAL will file suit to invalidate the petition signatures of Boyd Dunn, Corporation Commission candidate, and to have election officials enjoined from printing Dunn's name on the ballot.

2. Billing Statements and Payment.

Client shall not be responsible for any legal fees or costs billed by TAL. Client understands that Sloan for Corporation Commission will be paying all fees and costs.

3. Storage and Destruction of Your File. Once your matter is completed, our customary procedure is to close your file and send it to an off-site storage facility. If we did not previously do so, upon your written request, we will send to you any original documents and any original material that you have given to us. If you would like to receive your file at the conclusion of the matter, please notify us in writing now or promptly after the conclusion of our active service on your behalf. Once the file has been sent to the off-site storage facility, there may be a charge for its retrieval.

IF YOU DO NOT NOTIFY OUR FIRM OF YOUR DESIRE TO RECEIVE YOUR FILE, AND IT IS PLACED IN STORAGE, YOU SHOULD ASSUME THAT YOUR FILE, INCLUDING ANY ORIGINAL DOCUMENTS, WILL BE DESTROYED, WITHOUT FURTHER NOTICE TO YOU, FIVE (5) YEARS AFTER THE CONCLUSION OF OUR FIRM ACTIVELY PROVIDING LEGAL SERVICES IN CONNECTION WITH YOUR MATTER.

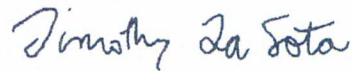
Dr. Branch
April 20, 2020
Page -2-

If the following is agreeable to you, please sign and return. I understand that in this instance, approval may require a vote of the full board.

Please let me know if I can answer any questions with regard to this engagement letter. Thank you for your consideration.

Sincerely,

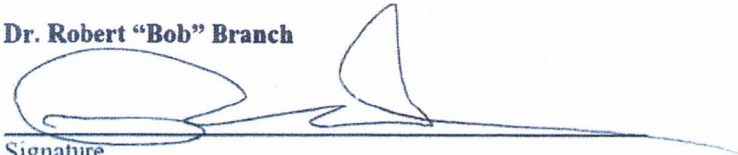
TIMOTHY A. LA SOTA, PLC



Timothy A. La Sota

ACCEPTED this 16 day of April, 2020.

Dr. Robert "Bob" Branch



Signature

Exhibit IV

Tim La Sota's Invoice to The Power of Fives LLC for Sloan's legal challenges, and Showing that The Power of Fives LLC paid that invoice.

Timothy A. La Sota, PLLC

2198 East Camelback Rd., Suite 305
Phoenix, Arizona 85016
P 602-515-2649
tim@timlasota.com

Invoice Number: 3631 (June 2020)

Matter: Power of Fives, general

TO:

Dr. Robert Branch
Principal, Power of Fives

April/May

\$23,000 flat fee, per Agreement

TOTAL DUE: \$23,000.00

Thank you!

PAID check #

1136

*Billable to Sloan
Court costs - Candidates
off Ballot competition*

Exhibit V

Tim La Sota's revised itemized invoice to The Power of
Fives LLC for Sloan's legal challenges

Timothy A. La Sota, PLLC

2198 East Camelback Rd., Suite 305
Phoenix, Arizona 85016
P 602-515-2649
tim@timlasota.com

Invoice Number: 3631 (June 2020-AMENDED 8/5/20)

Matter: Power of Fives, general

TO:

Dr. Robert Branch
Principal, Power of Fives

April/May

\$23,000 flat fee, per Agreement:

Superior Court cases against Owens, Dunn and Farnsworth: \$3,333 each

Dunn Appeal: \$3,000.

Sloan defense, Superior and Supreme Court: \$10,000.

Total: \$23,000

Total Paid: \$23,000

TOTAL DUE: \$0

Thank you!

Exhibit VI

The Power of Fives LLC Invoice for Eric Sloan's Primary Race



SENT VIA EMAIL AND USPS

Invoice # 1010
Primary Election
Phase I and Phase II Invoice
Page 1 of 2

July 31, 2020
Primary Election Invoice

Mr. Eric Sloan
8649 E. Holly Street
Scottsdale, Arizona 85257

Eric,

Once again, I want to congratulate you on the successful Primary Election. The Power of Fives LLC is excited to have provided to you a winning strategy and the complete "turnkey" campaign support that guided you to victory. Your victory is our shared victory.

This is the final invoice for Phase I and II of your campaign, the total contractual amount of \$116,016.

Please reference the following, for the Final Primary Election Invoice breakdown:

Total Campaign Services

Strategic Campaign Development	\$25,000.00
Orientation with photos	\$500.00
Candidate Training	\$1,000.00
Candidate Field Support	\$45,235.92
Signature Challenge Strategy	\$23,000.00
Campaign Meet and Greets	\$575.45
Media Banners	\$301.91
Media LinkedIn accounts	\$1,500.00
Voter contact development	\$6,504.72
Campaign development Admin	\$7,300.00
Use of The Power of Fives Brand Logo	\$1,000.00
Payment for signatures and admin fee	\$3,500.00
Copies plus admin fees	\$598.00
Total =	\$116,016.00



Invoice # 1010
Primary Election
Phase I and Phase II Invoice
Page 2 of 2

Per the Contract, Addendum A, you currently owe The Power of Fives LLC \$116,016 for Phase I and Phase II.

Again, congratulations on a very successful Primary Election, and please know that our contract is still in effect until August 24, 2020, and we reserve the right to submit a Phase III invoice for any necessary costs and expenses incurred.

Thank you for the opportunity to provide these services.

THE POWER OF FIVES LLC

Dr. Robert Branch
Managing Member
The Power of Fives LLC
Dr.Branch@thepoweroffives.com
602-334-6519



SERVICE AGREEMENT

THIS SERVICE AGREEMENT (this "Agreement"), is entered into and effective as of Jan 1, 2019, by and between The Power of Fives, LLC, an Arizona limited liability company (the "Company"), and Erin Slown, an individual (the "Candidate").

1. Services. The Candidate hereby engages the Company as an independent contractor and the Company hereby accepts such engagement upon the terms and conditions contained in this Agreement. During the term of this Agreement, the Company agrees to provide to the Candidate the services described in Exhibit A (the "Services"). The Company represents that the Company has the special skill, professional competence, expertise and experience to undertake the obligations imposed by this Agreement, and will perform the Services in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the Company's profession and in compliance with all applicable laws. The Company shall commit such time as is necessary to perform the Services. The Company acknowledges and agrees that the Company owes a duty while performing the Services under this Agreement to act in the best interests of the Candidate so as to maintain and increase the goodwill and reputation of the Candidate. The Company agrees to not make any statement, oral or written, intended to injure the business, interests or reputation of the Candidate. The Candidate agrees that during the term of this Agreement, without the Company's prior written consent, the Candidate will not engage any other consultant or contractor that provides services that are competitive to the Services provided by the Company.

2. Compensation; Expenses. The Company will be compensated for rendering the Services in the amounts set forth on Exhibit A. For the Services provided in Phase I of Exhibit A, the Company shall submit to the Candidate, not later than ten (10) days following the date hereof, an invoice setting forth the payment owed for Phase I. The Candidate shall pay all undisputed amounts on such invoice within thirty (30) days of the earlier of: (a) the termination of this Agreement, or (b) once the Candidate qualifies for public financing for the Primary Election. For the Services provided in Phase II or III of Exhibit A, the Company shall submit to the Candidate following the completion of some or all of the Services set forth in a respective payment period, an invoice setting forth the payment owed for such payment period. The Candidate shall pay all undisputed amounts on such invoices within thirty (30) days of receipt.

3. Term. The term of this Agreement shall commence upon the date first written above and shall continue until the Services have been completed, or as otherwise set forth in Exhibit A, unless earlier terminated as provided herein. The term of this Agreement may be shortened or extended upon the mutual written agreement of both parties.

4. Termination. Either party may terminate this Agreement for any reason by giving the other party written notice of the termination at least thirty (30) days in advance of the date of termination. This Agreement may also be terminated upon mutual written agreement of the parties. Upon termination, the Candidate shall pay the Company all amounts previously invoiced and/or incurred by the Company in connection with the Services and both parties shall immediately return to the other parties all Confidential Information (as defined below) and information and products of whatever nature or kind and in whatever format. If either party fails to promptly return any products to the other party after the termination of this Agreement, the party in violation of this Section 4 shall pay the other party, or the other party shall have the right to retain such amounts from any compensation owed under Section 2, an amount equal to the manufacturer's suggested retail price of such products.

5. Independent Contractor Status. The Company's relationship to the Candidate shall be that of an independent contractor. Nothing in this Agreement is intended to make the Company or its employees an employee or agent of the Candidate or confer on the Company or its employees any rights, privileges or benefits as an employee of the Candidate. The Company shall have no right, power or authority (and shall not hold itself out as having any such right, power or authority) to bind the Candidate in any manner or to any agreement or undertaking with any third party except as specifically provided in this Agreement.

6. Ownership and Return of Creations. All Work Product (as defined below), conceived, created, made, developed, or acquired by or for the Company used to perform the Services shall remain the property of the Company. "Work Product" shall include, without limitation, all designs, documents, manuals, videos, drawings, logos, improvements, plans, developments, processes, business methods, trade secrets, and any and all copyrightable expression, all copyrightable works, and all patentable subject matter, in all media (whether existing now or to be invented), whether or not protected by statute, including all derivative works. At the Company's request and no later than five (5) days after such request, the Candidate shall destroy or deliver to the Company, at the Company's sole option, (i) all Work Product, (ii) all tangible media of expression in the Candidate's possession or control which incorporate or in which are fixed any Confidential Information of the Company, and (iii) written certification of the Candidate's compliance with the Candidate's obligations under this Section 6.

7. Work Shall Not Infringe Third Party Rights. The Company represents and warrants to the Candidate that all Work Product used in connection with the Services shall not infringe upon or violate any rights (whether patent, copyright, trademark or otherwise) of any third party.

8. Confidentiality. In the course of its performance under this Agreement, each of the parties hereto may have access to and contact with certain confidential and proprietary information relating to the other party's business including, but not limited to, business strategy, marketing strategy, financial, pricing, customer and dealer information, product designs, drawings, specifications, processes, techniques, and other similar information, documents or materials, which are hereinafter referred to collectively as "Confidential Information." Each party agrees, throughout the term of this Agreement and at all times following the termination of this Agreement for any reason whatsoever, to neither disclose, use (except in connection with the provision of Services), communicate, reveal, transfer, nor make available to any third party in any manner whatsoever, any Confidential Information of the other party. The foregoing shall not prevent either party from disclosing Confidential Information necessary to enforce the provisions of this Agreement.

9. Indemnification. The Candidate will indemnify and hold harmless the Company, its officers, managers, members, agents, contractors and employees, if any, from any and all claims, losses, liabilities, damages, expenses and costs (including attorney's fees and court costs) (collectively, "Claims"), which result from (i) any breach or alleged breach of any misrepresentation of any warranty or representation made by the Candidate in or pursuant to this Agreement, (ii) failure by the Candidate to perform or comply with any covenant or agreement made by it in or pursuant to this Agreement, or (iii) any Claim brought by, through or under the Candidate's employees, officers, directors, principals, members, agents, subconsultants or subcontractors and/or anyone for whom any of them may be responsible, and all losses in connection with such Claims, arising out of, or resulting from, or in any manner connected with the Services. The rights and obligations of the parties under this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. Release. In consideration of the Services provided in Section 1, the Candidate hereby freely and voluntarily releases, waives, relinquishes and forever discharges on behalf of itself, its heirs, executors, administrators, officers, employees, agents or any other person claiming on its behalf, any and all claims, liabilities, obligations, demands or causes of action whatsoever (including those caused or alleged to be caused in whole or part by the negligence of the Company) (collectively, the "Releasees"), including, without limitation, claims for personal injury; wrongful death; property loss or damage; direct, indirect, punitive or consequential damages; lost profits; costs; charges; attorneys' fees; court costs; and other expenses of any kind arising, directly or indirectly, from the Services against the Company or its respective officers, employees, subsidiaries, affiliates, shareholders, members, directors, agents, successors and assigns.

11. Picture/Media Release and Waiver. The Candidate hereby irrevocably grants to the Company, its directors, officers, agents, employees and volunteers, and those acting with its authority with respect to the photographs, films, tape or other images taken of me by or on behalf of the Company (the "Images"), the unrestricted, absolute, perpetual, worldwide right to:

(a) reproduce, copy, modify, create derivatives in whole or in part, or otherwise use and exploit the Images or any versions or portions thereof and my performance in connection with the Images, including my image, likeness, own or fictitious name, or reproduction thereof, biography, photograph, words, utterances, gestures and recorded voice, or

any part thereof in combination with or as a composite of other matter, including, but not limited to, text, data, images, photographs, illustrations, animation and graphics, video or audio segments of any nature, and any information, including but not limited to remarks, suggestions, ideas, graphics or other submissions, communicated to the Company, in all languages, in color or black & white, in any media or embodiment, now known or hereafter to become known, including, but not limited to, any and all forms of print, pay television, free television, network broadcasting, over the air subscription television systems, theatrical, non-theatrical, DVD, CD and all formats of computer readable electronic magnetic, digital, laser or optical based media (the "Works"). The Candidate also consents to the use of any film, printed, video or voice-over matter in conjunction therewith,

(b) use and permit to be used the Candidate's name, image, likeness, biography, words, utterances and gestures, whether in original or modified form, in connection with the Works as the Company may choose, and

(c) display, perform, exhibit, distribute, transmit or broadcast the Works by any means now known or hereafter to become known.

The Candidate hereby waives all rights and releases Releasees from, and shall neither sue nor bring any proceeding against any such parties for, any claim or cause of action, whether now known or unknown, for defamation, invasion of right to privacy, publicity or personality or any similar matter, or based upon or related to the use and exploitation of the Images, including, but not limited to, any act of blurring, computer imaging, distortion, alteration, optical illusion, or use in composite form, whether intentional or otherwise, that may occur or be produced in the taking of such Images or in any subsequent processing thereof, as well as any publication thereof. The Candidate agrees that there shall be no obligation to utilize the authorization granted to the Candidate hereunder. The terms of this authorization shall commence on the date hereof and are without limitation.

12. Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each such counterpart shall be deemed an original.

13. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties with respect to its subject matter; any other oral or written agreements entered into with respect thereto are revoked and superseded by this Agreement; and no representations, warranties or inducements have been made by either of the parties except as expressly set forth herein. This Agreement cannot be amended except by a written instrument signed by both parties.

14. Severability. If any provision of this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

15. Assignability. This Agreement may not be assigned by the Candidate without the prior written consent of the other.

16. Arbitration. The parties shall attempt, in good faith, to resolve any dispute, claim or controversy regarding this Agreement and if a resolution is not reached within thirty (30) days, the dispute, claim or controversy shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules for expedited arbitration. The parties agree that the arbitration will be conducted in Phoenix, Arizona. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The parties agree that any dispute shall be heard and determined by one arbitrator appointed in accordance with the Commercial Arbitration Rules. Unless the parties agree otherwise, pre-hearing discovery shall be limited to the exchange of information and the production of documents required by the arbitrator from the parties.

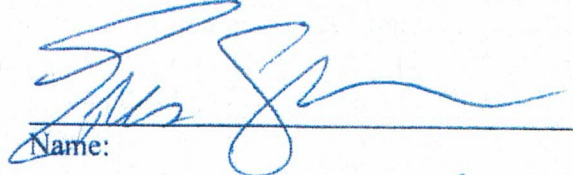
17. Governing Law; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona, without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Arizona. Should any litigation be commenced under this Agreement, the successful party in such litigation shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such litigation.

18. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written or electronic verification of receipt. All notices shall be sent to the parties at the addresses set forth below their signatures to this Agreement or at such other address as a party may designate by ten (10) days' advance written notice to the other party.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

CANDIDATE:


Name: _____

8645 E Holly St
Scottsdale AZ 85257

[Address]

COMPANY:

THE POWER OF FIVES, LLC


By: _____

Name: Robert Branch

Title: Manager

7000 North Cotton Lane, Suite 443,
Waddell, Arizona, 85355

EXHIBIT A

SERVICES AND COMPENSATION

Note: The Company will not directly solicit qualifying \$5 contributions and the Candidate at no time will pressure the Company to break any laws under the Citizens Clean Elections Act, A.R.S. § 16-940 *et seq.* (the "Act"). At no time will the Company spend more than the total Candidate's clean elections funding allotment for any phase (the "Fund Distribution"). The Candidate will be responsible for all required campaign reporting and adhering to the Act.

Phase	Services Provided / Term	Compensation
<u>Phase I:</u> Prefunding	Phase I will commence on the effective date of this Agreement and will end once the Candidate qualifies for public financing under the Act for the Primary Election. During Phase I, the Company will provide the following services: <ul style="list-style-type: none">• Develop the campaign strategy for the Candidate, develop the Candidate's brand, develop the strategy to collect nomination petition signatures, and develop the strategy to collect qualifying \$5 contributions.• Groom the Candidate, help develop the Candidate's message and start branding the Candidate as a "The Power of Fives Candidate."• Organize forums that the Candidate can attend to collect qualifying \$5 contributions for the Primary Election.	[40% of the Primary Fund Distribution.]
<u>Phase II:</u> Funded Primary	Phase II will commence after the Candidate qualifies for public financing for the Primary Election and will end following the Primary Election, which is on Aug 4 th , 2020 (<u>Note:</u> If the Candidate does not qualify for public financing under the Act, this Agreement shall immediately terminate). During Phase II, the Company will provide the following turn-key services: <ul style="list-style-type: none">• Continue to groom and train the Candidate.• Manage the Candidate's campaign with a campaign management team.• Continue branding the Candidate as a "The Power of Five Candidate" and develop the Candidate's message.• Handle all print and radio advertising during Phase II, including (number based on the office sought) yards signs, and (number based on the office sought) of large highway signs.• Provide support as needed to support the strategic plan of the campaign, as determined by the Company.	[60% of the Primary Fund Distribution.]
<u>Phase III:</u> Funded General Election	Phase III will commence if the Candidate win the Primary Election and will end following the General Election, which is on Nov 3 rd , 2020 (<u>Note:</u> If the Candidate does not win his or her Primary Election, this Agreement shall immediately terminate). During Phase III, the Company will provide the following turn-key services: <ul style="list-style-type: none">• Tailor the campaign with the Candidate to run against his or her new opponent.• All campaign management will be provided, as well as any support that is needed based on the campaign plan and as determined by the Company.• All print and radio ads will be provided by the Company as needed to support the campaign plan.	[100% of the General Election Fund Distribution.]

**AGREEMENT BETWEEN
SLOAN LYONS LLC and THE POWER OF FIVES LLC**

This Agreement is made and entered into this 13th day of November, 2019, between SLOAN LYONS LLC with its principal place of business located at 10450 North 74th Street, Scottsdale, Arizona (hereinafter "**CONSULTANT**") and THE POWER OF FIVES LLC with their principal place of business located at 7000 North Cotton Lane, Suite 443, Waddell, Arizona (hereinafter "**CLIENT**").

For and in consideration of the mutual promises set forth herein, **CLIENT** and **CONSULTANT** agree as follows:

RESPONSIBILITIES OF CONSULTANT

The **CLIENT** hereby contracts with the **CONSULTANT** to provide business consulting services to **CLIENT**.

RETAINER FEE FOR WORK PERFORMED

The **CLIENT** shall pay to the **CONSULTANT** a monthly retainer fee of \$4,000.00 upon receipt of invoice for work to be performed as detailed in **RESPONSIBILITIES OF CONSULTANT** above. Invoices shall be submitted in advance via email the month prior to services being provided. **CLIENT** shall pay **Consultant** by check within 15 days upon receipt of the invoice.

TERM OF AGREEMENT

This Agreement shall begin on November 13, 2019 and will continue until terminated by either party with 30 days written notice. The terms of the Agreement can be renegotiated one year after the Agreement begins, and subsequently on the anniversary of the Agreement, unless terminated by either party.

LABOR AND EQUIPMENT

The **CONSULTANT** shall be responsible for furnishing all supervision, labor, and office equipment required to perform the responsibilities and duties herein. Tools and supplies approved by and purchased for the **CLIENT** will be reimbursed at the full purchase price with no markup.

INDEPENDENT CONTRACTOR STATUS

The **CONSULTANT** is an independent contractor, not an employee of the **CLIENT**. Nothing in this Agreement shall be construed to create any agency or employment relationship between the **CLIENT** or any of its employees and the **CONSULTANT** or any of its employees. The **CONSULTANT** has the right to perform services for others during the term of this Agreement. Neither the **CONSULTANT** nor its employees shall be required by the **CLIENT** to devote full time to the performance of the services required by this Agreement. The **CONSULTANT** acknowledges that it is fully responsible for its taxes, insurance, keeping financial records and filing all federal, state and local tax returns.

WORKERS' COMPENSATION INSURANCE

The **CLIENT** shall make no Workers Compensation payments on behalf of the **CONSULTANT**. The **CONSULTANT** is not entitled to Workers Compensation benefits in connection with work performed under this Agreement.

CONFIDENTIAL OR PROPRIETARY INFORMATION

CONSULTANT acknowledges that it may be necessary for **CLIENT** to disclose certain confidential and proprietary information to **CONSULTANT** in order for **CONSULTANT** to perform duties under this Agreement. **CONSULTANT** acknowledges that disclosure to a third party or misuse of this confidential or proprietary information would irreparably harm **CLIENT**. Accordingly, **CONSULTANT** will not disclose or

use, either during or after the term of this Agreement, any confidential or proprietary information of CLIENT without CLIENT's prior written permission except to the extent necessary to perform services on CLIENT's behalf. Confidential and proprietary information includes but is not limited to the written, printed, graphic, or electronically recorded materials furnished by CLIENT for CONSULTANT to use; any written or tangible information stamped "confidential," "proprietary," or with a similar legend, or any information that CLIENT makes reasonable efforts to maintain the secrecy of; business or marketing plans or strategies, customer lists, operating procedures, trade secrets, design formulas, know-how and processes, curricula, computer programs, inventories, discoveries, and improvements of any kind, sales projections, pricing information; information belonging to customers and suppliers of CLIENT about whom CONSULTANT gained knowledge as a result of CONSULTANT's services to CLIENT. Upon termination of CONSULTANT's services to CLIENT, or at CLIENT's request, CONSULTANT shall deliver to CLIENT all materials in CONSULTANT's possession relating to CLIENT's business.

CONFLICT OF INTEREST:

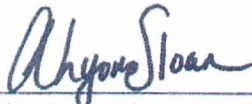
CONSULTANT hereby represents that CONSULTANT does not have, and will not have, any actual or potential conflict of interest in connection with performing and fulfilling CONSULTANT'S obligations under this Agreement. In the event that CONSULTANT learns of any actual or potential conflict of interest inconsistent with the foregoing representation, CONSULTANT shall notify CLIENT immediately, and CLIENT shall then have the right, in its sole discretion, to mandate the management of any such conflict or unilaterally change the Scope of Work in response thereto, or to terminate this Agreement.

ENTIRE AGREEMENT

The within Agreement shall be construed in accordance with Arizona law and shall constitute the entire Agreement between the parties.

SLOAN LYONS LLC and THE POWER OF FIVES LLC have approved and executed this Agreement the date and year set forth above.

SLOAN LYONS LLC



BY: Alisa Lyons Sloan, Member

Date

THE POWER OF FIVES LLC



BY: Robert Branch, Member

Date

11/15/19

From: Bob Branch bobbbranch2018@gmail.com
Subject: Re: Rep Candidates in the Arizona Corp
Comm race needs your help ASAP
Date: Jun 20, 2020 at 12:04:33 PM
To: Swannee schnezana@yahoo.com
Cc: sloanforarizona@gmail.com

Hello Swannee,

You actually do not need a Paypal account, but the State requires all of the Clean Elections candidates have a Paypal account. I have copied Eric Sloan to this email and he will help you.

Thank you so much and Blessings,

Bob

On Fri, Jun 19, 2020 at 1:09 PM Swannee
<schnezana@yahoo.com> wrote:

Hi Bob Branch,

I went to donate and it insists that I have Paypal! I DO NOT AND WILL have PAYPAL!
What other ways can I donate? I am attending SaturdayPCRC meeting can I do it there, check or cash?

Swannee Welsh

On Thursday, June 18, 2020, 10:26:08 AM MST, Bob Branch <bobbbranch2018@gmail.com> wrote:

Fellow Republican State Delegate,

Last week AZ GOP Chairwoman Kelli Ward emailed you and asked that you please support each of the Republican Candidates in the Arizona Corporation Commission race by contributing \$5 to their campaigns. This is the reason that I am contacting you today. By virtue of the fact

that you are a State Delegate, you are a leader in the Republican Party; and, we are counting on your leadership abilities.

There are three open seats on the AZ Corporation Commission board with only two Republicans on the ballot, and a third Republican running as a write-in candidate. So, the good news is that we know that Eric Sloan and Lea Marquez Peterson are on the ballot, and each will win their primary election; however, both are Clean Election candidates, and at this time, neither one has the required 1,500 - \$5 contributions. Lea and Eric are not yet funded. You cannot run a campaign when not funded.

Eric and Lea did their job and became our "Republican" candidates, and now it is our turn to do our job. We must get them funded. So, I am asking that if you have not already done so, please go to the Secretary of State's website and contribute to them. If you already gave them \$5, then please contact other Republicans and have them do the same. Remember that your individual \$5 contribution, less than a cup of coffee, will give the candidate over \$193 in funding for this election cycle. That is enough to buy 10 highway signs, and 10 yard signs, and that is enough to influence thousands of voters. There is Power in those \$5 bills.

We only have a short amount of time to get 1,500 - \$5 contributions for each of the candidates, so let's make them successful and help them by contributing today.

Please go to: <https://apps.azsos.gov/apps/election/eps/qc/>

Fill out your voter information, and give a \$5 contribution to each of the three candidates:

Eric Sloan, Lea Marquez Peterson, and Jim O'Connor (the write-in candidate).

Keep Arizona Red! Contribute to their campaigns and do your part. Our Party cannot afford to lose the seats by not doing our part. Your contribution matters!

Thank you and Blessings,

Bob

Dr. Bob Branch

Timothy A. La Sota, PLC
2198 E. Camelback Rd., Suite 305
Phoenix, Arizona 85016
P 602-515-2649
tim@timlasota.com

ENGAGEMENT AGREEMENT

April 16, 2020

Dr. Robert "Bob" Branch

Dear Dr. Branch:

This letter is a proposal for Timothy A. La Sota, PLC ("TAL") to represent you ("Client"). TAL proposes the following.

1. Description of Services. TAL will perform legal services as follows:

TAL will file suit to invalidate the petition signatures of Boyd Dunn, Corporation Commission candidate, and to have election officials enjoined from printing Dunn's name on the ballot.

2. Billing Statements and Payment.

Client shall not be responsible for any legal fees or costs billed by TAL. Client understands that Sloan for Corporation Commission will be paying all fees and costs.

3. Storage and Destruction of Your File. Once your matter is completed, our customary procedure is to close your file and send it to an off-site storage facility. If we did not previously do so, upon your written request, we will send to you any original documents and any original material that you have given to us. If you would like to receive your file at the conclusion of the matter, please notify us in writing now or promptly after the conclusion of our active service on your behalf. Once the file has been sent to the off-site storage facility, there may be a charge for its retrieval.

IF YOU DO NOT NOTIFY OUR FIRM OF YOUR DESIRE TO RECEIVE YOUR FILE, AND IT IS PLACED IN STORAGE, YOU SHOULD ASSUME THAT YOUR FILE, INCLUDING ANY ORIGINAL DOCUMENTS, WILL BE DESTROYED, WITHOUT FURTHER NOTICE TO YOU, FIVE (5) YEARS AFTER THE CONCLUSION OF OUR FIRM ACTIVELY PROVIDING LEGAL SERVICES IN CONNECTION WITH YOUR MATTER.

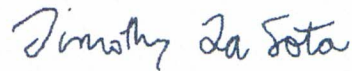
Dr. Branch
April 20, 2020
Page -2-

If the following is agreeable to you, please sign and return. I understand that in this instance, approval may require a vote of the full board.

Please let me know if I can answer any questions with regard to this engagement letter. Thank you for your consideration.

Sincerely,

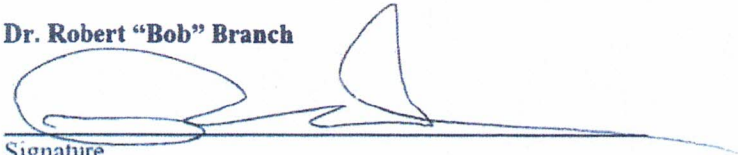
TIMOTHY A. LA SOTA, PLC



Timothy A. La Sota

ACCEPTED this 16 day of April, 2020.

Dr. Robert "Bob" Branch



Signature



SENT VIA EMAIL AND USPS

Invoice # 1010
Primary Election
Phase I and Phase II Invoice
Page 1 of 2

July 31, 2020
Primary Election Invoice

Mr. Eric Sloan
8649 E. Holly Street
Scottsdale, Arizona 85257

Eric,

Once again, I want to congratulate you on the successful Primary Election. The Power of Fives LLC is excited to have provided to you a winning strategy and the complete "turnkey" campaign support that guided you to victory. Your victory is our shared victory.

This is the final invoice for Phase I and II of your campaign, the total contractual amount of \$116,016.

Please reference the following, for the Final Primary Election Invoice breakdown:

Total Campaign Services

Strategic Campaign Development	\$25,000.00
Orientation with photos	\$500.00
Candidate Training	\$1,000.00
Candidate Field Support	\$45,235.92
Signature Challenge Strategy	\$23,000.00
Campaign Meet and Greets	\$575.45
Media Banners	\$301.91
Media LinkedIn accounts	\$1,500.00
Voter contact development	\$6,504.72
Campaign development Admin	\$7,300.00
Use of The Power of Fives Brand Logo	\$1,000.00
Payment for signatures and admin fee	\$3,500.00
Copies plus admin fees	\$598.00
Total =	\$116,016.00



Invoice # 1010
Primary Election
Phase I and Phase II Invoice
Page 2 of 2

Per the Contract, Addendum A, you currently owe The Power of Fives LLC \$116,016 for Phase I and Phase II.

Again, congratulations on a very successful Primary Election, and please know that our contract is still in effect until August 24, 2020, and we reserve the right to submit a Phase III invoice for any necessary costs and expenses incurred.

Thank you for the opportunity to provide these services.

THE POWER OF FIVES LLC

Dr. Robert Branch
Managing Member
The Power of Fives LLC
Dr.Branch@thepoweroffives.com
602-334-6519

William M. Fischbach, SBN# 019769



SEVENTH FLOOR CAMELBACK ESPLANADE II
2525 EAST CAMELBACK ROAD
PHOENIX, ARIZONA 85016-4237
TELEPHONE: (602) 255-6000
FACSIMILE: (602) 255-0103
EMAIL: wmf@tblaw.com

Attorneys for The Power of Fives, LLC

SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF MARICOPA

THE POWER OF FIVES, LLC, an Arizona
limited liability company,

Plaintiff,

vs.

ARIZONA CITIZENS CLEAN ELECTIONS
COMMISSION, a public entity; THE STATE
OF ARIZONA, a public entity.

Defendants.

Case No. CV2021-015826

FIRST AMENDED COMPLAINT

Parties, Jurisdiction, and Venue

1. This is a declaratory relief action seeking adjudication of the lawfulness of a contract under Arizona law in accordance with A.R.S. §§ 12-1831, -1833.

2. Plaintiff The Power of Fives, LLC (“TPOF”) is an Arizona Limited Liability Company authorized to conduct business in Arizona.

3. Defendant Arizona Citizens Clean Elections Commission (the “Commission”) is a bipartisan commission consisting of five members that was created under the Citizens Clean Election Act (the “Act”). See A.R.S. §§ 16-955 to -57. Defendant State of Arizona is joined to the extent the Commission is not a jural entity for purpose of this Action.

4. This case qualifies for Tier 2 designation under Ariz. R. Civ. P. 26.2.

5. The events alleged herein occurred in Maricopa County.

6. This Court has jurisdiction over this action under A.R.S. § 12-123 and the Arizona Constitution, Article VI, § 14.

GENERAL ALLEGATIONS

7. TPOF is in the business of identifying and supporting candidates to run for public office in Arizona.

8. Specifically, TPOF offers a “turnkey” or ready-made campaign services to the candidates that it partners with.

9. All such candidates sign an identical agreement with TPOF (the “Agreement”). A true and correct copy of the Agreement is attached hereto as **Exhibit A**.

10. The Agreement’s Services and Compensation sets forth a three-phase schedule for the candidate to compensate TPOF for these “turnkey” services: Phase I – Prefunding, Phase II – Funded Primary, and Phase III – Funded General Election.

11. The Agreement provides that TPOF would not “spend more than the total Candidate’s clean elections funding allotment for any phase” at any point during the campaign.

12. In addition, the Agreement makes the candidate “responsible for all campaign reporting and adhering to the Act.”

13. Under the Agreement, if the candidate failed to qualify for clean elections funding, the Agreement would automatically terminate. Thus, if a candidate never qualified for clean elections funding, it would owe nothing to TPOF.

14. In addition, the Agreement made payment at all phases contingent on TPOF delivering to the candidate an invoice setting forth the payment owed for that phase.

15. Although the Agreement tethered compensation to the primary fund distribution, no provision of the Agreement expressly required the candidate to pay TPOF directly from the primary fund distribution.

16. During the 2020 Election Cycle, TPOF partnered with Eric Sloan in his run for a seat on the Corporation Commission. As such, Sloan signed the Agreement.

1 17. After Sloan qualified for clean elections funding, TPOF delivered a final
2 invoice to him for Phase I and Phase II.

3 18. Sloan refused to pay the invoice in full and terminated his use of TPOF's
4 services.

5 19. This prompted TPOF to make a demand for arbitration in accordance with
6 the terms of the Agreement's provisions governing dispute resolution.

7 20. While the arbitration proceedings were pending, Dr. Bob Branch—TPOF's
8 Founder and Managing Member—filed a clean elections complaint against Eric Sloan for
9 violating the Act by (a) reporting only \$67,731 on his campaign finance report and not the
10 \$116,016 that he contractually owed to TPOF for Phase I and Phase II and (b) spending
11 over the limits applicable to clean election candidates by at least \$23,056.

12 21. Following Branch's Complaint, the Commission's Executive Director Tom
13 Collins provided a statement of reasons to believe that a violation of the Act and
14 Commission rules had occurred.

15 22. Thus, the Commission began an investigation of whether Sloan violated the
16 Act and Commission rules in conducting his campaign. The Commission expressed
17 hesitation, however, over the extent and scope of the investigation given the parties'
18 pending contractual dispute.

19 23. As the arbitration proceedings unfolded, Sloan began to contend that the
20 Agreement was illegal, and therefore unenforceable, because it required him to violate the
21 Act by forcing him to incur an expenditure in excess of cash on hand. Sloan even issued
22 a subpoena to the Executive Director Collins to support his argument, but the Commission
23 successfully moved to quash the subpoena by arguing, among other things, that Executive
24 Director Collins "ha[d] no personal knowledge of the events at issue."

25 24. The Arbitrator ultimately rejected Sloan's arguments, found the contract
26 enforceable against Sloan, and issued an award in TPOF's favor. The Arbitrator
27 specifically found that "[t]here is nothing in the Clean Election laws and regulations that
28 prevent a candidate from entering into a contract for services before he receives clean

1 election funding, with the payment to be paid upon receipt of clean election funding.” A
2 copy of the Arbitrator’s Interim Award is attached as **Exhibit B**.

3 25. After the Arbitrator issued the Interim Award, Sloan—without TPOF’s
4 knowledge or participation—conceded to the Commission that he violated the Act by
5 entering into the Agreement.

6 26. Upon information and belief, Sloan made this concession so that he could
7 later oppose the Confirmation of the final arbitration award in Superior Court.

8 27. Based in part on Sloan’s concession, the Commission ordered Sloan to repay
9 \$94,590.79 from either his personal funds or campaign account on April 29, 2021.

10 28. Meanwhile, the Arbitrator issued a final award in favor of TPOF for
11 \$116,106 in damages, \$40,000 in attorney’s fees, and \$10,750 in costs. A copy of the
12 Final Award is attached as **Exhibit C**.

13 29. Proceedings to confirm the Final Award were initiated on May 4, 2021, and
14 are still pending in the Maricopa County Superior Court under the case name *The Power*
15 *of Fives, LLC v. Eric Sloan et al.*, Case No. CV2021-007328.

16 30. In those proceedings, Sloan has argued that the Final Award should not be
17 confirmed based on his concession to the Commission that he had violated the Act by
18 merely signing the Agreement.

19 31. A week later, and despite the fact that it had already issued a repayment
20 order to Sloan, the Commission issued to Dr. Branch and TPOF a subpoena duces tecum
21 requesting extensive documents related to TPOF’s campaign services. On May 25, 2021,
22 Dr. Branch and TPOF provided all documents produced in the arbitral proceedings but
23 objected to the scope of the subpoena, expressing confusion about why its business
24 practices were suddenly under siege.

25 32. On June 1 and June 3, 2021, the Executive Director Collins sent e-mails to
26 TOPF’s counsel seemingly indicating Collins was now hostile to TPOF’s business
27 activity. Collins threatened potential enforcement action(s) against TPOF and its
28 candidates in which “no regard will be given to the [A]rbitrator’s statement” that TPOF’s

1 Agreement was compliant with the Clean Elections laws and regulations. A copy of the
2 Executive Director Collins' emails are attached as **Exhibit D**.

3 33. On September 17, 2021, the Executive Director of the Commission issued a
4 complaint against TPOF and Dr. Branch asserting that TPOF's service agreement with
5 Sloan violated the Citizens' Clean Elections Act. A copy of the complaint is attached as
6 **Exhibit E**.

7 34. In the Complaint, the Director asserts that Dr. Branch and/or TPOF violated
8 A.R.S. §§ 16-905(C), -916(A), -926(B)(3)(o), -941, -942, -946(B)(4), -948(C).

9 35. The Commission's enforcement authority is confined by the express
10 provisions of its enabling statute, the Clean Election Act.

11 36. The Commission's asserted violations of the act hinge on the statutory and
12 regulatory definition of the word "candidate." As defined in A.R.S. § 16-901(7), a
13 "candidate" is:

14 an individual who receives contributions or makes expenditures or
15 who gives consent to another person to receive contributions or
16 make expenditures on behalf of that individual in connection with
the candidate's nomination, election or retention for any public
office.

17 37. Although this statutory definition is limited to the individual candidate, the
18 Commission has expanded the definition of "candidate" and, thus, its enforcement power,
19 beyond that. To wit, Ariz. Admin. Code ("AAC") R2-20-101(4) provides that a candidate:

20 means a natural person who receives or gives consent for receipt of
21 a contribution for the person's nomination for or election to any
22 office in this state, **and includes the person's campaign
committee, the political committee designated and authorized
by the person, or any agents or personnel of the person. . . .**

23 38. By expanding the definition of "candidate" beyond the actual candidate
24 running for office, the Commission's definition exceeds its statutory authority and its
25 regulation is invalid.

26 39. By extension, the Director's complaint against Dr. Branch and TPOF—who
27 are not candidates—exceeds the Commission's statutory authority.
28

1 40. By way of example only, the Commission alleges that TPOF's invoice is
2 too broad to comply with A.R.S. § 16-948(C). But this statute, governing reporting
3 requirements, applies to candidates. It does not apply to organizations or individuals, like
4 Dr. Branch and TPOF, that provide campaign consulting services.

5 41. The Director's assertions regarding alleged violations of spending and
6 contribution limits likewise apply to candidates, not Dr. Branch and TPOF. This, too,
7 exceeds the Commission's statutory authority.

8 42. The Director has also sought to enforce an alleged violation of 16-941(D),
9 which requires "any person who makes independent expenditures" to file certain reports
10 with the secretary of state. Such an investigation here is unreasonable and thus exceeds
11 the Commission's authority, however, because the Director acknowledges that TPOF's
12 services were provided pursuant to a contract with Sloan, thereby contradicting the
13 statutory definition of "independent expenditure." *See* A.R.S. § 16-901(31).

14 43. Additionally, the Director has sought to enforce regulations, such as AAC
15 R2-20-104(D)(6) -110(A)(5) that apply to a candidate who incurs debt. Limited to the
16 statutory definition of candidate, however, no statute authorizes the attempt to enforce
17 these regulations against Dr. Branch and TPOF.

18 44. The Director also has sought to enforce statutes that are not within the Clean
19 Elections Act, namely A.R.S. § 16-905(C), -916(A), and -926(B)(3)(o). Though able to
20 monitor reports filed under Article 1 of Chapter 16, the Commission's authority to
21 investigate potential violations of Article 1 exists only to the extent it would identify a
22 violation of the Clean Elections Act. Because the Commission, as stated above, has
23 exceeded its statutory authority and failed to identify a potential violation of the Act, its
24 attempt to investigate and enforce potential violations of Article 1 similarly exceeds its
25 statutory authority.

26 45. Based on these and other actions, TPOF believes the Commission intends
27 to target TPOF's candidates with enforcement actions despite the lawfulness of the
28

1 Agreement. Such actions would effectively decimate TPOF's business model and result
2 in significant financial losses.

3 **Count One: Declaratory Relief**

4 46. Under A.R.S. § 12-1831, this Court has authority to grant declaratory relief
5 including declaring the rights, status, and legal relation of the parties.

6 47. There is a justiciable dispute between the parties concerning the Agreement.

7 48. There is also a justiciable dispute between the parties concerning the scope
8 of the Director and the Commission's investigatory and enforcement authority as it relates
9 to individuals and organizations who are not candidates for office.

10 49. TPOF seeks an order from this Court declaring that (1) a candidate does not
11 commit a violation of the Act by merely signed the Agreement and (2) the Agreement is
12 a lawful contract that does not violate the statues and rules applicable to clean elections
13 candidates under the Act.

14 50. As this action arises out of a contract, TPOF is entitled to any award of
15 attorneys' fees under A.R.S. § 12-341.01.

16 **Prayer for Relief**

17 TPOF seeks relief against Defendants as follows:

18 A. For an order from this Court declaring:

19 1. That the Commission may not pursue an enforcement action for a
20 violation of the Act simply because a candidate signs the Agreement.

21 2. That the Commission has no authority to enforce its regulations
22 against individuals and organizations who are not actually candidates for
23 office.

24 3. That the Agreement is a lawful contract that does not violate the
25 statues and rules applicable to clean elections candidates under the Act; and

26 B. TPOF's taxable costs and attorney's fees under A.R.S. §§ 12-341 and 12-
27 341.01

28 C. For any other such relief as this Court deems fair and just.

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RESPECTFULLY SUBMITTED this 22nd day of October 2021.



By: /s/William M. Fischbach

William M. Fischbach
Seventh Floor Camelback Esplanade II
2525 East Camelback Road
Phoenix, Arizona 85016
Attorneys for The Power of Fives, LLC

EXHIBIT A



SERVICE AGREEMENT

THIS SERVICE AGREEMENT (this "Agreement"), is entered into and effective as of _____, 2020, by and between The Power of Fives, LLC, an Arizona limited liability company (the "Company"), and _____, an individual (the "Candidate").

1. Services. The Candidate hereby engages the Company as an independent contractor and the Company hereby accepts such engagement upon the terms and conditions contained in this Agreement. During the term of this Agreement, the Company agrees to provide to the Candidate the services described in Exhibit A (the "Services"). The Company represents that the Company has the special skill, professional competence, expertise and experience to undertake the obligations imposed by this Agreement, and will perform the Services in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the Company's profession and in compliance with all applicable laws. The Company shall commit such time as is necessary to perform the Services. The Company acknowledges and agrees that the Company owes a duty while performing the Services under this Agreement to act in the best interests of the Candidate so as to maintain and increase the goodwill and reputation of the Candidate. The Company agrees to not make any statement, oral or written, intended to injure the business, interests or reputation of the Candidate. The Candidate agrees that during the term of this Agreement, without the Company's prior written consent, the Candidate will not engage any other consultant or contractor that provides services that are competitive to the Services provided by the Company.

2. Compensation; Expenses. The Company will be compensated for rendering the Services in the amounts set forth on Exhibit A. For the Services provided in Phase I of Exhibit A, the Company shall submit to the Candidate, not later than ten (10) days following the date hereof, an invoice setting forth the payment owed for Phase I. The Candidate shall pay all undisputed amounts on such invoice within thirty (30) days of the earlier of: (a) the termination of this Agreement, or (b) once the Candidate qualifies for public financing for the Primary Election. For the Services provided in Phase II or III of Exhibit A, the Company shall submit to the Candidate following the completion of some or all of the Services set forth in a respective payment period, an invoice setting forth the payment owed for such payment period. The Candidate shall pay all undisputed amounts on such invoices within thirty (30) days of receipt.

3. Term. The term of this Agreement shall commence upon the date first written above and shall continue until the Services have been completed, or as otherwise set forth in

Exhibit A, unless earlier terminated as provided herein. The term of this Agreement may be shortened or extended upon the mutual written agreement of both parties.

4. Termination. Either party may terminate this Agreement for any reason by giving the other party written notice of the termination at least thirty (30) days in advance of the date of termination. This Agreement may also be terminated upon mutual written agreement of the parties. Upon termination, the Candidate shall pay the Company all amounts previously invoiced and/or incurred by the Company in connection with the Services and both parties shall immediately return to the other parties all Confidential Information (as defined below) and information and products of whatever nature or kind and in whatever format. If either party fails to promptly return any products to the other party after the termination of this Agreement, the party in violation of this Section 4 shall pay the other party, or the other party shall have the right to retain such amounts from any compensation owed under Section 2, an amount equal to the manufacturer's suggested retail price of such products.

5. Independent Contractor Status. The Company's relationship to the Candidate shall be that of an independent contractor. Nothing in this Agreement is intended to make the Company or its employees an employee or agent of the Candidate or confer on the Company or its employees any rights, privileges or benefits as an employee of the Candidate. The Company shall have no right, power or authority (and shall not hold itself out as having any such right, power or authority) to bind the Candidate in any manner or to any agreement or undertaking with any third party except as specifically provided in this Agreement.

6. Ownership and Return of Creations. All Work Product (as defined below), conceived, created, made, developed, or acquired by or for the Company used to perform the Services shall remain the property of the Company. "Work Product" shall include, without limitation, all designs, documents, manuals, videos, drawings, logos, improvements, plans, developments, processes, business methods, trade secrets, and any and all copyrightable expression, all copyrightable works, and all patentable subject matter, in all media (whether existing now or to be invented), whether or not protected by statute, including all derivative works. At the Company's request and no later than five (5) days after such request, the Candidate shall destroy or deliver to the Company, at the Company's sole option, (i) all Work Product, (ii) all tangible media of expression in the Candidate's possession or control which incorporate or in which are fixed any Confidential Information of the Company, and (iii) written certification of the Candidate's compliance with the Candidate's obligations under this Section 6.

7. Work Shall Not Infringe Third Party Rights. The Company represents and warrants to the Candidate that all Work Product used in connection with the Services shall not infringe upon or violate any rights (whether patent, copyright, trademark or otherwise) of any third party.

8. Confidentiality. In the course of its performance under this Agreement, each of the parties hereto may have access to and contact with certain confidential and proprietary information relating to the other party's business including, but not limited to, business strategy, marketing strategy, financial, pricing, customer and dealer information, product designs, drawings, specifications, processes, techniques, and other similar information, documents or materials, which are hereinafter referred to collectively as "Confidential Information." Each

party agrees, throughout the term of this Agreement and at all times following the termination of this Agreement for any reason whatsoever, to neither disclose, use (except in connection with the provision of Services), communicate, reveal, transfer, nor make available to any third party in any manner whatsoever, any Confidential Information of the other party. The foregoing shall not prevent either party from disclosing Confidential Information necessary to enforce the provisions of this Agreement.

9. Indemnification. The Candidate will indemnify and hold harmless the Company, its officers, managers, members, agents, contractors and employees, if any, from any and all claims, losses, liabilities, damages, expenses and costs (including attorney's fees and court costs) (collectively, "Claims"), which result from (i) any breach or alleged breach of any misrepresentation of any warranty or representation made by the Candidate in or pursuant to this Agreement, (ii) failure by the Candidate to perform or comply with any covenant or agreement made by it in or pursuant to this Agreement, or (iii) any Claim brought by, through or under the Candidate's employees, officers, directors, principals, members, agents, subconsultants or subcontractors and/or anyone for whom any of them may be responsible, and all losses in connection with such Claims, arising out of, or resulting from, or in any manner connected with the Services. The rights and obligations of the parties under this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. Release. In consideration of the Services provided in Section 1, the Candidate hereby freely and voluntarily releases, waives, relinquishes and forever discharges on behalf of itself, its heirs, executors, administrators, officers, employees, agents or any other person claiming on its behalf, any and all claims, liabilities, obligations, demands or causes of action whatsoever (including those caused or alleged to be caused in whole or part by the negligence of the Company) (collectively, the "Releasees"), including, without limitation, claims for personal injury; wrongful death; property loss or damage; direct, indirect, punitive or consequential damages; lost profits; costs; charges; attorneys' fees; court costs; and other expenses of any kind arising, directly or indirectly, from the Services against the Company or its respective officers, employees, subsidiaries, affiliates, shareholders, members, directors, agents, successors and assigns.

11. Picture/Media Release and Waiver. The Candidate hereby irrevocably grants to the Company, its directors, officers, agents, employees and volunteers, and those acting with its authority with respect to the photographs, films, tape or other images taken of the Candidate by or on behalf of the Company (the "Images"), the unrestricted, absolute, perpetual, worldwide right to:

(a) reproduce, copy, modify, create derivatives in whole or in part, or otherwise use and exploit the Images or any versions or portions thereof and the Candidate's performance in connection with the Images, including the Candidate's image, likeness, own or fictitious name, or reproduction thereof, biography, photograph, words, utterances, gestures and recorded voice, or any part thereof in combination with or as a composite of other matter, including, but not limited to, text, data, images, photographs, illustrations, animation and graphics, video or audio segments of any nature, and any information, including but not limited to remarks, suggestions, ideas, graphics or other submissions, communicated to the Company, in all languages, in color or black & white, in any media or embodiment, now known or hereafter to

become known, including, but not limited to, any and all forms of print, pay television, free television, network broadcasting, over the air subscription television systems, theatrical, non-theatrical, DVD, CD and all formats of computer readable electronic magnetic, digital, laser or optical based media (the "Works"). The Candidate also consents to the use of any film, printed, video or voice-over matter in conjunction therewith,

(b) use and permit to be used the Candidate's name, image, likeness, biography, words, utterances and gestures, whether in original or modified form, in connection with the Works as the Company may choose, and

(c) display, perform, exhibit, distribute, transmit or broadcast the Works by any means now known or hereafter to become known.

The Candidate hereby waives all rights and releases Releasees from, and shall neither sue nor bring any proceeding against any such parties for, any claim or cause of action, whether now known or unknown, for defamation, invasion of right to privacy, publicity or personality or any similar matter, or based upon or related to the use and exploitation of the Images, including, but not limited to, any act of blurring, computer imaging, distortion, alteration, optical illusion, or use in composite form, whether intentional or otherwise, that may occur or be produced in the taking of such Images or in any subsequent processing thereof, as well as any publication thereof. The Candidate agrees that there shall be no obligation to utilize the authorization granted to the Candidate hereunder. The terms of this authorization shall commence on the date hereof and are without limitation.

12. Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each such counterpart shall be deemed an original.

13. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties with respect to its subject matter; any other oral or written agreements entered into with respect thereto are revoked and superseded by this Agreement; and no representations, warranties or inducements have been made by either of the parties except as expressly set forth herein. This Agreement cannot be amended except by a written instrument signed by both parties.

14. Severability. If any provision of this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

15. Assignability. This Agreement may not be assigned by the Candidate without the prior written consent of the other.

16. Arbitration. The parties shall attempt, in good faith, to resolve any dispute, claim or controversy regarding this Agreement and if a resolution is not reached within thirty (30) days, the dispute, claim or controversy shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules for expedited arbitration. The parties agree that the arbitration will be conducted in Phoenix, Arizona. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other

matter in question has arisen, and in no event shall be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The parties agree that any dispute shall be heard and determined by one arbitrator appointed in accordance with the Commercial Arbitration Rules. Unless the parties agree otherwise, pre-hearing discovery shall be limited to the exchange of information and the production of documents required by the arbitrator from the parties.

17. Governing Law; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona, without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Arizona. Should any litigation be commenced under this Agreement, the successful party in such litigation shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such litigation.

18. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written or electronic verification of receipt. All notices shall be sent to the parties at the addresses set forth below their signatures to this Agreement or at such other address as a party may designate by ten (10) days' advance written notice to the other party.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

CANDIDATE:

Signature

Print Name

Address

COMPANY:

THE POWER OF FIVES, LLC

By: _____

Name: Robert Branch

Title: Manager

Date: _____

7000 North Cotton Lane, Suite 443,
Waddell, Arizona, 85355

EXHIBIT A

SERVICES AND COMPENSATION

Note: The Company will not directly solicit qualifying \$5 contributions and the Candidate at no time will pressure the Company to break any laws under the Citizens Clean Elections Act, A.R.S. § 16-940 *et seq.* (the “Act”). At no time will the Company spend more than the total Candidate’s clean elections funding allotment for any phase (the “Fund Distribution”). The Candidate will be responsible for all required campaign reporting and adhering to the Act.

Phase	Services Provided / Term	Compensation
<u>Phase I:</u> Prefunding	<p>Phase I will commence on the effective date of this Agreement and will end once the Candidate qualifies for public financing under the Act for the Primary Election. During Phase I, the Company will provide the following services:</p> <ul style="list-style-type: none">• Develop the campaign strategy for the Candidate, develop the Candidate’s brand, develop the strategy to collect nomination petition signatures, and develop the strategy to collect qualifying \$5 contributions.• Groom the Candidate, help develop the Candidate’s message and start branding the Candidate as a “The Power of Fives Candidate.”• Organize forums that the Candidate can attend to collect qualifying \$5 contributions for the Primary Election.	[40% of the Primary Fund Distribution.]
<u>Phase II:</u> Funded Primary	<p>Phase II will commence after the Candidate qualifies for public financing for the Primary Election and will end following the Primary Election, which is on Aug 4th, 2020 (<u>Note:</u> If the Candidate does not qualify for public financing under the Act, this Agreement shall immediately terminate). During Phase II, the Company will provide the following turn-key services:</p> <ul style="list-style-type: none">• Continue to groom and train the Candidate.• Manage the Candidate’s campaign with a campaign management team.• Continue branding the Candidate as a “The Power of Five Candidate” and develop the Candidate’s message.• Handle all print and radio advertising during Phase II, including (number based on the office sought) yards signs, and (number based on the office sought) of large highway signs.• Provide support as needed to support the strategic plan of the campaign, as determined by the Company.	[60% of the Primary Fund Distribution.]
<u>Phase III:</u> Funded General Election	<p>Phase III will commence if the Candidate win the Primary Election and will end following the General Election, which is on Nov 3rd, 2020 (<u>Note:</u> If the Candidate does not win his or her Primary Election, this Agreement shall immediately terminate). During Phase III, the Company will provide the following turn-key services:</p> <ul style="list-style-type: none">• Tailor the campaign with the Candidate to run against his or her new opponent.• All campaign management will be provided, as well as any support that is needed based on the campaign plan and as determined by the Company.• All print and radio ads will be provided by the Company as needed to support the campaign plan.	[100% of the General Election Fund Distribution.]

EXHIBIT B

Rebecca A. Albrecht (SBN 004164)
BOWMAN AND BROOKE LLP
Phoenix Plaza – Suite 1600
2901 North Central Avenue
Phoenix, Arizona 85012-2736
Telephone: (602) 643-2300
rebecca.albrecht@bowmanandbrooke.com

Arbitrator

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

THE POWER OF FIVES, LLC, an Arizona
limited liability company,

Claimant,

v.

ERIC SLOAN and ALISA LYONS SLOAN,
husband and wife,

Defendants.

Case No. 01-20-0014-8998

INTERIM AWARD

Having been designated in accordance with the arbitration agreement entered into between the parties and, and having been duly sworn, and having duly heard the evidence and allegations of the Parties, the Arbitrator, Rebecca Albrecht, hereby enters this Interim Award as follows:

This matter came on for hearing on February 8, 2021. The Claimant, The Power of Fives, (TPOF) was represented by William Fischbach. The Respondents, Eric Sloan and Alisa Lyons Sloan (“Sloan”), were represented by Gregory Tomczak and Dustin Romney.

TPOF is an Arizona Limited Liability Company formed to assist candidates to run for public office in Arizona. Sloan and TPOF entered into an agreement dated January 1, 2020 (“Agreement”) in which TPOF agreed to provide certain services to Sloan in his pursuit of a candidacy. Sloan sought to be a Clean Election Candidate for the Corporation Commission. The purpose of the Agreement was to provide campaign support throughout the primary election and if the candidate prevailed in the primary to provide support through the general election.

1 Compensation under the Agreement was based on three campaign phases, Prefunding,
2 Funded Primary and Funded General Election. Phase one began from the date of the
3 Agreement through the date upon which the candidate qualified for clean election funding,
4 Phase two commenced at qualification through the Primary election (August 4, 2020). The
5 compensation to TPOF was to be 40% of the "Primary Fund Distribution" for Phase One and
6 60% of the "Primary Fund Distribution" for Phase Two. ARS §§ 16,959 (A) set the amount
7 of the distribution at \$116,016.00.

8 The Agreement provided that should the Candidate (Sloan in this Agreement) not
9 qualify for clean elections, the Agreement would terminate automatically and there would be
10 no amounts owing from the Candidate to TPOF. The Agreement could be cancelled upon
11 30 days' notice by either party. Upon termination the Candidate agreed to pay all amounts
12 invoiced or incurred by TPOF.

13 TPOF agreed to comply with all laws, and the candidate was responsible for all
14 required campaign reported and for adhering to the Clean Elections Act.

15 The Agreement provided that "Work Product" remained the property of TPOF.

16 Paragraph 17 of the Agreement provides in relevant part, that in addition to any other
17 relief, the prevailing party is entitled to an award of reasonable attorneys' fees, litigation
18 related expenses and other costs incurred in the litigation.

19 As a part its responsibilities, TPOF, with the knowledge and urging of Sloan, engaged
20 Timothy A. LaSota ("LaSota") to bring primary petition challenges against certain of Sloan's
21 primary opponents. LaSota charged a flat fee of \$23,000 for this litigation. Although brought
22 before the primary election, it was the understanding of TPOF and Sloan that LaSota's fee
23 would be the responsibility of Sloan and would be paid upon the receipt of the Primary Fund
24 Distribution.

25 Sloan qualified as a Clean Elections Candidate on July 17, 2020 therefore the Phase
26 One and Two compensation provisions of the Agreement were activated.

27 Sloan provided TPOF with a sample of the invoice for the use of TPOF on July 20,
28 2020. On July 23, 2020, Sloan requested an invoice from TPOF. The request for the invoice

1 instructed that the invoice include only “the time and effort Power of Fives has already
2 expended to date” and “not include budget items for the remainder of the primary period.”
3 TPOF send a ‘preliminary invoice for \$115,908.94 for Phase I and Phase II.

4 On July 25, 2020 after receiving an invoice from TPOF for Phase Three (the general
5 election) Sloan e-mailed TPOF indicating that Sloan would be sending a formal 30-day
6 notice of contract termination. (Termination would be effective based on that notice 30 days
7 thereafter or on August 23, 2020) Sloan also proposed to pay \$90,930.94 for the services
8 provided by TPOF to that date. The cancellation letter and the check for \$90,930.94 were
9 later received by TPOF. The amount proposed by Sloan was reduced by the \$23,000 paid to
10 Mr. LaSota. Sloan intended that should TPOF cash the check that terminate the Agreement
11 immediately, rather than 30 days after the notice of termination. TPOF did not cash the
12 check.

13 On July 31, 2020, TPOF sent a final invoice for \$116,016.00. Sloan contended in
14 response that Mr. LaSota’s fee was prohibited under the clean elections law and thereafter
15 issued a new check for \$67,730.94.

16 TPOF in this proceeding asserts that Sloan is in breach of his Agreement to pay
17 \$116,016.00. TPOF further seeks to enjoin Sloan from using any TPOF Work Product.

18 Sloan in this proceeding asserts that the Agreement entered into by the parties is
19 unenforceable/void because it would require Sloan to commit illegal acts. Sloan cites a
20 number of acts that he alleges were the illegal acts. The only acts that the Arbitrator finds
21 have any possible merit are the commitment to spend funds and the spending of funds before
22 qualifying for Clean Election funds. Sloan also presents other contentions which the
23 Arbitrator finds to be without merit.

24 A contract is only void if it is entered into for an illegal purpose. An illegal act during
25 the performance of the contract is not sufficient to make the contract void. This contract was
26 for TPOF to provide campaign consulting services, providing campaign consulting services
27 is not illegal, even if the candidate wants to be or is a Clean Elections Candidate. The
28 Agreement did not bind the campaign to a specific obligation, there was no debt created for

1 the campaign by entering into the Agreement. There was no obligation to pay until/if Sloan
2 qualified for public financing. There is nothing in the Clean Election laws and regulations
3 that prevent a candidate from entering into a contract for services before he receives clean
4 election funding, with the payment to be paid upon receipt of clean election funding.

5 Based on the foregoing the Arbitrator finds:

6 The parties entered into a valid legal contract. By the terms of the contract the full
7 \$116,016.00 was due and owing before the termination of the Agreement by Sloan became
8 effective.

9 The fees incurred for the LaSota work was within the contemplation of the parties'
10 Agreement and were incurred within the terms of the Agreement.

11 The Arbitrator Awards Claimant:

- 12 1. The contract amount of \$116,016.00.
- 13 2. TPOF fees and costs incurred in this proceeding.
- 14 3. Interest from that date the of the invoice for the contract amount until paid in
15 full at the rates provided pursuant to ARS § 44-1201.
- 16 4. TPOF shall file its affidavit of fees and costs on or before March 23, 2021.

17 Respectfully submitted this 25th day of February, 2021.

18 **BOWMAN AND BROOKE LLP**

19
20 By: 
21 Rebecca A. Albrecht
22 Arbitrator

23 **COPY** of the forgoing **e-mailed**
24 this 25th day of February, 2021, to:

25 Julie Collins
26 Manager of ADR Services
27 American Arbitration Association
28 JulieCollins@adr.org

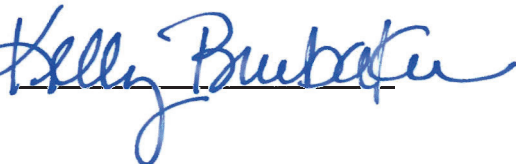


EXHIBIT C

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**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

THE POWER OF FIVES, LLC, an Arizona
limited liability company,

Claimant,

v.

ERIC SLOAN and ALISA LYONS SLOAN,
husband and wife,

Respondents.

Case No. 01-20-0014-8998

FINAL AWARD

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the agreement entered into between the above-named parties, and having been duly sworn, and having duly heard and considered the evidence and arguments made by each party and having entered an interim award in this matter, which is incorporated herein find and AWARD, as follows:

Claimant as the prevailing party in this matter is awarded:

1. \$116,016.00 in damages with interest to run at 10% per annum from July 31, 2020, to the date of this Award and with interest to run at 4.25% per annum from the date of this Award until paid in full.
2. \$40,000.00 in reasonable attorney's fees and \$10,075.00 in costs, with interest on both amounts to run at 4.25% per annum from the date of this Award until paid in full.
3. Reasonable attorney's fees and costs incurred in enforcing this Award.
4. This is intended as a complete resolution of this matter and any matters not addressed herein are dismissed with prejudice.

Dated: April 13, 2021


Rebecca A. Albrecht Arbitrator

1 **COPY** of the forgoing **e-mailed**
2 this 13th day of April, 2021, to:

3 Julie Collins
4 Manager of ADR Services
5 American Arbitration Association
6 JulieCollins@adr.org

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/s/ Kelly Brubaker

EXHIBIT D

From: [Thomas Collins](#)
To: [William Fischbach](#)
Cc: [Ryan P. Hogan](#)
Subject: Re: Follow up on Dr. Branch Email
Date: Thursday, June 3, 2021 10:16:00 AM

Will,

Sorry if I wasn't clear. The commission's rules regarding when an expenditure has occurred are not consistent with the language Dr. Branch cited in his email from the arbitrator. We will be enforcing those rules as written, as we have. There is no basis for relying on that language in Dr. Branch's business and if Dr. Branch advises, offers, etc. a contract on terms that are contrary to the commission's rules, naturally a potential enforcement follows and no regard will be given to the arbitrator's statement.

Thanks,
Tom.

On Thursday, June 3, 2021, William Fischbach <wmf@tblaw.com> wrote:

Hi Tom, thank you for your e-mail. Dr. Branch forwarded the arbitration award because the ultimate outcome of the arbitration seemed to be a matter of interest for the CCEC at our December hearing. Additionally, the thrust of Dr. Branch's complaint that Sloan had overspent was that Sloan was obligated to pay The Power of Fives, LLC ("TPOF") \$116,016, and not the roughly \$67,000 Sloan claimed on his CCEC reporting forms. The arbitrator agreed that the amount due was \$116,016. So the arbitration award validates Dr. Branch's CCEC complaint.

As you know, Dr. Branch and TPOF are staunch believers in Arizona's Clean Elections system, which is why my client felt obligated to report Mr. Sloan's overspending. Which is why we are somewhat perplexed by your reference to an enforcement action. Is there something we should be concerned about?

Will Fischbach

Get [Outlook for iOS](#)

From: Thomas Collins <thomas.collins@azcleanelections.gov>
Sent: Tuesday, June 1, 2021 1:28:57 PM
To: William Fischbach <wmf@tblaw.com>
Subject: Follow up on Dr. Branch Email

Will,

We received an email from Dr. Branch on May 11 regarding the arbitrator's award. I am not entirely certain why he sent it. I do think it's important, however, to ask you to communicate to your client that if he proceeds on the assertion that an arbitrator to a contract matter has authorized him and any candidates with whom he works to ignore the Commission's rules, such conduct may be subject to an enforcement action.

Let me know if you have any questions.

Thank you!
Tom

EXHIBIT E

RECEIVED

SEP 23 2021

TIFFANY & BOSCO, P.A.

Thomas M. Collins
Executive Director



**State of Arizona
Citizens Clean Elections Commission**

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

September 17, 2021
Dr. Bob Branch
The Power of Fives, LLC.
C/O William Fischbach
Tiffany & Bosco
Camelback Esplanade II
Seventh Floor
2525 East Camelback Road
Phoenix, Arizona 85016-9240

Via Electronic Mail and U.S. Mail

Dear Dr. Branch:

This letter serves as an internally-generated complaint against you by the Executive Director of the Arizona Citizens Clean Elections Commission. Ariz. Admin. Code R2-20-207.

Complaint

As you know, on October 23, 2020, you, as the managing member of The Power of Fives, LLC, submitted a complaint against Eric Sloan, a candidate for Corporation Commissioner. The Commission found Reason to Believe that a violation exists against Mr. Sloan, and we pursued an investigation against Mr. Sloan. Around the same time, you pursued an action in arbitration against Mr. Sloan and his wife, to collect the monies allegedly owed to the Power of Fives, LLC pursuant to the contract. Your complaint and the facts as they have been developed through the investigation of Mr. Sloan has provided evidence that you may have violated a number of provisions of the Clean Elections Act and Rules. See A.R.S. § 19-957(A) (providing the Commission the authority to determine if "a person has violated any provision of this article").

I. Relevant Facts

The Power of Fives ("TPOF") is an Arizona limited liability company, formed by Dr. Bob Branch in 2019 to "identify and support conservative candidates to run for public

office in Arizona.” Ex. 1, TPOF Post-Hearing Stmt. at 2. “TPOF ran 22 clean elections candidates throughout Arizona for the 2020 election cycle.” *Id.* When TPOF recruited a candidate, the candidate and TPOF executed a service agreement. “All of TPOF’s candidates signed an identical agreement.” *Id.*

A. The Sloan Campaign, September 2019-July 2020

In August of 2019, Eric Sloan (the “Candidate”) and TPOF “entered into an agreement where The Power of Fives, for the sum of \$116,016 for the Primary Elections (*sic*) would provide Mr. Sloan with a complete turnkey campaign[.]” Ex. 2, Sloan Complaint at 1. This agreement purports to have been committed to writing and signed by both the Candidate and Dr. Bob Branch as the Manager of TPOF on January 1, 2020. Ex. 3, TPOF Service Agreement at 1, 6. Despite the fact that the parties had not entered into a written agreement for services, Dr. Branch asserted that:

The Power of Fives LLC’s expenditures for Sloan began in September of 2019, when Mr. Sloan requested that The Power of Fives LLC start buying nomination petition signatures . . . [and] hire campaign support staff for his Primary campaign. Additionally, The Power of Fives LLC started holding joint campaign functions for Mr. Sloan’s campaign. Ex. 2 at 1.

While the Service Agreement between TPOF and Sloan was not signed until January 1, 2020, TPOF agreed to hire the Sloan Lyons Public Affairs LLC to provide “business consulting services to the CLIENT.” Ex. 4, Sloan Lyons Agreement at 1. In his October 2020 complaint, Dr. Branch stated that:

Mr. Sloan asked The Power of Fives LLC to hire him. He asked for a job, but that would be problematic since he was one of The Power of Fives LLC’s candidates. Mr. Sloan then asked that we hire his wife’s company; (*sic*) “Sloan Lyons Public Affairs LLC” and that we pay Sloan Lyons Public Affairs LLC \$4,000/month; The Power of Fives LLC agreed and hired Sloan Lyons Public Affairs LLC. Ex. 2 at 2.

However, the statement that TPOF would not hire Mr. Sloan conflicts with a statement made by TPOF on February 16, 2021, which states that both “Sloan and his wife Alyssa Sloan Lyons had been working as ‘consultants’ for TPOF” and that “Sloan signed up other TPOF candidates to the agreement . . . and even prepared a PowerPoint slideshow on clean elections law.” Ex. 1 at 4. The agreement with the Sloan Lyons LLC was eventually suspended, and based on the record has not resumed. *Id.* at 4-5.

On at least one occasion, Dr. Branch directly solicited \$5 contributions for at least one candidate, Mr. Sloan. Ex. 5, Email from Bob Branch, “Rep. Candidates in the Arizona Corp Comm race needs your help ASAP” (June 18, 2020). On Thursday, June 18, 2020, Dr.

Branch sent an email to the Arizona State Republican Delegates. Dr. Branch said that as “a State Delegate, you are a leader in the Republican Party; and, we are counting on your leadership abilities.” *Id.* He goes on to explain that there are three open seats for the Arizona Corporation Commission, that Eric Sloan is on the ballot and will win his primary election, but that Eric Sloan is “not yet funded. You cannot run a campaign when not funded.” *Id.* Dr. Branch goes on:

We must get [Eric Sloan and Lea Marquez Peterson] funded. So, I am asking that if you have not already done so, please go to the Secretary of State’s website and contribute to them. . . . Remember that your individual \$5 contribution, less than a cup of coffee, will give the candidate over \$193 in funding for this election cycle. . . . There is Power in those \$5 bills. . . Fill out your voter information, and give a \$5 contribution to each of the three candidates: Eric Sloan . . .

Id.

Mr. Sloan qualified for funding on July 17, 2020, after surviving a challenge to remove him from the ballot and pursuing challenges to remove rival candidates. In the Sloan Complaint, Dr. Branch alleges Mr. Sloan informed him that Mr. Sloan’s nomination petitions had been challenged and that Mr. Sloan was planning on challenging the petitions of his competitors: Boyd Dunn, David Farnsworth, and Kim Owens. Ex. 2 at 2. Dr. Branch alleges this challenge strategy was communicated by Mr. Sloan to Dr. Branch in April after Mr. Sloan was certified as eligible for the ballot. “At that time, [TPOF] made no agreement to pay for those challenges, and [TPOF] made no agreement to defend Mr. Sloan’s own signatures. Simply put, legal services were not services to be provided for in the contractual agreement between Sloan and [TPOF.]” *Id.* Dr. Branch alleges that it was not until May 20, 2020, that Mr. Sloan asked TPOF to advance him \$23,000 in legal fees that had accrued in April.

These statements, however, differ from other statements made by Dr. Branch and contemporaneous documents. For example, the engagement agreement between Mr. LaSota and Dr. Branch—which identifies Dr. Branch as the “Client”—indicates it will be paid by Mr. Sloan, and was signed and dated by Dr. Branch on April 16, 2020. Ex. 6, LaSota engagement agreement. Ultimately, Mr. Sloan survived the challenge, his competitors were removed from the ballot, and he won his primary election.

Around this time, the relationship between Mr. Sloan and Dr. Branch was souring. Mr. Sloan’s wife demanded an invoice from TPOF that included only “the time and effort Power of Fives has already expended to date” and “not include[ing] budget items for the remainder of the primary period.” Ex. 1 at 5. Dr. Branch takes the position that “there was

no basis for such a demand, as the Agreement called for a fixed fee of \$116,016.00 for Phase I and Phase II, regardless of what was spent by TPOF.” *Id.* On July 25, 2020, before the primary election had taken place, “Branch emailed Sloan the invoice for Phase III—the general election—noting it was due 10 days after receipt of general election funding.” *Id.* at 6. However, the Service Agreement provides that the invoices for Phase II and III shall be tendered after “the completion of some or all of the Services set forth in a respective payment period,” and then the candidate has thirty days from the receipt of the invoice in which to pay. Ex. 3 at 1. Following the submission of the invoice, Mr. Sloan tendered checks for less than the full primary allotment. Dr. Branch did not accept the partial payments, and instead filed the Sloan Complaint with the Commission and brought a claim for arbitration, in which he was awarded \$116,016 and attorney’s fees and costs.

B. The TPOF Service Agreement

TPOF’s Service Agreement is between the LLC and a candidate. TPOF asserts that it is an independent contractor that will provide the services “described in in Exhibit A,” which is discussed below. Ex. 3 at 1, ¶ 1. The Service Agreement further states that TPOF:

Represents that the Company has the special skill, professional competence, expertise and experience to undertake the obligations imposed by this Agreement, and will perform the Services in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the Company’s profession and in compliance with all applicable laws.

Id. Additionally, TPOF acknowledges it owes a duty to “act in the best interests of the Candidate.” *Id.* During the term of the Service Agreement, the candidate “will not engage any other consultant or contractor that provides services that are competitive to the Services provided by the Company.” *Id.*

The Service Agreement breaks a campaign into three phases. Phase I is dubbed the “prefunding” phase and purports to entitle TPOF to 40% of the total primary election allocation. Ex. 3 at 7. Phase II is the “funded primary” phase, beginning after the candidate qualifies for funding and lasting to the primary election, purports to entitle TPOF to the remainder of the primary election allocation. *Id.* Finally, Phase III, or the “funded general election” phase, begins after the candidate wins the primary election and ends upon the general election, and allegedly entitles TPOF to 100% of the general election allocation. *Id.* Pursuant to the Service Agreement, TPOF would invoice the candidate for Phase I within ten days of the Service Agreement’s execution. *Id.* at 1. Payment for services provided in the “prefunding” phase, before the candidate has qualified for or received any funds from the Commission, are due “within thirty (30) days of the earlier of: (a) the termination of this Agreement, or (b) once the Candidate qualifies for public financing for the Primary

Election.” *Id.* Conversely, TPOF could provide an invoice for the services in Phase II or III “following the completion of some or all of the Services.” *Id.*

The Service Agreement could be terminated in four ways. Either party could give written notice to terminate for any reason, and the agreement would terminate thirty days later. Ex. 3 at 2, ¶ 4. Mutual written agreement would terminate the Service Agreement immediately. *Id.* The Service Agreement would also terminate at the beginning of Phase II if the candidate fails to qualify for public funding, and the beginning of Phase III if the candidate “does not win his or her Primary Election.” *Id.* at 7 (labeled “Exhibit A”) (identifying in the Notes to Phase II and Phase III that the agreement terminates immediately if the prerequisite to begin that phase is not satisfied). Regardless of the manner of termination, “the Candidate shall pay the Company all amounts previously invoiced and/or incurred by the Company in connection with the Services.” *Id.* at 2.

II. Legal Arguments

The Commission has legal authority to investigate and prosecute violations of both Article 1 and Article 2 of Chapter 6, which are the statutes that govern campaign finance in Arizona. A.R.S. §§ 16-941(D), -947(B)(2), -957(A)(7); *Ariz. Advocacy Network Found. v. State*, 250 Ariz. 109, ¶¶53-56 (App. 2020). We have reason to believe, based on the facts presently before us, that the following violations of campaign finance law have occurred. Additional facts may require amendments or supplements to this Complaint.

A. Title 16, Chapter 6, Article 1

Based upon the facts provided herein, it appears that TPOF is operating as a political action committee and has failed to register as required by Arizona law. “An entity *shall* register as a political action committee” if it is “organized for the primary purpose of influencing the result of an election” and “knowingly receives contributions or makes expenditures, in any combination, of at least one thousand dollars in connection with any election in a calendar year.” A.R.S. § 16-905(C) (emphasis added). An LLC, like TPOF, is an “entity” for the purposes of political action committee registration. A.R.S. § 16-901(22). There is no record that TPOF registered as a political action committee.

Furthermore, an LLC like TPOF is prohibited from making a contribution to a candidate committee. A.R.S. § 16-916(A). “Contribution” is defined as “any money, advance, deposit or other thing of value that is made to a person for the purpose of influencing an election.” A.R.S. § 16-901(11). It appears that TPOF provided an advance or other thing of value of at least \$116,016 to the Sloan campaign in the form of the various services outlined above. Additionally, to the extent identical agreements were made with

twenty-two other candidates, additional undisclosed and/or excess contributions may have been made.

If TPOF argues it was not making a contribution to the campaign because it intended to collect payment from Mr. Sloan for TPOF's services, it was likely making an unreported expenditure. Expenditures by committees must be accounted for. *See, e.g.*, A.R.S. § 16-926(B)(3)(o), Ariz. Admin. Code R2-20-109(B)(3). An expenditure is "any purchase, payment or other thing of value that is made by a person for the purpose of influencing an election." A.R.S. § 16-901(25). "Person" includes an "individual, candidate, [or] limited liability company." A.R.S. § 16-901(39). The provision of services contemplated by TPOF's Service Agreement and Exhibit A are not exempt from the definition of expenditure, A.R.S. § 16-921, and were required to be reported. Additionally, the categories of expenses provided on TPOF's invoice are too broad to provide the meaningful transparency required by Arizona law. *E.g.*, A.R.S. § 16-948(C), -956(A)(7), Ariz. Admin. Code R2-20-101(7), R2-20-104(C), (D)

B. Title 16, Chapter 6, Article 2

The Commission is empowered to enforce the provisions of Article 2 if it finds that "there is reason to believe that a person has violated any provision of this article." A.R.S. § 16-957(A). A "person" includes a limited liability company, like TPOF. A.R.S. § 16-901(39); Ariz. Admin. Code R2-20-101(21). Furthermore, a "candidate" includes not only the candidate themselves, but also "any agents or personnel" authorized to act on the candidate's behalf. Ariz. Admin. Code R2-20-101(4). The Commission therefore has the authority to proceed to an enforcement action against Dr. Branch and TPOF because, as demonstrated by the Service Agreement, they are both "persons" authorized to conduct business on a candidate's behalf. Civil penalties for violating contribution and expenditure limits in A.R.S. § 16-941, and the reporting requirements for candidates, apply to their agents as well. A.R.S. § 16-942(A), (B) (providing that penalties may be assessed against a candidate or a person acting on their behalf).

Based on the facts provided, TPOF's terms of service violate the Clean Elections Act and Rules. Specifically, participating candidates "shall not incur debt, or make an expenditure in excess of the amount of cash on hand" prior to qualifying for funding from the Commission. Ariz. Admin. Code R2-20-104(D)(6). Once a candidate qualifies for funding, that candidate may "incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit." *Id.* "[A] candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services." Ariz. Admin. Code R2-20-110(A)(5).

Dr. Branch and TPOF acknowledge in the complaint against Mr. Sloan that expenses were incurred for the Sloan campaign in 2019, long before the campaign qualified for funding. The Service Agreement was dated January 1, 2020, but “[t]he Power of Fives LLC’s expenditures for Sloan began in September of 2019, when Mr. Sloan requested that The Power of Fives LLC start buying nomination petition signatures . . . [and] hire campaign support staff for his Primary campaign. Additionally, The Power of Fives LLC started holding joint campaign functions for Mr. Sloan’s campaign.” Ex. 2 at 1. However, Mr. Sloan’s campaign did not qualify and obtain the funding required to pay the Service Agreement until July 17, 2020. In other words, the TPOF Service Agreement contemplated the expenditure of campaign funds long before they were in the candidate’s account, in violation of the Clean Elections Act and Rules. And because TPOF claims it used identical Service Agreements for all of its candidates, it is very likely that this violation occurred repeatedly.

Exhibit A to the Service Agreement states “At no time will [TPOF] spend more than the total Candidate’s clean elections funding allotment for any phase.” Ex. 3 at 7. However, given the financing of the litigation as represented by Dr. Branch in his October 2020 Complaint, this appears to be inaccurate. TPOF claims it “made no agreement to pay” for court challenges to the signatures of Mr. Sloan’s competitors. Ex. 2 at 2. Additionally, TPOF claims it “made no agreement to defend Mr. Sloan’s own signatures” and that “legal services were not services to be provided for in the contractual agreement.” *Id.* Despite this position, Dr. Branch paid \$23,000 for legal services for Mr. Sloan, while alleging that he was entitled to 100% of Mr. Sloan’s primary election allotment. *See id.* (“Mr. Sloan signed a contract with [TPOF] and agreed to pay \$116,016 to [TPOF] for his 2020 Primary race.”). In short, the facts appear to demonstrate that Dr. Branch, in his personal capacity, knowingly incurred debt on behalf of a clean elections candidate in excess of the spending limits.

TPOF’s invoicing and accounting system makes compliance with the Clean Elections Act impossible. Participating candidates are required to maintain their records of accounts and transactions in a specific, transparent manner as required by state law applicable to candidate committees and Ariz. Admin. Code R2-20-115. *See also* A.R.S. § 16-942(B), (C). For example, the Primary Election Invoice provided in the Sloan Complaint indicates \$45,235.92 was spent for “candidate field support.” Ex. 7, Primary Election Invoice at 1. However, there is no additional information that would enable a person to understand how that \$45,000 was spent. *See, e.g.,* Ariz. Admin. Code R2-20-110(A)(1) (requiring that “[e]xpenditures for consulting advising, or other such services to a candidate shall include a detailed description of what is included in the service.”). Additionally, while Dr. Branch indicates TPOF paid for signatures and campaign staff for

Sloan beginning in September 2019, Ex. 2 at 1, there is not a corresponding line on the invoice for either signatures or staff, *see generally* Ex. 7.

Even if TPOF and Dr. Branch argue that they were not acting on behalf of Mr. Sloan, the above-stated facts demonstrate that TPOF and Dr. Branch were still required to file reports with the Secretary of State. Specifically, “any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle . . . shall file reports with the secretary of state” as an independent expenditure. A.R.S. § 16-941(D). An independent expenditure is “an expenditure by a person, other than a candidate committee,” which expressly advocates for or against a candidate and was not done in consultation with or at the suggestion of the candidate. A.R.S. § 16-901(31). No such reports were filed.

Additionally, Dr. Branch violated A.R.S. § 16-946(B)(4) when he sent a targeted email solicitation for \$5 contributions on behalf of Mr. Sloan, while Dr. Branch was employed as Mr. Sloan’s campaign consultant. The email was targeted to state Republican Committeemen, exactly the people who are most likely to contribute to the campaign of a Republican candidate. The language of the email was a clear solicitation for \$5 contributions: “Please go to: <https://apps.azsos.gov/apps/election/eps/qc/> Fill out your voter information, and give a \$5 contribution to . . . Eric Sloan.” This email was sent on June 18, 2020, during the time period the Service Agreement was active. State law prohibits soliciting qualifying contribution by a person “employed or retained by the candidate.” A.R.S. § 16-946(B)(4). Furthermore, this email and any other solicitation during the period of the Service Agreement would be an “expense[] associated with obtaining the qualifying contributions” that must be reported. Ariz. Admin. Code R2-20-105(B)

Opportunity for Response

Commission rules require notification to be given to the Respondent of a Complaint. Ariz. Admin. Code R2-20-204(A). Additionally, the rules provide that you be advised of Commission compliance procedures. *Id.* Those procedures are set forth in Article 2 of the Commission’s Rules (Ariz. Admin. Code. R2-20-201 to R2-20-228) as well as the Clean Elections Act (A.R.S. §§ 16-940 to 16-961), which are available at <https://storageccec.blob.core.usgovcloudapi.net/public/docs/554-ACTRulesManual-2020.pdf>.

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

205(C). Generally, for the purposes of the Commission's "reason to believe" finding, a failure to respond to a complaint within five days may be viewed as an admission to the allegations. *Id.*

The issuance of this notice and Complaint do not constitute a finding related to the Complaint. A finding, if any, may be made only after the Commission has reviewed the matter. *See* Ariz. Admin. Code R2-20-215(A). Additionally, it is recommended that you seek legal counsel, as the Commission and its staff cannot provide legal advice. Because you have retained counsel in the arbitration matter that concerning the same general facts, we have copied your attorney in that matter, William Fischbach, out of an abundance of caution and to expedite matters if you ultimately choose him to represent you in this matter.

Please contact us if you have any questions at (602) 364-3477 or by email at ccec@azcleanelections.gov.

Sincerely,

Thomas M. Collins

Thomas M. Collins,
Executive Director
Arizona Clean Elections Commission

cc: William Fischbach, Tiffany and Bosco by email at wmf@tblaw.com;
Ryan Hogan, Tiffany and Bosco by email at rph@tblaw.com;
Kara Karlson, Arizona Attorney General's Office at Kara.Karlson@azag.gov; and
Kyle Cummings, Arizona Attorney General's Office at Kyle.Cummings@azag.gov