

FIVE YEAR REVIEW – October 2015

Citizens Clean Elections Commission

This report covers all rules in Title 2, Chapter 20, all articles. The Citizens Clean Elections Commission (the “Commission”) adopted these rules to further the goals of the Citizens Clean Elections Act (“Act”). The Act was passed by the voters in 1998 and created the clean elections system to diminish the influence of special-interest money, including the opportunities for and appearance of *quid pro quo* corruption, and to thereby promote the integrity of Arizona state government. The Act promotes freedom of speech under the United States and Arizona Constitutions. It also created a voluntary system wherein “participating” candidates receive public funds to finance campaigns. To qualify for funding, participating candidates must follow additional rules and reporting requirements. The Act also applies to candidates who are nonparticipating candidates and independent spenders in elections. The Rules implement the provisions of the Act. All rules created or amended prior to June 25, 2013 have been “pre-cleared” by the U.S. Department of Justice pursuant to Section Five of the Federal Voting Rights Act.

The Commission reports the following analysis of its rules in the order required by Arizona Administrative Code (“A.A.C.”) R1-6-301. Pursuant to A.A.C. R1-6-301(B), Part I includes information pertaining to all, or a great number, of the rules. Part II reports information unique to the listed rules.

Part I: Analysis Which Is Identical Within Groups of Rules

1. General statutes authorizing the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The Commission’s general rulemaking authority is found in A.R.S. § 16-956 (C). This statute allows the Commission to adopt rules to carry out the purposes of the Article and to govern procedures of the Commission. A.R.S. § 16-956 (C) provides:

The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. Commission rule making is exempt from title 41, chapter 6, article 3. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The Commission shall also file a notice of exempt rule making and the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty-day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the Secretary of State's Office for publication in the Arizona Administrative Register. Any rules adopted

by the Commission shall only be applied prospectively from the date the rule was adopted.

The Commission is governed by the Act codified at Title 16, Chapter 6, Article 2. The Act includes A.R.S. §§ 16-940 through -961. A copy of the Act is attached hereto as Attachment A. Attachment B is a copy of the rules covered by this report.

2. The objective of the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The objective of each rule is to further the objective of the Act, which as stated in A.R.S. § 16-940 (A) is:

to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions.

3. Effectiveness of the rule in achieving the objective

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Each rule is effective in achieving the above-stated objective.

4. Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

The rules are consistent with state statutes and in the process of preparing this report the rules have been compared against each other and A.R.S. §§ 16-940 through -961 and have been found to be consistent.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

All rules are fairly and consistently enforced by the Commission.

6. Clarity, conciseness, and understandability of the rule

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES.

The Commission finds all of its rules to be clear, concise, and understandable.

7. **Summary of the written criticisms of the rule received by the agency within five years**

This information is provided in Part II for individual rules that were the subject of written criticism in the last five years. For rules with no entry under item 7 in Part II, the Commission did not receive any written criticism of the rule.

8. **Estimated economic, small business, and consumer impact**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Economic, small business and consumer impact statement

The rules proposed and adopted by the Commission between January 2010 and July 23, 2015 create no economic impact for small businesses or consumers provided participating candidates abide by the rules. Failure to abide by any of the statutes or rules may create an economic impact on those subject to the penalties the Commission may impose.

The Commission receives funds from the following sources.

- A 10 percent surcharge imposed on all civil and criminal fines and penalties collected pursuant to A.R.S. § 12-116.01;
- A \$5 voluntary contribution per taxpayer (\$10 when married and filing jointly) who files an Arizona state income tax return and marks an optional check-off box on the first page of the form. A taxpayer who checks this box receives a \$5 reduction in tax liability and \$5 goes to the Clean Elections Fund (NOTE: As of August 2, 2012, the Commission only receives \$5 voluntary taxpayer contributions from individuals filing tax returns for tax years 2012 and earlier.);
- A voluntary donation to the Clean Elections Fund by designating the Fund on an income tax return form filed by the individual or business entity, or by making a payment directly to the Fund. Any taxpayer making a donation shall receive a dollar-for-dollar tax credit not to exceed 20 percent of the tax amount on the return or \$680 per taxpayer, whichever is higher (NOTE: As of August 2, 2012, the Commission no longer accepts donations for the dollar-for-dollar tax credit.);
- Qualifying contributions received by participating candidates;
- Civil penalties assessed against violators of the Citizens Clean Elections Act.

9. **Analysis submitted by another person on the rules' impact on competitiveness**

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

No such analysis has been submitted to the Commission for any of its rules.

10. Course of Action from Last Review

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

All corrective action from the previous report was completed at the Commission meeting on July 21, 2011 and reported on the April 18, 2011 Five Year Report Progress Report.

11. Least Burden and Costs

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Each rule achieves its underlying regulatory objective with the least burden and cost possible, and the probable benefits of each rule outweigh its probable costs.

12. Determination to corresponding federal law

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

The rules are consistent with federal law and state statutes and in the process of preparing this report the rules have been compared against each other and A.R.S. §§ 16-940 through -961 and have been found to be consistent.

13. A.R.S. § 41-1037

INFORMATION IS IDENTICAL FOR AND APPLIES TO ALL RULES

Commission rules do not require the issuance of a regulatory permit, license or agency authorization.

14. Course of action the agency proposes to take regarding each rule

This information is provided in Part II for individual rules for which the Commission proposes to take action. For rules with no entry under item 10 in Part II, the Commission proposes no course of action.

Part II: Analysis of Individual Rules

ARTICLE 1 – GENERAL PROVISIONS

R2-20-101 Definitions

2. Objective

Supplement the definitions provided in A.R.S. §§16-901 and 16-961 for Chapter 20 of the Commission rules.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission struck the definition of “election cycle” from the rule because the definition is found in statute. (19 A.A.R. 3515)

On September 27, 2013, the Commission adopted final amendments to the rule that added the definitions of “person,” “candidate for statewide office,” and “legislative candidate.” The Commission also adopted final amendments to the rule that clarified the definition of “candidate” as a person and, if not specifically stated, “candidate” includes a candidate for statewide or legislative office. The Commission also adopted final amendments to the rule that changed the definition of “expressly advocates” by removing the language from (10)(b)(ii) that states “in the 16 week period immediate preceding a general election.” (19 A.A.R. 3515)

b. Action Proposed

None.

R2-20-102 Applicability

2. Objective

Specify to which candidates the Act and rules apply.

14. Course of Action

a. Action Taken

On September 27, 2013, the Commission unanimously repealed the applicability rule to eliminate potential confusion. (19 A.A.R. 3518)

b. Action Proposed

None.

R2-20-103 Time Calculations

2. Objective

Clarify procedures for computing periods of time and methods of communicating between the candidate and the Commission.

R2-20-104 Certification as a Participating Candidate

2. Objective

Provide guidance on filing an application for certification and electronic campaign finance reports; accepting contributions and making expenditures; and requirements for a nonparticipating candidate to be eligible for participating candidate status.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final rule amendments to (C)(8) clarifying the rule by removing the language “equalizing fund payments” as the Commission no longer issued equalizing funding at that time and inserted the language “primary and general election funding” to clarify the funding type. (19 A.A.R. 1685)

On May 9, 2013, the Commission adopted final rule amendments to (D)(5) requiring participating candidates to attend a candidate training class within 60 days of being certified or within 60 days of the beginning of the qualifying period if the candidate is certified prior to the start of the qualifying period. (19 A.A.R. 1685)

b. Action Proposed

None.

R2-20-105 Certification for Funding

2. Objective

Provide the process for certifying clean elections candidates.

14. Course of Action

a. Action Taken

On January 19, 2012, the Commission adopted final amendments to the rule adding a new subsection (C) to allow participating candidates to collect up to 50% of the number \$5 qualifying contributions required to qualify for funding through a secured electronic portal maintained by the Secretary of State’s Office known as E-Qual. (19 A.A.R. 1688)

On February 9, 2012, the Commission adopted final amendments to subsection (D) of the rule to clarify that solicitor information is not required for \$5 qualifying contributions collected in accordance with subsection (C). (19 A.A.R. 1688)

On May 9, 2013, the Commission adopted final amendments to subsection (J) of the rule increasing the minimum number of \$5 qualifying contributions required for all statewide and legislative offices. (19 A.A.R. 1688)

b. Action Proposed

None.

R2-20-106 Distribution of Funds to Certified Candidates

2. Objective

Provide the process and criteria for the Commission to evaluate a candidate's application for funding.

R2-20-107 Candidate Debates

2. Objective

Provide procedures for conducting debates, for candidates seeking to be excused from participation in the debates and the penalty for failing to participate in the debates.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to subsection (E) of the rule by removing reference to equalizing funds as the Commission no longer issued equalizing funds at that time. (19 A.A.R. 1690)

On November 21, 2013, the Commission adopted final amendments to subsections (A), (D), and (K) to outline the timelines and procedures for the Commission to invite participating and non-participating candidates to Commission sponsored debates and for allowing non-participating candidates to request a Commission sponsored debate even if there is not a participating candidate in the race. (19 A.A.R. 4213)

On July 23, 2015, the Commission adopted final amendments subsection (D)(3) to clarify the procedures in which a nonparticipating candidate may participate in a Commission sponsored debate and/or request the Commission sponsor a debate. (21 A.A.R. 1627)

b. Action Proposed

None.

R2-20-108 Termination of Participating Candidate Status

2. Objective

Provide a method for candidates to withdraw their application for certification or funding.

14. Course of Action

a. Action Taken

On May 20, 2011, the Commission adopted final amendments to the rule to permit a participating candidate to terminate the candidate's participation in the Arizona's public financing program. The Commission also removed language from subsection (A) stating that "the candidate shall immediately begin the process of returning public funds to the Fund" in order to clarify that once a candidate has received public funds, the candidate may not withdraw from participation in the program. The Commission amended subsection (C) to include language permitting a person who has withdrawn from participation to reapply provided the candidate is in compliance with other rules relating to the certification of participating candidates. (17 A.A.R. 1950)

b. Action Proposed

None.

R2-20-109 Reporting Requirements

2. Objective

Provide the requirements for candidates and independent expenditures committees to file campaign finance reports.

7. Written Criticism

Prior to the September 27, 2013 Commission meeting, Sam Wercinski of Arizona Advocacy Network submitted written public comment in support of the Commission proposed rule changes. Mr. Wercinski proposed a change to subsection (B)(3)(d) to clarify that the joint expenditure should fairly allocated to the "obligated candidate" rather than "candidate."

Prior to the May 22, 2014 Commission meeting, the Commission received public comment regarding the rule. Senator Steve Pierce and the Elect Steve Pierce Committees, through their legal counsel, Michael Liburdi, submitted a petition for a rule change proposing the Commission repeal R2-20-109(G). Mr. Liburdi stated the rule “is an extra-legal exercise of the Commission’s rulemaking power and established bad public policy for regulators and non-participating candidates.” The Citizens Clean Elections staff recommended the Commission not repeal the provision. Robyn Prud’homme-Bauer from the League of Women Voters of Arizona provided written public comment supporting the Commission staff’s position to R2-20-109 stating the rule changes aligned with the League’s position on full disclosure. Sam Wercinski of the Arizona Advocacy Network also submitted written public comment in support of the staff recommendation of amendments to R2-20-109(G) and in opposition to the petition for a rule change submitted by Senator Pierce. Finally, Tim Hogan from the Arizona Center for Law in the Public Interest submitted written public comment in opposition to Senator Pierce’s petition for a rule change for the fact that “the plain language of the Clean Elections Act does not support Pierce’s interpretation.”

On July 23, 2015, the Commission considered discussion and possible action on proposed amendments to the rule that were presented at the Commission’s May 14, 2015 public meeting. Prior to the meeting the Commission received numerous written public comments with 152 individuals supporting the Commission proposed rule changes and 6 individuals opposing the Commission proposed rule changes, including Connie Wilhelm Garcia, President and Executive Director of the Home Builders Association of Central Arizona. Louis Hoffman, a former Commissioner, provided substantial written public comment in regard to the rule revisions. Mr. Hoffman proposed removing the A.R.S. § 16-913 citation from subsection (F)(6) and adding clarifying language regarding independent expenditures to subsection (F)(3). Mr. Hoffman’s proposal also clarifies that the Commission may audit exempt entities in subsection (F)(8). He also adds additional detailed language regarding civil penalties in a new subsection (F)(12).

On August 19, 2015, the Secretary of State submitted a petition for a rule change proposing the Commission removes from R2-20-109(F)(3) entities subject to A.R.S. § 16-913 reporting requirements from being subject to penalties under A.R.S. § 16-942.

Prior to the August 20, 2015 Commission meeting, the Commission received public comment from 33 individuals. Substantive written public comments were received from the Center for Competitive Politics and their counsel, Kory Langhofer, Eric Spencer, Louis Hoffman, the Arizona Chamber of Commerce and Industry, and Saman Golestan. The Commission considered all public comment and proposed revisions to the rules.

Prior to the October 29 and 30, 2015 meetings, the Commission received public comment from 19 individuals or groups including: Glenn Hammer, President of the

Arizona Chamber of Commerce, former Clean Elections Commissioners, Timothy Reckart and Louis Hoffman, Morgan Dial of Southern Arizona Sports Marketing, and Shirley Sandelands, President of the Arizona League of Women Voters. The Commission considered all public comment prior to voting on the rule.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to subsection (A) of the rule clarifying campaign finance reports will be filed electronically with the Secretary of State's office and that participating candidates must have sufficient funds in their campaign accounts to pay for the total amount of the expenditure at the time it is made. The Commission also eliminated subsections (B-D) which pertained to equalizing funding and independent expenditures (subsections (E-F) were re-codified). Subsection (E) was added to clarify reporting requirements for participating candidates. (19 A.A.R. 2923)

On August 29, 2013, the Commission adopted final amendments to subsection (A) of the rule clarifying that participating candidate must make reimbursements to authorized agents within seven calendar days of the expenditure is deemed an in-kind contribution. In addition, the Commission added language to subsection (C) requiring candidates to maintain a travel log and reimburse mileage or air travel within seven calendar days. (19 A.A.R. 2923)

On September 27, 2013, the Commission adopted final amendments to the rule. The final adopted rule includes the following amendments:

Subsection (A) – amended to make clear the section applies to all persons obligated to file any campaign finance report subject to the Act and Rules.

Eliminates R2-20-109(A)(3)

Re-codified R2-20-109(A)(1-6) as R2-20-109(B)(1-5)

Subsection (B) - amended to further define joint expenditures and the allocation and reimbursement for joint expenditures.

Re-codified subsection(B) as subsection (C).

Subsection (C) - amended to clarify the timing of reporting expenditures for participating candidates.

Re-codified R2-20-109(C) as R2-20-109(D).

Subsection (D) - amended to clarify the transportation requirements for participating candidates.

Re-codified R2-20-109(D) as R2-20-109(E).

Subsection (E) – amended to clarify participating candidates’ reports and refunds of excess monies.

Subsection (F) – added to clarify reporting requirements for independent expenditures.

Subsection (G) – added to clarify reporting requirements and campaign finance limits applicable to non-participating candidates. (19 A.A.R. 3519)

On May 22, 2014, the Commission adopted final amendments to subsection (G) of the rule to clarify the Commission’s enforcement of contribution limits and reporting requirements related to non-participating candidates under the Citizens Clean Elections Act, rules, and related penalties. (20 A.A.R. 1329)

On September 11, 2014, the Commission adopted final emergency amendments to the rule. Subsection (F) was amended to clarify language related to the Commission’s enforcement of reporting requirements and exceptions under the Clean Elections Act, rules and related penalties. Subsection (F)(3)(c) was amended to clarify the penalties for amounts not reported during the election. Subsection (F)(3)(d) was added to clarify that the amounts in (a), (b), and (c) are subject to adjustment of A.R.S. § 16-959. Language was added to subsection (F)(4) to clarify that any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance or intends to comply with A.R.S. §§ 16-920 and -914.02 may seek an exemption from the reporting requirements of the Act. Subsection (F)(5) was amended by removing subsections (a) and (b) in regards to an organization’s primary purpose and certification that the organization does not intend to accept donations or contributions for the purpose of influencing elections. Subsection (F)(6) was amended to clarify that organizations that do not receive an exemption from the Commission are required to file independent expenditure reports as specified in A.R.S. § 16-958. (20 A.A.R. 2804)

On August 20 and 21, 2015, the Commission approved rule amendment proposals for publication with the Arizona Administrative Register in order to solicit public comment for the revised rule proposals which included the Secretary of State’s petition for a rule change and Mr. Langhofer’s rule amendment proposal. The Commission is currently seeking public comment on the following proposed rule amendments:

R2-20-109(D)(2)(a)(b) – clarifies the time period in which mileage reimbursements and expenditures must be reported. Allow for direct fuel

purchases by the candidate for the candidate's automobile only and require documentation such as a travel log to be kept regarding a candidate's direct fuel purchases.

R2-20-109 (F)(3) – adds language emphasizing an independent expenditure can be made on behalf of any candidate, a participating candidate or a nonparticipating candidate. Codify in rule statutory language stating an independent expenditure against a candidate is considered an independent expenditure on behalf of the opposing candidate(s). Add language that political committees receiving contributions or making expenditures for candidate elections are subject to the penalties of the Clean Elections Act. Also updates language to clarify the definition of “political committee” in response to HB 2649 redefining the term.

R2-20-109(F)(3) – removes entities subject to A.R.S. § 16-913 reporting requirements from being subject to penalties under A.R.S. § 16-942.

R2-20-109 (F)(6) – clarifies filing requirements to reflect statutory requirements.

R2-20-109 (F)(8) – clarifies Commission's auditing authority to eliminate potentially confusing language.

R2-20-109 (F)(12) – these provisions update the Commission's rules to address the passage of HB2649, which amended the definition of political committee and to provide further clarity to the requirements applicable to those making independent expenditures. (21 A.A.R. 1977, 2043)

On October 30, 2015, the Commission unanimously adopted final amendments to the rule. The final adopted rule includes the following amendments:

R2-20-109(D)(2)(a)(b) – clarifies the time period in which mileage reimbursements and expenditures must be reported. Allow for direct fuel purchases by the candidate for the candidate's automobile only and require documentation such as a travel log to be kept regarding a candidate's direct fuel purchases.

R2-20-109 (F)(3) – adds language emphasizing an independent expenditure can be made on behalf of any candidate, a participating candidate or a nonparticipating candidate. Codify in rule statutory language stating an independent expenditure against a candidate is considered an independent expenditure on behalf of the opposing candidate(s). Add language that political committees receiving contributions or making expenditures for candidate elections are subject to the penalties of the Clean Elections Act. Also updates language to clarify the definition of “political committee” in response to HB 2649 redefining the term.

R2-20-109(F)(3) – removes entities subject to A.R.S. § 16-913 reporting requirements from being subject to penalties under A.R.S. § 16-942.

R2-20-109 (F)(6) – clarifies filing requirements to reflect statutory requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B).

R2-20-109 (F)(8) – clarifies Commission’s auditing authority to eliminate potentially confusing language.

R2-20-109 (F)(12) – these provisions update the Commission’s rules to address the passage of HB2649, which amended the definition of political committee and to provide further clarity to the requirements applicable to those making independent expenditures. (21 A.A.R. 3168)

b. Action Proposed

None.

R2-20-110 Campaign Accounts

2. Objective

Specify the method for maintaining campaign accounts.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to the rule by removing subsection (B) which permitted the Commission to consider a nonparticipating candidate’s campaign finance activity in all accounts for the purposes of equalizing funds. (19 A.A.R. 1693)

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that a single campaign account is the same as a candidate campaign bank account. (21 A.A.R. 1629)

b. Action Proposed

None.

R2-20-111 Books and Records Requirements

2. Objective

Specify the manner for keeping records and giving the public access to campaign records.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that candidates should maintain records relating to the candidate's campaign bank account. (21 A.A.R. 1631)

b. Action Proposed

None.

R2-20-112 Political Party Exceptions

2. Objective

Provide guidance on the scope of the political party exceptions to the definitions of contributions and expenditures in A.R.S. § 16-901(5), (8).

R2-20-113. Calculation of Equalizing Funds (REPEALED)

2. Objective

Provide details for calculating equalizing funds in accordance with A.R.S. § 16-952.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission repealed the rule calculating equalizing funds for participating candidates. (19 A.A.R. 1694)

b. Action Proposed

None.

R2-20-113. Candidate Statement Pamphlet (NEW RULE)

2. Objective

Provide procedures for candidate eligibility and submission of statements for the Commission's primary and general election candidate statement pamphlets in accordance with A.R.S. § 16-956.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted a new rule to clarify which candidates are eligible to submit statements to the Commission's primary and general election candidate statement pamphlets. (21 A.A.R. 1633)

b. Action Proposed

None.

ARTICLE 2 – COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-201 Scope

2. Objective

Specify the scope of the rules.

R2-20-202 Initiation of Compliance Matters

2. Objective

Describe methods for initiating an enforcement matter.

R2-20-203 Complaints

2. Objective

Provide the process for filing a complaint.

R2-20-204 Initial Complaint Processing; Notification

2. Objective

Specify the procedures for processing complaints.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to subsections (A) and (B) of the rule to allow the Commission greater flexibility in the method in which respondents are provided with copies of complaints filed with the Commission. (21 A.A.R. 1634)

b. Action Proposed

None.

R2-20-205 Opportunity for No Action on Complaint-Generated Matters

2. Objective

Specify the method and time period allowed for an alleged violator to respond to a complaint.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to subsection (C) of the rule to require a respondent's response to be sworn to and signed in the presence of a notary public and notarized which aligns with the requirements of complaints filed with the Commission. (21 A.A.R. 1636)

b. Action Proposed

None.

R2-20-206 Administrative Counsel's Recommendation on Complaint-Generated Matters

2. Objective

Specify the Executive Director's and complainant's role prior to bringing a reason-to-believe violation to the Commission.

7. Written Criticism

Prior the May 22, 2014 Commission meeting, Robyn Prud'homme-Bauer from the League of Women Voters of Arizona provided a written comment supporting the rule amendments. Sam Wercinski from the Arizona Advocacy Network provided written public comment in opposition the proposed subsections (C) and (D) stating the proposals would create a separate process for initiating investigations for one group of candidates versus another and therefore creating unequal due process.

14. Course of Action

a. Action Taken

On May 22, 2014, the Commission adopted final amendments to subsection (B) clarifying that the Executive Director's recommendation is not an appealable agency action. The Commission also adopted subsections (C) and (D) to specify the procedures for initiating an inquiry regarding a nonparticipating candidate or a nonparticipating candidate's campaign committee and that the Commission's decision to authorize an inquiry is not an appealable agency action. (20 A.A.R. 1332)

On July 23, 2015, the Commission adopted final amendments to subsection (A) of the rule allow the Executive Director to close a complaint generated matter based on the respondent complying with the rule or statute on which the complaint is founded and notifying the Commission in such an instance. (21 A.A.R. 1638)

On August 20, 2015, the Commission approved a rule amendment proposal for publication with the Arizona Administrative Register in order to solicit public comment for a proposal that would require the Executive Director to first receive Commission approval to initiate an inquiry if a person making an independent expenditure in an election without a participating candidate faces penalties subject to A.R.S. § 16-942(B). (21 A.A.R. 1981)

b. Action Proposed

If given unanimous approval by the Commission, the earliest effective date of the proposed amendment would be October 29, 2015.

R2-20-207 Internally Generated Matters; Referrals

2. Objective

Provide the Executive Director with authority to generate an internal complaint.

R2-20-208 Complaint Processing; Notification

2. Objective

Provide the process for notifying the complainant and the respondent of a reason-to-believe determination.

7. Written Criticism

Prior to the August 20, 2015 Commission meeting, the Arizona Chamber of Commerce submitted a proposal to the Commission to amend the enforcement processing procedures when a complaint alleges an “Article 1” violation involving an independent expenditure.

14. Course of Action

a. Action Taken

On August 20, 2015, the Commission approved three rule amendment proposals for publication with the Arizona Administrative Register in order to solicit public comment for the proposals. (21 A.A.R. 1772, 1822, 1983)

b. Action Proposed

If given unanimous approval by the Commission, the earliest effective date of the proposed amendments would be October 29, 2015.

R2-20-209 Investigation

2. Objective

Specify the methods used by the Commission to investigate following a reason-to-believe determination.

R2-20-210 Written Questions Under Order

2. Objective

Allow the Commission to issue an order requiring any person to submit sworn, written answers to written questions.

R2-20-211 Subpoenas and Subpoenas Duces Tecum; Depositions

2. Objective

Allow the Commission to authorize the Administrative Counsel or Assistant Attorney General to issue subpoenas for a deposition or issue a subpoena *duces tecum* during its investigation.

R2-20-213 Motions to Quash or Modify a Subpoena

2. Objective

Allow any person to whom a subpoena is directed to apply to the Commission to quash or modify the subpoena.

R2-20-214 The Probable Cause to Believe Recommendation: Briefing Procedures

2. Objective

Specify the procedure for the Commission's determination of probable cause to believe that a violation of the statute or rule has occurred or is about to occur.

R2-20-215 The Probable Cause to Believe Finding; Notification

2. Objective

Provide the process for notifying the respondent of a probable cause finding.

R2-20-216 Conciliation

2. Objective

Provide the process for settling matters informally.

R2-20-217 Enforcement Proceedings

2. Objective

Provide the process for assessing civil penalties.

R2-20-218 Reserved

R2-20-219 Reserved

R2-20-220 Ex Parte Communications

2. Objective

Prohibit ex parte communications with the Commission staff or Commissioner.

R2-20-221 Representation by Counsel; Notification

2. Objective

Specify the extent of a respondent's right to be represented.

R2-20-222 Civil Penalties

2. Objective

Designate potential civil penalties.

7. Written Criticism

Prior to the September 27, 2013 meeting, Sam Wercinski from the Arizona Advocacy Network provided written public comment stating that he currently penalty structure is unfair and lacks deterrent value. Mr. Wercinski proposed a percentage based penalty for deterring campaign finance violations.

14. Course of Action

a. Action Taken

On May 9, 2013, the Commission adopted final amendments to subsections (A) and (B) which increased the maximum civil penalties for participating legislative candidate from \$500 to \$1,000, participating statewide candidates from \$2,500 to \$5,000, and for a person other than a participating candidate from \$500 to \$1,000. (19 A.A.R. 1697)

On September 27, 2013, the Commission adopted final amendments to the rule which struck subsection (C) of the rule which limited penalties for violations of the Act. (19 A.A.R. 3524)

b. Action Proposed

None.

R2-20-223 Notice of Appealable Agency Action

2. Objective

Specify the Commission's notice requirement after making a probable cause finding.

14. Course of Action

a. Action Taken

On July 21, 2011, the Commission amended subsection (A) to include language specifying the statute or the rule "violated and the specific facts constituting the violation." (On October 27, 2015, this rule amendment was submitted to Arizona Administrative Register for publication.)

b. Action Proposed

None.

R2-20-224 Request for Administrative Hearing

2. Objective

Designate the timeline and process for a respondent to request a hearing.

R2-20-225 Informal Settlement Conference

2. Objective

Provide the process for a respondent to request an informal settlement conference.

R2-20-226 Administrative Hearing

2. Objective

Specify the timeline and process for conducting administrative hearings.

R2-20-227 Review of Administrative Decision by Commission

2. Objective

Specify the Commission's responsibilities when it receives notice of an administrative decision.

R2-20-228 Judicial Review

2. Objective

Provide the process for exhausting administrative remedies prior to seeking judicial review.

ARTICLE 3 - STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES

R2-20-301 Purpose and Applicability

2. Objective

Indicate the purpose and scope of this article.

R2-20-302 Definitions

2. Objective

Define terms for this article.

R2-20-303 Notification to Commissioners and Employees

2. Objective

Specify material to be made available to each employee and Commissioner upon revision or entrance of new employment.

R2-20-304 Interpretation and Advisory Service

2. Objective

Specify the process for seeking advice on questions of conflict of interest.

R2-20-305 Reporting Suspected Violations

2. Objective

Provide the procedure for reporting suspected violations of conflict of interest requirements.

R2-20-306 Disciplinary and Other Remedial Action

2. Objective

Specify the disciplinary action for violating this Article.

R2-20-307 General Prohibited Conduct

2. Objective

Specify conduct that is prohibited for Commissioners or employees.

R2-20-308 Outside Employment or Activities

2. Objective

Specify the prohibited conduct related to employment and other activities for Commissioners or employees.

R2-20-309 Financial Interests

2. Objective

Specify financial conflicts of interest requirements.

R2-20-310 Political and Organizational Activity

2. Objective

Specify conflicts of interest related to express advocacy.

R2-20-311 Membership in Associations

2. Objective

Specify potential conflicts of interest related to membership in nongovernmental associations or organizations.

R2-20-312 Use of State Property

2. Objective

Specify limitations on using state property.

ARTICLE 4 – AUDITS

R2-20-401 Purpose and Scope

2. Objective

Provide the purpose and scope of the article.

13. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments removing nonparticipating candidates' campaign finances from the purpose and scope of the audits conducted by the Commission. (19 A.A.R. 1699)

b. Action Proposed

None.

R2-20-402. General

2. Objective

Establish the tools available to the Commission in conducting audits.

R2-20-402.01 Random Audits

2. Objective

Authorize Commission staff to conduct random audits.

14. Course of Action

a. Action Taken

On October 6, 2011, the Commission adopted final amendments to the rule removing nonparticipating candidates' campaign finances from the random audits conducted by the Commission. (19 A.A.R. 1700)

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that statewide and legislative candidates are selected for random audits rather than statewide offices and legislative districts, consistent with current practices. (21 A.A.R. 1640)

b. Action Proposed

None.

R2-20-403 Conduct of Fieldwork

2. Objective

Establish candidate responsibilities during an audit.

R2-20-404 Preliminary Audit Report

2. Objective

Provide the procedures for the first phase of the audit process.

R2-20-405 Final Audit Report

2. Objective

Provide the procedures for the final phase of the audit process.

R2-20-406 Release of Audit Report

2. Objective

Provide details on how an audit report is made available to the public.

ARTICLE 5 – RULEMAKING

R2-20-501 Purpose and Scope

2. Objective

Specify the purpose and scope of the Commission's rulemaking.

R2-20-502 Procedural Requirements

2. Objective

Provide the process for filing a written petition regarding the issuance, amendment or repeal of an administrative rule.

R2-20-503 Processing of Petitions

2. Objective

Provide the process for reviewing petitions related to issuing, amending, or repealing rules.

R2-20-504 Disposition of Petitions

2. Objective

Provide the process for disposition of petitions related to rulemaking.

R2-20-505 Commission Considerations

2. Objective

Specify a nonexclusive list of criteria the Commission may consider in disposing of a petition for rulemaking.

R2-20-506 Administrative Record

2. Objective

Designate which records compose the administrative record.

ARTICLE 6 – EX PARTE COMMUNICATIONS

R2-20-601 Purpose and Scope

2. Objective

Specify the purpose and scope of the article.

R2-20-602 Definitions

2. Objective

Define terms as used in the article.

R2-20-603 Audits, Investigations & Litigation

2. Objective

Prohibit ex parte communications with the Commission during audits, investigations or litigation.

R2-20-604 Sanctions

2. Objective

Specify the process for sanctioning those who violate this article.

ARTICLE 7 – AUDITS AND REPAYMENT

R2-20-701 Purpose and Scope

2. Objective

Specify the purpose and scope of the article.

R2-20-702 Use of Campaign Funds

2. Objective

Specify legal uses of campaign funds.

14. Course of Action

a. Action Taken

On February 17, 2011, the Commission adopted final amendments to the rule to clarify the limits on candidate expenditures for staff meals (R2-20-702(C)(2)), to clarify the personal use limitations listed are not inclusive (R2-20-702(C)(3)), and to prohibit campaign funds to be used to purchase extended warranties or other similar purchase options that extend beyond the campaign (R2-20-702(C)(3)(h)).

Additionally, the amendments to the rule require “fixed assets purchased with campaign funds that can be used for non-campaign purposes with a value of \$200 or more that were purchased with campaign funds shall be turned in to the Commission no later than 30 days after the primary election or the general election if the candidate was successful in the primary. A candidate may elect to reimburse the Commission for 50% of the original purchase price of the item instead of turning in the item” (R2-20-702(C)(6)). (17 A.A.R. 1267)

On October 6, 2011, the Commission adopted final amendments to the rule to clarify that candidates are prohibited from using Clean Elections funding for the cost of legal defense, any affirmative claim, or any litigation in court or before the Commission regarding a campaign (R2-20-702 (C)(1)). In addition, the Commission adopted final amendments to address disclosure of payments made by participating candidates to candidates or their family members or businesses (R2-20-702(C)(4)). (19 A.A.R. 1702)

On May 9, 2013, the Commission adopted final amendments to subsection (D) of the rule to decrease the amount of time a candidate has to return a fixed asset and increase the percentage of the cost of the item that the candidate must reimburse the Commission in the event the candidate wishes to retain the fixed asset. (19 A.A.R. 1702)

b. Action Proposed

None.

R2-20-702.01. Use of Assets

2. Objective

Provide a method for a candidate to use campaign materials from prior elections.

R2-20-703 Documentation for Direct Campaign Expenditures

2. Objective

Specify the process by which a participating candidate may ensure that campaign expenditures satisfy the direct campaign expenditure requirement.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule to clarify that candidates must keep a list of fixed assets with a value of \$200 or more. The amendment keeps rules regarding fixed assets consistent. (21 A.A.R. 1641)

b. Action Proposed

None.

R2-20-704 Repayment

2. Objective

Designate the process for repaying distributed funds to the Clean Elections fund and specify that the Commission may require such repayment.

14. Course of Action

a. Action Taken

On July 23, 2015, the Commission adopted final amendments to the rule clarifying that repayment sources include the candidate's current election campaign account. (21 A.A.R. 1643)

b. Action Proposed

None.

R2-20-705 Additional Audits or Repayment Determination

2. Objective

Authorize additional audits or examinations of campaign activity when new facts are available.

Doug Ducey
Governor

Thomas M. Collins
Executive Director



Thomas J. Koester
Chair

Mitchell C. Laird
Steve M. Titla
Damien R. Meyer
Mark S. Kimble
Commissioners

State of Arizona
Citizens Clean Elections Commission

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MEMORANDUM

To: Commissioners

From: Thomas M. Collins

Date: 10.16.2015

Subject: Amendments to R2-20-109

Background

In 2013, the Commission adopted amendments to R2-20-109 that codified in rule provisions of the Clean Elections Act related to independent expenditures and providing for a process by which certain entities could receive an exemption from some provisions of the Act. [Exhibit 1, 2]¹ During the 2014 election, numerous entities received exemptions. Other entities were hesitant to seek the exemption, but also refused to follow the rules duly passed by the Commission. At the same time, the Secretary of State requested that a number of corporate entities provide evidence that they were complying with certain reporting requirements related to political campaigns, including whether an entity's "primary purpose" was elections. In response, the Secretary received answers that identified several different interpretations of the "primary purpose" statutory language. *See* A.R.S. 16-914.02(K) (Any entity that makes an independent expenditure and that is organized primarily for the purpose of influencing an election and . . . that is a corporation, limited liability company or labor organization that accepts donations or contributions shall file with the filing officer as a political committee as otherwise provided by law."). That language generally requires an entity that is organized with a "primary purpose" that is election-related to file additional reports, including the identities of contributors. Commission staff reviewed these responses, presented a report to the Commission on September 11, 2014 on the approaches identified by the regulatory community to the Commission, and recommended monitoring enforcement developments and returning to the primary purpose issue in a rulemaking.

In addition, members of the regulated community expressed concern that the Secretary of State "provided . . . no standards that it will use to guide its review of [an entities] response" seeking

¹ Exhibit 2 includes suggested minor changes to address certain legal issues with the most recent draft.

information on “offsetting [i.e., non-political activity].” Ltr. From Michael T. Liburdi, Attorney for Arizona Free Enterprise Club to Christina Estes-Werther, State Election Director, August 8, 2014 **[Exhibit 3]**. Two attorneys representing election spenders appeared before the Commission at its meeting discussing this issue.

The Commission adopted an emergency rule amendment for the purpose of addressing concerns some spenders had identified. Subsequently, one hold out, the 60 Plus Association received an exemption. Another, the Arizona Free Enterprise Club was already subject to enforcement through 16-924, and the Commission staff recommended monitoring that matter.²

In the 2015 legislative session, the Legislature passed HB2649, which used the same “primary purpose” term in the catch-all definition of political committee it established. Those entities that are organized or operate as political committees are obligated to make reports, including reports that identify contributors. A.R.S. § 16-901(20)(F). **[Exhibit 4]**

In May 2015, the Commission opened a rule docket to amend R2-20-109 to address the primary purpose issue. An initial staff draft focused on two specific issues: 1) providing that entities formed during the election cycle or immediately before who spent in Arizona races would presumptively be treated as political committees for that initial cycle and 2) providing a safe harbor for donors to avoid disclosure if they took steps to ensure that their donations would not be used for political purposes. The initial staff draft also ensured that all Arizona election spending would be included in determining whether penalties for failure to file would apply.

Subsequent rounds of public comment and drafting included a version proposed by former Commissioner Louis Hoffman which was circulated for comment. **[Exhibit 5]** The public comment also included a proposal drafted on behalf of the Arizona Chamber of Commerce, and a proposal authored by election attorney Kory Langhofer. The Langhofer Draft, also referred to as Version 3, was approved for circulation on August 20, 2015. The Commission has thus far received 17 additional comments. **[See Email Attachment]**

Objective

The Commission is expressly authorized to make rules to “carry out the purpose of [the Clean Elections Act] and to govern [its] procedures.” A.R.S § 16-956(C).

The rulemaking serves two critical purposes related to the implementation of the Act. First, it serves to provide transparency to the public and regulated community on how the Commission will evaluate the political activities of entities for purposes of applying penalties called for in the Act. Second, it will provide guidance to Commission staff in evaluating complaints and other information that may come to our attention for purposes of making recommendations to the Commission.

Rulemaking is a routine part of administrative law. In this matter, the Commission has taken more than 120 days of public comment, received input from across the political spectrum, and specifically from the regulated community, including the Arizona Chamber of Commerce.

² The Free Enterprise Club matter was ultimately assigned to the Peoria City Attorney, who later decided not to take any action on it.

Analysis

Version 3 provides guidance to the public and the regulated community on how the Commission would apply penalties applicable under the Clean Elections Act. It also provides guidance to Commission staff. Generally, the rule sets for the circumstances that would lead to penalties against under A.R.S. 16-942 for entities subject to A.R.S. 16-901(20)(f). For such an entity, its total contributions and expenditures in Arizona elections must exceed 50 percent of the entity's total spending during an election cycle and exceed \$500. An updated version with suggested, non-substantive changes is attached for your review as **Exhibit 2**.

Here are three scenarios to illustrate the rule on a very general level, assuming no other spending:³

In a two-year election cycle,

Entity 1: Spends \$100,000 on legislative races. Spends \$200,000 on city ballot measure election. Subject to penalties under 16-942 for failure to file reports under the rule.	Entity 2: Spends \$500,000 on congressional election in Arizona. Spends \$250,000 on Arizona Corporation Commission election. Not subject to penalties under 16-942 for failure to file reports under the rule. (Federal election spending is reported to the Federal Election Commission).	Entity 3: Spends 300,000 on Arizona Corporation Commission Race Spends 300,000 on purported "issue advocacy" related to ACC renewable energy rules. Possibly subject to penalties under 16-942 for failure to file reports under the rule. (Section 16-901.01 analysis applies to determine whether spending is express advocacy).
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Therefore, the proposal provides reasonable guidance to both the regulated community and the public.

Although the rule is a reasonable construction and application of A.R.S. § 16-901(20)(f), it is not the only reasonable interpretation. One of the criticisms of this draft, for example, is that, in contrast to the Hoffman Draft, it narrows the application of the primary purpose to a two-year election cycle. *See* TLG Public Comment Dated 10/1/2015 at 2. **[Exhibit 6]** While an entity must make expenditures or take contributions of more than \$500 as a threshold matter to fall within the (20)(F) catchall, *see* A.R.S. § 16-901(20)(f)(ii), the Commission may reference a different time period for determining "primary purpose." What the current draft does do, however, is prevent an entity from looking back to its inception in an effort to show its purpose is other than political advocacy, or from relying on its tax status designation or application for

³ Regardless of A.R.S. § 16-901(20), any entity that makes expenditures over a certain threshold in state and legislative races set forth in the Act is required to file reports and faces penalties for failure to file that are exclusively enforced by the Commission. *See, e.g.,* A.R.S. § 16-941(D).

tax status as a defense to a penalty.⁴ *Cf.* Ltr. From Lisa T. Hauser on behalf of 60 Plus Association to Christina Estes-Werther, State Election Director, 8/1/2014 at 1-2 (“Based on its 22-year history as a 501(c)(4) and its Form 990s . . . , there can be no serious contention that 60 Plus is somehow organized primarily for the purpose of influencing elections.”) **[Exhibit 7]**⁵

Finally, in contrast to the Hoffman Draft and the Commission’s prior discussion, the current draft does not establish any particular amount of political spending that can trigger the primary purpose prong of the A.R.S. 16-901(20)(f). The terms of the statute, which expressly permit consideration of the conduct of an entity and combinations of entities, do not exclude such a construction. If the Commission adopts that concept, a reasonable time period, such as the election cycle, would continue to be an appropriate narrowing. I would concede that it is counter-intuitive as a policy matter that an entity can spend thousands on elections in Arizona yet not necessarily face disclosure beyond the minimum spending reports required by and/or enforced under the Clean Elections Act, *see, e.g.*, A.R.S. §§ 16-914.02, -920, -941(D), -942, -957. Nevertheless, the current draft has the benefit of reflecting to some extent the construction that a number of regulated community members are likely to comply with, provides the public with an insight into how the Commission will administer the policy, and highlights some areas in which voters and others may see shortcomings. It also sets reasonable metrics on the scope of activity that may trigger certain reports, which removes uncertainty and eliminates certain arguments that would lead to less disclosure, such as an express exemption for any 501(c)(4). In the first election cycle with this new definition, there is a strong argument for taking this more limited approach. Finally, the rules are fundamentally consistent with the notion, explicit in the Act, that “[t]here must be an independent entity (e.g., the CCEC) to oversee the implementation of these rules, with the authority to enforce such, to include appropriate penalties.” Comment of Rivko Knox **[Exhibit 8]**

Minor revisions

I do recommend several minor revisions. First, the burden of proof is not properly on the Commission, which is the decision maker. The revisions attached make that change. They also clarify that this rule applies to entities under 16-901(20)(F) and make similar clarifying changes.

⁴ The current draft expressly permits the Commission to waive penalties if it deems an entity is not a political committee. *But see* TLG Comment at 3 (criticizing this provision as vague).

⁵ TLG’s criticism of the exclusion of federal elections is less well-taken. The Hoffman Draft only referenced “listed elections.” Those elections, included in A.R.S. 16-901(19)(f), rely upon the state law definition of election which means “any election . . . for any office in this state other than the office of precinct committeeman and other than a federal office.” A.R.S. § 16-901(7). Although this is counter-intuitive from a policy standpoint, it is difficult to avoid as a matter of the definitions in current law. Note that A.R.S. § 16-902.02 provides that:

A political committee that files a statement of organization in this state as prescribed by section 16-902.01, that is registered in another state or pursuant to federal law and that intends to use in this state monies raised before filing its statement of organization shall also file in the format prescribed by the filing officer complete copies of its previous campaign finance or other similar reports filed in those other jurisdictions that cover all contributions or receipts for the preceding two years.

Finally, the Commission cannot create an exception to the public records law as the draft appears to propose. *See also* TLG Comment at 3. Accordingly, the proposed revision provides for notice to the Respondent in the event of such a request. Alternatively, the Commission may consider deleting the section and addressing matters on a case-by-case basis.

Conclusion

For the forgoing reasons, I recommend that the Commission give final approval to Version 3 with the changes identified in Exhibit 2. These are challenging legal questions and difficult policy issues. This process has confirmed the Commission's express authority to impose penalties in this area and provided a valuable dialogue involving all the stakeholders in a public setting. I will continue to monitor comments as they come in.

Exhibit 1

R2-20-109 Reporting Requirements

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

accepts contributions or makes expenditures on behalf of any candidate, participating or nonparticipating, regardless of any other contributions taken or expenditures made. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. Penalties shall be assessed as follows:

- a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
 - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
 - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
 - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission's Executive Director.
 5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:
 - a. is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and
 - b. has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).
 6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B), and comply with the requirements of A.R.S. § 16-913.
 7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption.
 - a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.
 - b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:
 - i. The specific facts constituting the denial;
 - ii. A description of the respondent's right to request a hearing and to request and informal settlement conference; and
 - iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.
 8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02 (A)-(J) and (b) remains in compliance with section part (2) of this subsection (F). All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit these entities. any exempt entity pursuant to Article 4 of these rules.
 9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in part (8) of this subsection (F); or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or parts (1), (2), or (6) of this subsection (F). Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and part (3) of this subsection (F), in addition to any other penalties applicable pursuant to rule or statute.
 10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9958 constitutes an admission that the

filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.

11. Any entity that has been granted an exemption as of September 11, 2014 is deemed compliant with the requirements of subpart (5) of this subsection (F) for the election cycle ending in 2014.
12. a. the commission shall bear the burden of proving by a preponderance of evidence that an entity is a political committee.
- b. an entity shall not be found to be a political committee unless, during a two-year legislative election cycle, the total reportable contributions made by the entity plus the total reportable expenditures made by the entity exceeds both \$500 and fifty percent (50%) of the entity's total spending during the election cycle.
 - i. for purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. a contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.
 - ii. for purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.
 - iii. for purposes of this provision, grants to other organizations shall be treated as follows:
 - a. a grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.
 - b. if the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.
 - iv. if the entity making a grant earmarks the grant, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and such portion of the grant shall count as a reportable contribution or reportable expenditure.
 - v. notwithstanding subsections ii(c)(1)-(3), the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:
 - a. the amount that the recipient organization spends on reportable contributions and reportable expenditures, plus
 - b. the amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.
- c. in the event that an entity fails to qualify for the safe harbor provided in section ii above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it would be inequitable or unreasonable to determine that the entity is a political committee.
- d. the commission shall not compel an entity to identify its sources of funding unless the commission has determined that the entity is a political committee and such determination is upheld after any timely appeals. any information gathered in the course of the commission's investigation of an entity's political committee status shall remain confidential until the final disposition of any appeal.

Exhibit 2

I. ~~THE COMMISSION SHALL BEAR THE BURDEN OF PROVING BY A PREPONDERANCE OF EVIDENCE THAT AN ENTITY IS A POLITICAL COMMITTEE.~~

II. AN ENTITY SHALL NOT BE FOUND TO BE A POLITICAL COMMITTEE UNDER A.R.S. 16-901(20)(F) UNLESS, A PREPONDERANCE OF THE EVIDENCE ESTABLISHES THAT DURING A TWO-YEAR LEGISLATIVE ELECTION CYCLE, THE TOTAL REPORTABLE CONTRIBUTIONS MADE BY THE ENTITY PLUS THE TOTAL REPORTABLE EXPENDITURES MADE BY THE ENTITY EXCEEDS BOTH \$500 AND FIFTY PERCENT (50%) OF THE ENTITY'S TOTAL SPENDING DURING THE ELECTION CYCLE.

A. FOR PURPOSES OF THIS PROVISION, A "REPORTABLE CONTRIBUTION" OR "REPORTABLE EXPENDITURE" SHALL BE LIMITED TO A CONTRIBUTION OR EXPENDITURE, AS DEFINED IN TITLE 16 OF THE ARIZONA REVISED STATUTES, THAT MUST BE REPORTED TO THE ARIZONA SECRETARY OF STATE, THE ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION, OR A LOCAL FILING OFFICER IN ARIZONA. A CONTRIBUTION OR EXPENDITURE THAT MUST BE REPORTED TO THE FEDERAL ELECTION COMMISSION OR TO THE ELECTION AUTHORITY OF ANY OTHER STATE, BUT NOT TO THE ARIZONA SECRETARY OF STATE, THE ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION OR A LOCAL FILING OFFICER IN ARIZONA, SHALL NOT BE CONSIDERED A REPORTABLE CONTRIBUTION OR REPORTABLE EXPENDITURE.

B. FOR PURPOSES OF THIS PROVISION, "TOTAL SPENDING" SHALL NOT INCLUDE VOLUNTEER TIME OR FUNDRAISING AND ADMINISTRATIVE EXPENSES BUT SHALL INCLUDE ALL OTHER SPENDING BY THE ORGANIZATION.

C. FOR PURPOSES OF THIS PROVISION, GRANTS TO OTHER ORGANIZATIONS SHALL BE TREATED AS FOLLOWS:

1. A GRANT MADE TO A POLITICAL COMMITTEE OR AN ORGANIZATION ORGANIZED UNDER SECTION 527 OF THE INTERNAL REVENUE CODE SHALL BE COUNTED IN TOTAL SPENDING AND AS A REPORTABLE CONTRIBUTION OR REPORTABLE EXPENDITURE, UNLESS EXPRESSLY DESIGNATED FOR USE OUTSIDE ARIZONA OR FOR FEDERAL ELECTIONS, IN WHICH CASE SUCH SPENDING SHALL BE COUNTED IN TOTAL SPENDING BUT NOT AS A REPORTABLE CONTRIBUTION OR REPORTABLE EXPENDITURE.

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2. IF THE ENTITY MAKING A GRANT TAKES REASONABLE STEPS TO ENSURE THAT THE TRANSFEREE DOES NOT USE SUCH FUNDS TO MAKE A REPORTABLE CONTRIBUTION OR REPORTABLE EXPENDITURE, SUCH A GRANT SHALL BE COUNTED IN TOTAL SPENDING BUT NOT AS A REPORTABLE CONTRIBUTION OR REPORTABLE EXPENDITURE.

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3. IF THE ENTITY MAKING A GRANT EARMARKS THE GRANT FOR REPORTABLE CONTRIBUTIONS OR REPORTABLE EXPENDITURES, KNOWS THE GRANT WILL BE USED TO MAKE REPORTABLE CONTRIBUTIONS OR REPORTABLE EXPENDITURES, KNOWS THAT A RECIPIENT WILL LIKELY USE A PORTION OF THE GRANT TO MAKE REPORTABLE CONTRIBUTIONS OR REPORTABLE EXPENDITURES, OR RESPONDS TO A SOLICITATION FOR REPORTABLE CONTRIBUTIONS OR REPORTABLE EXPENDITURES, THE GRANT SHALL BE COUNTED IN TOTAL SPENDING AND THE SUCH RELEVANT

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PORTION OF THE GRANT AS SET FORTH IN SUBSECTION 4 OF THIS SECTION SHALL COUNT AS A REPORTABLE CONTRIBUTION OR REPORTABLE EXPENDITURE.

4. NOTWITHSTANDING SUBSECTIONS II(C)(1)-(3), THE AMOUNT OF A GRANT COUNTED AS A REPORTABLE CONTRIBUTION OR REPORTABLE EXPENDITURE SHALL BE LIMITED TO THE LESSER OF THE GRANT OR THE FOLLOWING:

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aA. THE AMOUNT THAT THE RECIPIENT ORGANIZATION SPENDS ON REPORTABLE CONTRIBUTIONS AND REPORTABLE EXPENDITURES, PLUS

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bB. THE AMOUNT THAT THE RECIPIENT ORGANIZATION GIVES TO THIRD PARTIES BUT NOT MORE THAN THE AMOUNT THAT SUCH THIRD PARTIES FUND REPORTABLE CONTRIBUTIONS OR REPORTABLE EXPENDITURES.

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III. NOTWITHSTANDING SECTION I IN THE EVENT THAT AN ENTITY FAILS TO QUALIFY FOR THE SAFE HARBOR PROVIDED IN SECTION II ABOVE, THE COMMISSION MAY NONETHELESS DETERMINE THAT AN ENTITY IS NOT A POLITICAL COMMITTEE IF, TAKING INTO ACCOUNT ALL THE FACTS AND CIRCUMSTANCES OF GRANTS MADE BY AN ENTITY, IT IS NOT PERSUADED THAT THE PREPONDERANCE OF THE EVIDENCE ESTABLISHES WOULD BE INEQUITABLE OR UNREASONABLE TO DETERMINE THAT THE ENTITY IS A POLITICAL COMMITTEE AS DEFINED IN TITLE 16 OF ARIZONA REVISED STATUTES.

III.V. THE COMMISSION SHALL NOT COMPEL AN ENTITY TO IDENTIFY ITS SOURCES OF FUNDING UNLESS THE COMMISSION HAS DETERMINED THAT THE ENTITY IS A POLITICAL COMMITTEE AND SUCH DETERMINATION IS UPHOLD AFTER ANY TIMELY APPEALS. ANY INFORMATION GATHERED IN THE COURSE OF THE COMMISSION'S INVESTIGATION OF AN ENTITY'S POLITICAL COMMITTEE STATUS SHALL REMAIN CONFIDENTIAL UNTIL THE FINAL DISPOSITION OF ANY APPEAL. THE COMMISSION SHALL NOT RELEASE INFORMATION GATHERED IN THE COURSE OF THE INVESTIGATION OF AN ENTITY'S POLITICAL COMMITTEE STATUS WITHOUT THREE BUSINESS DAYS' PRIOR NOTICE TO THE ENTITY TO PERMIT THE ENTITY TO SEEK AN ORDER PREVENTING SUCH RELEASE.

Exhibit 3

One Arizona Center
400 East Van Buren Street
Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000
602.382.6070 (Fax)
www.swlaw.com

Michael T. Liburdi
(602) 382-6170
mliburdi@swlaw.com

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
RENO
SALT LAKE CITY
TUCSON

August 8, 2014

VIA EMAIL (cwerther@azsos.gov) & U.S. MAIL

Christina Estes-Werther, State Election Director
State of Arizona Secretary of State
1700 West Washington Street, Seventh Floor
Phoenix, Arizona 85007-2888

Re: Arizona Free Enterprise Club / Secretary of State Filer ID: 201000733

Dear Ms. Estes-Werther:

This law firm represents the Arizona Free Enterprise Club ("AzFEC"). On its behalf and without waiving any of AzFEC's protected due process rights, we respectfully submit this letter responding to your July 23, 2014, audit letter requesting information about AzFEC's "other expenditures" on "offsetting activity" during this election cycle.

Background

AzFEC was formed in 2005 and is organized as a free market, pro-growth advocacy group dedicated to Arizona issues and politics. It is recognized as an entity exempt from taxation under Section 501(c)(4) of the Internal Revenue Code. It files an annual Form 990 with the Internal Revenue Service. AzFEC is also in good standing as a nonprofit corporation with the Arizona Corporation Commission.

Since its inception in 2005, AzFEC has established itself as the leading advocate of economic freedom in Arizona. AzFEC's mission is to promote policies that encourage economic prosperity and limited government for all businesses and taxpayers. Through various activities, AzFEC is dedicated to taking a principled, aggressive stand for (1) reducing the income tax and property tax burden in Arizona, (2) opposing all subsidies and special interest carve-outs in our tax code, (3) supporting regulatory reform and eliminating burdensome regulations, (4) promoting fiscal discipline, limited government and a balanced budget, (5) supporting consumer choice and freedom in the education and health care systems, (6) reducing the influence of public sector unions in the political process and supporting employee rights, and (7) supporting and educating the general community and political leaders that promote such policies.

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AzFEC maintains an active presence at the Arizona Legislature and local municipalities by providing testimony, analyses, and other insights into proposed legislation implicating the economy. It provides public education on issues consistent with its mission by publishing articles and communicating with the public via other media. AzFEC seeks to influence public policy by working with ballot measure campaigns—in particular, it recently has contributed to ballot measure campaigns regarding pension reform in Phoenix and a sales tax initiative in Glendale. And it participates in public interest litigation, such as the *Arizona Free Enterprise Club PAC v. Bennett* case, decided by the United States Supreme Court in 2011.

Consistent with the United States Supreme Court's decision in *Citizens United v. Federal Election Commission* (2010), AzFEC has exercised its First Amendment right to support or oppose candidates for public office. But that is a small part of AzFEC's operations.

As a well-established, long-standing organization, AzFEC also spends a considerable amount of time handling administrative issues, fundraising for its non-profit efforts, and ensuring the stability of the entity going forward. Such efforts include responding to governmental inquiries, such as this, which also require a significant amount of resources.

Preliminary Concerns and Objections

AzFEC has concerns and objections with the manner in which your office has chosen to pursue this review. Your office has provided AzFEC with no standards that it will use to guide its review of AzFEC's response. The category "information about the other expenditures your corporation has made to offset the primary purpose of influencing elections" is broad and unclear.

Beyond its breadth and vagueness, we note a few other issues with your request. It focuses on expenditures as if they alone are somehow determinative of the entity's primary purpose. The relevant statute, A.R.S. § 16-914.02(K), does not support this inference. The statute refers to entities that are "*organized* primarily for the purpose of influencing an election" as entities that must register and report as political committees. (Emphasis added.) It does not reference allocation of expenses between election and non-election activity as the method for making this determination. A more appropriate reading of the statute would give rise to an analysis that takes into account the manner, method, and circumstances of an entity's organization and the activities it engaged in over a defined period.

The inquiry also attempts to reverse engineer AzFEC into the statute's ambit by assuming that AzFEC's primary purpose is to influence elections and requiring it to "offset" or otherwise rebut that assumption. As this letter explains in detail, this is not AzFEC's primary purpose in any way. Under a totality of the circumstances test, the great majority of AzFEC's efforts are dedicated to other purposes to support its mission. As do many organizations during the prime

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election season, AzFEC does periodically increase its efforts to influence elections in line with the organization's mission. But, that is for a limited period of time, and the organization's primary activities are not diminished.

Moreover, as referenced, your letter does not make clear what your office considers to be the relevant time period for its inquiry. The reference to "this election cycle" suggests that you will consider the time period between January 1, 2013 and December 31, 2014. The statute, however, provides no such limitation but rather refers to the manner in which the entity is "organized." See A.R.S. § 16-914.02(K). This word choice indicates to us that the *entire* history and organization of the entity must be considered in context.

Finally, we are unaware of any legal authority authorizing your office to conduct random inquiries into the private records of organizations engaging in political speech. There is no statute requiring private organizations such as AzFEC to be asked at random to open their private records for governmental and public inspection.

AzFEC Activity

AzFEC here provides a "snapshot" of its activity between January 1, 2013, to today. During this period, AzFEC has made approximately \$3,415,000 in total expenditures. These amounts do not include its cash reserves or expected expenditures for the remaining months of 2014. AzFEC was not engaged in any election activity during 2013 and the first half of 2014. On June 26, 2014, AzFEC notified your office of its first election-related expenditure this cycle. As of August 8, 2014, AzFEC has provided independent expenditure notifications totaling \$1,274,030, according to your office.

During the time period from January 1, 2013 to today, AzFEC has been consistently engaged in the following activity:

1. **Legislative Relations:** AzFEC participated as a stakeholder in discussions on numerous bills during the 2013 and 2014 legislative session. This activity involved attending stakeholder meetings, meetings with legislators, providing research, and planning a legislative strategy. The charts below identify some of the bills that AzFEC participated in during the past two legislative sessions. These are not exhaustive lists.

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Chart 1: 2014 Legislative Session

Bill Number	Description
HB2058	public pensions; limit on compensation
HB2090	defined contribution retirement plans; option
HB2196	election law amendments; repeal
HB2276	premium tax reduction
HB2377	income tax brackets; inflation index
HB2378	municipal taxes and fees; prohibition
HB2395	property tax calculations; school districts
HB2586 ¹	corporate tax credits; annual reporting
SB1094	school employees; paycheck deductions; authorization
SB1098	office of film and media
SB1182	school district overrides; bonds; information
SB1236	empowerment scholarships accounts; expansion
SB1254	election dates; school bonds; overrides
SB1303	property valuation; class six
FY 2015 Budget	multiple bills making up the FY 2015 state budget

¹ HB 2586 was AzFEC's corporate transparency legislation. The organization spent several months in 2013 and 2014 drafting the bill, planning legislative strategy, planning and holding a public press conference, and lobbying for it at the legislature. See Jamie Killin, *Advocates, lawmaker push for more transparency on state tax credits*, CRONKITE NEWS SERVICE (Feb. 25, 2014), available at <http://cronkitenewsonline.com/2014/02/advocates-lawmaker-push-for-more-transparency-on-state-tax-credits/> (attached as Exhibit 1).

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Chart 2: 2013 Legislative Session

Bill Number	Description
HB2111	sales tax reform
HB2169	student tuition protection
HB2239	medical malpractice; tort reform
HB2264	property tax 5% assessment ratio
HB2305	election reform
HB2342	R&D tax credits
HB2399	debt limit/property tax increase
HB2493	income tax inflation indexing
HB2531	instant depreciation
HB2593	campaign contribution limits
HB2608	pension reform
HB2646	ACA venture capital fund
SB1115	healthcare transparency
SB1182	paycheck protection
FY 2014 Budget	multiple bills making up the FY 2014 state budget

2. **Net Metering Advocacy:** For the past 2 years, AzFEC has been engaged in the net metering issue before the Arizona Corporation Commission by attending meetings, submitting public comment to the Commission, and providing public education. Attached as Exhibit 2 is an October 28, 2013 letter from AzFEC president and executive director Scot Mussi to the Commission regarding the net metering program.

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3. Administrative reorganization: At the beginning of this election cycle, Mr. Mussi took over leadership of the organization from past President and founding member Steve Voeller. Mussi's installation and subsequent reorganization of AzFEC represent a substantial portion of AzFEC's activities during that time period.

4. Public education and outreach: Via its website (azfree.org), Twitter feed (@azfec) and other media, AzFEC sought to educate the public and engage in outreach to support its missions. For example, AzFEC has a "Crony of the Month" feature in its blog postings designed to communicate to the public examples of "elected officials and political figures that use their position of power and close relationships to benefit insiders and special interests at the expense of taxpayers and the free market." On November 22, 2013, AzFEC published legislative scorecards that considered "[o]ver two dozen votes . . . covering a wide range of issues from tax policy, campaign finance and healthcare." Copies of the scorecards are attached as Exhibit 3.² AzFEC also presented its "Free Market Champion" awards to lawmakers for promoting and defending the principles of economic freedom and prosperity. See <http://www.azfree.org/2013-free-market-champion-award-winners-announced/> (Exhibit 5). Other examples of AzFEC's public education and outreach activity are available on the "News & Updates" page of its website, <http://www.azfree.org/news-and-updates/>.

5. Ballot measure campaigns: AzFEC provided funding to statewide and local ballot measure campaigns in 2013 and 2014. This includes a sales-tax initiative in Glendale, a pension-reform initiative in Phoenix, and the statewide "Stop Voter Fraud" campaign opposing the HB 2305 referendum. All of these contributions are disclosed under state and local law, including on campaign finance reports and, where required by A.R.S. § 16-912.01, with AzFEC listed as a "major contributor" on campaign literature and advertisements.

6. Public Interest Litigation. AzFEC submitted an amicus curiae brief to the Arizona Supreme Court for consideration in the 2013 *Cave Creek Unified School District v. Ducey* litigation.³

² See Club Releases 2013 Legislative Scorecard (Nov. 22, 2013), available at <http://www.azfree.org/club-releases-2013-legislative-scorecard/>. Exhibit 4. AzFEC intends to produce a legislative scorecard for the 2014 legislative session before the end of the year.

³ Also, in 2012, AzFEC participated as amicus curiae in support of Secretary of State Ken Bennett's position in the *Petersen v. Bennett* litigation involving the placement of Proposition 204 on the general election ballot. Between 2008 and 2011, AzFEC was involved as a plaintiff in the *Arizona Free Enterprise Club v. Bennett* litigation, in which the United States Supreme Court held unconstitutional the Clean Elections Act's matching funds program.

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7. **Public policy:** AzFEC has conducted research and developed stakeholder materials and talking points to support policies that promote a strong and vibrant Arizona economy. For example, in 2013, AzFEC actively participated in the income tax task force led by Representative Javan Mesnard. Mr. Mussi attended all the meetings, issued a press release, and conducted research on the different reform options. A copy of the press release is attached hereto as Exhibit 6. AzFEC also prepared a fact sheet on pension reform for the City of Phoenix, along with a mailer that was sent to Phoenix residents asking them to call Representative Bob Robson urging him to support HB 2058, legislation drafted to eliminate “pension spiking.” Exhibit 7. Other examples of AzFEC’s public policy activity are available on the “News & Updates” page of its website, <http://www.azfree.org/news-and-updates/> and in the attached sampling of media stories. Exhibit 8.

8. **Community Engagement:** In addition to the outreach efforts referenced above, AzFEC regularly meets directly with community members, representatives for other organizations, governmental entities, and businesses to understand current and future issues that may impact AzFEC’s policy mission. This would include attending conferences, fundraisers, charity events, meet and greets, speeches, political gatherings, municipal council meetings, government commission meetings, other governmental open meetings that are noticed to the general public, and other events as a representative of the AzFEC, but where AzFEC is not directly sponsoring or involved in the event. As referenced, attendance at such events is meant for education purposes of AzFEC staff, marketing efforts, and future awareness of issues for which AzFEC would be interested.

For the remainder of 2014, AzFEC plans to engage in additional non-campaign activity, such as the following:

- Continue to work on pension reform at the state and local level.
- Promote fiscal management and fight tax increases under consideration by the state and local governments.
- Host meetings and workshops with elected officials and stakeholders to promote issues affecting AzFEC’s mission.
- Engage in non-partisan get-out-the-vote efforts.
- Provide a non-partisan voter guide for the general election.
- Produce a 2014 legislative scorecard.

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- Continue participating in the net metering debate.
- Begin formulating a strategy for the upcoming 2015 legislative session.

This information shows that, although AzFEC has exercised its right to free speech in candidate elections, that activity is truly subordinate to the entity's other activities. AzFEC has spent only one of the past 19 months engaged in candidate-related election publicity; that is less than six percent of its total time during this election cycle. Moreover, its candidate advocacy expenditures amount to just over a third (37 percent) of its total expenditures since the beginning of the election cycle.

Conclusion

The foregoing demonstrates that AzFEC is organized primarily for the purpose of promoting a strong and vibrant Arizona economy through issue advocacy, voter education, economic research, policy advocacy, and government relations. While AzFEC takes issue with the scope and basis for your inquiry, it provides the above information as a courtesy in response. We thank you for the brief extension provided by your office. We encourage you to contact us with any additional questions about the primary purposes for AzFEC's organization.

Very truly yours,

Snell & Wilmer



Michael T. Liburdi

ML/ct

Exhibit 4

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

CHAPTER 297
HOUSE BILL 2649

AN ACT

AMENDING SECTIONS 16-901, 16-902, 16-902.01, 16-904, 16-912 AND 16-916,
ARIZONA REVISED STATUTES; RELATING TO CAMPAIGN CONTRIBUTIONS AND EXPENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 of the candidate, bequests to the candidate, income to the candidate from
2 trusts established before candidacy, income to the candidate from trusts
3 established by bequest after candidacy of which the candidate is a
4 beneficiary, gifts to the candidate of a personal nature that have been
5 customarily received before the candidacy and proceeds received by the
6 candidate from lotteries and other legal games of chance.

7 (c) The proceeds of loans obtained by the candidate that are not
8 contributions and for which the collateral or security is covered by
9 subdivision (a) or (b) of this paragraph.

10 (d) Family contributions.

11 19. "Political committee" means ~~a candidate or any association or~~
12 ~~combination of persons that is organized, conducted or combined for the~~
13 ~~purpose of influencing the result of any election or to determine whether an~~
14 ~~individual will become a candidate for election in this state or in any~~
15 ~~county, city, town, district or precinct in this state, that engages in~~
16 ~~political activity in behalf of or against a candidate for election or~~
17 ~~retention or in support of or opposition to an initiative, referendum or~~
18 ~~recall or any other measure or proposition and that applies for a serial~~
19 ~~number and circulates petitions and, in the case of a candidate for public~~
20 ~~office except those exempt pursuant to section 16-903, that receives~~
21 ~~contributions or makes expenditures of more than two hundred fifty dollars in~~
22 ~~connection therewith, notwithstanding that the association or combination of~~
23 ~~persons may be part of a larger association, combination of persons or~~
24 ~~sponsoring organization not primarily organized, conducted or combined for~~
25 ~~the purpose of influencing the result of any election in this state or in any~~
26 ~~county, city, town or precinct in this state. Political committee includes~~
27 ~~the following types of committees~~ ANY OF THE FOLLOWING:

28 (a) A CANDIDATE OR A candidate's campaign committee.

29 (b) A separate, segregated fund established by ~~a corporation or labor~~
30 ~~organization pursuant to section 16-920, subsection A, paragraph 3.~~

31 (c) ~~A committee acting~~ AN ASSOCIATION OR COMBINATION OF PERSONS THAT
32 CIRCULATES PETITIONS in support of ~~or opposition to~~ the qualification,
33 ~~passage or defeat of a ballot measure, question or proposition.~~

34 (d) ~~A committee organized to circulate or oppose a recall petition or~~
35 ~~to influence the result of a~~ AN ASSOCIATION OR COMBINATION OF PERSONS THAT
36 CIRCULATES A PETITION TO recall election A PUBLIC OFFICER.

37 (e) A political party.

38 (f) ~~A committee organized for the purpose of making independent~~
39 ~~expenditures.~~

40 (g) ~~A committee organized in support of or opposition to one or more~~
41 ~~candidates.~~

42 (f) AN ASSOCIATION OR COMBINATION OF PERSONS THAT MEETS BOTH OF THE
43 FOLLOWING REQUIREMENTS:

44 (i) IS ORGANIZED, CONDUCTED OR COMBINED FOR THE PRIMARY PURPOSE OF
45 INFLUENCING THE RESULT OF ANY ELECTION IN THIS STATE OR IN ANY COUNTY, CITY,

1 TOWN OR OTHER POLITICAL SUBDIVISION IN THIS STATE, INCLUDING A JUDICIAL
2 RETENTION ELECTION.

3 (ii) KNOWINGLY RECEIVES CONTRIBUTIONS OR MAKES EXPENDITURES OF MORE
4 THAN FIVE HUNDRED DOLLARS IN CONNECTION WITH ANY ELECTION DURING A CALENDAR
5 YEAR, INCLUDING A JUDICIAL RETENTION ELECTION.

6 ~~(h)~~ (g) A political organization.

7 ~~(i)~~ (h) An exploratory committee.

8 20. "Political organization" means an organization that is formally
9 affiliated with and recognized by a political party including a district
10 committee organized pursuant to section 16-823.

11 21. "Political party" means the state committee as prescribed by
12 section 16-825 or the county committee as prescribed by section 16-821 of an
13 organization that meets the requirements for recognition as a political party
14 pursuant to section 16-801, 16-802 or ~~section 16-804, subsection A.~~

15 22. "Sponsoring organization" means any organization that establishes,
16 administers or contributes financial support to the administration of, or
17 that has common or overlapping membership or officers with, a political
18 committee other than a candidate's campaign committee.

19 23. "Standing political committee" means a political committee that
20 satisfies all of the following:

21 (a) Is active in more than one reporting jurisdiction in this state
22 for more than one year.

23 (b) Files a statement of organization as prescribed by section
24 16-902.01, subsection E- F.

25 (c) Is any of the following as defined by paragraph 19 of this
26 section:

27 (i) A separate, segregated fund.

28 (ii) A political party.

29 (iii) A POLITICAL committee AS PRESCRIBED BY PARAGRAPH 19, SUBDIVISION
30 (f) OF THIS SECTION AND THAT IS organized for the purpose of making
31 independent expenditures.

32 (iv) A political organization.

33 24. "Statewide office" means the office of governor, secretary of
34 state, state treasurer, attorney general, superintendent of public
35 instruction, corporation commissioner or mine inspector.

36 25. "Surplus monies" means those monies of a political committee
37 remaining after all of the committee's expenditures have been made and its
38 debts have been extinguished.

Exhibit 5

R2-20-109. Reporting Requirements

F. Independent Expenditure Reporting Requirements.

1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
2. Any person required to comply with A.R.S. § 16-917 shall provide a copy of the literature and advertisement to the Commission at the same time and in the same manner as prescribed by A.R.S. § 16-917(A) and (B). For purposes of this subsection (F), "literature and advertisement" includes electronic communications, including emails and social media messages or postings, sent to more than 1,000 people.
3. Any person making an independent expenditure on behalf of a candidate, participating or non-participating, and not timely filing a campaign finance report as required by A.R.S. § 16-941(D), A.R.S. § 16-958, or A.R.S. § 16-913 shall be subject to a civil penalty ~~as described in A.R.S. § 16-942(B)~~. An expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. This subsection (F) and A.R.S. § 16-942(B) applies to any political committee person who or that accepts contributions or makes expenditures on behalf of any candidate, participating or nonparticipating, regardless of any other contributions taken or expenditures made. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. Penalties shall be assessed as follows:
 - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
 - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
 - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
 - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
 - ~~e. In respect to the last sentence of Section 16-942(B), the Commission may vote to waive any joint and several responsibility of a candidate and that candidate's campaign account if the Commission determines that the candidate and his or her campaign had no direct or indirect involvement with the commission of a violation by a person in connection with an independent expenditure on behalf of the candidate.~~
4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission's Executive Director.
5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:
 - a. is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and

- b. has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).
6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B); and comply with the requirements of A.R.S. § 16-913.
7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption.
 - a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.
 - b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:
 - i. The specific facts constituting the denial;
 - ii. A description of the respondent's right to request a hearing and to request and informal settlement conference; and
 - iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.
8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02 (A)-(J) and (b) remains in compliance with section part (2) of this subsection (F). All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit these entities. ~~any exempt entity pursuant to Article 4 of these rules.~~
9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in part (8) of this subsection (F); or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or parts (1), (2), or (6) of this subsection (F). Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and part (3) of this subsection (F), in addition to any other penalties applicable pursuant to rule or statute.
10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9958 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.

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

12. Under A.R.S. § 16-942, the Commission has the obligation to decide whether to impose civil penalties for “a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter,” i.e., A.R.S. §§ 16-901 through -961. Some of the referenced “reporting requirements” are applicable to “political committees.” According to A.R.S. § 16-901(19), as amended in April 2015 by H.R. 2649 (Ch. 297), a “political committee” is any of the persons specified in subsections (19)(a)-(e) or (g)-(h) or any “association or combination of persons” (referenced as a “Group” in this rule) that qualifies under subsection (19)(f) because it “meets both of the following requirements: (i) is organized, conducted or combined for the primary purpose of influencing the result of any election ...,” and “(ii) knowingly received contributions or makes expenditures of more than five hundred dollars in connection with any election during a calendar year ...” The same statute lists types of elections, referenced as “Listed Elections” in this rule. Whenever, to impose any penalty for violation of any reporting requirement of Chapter 6, Title 16, the Commission is called upon to decide whether a Group qualifies as a “political committee” under the definition in A.R.S. § 16-901(19)(f), the Commission shall apply the following:

a. The Commission shall consider a Group that is shown to be “organized” or “combined” for the primary purpose of influencing the results of any Listed Election as a “political committee,” provided that it meets the requirement of A.R.S. § 16-901(19)(f)(ii), regardless of the Group’s conduct at any time after its organization or combination. In considering whether a Group is “organized” or “combined” for the primary purpose of influencing a Listed Election, the Commission shall presume that, if the Group is an entity organized under Section 501(c)(3) of the federal tax code, it is not “organized” or “combined” for the primary purpose of influencing a Listed Election, unless the Group qualifies under a subsection of A.R.S. § 16-901(19) other than part (f). This is a presumption only, and if evidence is presented on the question of whether or not a Group has been “organized” or “combined” for such “primary purpose,” the Commission shall consider such evidence and any relevant facts and circumstances, including the type of entity, the circumstances surrounding its formation (including timing relative to elections), and the reasons of those forming it.

b. Alternatively, the Commission shall consider a Group a “political committee,” provided that it meets the requirement of A.R.S. § 16-901(19)(f)(ii), if the Group is “conducted” for the primary purpose of influencing the results of any Listed Election. In determining whether a Group is “conducted” for the primary purpose of influencing the results of any Listed Election, the Commission shall presume that a Group has been “conducted” for such primary purpose if (1) it has made expenditures as defined in A.R.S. § 16-901(8) during a calendar year of \$500 or more, or (2) it has taken contributions as defined in A.R.S. § 16-901(5) during a calendar year of \$500 or more. This is a presumption only, and if evidence is presented on the question of whether or not a Group has been “conducted” for such “primary purpose,” the Commission shall consider such evidence and any relevant facts and circumstances, including the type and amount of expenditures on all Listed Elections, the circumstances surrounding the expenditures (including timing relative to elections).

any reasons stated in solicitations of contributions, the Group's reasons for making the expenditures, and the relative size of expenditures aimed at influencing the results of any Listed Election compared to expenditures of the Group in the relevant period in this state on purposes other than influencing the result of any Listed Election.

c. For purposes of deciding whether a Group has received contributions or made expenditures of \$500 in a calendar year, including for purposes of part (F)(12)(b) of this rule or A.R.S. § 16-901(19)(f)(ii):

(1) The Commission shall consider all expenditures and contributions made by the Group during that calendar year in connection with all Listed Elections collectively, as opposed to election-by-election.

(2) The Commission shall consider the Group to meet the \$500 test from the date from the date the test is first met through December 31 of the calendar year in which the next legislative election occurs.

d. In determining for purposes of A.R.S. § 16-901(19)(f)(ii) whether a Group "knowingly" receives contributions or makes expenditures:

(1) The Commission shall presume that a Group knows of its own contributions and expenditures.

(2) If a Group transfers money or anything of value to a recipient that takes contributions as defined in A.R.S. § 16-901(5) or that makes expenditures as defined in A.R.S. § 16-901(8), the Commission shall presume that the Group knows that the transfer is an expenditure unless the Group has affirmatively restricted the transfer in a way that the recipient is prohibited from using the transfer for purposes of influencing any Listed Election, in which case the Commission shall presume that the Group does not know that the transfer of money is an expenditure. This is a presumption only, and if evidence on whether or not a Group acts "knowingly" is presented, the Commission shall evaluate such evidence.

e. A person appearing before the Commission may rebut a presumption established by this part (F)(12) by ~~clear and convincing~~ submitting proof by a preponderance of evidence.

Exhibit 6

October 1, 2015

Via fax (602-364-3487) **and e-mail** (comments@azcleelections.gov)

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

RE: TLG Public Comment on Proposed Rule R2-20-109 Version 3

Director Collins,

The Torres Law Group (“TLG”) is filing this public comment in response to the Arizona Citizens Clean Elections Commission’s (“the Commission”) request for comment on version three of the proposed revision to Rule R2-20-109.

TLG is an Arizona-based law firm with practice areas of labor law, regulatory compliance, and election/political law. We represent working families in Arizona and across the United States whose interests are directly harmed by the flood of illegal campaign activity by political committees masquerading as non-profit corporations violating Section 527 of the Internal Revenue Code and Sections 16-914.02 and -941(D) of the Arizona Revised Statutes, so-called dark money.

We understand the importance of having an informed electorate. That is why we fully support the Commission’s proposed revisions that would regulate dark money and promote transparency in Arizona elections. Thankfully, version three of Rule R2-20-109 still affirms the Commission’s role over independent expenditures made for the benefit or detriment of non-participating candidates. *See* Rule R2-20-109(F)(3). However, version three of Rule R2-20-109 is a significant step back from version two. It leaves many ambiguities in the law unaddressed, weakens enforcement mechanisms, and adds unclear subjective standards that will be difficult to adjudicate successfully. Version three of Rule R2-20-109 should be rejected in favor of a final rule closer to version two.

DISCUSSION

I. Rule R2-20-109 Version Three Leaves Ambiguities in the Law Unaddressed Leaving Voters and Political Committees Seeking Compliance with the Law in the Dark

Version three of the proposed rule removes many clarifying definitions found in version two of the rule. Version two addressed inherent ambiguities in law by providing clear definitions for “primary purpose” and “combination” or “association” of persons or entities. Without these clarifying definitions, citizens and entities that spend on elections may continue to have doubts about whether their contributions and expenditures require registration and disclosure. Persons and entities that wish to participate in Arizona elections may even have their speech chilled because they would be unable to understand when their combination or association of persons becomes a political committee. Version two of the rule was better defined and easier for voters to understand. As currently written, this rule increases the risk of lengthy and costly litigation for the Commission. It also increases the chances the rule could be struck down by the courts thereby forcing the Commission to spend precious time and resources on this flawed rule only to start over at the beginning again. Any one of these results would be a far greater setback for the Commission, for Arizona voters, and for entities seeking clear guidelines from the Commission.

II. Rule R2-20-109 Version Three Weakens Enforcement Mechanisms and Legal Standards

Version three of the proposed rule weakens enforcement mechanisms by weakening the standard used for determining if an entity is a political committee. *See* Rule R2-20-109(F)(12)(a). The rule measures contributions and expenditures made during a two-year legislative election cycle as opposed to in any one calendar year. *See* Rule R2-20-109(F)(12)(b). It does not address whether a political committee keeps its designation for the remainder of the legislative election cycle or if it can be lost by increasing spending in other non-political areas. The rule adds exceptions by narrowly defining what constitutes reportable contributions and reportable expenditures. *See* Rule R2-20-109(F)(12)(b)(i) - (iii). This definition explicitly excludes expenditure and contribution reporting that is not made any Arizona state or local agency. *Id.* This excludes spending reported to the Federal Election Commission. This means the rule excludes contributions and expenditures for Arizona’s federal offices and elections from its calculation. These exceptions in the proposed rule leave too much room for dark money entities to evade reporting requirements.

Another step back in this rule is the shifting of the legal burden. The prior version of the rule contained a rebuttable presumption on the party the Commission believed to be a political committee. The burden of proof was by clear and convincing evidence. Version three shifts the burden to the Commission and lowers the burden of proof to one by a preponderance of the evidence. *See* Rule R2-20-109(F)(12)(a). The rebuttable presumption framework provides a more meaningful and robust mechanism for disclosure of information to the Commission. It will ensure greater cooperation with the Commission’s investigations and discourage entities from using well-known delay tactics to avoid the Commission’s inquiries. TLG urges the Commission to keep the rebuttable presumption found in rule version two but keep the lowered burden of proof by a preponderance of the evidence found in version three.

The third weakened enforcement mechanism is also a procedural rule that prohibits the Commission from seeking disclosure of an entity's sources of funding until all appeals are exhausted. *See* Rule R2-20-109(F)(12)(d). While this may be necessary on a case by case basis, it should not be mandatory in every investigation or enforcement proceeding the Commission undertakes. Where necessary, an administrative law judge, or a state court judge could issue a stay halting the enforcement of source disclosure pending appeal. Making this a mandatory rule regardless of the underlying facts diminishes a key time-sensitive remedy available to the Commission. This rule also wrongfully removes this decision-making authority from the judicial branch. The Commission should adopt a rule allowing parties to seek stay of this particular enforcement remedy with the Commission itself and the Commission's discretion. This would be in line with the practices of other agencies and the judicial branch.

III. Rule R2-20-109 Version Three Adds New Undefined Subjective Standards Making Compliance Difficult and Leading to Selective Enforcement

Version three of the rule contains new subjective standards that lead to greater confusion for those seeking to comply with the Commission particularly on the issue of the calculation of grants made to other political organizations and entities when determining if those grants count toward reportable spending. The proposed rule contains an undefined subjective standard that allows the Commission to determine that an entity is not a political committee despite the evidence it has before it indicating the contrary, if it "takes into account all facts and circumstances" that makes using objective evidence before it "inequitable" or "unreasonable." *See* Rule R2-20-109(F)(12)(c). The rule does not describe what facts or circumstances the Commission can consider. Nor does the rule describe the standard for determining inequity or unreasonableness in this section. It fails to set any objective tests for the Commission's use in making this determination. The lack of objective factors in this section makes it difficult to adjudicate in the event of a legal challenge. It may also lead to uneven enforcement by the Commission. This only hampers the Commission's efforts and emboldens its critics. These undefined subjective tests will aid those who seek to exploit the system and avoid disclosure to the Commission.

The second large hole in the grant giving portion of the rule excludes otherwise reportable contributions or expenditures from the total of expenditures and contributions if "reasonable steps" are taken to ensure recipient entity does not use the funds for a reportable contribution or expenditure. *See* Rule R2-20-109(F)(12)(b)(iii)(b). The rule does not define what constitutes a reasonable step. Persons and entities who seek to follow the law will not know whether the steps they have taken are sufficient to comply and risk enforcement actions against them. Here, too, is another section of the rule that may chill speech. Without a clear definition of "reasonable step" persons and entities making legitimate non-reportable expenditures may believe they have to disclose because of uncertainty about the "reasonableness" of their steps. This has the potential to a chill unrelated non-political speech.

The Commission should reject these unclear subjective standards for its own sake and for the sake of those who seek clear guidance on the law.

CONCLUSION

The Commission should reject version three of the rule and move forward with a proposed rule similar to version two of Rule R2-20-109. The Commission's proposed rule should make it fair for those who seek to play by the rules, make it difficult for those who wish to break them, and ensure the people of Arizona know just who is attempting to influence their vote when they step into the voting booth. The Clean Elections Act requires it. Arizona voters demand it. They deserve nothing less.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Saman J. Golestan".

Saman J. Golestan

Exhibit 7

GAMMAGE & BURNHAM, PLC

ATTORNEYS AT LAW
TWO NORTH CENTRAL AVENUE
FIFTEENTH FLOOR
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TELEPHONE (602) 256-0666
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WRITERS DIRECT LINE

August 1, 2014

Lisa T. Hauser
(602) 256-4462
lhauser@gbllaw.com

Christina Estes-Werther
State Election Director
1700 W. Washington, 7th Floor
Phoenix, Arizona 85007

Re: 60 Plus Association

Dear Ms. Estes-Werther:

I represent the 60 Plus Association ("60 Plus"). It has received and referred your letter of July 23, 2014, to me for response. Your letter suggests that your office seeks to determine whether 60 Plus is entitled to report its independent expenditures pursuant to A.R.S. § 16-914.02 or whether it is an entity primarily engaged in influencing elections that is required to register as a political committee and report its contributions and expenditures.

60 Plus is a 501(c)(4) corporation founded in 1992. 60 Plus received its exemption letter from the Internal Revenue Service in 1991 (enclosed). It annually files Form 990 with the Internal Revenue Service. It is a non-partisan seniors advocacy group with a free enterprise, less government, less taxes approach to seniors issues. 60 Plus is often viewed as the conservative alternative to the American Association of Retired Persons ("AARP"). Among its priority issues are fighting to save Social Security and Medicare, ending the Death Tax, and making sure seniors have affordable energy options. There is no cost to join 60 Plus but it accepts contributions to support its exempt purposes. It does, however, engage in limited independent expenditures as permitted under federal law; it does not accept contributions specifically for the purpose of influencing elections. Its independent expenditures are made from the corporation's general funds.

Your letter asks that 60 Plus provide you "with information about the expenditures your corporation has made to offset the primary purpose of influencing elections or promptly register and report your contributions and expenditures as a political committee." This request is premised on the incorrect assumption that 60 Plus is organized for the primary purpose of influencing Arizona elections. Based on its 22-year history as a 501(c)(4) and its Form 990s (available for your review on the web site www.guidestar.org), there can be no serious contention

2014 AUG - 1 PM 1:07
SECRETARY OF STATE

Christina Estes-Werther
August 1, 2014
Page 2

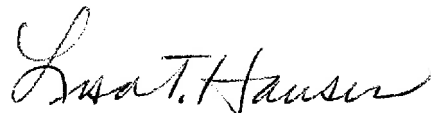
that 60 Plus is somehow organized primarily for the purpose of influencing elections. To the contrary, 60 Plus is exactly the type of corporation to which A.R.S. § 16-914.02 was intended to apply.

Please let me know if the information provided meets your needs. The Association timely registered and notified your office of its independent expenditures as required by A.R.S. § 16-914.02 and will continue to do so. 60 Plus's Independent Expenditure Notifications filed to date clearly state that its expenditures are advocating defeat of certain Arizona gubernatorial candidates. Please advise as to whether your office believes this poses a conflict that requires referral of this matter to another election official.

Also, please direct all further communications to me instead of to Mr. Christopher T. Craig. Thank you in advance for your cooperation.

Sincerely yours,

GAMMAGE & BURNHAM, P.L.C.

By 
Lisa T. Hauser

LH/dmm
Enclosure
cc: 60 Plus Association

Exhibit 8

Alec Shaffer

From: Rivko Knox <~~XXXXXXXXXXXX@XXXXXX~~>
Sent: Sunday, October 11, 2015 2:12 PM
To: CCEC Mailbox
Subject: Comments on the CCEC's Revised Proposed New Rules

Several months ago, I submitted very general comments in support of the initial new rules proposed by the CCEC. However, since then I have read all of the comments submitted in response to the initial proposed rules, with some making very specific suggestions for changes while others of course opposed the rules per se. I have also read the revised proposed rules, which took some of the submitted comments into account. Further, I attended two CCEC meetings at which various people spoke regarding the proposed rules and revisions to such, in some instances expanding upon the comments submitted and in others just stating their positions. I now wish to submit additional comments.

Also, since I submitted my initial 'general' comments, I have tried to learn as much as I can about the CCEC to include the history of the initiative that created the CCEC and the arguments made at that time for and against it. Second, I recognize that there have a number of significant changes in external circumstances since the CCEC was created, e.g., specifically the Supreme Court's Citizens United decision, the growth of a vast number of 501(c) 4's, recent rulings/interpretations of statutes by the FEC and of course the Supreme Court decision that declared AZ's additional matching funds for Clean Election candidates unconstitutional. Therefore it seems to me that revisions to existing rules are extremely necessary.

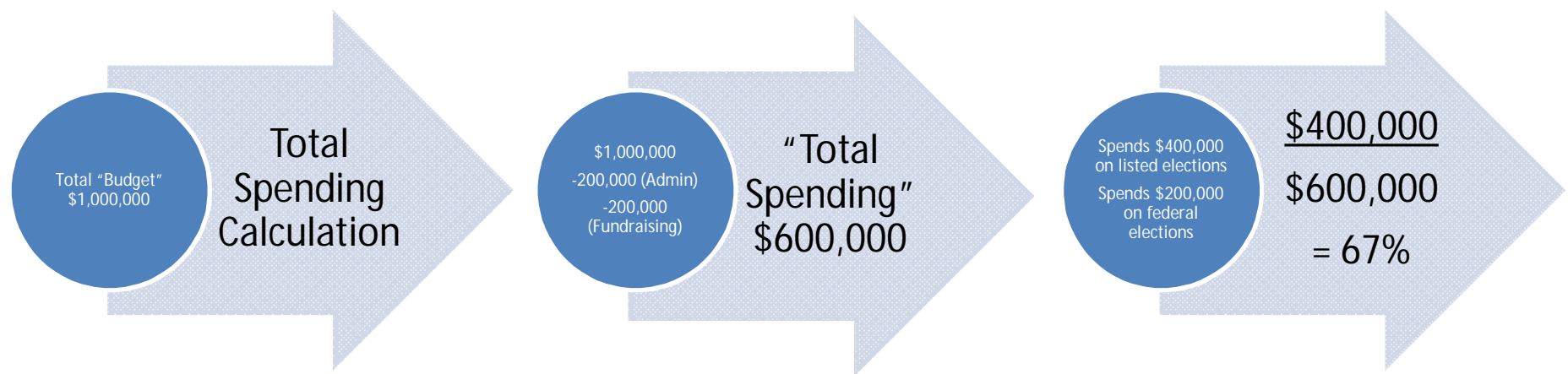
Thus I now wish to submit additional comments on the second/revised set of proposed rules.

Having the history of the Clean Elections Initiative fresh in my mind, it clearly seems to me that the proposed changes (reflecting the revised rules vs. the original ones) are just attempting to expand upon the initial goal of the initiative and make the process more relevant in today's world of significantly increased political/electoral contributions based on various Supreme Court cases (see above). The proposed changes are NOT attempting to expand the areas of oversight/control of the Commission.

Also, I feel it is extremely important that the CCEC rules adhere to the following guidelines (which I believe the revised proposed rules do): a) There must be very clear, easy to understand rules/regulations relating to money in campaigns and disclosure of such. b) These rules should NOT include loopholes or be written in a way that allows exceptions/doesn't create clear lines of authority/responsibility for enforcement; and c) There must be an independent entity (e.g., the CCEC) to oversee the implementation of these rules, with the authority to enforce such, to include appropriate penalties.

Finally, I support the proposed revised rules because as is very obvious (listen to any TV, radio show or read any blog, newspaper, etc.) the public has become ever more cynical about elections and politics. This has lead to less participation both as it relates to voting and to candidates running for office, because of the impact of money and especially of 'dark money'. If our democracy is to survive, robust participation in elections is crucial; and that requires a 'open' process, i.e., with extensive, timely and well enforced disclosure.

Rivko Knox
~~XXXXXXXXXXXX@XXXXXX~~
~~XXXXXXXXXXXX@XXXXXX~~



The proposal provides that certain overhead expenses are excluded to determine total spending. Once the total spending is calculated it becomes the denominator for the calculation. This chart assumes no other spending.



Clean Elections Act and Rule Overview

Item IV

Clean Elections Act

The Commission has the authority to impose civil penalties for any violation of the Clean Elections Act, A.R.S. § 16-957(B), and the penalties prescribed by A.R.S. § 16-942(B) and Arizona Administrative Code R2-20-109(F)(3) apply to violations of the independent expenditure reporting requirements.

Final Administrative Decision of the Commission,
In re: Legacy Foundation Action Fund, No. 15F-001-CCE at 7.

Court Decisions

- Clean Elections Institute v. Brewer
 - Enforcement of limits and reports are “paramount” duty apart from public financing
- Horne v. Clean Elections Commission
 - “The Commission has authority to investigate and impose penalties for violations of the [Act] by privately funded candidates in accordance with A.R.S. §§ 16-941(B), -942(B), -942(C), -956, and -957.”

Chapter 6

In addition to any other penalties imposed by law, the civil penalty for a violation by or on behalf of any candidate of any reporting requirement imposed by *this chapter*....

Article 1
A.R.S. 16-913 Campaign
finance reports;
reporting of receipts
and disbursements

Article 2
A.R.S 16-941 (D) . . .
any person who
makes independent
expenditures . . .

§16-941(D)

Person (ARS 1-215(28)/A.R.S. 16-941(D))

Corporations,
Unions, LLCs,
Committees,
Individuals,
Associations

Legacy Foundation

- On appeal from dismissal
- Parallel Special Action, Motion to Dismiss hearing 9/28
- Substantive Issues:
 - Enforcement of §16-941(D)
 - Enforcement of §16-942(B)
 - Enforcement of §16-901.01

Rule Amendments

- Purpose
 - Update rules to address new legislative language and address “primary purpose” issue that Commission has discussed since 2014.
 - Does not add powers to the Commission.
 - Implements Clean Elections Act
 - No proposal sought to make any ordinary going business selling widgets or the like file extensive reports.

May Proposal (CCEC)

- Key points
 - 6 Month Look Back to establish primary purpose – convenience corporations. Expires after first cycle.
 - Safe harbor for those whose donations were not be used for politics

July Proposal (Hoffman)

- Key Points
 - Focus on conduct prong of committee definition
 - Permits refuting of certain presumptions based on political spending
 - No six-month look back, no time limit.

August (Chamber)

- Key Points
 - Blanket 501(C)(4) Exemption
 - Burden on Commission

August 2 (Langhofer)

- Key Points
 - Examines transactions to measure political contributions and expenditures v. total spending.
 - Focuses on state spending (including ballot measures) excludes federal spending (even in state).
 - Percentage must exceed 50 percent.
 - Provides for certain procedural protections.

Secretary of State

- Key Points
 - Removes 16-913
 - Leaves 16-941 – Clean Elections IE reports
 - Leaves open primary purpose question under 16-914.02



Questions?