

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

Location: Citizens Clean Elections Commission

1110 W. Washington, Suite 250

Phoenix, Arizona 85007

Date: Thursday, October 27, 2022

Time: 9:30 a. m.

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Elections Commission and the general public that the Citizens Clean Elections Commission will hold a regular meeting, which is open to the public on October 27, 2022. This meeting will be held at 9:30 a.m. **This meeting will be held virtually.** Instructions on how the public may participate in this meeting are below. For additional information, please call (602) 364-3477 or contact Commission staff at ccec@azcleanelections.gov.

The meeting be available for live streaming online may at https://www.youtube.com/c/AZCCEC/live. You also visit can https://www.azcleanelections.gov/clean-elections-commission-meetings. Members of the Citizens Clean Elections Commission will attend by telephone, video, or internet conferencing.

Join Zoom Meeting

https://us02web.zoom.us/j/86399670625

Meeting ID: 863 9967 0625

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Please note that members of the public that choose to use the Zoom video link must keep their microphone muted for the duration of the meeting. If a member of the public wishes to speak, they may use the Zoom raise hand feature and once called on, unmute themselves on Zoom once the meeting is open for public comment. Members of the public may participate via Zoom by computer, tablet or telephone (dial in only option is available but you will not be able to use the Zoom raise hand feature, meeting administrator will assist phone attendees).

Please keep yourself muted unless you are prompted to speak. The Commission allows time for public comment on any item on the agenda. Commission members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing Commission staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.

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

The agenda for the meeting is as follows:

- I. Call to Order.
- II. Discussion and Possible Action on Executive Director's Report, Enforcement and Regulatory Updates and Legislative Update.
- III. Discussion and Possible Action on Meeting Minutes for September 29, 2022.
- IV. Discussion and Possible Action on Clean Elections debate series 2022.

 The Commission may meet in executive session pursuant to A.R.S. § 38-431.03(A)(3) for legal advice related to this matter.
- V. Discussion and Possible Action on Clean Elections interests in protecting against voter confusion and other issues related to drop boxes in Maricopa County

The Commission may meet in executive session pursuant to A.R.S. § 38-431.03(A)(3) for legal advice related to this matter.

VI. Discussion and Possible Action on The Power of Fives, Dr. Bob Branch, MUR 21-01, including Discussion and Possible Action on The Power of Fives' Response and Objection to the Commission's Subpoena Issued to TPOF on September 1, 2002.

The Commission may meet in executive session pursuant to A.R.S. § 38-431.03(A)(3) for legal advice related to this matter.

VII. Public Comment

This is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism

VIII. Adjournment.

This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission's office, 1110 W Washington St, #250, Phoenix, AZ 85007.

Dated this 26th day of October, 2022 Citizens Clean Elections Commission Thomas M. Collins, Executive Director

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

CITIZENS CLEAN ELECTIONS COMMISSION EXECUTIVE DIRECTOR REPORT October 27, 2022

Announcements:

- The General Election is on Tuesday, November 8th.
 - o Polls are open from 6am-7pm and ID is required to vote in person.
- Friday, October 28th at 5pm is the last day to request a ballot by mail.
 - Voters can return their ballot via mail (mail by November 1st), drop box or any voting location in their county.
- Friday, November 4th at 5pm is the last day to vote early in person.
- Emergency early voting occurs after 5:00 p.m. on Friday, November 4th, through 5:00 p.m. on Monday, November 7th.

Voter Education:

- Other voter education activities included: Alec updated the website with voting information for the November 8, General Election. Each county has their own detail page with information on early voting, election day voting, county contact information, what's on the ballot and more. Voters can also use the Clean Elections dashboard to find their customized voting information.
- The Commission sponsored a Meet the Candidates event for the Central Arizona Water Conservation District candidates. The video is available on our website.
- The Commission sponsored a Morning Scoop segment with the Arizona Capitol Times to prepare voters for the general election.
- Clean Elections partnered with Pinal County to provide a palm card for every in person voting that educates on how to confirm your ballot was counted and official sources for election information
- Clean Elections is partnering with Cochise County to produce an infographic explaining the ballot tabulation process.

Outreach:

- Avery presented an overview of the Ballot measures for the Arizona Center for Disability Law
- Avery attended the Courage in American Leadership: Conversation with Congresswoman Liz Cheney event
- Avery held a virtual presentation on Judicial Retention Election for Mesa Community College Civic Engagement Team
- Gina and Avery continue to collaborate at the Native Vote Communication meetings with ITCA
- Avery continues his participation on the Secretary of State's Voter Outreach Advisory Council
- Avery participates in the monthly African American Legislative Committee
 Planning Meeting as member of the Youth Committee

- Avery was guest speaker at the Maryvale Youth Provider Network Community spotlight meeting to promote Clean Elections resources
- Avery presented a comprehensive lesson on How To Get Involved in the Legislative Process at the Coconino Community College Comet Talk virtual event
- Avery completed the Flinn Brown program and is officially a Flinn Brown Scholar of the 2022 cohort
- Avery participated in the African American Leadership Institute's Civic Language Perception Focus Group
- Avery was guest speaker at the Black Mothers Forum Monthly Meeting to provide voter education and Clean Election resources
- Avery held a Government and Community Resources Workshop for Maryvale High School students
- Avery held a Ballot Education session in collaboration with the ASU Civic Engagement Coalition
- As a part of the Summit for Democracy, hosted by Global Ties Arizona and the U.S. Department of State's International Visitor Leadership Program, Gina hosted a delegation from the Democratic Republic of the Congo to talk about running for office in America. Gina is hosting an Iraqi delegation on Thursday to talk about the Arizona electoral process.
- Gina spoke with the OSCE/ODIHR (Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights) Election Observation Mission to the US 2022 Mid-term elections in Arizona about voter education and outreach.
- Commissioner Kimble spoke to the Democratic Club of Quail Creek/Green Valley about Clean Elections, running for office and the upcoming election.
- Gina hosted the Flinn Brown Civic Leadership Academy's Civic Day, speaking to Arizona electoral demographics and moderating a panel discussion on the role of technology in civic engagement.

Administration and Enforcement

• New Office Remaining Tenant Improvements

Mike and Paula continue to work with the GSD Project Manager, various contractors and state contracted vendors to wrap up completion of the new office and boardroom. Tentative completion dates for tenant improvement for remaining office areas is December possibly longer depending on backordered equipment.

Candidates

Total Number of Clean Elections General Candidates: 21 Legislative Clean Elections General Candidates: 16 Statewide Clean Elections General Candidates: 5

Audits

Audits have begun for the legislative Clean Elections candidates that did not move on to the general election as well as all statewide Clean Elections candidates.

<u>Legal</u>

- Legacy Foundation Action Fund v. Clean Elections
 - The Arizona Supreme Court will hold an oral argument on this case Nov. 15.
- The Power of Fives, LLC v. Clean Elections, CV2021-015826, Superior Court for Maricopa County
 - Pending.
- Election related lawsuits involving Arizona. There are multiple lawsuits now challenging HB2492 and HB2243, as well as SB1260.
- At least one lawsuit has been filed seeking to block the activities of persons who have staked out Maricopa County drop boxes. That case is called *Arizona Alliance for Retired Americans v.Clean Elections USA*, No. CV-22-01823-PHX-MTL. More information is here: https://www.nbcnews.com/politics/2022-election/retiree-latino-organizations-sue-group-alleged-voter-intimidation-ariz-rcna53887/

Appointments

No additional information at this time

Other Election Administration

 The 2022 Publicity Pamphlet with information on ballot measures and judicial performance was mailed to voters. The English version is available here: https://azsos.gov/sites/default/files/azsos_2022_publicity_pamphlet_standard_english_web_version.pdf.

Enforcement

- MUR 21-01, TPOF, pending.
- MUR 22-01, Freedom's Future Fund, pending.
- MUR 22-02, Orth, closed, no violation
- MUR 22-03, Young, closed, no violation
- MUR 22-04, Van Steenwyk, closed, no violation
- MUR 22-05, Sun, closed, no violation
- MUR 22-06, Andrade, closed, no violation

Regulatory Agenda

The Commission may conduct a rulemaking even if the rulemaking is not included on the annual regulatory agenda.

The following information is provided as required by A.R.S. § 41-1021.02:

- Notice of Docket Opening: TBD Pending Publication
- Notice of Proposed Rulemaking: TBD Pending Publication
- Federal funds for proposed rulemaking: **None**
- Review of existing rules: None pending
- Notice of Final Rulemaking: TBDRulemakings terminated: None
- Privatization option or nontraditional regulatory approach considered: **None**

Notice are pending publication for:

R2-20-305 and R2-20-306 – ensure process for commission to review issues related to commissioner conflicts and related matters.

R2-20-211. R2-20-220, R2-20-223- clarify roles of executive director and other representatives of the commission in enforcement proceedings.

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4	THE STATE OF ARIZONA
5	CITIZENS CLEAN ELECTIONS COMMISSION
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10	REPORTER'S TRANSCRIPT OF VIRTUAL PUBLIC MEETING
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14	Phoenix, Arizona
15	September 29, 2022
16	9:30 a.m.
17	
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19	
20	
21	COASH & COASH, INC. Court Reporting, Video & Videoconferencing
22	1802 N. 7th Street, Phoenix, AZ 85006 602-258-1440 staff@coashandcoash.com
23	
24	By: Kathryn A. Blackwelder, RPR Certified Reporter
25	Certificate No. 50666 CERTIFIED TRANSCRIPT

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VIRTUAL PUBLIC MEETING BEFORE THE CITIZENS
                                                                          CHAIRMAN MEYER: Good morning, everyone.
2 CLEAN ELECTIONS COMMISSION convened at 9:30 a.m. on
                                                             2 This is Damien Meyer. I'm Chair of the Citizens Clean
3 September 29, 2022, at the State of Arizona, Clean
                                                             3 Elections Commission this year. It is 9:30 a.m. on
4 Elections Commission, 1110 West Washington, Conference
                                                             4 September 29th of 2022, and I call this meeting of the
 5 Room, Phoenix, Arizona, in the presence of the
6 following Board Members:
                                                             5 Citizens Clean Elections Commission to order.
             Mr. Damien Meyer, Chairman
                                                                          I'd like to ask the audience members to
             Mr. Mark Kimble
                                                             7 please keep their microphones on mute.
8
             Ms. Amy Chan
             Mr. Galen Paton
                                                             8
                                                                          And with that, we will take attendance.
9
             Mr. Steve Titla
                                                             9 Commissioners, please identify yourselves for the
10
                                                            10 record.
    OTHERS PRESENT:
                                                            11
                                                                          COMMISSIONER PATON: This is Galen Paton.
11
             Thomas M. Collins, Executive Director
                                                            12
                                                                          CHAIRMAN MEYER: Good morning,
12
             Paula Thomas, Executive Officer
                                                            13 Commissioner Paton.
             Mike Becker, Policy Director
                                                                          COMMISSIONER KIMBLE: This is Mark Kimble.
                                                            14
13
             Gina Roberts, Voter Education Director
             Kara Karlson, Assistant Attorney General
                                                            15
                                                                          CHAIRMAN MEYER: Good morning.
14
             Thom Reilly, ASU
                                                            16
                                                                          COMMISSIONER CHAN: This is Amy Chan. Good
             Rivko Knox, Member of the Public
                                                            17 morning.
             Cathy Herring, Staff
15
                                                            18
                                                                          CHAIRMAN MEYER: And Commissioner Titla, I
16
17
                                                            19 see you there. Can you just announce your presence,
18
                                                            20 please?
19
                                                            21
                                                                          (No response.)
2.0
                                                            22
                                                                          CHAIRMAN MEYER: Okay. Commissioner Titla, I
21
22
                                                            23 think, is having some issues with his audio, but for
23
                                                            24 the record, he is present. And it looks like he can
24
                                                            25 hear us, but maybe we just can't hear him.
25
1
             MR. COLLINS: I think his phone is on mute.
                                                             1 implicit criticism of what we're doing. But
 2
             CHAIRMAN MEYER: But we will --
                                                             2 nevertheless, it was a -- it was a wonderful
 3
             Thank you, Tom.
                                                             3 recognition for Gina and we're very proud of her. And
 4
             We will go ahead and go to Agenda Item II,
                                                             4 there will be an awards ceremony, I think, I want to
 5 which is to -- discussion and possible action on
                                                             5 say November, but I -- yeah, November 4th. Sorry. So
 6 Executive Director's Report, enforcement and regulatory
                                                             6 if folks are interested in that, please let us know.
7 updates, and legislative update. Tom.
                                                             7
                                                                          CHAIRMAN MEYER: Tom, can you send that
                                                             8 around to all of us for when that is?
8
             MR. COLLINS: Yes. Mr. Chairman and
9 Commissioners, thank you very much for being here
                                                                         MR. COLLINS: Yes, absolutely.
10 today -- never ceases.
                                                            10
                                                                          CHAIRMAN MEYER: That would be wonderful.
                                                            11
11
             So couple of quick things we wanted to
                                                                          MR. COLLINS: Absolutely.
12 highlight. Obviously, we're going to have -- the voter
                                                            12
                                                                          CHAIRMAN MEYER: Thank you.
13 registration deadline is coming up here in the next two
                                                                          MR. COLLINS: We -- speaking of Gina, voter
14 weeks. Our Voter Education Guides have gone out to
                                                            14 registration, our debate process is ongoing. We have
15 households around the state. We have mailed 2.3 almost
                                                            15 debates happening both online and on television. As we
16 million Guides, and they should be arriving this week
                                                            16 -- over the last -- over this week we had -- last night
17 as we speak. In the Guide we have 15 statewide
                                                            17 we had the Attorney Generals debate, Monday we have the
18 candidates and 137 legislative candidates.
                                                            18 Treasurers debate, and then next week Wednesday -- on
                                                            19 the, 6th, rather, we have -- Thursday we have the U.S.
19
             Just to highlight really quickly, we were --
20 we were happy to see that Gina was named as a Woman
                                                            20 Senate debate featuring Senator Kelly, Blake Masters,
21 Achiever as the Unsung -- as the Unsung Hero award
                                                            21 and a libertarian candidate Marc Victor. We are
22 winner from the Arizona Capitol Times this last week.
                                                            22 collecting questions for that right now and we are very
23 That was, we thought, a wonderful recognition. We do
                                                            23 excited for that event.
24 hope we sing Gina's praises enough in our meetings and
                                                                          I want to thank -- thank Gina, obviously, for
                                                            24
25 otherwise, but -- so I'm assuming that's not an
                                                            25 her work in working with all these candidate campaigns
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1\,\, over the course of the last several months to
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- 2 coordinate their attendance and the logistics of that.
- 3 The Senate debate is a unique opportunity. We are
- 4 working with the Broadcasters Association, the
- 5 Newspapers Association to deliver this debate widely to
- 6 people around the state live. So it's a unique
- 7 opportunity for voters to see this debate. We believe
- 8 it's the only scheduled debate between these candidates
- 9 that will be happening this election cycle, so that's a
- 10 really important thing to highlight.
- 11 Gina, I don't know if there's anything you
- 12 want to add about the senate debate.
- 13 MS. ROBERTS: Sure. Mr. Chairman,
- 14 Commissioners, Tom, yes. So as Tom mentioned, the U.S.
- 15 Senate debate is -- is a very unique opportunity that
- 16 we have been fortunate enough to bring to voters to get
- 17 all of these candidates together on stage. It will be
- 18 an hour in length. And we have been working tirelessly
- 19 with all of our partners. It is quite the production
- 20 to do this because it's -- you know, for the most part,
- 21 all of our debates, we work with Arizona PBS and
- 22 they're broadcast on Arizona PBS, which reaches about
- 23 80 percent of the state. In this particular U.S.
- 24 Senate debate, due to the great partnerships that we've
- 25 been able to build with the Arizona Broadcasters

- 1 Association and the Arizona Newspapers Association, we
- 2 will have reach that, you know, we've said this before,
- 3 we'll say it again, that rivals the Super Bowl in terms
- 4 of being able to bring it to voters across the state
- 5 from, you know, whatever corner that they are in.
- 6 So it will be broadcast on television
- 7 stations, it will be streamed on radio stations, it
- 8 will be streamed on newspapers' websites. And we are
- 9 also bringing together closed captioning in English and
- 10 Spanish, it will be simulcast in Spanish, and we are
- 11 also having an American Sign Language production of it
- 12 as well too. So the amount of access that we are
- 13 bringing to voters for this particular debate really is
- 14 unprecedented.
- 15 MR. COLLINS: I also wanted to mention,
- 16 we're -- for the first time, and this is a really
- 17 important issue given the circumstances that are
- 18 existing, we will have a meet the candidates event, in
- 19 conjunction with the Center for Civic Leadership, for
- 20 the Central Arizona Water Conservation District
- 21 candidates for Maricopa County. This is the board that
- 22 manages the Central Arizona Project. And so we are
- 23 excited to have the opportunity to provide voters an
- 24 opportunity to hear directly from those candidates, as
- 25 we all know that water management, both on the delivery
- $1\,$ end and the financial end, is going to be something
- 2 that's going to be crucial in the near term for the
- 3 state.
- I do want to mention briefly, the state
- 5 Supreme Court did accept, I guess late last month --
- 6 kind of weird -- it took a little while to get the
- 7 agenda -- release its agenda from the last -- our last
- $8\,$ meeting. You may recall last meeting we were waiting
- $9\,\,$ to hear if the court would accept the petition
- 10 (unintelligible) Legacy Foundation Action Fund. That
- 11 -- that case did get accepted.
- 12 The issue there principally is whether or not
- 13 the Legacy Foundation Action Fund, which missed the
- 14 deadline to file an appeal from an enforcement action
- 15 the Commission took from the 2014 election, was --
- 16 essentially bars them from relief. They filed a
- 17 special action -- so they took that missing the
- 18 deadline all the way up to the state Supreme Court,
- 19 where they were not successful. Then they filed a
- 20 special action, essentially bringing the same claims.
- 21 So we're putting the briefing together on that. Right
- $22\,$ now the oral argument is scheduled for November 15th.
- 23 This is an issue that, you know, originally
- 24 arose from an independent expenditure report, but, you
- 25 know, at this point it's more -- it's more in the

- 1 nature of an issue about when a person who misses a
- 2 deadline can challenge, on a broad basis, something
- 3 that they characterize as jurisdiction of an
- 4 administrative agency. So it really has to do much
- 5 more with finality issues. In our view, this doesn't
- 6 have anything to do with the merits at this point.
- 7 It's a pure procedural and fault by the -- by the
- 8 respondent.
- 9 If you want more information about that, we
- 10 can -- we can provide it. This case, just for
- 11 perspective, has been on this list here for about, $\ensuremath{\mathtt{I}}$
- 12 think -- well, 2014 was when it originally happened.
- 13 It's -- it's hard to sort of -- for me to characterize
- 14 necessarily how significant it is or insignificant it 15 is because it's just been hanging out there for a long
- 16 time. But as I said, the actual underlying issue is
- 17 not particularly necessarily exciting unless you care
- 18 about, you know, the real nitty-gritty of
- 19 administrative law and the restatement of a precedent.
- 20 Couple of quick notes and then we -- I know
- 21 we don't want to belabor anything. The Secretary of
- 22 State's publicity pamphlet for ballot measures is also
- $23\,$ out. They'll be hosting some Zoom town halls over the
- 24 course of the next -- over the course of the next week. 25 And then I also wanted to mention that the --

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1 it was a news report, but nevertheless I thought it was
 2 very important to note that Rachel Leingang at -- who
 3 writes, among other places, for Votebeat, did a pretty
 4 comprehensive report looking at drop box usage in the
 5 2022 primary, and indicated that that usage remained
6 consistent and/or went up in some places where that --
7 there had been some controversy, if you will, around
8 whether or not those drop boxes are appropriate.
             The legislature did not pass significant
10 restrictions on drop boxes this past session
11 ultimately; although, they considered it. What they
12 did do instead was they -- was they created a pilot
13 program to basically try to make them theoretically
14 (unintelligible). But again, I think the usage
15 indicates that whatever is out there that -- in terms
16 of really sort of misleading, at best, rhetoric around
17 the effectiveness of drop boxes or the potential
18 problems with drop boxes, voters are still using them.
             I also want to highlight, and we can send
20 this to you later, that the Campaign Legal Center
21 issued a report last week looking at efficiency of
22 voter engagement around the state in terms of ease of
23 voting. On a 10-point scale Arizona did get an 8 out
24 of 10, which is good, but the report also sort of
25 highlighted that there are issues. In particular --
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1 particularly in -- or, in minority communities and on
 2 Native American lands respecting to -- respecting ways
 3 in which it might -- some things are more -- some
 4 things are problematic in terms of our policies.
5
             One of those things, for example, they
 6 highlight is the placement of actual voting centers or
 7 polling places. So in that respect, the drop box --
8 you know, people are still using the drop box. And the
9 extent that people are still using it is important,
10 because those are tools, again, that are helping voters
11 get their ballots back more effectively. And so, you
12 know, from a practical perspective, if we're trying
13 to -- we believe participation is important, and we do,
14 you know, it's good to see some evidence that, in fact,
15 some of this rhetoric is not cutting into
16 participation.
17
             So with that, I believe that concludes my --
18 my report. Mr. Chairman, thanks for letting us take a
19 little time here. And if anyone has any questions for
20 us, go ahead. Thank you.
             CHAIRMAN MEYER: Absolutely. Thank you, Tom.
21
             And Gina, congratulations. Very much
23 deserved. That's great that you're getting the
24 recognition. Everyone on this call knows how hard you
25 work and how -- what a service you do to Arizona voters
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1 in educating them. Pulling the debates together is
 2 just a, you know, small part of what you do. We all
 3 know how much you do and we appreciate it, so thank
 4 you. And I encourage everyone to try to go to that
 5 awards ceremony. That would be really, really fun.
             Another question I had. I know, of course,
7 our last meeting was about the gubernatorial debate.
8 Is there any -- I know Hobbs declined to debate. Is
9 there any more we need to know about that, Tom, or is
10 that just behind us at this point?
11
             You're on mute, my friend.
12
             MR. COLLINS: Mr. Chairman, Commissioners,
13 yes. We will have, on October 12th, the Q and A. That
14 is a result of -- you know, when one -- when we have
15 two candidates, and one candidate declines to
16 participate, we offer Q and A with the moderator.
17 That's what we did in the primary election for the
18 democratic gubernatorial nominee. We will be
19 proceeding with that on October 12th.
20
             Other than that, I think that, you know, the
21 debates -- all I can say is that otherwise we have
22 nothing really else to do -- to do there. You know, I
23 think we've kept everyone as informed as possible about
24 any changes in time and stuff like that should the
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25 situation change. But at this point, we don't expect

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1 to hear anything else about that issue.
 2
             CHAIRMAN MEYER: Thank you. I watched the AG
3 debate yesterday, and I thought that was, you know,
 4 great for voters to see.
5
           Any other Commissioners have any questions --
             COMMISSIONER PATON: I have a question.
7
             CHAIRMAN MEYER: -- on the report?
8
            Go ahead, Commissioner Paton.
             COMMISSIONER PATON: I was just wondering
10 about the Clean Elections candidates that we -- that we
11 sponsor. Is that a normal number, higher, lower, Tom?
12
             MR. COLLINS: Mr. Chairman, Commissioner
13 Paton, you know, the number this year is pretty roughly
14 consistent with where we have been percentage-wise over
15 the last couple of years. I think our high point in
16 2006 was somewhere around 60 percent. By 2020 we were
17 down to about 20 percent. That's about where we are.
             Now, there's some different factors around
18
19 that, one of which is that there's a view -- and I kind
20 of say this a lot to folks when they ask is that
21 there's a view among political consultants that running
22 clean is a somehow massively inefficient way to run a
23 campaign. And a couple of premises that are in that
24 view that are just flat incorrect. One, clean
25 candidates can work with their political party as
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1 nominees to the same extent that traditional candidates
                                                                          So, I mean -- so, you know -- so it's still
 2 can. So there is -- and the way that you now see
                                                             2 one of those things where I think that there are real
 3 political candidates in the nominee phase on a
                                                             3 efficiencies that are consistent with the underlying
 4 statewide basis is essentially merging their campaigns
                                                             4 policy premise of clean funding program that political
 5 with the state party provided that the barrier to --
                                                             5 consultants and lawyers just seem to not want to look
 6 you know, the funding barrier is there in the sense --
                                                             6 past. And, you know -- and part of that is
7 in effect that the candidate themselves is not out
                                                             7 ideological.
 8 there soliciting the donations and those kinds of
                                                             8
                                                                          Both parties are hostile to the notion of
9 things.
                                                             9 public financing for different reasons, and part of
10
             You know, there's a -- but that -- you know,
                                                            10 that is -- I think part of it is that if you're a
11 but when the legislature expanded the ability to
                                                            11 political consultant, you're looking for places to
12 coordinate with the party, it did so on a basis that
                                                            12 value add or, to be less generous, you're looking for
13 had no -- drew no distinction. But financially
                                                            13 places to add margin, right. So when your budget is
14 speaking, you know, that candidate still has an arm's
                                                            14 set forth by a -- by the Clean Elections Act, that
15 reach relationship with the funding, but the party has
                                                            15 margin is going to be static and not going to be -- you
16 some ability to step in there. And I think that was a
                                                            16 know, because a lot of times -- you know, the reality
17 significant change.
                                                            17 is that a candidate may be raising money for ads and a
             I also think that if you look at the amount
                                                            18 candidate may be raising money for some form of
19 of money that's involved in these -- in these
                                                            19 grassroots outreach; although, a lot of grassroots
20 legislative races, the reality is that most candidates
                                                            20 outreach isn't even a campaign expenditure. The
                                                            21 reality is that in some cases candidates are merely
21 still don't get much more money brought in than the
22 clean funding. So there's some real -- and again, the
                                                            22 working for consultants, you know.
23 purpose of the clean funding is to -- is to break the
                                                            23
                                                                          I mean, this sort of game of politics in a
24 link between direct contributions and political favors
                                                            24 sense is to recruit somebody who can raise money, and
25 that gives rise to the appearance of corruption.
                                                            25 then they pay you for the pleasure of having raised
1 money that you're going to spend. So there's some real
                                                             1 yes, I'm going to go out and raise a bunch of money.
 2 perverse incentives in the candidate-consultant
                                                             2
                                                                          And it's particularly important, I think,
 3 relationship that -- actually, I think that the program
                                                             4 because, you know, in those kind of regulatory roles,
             The long answer to your question, probably
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4 kind of makes apparent.

5 The long answer to your question, probably
6 not -- so the short answer was, it's about where it's
7 been. The long answer is, I think it's illogical for
8 it to be so low based on all the other circumstances
9 that are involved in financing political campaigns,
10 especially at the legislative level and at the lower
11 statewide level, treasurer, Corporation Commission. We
12 still have all the Corporation Commissioners. We have
13 one of the superintendent of public instruction
14 candidates.
15 I believe that, you know, if you look at --
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I believe that, you know, if you look at --

and I think we'll see this, that how goes the state is

how goes those lower level candidacies. So the issue

there is, again, what's the most efficient use of

resources. Putting aside the policy issues and the

decision making of candidates in consultation with

their consultants, seems to be pretty illogical for a

race like treasurer, for example, those kinds of

elections. So long as we're going to have those as

elected officials, it seems to me that there's very
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25 little logic towards that candidate sort of saying,

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3 that we have, for example, the Corporation Commission,
 5 where the potential for corruption becomes particularly
 6 acute -- you know, I think -- obviously, we used to
 7 have the governor's race. I wish we still had that
8 because obviously there, with the governor's vast
9 authority, there is a particularly -- again, an acute
10 issue of (unintelligible) corruption. But those are
11 kind of my thoughts on that, sort of a rationalization
12 of why we are where we are.
13
             CHAIRMAN MEYER: Okay.
14
             COMMISSIONER KIMBLE: Mr. Chairman.
15
             CHAIRMAN MEYER: Yes. Go ahead,
16 Commissioner Kimble.
17
             COMMISSIONER KIMBLE: I appreciate
18 Commissioner Paton bringing this matter up, and I don't
19 want to get into a lengthy discussion about it now, but
20 I think it's something that we need to discuss probably
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21 early next year, depending on what happens with the --

23 worked on. But it is concerning to people, and I think

22 with the ballot proposition that Terry Goddard has

24 it's something we've got to address, but I think we

25 should wait to see what the ballot proposition does.

```
CHAIRMAN MEYER: Thank you.
                                                             1 Mr. Chairman. I heard --
1
                                                                      CHAIRMAN MEYER: Oh, I'm sorry.
 2
             Anyone else have any other questions?
 3
             (No response.)
                                                                          COMMISSIONER CHAN: -- Commissioner Titla
             CHAIRMAN MEYER: All right. Thank you, Tom.
 4
                                                             4 make the motion, and I will second the motion.
                                                                          CHAIRMAN MEYER: Oh, I'm sorry. I'm sorry.
5
             And again, congrats to Gina.
             Let's see. Item No. III on the agenda,
                                                             6 Thank you. Okay. So we have a motion from
7 discussion and possible action on meeting minutes for
                                                             7 Commissioner Titla, and that motion has been seconded
 8 August 25th, 2022 and September 8, 2022. Anyone have
                                                             8 by Commissioner Chan, to approve the meeting minutes
                                                             9 for August 25th, 2022 and September 8th, 2022.
9 any comments on the minutes for either of those two
10 meetings?
                                                            10
                                                                          We'll go ahead and call the roll.
11
             (No response.)
                                                            11 Commissioner Chan.
12
             CHAIRMAN MEYER: If not, can I get a motion?
                                                            12
                                                                          COMMISSIONER CHAN: I vote ave.
13 I think we can approve both of them in one motion. Can
                                                            13
                                                                          CHAIRMAN MEYER: Commissioner Kimble.
                                                                          COMMISSIONER KIMBLE: Aye.
14 I get a motion to approve the meeting minutes?
                                                            14
15
             COMMISSIONER CHAN: Mr. Chairman.
                                                            15
                                                                          CHAIRMAN MEYER: Commissioner Paton.
             COMMISSIONER TITLA: I'll make that motion.
16
                                                            16
                                                                          COMMISSIONER PATON: Aye.
17
             CHAIRMAN MEYER: Hold on one second. I'm
                                                            17
                                                                          CHAIRMAN MEYER: Commissioner Titla.
18 hearing something from --
                                                            18
                                                                          COMMISSIONER TITLA: Aye.
19
             COMMISSIONER CHAN: I heard --
                                                            19
                                                                          CHAIRMAN MEYER: And I vote aye as well.
20
             COMMISSIONER TITLA: Commissioner Titla makes
                                                            20
                                                                          So that motion passes unanimously and the
                                                            21 minutes are approved.
21 a motion to approve.
22
             CHAIRMAN MEYER: Commissioner Titla, hold on
                                                            22
                                                                          Item No. IV on our agenda, discussion and
23 one second, okay? I think I'm hearing from tech or
                                                            23 possible action on presentation by Thom Reilly,
                                                            24 Director, Center for an Independent and Sustainable
24 support.
25
             COMMISSIONER CHAN: I was speaking,
                                                            25 Democracy, regarding the Center, election
1 administration, and independent voters.
 2
             So for this item, as part of our ongoing
 3 discussion on election policy issues facing Arizona
                                                             3 very illuminating and interesting.
 4 voters, we will hear from Dr. Thom Reilly of ASU Center
 5 for an Independent and Sustainable Democracy. And I'm
                                                             5 you, Thom. Thanks so much for joining us.
 6 really excited about this presentation.
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7
             Dr. Thom Reilly is currently a professor in
8 the School of Public Affairs and co-director for the
9 Center for an Independent and Sustainable Democracy at
10 ASU. He's the former chancellor of the Nevada System
11 of Higher Education, where he served as chief executive
12 officer and oversaw a complex system that includes
13 research universities, four-year undergraduate
14 institutions, a research institute, and community
15 colleges. Prior to this appointment, he served as a
16 director of the Morrison Institute for Public Policy
17 here at Arizona State University.
             He previously served as County Manager for
19 Clark County, which is in the Las Vegas Valley, where
20 he provided both regional and municipal-type services.
21 As CEO, he was responsible for the fiscal management of
22 the County's $5.8 billion budget and administrative
23 oversight of close to 12,000 employees.
             Thom is going to discuss the Center's role
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25 and its recent research on election administration and

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1 independent voters. We did receive some materials; I
 2 hope you all had a chance to review those. They were
             And with that, I'm going to turn it over to
             MR. REILLY: Mr. Chairman and Commissioners
 7 and Tom Collins, it's good to see you again. I
 8 appreciate the invite, and thank you for the
 9 opportunity to briefly talk about the mission of the
10 Center and then just touch upon some of the work that
11 we're doing that can illuminate some of the work of the
12 Center.
13
             So we recently started the Center for the
14 Independent and Sustainable Democracy, and it basically
15 has two primary missions. One is to explore
16 nonpartisan reforms at the local, state, and federal
17 level, and two is to do a deep dive into who the
18 independent voter is. And to our knowledge, there is
19 no other university in the United States that actually
20 has a focus on understanding who the independent voter
21 is.
             On October 19th in Washington, D.C. we're
22
23 launching the Center, and we're also launching our
24 book, put out by Routledge, called The Independent
25 Voter, with my colleagues Jackie Salit, and Jackie is
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1 president of voter -- independentvoter.org, she's kind
 2 of a grassroots individual, and Omar Ali, who's a
 3 well-known historian from University of North Carolina
 4 Greensboro. So we'll be launching that event on the
 5 19th. If anyone is in D.C., you're more than welcome
 6 to come. I can get that information to you.
             You know, a lot of the narrative too about
 8 concerns has been about talking about voter supression,
9 but many individuals now are saying that our partisan
10 election administration is really the greater worry
11 than even voter supression. So part of that is a
12 partial study that we did that looked at administration
13 of our elections, particularly the partisan. And we
14 did a review of the 30 states that have a partisan
15 registration system, and we're finishing up the
16 analysis of the remaining 20 with nonpartisan.
17
             But, you know, this partisanship is baked
18 into every aspect of our American electoral system. I
19 think as I noted before, you know, the U.S. is the only
20 democracy in the world with a partisan system of
21 election administration, and that's done by design.
22 And this can leave -- obviously, to -- the Commission
23 well knows that elections can be open to partisan
24 politics and political interference. So party parity
25 has been kind of the fundamental principle of the
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1 American electoral process, and this has kind of been
 2 baked in the system, and the concern between the parity
 3 of the Ds and the Rs as the defining function. And so,
 4 in essence, each party is tasked by law with checking
 5 the other party's ability to tinker with the balance of
6 the election outcomes.
             And we see this even at the top level, at the
8 federal level. The Federal Elections Commission, which
9 is designed as the protectorate, at the federal level,
10 of election integrity, is the only federal commission
11 in the United States that has an even number of six
12 members, three Democrats and three Republicans. So
13 it's designed to not be able to make a decision if both
14 major parties disagree.
15
             Now, as long as most Americans were actually
16 from each of the parties and that there was some
17 semblance of competition geographically throughout the
18 United States, you know, this seemed to work, well, you
19 know, although imperfectly. But now, the largest group
20 of voters are those that are unaffiliated and
21 independent.
22
             In fact, this is one area we deal with quite
23 extensively in our book about why are so many people
24 leaving the two-party system. You know, if we look at
25 millennials, 52 percent of millennials, 52 percent of
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1 Gen X, Gen Z are now not identifying themselves as part
 2 of a party. So when you have the largest number of
 3 voters that aren't part of the party, this parity --
 4 party parity can be called into question.
             On top of that, when you have -- you know,
 5
 6 true competition has diminished in our country with --
7 many states are run, at all levels, by one major party.
8
             So with that, you know, you have a system
9 that there can be quite a bit of concerns, and that's
10 one of the areas that we looked at in this election
11 report. You know, instead of requiring that each
12 state's chief election officer be nonpartisan or
13 neutral, we elect them in these very highly polarized
14 campaigns, and then expect that they be viewed the next
15 day as these trusted arbiters of election information
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and the electoral process.

And it's not only the case of individuals
that are running as partisans now and endorsing
candidates when they're running as secretary of states,
or even as election deniers that we see in several
states, but now that -- we have people tinkering or
being reported as tinkering with this partisan process
that we have by looking at getting poll workers, for
example, that are election deniers and populating the
poll centers.

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4 partisans wanting to serve, you know, on election
 5 boards or as poll workers, and nearly half privileged
 6 partisans wanting to serve as election judges. Almost
 7 every state code we studied privileged partisans'
 8 access to basic tools of election machinery and
9 engineering, including voter data and public campaign
10 expenditures.
11
             As I mentioned, this is kind of the first
12 iteration of the report. We're finishing up the
13 analysis and come up with a set of recommendations.
14 But basically, you know, at this point we've been
15 really calling for a larger conversation and attention
16 to the concerns that we have in the United States about
17 a partisan election system and that this may very well
18 be the most worrisome issue moving forward when we
19 start talking about the integrity of our democracy.
20
             I'll jump on to the second one. Then if
21 there's any questions, just please interrupt me or we
22 can finish up.
23
             So the first report that we did looked at
24 election administration, which is going to our mission
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25 of looking at new nonpartisan governance systems. The

So when we looked at something as dry and

2 mundane as election codes, what we found is, of the 30

3 states, that 27 really gave preferential treatment to

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1 most recent study we just finished, and it's under
2 review now with an academic journal, is to look at this
3 notion of independent voting over time. So, you know,
4 most political scientists, political strategists really
5 have been somewhat dismissive, as you well know, of who
6 the independent voter is. The assumption is that most
7 independents profess this independence, but they're
8 really leaners.
9 And this really kind of dates back to some of
10 the seminal work in 1960 by Agnus Campbell of the
11 American voter. And that basically looked at surveys
12 of the American National Election System, ANES,
13 particularly around the issues of presidents, governor,
```

14 and Congress. And they began asking individuals in 15 1960 to identify yourself, whether you're Republican, 16 Democrat, or independent. So they came up with this,

17 you know, this data based upon this breakdown of the 18 three different classifications.

20 follow-up question to independents. We trust you if
21 you say you're Republican; we trust you if you say
22 you're Democrat; but if you're independent, we're going
23 to ask you a follow-up question. And the follow-up
24 question is: Do you lean Republican or Democrat? And

Shortly thereafter, they began asking a

25 so they came up with this seven-point scale of whether

you're a strong Democrat, Democrat, whether you're a leaner, whether you're truly independent, whether you lean Republican, whether you're a Republican, or a strong Republican. So they developed this kind of seven-point scale to kind of measure people's identification.

But due to the work of a gentleman by the

8 name of Keith and his book that he put out called The 9 Myth of the Independent Voter, in 2008 the American 10 National Election Studies were convinced they could

11 collapse that seven-point scale down to three points, 12 okay. And this is kind of important, because they've

13 reclassified those that were leaners to -- as

14 partisans. So it became Republicans -- if you leaned, 15 you were considered a Republican; if you leaned

16 Democrat, you were considered a Democrat; and then you

17 left just that middle category of independents. And so 18 from that, political scientists began to label leaners

19 and argue that the true number of independents is

20 really quite small, it's only about 10 percent.

21 Our colleague from University of Arizona,

22 Samara Klar, came out with a great book called23 Independent Politics, and she really proposed that

24 people were embarrassed by their parties. So what they

25 do is that they don't want to admit that they're party

 $\ensuremath{\mathbf{1}}$ affiliated, although they may truly vote that way. And

2 she said basically that they don't want to be

3 associated with either party, so they say independent;

 $4\,$ but when you look at their voting patterns, they tend

Now, the issue with that, in most of the

5 to be leaners and partisans.

7 studies, has been that when you ask someone whether you 8 lean Republican or Democrat and ask how they vote at 9 the next election, most of them follow where they lean. 10 And what wasn't taken into consideration is maybe they 11 were voting for positions, maybe they were voting for 12 individuals, but there hasn't been a lot of studies of 13 looking at voting patterns over time.

14 One of the lead persons advocating for this 15 was actually -- he's a professor at Stanford, was 16 actually the president of the board of ANES, says that 17 you really have to look at voting over time and you 18 need to look at down ballot. You can't just look at

19 the top positions. Look at down ballot and start

20 tracking independent voters over time.21 Okay. So what we did is we took data from

22 1972 to 2020 and looked at that very issue. Let's 23 study independent voting over time and see, you know, 24 if there is -- if they are truly sticking to one party

25 or another. And now it's wrapped up, but what we found

1 was that when tracking independent voting behavior over 2 more than one election, we saw a significant volatility

3 in voting loyalty.

4 Our analysis on how independent voters and

5 nonvoters, which is really important to get at what 6 triggers them to vote, we found, from one cycle to the

7 other, that there was significant fluidity with voters

8 and nonvoters and they were incredibly unpredictable,

9 which is really kind of the central theme of our book,

 $10\,\,$ that if you really think you know independents, you

11 have another thing coming. They are so unpredictable

12 and volatile in their voting and really do deserve a

13 deeper dive.

And if I was a partisan running a campaign, I would really want to get more insight into how this group of voters that supported Obama by 8 percentage points, flipped to Trump in 2016 by 4 percentage points, and then flipped back to Biden by 13 percentage points in the last election.

20 But what we did is that we looked at all
21 three voting scales. So we looked at that original

22 scale, tell us how you are, Republican, Democrat, or

 $23\,$ independent, the seven-point scale, and then the

 $24\,$ collapsed three-point scale. And in every one of those

 $25\,\,$ scales we saw an incredible amount of volatility and

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1 that the identification really depended upon specific
 2 candidates on an issue on the ballot, short-term
 3 interest versus -- you know, that they had much more
 4 short-term interest than this long-standing loyalty to
 5 a party. And then the research also confirmed that a
 6 sizable number of independents moved in and out of
7 independent status from one election to another.
8
             So I think this study, I think, will add to
9 the limited number of research that has actually looked
10 at independents over time and not just looked at them
11 in one election. And this is coupled with some really
12 interesting emerging research that is coming out down
13 ballot. There was a great study that was done just in
14 North Carolina that when you look down ballot and you
15 get away from the president or celebrity candidates and
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20 package, was a study that we did that looked at media 21 consumption and where -- who people talk about their 22 voting patterns. And this was just actually published 23 a couple months ago. And what we did is we asked, you

And then the last thing I'll just mention

16 look down ballot, you see, again, this incredible

19 too, I think Tom, Mr. Collins, put this in your

 $24\,\,$ know -- we based upon the research that Pew had come

25 out with that, you know, people tend to choose their

 $1\,$ media sources to fit their reality, right, that we have

2 this cafeteria style and we're able to choose media

3 stuff that reflects our world view. And then, when we

4 do that, we end up talking about it with people who

5 think and act like us. So liberals, conservatives, and

6 moderates kind of live in these bubbles.

7 And so what we used in Arizona is that,

8 because Arizona is kind of more or less a third, a

9 third, and a third between Republicans, Democrats, and

10 independents, to ask them where they get their media

11 sources and then who they talk about -- who do they

 $12\,\,$ talk to. And so we looked at all these media sources.

13 We didn't do a content analysis of the media sources,

 $14\,\,$ but we based it upon their perception of whether it was

15 liberal or Republican. And this kind of mirrored some

 $16\,\,$ of the research that Pew came out with, but our study

 $17\,\,$ looked at independents equally with partisans as

18 Republicans and Democrats.

19 Sure enough, Republicans tend to get their 20 news sources -- the more conservative you are, you can

20 news sources — the more constructive you are, you ca

21 move towards Fox and others and you have Republican $\,$

 $22\,$ friends. Democrats have Democrats as friends and they

 $23\,$ have a different set of news sources. Independents are

24 a bit distinct from the two, but Republicans and

25 Democrats were more likely to have independents as part

 $\ensuremath{\mathsf{1}}$ of their circle of friends they talk about. And when

2 they did, which is, I think, the big takeaway from the

3 study and was most significant, is that they tend to

 $4\,$ moderate it -- moderate their news sources, right. So

5 when you had more independents in your circle of

6 friends, the media sources moderated particularly for

7 those that are Republican.

17 amount of volatility.

18

And so where previous research shows that
individuals with highly polarized views are less likely
to discuss politics with those with opposing views, our

11 research really shows that partisans, when they 12 continue to discuss stuff with -- politics with

13 independents, they perhaps were a little more open to

14 considering different points of view.

The last thing I'll say about that study is that Twitter picked up on it, and the big outcome that came on the Twitter study was not what we felt was the most significant part of that study, it was that young

19 Democrats were most likely to unfriend you on Facebook.

20 Independents are less likely to knock you off of

21 Facebook if they disagree with you. Young Democrats 22 were most likely to kick you off.

23 Well, with that -- sorry I was going through 24 that at such rapid speed, but I do think that the

25 Center that we have will add some incredible value.

1 Our book that comes out there, which is -- I think it's

2 probably one of the more comprehensive views and

3 deep-dive look at -- of who this very unpredictable,

4 volatile group of voters are, but we also tied in this

5 notion about how do we explore, as a country, more

 $\ensuremath{\mbox{6}}$ nonpartisan alternatives from everywhere from the

7 Secretary of State in elections, but just how we do

8 business in the United States. So thank you again for

9 the opportunity to kind of share what we're doing at

10 the Center.

11 CHAIRMAN MEYER: No, thank you. I appreciate
12 you being here. I did have a couple questions. That
13 was a lot of information. I mean, could you -- could
14 you share with us maybe one or two things that you were

14 you share with us maybe one or two things that you were 15 most surprised by when you reviewed the data from your

16 study?

17 MR. REILLY: From the election study or from 18 the -- from the independent voter?

19 CHAIRMAN MEYER: From both. From both.

20 MR. REILLY: Yeah. I think from the -- you

21 know, we really, until this election, really haven't

22 focused enough on how partisan our election system is.

23 I think what many people are finding that's pretty

24 shocking is that, you know, almost in all these voter

25 registration systems, you know, if you're not part of a

19

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1 major party, you can't participate in issues as poll
 2 workers or judges. And so the amount, how partisan
 3 this is, and how it's just not working as -- you know,
 4 not when we have a growing number of people that are
 5 independent.
             And when you want people in the poll places,
7 that probably will add to, as nonpartisans -- the fact
8 that they're excluded was somewhat astonishing, I
9 think. And then when you start looking at, you know,
10 just how it's kind of baked into our whole system, that
11 it really just deals with two parties and, you know --
12 and if they can't come to agreement, they just
13 deadlock. And it's not only at the federal level; that
14 trickles down at the state and local level. So I think
15 that was pretty astonishing.
             I think when we talked with individuals, we
17 did -- one of the co-authors and I, Jeremy Groomer, did
18 an op ed in The Hill. I think we got a lot of
19 really -- comments on that saying like, wow. You know,
20 no one looks at those details. But it is those -- it
21 is that partisan system now that I think makes us most
22 vulnerable and is allowing for this exploitation of it,
23 right. So, you know, let's not only run people that
24 are deniers, but let's throw them in the poll places
25 and really muck things up. So I think -- I think this
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1 is an area, from the media perspective and one from the
 2 academic perspective that has not been looked at, that
 3 I think is ripe.
4
             The Independent Voter I think is interesting
 5 because it kind of dispels and puts us at odds with
 6 most of our colleagues in political science. You know,
7 political sciences are basically dismissive of
8 independents. You know, people profess it, but they're
9 leaners. And what we found was that there were so few
10 studies that went beyond a single election to make that
11 analysis. And now we're looking at data from ANES, the
12 national database, the gold standard, and I think what
13 we found was that there is a great amount of
14 volatility. And I'll tell you, people think they can
15 tell you how independents vote, they're not being
16 truthful, because I think they are an incredibly
17 volatile group of voters. And I think, you know, what
18 happens with partisans is that when -- one election,
19 when independents perhaps vote for them in one
20 election, they begin treating them as partisans instead
21 of independents that, you know, don't have these firm
22 loyalties that people think they have.
23
             CHAIRMAN MEYER: That's interesting. I mean,
24 to me it makes sense that an independent voter would be
25 more volatile because, by the very nature they're
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1 independents, they're not, you know, leaning one way or 2 the other. So that -- but that is interesting that 3 your research kind of confirmed that. And then one other question I had, and maybe 5 this is a little off the wall. But, I mean, you're 6 taking about hyperpartisanship and sort of the issues 7 it's creating within our election process. I have read 8 studies or seen talk about rank choice voting as a way 9 to help sort of eliminate some of that 10 hyperpartisanship. Have you guys looked at that or do 11 you have any thoughts on that? I know they use it in 12 Alaska. I'm just curious if that's something --MR. REILLY: Yeah, we did, actually. We 14 covered the -- we have actually a section -- one of the 15 chapters I wrote actually dealt with, you know, the 16 prevalence of rank choice voting worldwide. You know, 17 Ireland endorses it. There's a lot of counties and 18 municipalities in Utah, surprisingly, that have adopted 19 rank choice voting. And I think we kind of viewed it 20 as, you know, one of many ways to look at perhaps this 21 hyperpolarized system in that -- you know, some of the 22 criticisms of rank choice voting was that it's more

23 complex, people may have a hard time understanding it.

25 individual communities or states to consider in

But we also address, you know, other ways for

2 talk why we even -- why do we even have primaries. You 3 know, I mean, why do we have, you know, primaries in 4 majority of states that exclude independents or 5 unaffiliated from voting. And parties will argue, 6 well, it's our party. We should nominate our own 7 individuals. Yeah, maybe you should, but taxpayers 8 shouldn't pay for it if you're going to exclude a large 9 portion of voters. So, you know, there is this kind of 10 body of research and thought coming out there, why not 11 just eliminate primaries and go to the top two, top 12 four, top five vote getters. So I think the message we kind of put out 14 there is, instead of just -- you know, there's a lot of 15 different models that are out there, including rank 16 choice, including top two, top four, top five, and that 17 communities will probably best look at what might work 18 in their community. You know, I know I'm from Nevada, just came 20 back from Nevada again, and they have on their ballot 21 the rank choice voting this time. Both parties have 22 come out pretty strongly against it. The process in 23 Nevada is a little more complicated to change the 24 constitution because you have to have two votes of the

25 people, and they meet every two years. So even if it

1 addition to rank choice. You know, I mean, there's all

```
1 passes now and it's polling slightly ahead, it will
                                                             1 there wasn't this partisan election that just happened
 2 require another two years.
                                                             2 in 2016. It was this -- this notion is, how dare do we
             But the challenge individuals have is
                                                             3 consider opening it up. Yeah.
 4 explaining it to voters, right. So, you know, we've
                                                                          CHAIRMAN MEYER: All right. Any other
                                                             4
 5 been kind of baked into the system of the primary and
                                                             5 Commissioners have questions?
 6 the top two between -- I mean, the top vote getters
                                                             6
                                                                        COMMISSIONER CHAN: Mr. Chairman.
7 from each party. So putting another layer of it, for
                                                             7
                                                                          CHAIRMAN MEYER: Commissioner Chan.
8 some, is confusing.
                                                             8
                                                                          COMMISSIONER CHAN: I just wanted to thank
             (Simultaneous speaking.)
                                                             9 Thom for coming and spending this time talking to us.
10
             MR. REILLY: It's very prominent in Utah at
                                                            10 You know, I've often thought, over the years, that,
11 the local level.
                                                            11 despite knowing that all of our independent voters are
12
             CHAIRMAN MEYER: So when you hear both
                                                            12 not in a party, that is the independent party, that
13 parties are against it, what's your reaction to that?
                                                            13 there should be an opportunity for them to have their
14 Because my initial reaction is, well, maybe that's a
                                                            14 own primary, which may sound crazy, again, just because
15 good thing --
                                                            15 they are so disparate and they're all not members of a
16
             (Simultaneous speaking.)
                                                            16 recognized party for a reason and those reasons may
17
             MR. REILLY: And I don't know, Tom Collins,
                                                            17 differ. But I really think that even though Arizona
18 if you were at this, but, you know, when I was at
                                                            18 has open primaries, I think aside from the libertarian
19 Morrison we had kind of put out a report on the
                                                            19 party, which did, I think, sue successfully to keep
20 independent voter, and it was right after Trump was
                                                            20 theirs closed at their discretion, that a lot of
21 elected and it was like two weeks after the election.
                                                            21 independent voters, even high-efficacy voters who are
22 And, you know, I mean, so there was a lot of just high
                                                            22 well educated and have every advantage, still don't
23 emotions, if you will. But when we start talking about
                                                            23 really realize that they can vote and participate in
24 open primaries, I'll tell you, I never saw the parties
                                                            24 the recognized party primaries, so -- and we've had
25 unite against a common enemy. You would think that
                                                            25 those open primaries for, I think, decades now. It's
1 hard to remember. I'm getting so old that it seems
                                                             1 elections can be kind of a shortcut for people to try
 2 like it's been forever, but it may be a little more
                                                             2 -- who think they understand the values of those
                                                             3 particular parties, but I also think that -- I think I
 3 recent than it -- than I think.
             But the other thing that I find interesting,
                                                             4 agree with you, I don't want to mischaracterize what
                                                             5 you said, but that it's just leading to this super
 5 you know, when I started getting involved with
 6 elections, is that we do have these partisan elections
                                                             6 hyperpartisanship that isn't productive or good for
7 at the statewide and legislative level, and maybe at
                                                             7 anyone in our society. So I really appreciate what you
8 other levels -- well, board of supervisors, for
                                                             8 had to say --
9 example -- but then at the city level, at the school
                                                             9
                                                                         (Simultaneous speaking.)
10 board level, those are non-partisan primaries.
                                                            10
                                                                          MR. REILLY: In our book, actually, I do
             MR. REILLY: For the most part.
11
                                                            11 cover kind of the history of partisan elections and,
12
             COMMISSIONER CHAN: And I've never understood
                                                            12 you know, one of -- one of the things that we throw out
13 the rationale for maintaining partisan elections at
                                                            13 there is this notion of how we perhaps move the
14 these other levels when I just -- I guess there's got
                                                            14 non ballot up, right, and not -- it more populates, for
15 to be a rationale somewhere for how these policies
                                                            15 the most part, local governments and school boards and
16 began, and I would really love to learn more about the
                                                            16 judicial races after the progressive era but perhaps
17 reasons for those.
                                                            17 looking at moving it up to other offices too as
18
             I will say that in recent years, maybe longer
                                                            18 something to ponder.
                                                            19
19 than recent, for city primaries -- or, for city
                                                                          COMMISSIONER CHAN: Thank you. I'll have to
20 elections, for example, I see the folks running,
                                                            20 check out your book.
21 putting their party on even in these nonpartisan
                                                            21
                                                                         MR. REILLY: Thanks.
22 elections. It's, you know, I guess an indication like,
                                                            22
                                                                          CHAIRMAN MEYER: Thank you.
23 hey, it's a nonpartisan election, but these are my
                                                            23
                                                                          Any other Commissioners have any questions?
```

24

25

24 values. That's how I kind of interpret it.

So, you know, it's -- I think partisan

COMMISSIONER KIMBLE: Mr. Chairman.

CHAIRMAN MEYER: Go ahead, Commissioner

```
1 Kimble.
                                                             1 independents at any juncture, or if they do it's a very
             COMMISSIONER KIMBLE: Dr. Reilly, as the
                                                             2 lengthy process. So Arizona is, you know, in some ways
 2
3 token independent on the Commission, I want to
                                                             3 light-years ahead of other states in trying to do it
 4 piggyback on some things that Commissioner Chan said.
                                                             4 for the primary, not the presidential election, that's
 5 Is it -- it seems prevailing thought that independents
                                                             5 a little different, which makes it all the more
 6 became independents because they kind of wanted to
                                                             6 confusing.
7 withdraw from the political system, they don't want to
                                                                          But, you know, I think that's kind of what we
 8 be as active; is that accurate?
                                                             8 underscored in the book is that, you know, they're not
             And also, as Commissioner Chan pointed out,
                                                             9 monolithic. There's a lot of reasons why they don't
10 we have continuing problems on the Commission trying to
                                                            10 want to be part of the two-party system, including
11 reach independents to let them know that they can vote
                                                            11 that, even if they could vote, out of principle they
12 in primaries. And the numbers show that we're not
                                                            12 don't want to be -- they don't like the two-party
13 getting there, that independents don't understand that.
                                                            13 system and cite reasons from, you know, from our
14 And factually I get it, it's hard to process that you
                                                            14 Founding Fathers that intentionally left out the
15 can go and pick a party to vote in and you've got to
                                                            15 two-party system because they feared it.
16 explain it every time. But is there something more
                                                            16
                                                                          So I think there's a lot of different ways,
                                                            17 but I think, you know, what Clean Elections has done,
17 that we ought to be doing to try to get independents
18 more engaged certainly at the primary -- in the
                                                            18 others with the media, is, you know, so much -- so many
19 primaries, but also in the general?
                                                            19 times we look at things from this two-party lens, from
2.0
             MR. REILLY: I think that's the -- that's the
                                                            20 the media, from academia, from everywhere, without
21 big question is how you have them more engage. And to
                                                            21 understanding that there's this whole distinct group of
22 your point is that Arizona does have an ability for
                                                            22 voters that, you know, aren't part of the two-party
23 independents to vote in primaries, which doesn't exist
                                                            23 system. So I think, you know, the more we can reach
24 in a lot of states. So, I mean, in many states, and
                                                            24 out to independents and allow them avenues to vote --
25 these are Rs and Ds that are dominated, don't allow
                                                            25 you know, it's kind of the same reasons why young
1 people don't vote, particularly the first couple times,
                                                                          Okay. So now we will move on to Agenda Item
 2 is that we think it's very simple and that they should
                                                             2 No. V, which is discussion and possible action on rule
 3 just figure it out, but for many young people they cite
                                                             3 amendments to AAC R2-20-211, -220, and -223 relating to
 4 it is a bit confusing. And then trying to educate
                                                             4 compliance and enforcement procedures.
 5 yourself about who the candidates are and know where to
                                                                          Staff is asking for approval to publish these
                                                             6 rules for public comment. These rule amendments seek
 6 go to do that.
7
             Again, I think Arizona is a leader in some
                                                             7 to clarify the procedures for enforcement proceedings.
8 respect, because Clean Elections puts out information
                                                                          Tom, do you want to go ahead and give us an
                                                             8
9 that isn't just from the two parties that dominates
                                                             9 overview? I've reviewed these and didn't see anything
10 most states. But I think it is a group of voters
                                                            10 too -- that I had too many questions about. But
11 that -- you know, that's one thing we're looking at is
                                                            11 anyway, go ahead.
12 that what seems to motivate them to engage, and I don't
                                                            12
                                                                         MR. COLLINS: Sure. Mr. Chairman, thank you.
13 think that's really understood, you know, from a
                                                            13
                                                                          Commissioners, in your packet is a set of
14 research perspective.
                                                            14 amendments to three rules. There wasn't really a cover
15
             COMMISSIONER KIMBLE: Thank you.
                                                            15 memo with it. I think they're fairly self-explanatory,
16
             CHAIRMAN MEYER: Thank you.
                                                            16 and we've had some notes on them in the past in the
17
             Any other questions for Dr. Reilly?
                                                            17 Executive Director's Report.
18
             (No response.)
                                                            18
                                                                          In effect, what we're trying to do is make
19
             CHAIRMAN MEYER: All right. Thank you so
                                                            19 sure that the lines are clear enough in our -- in
```

22 interesting. Thank you.

24 appreciate it.

23

25

20 much for coming here, sharing information with us. It

MR. REILLY: Thank you for having me. I

CHAIRMAN MEYER: You bet. You bet.

21 was -- it really -- I found it very helpful, very

20 updating our compliance and enforcement procedures so

21 that it's clear how the responsibilities for certain 22 administrative actions flow and how that -- and how

25 set up, at the time those rules were drafted

In other words, the way that our rules are

23 that is set forth.

24

```
1 20-something years ago the Commission had a position
                                                             1 this ball rolling while there's -- while we don't know
 2 called admin counsel that was filled by an attorney,
                                                             2 what party will be in power and we want to make sure,
 3 and the Attorney General's Office was structured in
                                                             3 essentially, that that will be efficient.
 4 kind of a different way than it is now. And so it kind
                                                                         There are some worst-case scenarios that
 5 of created this -- I think almost by default, quite
                                                             5 could come out of leaving the rules as they are. One
 6 honestly, they sort of put in this sort of potentially
                                                             6 of those worst-case scenarios would be the
7 limiting language. I'm not sure it's that limiting,
                                                             7 Commission -- that the Executive Director and the
8 but nevertheless it's certainly -- it clearly bears
                                                             8 Assistant Attorney General disagree on the direction
9 sort of a consistency to say, look, when the Commission
                                                             9 for a case. The rules don't actually explain what
10 authorizes an investigation, it's essentially
                                                            10 happens in that situation, and actually there's an
11 authorizing the staff to proceed, and then the staff
                                                            11 argument that says that the Assistant Attorney General
12 may need to use a person authorized to do certain legal
                                                            12 could force that decision in front of the Commission
13 operations that may or may not be an Assistant Attorney
                                                            13 or -- and that's just not -- I mean, again, not a thing
14 General by nature. Obviously, in most cases that's
                                                            14 that has happened, but, I'll be honest with you, again,
15 been the case.
                                                            15 we've seen over the course of the last decade, you
             But, you know, the reality is, we're coming
                                                            16 know, too many places in which anything -- any word
                                                            17 that can be used to maximize conflict gets used to
17 up on a period of time where the reason we want to
18 start this now is we're in a period of time where we
                                                            18 maximize conflict, and so I think it's a foreseeable
19 don't know what the next Attorney General would be or
                                                            19 thing.
20 who they will be, so it's not something that I feel
                                                            20
                                                                         Also, you know, these are essentially
21 like will be wrapped up in some of the, I think, sort
                                                            21 procedural changes, but we don't want to end up in a
22 of --
                                                            22 position where, again, for potentially partisan
23
             It's pretty hard to not just be honest about
                                                            23 reasons, a respondent -- and, you know, we don't have a
24 this. Everything gets politicized, even if it's not
                                                            24 ton of complaints, we don't have a ton of
25 legitimate to politicize it, so we want to try to start
                                                            25 enforcement -- but were to say, I'm entitled to an
                                                                         COMMISSIONER CHAN: I don't have any
1 Assistant Attorney General to serve me with process,
                                                             2 questions. In reviewing the proposed changes, I think
 2 for example. Because, I mean, again, I don't think
 3 that's a substantive right, I don't think that's -- but
                                                             3 they're common sense updates to our rules, so I support
                                                             4 the changes as they're drafted.
 4 why leave it there when we know that, in effect, we --
                                                                         CHAIRMAN MEYER: Anyone else have any
 5 we know that that's not really something that the
                                                             6 questions?
 6 Commission intends.
                                                                        (No response.)
                                                            7
             So, you know, I've been able to talk to Kara
                                                                         CHAIRMAN MEYER: If not, can I hear a motion
8 about this over the course of the last, you know, few
9 months. I think it's -- I think it's -- those have
                                                             9 to publish these amendments for public comment?
                                                            1.0
                                                                        COMMISSIONER CHAN: Mr. Chairman, I move that
10 always been helpful discussions. And we are --
                                                            11 we publish -- how should I say this? Let me look at
             You know, and so that's really it. Basically
                                                            12 the agenda. Sorry. Mr. Chairman, I move that we
12 to update these rules to be consistent with our
                                                            13 publish the rule amendments.
13 practice, avoid any potential for future conflict, and
                                                            14
                                                                         Tom, is that sufficient, or do I have to name
14 do it in a -- and get the process underway. Although,
                                                            15 the rules?
15 it won't be completed by January because of
                                                           16
                                                                        MR. COLLINS: I think that's -- that's
16 (unintelligible) and all that -- but to get the process
                                                            17 sufficient.
17 underway when we are sort of neutral as to how we --
18 how the -- a veil of ignorance, if you will, as to who
                                                            18
                                                                         And then, Mr. Chairman, I have a quick note I
```

23 them out for public comment?

staff@coashandcoash.com

24

19 will be the Attorney General when the rules finally get

22 questions on these proposed rule changes or putting

COMMISSIONER CHAN: Mr. Chairman.

CHAIRMAN MEYER: Any Commissioners have any

CHAIRMAN MEYER: Go ahead, Commissioner Chan.

20 approved, assuming they do. So any questions?

19 want to make at the end about this just to close out

22 just -- the rule says that the amendments that are

23 proposed in the packet is fine.

Commissioner Chan, I think if you want to

COMMISSIONER CHAN: Is that what I said?

CHAIRMAN MEYER: Just for clarification, we

20 the record.

21

24

25

```
1 have a motion from Commissioner Chan that we publish
                                                             1 discuss things with Kara all the time. But this is
 2 the rules identified in Agenda Item V in today's agenda
                                                             2 a -- Commission driven and not Attorney General's
                                                             3 Office driven. And, you know, again, for all the
 3 for public comment. Is there a second to that motion?
             COMMISSIONER PATON: Second. Commissioner
                                                             4 reasons we've discussed, I think it's important not to
                                                                make (unintelligible).
 5 Paton.
 6
                                                                          CHAIRMAN MEYER: Thank you for that
             CHAIRMAN MEYER: All right. We have a motion
                                                             6
 7 and a second. We'll vote. I'll call the roll.
                                                             7 clarification.
   Commissioner Chan.
                                                                          We'll now move on to Agenda Item No. VI,
 9
                                                             9 which is public comment. This is the time for
             COMMISSIONER CHAN: I vote aye.
             CHAIRMAN MEYER: Commissioner Kimble.
                                                            10 consideration of comments and suggestions from the
10
11
              COMMISSIONER KIMBLE: Aye.
                                                            11 public. Action taken as a result of public comment
12
             CHAIRMAN MEYER: Commissioner Paton.
                                                             12 will be limited to directing staff to study the matter
             COMMISSIONER PATON: Aye.
13
                                                             13 or rescheduling the matter for further consideration
14
              CHAIRMAN MEYER: And Commissioner Titla.
                                                             14 and decision at a later date or responding to
15
             COMMISSIONER TITLA: Aye.
                                                            15 criticism. Please limit your comments to no more than
16
             CHAIRMAN MEYER: Aye. Okay. Thank you.
                                                            16 two minutes
17
             And this is Commissioner Meyer. I vote aye.
                                                             17
                                                                          Does any member of the public wish to make
18
             Motion carries 5-0.
                                                            18 comments at this time?
             Tom, did you have another -- something to
19
                                                             19
                                                                          You may also send comments to the Commission
20 button up here or did you already do that?
                                                             20 by e-mail -- excuse me -- by mail or e-mail at
             MR. COLLINS: I just needed to --
                                                             21 ccec@azcleanelections.gov.
22 Mr. Chairman, if I may just really quickly, I do want
                                                             22
                                                                          Is there anyone who would like to make public
23 to say, you know, this is a Commission-initiated rule,
                                                             23 comment at this time?
24 you know, obviously, for obvious reasons. I mentioned
                                                             2.4
                                                                          (No response.)
25 that we discussed these things with Kara, but we
                                                                          CHAIRMAN MEYER: All right. It doesn't look
                                                             25
 1 like we have anyone there, so we will go on to Agenda
                                                             1 STATE OF ARIZONA )
 2 Item No. VII, which is adjournment. Do I have a motion
                                                                                   ) ss.
                                                             2 COUNTY OF MARICOPA )
 3 to adjourn?
                                                             3
             COMMISSIONER CHAN: Mr. Chairman, I move that
                                                                          {\tt BE}\ {\tt IT}\ {\tt KNOWN} that the foregoing proceedings
   we adjourn the meeting.
                                                             5 were taken by me; that I was then and there a Certified
             CHAIRMAN MEYER: Thank you.
                                                             6 Reporter of the State of Arizona; that the proceedings
 7
             Is there a second?
                                                             7\, were taken down by me in shorthand and thereafter
 8
             COMMISSIONER KIMBLE: Commissioner Kimble,
                                                                transcribed into typewriting under my direction; that
 9
    second.
                                                                the foregoing pages are a full, true, and accurate
             CHAIRMAN MEYER: All right. We will call the
10
                                                             10 transcript of all proceedings had and adduced upon the
11 roll. Commissioner Chan.
                                                            11 taking of said proceedings, all to the best of my skill
12
             COMMISSIONER CHAN: I vote aye.
                                                            12 and ability.
13
             CHAIRMAN MEYER: Commissioner Kimble.
                                                            13
14
              COMMISSIONER KIMBLE: Aye.
                                                             14
                                                                          I FURTHER CERTIFY that I am in no way related
                                                             15 to nor employed by any of the parties hereto nor am I
15
             CHAIRMAN MEYER: Commissioner Paton.
             COMMISSIONER PATON: Aye.
                                                             16
                                                               in any way interested in the outcome hereof.
16
                                                            17
17
              CHAIRMAN MEYER: Commissioner Titla.
                                                            18
                                                                          DATED at Tempe, Arizona, this 30th day of
18
             COMMISSIONER TITLA: Aye.
                                                             19
                                                                September, 2022.
             CHAIRMAN MEYER: And this is Commissioner
19
                                                             20
20 Meyer. I vote aye as well.
                                                             21
21
             The motion carries. We are adjourned.
                                                             22
2.2
             Thank you all. We'll see you next month.
23
              (The proceedings concluded at 10:37 a.m.)
                                                                                    Certified Reporter #50666
24
                                                             2.4
25
                                                             25
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1			



Mary R. O'Grady

2929 North Central Avenue 21st Floor Phoenix, Arizona 85012 Direct Line

Telephone Facsimile omlaw.com 602.640.9000 602.640.9050

October 25, 2022

VIA FEDEX AND EMAIL

Clean Elections USA
Melody K. Jennings

Re: Unauthorized use of name "Clean Elections USA"

Attention:

I represent the Arizona Citizens Clean Elections Commission ("Clean Elections"), which is a state entity established by A.R.S. § 16-955. It is a non-partisan commission established by state law that, among other things, is responsible for voter education. It produces a voter education pamphlet that is provided to all households, sponsors debates, and has a comprehensive program to ensure voters have accurate information about elections and voting in Arizona. It has been in existence since the voters approved the Clean Elections Act more than 20 years ago.

It has come to our attention that people are using the name "Clean Elections USA" in Arizona to engage in activities related to the November 2022 election. I understand there are concerns about potential voter intimidation, and those concerns have been reported to the appropriate authorities. Independent from those issues, my client is concerned that your use of the mark CLEAN ELECTIONS USA in Arizona is likely to cause confusion because of the state agency known as Clean Elections. In particular, your use is likely to cause members of the public to think that you are associated with the Clean Elections state agency and that your activities are affiliated with, sponsored by, or endorsed by Clean Elections. Your actions violate several Arizona statutes and common-law doctrines. Accordingly, your use of CLEAN ELECTIONS USA is unlawful and you must immediately cease and desist all uses of CLEAN ELECTIONS USA.

Arizona election statutes prohibit using any "fraudulent device or contrivance" whatsoever to "impede" or "otherwise interfere" with the free exercise of the elective franchise of any voter. A.R.S. § 16-1013(2). Clean Elections has a statutory duty to educate voters. A.R.S. § 16-956. Your use of CLEAN ELECTIONS USA interferes with voters' rights to education under the statute. Moreover, your use of CLEAN ELECTIONS USA is also unlawful under A.R.S. § 13-2406 and A.R.S. § 13-2008 and subjects you to criminal penalties.

Furthermore, Clean Elections has been using the mark CLEAN ELECTIONS since at least as early as 1998. Your use of CLEAN ELECTIONS USA creates the false impression you are associated with Clean Elections and is likely to cause confusion as to the source, origin, and affiliation of your actions. Accordingly, your use violates common-law trademark rights.

Clean Elections therefore demands that you immediately cease and desist from all further uses of CLEAN ELECTIONS USA, including any other name or mark that incorporates the mark CLEAN ELECTIONS or is confusingly similar to CLEAN ELECTIONS. You must cease using the mark in all in-person activities, as well as in print and online, including websites, blogs, social media, messaging, advertisements, and all other uses.

Please provide written confirmation to me no later than **Thursday**, **October 27**, **2022** that you have stopped all uses of CLEAN ELECTIONS USA. If we do not receive a satisfactory and timely response, we are prepared to take all steps necessary to protect the public from confusion. If you or your counsel have any questions or concerns, please contact me at

Sincerely,

Mary R. O'Grady

THE STATE OF ARIZONA ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION		
In the Matter of:		
21-01 The Power of Fives, LLC	SUBPOENA DUCES TECUM	
ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION TO	The Power of Fives, LLC c/o Timothy La Sota 2198 E. Camelback Rd. Suite 305 Phoenix, AZ 85016 tim@timlasota.com 602.515.2649	
YOU ARE HEREBY REQUIRE	ED, pursuant to A.R.S. § 16-956(B)	
and R2-20-211(A), to produce and	permit inspection and copying of all	
Documents in your possession, o	ustody, or control related to the	
Complaint (CCEC MUR #21-01) file	d on October 27, 2021, and the	
determination there is reason to believe	eve violations occurred made by the	
Commission on December 16, 2021.	See A.R.S. § 16-956(B); A.A.C. R2-	
20-211. This information is reques	ted in connection with an inquiry	
authorized pursuant to A.R.S. § 16-95	6(A)(7) and A.A.C. R2-20-206(C).	
<i>//</i>		
II		

1 This Subpoena Duces Tecum requires that you produce the 2 following materials: 3 Documents that will enable the Commission to ascertain the 4 identities of all members of The Power of Fives, LLC, and each 5 member's ownership interest, from its date of formation through the present. This includes, by way of example only, all Power of Fives, 6 LLC's operating agreements and other agreements between its members. 7 8 Documents that will enable the Commission to ascertain the identities of all employees, agents, or independent contractors of 9 The Power of Fives, LLC, and each person's job title or a description 10 of the services provided, from the date of formation of The Power of Fives, LLC, through the present. 11 12 All contracts and agreements between You and any political candidate, political campaign, or any representative or agent of a 13 political candidate or political campaign, from 2019 through the 14 present. 15 With respect to all political candidates and political campaigns with 16 whom You have entered into a contract or agreement from 2019 through the present, or for whom you have otherwise provided 17 campaign-related services at any time from 2019 through the present, (each of which is referred to as a "Campaign") produce all 18 Documents and Communications relating to each such 19 Campaign. This includes, by way of example: 20 All Documents and Communications relating to all 21 expenditures you made relating to each Campaign. This includes, but is not limited to, Campaign receipts, Campaign 22 expenses, Campaign finance reports, marketing expenses, 23 get-out-the-vote expenses, payments to vendors, joint expenditures with other candidates or campaigns, and any 24 other documents relating to Campaign expenditures. 25

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0	For each Campaign, all Documents and Communications			
	relating to fundraising, solicitation of contributions (including \$5 Qualifying Contributions), and receipt of contributions.			
	,, , , , , , , , , , , , , , , , , , ,			
0	For each Campaign, all Documents and Communications relating to payments You received for your services.			
0	For each Campaign, all Documents and Communications relating to scheduling of volunteers, paid staff, consultants,			
	and independent contractors.			
0	For each Campaign, all Documents and Communications relating to assignments given to volunteers, paid staff,			
	consultants, and independent contractors.			
0	For each Campaign, all Documents and Communications			
	relating to travel logs, mileage logs, and work hour logs for You and anyone else working on the Campaign.			
	Tod and anyone else working on the Gampaign.			
0	For each Campaign, all Documents and Communications relating to contracts or agreements You entered into with			
	vendors, consultants, independent contractors, or anyone			
	else.			
0	For each Campaign, all internal Communications among and between any of You (including your agents, employees and			
	representatives) related to the Campaign or your contract or			
	agreement with the Campaign.			
0	For each Campaign, all Communications between You and			
	any candidate or any agent or representative of a candidate or a candidate's campaign.			
	a canalacte e campaign.			
0	For each Campaign, all Communications between You and vendors, consultants, independent contractors, paid staff, and			
	volunteers who provided services to the Campaign.			
0	For each Campaign, all Communications between You and			
	any third party related to the Campaign or your contract or agreement with the Campaign.			
	agi comone mai alo campaigii.			

1	 For each Campaig 	gn, all invoices, receipts, descriptions of				
2	services, and any other Documents and Communications relating to services provided by vendors, consultants, or independent contractors.					
3						
4	General Definitions					
5	"Vou" magne the Dower of Five					
6	"You" means the Power of Fives, LLC, Dr. Bob Branch, and each of their agents, employees and representatives.					
7	"Communications" means any	written transmission of information,				
8	including emails, text messages, instant messages, social media postings and messages, letters, correspondence, reports, memos, notes, facsimiles, any type of electronic posting or message.					
9						
10						
11	•	"Documents" means every writing and record of every type and description, including electronic data, electronically-stored information,				
12	hard copies, papers, audio and visual recordings, photographs, books,					
13	pamphlets, flyers, and calendar	pamphlets, flyers, and calendar entries				
14	"Person" means an individual, corporation, partnership, limited liability company, political party, political committee, or non-profit entity.					
15	, , , , , , , , , ,					
16	TIME AND DATE OF PRODUC	CTION: 4:00 p.m., Sept. 23, 2022				
17	PLACE OF PRODUCTION:	Citizens Clean Elections Commission 1616 West Adams, Suite 110				
18		Conference Room				
19		Phoenix, Arizona 85007				
20	Note:					
21	You have been subpoenaed by the Citizens Clean Election Commission,					
22	whose attorney's name, address and telephone number are:					
23	Robert McKirgan & Jon V Papetti Samuels Weiss N	Robert McKirgan & Jon Weiss Papetti Samuels Weiss McKirgan, LLP				
24	Scottsdale Quarter 15169 N. Scottsdale Rd., Ste. 205 Scottsdale, AZ 85254 480.88.3533					
25						
26	rmckirgan@pswmlaw.com jweiss@pswmlaw.com					
27	<u></u>					

1 2 Kara Karlson Assistant Attorney General 2005 N. Central Ave. 3 Phoenix. AZ 85007 4 602.542.8118 5 Kara.Karlson@azaq.gov 6 Your Duties In Responding to This Subpoena 7 You have a duty to produce the documents requested as they are kept by 8 you in the usual course of business, or you may organize the documents and label them with the categories set forth in this subpoena. 9 10 If a claim of privilege is asserted with respect to any Document or you refuse to disclose any Document requested herein on any other ground. 11 state separately for each Document withheld the basis for your claim that 12 such Document need not be disclosed with such specificity as will permit the Commission or a Court of Law to determine the legal sufficiency of 13 your objection or position. 14 If this subpoena asks you to produce or permit inspection of designated 15 books, papers, documents, tangible things, or the inspection of premises, you need not appear to produce the items unless the subpoena states you 16 must appear. If relevant records are not in your possession please provide 17 an index identifying the records and who is in possession of such records. 18 Your Right to Object 19 You may object if you feel that you should not be required to respond to 20 the request made. Under A.A.C. R2-20-213, you have a right, prior to the 21 time specified herein for compliance, but in no event more than five days after the receipt of this subpoena, to apply to the Citizens Clean Election 22 Commission to guash or modify it. Such application must include the reasons therefore. The Commission may deny the application, quash the 23 subpoena, or modify the subpoena. 24

Failure to comply with this subpoena may subject you to proceedings

in Superior Court to enforce its requirements.

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1	ADA Notification
2	REQUESTS FOR REASONABLE ACCOMMODATIONS FOR PERSONS
3	WITH DISABILITIES MUST BE MADE TO THE COMMISSION AT
4	LEAST THREE DAYS IN ADVANCE OF A SCHEDULED PROCEEDING.
5	SIGNED AND SEALED this1st day of September, 2022.
6	
7	By: /s/Thomas Collins
8	Thomas M. Collins Executive Director Citizens Clean Elections
9	Commission
10	
11	
12	ORIGINAL of this Subpoena sent by hand-delivery this
13	1st day of September, 2022 to:
14	The Power of Fives, LLC
15	c/o Timothy La Sota
16	2198 E. Camelback Rd. Suite 305
17	Phoenix, AZ 85016
18	tim@timlasota.com 602.515.2649
19	
20	
21	
22	
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24	
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26	

Attorney or Party without Attorney: Robert McKirgan (SBN) PAPETTI SAMUELS WEISS 15169 N Scottsdale Rd				For Court Use Only		
Scottsdale, AZ 85254						
Telephone No: (480) 800-3535	564 544					
Attorney For:	Ref. No. or File No	3158-1				
Insert name of Court, and Judicial District and Branch Court: The State of Arizona, Arizona Citizens Clean Elections Commission						
Plaintiff: IN THE MATTER OF: 21-01 THE Defendant:	POWER OF FIVES,	LLC				
CERTIFICATE OF SERVICE	Hearing Date: SEPTEMBER 23,	2022	<i>Time:</i> 4:00 PM	Dept/Div:	Case Number:	

- 1. At the time of service I was at least 21 years of age and not a party to this action.
- 2. I served copies of the SUBPOENA DUCES TECUM
- 3. a. Party served: THE POWER OF FIVES, LLC C/O TIMOTHY LA SOTA b. Person served: Robert Branch, Registered Agent for Service of Process
- 4. Address where the party was served: 18331 W Palo Verde Ave, Waddell, AZ 85355
- 5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Thu, Sep 15 2022 (2) at: 09:01 AM

I Declare under penalty of perjury under the laws of the State of Arizona that the foregoing is true and correct.

6. Person Executing:

a. Tim Meyer MC-7459, Maricopa County

b. FIRST LEGAL INVESTIGATIONS 2070 N. TUSTIN AVE, 2ND FLOOR SANTA ANA, CA 92705

c. (714) 550-1375

09/16/2022 (Signature)

CERTIFICATE OF SERVICE





WILLIAM M. FISCHBACH

Shareholder 602-255-6036

Email: wmf@tblaw.com Licensed in Arizona

September 20, 2022

VIA E-MAIL ONLY TO:

Thomas Collins Citizens Clean Elections Commission 1616 W. Adams, Suite 110 Phoenix AZ, 85007 thomas.collins@azcleanelections.gov

Robert McKirgan & Jon Weiss Papetti Samuels Weiss McKirgan, LLP 15169 N. Scottsdale Rd., Ste. 205 Scottsdale, AZ 85254 rmckirgan@pswmlaw.com jweiss@pswmlaw.com

Kara Karlson Assistant Attorney General 2005 N. Central Ave. Phoenix, AZ 85007 Kara.karlson@azag.gov

Re: Subpoena Duces Tecum issued to Dr. Bob Branch and the Power of Fives, LLC in MUR No. #21-01

Mr. Collins, Mr. McKirgan, and Ms. Karlson,

This office represents The Power of Fives, LLC ("TPOF") and Dr. Bob Branch ("Dr. Branch") for the purpose of responding to the Subpoena Duces Tecum ("Subpoena") issued by the Arizona Clean Elections Commission ("AZCEC") with a compliance deadline of September 23, 2022 at 4:00 p.m. Stated succinctly, TPOF objects to the Subpoena because its overbroad in its scope and because it's an improper discovery request. This Subpoena is overbroad because it covers matters irrelevant to AZCEC's investigation of TPOF and Eric Sloan's ("Sloan") relationship during the Sloan campaign, and the Subpoena is an improper discovery request because active litigation is ongoing between TPOF and AZCEC in a declaratory action pending before the Maricopa County Superior Court. For those reasons, TPOF and Dr. Branch move pursuant to A.A.C. R2-20-213 to quash the Subpoena.



The only potentially relevant documentation related to AZCEC's investigation was disclosed in TPOF's May 25, 2021 Subpoena Response. Subject to and without waiving our previous objection and motion to quash, TPOF provides AZCEC with all exhibits introduced in *The Power of Fives, LLC v. Eric Sloan* et al., Case No. 01-20-0014-8898, an American Arbitration Association ("AAA") proceeding before Judge Rebecca Albrecht (ret.), and additional exhibits from subsequent litigation. These documents are more than sufficient to provide the AZCEC with relevant information to address any alleged misconduct between TPOF and Sloan.

BACKGROUND

This case arises from an agreement dated January 1, 2020, between TPOF and Eric Sloan to provide Sloan with "turnkey" campaign support throughout the primary election and, if the Sloan prevailed in the primary, the general election. ("Agreement"). [See TPOF Service Agreement, attached as **Exhibit A**] The Agreement contemplated three phases. Phase I and Phase II of the Agreement ran through the August 4, 2020 primary election. [Id. at 7] Upon completion of Phases I and II, TPOF was entitled to the entirety of the Primary Fund Distribution paid to Sloan. [Id.] Under A.R.S. §§ 16-659(A) and -961(G)(3), that amount was \$116,016. TPOF supplied Sloan with a turnkey primary election campaign, in accordance with Phases I and II of the Agreement. [See Judge Albrecht's Ruling, attached as **Exhibit B**, at 3-4]

Sloan qualified for clean election funding on July 17, 2020, activating the Agreement's compensation provisions for Phases I and II. [*Id.* at 2] TPOF thus sent a final invoice for the full amount of the Primary Fund Distribution (\$116,016) that Sloan owed under the Agreement. [*Id.* at 3] Sloan, however, refused to pay anything more than \$67,730.04. [*Id.*]

On October 23, 2020, Dr. Robert Branch, the Managing Member of TPOF, filed a Complaint with AZCEC alleging that Eric Sloan violated statutes and regulations applicable to clean elections candidates in this state. [See Clean Elections Complaint, attached as **Exhibit C**] Specifically, the Complaint alleged that Sloan had: (1) overspent during the Primary Election; and (2) failed to report the full amount he owed TPOF for services it provided to him during his Primary Campaign (\$116,016) after incurring the obligation to pay that amount. [Id. at 2]

After Sloan responded to the complaint, AZCEC's Executive Director issued a "Statement of Reasons" to believe a campaign finance violation may have occurred. [See Statement of Reasons, attached as **Exhibit D**] In his statement, the Director reasoned under A.A.C. R2-20-110.1, a candidate may authorize an agent to purchase goods or services on



behalf of a candidate. [Id. at 1-2] When the candidate incurs an obligation to pay, however, he must report the expenditure, must have sufficient funds to pay for the expenditure, and pay the agent within seven days. [Id.] Yet the Director appeared to misunderstand how the Agreement worked, stating there was "reason to believe that the Contract expenditure amount should not have been reported later than the report closing December 31, 2019." [Id. at 3] The Director also opined that "the value of the alleged expenditure included in the [Agreement] exceeded the amount of money Sloan was permitted to raise in seed money all together [sic], which was \$29,004." [Id. at 4]. The Director recommended the AZCEC vote to determine if a violation of statutes and regulations applicable to clean elections candidates in Arizona. [Id. at 5] The AZCEC made that determination on January 28, 2021. Nonetheless, the Commissioners expressed hesitation over launching a full-blown investigation into this matter given the parties' contractual dispute was subject to a pending commercial arbitration proceeding. [See January 28, Meeting Packet, Transcript, attached as Exhibit E, at 38:24-25]

That arbitration has since concluded and TPOF prevailed on all issues involved. Judge Albrecht awarded TPOF \$116,016.00 under the Agreement, plus costs, attorneys' fees, and applicable pre- and post-judgment interest. After accounting for accrued interest as of May 24, 2021, TPOF's arbitration award against Sloan is \$175,020.93, with additional interest accruing at 4.25% per annum. Although TPOF's demand for arbitration presented a relatively run-of-the mill breach of contract case, Sloan—seizing on language in the Director's Statement of Reasons—sought to transform the arbitration into a full-blown election compliance hearing. Specifically, Sloan argued that the Agreement could not be enforced because it was "illegal" for the following reasons:

- 1) It committed the campaign to spend money before approval for funding.
- 2) TPOF incurred expenses on the campaign's behalf before the campaign had sufficient funds to pay for the expenses.
- 3) TPOF's invoices were not sufficiently itemized to comply with reporting requirements that clean elections candidates were subject to.
- 4) The Agreement amounted to campaign spending unauthorized by a campaign treasurer.
- 5) TPOF's services were illegal corporate contributions.

[Sloan's Pre-Hearing Statement, attached as **Exhibit F** at 1–2; Sloan's Post-Hearing Statement, attached as **Exhibit G**, at 1–2]. Sloan specifically tethered his contract illegality arguments to Director's Statement of Reasons.¹ [Ex. F at 4; Ex. G at 6, 11]. And in

¹ Albeit, Sloan greatly mischaracterized the Director's actual conclusion. The Director actually concluded that **Sloan** may have violated Clean Elections Law by failing to fully report his expenditures and spent more than the law permitted him to.



particular, Sloan focused on the Director's statement that an agreement cannot "be post-dated to avoid the expenditure." [Id.]

Judge Albrecht rejected Sloan's contract illegality arguments entirely. Judge Albrecht found that most of Sloan's contentions "to be without merit." [Ex. B at 3] The only acts having "any possible merit are the commitment to spend funds and the spending of funds before qualifying for Clean Election funds." [Id.] The Agreement, however,

did not bind the campaign to a specific obligation, there was no debt created for the campaign by entering into the Agreement. There was no obligation to pay until/if Sloan qualified for public funding. There is nothing in the Clean Election laws and regulations that prevent a candidate from entering into a contract for services before he receives clean election funding, with the payment to be paid upon receipt of clean election funding."

[Id. at 4]. In other words, the Agreement itself was not an expenditure because the obligation to pay was contingent upon Sloan qualifying for clean election funding. If Sloan failed to obtain clean election funding, the Agreement automatically terminated. There was no specific and concrete obligation to pay at the time of the Agreement's signing. This comports with A.A.C. R2-20-110(A)(5), which states "a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services." The items in this list all share one obvious commonality, "an obligation to pay." That obligation did not exist unless and until Sloan qualified for clean election funding. These arguments are summarized in TPOF's own Post-Hearing Statement. [TPOF's Post-Hearing Statement, attached as Exhibit H at 7-13]

The AZCEC entered a Repayment Order on April 29, 2021 finding, *inter alia*, that Sloan "incurred a debt of \$174,024.00 when he signed the [Agreement]" with TPOF and ordering him to repay \$94,590.79. [CCEC Repayment Order, attached as **Exhibit I** at ¶ U] However, this finding was premised on Sloan's express concession in his Post Hearing Statement that "the Sloan campaign incurred a campaign expenditure or debt, at the latest, when it contracted with TPOF on January 1, 2020 for campaign consulting services." [*Id.* at ¶ I] This statement was part of Sloan's self-serving arguments—arguments fueled by the Director's initial Statement of Reasons—at the arbitration to defeat TPOF's contract under a claim of "illegality." The Arbitrator—a retired Superior Court Judge—rejected Sloan's argument outright.

On May 4, 2021, TPOF filed an Application to Confirm Arbitration Award under A.R.S. § 12-1511 with the Maricopa County Superior Court. [TPOF Application, attached



as **Exhibit J**] Sloan, relying on the same arguments made in the Arbitration proceeding, argued that the Agreement cannot be enforced because the acts performed under it are illegal pursuant to the Clean Elections Act, and therefore, the Arbitrator exceeded her authority in enforcing the Agreement. [Sloan's Response, attached as **Exhibit K**] The Court ultimately ruled in favor of TPOF, granting its Application to Confirm Arbitration Award. [Arbitration Award Minute Entry, attached as **Exhibit L**] The minute entry held that Sloan's argument that the Arbitrator exceeded her authority because the contract is illegal was incorrect, because "[Sloan] litigated exactly this issue before the Arbitrator. Having submitted the issue to the arbitrator for decision, [Sloan] cannot now argue that the Arbitrator lacked the authority to decide it." *Id.* at 2.

On September 17, 2021, AZCEC issued a Complaint against TPOF and Dr. Branch. [Clean Elections Complaint, attached as **Exhibit M**]. Specifically, the Complaint alleged that: (1) TPOF is operating as a political action committee and has failed to register as required by Arizona law related to Sloan's campaign; (2) TPOF was making unreported expenditures on behalf of the Sloan campaign; (3) TPOF's Agreement with Sloan violated Clean Elections Act and Rules by making an expenditure on behalf of the Sloan campaign prior to Sloan qualifying for Clean Election funding; and (4) Dr. Branch violated A.R.S. § 16-946(B)(4) when he sent an email solicitation on behalf of Sloan. *Id.* at 5-8.

On October 7, 2021, TPOF filed a declaratory relief action against AZCEC, seeking adjudication of the lawfulness of the Agreement under Arizona law in accordance with A.R.S. §§ 12-1831, -1833. [Declaratory Relief Action, attached as **Exhibit N**]. In that case, TPOF is seeking an order from the court declaring that "(1) a candidate does not commit a violation of the [Citizens Clean Election] Act by merely sign[ing] the Agreement and (2) the Agreement is a lawful contract that does not violate the statutes and rules applicable to clean elections candidates under the Act." *Id.* at pg. 5 This action is currently pending before the Maricopa County Superior Court, and AZCEC is actively participating in that litigation.

On October 13, 2021, TPOF responded to the Complaint, arguing that: (1) AZCEC has no legal authority to require TPOF to register as a political action committee, even if the Complaint was correct in its assertion that TPOF is a political action committee; (2) AZCEC has no enforcement authority with regard to an alleged violation of A.R.S. § 16-916; (3) AZCEC does not have authority over vendors, and it cannot expand its powers beyond that expressly granted pursuant to statute; (4) the Agreement did not require Sloan to promise, agree, contract or otherwise incur an obligation to pay for goods and services until Sloan qualified for funding; (5) any TPOF expenditure on legal fees is not prohibited and is exempted from both the "contribution" and "expenditure" language in A.R.S. §§ 16-911 and 16-921; (6) because TPOF is not a political action committee, it is up to Sloan to



monitor and file his campaign finance reports; and (7) Dr. Branch's June 18, 2020 email is not a violation of A.R.S. § 16-946, as there is no violation of that statute, only that a contribution isn't a "qualifying" contribution. [See Response to Complaint, attached as **Exhibit O**]

Not long after TPOF filed its declaratory relief action, AZCEC's Executive Director issued a "Statement of Reasons" to believe Clean Elections Act and Rules may have occurred. [Statement of Reasons, attached as **Exhibit P**]. In his statement, the Director reasoned that: (1) the AZCEC has "broad powers" to investigate TPOF's campaign activity in 2020 related to the Agreement between TPOF and Sloan; (2) AZCEC rules preclude participating candidates from taking on a debt, and that TPOF extended a loan to finance Sloan to pay for goods, services, and legal expenses; (3) TPOF was required to file reports with the Secretary of State regarding its expenditures; and (4) Dr. Branch's email solicitation violated the Clean Elections Act.

On January 18, 2022, Sloan filed a Notice of Appeal to the Arizona Court of Appeals, appealing the Superior Court's minute entry affirming the arbitration award. [See Notice of Appeal, attached as **Exhibit Q**] This matter is currently pending before the Court of Appeals.

TPOF'S PARTIAL OBJECTION

The Subpoena requests production of the following items:

- Documents that will enable the Commission to ascertain the identities of all members of The Power of Fives, LLC, and each member's ownership interest, from its date of formation through the present. This includes, by way of example only, all Power of Fives, LLC's operating agreements and other agreements between its members.
- Documents that will enable the Commission to ascertain the identities of all employees, agents, or independent contractors of The Power of Fives, LLC, and each person's job title or a description of the services provided, from the date of formation of The Power of Fives, LLC, through the present.
- All contracts and agreements between You and any political candidate, political campaign, or any representative or agent of a political candidate or political campaign, from 2019 through the present.
- With respect to all political candidates and political campaigns with whom You have entered into a contract or agreement from 2019 through the present, or for



whom you have otherwise provided campaign-related services at any time from 2019 through the present, (each of which is referred to as a "Campaign") produce all Documents and Communications relating to each such Campaign. This includes, by way of example:

- O All Documents and Communications relating to all expenditures you made relating to each Campaign. This includes, but is not limited to, Campaign receipts, Campaign expenses, Campaign finance reports, marketing expenses, get-out-the-vote expenses, payments to vendors, joint expenditures with other candidates or campaigns, and any other documents relating to Campaign expenditures.
- o For each Campaign, all Documents and Communications relating to fundraising, solicitation of contributions (including \$5 Qualifying Contributions), and receipt of contributions.
- o For each Campaign, all Documents and Communications relating to payments You received for your services.
- For each Campaign, all Documents and Communications relating to scheduling of volunteers, paid staff, consultants, and independent contractors.
- For each Campaign, all Documents and Communications relating to assignments given to volunteers, paid staff, consultants, and independent contractors.
- For each Campaign, all Documents and Communications relating to travel logs, mileage logs, and work hour logs for You and anyone else working on the Campaign.
- o For each Campaign, all Documents and Communications relating to contracts or agreements You entered into with vendors, consultants, independent contractors, or anyone else.
- For each Campaign, all internal Communications among and between any of You (including your agents, employees and representatives) related to the Campaign or your contract or agreement with the Campaign.
- o For each Campaign, all Communications between You and any candidate or any agent or representative of a candidate or a candidate's campaign.
- For each Campaign, all Communications between You and vendors, consultants, independent contractors, paid staff, and volunteers who provides services to the Campaign.
- o For each Campaign, all Communications between You and any third party related to the Campaign or your contract or agreement with the Campaign.



 For each Campaign, all invoices, receipts, descriptions of services, and any other Documents and Communications relating to services provided by vendors, consultants, or independent contractors.

The categories of requested documents cover items that are either irrelevant to AZCEC's investigation of the relationship between TPOF and Sloan, fall outside its subpoena power, or are an improper discovery request. Pursuant to A.A.C. R2-20-213, TPOF moves to quash the Subpoena for three reasons.

First, as outlined above, this matter concerns TPOF and Sloan's relationship during the Sloan campaign, and disagreement on whether or not it TPOF or Sloan violated statutes and regulations applicable to clean election candidates. Indeed, when reading the Complaint, Statement of Reasons, and what the Commissioners voted to investigate, this is readily apparent. The Complaint focus solely on TPOF's activity as it relates to the Sloan campaign, including whether or not: (1) TPOF failed to register as a political action committee related to Sloan's campaign; (2) TPOF was making unreported expenditures on behalf of the Sloan campaign; (3) TPOF's Agreement was an expenditure; or (4) Dr. Branch violated a statutory provision by sending an email solicitation on behalf of the Sloan campaign. [See Exhibit N, 5-8] This understanding is confirmed by the fact that during the Commission's December 16, 2021 and January 27, 2022 committee meetings, the entirety of the discussion was focused on TPOF's interaction with the Sloan campaign, and any violations that may have occurred related to that specific campaign. [See December 16, Meeting Packet, Transcript, attached as Exhibit R; see also January 27, 2022, Meeting Packet, Transcript, attached as Exhibit S] Additionally, looking at the Statement of Reasons, it speaks generally about the AZCEC's enforcement provisions, but the focus is on TPOF's financial involvement with the Sloan campaign and the solicitation of contributions for that campaign. [See Exhibit P, 2-5] As such, the Subpoena is overbroad as it covers areas completely irrelevant to its investigation.

Second, the Subpoena is an improper discovery request because active litigation is ongoing between TPOF and AZCEC in a declaratory action pending before the Maricopa County Superior Court. That litigation directly concerns the Agreement between TPOF and Sloan, and TPOF is seeking an order from the court declaring that "(1) a candidate does not commit a violation of the [Citizens Clean Election] Act by merely sign[ing] the Agreement and (2) the Agreement is a lawful contract that does not violate the statutes and rules applicable to clean elections candidates under the Act." [Exhibit N, pg. 5] If AZCEC wishes to seek discovery in that case, it's welcomed to do so, but TPOF will not participate in improper discovery requests aimed at undermining active litigation.



Third, AZCEC's subpoena power is not absolute. Rather, its subpoena power is limited to witnesses and other documents "material to the performance of the commission's duties or exercise of its powers." A.R.S. § 16-956(B). The AZCEC's duties and powers extend only to the enforcement of the Clean Elections Act, which is in its exclusive purview. *Ariz. Advoc. Network Found. v. State*, 250 Ariz. 109, 121 ¶ 56 (App. 2020). And the only potential violation of the Clean Elections Act for which there has been either a complaint or the initiation of an investigation pursuant to A.A.C. R2-20-209 is TPOF's involvement with the Sloan campaign. While § 19-956(B) is broad, it doesn't allow AZCEC to engage in fishing expeditions of individuals who are not currently under investigation.

TPOF seeks to assist the AZCEC into its investigation of TPOF and its involvement with the Sloan campaign, and TPOF considers itself duty-bound to do so. That is why TPOF is producing the evidence submitted in the AAA proceedings, and additional documentation related to further proceedings in that case, in order to assist in its inquiry. Beyond what the parties' produced, however, any internal documents from TPOF; documents related to TPOF's membership structure; and any documents or communications related to any other campaign TPOF may or may not have been involved in, are simply irrelevant to what AZCEC is actually investigating at this time, as well as grossly overbroad under the circumstances.

Regardless, the investigation of TPOF's relationship with the Sloan campaign does not give AZCEC a license to put TPOF under the microscope for completely unrelated matters outside the scope of the Complaint related to its internal business procedures. Nevertheless, as promised, please find all the exhibits introduced in the AAA arbitration proceedings and subsequent litigation. If you have any questions, please do not hesitate to contact this office.

Sincerely,

TIFFANY & BOSCO, P.A.

William M. Fischbach

WMF/ecs Enclosure

EXHIBIT A



SERVICE AGREEMENT

THIS SERVICE AGREEMENT (this "Agreement"), is entered into and effective as of 1, 2015, by and between The Power of Fives, LLC, an Arizona limited liability company (the "Contpany"), and FUL Stow, an individual (the "Candidate").

- The Candidate hereby engages the Company as an independent contractor and the Company hereby accepts such engagement upon the terms and conditions contained in this Agreement. During the term of this Agreement, the Company agrees to provide to the Candidate the services described in Exhibit A (the "Services"). The Company represents that the Company has the special skill, professional competence, expertise and experience to undertake the obligations imposed by this Agreement, and will perform the Services in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the Company's profession and in compliance with all applicable laws. The Company shall commit such time as is necessary to perform the Services. The Company acknowledges and agrees that the Company owes a duty while performing the Services under this Agreement to act in the best interests of the Candidate so as to maintain and increase the goodwill and reputation of the Candidate. The Company agrees to not make any statement, oral or written, intended to injure the business, interests or reputation of the Candidate. The Candidate agrees that during the term of this Agreement, without the Company's prior written consent, the Candidate will not engage any other consultant or contractor that provides services that are competitive to the Services provided by the Company.
- 2. <u>Compensation: Expenses.</u> The Company will be compensated for rendering the Services in the amounts set forth on <u>Exhibit A</u>. For the Services provided in Phase I of <u>Exhibit A</u>, the Company shall submit to the Candidate, not later than ten (10) days following the date hereof, an invoice setting forth the payment owed for Phase I. The Candidate shall pay all undisputed amounts on such invoice within thirty (30) days of the earlier of: (a) the termination of this Agreement, or (b) once the Candidate qualifies for public financing for the Primary Election. For the Services provided in Phase II or III of <u>Exhibit A</u>, the Company shall submit to the Candidate following the completion of some or all of the Services set forth in a respective payment period, an invoice setting forth the payment owed for such payment period. The Candidate shall pay all undisputed amounts on such invoices within thirty (30) days of receipt.

- 3. <u>Term.</u> The term of this Agreement shall commence upon the date first written above and shall continue until the Services have been completed, or as otherwise set forth in <u>Exhibit A</u>, unless earlier terminated as provided herein. The term of this Agreement may be shortened or extended upon the mutual written agreement of both parties.
- 4. <u>Termination</u>. Either party may terminate this Agreement for any reason by giving the other party written notice of the termination at least thirty (30) days in advance of the date of termination. This Agreement may also be terminated upon mutual written agreement of the parties. Upon termination, the Candidate shall pay the Company all amounts previously invoiced and/or incurred by the Company in connection with the Services and both parties shall immediately return to the other parties all Confidential Information (as defined below) and information and products of whatever nature or kind and in whatever format. If either party fails to promptly return any products to the other party after the termination of this Agreement, the party in violation of this Section 4 shall pay the other party, or the other party shall have the right to retain such amounts from any compensation owed under Section 2, an amount equal to the manufacturer's suggested retail price of such products.
- 5. Independent Contractor Status. The Company's relationship to the Candidate shall be that of an independent contractor. Nothing in this Agreement is intended to make the Company or its employees an employee or agent of the Candidate or confer on the Company or its employees any rights, privileges or benefits as an employee of the Candidate. The Company shall have no right, power or authority (and shall not hold itself out as having any such right, power or authority) to bind the Candidate in any manner or to any agreement or undertaking with any third party except as specifically provided in this Agreement.
- 6. Ownership and Return of Creations. All Work Product (as defined below), conceived, created, made, developed, or acquired by or for the Company used to perform the Services shall remain the property of the Company. "Work Product" shall include, without limitation, all designs, documents, manuals, videos, drawings, logos, improvements, plans, developments, processes, business methods, trade secrets, and any and all copyrightable expression, all copyrightable works, and all patentable subject matter, in all media (whether existing now or to be invented), whether or not protected by statute, including all derivative works. At the Company's request and no later than five (5) days after such request, the Candidate shall destroy or deliver to the Company, at the Company's sole option, (i) all Work Product, (ii) all tangible media of expression in the Candidate's possession or control which incorporate or in which are fixed any Confidential Information of the Company, and (iii) written certification of the Candidate's compliance with the Candidate's obligations under this Section 6.
- 7. Work Shall Not Infringe Third Party Rights. The Company represents and warrants to the Candidate that all Work Product used in connection with the Services shall not infringe upon or violate any rights (whether patent, copyright, trademark or otherwise) of any third party.

- 8. Confidentiality. In the course of its performance under this Agreement, each of the parties hereto may have access to and contact with certain confidential and proprietary information relating to the other party's business including, but not limited to, business strategy, marketing strategy, financial, pricing, customer and dealer information, product designs, drawings, specifications, processes, techniques, and other similar information, documents or materials, which are hereinafter referred to collectively as "Confidential Information." Each party agrees, throughout the term of this Agreement and at all times following the termination of this Agreement for any reason whatsoever, to neither disclose, use (except in connection with the provision of Services), communicate, reveal, transfer, nor make available to any third party in any manner whatsoever, any Confidential Information of the other party. The foregoing shall not prevent either party from disclosing Confidential Information necessary to enforce the provisions of this Agreement.
- 9. Indemnification. The Candidate will indemnify and hold harmless the Company, its officers, managers, members, agents, contractors and employees, if any, from any and all claims, losses, liabilities, damages, expenses and costs (including attorney's fees and court costs) (collectively, "Claims"), which result from (i) any breach or alleged breach of any misrepresentation of any warranty or representation made by the Candidate in or pursuant to this Agreement, (ii) failure by the Candidate to perform or comply with any covenant or agreement made by it in or pursuant to this Agreement, or (iii) any Claim brought by, through or under the Candidate's employees, officers, directors, principals, members, agents, subconsultants or subcontractors and/or anyone for whom any of them may be responsible, and all losses in connection with such Claims, arising out of, or resulting from, or in any manner connected with the Services. The rights and obligations of the parties under this Section 9 shall survive the expiration or earlier termination of this Agreement.
- 10. Release. In consideration of the Services provided in Section I, the Candidate hereby freely and voluntarily releases, waives, relinquishes and forever discharges on behalf of itself, its heirs, executors, administrators, officers, employees, agents or any other person claiming on its behalf, any and all claims, liabilities, obligations, demands or causes of action whatsoever (including those caused or alleged to be caused in whole or part by the negligence of the Company) (collectively, the "Releasees"), including, without limitation, claims for personal injury; wrongful death; property loss or damage; direct, indirect, punitive or consequential damages; lost profits; costs; charges; attorneys' fees; court costs; and other expenses of any kind arising, directly or indirectly, from the Services against the Company or its respective officers, employees, subsidiaries, affiliates, shareholders, members, directors, agents, successors and assigns.
- 11. <u>Picture/Media Release and Waiver</u>. The Candidate hereby irrevocably grants to the Company, its directors, officers, agents, employees and volunteers, and those acting with its authority with respect to the photographs, films, tape or other images taken of me by or on behalf of the Company (the "<u>Images</u>"), the unrestricted, absolute, perpetual, worldwide right to:
- (a) reproduce, copy, modify, create derivatives in whole or in part, or otherwise use and exploit the Images or any versions or portions thereof and my performance in connection with the Images, including my image, likeness, own or fictitious name, or reproduction thereof, biography, photograph, words, utterances, gestures and recorded voice, or

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

- (b) use and permit to be used the Candidate's name, image, likeness, biography, words, utterances and gestures, whether in original or modified form, in connection with the Works as the Company may choose, and
- (c) display, perform, exhibit, distribute, transmit or broadcast the Works by any means now known or hereafter to become known.

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

- 12. Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each such counterpart shall be deemed an original.
- 13. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties with respect to its subject matter; any other oral or written agreements entered into with respect thereto are revoked and superseded by this Agreement; and no representations, warranties or inducements have been made by either of the parties except as expressly set forth herein. This Agreement cannot be amended except by a written instrument signed by both parties.
- 14. <u>Severability</u>. If any provision of this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.
- 15. <u>Assignability</u>. This Agreement may not be assigned by the Candidate without the prior written consent of the other.

- or controversy regarding this Agreement and if a resolution is not reached within thirty (30) days, the dispute, claim or controversy shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules for expedited arbitration. The parties agree that the arbitration will be conducted in Phoenix, Arizona. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The parties agree that any dispute shall be heard and determined by one arbitrator appointed in accordance with the Commercial Arbitration Rules. Unless the parties agree otherwise, pre-hearing discovery shall be limited to the exchange of information and the production of documents required by the arbitrator from the parties.
- 17. Governing Law: Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona, without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Arizona. Should any litigation be commenced under this Agreement, the successful party in such litigation shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such litigation.
- 18. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written or electronic verification of receipt. All notices shall be sent to the parties at the addresses set forth below their signatures to this Agreement or at such other address as a party may designate by ten (10) days' advance written notice to the other party.

[Signature page follows.]

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

CANDIDATE:

Name:

8645 E Holly St

[Address]

COMPANY:

THE POWER OF FIVES, LLC

Name: Robert Branch Title: Manager

7000 North Cotton Lane, Suite 443,

Waddell, Arizona, 85355

EXHIBIT A

SERVICES AND COMPENSATION

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

Phase	Services Provided / Term	Compensation
Phase I: Prefunding	Phase I will commence on the effective date of this Agreement and will end once the Candidate qualifies for public financing under the Act for the Primary Election. During Phase I, the Company will provide the following services: Develop the campaign strategy for the Candidate, develop the Candidate's brand, develop the strategy to collect nomination petition signatures, and develop the strategy to collect qualifying \$5 contributions. Groom the Candidate, help develop the Candidate's message and start branding the Candidate as a "The Power of Fives Candidate." Organize forums that the Candidate can attend to collect qualifying \$5 contributions for the Primary Election.	[40% of the Primary Fund Distribution.]
Phase II Funded Primary	Phase II will commence after the Candidate qualifies for public financing for the Primary Election and will end following the Primary Election, which is on Aug 4th, 2020 (Note: If the Candidate does not qualify for public financing under the Act, this Agreement shall immediately terminate). During Phase II, the Company will provide the following turn-key services: Continue to groom and train the Candidate. Manage the Candidate's campaign with a campaign management feam. Continue branding the Candidate as a "The Power of Five Candidate" and develop the Candidate's message. Handle all print and radio advertising during Phase II, including (number based on the office sought) yards signs, and (number based on the office sought) of large highway signs. Provide support as needed to support the strategic plan of the campaign, as determined by the Company.	[60% of the Primary Fund Distribution.]
Phase III: Funded General Election	Phase III will commence if the Candidate win the Primary Election and will end following the General Election, which is on Nov 3rd, 2020 (Note: If the Candidate does not win his or her Primary Election, this Agreement shall immediately terminate). During Phase III, the Company will provide the following turn-key services: Tailor the campaign with the Candidate to run against his or her new opponent. All campaign management will be provided, as well as any support that is needed based on the campaign plan and as determined by the Company. All print and radio ads will be provided by the Company as needed to support the campaign plan.	[100% of the General Election Fund Distribution.]

EXHIBIT B

1	Rebecca A. Albrecht (SBN 004164) BOWMAN AND BROOKE LLP				
2	Phoenix Plaza – Suite 1600				
3	2901 North Central Avenue Phoenix, Arizona 85012-2736				
4	Telephone: (602) 643-2300 rebecca.albrecht@bowmanandbrooke.com				
5	Arbitrator				
6		TION ACCOCIATION			
7	AMERICAN ARBITRATION ASSOCIATION Commercial Arbitration Tribunal				
8					
9	THE POWER OF FIVES, LLC, an Arizona limited liability company,	Case No. 01-20-0014-8998			
10	Claimant,	INTERIM AWARD			
11	v.				
12	ERIC SLOAN and ALISA LYONS SLOAN, husband and wife,				
13	ŕ				
14	Defendants.				
15	Having been designated in accordance	with the arbitration agreeme			

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1	the campaign by entering into the Agreement. There was no obligation to pay until/if Sloan				
2	qualified for public financing. There is nothing in the Clean Election laws and regulations				
3	that prevent a candidate from entering into a contract for services before he receives clear				
4	election funding, with the payment to be paid upon receipt of clean election funding.				
5	Based on the foregoing the Arbitrator finds:				
6	The parties entered into a valid legal contract. By the terms of the contract the ful				
7	\$116,016.00 was due and owing before the termination of the Agreement by Sloan became				
8	effective.				
9	The fees incurred for the LaSota work was within the contemplation of the parties				
10	Agreement and were incurred within the terms of the Agreement.				
11	The Arbitrator Awards Claimant:				
12	1. The contract amount of \$116,016.00.				
13	2. TPOF fees and costs incurred in this proceeding.				
14	3. Interest from that date the of the invoice for the contract amount until paid in				
15	full at the rates provided pursuant to ARS § 44-1201.				
16	4. TPOF shall file its affidavit of fees and costs on or before March 23, 2021.				
17	Respectfully submitted this 25th day of February, 2021.				
18	BOWMAN AND BROOKE LLP				
19					
20	By: Kelegge S Albrecht				
21	Rebecca A. Albrecht Arbitrator				
22					
23	COPY of the forgoing e-mailed this 25 th day of February, 2021, to:				
24	Julie Collins				
25	Manager of ADR Services American Arbitration Association				
26	JulieCollins@adr.org				

EXHIBIT C



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

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

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

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

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

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

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

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

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

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

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

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

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

Blessings,

Dr. Bob Branch Managing Member

The Power of Fives LLC

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

STATE OF ARIZONA)
)ss.
County of Maricopa)

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

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

ROBERT BRANCH, Applicant

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

Notary Public

Seal & Commission Expiration Date:

AMANDA PENNINGTON
Notary Public, State of Arizona
Maricopa County
Commission # 556366
My Commission Expires
September 17, 2022

Exhibit 1

Signed Contract between Eric Sloan and The Power of Fives LLC



SERVICE AGREEMENT

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

- The Candidate hereby engages the Company as an independent contractor and the Company hereby accepts such engagement upon the terms and conditions contained in this Agreement. During the term of this Agreement, the Company agrees to provide to the Candidate the services described in Exhibit A (the "Services"). The Company represents that the Company has the special skill, professional competence, expertise and experience to undertake the obligations imposed by this Agreement, and will perform the Services in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the Company's profession and in compliance with all applicable laws. The Company shall commit such time as is necessary to perform the Services. The Company acknowledges and agrees that the Company owes a duty while performing the Services under this Agreement to act in the best interests of the Candidate so as to maintain and increase the goodwill and reputation of the Candidate. The Company agrees to not make any statement, oral or written, intended to injure the business, interests or reputation of the Candidate. The Candidate agrees that during the term of this Agreement, without the Company's prior written consent, the Candidate will not engage any other consultant or contractor that provides services that are competitive to the Services provided by the Company.
- 2. <u>Compensation; Expenses.</u> The Company will be compensated for rendering the Services in the amounts set forth on <u>Exhibit A</u>. For the Services provided in Phase I of <u>Exhibit A</u>, the Company shall submit to the Candidate, not later than ten (10) days following the date hereof, an invoice setting forth the payment owed for Phase I. The Candidate shall pay all undisputed amounts on such invoice within thirty (30) days of the earlier of: (a) the termination of this Agreement, or (b) once the Candidate qualifies for public financing for the Primary Election. For the Services provided in Phase II or III of <u>Exhibit A</u>, the Company shall submit to the Candidate following the completion of some or all of the Services set forth in a respective payment period, an invoice setting forth the payment owed for such payment period. The Candidate shall pay all undisputed amounts on such invoices within thirty (30) days of receipt.

- 3. <u>Term.</u> The term of this Agreement shall commence upon the date first written above and shall continue until the Services have been completed, or as otherwise set forth in <u>Exhibit A</u>, unless earlier terminated as provided herein. The term of this Agreement may be shortened or extended upon the mutual written agreement of both parties.
- 4. Termination. Either party may terminate this Agreement for any reason by giving the other party written notice of the termination at least thirty (30) days in advance of the date of termination. This Agreement may also be terminated upon mutual written agreement of the parties. Upon termination, the Candidate shall pay the Company all amounts previously invoiced and/or incurred by the Company in connection with the Services and both parties shall immediately return to the other parties all Confidential Information (as defined below) and information and products of whatever nature or kind and in whatever format. If either party fails to promptly return any products to the other party after the termination of this Agreement, the party in violation of this Section 4 shall pay the other party, or the other party shall have the right to retain such amounts from any compensation owed under Section 2, an amount equal to the manufacturer's suggested retail price of such products.
- 5. Independent Contractor Status. The Company's relationship to the Candidate shall be that of an independent contractor. Nothing in this Agreement is intended to make the Company or its employees an employee or agent of the Candidate or confer on the Company or its employees any rights, privileges or benefits as an employee of the Candidate. The Company shall have no right, power or authority (and shall not hold itself out as having any such right, power or authority) to bind the Candidate in any manner or to any agreement or undertaking with any third party except as specifically provided in this Agreement.
- 6. Ownership and Return of Creations. All Work Product (as defined below), conceived, created, made, developed, or acquired by or for the Company used to perform the Services shall remain the property of the Company. "Work Product" shall include, without limitation, all designs, documents, manuals, videos, drawings, logos, improvements, plans, developments, processes, business methods, trade secrets, and any and all copyrightable expression, all copyrightable works, and all patentable subject matter, in all media (whether existing now or to be invented), whether or not protected by statute, including all derivative works. At the Company's request and no later than five (5) days after such request, the Candidate shall destroy or deliver to the Company, at the Company's sole option, (i) all Work Product, (ii) all tangible media of expression in the Candidate's possession or control which incorporate or in which are fixed any Confidential Information of the Company, and (iii) written certification of the Candidate's compliance with the Candidate's obligations under this Section 6.
- 7. Work Shall Not Infringe Third Party Rights. The Company represents and warrants to the Candidate that all Work Product used in connection with the Services shall not infringe upon or violate any rights (whether patent, copyright, trademark or otherwise) of any third party.

- 8. Confidentiality. In the course of its performance under this Agreement, each of the parties hereto may have access to and contact with certain confidential and proprietary information relating to the other party's business including, but not limited to, business strategy, marketing strategy, financial, pricing, customer and dealer information, product designs, drawings, specifications, processes, techniques, and other similar information, documents or materials, which are hereinafter referred to collectively as "Confidential Information." Each party agrees, throughout the term of this Agreement and at all times following the termination of this Agreement for any reason whatsoever, to neither disclose, use (except in connection with the provision of Services), communicate, reveal, transfer, nor make available to any third party in any manner whatsoever, any Confidential Information of the other party. The foregoing shall not prevent either party from disclosing Confidential Information necessary to enforce the provisions of this Agreement.
- 9. Indemnification. The Candidate will indemnify and hold harmless the Company, its officers, managers, members, agents, contractors and employees, if any, from any and all claims, losses, liabilities, damages, expenses and costs (including attorney's fees and court costs) (collectively, "Claims"), which result from (i) any breach or alleged breach of any misrepresentation of any warranty or representation made by the Candidate in or pursuant to this Agreement, (ii) failure by the Candidate to perform or comply with any covenant or agreement made by it in or pursuant to this Agreement, or (iii) any Claim brought by, through or under the Candidate's employees, officers, directors, principals, members, agents, subconsultants or subcontractors and/or anyone for whom any of them may be responsible, and all losses in connection with such Claims, arising out of, or resulting from, or in any manner connected with the Services. The rights and obligations of the parties under this Section 9 shall survive the expiration or earlier termination of this Agreement.
- hereby freely and voluntarily releases, waives, relinquishes and forever discharges on behalf of itself, its heirs, executors, administrators, officers, employees, agents or any other person claiming on its behalf, any and all claims, liabilities, obligations, demands or causes of action whatsoever (including those caused or alleged to be caused in whole or part by the negligence of the Company) (collectively, the "Releasees"), including, without limitation, claims for personal injury; wrongful death; property loss or damage; direct, indirect, punitive or consequential damages; lost profits; costs; charges; attorneys' fees; court costs; and other expenses of any kind arising, directly or indirectly, from the Services against the Company or its respective officers, employees, subsidiaries, affiliates, shareholders, members, directors, agents, successors and assigns.
- 11. <u>Picture/Media Release and Waiver</u>. The Candidate hereby irrevocably grants to the Company, its directors, officers, agents, employees and volunteers, and those acting with its authority with respect to the photographs, films, tape or other images taken of me by or on behalf of the Company (the "Images"), the unrestricted, absolute, perpetual, worldwide right to:
- (a) reproduce, copy, modify, create derivatives in whole or in part, or otherwise use and exploit the Images or any versions or portions thereof and my performance in connection with the Images, including my image, likeness, own or fictitious name, or reproduction thereof, biography, photograph, words, utterances, gestures and recorded voice, or

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

- (b) use and permit to be used the Candidate's name, image, likeness, biography, words, utterances and gestures, whether in original or modified form, in connection with the Works as the Company may choose, and
- (c) display, perform, exhibit, distribute, transmit or broadcast the Works by any means now known or hereafter to become known.

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

- 12. <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each such counterpart shall be deemed an original.
- 13. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties with respect to its subject matter; any other oral or written agreements entered into with respect thereto are revoked and superseded by this Agreement; and no representations, warranties or inducements have been made by either of the parties except as expressly set forth herein. This Agreement cannot be amended except by a written instrument signed by both parties.
- 14. <u>Severability</u>. If any provision of this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.
- 15. <u>Assignability</u>. This Agreement may not be assigned by the Candidate without the prior written consent of the other.

- or controversy regarding this Agreement and if a resolution is not reached within thirty (30) days, the dispute, claim or controversy shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules for expedited arbitration. The parties agree that the arbitration will be conducted in Phoenix, Arizona. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The parties agree that any dispute shall be heard and determined by one arbitrator appointed in accordance with the Commercial Arbitration Rules. Unless the parties agree otherwise, pre-hearing discovery shall be limited to the exchange of information and the production of documents required by the arbitrator from the parties.
- 17. Governing Law; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona, without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Arizona. Should any litigation be commenced under this Agreement, the successful party in such litigation shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such litigation.
- be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written or electronic verification of receipt. All notices shall be sent to the parties at the addresses set forth below their signatures to this Agreement or at such other address as a party may designate by ten (10) days' advance written notice to the other party.

[Signature page follows.]

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

CANDIDATE:

Name:

Stort dule on son

[Address]

COMPANY:

THE POWER OF FIVES, LLC

Name: Robert Branch Title: Manager

7000 North Cotton Lane, Suite 443,

Waddell, Arizona, 85355

EXHIBIT A

SERVICES AND COMPENSATION

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

Phase	Services Provided / Term	Compensation
Phase I: Prefunding	Phase I will commence on the effective date of this Agreement and will end once the Candidate qualifies for public financing under the Act for the Primary Election. During Phase I, the Company will provide the following services: Develop the campaign strategy for the Candidate, develop the Candidate's brand, develop the strategy to collect nomination petition signatures, and develop the strategy to collect qualifying \$5 contributions. Groom the Candidate, help develop the Candidate's message and start branding the Candidate as a "The Power of Fives Candidate." Organize forums that the Candidate can attend to collect qualifying \$5 contributions for the Primary Election.	[40% of the Primary Fund Distribution.]
Phase II: Funded Primary	Phase II will commence after the Candidate qualifies for public financing for the Primary Election and will end following the Primary Election, which is on Aug 4th. 2020 (Note. If the Candidate does not qualify for public financing under the Act, this Agreement shall immediately terminate). During Phase II, the Company will provide the following turn-key services: Continue to groom and train the Candidate. Manage the Candidate's campaign with a campaign management team. Continue branding the Candidate as a "The Power of Five Candidate" and develop the Candidate's message. Handle all print and radio advertising during Phase II, including (number based on the office sought) yards signs, and (number based on the office sought) of large highway signs. Provide support as needed to support the strategic plan of the campaign, as determined by the Company.	[60% of the Primary Fund Distribution.]
Phase III: Funded General Election	Phase III will commence if the Candidate win the Primary Election and will end following the General Election, which is on Nov 3 rd , 2020 (Note: If the Candidate does not win his or her Primary Election, this Agreement shall immediately terminate). During Phase III, the Company will provide the following turn-key services: • Tailor the campaign with the Candidate to run against his or her new opponent. • All campaign management will be provided, as well as any support that is needed based on the campaign plan and as determined by the Company. • All print and radio ads will be provided by the Company as needed to support the campaign plan.	[100% of the General Election Fund Distribution.]

Exhibit 1I

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

AGREEMENT BETWEEN SLOAN LYONS LLC and THE POWER OF FIVES LLC

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

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

RESPONSIBILITIES OF CONSULTANT

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

RETAINER FEE FOR WORK PERFORMED

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

TERM OF AGREEMENT

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

LABOR AND EQUIPMENT

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

INDEPENDENT CONTRACTOR STATUS

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

WORKERS' COMPENSATION INSURANCE

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

CONFIDENTIAL OR PROPRIETARY INFORMATION

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

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

CONFLICT OF INTEREST:

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

ENTIRE AGREEMENT

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

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

SLOAN LYONS LLC

BY: Alisa Lyons Sloan, Member

Date

THE POWER OF FIVES LLC

BY: Robert Branch, Member

Exhibit III

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

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

ENGAGEMENT AGREEMENT

April 16, 2020

Dr. Robert "Bob" Branch

Dear Dr. Branch:

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

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

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

Billing Statements and Payment.

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

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

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

Dr. Branch April 20, 2020 Page -2-

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

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

Sincerely,

TIMOTHY A. LA SOTA, PLC

Timothy La Sota

ACCEPTED this 16 day of April, 2020.

Dr. Robert "Bob" Branch

Signature

Exhibit IV

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

Timothy A. La Sota, PLC

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

Invoice Number: 3631 (June 2020)

Matter: Power of Fives, general

TO:

Dr. Robert Branch Principal, Power of Fives

April/May

\$23,000 flat fee, per Agreement

TOTAL DUE: \$23,000.00

Thank you!

PAID Cherend

+ 1136

Billable to STOAP

COURT COSES - CAPOIDATES

COFFETITION

Exhibit V

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

Timothy A. La Sota, PLC

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

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

Matter: Power of Fives, general

TO:

Dr. Robert Branch Principal, Power of Fives

April/May

\$23,000 flat fee, per Agreement:

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

Dunn Appeal: \$3,000.

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

Total: \$23,000

Total Paid: \$23,000

TOTAL DUE: \$0

Thank you! 44

Exhibit VI

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



SENT VIA EMAIL AND USPS

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

July 31, 2020 Primary Election Invoice

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

Eric,

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

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

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

Total Campaign Services

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



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

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

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

Thank you for the opportunity to provide these services.

THE POWER OF FIVES LLC

Dr. Robert Branch Managing Member

The Power of Fives LLC

Dr.Branch@thepoweroffives.com

602-334-6519

EXHIBIT D

STATE OF ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

MUR 20-04
Eric Sloan
STATEMENT OF REASONS OF THE EXECUTIVE DIRECTOR

On behalf of the Citizens Clean Elections Commission ("Commission"), the Executive Director hereby provides the following Statement of Reasons why there is reason to believe that a violation of the Citizens Clean Elections Act and Commission rules (collectively, the "Act") may have occurred. Based on this statement of reasons, the Executive Director requests authorization to conduct an investigation and additional authorization to begin a repayment inquiry.

I. Background

On August 10, 2020, participating candidate Eric Sloan (Sloan or respondent), a candidate for corporation commission, notified Commission staff of a dispute between the Sloan campaign and a purported vendor of the Sloan Campaign, a Limited Liability Company called Power of 5s. *See* A.R.S. § 16-953(C)(providing procedures in the event of a vendor dispute.). In a letter dated October 23, 2020, Dr. Bob Branch (Branch or Complainant), the managing member of Power of 5s, filed a complaint with the Commission. See Exhibit A (Branch Complaint). It alleges:

- That Sloan failed to report expenditures to Power of 5s. *See* A.R.S. § 16-942(B). Complaint at 1-3.
- That the amount of the alleged expenditures caused Sloan to exceed the spending limits to which he agreed as a participating candidate. See A.R.S. § 16-941(A), -942(A), C, D. Complaint at 1-3
- That Power of 5s undertook work for Sloan. The complaint alleges that Sloan directed Power of 5s to secure nomination petition signatures and to hire staff for the primary election. Complaint at 1. Furthermore, the Complaint alleges that Power of 5s "advanced" \$23,000 to defend

Sloan's signatures from challenge and to provide for an effort to challenge the signatures of other candidates. *Id.* at 2.

Sloan's campaign provided a response on Nov. 5, disputing those allegations. *See* Sloan Response (Exhibit B). In the response, the Sloan campaign alleges that Power of 5s provided plans and invoices that the Campaign never authorized. Sloan argues that the campaign tendered payment for more than \$67,000, but Power of 5 has yet to cash the check. Sloan disputes that the campaign ever authorized an expenditure for legal services. The Sloan Committee argues that whatever the "value of services" provided by Power of 5s is can be determined in a pending arbitration. (The Contract between Sloan and Power of Fives included an arbitration clause. The arbitration remains in the scheduling stages). Ultimately, Sloan argues, at least \$20,000 is available for that expense. Response at 2.

II. Legal Analysis

Failure to Report

Branch claims that the expenditure to Power of 5s was not properly reported. The Contract was signed in August to be "effective" January 1 2020. *See* Complaint Exhibit 1.

Under the Commission's rules.

"A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that: a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services; b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and c. Within seven calendar days of the date upon which the amount of the expenditure is

known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services." AAC R2-20-110.1 The Act and rules do not provide for an agreement to be post-dated to avoid the expenditure. Accordingly, there is reason to believe that the Contract was made the date it was signed in August and thus there is reason to believe that the Contract expenditure amount should not have been reported later than the report closing December 31, 2019. However, even if the post-dating of the agreement could move the expenditure back, it remains the case that no reporting of the expenditure took place until the tendering of the 67,000. *See* Exhibit C (Sloan campaign finance report). Accordingly, there is reason to believe a violation may have occurred. Additionally, to the extent that the Power of 5s "advanced" legal fees to the Campaign for an attorney, there is reason to believe that subvendor reporting was required. A.R.S. § 16-948.

Exceeding the Amount of the Campaign Spending Limits

Branch alleges that Sloan overspent the primary election spending limits by "at least \$23,056." He reaches this conclusion by adding Power of 5s claimed amount owed to the amount raised by the Campaign. Under A.R.S. § 16-941(A), Sloan was subject to several limitations, including on seed money. Under the Commission's rules, "[d]uring the primary election period, a participating candidate shall not make any expenditure greater than the difference between: 1. The sum of early contributions received plus public funds disbursed through the primary election period; less 2. All other expenditures made during and for the exploratory, qualifying and primary election periods." According to Sloan's campaign finance reports, he raised \$13,022.20 in early contributions, \$1,424.02 in personal/family contributions

^{1.} The Contract purports to place limitations on Power of 5s status as an agent, but those limitations are not relevant to the question of whether there is reason to believe a violation may have occurred. See Complaint Exhibit 1.

and received an allocation of \$116,016 for a total of \$130,462.22 in spending capacity. Sloan's pre-primary report indicates he spent \$105,183.42, including the amount he tendered to Power of 5s, leaving \$25,278.80 in spending capacity in the primary. Branch alleges he is owed an additional \$48,285.06. Consequently, there is, reason to believe that there may be a violation of ARS § 16-941(A).

Additionally, when Sloan and Power of 5s executed the Contract, the value of the alleged expenditure included in the document exceeded the amount of money Sloan was permitted to raise in seed money all together, which was \$29,004. A.R.S. \$ 16-945(A)(2); see also AAC R2-20-104(D)(6)("Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State, a candidate may incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit."). See also Ariz. Secretary of State, Arizona Citizens Clean Elections Act 2019-2020 Participating Candidate Expenditure & Contribution Limits

 $https://azsos.gov/sites/default/files/elections_2019-$

2020_Clean%20Elections_Act_Biennial_

Adjustments.pdf. Similarly, the expenditure as alleged provides reason to believe Sloan may have been over the spending limit of the Primary Election set forth in A.R.S. § 16-941(A)(3).

Additionally, the Complaint characterizes the payment of legal fees as an "advance" – in other words a contribution in the form of a loan. However, Power of 5s is not a legal donor under these facts. Section 16-941 provides for a limited amount of donations from particular kinds of contributors and Power of 5s does not fit those categories. Thus, there is reason to believe that a violation of 16-941 may have occurred. Finally, the Complaint raises the question of whether the legal

expenditures claimed by Power of 5s were direct campaign expenditures consistent with the Act.

Sloan counters that he has, in fact, attempted to pay Power of 5s more than half of the Contract price, and withheld an amount roughly equal to the legal fees described in the Complaint pursuant to A.R.S. §16-956. Furthermore, Sloan claims that the additional amounts allegedly owed under the Contract are for goods and services that were not authorized by the Sloan campaign. In other words, regardless of the Contracts terms, Sloan disputes that his campaign authorized expenditures beyond the amount tendered to the Company. Additionally, Sloan argues that the contractual arbitration proceeding should determine whether any more money is owed to Power of 5s. Consequently, although there is reason to believe violations may have occurred, there are substantial issues of fact related to the expenditures requiring further investigation. Additionally, Because of this aspect of the dispute, the Executive Director requests authorization to begin a repayment inquiry as outlined in section III.

III. Recommendation

Based on the Complaint, the Response, and the analysis above, the Executive Director recommends the commission determine reason to believe violations of the Clean Elections Act and Rules may have occurred. If the Commission determines by an affirmative vote of at least three of its members that it has reason to believe Sloan has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify Sloan of the Commission's finding setting forth: (i) the sections of the statute or rule alleged to have been violated; (ii) the alleged factual basis supporting the finding; and (iii) an order requiring compliance within fourteen (14) days. During that period, the Respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.

A.R.S. § 16-957(A) & AAC R2-20-208(A). If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, the Commission shall conduct an investigation. AAC R2-20-209(A). The staff seeks authorization for the Executive Director or the Commission's attorneys to subpoena all of the Complainant and Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit, and require persons with information to sit for depositions or other sworn testimony. Furthermore, because the Complaint and Response taken together raise substantial questions regarding the use of funds, the Executive Director requests authorization to begin an inquiry regarding repayment of funds.

Upon expiration of the fourteen (14) days, if the Commission finds that the alleged violator remains out of compliance, the Commission shall make a public finding to that effect and issue an order assessing a civil penalty unless good cause of reduction is shown. A.R.S. § 16-957(B).

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

Dated this 14th day of December, 2020

By: s/Thomas M. Collins

Thomas M. Collins, Executive Director



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

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

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

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

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

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

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

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

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

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

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

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

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

Blessings,

Dr. Bob Branch Managing Member The Power of Fives LLC

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

STATE OF ARIZONA)
)ss.
County of Maricopa)

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

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

ROBERT BRANCH, Applicant

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

Notary Public

Seal & Commission Expiration Date:

AMANDA PENNINGTON
Notary Public, State of Arizona
Maricopa County
Commission # 556386
My Commission Expires
September 17, 2022

Exhibit 1

Signed Contract between Eric Sloan and The Power of Fives LLC



SERVICE AGREEMENT

THIS SERVICE AGREEMENT (this "Agreement"), is entered into and effective as of 2015, by and between The Power of Fives, LLC, an Arizona limited liability company (the "Company"), and Free Stow, an individual (the "Candidate").

- The Candidate hereby engages the Company as an independent contractor and the Company hereby accepts such engagement upon the terms and conditions contained in this Agreement. During the term of this Agreement, the Company agrees to provide to the Candidate the services described in Exhibit A (the "Services"). The Company represents that the Company has the special skill, professional competence, expertise and experience to undertake the obligations imposed by this Agreement, and will perform the Services in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the Company's profession and in compliance with all applicable laws. The Company shall commit such time as is necessary to perform the Services. The Company acknowledges and agrees that the Company owes a duty while performing the Services under this Agreement to act in the best interests of the Candidate so as to maintain and increase the goodwill and reputation of the Candidate. The Company agrees to not make any statement, oral or written, intended to injure the business, interests or reputation of the Candidate. The Candidate agrees that during the term of this Agreement, without the Company's prior written consent, the Candidate will not engage any other consultant or contractor that provides services that are competitive to the Services provided by the Company.
- 2. <u>Compensation; Expenses.</u> The Company will be compensated for rendering the Services in the amounts set forth on <u>Exhibit A</u>. For the Services provided in Phase I of <u>Exhibit A</u>, the Company shall submit to the Candidate, not later than ten (10) days following the date hereof, an invoice setting forth the payment owed for Phase I. The Candidate shall pay all undisputed amounts on such invoice within thirty (30) days of the earlier of: (a) the termination of this Agreement, or (b) once the Candidate qualifies for public financing for the Primary Election. For the Services provided in Phase II or III of <u>Exhibit A</u>, the Company shall submit to the Candidate following the completion of some or all of the Services set forth in a respective payment period, an invoice setting forth the payment owed for such payment period. The Candidate shall pay all undisputed amounts on such invoices within thirty (30) days of receipt.

- 3. <u>Term.</u> The term of this Agreement shall commence upon the date first written above and shall continue until the Services have been completed, or as otherwise set forth in <u>Exhibit A</u>, unless earlier terminated as provided herein. The term of this Agreement may be shortened or extended upon the mutual written agreement of both parties.
- 4. <u>Termination</u>. Either party may terminate this Agreement for any reason by giving the other party written notice of the termination at least thirty (30) days in advance of the date of termination. This Agreement may also be terminated upon mutual written agreement of the parties. Upon termination, the Candidate shall pay the Company all amounts previously invoiced and/or incurred by the Company in connection with the Services and both parties shall immediately return to the other parties all Confidential Information (as defined below) and information and products of whatever nature or kind and in whatever format. If either party fails to promptly return any products to the other party after the termination of this Agreement, the party in violation of this Section 4 shall pay the other party, or the other party shall have the right to retain such amounts from any compensation owed under Section 2, an amount equal to the manufacturer's suggested retail price of such products.
- 5. Independent Contractor Status. The Company's relationship to the Candidate shall be that of an independent contractor. Nothing in this Agreement is intended to make the Company or its employees an employee or agent of the Candidate or confer on the Company or its employees any rights, privileges or benefits as an employee of the Candidate. The Company shall have no right, power or authority (and shall not hold itself out as having any such right, power or authority) to bind the Candidate in any manner or to any agreement or undertaking with any third party except as specifically provided in this Agreement.
- 6. Ownership and Return of Creations. All Work Product (as defined below), conceived, created, made, developed, or acquired by or for the Company used to perform the Services shall remain the property of the Company. "Work Product" shall include, without limitation, all designs, documents, manuals, videos, drawings, logos, improvements, plans, developments, processes, business methods, trade secrets, and any and all copyrightable expression, all copyrightable works, and all patentable subject matter, in all media (whether existing now or to be invented), whether or not protected by statute, including all derivative works. At the Company's request and no later than five (5) days after such request, the Candidate shall destroy or deliver to the Company, at the Company's sole option, (i) all Work Product, (ii) all tangible media of expression in the Candidate's possession or control which incorporate or in which are fixed any Confidential Information of the Company, and (iii) written certification of the Candidate's compliance with the Candidate's obligations under this Section 6.
- 7. Work Shall Not Infringe Third Party Rights. The Company represents and warrants to the Candidate that all Work Product used in connection with the Services shall not infringe upon or violate any rights (whether patent, copyright, trademark or otherwise) of any third party.

- 8. Confidentiality. In the course of its performance under this Agreement, each of the parties hereto may have access to and contact with certain confidential and proprietary information relating to the other party's business including, but not limited to, business strategy, marketing strategy, financial, pricing, customer and dealer information, product designs, drawings, specifications, processes, techniques, and other similar information, documents or materials, which are hereinafter referred to collectively as "Confidential Information." Each party agrees, throughout the term of this Agreement and at all times following the termination of this Agreement for any reason whatsoever, to neither disclose, use (except in connection with the provision of Services), communicate, reveal, transfer, nor make available to any third party in any manner whatsoever, any Confidential Information of the other party. The foregoing shall not prevent either party from disclosing Confidential Information necessary to enforce the provisions of this Agreement.
- 9. Indemnification. The Candidate will indemnify and hold harmless the Company, its officers, managers, members, agents, contractors and employees, if any, from any and all claims, losses, liabilities, damages, expenses and costs (including attorney's fees and court costs) (collectively, "Claims"), which result from (i) any breach or alleged breach of any misrepresentation of any warranty or representation made by the Candidate in or pursuant to this Agreement, (ii) failure by the Candidate to perform or comply with any covenant or agreement made by it in or pursuant to this Agreement, or (iii) any Claim brought by, through or under the Candidate's employees, officers, directors, principals, members, agents, subconsultants or subcontractors and/or anyone for whom any of them may be responsible, and all losses in connection with such Claims, arising out of, or resulting from, or in any manner connected with the Services. The rights and obligations of the parties under this Section 9 shall survive the expiration or earlier termination of this Agreement.
- hereby freely and voluntarily releases, waives, relinquishes and forever discharges on behalf of itself, its heirs, executors, administrators, officers, employees, agents or any other person claiming on its behalf, any and all claims, liabilities, obligations, demands or causes of action whatsoever (including those caused or alleged to be caused in whole or part by the negligence of the Company) (collectively, the "Releasees"), including, without limitation, claims for personal injury; wrongful death; property loss or damage; direct, indirect, punitive or consequential damages; lost profits; costs; charges; attorneys' fees; court costs; and other expenses of any kind arising, directly or indirectly, from the Services against the Company or its respective officers, employees, subsidiaries, affiliates, shareholders, members, directors, agents, successors and assigns.
- 11. <u>Picture/Media Release and Waiver</u>. The Candidate hereby irrevocably grants to the Company, its directors, officers, agents, employees and volunteers, and those acting with its authority with respect to the photographs, films, tape or other images taken of me by or on behalf of the Company (the "Images"), the unrestricted, absolute, perpetual, worldwide right to:
- (a) reproduce, copy, modify, create derivatives in whole or in part, or otherwise use and exploit the Images or any versions or portions thereof and my performance in connection with the Images, including my image, likeness, own or fictitious name, or reproduction thereof, biography, photograph, words, utterances, gestures and recorded voice, or

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

- (b) use and permit to be used the Candidate's name, image, likeness, biography, words, utterances and gestures, whether in original or modified form, in connection with the Works as the Company may choose, and
- (c) display, perform, exhibit, distribute, transmit or broadcast the Works by any means now known or hereafter to become known.

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

- 12. <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each such counterpart shall be deemed an original.
- 13. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties with respect to its subject matter; any other oral or written agreements entered into with respect thereto are revoked and superseded by this Agreement; and no representations, warranties or inducements have been made by either of the parties except as expressly set forth herein. This Agreement cannot be amended except by a written instrument signed by both parties.
- 14. <u>Severability</u>. If any provision of this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.
- 15. <u>Assignability</u>. This Agreement may not be assigned by the Candidate without the prior written consent of the other.

- or controversy regarding this Agreement and if a resolution is not reached within thirty (30) days, the dispute, claim or controversy shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules for expedited arbitration. The parties agree that the arbitration will be conducted in Phoenix, Arizona. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The parties agree that any dispute shall be heard and determined by one arbitrator appointed in accordance with the Commercial Arbitration Rules. Unless the parties agree otherwise, pre-hearing discovery shall be limited to the exchange of information and the production of documents required by the arbitrator from the parties.
- 17. Governing Law: Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona, without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Arizona. Should any litigation be commenced under this Agreement, the successful party in such litigation shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such litigation.
- 18. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written or electronic verification of receipt. All notices shall be sent to the parties at the addresses set forth below their signatures to this Agreement or at such other address as a party may designate by ten (10) days' advance written notice to the other party.

[Signature page follows.]

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

CANDIDATE:

Name:

Stortidule or 8525)

[Address]

COMPANY:

THE POWER OF FIVES, LLC

Name: Robert Branch

Title: Manager

7000 North Cotton Lane, Suite 443,

Waddell, Arizona, 85355

EXHIBIT A

SERVICES AND COMPENSATION

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

Phase	Services Provided / Term	Compensation
Phase 1: Prefunding	Phase I will commence on the effective date of this Agreement and will end once the Candidate qualifies for public financing under the Act for the Primary Election. During Phase I, the Company will provide the following services: Develop the campaign strategy for the Candidate, develop the Candidate's brand, develop the strategy to collect nomination petition signatures, and develop the strategy to collect qualifying \$5 contributions. Groom the Candidate, help develop the Candidate's message and start branding the Candidate as a "The Power of Fives Candidate."	[40% of the Primary Fund Distribution.]
	 Organize forums that the Candidate can attend to collect qualifying \$5 contributions for the Primary Election. 	
Phase II: Funded Primary	Phase II will commence after the Candidate qualifies for public financing for the Primary Election and will end following the Primary Election, which is on Aug 4th, 2020 (Note. If the Candidate does not qualify for public financing under the Act, this Agreement shall immediately terminate). During Phase II, the Company will provide the following turn-key services: Continue to groom and train the Candidate. Manage the Candidate's campaign with a campaign management team. Continue branding the Candidate as a "The Power of Five Candidate" and develop the Candidate's message. Handle all print and radio advertising during Phase II, including (number based on the office sought) yards signs, and (number based on the office sought) of large highway signs. Provide support as needed to support the strategic plan of the campaign, as determined by the Company.	[60% of the Primary Fund Distribution.]
Phase III: Funded General Election	Phase III will commence if the Candidate win the Primary Election and will end following the General Election, which is on Nov 3rd, 2020 (Note: If the Candidate does not win his or her Primary Election, this Agreement shall immediately terminate). During Phase III, the Company will provide the following turn-key services: Tailor the campaign with the Candidate to run against his or her new opponent. All campaign management will be provided, as well as any support that is needed based on the campaign plan and as determined by the Company. All print and radio ads will be provided by the Company as needed to support the campaign plan.	[100% of the General Election Fund Distribution.]

Exhibit 1I

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

AGREEMENT BETWEEN SLOAN LYONS LLC and THE POWER OF FIVES LLC

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

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

RESPONSIBILITIES OF CONSULTANT

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

RETAINER FEE FOR WORK PERFORMED

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

TERM OF AGREEMENT

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

LABOR AND EQUIPMENT

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

INDEPENDENT CONTRACTOR STATUS

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

WORKERS' COMPENSATION INSURANCE

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

CONFIDENTIAL OR PROPRIETARY INFORMATION

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

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

CONFLICT OF INTEREST:

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

ENTIRE AGREEMENT

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

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

SLOAN LYONS LLC

BY: Alisa Lyons Sloan, Member

Date

1

BY: Robert Branch, Member

THE POWER OF FIVES LLC

Exhibit III

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

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

ENGAGEMENT AGREEMENT

April 16, 2020

Dr. Robert "Bob" Branch

Dear Dr. Branch:

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

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

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

Billing Statements and Payment.

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

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

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

Dr. Branch April 20, 2020 Page -2-

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

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

Sincerely,

TIMOTHY A. LA SOTA, PLC

Timothy La Sota

Timothy A. La Sota

ACCEPTED this 16 day of April, 2020.

1

Dr. Robert "Bob" Branch

Exhibit IV

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

Timothy A. La Sota, PLC

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

Invoice Number: 3631 (June 2020)

Matter: Power of Fives, general

TO:

Dr. Robert Branch Principal, Power of Fives

April/May

\$23,000 flat fee, per Agreement

TOTAL DUE: \$23,000.00

Thank you!

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CORPETITION

Exhibit V

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

Timothy A. La Sota, PLC

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

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

Matter: Power of Fives, general

TO:

Dr. Robert Branch Principal, Power of Fives

April/May

\$23,000 flat fee, per Agreement:

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

Dunn Appeal: \$3,000.

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

Total: \$23,000

Total Paid: \$23,000

TOTAL DUE: \$0

Thank you!

Exhibit VI

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



SENT VIA EMAIL AND USPS

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

July 31, 2020 Primary Election Invoice

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

Eric,

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

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

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

Total Campaign Services

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

Total =

\$116,016.00



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

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

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

Thank you for the opportunity to provide these services.

THE POWER OF FIVES LLC

Dr. Robert Branch Managing Member

The Power of Fives LLC

Dr.Branch@thepoweroffives.com

602-334-6519

Lee Miller

ATTORNEYS AT LAW

The Wilenchik & Bartness Building 2810 North Third Street Phoenix Arizona 85004

Telephone: 602-606-2810 Facsimile: 602-606-2811 November 5, 2020

Mr. Tom Collins

Executive Director, Citizens Clean Elections Commission

1616 West Adams, Suite 110

Phoenix, Arizona 85007 via email to thomas.collins@azcleanelections.gov

RE: Complaint for Power of Fives against Sloan 2020

Dear Tom:

This firm represents candidate Eric Sloan and the Sloan 2020 candidate committee (collectively the "Committee"). I write to respond to the allegations made against the Committee by Bob Branch. A cursory review of the Committee's campaign finance reports together with our enclosures directs a decision that no violations of the Clean Election Act or its regulations have occurred and that this matter should be closed as there is no basis to proceed.

Simply put, Mr. Branch is a disgruntled consultant who was fired by the Committee because the firm failed to follow the Committee's directions. Two things are critical to note. The first is that the Committee has already tendered payment to Branch's company in the amount of \$67,730. As of this writing Branch has not cashed the check. The Committee, as it has already informed the Commission, disputes that it owes Branch anything else, including reimbursement for legal fees. Nonetheless, the Committee has reserved \$23,000 in its primary spending account if it is ultimately determined that the Committee does owe that amount. As called for in the original contract the Committee signed with Branch's company, this dispute is subject to arbitration. Both sides are proceeding through the initial steps of the arbitration process. The arbitrator has not yet scheduled a hearing.

The Committee terminated Branch on July 25, 2020. The Committee's principal reason for terminating his firm is that they would not take direction from the Committee and continually presented the committee with plans and invoices for services not authorized by the Committee. Branch sent the Committee an invoice on July 24 and proposed to bill for such items as potential development and support expenses as well as future use of Branch's logo. The Committee, on the other hand, expected Branch to budget and bill for things like social media ad placement, text messages, radio and the usual voter contact expenses. The Committee and Branch never agreed on a primary period spending program and he was terminated per the contract.

The July 24 invoice from Branch is also informative in that it acknowledges that as of that day Branch believed the Committee was still \$20,000 under its Clean Elections funding amount, let alone the amount available to the Committee when seed money is added to the available balance. This \$20,000 is the amount reflected in the Branch invoice for "signs estimated cost not paid." The Committee raised over \$13,000 in seed money and, as of July 24, had \$3982 in cash on hand.

Branch asserts he is owed a total of \$116, 016 regardless of the quantity or quality of goods or services he provided to the Committee. The Committee disagrees. The Committee may have ultimately spent that amount of money with Branch but that to do so there would have been



continuing discussions and consent to the pieces and parts of Branch's campaign plan. The Committee did pay Branch for the services that were satisfactory to the campaign. We dispute that there was any agreement to reimburse Branch for legal fees, however we have reserved an appropriate amount should it be determined that the Committee is liable for that expense. And even Branch agrees that when he was terminated the Committee still had at least \$20,000 in available funds.

One can debate the value of the services Branch provided and we will do that in the arbitration. Regardless of the value, the Committee has tendered payment of \$67,730 to Branch. Likewise, an arbitrator will rule on whether any one authorized to spend the Committee's money authorized a fee agreement between Branch, Tim LaSota and the Committee. Our position is that neither Mr. Sloan nor anyone else authorized by the Committee approved this expense. For these purposes that matter is irrelevant as an appropriate amount is held in reserve. Branch himself acknowledges that on the day he was terminated the Committee had neither spent nor committed to its' remaining \$20,000 balance of Clean Elections funding. And, the Committee still had \$3982 of seed money on hand. The Committee did not exceed its primary spending limit. This matter should be closed as there is no legal or factual basis on which to proceed.

cerel

Lee Miller

Enclosures

cc:

Eric Sloan Alisa Lyons Jack Wilenchik



Invoice # 1007
Preliminary Invoice

July 24, 2020

Sloan2020 Campaign Mr. Eric Sloan 8649 E. Holly Street Scottsdale, Arizona 85257

Hello Eric.

I want to congratulate you on the successful Primary Election. The Power of Fives LLC is excited to have provided to you a winning strategy that guided you to victory. Your victory is our shared victory.

Per your request, here is a preliminary invoice for budgeting purposes, and the final bill will be submitted once the Primary is finalized. As you can see, we have one item on the bill that is an estimate and that is for highway signs. I am using the figures that you and Brett gave me (\$15,000 plus \$5000 for stakes). I tried to put it in Alisa's format, and I did the best that I could; however, her format did not take into consideration expenses like copies. If she has any suggestions on the format that I am providing please let me know.

Here is the breakdown of the preliminary invoicing for the Primary Election. As you can see, we are almost out of Primary money, so we need to keep track of the actual cost of the highway signs.

Strategic Campaign Development	\$ 25,000.00
Orientation with photos	\$ 500.00
Candidate Training	\$ 1,000.00
Candidate Field Support	\$ 28,872.00 Partial payment of \$23,622 (less expenses for \$5,250 future field support)
Signature Challenge Strategy	\$ 23,000.00 Disputed - Not paid
Campaign Meet and Greets	
Includes tables at events	\$ 575.45
Voter contact development	\$ 6,504.72
Campaign Development Admin	\$ 7,300.00
Media Banners	\$ 301.91
Media Linkedin accounts	\$ 1,500.00
Use of The Power of Fives Brand Logo	\$ 1,000.00
Copies	\$ 426.86
Media Prebuys 1000 highway signs	\$ 20,000.00 Estimated Cost Not paid
Preliminary Total	\$115.980.94

The Power of Fives LLC - 7000 N. Cotton Lane, Suite #443, Waddell, Arizona 85355

Again, congratulations on a very successful Primary, and please know that The Power of Fives looks forward to working on your victory in the General Election.

It is a pleasure working with you and your campaign toward the path to victory.

The Power of Fives LLC

Dr. Bob Branch
Managing Member
7000 N. Cotton Ln, Ste. 443
Waddell, AZ 85355
602-334-6519
Dr.Branch@thepoweroffives.com

Fwd: Revised Invoice and Contract Termination Notification

Alisa Lyons <alisa@sloanlyons.com>

Thu 11/5/2020 10:57 AM

To: lee@leemillerlaw.com <lee@leemillerlaw.com>

Begin forwarded message:

From: Eric Sloan < sloanforarizona@gmail.com >

Date: July 25, 2020 at 1:29:17 PM MST

To: Bob Branch < dr.robertbranch@gmail.com >, "Dr. Bob Branch"

<<u>dr.branch@thepoweroffives.com</u>>

Cc: lee@leemillerlaw.com

Subject: Revised Invoice and Contract Termination Notification

Bob: Thank you for sending your preliminary invoice.

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

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

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

Eric C. Sloan
SloanforArizona@gmail.com
602-300-7618

Paid for by Sloan2020



Campaign Finance Report

Committee #: 20200066

Sloan2020

Treasurer: sloan, eric 10450 N 74th St, Scottsdale, AZ 85258

Phone: (602) 300-7618

Email: sloanforarizona@gmail.com Candidate Name: Sloan, Eric Office Sought: Corporation Commissioner

Amended 2020 Primary Recap Report

Election Cycle: 2020

Date Filed: August 14, 2020

Reporting Period: July 29, 2020-August 4, 2020

Summary of Finances

Cash Balance at Beginning of Reporting Period: \$113,604.14

Total Cash Receipts this Reporting Period: \$50.00

Total Cash Disbursements this Reporting Period: \$89,799.36

Cash Balance at End of Reporting Period: \$23,854.78

Report ID: 216298

202000066 Sloan2020

Summary of Activity

Income	Schedule		This Period		F - 4 - 4 - 4 - 4 - 4 - 4 - 4 - 4 - 4 -
		Cash	Other	Total	lotal to Date
Personal and Family Contributions	C1	00'0\$	\$0.00	\$0.00	\$1,424.02
Individual Contributions	C2	00'05\$	00.0\$	\$50.00	\$13,022.20
Contributions from Political Committees	C3a,b,c	00'0\$	00.0\$	00.0\$	00'0\$
Business Contributions	C4a,b,c	00'0\$	00.0\$	00'0\$	00'0\$
Small Contributions	C2	00'0\$	00.0\$	00.0\$	00'0\$
CCEC Funding and Matching	90	00'0\$	00.0\$	00'0\$	\$116,016.00
Qualifying Contributions	C7	00'0\$	00.00\$	00.0\$	00.0\$
Loans Made to this Committee	L1	00'0\$	00.0\$	00'0\$	00'0\$
Other Receipts, including Interest and Dividends	R1	00'0\$	00.00\$	00.0\$	00.0\$
Transfers from Other Committees	T1	00'0\$	00.0\$	00.0\$	00'0\$
Cash Surplus from Previous Committee	S1	00'0\$	\$0.00	00.0\$	00.0\$
Total Income		00'05\$	\$0.00	\$50.00	\$130,462.22
Expenditures	Schedule		This Period		STOR OF STORE
		Cash	Other	Total	lotal to Date
Operating Expenses	E1	\$89,799.36	\$0.00	\$89,799.36	\$105,183.42
Independent & Ballot Measure Expenditures	E2a,b,c	00'0\$	\$0.00	00.0\$	00'0\$
Contributions to Committees/Businesses	E3a -E3f	00'0\$	\$0.00	00.0\$	00.0\$
Small Expenses	E4	00'0\$	00.0\$	00.0\$	00'0\$
Transfers to Other Committees	T1	00'0\$	00.00\$	00.0\$	00.0\$
Loans Made by This Committee	L2	00'0\$	\$0.00	\$0.00	\$0.00
Disposal of Surplus Cash	S1	00'0\$	00.0\$	\$0.00	\$0.00
Total Expenditures		98'662'68\$	\$0.00	\$89,799.36	\$105,183.42

\$89,799.36

Bill Payments for Previous Expenditures

Total Cash Disbursed

Schedule C	Schedule C2 - Individual contributions	Date	Amount	Cycle To Date
Name:	Root, Scott	08/03/2020	\$20.00	\$100.00
Address:	10428 W Meade Dr, Sun City, AZ 85351		Cash	
Occupation:	Realtor, Self			
Total of Individual Contributions	ontributions		\$20.00	
Total of Refunds Given	en		\$0.00	
Net Total of Individual Contributions	al Contributions		\$20.00	

3

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Schedule E1	1 - Operating expenses	Date	Amount	Cycle To Date
Name:	Anedot	07/29/2020	\$451.97	\$451.97
Address:	PO Box 84314, Baton Rouge, LA 70898		Cash	
Category:	Miscellaneous - Other			
Memo:	Credit Card Processing Fees			
Name:	Arena Mail & Digital	07/29/2020	\$9,857.00	\$9,857.00
Address:	1260 Stringham Avenue, Suite 350, Salt Lake City, UT 84106		Cash	
Category:	Communications - Advertising			
Memo:	Advertising, Website Development, Web Hosting, Video Production			
Name:	Chance Wnuck	07/29/2020	\$1,600.00	\$4,600.00
Address:	4649 E Acoma Dr, Phoenix, AZ 85032		Cash	
Category:	Professional Services - Sign installation			
Name:	SED Agency LLC	07/30/2020	\$5,000.00	\$5,000.00
Address:	3655 Anthem Way, A-109 #272, Anthem, AZ 85086		Cash	
Category:	Communications - Other			
Memo:	Website Development			
Name:	Intrepid Global Strategies, LLC	08/03/2020	\$2,000.00	\$2,000.00
Address:	3421 E Avalon Dr, Phoenix, AZ 85018		Cash	
Category:	Professional Services - Consultants			
Memo:	Campaign Consulting			
Name:	Ladge Films, LLC	08/03/2020	\$2,300.00	\$2,300.00
Address:	1 N 1st St Suite 642, PHoenix, AZ 85004		Cash	
Category:	Professional Services - Photography			
Memo:	Filming			
Name:	Lee Miller, Attorney at Law	08/03/2020	\$609.45	\$909.45
Address:	2029 E Orangewood Ave, Phoenix, AZ 85020		Cash	
Category:	Professional Services - Attorney fees			
Name:	The Power of Fives LLC	08/03/2020	\$67,730.94	\$67,730.94
Address:	7000 N. Cotton Lane, Suite 443, Waddell, AZ 85355		Cash	
Category:	Professional Services - Consultants			
Memo:	Campaign Consulting			
Name:	TIMON HARPER	08/03/2020	\$250.00	\$250.00
Address:	PHX, PHOENIX, AZ 85031		Cash	
Category:	Professional Services - Photography			
Total of Operating Expenses	sesuedx		\$89,799.36	
Total of Refunds, Re	Total of Refunds, Rebates, and Credits Received		\$0.00	
Net Total of Operating Expenses	ng Expenses		\$89,799.36	
•				

EXHIBIT E



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

Location: Citizens Clean Elections Commission

1616 West Adams, Suite 110

Phoenix, Arizona 85007

Date: Thursday, January 28, 2021

Time: 9:30 a. m.

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

Join Zoom Meeting

https://us02web.zoom.us/j/82206073831?pwd=SzEyNDl2amlGQ1ZPb2w0WXJicnNhUT09

Meeting ID: 822 0607 3831 Passcode: 638364

One tap mobile

+16699006833,,82206073831#,,,,,0#,,638364# US (San Jose) +12532158782,,82206073831#,,,,,0#,,638364# US (Tacoma)

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

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

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

The agenda for the meeting is as follows:

- I. Call to Order.
- II. Discussion and Possible Action on Commission Minutes for December 17, 2020.
- III. Discussion and Possible Action on Executive Director's Report and Legislative Update, including election and administrative bills such as HB2014 and HB2110.
- IV. Discussion and Possible Action on 2021 Voter Education Plan.
- V. Discussion and Possible Action on the following 2020 Primary Election Candidate Audits.
 - A. Anna Tovar, Corporation Commission
 - B. Lea Marquez Peterson, Corporation Commission
 - C. Eric Sloan, Corporation Commission
 - D. Ryan Starzyk, State Senate, LD24
 - E. Ed Cocchiola, State Rep, LD1
- VI. Discussion and Possible Action on MUR20-03, Arizona Education Association.
- VII. Discussion and Possible Action on Proposed Meeting Dates for February July 2021.
- VIII. Recognition and Appreciation to Commissioner and Past Chairman, Galen D. Paton, for his service to the Commission and the State of Arizona.
- IX. Public Comment

This is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism

X. Adjournment.

This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission's office, 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

Dated this 26th day of January, 2021 Citizens Clean Elections Commission Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Commission at (602) 364-3477. Requests should be made as early as possible to allow time to arrange accommodations.

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4	THE STATE OF ARIZONA
5	CITIZENS CLEAN ELECTIONS COMMISSION
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10	REPORTER'S TRANSCRIPT OF PUBLIC VIRTUAL MEETING
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13	
14	Phoenix, Arizona
15	December 17, 2020
16	9:31 a.m.
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18	
19	
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21	COASH & COASH, INC.
22	Court Reporting, Video & Videoconferencing 1802 North 7th Street, Phoenix, AZ 85006 602-258-1440 staff@coashandcoash.com
23	502 230 1440 Scallecoasiiaiidcoasii.Com
24	Prepared by: LILIA MONARREZ, CSR, RPR
25	Certificate No. 50699

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09:33:14-09:34:14 Page 2 Page 4 PUBLIC VIRTUAL MEETING BEFORE THE CITIZENS CLEAN ELECTIONS COMMISSION convened at 9:31 a.m. on December 17, 2020, at the State of Arizona, Clean Elections Commission, 1616 West Adams, Phoenix, Arizona, in the presence of the following Board members: 1 COMMISSIONER CHAN: I move that we adopt 2 2 the minutes as written. 3 3 CHAIRMAN PATON: Do I have a second? 4 Mr. Galen D. Paton, Chairperson Ms. Amy B. Chan Mr. Mark S. Kimble 4 COMMISSIONER KIMBLE: Commissioner Kimble. 5 5 Second. 6 OTHERS PRESENT: 6 CHAIRMAN PATON: Okay. So, was that for Thomas M. Collins, Executive Director Paula Thomas, Executive Officer Gina Roberts, Voter Education Director Mike Becker, Policy Director Alec Shaffer, Web Content Manager Avery Oliver, Voter Education Specialist Julian Arndt, Executive Support Specialist Kara Karlson, Assistant Attorney General Jeanne Galvin, Assistant Attorney General Kyle Cummings, Assistant Attorney General Kyle Cummings, Assistant Attorney General Leo Miller, Wilenchik & Bartness Joshua Offenhartz, Wilenchik & Bartness William Fischbach, Tiffany & Bosco Dr. Bob Branch, Power of Fives Leezah Sun, Candidate Bob Christie, AP 7 Thomas M. Collins, Executive Director both August and October meetings? 8 COMMISSIONER CHAN: Oh, I'm sorry, 9 **9** Mr. Chairman. On the agenda, it just says the 10 Commission minutes for November 19th, 2020. 11 CHAIRMAN PATON: Okay. But my notes say 11 12 12 something different. So, we'll just go with that, 13 13 14 So, we are -- we have a motion and a second 15 15 to adopt the minutes for November 19th, 2020, and we'll 16 16 start voting. 17 17 Commissioner Chan, how do you vote? COMMISSIONER CHAN: I vote ave. 18 18 19 19 CHAIRMAN PATON: Commissioner Kimble? 20 COMMISSIONER KIMBLE: Aye. 20 CHAIRMAN PATON: And this is Commissioner 21 21 22 Paton, and I vote aye, as well. The motion passes. 22 Item III: Discussion and possible action 23 24 on Executive Director's report. 24 25 Mr. Collins? 25

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1 PROCEEDING

2

- 3 CHAIRMAN PATON: Okay. This is
- 4 Commissioner Galen Paton, and I will call the meeting
- 5 to order. Agenda 1 is to call the order. It is 9:30
- 6 on December 17th, and I call this meeting of the
- 7 Citizens Clean Elections Commission to order.
- 8 And we will go through the roll call, and
- **9** let me know if you are here.
- 10 Commissioner Chan?
- 11 COMMISSIONER CHAN: This is Commissioner
- 12 Chan. I am here.
- 13 CHAIRMAN PATON: Welcome. I see you.
- 14 Commissioner Kimble?
- 15 COMMISSIONER KIMBLE: I am here.
- 16 CHAIRMAN PATON: And I believe Commissioner
- 17 Meyer and Commissioner Titla are not present. And so,
- 18 I'm Commissioner Galen Paton, the chairman, and I'm
- **19** here.
- 20 So, Item II: Discussion and possible
- 21 action on minutes for the November 19th, 2020 meeting.
- 22 Any discussion?
- 23 COMMISSIONER CHAN: Mr. Chairman, this is
- 24 Commissioner Chan.
- 25 CHAIRMAN PATON: Yes. Go ahead.

- MR. COLLINS: Yes, Commissioner -- Chairman
- 2 Paton, Commissioners. So, I will -- I'm going to get
- 3 through the agenda fairly -- through this part of the
- 4 agenda fairly quickly.
- 5 Just a quick preview with respect to the
- 6 rest of the meeting and those of who you are waiting
- 7 for the Item -- I think it's VI, I think we should be
- 8 able to get there fairly quickly.
- 9 So, we had -- the electors met on
- 10 December 14th and, you know, you can see in the report
- 11 some of the activities that happened leading up to
- 12 that, in terms of the canvass and other aspects.
- You know, we did a -- as you all know, we
- 14 did a letter, you know, thanking the voting community
- 15 and the election officials and others for their efforts
- 16 in this election and, you know, we do continue to
- 17 follow up on many of those -- those kinds of
- 18 educational and informational opportunities.
- You know -- and, as you can see, working
- 20 through this month, the Voter Education team will be
- 21 plugging away really right through the end of the month
- 22 and has been.
- A couple of quick points for us, I just
- 24 want to make -- if I can figure out how to use my mouse
- 25 here for a second.

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- 1 The one other thing I wanted to really
- 2 mention, you know, we are -- as far as our regulatory
- 3 agenda, you'll see there that we've identified, you
- 4 know, what we think is going to be our main regulatory
- 5 agenda for the coming year. That's something that we
- 6 will post on our -- on our website, and part of that is
- 7 just the -- part of the process of some of the things
- 8 that we -- boxes, frankly, that we need to check off in
- 9 terms of notice for purposes of the rule-making process
- **10** now.
- 11 And right now, as we look at things, we
- 12 think the main thing will be to make sure that we need
- 13 to evaluate and determine if there's any rules that we
- 14 need to update because of the Court of -- Court of
- 15 Appeals' decision that we got in October, I want to
- 16 say, and we know that some of those things we were
- 17 ahead of the game on in terms of the rules we adopted
- 18 in, like, 2017. Other things will definitely have to
- 19 change.
- 20 So -- and then -- and I hope to get in
- 21 contact with the Governor's Regulatory Review Council
- 22 staff, hopefully, soon in the new year to make sure
- 23 we're on track there.
- 24 So, you know, really not a lot to report,
- 25 other than our ongoing, you know, Voter Education

- 1 And, then, because the statute sets up our budgeting --
- 2 sets those caps around calendar years, you know, it
- 3 follows from that that our budget follows the calendar
- 4 year.
- 5 So, what we have done here, as we had in
- 6 prior years, is identified those things that are
- 7 calculations that are required to be done by statute
- 8 and, then, included in that, also, our anticipated
- 9 budget for the coming calendar year.
- .0 A couple of things that I would note,
- 11 first, you know, obviously, there's not going to be
- 12 candidate funding in this calendar year because
- 13 we're -- candidates cannot file for 2022 until January
- **14** of 2022 for their funding.
- And, then, I think the other thing I
- 16 just -- I just want to make a quick point about is
- 17 that -- you know, there's two things. One, as we
- 18 always see on this memo, there is a structural, if you
- 19 will -- well, "structural" is not the right word.
- 20 There is a projection we have to do that will -- that
- 21 continues to show the funded deficit if we spent at the
- 22 maximum allowable under law. You know, that projection
- 23 is required by statute, but you know, that's not a --
- 24 that's not a true deficit because we don't spend at
- 25 that level. It's just, you know, if we were -- if we

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- 1 activities, but if you have any questions,
- **2** Commissioners, I'm happy to answer them.
- 3 Thank you.
- 4 I'm sorry, Mr. Chairman. I think you're on
- 5 mute.
- 6 CHAIRMAN PATON: I was on mute.
- 7 Any comments from the audience on this
- 8 item? You can signal the moderator if you have any
- 9 comments.
- 10 (No response.)
- 11 CHAIRMAN PATON: If not, then, moving on to
- 12 Item IV: Discussion and possible action on 2021
- 13 calendar year budget.
- 14 And Mr. Collins is going to begin our
- 15 discussion and Mike is on hand if you have any
- 16 additional questions.
- 17 Go ahead, Tom.
- 18 MR. COLLINS: Yes. Thank you,
- 19 Mr. Chairman.
- We are -- so every year, as I think all
- 21 of -- all of you have gone through this for at least
- 22 four years. Basically, what we do is we -- the statute
- 23 obligates us to make some projections about, you know,
- 24 what the fund looks like, what our projected expenses 25 are, and make those calculations on a formula basis.

- 1 spent at the statutory capacity.
- 2 And, then, the other, you know, point, I
- 3 think, is worth stressing is that this is not a
- 4 calendar year appropriation that rolls over; rather,
- 5 the way that the statute operates is that the surcharge
- 6 that funds the Act is collected. The treasurer is
- 7 directed to place that -- to place those dollars in
- 8 the -- into the Clean Elections fund, you know, where9 they remain because they are appropriated explicitly by
- 10 the statute, by the voters.
- So, with that background, you know, I think
- 12 that -- you know, other than, obviously, in these
- 13 off-years, we have a reduction in our overall spending.
- 14 We don't have any -- anything that we think is
- 15 necessarily -- I mean, basically, I'd turn it over to
- 16 you all for -- to any commissioner that has questions
- 17 or comments.
- 18 You know, I, also, note that
- 19 programmatically, you know, we anticipate coming to the
- 20 Commission with the voter -- with our voter education
- 21 plans for the coming year in the coming year. So, once
- 22 we have -- once we've made this determination about the
- 23 budget, you know, then Gina and her team will -- and
- 24 Paula will work on that process.
- 25 So, you know -- so, at that point,

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- 1 Mr. Chairman, if you have any questions or comments,
- 2 we're happy to answer them.
- 3 CHAIRMAN PATON: Any questions for
- 4 Mr. Collins from the Commission?
- 5 COMMISSIONER KIMBLE: Yes, Mr. Chairman.
- **6** This is Commissioner Kimble.
- 7 CHAIRMAN PATON: Yes, Commissioner Kimble,
- 8 go ahead.
- 9 COMMISSIONER KIMBLE: Mr. Collins, I don't
- 10 want to get too much into the weeds on the budget, but
- 11 looking through it, the total expenses are up
- 12 substantially, more than twice what they were last
- 13 year. And I can see personnel services are going up
- **14** substantially, data processing.
- 15 Could you just talk about some of the
- 16 reasons for going from total expenses of about 670,000
- **17** to about 1.4 million?
- 18 MR. COLLINS: I would -- well, I'm going to
- **19** ask Mike to rescue me on this.
- 20 MR. BECKER: Mr. Chairman, Commissioner
- 21 Kimble, a couple of reasons the numbers are a little
- 22 bit off. One, the full amount that the Commission has
- 23 spent in 2020 has not come in yet. So, when you are
- 24 looking at the actual numbers and comparing it to what
- 25 we're budgeting, the actual numbers are going to

- 1 thing, candidate funding projections. In 2018, it was
- 2 close to \$9 million to candidates. 2020, it was \$2.9
- 3 million.
- 4 Is that, substantially, because there were
- 5 no -- outside the Corporation Commission, no statewide
- 6 races or are fewer people signing up to be Clean
- 7 Elections candidates?
- MR. BECKER: Mr. Chairman, Commissioner
- 9 Kimble, it's both. We do expect more candidates
- 10 because there's going to be another statewide race for
- 11 the Governor and Secretary of State. We do expect the
- 12 numbers to increase a bit, but not where it was several
- 13 years ago. And we don't have the numbers that we used14 to have, and this year was only the Corporation
- 15 Commission for the statewide. So, that's why.
- 16 COMMISSIONER KIMBLE: So, is it right to
- 17 say there's been, like, a -- there's been a steady
- 18 decline in interest in being a so-called clean
- 19 candidate?
- 20 MR. BECKER: Mr. Chairman, Commissioner
- 21 Kimble, when matching funds went away several election
- 22 cycles ago, we had a dramatic decline. Now we've seen
- 23 a steady -- a steady rate of, roughly, somewhere
- 24 between 28 and 35 candidates running through the Clean
- 25 Elections. That may go up a bit with more statewide

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- 1 increase. We did not -- we do not have those numbers
- 2 for December, and we will have more numbers in January.
- 3 So, that number will increase.
- 4 As far as your external data processing,
- 5 that number has increased quite a bit for both the
- 6 voter ed side and the admin side, and the reason for
- 7 that is we are -- there are a couple of reasons. One,8 we're moving from the way we handle our system and
- 9 things like that, we're going to a Cloud basis through
- 10 the State. And there's a lot of detail that has been
- 11 worked out by our IT group and a lot of work on that.
- 12 So, we are -- we are budgeting quite a bit more than we
- 13 think is going to actually be needed so that we don't
- 14 have to come back to you time and time again.
- 15 Secondly, we are, also, having to update
- 16 our systems, our individual computers, as well as our
- 17 laptops, to do security upgrades and to get more
- 18 software that are more compatible with what we're doing
- 19 in the state. So, that's why those numbers have
- 20 increased, but overall, you will see our actual numbers
- 21 will go up at the end of this month and in January,
- 22 when we get final numbers for what we put the
- 23 Commission spent for 2020.
- 24 COMMISSIONER KIMBLE: Okay. And one other
- 25 question I had, the last page of this -- of this budget

- 1 offices open in 2022, but we expect in that range
- 2 again
- 3 MR. COLLINS: And, if I could,
- 4 Mr. Chairman, Commissioner Kimble, just add a little to
- 5 Mike's point about that, with respect to participation,
- 6 I think there's two other issues that we don't -- you
- 7 know, we don't know -- I think Mike is right that we
- 8 have reached a point of stability. What we don't know,
- 9 in a given year -- and we've had now -- just in 2016,
- 10 we had the 2016 election cycle, 2018 election cycle and
- 11 the 2020 election cycle.
- 12 Those election cycles have all been under
- 13 different regimes, campaign finance-wise, as applied to
- 14 the Clean Elections Act. The first being in 2018, we
- 15 were under the same rules as we now will be under
- 16 following the Court of Appeals' decision. And, then,
- 17 in 2020, it was our first year under Prop 306, and we
- L8 know for a fact that there have been wild
- 19 misconceptions about the effect of that Act and active
- 20 discouragement of folks running clean because of it.
- 21 You know, whether that's -- and, you know,
- 22 that is -- that is a true statement that those things
- 23 have occurred. Whether or not those inaccurate
- 24 portrayals of the law will change -- as they're

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- 1 now that the Court of Appeals has settled, you know,
- 2 one of the -- a couple of the major outstanding issues
- 3 related to that, you know, I mean, we may see some
- 4 changes in 2022 one way or another, but it's -- you
- 5 know, we have not had a stable legal regime in place
- 6 under Clean Elections or under the campaign finance
- 7 system as a whole since 2016.
- 8 It's changed every -- every cycle. So, it
- 9 just makes it a little harder for consultants and
- 10 attorneys who, you know, have -- you know, to make the
- 11 kind of decisions and advice that they might otherwise.
- **12** So that's just my two cents. The facts are the facts.
- 13 That's my inference and subject to your own point of
- 14 view.
- 15 COMMISSIONER KIMBLE: Well, I guess -- and
- 16 I don't want to get too much into it today, but it
- 17 seems like a topic for future discussions about are
- 18 there things we can and should be doing to -- to
- 19 encourage more candidates to consider running as Clean
- 20 Elections candidates.
- MR. COLLINS: Yeah. Mr. Chairman,
- 22 Commissioner Kimble, I agree. I think -- I think
- 23 that -- I think that in this off year or off nine
- 24 months, if you will, I do think there will be some
- 25 opportunities to -- with the -- with the Court of

- 1 further discussion, I'll entertain a motion to adopt
- 2 the memorandum at pages 1 and 2 of Item IV, setting
- 3 forth Commission's progressions -- projections for the
- 4 calendar year.
- 5 COMMISSIONER CHAN: Mr. Chairman?
- 6 CHAIRMAN PATON: Yes, Commissioner Chan.
- 7 COMMISSIONER CHAN: I'll make the motion to
- 8 adopt the projections set forth on pages 1 and 2. Is
- 9 that what you said?
- 10 CHAIRMAN PATON: Yes, 1 and 2 of Item IV.
- 11 COMMISSIONER CHAN: Of Item IV. Thank you,
- 12 Mr. Chairman.
- 13 COMMISSIONER KIMBLE: I will second that.
- 14 CHAIRMAN PATON: Okay. So, we have a
- 15 motion and a second to adopt the memorandum of pages 1
- 16 and 2 of Item IV, and I will call the roll.
- 17 Commissioner Chan?
- 18 COMMISSIONER CHAN: Aye.
- 19 CHAIRMAN PATON: Commissioner Kimble?
- 20 COMMISSIONER KIMBLE: Aye.
- 21 CHAIRMAN PATON: And this is Commissioner
- 22 Paton, and I vote aye, as well. The motion carries.
- Moving on to Item V: Discussion and
- 24 possible action on Primary Election candidate audits.
- 25 Mr. Collins?

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- 1 Appeals' decision and with the rule-makings we'll have
- 2 to do, as I mentioned in the Executive Director report,
- 3 and then with the year under Prop 306 -- the cycle
- 4 under Prop 306 is done, I think that we will be in a
- 5 position to start to address some of those things on
 6 a -- on a -- by communicating them, in part, to, you
- 7 know, the folks who are involved in this process on a,
- 8 sort of, day-to-day basis. That's fairly easy.
- 9 COMMISSIONER KIMBLE: Thank you,
- 10 Mr. Chairman.
- 11 CHAIRMAN PATON: Sure.
- 12 I might add that maybe we could do
- 13 education to prospective candidates to -- before --
- 14 well before planning for this could start for them to
- 15 let them know that we're available and how Clean
- 16 Elections can help them with their campaign. Just as
- 17 we've been doing voter education, maybe we could do
- 18 candidate education.
- 19 MR. COLLINS: I agree.
- 20 CHAIRMAN PATON: Any other comment?
- 21 (No response.)
- 22 CHAIRMAN PATON: Any comments from the
- 23 public?
- 24 (No response.)
- 25 CHAIRMAN PATON: Okay. If there's no

- 1 MR. COLLINS: Yes, Mr. Chairman. Thank
- 2 you.
- 3 I'm going to -- these are Primary Election
- 4 audits. We are in the process of -- you know,
- 5 obviously, we'll be endeavoring to finish the primary
- 6 and then we'll move on to the general. You know, my
- 7 understanding with these audits is there's no -- no
- 8 significant findings, and so the rules require that we
- 9 approve them, frankly, regardless of if there's
- 10 findings or not.
- This is simply an opportunity for the
- 12 Commission to, you know, review and -- and if you have
- 13 any questions or comments on the issues -- on those
- 14 reports, obviously, Mike or I can answer them.
- 15 Otherwise, like I said, we're open for questions or
- 16 comments from you, Mr. Chairman.
- 17 CHAIRMAN PATON: Okay. Any discussion from
- **18** the Commission?
- **19** (No response.)
- 20 CHAIRMAN PATON: And any discussion from
- 21 the public?
- 22 (No response.)
- 23 CHAIRMAN PATON: If not, I'll entertain a
- 24 motion to approve the audits identified in Item V of
- 25 the agenda.

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- 1 COMMISSIONER KIMBLE: Mr. Chairman?
- 2 CHAIRMAN PATON: Yes, Commissioner Kimble.
- 3 COMMISSIONER KIMBLE: I move that we
- 4 approve the audits in Item V of today's agenda.
- 5 CHAIRMAN PATON: Okay. We have a motion.
- 6 Do we have a second?
- 7 COMMISSIONER CHAN: Mr. Chairman, I second
- 8 the motion.
- 9 CHAIRMAN PATON: Commissioner Chan seconds
- 10 the motion, and so we will have a vote.
- 11 Commissioner Chan, how do you vote?
- 12 COMMISSIONER CHAN: I vote aye.
- 13 CHAIRMAN PATON: Commissioner Kimble?
- 14 COMMISSIONER KIMBLE: Aye.
- 15 CHAIRMAN PATON: And this is Commissioner
- 16 Paton. I vote aye, as well.
- 17 Item VI: Discussion and possible action on
- 18 MUR 20-04, Eric Sloan. This is an enforcement-related
- 19 item. Since we're meeting virtually, I'd like to Tom
- 20 to introduce the item and give an overview of the
- 21 recommendation, then have time for Commission
- 22 questions. Following that, I would like to hear from
- 23 Mr. Miller, the attorney for Mr. Sloan, then
- 24 Mr. Fischbach, who represents Dr. Branch, and
- 25 Mr. Miller again, if necessary.

- 1 point, Mr. Chairman, and --
- 2 COMMISSIONER CHAN: Mr. Chairman?
- 3 MR. COLLINS: Sure.
- 4 COMMISSIONER CHAN: Tom, you know, just
- 5 looking at this last night, frankly, there was just
- 6 such a dichotomy between the two parties', kind of,
- 7 versions of events. And so, just to refresh my
- 8 recollection, since we do this, kind of, every two
- 9 years, if we find that there is -- if we agree with
- 10 your recommendation that there is reason to believe
- 11 that there may have been a violation, that doesn't put
- 12 a penalty on Mr. Sloan.
- Does that just proceed to an additional
- **14** investigation? Is that how this works?
- 15 MR. COLLINS: Yeah.
- 16 COMMISSIONER CHAN: Can you just, kind of,
- 17 refresh my recollection, please?
- 18 MR. COLLINS: Sure, of course.
- 19 Mr. -- Mr. Chairman, Commissioner Chan, the
- 20 rules lay out the process here. So, if there are three
- 21 members of the Commission who determine that there's
- 22 reason to believe a violation may have occurred, we do
- 23 undertake an investigation. We have outlined in the --
- 24 in the memo some of the tools we think may be necessary
- 25 to do that.

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- 1 So, Mr. Collins, you're up.
- MR. COLLINS: Yes. Thank you, Mr. Chairman
- 3 Commissioners.
- 4 I'm not sure if we'll end up having Lee
- 5 Miller, or someone else from his firm, but at any rate,
- 6 I don't want to put too much gloss on the
- 7 recommendation. We do believe that there is reason to
- 8 believe a violation may have occurred. We've outlined
- 9 what we think are the issues that are -- that we've
- 10 been able to identify by evaluating the complaint, the
- 11 response and campaign finance reports.
- 12 I just want to stress that -- that this is
- 13 a determination that is preliminary and, as you can see
- 14 from the memo and the two -- and the response and the
- 15 complaint, there are substantial issues of fact around
- 16 the issues we've identified that there are -- that
- 17 there's reason to believe a violation may have
- 18 occurred, so just to put this in perspective.
- 19 And, then, additionally, if you have
- 20 questions related to procedure here, we do have an
- 21 attorney from the Attorney General's Office who is
- 22 there to answer your questions on those, just to ensure
- 23 that there's an appropriate buffer, but other than
- 24 that, you know, unless you have questions or
- 25 comments -- I mean, I'm open to your questions at this

- 1 So, you know -- so, the big -- the
- 2 distinction to your point about penalties and those
- 3 kinds of things, this determination is the functional
- 4 equivalent of a reasonable cause determination by
- 5 the -- by the Secretary of State's Office. And so, as
- **6** you probably recall, obviously, once the Secretary of
- 7 State does that, they pass the case to the Attorney
- 8 General's Office.

penalty question.

- 9 In our situation, once this determination
- 10 is made, we go forth and do an investigation to try to
- 11 determine, from Staff's perspective, what the -- what
- 12 the facts are. There are then -- you know, there
- 13 are -- there are provisions related to administrative
- 14 settlement in the rules that we are -- you know, we
- 15 have to abide by and, then, there are, also, rules
- 16 related to the briefing of the determination of
- 17 probable cause to believe, and then -- and, then, the
- So, those are all -- and just to be candid,
- 20 obviously, those are not, in every matter, steps that
- 21 we reach. In other words, you know, we -- you know, we
- 22 have often come back to the Commission with a
- 23 conciliation agreement, you know, prior to that, but
- 24 our -- were the Commission to determine reason to
- 25 believe a violation may have occurred, it would be our

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- 1 goal to try to determine what -- you know, to try to --
- 2 try to determine what we think the -- how we would --
- 3 be able to be in a position to make a recommendation to
- 4 the Commission on, you know, what we believe the
- 5 preponderance of the evidence is on those disputed
- 6 issues of fact.
- COMMISSIONER CHAN: Mr. Chairman -- and I'm
- 8 happy, of course, to give time to Commissioner Kimble
- 9 and yourself, but I am anxious to hear from the parties
- 10 involved from their own mouths. I know, you know,
- 11 obviously, there's a lot of paperwork here documenting
- 12 their claims, but just to hear from them today is going
- 13 to be something I'm interested in because of the
- 14 different stories they have to tell -- not stories in
- 15 the sense that they're not true, but just the
- 16 difference between them --
- 17 CHAIRMAN PATON: Certainly.
- 18 COMMISSIONER CHAN: -- is what I'm saying.
- CHAIRMAN PATON: Certainly. 19
- 20 MS. KARLSON: Mr. Chairman?
- 21 CHAIRMAN PATON: Yes, Kara.
- MS. KARLSON: I just wanted to make clear 22
- 23 that, for purposes of this decision item, Jeanne Galvin
- 24 is the Attorney General -- or Assistant Attorney
- 25 General who will be representing the Commission. So,

- 1 Members. My name is Lee Miller. We are with
- 2 Wilenchik & Bartness, here today on behalf of the
- 3 Respondent, Sloan 2020 Campaign Committee and the
- 4 candidate, Eric Sloan.
- Frankly, at this point, all I wanted to
- 6 convey to you and your colleagues is that we stand by
- our response, note that we received a clean audit
- report for our primary period activities, and look
- 9 forward to working with Mr. Collins and his colleagues
- at the Commission to resolve this matter as rapidly as
- we possibly can.
- 12 And with that, Mr. Chairman, I'm available
- 13 for any questions.
- CHAIRMAN PATON: Okay. Any questions for
- 15 Mr. Miller from the Commission?
- COMMISSIONER CHAN: Mr. Chairman? 16
- 17 CHAIRMAN PATON: Yes, Commissioner Chan.
- COMMISSIONER CHAN: Hi -- Hi, Lee. It's 18
- 19 Amy, obviously. Can you just, kind of, go over for
- us -- I know, obviously, you know, you probably feel
- 21 like you don't want to repeat ad nauseam what you
- 22 already put in paper, but can you, please, just go over
- for us, boil it down, simple terms, what happened?
- What is the story here? Why is there this difference
- 25 of facts? What happened, according to Sloan, and

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- 1 to the extent the Commission has any questions, they
- 2 should be directed to Jeanne. And I just wanted to say
- 3 thank you to her for stepping into this role and being
- 4 able to provide any advice you may need.
- 5 MS. GALVIN: Good morning, and you're
- 6 welcome.
- 7 CHAIRMAN PATON: Thank you, Ms. Galvin.
- Any other questions or discussion before we 8
- **9** have Mr. Miller speak?
- COMMISSIONER KIMBLE: Mr. Chairman? 10
- 11 CHAIRMAN PATON: Yes, Commissioner Kimble.
- COMMISSIONER KIMBLE: I agree with 12
- 13 Commissioner Chan that I'd like to hear from the
- 14 parties. There's just such substantial disagreement
- 15 on -- on what the facts are that I'd like to hear from
- 16 them. I've read this all over several times, and I
- 17 really would like to hear them talk about it in their
- 18 own words.
- 19 CHAIRMAN PATON: Certainly. I agree.
- 20 Any other questions? Discussion?
- 21 (No response.)
- 22 CHAIRMAN PATON: Okay. Mr. Miller, if
- 23 you're available, you have the floor to speak to the
- 25 MR. MILLER: Thank you, Mr. Chairman,

- 1 what's the deal here?
- MR. MILLER: Certainly, Mr. Chairman,
- Commissioner Chan. I guess, to try and summarize,
- 4 Mr. Sloan and the Sloan 2020 Committee entered into --
- 5 you know, we'll call it a consulting agreement with a,
- 6 quote/unquote, consulting firm known as the Power of
- 7 Fives and that The Power of Fives would work closely
- 8 with Sloan 2020 and with Candidate Sloan and would
- **9** assist them with both gathering \$5 contributions
- 10 qualifying for Clean Elections and, when they were
- 11 qualified, frankly, with figuring out a spending plan,
- 12 how The Power of Fives was going to facilitate
- 13 Mr. Sloan being elected to the Corporation Commission.
- I think -- I think the most fundamental
- difference in perspective here is that Sloan 2020
- believed -- believes that having -- having qualified
- for Clean Elections funding, it's, at that point, that
- 18 it would engage with its consultant and, you know, put
- together a budget, put together a plan, you know,
- \$50,000 on World Radio, \$25,000 for social media,
- things that you would customarily see in any political
- 22 campaign.
- 23 What we experienced was -- as soon as Sloan
- 24 2020 qualified for Clean Elections funding, was that it
- 25 received an invoice from The Power of Fives that simply

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- 1 said, you know, pay us over 100 percent of the funding
- 2 that you're entitled to. You know, we're happy to chat
- 3 about how that money is going to be spent, but The
- 4 Power of Fives' view of things is that they earned the
- 5 entire \$115,000 and, I think, change as soon as Sloan
- **6** 2020 qualified for Clean Elections funding.
- 7 Within days of that -- within days of
- 8 qualifying for Clean Elections funding, there was,
- 9 we'll call it, robust dialogue between the Sloan
- 10 Campaign and The Power of Fives over how the money was
- 11 to be spent. Ultimately, Sloan 2020, Eric Sloan, came
- 12 to the conclusion that the spending plans -- that the
- 13 services being offered by The Power of Fives were not
- 14 services that he believed were going to create a
- 15 victory in the campaign.
- And so, pursuant to the contract, Sloan
- 17 2020 terminated The Power of Fives. And, then, three
- 18 or four weeks later, you all received this complaint,
- **19** and I think that's -- that's our summary.
- 20 COMMISSIONER CHAN: Thank you so much for
- 21 going over it for us again like that. Thank you.
- 22 CHAIRMAN PATON: Thank you.
- Any other questions for Mr. Miller?
- 24 (No response.)
- 25 CHAIRMAN PATON: If not, then we will hear

- 1 elections to multiple candidates, one of which happened
- 2 to be Sloan who, also, at one point, used to work for
- 3 The Power of Fives.
- 4 Mr. Sloan signed an agreement that is clear
- 5 as day as to what the obligation was in that through
- 6 Phase 1 and 2 of the campaign, which is, essentially,
- 7 through the Primary Election. He was obligated to pay
- 8 the entire statutory amount allotted for the Primary
- 9 Election campaign, which Mr. Miller is correct, it's
- 10 \$116,000 -- \$116,600. We provided the support, and
- 11 under that, the terms of that contract, Sloan was
- 12 obligated to pay it.
- 13 In addition, The Power of Fives paid
- 14 \$23,000 to an attorney by the name of Tim LaSota to
- 15 both challenge Sloan's opposition during the Primary
- 16 Election, but also, to defend Sloan himself when
- 17 Sloan's own signatures were challenged. And the notion
- 18 that Mr. Sloan was unaware of this expenditure or that
- 19 he didn't authorize it is ludicrous.
- 20 At one point, Tim LaSota was representing
- 21 Mr. Sloan, and Mr. Sloan can't deny it. There's --
- 22 Mr. LaSota appeared to defend Mr. Sloan in the primary
- 23 challenge lawsuit against Mr. Sloan, and in terms of
- 24 the engagement between The Power of Fives, Mr. LaSota
- 25 made it clear that Mr. Sloan was obligated to pay for

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- 1 from Mr. Fischbach, if Mr. Fischbach is available to
- 2 speak to the Commission.
- 3 MR. FISCHBACH: Yes. Good morning, members
- 4 of the Commission. My name is Will Fischbach. I'm a
- 5 partner with the law firm of Tiffany & Bosco. Seated
- 6 to my right is my client, Dr. Bob Branch, who is the
- 7 principal of The Power of Fives. I'd like to make a8 brief statement and have my client make one, as well,
- 9 and then -- and, then, I'm happy to answer any
- **10** questions.
- 11 Relative to the -- I think, the inquiry
- 12 from Commissioner Chan, we agree with the Chairman's
- 13 position that it is up to this Commission to decide
- 14 today whether or not probable cause exists to move
- 15 forward with an investigation. We are not asking you
- 16 and I don't believe the chairman is asking you to pass
- 17 judgment at this point in time, nor would that be
- 18 prudent of you to do so, unless and until you have all
- 19 of the facts at your disposal.
- 20 Of course, it's not unusual, in a
- 21 circumstance like this, for there to be dual narratives
- 22 of what happened, but succinctly put, The Power of
- 23 Fives is not, as Mr. Miller put it, a political
- 24 consulting company. The Power of Fives offered turnkey
- 25 election support in both the primary and general

- 1 Mr. LaSota's fees.
- 2 And he would have done so, but, as alleged
- 3 in our compliant, I believe, roughly -- was it July of
- 4 this year? Mr. Sloan approached Mr. Branch and asked
- 5 him to advance that additional sum of money of \$23,000,
- 6 to pay Mr. -- Mr. LaSota's bills.
- 7 Now, I'm sure that my colleague, Lee
- 8 Miller, disagrees with that. I'm sure that Mr. Sloan
- 9 disagrees with that summary, but that is why it is
- 10 incumbent on you, as the Clean Elections Commission, to
- 11 conduct a thorough investigation, utilize your subpoena
- 12 power and get your arms around what happened here. And
- 13 I am confident and Mr. Branch is confident that when
- 14 you do that, you will find that the facts align with
- 15 our version of the events.
- 16 I would like to see if Mr. Branch --
- 17 Dr. Branch, rather, has anything to add to that
- 18 summary.
- **19** DR. BRANCH: I would and --
- 20 CHAIRMAN PATON: Yes. Go ahead,
- 21 Dr. Branch.
- DR. BRANCH: Yes. Sorry, sir.
- 23 CHAIRMAN PATON: Go ahead.
- 24 DR. BRANCH: Commissioner and Chairman,
- 25 thank you very much for letting us be here today.

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- In July of 2019, Eric Sloan and I entered
- 2 into an agreement that he would be our first candidate
- 3 that The Power of Fives, LLC would represent. In
- 4 August, we executed that, and in September of last
- 5 year -- now, I know that Mr. Miller wants you to
- 6 believe that nothing happened until Eric Sloan received
- 7 his funding, but understand Eric Sloan received his
- 8 funding about a week and a half prior to the Primary
- 9 Election. We were actually running his entire campaign
- 10 since a year ago September is when we had our first
- 11 expenditures.
- 12 We started gathering signatures for him per
- 13 his request. We started having events for him per his
- 14 request. And in November of last year, 2019, he asked
- 15 me for a job. I told him that it was problematic since
- 16 he was my candidate. And he said, well, hire my wife's
- 17 firm. And he says, that's perfectly legal; you can do
- that. So, I agreed to pay his wife's firm \$4,000 a
- 19 month. So, when Mr. Evans wants -- I mean, Miller
- 20 wants you to believe that we had no expenditures,
- 21 that's not the case.
- Also, working on his campaign I had former 22
- 23 Secretary of State Ken Bennett working on his campaign,
- 24 my management staff working on his campaign, and a
- 25 whole host of people that were front people at events

- 1 away from qualifying. Now, understand The Power of
- 2 Fives was spending all of this money before he
- 3 qualified. We made agreements, since Sloan and Lea
- 4 Marquez Peterson were the only two Republican
- candidates. I entered into agreements with the
- 6 Republican Party to help get behind them, those two
- candidates.
- We created -- again, with, you know, former
- 9 Secretary of State Ken Bennett and a few other people,
- plus the Republican Party, we had mass mailings. We
- 11 had the calls all set up to convince people to give \$5
- 12 contributions. These are expenditures that The Power
- of Fives paid.
- So, when Eric Sloan -- when it came up
- 15 to -- when he got his funding, at that time, it was
- over. He won the primary. He got his funding. All of
- the effort was because of The Power of Fives and the money that we had expended and, according to the
- 19 contract, nothing more and nothing less is what we
- 20 asked for.
- 21 Now, the \$23,000 for the legal fees, when
- 22 they came to me and -- when Sloan came to me and asked
- me for them, this was after everything was --
- challenges were all done. I said, listen -- after his
- attorney and he convinced me that this was legal, I

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- 1 for Mr. Sloan gathering signatures. In fact, when the
- 2 signatures were ultimately challenged, Eric Sloan was
- 3 the only signature that was challenged that came
- 4 through victorious because we funded and we funded the
- 5 people to help go get those signatures. So, the only
- 6 reason why he is on the ballot was because of our
- 7 efforts.
- A little correction from my attorney here,
- 9 in May of last -- of this year, after all of the court
- 10 cases -- now, understand Eric Sloan went out and got
- 11 Tim LaSota. I didn't even know Tim LaSota -- Attorney
- 12 Tim LaSota. He negotiated the price for Tim LaSota on
- 13 the challenges, the signature challenges, and he
- 14 negotiated the price with Tim LaSota on his own
- 15 defense.
- After all of those challenges and after all 16
- 17 of the defenses, that's when Tim LaSota -- I mean,
- 18 that's when Eric Sloan and Tim LaSota both came to me
- 19 and asked me, The Power of Fives, to advance him
- 20 \$23,000 that was negotiated by Sloan. So, throughout
- 21 the entire process, The Power of Fives was expending a
- 22 lot of money.
- Now, when April came around and his
- 24 signature challenge was successful, he defended it, we
- 25 still -- we were still over a thousand \$5 contributions

- 1 said this is a campaign expenditure. It has to be. It
- 2 has to be because my company is not in the business to
- 3 loan money. We are your turnkey campaign. This is a
- 4 campaign expenditure.
- So, when I've seen that he did not put that
- 6 on his filing, that's when I contacted my attorney and
- 7 I said, listen, this is --
- MR. FISCHBACH: Don't. What we talked
- 9 about is privileged.
- DR. BRANCH: Oh, I'm sorry. That's when I
- 11 filed the complaint. That's when I contacted
- 12 Mr. Collins.
- And I want to thank you very much, 13
- 14 Mr. Collins. It was over a weekend, and you responded
- to me in this COVID world. And that's when I submitted
- my complaint.
- CHAIRMAN PATON: Okay. Any questions by
- 18 the Commission for the two -- the two men on the
- 19 screen?
- 20 (No response.)
- COMMISSIONER KIMBLE: Mr. Chairman? 21
- 22 CHAIRMAN PATON: Yes, Commissioner Kimble.
- COMMISSIONER KIMBLE: Tom, I wonder if you 24 could get into, briefly, a discussion of why what, on
- 25 the face of it is a contract dispute between these two

23

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- 1 parties, is now a Clean Elections matter.
- MR. COLLINS: Mr. Chairman, Commissioner
- 3 Kimble, that's a good question. I would say this about
- 4 that. The Act provides for what to do in the event of
- 5 a contract dispute of this nature and, you know,
- 6 Mr. Miller contacted me about that. And they -- and
- 7 under the terms of that provision, as the response
- 8 notes, there's some amount of money -- I'm not going
- 9 to rely on my memory to state what it is, but there's
- 10 some amount of money held back from the primary to deal
- 11 with that. There's, also, a pending arbitration
- 12 schedule.
- My view on this is that we have a -- there 13
- 14 are two interests here. One, there's an enforcement
- 15 issue that I believe there's reason to believe a
- 16 violation may have occurred and, then, secondly,
- 17 because of the substantial issues of fact, there are
- 18 questions -- there's an overall question about whether
- 19 or not -- and we want to develop to examine, I should
- 20 say, you know, some of the expenditures here.
- 21 Now, it may be that the arbitration, you
- 22 know, purports to resolve some of those issues. I
- 23 think that my viewpoint is that rather than deferring
- 24 this determination until after the arbitration is
- 25 completed, the determination here on its face would

- 1 arbitration take its course and then whatever comes out
- 2 of that, we'll deal with. The reason being that, you
- 3 know -- you know, there's -- there's a -- because
- without the authorization, I just -- I don't -- I don't
- know how to engage with that process in a way that can
- ensure whatever the Commission's interests -- whatever
- we sort of think the Commission's interests may turn
- out to be are taken care of.
- So, I guess, what I'm trying to say is
- 10 that, obviously, but for the complaint, we wouldn't be
- here; but that having been said, again, I think that
- because this is a preliminary determination, you know,
- I think that in order for us to feel, you know,
- comfortably empowered within the rules of the
- Commission to get in -- to be aware of and to,
- potentially, have to take actions in this situation, we
- 17 just -- we would -- we would recommend not waiting
- until the arbitration results.
- 19 I hope that answers your question. I know
- 20 it's a long answer to a -- because the answer is -- the
- real answer is I don't know yet, but I don't want to
- wait -- or my recommendation is not to wait until then
- to determine probable cause -- or not probable cause --
- to determine whether there's reason to believe a
- 25 violation may have occurred.

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- 1 empower the staff to ensure that the Commission's
- 2 interests, which are separate from the party, are
- 3 looked after.
- Whether or not and how we would -- how we
- 5 address that in the context of this arbitration. I'm
- 6 not -- I'm not, frankly, in a position to tell you.
- 7 That is something that I think that we would
- 8 anticipate, you know, talking to both sides about that
- 9 issue once we're empowered to ensure that the
- 10 Commission interest here has -- you know, has the --
- 11 essentially, that my actions and the actions that, you
- 12 know, other staff members or attorneys might take are
- 13 authorized under the Commission's rules.
- So, it's really out of a sense of prudence, 14
- 15 from my perspective, that we recommend the
- 16 determination be made now on this preliminary question
- because it will give us an opportunity to evaluate, you 17
- 18 know, how we ascertain the necessary facts and how the
- 19 arbitration proceeding would fit into those -- would
- 20 fit into those -- fit into that.
- I'm not prepared today, for example, to 21
- 22 say -- because this would be the effect of not making a
- 23 determination, I think. What I'm not prepared to do is
- 24 say or to recommend -- and this is, obviously, your
- 25 decision, not mine, but mine is to say let's let the

- COMMISSIONER KIMBLE: So, could you talk a
- 2 little bit about what kind of timeline you envision
- 3 this taking? Is this something that you would come
- 4 back with -- if we were to move forward, would you come
- 5 back with a recommendation in a month, or is this a
- very lengthy process?
- MR. COLLINS: Mr. Chairman, Commissioner
- 8 Kimble, I would say this about that. We're -- you
- know, as you -- as You -- as Kara noted, you know,
- helpfully, for the record, you know, we have -- we have
- things set up in such a way where, you know, you'll
- have counsel on the -- on the proceedings and we will
- have counsel on our investigation. Those would be
- 14 separate, and that's in order to ensure, you know, that
- everybody has ample process.
- I -- you know, I think that with this
- authorization, we'll be able to engage a little bit
- more in that evaluation. I will say this. Unless
- there's a contrary rule -- and I don't think that there
- is provided that, you know, ex parte and other things
- are dealt with -- you know, we could, obviously, update
- you on where the arbitration question gets us once, you
- 23 know, we have -- we -- you know, staff and Kara have an
- **24** opportunity to be engaged in the process.
- I don't -- I think that -- I think that we 25

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- 1 can work with the parties to -- with the Respondent,
- 2 really, ultimately, and then -- and then, obviously,
- 3 we'll -- we'll be working with the Complainant, as
- 4 well, to -- you know, to make sure that there's -- that
- 5 appropriate communication of our progress is made
- 6 subject to all the -- the due process considerations
- 7 that go into that.
- MS. GALVIN: If I may -- this is Jeanne
- 9 Galvin -- Chairman Paton, members of the Commission, I
- 10 would suggest that you make your decision on whether to
- 11 move forward separate and apart from the status of the
- 12 arbitration. You clearly have jurisdiction over the
- 13 campaign issues, and I would recommend that, that you
- 14 evaluate what you have in front of you, decide whether
- 15 there is merit in the findings and whether the
- 16 investigation should continue and, at this point, not
- 17 worry so much about the arbitration. Let the parties
- 18 do that part of it, and then you exercise your
- 19 authority with respect to the material that you have in
- 20 front of you.
- 21 COMMISSIONER CHAN: Mr. Chairman?
- 22 CHAIRMAN PATON: Yes, Commissioner Chan.
- 23 COMMISSIONER CHAN: Mr. Chairman,
- 24 Ms. Galvin, I'm so disappointed to hear you say that
- 25 because, frankly, hearing Commissioner Kimble's --

- 1 CHAIRMAN PATON: Yes. Go ahead.
- 2 MR. FISCHBACH: The arbitration hearing is
- 3 scheduled for, I believe, January 13th of next year,
- 4 but it is -- it is coming up. However, I would agree
- 5 with Jeanne Galvin that there are two separate things
- 6 and one doesn't necessarily, you know, govern the
- 7 outcome of the other. And, you know, it is -- you've
- 8 heard the phrase sunlight is the best disinfectant.
- **9** The origin of that phrase is from a collection of
- 10 essays by Louis Brandeis called "Other People's Money
- 11 and How the Bankers Use It."
- And the question for this Commission is the
- 13 citizens money, the citizens of Arizona, and how
- 14 Mr. Sloan used it. And that is certainly within your
- 15 purview regardless of what happens in the Triple A
- 16 arbitration.
- 17 CHAIRMAN PATON: Thank you, sir.
- 18 COMMISSIONER CHAN: Thank you.
- 19 CHAIRMAN PATON: Any other questions or
- 20 comments?
- 21 COMMISSIONER CHAN: Mr. Chairman, I'll just
- 22 make some comment.
- 23 CHAIRMAN PATON: Yes.
- 24 COMMISSIONER CHAN: I mean, I'm inclined to
- 25 go with Tom's recommendation just with the caveat that

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- 1 Chairman -- question, I should say, I actually had that
- 2 same thought, which was, you know, one, I wanted to ask
- 3 the parties -- and forgive me if it's in the
- 4 paperwork -- have they proceeded to arbitration and are
- 5 they planning to, if they haven't.
- 6 Because if we get involved or -- I mean, I
- 7 do think there are substantial issues of fact,
- 8 obviously. I mean, this is a contract dispute that
- 9 needs to be sorted out for us to determine -- I mean, I
- 10 don't disagree that there is reason to believe a
- 11 violation may have occurred, depending on which way the
- 12 contract dispute goes. For us to get involved in
- 13 trying to figure that out, when there's an arbitration
- 14 clause between the parties, seems like a lot of
- 15 duplication of work if there's going to be an
- 16 arbitration.
- 17 That's what I'm concerned about. Not that
- 18 that's not our role, but if there's going to be that
- 19 already, should we be getting involved there. So, I
- 20 guess, that's more of a comment, but that's why my
- 21 thought process was, also, going to the arbitration.
- 22 Can one of the parties, maybe, jump in and
- 23 let us know? Is that going forward?
- 24 MR. FISCHBACH: This is Will Fischbach
- 25 here, counsel for The Power of Fives.

- 1 because -- there's to caveat. I don't think there's
- 2 any harm in going forward. I mean, I think, you know,
- 3 if there's no "there" there, then there's nothing that
- 4 will come of it. I think, obviously, we've kind of
- 5 erred this out. We've gotten a lot of information from
- 6 the parties, both on paper and today here at the
- 7 meeting, on the record.
- 8 I just hate to see, you know, what happens
- 9 between parties that originally started out as friends,
- 10 so to speak, or colleagues. So, I guess, I would just
- 11 put that forward.
- 12 And thank you, Ms. Galvin, for stepping in
- 13 today and for your advice.
- 14 MS. GALVIN: You are very welcome.
- 15 CHAIRMAN PATON: Commissioner Kimble,
- 16 anything else?
- 17 COMMISSIONER KIMBLE: Mr. Chairman, I would
- 18 make a motion that we determine that there is reason to
- 19 believe that violations of the Clean Elections Act and
- 20 rules may have occurred and that the executive director
- 21 is empowered to move forward with a further
- 22 investigation.
- I hope I worded that correctly, Tom.
- 24 CHAIRMAN PATON: Before we get that far, I
- 25 just -- I want to say something myself. You know, I'm

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1	a layperson, and this is something that, I think, a	1	Kimble, and we will vote.
	light needs to be shined. Obviously, there's two	2	Commissioner Chan?
	widely divergent sides to this, and myself, I feel like	3	COMMISSIONER CHAN: I vote aye.
	I need somebody to go through this step by step. And	4	CHAIRMAN PATON: Commissioner Kimble?
	this is this is State money that we are entrusted	5	COMMISSIONER KIMBLE: Aye.
	with and we have to we have a responsibility to make	6	CHAIRMAN PATON: And Commissioner Paton, I
	sure that it's used correctly and in line with the law	7	vote I, as well.
8	and to give us credibility with the electorate.	8	Thank you, and have a safe rest of
9	And so, I certainly believe that we should	9	December.
10	proceed on with this. There may not be anything there,	10	(Whereupon, the proceedings concluded at
11	but that way we will know exactly what's going on.	11	10:34 a.m.)
12	So, going back to your motion, I accept	12	
13	that motion.	13	
14	Do we have a second?	14	
15	COMMISSIONER CHAN: I second the motion,	15	
16	Mr. Chairman.	16	
17	CHAIRMAN PATON: So, Commissioner Chan	17	
	seconds the motion.	18	
19	So, we are going to vote on whether we	19	
	proceed with the reason reason to believe that there	20	
	was a violation here.	21	
22	Commissioner Chan, how do you vote?	22	
23	COMMISSIONER CHAN: I vote aye.	23	
24	CHAIRMAN PATON: Commissioner Kimble?	24	
25	COMMISSIONER KIMBLE: Aye.	25	
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	CHAIDMAN DATON, And this is Commissioner	1	STATE OF ARIZONA)
1	CHAIRMAN PATON: And this is Commissioner	2	COUNTY OF MARICOPA)
	Paton, and I vote aye, as well. So the motion carries and let's see where are we going.	3	BE IT KNOWN the foregoing proceedings were
4	And Item VII, does any member of the public	4	taken by me; that I was then and there a Certified
	wish to make comments at this time? You may, also,	5	Reporter of the State of Arizona, and by virtue thereof
	send comments to the Commission by mail or email at	6	authorized to administer an oath; that the proceedings
	ccec.cleanelections.gov.	7	were taken down by me in shorthand and thereafter
8	If we don't have go ahead. Yes,	8	transcribed into typewriting under my direction; that
9	Commissioner Chan.	9	the foregoing pages are a full, true, and accurate
10	COMMISSIONER CHAN: I don't know if there's	10	transcript of all proceedings and testimony had and
	any other public comment, but I wanted to give a shout	11	adduced upon the taking of said proceedings, all done to
	out to my children who are watching on YouTube. They	12	the best of my skill and ability.
13	found out I was going to be on YouTube and they got	13	I FURTHER CERTIFY that I am in no way
14	very excited about it. So, shout out to my six- and	14	related to nor employed by any of the parties thereto
15	eight-year-old watching us on YouTube.	15	nor am I in any way interested in the outcome hereof.
16	CHAIRMAN PATON: You're famous.	16	DATED at Phoenix, Arizona, this 18th day of
17	Okay. Item VIII: Motion to adjourn.	17	December, 2020.
18	Do I have a motion to adjourn?	18	Mrun
19	COMMISSIONER CHAN: Mr. Chairman, I move	19	LILIA MONARREZ, RPR, CR #50699
20	that we adjourn the meeting.	20	HILLA MONARREZ, RFR, CR #30099
21	CHAIRMAN PATON: All right. We have a	21	
	motion to adjourn.	22	
23	Do we have a second?	23	
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CITIZENS CLEAN ELECTIONS COMMISSION EXECUTIVE DIRECTOR REPORT January 28, 2021

Announcements:

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

Voter Education:

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

Administration:

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

Miscellaneous

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

Appointments

No additional information at this time.

Enforcement

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

Regulatory Agenda

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

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

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

Legislative Agenda

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

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

Bill	Sponsor	Assigned to	What it does Only on a specific resolution of the county board of	Direct effect on CCEC	Status	Notes
HB2343-voting centers; board of supervisors	Rep. Salman (D)		supervisors, the board is permitted to authorize the use of additional types of voting locations by using voting centers and early voting drop-off centers. A voting center is deemed to be a polling place on election day, and may be used as an early voting location. When an election is supervisors is required to appoint a voting center election board for each voting center consisting of at least one inspector, one marshal and as many judges or clerks as needed. Requires there to be an equal number of inspectors, one marshal many centers in the county who are members of the two largest political parties. The board may also appoint a minor, at least 16 to serve as County recorders as appoint a minor, at least 16 to serve as County recorders are authorized to make changes to the approved early voting locations and are required to notify the public as soon as practicable. Also, change "one central location" for replacement ballots to "one or more locations".	Updates to voter education. Possible outreach to let idds know they can be hired for this posistion. Sounds like a nice opportunity to get involved.		
HB2344:early voting; weekend hours	Rep. Salman (D)		On-site early voting locations, including the locations at the county recorder's office, are required to be open until 7:00PM on the Saturday, Sunday and Monday immediately preceding election day.	Voter Ed. changes to reflect change in early emergency voting.		
HB2345: early ballot collection; limitations; repeal	Rep. Salman (D)		Would no longer be a class (6) felony to knowingly collect voted or unvoted early ballots.	Small update to website.		
HB2358:voter registration update; address change	Rep. Kavanaugh (R)		By May 1 of each year, the County Recorder shall use the National Change of Address system from USPS to remove voters who have moved out of the County or State. They are also no longer required to provide information to the voter on how to continue to be eligible to vote.	None.		
HB2359:election equipment; access; locks	Rep. Kavanaugh (R)		For a voting machine; any open plug, port, access port will be will be locked with a tamper proof device.	None.		
HB2360: driver license voter registrations; committee	Rep. Kavanaugh (R)		The Secretary of State is required to operate and maintain the driver license voter registration system in conjunction with a committee of county recorders that is selected by a statewide county recorder membership group.	None.		
HB2361: write-ins; early ballots; processing	Rep. Kavanaugh (R)	House: Government & Elections, Rules	The deadline for filing a nomination paper to be a write-in candidate is moved to SPM on the 76th day before the election, from SPM on the 40th day before the election. Tallying of early ballots is permitted to begin immediately after the envelope and completed affidavit are processed and delivered to the early election board, and the prohibition on early ballots being tallied any early than 14 days before election day is deleted.	Slight update to candidate training regarding nomination papers for write-ins.		
HB2362: elections; ballot privacy folders	Rep.Kavanaugh (R)		A voter is to be given a privacy envelope along with their ballot when voting.	None.		
HB2363: municipal election officers; certification training	Rep. Kavanaugh (R)	House: Government & Elections, Rules	For municipal employees who work on elections, the municipality is authorized to train its own employees if the municipal training program is approved by the Secretary of State.	None.		
HB2364: election pamphlet submittals; identification required	Rep.Kavanaugh (R)		Aguments in favor of or against a ballot measure, which are printed in the informational pamphlet, must contain a swom, notarized statement of the person submitting it. If the argument is submitted by an organization, it must contain the swom statement of two executive officers of the organization. The names of persons and entities submitting written arguments is required to be included in the informational pamphet. Persons signing the regioner must identify themselves by giving the result of the pamphet. Any argument submitted that does not comply with these requirements cannot be included in the pamphet.	None.		
HB2369-early ballots; notarization; identification	Rep. Payne (R)		Requires a voter's signature on an early ballot return envelope to be notarized. The voter is required to present identification to the election board worker when dropping off an early ballot as required for in-person voting. A family member and a household member are removed from the list of persons authorized to collect an early ballot on behalf of a voter.	Update to voter education regarding early ballots.		
HB2370: permanent early voting list; repeal	Rep. Payne (R)		Repeals the PEVL.	Update to voter education regarding early voting.		Would require that you request an early ballot for each election.
HB2371: hand count; voting centers; total	Rep. Payne (R)		For a county that uses voting centers, at least two percent of the total number of ballots cast in the county must be randomly selected for a hand count after each election, from a pool consisting of a test two percent of the voting centers or two voting centers, whichever is greater. Voting centers are deemed to be a precinct for the purposes of the hand counts.	None.		
HB2373: voter registration groups; forms; identifiers	Rep. Dunn (R)		Any person or group that request 10 or more voter registration forms from the County must put their unique identifier on said form collected or distrubuted by them.	We would likely need to add the Clean Elections symbol to voter registration forms (stamp, printed).		
HB2378: ranked choice voting; presidential preference	Rep.Dunn (R)		Notwithstanding any other statute, the PPE shall be conducted by ranked choice voting when 3 or more candidates qualify for a political party's ballot. Establishes requrements for how to conduct tabulation. The SoS shall conduct a voter education outreach campaign to familirize electors with ranked choice voting.	Would require an update to voter education and likely a joint campaign with the SoS's office.		"Election threshhold" means the number of votes that are sufficient for a candidate to be elected in a multi-winner contest which is determined by calculating the total votes to be counted for active candidates in the first round of tabulation, dividing by the sum of one plus the number of offices to be filled, then adding one, disregarding any fractions.
HB2426:presidential electors; congressional districts; at-large	Rep. Carrol (R)		Would change Arizona from a winner take all state to a state who casts their Electoral College votes by Congressional District. The 2 remaining votes would voted on by the Legislature. If a tie vote occurs, the remain	Update to voter education, specifically how the Electoral College would function in Arizona.		

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

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

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

Anna Tovar Participating Candidate for Corporation Commissioner Primary Election 2020



Independent Accountants' Report on Applying Agreed-Upon Procedures

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

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

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

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

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

December 21, 2020

Fester & Chapman, PLLC

Summary of Procedures and Findings

1. Preliminary Procedures

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

We noted no unusual disbursements during our review.

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

Finding

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

2. Fieldwork Procedures

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

Finding

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

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

Finding

See comment in a) above.

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

Finding

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

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

Finding

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

- (ii) Review bank statements for each of the months in the reporting period and perform the following:
 - Select a sample of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

- e) Judgmentally select a sample of cash expenditures reported in the candidate's campaign finance report and perform the following:
 - (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

Marquez Lea Peterson Participating Candidate for Corporation Commissioner Primary Election 2020



Independent Accountants' Report on Applying Agreed-Upon Procedures

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

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

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

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

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

Fester & Chapman, PLLC

December 17, 2020

Summary of Procedures and Findings

1. Preliminary Procedures

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

We noted no unusual disbursements during our review.

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

Finding

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

2. Fieldwork Procedures

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

Finding

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

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

Finding

See comment in a) above.

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

Finding

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

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

Finding

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

- (ii) Review bank statements for each of the months in the reporting period and perform the following:
 - Select a sample of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

- e) Judgmentally select a sample of cash expenditures reported in the candidate's campaign finance report and perform the following:
 - (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

Eric Sloan
Participating Candidate for
Corporation Commissioner
Primary Election 2020



Independent Accountants' Report on Applying Agreed-Upon Procedures

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

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

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

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

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

December 23, 2020

Fester & Chapman, PLLC

Summary of Procedures and Findings

1. Preliminary Procedures

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

We noted no unusual disbursements during our review.

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

Finding

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

2. Fieldwork Procedures

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

Finding

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

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

Finding

See comment in a) above.

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

Finding

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

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

Finding

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

- (ii) Review bank statements for each of the months in the reporting period and perform the following:
 - Select a sample of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

- e) Judgmentally select a sample of cash expenditures reported in the candidate's campaign finance report and perform the following:
 - (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

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



Independent Accountants' Report on Applying Agreed-Upon Procedures

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

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

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

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

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

December 20, 2020

Fester & Chapman, PLLC

Summary of Procedures and Findings

1. Preliminary Procedures

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

We noted no unusual disbursements during our review.

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

Finding

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

2. Fieldwork Procedures

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

Finding

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

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

Finding

See comment in a) above.

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

Finding

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

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

Finding

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

- (ii) Review bank statements for each of the months in the reporting period and perform the following:
 - Select a sample of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

- e) Judgmentally select a sample of cash expenditures reported in the candidate's campaign finance report and perform the following:
 - (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

CITIZENS CLEAN ELECTIONS COMMISSION

Report on Agreed-Upon Procedures

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



Independent Accountants' Report on Applying Agreed-Upon Procedures

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

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

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

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

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

December 17, 2020

Fester & Chapman, PLLC

Summary of Procedures and Findings

1. Preliminary Procedures

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

We noted no unusual disbursements during our review.

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

Finding

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

2. Fieldwork Procedures

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

Finding

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

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

Finding

See comment in a) above.

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

Finding

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

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

Finding

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

- (ii) Review bank statements for each of the months in the reporting period and perform the following:
 - Select a sample of deposits and withdrawals from the bank statements and determine that the transaction is properly reflected in the candidate's records and campaign finance report.

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

- e) Judgmentally select a sample of cash expenditures reported in the candidate's campaign finance report and perform the following:
 - (i) Review supporting invoice or other documentation and agree amount to the amount reported in the candidate's finance report.

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

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

Finding

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

STATE OF ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

MUR 20-03

Arizona Education Association STATEMENT OF REASONS OF THE EXECUTIVE DIRECTOR

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

I. Procedural Background

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

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

II. Alleged Violations

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

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

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

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

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

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

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

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

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

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

Id.

III. Analysis

A. Relevant Evidentiary Standard

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

B. Relevant Legal Standard

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

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

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

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

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

The U.S. Supreme Court case *Federal Election Commission v. Wisconsin Right to Life (WRTL)*, 551 U.S. 449 (2007) is persuasive authority here. That case dealt with when an absolute ban on express advocacy could be imposed, in the context of the greater scrutiny that absolute bans require. *Id.* at 464-65.2 That case held that, in order to impose a ban on express advocacy under the then-existing federal standard, the advertisement in question must, objectively be the functional equivalent of express advocacy "only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Id.* at 470.

C. Application

Respondent recognizes that the mailers and advertisements in question were directed at the constituencies of lawmakers running for office, Response at 4.

Nevertheless, Respondent proposes several distinctions from the prevailing cases.

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

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

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

- B. Any person who must file an original report pursuant to section 16-941, subsection D or who must file a supplemental report for previously unreported amounts pursuant to subsection A of this section shall file as follows:
- 1. Before the beginning of the primary election period, the person shall file a report on the first of each month, unless the person has not reached the dollar amount for filing an original or supplemental report on that date.
- 2. Thereafter, except as stated in paragraph 3 of this subsection, the person shall file a report on any Tuesday by which the person has reached the dollar amount for filing an original or supplemental report.
- 3. During the last two weeks before the primary election and the last two weeks before the general election, the person shall file a report

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

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

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

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

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

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

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

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

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

Recommendation

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

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

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

Dated this 25th day of January, 2021.

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

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

September 25, 2020

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

Re: Campaign Finance Complaint Against Arizona Education Association

Dear Director Collins:

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

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

FACTUAL BACKGROUND

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

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

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

LEGAL VIOLATIONS

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

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

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

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

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

A. Content

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

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

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

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

The FEC's pronouncements are highly persuasive authority in the interpretation of Arizona campaign finance law, see Ariz. Att'y Gen. Adv. Op. II1-006 (R11-010) (Sept. 21, 2011), particularly where, as here, the corresponding federal regulatory definition is substantively identical to its Arizona counterpart. Compare Ariz. Rev. Stat. § 16-901.01 with 11 C.F.R. § 100.122.

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

B. Targeting

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

C. Timing

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

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

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

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

Thank you for your consideration of this important matter.

CERTIFICATION

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

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

cljoiner@aol.com

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

Notary Public

My Commission Expires:

SIERRA YOUNGLOVE
Notary Public - State of Arizona
MARICOPA COUNTY
Commission to 564904
Expires June 7, 2023



Exhibit A

SEN. BROPHY-MCGEE VOTED TO CUT PUBLIC SCHOOL FUNDING: UNDERFUNDED PUBLIC SCHOOLS PUT US ALL AT RISK.

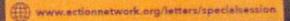
OUR STUDENTS AND EDUCATORS DESERVE SAFE CLASSROOMS.

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



CONTACT SEN. BROPHY-MCGEE TODAY:

(602) 926-4486



Arizona Education Association 345 E Palm Ln. Proenix, AZ 85004



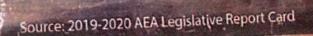
NON PROFIT ORG US POSTAGE PAID PHOENX, AZ PERMIT NO. 1



Paid for by the Arizona Education Association.

Exhibit B

REP. JEFF WENINGER
FAILED TO KEEP
US SAFE.



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

Arizona's Surge In Coronavirus Cases Has Been "The Worst In The Entire Country," Health Expert Says 7/13/20

Contact and ask him to call for a special session.



Arizona deserves safe classrooms

CONTACT REP. JEFF WENINGER TODAY:



(602) 926-3092

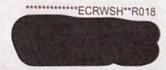


www.actionnetwork.org/letters/specialsession

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



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



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Paid for by Arizona Education Association

Exhibit C

Company Comp				Day		1	
Company Comp			End Date	Duration		Video URL	URL Redirect
Company Comp					Politicians like Kate Brophy-McGee refuse to fund public schools. Now as Arizona considers reopening schools, that decision puts us all at risk. Contact Kate Brophy-McGee and tell her to call for a special session to fund our public schools and keep students & educations are selected to the second services of the second services and tell her to call for a special session to fund our public schools. Now as Arizona considers reopening schools, that decision puts us all at risk. Contact Kate Brophy-McGee and tell her to call for a special session to fund our public schools. Now as Arizona considers reopening schools, that decision puts us all at risk. Contact Kate Brophy-McGee and tell her to call for a special session to fund our public schools.	https://video-or	n/a
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Ballard Spahr

1 East Washington Street, Suite 2300 Phoenix, AZ 85004-2555 TEL 602.798.5400 FAX 602.798.5595 www.ballardspahr.com Daniel A. Arellano Tel: 602.798.5436 Fax: 602.798.5595 arellanod@ballardspahr.com

November 6, 2020

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

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

Re: CCEC MUR No. 20-03

Dear Mr. Becker:

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

Background

A. The Public Calls for a Special Session.

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

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

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

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

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

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

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

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

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

ed/joannaallhands/2020/05/26/arizona-senate-sine-die-without-hearing-house-bills-fallout/5262115002/.

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

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

Discussion

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

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

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

The "functional equivalent" test in the statute is drawn nearly verbatim from the U.S. Supreme Court's opinion in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 469–70 (2007) ("WRTL"), which held that "a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The Court held that the ads at issue in that case were "plainly not the functional equivalent of express advocacy," *id.* at 470, for two reasons:

First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.

Id.

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

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

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

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

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

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

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

Conclusion

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

Very truly yours,

Daniel A. Arellano

State of Arizona

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

Notary Public

My Commission Expires:

January 08, 2023

County of Maricopa

BEATRIZ PINON
Notary Public, State of Arizona
Maricopa County
Commission # 559584
My Commission Expires
January 08, 2023

bulletin

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2004-7, page 327.

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

Announcement 2004-7, page 365.

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

EMPLOYEE PLANS

Notice 2004-8, page 333.

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

EXEMPT ORGANIZATIONS

Rev. Rul. 2004-6, page 328.

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

EMPLOYMENT TAX

Rev. Rul. 2004-1, page 325.

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

ADMINISTRATIVE

Notice 2004-9, page 334.

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

(Continued on the next page)

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



BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS

(January 1941 = 100, unless otherwise noted)

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

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

DRAFTING INFORMATION

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

Section 527.—Political Organizations

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

Public advocacy; public policy issues.

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

Rev. Rul. 2004-6

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

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

Dansont Change

 $^{^{2}}$ Indexes on a January 1986 = 100 base.

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

ISSUE

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

LAW

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

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

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

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

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

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

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

from Federal income tax except on their investment income.

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

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

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

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

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

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

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

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

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

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

ANALYSIS OF FACTUAL SITUATIONS

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

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

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

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

- e) The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and
- f) The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

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

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

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

Each of the situations assumes that:

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

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

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

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

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

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

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

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

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

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

Under the facts and circumstances in Situation 3, the advertisement is for an exempt function under § 527(e)(2). P's advertisement identifies Senator D, appears shortly before an election in which Senator D is a candidate, and targets voters in that election. Although federal funding of hospitals has not been raised as an issue distinguishing Senator D from any opponent, the advertisement identifies Senator D's position on the hospital funding issue as agreeing with P's position, and is not part of an ongoing series of substantially similar advocacy communications by P on the same issue. Moreover, the advertisement does not identify any specific legislation and is not timed to coincide with a legislative vote or other major legislative action on the hospital funding issue. Based on these facts and circumstances, the amount expended by P on the advertisement is an exempt function expenditure under § 527(e)(2) and, therefore, is subject to tax under § 527(f)(1).

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

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

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

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

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

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

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

HOLDINGS

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

DRAFTING INFORMATION

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

Part III. Administrative, Procedural, and Miscellaneous

Abusive Roth IRA Transactions Notice 2004–8

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

Background

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

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

Facts

In general, these transactions involve the following parties: (1) an individual (the Taxpayer) who owns a pre-existing business such as a corporation or a sole proprietorship (the Business), (2) a Roth IRA within the meaning of § 408A that is maintained for the Taxpayer, and (3) a corporation (the Roth IRA Corporation), substantially all the shares of which are owned or acquired by the Roth IRA. The Business and the Roth IRA Corporation enter into transactions as described below. The acquisition of shares, the transactions or both are not fairly valued and thus have the effect of shifting value into the Roth IRA.

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

Analysis

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

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

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

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

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

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

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

Proposed Commission Meeting Dates February - July 2021

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



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

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

ITEM VII

EXHIBIT F

Attorneys for Respondents

admin@wb-law.com

AMERICAN ARBITRATION ASSOCIATION

THE POWER OF FIVES, LLC, an Arizona No. 01-20-0014-8998 limited liability company,

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Claimant,

v.

ERIC SLOAN ALISA LYONS and **SLOAN**, husband and wife,

OF WITNESSES AND EXHIBITS AND PRE-HEARING STATEMENT

RESPONDENTS' FINAL LIST

(Assigned to Arbitrator Rebecca A. Albrecht)

Respondents.

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Respondents Eric Sloan and Alisa Lyons Sloan (collectively, "Respondents") herein submit their final list of witnesses and exhibits, and their pre-hearing statement for the hearing set for February 8, 2021.

PRE-HEARING STATEMENT

I. INTRODUCTION

Few tenets of the law are as clear as this one: acts to be performed under a contract that are illegal cannot be enforced. The Power of Fives, LLC ("Petitioner" or "TPOF") has initiated this arbitration against Eric Sloan ("Sloan") in an attempt to collect on a contract for campaign services rendered during Sloan's run for corporation commissioner as a "Clean Elections" candidate. But if Sloan were to pay the amount demanded, it would violate at least four elections laws. First, the

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contract committed Eric Sloan's campaign to spend money before the campaign had been approved for Clean Election's funding. Second, TPOF incurred expenses on behalf of the campaign before the campaign had sufficient funds to pay for the expenses. Third, the invoices sent by TPOF were not sufficiently itemized to comply with the campaign finance reporting requirements. Finally, only a campaign's treasurer or the treasurer's agent can authorize campaign spending, and TPOF was never the campaign treasurer's agent but incurred expenses that were not approved by the campaign treasurer. For all of these reasons, if Respondents were to pay the amounts claimed to be owed under the contract, they would be in violation of Arizona election law, subjecting them to personal liability for the monies wrongfully paid and to civil penalties. Accordingly, Petitioner's claim should be dismissed, and Respondents should be awarded their attorney's fees and costs.

II. FACTUAL BACKGROUND

Respondent Sloan ran for Arizona Corporation Commission during the 2020 election cycle as a Clean Elections candidate, meaning he could use public money to fund his campaign if he adhered to certain conditions. Sloan entered into a contract with TPOF to provide "turnkey" campaign management services (the "Contract"). Exhibit 1. TPOF was formed by its principal Bob Branch ("Branch"). Prior to signing, Sloan raised concerns about the legality of the Contract under the Citizens Clean Elections Act (the "Act") but was assured by TPOF counsel Daniel Arellano that the Contract was legal. By its terms, the Contract became effective on January 1, 2020. Exhibit 1. The services to be provided under the Contract included, "develop campaign strategy," "groom the candidate," "handle all print and radio advertisements," and "provide support as needed to support the strategic plan of the campaign as determined by the [TPOF]." *Id.* at 7. Compensation to TPOF for these services was to receive all Clean Elections funding that Sloan was to receive. *Id.* For the primary phase, that amount was statutorily determined at \$116,016 (A.R.S. §§ 16-959(A) and 961(G)(3)).

Sloan's campaign committee did not qualify for Clean Elections funding until July 17, 2020, (Exhibit 2) and did not receive Clean Elections funds until July 27, 2020. *See* Exhibit 8 at 10. TPOF alleges the services began to be provided for the campaign in September of 2019. *See*

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Petitioner's Amended Demand for Arbitration at ¶ 12. All of TPOF's services were rendered prior to July 17, 2020. Prior to July 18, the highest cash balance reported by the Sloan campaign was \$10,360.10. See Exhibits 3-12.

Throughout the campaign season, TPOF incurred or otherwise attempted to bill charges that were not approved by Sloan, who was the campaign's treasurer. For example, in February 2020, Branch invited Sloan to attend a gun show to collect petition signatures needed to qualify for the ballot. Sloan paid for his own entry and collected his own signatures, yet TPOF billed Sloan for these signature-gathering efforts. As another example, TPOF and Branch filed signature challenge lawsuits against other corporation commissioner candidates without authorization. Branch negotiated a \$23,000 flat fee for attorney Timothy LaSota to provide legal services for these challenges. See Exhibit 13. The challenges were successful and as a result, Sloan "won" the primary because all other Republican candidates were knocked off the ballot. TPOF billed Sloan for these challenges at \$23,000 as "Signature Challenge Strategy." Exhibit 14. Yet in its Amended Demand for Arbitration, TPOF characterized the "Strategy" as Sloan's idea and alleged that 15 Branch was simply acting at the direction of Sloan in negotiating the fee arrangement with Mr. LaSota. See Amended Demand for Arbitration at ¶¶ 17-21; Exhibit 17. In reality, as the fee agreements with Mr. LaSota make clear, Branch negotiated the fee arrangement and initiated the petition challenges. See Exhibit 13. Sloan and Branch had continual disputes over TPOF's campaign activities and billing practices. Branch claimed he had authority to spend on the campaign's behalf whether Sloan approved or not. See Exhibits 18-23.

On July 24, 2020, Branch sent Sloan a "preliminary invoice" for \$115,980.94 for services rendered during the primary phase of the campaign (January 1 to August 4, 2020). Exhibit 14. The invoice included \$20,000 for estimated future media prebuys, \$23,622 for "Candidate Field" Support," and \$5,250 for "future field support." Id. The invoiced amount also included the \$23,000 in legal fees but was labeled as "Signature Challenge Strategy." *Id.*

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¹ Part of this fee also went towards Mr. LaSota's defense of a challenge to Sloan's petition signatures. Sloan did engage Mr. LaSota for the defense but was told by Mr. LaSota that the cost of the defense would be covered by \$23,000 payment from TPOF.

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On July 25, 2020, Sloan responded to this invoice by instructing Branch to not spend the \$25,250 in future estimated costs (\$20,000 for media pre buys and \$5,250 for "future field support") and informed him that he was terminating the Contract and would tender a check for \$90,766 as a final payment. Exhibit 15. This payment represented the full clean elections funding amount of \$116,016 minus the \$25,250 that had yet to be spent as indicated in the preliminary invoice sent by Branch. Sloan tendered the check but Branch did not cash or deposit it. Subsequently, Sloan, upon consultation with an attorney, determined that it would be illegal to compensate TPOF for the \$23,000 in legal fees. Exhibit 29. Accordingly, Sloan canceled the check for \$90,766 and sent another check for \$67,766 (\$90,766 – \$23,000). *Id.* Branch did not cash or deposit this check. Sloan later filed his final primary campaign finance report reflecting a \$67,730 payment to TPOF for consulting services rendered and a remaining cash balance of \$23,854. Exhibit 9. The \$67,766 check was also later cancelled.

On July 31, 2020, TPOF sent a final invoice for \$116,016. Exhibit 16. This updated invoice now included, without explanation, \$45,235.92 for "Candidate Field Support," whereas the July 15|| 24 invoice delineated \$23,622 for this same category. *Compare* Exhibit 14 with Exhibit 16. The mysterious increase happened to be roughly the amount of disputed invoicing for future services and increased the amount owed to exactly the amount of primary clean elections funding. The July 31 invoice also included \$25,000 for "Strategic Campaign Development," \$7,300 for "Campaign development Admin.," \$3,500 for "Payment for signatures and admin fee," and \$1,000 for "Use of The Power of Fives Brand Logo." Exhibit 16. No other breakdown of costs was provided to Sloan explaining exactly what these charges entailed.

On October 23, 2020, Branch filed a complaint against Sloan with the Citizens Clean Election Commission ("CCEC") alleging that Sloan overspent on his primary campaign by \$23,056 in violation of the Act. Exhibit 17. In response, the CCEC's executive director issued a "Statement of Reasons of the Executive Director" (the "Statement") summarizing his reasons for believing that the Contract may have violated the Act. Exhibit 24. TPOF then filed its demand for arbitration on November 23, 2020, claiming it is owed the full amount of primary funding, \$116,016.

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III. LEGAL DEFENSES

A. The Contract Between TPOF And Sloan Is Illegal

The Contract between TPOF and Sloan is illegal. The Act allows candidates for Arizona State Offices to use public money to fund their campaigns. *See* A.R.S. § 16-940 et seq. The Act established the CCEC to administer the Act. A.R.S. § 16-955-56. The CCEC may prescribe rules to carry out the purposes of the Act. *Id.* The Act and CCEC regulations place strict limits and controls over campaign spending by Clean Elections candidates. There are at least four such restrictions that are relevant here.

First, a candidate cannot incur debt or make expenditures that exceed the amount of cash on hand² before the candidate has qualified for Clean Elections funding. A.A.C. R2-20-104(D)(6).³ Second, while candidates may authorize agents to purchase goods or services on behalf of the campaign, the candidate must have "sufficient funds in the candidate's campaign account to pay for the amount of such expenditures *at the time it is made* and all other outstanding obligations of the candidate's campaign committee[.]" A.A.C. R2-20-110(A)(3)(b) (emphasis added). A campaign expenditure is deemed to have been made "as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services." A.A.C. R2-20-110(A)(5).

Third, Clean Elections regulations also require *detailed* reports of campaign expenditures. A.A.C. R2-20-110. As it concerns expenditures for consulting, advising or the like, the candidate must include in finance reports "a detailed description of what is included in the service, including an allocation of services to a particular election." A.A.C. R2-20-110(A)(1). Clean Elections funds can only be used for "direct campaign purposes." A.A.C. R2-20-702(A). "Direct campaign purpose" is defined as including "materials, communications, transportation, supplies and expenses used toward the election of a candidate. A.A.C. R2-20-101. The candidate has the burden of proving that an expenditure was for a direct campaign purpose. A.A.C. R2-20-703(A)(1). Every

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² Clean Elections candidates may collect a limited number of small contributions in addition to the public money received from CCEC. *See* A.R.S. § 16-945.

³ "Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand."

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campaign expenditure must be documented in detail so as to meet this burden. *See* A.A.C. R2-20-703(A)(2). Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies A.A.C. R2-20-703(C).

Fourth, "[n]o expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent." A.A.C. R2-20-115(B)(2); see also, A.R.S. § 16-907(A) ("A committee may not make a contribution, expenditure or disbursement without the authorization of the treasurer or the treasurer's designated agent.").

A party to a contract cannot recover payments under the contract if the acts to be performed under the contract are illegal. *White v. Mattox*, 127 Ariz. 181, 184 (1980) ("Recovery will be denied if the acts to be performed under the contract are themselves illegal or contrary to public policy."). In *Mattox*, the Arizona Supreme Court upheld a summary judgment for a purchaser of a liquor license to recover sums paid under the purchase contract because it was illegal to sell a liquor license without also selling the attendant business. *Id.* Equity cannot save a party seeking to enforce an illegal contract. *Landi v. Arkules*, 172 Ariz. 126, 136 (App. 1992) (baring defendant from collecting under an illegal contract even though the plaintiff benefited substantially from the defendant's services).

In this case, the Contract between TPOF and Sloan was illegal the moment it was signed. The Contract was signed in December of 2019 but by its terms was not effective until January 1, 2020. Exhibit 1. Yet, TPOF alleges that services for the Sloan campaign began to be provided in September 2019. Petitioner's Amended Demand for Arbitration at ¶ 12. Setting aside that any expenses incurred before the effective date of the Contract would be unenforceable, the entire amount of expenses are unenforceable because the signing of the Contract itself incurred debt for the Sloan campaign months before the campaign was qualified for Clean Elections funding on July 17, 2020. This was a clear and direct violation of A.A.C. R2-20-104(D)(6). Moreover, all services rendered by TPOF, including the legal challenges handled by Mr. LaSota, were rendered prior to July 17, 2020. Thus, whether an expenditure was incurred when the service was rendered

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or at the time the Contract was signed, there can be no question that the Sloan campaign incurred debt prior to qualification for Clean Elections Funding.

The Contract also is a direct violation of A.A.C. R2-20-110(A)(3)(b) and (A)(5) because it incurred an expense without sufficient funds in Sloan's account, at the time the expense was incurred, sufficient to pay the amount of the expenditure. A campaign expenditure was made on the date Sloan promised, agreed, or contracted for the obligation to pay TPOF the amount of Clean Elections funding - \$116,016. A.A.C. R2-20-110(A)(5). Sloan's campaign unquestionably did not have that amount of funds at the time the Contract was signed or at any time during the period the services were rendered up to July 17, 2020. Exhibits 3-12. Prior to July 18, the highest cash balance reported by the Sloan campaign was \$10,360.10. Thus, the campaign never had sufficient funds to cover the TPOF Contract expenditure and for this reason alone, the Contract is illegal and cannot be enforced.

It would also be illegal for Sloan to pay the amount due under the Contract because TPOF's invoices do not comply with the CCEC's reporting requirements. Under the terms of the Contract, TPOF unquestionably was to provide consulting, advising, and similar services. Thus, finance reports must contain a detailed description of what is included in the service. A.A.C. R2-20-110(A)(1). Instead, TPOF's invoices charge large dollar amounts for vague categories such as "Candidate Field Support" and "Strategic Campaign Development." The public policy requiring more detailed reporting includes ensuring that public funds are not used to line the pockets of a candidate's close friends or associates for providing bogus services. For all anyone is aware, TPOF's \$25,000 charge for "Strategic Campaign Development" could have consisted of nothing more than a one-hour (or five-minute) consultation. For Sloan to make these payments using public money would violate the CCEC's rules and the public policy supporting them. In addition, Sloan could not possibly meet his burden of proving that these campaign expenditures were for a "direct campaign purpose" based on TPOF's vague invoices. The invoices fall short of the detailed documentation required for campaign expenditures. As such, if Sloan were to pay these invoices using Clean Elections money, he would be personally liable to repay the Clean Elections fund. A.A.C. R2-20-703(C).

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Finally, the arrangement contemplated by the Contract is illegal because it essentially purports to allow TPOF to manage campaign spending. *See* Exhibits 18-23. The Act only allows the campaign's treasurer or the treasurer's agent to make spending decisions. A.R.S. § 16-907(A). The Contract does not make TPOF an agent for the campaign. Instead, the Contract provides that TPOF "shall not have any right, power or authority (and shall not hold itself out as having any such right, power or authority) to bind the Candidate in any manner or to any agreement or undertaking with any third party except as specifically provided in this Agreement." Exhibit 1. Nothing in the Contract specifically provides for TPOF to bind Sloan to an agreement with a third party. Thus, any expenditures incurred by TPOF that were not specifically authorized by Sloan were a violation of campaign finance law and therefore cannot be paid using Clean Election money.

There is a thick irony in the fact that Branch filed a complaint with the CCEC alleging that his own contract with Sloan was in violation of the Act. Indeed, the "Statement of Reasons of the Executive Director" (the "Statement") from the CCEC reiterates that the "Act and rules do not provide for an agreement to be post-dated to avoid the expenditure." Accordingly, the Statement concludes that there is reason to believe a violation occurred because the Contract expenditure should have been reported for 2019. Once again, an expenditure – which the Statement makes clear actually occurred at the signing of the Contract – cannot be incurred before qualification for Clean Elections funding. Branch cannot simultaneously complain that it was Sloan who committed violations of the Act by entering into the Contract while claiming that Sloan owes him the money due under the illegal Contract.

For all of these reasons, the Contract is illegal or otherwise violates public policy and as such cannot be enforced. For Sloan to pay TPOF the amounts claimed to be owed would be a violation of the Act, its related regulations, and supporting public policy. As such, just as the seller of the liquor license in *Mattox*, TPOF must be barred from collecting under the Contract.

B. Equity Favors Sloan

To the extent TPOF may argue that it should be compensated on equity grounds, those arguments should be dismissed. As the *Landi* court (and numerous other courts) made clear, it

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does not matter that a party has benefited from an illegal contract; the fact that it is illegal is conclusive as to enforceability. Moreover, Branch and TPOF purported to provide turnkey campaign services and assured Sloan that the Contract was legally compliant. Branch put himself out as an expert and Sloan relied on his representations. Emails from Branch make clear that he asserted himself as the leader of the Sloan campaign. Exhibits 18-23. For example, in one email, Branch asserts that he can run the campaign without Sloan's input and that he will provide services for the Sloan campaign whether Sloan agrees to it or not. Exhibit 18. After positioning himself in this way, Branch and TPOF cannot now rely on equity to claim they deserve compensation for services that were not approved by Sloan.

As another illustration of the absence of equity favoring TPOF, its invoice billing \$23,000 for "Signature Challenge Strategy" stands out. Branch claims in his Demand for Arbitration and CCEC complaint that it was Sloan who "informed the [TPOF] that he was going to challenge the 13 signatures of [Sloan's opponents]." Exhibit 17; see also, Amended Demand for Arbitration at ¶¶ 14 17-21. Yet, Branch wants to collect the \$23,000 through this arbitration for 'his' "Signature 15 Challenge Strategy." Exhibit 14. He cannot have it both ways. If Sloan in fact came up with the idea and executed it, then there would be no equity in compensating TPOF for the "Strategy." If Branch did form and execute the strategy, then he perjured himself to CCEC.⁴ If equity demands

⁴ Regardless of who came up with the idea or who engaged Mr. LaSota for the legal challenges and defenses, it is illegal to use Clean Elections money to pay for Mr. LaSota's services because, as explained above, the services were incurred prior to qualification for funding and before the campaign had sufficient funds to pay for the expenditure, were not specifically approved by Sloan as the campaign's treasurer, and the invoice item "Signature Challenge Strategy" is not sufficiently detailed to indicate what this service entailed. In addition, a close reading of the statutes indicates that legal services for a campaign are not campaign expenditures at all. A.R.S. § 16-921(B)(7). And since Clean Elections funding can only be used for direct campaign expenditures, (A.A.C. R2-20-702(A)), they cannot be used for something that is not a campaign expenditure at all. In practice however, it is unclear whether CCEC would find a violation for using Clean Elections money to pay for legal services. At any rate, legal services were not part of the services to be provided under the Contract and Sloan never authorized TPOF to incur the \$23,000 in legal expenses (creating another reason this expenditure violates elections laws; it was an expenditure not authorized by the campaign treasurer). Moreover, the Contract specifically provides that it does not make TPOF or its employees an agent of the candidate. Exhibit at § 5. The Contract goes on to state, "The Company [TPOF] shall not have any right, power or authority (and shall not hold itself out as having any such right, power or authority) to bind the Candidate in any manner or to any agreement or undertaking with any third party except as specifically provided in this Agreement." Thus, as a matter of contract interpretation, TPOF is not entitled to be reimbursed for

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anything, it demands that TPOF and/or Branch should compensate Sloan for any consequences arising from violations of the Act.

C. TPOF Breached Its Fiduciary Duty To Sloan

TPOF and Branch created fiduciary duties to Sloan by purporting to provide "turnkey" campaign services. TPOF breached its fiduciary duty by incurring unapproved expenses, entering into an illegal contract it should have known was illegal, and by incurring expenses TPOF should have known could not be paid for by the funds in Sloan's account. A fiduciary that breaches its duty has no right to collect for its services. *Coldwell Banker Commercial Grp., Inc. v. Camelback Office Park*, 156 Ariz. 214, 221 (App. 1987), *aff'd in part, vacated in part*, 156 Ariz. 226 (1988) ("A broker who breaches his fiduciary duty to his principal is not entitled to a commission.").

IV. CONCLUSION

For the foregoing reasons, TPOF's claim must be dismissed and the remaining funds in Sloan's campaign account must be returned to CCEC. Respondents also request that they be awarded attorney's fees and costs pursuant to A.R.S. § 12-341, § 12-341.01, and Section 17 of the Contract.

SLOAN EXHIBIT LIST

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17		INDEX
18	1.	2020-01-01_Services_Agreement
10	2.	2020-07-17_Memorandum
19	3.	2020-08-14 Amended 2019 Report
20	4.	2020-04-14 Amended 2020 Interim Report
	5.	2020-08-14 Amended 2020 Q1 Report
21	6.	2020-08-14 Amended 2020 Q2 Report
22	7.	2020-08-14 Amended 2020 Pre-Primary Report
	8.	2020-08-14 Amended 2020 Qualifying Period Recap Report
23	9.	2020-08-14 Amended 2020 Primary Recap Report
24	10.	2020-10-15 2020 Q3 Report
	11.	2020-11-27 Amended 2020 Pre-General Report
25	12.	2020-11-10 Amended 2020 General Recap Report
26	13.	Various Dates_LaSota_Invoices
20	14.	2020-06-24 Ltr B Branch to E Sloan re Invoice 1007
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the legal expenses. This is likely the reason TPOF is invoicing the \$23,000 as "Strategy" rather than legal fees.

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	15.	2020-07-25_EM_E_Sloan_to_B_Branch re Revised Invoice	
	16.	2020-07-31 Ltr Branch to Sloan re Election Invoice	
2∥	17. 2020-10-23 Ltr B Branch re Clean Elections Campaign		
18. 2020-07-23EM B Branch to A Lyons and E Sloan re point of clarification			
'∥	19.	2020-01-14 EM B Branch to B Branch re Deadline_end of business	
₊ ∥	20. 2020-01-24 EM B Branch to B Branch re Sig petitions 5 dollar forms		
$\ $	21.	2020-02-05 EM B Branch to B Branch re platform_State of Union	
`∥	22.	2020-03-14 EM B Branch to B Branch re time for you to lead	
<u>,</u>	23.	2020-03-16 EM B Branch to B Branch re Plan B_Mandatory Zoom Meeting	
	24.	Undated_State of Arizona CCEC Statement of Reasons	
$\ $	25.	2020-07-25 Ltr B Branch to E Sloan re Invoice No. 1008	
,	26.	2020-07-31 Ltr B Branch to E Sloan re Invoice No. 1010	
$\ $	27.	2020-08-03 EM E Sloan to B Branch re Final Invoice Phase I_II	
╢	28.	2020-08-03 EM E Sloan to B Branch re Final invoice Phase I_II	
$\ $	29.	Undated_ Clean Elections Funding chapter excerpts	
$\ $	30.	Undated Partisan Nomination Petition	
.	31.	2020-11-05 Ltr L Miller to T Collins re Complaint	
$\ $	32.	2020-12-23 State Participating Candidate App to Receive Funds	

SLOAN WITNESS LIST

- 1. Eric Sloan
- 2. Allyssa Lyons Sloan
- 3. Constantine Querard
- 4. Tom Collins, Executive Director, Citizens Clean Elections Commission
- 5. Timothy LaSota
- 6. Bob Branch
- 7. Without waiving any objections thereto, any and all witnesses listed by Petitioner in its Disclosure Statement and all supplements thereto.

RESPECTFULLY SUBMITTED this 1st day of February, 2021.

WILENCHIK & BARTNESS, P.C.

/s/ Dustin D. Romney

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John "Jack" D. Wilenchik, Esq.
Dustin D. Romney, Esq.
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Phoenix, Arizona 85004
Attorneys for Attorneys for Respondents

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		<u>rebecca.albrecht@bowmanandbrooke.com</u>
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EXHIBIT G

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AMERICAN ARBITRATION ASSOCIATION

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

Claimant,

v.

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ERIC SLOAN and ALISA LYONS SLOAN, husband and wife,

Respondents.

No. 01-20-0014-8998

RESPONDENTS' POST-ARBITRATION SUMMATION

(Assigned to Arbitrator Rebecca A. Albrecht)

Respondents Eric Sloan ("Sloan") and Alisa Lyons Sloan (collectively, "Respondents") herein submit their Post-Arbitration Summation.

I. INTRODUCTION

At the arbitration hearing (the "Hearing"), the parties testified extensively as to the circumstances surrounding the consummation and performance of the contract. Branch's testimony was erratic, contradictory, and incredible. To the contrary, Sloan's testimony was consistent, concise, and wholly credible. Nevertheless, most of this testimony was irrelevant to the central issue in this case, i.e., whether the contract is valid and can be legally enforced. It cannot because contracts that require illegal acts to be performed are completely unenforceable. If Sloan were to pay the amount demanded, he would violate at least five elections laws. First, the

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contract committed Sloan's campaign to spend money before the campaign had been approved for Clean Election's funding. Second, The Power of Fives ("TPOF") incurred expenses on behalf of the campaign before the campaign had sufficient funds to pay for the expenses from their cash on hand. Indeed, when the contract was signed, the committed contract amount was more than four times the maximum amount of seed money allowable by law. Third, the invoices sent by TPOF were not sufficiently itemized to comply with campaign finance reporting requirements. Fourth, only a campaign's treasurer or the treasurer's agent can authorize campaign spending, and TPOF was never the campaign treasurer's agent but incurred expenses that were not approved by the campaign treasurer. Finally, to the extent TPOF provided any valuable services, which it did not, to the Sloan campaign, they were illegal corporate contributions because TPOF was not compensated for them nor could it have been because the campaign had not qualified for Clean Elections funding at the time the services were agreed upon and/or delivered.

For all of these reasons, if Respondents were to pay the amounts claimed to be owed under the contract, they would be in violation of Arizona election laws, subjecting them to personal liability for the monies wrongfully paid and to civil penalties. The Contract is therefore void *ab initio* and unenforceable. Accordingly, Petitioner's claim should be dismissed, and Respondents should be awarded their attorney's fees and costs. Even in the event that Your Honor finds that the Contract is valid, as Sloan described in detail, Branch and TPOF failed to perform a fraction of the services due to Sloan under the Contract. By way of example, Sloan was approved for Clean Election funding on July 17, 2020 and Branch and TPOF was terminated on July 25, 2020. In addition to a prefunding amount of \$46,406.40, Branch now seeks payment for nominal services provided for a period of 18 days in the amount of \$69,609.60 (8 days if you calculate from the time of funding to termination of the Contract by Sloan on July 25, 2020). This is an unconscionable amount being demanded by Branch for the limited work TPOF performed during that time. As such, even if the contract is deemed valid, Branch and TPOF are not entitled to any such award.

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II. FACTUAL BACKGROUND

Respondent Sloan ran for Arizona Corporation Commission during the 2020 election cycle as a Clean Elections candidate, meaning he could use public money to fund his campaign if he adhered to certain conditions. Sloan entered into a contract with TPOF to provide "turnkey" campaign management services (the "Contract"). Exhibit 1. TPOF was formed by its principal Robert Branch ("Branch"). Prior to signing, Sloan raised concerns about the legality of the Contract under the Citizens Clean Elections Act (the "Act") but was assured by TPOF counsel Daniel Arellano that the Contract was legal. Indeed, both Branch and Sloan testified that they believed, albeit mistakenly, that the Contract was valid and enforceable. By its terms, the Contract became effective on January 1, 2020. Exhibit 1. The services to be provided under the Contract included, "develop campaign strategy," "groom the candidate," "handle all print and radio advertisements," and "provide support as needed to support the strategic plan of the campaign as determined by the [TPOF]." *Id.* at 7. Compensation to TPOF for these services was to receive all Clean Elections funding that Sloan was to receive. *Id.* For the primary phase, that amount was statutorily determined at \$116,016 (A.R.S. §§ 16-959(A) and 961(G)(3)).

Sloan's campaign committee did not qualify for Clean Elections funding until July 17, 2020, (Exhibit 2) and did not receive Clean Elections funds until July 27, 2020. *See* Exhibit 8 at 10. TPOF alleges the services began to be provided for the campaign in September of 2019. *See* Petitioner's Amended Demand for Arbitration at ¶ 12. All of TPOF's services were rendered prior to July 17, 2020. Prior to July 18, the highest cash balance reported by the Sloan campaign was \$10,360.10. *See* Exhibits 3-12.

Throughout the campaign season, TPOF incurred or otherwise attempted to bill for expenditures that were not approved by Sloan, who was the campaign's treasurer. For example, in February 2020, Branch invited Sloan to attend a gun show to collect petition signatures needed to qualify for the ballot. Sloan paid for his own entry and collected his own signatures, yet TPOF billed Sloan for these signature-gathering efforts. As another example, TPOF and Branch filed signature challenge lawsuits against other corporation commissioner candidates without authorization. Branch negotiated a \$23,000 flat fee for attorney Timothy LaSota to provide legal

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services for these challenges. See Exhibit 13. The challenges were successful and as a result, Sloan "won" the primary because all other Republican candidates were knocked off the ballot. TPOF billed Sloan for these challenges at \$23,000 as "Signature Challenge Strategy." Exhibit 14. Yet in its Amended Demand for Arbitration, TPOF characterized the "Strategy" as Sloan's idea and alleged that Branch was simply acting at the direction of Sloan in negotiating the fee arrangement with Mr. LaSota. See Amended Demand for Arbitration at ¶¶ 17-21. In reality, as the fee agreement with Mr. LaSota makes clear, Branch negotiated the fee arrangement and initiated the petition challenges. See Exhibit 13. Sloan and Branch had continual disputes over TPOF's campaign activities, lack of performance, and billing practices. Branch claimed he had authority to spend on the campaign's behalf whether Sloan approved or not. See Exhibits 18-23. A "fact" that was vehemently denied by Sloan. Branch was not and was never considered an agent of Sloan's campaign. To the contrary, paragraph 5 of the Contract specifically states that TPOF was not an agent of Sloan nor did TPOF (Branch) have any authority whatsoever to bind Sloan in any manner or to any agreement or undertaking with any third party (emphasis added). Thus, even if the Contract is deemed illegal, the clear language of paragraph 5 demonstrates the intentions of Sloan to not confer authority upon TPOF or Branch to enter into any contract including the retainer agreement with Mr. Lasota. Moreover, legal fees were specifically excluded from the terms of the Contract, so when signing the retainer with Mr. Lasota, and as explained by Sloan, Branch had no authority whatsoever to enter into the retainer binding Sloan to pay the balance. Branch is also billing the legal fees as a campaign expense under the misleading and false category of "Signature Challenge Strategy" clearly because legal fees fell outside of the scope of the Contract terms.

On July 24, 2020, Branch sent Sloan a "preliminary invoice" for \$115,980.94 for services rendered during the primary phase of the campaign (January 1 to August 4, 2020). Exhibit 14. The invoice included \$20,000 for estimated future media prebuys, \$23,622 for "Candidate Field Support," and \$5,250 for "future field support." *Id.* The invoiced amount also included the

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\$23,000 in legal fees but was labeled as "Signature Challenge Strategy." *Id.* It should be noted that Branch, despite his representations to the contrary, never provided any signs, text message blasts, email blasts, or radio advertisements for the campaign other than one media banner.

On July 25, 2020, Sloan responded to this invoice by instructing Branch to not spend the \$25,250 in future estimated costs (\$20,000 for media pre buys and \$5,250 for "future field support") and informed him that he was terminating the Contract and would tender a check for \$90,766 as a final payment. Exhibit 15. This payment represented the full clean elections funding amount of \$116,016 minus the \$25,250 that had yet to be spent as indicated in the preliminary invoice sent by Branch. Sloan tendered the check but Branch did not cash or deposit it. Subsequently, Sloan, upon consultation with an attorney, determined that it would be illegal to compensate TPOF for the \$23,000 in legal fees. Exhibit 29. Accordingly, Sloan canceled the check for \$90,766 and sent another check for \$67,766 (\$90,766 – \$23,000). *Id.* Branch did not cash or deposit this check. Sloan later filed his final primary campaign finance report reflecting a \$67,730 payment to TPOF for consulting services rendered and a remaining cash balance of \$23,854. Exhibit 9. The \$67,766 check was also later cancelled.

On July 31, 2020, TPOF sent a final invoice for \$116,016. Exhibit 16. Despite Sloan's clear instructions, this updated invoice now included, without explanation, \$45,235.92 for "Candidate Field Support," whereas the July 24 invoice delineated \$23,622 for this same category. *Compare* Exhibit 14 *with* Exhibit 16. The mysterious increase happened to be roughly the amount of disputed invoicing for future services and increased the amount owed to exactly the amount of primary clean elections funding. The July 31 invoice also included \$25,000 for "Strategic Campaign Development," \$7,300 for "Campaign development Admin.," \$3,500 for "Payment for signatures and admin fee," and \$1,000 for "Use of The Power of Fives Brand Logo." Exhibit 16. No other breakdown of costs was provided to Sloan explaining exactly what these charges encompassed. Branch testified that the invoice contained no detail other than allocations in broad

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¹ Part of this fee also went towards Mr. LaSota's defense of a challenge to Sloan's petition signatures. Sloan did engage Mr. LaSota for the defense but was told by Mr. LaSota that the cost of the defense would be covered by \$23,000 payment from TPOF.

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and unspecific categories because Sloan requested that the invoice be vague with nothing but broad categories. He further testified that Alisa Sloan provided him with a sample invoice and he followed that format. Petitioner's Exhibit 9. However, on cross-examination, Branch admitted that he did not follow the sample format which contained more detailed categories of expenses set forth under the broad categories. Branch knew that such detail was crucial to Sloan's ability to legally file his campaign finance report. This fact is made clear when Branch requested that Mr. Lasota provide to him a more detailed invoice for services rendered under the retainer agreement. Petitioner's Exhibit 17. This more detailed invoice was never provided to Sloan, nor was TPOF invoice amended to include the more specific billing details. Petitioner's Exhibit 8. Moreover, on cross-examination Branch testified that he included the separate line item for "Campaign Development Admin." For \$3,500 because he thought Sloan needed it to comply with Clean Elections Regulations. With regard to detailed billings, Branch further testified that he was in possession of ALL of the backup documentation to substantiate the amounts billed to Sloan under the broad invoice categories. Branch first testified that he did not provide this documentation to his attorney, then later contradicted himself by testifying that he did provide it to his attorney. Mysteriously, however, when bringing his claim for Breach of Contract, he never provided such backup documents to support his claim. Regardless of whether this documentation exists, it is not before Your Honor and its absence should compel, at a minimum, the conclusion that Branch cannot meet his burden to show that he performed under the contract. Nevertheless, Sloan was not approved for Clean Election funding until July 17, 2020 and Branch and TPOF was terminated on July 25, 2020. Branch now seeks payment for nominal services provided for a period of 18 days in the amount of \$69,609.60. This is an unconscionable amount being demanded by Branch for the limited work TPOF performed during that time (8 days if you calculate from the time of funding to termination of the Contract by Sloan on July 25, 2020).

On October 23, 2020, Branch filed a complaint against Sloan with the Citizens Clean Election Commission ("CCEC") alleging that Sloan overspent on his primary campaign by \$23,056 in violation of the Act. Exhibit 17. In response, the CCEC's executive director issued a "Statement of Reasons of the Executive Director" (the "Statement") summarizing his reasons for

believing that the Contract may have violated the Clean Elections statutes and regulations. Exhibit 24. TPOF then filed its demand for arbitration on November 23, 2020, claiming it is owed the full amount of primary funding, \$116,016.

III. THE CONTRACT CANNOT BE LEGALLY ENFORCED

A. A Contract Cannot be Enforced if the Acts to be Performed Under the Contract are Illegal

A party to a contract cannot recover payments under the contract if the acts to be performed under the contract are illegal. *White v. Mattox*, 127 Ariz. 181, 184 (1980) ("Recovery will be denied if the acts to be performed under the contract are themselves illegal or contrary to public policy."). In *Mattox*, the Arizona Supreme Court upheld a summary judgment for a purchaser of a liquor license to recover sums paid under the purchase contract because it was illegal to sell a liquor license without also selling the attendant business. *Id.* No theory of equity can save a party seeking to enforce an illegal contract. *Landi v. Arkules*, 172 Ariz. 126, 136 (App. 1992) (baring defendant from collecting under an illegal contract even though the plaintiff benefited substantially from the defendant's services); *Hammer v. Today's Health Care II*, No. CV2011-051310, 2012 WL 12874349, at *2 (Ariz.Super. Apr. 17, 2012) ("[O]ne who enters into [an illegal] contract is not only denied enforcement of his bargain, he is also denied restitution for any benefits he has conferred under the contract.").

B. The Contract Violates The Statutes and Rules Governing Clean Election Campaign Funding

A candidate cannot incur debt or make expenditures that exceed the amount of cash on hand² before the candidate has qualified for Clean Elections funding. A.A.C. R2-20-104(D)(6).³ A campaign expenditure is deemed to have been made "as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services." A.A.C. R2-20-110(A)(5).

² Clean Elections candidates may collect a limited number of small contributions in addition to the public money received from CCEC. *See* A.R.S. § 16-945.

³ "Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand."

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In this case, Branch's own testimony confirmed that the Sloan campaign did not qualify for Clean Elections funding until July 17, 2020 (see Respondents' Exhibit 2) and that the Contract became effective January 1, 2020. In fact, Branch also testified that TPOF provided services to the Sloan campaign as early as September 2019. Thus, the Sloan campaign incurred a campaign expenditure or debt, at the latest, when it contracted with TPOF on January 1, 2020 for campaign consulting services. This was well before the campaign qualified for Clean Elections funding and the amount of the expenditure (\$116,016) far exceeded the campaign's cash on hand at the time. See Exhibits 3-12. Thus, the contract, from the moment it was entered into, created an illegal campaign debt or expenditure for the Sloan campaign. Sloan cannot use public Clean Elections money to pay an illegally incurred debt. Moreover, Branch represented to Sloan that he was an expert in the area of Clean Election law. However, he testified on cross-examination that he was not. But as was made apparent by the testimony of Sloan's expert witness, Constantine Querard, intimate knowledge of the relevant laws is crucial to a campaign consultant's discharge of his duties. In particular, a campaign consultant must be aware of the campaign's budget so that the consultant does not incur an illegal expense and thereby jeopardize his client's entire campaign. This goes to the heart of the contract for campaign consulting which reads, "The Company [TPOF] represents that the Company has the special skill, professional competence, expertise and experience to undertake the obligations imposed by this Agreement, and will perform the Services in a . . . skillful manner commensurate with the highest standards of the Company's profession and in compliance with all applicable laws." (emphasis added). TPOF failed to perform this promise by incurring illegal campaign expenditures on behalf of Sloan and by failing to provide adequately detailed invoices. Even if Alisa Sloan requested vague invoices – a point that is strenuously contested by Sloan's testimony – Branch and TPOF should have had the expertise to know that this would not satisfy Clean Elections regulations and should have advised Sloan to that effect.

Second, while candidates may authorize agents to purchase goods or services on behalf of the campaign, the candidate must have "sufficient funds in the candidate's campaign account to pay for the amount of such expenditures *at the time it is made* and all other outstanding obligations

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of the candidate's campaign committee[.]" A.A.C. R2-20-110(A)(3)(b) (emphasis added). A campaign expenditure is deemed to have been made "as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services." A.A.C. R2-20-110(A)(5). Thus, upon signing the Contract, Sloan incurred an obligation to pay TPOF in excess of four times the maximum allowable amount of seed money the campaign could expend and more than sixteen times the amount of seed money the campaign would raise. This fact alone proves that the Contract was illegal when consummated.

Third, Clean Elections regulations also require *detailed* reports of campaign expenditures. A.A.C. R2-20-110. As it concerns expenditures for consulting, advising or the like, the candidate 10 must include in finance reports "a detailed description of what is included in the service, including an allocation of services to a particular election." A.A.C. R2-20-110(A)(1). Clean Elections funds can only be used for "direct campaign purposes." A.A.C. R2-20-702(A). "Direct campaign purpose" is defined as including "materials, communications, transportation, supplies and expenses used toward the election of a candidate. A.A.C. R2-20-101. The candidate has the burden of proving that an expenditure was for a direct campaign purpose. A.A.C. R2-20-703(A)(1). Every campaign expenditure must be documented in detail so as to meet this burden. See A.A.C. R2-20-703(A)(2). Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies A.A.C. R2-20-703(C).

Fourth, "[n]o expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent." A.A.C. R2-20-115(B)(2); see also, A.R.S. § 16-907(A) ("A committee may not make a contribution, expenditure or disbursement without the authorization of the treasurer or the treasurer's designated agent.").

As previously noted, the Contract between TPOF and Sloan was illegal the moment it was signed. The Contract was signed in December of 2019 but by its terms was not effective until January 1, 2020. Exhibit 1. Yet, TPOF alleges that services for the Sloan campaign began to be provided in September 2019. Petitioner's Amended Demand for Arbitration at ¶ 12. Setting aside that any expenses incurred before the effective date of the Contract would be illegal, the entire

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amount of expenses are illegal because the signing of the Contract itself incurred debt for the Sloan campaign months before the campaign was qualified for Clean Elections funding on July 17, 2020. This was a clear and direct violation of A.A.C. R2-20-104(D)(6). Moreover, all services rendered by TPOF, including the legal challenges handled by Mr. LaSota, were rendered prior to July 17, 2020. Thus, whether an expenditure was incurred when the service was rendered or at the time the Contract was signed, there can be no question that the Sloan campaign incurred debt prior to qualification for Clean Elections Funding.

The Contract also is a direct violation of A.A.C. R2-20-110(A)(3)(b) and (A)(5) because it incurred an expense without sufficient funds in Sloan's account, at the time the expense was incurred, sufficient to pay the amount of the expenditure. A campaign expenditure was made on the date Sloan promised, agreed, or contracted for the obligation to pay TPOF the amount of Clean Elections funding - \$116,016. A.A.C. R2-20-110(A)(5). Sloan's campaign unquestionably did not have that amount of funds at the time the Contract was signed or at any time during the period the services were rendered up to July 17, 2020. Exhibits 3-12. Prior to July 18, the highest cash balance reported by the Sloan campaign was \$10,360.10. Thus, the campaign never had sufficient funds to cover the TPOF Contract expenditure and for this reason alone, the Contract is illegal and cannot be enforced.

It would also be illegal for Sloan to pay the amount due under the Contract because TPOF's invoices do not comply with the CCEC's reporting requirements. Under the terms of the Contract, TPOF unquestionably was to provide consulting, advising, and similar services. Thus, finance reports must contain a detailed description of what is included in the service. A.A.C. R2-20-110(A)(1). Instead, TPOF's invoices charge large dollar amounts for vague categories such as "Candidate Field Support" and "Strategic Campaign Development." The public policy requiring more detailed reporting includes ensuring that public funds are not used to line the pockets of a candidate's close friends or associates for providing bogus services. For all anyone is aware, TPOF's \$25,000 charge for "Strategic Campaign Development" could have consisted of nothing more than a one-hour (or five-minute) consultation. For Sloan to make these payments using public money would violate the CCEC's rules and the public policy supporting them. In addition,

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Sloan could not possibly meet his burden of proving that these campaign expenditures were for a "direct campaign purpose" based on TPOF's vague invoices. The invoices fall short of the detailed documentation required for campaign expenditures, despite Branch's testimony that he and his lawyer were in possession of ALL the backup documentation to justify the amounts invoiced, but never produced them or attached them to the Demand for Arbitration. This is because such documents do not exist. As such, if Sloan were to pay these invoices using Clean Elections money, he would be personally liable to repay the Clean Elections fund. A.A.C. R2-20-703(C).

8 Finally, the arrangement contemplated by the Contract is illegal because it essentially purports to allow TPOF to manage campaign spending. See Exhibits 18-23. The Act only allows the campaign's treasurer or the treasurer's agent to make spending decisions. A.R.S. § 16-907(A). The Contract does not make TPOF an agent for the campaign. Instead, the Contract provides that TPOF "shall not have any right, power or authority (and shall not hold itself out as having any such right, power or authority) to bind the Candidate in any manner or to any agreement or undertaking with any third party except as specifically provided in this Agreement." Exhibit 1. 15|| Nothing in the Contract specifically provides for TPOF to bind Sloan to an agreement with a third party. Thus, any expenditures incurred by TPOF that were not specifically authorized by Sloan were a violation of campaign finance law and therefore cannot be paid using Clean Election 18 money.

There is a thick irony in the fact that Branch filed a complaint with the CCEC alleging that his own contract with Sloan was in violation of the Act. Indeed, the "Statement of Reasons of the Executive Director" (the "Statement") from the CCEC reiterates that the "Act and rules do not provide for an agreement to be post-dated to avoid the expenditure." Accordingly, the Statement concludes that there is reason to believe a violation occurred because the Contract expenditure should have been reported for 2019. Once again, an expenditure – which the Statement makes clear actually occurred at the signing of the Contract – cannot be incurred before qualification for Clean Elections funding. Branch cannot simultaneously complain that it was Sloan who committed violations of the Act by entering into the Contract while claiming that Sloan owes him the money due under the illegal Contract.

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For all of these reasons, the Contract is illegal or otherwise violates public policy and as such cannot be enforced. For Sloan to pay TPOF the amounts claimed to be owed would be a violation of the Act, its related regulations, and supporting public policy. As such, just as the seller of the liquor license in *Mattox*, TPOF should be barred from collecting under the Contract.

C. Equity Favors Sloan

To the extent TPOF may argue that it should be compensated on equity grounds, those arguments should be dismissed. As the *Landi* court (and numerous other courts) made clear, it does not matter that a party has benefited from an illegal contract; the fact that it is illegal is conclusive as to enforceability. Moreover, Branch and TPOF purported to provide turnkey campaign services and assured Sloan that the Contract was legally compliant. Branch put himself out as an expert and Sloan relied on his representations. Emails from Branch make clear that he asserted himself as the leader of the Sloan campaign. Exhibits 18-23. For example, in one email, Branch asserts that he can run the campaign without Sloan's input and that he will provide services for the Sloan campaign whether Sloan agrees to it or not. Exhibit 18. After positioning himself in this way, Branch and TPOF cannot now rely on equity to claim they deserve compensation for services that were not approved by Sloan.

As another illustration of the absence of equity favoring TPOF, its invoice billing \$23,000 for "Signature Challenge Strategy" stands out. Branch claims in his Demand for Arbitration and CCEC complaint that it was Sloan who "informed the [TPOF] that he was going to challenge the signatures of [Sloan's opponents]." Exhibit 17; *see also*, Amended Demand for Arbitration at ¶¶ 17-21. Yet, Branch wants to collect the \$23,000 through this arbitration for 'his' "Signature Challenge Strategy." Exhibit 14. He cannot have it both ways. If Sloan in fact came up with the idea and executed it, then there would be no equity in compensating TPOF for the "Strategy." If Branch did form and execute the strategy, then he perjured himself to CCEC and in his testimony at the hearing.⁴ If equity demands anything, it demands that TPOF and/or Branch should compensate Sloan for any consequences arising from violations of the Act.

⁴ Regardless of who came up with the idea or who engaged Mr. LaSota for the legal challenges and defenses, it is illegal to use Clean Elections money to pay for Mr. LaSota's services because,

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have known could not be paid for by the funds in Sloan's account. A fiduciary that breaches its duty has no right to collect for its services. Coldwell Banker Commercial Grp., Inc. v. Camelback Office Park, 156 Ariz. 214, 221 (App. 1987), aff'd in part, vacated in part, 156 Ariz. 226 (1988)

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("A broker who breaches his fiduciary duty to his principal is not entitled to a commission."). In our earlier memo we cited four legal defects in the TPOF contract that make it

TPOF Breached Its Fiduciary Duty To Sloan

TPOF and Branch created fiduciary duties to Sloan by purporting to provide "turnkey"

campaign services. TPOF breached its fiduciary duty by incurring unapproved expenses, entering

into an illegal contract it should have known was illegal, and by incurring expenses TPOF should

fundamentally flawed. Branch's testimony, however, highlighted a fifth flaw. He testified that if a TPOF candidate failed to qualify for Clean Elections then the candidate was not obligated to pay TPOF any amount. While TPOF may have been willing to clear the candidate's allocable share of TPOF expenses that doesn't mean the expenses didn't exist or that the candidate didn't 14 receive something of value on account of the expenses. As a campaign finance matter, whatever 15 TPOF billed for but did not collect would have to be treated as a campaign contribution to the

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as explained above, the services were incurred prior to qualification for funding and before the campaign had sufficient funds to pay for the expenditure, were not specifically approved by Sloan as the campaign's treasurer, and the invoice item "Signature Challenge Strategy" is not sufficiently detailed to indicate what this service entailed. In addition, a close reading of the statutes indicates that legal services for a campaign are not campaign expenditures at all. A.R.S. § 16-921(B)(7). And since Clean Elections funding can only be used for direct campaign expenditures, (A.A.C. R2-20-702(A)), they cannot be used for something that is not a campaign expenditure at all. In practice however, it is unclear whether CCEC would find a violation for using Clean Elections money to pay for legal services. At any rate, legal services were not part of the services to be provided under the Contract and Sloan never authorized TPOF to incur the \$23,000 in legal expenses (creating another reason this expenditure violates elections laws; it was an expenditure not authorized by the campaign treasurer). Moreover, the Contract specifically provides that it does not make TPOF or its employees an agent of the candidate. Exhibit 1 at § 5. The Contract goes on to state, "The Company [TPOF] shall not have any right, power or authority (and shall not hold itself out as having any such right, power or authority) to bind the Candidate in any manner or to any agreement or undertaking with any third party except as specifically provided in this Agreement." Thus, as a matter of contract interpretation, TPOF is not entitled to be reimbursed for the legal expenses. This is likely the reason TPOF deceitfully invoiced the \$23,000 as "Strategy" rather than legal fees.

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A PROLESSIONAL CONFORMION

candidate's campaign committee. As a legal matter those uncollected expenses are illegal corporate contributions from TPOF to the candidate.

To highlight, Candidate Jones receives something of value for the purpose of influencing the outcome of an election - attending or having the opportunity to attend a meet and greet - and does not pay for it. That's a "contribution." 16-901.11. That thing of value is not one of the exemptions from the definition of contribution found at 16-911, so it is a contribution. The "contribution" was provided by an LLC, in violation of 16-916A.

By billing for services prior to their qualifying Branch and TPOF set his candidates up to violate Article 2 of Chapter 6 of Title 16 (CCEC laws and regs.) By not billing when his candidates didn't qualify, he set his candidates up to violate Article 1 of Chapter 6 of Title 16 (the overall law of campaign finance). This is not indicative of a professional performing services in a competent and skillful manner in compliance with applicable laws. This was a breach of contract and therefore, even if the contract were legally enforceable, Sloan would be under no obligation to pay TPOF.

Finally, Branch violated his fiduciary duties to Sloan by billing for services that he could not have performed from the time Sloan was approved for Clean Election funding, July 17, 2020, and his termination on July 25, 2020. However, in addition to an illegal prefunding amount of \$46,406.40, Branch now seeks payment for nominal services provided for a period of 18 days in the amount of \$69,609.60. This is an unconscionable amount being demanded by Branch for the limited work TPOF performed during that time (8 days if you calculate from the time of funding to termination of the Contract by Sloan on July 25, 2020).

IV. CONCLUSION

For the foregoing reasons, TPOF's claim should be dismissed and the remaining funds in Sloan's campaign account must be returned to the CCEC. Respondents also request that they be awarded attorney's fees and costs pursuant to A.R.S. § 12-341, § 12-341.01, and Section 17 of the Contract.

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

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AMERICAN ARBITRATION ASSOCIATION

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

Claimant,

VS.

ERIC SLOAN and ALISA SLOAN LYONS, husband and wife,

Respondents.

I. INTRODUCTION

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

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

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Post-Hearing Statement

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

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

II. FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

At 11:34 AM on July 25, 2020, Branch e-mailed Sloan the invoice for Phase III—the general election—noting it was due 10 days after receipt of general election funding. **CEX 13**. Sloan put the next step of his plan into action via an e-mail sent that same day at 1:29 P.M., purporting to cancel the Agreement and offering to pay only \$90,730.94: Bob: Thank you for sending your preliminary invoice.

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

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

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

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

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

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

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

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

III. **ARGUMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. TPOF'S CLAIMS.

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

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

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

between the enrichment and impoverishment, (4) the absence of justification for the enrichment and impoverishment, and (5) the absence of a remedy at law).

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

V. CONCLUSION.

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

1	RESPECTFULLY SUBMITTED this 16th day of February, 2021.			
2	TB TIFFAN Y& BOSCO			
3	By: /s/William M. Fischbach			
4	William M. Fischbach			
5	Ryan P. Hogan			
6	Seventh Floor Camelback Esplanade II 2525 East Camelback Road			
7	Phoenix, Arizona 85016 Attorneys for The Power of Fives, LLC			
8	Copy of the foregoing e-mailed this 16th day of February, 2021 to:			
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15	Hon. Rebecca A. Albrecht			
16	rebecca.albrecht@bowmanandbrooke.com Kelly.Brubaker@bowmanandbrooke.com			
17	Arbitrator			
18	Julie E Collins AAA Manager of ADR Services JulieCollins@adr.org			
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20	By: <u>/s/ Jessica Cebalt</u>			
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EXHIBIT I

STATE OF ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION

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In the Matter of:

Eric Sloan, Respondent

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MUR No. 20-04

[Proposed] Repayment Order

Pursuant to ARS § 16-956(A)(7) and Ariz. Admin. Code R2-20-702, R2-20-703 and R2-20-704, the Citizens Clean Elections Commission (the "Commission"), hereby orders Eric Sloan ("Respondent"), a participating candidate for the Arizona Corporation Commission in 2020, to repay the amount of \$94,590.79. This order is effective upon approval of the Commission on April 29, 2021, and is based on the following legal and factual reasons:

- A. Respondent received \$290,040.00 from the Clean Elections Fund for his campaign in 2020, including \$116,016.00 for the primary election and an additional \$174,024.00 for the general election.
- B. A Complaint was filed with the Commission on October 23, 2020, alleging that Respondent violated the Clean Elections Act by, among other things, exceeding the campaign spending limits to which Respondent had agreed to adhere as a Clean Elections candidate. Exhibit 1, Branch Complaint at CEC0003-04.
- C. The Commission determined that there was reason to believe violations of the Clean Elections Act and Rules had occurred, and ordered the Commission's Executive Director to carry out an investigation into the matter. This investigation is active and on-going.

- D. In response to a subpoena from the Executive Director, Respondent provided documentation related to the campaign, including documentation submitted by Respondent in an arbitration proceeding related to a contract dispute. Among these documents was a Service Agreement, which Respondent has acknowledged as being a contract between Respondent and The Power of Fives, LLC ("TPOF"). This Service Agreement, per its terms, was entered into and effective on January 1, 2020. Exhibit 1, CEC006.
- E. Under the Service Agreement, TPOF would provide services related to aiding Respondent's campaign efforts. *Id.* at CEC006. In terms of compensation, Respondent was to "pay all undisputed amounts on an invoice within thirty (30) days of the earlier of: (a) the termination of this Agreement, or (b) *once the* [Respondent] *qualifies for public financing for the Primary Election.*" *Id.* (emphasis added). Additionally, "Exhibit A" of the Service Agreement states that Phase I of TPOF's provided services was to begin "on the effective date of this Agreement and will end once the [Respondent] qualifies for public financing under the [Clean Elections Act] for the Primary Election." *Id.* at CEC012. Compensation for Phase I, as well as for Phases II and III, respectively, was listed as "40% of the Primary Fund Distribution," "60% of the Primary Fund Distribution," and "100% of the General Election Fund Distribution." *Id.*
- F. Under A.R.S. § 16-951(A)(1) & (C), a candidate who qualifies for Clean Elections

 Funding for the primary and general elections shall receive from the fund "an amount

 equal to the original primary election spending limit" for the primary election, and "an

 amount equal to the original general election spending limit" for the general election.
- G. For the first campaign cycle after the Clean Elections Act became law, Arizona Corporation Commission candidates had a primary election spending limit of \$82,680.00, A.R.S. § 16-961(G)(3), and a general election spending limit "fifty per cent greater than" the \$82,860.00, A.R.S. § 16-961(H). These spending limits in A.R.S. §

- 16-961(G)-(H) are modified every two years by the Secretary of State to account for inflation. A.R.S. § 16-959(A).
- H. The 2019-2020 expenditure limits for a candidate receiving Clean Elections funding—i.e., the amount of funding they would receive—were \$116,016.00 for the primary election and \$174,024.00 for the general election. Exhibit 2, Arizona Clean Elections Candidate Guide 2020 at CEC028.
- The January 1, 2020 Service Agreement promised TPOF compensation of \$116,016.00 for Phases I and II of services rendered to the Sloan campaign, and \$174,024.00 for Phase III of services rendered to the Sloan campaign.
- J. "Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State, a candidate may incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit." A.A.C. R2-20-104(D)(6).
- K. Per Sloan's Campaign Finance Report for the reporting period of January 1, 2020, through January 14, 2020, the campaign's cash balance at the beginning of the reporting period was \$3,754.12.
- L. Respondent qualified for Clean Election Funding on July 17, 2020.
- M. A candidate "shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services." A.A.C. R2-20-110(A)(5).
- N. In addition to filing a Complaint in this matter, TPOF sought payment from Respondent pursuant to the Service Agreement through an independent arbitration. Respondent's primary defense and counterclaim in the arbitration has been consistent: the Respondent believes that the payment is illegal.
- O. Respondent's Counterclaim in the arbitration proceeding states that "[u]nbeknownst to Sloan, the Compensation under the Agreement was illegal under Arizona law because

- it envisioned an upfront allocation of 100% of the Primary Fund Distribution under Clean Elections Act." Exhibit 3 at CEC069.
- P. Respondent's Post-Arbitration Summation states that "the contract committed Sloan's campaign to spend money before the campaign had been approved for Clean Election's funding," and that "when the contract was signed, the committed contract amount was more than four times the maximum amount of seed money allowable by law." Exhibit 4 at CEC203.
- Q. Respondent further states "the Sloan campaign incurred a campaign expenditure or debt, at the latest, when it contracted with TPOF on January 1, 2020 for campaign consulting services. This was well before the campaign qualified for Clean Elections funding and the amount of the expenditure (\$116,016) far exceeded the campaign's cash on hand at the time....Thus, the contract, from the moment it was entered into, created an illegal campaign debt or expenditure for the Sloan campaign." Id. at CEC209.
- R. The Commission has already found reason to believe a violation of A.A.C. R2-20-104(D)(6) may have occurred.
- S. Candidates who qualify for Clean Elections funding may not incur debt or make expenditures that are in excess of the amount of money on hand. A.A.C. R2-20-104(D)(6).
- T. Respondent agreed to these conditions in his sworn application for certification to the Arizona Clean Elections Commission. A.R.S. § 16-947; A.A.C. R2-20-104(C).
- U. Respondent has acknowledged that he incurred debts which were in excess of the money on the hand. While he explicitly recognizes that he incurred a debt of \$116,016.00 when he signed the Service Agreement, the fact that the Service Agreement also provided for payment of services to TPOF via the general election funding (\$174,024.00) means that he also incurred a debt of \$174,024.00 when he signed the Services Agreement. This \$174,024.00 was in excess of the money on

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hand. However, because both Sloan and TPOF agree that the Service Agreement was terminated before the general election period, that amount is not currently subject to this Repayment Order.

V. The funds remaining in the Respondent's bank account after the primary election audit was \$94,590.79.

WHEREFORE, the Commission enters the following orders in addition to any other action regarding this matter:

- The Commission has jurisdiction over Respondent pursuant to A.R.S. § 16-956(A)(7)
 and the Arizona Administrative Code.
- 2. The Commission orders Respondent repay \$94,590.79 immediately.
- 3. All payments shall be made from Respondent's personal funds and/or the Respondent's campaign account that were withheld by Respondent via check or money order payable to the Citizens Clean Elections Fund and delivered to the Citizens Clean Elections Commission, 1616 West Adams, Suite 110, Phoenix, Arizona, 85007.
- 4. Interest shall accrue on the unpaid balance from the date that the payments become due and payable. Interest shall accrue at the statutory rate of ten percent (10%) pursuant to A.R.S. § 44-1201(A).
- 5. This Order constitutes a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss; and pursuant to 11 USC § 523 such obligations are not subject to discharge in bankruptcy.
- 6. In the event legal action is necessary to enforce collection hereunder, Respondent shall additionally pay all costs and expenses of collection, including without limitation, reasonable attorneys' fees in an amount equal to thirty-five percent (35%) of monies recovered.
- 7. In the event that any paragraph or provision of this Order shall be ruled unenforceable, all other provisions hereof shall be unaffected thereby.

- This Order does not prevent the Commission from seeking additional penalties and repayments from Respondent.
- This Order does not affect or impair any investigatory activities undertaken by the Commission staff pursuant to prior Commission authorizations in this matter.
- 10. No delay, omission or failure by the Commission to exercise any right or power hereunder shall be construed to be a waiver or consent of any breach of any of the terms of this Order by the Respondent.
- 11. The Commission authorizes the Executive Director to sign this order making it effective upon the Executive Director's signature.
- 12. If Respondent disputes the Commission repayment determination, he may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092, et. seq. A.A.C. R2-20-704(C)(2).

Dated this 29th day April, 2021.

Ву:

Thomas M. Collins, Executive Director Citizens Clean Elections Commission

EXHIBIT J

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William M. Fischbach, SBN# 019769

ТВ

TIFFAN Y& BOSCO

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SEVENTH FLOOR CAMELBACK ESPLANADE II 2525 EAST CAMELBACK ROAD

4 PHOENIX, ARIZONA 85016-4237 TELEPHONE: (602) 255-6000

FACSIMILE: (602) 255-0103 EMAIL: wmf@tblaw.com

Attorneys for The Power of Fives, LLC

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SUPERIOR COURT OF THE STATE OF ARIZONA

FOR THE COUNTY OF MARICOPA

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

Case No. __CV2021-007328

11 | Plaintiff,

VS.

APPLICATION TO CONFIRM ARBITRATION AWARD UNDER A.R.S. § 12-1511

ERIC SLOAN and ALISA SLOAN LYONS, husband and wife,

Defendants.

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1. Plaintiff The Power of Fives, LLC ("TPOF" or "Plaintiff") is an Arizona limited liability company.

- 2. Defendants Eric Sloan and Alisa Sloan Lyons ("Defendants") are husband and wife residing in Maricopa County.
- 3. This Court has jurisdiction over this proceeding under A.R.S. § 12-1511 and the Arizona Constitution, Article VI, § 14.
 - 4. Venue is proper in this Court under A.R.S. § 12-401.
- 5. Plaintiff and Defendants were parties to an arbitration hearing held by the American Arbitration Association on February 8, 2021. The Honorable Rebecca A. Albrecht (Ret.) presided as Arbitrator.

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- 6. The Arbitrator entered an Interim Award on February 25, 2021 (See Exhibit A) finding in favor of Plaintiff.
- 7. The Arbitrator entered a Final Award on April 13, 2021 (See Exhibit B) awarding Plaintiff the following relief:
 - \$116,016.00 in damages with interest to run at 10% per annum from July 31, 2020, to the date of the Final Award and with interest to run at 4.25% per annum from the date of the Final Award until paid in full.
 - \$40,000.00 in reasonable attorney's fees and \$10,075.00 in costs, with interest on both amounts to run at 4.25% per annum from the date of the Final Award until paid in full.
 - Reasonable attorney's fees and costs incurred in enforcing the Final Award.

PRAYER FOR RELIEF

TPOF askes this Court to enter judgment upon the Final Award under A.R.S § 12-1511 as follows:

- \$116,016.00 in damages with interest to run at 10% per annum from July 31, 2020 to April 13, 2021 and with interest to run at 4.25% per annum from April 13, 2021 until paid in full.
- \$40,000.00 in reasonable attorney's fees and \$10,075.00 in costs, with interest on both amounts to run at 4.25% per annum from April 13, 2021 until paid in full.
- Reasonable attorney's fees and costs incurred in enforcing the Judgment.

TIFFANY&BOSCO

By: /s/William M. Fischbach

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

EXHIBIT A

1	Rebecca A. Albrecht (SBN 004164) BOWMAN AND BROOKE LLP	
2	Phoenix Plaza – Suite 1600	
3	2901 North Central Avenue Phoenix, Arizona 85012-2736 Telephone: (602) 643-2300	
4	rebecca.albrecht@bowmanandbrooke.com	
5	Arbitrator	
6	AMERICAN ARBITRA	TION ASSOCIATION
7	Commercial Arbi	
8	THE DOWED OF FIVES II C on Arizona	Case No. 01-20-0014-8998
9	THE POWER OF FIVES, LLC, an Arizona limited liability company,	Case No. 01-20-0014-8998
1.0		
10	Claimant,	INTERIM AWARD
10	Claimant, v.	INTERIM AWARD
	v. ERIC SLOAN and ALISA LYONS SLOAN,	INTERIM AWARD
11	v. ERIC SLOAN and ALISA LYONS SLOAN, husband and wife,	INTERIM AWARD
11 12	v. ERIC SLOAN and ALISA LYONS SLOAN,	INTERIM AWARD

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

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

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

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

Compensation under the Agreement was based on three campaign phases, Prefunding,

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

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

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

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

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

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

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

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

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

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

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

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

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

1	the campaign by entering into the Agreement. There was no obligation to pay until/if Sloan	
2	qualified for public financing. There is nothing in the Clean Election laws and regulations	
3	that prevent a candidate from entering into a contract for services before he receives clean	
4	election funding, with the payment to be paid upon receipt of clean election funding.	
5	Based on the foregoing the Arbitrator finds:	
6	The parties entered into a valid legal contract. By the terms of the contract the full	
7	\$116,016.00 was due and owing before the termination of the Agreement by Sloan became	
8	effective.	
9	The fees incurred for the LaSota work was within the contemplation of the parties'	
10	Agreement and were incurred within the terms of the Agreement.	
11	The Arbitrator Awards Claimant:	
12	1. The contract amount of \$116,016.00.	
13	2. TPOF fees and costs incurred in this proceeding.	
14	3. Interest from that date the of the invoice for the contract amount until paid in	
15	full at the rates provided pursuant to ARS § 44-1201.	
16	4. TPOF shall file its affidavit of fees and costs on or before March 23, 2021.	
17	Respectfully submitted this 25 th day of February, 2021.	
18	BOWMAN AND BROOKE LLP	
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20	By: Killer an Allerah	
21	Rebecca A. Albrecht Arbitrator	
22		
23	COPY of the forgoing e-mailed this 25 th day of February, 2021, to:	
24	Julie Collins	
25	Manager of ADR Services American Arbitration Association	
26	JulieCollins@adr.org	

EXHIBIT B

1 AMERICAN ARBITRATION ASSOCIATION 2 Commercial Arbitration Tribunal 3 Case No. 01-20-0014-8998 THE POWER OF FIVES, LLC, an Arizona limited liability company, 4 Claimant, FINAL AWARD 5 v. 6 7 ERIC SLOAN and ALISA LYONS SLOAN, husband and wife, 8 Respondents. 9 THE UNDERSIGNED ARBITRATOR, having been designated in accordance with 10 the agreement entered into between the above-named parties, and having been duly sworn, 11 and having duly heard and considered the evidence and arguments made by each party and 12 having entered an interim award in this matter, which is incorporated herein find and 13 AWARD, as follows: 14 Claimant as the prevailing party in this matter is awarded: 15 1. \$116,016.00 in damages with interest to run at 10% per annum from July 31, 16 2020, to the date of this Award and with interest to run at 4.25% per annum 17 from the date of this Award until paid in full. 18 2. \$40,000.00 in reasonable attorney's fees and \$10,075.00 in costs, with interest 19 on both amounts to run at 4.25% per annum from the date of this Award until 20 paid in full. 21 3. Reasonable attorney's fees and costs incurred in enforcing this Award. 22 4. This is intended as a complete resolution of this matter and any matters not 23 addressed herein are dismissed with prejudice. 24 Dated: April 13, 2021 25 26 Rebecca A. Albrecht Arbitrator 27

1	this 13th day of April, 2021, to:
2	Julie Collins
3	Manager of ADR Services American Arbitration Association
4	JulieCollins@adr.org
5	/s/ Kelly Brubaker
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EXHIBIT K

WILENCHIK & BARTNESS A PROFESSIONAL CORPORATION ATTORNEYS AT LAW The Wilenchik & Bartness Building 2810 North Third Street Phoenix, Arizona 85004 Telephone: 602-606-2810 Facsimile: 602-606-2811

Dennis I. Wilenchik #005350 John "Jack" D. Wilenchik #029353 admin@wb-law.com Attorneys for Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

V.

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ERIC SLOAN and ALISA LYONS SLOAN, husband and wife,

Defendants.

Case No. CV2021-007328

RESPONSE/OPPOSITION TO APPLICATION TO CONFIRM ARBITRATION AWARD AND MOTION TO VACATE ARBITRATION AWARD PURSUANT TO A.R.S. § 12-3023(A)(4) AND § 12-1512(A)(3)

(Assigned to the Honorable Margaret Mahoney)

Pursuant to A.R.S. § 12-3023(A)(4) and § 12-1512(A)(3), Defendants Eric Sloan ("Sloan") and Alisa Lyons Sloan (collectively, "Defendants") herein respond to Plaintiff's "Application to Confirm Arbitration Award Under A.R.S. 12-1511" and move this Court to vacate the arbitration award in the above captioned matter. The award is attached hereto as Exhibit A. In granting the award, the Arbitrator exceeded her authority because the contract on which the award is based is illegal and unenforceable. Mr. Sloan has been ordered to repay the remaining funds in his campaign account because the Citizens Clean Election Commission agreed that the contract is

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illegal. The repayment order is attached hereto as Exhibit B. Therefore, Plaintiff is not entitled to confirmation of the award as prayed for and the award should be vacated.

I. INTRODUCTION

Defendant Sloan ran for Arizona Corporation Commission during the 2020 election cycle as a Clean Elections candidate, meaning he used public money to fund his campaign. Clean Elections candidates are required to strictly adhere to certain campaign spending controls and rigorous reporting requirements. Sloan entered into a contract with Claimant, The Power of Fives, LLC ("TPOF") to provide "turnkey" campaign management services (the "Contract"). By its terms, the Contract became effective on January 1, 2020. The services to be provided under the Contract included, "develop campaign strategy," "groom the candidate," and "provide support as needed to support the strategic plan of the campaign as determined by the [TPOF]." Compensation to TPOF for these services was to receive all Clean Elections funding that Sloan was to receive. For the primary phase, that amount was statutorily determined at \$116,016. A.R.S. §§ 16-959(A) and 961(G)(3).

The contract is illegal under Arizona election law and therefore unenforceable. This is so because the contract committed Sloan's campaign to spend money before the campaign had been approved for Clean Election's funding in excess of cash on hand. In addition, the services required to be provided under the contract were in-kind contributions in violation of private contribution limits. If Sloan were to pay the Arbitrator's award (the "Award"), he would violate the Citizens Clean Election Commission's ("CCEC") order to repay his campaign funds, subjecting him to personal liability for the monies wrongfully paid and to civil penalties. The Contract is therefore void and unenforceable. Accordingly, the Arbitrator exceeded her authority, and the Award should be vacated. Defendants should also be awarded their attorney's fees and costs.

II. FACTUAL BACKGROUND

Sloan ran for Arizona Corporation Commission during the 2020 election cycle as a Clean Elections candidate. Under the Citizens Clean Elections Act (the "Act"), Clean Elections candidates may use public money to fund their campaigns if they agree, among other things, to not take private contributions beyond small, limited amounts. *See* A.R.S. § 16-941(A). At some

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point in or around August 2019, Sloan entered into a contract with TPOF to provide comprehensive campaign services, including services to help him qualify for the primary election, in exchange for receiving the entire statutory amount that Sloan would receive for the primary election, \$116,016. See Exhibit 1 to Defendants' Post-Arbitration Summation attached hereto as Exhibit C. By its terms, the contract became effective January 1, 2020. The contract services began to be provided in September of 2019. See Petitioner's Amended Demand for Arbitration at ¶ 12 (attached hereto as Exhibit C). Sloan's campaign committee qualified for Clean Elections funding on July 17, 2020. All of TPOF's services were rendered prior to July 17, 2020. Prior to July 18, the highest cash balance reported by the Sloan campaign was \$10,360.10.

On July 24, 2020, TPOF sent Sloan a "preliminary invoice" for \$115,980.94 for services rendered during the primary phase of the campaign (January 1 to August 4, 2020). The invoice included \$20,000 for estimated future media prebuys, \$23,622 for "Candidate Field Support," 13 \$5,250 for "future field support," and \$23,000 in "Signature Challenge Strategy." *Id.* Given that Sloan did not qualify until July 17, and the primary election took place on August 4, the Sloan 15 campaign only had about three weeks in which to spend \$116,016 (since that money could not have been spent prior to qualifying). On July 25, 2020, Sloan responded to this invoice by instructing Branch to not spend the \$25,250 in future estimated costs (\$20,000 for media pre buys and \$5,250 for "future field support") and informed him that he was terminating the Contract and would tender a check for \$90,766 as a final payment. Simply put, Sloan terminated the contract because TPOF refused to follow Sloan's instructions and failed to deliver promised services. Sloan tendered the check but TPOF did not cash or deposit it.² Subsequently, through legal

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¹ This payment represented the full clean elections funding amount of \$116,016 minus the \$25,250 that had yet to be spent as indicated in the preliminary invoice sent by TPOF.

² Subsequently, Sloan, upon consultation with an attorney, determined that it would be illegal to compensate TPOF for a \$23,000 charge in legal fees. Accordingly, Sloan canceled the check for \$90,766 and sent another check for \$67,766 (\$90,766 – \$23,000). *Id.* TPOF did not cash or deposit this check. Sloan later filed his final primary campaign finance report reflecting a \$67,730 payment to TPOF for consulting services rendered and a remaining cash balance of \$23,854. Exhibit 9 to Defendants' Post Arbitration Summation attached hereto as Exhibit C. The \$67,766 check was also later cancelled.

WILENCHIK & BARTNESS

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counsel, it came to Sloan's attention that the contract itself was in violation of Clean Elections Law and therefore was illegal.

On July 31, 2020, TPOF sent a final invoice for \$116,016. Despite Sloan's clear instructions, this updated invoice now included, without explanation, \$45,235.92 for "Candidate Field Support," whereas the July 24 invoice delineated \$23,622 for this same category. The mysterious increase happened to be roughly the amount of disputed invoicing for future services and increased the amount owed to exactly the amount of primary clean elections funding. The July 31 invoice also included \$25,000 for "Strategic Campaign Development," \$7,300 for "Campaign development Admin.," \$3,500 for "Payment for signatures and admin fee," and \$1,000 for "Use of The Power of Fives Brand Logo." No other breakdown of costs was provided to Sloan explaining exactly what these charges encompassed.

On October 23, 2020, TPOF's principal, Bob Branch filed a complaint against Sloan with the Citizens Clean Elections Commission ("CCEC") alleging that Sloan overspent on his primary campaign by \$23,056 in violation of the Act. The CCEC's investigation into Mr. Branch's complaint remains ongoing. TPOF then filed its demand for arbitration on November 23, 2020, claiming it is owed the full amount of primary funding, \$116,016. Following an evidentiary hearing, the Arbitrator issued her final award to TPOF on April 13, 2021, awarding TPOF the full \$116.016 plus attorney's fees and costs. In awarding TPOF the full primary amount, the Arbitrator rejected the Sloans' argument that the contract is illegal and unenforceable. Separately, pursuant to R2-20-703(B), Sloan asked the CCEC for a determination on what to do with the remaining \$93,983 in his campaign account. On April 29, 2021, the CCEC responded with a Repayment Order that ordered Sloan to pay the entire amount back to the CCEC because the contract with TPOF was illegal under the Act. Thus, the CCEC agrees that the Contract is illegal and unenforceable. Mr. Sloan now is faced with two conflicting orders, one from the CCEC to repay the public's money, and one from the Arbitrator that seeks to enforce the Contract against the Defendants.

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WILENCHIK & BARTNESS A PROTESTORY CORPORATION

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III. ARGUMENT

The Contract Cannot be Enforced Because the Acts to be Performed Under the Contract are Illegal and, Therefore, the Arbitrator Exceeded her Authority in Seeking to Enforce the Contract

The Citizens Clean Elections Act (the "Act") was enacted to allow candidates for elective offices to use public money to fund their campaigns if they refrained from taking private contributions. See A.R.S. § 16-940. The purpose of the Act was to improve the integrity of elections and decrease the influence of special interests. *Id.* The CCEC was established to administer and enforce the Act. See A.R.S. § 16-1956.

All campaign finance activity – all expenditures and contributions – must be tracked through a single campaign account. A.R.S. § 16-948(A). Clean Elections candidates cannot accept private contributions other than small, limited amounts, nor may they make more than a small contribution from their personal monies. A.R.S. § 16-941(A). No single contributor can give more than \$100 to a Clean Elections candidate. A.R.S. 16-945(A)(1). Donated or discounted services generally constitute contributions and are therefore subject to contribution limits. *See* Arizona SOS Campaign Finance – Candidate Guide at 19 (February 2020). "In-kind contribution" means a contribution of goods, services or anything of value that is provided without charge or at less than the usual and normal charge." A. R. S. § 16-901(32).

A Clean Elections candidate cannot incur debt or make expenditures that exceed the amount of cash on hand before the candidate has qualified for Clean Elections funding. A.A.C. R2-20-104(D)(6).³ A campaign expenditure is deemed to have been made "as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services." A.A.C. R2-20-110(A)(5). Services rendered to a campaign but not paid for are considered contributions until paid for. *See* Arizona Citizens Clean Elections Guide at 16, CCEC (2020); ** see also*, A.R.S. § 16-901(11) (""Contribution" means any money, advance, deposit or other thing of value that is made to a person for the purpose of influencing an election.")

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³ "Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand."

⁴ https://storageccec.blob.core.usgovcloudapi.net/public/docs/550-Candidate-Guide-2020_fullguide.pdf

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(emphasis added). The fair market value of all in-kind contributions must be reported for the period they were received. A.R.S. § 16-926(B).

A party to a contract cannot recover payments under the contract if the acts to be performed under the contract are illegal. *White v. Mattox*, 127 Ariz. 181, 184 (1980) ("Recovery will be denied if the acts to be performed under the contract are themselves illegal or contrary to public policy."). In *Mattox*, the Arizona Supreme Court upheld a summary judgment for a purchaser of a liquor license to recover sums paid under the purchase contract because it was a violation of statute to sell a liquor license without also selling the attendant business. *Id.* No theory of equity can save a party seeking to enforce an illegal contract. *Landi v. Arkules*, 172 Ariz. 126, 136 (App. 1992) (baring defendant from collecting under an illegal contract even though the plaintiff benefited substantially from the defendant's services); *Hammer v. Today's Health Care II*, No. CV2011-051310, 2012 WL 12874349, at *2 (Ariz.Super. Apr. 17, 2012) ("[O]ne who enters into [an illegal] contract is not only denied enforcement of his bargain, he is also denied restitution for any benefits he has conferred under the contract.").

A contract is illegal and unenforceable if it is illegal to make some promise in the bargain, even if the act might be legally performed, or because of a condition that violates the law. *See* Restatement (First) of Contracts § 512 (1932). In the election law context, acts that may seem innocuous in themselves may constitute part of an illegal and unenforceable contract. *See de Vera v. Blaz*, 851 F.2d 294, 296 (9th Cir. 1988) (affirming dismissal of campaign worker's complaint against candidate for violating a contract to employ the worker in the candidate's office in consideration for the worker's campaign efforts in support of the candidate because election statute prohibited supporting candidates in exchange for remuneration). A contract is illegal and unenforceable if performance under the contract would violate an election law. *See Schaal v. Race*, 135 So. 2d 252, 256 (Fla. Dist. Ct. App. 1961) (voiding oral contract for advertising services for a political candidate because Florida election law required candidates to provide written authorization for all expenditures). A contract can also be held legally unenforceable if it is against public policy even though it would not violate any specific statute. *Tidwell Homes, Inc. v. Shedd Leasing Co.*, 191 Ga. App. 892, 894 (1989).

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In this case, the Contract between Sloan and TPOF was illegal because it committed the Sloan campaign to spend more money than it had on hand before qualifying for Clean Elections funding. Contract services began to be delivered in September 2019. The contract became effective January 1, 2020. Yet, the campaign did not qualify for funding until July 17, 2020. Prior to July 18, the highest cash balance reported by the Sloan campaign was \$10,360.10. The contract places a value on the services of \$116,016. The expenditure or debt was incurred when the campaign entered into the Contract, or at the latest, when it became effective on January 1, 2020. See A.A.C. R2-20-110(A)(5) (stating that a debt is incurred "as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services."). Thus, the Contract illegally committed the Sloan campaign to pay money in an amount greater than it had on hand prior to qualifying for Clean Elections funding in violation of R2-20-104(D)(6).

The Arbitrator reasoned that since the Contract made payment to TPOF contingent on qualification for clean elections funding, the campaign's obligation to pay did not arise until Sloan qualified for funding and therefore, no illegal expenditure or debt was incurred when the Contract was entered into. Although the CCEC did not specifically address this argument, we address it here to remove any doubt that the contract is illegal.

The Arbitrator's reasoning is wrong for at least two reasons. First, when services are actually rendered on behalf of a campaign, they must be classified and reported either as a contribution (if not compensated) or an expenditure (if compensated). *See* A.R.S. § 16-926(B). They cannot simply go unreported as nothing. According to CCEC guidance, services rendered but not paid for are considered contributions. *See* Arizona Citizens Clean Elections Guide at 16, CCEC (2020); A.R.S. § 16-901(11) (""Contribution" means any money, *advance*, deposit or *other thing of value* that is made to a person for the purpose of influencing an election."). Further underscoring this point is § 16-926(B), which requires in-kind contributions to be reported. Thus, when the services were rendered to the campaign beginning in September 2019, they constituted illegal contributions in violation of the contribution limits in A. R. S. § 16-941(A)(1) and § 16-945(A)(1) (prohibiting any single contributor from contributing more than \$100 in an election

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cycle) because they were uncompensated. The Contract required TPOF to provide services to help the Sloan campaign to qualify for funding. See Exhibit 1 to Defendants' Post-Arbitration Summation attached hereto as Exhibit C. In other words, pursuant to the Contract, those services were required to be delivered (and were in fact delivered) prior to Sloan's qualification for funding. See id at 7.5

Second, even if the contingent nature of Sloan's obligation to pay were significant, at the time the Contract was signed, no one knew whether Sloan would qualify for funding. If Sloan had not qualified (thus never obligating Sloan to pay), the services rendered would have indisputably constituted in-kind contributions in excess of the limits set forth in § 16-941(A)(1) and § 16-945(A)(1). But the legality of a contract is determined when it is signed and does not depend on whether an illegal condition is met. If for no other reason than public policy, such contracts should not be enforced lest the courts encourage contracts that risk illegal behavior. Worse for TPOF however, is that the Contract is illegal whether Sloan would have qualified or not; either the services required to be rendered were an illegal advance of in-kind contributions in the event 15 || Sloan qualified (and the obligation to repay is triggered), or they were illegal in-kind contributions in the event he did not qualify (and no obligation to pay is triggered).

To illustrate this further, consider the following hypothetical. Suppose in January of 2020 TPOF had advanced the Sloan campaign \$116,016 worth of signs to be displayed from February to June in exchange for receiving the clean elections funding in the event that the campaign qualified. Assume the Sloan campaign never had more than \$10,000 cash on hand at any given

⁵ Payments under the contract were divided into three phases. Phase 1 called for TPOF to receive 40% of the primary fund distribution (\$46,406.40) and phase 2 called for the remaining 60% (\$69,609.60) for the total statutory amount of \$116,016. Phase 1 is referred to as the qualifying period and lasted from January 1, 2020 (the effective date of the Contract) up until the date the candidate qualified. Thus, phase 1 lasted from January 1, 2020 to July 17, 2020. Phase 2 lasted from the date of qualification to the date of the primary election, August 4, 2020. Defendants argued in their Post-Arbitration Summation that it was unconscionable for TPOF to charge \$69,609.60 for 18 days' worth of services (the length of phase 2). However, TPOF's Post-Arbitration Summation does not even argue that it provided any services after Sloan qualified. Even if any services were provided following July 17, 2020, they were nominal. Thus, TPOF does not contend that it is owed some amount less than \$116,016 equivalent to the value of services provided after July 17, 2020, nor has it made any accounting to that effect.

WLENCHIK & BARTNESS

time and that the campaign qualified for clean elections funding in July. The Sloan campaign would have received the benefit of \$116,016 worth of services before qualifying for funding. This clearly would have violated the prohibition against incurring debt or making expenditures in excess of cash on hand before qualifying in addition to violating the contribution limits for clean elections candidates (A.R.S. § 16-941(A)).

Similarly, TPOF provided (as TPOF alleges) \$116,016 worth of campaign consulting services to the Sloan Campaign prior to qualification in excess of cash on hand pursuant to the Contract. Such a contract cannot be legally enforced. The public policy behind these prohibitions is multi-faceted. First, the purpose of qualifying for clean elections funding before receiving the money is to ensure that only candidates with a significant modicum of support receive the public's funds, thus ensuring that money is not wasted on candidates who have little chance of obtaining significant electoral success. Were candidates allowed to receive the benefit of funding before actually qualifying, this policy would be defeated. Second, candidates that begin receiving services before qualifying for public money clearly have an unfair advantage over those who wait for qualifying before spending, or otherwise incurring the benefit of, public money. Finally, under the arbitrator's interpretation of the law, a candidate could commit all public funding to one consultant (a close personal friend) and have the consultant perform bogus work in exchange for a windfall of public money once the candidate qualified. These public policy considerations alone are enough for a court to refuse to enforce the Contract.

The enforceability of the contract is not saved because the activity of campaign consulting is generally a lawful activity. Many activities may be generally lawful, such as selling a liquor license as in *Mattox*, but if it is not done according to law, then a contract requiring the activity to be done *contrary* to the law is void. Making expenditures in support of the election of a candidate or campaigning on their behalf are lawful, indeed constitutionally protected, activities. Nonetheless, as in *Blaz* and *Race*, any contract to make expenditures in support of a candidate while failing to comply with disclosure laws, or in exchange for a kickback, becomes unenforceable because the contract requires a violation of election laws.

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Likewise, a contract between a political consultant and a Clean Elections candidate that requires the consultant to perform services for the campaign with a value in excess of cash on hand before the candidate has qualified for Clean Elections funding is an illegal contract. This is so because the law states with emphatic clarity that a Clean Elections candidate shall "not incur debt, or make an expenditure in excess of the amount of cash on hand" prior to qualifying for funding, A.A.C. R2-20-104(D)(6), and "[s]hall not accept any contributions other than a limited number of five-dollar qualifying contributions as specified in § 16-946 and early contributions as specified in § 16-945." A. R. S. § 16-941(A).

Sloan is currently under an order from the CCEC to repay the money remaining in his campaign account. Candidates are required to give preference to repayment orders over all other outstanding obligations. A. A. C. R2-20-704(A)(3) ("[T]he candidate should give preference to the repayment over all other outstanding obligations.") Through its order, the CCEC has made a formal determination interpreting and applying the Clean Elections Act. The CCEC concluded that the Contract is illegal. That conclusion is entitled to deference. E.g., Di Giacinto v. Arizona 15 State Ret. Sys., 242 Ariz. 283, 286 ¶ 9 (App. 2017) (noting that great weight is given to agency interpretations of statutes and regulations that they administer).

Moreover, if Sloan were to ignore the CCEC order and pay the arbitrator's Award, he would subject himself to personal liability for repayment of the funds. See A. A. C. R2-20-704(A)(4). If the Court were to force Sloan to pay TPOF using his personal money, it would violate the personal contribution limits in A.R.S. § 16-941(A)(2) (limiting contribution of personal monies for statewide candidates to \$1,000). Sloan cannot legally comply with the CCEC repayment order and pay the Arbitrator's Award. The Arbitrator has no authority to order a party to violate the law or to enforce an illegal contract.

IV. **CONCLUSION**

For the foregoing reasons, the Contract between Sloan and TPOF was illegal. As such, the Arbitrator exceeded her authority in attempting to enforce it and award the contract amount to TPOF. Defendants therefore request that this Court vacate the Award in its entirety and dismiss

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Plaintiff's Application to Confirm Arbitration Award. Defendants also request that they be awarded attorney's fees and costs pursuant to A.R.S. § 12-341 and § 12-341.01. **RESPECTFULLY SUBMITTED** this 24th day of May, 2021. 3 WILENCHIK & BARTNESS, P.C. 5 /s/ John D. Wilenchik Dennis I. Wilenchik, Esq. John "Jack" D. Wilenchik, Esq. 2810 North Third Street Phoenix, Arizona 85004 admin@wb-law.com 9 Attorneys for Defendants 10 **ELECTRONICALLY** filed via 11 AZTurboCourt.com 12 **ELECTRONICALLY** transmitted via 13 AZTurboCourt.com and via email on May 25, 2021, to: 15 William M. Fischbach, Esq. Ryan P. Hogan, Esq. 16 TIFFANY & BOSCO, P.A. 17 2525 East Camelback Road Phoenix, Arizona 85016 18 wmf@tblaw.com rph@tblaw.com Attorneys for Claimant/Petitioner 20 /s/ Christine M. Ferreira 21 22 23 24 25 26



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VERIFICATION

I, Eric Sloan, hereby declare under penalty of perjury, that the factual allegations in the above response and motion are true and correct to the best of my knowledge.

Executed: 5/20/2021

—DocuSigned by:

Eric Sloan Eric Sloan

Defendant



EXHIBIT L

SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

CV 2021-007328 10/05/2021

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
A. Meza
Deputy

POWER OF FIVES L L C, THE

WILLIAM MORRIS FISCHBACH III

v.

ERIC SLOAN, et al.

ERIC SLOAN 10450 N 74TH ST SCOTTSDALE AZ 85258

ALISA SLOAN LYONS 10450 N 74TH ST SCOTTSDALE AZ 85258 JUDGE WARNER

MINUTE ENTRY

East Court Building – Courtroom # 414

10:00 a.m. This is the time set for virtual Oral Argument regarding Plaintiff's May 4, 2021 Application to Confirm Arbitration Award Under A.R.S. § 12-1511. Plaintiff, The Power of Fives, LLC, is represented by counsel, Ryan P. Hogan, appearing for counsel of record, William M. Fischbach. Dr. Bob Branch is present as client representative for Plaintiff. Defendant, Eric Sloan, is present on his own behalf. No other party is present or represented by counsel. All appearances are virtual via Court Connect.

A record of the proceedings is made digitally in lieu of a court reporter.

The Court has reviewed the briefing related to this issue.

Oral argument is presented.

Docket Code 005 Form V000A Page 1

SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

CV 2021-007328 10/05/2021

Based on the matters presented to the Court,

IT IS ORDERED taking this matter under advisement.

10:17 a.m. Matter concludes.

Later

At issue is whether to confirm an arbitration award entered on April 13, 2021. Under the Revised Uniform Arbitration Act, an arbitration award must be confirmed unless a statutory ground for vacating an award exist. A.R.S. §§ 12-3022, 12-3023(A). Defendant here argues that the Arbitrator exceeded her powers because the contract at issue is illegal and unenforceable. A.R.S. § 12-3023(A)(4).

Defendant litigated exactly this issue before the Arbitrator. Having submitted the issue to the arbitrator for decision, Defendant cannot now argue that the Arbitrator lacked the authority to decide it. *See Migneault v. United Servs. Auto. Ass'n*, 21 Ariz. App. 397, 400, 519 P.2d 1162, 1165 (1974) (party to arbitration waives objection to the arbitrator's jurisdiction over an issue by participating in the arbitration of that issue without objection).

Whether the Arbitrator was correct on the law is not for this Court to decide. Defendant agreed to arbitrate, so he is bound by the Arbitrator's determination. And having argued to the Arbitrator that the contract is illegal, Defendant cannot now argue that the Arbitrator lacked authority to decide that issue.

Defendant points out that, after the award, the Clean Elections Commission ordered him to return the clean elections funding he received. Whether and how this order affects the award is for the Arbitrator to decide. It does not show that the Arbitrator exceeded her powers.

After this matter was briefed, Defendant filed a Motion to Vacate Arbitration Award. The arguments made in that Motion are the same that Defendant made in the Response, so additional briefing on that Motion is not needed.

IT IS ORDERED granting Plaintiff's Application To Confirm Arbitration Award Under A.R.S. § 12-1511.

IT IS FURTHER ORDERED denying Defendant's Motion to Vacate Arbitration Award.

SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

CV 2021-007328 10/05/2021

IT IS FURTHER ORDERED that Plaintiff lodge a form of final judgment and file any request for costs or attorneys' fees within 30 days.

NOTE: Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2021-109 and the Maricopa County Superior Court Administrative Order 2021-119 require all individuals entering a court facility in Maricopa County to wear a mask or face covering at all times that they are inside the facility. Any person who refuses to wear a mask or face covering as directed by court personnel will be denied access to the facility. If a participant is denied physical access to a courthouse for refusing to wear a face covering, the participant must contact the assigned judicial division to determine whether the person can participate in the proceeding using an audio or video connection.

EXHIBIT M



State of Arizona Citizens Clean Elections Commission

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

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

Via Electronic Mail and U.S. Mail

Dear Dr. Branch:

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

Complaint

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

I. Relevant Facts

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

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

A. The Sloan Campaign, September 2019-July 2020

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

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

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

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

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

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

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

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

Id.

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

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

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

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

B. The TPOF Service Agreement

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

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

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

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

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

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

II. Legal Arguments

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

A. Title 16, Chapter 6, Article 1

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

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

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

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

B. Title 16, Chapter 6, Article 2

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

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

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

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

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

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

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

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

Opportunity for Response

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

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

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

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

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

Sincerely,

Thomas M. Collins

Thomas M. Collins,
Executive Director
Arizona Clean Elections Commission

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

EXHIBIT N

William M. Fischbach, SBN# 019769 1 2 TIFFAN Y & BOSCO 3 SEVENTH FLOOR CAMELBACK ESPLANADE II 2525 EAST CAMELBACK ROAD 4 PHOENIX, ARIZONA 85016-4237 TELEPHONE: (602) 255-6000 FACSIMILE: (602) 255-0103 EMAIL: wmf@tblaw.com Attorneys for The Power of Fives, LLC 6 7 SUPERIOR COURT OF THE STATE OF ARIZONA 8 FOR THE COUNTY OF MARICOPA 9 THE POWER OF FIVES, LLC, an Arizona 10 limited liability company, 11 Plaintiff. 12 VS. 13 14 ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION, a public entity; THE STATE

OF ARIZONA, a public entity.

Defendants.

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Case No. CV2021-015826

COMPLAINT

Parties, Jurisdiction, and Venue

- 1. This is a declaratory relief action seeking adjudication of the lawfulness of a contract under Arizona law in accordance with A.R.S. §§ 12-1831, -1833.
- Plaintiff The Power of Fives, LLC ("TPOF") is an Arizona Limited Liability 2. Company authorized to conduct business in Arizona.
- 3. Defendant Arizona Citizens Clean Elections Commission "Commission") is a bipartisan commission consisting of five members that was created under the Citizens Clean Election Act (the "Act"). See A.R.S. §§ 16-955 to -57. Defendant State of Arizona is joined to the extent the Commission is not a jural entity for purpose of this Action.
 - 4. This case qualifies for Tier 2 designation under Ariz. R. Civ. P. 26.2.

- 5. The events alleged herein occurred in Maricopa County.
- 6. This Court has jurisdiction over this action under A.R.S. § 12-123 and the Arizona Constitution, Article VI, § 14.

GENERAL ALLEGATIONS

- 7. TPOF is in the business of identifying and supporting candidates to run for public office in Arizona.
- 8. Specifically, TPOF offers a "turnkey" or ready-made campaign services to the candidates that it partners with.
- 9. All such candidates sign an identical agreement with TPOF (the "Agreement"). A true and correct copy of the Agreement is attached hereto as **Exhibit A**.
- 10. The Agreement's Services and Compensation sets forth a three-phase schedule for the candidate to compensate TPOF for these "turnkey" services: Phase I Prefunding, Phase II Funded Primary, and Phase III Funded General Election.
- 11. The Agreement provides that TPOF would not "spend more than the total Candidate's clean elections funding allotment for any phase" at any point during the campaign.
- 12. In addition, the Agreement makes the candidate "responsible for all campaign reporting and adhering to the Act."
- 13. Under the Agreement, if the candidate failed to qualify for clean elections funding, the Agreement would automatically terminate. Thus, if a candidate never qualified for clean elections funding, it would owe nothing to TPOF.
- 14. In addition, the Agreement made payment at all phases contingent on TPOF delivering to the candidate an invoice setting forth the payment owed for that phase.
- 15. Although the Agreement tethered compensation to the primary fund distribution, no provision of the Agreement expressly required the candidate to pay TPOF directly from the primary fund distribution.
- 16. During the 2020 Election Cycle, TPOF partnered with Eric Sloan in his run for a seat on the Corporation Commission. As such, Sloan signed the Agreement.

- 17. After Sloan qualified for clean elections funding, TPOF delivered a final invoice to him for Phase I and Phase II.
- 18. Sloan refused to pay the invoice in full and terminated his use of TPOF's services.
- 19. This prompted TPOF to make a demand for arbitration in accordance with the terms of the Agreement's provisions governing dispute resolution.
- 20. While the arbitration proceedings were pending, Dr. Bob Branch—TPOF's Founder and Managing Member—filed a clean elections complaint against Eric Sloan for violating the Act by (a) reporting only \$67,731 on his campaign finance report and not the \$116,016 that he contractually owed to TPOF for Phase I and Phase II and (b) spending over the limits applicable to clean election candidates by at least \$23,056.
- 21. Following Branch's Complaint, the Commission's Executive Director Tom Collins provided a statement of reasons to believe that a violation of the Act and Commission rules had occurred.
- 22. Thus, the Commission began an investigation of whether Sloan violated the Act and Commission rules in conducting his campaign. The Commission expressed hesitation, however, over the extent and scope of the investigation given the parties' pending contractual dispute.
- 23. As the arbitration proceedings unfolded, Sloan began to contend that the Agreement was illegal, and therefore unenforceable, because it required him to violate the Act by forcing him to incur an expenditure in excess of cash on hand. Sloan even issued a subpoena to the Executive Director Collins to support his argument, but the Commission successfully moved to quash the subpoena by arguing, among other things, that Executive Director Collins "ha[d] no personal knowledge of the events at issue."
- 24. The Arbitrator ultimately rejected Sloan's arguments, found the contract enforceable against Sloan, and issued an award in TPOF's favor. The Arbitrator specifically found that "[t]here is nothing in the Clean Election laws and regulations that prevent a candidate from entering into a contract for services before he receives clean

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

- 25. After the Arbitrator issued the Interim Award, Sloan—without TPOF's knowledge or participation—conceded to the Commission that he violated the Act by entering into the Agreement.
- 26. Upon information and belief, Sloan made this concession so that he could later oppose the Confirmation of the final arbitration award in Superior Court.
- 27. Based in part on Sloan's concession, the Commission ordered Sloan to repay \$94,590.79 from either his personal funds or campaign account on April 29, 2021.
- 28. Meanwhile, the Arbitrator issued a final award in favor of TPOF for \$116,106 in damages, \$40,000 in attorney's fees, and \$10,750 in costs. A copy of the Final Award is attached as **Exhibit C**.
- 29. Proceedings to confirm the Final Award were initiated on May 4, 2021, and are still pending in the Maricopa County Superior Court under the case name *The Power of Fives, LLC v. Eric Sloan et al.*, Case No. CV2021-007328.
- 30. In those proceedings, Sloan has argued that the Final Award should not be confirmed based on his concession to the Commission that he had violated the Act by merely signing the Agreement.
- 31. A week later, and despite the fact that it had already issued a repayment order to Sloan, the Commission issued to Dr. Branch and TPOF a subpoena duces tecum requesting extensive documents related to TPOF's campaign services. On May 25, 2021, Dr. Branch and TPOF provided all documents produced in the arbitral proceedings but objected to the scope of the subpoena, expressing confusion about why its business practices were suddenly under siege.
- 32. On June 1 and June 3, 2021, the Executive Director Collins sent e-mails to TOPF's counsel seemingly indicating Collins was now hostile to TPOF's business activity. Collins threatened potential enforcement action(s) against TPOF and its candidates in which "no regard will be given to the [A]rbitrator's statement" that TPOF's

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

- 33. On September 17, 2021, the Commission issued a complaint against TPOF asserting that its service agreement with Sloan violated the Citizens' Clean Elections Act.
- 34. Based on these and other actions, TPOF believes the Commission intends to target TPOF's candidates with enforcement actions despite the lawfulness of the Agreement. Such actions would effectively decimate TPOF's business model and result in significant financial losses.

Count One: Declaratory Relief

- 35. Under A.R.S. § 12-1831, this Court has authority to grant declaratory relief including declaring the rights, status, and legal relation of the parties.
 - 36. There is a justiciable dispute between the parties concerning the Agreement.
- 37. TPOF seeks an order from this Court declaring that (1) a candidate does not commit a violation of the Act by merely signed the Agreement and (2) the Agreement is a lawful contract that does not violate the statues and rules applicable to clean elections candidates under the Act.
- 38. As this action arises out of a contract, TPOF is entitled to any award of attorneys' fees under A.R.S. § 12-341.01.

Prayer for Relief

TPOF seeks relief against Defendants as follows:

- A. For an order from this Court declaring:
 - 1. That the Commission may not pursue an enforcement action for a violation of the Act simply because a candidate signs the Agreement.
 - 2. That the Agreement is a lawful contract that does not violate the statues and rules applicable to clean elections candidates under the Act; and
- B. TPOF's taxable costs and attorney's fees under A.R.S. §§ 12-341 and 12-341.01
- C. For any other such relief as this Court deems fair and just.

RESPECTFULLY SUBMITTED this 7th day of October 2021.

TIFFAN Y& BOSCO

By: /s/William M. Fischbach

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

EXHIBIT A



SERVICE AGREEMENT

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

- 1. Services. The Candidate hereby engages the Company as an independent contractor and the Company hereby accepts such engagement upon the terms and conditions contained in this Agreement. During the term of this Agreement, the Company agrees to provide to the Candidate the services described in Exhibit A (the "Services"). The Company represents that the Company has the special skill, professional competence, expertise and experience to undertake the obligations imposed by this Agreement, and will perform the Services in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the Company's profession and in compliance with all applicable laws. The Company shall commit such time as is necessary to perform the Services. The Company acknowledges and agrees that the Company owes a duty while performing the Services under this Agreement to act in the best interests of the Candidate so as to maintain and increase the goodwill and reputation of the Candidate. The Company agrees to not make any statement, oral or written, intended to injure the business, interests or reputation of the Candidate. The Candidate agrees that during the term of this Agreement, without the Company's prior written consent, the Candidate will not engage any other consultant or contractor that provides services that are competitive to the Services provided by the Company.
- 2. <u>Compensation; Expenses</u>. The Company will be compensated for rendering the Services in the amounts set forth on <u>Exhibit A</u>. For the Services provided in Phase I of <u>Exhibit A</u>, the Company shall submit to the Candidate, not later than ten (10) days following the date hereof, an invoice setting forth the payment owed for Phase I. The Candidate shall pay all undisputed amounts on such invoice within thirty (30) days of the earlier of: (a) the termination of this Agreement, or (b) once the Candidate qualifies for public financing for the Primary Election. For the Services provided in Phase II or III of <u>Exhibit A</u>, the Company shall submit to the Candidate following the completion of some or all of the Services set forth in a respective payment period, an invoice setting forth the payment owed for such payment period. The Candidate shall pay all undisputed amounts on such invoices within thirty (30) days of receipt.
- 3. <u>Term.</u> The term of this Agreement shall commence upon the date first written above and shall continue until the Services have been completed, or as otherwise set forth in

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

- 4. <u>Termination</u>. Either party may terminate this Agreement for any reason by giving the other party written notice of the termination at least thirty (30) days in advance of the date of termination. This Agreement may also be terminated upon mutual written agreement of the parties. Upon termination, the Candidate shall pay the Company all amounts previously invoiced and/or incurred by the Company in connection with the Services and both parties shall immediately return to the other parties all Confidential Information (as defined below) and information and products of whatever nature or kind and in whatever format. If either party fails to promptly return any products to the other party after the termination of this Agreement, the party in violation of this <u>Section 4</u> shall pay the other party, or the other party shall have the right to retain such amounts from any compensation owed under <u>Section 2</u>, an amount equal to the manufacturer's suggested retail price of such products.
- 5. <u>Independent Contractor Status</u>. The Company's relationship to the Candidate shall be that of an independent contractor. Nothing in this Agreement is intended to make the Company or its employees an employee or agent of the Candidate or confer on the Company or its employees any rights, privileges or benefits as an employee of the Candidate. The Company shall have no right, power or authority (and shall not hold itself out as having any such right, power or authority) to bind the Candidate in any manner or to any agreement or undertaking with any third party except as specifically provided in this Agreement.
- 6. Ownership and Return of Creations. All Work Product (as defined below), conceived, created, made, developed, or acquired by or for the Company used to perform the Services shall remain the property of the Company. "Work Product" shall include, without limitation, all designs, documents, manuals, videos, drawings, logos, improvements, plans, developments, processes, business methods, trade secrets, and any and all copyrightable expression, all copyrightable works, and all patentable subject matter, in all media (whether existing now or to be invented), whether or not protected by statute, including all derivative works. At the Company's request and no later than five (5) days after such request, the Candidate shall destroy or deliver to the Company, at the Company's sole option, (i) all Work Product, (ii) all tangible media of expression in the Candidate's possession or control which incorporate or in which are fixed any Confidential Information of the Company, and (iii) written certification of the Candidate's compliance with the Candidate's obligations under this Section 6.
- 7. <u>Work Shall Not Infringe Third Party Rights</u>. The Company represents and warrants to the Candidate that all Work Product used in connection with the Services shall not infringe upon or violate any rights (whether patent, copyright, trademark or otherwise) of any third party.
- 8. <u>Confidentiality</u>. In the course of its performance under this Agreement, each of the parties hereto may have access to and contact with certain confidential and proprietary information relating to the other party's business including, but not limited to, business strategy, marketing strategy, financial, pricing, customer and dealer information, product designs, drawings, specifications, processes, techniques, and other similar information, documents or materials, which are hereinafter referred to collectively as "<u>Confidential Information</u>." Each

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

- 9. <u>Indemnification</u>. The Candidate will indemnify and hold harmless the Company, its officers, managers, members, agents, contractors and employees, if any, from any and all claims, losses, liabilities, damages, expenses and costs (including attorney's fees and court costs) (collectively, "<u>Claims</u>"), which result from (i) any breach or alleged breach of any misrepresentation of any warranty or representation made by the Candidate in or pursuant to this Agreement, (ii) failure by the Candidate to perform or comply with any covenant or agreement made by it in or pursuant to this Agreement, or (iii) any Claim brought by, through or under the Candidate's employees, officers, directors, principals, members, agents, subconsultants or subcontractors and/or anyone for whom any of them may be responsible, and all losses in connection with such Claims, arising out of, or resulting from, or in any manner connected with the Services. The rights and obligations of the parties under this <u>Section 9</u> shall survive the expiration or earlier termination of this Agreement.
- 10. Release. In consideration of the Services provided in Section 1, the Candidate hereby freely and voluntarily releases, waives, relinquishes and forever discharges on behalf of itself, its heirs, executors, administrators, officers, employees, agents or any other person claiming on its behalf, any and all claims, liabilities, obligations, demands or causes of action whatsoever (including those caused or alleged to be caused in whole or part by the negligence of the Company) (collectively, the "Releasees"), including, without limitation, claims for personal injury; wrongful death; property loss or damage; direct, indirect, punitive or consequential damages; lost profits; costs; charges; attorneys' fees; court costs; and other expenses of any kind arising, directly or indirectly, from the Services against the Company or its respective officers, employees, subsidiaries, affiliates, shareholders, members, directors, agents, successors and assigns.
- 11. <u>Picture/Media Release and Waiver</u>. The Candidate hereby irrevocably grants to the Company, its directors, officers, agents, employees and volunteers, and those acting with its authority with respect to the photographs, films, tape or other images taken of the Candidate by or on behalf of the Company (the "<u>Images</u>"), the unrestricted, absolute, perpetual, worldwide right to:
- (a) reproduce, copy, modify, create derivatives in whole or in part, or otherwise use and exploit the Images or any versions or portions thereof and the Candidate's performance in connection with the Images, including the Candidate's image, likeness, own or fictitious name, or reproduction thereof, biography, photograph, words, utterances, gestures and recorded voice, or any part thereof in combination with or as a composite of other matter, including, but not limited to, text, data, images, photographs, illustrations, animation and graphics, video or audio segments of any nature, and any information, including but not limited to remarks, suggestions, ideas, graphics or other submissions, communicated to the Company, in all languages, in color or black & white, in any media or embodiment, now known or hereafter to

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

- (b) use and permit to be used the Candidate's name, image, likeness, biography, words, utterances and gestures, whether in original or modified form, in connection with the Works as the Company may choose, and
- (c) display, perform, exhibit, distribute, transmit or broadcast the Works by any means now known or hereafter to become known.

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

- 12. <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each such counterpart shall be deemed an original.
- 13. <u>Entire Agreement; Amendment.</u> This Agreement constitutes the entire understanding between the parties with respect to its subject matter; any other oral or written agreements entered into with respect thereto are revoked and superseded by this Agreement; and no representations, warranties or inducements have been made by either of the parties except as expressly set forth herein. This Agreement cannot be amended except by a written instrument signed by both parties.
- 14. <u>Severability</u>. If any provision of this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.
- 15. <u>Assignability</u>. This Agreement may not be assigned by the Candidate without the prior written consent of the other.
- 16. <u>Arbitration</u>. The parties shall attempt, in good faith, to resolve any dispute, claim or controversy regarding this Agreement and if a resolution is not reached within thirty (30) days, the dispute, claim or controversy shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules for expedited arbitration. The parties agree that the arbitration will be conducted in Phoenix, Arizona. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other

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

- 17. Governing Law; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Arizona, without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Arizona. Should any litigation be commenced under this Agreement, the successful party in such litigation shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such litigation.
- 18. <u>Notices</u>. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written or electronic verification of receipt. All notices shall be sent to the parties at the addresses set forth below their signatures to this Agreement or at such other address as a party may designate by ten (10) days' advance written notice to the other party.

[Signature page follows.]

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

Sig	nature	
Prii	nt Name	
Ado	Iress	
<u>CO</u>	MPANY:	
ТН	E POWER OF FIVES, LLC	
By:		
	ne: Robert Branch e: Manager	
Dat	e:	

EXHIBIT A

SERVICES AND COMPENSATION

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

Phase	Services Provided / Term	Compensation
Phase I: Prefunding	 Phase I will commence on the effective date of this Agreement and will end once the Candidate qualifies for public financing under the Act for the Primary Election. During Phase I, the Company will provide the following services: Develop the campaign strategy for the Candidate, develop the Candidate's brand, develop the strategy to collect nomination petition signatures, and develop the strategy to collect qualifying \$5 contributions. Groom the Candidate, help develop the Candidate's message and start branding the Candidate as a "The Power of Fives Candidate." Organize forums that the Candidate can attend to collect qualifying \$5 contributions for the Primary Election. 	[40% of the Primary Fund Distribution.]
Phase II: Funded Primary	 Phase II will commence after the Candidate qualifies for public financing for the Primary Election and will end following the Primary Election, which is on Aug 4th, 2020 (Note: If the Candidate does not qualify for public financing under the Act, this Agreement shall immediately terminate). During Phase II, the Company will provide the following turn-key services: Continue to groom and train the Candidate. Manage the Candidate's campaign with a campaign management team. Continue branding the Candidate as a "The Power of Five Candidate" and develop the Candidate's message. Handle all print and radio advertising during Phase II, including (number based on the office sought) yards signs, and (number based on the office sought) of large highway signs. Provide support as needed to support the strategic plan of the campaign, as determined by the Company. 	[60% of the Primary Fund Distribution.]
Phase III: Funded General Election	 Phase III will commence if the Candidate win the Primary Election and will end following the General Election, which is on Nov 3rd, 2020 (Note: If the Candidate does not win his or her Primary Election, this Agreement shall immediately terminate). During Phase III, the Company will provide the following turn-key services: Tailor the campaign with the Candidate to run against his or her new opponent. All campaign management will be provided, as well as any support that is needed based on the campaign plan and as determined by the Company. All print and radio ads will be provided by the Company as needed to support the campaign plan. 	[100% of the General Election Fund Distribution.]

EXHIBIT B

1	Rebecca A. Albrecht (SBN 004164) BOWMAN AND BROOKE LLP		
2	Phoenix Plaza – Suite 1600		
3	2901 North Central Avenue Phoenix, Arizona 85012-2736		
4	Telephone: (602) 643-2300 rebecca.albrecht@bowmanandbrooke.com		
5	Arbitrator		
6	AMEDICAN ADDIEDA	TION ACCOCLATION	
7	AMERICAN ARBITRATION ASSOCIATION Commercial Arbitration Tribunal		
8			
9	THE POWER OF FIVES, LLC, an Arizona limited liability company,	Case No. 01-20-0014-8998	
10	Claimant,	INTERIM AWARD	
11	v.		
12	ERIC SLOAN and ALISA LYONS SLOAN, husband and wife,		
13	ŕ		
14	Defendants.		
15	Having been designated in accordance	with the arbitration agreeme	

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1	the campaign by entering into the Agreement. There was no obligation to pay until/if Sloan
2	qualified for public financing. There is nothing in the Clean Election laws and regulations
3	that prevent a candidate from entering into a contract for services before he receives clean
4	election funding, with the payment to be paid upon receipt of clean election funding.
5	Based on the foregoing the Arbitrator finds:
6	The parties entered into a valid legal contract. By the terms of the contract the full
7	\$116,016.00 was due and owing before the termination of the Agreement by Sloan became
8	effective.
9	The fees incurred for the LaSota work was within the contemplation of the parties'
10	Agreement and were incurred within the terms of the Agreement.
11	The Arbitrator Awards Claimant:
12	1. The contract amount of \$116,016.00.
13	2. TPOF fees and costs incurred in this proceeding.
14	3. Interest from that date the of the invoice for the contract amount until paid in
15	full at the rates provided pursuant to ARS § 44-1201.
16	4. TPOF shall file its affidavit of fees and costs on or before March 23, 2021.
17	Respectfully submitted this 25 th day of February, 2021.
18	BOWMAN AND BROOKE LLP
19	
20	By: Keller W Steller W Rebecca A. Albrecht
21	Arbitrator
22	
23	COPY of the forgoing e-mailed this 25 th day of February, 2021, to:
24	Julie Collins
25	Manager of ADR Services American Arbitration Association
26	JulieCollins@adr.org

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EXHIBIT C

1	this 13th day of April, 2021, to:
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3	Julie Collins Manager of ADR Services American Arbitration Association
4	JulieCollins@adr.org
5	/s/ Kelly Brubaker
6	16/ Henry Brucener
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EXHIBIT D

 From:
 Thomas Collins

 To:
 William Fischbach

 Cc:
 Ryan P. Hogan

Subject: Re: Follow up on Dr. Branch Email

Date: Thursday, June 3, 2021 10:16:00 AM

Will,

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

Thanks, Tom.

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

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

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

Will Fischbach

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From: Thomas Collins < thomas.collins@azcleanelections.gov>

Sent: Tuesday, June 1, 2021 1:28:57 PM **To:** William Fischbach < wmf@tblaw.com > **Subject:** Follow up on Dr. Branch Email

Will,

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

Let me know if you have any questions.

Thank you! Tom

EXHIBIT O

Timothy A. La Sota, PLC

2198 East Camelback, Suite 305 Phoenix, Arizona 85016 P 602-515-2649

tim@timlasota.com

October 13, 2021

Via email to:

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

Re: Complaint against The Power of Fives, LLC

Dear Mr. Collins:

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

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

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

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

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

Mr. Thomas M. Collins October 13, 2021

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

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

Id.

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

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

B. ALLEGATIONS BASED ON ARTICLE 2

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

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

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

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

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

2. BY THE EXPRESS TERMS OF THE CONTRACT, A CANDIDATE

DOES NOT "PROMISE, AGREE, CONTRACT OR OTHERWISE INCUR

AN OBLIGATION TO PAY FOR GOODS AND SERVICES" UNTIL THE

CANDIDATE QUALIFIES FOR FUNDING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. CONCLUSION

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

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

Very truly yours,

TIMOTHY A. LA SOTA PLC

Timothy A. La Sota

STATE OF ARIZONA

) ss.:

County of Maricopa

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

ANTONINA CARBAJAL
Notary Public - Arizona
MARICOPA COUNTY
Commission # 597348
Expires January 22, 2025

Notary Public

EXHIBIT P

STATE OF ARIZONA

CITIZENS CLEAN ELECTIONS COMMISSION

MUR 21-01

The Power of Fives, LLC (TPOF)

STATEMENT OF REASONS OF THE EXECUTIVE DIRECTOR

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

Background

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

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

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

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

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

Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

Upon expiration of the fourteen (14) days, if the Commission finds that the alleged violator remains out of compliance, the Commission shall make a public finding to that effect and issue an order assessing a civil penalty unless good cause of reduction is shown. A.R.S. § 16-957(B).

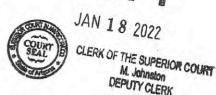
After fourteen (14) days and upon completion of the investigation, the Executive Director will recommend whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred. Ariz. Admin. Code R2-20-214(A). Upon a finding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

Dated this 27th day of October, 2021

By: S/Thomas M. Collins, Executive Director

EXHIBIT Q





Eric Sloan Alisa Lyons Sloan

10450 N. 74th Street Scottsdale, Arizona 85258

Defendants in pro. per.

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Superior Court of the State of Arizona

In and For the County of Maricopa

8	The Power of Fives, LLC,	
9	Plaintiff,	
10	vs.	
11	Eric Sloan and Alisa Lyons Sloan,	
12	Defendants.	

(P.A. Hon. Randal H, Warner)

No. CV2021-007328

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendant Eric Sloan and Defendant Alisa Lyons Sloan appeal to the Arizona Court of Appeals, Division One, from the judgment entered in this action on December 22, 2021.

DATED: January 18, 2022.

Eric Sloan

Alisa Lyons Sloan

EXHIBIT R



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

Location: Citizens Clean Elections Commission

1616 West Adams, Suite 110

Phoenix, Arizona 85007

Date: Thursday, December 16, 2021

Time: 9:30 a. m.

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Elections Commission and the general public that the Citizens Clean Elections Commission will hold a regular meeting, which is open to the public on Thursday, December 16, 2021. This meeting will be held at 9:30 a.m., at the Citizens Clean Elections Commission, 1616 West Adams, Suite 110, Phoenix, Arizona 85007. The meeting may be available for online https://www.youtube.com/c/AZCCEC/live. You live streaming can also visit https://www.azcleanelections.gov/clean-elections-commission-meetings. Members of the Citizens Clean Elections Commission will attend either in person or by telephone, video, or internet conferencing. This meeting will be held virtually. Instructions on how the public may participate in this meeting are below. For additional information, please call (602) 364-3477 or contact Commission staff at ccec@azcleanelections.gov.

Join Zoom Meeting

 $https://us02web.zoom.us/j/858645524\underline{71?pwd} = \underline{M0krakNudTcrT3pnaHUyYTczV1JtQT09}$

Meeting ID: 858 6455 2471 Passcode: 599943

One tap mobile

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> Dial by your location +1 669 900 6833 US (San Jose) +1 253 215 8782 US (Tacoma) +1 346 248 7799 US (Houston) +1 929 205 6099 US (New York) +1 301 715 8592 US (Washington DC) +1 312 626 6799 US (Chicago) Meeting ID: 858 6455 2471

Passcode: 599943

Find your local number: https://us02web.zoom.us/u/kdd7gA4OZF



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

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

The agenda for the meeting is as follows:

- I. Call to Order.
- II. Discussion and Possible Action on Commission Minutes for October 29, 2021.
- III. Discussion and Possible Action on Executive Director's Report, Enforcement and Regulatory Updates and Legislative Update.
- IV. Discussion and Possible Action on the 2022 Budget and related statutory calculations.
- V. Discussion and Possible Action on Amendment to R2-20-101, Rule Amendment related to personal and family contributions to candidates participating in the Clean Elections Funding program.
- VI. Discussion and Possible Action on MUR 21-01, The Power of Fives, LLC

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

VII. Discussion and Possible action on MUR 20-04, Eric Sloan

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

- VIII. Discussion and Possible Action on Election of Chairperson for 2022.
- IX. Public Comment

This is the time for consideration of comments and suggestions from the public. Action taken as a result of

public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism.

X. Adjournment.

This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission's office, 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

Dated this 14th day of December, 2021 Citizens Clean Elections Commission Thomas M. Collins, Executive Director

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

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4	THE STATE OF ARIZONA				
5	CITIZENS CLEAN ELECTIONS COMMISSION				
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10	REPORTER'S TRANSCRIPT OF VIRTUAL PUBLIC MEETING				
11					
12					
13					
14	Phoenix, Arizona				
15	October 29, 2021				
16	9:31 a.m.				
17					
18					
19					
20					
21	COASH & COASH, INC.				
22	Court Reporting, Video & Videoconferencing 1802 North 7th Street, Phoenix, AZ 85006				
23	602-258-1440 staff@coashandcoash.com				
24	Prepared by:				
25	LILIA MONARREZ, CSR, RPR Certificate No. 50699				

Coash & Coash, Inc. 602-258-1440 www.coashandcoash.com

09:32:17-09:33:22 Page 4 1 VIRTUAL PUBLIC MEETING BEFORE THE CITIZENS CLEAN ELECTIONS COMMISSION convened at 9:31 a.m. or We have a quorum for business today and, 2 October 29, 2021, at the State of Arizona, Clean Elections Commission, 1616 West Adams, Conference Room, Phoenix, Arizona, in the presence of the following Board 2 with that, we can move on to Agenda Item II -- bear 3 with me one moment -- discussion and possible action on members: 4 Commission minutes for July 29th, 2021. Ms. Amy B. Chan, Chairperson Mr. Galen D. Paton Mr. Mark S. Kimble 5 Is there any discussion? And, if not, do I 6 have a motion to approve the minutes? OTHERS PRESENT: 7 Thomas M. Collins, Executive Director Paula Thomas, Executive Officer Mike Becker, Policy Director Alec Shaffer, Web Content Manager Avery Xola, Voter Education Specialist Kara Karlson, Assistant Attorney General Kyle Cummings, Assistant Attorney General Monique Coady, Independent Advisor Cathy Herring, Staff Eric Sloan Rivko Knox 7 COMMISSIONER KIMBLE: Madam Chair? 8 8 CHAIRWOMAN CHAN: Yes, Commissioner Kimble. 9 9 COMMISSIONER KIMBLE: I move we approve the 10 10 minutes for the Commission meeting of July 29th, 2021. 11 11 CHAIRWOMAN CHAN: Thank you. 12 12 Do I have a second? Rivko Knox Timothy A. La Sota, Esq. 13 I think, Commissioner Paton, you're on 13 14 15 COMMISSIONER PATON: And I would second 15 16 **16** that. 17 17 CHAIRWOMAN CHAN: Thank you. 18 18 All right. We have a motion and a second. 19 **19** Let's go ahead and call the roll. 20 Commissioner Kimble, how do you vote? 20 21 **COMMISSIONER KIMBLE: Commissioner Kimble** 21 22 votes ave. 22 CHAIRWOMAN CHAN: Commissioner Paton? 23 23 24 COMMISSIONER PATON: I vote aye. 24 25 CHAIRWOMAN CHAN: And I vote aye, as well. 25 09:31:24-09:32:14 Page 3 09:33:23-09:34:56

Page 5

PROCEEDING 1

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- CHAIRWOMAN CHAN: Good morning. You are
- 4 attending the meeting of the Citizens Clean Elections
- 5 Commission. I hope everybody is doing well this
- 6 morning. I'm having trouble waking up. I probably
- 7 needed more coffee. I don't know what's going on, but
- 8 the first item on the agenda today is the call to
- 9 order. It is 9:30 on October 29th, 2021, so I will go
- 10 ahead and call the meeting to order.
- I'd like to ask the audience members to
- 12 please keep their microphones on mute and, with that,
- 13 we will take attendance.
- 14 Commissioners, could you please identify
- 15 yourselves for the record? Perhaps, we can start with
- **16** Commissioner Kimble.
- **COMMISSIONER KIMBLE: Commissioner Kimble** 17
- 18 is present.
- CHAIRWOMAN CHAN: Thank you. 19
- 20 Commissioner Paton, can you identify
- 21 yourself?
- 22 **COMMISSIONER PATON: Commissioner Paton is**
- 23 here.
- CHAIRWOMAN CHAN: All right. And I'm
- 25 Commission Chan. I am here, also.

- 1 So by a vote of three ayes and zero nays, we have
- 2 approved the minutes as written.
- And we can move on to Agenda Item III:
- 4 Discussion and possible action on Executive Director's
- report, enforcement and regulatory updates and
- 6 legislative update.
- 7 Tom?
- MR. COLLINS: Yes. Thank you, Madam Chair
- 9 and Commissioners. I know it's been a little while
- since we've met.
- As you can see, we have -- well, first, I
- want to note a couple of things. One, November 2nd is
- the -- is the local consolidated election date -- or it
- 14 is the consolidated election date for the local
- elections happening as we speak. We've had -- we have
- details of those election sites on our -- the sites --
- I'm sorry -- the elections in the various counties and
- 18 jurisdictional subdivisions, like school districts, on
- our website.
- 20 I just want to give Gina and Alec and Avery
- credit for putting that together that -- and if I
- 22 missed anybody. It's been well received. We know that
- 23 it's been distributed to folks through a variety of
- 24 channels just as a guide, and I have an anecdotal and
- 25 important reference from my mom, which was the fact

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- 1 that she figured out where to drop her ballot for the
- 2 school board election -- school district election, I
- 3 should say, based on our website, which she got to on
- 4 her own. So this is all very -- this is all very good
- 5 and we're very happy about that.
- 6 Also, Chairwoman Chan and Julian Arndt both
- 7 have completed election officer certification training
- 8 with the Secretary of State's Office. So
- 9 congratulations to them, and I think their certificate
- 10 will arrive -- at some point. I don't -- we don't
- 11 control it.
- 12 CHAIRWOMAN CHAN: I still have to be
- 13 recert, actually.
- MR. COLLINS: Oh, you still have to do
- **15** recert. Well, anticipatory congratulations.
- As the executive -- as the report notes,
- 17 there's been a full panoply of voter education
- 18 activities over the last several months. A couple of
- 19 things that I think are key, Commissioner Titla, Gina
- 20 and Avery participated in a tribal conference that the
- 21 Secretary of State Hobbs put on, and Gina was a
- 22 participant in the panel discussion there. Gina --
- 23 both Gina and Avery have kept -- and have kept up a
- 24 full organizational -- I should say, an educational
- 25 role and have been called in to discuss, with a variety

- 1 And so I, also, wanted to mention -- and I
- 2 think it's important -- Lilia Monarrez, who's been our
- 3 court reporter for the past -- goodness -- a long time,
- 4 this is going to be her last meeting as our court
- 5 reporter. So I just wanted to thank her. I know Paula
- 6 and I certainly wouldn't be able to do our jobs without
- 7 having Lilia's services and her efficiency and her
- 8 skill. So we're grateful for that.
- 9 And I think that that probably will -- I
- 10 think that probably sums up the things to highlight, I
- 11 think.
- 12 And if you have any questions,
- 13 Commissioners -- Chairwoman Chan, Commissioners, I'm,
- 14 obviously -- I'm well open to them.
- 15 COMMISSIONER KIMBLE: Madam Chair?
- 16 CHAIRWOMAN CHAN: Yes, Commissioner Kimble.
- 17 COMMISSIONER KIMBLE: Tom and/or Avery, I
- 18 see a mention in here about meeting with One Arizona to
- 19 discuss Arizona redistricting. Obviously, we don't
- 20 have any official role in the redistricting process,
- 21 but can you talk a little bit about what we are doing,
- 22 if anything?
- MR. COLLINS: I might start, I guess -- or
- 24 Avery, do you want to go first? I didn't -- I think
- 25 hear anyone --

09:36:18-09:37:49 Page 7 | 09:39:37-09:40:43 Page 9

- 1 of different groups, what Clean Elections does and,
- 2 particularly, what we have to offer from an educational
- 3 perspective.
- We will -- we did launch our civics
- 5 curriculum during civics week, which was in September.
- 6 We -- that's housed on our website. We have -- also,
- 7 we have a storytelling project that we did with that.
- 8 So Chairwoman Chan, Secretary Hobbs, other folks from
- 9 around the Valley and state, you know, did a
- 10 storytelling -- a storytelling project about people and
- 11 their influence and/or their experience with voting.
- 12 We're very excited about that.
- 13 Again, anecdotally, I can tell you that --
- 14 I mean, I've heard from a friend of mine who is a
- 15 teacher, who is government -- the government teacher at
- 16 their high school is using our curriculum. So we are
- 17 getting and we have been -- and I think the Department
- 18 of Education has been -- and the ahead of the civics
- 19 education consortium there have been very helpful.
- 20 I'd invite Avery to interrupt me here if
- 21 there's anything I'm missing as far as fleshing out
- 22 some of that curriculum issue. I don't know if I
- 23 want -- not issue, but if there's anything I'm missing,
- 24 Avery, interrupt me or -- so we're very excited about
- 25 that, about that continued partnership.

- 1 MR. XOLA: Yes. Madam Chair,
- 2 Commissioners, yeah, well, we kind of -- as far as the
- 3 One Arizona and redistricting, we have been teaming up
- 4 with their outreach team and sharing information. I
- 5 know we had a few meetings -- at least three or four
- 6 meetings with them and I, basically, gave them a lot of
- 7 my network -- my contacts for outreach so they can go
- 8 to the community level, you know, grassroots and inform
- **9** those people about the process.
- 10 So it's kind of been an information sharing
- 11 partnership. So they share information with us and
- 12 then we will put it on our website, and then we will
- 13 inform them about things we know, maybe about different
- 14 organizations, or put them in contact with people who
- 15 they should speak with.
- 16 CHAIRWOMAN CHAN: That's amazing and
- 17 wonderful. Thank you for doing that. I actually was
- 18 so impressed, Tom, with the list of what Avery and Gina
- 19 have been working on, and was also just reminded,
- 20 hearing from Avery, congratulations, I think, are in 21 order.
- You're a published author now, right?
- MR. XOLA: Yes. Thank you. Thank you.
- 24 CHAIRWOMAN CHAN: Tom, did you want to add
- 25 anything?

09:40:45-09:41:45 Page 10 | 09:42:48-09:44:46 Page 12

- MR. COLLINS: Oh, no, no. I mean, we're
- 2 pleased, I think, just -- I think that the AIRC folks
- 3 have reached out to -- especially to Avery and Gina.
- 4 And -- no. That's about all.
- 5 CHAIRWOMAN CHAN: Okay. Commissioner
- 6 Kimble, did you have any additional questions about
- 7 that or comments?
- 8 COMMISSIONER KIMBLE: No, I did not. Thank
- 9 you.
- 10 CHAIRWOMAN CHAN: Okay.
- 11 MR. XOLA: Thank you.
- 12 CHAIRWOMAN CHAN: Anything else? Anything
- 13 further on Item III before we move on?
- 14 (No response.)
- 15 CHAIRWOMAN CHAN: And I think we're going
- **16** to hold Item IV for the day.
- MR. COLLINS: Yes, please, Madam Chair.
- 18 CHAIRWOMAN CHAN: Thanks, Tom.
- And moving on, then, to Item V -- just one
- 20 moment -- okay, discussion and possible action on MUR
- 21 21-01, The Power of Fives. This is an
- 22 enforcement-related item and, since we're meeting
- 23 virtually, I'll have Tom introduce the item and give an
- 24 overview of his recommendation and then open it for
- 25 commissioner questions. And, following that, I know

- 1 So thank you so much.
- 2 And thank you so much for being here,
- 3 Ms. Coady.
- 4 MS. COADY: You're very welcome.
- 5 MR. COLLINS: Madam Chair, just by way of
- 6 background, in -- about a year ago, a little more than
- 7 a year ago, the Commission received a complaint from a
- 8 Dr. Bob Branch, who's the managing member of a
- 9 company -- a limited liability company called The Power
- 10 of Fives against a participating candidate named Eric
- 11 Sloan. The Commission found reason to believe, based
- 12 on that complaint in, I believe, December of 2020 or
- 13 January of 2021. In April, the Commission met again,
- **14** and we ordered -- or the Commission, I should say,
- 15 ordered Mr. Sloan to repay monies that the Clean
- 16 Elections fund had paid out to him, and he did so.
- 17 The -- we, then -- in late September, I
- 18 filed, under our rules, a complaint that -- against the
- 19 The Power of Fives because, as explained in the
- 20 complaint and the reason to believe memo, we believe
- 21 there's reason to believe that a violation may have
- 22 occurred with respect to The Power of Fives' conduct in
- 23 the 2020 election. So, for purposes of this
- 24 discussion, this is about The Power of Fives' actions,
- 25 and so that's what we are focused on today.

09:41:50-09:42:47 Page 11 09:44:49-09:46:41 Page 13

- 1 Tim La Sota is here, and then we'll hear from him
- 2 after -- after Tom presents and we ask him questions.
- 3 After that, we'll allow Mr. La Sota to speak to us, the
- 4 attorney for the The Power of Fives.
- 5 And so we'll begin with Tom.
- 6 MS. KARLSON: And just -- sorry.
- 7 CHAIRWOMAN CHAN: Go ahead.
- 8 MS. KARLSON: Madam Chair?
- 9 CHAIRWOMAN CHAN: Yes.
- 10 MS. KARLSON: I apologize to interrupt. I
- 11 just want to make it clear that for this item, in
- 12 particular, Monique Coady -- should the Commission have
- 13 any questions, legal questions and need to go into
- 14 executive session, I just want to make it clear on the
- 15 record that because Kyle and I are working with Tom to
- 16 do the investigations, we will not be participating.
- 17 It will be Monique Coady that you will be asking your
- 18 questions to, and we should not be involved in the
- 19 executive session, as well.
- 20 So I just wanted to get that out on the
- 21 record before the presentation started. My apologies
- 22 for the interruption.
- 23 CHAIRWOMAN CHAN: Oh, you're very welcome
- 24 to interrupt, especially when it's something important
- 25 like that. I mean, anytime. Everything is important.

- 1 I think that, obviously, we -- this is a
- 2 matter that has some complication to it. It's -- it's
- 3 not necessarily a simple issue. I think, however, that
- 4 there's really a few facts that are not in any serious
- 5 dispute that are the critical facts for a determination
- 6 of reason to believe. Now, a determination for reason
- 7 to believe, in Staff's view, you know, is based on, you
- 8 know, whether or not a violation of the Act or rules
- 9 may have occurred.
- 10 The facts that we think are -- or I should
- 11 say, I think are dispositive of a determination of
- 12 reason to believe are what is The Power of Fives and
- 13 what did it do. The Power of Fives is a limited
- 14 liability company. The Power of Fives was formed for
- 15 the express purpose of identifying and supporting
- 16 candidates for public office in Arizona. The elements
- 17 of becoming -- of being a political committee under
- 18 Arizona law are that you were formed for the purpose of
- **19** influencing elections. As I just articulated the
- 20 purpose of The Power of Fives, we think that's not
- 21 subject to debate. We know that the Commission -- that
- 22 TPOF, under the service agreement that they joined with
- 23 Sloan, was providing services to Sloan despite the fact24 that Sloan did not have cash on hand at the time, and
- 25 we know that The Power of Fives made no reports of its

09:46:45-09:48:09 Page 14 | 09:49:48-09:51:14 Page 16

- 1 own.
- 2 There's no exemption under the Clean
- 3 Elections Act for an entity that is -- considers itself
- 4 a consultant when that entity admits that its purpose
- 5 is the support of candidates. It refers to its
- 6 candidates as partners. You know, these are all
- 7 indicia, if there was any question, this is a political
- 8 committee operating under a nominally different name.
- 9 I mean, literally a different name, just not -- with no
- 10 other distinguishing characteristics.
- 11 Because that's true, I mean, in our view,
- 12 once you make that determination, it becomes -- it
- 13 becomes -- you become an organization to have filed
- 14 reports that were not filed. It's not incumbent on the
- 15 Commission or on Staff, at this point, to determine how
- 16 those reports should have been filed because the
- 17 absence of filings means the accounting that would have
- 18 been done hasn't been done. So in order for us to move
- 19 past the reason to believe stage and get to a probable
- 20 cause to believe stage, we are requesting your
- 21 authorization to proceed with an investigation.
- 22 Thank you, Madam Chair. I went long but --
- 23 CHAIRWOMAN CHAN: No, it's okay. I just --
- 24 I was interrupting you a little bit because one of the
- 25 biggest questions I think I have is, you know, my fear

- 1 And I -- and, to the best of my knowledge,
- 2 most political consultants are not in the business of
- 3 written finance agreements with their candidates to
- 4 carry them to qualification. If it were so, the very
- 5 essence of the Clean Elections Act would be undermined,
- 6 as well as other issues, such as corporate
- 7 contributions. So there are -- so this service
- 8 agreement distinguishes the -- which is -- which, you
- 9 know, came through the complaint in the first place is
- 10 what distinguishes this case from other cases that
- 11 we've dealt with.
- 12 CHAIRWOMAN CHAN: Well -- and, to me, I
- 13 just wonder if those are two separate issues, and
- 14 that's why I'm asking about the political action
- 15 committee piece because when I saw the original
- 16 complaint from Dr. Branch about Candidate Sloan, my
- 17 initial thought was you can't contract for services. I
- 18 mean, contracting for services is an expenditure and,
- 19 therefore, I felt like that was a pretty clearcut
- 20 violation of our rules, for example.
- 21 And it just -- I mean, I remember way back
- 22 years ago, a decade or more, maybe, you know, Janet
- 23 Napolitano, in her governor's race, got in trouble for
- 24 that exact thing, but isn't that separate from whether
- 25 this consultant needs to register as a political

09:48:16-09:49:44 Page 15 09:51:18-09:52:31 Page 17

- 1 that -- you know, how is this distinguishable from --
- 2 and I know other consultants and agencies that do this
- 3 type of work aren't before us, but is this
- 4 distinguishable from the work that other consultants
- 5 do, for example? I just feel like --
- 6 MR. COLLINS: Sure. That's a fair
- 7 question.
- 8 CHAIRWOMAN CHAN: -- look at the letter of
- 9 the law, but I just am curious if they operate in a
- 10 different way that distinguishes them from other
- 11 consultant-type businesses.
- MR. COLLINS: So, Madam Chair,
- 13 Commissioners, a very fair question. And the issue in
- 14 this case is -- I mean, quite honestly, I don't know
- 15 the answer to your question. I don't know what the
- 16 industry practice is. I hope the industry practice is
- 17 not the service agreement here because the crux of this
- 18 complaint is that the service agreement that Candidate
- 19 Sloan and TPOF entered into stated expressly that the
- 20 services we provided for Phase 1 and Phase 2 -- payment
- 21 for Phase 1 and Phase 2 would not arrive until the
- 22 person receives their money from the Clean Elections
- 23 fund if they qualify; therefore, those -- any services
- 24 provided -- and we know it's up to \$116,000 --
- 25 were forwarded, were an advance, were a loan.

- 1 committee? I don't know that I see them as intertwined
- **2** and that --
- 3 MR. COLLINS: Sure.
- 4 CHAIRWOMAN CHAN: I guess. And if you want
- 5 to address it, great, and maybe Tim La Sota may have
- 6 some -- I mean, I know he has --
- 7 MR. COLLINS: Yeah.
- 8 CHAIRWOMAN CHAN: Oh, he's going to address
- 9 it. He addressed it in his answer.
- 10 MR. COLLINS: Sure.
- 11 CHAIRWOMAN CHAN: But if you want to try to
- 12 address that, that would be great.
- 13 MR. COLLINS: Sure. Madam Chair,
- 14 Commissioners, I think that the -- I think that the key
- 15 here is that they are -- is that they are separate. In
- 16 other words, there are actions that Mr. -- excuse me --
- 17 that Mr. Sloan took and we've talked about those, and
- **18** there are actions that The Power of Fives took.
- The reason why the service agreement here
- 20 is so -- at least we see critical to the -- to the
- 21 issue is because it literally sets forth the payment
- 22 terms and sets them at a level that was inherently23 above the cash on hand that would have been available
- 24 to that candidate up to the disbursement of primary
- 25 funds. And the service agreement distinguishes between

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- 1 the primary funds and the general funds and says that
- 2 the general funds would get paid for from the allotment
- 3 that comes in going forward.
- 4 So, in essence, the upshot of what the
- 5 service agreement did was say by the distinction
- 6 between the general and the primary -- the general and
- 7 the primary election was say we're going to front you
- 8 the primary and you're going to pay us cash on hand for
- 9 the general because we know you're going to get the
- 10 general grant upfront at the beginning of the general,
- 11 period.
- So if that distinction within the contract,
- 13 in addition -- that demonstrates that this is -- that
- 14 the agreement was for TPOF to carry Sloan to
- 15 qualification and Sloan was to pay them at that time.
- 16 There's no evidence that Sloan ever had \$116,000 on
- 17 hand when the agreement was signed and, in fact, he
- 18 couldn't have, as a matter of law.
- 19 CHAIRWOMAN CHAN: Thank you.
- 20 Do the other commissioners have any
- 21 questions for Tom?
- 22 COMMISSIONER KIMBLE: Madam Chair.
- 23 CHAIRWOMAN CHAN: Yes, Mr. Kimble.
- 24 COMMISSIONER KIMBLE: Tom, let me ask again
- 25 about that last point you just made. So in his letter,

- 1 Power of Fives, therefore, became, essentially, the
- 2 guarantor of services through the primary, it was the
- 3 financier of the primary election activities.
- 4 COMMISSIONER KIMBLE: Okay. Thank you.
- 5 MS. COADY: Commissioner Kimble, would you
- 6 like me to provide a legal response regarding your
- 7 question on the validity of the contract?
- 8 COMMISSIONER KIMBLE: Yes. I would
- 9 appreciate that.
- 10 MS. COADY: Sure. So once a contract has
- 11 been executed being signed by both parties, it is
- 12 legally enforceable. Although the terms might seem
- 13 confusing in certain contracts, it is legally binding.
- 14 In this particular contract, there are other clauses in
- 15 there, as well, such as the termination clauses.
- 16 There's timing involved with, I believe, all of them,
- 17 other than mutual termination. There's clauses in
- 18 there regarding payment terms, but it is a legally
- 19 binding contract. And you would need to look at it in
- 20 its entirety, which I'm sure you already have done, but
- **21** it is absolutely binding once executed.
- Does that answer your question,
- 23 Commissioner Kimble?
- 24 COMMISSIONER KIMBLE: Yes, it does. Thank
- 25 you, Ms. Coady.

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- 1 Mr. La Sota's point was that there were numerous escape
- 2 periods during the primary, like, if he didn't qualify
- 3 as a Clean Elections candidate, then he could end the
- 4 contract and wouldn't owe anything.
- 5 Is that -- at what point does a -- does a
- 6 contract become a contract if you can -- and, I guess,
- 7 this is a legal question -- if you can back out of it
- 8 with no penalty? Is it still a binding contract from
- 9 the point that you -- that you first sign it?
- 10 MR. COLLINS: Madam Chair, Commissioner
- 11 Kimble, well, I can -- on the merits of that question,
- 12 in terms of what the advocacy from our point -- or
- 13 Staff -- is on the -- of the contract is this. The
- 14 fact that a -- let me put it this way. There are
- 15 contracts that have -- that have, you know, clauses in
- 16 them that waive repayment. Under campaign finance
- 17 rules, if those are -- if those contracts -- if you're
- 18 financing for something that you're financing something
- 19 with cash on hand, the fact -- if it were forgiven, it
- 20 would become a loan, right?
- 21 So those clauses that the response
- 22 discusses are the clauses that, in fact, confirm that
- 23 this was financing because if the person didn't qualify
- 24 for the ballot, the loss was going to be borne by The
- 25 Power of Fives, not by the candidate. As soon as The

- 1 CHAIRWOMAN CHAN: Thank you.
- 2 Okay. So, at this time, Mr. La Sota, I
- 3 will give you the floor to present your response, and
- 4 if we have questions, we can ask them of you afterward.
- 5 MR. LA SOTA: Thank you, Madam Chair and
- 6 members of the Commission. I'm Timothy La Sota here on
- 7 behalf of The Power of Fives this morning, and I think
- 8 that the Commission wisely focused on a couple of
- 9 questions that Mr. Collins still has not answered. I
- 10 think it's a very bad question what Mr. Collins wants
- 11 to do. The Power of Fives is a vendor. I put it in my
- 12 letter, you know. If they're a vendor, then I don't
- 13 know -- and they -- now they're a political committee;
- 14 they've got to do all these reports, I don't know why I
- 15 wouldn't have to do the reports.
- The -- you know, the -- he, also, didn't
- 17 answer the question of he doesn't know how other
- **18** campaigns are run or how other -- how other vendors
- 19 handle things. Well, you know, the bottom line is this
- 20 is just the way it works in this realm. I mean,21 vendors provide services and they're paid or they're
- 22 not paid. I mean, I'll just give you one example.
- 23 What if a -- what if someone -- a vendor happens to not
- 24 be paid by a candidate? I think under -- under
- 25 Mr. Collins' logic, now that vendor is a political

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- 1 committee because they've made an in kind contribution
- 2 to the candidate. It just -- it doesn't make sense and
- 3 there's no end to it. It's a -- it's a very
- 4 significant regulatory leap.
- Now, the -- in terms of the -- you know,
- 6 the contract, whether it's a binding contract at the
- 7 outset, I don't think is at all the question that the
- 8 Commission should be focusing on. I think the issue
- 9 here is, you know, Mr. Collins wants to call this
- 10 financing. He wants to call it a loan. I mean, a loan
- 11 is, here, I'm going to give you money and you have to
- 12 repay it. Well, as the -- as the arbitrator in a
- 13 related civil suit found with regard to this -- this
- 14 arrangement, it wasn't a loan at all. A loan is
- something that you have to be -- that you have to
- 16 repay.
- 17 And I'd like to quote briefly from the
- award -- the arbitration decision. It was made by
- 19 Rebecca Albrecht, who is a highly respected former
- 20 Maricopa County Superior Court judge. It said the
- 21 agreement did not bind the campaign to a specific
- 22 obligation. There was no debt created for the campaign
- 23 by entering into the agreement. Yeah, the agreement is
- 24 valid, but there's no debt created by -- just by
- 25 entering into the agreement. There was no obligation

- 1 the Commission's questions, really, when they were
- 2 asked, but you know, this business about that -- the
- email that Mr. Branch sent being illegal.
- 4 So here's what the statute says. The
- statute says to be a qualifying contribution it's got
- to be five bucks. It's got to be this, that and other
- thing, and it can't be sent by a -- by an agent of the
- campaign. Well, okay, so it's -- under that statute,
- it's either a qualifying contribution or it's not. At
- worst it's not a qualifying contribution. The statute
- doesn't say it's illegal to send the email. It says --
- at worst, it says, if you send this email, this is not
- a qualifying contribution.
- It doesn't say it's a Class 1 misdemeanor.
- 15 It doesn't say it's a civil violation. If simply says
- that, you know, if this is -- if this comes from an
- agent of the campaign is being paid, it's not a
- qualifying contribution. That's the only remedy.
- And that leads me to my last point, which 19
- 20 is, you know, if you just look through the whole fabric
- of the Clean Elections Act, you know, you just -- so
- what's the -- what's the remedy against the vendor? I
- mean, I pointed that out in my letter that there's --
- 24 you know, there's no real remedies. I mean, you've got
- 25 fines you can impose against candidates but, you know,

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- 1 to pay until, slash, if Sloan qualified for public
- 2 financing.
- There's nothing in the Clean Election laws
- 4 and regulations that prevent a candidate from entering
- 5 into a contract for services before he receives Clean
- 6 Election funding with the payment to be paid upon
- 7 receipt of Clean Election funding. That's the issue 8 right there. So I think that, you know, there's just
- 9 not a lot to say that I haven't said already in my
- 10 letter because Mr. Collins, you know, his -- his
- 11 response or the statement of reasons of the executive
- 12 director, it was just a regurgitation of what he did
- 13 the first time, and he didn't address any of the points
- **14** I made, hardly.
- 15 He still won't acknowledge Arizona Advocacy
- 16 Network and its finding about what the regulatory
- authority of the Commission is vis-a-vis the Secretary
- of State. In fairness, that case did find -- did find
- 19 certain regulatory, but it said it's largely limited to
- 20 Article 2 or things in Article 1 that impact Article 2.
- One last thing I'll point out is -- well, 21
- 22 actually, I did want to mention that -- and this is a
- 23 minor point, I know, but it just -- it just goes to
- 24 show that -- you know, that Mr. Collins didn't -- he
- 25 didn't -- he's got no real answer. He didn't answer

- 1 if you look through 16-941 to 43, I think you just --
- 2 you don't come up with anything this Commission can do
- 3 about vendors. So I think that tells you, you know,
- 4 there's a reason there's no penalty, and that's because
- the Act was never meant to get into these situations. 6 I didn't see anything from Mr. Collins about that point
- 7 either.
- So that's probably the most telling thing
- **9** is, look, if this were something that the drafters,
- that the people, when they passed it, really wanted to
- get at, you'd think they would put something in there
- that, you know, if you send one of these emails and it
- comes from an agent, what's the penalty? Well, the
- penalty in that case is it's not a qualifying
- contribution. What's the penalty for any of this other
- thing that Mr. Collins thinks is subject to regulation?
- 17 It doesn't say.
- I mean, the Act's penalties are directed at 18
- candidates because that is supposed to be the -- sort
- of the realm of enforcement of the Commission.
- And I'd be happy to try to answer 21
- 22 questions.
- 23 CHAIRWOMAN CHAN: Thank you, Mr. La Sota.
- 24 Do any of the commissioners have questions?
- COMMISSIONER KIMBLE: Madam Chair? 25

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- CHAIRWOMAN CHAN: Yes, Commissioner Kimble.
- 2 COMMISSIONER KIMBLE: Mr. La Sota, going
- 3 back to the question of the contract, you said that no
- 4 debt was created by the campaign, okay, but I think the
- 5 point here is that -- that no debt was created by the
- 6 campaign, but a service was provided by the Powers
- 7 of -- The Power of Fives and it was not paid for until
- 8 something would happen in the future and it may or may
- 9 not happen.
- 10 So it's not so much that there was no debt
- 11 created by the campaign. It seems like there was a
- 12 service that was -- that was provided on the hope that
- 13 The Power of Fives would be reimbursed, which
- 14 Mr. Collins has characterized as a loan.
- 15 Could you address that?
- MR. LA SOTA: Certainly, Madam Chair and 16
- 17 Commissioner Kimble. So a loan is -- I know -- I know
- 18 Mr. Collins says that that's a loan. A loan is
- something that you have to pay back, and that's the
- definition of a loan, that -- and it's I'm giving you
- 21 money and you've got to pay it back.
- And I -- you know, not to -- not to belabor 22
- 23 the point too much, but I'll just quote the arbitrator:
- 24 The agreement did not bind the campaign to a specific
- 25 obligation. There was no debt created for the campaign

- 1 clearly it's not a loan because, you know, maybe
- 2 there's a hope that the qualification will happen,
- 3 maybe -- you know, but a hope is not a binding
- 4 obligation to pay, which is -- which is what a loan
- requires, you know, something that, well, if this
- 6 happens and that happens, then, you know, you'll pay me
- from your proceeds. That's just not a loan.
- I mean, the other thing -- and I should
- 9 have said this at the beginning. It's a little
- surprising that, you know, the way Mr. Collins -- this
- is a very innovative way to help candidates. You know,
- Clean Elections funding has -- you know, has certain
- advantages, but it has certain difficulties. This is a
- very innovative way of getting more people into the
- system. I would think Mr. Collins would be supportive
- of it because it's -- you know, it's legal and it's a
- way of helping people participate in this system and
- overcoming some of the inherent challenges of Clean
- Elections funding.
- 20 I know that wasn't responsive, but I should
- 21 have said that at the beginning. Hopefully, I've
- 22 answered your question. It's just -- it's just not a
- 23 loan, as the arbitrator found.
- 24 COMMISSIONER KIMBLE: Thank you.
- 25 CHAIRWOMAN CHAN: Thank you.

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- 1 by entering into the agreement. The obligation to pay
- 2 did not arise until/if Sloan qualified for funding.
- 3 Under those circumstances, that is not a loan. That is
- 4 something else, but it is not a loan.
- I mean, this is -- this is a disinterested
- 6 arbitrator that made this finding because the argument
- 7 was made that the contract is illegal so it wouldn't be
- 8 enforced -- so it shouldn't be enforced. Well, the
- 9 arbitrator said, no, the contract is legal and it's
- 10 just not -- it's just not a loan when there's no
- 11 obligation, at that time, to pay it back.
- COMMISSIONER KIMBLE: Well, Madam Chair, 12
- 13 Mr. La Sota, you provided -- The Power of Fives
- 14 provided some services before they were paid for.
- 15 Certainly, The Power of Fives -- it cost them something
- 16 to provide these services. Whether they were paid for
- 17 them or not, The Power of Fives was out some amount of
- 18 money for providing the services that came -- that were
- 19 provided before they were paid for.
- 20 Am I right?
- MR. LA SOTA: Mr. -- Madam Chair and 21
- 22 Commissioner Kimble, yes. And I don't know the exact
- 23 timetable, but you know, this is -- again, I think that
- 24 focuses on the wrong inquiry because I think this is --
- 25 I think the question is is this a loan. And I think

- Listening to the conversation about the
- loan versus not a loan, in terms of -- I'm not a
- 3 contract expert, but in the context of the contract, it
- just sounds like The Power of Fives was willing to take
- 5 on the risk of helping this candidate get their \$5
- qualifying contributions thinking we can help them
- qualify and, therefore, then we'll get paid which,
- again, I think it's established on the candidate's side that they can't contract for things without, you know,
- paying for things like that before the funding. And I
- hope I'm not misstating that.
- Mr. La Sota, if you want to respond to
- 13 that, you can, but I think that's -- I think that's
- 14 well settled.
- MR. LA SOTA: I think that's exactly right.
- And, as an attorney, I, sometimes -- you know, I've
- sometimes done that myself that, you know, look, you
- could -- you could pay me at the end, you know, if you
- 19 like what we -- and in unique cases, but I've certainly
- done it. And, you know, look, you could pay me at the
- end and pay me what you think is right if we've
- 22 achieved something that you think is good, but you 23 know, if you don't pay me, you're not going to get so
- 24 much as a nasty email from me, much less a lawsuit for
- 25 breach of contract.

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- CHAIRWOMAN CHAN: Okay.
- MR. LA SOTA: But that's a risk I accept, 2
- 3 and it's -- I think that's a distinction here. It's as
- 4 Chairwoman Chan said.
- CHAIRWOMAN CHAN: Thank you.
- 6 And, to me, again, I just want to make sure
- 7 I kind of understand where both Tom and Tim are.
- So, Tom, it sounds like the argument, from
- 9 your legal position, is that by virtue of the
- 10 violation, okay, by contracting into kind of a
- 11 violation, a Clean Election violation, that puts the
- 12 LLC in a somewhat different position maybe? The -- the
- 13 virtue of the violation kind of puts them in this
- **14** position?
- 15 MS. KARLSON: You are muted.
- 16 CHAIRWOMAN CHAN: I'm sorry.
- 17 MR. COLLINS: Madam Chair, Commissioners,
- **18** I wouldn't say -- that's not precisely our position.
- 19 Our position starts at the beginning of The Power of
- 20 Fives, not at the beginning of Eric Sloan's campaign.
- 21 The Power of Fives was formed expressly to identify and
- 22 support candidates for office. That is the exact type
- 23 of activity that constitutes influencing the results of
- 24 an election. There's no equivocation by The Power of
- 25 Fives about why it was formed. So that's Check Box 1

- 1 argument isn't that the contract is void. Our argument
- 2 is that entering into a contract that calls for you to
- 3 pay more than you have on hand at the time in the
- 4 future is a clear violation of the Clean Elections
- rules, but the activities of TPOF go far beyond that.
- And so we -- and accounting for those is triggered by
- the purpose and spending.
- The -- I think the -- one other -- you
- 9 know, if I can, just without -- you know, just to get
- through a couple of things, you know, I agree with
- Mr. La Sota. I don't know what the industry practice
- is, if the industry practice involves this kind of
- contract, and that's an issue that we need to do some
- education upon, quite honestly.
- The comparison of the commercial loan case 15
- to a campaign finance, they're not analogous because
- the definition of a contribution is loan, advance,
- deposit, et cetera. So it doesn't have to be a loan
- for money. It has to be something else.
- 20 And, then -- so, I guess, finally, I'll
- 21 just say our logic is not that Mr. Sloan could turn
- 22 The Power of Fives into a political committee but the
- reverse. The Power of Fives was a political committee
- 24 that went -- that, in turn, went out and sought
- 25 candidates.

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- 1 on the road to being a political committee. Eric Sloan
- 2 doesn't even have to be there.
- 3 CHAIRWOMAN CHAN: Okay.
- MR. COLLINS: Check box 2 is did they
- 5 accept or expend more than about \$1,000. I don't think
- 6 there's a serious dispute about that. I don't think
- 7 that we know the precise amount, and I don't expect
- 8 Mr. La Sota to know that. The point is it's
- 9 unreasonable, based on what we know that occurred here,
- 10 to believe that they were somehow all accomplished for
- 11 less than \$1,000 because we know, also, there's 22
- 12 other candidates out there who may or may not -- how
- 13 far they got, we don't know, but we know that they were
- 14 involved in the same thing.
- 15 So that takes care of the expenditure
- 16 piece. They're not a nonprofit. That takes care of
- 17 the exemption piece. Once you're in that bucket,
- you've got to file. The reason Mr. La Sota's law firm
- 19 is not -- would not be a political committee is because
- 20 Mr. La Sota's law firm was created for the purpose of
- 21 providing legal services. That's a distinction within
- 22 a big difference.
- I mean, relatedly, the contract terms that
- 24 Judge Albrecht was looking at was under an argument
- 25 that said that the entire contract was void. Our

- CHAIRWOMAN CHAN: Okay. Thank you, Tom,
- 2 for clarifying. That is -- that's helpful and
- 3 illuminating.
- Mr. La Sota, did you wish to speak?
- MR. LA SOTA: Yes. So The Power of Fives 5
- 6 was formed to make money. I mean, Mr. Collins saying
- it's formed as a political committee is just not true.
- It was formed for the same reason my law firm was
- 9 formed: to make money. I mean, that the -- you know,
- that's the purpose. Campaigns are formed to win
- 11 elections. So, you know -- and I think that's a
- 12 critical point.
- The one other thing, just one other real
- 14 quick is that, you know, Mr. Collins is arguing that
- this contract is void because if it's illegal -- if
- what he says is true, then it's for an illegal purpose
- and it would be void. So, I mean, that -- I don't even
- know that that's terribly relevant, but just as a point
- of clarification, he's wrong about that. So -- and
- that was precisely the argument that failed in front of
- 21 Judge Albrecht.
- 22 And that's all I have. Thank you.
- 23 CHAIRWOMAN CHAN: I see Kara has her hand
- 24 raised, and I'm sorry if I missed that, Kara, earlier.
- MS. KARLSON: Yeah. Now I'm, like, 25

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- 1 wondering if I should even -- because you guys kind of
- 2 hit on some of the things, but there was a question,
- 3 Chairman, Commissioners, from -- I'm sorry. It's been
- 4 a while at this point, but I want to say Commissioner
- 5 Kimble, you know, asking about the expenses being
- 6 incurred. And we know, according to Dr. Branch's own
- 7 complaint to this Commission against Mr. Sloan, that --
- 8 and I quote -- The Power of Fives, LLC's expenditures
- 9 for Sloan began in September of 2019 when Mr. Sloan
- 10 requested The Power of Fives start buying nomination
- 11 petition signatures.
- 12 So The Power of Fives was out in the field
- 13 spending actual money to purchase signatures for
- 14 candidates, and this was before the contract was even
- **15** signed. You don't see that anywhere. You don't even
- 16 see that in the invoice that The Power of Fives
- 17 eventually sent Sloan, and the rules specifically state
- 18 that a candidate or a campaign shall be deemed to have
- 19 made an expenditure as of the date upon which a
- 20 candidate or campaign promises, agrees, contracts or
- 21 otherwise incurs an obligation to pay for goods or
- 22 services.
- Now, the contract, while -- while they
- 24 argue that no money is due until a candidate qualifies
- 25 for funding, again, there's an issue in terms of how do

- 1 you know, that they have -- they are trying to argue
- 2 that this contract is a purely contingency contract,
- 3 and I don't know if that's true. And even if that were
- 4 true, that would only cover Phase 1. You know, Phase 2
- 5 and Phase 3, you still owe 100 percent and that money
- 6 doesn't have to be paid right away; therefore, the
- 7 reporting doesn't occur right away.
- 8 So I think that, really, regardless of how
- 9 this shakes out -- I mean, like Tom said, it's
- 10 complicated. There's a lot of moving parts, but we've
- 11 tried to look at it a number of different ways and it
- .2 just -- no matter how you look at it, I don't think
- 13 that there's a way to escape the fact that this has
- 14 created a black hole that, you know, you can sign this
- 15 contract and, really, just prevent the disclosure of
- 16 any of these contributions and/or expenditures until
- 17 later in the cycle because how are you supposed to know
- 18 that, you know, The Power of Fives was paying someone
- **19** in September of 2019?
- You know, under Mr. La Sota's argument, The
- 21 Power of Fives could pay someone in September of 2019
- 22 to purchase signatures on behalf of Mr. Sloan and, if
- 23 Mr. Sloan never qualified, that would never be
- 24 recorded.
- 25 CHAIRWOMAN CHAN: Why isn't it Mr. Sloan's

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- 1 you -- you know, that exceeds cash on hand if you've
- 2 got expenses going out the door before a candidate
- 3 qualifies for funding.
- 4 And you have a question about the single
- 5 bank account because most places don't let you open a
- 6 bank account with zero dollars, but in paragraph 2 of
- 7 The Power of Fives' service agreement, which they, you
- 8 know, not only used with Mr. Sloan but have used with
- 9 all their other -- but they have admitted they used the
- 10 exact same contract with other candidates and they're
- 11 doing so again this cycle.
- 12 It says that for services provided in Phase
- 13 1, the company shall submit to the candidate, not later
- 14 than ten days following the date hereof, an invoice
- 15 setting forth the payment note for Phase 1. The
- 16 candidate shall pay all undisputed amounts on such
- 17 invoice within 30 days of the earlier of the18 termination of this agreement or once the candidate
- 19 qualifies for public financing for the primary
- 20 election.
- 21 That language, I believe, could be read to
- 22 say that those signatures that we collected for you in
- 23 September and paid money for, here's the receipt; this
- 24 is what you owe; pay us for these even if you didn't
- 25 actually qualify for funding. So I don't know that --

- 1 responsibility to report it?
- 2 MS. KARLSON: Well, because Mr. Sloan never
- 3 incurred --
- 4 CHAIRWOMAN CHAN: The cost.
- 5 MS. KARLSON: -- the expense at that point.
- 6 CHAIRWOMAN CHAN: Okay. Okay. I see what
- 7 you're saying. Okay. Thank you.
- 8 And I'm sorry. I interrupted there at the
- 9 end, perhaps.
- 10 MS. KARLSON: No. It's fine. I have
- 11 nothing.
- 12 CHAIRWOMAN CHAN: Okay.
- 13 Commissioner Kimble, Commissioner Paton,
- 14 any other questions?
- 15 (No response.)
- 16 CHAIRWOMAN CHAN: And I don't know if -- do
- 17 we have anyone else who would like to comment about
- 18 this matter before we -- and I don't know if --
- 19 MR. SLOAN: I would like to. This is Eric
- 20 Sloan.
- 21 CHAIRWOMAN CHAN: Okay. Sure. Mr. Sloan,
- 22 please go ahead.
- MR. SLOAN: Well, you know, I've been very
- 24 interested by the conversation that's been had here.
- 25 Let me first start by saying that I'm having to

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- 1 represent myself in a civil matter where Bob Branch and
- 2 The Power of Fives has personally sued my wife and I
- 3 for the entirety of the \$116,000 that was requested
- 4 payment in the contract. Let me also point out to the
- 5 Commissioners that that is -- that an arbitrator
- 6 decided that there were four corners of the contract
- 7 and that she also stated in her opinion that the only
- 8 feasible objection to the contract would be that there
- 9 could be a potentiality that it does not comply with
- 10 Clean Elections law.
- And let me point out that the arbitrator
- 12 said that it didn't bind the campaign to a specific
- 13 obligation and no debt was created by the campaign
- 14 entering in an agreement, but that ruling is in direct
- 15 opposition to Clean Elections law, Administrative Code
- 16 R2-20-110(b)(5), which states: For the purpose of the
- 17 Act and the Commission rules, a candidate or a campaign
- 18 shall be deemed to have an expenditure as of the date
- 19 upon the candidate or campaign promises, agrees,
- 20 contracts, or otherwise incurs an obligation to pay for
- 21 goods or services.
- 22 You know, her point that the -- that
- 23 there's nothing that prevents a candidate from entering
- 24 into -- into a contract before they receive funding
- 25 seems to be in direct contradiction to your previous

- 1 There's some other things that happened
- 2 during the campaign which led me to believe that
- 3 Dr. Branch was running what was the equivalent of a
- 4 fraud because he was promising things that were never
- 5 coming to fruition. And I would also point out that in
- 6 this position that I'm in, I'm asking -- you know, I
- 7 would be asking the Commission to make a determination
- 8 whether or not this contract was legal and enforceable
- 9 because that will have a direct bearing on not only my
- 10 case but other cases that are being -- that Bob Branch
- 11 is pursuing.
- 12 There was another candidate, Jackie Fox,
- 13 who was not -- did not qualify for Clean Elections but
- 14 was sent a demand letter for over \$10,000, and I
- 15 believe Mr. La Sota wrote that demand letter. And so
- 16 the question becomes, you know, that The Power of Fives
- 17 wants it both ways. They want you to tell them that
- 18 they can continue to do business in violation -- direct
- 19 violation of the rules that are explicitly written, and
- 20 they want me to pay them out of my own pocket, and they
- 21 want to go after other candidates. It is a predatory
- 22 practice, and I'm hoping that this Commission will take
- 23 a stance on it.
- 24 CHAIRWOMAN CHAN: Okay.
- MR. SLOAN: That is all. Thank you.

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- 1 repayment order where I was -- I was asked to repay
- 2 \$94,000, which I did within 24 hours, because that
- 3 money had been set aside and not spent in my primary
- 4 election because there was a conflict with regards to
- 5 if the contract was actually a valid contract.
- 6 My argument has been consistent that this
- 7 contract is not valid because the very enactment of the
- 8 contract was a violation of the Clean Elections law. I
- 9 am now being put in a position in a civil matter where
- 10 I'm being -- I'm being told I have to break the law and
- 11 pay Dr. Branch and The Power of Fives. And, again --
- 12 and, then, on the other end, I'm being -- you know,
- 13 I've been told by Clean Elections that -- you know,
- 14 that when you enter into an agreement, that agreement
- 15 becomes the equivalent of a debt, right?
- 16 I think that we're really at a point now
- 17 where we need to decide whether or not this contract
- 18 was valid or not valid, considering that -- and I did
- 19 not understand this at the time of signing the
- 20 contract. Let me be very clear. I relied on
- 21 Dr. Branch and The Power of Fives, who presented
- 22 themselves as experts in Clean Elections law. In fact,
- 23 the very nature of his -- of his company's name would
- 24 give you a reasonable expectation that he is an expert
- 25 in Clean Elections law. As it turns out, he was not.

- 1 CHAIRWOMAN CHAN: Thank you, Mr. Sloan.
- 2 And I -- you know, these situations are
- 3 always difficult, and I know -- especially when parties
- 4 to a contract have had significant legal issues, in
- 5 this case, I know. And so I appreciate you both -- you
- 6 know, Mr. Sloan and Mr. La Sota, being here to speak to
- 7 this.
- 8 I know some of the things -- I personally
- 9 believe that when it comes to election law, you know,
- 10 contract law can, maybe, be informative. It may not be
- 11 the be-all-end-all of how we analyze it -- I'm getting
- 12 some noise from somebody. I don't know -- is everybody
- 13 on mute or -- that's okay. I think -- I don't know who
- 14 it is, but anyway. It was coming through when
- 15 Mr. Sloan was speaking, too, but you know, I think it
- 16 can be informative, but perhaps there are different
- 17 legal standards that can apply in different legal
- 18 scenarios. So contract law is different from election
- 19 law, et cetera, but it is -- it is informative.
- 20 And, I mean, I guess, at this point, do the
- 21 commissioners have any further questions? I don't know
- 22 if we need to speak with Ms. Coady.
- What do you think? Commissioner Paton?
- 24 COMMISSIONER PATON: Yes. This is
- 25 Commissioner Paton. I think we should go into

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- 1 executive session.
- 2 CHAIRWOMAN CHAN: That's kind of how I'm
- 3 feeling, frankly, as well, if Ms. Coady wouldn't mind
- 4 doing that with us, just because I feel like I have
- 5 some more legal questions that I need to discuss still.
- 6 So, Ms. Coady, would that be acceptable if
- 7 a motion is made?
- 8 MS. COADY: Yes. That would be fine, but
- 9 if there's a separate line, I would need to be informed
- 10 of how I could join you in executive session.
- 11 CHAIRWOMAN CHAN: I think that the
- 12 moderator can take care of that.
- 13 Ms. Herring?
- 14 MS. HERRING: Yes. So I will open a
- 15 breakout room and only invite those who should
- 16 participate in the executive session to enter the
- 17 breakout room. There will be no time limit, so you can
- 18 stay in the executive session as long as needed. The
- 19 remaining participants will stay in this meeting room
- 20 and, then, you can return to this meeting room at any
- **21** time.
- 22 CHAIRWOMAN CHAN: Okay. And how is our
- 23 court reporter doing? We've been in meeting for about
- 24 an hour. Do we need to take a quick break before we
- 25 make these motions to go into executive session or --

- 1 CHAIRWOMAN CHAN: -- from his position and
- 2 Mr. La Sota's position on behalf of his client.
- 3 COMMISSIONER PATON: Okay.
- 4 CHAIRWOMAN CHAN: So, Commissioner Paton,
- 5 do you mind making a motion for it?
- 6 COMMISSIONER PATON: I would like to make a
- 7 motion that we go into executive session to discuss the
- 8 legal aspects of this issue.
- 9 CHAIRWOMAN CHAN: Thank you.
- 10 Do I have a second?
- 11 COMMISSIONER KIMBLE: Commissioner Kimble,
- 12 second.
- 13 CHAIRWOMAN CHAN: Okay. Great. Let's go
- 14 ahead and vote.
- 15 Commissioner Kimble, how do you vote?
- 16 COMMISSIONER KIMBLE: Aye.
- 17 CHAIRWOMAN CHAN: Okay. Commissioner
- **18** Paton?
- 19 COMMISSIONER PATON: Aye.
- 20 CHAIRWOMAN CHAN: I vote aye, as well. So
- 21 by three ayes and zero nays, we'll go ahead and go into
- 22 executive session with those we've mentioned prior.
- 23 And I think Ms. Herring can just move us over there.
- 24 (The following section of the meeting is in
- 25 executive session and bound under separate cover.)

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- 1 how are we doing?
- 2 THE REPORTER: Yes. I'm sorry.
- 3 CHAIRWOMAN CHAN: No, it's okay.
- 4 THE REPORTER: I'm fine with proceeding.
- 5 Thank you.
- 6 MS. KARLSON: Commissioner Chan?
- 7 CHAIRWOMAN CHAN: Oh, yes, Kara.
- 8 MS. KARLSON: Just -- just to be clear, it
- 9 will be only the Commission members and Ms. Coady who
- 10 will be in the executive session -- or excuse me -- who
- 11 should be invited to the breakout room.
- 12 CHAIRWOMAN CHAN: Thank you very much for
- 13 clarifying that. That's always the key, isn't it?
- 14 Here she goes. So just Ms. Coady, Commissioner Paton,
- 15 Commissioner Kimble and myself.
- MS. THOMAS: Excuse me, Chair Chan. Also,
- 17 the court reporter should be --
- **18** CHAIRWOMAN CHAN: And the court reporter.
- 19 Very important. Thank you.
- 20 COMMISSIONER PATON: And Tom, too?
- 21 CHAIRWOMAN CHAN: It takes a village.
- 22 COMMISSIONER PATON: And Tom?
- 23 CHAIRWOMAN CHAN: Not Tom because he's on
- 24 one side and he's --
- 25 COMMISSIONER PATON: Oh, okay.

- 1 ****
 - **2** (End of executive session. Public meeting
 - **3** resumes at 10:39 a.m.)
 - 4 CHAIRWOMAN CHAN: Okay. And we'll go back
 - **5** into the meeting now.
 - 6 Are we all set? Tom? Oops. I think
 - 7 you're on mute.
 - 8 MR. COLLINS: We need to -- what? I don't
 - 9 know.
- 10 Tim, are you back or are you --
- 11 CHAIRWOMAN CHAN: Oh, yeah, I see Tim.
- MR. COLLINS: But I don't see him. Shall
- 13 we call him?
- 14 CHAIRWOMAN CHAN: Sure. I know that was a
- 15 quick --
- MR. COLLINS: Hang on a second. Let me see
- **17** if I have --
- 18 CHAIRWOMAN CHAN: Oh, there he is. There's
- **19** Tim.
- 20 MR. COLLINS: Okay.
- 21 CHAIRWOMAN CHAN: Real quick, you know, I
- 22 had some legal questions that I wanted some
- 23 clarification on, obviously, and I know that the next
- 24 agenda item is discussion on, you know, the lawsuit.
- 25 And I don't want to hold things up, but I'll just be

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- 1 real frank. I'm having a little bit of -- I want to
- 2 say one thing. Tom is a brilliant lawyer and that's
- 3 why I generally defer -- or not defer, but you know, I
- 4 like to take his recommendations and let him move on
- 5 them because I feel like he is -- you know, Tom, you're
- 6 one of the most knowledgeable election lawyers I know.
- 7 The one thing that is giving me a little
- 8 heartburn about this -- and I hate to frustrate you
- 9 with this, but is applying campaign finance law to a
- 10 business. And I understand why that's where you
- 11 arrived, and I don't personally want to stop you from
- 12 investigating it, though. And I'm leaning towards if
- 13 we can table this.
- 14 Is that something possible to do and hold
- 15 it over until the next meeting, or do we have to take
- 16 action of some sort today?
- MR. COLLINS: For me, that's a question for
- 18 Ms. Coady, not for me. I'm sorry.
- 19 CHAIRWOMAN CHAN: Ms. Coady, I'm sorry.
- 20 And I know I didn't really give you any time to
- 21 research that or -- and if the other commissioners want
- 22 to chime in, if you have --
- 23 MR. COLLINS: From a practical perspective,
- 24 I have no problem with that, but I don't think that I'm
- 25 the -- I don't think I'm the --

- 1 COMMISSIONER KIMBLE: Yeah. I would be
- 2 opposed to tabling it. This is not the final decision.
- 3 This is just asking us whether we're going to empower
- 4 Tom to investigate further. I don't know that tabling
- 5 it is -- I don't understand why we'd table it. I can
- 6 understand that it would be helpful to have the full
- 7 Commission here when we make a decision, but at this
- 8 point, I see no reason to delay moving ahead and
- **9** empowering Tom to conduct a further investigation.
- .0 CHAIRWOMAN CHAN: Okay. I appreciate that
- 11 input. I think I'm just at the comfort level similar
- L2 to what Mr. Paton stated that, you know -- and I don't
- 13 want to stymie Tom's work either, but I just -- I
- 14 really feel strongly that this is something, I guess,
- 15 I'd like a few more minds to weigh in on, on the
- 16 Commission, have some more discussion about because it
- 17 does feel like a watershed as far as, you know, kind of
- 18 attributing the requirement to file as a committee for
- 19 a business that is, you know, consulting. And I don't
- 20 know that we can separate that from the other issues.21 So -- and, Tom, you know -- yeah. Okay.
- 22 So I'm going to use my chairman gavel to hold on to
- 23 this. I hope everyone can forgive me.
- 24 MS. COADY: Madam Chairwoman, I believe
- 25 that because it is an agenda item, that you would need

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- 1 CHAIRWOMAN CHAN: Okay.
- 2 MR. COLLINS: -- advisor in any way on
- 3 that. That's my advocacy position.
- 4 CHAIRWOMAN CHAN: And, Ms. Coady, if you
- 5 need to take time, I can just ask the other
- 6 commissioners if they have strong feelings one way or
- 7 the other.
- 8 Do you guys want to take a vote or if we
- 9 can table it?
- 10 COMMISSIONER PATON: I would -- this is
- 11 Galen Paton. I would like the other commissioners to
- 12 be involved, as well. I mean, they're both lawyers, so
- 13 that would -- I mean, that would, I think, give us even
- 14 more perspectives.
- 15 CHAIRWOMAN CHAN: Yeah.
- 16 Ms. Coady?
- 17 MS. COADY: Chairman -- Chairwoman Chan, to
- 18 answer your question, I found nothing in your rules
- 19 that would prohibit tabling this matter until your next
- 20 meeting to take a vote on whether to proceed with the
- 21 investigation. So that would be an option that is
- 22 available to you. I did not find anything in your
- 23 rules that would prohibit that.
- 24 CHAIRWOMAN CHAN: Okay. And Commissioner
- 25 Kimble, did you want to weigh in?

- 1 to make -- or someone would need to make a motion. It
- 2 would need to be seconded and, then, there would need
- 3 to be a vote. So you would need a majority vote to
- 4 continue it to the next meeting.
- 5 CHAIRWOMAN CHAN: All right. I don't know
- 6 if we'll get a second on that, but can I have a motion
- 7 to hold it over to the next meeting?
- 8 COMMISSIONER PATON: This is Commissioner
- 9 Paton. I would make a motion that we table this to the
- 10 next meeting -- the next Commission meeting.
- 11 CHAIRWOMAN CHAN: Okay. Thank you.
- 12 I don't know if I -- now, if Mr. Kimble
- 13 doesn't want to be the second, how do we handle that?
- MS. COADY: Because there's only three
- 15 committee members present today, you, as Chair, could
- 16 be the second in this situation, based on the rules of
- 17 impossibility. You have to be able to conduct --
- 18 CHAIRWOMAN CHAN: Okay.
- **19** MS. COADY: -- to get a second.
- 20 CHAIRWOMAN CHAN: Okay.
- 21 Mr. Kimble, do you -- okay. I'll go ahead
- 22 and second this and not make Mr. Kimble do something
- 23 that he opposes.
- And with that, we'll take a vote to table
- 25 it.

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- 1 Commissioner Kimble, how do you vote?
- 2 COMMISSIONER KIMBLE: No.
- 3 CHAIRWOMAN CHAN: Commissioner Paton?
- 4 COMMISSIONER PATON: Aye.
- 5 CHAIRWOMAN CHAN: I vote aye, as well. So
- 6 by a vote of two ayes and one nay, we will move this
- 7 over for the next committee meeting. And thank you,
- 8 everyone, for that.
- 9 And with that, we will move to Agenda
- 10 Item VI and -- let's see -- discussion and possible
- 11 action on The Power of Fives versus Clean Elections
- 12 Commission. It relates to a lawsuit filed by The Power
- 13 of Fives against the Commission, and Tom can fill us in
- 14 on the details.
- 15 MR. COLLINS: I will -- I'm sorry. Madam
- 16 Chair, Commissioners, I will fill us -- fill you in as
- 17 best as possible. I don't -- we don't -- so I think it
- 18 was on October -- I want to say 13th, but then there
- 19 was an amended complained filed on, like, the 22nd.
- 20 This first amended complaint from The Power
- 21 of Fives, basically, says three things. It says
- 22 that -- it challenges the rule -- the Rule 110 that
- 23 says, basically, that you can't take an obligation
- 24 beyond cash on hand. It says that that's not a
- 25 reasonable rule. It says that the Commission doesn't

- 1 don't know, but that's about it.
- 2 CHAIRWOMAN CHAN: Did that change with any
- 3 of the legislation or did that go away?
- 4 MR. COLLINS: It depends on if you talk
- 5 to -- the Attorney General's Office -- and I'm speaking
- 6 for myself here, not for Kara. The Attorney General's
- 7 Office views itself as the representative of the State
- 8 independent of its clients. The law changed to try to
- 9 allow the Attorney General to settle cases that the
- 10 Secretary was named nominally and has -- really has
- 11 nothing to do -- is only a codification of the Attorney
- 12 General's view over the last six years. I just -- I'm
- 13 not privy to how the Attorney General has resolved the
- 14 State versus Commission issue in this matter. I just
- 15 don't know.
- Also -- and this is a practical question,
- 17 and I don't know who the right person to ask this is
- 18 because I literally don't know the answer. I just
- 19 don't know what and how, you know, where we are affects
- 20 the responsiveness of the seating. So, in other words,
- 21 based on today, it's not at all clear to me that the
- 22 Commission would file a pleading to have this to not
- 23 defend -- to defend this case because the Commission
- 24 has a decision in front it that relates to it.
- 25 So that's -- so those are all issues I'm

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- 1 have -- and then a lot of stuff about what we've
- 2 already heard with respect to the other matter. So I
- 3 don't -- I don't know how to avoid -- there's crossover
- 4 that's unavoidable.
- 5 We don't -- the other claim is, basically,
- 6 we don't have the authority to look at stuff. That's
- 7 the upshot. We won't have a responsive pleading due in
- 8 that matter until, I think, close to Thanksgiving, so
- 9 November, because there's no -- there's not, at this
- 10 point, a preliminary injunction, TRO or any of those
- 11 things. So -- and that's -- that is it.
- As you can imagine from the other
- 13 discussion, we -- well, I don't know who gets to decide
- 14 what we do with this lawsuit. We would generally --
- 15 leftward advice is be inclined to defend it because we
- 16 don't want -- we would not, in this posture, concede
- 17 that what the Commission doesn't have the authority to
- 18 do are the things that we are recommending that you, in
- 19 fact, authorize. We, also, don't believe that the rule
- 20 in question is open to any real question. So that's
- 21 the Staff's view.
- 22 The State of Arizona is also a party. I
- 23 don't know who represents the State of Arizona, if
- 24 anybody. I think Kara may. And I don't know if we get
- 25 a call on this or the State of Arizona does. I just

- 1 sort of -- we just haven't fleshed out yet and --
- 2 but -- so, I guess, what I'm trying to say is we
- 3 would -- or I would ordinarily be saying we're going
- 4 to -- I think we should do X, Y, Z or Kara might advise
- 5 us in executive session about whatever she thinks we
- 6 ought to do. I'm happy to do that. I just don't know
- 7 how to parse out the different factors in terms of who
- 8 gets to decide what the timing of decisions is. I
- 9 don't know any of those answers.
- 10 CHAIRWOMAN CHAN: Well, maybe --
- 11 MR. COLLINS: Kara may have -- I'm sort of
- 12 inviting Kara to see if there's any of those blanks I
- 13 can -- some of those -- she may be able to fill out
- 14 some of those blanks. I just -- I'm just -- I'm at
- 15 a -- I'm just a little -- I don't want to misstate or
- 16 go too far is what I'm trying to say. I don't want to
- ${f 17}$ say we should do X or we should do Y or any of those
- 18 things because I don't feel like that's the appropriate
- **19** way to talk about this.
- 20 CHAIRWOMAN CHAN: Okay. Kara?
- 21 MS. KARLSON: Tom was right about the
- 22 response deadline. It's been moved out to
- 23 November 23rd.
- 24 CHAIRWOMAN CHAN: Do we need to have
- 25 another Commission meeting where we can, all five of

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- 1 us, be here for the tabled item?
- 2 MS. KARLSON: I think that would be the
- 3 best call and, you know, the sooner the better, like --
- 4 CHAIRWOMAN CHAN: Next week?
- 5 MS. KARLSON: For now, you know, so that we
- 6 can flesh out a legal strategy for dealing with this
- 7 case. And I can talk to you about the alternatives,
- 8 the legal alternatives, but I would -- I wouldn't want
- 9 to do that in open session.
- 10 CHAIRWOMAN CHAN: Okay. Well, perhaps, we
- 11 can go into executive session if the other members --
- MS. KARLSON: Tom, you look like you have
- 13 a --
- MR. COLLINS: Well -- yeah, I mean, I don't
- 15 have any -- I have no opinion. That's fine. I looked
- 16 like I was going to say something, but I wasn't.
- 17 MS. KARLSON: Sorry.
- 18 MR. COLLINS: There were no thoughts there
- 19 when I opened my mouth. Just my mouth opened up.
- 20 Sorry.
- 21 CHAIRWOMAN CHAN: So do we need to talk
- 22 about this right now? Do we want to have another
- 23 do-over next week when more commissioners can be here,
- 24 perhaps?
- 25 COMMISSIONER PATON: This is Commissioner

- 1 us past this particular --
- MS. KARLSON: That's not happenning.
- 3 I mean, we can ask them, but I'm just trying to be real
- 4 frank --
- 5 MR. COLLINS: Well, then --
- 6 MS. KARLSON: -- that I don't think that we
- 7 will get another extension.
- 8 MR. COLLINS: Okay. Well, then, I'll be
- 9 honest with you, Madam Chair, my opinion is we need a
- 10 strategy at least to get us through this and we should
- 11 discuss it now.
- 12 CHAIRWOMAN CHAN: Okay. So in executive
- 13 session?
- 14 MR. COLLINS: Yeah.
- 15 CHAIRWOMAN CHAN: Okay. Can I get a motion
- 16 to go into executive session? We need all the
- 17 commissioners, Kara, Tom --
- 18 MS. KARLSON: And Kyle.
- **19** CHAIRWOMAN CHAN: I'm sorry?
- 20 MR. COLLINS: And Kyle.
- 21 MS. KARLSON: And Kyle.
- MR. COLLINS: And Kyle, yes.
- 23 CHAIRWOMAN CHAN: And Kyle, okay, and the
- 24 court reporter.
- MS. KARLSON: And the court reporter.

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- 1 Paton -- oh, go ahead.
- 2 COMMISSIONER KIMBLE: Madam Chair, this is
- 3 Commissioner Kimble. Just for your scheduling
- 4 information, I am unavailable from November 4th through
- 5 November 20th.
- 6 CHAIRWOMAN CHAN: All right.
- 7 MS. THOMAS: And, Chair, sorry to
- 8 interrupt, but there are other commissioners that have
- 9 conflicts -- several conflicts in November. So we
- 10 technically don't have enough to pull than what we have
- 11 today for our meeting, and maybe we need to pull all --
- 12 at least four.
- MR. COLLINS: Madam Chair, if I may.
- 14 CHAIRWOMAN CHAN: Yeah.
- 15 MR. COLLINS: Madam Chair, Kara, do you
- 16 think that for purposes of discussing deadlines
- 17 associated with the lawsuit that we may need to move,
- 18 would that be a discussion in executive session or
- **19** here?
- 20 MS. KARLSON: Which deadlines?
- 21 MR. COLLINS: Well -- okay. I'll just -- I
- 22 mean -- okay. So the question is -- the question I
- 23 have is -- and I think that would resolve all of this
- 24 is if we can -- if we ask The Power of Fives for
- 25 another extension on the responsive pleading, that gets

- 1 CHAIRWOMAN CHAN: Okay. So can I get a
- 2 motion to go into executive session?
- 3 COMMISSIONER PATON: This is Commissioner
- 4 Paton. I would like to make a motion that we go into
- 5 executive session to talk about our strategy for this
- 6 lawsuit.
- 7 CHAIRWOMAN CHAN: Thank you.
- 8 Do I have a second?
- 9 COMMISSIONER KIMBLE: Commissioner Kimble,
- 10 second.
- 11 CHAIRWOMAN CHAN: Thank you. All right.
- 12 Let's vote.
- 13 Commissioner Kimble, how do you vote?
- 14 COMMISSIONER KIMBLE: Aye.
- 15 CHAIRWOMAN CHAN: Commissioner Paton?
- 16 COMMISSIONER PATON: Aye.
- 17 CHAIRWOMAN CHAN: I vote aye, as well. And
- 18 by a vote of three to zero, we will go into executive
- 19 session to discuss this item.
- 20 (The following section of the meeting is in
- 21 executive session and bound under separate cover.)
- 22 ****
- 23 (End of executive session. Public meeting
- **24** resumes at 11:06 a.m.)
- 25 CHAIRWOMAN CHAN: It looks like we are all

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- 1 back, and I think we can just move on to Item VII:
- 2 public comment.
- 3 So this is the time for consideration of
- 4 comments and suggestions from the public. Any action
- 5 taken as a result of public comment will be limited to
- 6 directing staff to study the matter or rescheduling the
- 7 matter for further consideration and decision at a
- 8 later date or responding to criticism.
- 9 Does any member of the public wish to make
- 10 comments at this time?
- 11 MR. SLOAN: Can I make a comment?
- 12 CHAIRWOMAN CHAN: Certainly, Mr. Sloan.
- MR. SLOAN: I would just encourage the
- 14 Commission to defend themselves and the validity of
- 15 whether or not the rules that are applied currently,
- 16 which are understood -- understood by The Power of
- 17 Fives in their current application, otherwise, this
- 18 lawsuit wouldn't be needed -- were enforced.
- 19 I hope that the Commission -- I understand
- 20 that there are going to be some scheduling conflicts
- 21 moving forward -- would reconsider whether or not an
- 22 investigation is warranted into Mr. Branch and The
- 23 Power of Fives, irregardless of the -- whether or not
- 24 they need to be a political finance committee, but more
- 25 importantly, to the point of whether or not their

- 1 the Elections -- Elections Commission of the U.S.,
- 2 Elections Assistance Commission and a few other
- 3 commissions where new appointments are not made and, in
- 4 essence, their body cannot take action.
- 5 So I don't have any recommendations. I did
- 6 years ago, and I know when I was here representing the
- 7 League, the League did submit a letter or two. And I
- 8 realize, obviously, this is an upcoming election cycle,
- 9 which has really started already and people are very
- 10 concerned with campaigns, but it's such a significant
- To concerned with campaigns, but it's such a significant
- barrier to the Commission doing its constitutionally required actions. And I don't know if anybody else has
- 13 the authority to reach out. I guess I do, as a private
- 14 citizen, but I just wanted to note it for the record,
- 15 that it is very concerning to me.
- And I'm going to mute myself and close my
- 17 camera. By the way, these represent the fact that I'm
- 18 on so many Zoom calls, my husband got sick of listening
- 19 to everybody else talk. So now I can hear you, but he
- 20 doesn't. And don't take that personally.
- 21 So thank you very much, and I appreciate
- 22 your hearing my comment. And I continue to enjoy and
- 23 plan to attend future meetings.
- 24 CHAIRWOMAN CHAN: Thank you so much, Rivko.
- 25 It's always such a pleasure to see you at our meetings.

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- 1 contract and their practices comply with the Clean
- 2 Elections rules and laws as they are administered
- 3 currently.
- 4 CHAIRWOMAN CHAN: Thank you. Thank you,
- 5 Mr. Sloan.
- 6 I see -- I see Rivko. Hi, Rivko.
- 7 MS. KNOX: Good morning, everybody. My
- 8 name is Rivko Knox. I am speaking -- I'm a longtime
- 9 resident of the city of Phoenix, Arizona voter, and
- 10 I'm -- I just wanted to make a personal comment, which
- 11 is that I remain very distressed by the fact that there
- 12 have been no new appointments to the Commission.
- 13 It is my understanding that the Commission
- 14 meeting was moved from yesterday to today -- Thursdays
- 15 are the normal meeting day -- because there was not a
- **16** quorum. And now that I've been listening to the
- 17 discussion, which was very interesting -- I'm not
- 18 trying to get all the legal implications there but19 fascinating discussion -- about having to schedule
- 20 another meeting and the difficulties involved in doing
- **21** that.
- I do not have any answers, but I do find it
- 23 very concerning because, obviously, one way to, more or
- 24 less, neuter an agency is to not appoint new people
- 25 and, therefore -- and that has happened, I believe, on

- 1 You're our most enthusiastic member of the public.
- 2 And just full disclosure, it was actually
- 3 my own fault. I asked whether we could reschedule the
- 4 meeting because I had a field trip that my son was on
- 5 yesterday. It was bad timing after we had all
- 6 committed to our usual Thursday. That was entirely on
- 7 me, but I will say you are correct. I am the only
- 8 member who is still on my current term and everybody
- 9 else is just serving through their own grace, which I wanted to say thank you to the commissioners for,
- 11 because they all have lives, very busy lives, and the
- **12** fact that they are continuing to serve five years --
- 13 some of them -- after their term expired is incredible.
- 14 And I certainly appreciate it very much.
- But, you know, I've seen in the news that
- 16 we are not the only Commission -- sadly -- that is in
- 17 this situation. It just seems that it only gets the
- **18** attention of the Governor's office when something makes
- 19 the news a scandal, and that's my own editorializing.
- 20 I will say that we are very fortunate that we have
- 21 wonderful commissioners. I'm not trying to give myself
- 22 any props but to the other four commissioners. So the
- 23 fact that we don't have any new appointments is really
- 24 not a detriment to the public so much, I would like to

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Citizens Clean Elections Commission 11:12:00-11:12:55 Page 62 STATE OF ARIZONA 1 be able to move on in their own lives, you know, that 2 COUNTY OF MARICOPA 2 they're giving up their time continually for this --3 BE IT KNOWN the foregoing proceedings were 3 their dedication to elections in Arizona. taken by me; that I was then and there a Certified So thank you. Sorry to editorialize. 5 Reporter of the State of Arizona, and by virtue thereof Anyone else wish to add anything? 6 authorized to administer an oath; that the proceedings 6 (No response.) were taken down by me in shorthand and thereafter CHAIRWOMAN CHAN: Okay. I'm not sure if I transcribed into typewriting under my direction; that 8 read the part about sending comments to the Commission the foregoing pages are a full, true, and accurate 9 by mail or email, but you can do that at 10 transcript of all proceedings and testimony had and 10 ccec@azcleanelections.gov. 11 adduced upon the taking of said proceedings, all done to 11 And with that, we can move on to Item VIII, 12 the best of my skill and ability. 12 which is adjournment. So at this a time, I would 13 I FURTHER CERTIFY that I am in no way 13 entertain a motion to adjourn. 14 COMMISSIONER KIMBLE: Madam Chair? related to nor employed by any of the parties thereto 14 15 CHAIRWOMAN CHAN: Commissioner Kimble? 15 nor am I in any way interested in the outcome hereof. COMMISSIONER KIMBLE: I move we adjourn. 16 16 DATED at Phoenix, Arizona, this 30th day of 17 CHAIRWOMAN CHAN: All right. Thank you. 17 October, 2021. Do I have a second? 18 18 **COMMISSIONER PATON: This is Commissioner** 19 19 LILIA MONARREZ, RPR, CR #50699 20 Paton. I second it. 20 21 CHAIRWOMAN CHAN: All right. Commissioner 21 22 Kimble, how do you vote? 22 COMMISSIONER KIMBLE: Ave. 23 CHAIRWOMAN CHAN: Commissioner Paton, how 24 24 25 do you vote? 25 11:12:56-11:13:03 Page 63 COMMISSIONER PATON: Aye. CHAIRWOMAN CHAN: I vote aye, as well. By 3 a motion of -- by a vote of three to zero, we have

4 adjourned the meeting, and we will see you all next 5 time. 6 Thank you. (Whereupon, the proceedings concluded at 7 11:13 a.m.) 8 9 /// 10 11 12 13 14 15 16 17 18 19 20 21 22 23

Coash & Coash, Inc.

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EXHIBIT S



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

Location: Citizens Clean Elections Commission

1616 West Adams, Suite 110

Phoenix, Arizona 85007

Date: Thursday, January 27, 2022

Time: 9:30 a. m.

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Elections Commission and the general public that the Citizens Clean Elections Commission will hold a regular meeting, which is open to the public on January 27, 2022. This meeting will be held at 9:30 a.m., at the Citizens Clean Elections Commission, 1616 West Adams, Suite 110, Phoenix, Arizona 85007. The meeting may be available for live streaming online at https://www.youtube.com/c/AZCCEC/live. You can also visit https://www.azcleanelections.gov/cleanelections-commission-meetings. Members of the Citizens Clean Elections Commission will attend either in person or by telephone, video, or internet conferencing. **This meeting will be held virtually.** Instructions on how the public may participate in this meeting are below. For additional information, please call (602) 364-3477 or contact Commission staff at cee@azcleanelections.gov.

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taken as a result of public comment will be limited to directing Council staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date.

The Commission may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item listed on the agenda, pursuant to A.R.S. § 38-431.03 (A)(3). The Commission reserves the right at its discretion to address the agenda matters in an order different than outlined below.

The agenda for the meeting is as follows:

- I. Call to Order.
- II. Discussion and Possible Action on Commission Minutes for December 16, 2021.
- III. Discussion and Possible Action on Executive Director's Report, Enforcement and Regulatory Updates and Legislative Update.
- IV. Discussion and Possible Action on Proposed Meeting Dates for February July 2022.
- V. Discussion and Possible Action on the 2022 Voter Education Plan.
- VI. Discussion and Possible Action on E-Qual electronic system for candidate petitions and qualifying contributions and process for collection and review of qualifying contributions.
- VII. Discussion and Possible Action on *Legacy Foundation Action Fund v. Clean Elections Commission*, 1 CA-CV 19-0773.

The Commission may choose to go into executive session for discussion or consultation with its attorneys to consider its position and instruct its attorneys regarding the public body's position regarding contracts, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation. A.R.S. § 38-431.03(A)(4).

- VIII. Discussion and possible action on legislative bills on the topics of elections, voting, administration, campaign finance.
 - IX. Recognition and Appreciation to Commissioner and Past Chair, Amy B. Chan, for her service to the Commission and the State of Arizona.
 - X. Public Comment

This is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism

XI. Adjournment.

This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive

sessions) is available for public inspection at the Commission's office, 1616 West Adams, Suite 110, Phoenix, Arizona 85007.

Dated this 25th day of January, 2022 Citizens Clean Elections Commission Thomas M. Collins, Executive Director

Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Commission at (602) 364-3477. Requests should be made as early as possible to allow time to arrange accommodations.

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4	THE STATE OF ARIZONA
5	CITIZENS CLEAN ELECTIONS COMMISSION
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10	REPORTER'S TRANSCRIPT OF VIRTUAL PUBLIC MEETING
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12	
13	
14	Phoenix, Arizona
15	December 16, 2021
16	9:30 a.m.
17	
18	
19	
20	
21	COASH & COASH, INC. Court Reporting, Video & Videoconferencing
22	1802 N. 7th Street, Phoenix, AZ 85006 602-258-1440 staff@coashandcoash.com
23	002-230-1440 Starrecoashandcoash.Com
24	By: Kathryn A. Blackwelder, RPR Certified Reporter
25	Certificate No. 50666

Coash & Coash, Inc. 602-258-1440 www.coashandcoash.com

Page 2 Page 4 1 VIRTUAL PUBLIC MEETING BEFORE THE CITIZENS to approve the minutes? 2 CLEAN ELECTIONS COMMISSION convened at 9:30 a.m. on COMMISSIONER KIMBLE: Madam Chair. 3 December 16, 2021, at the State of Arizona, Clean CHAIRWOMAN CHAN: Commissioner Kimble. 3 4 Elections Commission, 1616 West Adams, Conference Room, COMMISSIONER KIMBLE: I move we approve the 5 Phoenix, Arizona, in the presence of the following minutes for the Commission meeting of October 29th, 6 Board Members: 2021. 6 Ms. Amy B. Chan, Chairperson Mr. Mark S. Kimble Mr. Damien R. Meyer 7 7 CHAIRWOMAN CHAN: Thank you. 8 Do I have a second, Commissioner? 8 9 OTHERS PRESENT: COMMISSIONER MEYER: I wasn't there, so I 9 Thomas M. Collins, Executive Director Paula Thomas, Executive Officer Mike Becker, Policy Director Gina Roberts, Voter Education Director Julian Arndt, Executive Support Specialist Kara Karlson, Assistant Attorney General Kyle Cummings, Assistant Attorney General Monique Coady, Independent Advisor Cathy Herring, Staff Eric Sloan Rivko Knox Timothy A. La Sota, Esq. 10 don't know --10 11 CHAIRWOMAN CHAN: Oh. 11 12 12 COMMISSIONER MEYER: -- if I can technically 13 second this motion, so I would defer to the -- to the 14 Chairperson. CHAIRWOMAN CHAN: Maybe I'll go ahead and 15 Rivko Knox Timothy A. La Sota, Esq. 15 second it, if I'm the only one left. 16 16 And with that, we can go ahead and vote on 17 17 that. Commissioner Meyer, do you want to vote on it 18 18 or --19 19 COMMISSIONER MEYER: I'll vote aye. 20 20 CHAIRWOMAN CHAN: Okay. Commissioner Kimble. 21 21 COMMISSIONER KIMBLE: Aye. 22 22 23 CHAIRWOMAN CHAN: And I'll vote ave as well. 23 And with that, we can move on to Agenda Item 24 24 25 III, discussion and possible action on Executive 25 Page 3 PROCEEDING 1 Director's report, enforcement and regulatory updates 1 2 and legislative update. Tom is going to go over this 2 CHAIRWOMAN CHAN: It is 9:30 a.m. on for us today, as always. Thank you, Tom. 3 4 December 16th, 2021, and I'll call this meeting of the MR. COLLINS: I swore I wouldn't do that. 5 Citizens Clean Elections Commission to order. I would Thank you, Madam Chair, Commissioners. And 5 like to ask audience members to please keep their 6 thanks, everyone, for being here. I know we have a lot microphones on mute. 7 of work to do, but I think, you know, just the last six And with that, we will take attendance. If weeks have been very productive for the Commission Commissioners could identify themselves for the record. 9 staff. COMMISSIONER KIMBLE: Commissioner Mark 10 First, though, I want to say congratulations 10 Kimble. to Avery Xola, who earned his master's in public 11 CHAIRWOMAN CHAN: Thank you. administration from ASU this month. We are all excited 12 COMMISSIONER MEYER: Good morning. about that and that's pretty cool. I think he's out 13 Commissioner Damien Meyer. today, but -- but nevertheless, we are very excited 14 about that. 15

CHAIRWOMAN CHAN: And I'm Commissioner 15 Amy Chan. I don't see any other Commissioners in 17 attendance, I don't believe. So we've got a quorum, 19 three of us.

20 And with that, we can move on to Agenda

21 Item II. Rolling right along. Item II, discussion and

possible action on Commission minutes for October 29th,

23 2021. Is there any discussion?

(No response.) 24

CHAIRWOMAN CHAN: If not, do I have a motion 25

You know, the legislative session starts in a 17 little less than a month now. So before we next meet,

the legislature will have started. I want to hit a couple of the things that are

20 highlighted in the voter education section. You know, we had -- just yesterday we had a online webinar that

we hosted with the Arizona Capital Times about the

midterms for 2022. It was really, really well done.

Gina and Ken Matta, who's the security chief for the

25 state elections, and Scott Jarrett, who's the election

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1 director for -- for Maricopa County, and Paul Senseman,

- 2 who many of you may know is a long-time lobbyist and
- 3 communications expert, one of the most well-respected
- 4 members of the government affairs community here. And
- 5 they really provided a lot of wonderful information and
- 6 it's -- and it's always great to see. And I really
- can't commend Gina enough for her work on that.
- Gina was also a judge of the We The People
- regional competition with the Center for Civic
- Education this weekend, which was very exciting. We're
- very proud of that. 11
- And obviously, you can see the variety of 12
- outreach activities that Avery and Gina and
- Chairwoman Chan have been involved in the last month. 14
- We -- we will have more on voter education 15
- for 2022 in January. 16
- CHAIRWOMAN CHAN: Tom. 17
- MR. COLLINS: Sorry. Yes. 18
- CHAIRWOMAN CHAN: No, don't be sorry. I'm 19
- interrupting you. But I was -- I was really interested 20
- to see that Gina met with someone from The Carter
- Center, because I believe -- and it was to discuss
- election observers at the polls. I was curious to hear
- a little more about that meeting. I'm interested
- 25 because I think The Carter Center has been around for.

1 conversations with key stakeholders in key states that they were looking at, Arizona being one of them.

- So I -- I met with a representative, and it
- was -- it was a fantastic discussion. And -- and
- 5 really what they were looking at is, would it be
- beneficial to have somebody who is, you know,
- nonpartisan in nature be there in the polls. Would
- that benefit the voters. And so we had a good
- discussion about what that would look like.

There -- in my opinion, I initially -- I see

- 11 a lot of challenges with that, with doing that. And so we had a good discussion about a lot of things that
- they would have to work through if they wanted to
- pursue that, and mostly being kind of what is the end
- game. What is the purpose of that nonpartisan person being there. When you talk about political observers,
- they have a specific function, where they're taking
- notes and they're reporting back to their party. And,
- you know, eventually, you know, if they go to court, if
- they end up contesting the election, you know, those
- observers could be called in as witnesses.
- So there's specific roles that the political
- party observers serve for kind of that end game, if you
- 24 will, you know, what does it -- end up occurring. So
- 25 what would be the function, then, of that nonpartisan

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1 observer? So who are they really representing there?

- And then also, we talked about voter
- 3 perception too, such as -- the term "nonpartisan," as
- 4 we know here at Clean Elections, you know, we have to
- often -- I think sometimes you have to earn that title.
- And not saying that The Carter Center certainly hasn't
- earned that. But when you're a voter too talking about
- perceptions when you go into a polling place, you know,
- how do you identify that person? You know, do you know
- who that person is? Do you know that they're, you
- know, with a nonpartisan entity? Or is it, you know,
- 12 something more comfortable for a voter to see a person
- of each major political party there to provide that

So lots of just, you know, initial 15

- 16 discussions, things to think about, you know, not
- necessarily a good thing or a bad thing. But it was,
- again, just, you know, what are some of the things that
- popped into our head when we first started talking
- 20 about this, what would it look like, and really what's
- 21 that ultimate goal of having that observer there. So
- 22 that was really what the main points of the discussion
- ended up being. CHAIRWOMAN CHAN: Thank you so much for that 25 overview. I was really curious to -- to hear a little

- 1 I don't know, several -- a long time, and my
- 2 understanding is that they have never thought it was
- 3 necessary to take a role in domestic election affairs
- 4 before. They've always done international work. And
- with the situation in our country being what it is,
- 6 they've started doing some work here within the U.S., and I -- I just wondered, would it be all right to ask
- Gina to tell us a little bit about that --
- 9 MR. COLLINS: Sure.
- CHAIRWOMAN CHAN: -- meeting? 10
- MR. COLLINS: Surely. 11
- CHAIRWOMAN CHAN: Okay. Gina. 12
- MS. ROBERTS: Madam Chair, Commissioners, 13
- good morning. So the meeting -- The Carter Center
- reached out to Clean Elections, and they were looking
- to speak to stakeholders in the state just about the idea of having nonpartisan election observers stationed
- at the polls. And very initial discussions. They were
- -- The Carter Center expressed that, you know, they --
- 20 they don't have any -- anything written down. They
- were really just kind of putting the topic out there 22 and just starting very initial discussions on it. So
- their -- they didn't really have any type of, you know, 24 framework or game plan, if you will, about what it 25 would look like. They just wanted to start those

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- 1 bit about that. Thank you.
- All right. Does anyone have any questions
- з for Gina?
- 4 (No response.)
- 5 CHAIRWOMAN CHAN: And if not, I'll throw it 6 back to Tom. Thanks, Tom.
- MR. COLLINS: No. Thank you, Madam Chair,
- 8 Members. Just really quickly, we will meet again on
- January 27th.
- And I wanted to mention, Paula and Mike have
- 11 been coordinating our work with the Auditor General's
- 12 Office. As you all know, under 16-949, we are -- the
- 13 fund and its expenditures and revenues are audited 14 every four years by the Auditor General. We've had
- 15 productive meetings with them. They've been wonderful
- 16 and professional to work with. I really can't say
- 17 enough good things about them. And of course, Mike and
- 18 Paula have been -- been easy for them to work with,
- which I think is important as well. So we look forward to the results of that. You may look out in your own
- 20 to the results of that. Tou may look out in your own
- e-mails for a message from them in the next few weeks relating to whatever the audit resolution is.
- I wanted to mention a couple of legal issues
- 24 I think are worth noting. We have two cases pending
- 25 respecting the Commission. One is the Legacy

- 1 committee.
- 2 Since we've all been here for a while, we
- 3 might recall there's a case called Galassini v.
- 4 Fountain Hills that came up through the federal courts
- 5 in 2013 that struck down the then existing political
- 6 committee definition in part because of the burdens the
- 7 way it was drafted and how it was sought to be imposed
- 8 by the Town of Fountain Hills.
- 9 Again, I don't pretend to know the first
- 10 thing about election contests, but I do think we need
- 11 to be aware of the arguments that the Town is putting
- 12 forward and how they affect the overall operation of
- 13 the campaign finance system, because these concepts are14 not entirely separate.
- 15 I wanted to really quickly hit -- and I
- 16 apologize, it's going longer than I expected. As you
- 17 can see, Gina, Alec, Avery, and the Chairwoman have
- been either certified or recertified as election officers through the Secretary of State.
- Another thing we're just keeping an eye on is 21 the -- the Secretary and the Attorney General's Office.
- 22 I can't really characterize it beyond the fact that
- 23 they are -- there's some kind of argument relating to
- 24 the approval of the Election Procedures Manual. Again,
- 25 why is that something that we're asking you to keep an

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- 1 Foundation Action Fund matter at the Court of Appeals
- 2 and the other is The Power of Fives versus Clean
- 3 Elections, which is also part of the -- related, in a 4 way, to the enforcement item.
- 5 An important election case that was decided
- 6 in -- last week, the Ninth Circuit Court of Appeals
- 7 overruled the District Court and found that Arizona's8 standard where, if you have failed to sign your ballot
- 9 affidavit envelope and fail to rectify that before
- 7:00 p.m. on election day, that is constitutional.
- 11 That means that the law that's on the books is still on
- 12 the books, and it makes it incredibly important --
- 13 well, it was always incredibly important. But it makes
- 14 it -- reemphasizes how important it is to sign your
- 15 ballot return envelope affidavit.
- I want to -- I want to mention, I'm not a
- 17 real expert in election contests, but there is a case
- 18 out there called Torgeson v. Town of Gilbert, and it
- 19 has to do -- the operative facts -- the reason that
- 20 it's on the list here is because the operative facts
- 21 involve the Town taking down political signs. And part
- 22 of the Town's defense, which is relevant to the
- 23 campaign finance system, is that, in effect, the Town
- was entitled to take these signs down because they wereput up by an individual and not by a political

- 1 eye on? It's because the Secretary's Office
- 2 historically has, you know, had the -- the Election
- 3 Procedures Manual has always been a place where the
- 4 Clean Elections role and the Secretary's role come into
- 5 play with one another. And, of course, obviously, from
- 6 a voter education perspective, you know, where the
- 7 manual is, what the law is, those kind of things,
- 8 are -- are important. So, you know, we'll be tracking
- 9 that, but, you know we don't have any insight or inside
- 10 information other than the information that has been
- 11 made publicly available by the Secretary, which we have
- 12 if you want.
 - Finally, I want to say this. And this is
- 14 important for the -- for the -- for administrative law
- 15 purposes. Our regulatory agenda for this year we're
- 16 going to finish this year, this meeting, I hope. We --
- 17 we do not have additional rulemaking that we intend in
- 18 2022. If we -- something comes up and we have to,
- 19 obviously we'll update that and make you aware of that.
- 20 But we just want -- I just want to make sure that, you 21 know, we make our annual statement of what our
- 22 regulatory agenda is, and that is it.
 - 3 So unless anyone has any further questions,
- 24 Madam Chair, Members, thank you very much for your time
- 25 this morning.

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- CHAIRWOMAN CHAN: Thank you, Tom. I think 1 for the
- 2 I'm the reason that it went longer than you expected.
- 3 Does anyone -- do any Commissioners have any
- 4 comments or questions for Tom?
- 5 (No response.)
- 6 CHAIRWOMAN CHAN: I'm so thrilled and
- 7 impressed with Avery, by the way.
- 8 Oh, I see Commissioner Meyer's hand is up.9 Go ahead, please.
- 10 COMMISSIONER MEYER: I just want to make a 11 quick comment. Thank you, Chairman. You know, voter
- 12 education is more important right now than it has been
- 12 education is more important right now than it has been
- in my entire time on the Commission, I believe. I'm
- 14 just really thankful and proud to see what Tom and Gina 15 and Avery and the whole staff were out there doing on
- 16 the voter education to combat all the misinformation
- 17 out there. So thank you. Keep up the great work. I
- 18 know we're going to see your plan in January; I'm
- 19 looking forward to that. But I just wanted to thank
- 20 you and encourage you to keep it up, because we need --
- 21 we and the state, the citizens of Arizona, need you
- 22 guys now more than ever on this front. So thank you.
- 23 CHAIRWOMAN CHAN: Well said. Agree
- 24 100 percent. Thank you, Commissioner Meyer.
- All right. If there's nothing further on

- 1 for the 2022 election cycle.
- 2 Another area I want to highlight quickly for
- 3 you is in the -- both on the admin expenditure
- 4 projections, as well as the voter education expenditure
- 5 projections, the rent charges for the agency, those
- 6 have increased. That is due to the fact that we're
- 7 moving to a new building sometime in July, August time
- 8 frame, and the rent will increase in that. And so I've
- 9 also budgeted funds in there to offset any costs that
- 10 may be incurred for the moving, taking down our desks,
- 11 moving them over, assembling them, all that type of
- 12 thing. So that has increased from previous years.
 - Another aspect that I want to make sure
- 14 you're aware of that has increased dramatically is
- 15 under the voter ed side. If you look at the other
- 16 professional outside services, that has been -- that is
- 17 about a little over \$3 million, and that is a
- 18 substantial increase from previous years. That is due
- 19 to a couple things: One, a lot of what we're doing in
- 20 the IT side is moving from our actual servers, hard
- 21 servers, to going to the cloud, so that's going to cost
- some funds; as well as being prepared for anything that may come along through 2022.
 - I know in previous election cycles we've been
- 25 asked to be involved in different federal races in

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- 1 this item, we'll move to Item IV, which is the budget,2 discussion and possible action on the 2022 budget and
- 3 related statutory calculations.
- 4 So every year we approve a calendar year
- 5 budget, along with certain calculations required by
- 6 law, and there's a memo in the materials at Item IV
- 7 which outlines those calculations and our plan for
- 8 2022. And I believe this is Mike's item to present and
- 9 answer questions. Thank you, Mike.
- MR. BECKER: Good morning, Madam Chair,
- 11 Commissioners. Before you is the proposed Commission
- budget for calendar year 2022. Just a few highlights Iwant to touch on.
- 14 First, the expenditure cap has increased. It
- 15 went up about a million dollars from last year, so
- 16 that's a good sign, which allows us to increase our --
- 17 both our administration and our voter education caps
- 18 going into 2022. Though, one downside. If you look at
- 19 the projected revenue going into 2022 and moving
- 20 forward for the next four years, we are projecting a
- 21 decrease in our revenue. We did see that this year,
- 22 and we are likely to continue to see that. Now, that
- 23 being said, the Clean Elections fund is flush with
- cash, so we're not anticipating any concerns or issueswhen it comes to funding our candidates moving forward

- terms of debates; we want to make sure we're preparedfor that. And as long -- along that line, maybe the
- 3 congressional races as well. But we just want to be
- 4 prepared so that we can jump in at any time and make
- 5 sure that Clean Elections is involved in all these
- 6 aspects, just like we've been doing in the last couple
- 7 election cycles, and we want to increase that on the
- 8 voter ed side. So if you see that, that's -- that's
- 9 why that number has increased.
- One last area I want to point out is, again,
- 11 expenditure cap and our balance. If we were to spend
- 12 all the way to the cap, we would be -- we would not
- 13 have any funds available. That's why we always
- 14 continue to say -- let you know that we recommend not
- 15 having any -- we don't have any funds available to give
- 16 to the general fund moving forward in 2022. We want to
- 17 make sure we're -- we have the funds available, which 18 we do, and continue to do, to fund all of our
- 19 candidates. And with it being a bigger election cycle
- 20 because of the Governor's race, Secretary of State, all
- 21 the -- all the statewides are going to be running,
- 22 we're going to make sure we still have the funds
- 23 available to fully fund every candidate that wants to 24 run as a Clean Elections candidate.
- And with that, I'm happy to answer any

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- 1 questions.
- CHAIRWOMAN CHAN: Thank you so much, Mike.
- 3 This is something that's extraordinary complex to my
- mind but may not be to others.
- Commissioner Kimble, did you have a comment or question?
- COMMISSIONER KIMBLE: I did.
- Mike, you talked about revenue projections. 8
- And I'm looking at Page 10 of the attachment,
- 10 anticipated fund balance projections over the next four
- years, and projected revenues are flat to dipping a
- little. Is this because of a decrease or a projected
- decrease in court assessments or uncertainty about
- court assessments or what is the reason for this? MR. BECKER: Madam Chair, Commissioner
- 15
- Kimble, that's exactly it. It is the court 16
- assessments. The court assessments have decreased over 17
- the last several years, and this is our way of just
- being cautious, not knowing where the court assessments
- will be moving forward, and that's why the numbers are
- what they are. 21
- COMMISSIONER KIMBLE: And have they -- why 22
- have they decreased over the past couple years? There
- 24 was a legislative action, I guess it was a year ago,
- 25 that allowed judges to waive certain -- certain fees,

- COMMISSIONER KIMBLE: Interesting
- observation. Thank you. 2
- CHAIRWOMAN CHAN: Thank you. 3
- 4 Anything -- any other questions or comments?
- (No response.) 5
- CHAIRWOMAN CHAN: Okay. Yeah, that is
- interesting about the cars on the roads. I have to
- say, I'm back driving, now that my kids are back in
- school, and I haven't really noticed fewer cars. I
- don't disagree with what you're saying, but I've
- definitely noticed more aggressive drivers and faster
- 12 drivers. It's like it's all been pent up over the past
- vear. Crazy.
- Okay. So let's -- if there's nothing 14
- 15 further, question or discussion-wise, could we get a
- motion to approve the memorandum in Item IV,
- Commissioner Kimble or Meyer?
- COMMISSIONER KIMBLE: Madam Chair.
- CHAIRWOMAN CHAN: Yes. 19
 - COMMISSIONER KIMBLE: I move that we approve
- 21 the memorandum regarding budget projections in Item IV of today's meeting.
- CHAIRWOMAN CHAN: Thank you. 23
- Is there a second? 24
- 25 COMMISSIONER MEYER: Commissioner Meyer.

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20

- 1 I'll second that motion.
- CHAIRWOMAN CHAN: Thank you.
- All right. Item IV has been moved and
- 4 seconded. We'll go ahead and call the roll.
- Commissioner Meyer, how do you vote?
- COMMISSIONER MEYER: Aye. 6
- 7 CHAIRWOMAN CHAN: Commissioner Kimble, how do
- 8 you vote?
- 9 COMMISSIONER KIMBLE: Aye.
- CHAIRWOMAN CHAN: And I vote aye as well. 10
- By our vote of three ayes and zero nays, we
- 12 have approved the item, and we will -- congratulations,
- 13 everybody. Good work. Good work. Thank you, Mike.
- MR. BECKER: Thank you.
- CHAIRWOMAN CHAN: Moving on to Item V, 15
- 16 discussion and possible action on amendment to
- R2-20-101, rule amendment related to personal and
- 18 family contributions to candidates participating in the
- Clean Election funding program.
- We approved this rule for public comment in 20 21 July. And you may recall, the staff worked with
- 22 Governor's Regulatory Review Council to develop a clear
- rule proposal to resolve an issue related to the
- cross-references in the Act's definitions.
- Tom, would you like to provide a brief 25

1 but I don't know that that's really taken -- do we know

- 2 if that's really had much of an effect, or is it some
- 3 other factor?
- MR. BECKER: Madam Chair, Commissioner
- 5 Kimble, at this point we don't know. It hasn't been --
- 6 hasn't been in place long enough to know whether that's really affecting it.
- The biggest issues, when it comes to our
- 9 court assessments, is the lack of drivers on the roads.
- 10 That's what -- during the -- as the pandemic hit last year and we've seen the lack of drivers on the roads,
- 12 that's where the numbers come in. Most of our funding
- for the Commission comes through that 10 percent
- 14 surcharge on traffic tickets. With the numbers of
- drivers dropping, those -- those aren't occurring as
- often. So on the one hand, that's good, people aren't getting in trouble with the law; but for us, it hurts 17
- our funding. 18
- The other area is, again, which -- the 19
- 20 traffic -- the red light running, those cameras, they
- are sporadic throughout the state, as the legislature 22 has gotten rid of most of them. So those funds, what
- used to be a considerable amount, have dwindled to 24 basically nothing at this point. So it really boils
- 25 down to, we need more cars on the roads.

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- 1 summary of this draft and your recommendation?
- MR. COLLINS: Sure. Madam Chair,
- 3 Commissioners, yes. As Chairwoman Chan said, you know,
- 4 we have had this rule. We've worked -- this is the
- 5 second version we've worked through after we got
- 6 some -- some good feedback from the Governor's
- 7 Regulatory Review Council about trying to smooth and
- make sure the language was clear.
- The upshot of this is that there's a --
- 10 there's a definition of family member for purposes of
- 11 the traditional candidate contributions and, you know,
- essentially family members' donations are considered
- essentially personal monies, for all practical
- 14 purposes, they are deemed to not have the corrupting
- influence that -- that monies from nonfamily members
- would have. In 2016 the legislature expanded the
- definition of who was a family member for purposes of
- that definition.
- Because of the cross-references in the Clean 19
- 20 Elections Act, the reverse happens, in effect. And we
- had a rule that -- that was set up under the old
- system. So, in other words, when the -- when the
- legislature broadened the definition for the purposes
- 24 of who can give to traditional candidates, it narrowed

What does that mean? To be more precise, the

3 Clean Elections Act limits participating candidates on

4 the amount of personal and family contributions they

5 can receive. So now -- so whereas in 2016, for

6 example, a clean candidate might have been able to take 7 the \$180 in seed money from an aunt without having that

8 go towards their seed money -- their personal money

9 cap, under this rule it will. And that is, we believe,

25 and put in, under the category of family members, the

1 definition for purposes of Clean Elections.

- 1 Governor's Regulatory Review Council.
- CHAIRWOMAN CHAN: Thank you, Tom.
- Any questions from the Commission? 3
- 4 (No response.)
- CHAIRWOMAN CHAN: Okay. If there are no
- questions, is there a motion to approve the rule --
- proposed rule -- or, amendment to the rule, I should sav? 8
- COMMISSIONER KIMBLE: Madam Chair. 9
- CHAIRWOMAN CHAN: Commissioner Kimble. 10
- 11 COMMISSIONER KIMBLE: I move that we approve
- 12 the amendment to R2-20-101, the rule amendment related
- to personal and family contributions to candidates
- participating in the Clean Elections funding program.
- CHAIRWOMAN CHAN: Thank you. 15
- May I --16
- COMMISSIONER MEYER: Second. 17
- 18 CHAIRWOMAN CHAN: -- have a second?
- Oh, thank you, Commissioner Meyer. I heard 19 20
 - vou second that.
- And we do have a motion and a second, so I
- 22 will call the roll. Commissioner Meyer, how do you
- 23 vote?
- COMMISSIONER MEYER: Aye. 24
- CHAIRWOMAN CHAN: Commissioner Kimble, how do 25

Page 23

1 you vote?

- COMMISSIONER KIMBLE: Aye.
- CHAIRWOMAN CHAN: And I vote aye as well. 3
- By your votes of three ayes and zero nays, we
- 5 have approved the amendment to the rule.
- All right. Moving on to Item VI, discussion
- and possible action on MUR 21-01, The Power of Fives,
- 8 LLC. The Commission may choose to go into executive
- 9 session for discussion or consultation with its
- attorneys. 10
- This is an enforcement-related item that we 11
- continued -- that I continued from last month. There
- was a lot of discussion around that. And since -- I'll
- 14 have Tom introduce the item, give an overview of his
- 15 recommendation, and then have time for Commission
- 16 questions and discussion. And then following that, we
- 17 can hear from Mr. La Sota, the attorney for Power of
- 18 Fives.
- Tom. 19
- 20 MR. COLLINS: Madam Chair, Commissioners,
- 21 thank you. I want to say, you know, ordinarily we
- 22 don't -- we haven't done timing on these things, and I
- 23 don't -- I'm not saying that we should, but I do want
- 24 to make -- make clear that we are going to -- we would
- 25 like time for rebuttal after Mr. La Sota presents.

10 or at least I believe, a result of the litigation in --11 in a case called -- I think it's called Arizona

Advocacy Network versus State. 12

So that's what -- that's what we've done. 13

We -- those definitions will line up with the statute.

There is -- and I'd be remiss to not say that there is

- a crimping on donations that would have been available
- to participating candidates and there is a crimping on
- the right of those people, those persons who are under that definition, to give to the candidate of their
- choice if they are participating. Those are results of
- 21 the statutory change and those will be results of the
- 22 rule change; however, this is not a policy -- in my 23 view, this is not a policy discussion. It's a -- it's
- 24 a legal exercise. So we recommend that the Commission 25 approve the rule, and we will then forward it to the

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So where we left things last month, really 2 the upshot of the -- what amounts to a motion to 3 dismiss from The Power of Fives is that there is a -some kind -- there's a bright line to be found in the 5 Clean Elections Act between a business and everything 6 else and -- you know, and I think that -- I think that 7 that's a good place to start, because I think the big picture here is that --

And I should note, you know, our -- my 10 colleague in this case, Kara Karlson and Kyle Cummings, 11 are here and will -- and may have -- and will have -- I will -- at some point they will have their own thoughts to add. I think.

But I think that -- I think that -- I think 14 that's -- I think that's a good place to start and I 15 think that -- and I think that that's -- and I think the Act makes it clear that that's -- that what the -what we're recommending, as far as determining there is reason to believe here, is -- is appropriate. 19

Voters -- in the findings and declarations of 20 21 the Clean Elections Act, you know, voters talk about -about the influence of money on elections, they talk about the need to have, you know, more information about how candidates are funding their campaigns. And 25 it seems to me that when you read those findings and 1 always seemed to be, well, we're -- we're a business.

- 2 Now, in this particular case, the complaint makes clear
- 3 that whatever The Power of Fives was doing, it resulted 4 in a campaign finance activity that ought to have been
- 5 reported and wasn't reported, campaign finance activity
- that implicates and directly involves contributions or
- items that, you know, are either contributions or
- expenditures on behalf of candidates by The Power of
- Fives. And so just to underscore the audacity of the -- of the -- of The Power of Fives' response in this
- matter, it's illegal for limited liability companies and corporations to contribute to candidates.

So does the campaign finance code apply to businesses? Absolutely. It absolutely says that businesses have to be more careful in how they interact with candidates under the code than anyone else. The only exception under the campaign finance code for all of these things is for entities that have designation under Section 501(a) of the Internal Revenue Code, nothing else. And that's not a fact here. The

contours of that are -- don't even matter for this purposes. But in this case, there's no exception.

So I think that we've made out the prima 24 facie case here for the violations that are laid out in

25 the complaint. And for that reason, you know, we

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- 1 declarations, it's pretty much impossible for me to 2 conclude that voters intended to create an onramp for a 3 network of undisclosed campaign finance activity.
- Because as the complaint in the case -- you
- 5 know, this is not -- The Power of Fives' activity here
- 6 in the main arises from activity with Mr. Sloan, but 7 there were several other candidates who had this same
- 8 relationship with The Power of Fives. The Act, by its
- 9 terms, applies to persons. It doesn't apply expressly
- 10 to candidates. 16-957, the penalty enforcement
- 11 provisions, expressly apply to anyone who violates the 12 Act.
- It's been the Commission's position, in fact, 13
- 14 in court, throughout every case, that it has
- jurisdiction to enforce the Act across a variety of different kinds of entities that come in conflict with
- the -- with the Clean Elections Act. And every court
- that has ever looked at the jurisdictional question of the Commission has essentially concluded that the
- Commission has the jurisdiction that it asserts under
- the plain terms of the Act. 21
- You know, I think that one of the things that 22 -- so we talk about it like what could -- what would be
- 24 the reasons why there could not be reason to believe
- 25 here. And again, I think the main one seem -- has

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- 1 recommend that -- that the Commission determine that 2 there's reason to believe here. And, you know, so that's really our position.
- Kara, I don't know if you want to jump in 5 here briefly.
- CHAIRWOMAN CHAN: Sure.
- MS. KARLSON: Thank you, Madam Chair,
- Commissioners. And Tom, thank you for giving that
- initial kind of table setting perspective. Because I
- drafted the -- the slides about the reporting period, I
- wanted to kind of explain why I provided that. And
- then especially since Mr. Sloan is here also
- separately, I did want to highlight for the Commission
- 14 that while the facts that I included in here are related to the Sloan campaign, that is only because
- 16 those are the facts that we have directly from The
- Power of Fives. So we are using what should be undisputed 19 facts provided by The Power of Fives that give an example of what The Power of Fives' scheme, their
- 21 contractual scheme would allow them to do with any 22 candidate. So, you know, to the extent that this
- 23 appears to be, you know -- I just don't want it to be
- 24 interpreted as an attack on Mr. Sloan, because this is

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1 we have that was provided from The Power of Fives. So The Power of Fives acknowledged that work 3 began in August of 2019. The Power of Fives stated

4 that they spent money on Mr. Sloan's campaign beginning

5 in September of 2019. They purchased signatures. They

6 booked events. So they spent some kind of money on at

least Mr. Sloan's campaign beginning on September 2019. They booked -- or, they -- they signed the

contract on January 2020, and the first -- at the

latest, the first campaign finance report would have

been due April 15th. There was no campaign finance report. And, in fact, that is not an accident. That

would be, you know, on -- under The Power of Fives'

thought process, that is exactly how it should work.

Because even though The Power of Fives was out there making expenditures on behalf of getting Sloan elected,

Sloan hadn't made those expenditures. 17

And then moving to the second reporting

period, you have Dr. Branch hiring Mr. La Sota and

paying for the -- to both defend Mr. Sloan's petitions 20

and to knock off the -- Mr. Sloan's competition. Again, nowhere is that disclosed that that happened. 22

By June 18th, you have the Branch e-mail to

24 the State Committee for the \$5 contributions for, you

25 know, The Power of Fives candidates. And I think --

1 violate the Act.

And I do repeat Tom's point that under 16-916

3 LLCs shall not make contributions to candidate

4 committees. We know that Dr. Branch, by his own admission, paid for, you know, 23,000 in legal fees.

So there are just -- these are just -- this

is just the tip of the iceberg in what is going on.

But really the key point of this slide is to just -- to

just show you some highlights of like these are

big-ticket things that happened that would go

11 unreported because of -- if we accept The Power of Fives' reading on this.

CHAIRWOMAN CHAN: So may I ask a question of 14 Kara before we throw it back to Tom? I mean -- and 15 these slides were very helpful, Kara, so thank you. I

wasn't sure who created it. You know, it reminds me of the conversation we had last month when it was Commissioner Paton,

Commissioner Kimble, and I. And I think my -- my discomfort with this is, why is it not on the candidate

to be the reporter? Why are we putting the onus on the consultant? Are we going to have a situation now, if

we go forward with this -- this just seems so different

24 from things we've done in the past, and I don't know if

25 I'm missing something. If I'm wrong about that, please

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1 and then you have this like very rushed period in July

2 where, you know, the actual qualification happens, 3 money is changing hands, and the final invoices for all

4 three phases are sent and there's a cancellation.

But basically like what that shows you is

6 that from September of 2019 through July 25th, 2020, 7 under Dr. Branch's reading of the Clean Elections Act,

8 no reporting is required for a full year. They can do

a full year of work and no reporting is required if you

take their -- their perspective. 10

And then I think, obviously, the big issue, or at least one -- an example, a single example from

what we have right now, before we've been authorized to

do any further investigation, is that -- that June 18th

e-mail where Dr. Branch sends out an e-mail requesting

-- requesting \$5 contributions for Mr. Sloan's campaign, and nowhere in that e-mail is there any

explanation that if he's successful in qualifying Eric

Sloan, that is a direct benefit to Dr. Branch.

Dr. Branch is sending out this e-mail on behalf of a 21 campaign, but he doesn't admit it in the e-mail. And

22 there's no report indicating that, should Mr. Sloan

qualify, he will actually stand to benefit at least

24 \$116,000. Now, I have a hard time looking at the Act 25 itself and figuring out a way where that does not 1 call me on it.

I just, you know, I think of Constantin

3 Querard, who I know -- I just happen to know is a consultant who, I don't know if he still does, but has

represented a lot of Clean Elections candidates in the

past. Is he going to have to register as a political

committee as a consultant?

Okay. So I see Kara shaking her head. I

9 know I -- Tom has his hand up too. Kara, let me let 10 you answer first. And then, Tom, you can have your say 11 as well. Because those were my concerns last time is,

12 are we going down a path that is, to my mind, a little -- not a path I'm comfortable with? Go ahead.

MS. KARLSON: No. I hear your concern. This 15 is different. This is not saying that the -- that the

-- that the LLC -- that a campaign consultant would be 17 on the hook for making the -- you know, making the

18 record, filing the report. What this is saying is, you 19 cannot set up a business system that by its very nature

20 avoids needing those reports, right. So his -- the argument that Sloan is making

22 is -- or, not that Sloan. Excuse me. The argument

23 that Branch is making, to the best of my

24 understanding -- and obviously, Mr. La Sota will get an 25 opportunity to rebut this -- is that, you know, we are

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- 1 fine because we just made this business and you -- no
- 2 one owed money until this later point in time, even
- 3 though all of these transactions were taking place
- 4 beforehand. And that is a clear violation of the law,
- 5 especially when you get into the fact that, again, by
- 6 its very term, 16-916, LLCs cannot make contributions
- 7 to a candidate committee. And this was either a
- 8 contribution to a candidate committee because, you
- 9 know, if Mr. Sloan didn't qualify, then he would not
- 10 owe them anything, in which case the LLC has given all
- 11 of this money to influence an election, or he intended
- to make that money all along and this was set up
- expressly to avoid any kind of -- the regular
- disclosure obligations.
- CHAIRWOMAN CHAN: I mean, I agree with you on 15
- 16 a promise to spend -- you know, a contract like that
- needs to be reported at the time it's entered into,
- right. I mean, and I think I brought up the Napolitano
- campaign from years ago running into this exact
- problem. But again, like at that time it wasn't her
- consultant. It was her campaign that was in trouble
- for that. And I think Mr. Sloan had his own issue with
- us regarding this matter. And perhaps I'm just too
- 24 dense for this, but what is it that makes this Branch's
- 25 issue rather than Sloan's issue? And again, not to

- 1 business set up where you could agree to provide
- 2 services, begin to provide services, and that services,
- 3 by virtue of the contract, evade the very rules that
- 4 are in place. So if you -- if the Commission does not have
- the authority to put accountability on everyone who may
- have -- again, this is a reason to believe stage. This
- is not the end of this case, with all due respect,
- Chairperson Chan. If the Commission says that now,
- there will be an exception that will allow consultants
- to drain the Clean Elections fund with no
- accountability to the public whatsoever, and I simply
- can't read the Clean Elections Act to say that.
- CHAIRWOMAN CHAN: Okay. Thank you, Tom. 15 Thank you.
- Anyone -- and I interrupted, I think, because 16
- 17 you had given it --
- MR. COLLINS: No.
- CHAIRWOMAN CHAN: -- over to Kara. And then 19
- 20 you maybe --
- MR. COLLINS: I think we're -- I think we're 21
- 22 okay for now. I mean, we obviously want the time to 23 rebut.
- CHAIRWOMAN CHAN: Yes. 24
- 25 MR. COLLINS: It's important.

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- 1 beat up on Mr. Sloan here.
 - Tom, did you want to jump on that one or --MR. COLLINS: Yes. Yes, I absolutely do.
- 3 CHAIRWOMAN CHAN: And I apologize. I --4
- MR. COLLINS: It is both -- it is both of
- their issue.
- CHAIRWOMAN CHAN: Okay.
- MR. COLLINS: We have an enforcement going
- against Mr. Sloan. It's on the agenda later.
- Mr. Sloan has requested it to be there.
- CHAIRWOMAN CHAN: Yes. 11
- MR. COLLINS: This enforcement -- when we 12
- brought this case to the Commission a year ago, the
- Commission told us, go out and figure out what's
- happening here. We have -- we had a he-said-he-said
- situation that happened in this very Zoom room. And
- what we did was went out and dug into the facts. We
- 18 have the facts. We have all the facts we thought we
- could appropriately have before we had to -- simply had
- to file a complaint, and then we did that. 20
- They're -- the reason why the consultant is 21 on the hook here too is because, under the statute and
- the rules, the consultant is an actor of -- in his own
- 24 way. Not every consultant is doing this this way. I
- 25 have no evidence or experience of anyone ever having a

- CHAIRWOMAN CHAN: Sure. 1
- MR. COLLINS: So thank you. 2
- CHAIRWOMAN CHAN: Okay. Any Commissioners 3
- have any questions so far, other than myself?
- (No response.)
- CHAIRWOMAN CHAN: And if not, we'll move on,
- I think, to Mr. La Sota, if he's ready and willing to
- speak up.
- MR. LA SOTA: I am. Are you ready for me to
- 10 begin, Madam Chair?
- CHAIRWOMAN CHAN: Yes, please go ahead.
- MR. LA SOTA: So good morning. I'm Timothy
- 13 La Sota on behalf of The Power of Fives. And I'd like
- 14 to start by talking out -- talking -- there are two
- 15 separate issues here. I think either one would command
- 16 a decision to dismiss this matter, but there are two
- issues. There's the issue of Mr. Collins trying to
- 18 regulate a vendor, which the Chair has talked about at
- some length at both -- and I think raised all the right
- 20 questions that I'll get into further in a moment. But
- 21 there's that issue, and there's also the issue that,
- 22 you know, look, at the inception of this contract,
- 23 it's -- there's no promise, agreement, no obligation to 24 pay anything, so -- but I'll get into that second.
- First, I want to focus on the notion, you 25

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- know, that now vendors have to register as a politicalcommittee. And Mr. Collins is wrong that nobody has
- 3 these types of arrangements, and I'll give you a good4 example.
- I mean, so, you know, we talked about last
- 6 time. Last time Mr. Collins said The Power of Fives is
- 7 set up to -- to influence elections. I said, no, it's
- 8 not. It's set up to make money, same as my law firm.
- 9 But, you know, what if I'm in a situation -- and in
- these election cases that happen very quickly,
- 11 sometimes payment is not made until later. Sometimes
- 12 payment is not made at all. Believe it or not,
- 13 candidates have been known to stiff an attorney. So in
- 14 that case, I'm now -- I've now made an in-kind
- 15 contribution to the -- to the candidate. And now,
- 16 according to Mr. Collins and Ms. Karlson, apparently,
- 17 I'm now guilty of -- I'm not just in violation of the
- 18 Clean Elections Commission Act, but I've now committed
- 19 a criminal offense because my firm is a -- it's an S
- 20 corporation.
- So, I mean, that's the path you're going
- 22 down. Absolutely, you know, I'd like to answer that
- 23 question for the Chairwoman. If you side with
- 24 Mr. Collins and Ms. Karlson, absolutely I will tell
- 25 clients that they need to register as a political

itical 1 So -- but let's get into some specifics here

- 2 as to why Mr. Collins and Ms. Karlson are wrong. So
- 3 let's just talk -- they keep talking about -- they keep
- 4 talking about attorneys' fees, and you'll notice they
- 5 never read anything from the statute.
- 6 Okay. So let's look at the statute. So
- 7 we're talking about exemption from the definition of
- $\boldsymbol{8}\,$ expenditures. The following are not expenditures: The
- 9 value of any of the following to a committee: Payment
- 10 of a committee's legal or accounting expenses. Anyone
- can look that up under 16-921. 16-911 is exemption
- 12 from definition of contribution, says the exact same 13 thing.
- And this is exactly what Mr. Collins lost --
- 15 this issue he lost in his Arizona Advocacy Network case
- 16 where he said the legislature cannot change that
- 17 statute because it is locked in by the -- by the Voter
- 18 Protection Act. So, you know, obviously Mr. Collins,
- 19 you know, doesn't like things that take -- that take
- 20 certain elements out of his regulatory purview. I
- 21 guess maybe technically he was a defendant there, but
- 22 it was one of those where he was more -- he was on the
- 23 side of the plaintiff. And they were advocating that
- 24 the legislature cannot make that exception, that
- 25 exception for legal fees. Well, they lost, and it's

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- committee, because what if they get caught in asituation, you know, where somebody doesn't pay a bill.
- 3 And in that case, they are in no different position
- 4 than The Power of Fives.
- 5 Sometimes people take things on a
- 6 contingency. I don't see any reason why that wouldn't
- 7 be legal, generally speaking. In this realm, well, now
- 8 it's illegal. And now, according -- and never mind the
- 9 Clean Elections Act, but just look at corporate -- you
- 10 know, let's just look at the corporate contributions
- 11 prohibition. Now, according to Mr. Collins and
- **12** Ms. Karlson, that that's a -- that would be a criminal
- 13 offense because you've -- you've given something of
- 14 value as soon as you've entered into that agreement.15 So this is a -- this is a very troubling path
- So this is a -- this is a very troubling path for the Commission to lead down. And this business
- 17 about this is just at the reason to believe stage,
- 18 look, we're here with a legal issue now. There's no
- 19 reason for this Commission to proceed with this matter,
- 20 because there's really no need for further
- 21 investigation. It -- you know, it's the legal issue
- 22 presented to you. I think that the Chair has focused
- 23 very appropriately on the terrible precedent that would
- 24 be set by -- if we're going to credit Mr. Collins and
- 25 his -- Ms. Karlson here.

- 1 right there in statute, so I have no idea why they keep 2 talking about that.
- 3 Also, I have no idea why they keep talking
- 4 about 16-946. That's the qualifying contributions
- 5 statute where you continue to hear Mr. Collins, and now
- 6 Ms. Karlson joining him, saying that Mr. Branch
- 7 violated that statute. Well, let's read that actual
- 8 statute. It says, during the qualifying period, a
- 9 participating candidate may collect qualifying
- 10 contributions, which shall be paid to the fund. To
- 11 qualify as a contribution, a contribution must be, and
- 12 it lists the different things that a contribution must 13 be.
 - 4 It does not say anything about -- it doesn't
- 15 say anything about that there's a violation of that
- statute. What it says is if that statute is not
- 17 followed, a contribution is not a qualifying
- 18 contribution. I mean, it stuns me that we would have
- 19 repeatedly these either misunderstandings or 20 misstatements about clear statutory law that anyone can
- 21 go look up, 16-946. You notice you didn't -- you
- 21 go look up, 10 940. Tou notice you didn't
- really didn't hear any quotations of the actualstatutes, because they keep trying to get away from the
- So -- and there is a -- there's actually a

24 actual laws.

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criminal penalty that would apply to somebody that -but it only -- as to 16-946, but it only applies to
somebody who actually pays for a contribution. It
doesn't apply to any of this other business, a
solicitation that they allege was improperly sent.
So obviously, the drafters thought of that
and did not include -- you know, did not include any -any sanction for not following that statute except in
that one limited case, except the only sanction is the
contribution does not count as a qualifying
contribution, but you can't -- it's not a violation of

the statute unless you're paying somebody for the \$5

So, now, in terms of -- you know, we talked about at some length, I put this in my memo that, you know, look, the bottom line here is -- is that when they -- at the inception of this contract, there is no promise, agreement, contract, or otherwise an obligation to pay for goods and services. It's entirely contingent. As of that moment, none of those things exist. And that's why, you know, you heard Ms. Karlson make a huge concession when she spoke. She said the word "if." That was the word she used, "if,"

and that's the critical word here. It's an "if."

And Mr. Collins says he can't read the

exist in the future is not an obligation, period, endof story.

So, you know, the bottom line here is -- you know, there are two separate reasons. Both of them are good enough. There's no reason for this matter to proceed any further, because the Commission is at the threshold of what's really a legal determination, and that -- and that does not involve -- you know, that doesn't mean we need to give Mr. Collins more time to investigate. He's had plenty of time. Most of the things that have come out have come out in that other civil matter

things that have come out have come out in that other civil matter.

But, you know, the bottom line here is -- is, look, if we're going to go down this path, I mean, I don't know what it's going to do to this entire industry. But people like me, you know, it's like I said about my law firm, my law firm was formed to make money. That's why it was formed. I mean, yeah, sure, I help candidates. But campaigns are formed to win elections, and vendors operate to make money. Now, they make money by helping candidates win elections, but it does not mean, as Mr. Karlson -- as Ms. Karlson and Mr. Collins would have it, that every one of those

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statute that way. Well, I mean, he doesn't want to
 read it that way. But that's what the statute says.
 And when we don't like --

And okay. Let's just -- maybe we could -someone could argue that this is a gap, right, that
somehow this situation was not intended to be not
addressed and sort of the -- the situation that
Ms. Karlson talked at length about prevails where, you
know, somebody is allowed to do this, and if the person
doesn't qualify the thing just kind of disappears,
it -- poof. Well, let's say that was an oversight. I
don't know that it was. But even if it was, the proper
response to that is to address the oversight through
legislation. It is not to read out or contort the
words of the actual statute.

legislation. It is not to read out or contort the
words of the actual statute.
So, you know, the bottom line is, there's
nothing -- you know, at the inception of this thing
there's no promise, there's no agreement, there's no
contract, there's no nothing to -- for an obligation as
of that moment. The obligation arises later, if at
all. It's contingent. It may not arise. If X doesn't
happen, there is absolutely no obligation. So how can
you say -- how can you possibly say there's an
obligation at that moment? You can't. It's -- you

25 know, there is no -- an obligation that may or may not

And you notice, you know, their attempts to say, well, what's the difference? You know, the Chair asked, well, you know, does this mean that everyone needs to register, and they said no. But they -- but they never said why not. Well, of course they need to

needs to register as a political committee or that the

25 -- this Commission should embrace that -- what I view

1 as a very chilling, very, very problematic step.

6 they never said why not. Well, of course they need to
7 register.
8 What if I -- I help out a candidate and the

What if I -- I help out a candidate and the candidate stiffs me? Now I should have registered, because I should have said at that moment I've made an in-kind contribution to the candidate, even though that was -- I never thought I'd be in that position. It's really -- it's -- it may not be the exact same situation as The Power of Fives, but that conclusion is inescapable if you -- if you go down the path of trying to -- trying to regulate vendors.

Now, the last thing I'll say is if the Clean

18 Elections Act was -- was meant to -- so clearly to 19 apply to vendors and entities that simply assist for a 20 living, that's what they do, that's their trade, the 21 Constantin Querards of the world, if it was meant to 22 apply to that, where are the penalty provisions? 23 Now, Mr. Collins said, oh, yeah, you know, 24 we've got that authority and it says we can do this, it 25 says we can do that, it says any person. Well, okay,

25

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- 1 then how come he still has not identified what the
- 2 penalty would be, what penalty this Commission would be
- 3 able to impose?
- 4 So I look through. I think the penalty
- 5 provisions are 16-941-940 -- to 943, and I don't find
- 6 anything that would be even remotely applicable. 19
- 7 dash, I'll pull up 941 real quick. You know, that
- 8 talks about -- well, 941, limits on spending and
- 9 contributions for political campaigns, and that says
- 10 that (A) is a participating candidate, (B) is a
- 11 nonparticipating candidate, (C) is a candidate, whether
- 12 participating or nonparticipating. And so, you know,
- 13 that's it.
- And then there's also -- you know, there's
- 15 16-942. There is a -- there's -- you know, the
- 16 reporting obligations that may arise under Article 1
- 17 are certainly not the purview of this Commission.
- 18 Under 942 they talk about the civil penalty for the
- 19 participating candidate, it's 10 times, it's
- 20 forfeitures of office.
- 21 Criminal violations and penalties under
- 22 16-943. Candidate who violates 941, Class 1
- 23 misdemeanor. That's not us.
- 24 Any person who knowingly pays anything of
- 25 value or compensation for a qualifying contribution, a

- 1 disagreements here, and I know you and I have had them
- 2 before too in enforcement -- in the enforcement realm,
- 3 I think back when I was at the Secretary of State. So,
- 4 you know, we can all have disagreements, and reasonable
- 5 disagreements even, and I just -- I don't want to have
- 6 that be on the record without speaking up about that,
- 7 because they're two probably of the -- the attorneys
- 8 that I probably respect most in Arizona on our election
- 9 laws. So I do want to say that.
- MR. LA SOTA: Can I address that, Madam Chair?
- 12 CHAIRWOMAN CHAN: Sure.
- MR. LA SOTA: I like Mr. Collins and I like
- 14 Ms. Karlson. I mean, you know, Mr. Collins actually
- 15 sent me a client. And it doesn't -- and I think they
- 16 are trying to get you -- you know, I mean, it's --
- 17 they're not doing -- they're advocating.
- .8 CHAIRWOMAN CHAN: Well, just like you are.
- MR. LA SOTA: Right.
- 20 CHAIRWOMAN CHAN: Any good attorney is going
- 21 to advocate on behalf of their client and how they see 22 the law.
- MR. LA SOTA: I don't blame them for that.
- 24 But, you know, look, if you've got a statute where
- 25 you -- you know, you'd rather characterize a statute in
- 1 a certain way, I mean, I do the same thing, that's not
- 2 that would make an actual violation of 16-946 subject | 2 -- that's not a character aspersion, but I'm trying to
 - 3 get you back to the actual wording of the statute. And
 - 4 naturally, they're maybe trying to get you a little bit
 - 5 away, but I didn't say that that's anything I wouldn't
 - 6 do under similar circumstances.
 - 7 CHAIRWOMAN CHAN: Well, thank you for that
 - 8 clarification. I just -- I wanted it to go on the
 - 9 record that, knowing them both the way that I do and 10 how much they -- and I know yourself too. You know the
 - 11 election laws in the state as well. But they are two
 - 12 of the most knowledgeable election attorneys I know and
 - 13 have such personal and professional integrity, so I
 - 14 just wanted to recognize that for everybody and have it
 - 15 on the record.
 - I don't know what the best order to go into
 - 17 is. I know Tom wanted to speak. Did Mr. Sloan want to speak as well?
 - Okay. Tom, do you think we should allow
 - 20 Mr. Sloan to speak? I don't know if it matters to you 21 one way or the other, but...
 - MR. COLLINS: It certainly doesn't matter to
 - 23 me. If it's a procedural question, I would defer to 24 Ms. Coady.
 - 25 CHAIRWOMAN CHAN: Okay. Well, I'll perhaps

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 ${\bf 1}$ Class 1 misdemeanor, that was -- that's the one thing

- 3 to a sanction other than that the qualifying
- 4 contribution doesn't count. Not applicable.
- 5 False or incomplete report, Class 1
- 6 misdemeanor.
- 7 So, I mean, what -- what would you do to The
- 8 Power of Fives? You know, I put that in my memo. We
- 9 still don't really have an answer on that. And if --
- 10 if it's so apparent that the drafters, the voters
- 11 intended to capture us, then why is that -- why aren't
- 12 there actual penalty provisions that seem to apply to a
- 13 vendor?
- So with that, I'd be happy to answer any questions.
- 16 CHAIRWOMAN CHAN: All right. And just real
- 17 quick, Tim, I want to come to the defense of -- because18 I feel a little bit like you were casting some
- 19 aspersions on Kara and Tom, and I disagree with that
- 20 entirely. I mean, they are two of the best lawyers I 21 know in the election realm. They know their stuff. I
- 22 think they don't speak down to the Commission or the
- public, so, you know, not reading out the law is not --they're not hiding anything.
- You know, I know that there are sincere

1 let Mr. Sloan speak, and that way you can kind of wrap 2 up, maybe make your summation, so to speak, after that.

So I'll recognize Mr. Sloan.

MR. SLOAN: Thank you, Madam Chair, Members 5 of the Commission. Well, this has been going on for 6 quite some time. Here we are a year later -- year and a half later, actually, since this issue originally arose. I will be speaking later on to the other item 9 regarding myself as a candidate, but I think it's really important to point out some things.

11 Mr. La Sota made the point that there's no promise to pay until you're qualified, and that was how -- that was how the contract was explained to me by 14 Dr. Branch. There were only 17 days between the moment that I fired Dr. Branch -- or, the moment I qualified and the moment that I fired Dr. Branch. So there were 17 days there. So he's asking for \$116,000, the entire amount of the Clean Elections funding, for that 17-day period. That's the first issue I want to point out to the Commission. 20

The second point that I want to point out to 21 the Commission is that Bob Branch weaponized this Commission against a former client of his because I 24 raised issues about the legality of the contract. And 25 once I raised those issues about the legality of the Page 52

1 Power of Fives and Dr. Branch's accounting makes it 2 impossible for a candidate to do the appropriate

filings not only with the Clean Elections Commission,

4 but with the Secretary of State's Office. That is done purposefully on the -- on the -- by The Power of Fives,

because what they are doing is trying to take all of

that money and then not provide any service, which is

the reason why we are in this situation now, because I

became aware of what that -- what they were doing and decided that I was not going to be a part of that.

11 Again, I just want to point out that I am in 12 the middle of a civil matter with The Power of Fives. They have sued my wife and I personally for these 14 monies. We have accrued a tremendous amount of legal expense to defend ourselves. We have lost the 16 arbitration. The arbitrator -- The Power of Fives is now trying to confirm the arbitration award, which is \$116,000, plus another 60 or \$70,000 in legal fees, against me and my wife personally. The judge in that case is waiting to see what the outcome is with regards to how the Clean Elections law actually applies to this contract, because Dr. Branch has sued you all with

But more importantly, I think it would be 25 really important that we continue to move forward with

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1 contract and brought those issues to the Commission,

2 which Mr. Collins and Ms. Karlson can confirm to you,

3 and was told that the contract did not apply to Clean

4 Elections -- did not meet the standards of Clean

5 Elections law, at that point we tried to figure out

what we needed to do. And I worked hand in hand with

the Commission on what needed to be done, which

8 included withholding \$94,000 of disputed revenues,

9 which were returned to the Commission promptly within

hours of a repayment order being paid.

I also want to point out that it is my

understanding and has always been my understanding that

you cannot use Clean Elections funds to pay legal

expenses. So the argument that this would cover all

vendors, including law firms, is a big stretch when

you're looking at the actual wording of the law.

Part of this issue arose because Dr. Branch 17

asserted, and has continued to assert, that he spent a

lot of money on my behalf, without my knowledge, before

I qualified for Clean Elections. That was never

disclosed to me as a candidate. My understanding was

always that once you qualify, the obligation begins, as

was stated by Mr. La Sota. So that's the entirely --

The other part I would point out is that the

25 Commission has found, on numerous occasions, that The

1 an investigation because there are more things to be 2 uncovered. There were other candidates who were

3 involved who qualified for Clean Elections. There are

current candidates that are being solicited by

5 Dr. Branch. He is continuing to use this model and,

quite frankly, is continuing to defraud people by

telling them that he is in compliance with Clean

Elections and that he is an expert in Clean Elections.

The Power of Fives denotes his expert status

of Clean Elections. His contract reads that he is an

expert in Clean Elections, and yet he is putting candidates like myself and others in a position that we

could be fined up to 10 times the amount of the

14 contract, which we entered into in good faith, but he

15 did not, because he has put us in a position where he

can extort us by filing a complaint with Clean Elections if we don't pay him. And that is wrong, and

the Commission should absolutely investigate that.

Thank you, Madam Chair.

CHAIRWOMAN CHAN: Thank you, Mr. Sloan. 20

All right. Tom. 21

regards to that.

MR. COLLINS: Yes. Madam Chair, 22

Commissioners, look, just to try to briefly rebut some

24 of the points that The Power of Fives raised, The Power

25 of Fives admitted right here just now that they spent

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- 1 money on the candidacy of Mr. Sloan and didn't report
- 2 it anywhere. Under the Act, spending on behalf of a
- 3 candidate, under 16-942(B), must be reported. It was
- 4 not. The issue --
- CHAIRWOMAN CHAN: Tom. Tom.
- MR. COLLINS: Yes. I'm sorry. 6
- CHAIRWOMAN CHAN: That is the difference that
- 8 you're -- is that -- and I'm sorry to keep beating on
- 9 this. Probably maybe you wish it was the difference.
- That is the difference between --
- MR. COLLINS: That is -- that is a 11
- 12 difference.
- CHAIRWOMAN CHAN: Okay. 13
- MR. COLLINS: That is a difference for sure. 14
- 15 If you're looking for statutory language, it's all --
- this is all in the complaint, mind you, but --
- CHAIRWOMAN CHAN: Right. 17
- MR. COLLINS: -- and in the response, but --18
- I mean, so -- just to make a point for the record, in
- fact, every citation necessary for this is in the
- materials, and we assume the Commission has read those
- materials. So we didn't feel the need to do a
- PowerPoint with a bunch of citations.
- But, yes, the Act, penalty provisions 24
- 25 expressly apply to spending on behalf of a candidate

- 1 that The Power of Fives took. Mr. Sloan took actions;
- 2 those are subject to another complaint. Those are
- 3 actions The Power of Fives took. The Power of Fives
- admitted them here today.
- In fact, Mr. La Sota's defense to this very
- complaint is that they went out and spent money on the
- campaign and didn't report it. That's the defense.
- That can't be a good defense. It wouldn't matter if
- 9 they were a PAC or a 501(c)(4) or whatever. If you are
- spending on behalf of a candidate, you have reporting
- obligations under the Act that are freestanding and
- 12 independent of everything else in the campaign finance code.
- So at a minimum, the prima facie case for 14
- 15 reason to believe is made. And if we don't think that
- 16 a prima facie case for reason to believe has been made
- here, then we are, in fact, reading out the on behalf
- of language in 16-942(B), we are reading out the
- commercially reasonable requirements under the regular
- campaign finance code, we are reading out the fact that
- the Commission has a specific rule that binds agents in
- this -- in this particular context to avoid this very
- kind of activity. 23
- Mr. Branch and The Power of Fives know the
- 25 Clean Elections Act. They say they know the Clean

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- 1 unless you report it. It wasn't here. Mr. La Sota 1 Elections Act. Now, I have no doubt that Mr. La Sota
- 2 doesn't dispute the fact that The Power of Fives went
- 3 out and spent money on a candidate. There is a dispute
- 4 about whether or not that spending was authorized or
- 5 known or not. That's what we're trying to get to.
- That's part of the reason why we think there is good jurisdiction here.
- With respect to this idea that if someone
- 9 stiffs you on a loan you somehow accidentally made a
- campaign contribution, the statute deals with that.
- 16-921 expressly talks about the fact that if you have
- an extension of credit, it has to be commercially reasonable, and you have to do something to go and get
- it back. If you waive that loan in an unreasonable
- way, yes, you have, in fact, made a contribution.
- That's black letter law. 16
- So the law is -- you know, the law is -- the 17
- law is clear. There are -- and the admissions are
- clear. The Power of Fives went out and spent money.
- Mr. La Sota confirmed that again here today. That
- money was not reported in a timely manner. The details
- 22 of that -- of those -- of those reports would not have
- 23 been, at least for purposes of this motion, enough to 24 satisfy the requirements of the -- of the Act in terms
- 25 of reporting as it is. Those are, in fact, actions

- 2 knows the Clean Elections Act. Mr. La Sota is -- it's
- 3 true, Mr. La Sota is an excellent attorney, and I
- 4 believe very strongly that he makes some good arguments
- 5 in some cases. Here, that's not this case. There's no
- -- there's no slippery slope here. There's no nothing.
- This is a discrete set of facts where an LLC's lawyer
- comes before the Commission and says, yeah, we went out
- 9 and spent on behalf of the candidate, and no, we didn't
- 10 report it. And that's really all there is to this
- 11 stage.
- 12 CHAIRWOMAN CHAN: All right. Thank you, Tom.
- 13 I'm not sure if any members of the public
- 14 wish to weigh in. If so, let me know by raising your
- hand or unmuting and speaking up.
- 16 And do the Commissioners have any comments or 17 questions?
- Oh, I'm sorry, Kara. 18
- Commissioner Meyer, you have a comment or 19
- 20 question? Perhaps I'll let you go and then Kara can --COMMISSIONER MEYER: I do. Thank you, Madam 21
- 22 Chair. I do have a question. And I was not at the
- October meeting, so I apologize if I'm asking a
- 24 question that's been answered. I didn't see a copy of
- 25 the contract in the materials for this meeting. Is

- 1 that -- is that in there anywhere?
- CHAIRWOMAN CHAN: I think we might have --2
- MR. COLLINS: Yeah. 3
- 4 MS. KARLSON: It was -- it was on a link, so
- there was a link with a Google Drive --
- CHAIRWOMAN CHAN: It was a Google Drive.
- MS. KARLSON: -- that had --7
- COMMISSIONER MEYER: Okay. My apologies. I 8
- guess so my question is, when -- you know, what we're
- essentially talking about is a contingent liability.
- What -- what is the event that happens to make that
- contingent liability then become, you know, a fixed
- liability that when the -- when the -- The Party of
- 14 Five actually is owed money, what event happens to make
- that the case? And I apologize -- go ahead.
- MR. COLLINS: Mr. La Sota? I assume that's 16 for Mr. La Sota. 17
- COMMISSIONER MEYER: That's for anyone who
- knows the answer. 19
- MR. LA SOTA: No, I can address that, and 20
- 21 it's the -- it's the qualifying. And as a matter of
- fact, in the arbitration by Judge Albrecht, the former
- Superior Court judge, she found, and I'm going to
- 24 quote, this contract was for The Power of Fives to
- 25 provide campaign consulting services, provide campaign

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- COMMISSIONER MEYER: No, I understand that's
- the offense, but what's the penalty?
- MR. COLLINS: Well, we would -- the penalty
- would be that they would have to file those reports and
- they would owe a late fee of up to the -- up to twice
- the -- up to twice the amount of the unreported
- expenditure.
- COMMISSIONER MEYER: Okay. So that's the --
- that's the (B), then, right, that's the --
- MR. COLLINS: Yeah. 10
- 11 CHAIRWOMAN CHAN: Oh, Mr. La Sota apparently
- 12 disagrees with that. He's shaking his head.
 - MR. LA SOTA: And I really appreciate the
- opportunity. So let's -- let's read (B). In addition
- to any other penalties imposed by law, the civil
- penalty for a violation by or on behalf of any
- candidate or any reporting requirement imposed by this
- chapter shall be \$100 per day for candidates for the
- legislature and \$300 per day for candidates for
- statewide office. I mean, there you go. Again,
- another example of the Act penalizing candidates. 21
- 22 MR. COLLINS: I'm sorry.
- CHAIRWOMAN CHAN: I think --23
- MR. COLLINS: I'm sorry. 24
- CHAIRWOMAN CHAN: And, I mean, I'll let Tom 25

- 1 consulting services is not illegal, even if the
- 2 candidate wants to be or is a Clean Elections
- 3 candidate. The agreement did not bind the campaign to
- 4 a specific obligation. There was no debt created for
- 5 the campaign by entering into the agreement. There was 6 no obligation to pay until/if Sloan qualified for
- public financing. There's nothing in the Clean
- 8 Election laws and regulations that prevent a candidate
- from entering into a contract for services before he
- receives Clean Elections funding with the payment to be
- paid upon receipt of the Clean Elections funding.
- 12 That's exactly this issue, and it is upon
- qualification and -- yeah. 13
- COMMISSIONER MEYER: And my next question 14
- relates to the penalty issue that Mr. La Sota raised.
- And, Tom, is the penalty here 942(B)? Is that where
- the penalty is for The Party of Fives? 17
- MR. COLLINS: Well, Madam Chair, Commissioner 18
- Meyer, I think that Mr. La Sota confirmed that, in
- fact, that -- based on what Judge Albrecht said, if the
- 21 candidate didn't owe anything until qualification, then
- 22 all of the expenses that were incurred by The Party of
- Fives were incurred on behalf of Mr. Sloan and
- 24 unreported. And those are, in fact, required to be
- 25 reported under 16-942(B).

- 1 speak, but to me that means that's the race involved,
- 2 not the candidate specifically, but maybe I'm wrong 3 about that.
- MR. COLLINS: Madam Chair, this is very
- 5 important. We have a --
- CHAIRWOMAN CHAN: Yes.
- MR. COLLINS: -- case pending at the Court of
- Appeals right now where our position is the precise
- 9 opposite of that. We are -- I mean, I just have to
- 10 advise you and advocate at this point -- not advise --
- 11 advocate here that this Commission's position has been,
- 12 and we are in court right now with the position, that
- 13 942(B)'s language says precisely, Madam Chair, what you
- 14 just said. This is not fooling around stuff.
- MS. KARLSON: Well, and --15
- CHAIRWOMAN CHAN: Okay. Go ahead, Kara. 16
- MS. KARLSON: -- Madam Chair and 17
- Commissioners, if I can also add that, in terms of
- statutory, you know, reference, 16-901(7) defines
- 20 candidate to include not only the person running, but
- 21 also anyone who is receiving contributions or making
- 22 expenditures on behalf of that individual in connection
- with the candidate's nomination, election, or retention 24 of office.
- And I just wanted to say, Chairwoman Chan, 25

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- 1 thank you for making that -- that statement. We were
- 2 not running from the statutes. We did not need to cite
- 3 this. We have, you know, nine pages of documents that
- 4 include lots of citations. To the extent you need any
- 5 additional elucidation, we would be happy to do that.
- 6 But it was certainly not meant to be running and/or
- 7 hiding from the statutes. It was just to not beat you
- over the head with what you've already received.
- CHAIRWOMAN CHAN: Thank you.
- And I see Eric Sloan has his hand raised. 10
- 11 Yes, Mr. Sloan.
- MR. SLOAN: Thank you, Madam Chair. 12
- Mr. Meyer -- or, Commissioner Meyer, the way 13
- 14 it was described to me by The Power of Fives and the
- way Mr. La Sota has described it today is that the
- obligation begins once you receive funding, okay. The
- way that it was described to me by the Commission staff
- was that once you enter into an agreement, the promise
- of the agreement is the actual -- I'm sorry, I'm not a
- lawyer, so I'm trying to put these words together here
- -- is the actual qualifying moment that happens going
- forward. So the -- so there's -- there was a big
- difference there, okay, which is the reason why --
- CHAIRWOMAN CHAN: The obligation. 24
- 25 MR. SLOAN: I'm sorry. Again?

11

1 issue with regards to Clean Elections law, but as far

- 2 as a contract goes, this is a contract, right. She
- didn't take into account Clean Elections law.
- Now, I think, to a large degree, being a part
- 5 of that proceeding, she didn't understand it. And
- 6 Dr. Branch made it very clear that that arbitration was
- specifically about a contract between himself and me as
- an individual, which I did not sign that contract as an
- individual, I signed it as a candidate, which is the
- reason why we're here today.
 - And I just think it's really, really a bad
- 12 situation that an arbitrator, who didn't understand
- Clean Elections, has passed a ruling that is now going
- 14 to put the entire system in jeopardy. The system will
- 15 no longer exist in its current form if this is allowed
- 16 to happen. And the only way you're going to get to the
- 17 bottom of this is if you dig into it and investigate
- 18 it. So I would again encourage the Commission to
- 19 investigate this matter. Thank you.
- CHAIRWOMAN CHAN: Thank you, Mr. Sloan. And 20
- 21 I will say, from my perspective, although the
- arbitration decision can be illuminating, I do view it
- as separate from the election law issues. I mean,
- it's -- it may be relevant or helpful in some way, but
- 25 to me it's not dispositive as to the election or

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- CHAIRWOMAN CHAN: I'm sorry, and
- especially --
- MR. SLOAN: No, please. 3
- CHAIRWOMAN CHAN: -- to our court reporter.
- But the obligation that you enter into --
- MR. SLOAN: Yes. Yes. Yes.
- 7 CHAIRWOMAN CHAN: -- before any money changes
- 8 hands --
- 9 MR. SLOAN: Yes.
- CHAIRWOMAN CHAN: -- is something that needs 10
- to be reported. I agree --11
- MR. SLOAN: Sure. 12
- CHAIRWOMAN CHAN: -- with that. I believe 13
- that is the law. 14
- MR. SLOAN: Yeah, and I -- and I believe that 15
- there's statute there. I can't cite to statute
- because, again, I apologize, I don't have it in front
- of me and I'm not a lawyer, but that was the issue at hand.
- With regards to the arbitrator, the 20
- 21 arbitrator said there are four corners to this
- 22 contract. And because there are four corners to this
- 23 contract, Mr. Sloan has to pay Power of Fives. She
- 24 said -- she did say that there could be -- and I don't 25 have it in front of me, again, but there could be an

- campaign finance issues for the reasons you stated.
- Well, I think if there's no other --
- MR. LA SOTA: Madam Chair. 3
- CHAIRWOMAN CHAN: Oh, I'm sorry. Did I miss 4
- anybody or --
- MR. LA SOTA: 15 more seconds.
- CHAIRWOMAN CHAN: Okay. 7
- MR. LA SOTA: Going back to 16-942(B), where
- we were talking about reporting the language, the last
- sentence of that subsection says, the candidate and the
- candidate's campaign account shall be jointly and severally responsible for any penalty imposed pursuant
- to this subsection. So I think clearly that's a
- penalty provision for -- for candidates.
- CHAIRWOMAN CHAN: Okay. And I think -- now, 15
- I see --16
- MR. SLOAN: But what -- but what happens --Madam Chair, I'm sorry. I didn't mean to interrupt.
- But what happens when you have a situation where a
- consultant spends money or says they spent money on behalf of a candidate, without the candidate ever being
- 22 informed or told that that was happening, and then
- 23 dropped a bill on the desk that says, pay me \$116,000
- 24 for 17 days of work and, oh, by the way, it wasn't 17
- 25 days of work, we started work back in August. I mean,

19

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- 1 he could make up any mythical date that he wanted and2 use it.
- 3 What Bob Branch has done and The Power of
- 4 Fives has done is they're trying to have it both ways
- 5 in this case. Now they're saying, well, there's
- 6 nothing wrong with our contract, but also, Eric Sloan
- 7 owes me all this money. And if he can't pay for it out
- 8 of Clean Elections, he just has to pay for it out of
- 9 his own pocket. It's preposterous.
- 10 CHAIRWOMAN CHAN: Okay. Thank you,
- 11 Mr. Sloan.
- MR. SLOAN: Thank you.
- 13 CHAIRWOMAN CHAN: I'm going to -- I'm going
- 14 to put a pin in the conversation now because I think --
- 15 I mean, I think I've heard enough to move forward. I
- 16 feel more comfortable now. I know I've made staff
- 17 aware, just from my statements here, the concern I have
- about -- you know, but I think I understand it a little
- 19 better now. I have a little more comfort with it. I
- 20 definitely agree on the law regarding the obligation.
- 21 That's where you start the obligation to report, not
- 22 the actual getting the money and changing hands. Does
- 23 that make sense?
- 24 So for myself, I think I'm comfortable moving
- 25 forward. I want to make sure the other Commissioners

- 1 recommendation memo set forth in the materials.
- 2 MS. COADY: I would recommend that the motion
- 3 does include the reason to believe language and also --
- 4 CHAIRWOMAN CHAN: Oh, well done, Commissioner 5 Kimble.
- 6 MS. COADY: I'm so pleased. I'm so
- 7 impressed. And also, recommend that the motion would
- 8 include both the complaint and the reason to believe
- 9 memorandum, because the complaint does specify the
- statutes in more detail, as Ms. Karlson had mentioned.
- So perhaps a motion along the lines of, you
- 12 know, move to proceed with an investigation.
- 13 Commission finds reason to believe violations of the
- 14 statutes or rules may have occurred based on the
- 15 complaint and the reason to believe memorandums
- 16 provided, something along those lines.
- 17 CHAIRWOMAN CHAN: Commissioner Kimble.
- 18 COMMISSIONER KIMBLE: Madam Chair, can I just
- 19 cut and paste what Ms. Coady said --
- 20 CHAIRWOMAN CHAN: Certainly.
- 21 COMMISSIONER KIMBLE: -- as my motion?
- 22 CHAIRWOMAN CHAN: Yes.
- Okay. So we have a motion. And do we have a
- 24 second?
- 25 COMMISSIONER MEYER: I second. Commissioner

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- 1 are as well. Unless you guys have any questions, I 1 Meyer.
- 2 will entertain a motion to approve the recommendation
- 3 memo set forth in the materials or a motion to
- 4 determine there's no reason to believe. So does one of
- 5 you want to make a motion?
- 6 COMMISSIONER KIMBLE: Madam Chair.
- 7 CHAIRWOMAN CHAN: Yes, Commissioner Kimble.
- 8 COMMISSIONER KIMBLE: I move that we
- ${\bf 9}\;$ authorize Tom to move ahead as -- I want to make sure I
- 10 have the wording correctly --
- 11 CHAIRWOMAN CHAN: To approve the
- 12 recommendation memo?
- 13 COMMISSIONER KIMBLE: -- to approve the
- 14 recommendation and move ahead with a -- determine that
- 15 we believe -- we believe that there's reason to believe
- 16 violations of the Clean Act and -- Clean Act and rules
- 17 may have occurred.
- 18 CHAIRWOMAN CHAN: Thank you.
- 19 Is there a second?
- 20 COMMISSIONER MEYER: Just -- just so we're on
- 21 the same page, can I get that motion one more time?
- 22 Can I hear that again?
- 23 CHAIRWOMAN CHAN: Sure.
- 24 Do you want to restate it, Commissioner
- 25 Kimble? I think you can say, motion to approve the

- 1 Meyer. I second it.
 - 2 CHAIRWOMAN CHAN: Thank you.
- 3 And we'll go ahead and have our vote.
- 4 Commissioner Meyer, how do you vote?
- 5 COMMISSIONER MEYER: Aye.
- 6 CHAIRWOMAN CHAN: Commissioner Kimble.
- 7 COMMISSIONER KIMBLE: Aye.
- 8 CHAIRWOMAN CHAN: And I vote aye as well.
- 9 I appreciate the staff and Mr. La Sota and
- 10 Mr. Sloan explaining all of this to me. I feel like
- 11 I've been a little bit of a logiam with, you know, my
- 12 difficulty, but I do believe that there is reason to
- 13 believe here, and that's why I did vote aye. And so
- 14 with our votes of three ayes and zero nays, we have
- 15 approved that as moved and will move on to the next
- 16 item, Item VII.
- .7 I did want to ask our court reporter, do you
- 18 need a break? We have a few items left, and I wondered
- 19 if you could use a brief break.
- THE COURT REPORTER: I'm okay to keep going if everyone else is. Thank you for checking.
- 22 CHAIRWOMAN CHAN: Okay. Sure. All right.
- Everyone else good to keep going? We'll just try to move it along.
- All right. Item VII, discussion and possible

- 1 action on MUR 20-04, Eric Sloan. This item concerns a
- 2 complaint brought by Dr. Bob Branch of The Power of
- 3 Fives against Eric Sloan, who is a Corporation
- 4 Commission candidate.
- The Commission determined reason to believe
- 6 last December and entered a repayment order in April
- 7 that Mr. Sloan fulfilled. He has requested to address
- the Commission regarding this matter, and we may close
- the matter or take no action. Staff has not proceeded
- to the next stage in MUR 20-04, but is available to answer questions. 11
- So with that, I'll allow Mr. Sloan to speak 12
- to this. And then if the Commissioners have any
- questions or comments, perhaps Tom can step in.
- MR. SLOAN: Sorry. I hit my camera button 15 there instead of the mute button. 16
- CHAIRWOMAN CHAN: Oh, that's all right. 17
- MR. SLOAN: Well, let me see. Where to 18
- begin. A brief historical background. I was a Power
- of Fives candidate. I was -- my signatures were
- actually challenged by Bob Branch's attorneys, his
- legal counsel for his Power of Fives corporation. That
- began to sour our relationship.
- Subsequently, I did hire Tim La Sota, who was 24 25 on this call representing Bob Branch. Tim La Sota

- Page 72 1 Elections staff that it was not compliant with Clean
 - 2 Elections law.
 - At that point, I put a full stop on all
 - 4 monies and payments to Bob Branch and withheld that
 - 5 money. It was about \$94,000. The Commission did agree
 - that there were \$23,000 in justifiable expenses after I
 - fired The Power of Fives and Dr. Branch. As I stated
 - before, there were 17 days between my qualifying and
 - Dr. Branch being fired, Power of Fives being fired.
 - There was actually 30 days between the time that I got
 - the check and my canceling the contract with
- 12 Dr. Branch, but I understand that the qualifying is the
- issue, not the actual receipt of the check. I have
- fully admitted to my fault in this.
 - As I said before, I am being sued civilly.
- 16 My wife and I personally are being sued by The Power of
- Fives. I did not enter into that contract as an
- 18 individual. I entered into it as a candidate. There
- are several lawyers on the call, so I'm sure everyone
- can make the distinction there.
- This investigation is being used as a weapon 21
- 22 against me in the civil matter. It's being used to --
- 23 to tell people who are decision makers, who don't
- 24 understand the Clean Elections process, who don't
- 25 understand the administrative law side of the state

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- 1 represented me in court. He was my attorney. He, 2 candidly, never disclosed that Bob Branch was his
- 3 client. I was always under the assumption that I was
- 4 his client. I found this out, that Bob Branch was his
- 5 client, in the newspaper, of all places, in November during the last election cycle.
- The issues that arose between me and
- 8 Dr. Branch arose specifically around his billing
- practices and the fact that he was trying to bill me
- 10 for things that he never did and he was trying to bill
- me for things that he couldn't possibly do, as example,
- printing services. He also had made several comments,
- and I believe the Commission has these documents, where
- he said that that money was not the campaign's money.
- It was his money to spend as he saw fit.
- At that point, I contacted Lee Miller, who I 16
- had met during the campaign, who is an elections 17
- attorney. I believe Lee spoke directly with Tom and
- Kara regarding the situation. We fully disclosed every
- single thing that was going on. I have done nothing to
- prevent the Commission from having full access and full
- disclosure with regards to my campaign. I have
- admitted that I entered into a contract, which I
- 24 believed was legal at the time that I entered into it, 25 but subsequently was notified by elections -- Clean

- 1 agencies, that I am under investigation for acting 2 improperly, when I think I have clearly stated here and
- 3 continue to state in my civil matter that I was
- 4 defrauded and that I was the victim of that fraud. And
- once I discovered it, I completely put the brakes on
- it. And then I was retaliated against using the
- official process of Clean Elections to basically try to
- ruin me is what Bob Branch and The Power of Fives is
- trying to do.
- The only way for me to move forward is to ask 11 the Commission to please end the investigation with
- 12 regards to me as an individual. And I don't know if
- 13 that's the right wording. Tom, you'll have to help me.
- Kara, I would need your -- I don't know what the
- wording is, so I apologize, but --
- Tom, is that the right wording? 16
- MR. COLLINS: Yeah. I mean, I'm sorry, Madam 17 Chair. I --
- MR. SLOAN: I'm not asking for legal counsel. 19 20 I'm asking for --
- MR. COLLINS: No. No. No. No. I follow. 21
- Madam Chair, Commissioners, I think that -- I
- 23 mean, so just to recapitulate, I think what we're
- 24 hearing, I think what Mr. Sloan is saying is, look, you
- 25 got this matter under review. Will you close it?

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- MR. SLOAN: Yes, that's exactly what I'm
- 2 saying. I would -- I would -- I have no problems with
- 3 continuing to work with the Commission with regards to
- 4 what happened in the past, but also, and I've told Tom
- 5 and Kara this, Bob Branch is continuing this fraud on
- 6 other candidates. He has already signed up other
- 7 candidates. He has already signed contracts to put a
- 8 concert in place, to put other events in place. He is
- 9 moving forward, full steam ahead, with total disregard
- 10 for this Commission, because his intent is to drain the
- Clean Elections fund of money.
- As I told you, he is -- he is promising 12
- services that he is not going to provide and can't
- provide. And I don't want to see other people end up
- in the situation that I'm in and the stress that my
- family is under because of this civil suit, because the
- arbitrator didn't understand Clean Elections law, which is exactly what he was hoping for. And so I am
- throwing myself on the mercy of this Commission and asking you to please end this. 20
- CHAIRWOMAN CHAN: Thank you, Mr. Sloan. It 21
- 22 really is -- I just hate hearing about the troubles
- 23 that people have to go through with regard to
- disagreements like this that blow up and become
- 25 litigation, so I am sorry about that for you and your

1 you could ask Mr. Collins to weigh in. But I would

- 2 advise you that in your rules, when a matter is closed,
- 3 it's typically because the Commission has found, after
- 4 investigation or after hearing, that a violation did
- 5 not occur.
- Here there's -- it's at the discretion of the
- Commission, after some discussion, whether you want to
- continue with the investigation or close the matter.
- 9 But any motion, I would ask if you do move to close it,
- would have more of a factual basis so you don't set the
- precedent of closing matters without coming to the
- conclusion a violation didn't occur.
 - Here there are extenuating circumstances.
- 14 And so after you ask your questions of Mr. Collins and
- 15 perhaps more of Mr. Sloan, then you can come to your
- 16 own conclusions and make a motion to either continue
- the investigation or to close it for whatever reason. CHAIRWOMAN CHAN: Thank you.
- And actually, that does -- I guess I do have 19
- 20 a question, and perhaps the other Commissioners will
- have the same one or others. But, for example, I
- 22 really thought we had kind of put Mr. Sloan's case to
- 23 bed. He had paid all the money back. And so I hate to
- confess I was surprised we were still having his case
- 25 hang around, because that makes me sound like I don't

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- 1 family.
- MR. SLOAN: Thank you.
- CHAIRWOMAN CHAN: Let me ask, do any of the 3
- Commissioners have comments or questions?
- And Tom, perhaps you could -- would it be
- 6 appropriate or acceptable to ask you weigh in on your opinion on this?
- MR. COLLINS: Well, I mean, if you're -- if
- 9 you're asking me that question, I think it is. But
- 10 really, Ms. Coady would have to answer that question if you're asking.
- CHAIRWOMAN CHAN: Okay. Well, maybe 12 13 Ms. Coady can do it.
- MS. COADY: Madam Chairwoman --14
- CHAIRWOMAN CHAN: I don't know if we've ever 15
- 16 been in this situation before, and it seems very
- unique. And I can kind of understand, based on what
- Mr. Sloan is presenting, the broader lay of the land
- that -- you know, in law school we studied cases, and
- usually it seemed like it was family law that this type 21 of stuff would happen in, but -- so perhaps, yes,
- Ms. Coady, could you weigh in on this and --
- MS. COADY: Yes. Madam Chairwoman.
- 24 Commissioners. There really are no rules guiding what
- 25 you can ask of whomever is on the call, so certainly

- 1 know what's going on. But I will admit, I apparently did not know what was going on.
- MR. SLOAN: No. And Madam Chair, if I can, 3 please.
- 5 CHAIRWOMAN CHAN: Sure, Mr. Sloan. Go ahead.
- MR. SLOAN: I don't think that the issue is
- with regards to it just hanging around. I think the
- issue is regards to extenuating circumstances that are
- happening in civil court currently, right.
 - CHAIRWOMAN CHAN: Yes.
- MR. SLOAN: The other part of that is, and to 11
- 12 Ms. Coady's point, I think the factual basis is that
- there was an investigation. I have admitted that I
- 14 entered into a contract improperly. I repaid \$94,000
- to the Commission, which has got to be one of the
- 16 highest repayments the Commission has ever received. I
- was a steward of the money. And I have, in every step
- 18 of this situation, tried to do the right thing. And so
- if there is a factual basis for saying that the
- 20 investigation is over, that there has been a remedy,
- 21 that -- those are the facts.
- CHAIRWOMAN CHAN: Thank you, Mr. Sloan. And
- 23 I -- I don't know if you're, you know, going to run
- 24 again, but if you do, I hope you'll consider running

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just hate that you had such a horrible experience,apparently. Maybe --

MR. SLOAN: Well, staff has been wonderful.
 Let me just be very clear. Staff has been terrific.

- 5 They have always told me that they are not my legal6 counsel, which I greatly appreciate, because I don't
- 7 know -- I mean, they're always -- I mean, it's been
- 8 really -- working with the Clean Elections staff has

o not been an issue.

10 CHAIRWOMAN CHAN: That's wonderful to hear.
11 I mean, I didn't expect --

MR. SLOAN: There has been outside issues, yeah.

14 CHAIRWOMAN CHAN: Tom, do you have a position 15 you could talk to us about on this?

MR. COLLINS: So, Madam Chair, Commissioners, yes. I mean -- and I take Ms. Coady's advice to heart.

18 I think that's -- I think that's a fair point and I --

and I -- and I agree with -- and so I'm not sure,

20 within that, you know, how you would craft that, but

21 here's what we -- here's what we know. You know, 22 everything -- I mean, without getting into the stuff we

don't know, which is really the civil action side, you

know, it is true and it's in our -- and it's in all the

25 memos associated with this that it was Mr. Sloan's

1 that. So we may not --

2 MR. SLOAN: We would fully comply.

MR. COLLINS: Yeah. Yeah. So we may not be -- we may not be done with the -- with the -- with

5 the factual issues here.

So, you know, the harder part here is -- and I suppose maybe I should have been more effective as

8 staff here. The harder part here I think really is the

9 issue that Ms. Coady identified. So, for example, if

we could put together a motion that simply said, like, look, we are going to conclude this matter and, based

12 on the representations of Mr. Sloan, we are not -- we

13 don't see the need to impose further penalties, and 14 therefore, we are closing it, you know, or something

15 along those lines that makes that record, you know, I

6 think -- I feel comfortable with that.

And then Kara -- Ms. Karlson has something to add, Madam Chair, if you would recognize her. Thanks.

19 CHAIRWOMAN CHAN: Certainly.

20 Ms. Karlson.

MS. KARLSON: Madam Chair, Commissioners, the only thing that I would add -- I think that Tom is on the right track. And again, you know, I'm in this spot right now where I'm not advising you necessarily. You

25 know, I'm not advising you. But what I would advocate

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1 campaign that initially contacted us about this

2 dispute, and they did follow the Act with respect to3 how this dispute was to be treated.

It's also true -- and, Madam Chair, you're

5 not wrong. I mean, we had a substantiative hearing in

6 April, we had -- about the repayment order. We went 7 through that. Mr. Sloan made -- I mean, it wasn't

8 sworn, but, you know, what amounts to an allocution

around those issues.

So I don't know how you phrase the -- how you put that phrasing together, I'll be candid. What I think is this. The reason we have this case open as a

separate matter still is because of the fact that we

14 are in a situation where we wanted to make sure that we

retained jurisdiction over the transactions. We believe we have the jurisdiction over the transactions

16 believe we have the jurisdiction over the transactions 17 in two ways. We are not currently seeking additional

18 penalties against Mr. Sloan. Like if you were to say

19 today, what do you want to do about this, you know, we

would not be in a position to say that we would be seeking a penalty on top of the repayment. You know,

22 so -- I mean, we obviously are going to have to retain,

and I think we have the authorization to -- you know, if we have to subpoena Mr. Sloan or his spouse, you

25 know, as part of the thing, we're going to have to do

1 for is to include, as part of that factual basis, that

2 there was a repayment that made the -- you know, a

3 repayment of the remaining Commission funds. Because I

4 do think that that is important, as part of the factual 5 basis for concluding the investigation, that, you know,

6 there was an investigation, there was, as you put it,

7 Madam Chair, I think, essentially an allocution, and8 there was a repayment of those funds. And on that

basis, with all of those factors, I think that that

provides a good precedent for future investigations

11 when we're moving forward. It's not just a, oh, well, 12 you dismissed, you know, this other case for no reason.

3 We can say, no, there -- there were very good reasons.

CHAIRWOMAN CHAN: Yeah. I mean, I -personally I -- on one hand, I hate to treat somebody
differently from how we would treat a regular case, but

17 I think this is just the first time somebody has

18 actually come to us to ask us to close the case, and 19 it's after all of this -- he's cooperated with our

20 investigation, repaid all the Commission funds, been

21 present at every meeting we've talked about this at to 22 add his information. And I think if anybody came to us

in this way, we would be willing to consider it.
I hope I'm not -- you know, I may or may not
be speaking for all of us. But doesn't mean we would

- 1 always approve it; I don't know whether we will today.
- 2 I'm interested to hear from the other Commissioners
- 3 whether they have questions or comments. But, you
- 4 know, those are kind of some of the concerns I have, I
- 5 suppose, that we've just never done this before. But
- 6 again, nobody has suggested it before. So there's a
- 7 first time for everything, I suppose.
- 8 Commissioner Meyer, did you have a comment or 9 a question?
- 10 COMMISSIONER MEYER: I did. Thank you, Madam
- 11 Chair. I think I know the answer to this question, but
- 12 I just want to make sure it's on the record. And this
- 13 is a question for -- for Tom and staff. It sounds like
- 14 from the point that Mr. Sloan brought this issue to
- 15 your attention or came to you regarding this that he's
- 16 been entirely cooperative and done everything you've
- 17 asked him to do. Is there anything that the Commission
- 18 and staff have asked of Mr. Sloan that he has not done
- 19 or not cooperated with since he came to you -- came to
- 20 the Commission with this issue?
- MR. COLLINS: Madam Chair, Commissioner
- 22 Meyer, no, I can't -- I couldn't identify a thing.
- 23 COMMISSIONER MEYER: Okay.
- 24 CHAIRWOMAN CHAN: Tom, did you need to add --
- MR. COLLINS: No. I mean, like I said -- I

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- order, I had the check written and drove it down toClean Elections immediately.
- 3 MR. COLLINS: I mean, that's -- so that's --
- 4 yes. So I'm just -- Madam Chair, Commissioner Meyer,
- 5 just to try to fill out the record a little bit there,
- 6 you know, they brought the issue to us. When the
- 7 complaint arose, they didn't withdraw from interacting
- 8 with us.
- 9 I would also note Mr. Sloan, because of the
- 10 financial aspects of this, is acting pro per. And I
- 11 think that -- and so -- and as Mr. Sloan said, and I
- 12 appreciate him saying, we have -- we have been in a
- 13 position where we cannot ask -- we cannot -- we have to
- 14 respect our roles as State employees and attorneys, so
- 15 it's been -- in other words, he's been navigating this 16 in a way -- in an environment where neither Kara nor I,
- 17 as a professional nor legal matter, are in a position
- 18 to assist him or to even really do anything other than
- 19 tell him he shouldn't be talking to us, so -- so --
- o quite frankly.
- 21 And so I just -- I don't know really what
- 22 else to add, but I -- but other than under the
- 23 conditions -- you know, we've done repayments before.
- 24 We've had candidates get involved in stuff, and some of
- 25 them -- and some of them go south.

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- COMMISSIONER MEYER: So Madam Chair.
- CHAIRWOMAN CHAN: Yes, Commissioner Meyer.
- 3 COMMISSIONER MEYER: I mean, we're stewards
- 4 of this money, this Clean Elections funding money. Is
- 5 it your findings, Tom, or your opinions that all the
- 6 money -- the Clean Election funding was either
- 7 appropriately spent by Mr. Sloan's campaign or returned
- 8 to the Commission?
- 9 MR. COLLINS: Madam Chair, Commissioner
- 10 Meyer, yes. Under the terms of the repayment order,
- 11 which is -- which was -- which is a comprehensive
- 12 detailing of the -- of the accounting leading up to
- 13 that that is included in the order, and the order --
- 14 yes, that is, in fact, correct. In fact, the \$94,000
- 15 amounts to virtually the entirety of the primary
- 16 funding that Mr. Sloan received.
- 17 COMMISSIONER MEYER: Okay.
- 18 CHAIRWOMAN CHAN: So, Ms. Coady, do you
- 19 believe that we've kind of laid out enough of the facts
- 20 here for our consideration that we could make a motion?
- MS. COADY: Madam Chairwoman, Commissioners,
- 22 I do. I think that the rationale that has been
- 23 discussed would be the cooperation of Mr. Sloan and the
- 24 completion of the repayment order or fulfillment of the
- 25 repayment order or some such wording.

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1 mean, the fact -- the facts -- I mean, putting aside

- 2 the, you know, facts around that we don't know, the
- 3 interactions with the Commission were -- they came --
- 4 the campaign got in touch with us in, I don't know,
- 5 August or something of 2020 and proceeded accordingly,
- 6 and the complaint came after that. We don't know -- we 7 don't -- we, as Clean Elections staff, don't know all
- 8 the things that happened in the intervening, you know,
- 9 that caused Mr. Branch to then bring this complaint.
- 10 We don't. But we do know that, like I said, Mr. Sloan
- 11 has provided us those documents that we requested and 12 he has -- you know, so I just don't -- I just -- I'm
- 13 trying to think through all the transactions we've had,
- 14 and it's hard to find one. I have not -- I can't
- 15 find -- I can't find one that -- where we asked for
- 16 something and didn't get it immediately. I mean, we
- 17 got the repayment order done in -- very quickly. That
- 18 was -- I mean, that was --
- MR. SLOAN: Few hours.
- MR. COLLINS: Yeah, that was -- that was -- I
- 21 mean, that was, in itself --
- 22 CHAIRWOMAN CHAN: That is fast.
- MR. COLLINS: Yeah, so --
- MR. SLOAN: I mean, literally we had the
- 25 check written -- the second we signed the repayment

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- CHAIRWOMAN CHAN: Okay. Is there a
- 2 Commissioner who would like to make a motion on this?
- 3 Do you need help with language?
- COMMISSIONER MEYER: I guess I just want to
- 5 understand what closure of the file -- closure of this
- 6 case means that -- that the Commission no longer has
- 7 jurisdiction to investigate this anymore. But I guess,
- 8 you know, with my litigator hat on, I mean, we have --
- 9 the case against The Party of Fives is ongoing. Is
- 10 that the -- that's the case where you would use -- you
- would use that -- the fact that that case is open as
- your -- as your vehicle to get any discovery that you
- need on that issue, right? I mean, we're done with 14 Mr. Sloan, right?
- MR. COLLINS: Madam Chair, Commissioner 15
- 16 Meyer, that's -- yes, we had -- we had maintained this
- case for -- you know, really with the idea that if --
- if there were -- if there was -- that having the
- penalties available in the event that there was not
- cooperation or things turned out to not be truthful, et
- cetera, those were the kinds of things we're always
- concerned about. So, I mean, you know, we have --
- And I would say, and I want to make clear,
- 24 because I think Rep -- not the Representative. I think
- 25 the Chairwoman made a very good choice -- not yet,

- 1 into consideration, is it possible that one of you
- 2 might have a motion, my fellow Commissioners? Do we
- need help with language on that?
- COMMISSIONER MEYER: I -- I think I have one
- 5 here, Madam Chair, if I can make that.
- CHAIRWOMAN CHAN: Sure. Sure, Commissioner Meyer.
- COMMISSIONER MEYER: I would move that, based
- 9 upon the unique facts of Mr. Sloan's case, including
- 10 the fact that Mr. Sloan has made repayment to the
- 11 Commission consistent with the order he agreed to, has
- 12 fully cooperative with the Commission in investigating
- 13 this matter since it was brought to the Commission, and
- based upon the fact that the Commission has done an
- 15 investigation and is seeking no further penalties from
- Mr. Sloan, that we close this case.
- CHAIRWOMAN CHAN: Thank you. 17
- 18 Do I have a second?
- COMMISSIONER KIMBLE: Commissioner Kimble. I 19
- 20 second.
- CHAIRWOMAN CHAN: Thank you. All right. 21
- With that, we will take a vote. Commissioner 22
- 23 Meyer, how do you vote?
- COMMISSIONER MEYER: Aye. 24
- CHAIRWOMAN CHAN: Commissioner Kimble. 25

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- 1 Representative -- that, you know, that this isn't --
- 2 that this isn't a, oh, this is what -- you know, that
- 3 this is not something anyone -- would happen to just
- 4 anyone. I mean, we really do have a substantial record
- 5 here. And, you know, I mean, and we have -- frankly,
- 6 we have -- many of the facts are not in dispute. You
- 7 know, some of the facts are, and we need to get to the
- 8 bottom of that. That's a whole other thing. But I
- 9 just feel like we are -- we are not in a position where 10 we would be seeking that additional penalty at this
- 11 point, and so...
- 12 CHAIRWOMAN CHAN: Okay. Thank you.
- Yeah. I will say, Mr. Sloan, you have 13
- 14 definitely stood out as an active participant, very
- cooperative participant in this whole process, which,
- from my perspective as a Commissioner, I really
- appreciate. Especially since I used to do campaign 17
- finance enforcement at the Secretary of State's Office,
- it's nice when you can kind of work cooperatively with the people you're doing enforcement against --
- MR. SLOAN: Yeah. 21
- CHAIRWOMAN CHAN: -- since it can be an 22
- adversarial process. So thank you for that.
- MR. SLOAN: Thank you. 24
- CHAIRWOMAN CHAN: So having taken all of this 25

- COMMISSIONER KIMBLE: Aye. 1
- CHAIRWOMAN CHAN: I vote aye as well. 2
- And with that, we will close MUR 20-04 3
- 4 regarding Eric Sloan. Congratulations, Mr. Sloan.
- MR. SLOAN: Thank you very much. I 5
- appreciate it.
- CHAIRWOMAN CHAN: And thank you for -- for
- that cooperation. I'm sure that's, you know --
- MR. SLOAN: Absolutely. And again, you know,
- without repeating myself, I'm happy to continue to
- 11 cooperate with any of the investigations that have to
- 12 do with The Power of Fives and the Sloan campaign from
- 13 2020, but I did want to make the Commission aware that
- 14 The Power of Fives is continuing to do business as it
- did in 2020. And so thank you so much. I really appreciate it. Thank you.
- CHAIRWOMAN CHAN: Thank you. 17
- All right. With that, we can move on to 18
- 19 Item VIII, discussion and possible action of -- on election of Chairperson for 2022.
- COMMISSIONER MEYER: Madam Chair, can I make 21
- 22 a brief comment on Item No. VII before we move on?
- 23 CHAIRWOMAN CHAN: Oh, certainly. I'm sorry.
- Commissioner Meyer, please. 24
- COMMISSIONER MEYER: That is, you know, I 25

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- 1 certainly understand -- I'm very sympathetic and
- 2 empathetic for what Mr. Sloan has gone through. You
- 3 know, I just feel like he was an unknowing victim here
- 4 of this scheme that we were talking about with The
- 5 Party of Fives. And if there is -- I don't know our
- 6 training materials inside and out for the Clean
- Election candidate training, but maybe this is
- 8 something we want to make sure that we're informing
- candidates about to very closely look at these
- consulting agreements and understand the risks. And I
- don't know if there's a way to run these agreements
- through Commission staff before they're signed, as
- opposed to after the fact. And if this is already
- 14 being done, forgive me. But I just want to put that on
- the record that if there's a way we can help future
- candidates avoid the scenario that Mr. Sloan has had to go through, let's do that. 17
- 18 CHAIRWOMAN CHAN: Thank you.
- Oh, Tom. 19
- MR. COLLINS: I just want to -- Madam Chair, 20
- 21 I just want to say that we can take that as direction
- and make sure we review our materials. I mean, I can
- state with confidence that our materials cover this
- 24 kind of -- when obligations arise under the Act, they
- 25 do. But I do think that, you know, we can always shore

- 1 of the other Commissioners is desiring of or willing to
- 2 be the Chairperson next year, I am more than happy to
- 3 nominate that person and we can vote on it today. So
- with that --
- COMMISSIONER KIMBLE: Madam --5
- CHAIRWOMAN CHAN: Yes. 6
- 7 COMMISSIONER KIMBLE: Madam Chair.
- CHAIRWOMAN CHAN: Commissioner Kimble. 8
- COMMISSIONER KIMBLE: As you point out, we --
- 10 we are, in about two and a half weeks, going to be in
- 11 unprecedented territory where all five of us are
- 12 serving past the end of our term. And the people
- charged with appointing members have not followed
- through with their legal responsibility to do that for
- 15 five years now, which is unfortunate. But we have a, I
- think, I don't know if it's a policy, but it's
- certainly a strong tradition of selecting a new Chair
- every year, and I think it is incumbent upon us to
- carry forward in as normal a manner as possible given
- the challenges that we're unexpectedly facing.
- And with no -- with no disrespect to you, 21
- 22 Madam Chair, because I think you've done an excellent
- job this year, I would like to nominate Commissioner
- Meyer to be Chair for 2022 --
- 25 CHAIRWOMAN CHAN: All right.

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- COMMISSIONER KIMBLE: -- and I hope he'll 1
- 2 is what I'm trying to -- we can always look at -- if we
- 3 wanted to get that kind of information, you know, we

1 that up. And, you know -- and if necessary, and this

- 4 can -- we can talk about how to -- how to do that.
- Certainly one thing we can tell people and we
- have -- well, I'll leave it there. We will take that 7 and try.
- CHAIRWOMAN CHAN: Okay. Thank you. 8
- 9 Commissioner Meyer, that's an excellent suggestion. 10
- COMMISSIONER MEYER: Thank you. 11
- 12 CHAIRWOMAN CHAN: And thank you, Tom.
- 13 All right. And with that, we can move on to
- 14 the -- get a -- get a volunteer perhaps. Well, we can
- talk about Item VIII. Every year we do elect a
- Chairperson to chair meetings in the next calendar
- year, and we are at a crossroads that we have never 17
- been at before because we do not have a junior member
- to nominate or saddle with the job. We don't even
- have, you know, all five of us here. 20
- And so I will say that I am happy to continue 21
- 22 doing this job if you should want me to continue doing
- 23 it. I know that just being a Commissioner is a big 24 job. You know, it's disruptive once a month. It's
- 25 a -- it's an important job, in my opinion. But if one

- 2
- 3 CHAIRWOMAN CHAN: Commissioner Meyer, your 4 thoughts.
- COMMISSIONER MEYER: I don't know whether I 5
- should consider this appointment to be a lifetime
- appointment or a lifetime sentence at this point, and I
- say that jokingly.
- Tom, did you have something to say? 9
- MR. COLLINS: No, I don't have a better --10
- CHAIRWOMAN CHAN: I think this whole 11
- 12 situation is a little humorous, isn't it? We're doing
- a voluntold Chairmanship now going forward.
- COMMISSIONER MEYER: Well, I joke because I
- 15 don't know what else to do. I -- I know -- I'm very
- 16 honored to accept -- or, to be nominated, and I just
- want to, you know, flesh this out a little bit more. I
- mean, 2022 is going to be a very big year for the
- Commission, for the state with the midterms. And I am
- 20 happy and more than willing to serve as Chairperson of
- 21 this Commission. I am also a full-time practicing 22 attorney and full-time dad. And I know Commissioner --
- 23 I mean, we're all working, we're all busy. I know --
- 24 I'm not sure if either of you feel like you have more
- 25 time to devote to the Chairperson position. I would

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- 1 like to hear from you on that. Again, I'm happy to do
- 2 it and I'm not rejecting the nomination, but I
- 3 certainly maybe want to talk with you all a little bit4 about it more.
- 5 And as far as the tradition of changing the
- 6 Chairmanship every year, tradition has been thrown out
- 7 the window here, as all five of us are now past the
- 8 five-year plan. I personally would have no issue with
- 9 Madam Chair -- Commissioner Chan serving as Chairperson
- 10 again. I think you've done a great job. So I'll just
- 11 throw that -- those considerings out. I want to throw
- 12 that out to you two to kind of hear from you about 13 that.
- 13 mai.
- 14 CHAIRWOMAN CHAN: Well, and maybe --
- 15 Commissioner Kimble, I don't know -- I know that you
- 16 served perhaps more recently as Chairman than
- 17 Commissioner Meyer, but it was still a Chairman -- two
- 18 Chairmen removed if you were going -- would you be
- 19 willing to consider being the new Chairman next year
- 20 perhaps? I was trying to think in my mind, frankly, of
- 21 who's not working full-time, and I think it is
- 22 Commissioner Kimble and myself of the five of us, if
- 23 I'm not mistaken. Because I know that that can be a
- 24 factor now that we don't really have anybody new. What
- 25 do you think, Commissioner Kimble? Would you

CHAIRWOMAN CHAN: I mean, I -- I would like

- 2 it to be someone who's willing to accept it. And if
- 3 you are, I'm happy to support your nomination. I just
- Jundarstand I feel like there's again
- 4 -- I understand -- I feel like there's -- again,
- 5 because of the fact that everybody is here now -- going
- 6 to be here past their expiration date next year, I was
- 7 thinking about rolling back through seniority, you
- 8 know, even. But I also feel like once people's seats
- 9 have expired, they move on in a little bit of a regard,
- 10 you know, not that they don't participate. But to go
- 10 you know, not that they don't participate. But to go 11 back through seniority, so -- but I have no problem
- 12 switching Chairs. I just hate to see --
- COMMISSIONER KIMBLE: Madam Chair.
- 14 CHAIRWOMAN CHAN: Yes.
- 15 COMMISSIONER KIMBLE: I think seniority is a
- 16 good point. And I would have nominated Commissioner
- 17 Titla, but he has challenges of his own at getting to
- 18 meetings, and so the next most senior member is
- 19 Commissioner Meyer.
- 20 COMMISSIONER MEYER: Okay. Well, based upon
- 21 the comments from my fellow Commissioners, I will 22 accept the nomination.
- 23 CHAIRWOMAN CHAN: All right. Excellent.
- 24 COMMISSIONER MEYER: Do we vote?
- 25 CHAIRWOMAN CHAN: Yeah, I think we -- we do

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- 1 perhaps --
- 2 COMMISSIONER KIMBLE: Oh, well, I wasn't --
- 3 this is probably selfish, but I wasn't really thinking
- 4 so much of who has the time to do it. I was thinking,
- 5 as Commissioner Meyer pointed out, that 2022 is going
- 6 to be a busy and challenging year. And for that
- 7 reason, I think Commissioner Meyer is best suited to
- 8 lead the Commission during this.
- 9 Again, I think, Madam Chair, you've done --
- 10 you've done an exceptional job this year, which has
- 11 been a -- a weird year. But I just don't think that we
- 12 ought to say, well, tradition has been all upended, so
- 13 let's just -- let's just stop picking new Chairs. I --
- 14 I feel Chairman Meyer would be the best Chair for this
- coming year, which is not really answering your question, but that's my feelings.
- 17 CHAIRWOMAN CHAN: Okay. Well, no. I mean, 18 you know, that's perfectly acceptable.
- Well, Commissioner Meyer, I think
- 20 Commissioner Kimble has made his feelings known. And,
- 21 you know, I don't know if we should take a vote today
- 22 or wait and see if any of the others want to offer
- 23 themselves up as Chairpeople.
- 24 COMMISSIONER MEYER: Commissioner Chan,
- 25 what's your opinion?

- 1 vote.
- 2 MR. COLLINS: We have -- you have voted
- 3 historically.
- 4 COMMISSIONER KIMBLE: And I made a motion,
- 5 which I don't know if it's been seconded.
- 6 CHAIRWOMAN CHAN: Oh, then I will second the
- 7 motion and then we'll call the roll.
- 8 Commissioner Meyer, how do you vote?
- 9 COMMISSIONER MEYER: Aye.
- 10 CHAIRWOMAN CHAN: Commissioner Kimble, how do 11 you vote?
- 12 COMMISSIONER KIMBLE: Aye.
- 13 CHAIRWOMAN CHAN: And I vote aye as well.
- And by a vote of three to zero, Commissioner
- 15 Meyer, you are Chairman for the second time, which I
- 16 don't know if that's been done in the history of the
- 17 Commission, but congratulations.
- MR. COLLINS: It happened one time.
- CHAIRWOMAN CHAN: Oh, it did? Okay.COMMISSIONER MEYER: Oh, don't burst my
- 21 bubble.
- MR. COLLINS: I'm sorry. I mean -- well, I'm
- 23 sorry. I'm sorry. I take it back. It never happened.
- 24 CHAIRWOMAN CHAN: In our recent memory, for
- 25 all of us new to the Commission --

- MR. COLLINS: Oh, yes. Yes. Yes. You would have had --
- 3 CHAIRWOMAN CHAN: -- it's a historical event, 4 so congratulations.
- MR. COLLINS: Mike, Paula, and I are the only three people that actually know that. So if the rest of you forget it, it never happened.
- 8 CHAIRWOMAN CHAN: Okay.
- 9 COMMISSIONER MEYER: This is being live streamed by millions.
- 11 CHAIRWOMAN CHAN: It should be.
- All right. Item IX, we can move on to public comment. So this is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a
- 18 later date or responding to criticism.

 19 So does any member of the public wish to make
 20 comments at this time? You can -- oh, I see Rivko is
 21 here with her hand raised. I'll just note that you can
 22 also send comments to the Commission by mail or e-mail
 23 at ccec@azcleanelections.gov. So, Ms. Knox.
- MS. KNOX: My name is Rivko Knox, for the record. I'm just speaking as a citizen of the state of

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- 1 chat who was off in a different dimension, I suppose2 one might say. But the nice thing was that most of the
- 3 comments were either asking questions or complimenting
- 4 the speakers. And I'm just so happy at the wonderful 5 institution that this is, and that it continues.
- 6 And I'm not sure if this is appropriate for
- 7 me to say or not, but as you know, I am no longer the
- 8 League-assigned observer or representative here, and I
- 9 know a new person has been assigned. And all I can say
- 10 is, I hope that that person is staying in touch with
- 11 you, Mr. Collins, as Executive Director, and the
- 12 Commissioners and adequately reporting. I do send a
- 13 report of the meetings that I attend, or observe 14 afterwards if I'm unable to actually be there on the
- 15 day, to a few people in the League who are interested,
- but I just hope the connection stays, especially with
- 17 the importance of this upcoming election year, 2022.

Thank you very much, and I look forward to seeing all -- or, listening to all of you next month.

Happy holidays.

21 CHAIRWOMAN CHAN: Thank you, Rivko. Same to 22 you. Happy holidays, happy new year.

And is there anyone else who wishes to speak?
I don't even know if there's any other members of the public here. I don't think so.

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- 1 Arizona and a voter.
- 2 Madam Chair and Members of the Commission,
- 3 all three of you, I want to, first of all, to one more
- 4 time tell you how very much I enjoy and learn from
- 5 participating in these meetings about the law and the
- 6 intricacies of the law. I'm not an attorney and never
- 7 have been.
- 8 I also wanted to thank all three of you for
- 9 continuing to serve. I know last time I made a
- 10 comment -- a month ago I made a comment about my
- 11 ongoing, and it's true, my ongoing concern about the
- 12 lack of nomination of new Commissioners. And I don't
- 13 know at this point what anybody -- I know I -- I'm not
- 14 sure there's anything I can do.
- But my -- the main point I wanted to make is
- 16 what a tremendous program the Commission sponsored
- 17 yesterday with the Arizona Capital Times Morning Scoop,
- 18 at which Gina Roberts -- who I found out her real name
- a control of the Roberts who I found out her fear hame
- 19 is Regina Roberts, but that's how it goes, after eight
- 20 years or something I finally found that out -- did an
- 21 amazing job. The entire program was beautifully,
- **22** beautifully, very well organized. Very knowledgeable
- people spoke. All the speakers were experts in what they talked about and spoke to facts.
- 25 Unfortunately, there was one person in the

- So in that case, we will move on to Item -- I
- 2 don't know which item -- oh, it's Item X, excuse me,
- 3 adjournment, motion to adjourn. So I would entertain a
- 4 motion to adjourn.
- 5 COMMISSIONER KIMBLE: Madam Chair.
- 6 CHAIRWOMAN CHAN: Commissioner Kimble.
- 7 COMMISSIONER KIMBLE: I move that we adjourn.
- 8 CHAIRWOMAN CHAN: Okay. Is there a second?
- 9 COMMISSIONER MEYER: Second.
- 10 CHAIRWOMAN CHAN: All right. Let's call the 11 roll. Commissioner Meyer.
- 12 COMMISSIONER MEYER: Aye.
- 13 CHAIRWOMAN CHAN: Commissioner Kimble.
- 14 COMMISSIONER KIMBLE: Aye.
- 15 CHAIRWOMAN CHAN: And I vote aye as well.
- And with that, we are adjourned. Everybody
- 17 go be safe, have a wonderful holiday and happy new 18 year, and we'll see you back here in January. Bye.
- 19 COMMISSIONER MEYER: Bye, guys.
 - (The proceedings concluded at 11:43 a.m.)

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Page 102 STATE OF ARIZONA ss. COUNTY OF MARICOPA 2 BE IT KNOWN that the foregoing deposition was taken by me pursuant to stipulation of counsel; that I was then and there a Certified Reporter of the State of Arizona, and by virtue thereof authorized to administer an oath; that the witness before testifying was duly sworn by me to testify to the whole truth; that the transcript was submitted for review and signature; that the questions propounded by counsel and the answers of the witness thereto were taken down by me in shorthand and thereafter transcribed into typewriting under my direction; that the foregoing pages are a full, true, and accurate transcript of all proceedings and testimony had and adduced upon the taking of said deposition, all to the best of my skill and ability. 3 11 I FURTHER CERTIFY that I am in no way related to nor employed by any of the parties hereto nor am I in any way interested in the outcome hereof. 12 13 14 15 DATED at Tempe, Arizona, this 20th day of December, 2021. 16 17 18 19 athryn A. Blackwelder, RPR Certified Reporter #50666 20 21 22 23 24 25

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October 24, 2022

Via Email to wmf@tblaw.com

William M. Fischbach Tiffany & Bosco PA Camelback Esplanade II, 7th Fl. 2525 E. Camelback Rd. Phoenix, AZ 85016

Subpoena Duces Tecum issued to Dr. Branch and the Power of Fives, LLC Re:

Dear Mr. Fischbach:

We write in response to your letter dated September 20, 2022, in which The Power of Fives, LLC ("TPOF") and Dr. Bob Branch (together "TPOF Parties") seek to quash the subpoena issued by the Commission on September 1, 2022 ("Subpoena"). Although the Commission's rules do not require a written response to a motion to quash, we nevertheless want to provide you with our position in writing in advance of the Commission's meeting on October 27, 2022, when this matter will be on the agenda.

As explained below, the motion to quash is built on a faulty factual premise—that the Commission's investigation of TPOF Parties is limited to their relationship with 2020 Corporation Commission candidate Eric Sloan. In reality, the Commission's investigation is much broader and includes TPOF Parties' relationship with at least 22 other candidates during the 2020 election cycle, plus any relationships it may have had with candidates in the 2022 election cycle.

PROCEDURAL BACKGROUND

TPOF is an Arizona limited liability company formed by Dr. Branch to "identify and support conservative candidates to run for public office in Arizona." See Ex. A, Complaint, dated Sept. 17, 2021, citing TPOF Post-Hearing Statement at 2. One of the candidates with whom it worked was Mr. Sloan, who entered into a Service Agreement with TPOF dated January 1, 2020.

In October 2020, Dr. Branch submitted a complaint to the Commission against Mr. Sloan. The Commission investigated, determined that it had reason to believe Mr. Sloan had committed a violation of the Citizens Clean Elections Act and related administrative rules (collectively, the "Act"), and ultimately adopted a repayment order, which included Mr. Sloan's acknowledgement that he had violated the Act by following the terms of TPOF's Service Agreement.

As a result of the Commission's investigation of Dr. Branch's complaint against Mr. Sloan, substantial evidence was unearthed indicating that TPOF Parties themselves had violated the Act in multiple ways in connection with services they provided to Mr. Sloan and other political candidates. Indeed, the investigation revealed that TPOF had used that same unlawful Service Agreement with at least 23 separate candidates. Consequently, on September 17, 2021, the Commission's Executive Director issued a complaint against TPOF Parties (the "Complaint"). See Ex. A, Complaint, dated Sept. 17, 2021.



In accordance with Ariz. Admin. Code R2-20-205(A), TPOF Parties had five days from receipt of the Complaint to submit a notarized response setting forth reasons why the Commission should take no action. Instead of filing its response within the prescribed time period, TPOF Parties, through counsel, contacted the Commission's Executive Director and sought a two-week extension. Counsel said the extension was needed because Dr. Branch was out of the country and thus "unable to meaningfully consult" with counsel. The Executive Director immediately agreed to the requested extension, thus making TPOF Parties' response due on October 8, 2021. *See* Ex. B, email exchange between William Fischbach and Thomas Collins.

The Executive Director did not hesitate to accommodate the TPOF Parties' request for additional time. However, it appears that the extension was not requested in good faith because the TPOF Parties used the additional time to file a lawsuit against the Commission, and the response for which the extension was sought was still filed late despite the extension. The lawsuit was filed on October 7, 2021, but the response the Commission's complaint was not sent until October 13, 2021. *See* **Ex. C**, Letter from Timothy La Sota dated Oct. 13, 2021.

TPOF's effort to seek judicial intervention before the Commission has made a final determination in this matter puts the cart before the horse. The lawsuit aims to subvert the Commission's investigation and enforcement authority by seeking a judicial declaration that TPOF's Service Agreement does not violate the Act. But, just this year the Arizona Supreme Court reaffirmed the well-established principle that parties who are the subject of administrative enforcement actions must exhaust administrative remedies before seeking judicial relief. See Mills v. Arizona Board of Technical Registration, 253 Ariz. 415, ___, ¶ 11 (2022). We will be filing an appropriate motion with the Court seeking dismissal of the lawsuit based on TPOF's improper effort to bypass the administrative process.

In any event, TPOF Parties' response did not provide a sufficient basis to discontinue the investigation. Pursuant to the Act and Rules, a written Statement of Reasons to believe a violation of the Act may have occurred was drafted and presented at public meetings of the Commission held on October 29, 2021, and December 16, 2021. See Ex. D, Statement of Reasons of the Executive Director, dated Oct. 27, 2021; Ex. E, Transcript of Virtual Public Meeting dated Oct. 29, 2021; Ex. F, Transcript of Virtual Public Meeting dated Dec. 16, 2021.

TPOF Parties' attorney participated in both public hearings, vigorously advocated on his clients' behalf, and urged the Commission to reject the Executive Director's request to authorize further investigation. Following the detailed presentations, on December 16, 2021, the Commission voted to proceed with an investigation based on its finding of reasons to believe that TPOF Parties may have violated the Act. *See* **Ex. E**, at 67-69.

In furtherance of its investigation, on April 29, 2022, the Commission issued an Order Requiring Compliance. *See* **Ex. G**, Order Requiring Compliance dated April 29, 2022. The Order required TPOF to provide accurate reports responding to specific Commission questions relating to TPOF's work on behalf of 23 political candidates with whom it had entered into agreements to provide campaign-related services. To date, TPOF has not provided any of the information required by the Order.

The Commission and TPOF Parties have engaged in discussions in an attempt to resolve this matter. When it became clear that those discussions had reached an impasse, the Commission served the Subpoena at issue. *See* **Ex. H**, Subpoena Duces Tecum.

TPOF Parties' Objections Do Not Withstand Scrutiny

Much of your letter focuses on arguments as to why TPOF Parties disagree with the Executive Director's position regarding their violations of the Act, supported by a recitation of the history



of a private arbitration proceeding to which the Commission was not a party. TPOF Parties previously presented those same arguments in their written response to the Executive Director's Complaint and their oral presentations to the Commission at public meetings. The Commission carefully considered TPOF Parties' arguments, were not persuaded, and voted to move forward with its investigation.

We will not rehash our disagreements with your position regarding the lawfulness of TPOF Parties' conduct. The issue before the Commission is the enforceability of the Subpoena, not the underlying merits of the parties' legal positions. Resolving your objections to the Subpoena does not require the Commission to reconsider the issues that it already analyzed. Instead, the proper inquiry is on the three specific arguments you make (at pp. 8-9 of your letter) in support of your assertion that the Subpoena should be quashed. We will address those three arguments in turn.

1. The Commission's Investigation is Not Limited to TPOF's Relationship with Sloan

This matter came to the Commission's attention as a result of the complaint TPOF filed against Mr. Sloan, but by no means did the Commission ever intend to limit its investigation of TPOF Parties to just its relationship with Mr. Sloan. The fact that much of the record to date focuses on the Sloan campaign is simply a function of the fact that most of the evidence the Commission has been able to collect so far derives from its investigation of TPOF's complaint against Mr. Sloan. But the Commission has always intended for its investigation of TPOF Parties to include their campaign-related for *all* candidates with whom they contracted, not just their work for Mr. Sloan. The record makes that abundantly clear.

As noted, the Executive Director issued a Complaint against TPOF Parties on September 17, 2021. The substance of that Complaint shows that the Commission's concerns relating to TPOF Parties are far broader than just their involvement with Mr. Sloan. For example:

- The background section of the Complaint says: "TPOF ran 22 clean elections candidates throughout Arizona for the 2020 election cycle. When TPOF recruited a candidate, the candidate signed a service agreement. All of TPOF's candidates signed an identical agreement." See Ex. A, at 2 (internal quotations and citations omitted).
- The section of the Complaint entitled "The TPOF Service Agreement" discusses the Service Agreement without any reference to Mr. Sloan or any other specific candidate. Indeed, the first sentence of that section says, "TPOF's Service Agreement is between the LLC and a candidate," thus making clear that the Commission's focus was not on any particular candidate. See Ex. A, at 4.
- The Complaint's Legal Arguments section begins with a discussion of TPOF's apparent violations of Title 16, Chapter 6, Article 1 of the Arizona Revised Statutes. After describing evidence relating to TPOF providing roughly \$116,000 worth of services to the Sloan campaign, the Complaint says, "Additionally, to the extent identical agreements were made with twenty-two other candidates, additional undisclosed and/or excess contributions may have been made." See Ex. A, at 5-6.
- The Complaint's Legal Arguments section also discusses TPOF's apparent violations of Title 16, Chapter 6, Article 2 of the Arizona Revised Statutes. It says, "[T]he TPOF Service Agreement contemplated the expenditure of campaign funds long before they were in the candidate's account, in violation of the Clean Elections Act and Rules. And because TPOF claims it used identical Service Agreements for all of its candidates, it is very likely that this violation occurred repeatedly." See Ex. A, at 7.



The Executive Director's Statement of Reasons, issued on October 27, 2021, incorporates the Complaint and seeks authorization to "subpoena all the Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit, and require persons with information to sit for depositions or other sworn testimony." *See* Ex. D, at 5. That requested authorization was broadly worded and intentionally not limited to information relating solely to TPOF's association with the Sloan campaign.

The discussion during the Commission's public meeting on October 29, 2021, also made clear the need for a more fulsome investigation of TPOF Parties' relationship with political candidates other than just Mr. Sloan. After explaining the need to show that TPOF spent more than \$1,000, the Executive Director added:

I don't think that we know the precise amount, and I don't expect [TPOF Parties' counsel] to know that. The point is it's unreasonable, based on what we know occurred here, to believe that they were somehow all accomplished for less than \$1,000 because we know, also, there's 22 other candidates out there who may or may not—how far they got, we don't know, but they were involved in the same thing.

See Ex. E, at 31:6-14.

When the Commission met on December 16, 2021, the Executive Director again made clear that the concerns relating to TPOF related to its relationships with candidates, plural:

[T]he complaint makes clear that whatever The Power of Fives was doing, it resulted in a campaign finance activity that ought to have been reported and wasn't reported, campaign finance activity that implicates and directly involves contributions or items that, you know, are either contributions or expenditures on behalf of **candidates** by The Power of Fives.

See **Ex. F**, at 28:3-8 (emphasis added). At that same meeting, the Executive Director explained that while much of the activity he was describing related to TPOF's work with Mr. Sloan, "there were several other candidates who had this same relationship with The Power of Fives." *See* **Ex. F**, at 27:6-8.

The Commission's Order Requiring Compliance is perhaps the most direct in unambiguously belying TPOF Parties' arguments about the scope of the Commission's investigation. Key passages include:

- "The Commission found reason to believe that Respondent TPOF made expenditures on behalf of Candidate Eric Sloan and 22 other candidates when it entered into and performed a contract for services that provided that services to the candidates without reporting them." See Ex. G, at 2.
- "To achieve compliance with the Act, TPOF must report accurately its expenditures on behalf of these 23 candidates, along with any contributions that entity received." See Ex. G, at 2.
- "At this phase of the investigation, it is unclear how many qualifying contributions were collected as a result of this direct solicitation, and whether additional contributions were collected from the other 22 candidates." See Ex. G, at 2.
- "To achieve compliance with the Act, TPOF must report accurately how many emails and other direct solicitations it made on behalf of all 23 TPOF-contracted candidates, and



how many qualifying contributions were received from people who received these solicitations." *See* **Ex. G**, at 2.

TPOF's failure to provide the information required by the Order is part of what necessitated the Commission to have to serve the Subpoena.

In the end, TPOF Parties' logic is circular. Their assertion that the Commission's investigation must only be about TPOF Parties' relationship with the Sloan campaign is premised on the fact that the evidence the Commission has been able to gather to date relates almost entirely to TPOF Parties' relationship with the Sloan campaign. Commission staff's inability to address details of TPOF Parties' relationship with other candidates is purely a function of the Commission not yet having been given access to that information. For TPOF Parties to now insist that the Commission is not entitled to the information because it has not yet relied on the information is the height of audacity.

Finally, TPOF Parties' argument is belied by their own conduct. Instead of timely responding to the Commission's complaint, TPOF filed a lawsuit seeking a declaratory judgment that "the Agreement is a lawful contract that does not violate the statutes and rules applicable to clean elections candidates under the Act." See Ex. I, Compl. at ¶ 38. The lawsuit repeatedly references "TPOF's business activity" and "business practices," independent of the Sloan campaign. See, e.g., Id. at ¶¶ 31-32. Indeed, the lawsuit alleges that the Commission's enforcement actions "would effectively decimate TPOF's business model." Id. at ¶ 34. The TPOF Parties clearly understood that the investigation went to the Agreement as a whole, and was not limited to the Sloan 2020 campaign, or else the TPOF Parties would not have sought an order seeking prospective declaratory relief.

2. The Litigation Does Not Stay the Commission's Investigation

TPOF Parties' assertion that its filing of a lawsuit against the Commission somehow prevents the Commission from moving forward with its investigation is specious. They notably cite no authority for that unfounded proposition. Nor can they, because there is no such authority.

TPOF Parties have it backwards. Their effort to circumvent the administrative process by filing a premature lawsuit is directly at odds with decades' old legal precedent requiring litigants to exhaust statutorily prescribed administrative remedies before seeking judicial relief from actual or threatened injuries. *See, e.g., Moulton v. Napolitano*, 205 Ariz. 506, 511, ¶ 9 (App. 2003). "The purpose of the exhaustion doctrine is to afford an administrative agency the opportunity to perform functions within its special competence—to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies." *Mills v. Arizona Board of Technical Registration*, 253 Ariz. 415, ___, ¶ 11 (2022) (internal quotation omitted).

TPOF's mere filing of a lawsuit does not thwart the Commission's investigatory powers and responsibilities. Unless a court orders the Commission to halt its investigation—and TPOF Parties have not asked a court to do so, presumably because they know a court would not do so—it is entitled, indeed obligated, to continue pursuing its investigatory mandate.

¹ The *Mills* court found that the exhaustion principle did not apply to the plaintiff in that case because the agency with which he had a dispute—the Arizona Board of Technical Registration—had not initiated formal proceedings against the plaintiff, so there were no pending administrative remedies to exhaust. That situation is a far cry from here, where the Commission initiated proceedings against the TPOF Parties, and their response would have been due *before* the lawsuit was filed but for their requested extension.



3. The Subpoena Does Not Exceed the Commission's Authority

TPOF Parties final argument is that the Subpoena exceeds the Commission's authority because "the only potential violation of the [Act] for which there has been either a complaint or the initiation of an investigation . . . is TPOF's involvement with the Sloan campaign." See TPOF Parties' letter dated Sept. 20, 2022, at 9. As detailed above, that simply is not true. The existing Complaint and ongoing investigation against TPOF Parties include all campaigns the TPOF Parties entered into the Agreement with, not just the Sloan campaign. Their conduct involving the 22 other candidates with whom they have admitted to working during the 2020 election cycle, and perhaps other candidates with whom they have worked during the 2022 election cycle, is a critical part of the Commission's investigation.

The Arizona Court of Appeals recently reaffirmed that "[U]nder the Act's express language, the Commission has *broad enforcement authority*. To that end, the Act expressly authorizes the Commission to investigate." *Ariz. Advoc. Network Found. V. State*, 250 Ariz. 109, 121 ¶ 57 (App. 2020) (emphasis added); *see also Legacy Foundation Action Fund v. Citizens Clean Elections Commission.*, 252 Ariz. 499, 504 ¶ 18 (App. 2022) (Arizona law "expressly authorizes the Commission to enforce the Act, and the Commission has the sole power to investigate and enforce violations of the Act."); A.R.S. § 16-956(B) (authorizing the Commission to "require by subpoena the production of books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers." A.R.S. § 16-956(B); Ariz. Admin. Code R2-20-211(A) ("The Commission may authorize its Executive Director or Assistant Attorney General... to issue subpoenas duces tecum for the production of documentary or other tangible evidence....").

The law does not sanction TPOF Parties' ongoing efforts to block the Commission's investigation. Its motion to quash should be denied.

PAPETTI SAMUELS WEISS MCKIRGAN LLP

Sincerely,

Robert McKirgan

RM/JW/maa Enclosures

cc:

Thomas Collins Kara Karlson Kyle Cummings Elliot Stratton Jessica Cebelt