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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS
TOM FORESE, CHAIRMAN
DOUG LITTLE
BOB BURNS
ANDY TOBIN
BOYD DUNN

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.	DOCKET NO. E-01345A-16-0036
IN THE MATTER OF FUEL AND PURCHASED POWER PROCUREMENT AUDITS FOR ARIZONA PUBLIC SERVICE COMPANY	DOCKET NO. E-01345A-16-0123
DEVELOPMENT OF NEW TRANSPARENCY AND DISCLOSURE RULES RELATED TO FINANCIAL EXPENDITURES BY REGULATED MONOPOLIES, INTERVENORS AND OTHER STAKEHOLDERS	~~DOCKET NO. RU-00000A17-0035~~

Arizona Corporation Commission
DOCKETED
MAR 10 2017
DOCKETED BY

RENEWED MOTION TO QUASH

OSBORN MALEDON
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

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TABLE OF CONTENTS

Page

INTRODUCTION 1

FACTUAL BACKGROUND 5

A. Commissioner Burns Requests That APS and Pinnacle West Voluntarily Abstain from Engaging in Protected First Amendment Activity 5

B. Commissioner Burns Requests Records of Political Contributions to Confirm That Ratepayer Funds Are Not Used for Political Speech 8

C. Commissioner Burns Broadens His Inquiry After APS Declined to "Voluntarily" Compromise Its First Amendment Rights 9

D. Commissioner Burns Issues Subpoenas to the Companies 10

E. Pinnacle West Adopts Expanded Disclosure Policy 12

F. Commissioner Burns Renews His Campaign Against the Companies 12

ARGUMENT 14

I. The Subpoenas Seek Documents and Testimony Irrelevant to the Commission's Regulatory Responsibilities 14

A. Commissioner Burns' Purported Interest in Ratepayer Protection Does Not Justify the Subpoenas 15

B. Commissioner Burns' Purported Interest in Commission Integrity Does Not Justify the Subpoenas 17

II. The Subpoenas Should Be Quashed Because Their Motive Is to Deter and Retaliate Against Political Expression by the Companies, in Violation of Arizona Law and the First Amendment 20

A. The Subpoenas Violate the First Amendment 21

1. The Subpoenas Are Subject to Strict Scrutiny 21

2. The Subpoenas Cannot Survive Either Level of Scrutiny 22

a. The Subpoenas Are Not Justified by Any Important Government Interest 22

b. The Subpoenas Are Intended to Harass 24

B. The Subpoenas Violate the Arizona Constitution and Are Unauthorized by the Administrative Procedures Act 26

III. The Subpoenas' Demand for Testimony by the APS and Pinnacle West CEO, and Commissioner Burns' Threat to Publicly Disclose All Information Gathered, Is Wholly Improper and Confirms the Subpoenas' Improper Motive 27

A. The Demand to Depose the Companies' CEO Is Improper 27

B. Commissioner Burns' Threat to Publicly Disseminate the Information Gathered by the Subpoenas Underscores Their Improper Purpose and Violates Commission Rules 28

IV. The Commission Should Reject Any Argument by Commissioner Burns That It Lacks the Authority to Quash the Subpoenas 29

A. A.R.S. 40-241 Does Not Prevent the Commission From Quashing the Subpoenas 29

B. Article 15, Section 4 Does Not Prevent the Commission From Quashing the Subpoenas 31

CONCLUSION 33

Pursuant to Corporation Commission Rule R14-3-109(O), Arizona Public Service Company ("APS") and Pinnacle West Capital Corporation ("Pinnacle West"), collectively "the Companies," hereby restate and renew their motion that has been pending since September 9, 2016, asking that the Commission quash the subpoenas issued by Commissioner Burns on August 25, 2016 attached hereto as Exhibit A. By letter dated February 7, 2017 (Exhibit O hereto), Commissioner Burns has renewed his demands set forth in the subpoenas in a newly created docket initiated by him and, therefore, the Companies file this renewed Motion to Quash seeking a decision on the issues that have been pending for several months. Under Rule R14-3-109(O), the Commission may "[q]uash the subpoena if it is unreasonable or oppressive." For the reasons given below, the Commission should exercise that authority here.

INTRODUCTION

This case involves the latest stage in an ongoing campaign of harassment waged by a single Arizona Corporation Commissioner against the Companies for their perceived political speech. During the 2014 election cycle, certain 501(c)(4) social welfare organizations made expenditures in connection with Commission elections. Those organizations have not disclosed their donors, and there is no suggestion that those organizations violated Arizona law by failing to do so. Nevertheless, based on speculation that the Companies may have donated to these social welfare organizations, Commissioner Burns issued subpoenas purporting to compel the Companies to open their books and publicly divulge any political expenditures, charitable contributions, and lobbying expenditures they may have made.[1]

Under Commission Rule 14-3-109(O), the Commission may quash a subpoena that is "unreasonable or oppressive." The Commission should quash the subpoenas at issue here, for several reasons:

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[1] As noted in the Objections served by the Companies on counsel for Commissioner Burns, APS has voluntarily produced public APS documents responsive to the subpoenas and agreed to produce certain non-public APS documents upon entry of an appropriate confidentiality agreement.

- **The subpoenas are unreasonable because they selectively target two companies to disclose confidential information that is unrelated to the Commission's legitimate regulatory interests**. Under Arizona law, a subpoena should be quashed when the "inquiry is not within [the Commission's] scope of authority" or "seeks irrelevant information." *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, 305 ¶ 9 (App. 2000). Under this rule, Commissioner Burns' subpoenas should be quashed. They fall outside the scope of the Commission's authority and seek information irrelevant to the Commission's legitimate regulatory role.

The purported reasons given by Commissioner Burns for the subpoenas have shifted over time. At first, Commissioner Burns claimed to be concerned that ratepayers might be charged for any political expenditures, charitable contributions, and lobbying expenditures made by the Companies. But as the Commission well knows, APS's rates are set following a detailed and comprehensive rate case proceeding, in which APS must justify all the categories of expenses for which it seeks to charge its customers and substantiate the amounts to be charged. Those amounts do not include any charitable contributions or political expenditures. Information regarding the expenses that APS has sought to recover in rates currently being charged is already in the Commission's possession, and has been carefully vetted by Commission Staff. Commissioner Burns' requests for other APS and Pinnacle West documents regarding political, charitable, and lobbying expenditures, are categorically irrelevant to APS's rates.

Of late, Commissioner Burns has shifted his purported reason for the subpoenas. Now, he claims to be gathering information to aid in the development of transparency and disclosure rules to govern Commission proceedings. According to Commissioner Burns, these rules are needed to prevent his fellow Commissioners from being improperly influenced by the parties appearing before them. But the Arizona Constitution does not task the Commission with enacting or enforcing regulations regarding political and charitable expenditures. The Arizona Legislature is in charge of enacting election rules, and it has done so. But the legislature has chosen *not* to require the kind of compelled disclosure that

Commissioner Burns has sought from the Companies. As the State of Arizona recently told the U.S. Supreme Court, "mandatory [campaign expenditure] disclosure rules invariably chill" activity protected by the First Amendment and invite "government officials ... to single out their political opponents for retribution. Thus, the First Amendment harm is inherent in the disclosure to the government official..."[2] Commissioner Burns has no authority to override the balance the legislature has chosen to strike between disclosure and First Amendment interests. As for enforcing the rules that do exist, and investigating accusations of corruption, that authority belongs to the Attorney General and other officials—but not the Corporation Commission. Commissioner Burns has no legitimate interest in usurping that law enforcement authority.

- **The subpoenas are oppressive because their true purpose is to retaliate and harass the Companies to deter them from exercising their First Amendment rights.** Under Arizona law, a subpoena should be quashed when "the investigation is being used for an improper purpose, such as to harass." *Carrington*, 199 Ariz. at 305 ¶ 9. And under the First Amendment, "[t]he government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828-29 (1995). Based on these principles, the subpoenas must be quashed.

The record shows that the true motive behind the subpoenas is to deter the Companies' political speech because Commissioner Burns disagrees with their viewpoint on regulatory policy. Commissioner Burns began his inquiry in 2015 by asking all parties appearing before the Commission to "voluntarily refrain" from any political expenditures in the 2016 election cycle, when Commissioner Burns would be up for reelection—though he made clear that his prime concern was with "APS's alleged contributions to political campaigns." Letter from Commissioners Bitter Smith and Burns 1, Docket No. AU-00000A-

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[2] Brief of the States of Arizona, Michigan, and South Carolina as *Amici Curiae* in Support of Petitioner at 2, *Center for Competitive Politics v. Harris*, No. 15-152 (U.S. Sept. 2, 2015).

15-0309 (Sept. 8, 2015) (Ex. B). When APS declined to silence itself, Commissioner Burns initiated the inquiry that has culminated in the subpoenas at issue Letter from Commissioner Burns 1, Docket No. AU-00000A-15-0309 (Nov. 30, 2015) (Ex. C). He explained the purpose of that inquiry as preventing "utility overspending and overparticipating, if you will, in the elections of Corporation." Commissioner Transcript of Staff Meeting: Special Open Meeting 59, Docket No. AU-00000E-16-0270 (Aug. 11, 2016) (Ex. L). Neither state law nor the federal Constitution allows a government official to selectively target the Companies with subpoenas because, in the view of that official, they participated *too much* in the democratic process.

- **Commissioner Burns' improper purpose is underscored by his demand that the Companies produce their Chief Executive Officer for a deposition and by his threat to make public all information obtained under the subpoenas.** Well-established law holds that a subpoena cannot be used to compel the testimony of a high-ranking company officer without regard to whether that officer is most knowledgeable regarding the information sought. Yet Commissioner Burns has demanded that the Companies produce their Chief Executive Officer for deposition. The Commission should terminate the need for the Companies to comply with that requirement. Moreover, Commissioner Burns has made clear his intention "to publicly file all documents related to this investigation." Letter from Commissioner Burns 1, Docket No. E-01345A-16-0036 (Aug. 25, 2016) (Ex. A). The documents sought by Commissioner Burns, however, include information that is confidential and that the Companies have not voluntarily chosen to make public. Parties to utility rate cases routinely sign confidentiality agreements before receiving documents related to utility rate requests. APS has offered voluntarily to provide non-public documents responsive to Commissioner Burns' request upon execution of an appropriate confidentiality order. Commissioner Burns has rejected that offer. Commissioner Burns' threat to disregard confidentiality underscores the improper and unlawful purpose behind the subpoenas, and flouts the Commission's own rules intended to safeguard the confidentiality of information submitted to it.

- **The Commission should reject any contention that it lacks the power to quash the subpoenas.** Commission Rules make clear that the Commission has the power to quash subpoenas that are "unreasonable or oppressive," A.A.C. R14-3-109(O). None of the provisions relied upon by Commissioner Burns would prevent the Commission from quashing a subpoena on that ground. Indeed, none of the provisions cited by Commissioner Burns even authorizes the subpoenas in the first place.

FACTUAL BACKGROUND

The subpoenas were issued as part of a multi-year campaign by Commissioner Burns to silence the Companies' political speech because he disagrees with the regulatory policies that the Companies have advocated.

A. Commissioner Burns Requests That APS and Pinnacle West Voluntarily Abstain from Engaging in Protected First Amendment Activity.

In a recent speech, Commissioner Burns explained that he first became concerned about utility participation in the political process in 2013, a year after he was first elected to the Commission. Commissioner Burns explained that the Commission had decided to "take an examination of a business model of how we regulate and how power is generated." 2/1/17 Pebble Creek Mtg.. at 2 (Ex. P). The Companies opposed this effort as bad public policy and exercised their constitutional rights to make their views known to the public. Commissioner Burns disapproved of the Companies' speech, which he described as "a fear campaign" and "a public fight in a campaign on the street." *Id.*

Commissioner Burns was up for reelection in 2016, and in the run up to that election season, he began searching for ways to neutralize the Companies' participation in the political process. Commissioners Burns and Bitter Smith publicly issued a joint letter on September 8, 2015, "request[ing] that all public service corporations and unregulated entities that appear before the Commission agree to voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates." Letter from Commissioners Bitter Smith and Burns 1, Docket No. AU-00000A-15-0309 (Sept. 8,

2015) (Ex. B).[3] In particular, the letter emphasized "APS's alleged contributions to political campaigns." *Id.* These allegations were based on rumors in the news media speculating that APS had made donations to social welfare organizations that in turn made political expenditures in the 2014 campaign season.

The letter "acknowledge[d] that public service corporations have a First Amendment right to support the candidates of their choice" and that "this constitutional right carries with it the right to contribute to political campaigns." *Id.* The letter also conceded that the "laws governing campaign finance are not within the Commission's purview" and "at the present time, there do not appear to be assertions that Pinnacle West, APS or others have failed to comply with any applicable campaign finance laws." *Id.* Nonetheless, Commissioners Burns and Bitter Smith asserted that they personally "view it as unacceptable and inappropriate for public service corporations or others to make campaign contributions in support of or in opposition to any candidate for the Corporation Commission." *Id.*

Each of the other Commissioners filed responses to Commissioners Burns and Bitter Smith's request. Commissioner Forese stated that Commissioners should not "attempt[] to influence campaigns in their official capacity" and that the voluntary request to refrain from campaign spending would "have severe implications to civil liberties." Letter from Commissioner Forese 1, Docket No. AU-00000A-15-0309 (Sept. 4, 2015) (Ex. D). Commissioner Forese also noted that the public would be left "with incomplete information" because Commissioner Burns' request "would not extend to the communications of organizations who are not under the purview of the Commission." *Id.* at 2.

Commissioner Little opposed the request because "[a]ny attempt to control who speaks or what is said runs counter to the First Amendment," which "protects political speech and by inference, spending money to engage in political speech." Letter from Commissioner Little 1, 2, Docket No. AU-00000A-15-0309 (Sept. 8, 2015) (Ex. E).

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[3] Commissioners Burns and Bitter Smith had filed, in the same docket, a draft of this letter on August 27, 2015.

Commissioner Little filed another letter a week later, responding to Commissioner Burns' statement at a Commission Staff meeting "express[ing] his desire to subpoena the financial records" of APS "to determine if they engaged in political spending ... in the 2014 election." Letter from Commissioner Little, Docket No. AU-00000A-15-0309 (Sept. 11, 2015) (Ex. F). Commissioner Little emphasized that any "attempt to subpoena [campaign finance] records will have similar constitutional and practical problems." *Id.* Specifically, Commissioner Little noted that "it would be impossible for any expenditure" from 2014 "to be included in rates because there has not been a rate case filed since that time." *Id.* Moreover, "[c]osts associated with political activities ... are not recoverable in rates," and "[d]uring the course of a rate case an audit is performed that ensures ... that no such expenditures are recovered through rates." *Id.* Thus, Commissioner Little stated, the "purpose such a subpoena would serve" was "not clear." *Id.* In addition, Commissioner Little noted, "an examination of APS' activities during the campaign will not give us a complete picture," because "[m]any entities other than APS may have participated in the 2014 elections." *Id.* "To subpoena APS and leave all of these other entities unexamined would be inherently unfair and would lead to an incomplete picture of what actually was going on in the 2014 elections." *Id.* Finally, Commissioner Little emphasized, Arizona law does not require disclosure of the identity of donors who make independent expenditures to 501(c)(4) social welfare organizations. "If Arizonans want to change that, the proper venue is the Arizona Legislature, not the Arizona Corporation Commission." *Id.*

Commissioner Stump indicated that he would "prefer that all parties with business before the Commission refrain from participating in Commission races" but concluded that "their participation is perfectly legal and within their First Amendment rights." Letter from Commissioner Stump 1, Docket No. AU-00000A-15-0309 (Sept. 8, 2015). Commissioner Stump likewise noted that the request to abstain would not reach unregulated entities, thereby creating "an uneven playing field among parties wishing to exercise their First Amendment rights." *Id.*

On October 23, 2015, the Companies responded to Commissioners Burns' "unusual" and "unprecedented" request and respectfully declined "to forfeit any of their First Amendment rights to speak on public issues." Letter from Donald E. Brandt at 1, 3, Docket No. AU-00000A-15-0309 (Oct. 23, 2015) (Ex. G). Noting the long-standing First Amendment protection for corporations to engage in political speech, the Companies expressed concern over "a request from governmental officials with great authority over APS to relinquish one means of expression of this right." *Id.* APS and Pinnacle West also highlighted that Commissioner Burns' request would place APS at a severe disadvantage in the marketplace of ideas because "significant political expenditures will undoubtedly be made by others" who are not regulated by the Commission but who "have strong economic interests in Commission decisions." *Id.* at 2-3.

B. Commissioner Burns Requests Records of Political Contributions to Confirm That Ratepayer Funds Are Not Used for Political Speech.

Undaunted by the fact that Arizona law does not mandate the disclosure of contributions to social welfare organizations that make independent political expenditures, Commissioner Burns sent another letter to the Companies on November 30, 2015, stating that "in my opinion, your support for any particular candidate should be open and transparent." Letter from Commissioner Burns 1, Docket No. AU-00000A-15-0309 (Nov. 30, 2015) (Ex. C). Based on that personal view about what Arizona should (but does not) require, Commissioner Burns "ask[ed] APS to provide my office with a full report of all spending related in any way to the 2014 election cycle." *Id.* The ostensible purpose of the inquiry was "to find out if APS has *spent ratepayer money* to support or oppose the election of Arizona Corporation Commission candidates" and "to ensure that only APS's profits are being used for political speech." *Id.* (emphasis added). But Commissioner Burns did not respond to Commissioner Little's point that it would be impossible for APS to recover 2014 political expenditures from ratepayers, because its rates were set based on its expenses in 2010 and because there is an audit process in place to ensure that political expenditures cannot be charged to customers in rates.

APS responded on December 29, 2015, confirming the company's understanding and commitment that "any political contribution made by a public service corporation [is] not treated as an operating expense recoverable in rates." Letter from Donald E. Brandt 1, Docket No. AU-00000A-15-0309 (Dec. 29, 2015) (Ex. H).

C. Commissioner Burns Broadens His Inquiry After APS Declined to "Voluntarily" Compromise Its First Amendment Rights.

On January 28, 2016, Commissioner Burns sent another letter that "embark[ed] upon the next stage of [his] inquiry into APS's possible campaign contributions" in the 2014 election cycle. Notice of Investigation 1, Docket No. AU-00000A-15-0309 (Jan. 28, 2016) (Ex. I). Commissioner Burns stated that the investigation was prompted by the fact that APS had "rejected [the] proposal" to "voluntarily agree to refrain from making political contributions ... in the upcoming election cycle," and then had declined to "provide a report listing any campaign contributions ... by APS in 2014." *Id.* As a result, Commissioner Burns announced his intent "to broaden [his] inquiry to include funds expended on all political contributions, lobbying, and charitable contributions, *i.e.* all donations made—either directly or indirectly—by APS or under APS's brand name for any purpose." *Id.*

Commissioner Burns indicated that he would be "in contact with" APS "soon," but never followed up, and APS did not respond. Nevertheless, Commissioner Burns made clear that he intended to use his vote as Commissioner as a "tool" to force APS's compliance with his demands. At the Commission's April 12, 2016, meeting, Commissioner Burns stated that "[a]ll votes of this Commission are a tool to be used," and that he "will not support any further action items requested by APS with the exception of an item that might have health or safety components" until APS complied with his demands. Transcript of Open Meeting 12-13, Docket No. E-01345A-11-0224 (Apr. 12, 2016) (Ex. J).

On April 20, 2016, Commissioner Burns issued a letter purporting "to elucidate" his statements at the April 12 meeting. *See* Letter from Commissioner Burns 1, Docket No. E-01345A-11-0224 (Apr. 20, 2016) (Ex. K). He clarified that he would "consider every case that comes before this Commission on its merits" but would "continue to explore every

means available to me to acquire the information that I have ordered from APS." *Id.* Nevertheless, Commissioner Burns' campaign website continued to advertise, as part of a "[t]imeline of my battle with APS," that he "refuses to vote for APS items until company discloses 'dark money' ties." Commissioner Bob Burns website, http://www.bobburns.gop/issues.aspx (Ex. N). In other words, Commissioner Burns threatened to retaliate against APS for its perceived First Amendment activities by voting against requests made by APS to the Commission.

D. Commissioner Burns Issues Subpoenas to the Companies.

In August 2016, Commissioner Burns sought to retain an attorney to conduct an investigation into campaign expenditures in Commissioner elections. In an open meeting on August 11, 2016, Commissioner Burns explained the purpose of the investigation as "protecting the ratepayer ... from undue influence by utility overspending and overparticipating, if you will, in the elections of Corporation Commissioner." Transcript of Staff Meeting: Special Open Meeting 59, Docket No. AU-00000E-16-0270 (Aug. 11, 2016) (Ex. L). He made clear that he did not believe any of the Commissioners serving at that time had been unduly influenced. *See id.* at 20 ("I'm not telling anybody that you're unduly influenced. I'm concerned about the future of who comes to run for the Corporation Commission and how they are perceiving these large sums of money being pumped into these campaigns."). The Commission declined to authorize the expenditure of Commission funds to support the investigation.

On August 25, 2016, Commissioner Burns issued the subpoenas that are the subject of this Motion to Quash. *See* Letter from Commissioner Burns 1, Docket No. E-01345A-16-0036 (Aug. 25, 2016) (Ex. A). He claimed that "[f]or nearly two years now, APS has refused to voluntarily answer my questions about any political expenditures that APS/Pinnacle West may have made" and "[c]onsequently, it is necessary for me to proceed in a more direct way." *Id.* Consistent with his previous letters, Commissioner Burns once again stated that his purpose was to "determine whether APS has *used ratepayer funds* for political, charitable or other expenditures." *Id.* (emphasis added).

Commissioner Burns ordered APS and Pinnacle West CEO Donald Brandt to appear for testimony on October 6, 2016, and ordered the parties to provide, by September 15, 2016, documents and information including:

(1) all documents "of any kind that describe arrangement governing Pinnacle West's expenditures or donations of funds for any purpose under APS's name or brand";

(2) all documents "of any kinds that describe the arrangements governing the APS Foundation's expenditures or donations of funds for any purpose under APS's name or brand";

(3) for APS, in each year 2011-2016: "each charitable contribution," "each political contribution," "each expenditure made ... for lobbying purposes," "each marketing/advertising expenditure," and "a list of all expenditures to 501(c)(3) and 501(c)(4) organizations";

(4) for Pinnacle West, in each year 2011-2016: "all charitable contributions," "all donations for political purposes," "all expenditures to 501(c)(3) organizations," "all expenditures to 501(c)(4) organizations," and "each marketing/advertising expenditure."

(5) information on "any foundations or other entities (formed for charitable or other philanthropic purposes) that are related to APS and/or Pinnacle West," including "how these entities are funded."

Commissioner Burns made clear that he "intend[s] to publicly file all documents related to this investigation." *Id.* The subpoenas were served on August 26, 2016.

The Companies responded to the subpoenas by serving written objections and filing a Motion to Quash with the Commission.[4] The Companies voluntarily produced publicly

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[4] In an abundance of caution, particularly in light of the scheduled deposition date, the Companies also filed an action for declaratory and injunctive relief in superior court challenging the subpoenas and seeking a preliminary injunction to permit the legal issues to be resolved. On March 8, 2017, the Companies filed a notice voluntarily dismissing their lawsuit against Commissioner Burns concerning the subpoenas to allow this matter to be resolved in the first instance by the Commission. The Commission is best situated to decide in the first instance whether to quash subpoenas issued by a single Commissioner in connection with a proceeding held under the Commission's auspices. The Commission's rules allow it to quash subpoenas, and the Companies simply ask the Commission to apply that rule here.

available documents and APS voluntarily offered to make non-public documents available for inspection upon execution of a confidentiality agreement, but Commissioner Burns has not accepted that offer.

E. Pinnacle West Adopts Expanded Disclosure Policy.

In February 2015, Pinnacle West's board of directors adopted a voluntary political participation policy that, among other things, disclosed publicly certain categories of lobbying and political contributions that were not required to be disclosed by state or Federal law. The Pinnacle West board continually reviewed the policy, which evolved over the succeeding two years. Most recently, in December 2016, the board adopted a revised policy which includes expanded voluntary disclosure of political expenditures on a going-forward basis. The policy reiterated Pinnacle West's commitment to participating in democratic processes to serve the interests of its customers, communities and shareholders and to advance its long-term business interests. The policy recognizes that "broad political participation contributes to a strong democracy, promotes good government and encourages sound policymaking."

Under its revised policy, in addition to disclosing all political spending required by law, Pinnacle West will disclose (in March of each year, in respect of the previous year) its political contributions, payments to trade associations that may have been used for lobbying-related or other political activities, contributions to 501(c)(3) or 501(c)(4) organizations that may have used some of the proceeds for lobbying-related or political activities permitted by law, and independent political expenditures made by Pinnacle West.

F. Commissioner Burns Renews His Campaign Against the Companies.

In 2017, Commissioner Burns continued to demand that the Companies retroactively disclose expenditures made in the past, even though such disclosure is not required under any state or Federal law and is not required of any other public service corporation regulated by the Commission or corporation doing business in Arizona. On February 1, 2017, he told a community group that he was upset by rumored APS spending related to issues that were pending before the Commission in 2013 and on the 2014 statewide elections. He believed

that the spending results in "a commission that is captured basically in favor of . . . what the utility is requesting." 2/1/17 Pebble Creek Mtg. at 3 (Ex. P).

On February 7, 2017, Commissioner Burns renewed the demand for "full compliance" with the subpoenas and filed a document opening a new docket to explore expanded "disclosure and transparency" rules for the Commission. Letter from Bill Richards (Ex. O at 1). This new docket abandons the previous focus on the Commission's rate-making responsibilities and unveils explosive allegations of widespread corruption at the Commission. *Id.* at 12-17.

The new inquiry is purportedly to develop rules to end "the potential for regulatory 'capture'" of the Commission. (*Id.* at 9.) Commissioner Burns' apparent concern is that a clandestine process allows unnamed Commission candidates and their supporters to evade campaign finance laws and that "less-than scrupulous candidates, campaign officials, expenditure group principals, and regulated monopolies" engage in "cloaked influence-peddling" (*id.* at 14) sometimes assisted by Commissioners' family and friends (*id.* at 10-17). Campaign expenditures and charitable spending are all allegedly tools of quid pro corruption among Commissioners and Commission candidates. Ignoring the existing conflict-of-interest laws, financial disclosure laws, campaign finance laws and other anti-corruption measures that the Legislature has enacted and that the Attorney General and other officials enforce, Commissioners Burns wants to lead a wide-ranging inquiry into these allegations of corruption at the Corporation Commission purportedly to adopt new rules on these topics.

As part of this unprecedented and unmoored exploration, he has reinstated his attempt to compel the Companies' disclosures by demanding compliance with his subpoenas. As before, he continues to single out the Companies for compelled disclosure, even though the new docket purportedly will develop rules to apply to all public service corporations, intervenors, and other stakeholders that regularly appear before the Commission. Commission Burns set March 24, 2017, as the date by which he sought the Companies' "full

compliance with the document production requirements in the subpoenas" that he previously issued, and to which the Companies had already objected.

ARGUMENT

Under the Commission's Rules, the Commission may quash a subpoena that is "unreasonable or oppressive." A.A.C. R14-3-109(O). The case law likewise holds that, in exercising the subpoena power, "the Commission may not act unreasonably." *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, 305 ¶ 9 (App. 2000). Accordingly, "a party may resist the Commission's subpoena on grounds that the inquiry is not within its scope of authority, the order is too vague, the subpoena seeks irrelevant information, or the investigation is being used for an improper purpose, such as to harass." *Id.*

Commissioner Burns' subpoenas transgress these prohibitions. The subpoenas are unreasonable because they selectively seek to compel the Companies to disclose confidential information irrelevant to any legitimate regulatory purpose, and thus fall outside the Commission's scope of authority. And the subpoenas are oppressive because they are being used to harass the Companies for refusing to "voluntarily" comply with Commissioner Burns' demands that they abstain from First Amendment-protected activities. Commissioner Burns' improper purpose is underscored by his demand to depose the Companies' Chief Executive Officer, without regard to whether he is the most knowledgeable person regarding the requested information, and by his threat to publicly disclose all information obtained from the Companies without regard to whether that information is confidential. The Commission should quash the subpoenas.

I. The Subpoenas Seek Documents and Testimony Irrelevant to the Commission's Regulatory Responsibilities.

A subpoena should be quashed when the "inquiry is not within [the Commission's] scope of authority" or "seeks irrelevant information." *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, 305 ¶ 9 (App. 2000). Under this rule, Commissioner Burns' subpoenas

should be quashed. Commissioner Burns has identified different justifications at different times for his demands for information, but none justifies the subpoenas.

A. Commissioner Burns' Purported Interest in Ratepayer Protection Does Not Justify the Subpoenas.

Commissioner Burns initially described his purpose as focused on ratepayer protection: that is, he sought assurance that any charitable, political, or lobbying expenditures were not being charged to ratepayers as recoverable expenses. For example, Commissioner Burns stated:

- "I would like to ensure that only APS's profits are being used for political speech." Letter from Commissioner Burns 1, Docket No. AU-00000A-15-0309 (Nov. 30, 2015) (Ex. C).
- "I intend to … determine whether APS has used above-the-line funds for political, charitable, or other donations." Notice of Investigation 1, Docket No. AU-00000A-15-0309 (Jan. 28, 2016) (Ex. I).
- "I now seek to continue my investigation to determine whether APS has used ratepayer funds for political, charitable or other expenditures." Letter from Commissioner Burns 1, Docket No. E-01345A-16-0036 (Aug. 25, 2016) (Ex. A).

The vast bulk of the information sought by the subpoenas is simply irrelevant to the stated purpose of ratepayer protection. As APS has previously stated, it agrees and ensures that any charitable, political, or lobbying expenditures should not be treated as operating expenses recoverable in rates.[5] As Commissioner Little has clearly explained, and as

[5] APS has made clear that it does not, has not, and will not seek to include any political contributions in the costs it seeks to recover from ratepayers. Letter from Donald E. Brandt 1, Docket No. AU-00000A-15-0309 (Dec. 29, 2015) (Ex. H). Likewise, the Commission has made clear that charitable contributions may not be included in rates. *See In re Application of Sulphur Springs Valley Elec. Coop., Inc.*, 2009 WL 2983260 (A.C.C. Sept. 8, 2009) ("Although we recognize their importance to the community, we do not believe that charitable contributions and sponsorships are appropriate above-the-line expenses that should be collected from ratepayers."). Thus, any charitable contributions are made from non-operating, or below-the-line, funds that are not included in rates. Similarly, APS does not include lobbying expenses in the costs it seeks to recover from customers. The Commission has held that if APS does seek to recover any of its lobbying costs in rates as useful to customers, "APS must provide the itemized lobbying costs associated with each benefit it alleges resulted from the specific lobbying activity." *In re Arizona Pub. Serv. Co.*, 258 P.U.R.4th 353 (A.C.C. June 28, 2007).

Commissioner Burns should well know, utility rates are set in rate case proceedings. In those proceedings, the Commission reviews the utility's books and records for a "test year"—a specified twelve-month period—and uses data from that test year to determine the amount of revenue the utility requires in order to cover its costs. *See* Letter to Mark Brnovich, Arizona Attorney General, from Commissioner Doug Little, Docket No. AU-00000A-15-0309 (Feb. 22, 2016) (Ex. M); Ariz. Admin. Code R14-2-103; *Tucson Elec. Power Co. v. Ariz. Corp. Comm'n,* 132 Ariz. 240, 246 (App. 1982) (describing Commission's use of "test year from which to project the future capital expenditures and income needs of the utility" when considering rate adjustment). Specifically, the Commission examines all of the operating expenses claimed by the utility as well as the utility's invested capital. The utility is permitted to earn a fair rate of return on the latter. The Commission Staff performs a detailed review to ensure that the operating expenses claimed by the utility are in fact recoverable. Based on the operating expenses claimed by the utility and deemed to be recoverable, and based on the utility's invested capital multiplied by a fair rate of return, the Commission determines the utility's revenue requirement. It then uses that revenue requirement to set the rates that the utility will collect going forward. *See Residential Util. Consumer Office v. Ariz. Corp. Comm'n*, 199 Ariz. 588, 591 (App. 2001) (describing principle that rates should be sufficient to cover "utility's operating costs" and to give "a reasonable rate of return on the utility's investment").

APS's current rates were set based on a 2010 test year. In other words, the current rates reflect solely the operating expenses that APS incurred in 2010 and for which it claimed recovery, and that Commission Staff found to be recoverable in its review. If APS incurred other expenses in 2010, but did not seek their recovery, those other expenses would not be reflected in rates. And any expenses APS incurred in 2011, 2012, 2013, 2014, and 2016 are irrelevant to the rates customers pay, because those rates—as just explained—are based

solely on the 2010 test year.[6] Currently, APS is seeking new rates, based on expenses incurred during 2015. Thus, with respect to these new rates, only operating expenses during this 2015 test year will be relevant to rates paid by customers. All other APS documents and all information requests regarding APS are irrelevant to the purported interest in ratepayer protection. Pinnacle West, meanwhile, is not a regulated entity and does not recover its operating expenses in rates.[7] Its documents and the information requests regarding Pinnacle West likewise are not relevant.

Accordingly, the bulk of the information sought by Commissioner Burns is completely irrelevant to the purported purpose of the inquiry that prompted the subpoenas, and accordingly the demand for that information should be quashed. *See Carrington*, 199 Ariz. At 305 ¶ 9 (Commission subpoena should be quashed when it "seeks irrelevant information").[8]

B. Commissioner Burns' Purported Interest in Commission Integrity Does Not Justify the Subpoenas.

Perhaps recognizing the weakness of the interest asserted to justify the issuance of the subpoenas, Commissioner Burns has now shifted his justification to focus on the purported need to ensure the integrity of his fellow Commissioners. But it is not the Commission's job—let alone the job of a single Commissioner—to enforce campaign finance disclosure requirements that the legislature has not enacted, nor to conduct investigations intended to uncover allegedly corrupt practices. Those duties belong to other branches of government, and fall outside the Commission's scope of authority. And "a party may resist an

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[6] The one exception is expenses that may be recovered through adjustor mechanisms. These expenses are specified in Commission Orders, are transparently calculated and updated in Commission dockets, and do not include the types of expenses at issue in the subpoena.

[7] Pinnacle West does provide business services to APS. To the extent APS seeks to recover in rates the cost of paying Pinnacle West for those business services, the relevant expenses would be submitted as part of the test-year ratemaking described above and subjected to Commission review before they could be included in rates.

[8] As noted in the Objections that the Companies served on Commissioner Burns, APS has voluntarily produced certain public documents identified by the subpoena, *see* Ex. A, Attach. A at 1, and it will produce non-public documents upon the execution of a confidentiality agreement.

administrative subpoena on any appropriate grounds[,] . . . includ[ing] that the inquiry is not within the agency's scope of authority." *People ex rel. Babbitt v. Herndon*, 119 Ariz. 454, 456 (1978) (citing *United States v. Powell*, 379 U.S. 48 (1964)); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950).

The Arizona Constitution delegated campaign finance regulations to the Legislature, not to the Corporation Commission. *See* Ariz. Const. art. 7, § 16. Regulation of campaign finance is governed by the "comprehensive statutory scheme" set forth in Arizona Revised Statutes §§ 16–901 to 16–961, *Pacion v. Thomas*, 225 Ariz. 168, 169 ¶ 6 (2010), and is administered by the Secretary of State and the Citizens Clean Elections Commission, not the Commission. Violations are punished by the Citizens Clean Elections Commission, the Attorney General or county, city, or town attorney. A.R.S. §§ 16-938; 956(A)(7). In 2016, the Legislature enacted a comprehensive revision of these campaign finance laws. 2016 Ariz. Sess. Laws Ch. 79 (S.B. 1516). Under governing Arizona law, there is no requirement for corporations to disclose their contributions to groups that may make independent political expenditures. And groups that make independent expenditures need only disclose their donors if they qualify as "political action committees" under Arizona law. *See* A.R.S. §§ 16-913, 16-914.02(K), 16-915. And the Commission has no authority to enforce any of the campaign finance statutes. Indeed, Commissioner Burns himself acknowledged in his initial letter to the Companies that the "laws governing campaign finance are not within the Commission's purview." Letter from Commissioners Bitter Smith and Burns 1, Docket No. AU-00000A-15-0309 (Sept. 8, 2015).

Likewise, the Legislature has enacted a series of laws criminalizing corrupt practices; trading in public office; the use of confidential information gained in office for personal financial gain; receipt of compensation directly or indirectly for service to be rendered by an officeholder in any case proceeding, application, or other matter pending before a public agency; and offering, soliciting, or accepting things of value. The statutes also include detailed conflict of interest provisions and mandated personal financial disclosures for candidates and elected officials. *See* A.R.S. §§ 13-2602, 13-2603, 18-444; 38-503, 38-504,

38-505, 38-510, 38-541 to -544. The Legislature has also established additional conflict of interest requirements that apply only to Commissioners and Commission staff for which the penalty is loss of a person's job or public office. A.R.S. § 40-101. The Attorney General, not a Corporation Commissioner, is charged with enforcing these laws and investigating their violation.

Commissioner Burns, like any citizen, is free to advocate for a change in the law if he believes that existing laws are insufficient. But he may not use the subpoena power to override policy decisions that the Constitution assigns to the legislative branch and enforcement decisions that the Constitution assigns to the executive branch. Simply put, a Commissioner has no legitimate regulatory interest in a company's charitable and political contributions and lobbying expenses, so long as a public service corporation is not seeking to treat those expenditures as recoverable operating expenses. And a Commissioner has no legitimate interest at all in such expenses by an unregulated corporation, such as Pinnacle West.

The separation of powers does not permit that kind of encroachment by the Commission on the powers assigned by the Constitution to the Legislature. *State ex rel. Montgomery v. Mathis*, 231 Ariz. 103, 121 ¶ 66 (App. 2012) ("A violation of the separation of powers doctrine occurs when one branch of government usurps another branch's powers or prevents that other branch from exercising its authority."); *Williams v. Pipe Trades Indus. Program of Ariz.*, 100 Ariz. 14, 17 (1966) (holding that the "Corporation Commission's powers do not exceed those to be derived from a strict construction of the Constitution and implementing statutes."); *U.S. W. Commc'ns, Inc. v. Arizona Corp. Comm'n*, 197 Ariz. 16, 25 ¶ 35 (App. 1999) (holding that an "incidental relationship" to ratemaking "is not enough" to give the Commission jurisdiction over an area assigned to another branch); *Tonto Creek Estates Homeowners Ass'n v. Ariz. Corp. Comm'n*, 177 Ariz. 49, 55-57 (App. 1993) (similar). Therefore, the subpoenas should be quashed. *See Carrington*, 199 Ariz. at 305 ¶ 9 (subpoena should be quashed when "the inquiry is not within [the Commission's] scope of authority").

II. The Subpoenas Should Be Quashed Because Their Motive Is to Deter and Retaliate Against Political Expression by the Companies, in Violation of Arizona Law and the First Amendment.

The factual record makes clear that the true motive behind the subpoenas is to deter the Companies' political participation because Commissioner Burns disagrees with their point of view. Commissioner Burns stated this purpose clearly when he explained that his investigation is intended to prevent "utility overspending and overparticipating, if you will, in the elections of Corporation Commissioner," Transcript of Staff Meeting: Special Open Meeting 59, Docket No. AU-00000E-16-0270 (Aug. 11, 2016) (Ex. L), and when he complained about utilities engaging in political advocacy directed to voters—which he characterized as engaging in a "public fight in a campaign on the street." Pebble Creek Mtg.at 2 (Ex. P).

The First Amendment and the Arizona Constitution do not allow a government official to subpoena a company's records in order to prevent that company from "overparticipating" in an election or from engaging in public discourse. *See White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000) ("[G]overnment officials violate [the First Amendment] when their acts would chill or silence a person of ordinary firmness from future First Amendment activities."). "[I]t is our law and our tradition that more speech, not less, is the governing rule." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 361 (2010). Nor are they permitted to "regulat[e] speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for" the regulation. *Rosenberger*, 515 U.S. at 828-29. Indeed, it is hard to imagine a clearer example than this one of how the subpoena power can be abused to violate First Amendment rights. These subpoenas present precisely the situation that the State of Arizona told the United States Supreme Court that it tries to *prevent* by not requiring mandatory disclosure of campaign expenditures: an effort by a "government official … to single out their political opponents for retribution."[9]

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[9] Brief of the States of Arizona, Michigan, and South Carolina as *Amici Curiae* in Support of Petitioner at 2, *Center for Competitive Politics v. Harris*, No. 15-152 (U.S. Sept. 20, 2015).

A. The Subpoenas Violate the First Amendment.

1. The Subpoenas Are Subject to Strict Scrutiny.

The U.S. Supreme Court has long emphasized that "[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." *Citizens United*, 558 U.S. at 339; *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) ("Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution."). The First Amendment "has its fullest and most urgent application to speech uttered during a campaign for political office." *Citizens United*, 558 U.S. at 339 (quoting *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989)) (internal quotation marks omitted). In the landmark *Citizens United* decision, the U.S. Supreme Court held that "[c]orporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster." *Id.* at 343 (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978)).

The Supreme Court has also long recognized the strong First Amendment interests in anonymous speech. As the Court has explained, "even in the field of political rhetoric, where the identity of the speaker is an important component of many attempts to persuade, the most effective advocates have sometimes opted for anonymity." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342-43 (1995). And the "decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment." *Id.* at 342. The Court recognized that compelled disclosure of independent expenditures or charitable contributions can also impinge on associational rights protected by the First Amendment. *Buckley*, 424 U.S. at 64; *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 744 (2008). "The First Amendment protects political association as well as political expression," *Buckley*, 424 U.S. at 15 (citing *NAACP v. Alabama*, 357 U.S. 449 (1958)), and the right to political association includes association through financial contribution to political activities or charitable organizations. *Id.* at 65.

Recognizing these strong First Amendment interests, the Supreme Court has subjected generally applicable disclosure requirements to "exacting scrutiny." *Citizens United*, 558 U.S. at 366-67. Specifically, such a disclosure requirement must, first, be justified by a "sufficiently important government interest," *id.*, that "reflect[s] the seriousness of the actual burden on First Amendment rights." *Davis*, 554 U.S. at 744 (emphasis added); *John Doe #1 v. Reed*, 561 U.S. 186, 196 (2010). Second, the government interest must have a "substantial relation" to the disclosure requirement. *Citizens United*, 558 U.S. at 366-67.

Here, the subpoenas must be subjected to even more stringent scrutiny. The subpoenas are not prospective, generally applicable disclosure requirements, such as the statute at issue in *Citizens United*. Instead, they are retrospective disclosure requirements targeted at two Companies in retaliation for the political positions those Companies have taken in the past. It is well-established that a disclosure requirement violates the First Amendment when it is "adopted or is enforced in order to harass," *Harris v. Ctr. for Competitive Politics*, 784 F.3d 1307, 1313 (9th Cir. 2015); *accord Citizens United*, 558 U.S. at 370, or imposed on account of the target's viewpoint. *Rosenberger*, 515 U.S. at 828-29. That is the case here.

2. The Subpoenas Cannot Survive Either Level of Scrutiny.

a. The Subpoenas Are Not Justified by Any Important Government Interest.

Even under the "exacting scrutiny" applied to generally applicable disclosure requirements, the subpoenas violate the First Amendment because they are not justified by any important governmental interest—let alone one sufficiently important to justify the serious burden placed on the Companies' First Amendment rights. As an initial matter, the subpoenas plainly cannot be justified by the Commission's interests in protecting ratepayers because, as discussed above, the subpoenas are massively overbroad with respect to that interest. *See Ariz. Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1010-11 (9th Cir. 2003) (invalidating statute burdening political speech where fit between statute and purported purpose "is poor at best"); *Am. Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979, 1000 (9th Cir. 2004) (invalidating law requiring certain groups to reveal names of

financial sponsors as overbroad). Requiring the Companies to produce information that can have no bearing on the rates being charged to customers bears no "substantial relation" to the Commission's interest in regulating rates. *Citizens United*, 558 U.S. at 366-67.

Nor can the subpoenas be justified on the ground that they will help to prevent some entities from "overparticipating" in the electoral process, to use Commissioner Burns' phrase. The Supreme Court has held that the government has no legitimate interest in trying to prevent "distortion" of the marketplace of ideas by limiting speech; instead, the solution is more speech. The Constitution "entrust[s] the people to judge what is true and what is false." *Citizens United*, 558 U.S. at 354-55. The Supreme Court elaborated: "All speakers ... use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech, even if it was enabled by economic transactions with persons or entities who disagree with the speaker's ideas." *Id.* at 351. Commissioner Burns may not agree, but that is the law.

Commissioner Burns has also suggested that the subpoenas are justified by the need to prevent the appearance of corruption. However, the U.S. Supreme Court has made crystal clear that "independent expenditures, including those made by corporations, *do not give rise to corruption or the appearance of corruption*." *Citizens United*, 558 U.S. at 357 (emphasis added). In fact, the Supreme Court continued, "there is only scant evidence that independent expenditures even ingratiate.... Ingratiation and access, in any event, are not corruption." *Id.* at 360. Thus, the Supreme Court held, the government's sufficiently important interest is "limited to *quid pro quo* corruption," *id.* at 359, and does not extend to the mere appearance of impropriety. The Court explained that, with respect to independent expenditures, "[t]he absence of prearrangement and coordination ... with the candidate or his agent ... alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Id.* at 357. The Court further explained that such expenditures are nothing more than "political speech presented to the electorate" in attempt to "persuade voters." *Id.* at 360. The Supreme Court's holding applies with even greater force to anonymous contributions received by independent 501(c)(4) social welfare organizations, which then

decide how to use the funds they receive in support of those organizations' own advocacy goals and agendas. Such contributions are two steps removed from a candidate and, under the Supreme Court's reasoning, pose no concern regarding undue influence.

Commissioner Burns apparently suspects that his fellow Commissioners regularly flout state laws that prohibit political candidates and their campaigns from coordinating with groups making independent political expenditures, Ex. O at 12-14, and are in fact engaged in *quid pro quo* corruption by providing votes in exchange for financial contributions to family members, friends, or charitable organizations in which a Commissioner has an interest. *Id.* at 14-17. These are explosive allegations striking at the core of the Commission's integrity. But in all events, his colleagues' compliance with campaign finance and anti-corruption laws is not for Commissioner Burns to investigate. As discussed above, that responsibility lies with other branches of government.

b. The Subpoenas Are Intended to Harass.

Although generally applicable disclosure requirements concerning election-related expenditures may sometimes survive exacting scrutiny when supported by a sufficiently important governmental interest (which Commissioner Burns has not articulated here), the Commission is faced here with quite a different situation: a forced disclosure requirement, aimed selectively at two companies after they refused to "voluntarily" abstain from political speech, against a backdrop in which such disclosure is *not* generally required.

Specifically, Commissioner Burns' subpoenas differ from typical disclosure requirements in two critical ways, each of which suffices to establish a First Amendment violation.

First, the subpoenas violate First Amendment protections against regulations of speech based on the viewpoint and identity of the speaker. "Discrimination against speech because of its message is presumed to be unconstitutional . . . The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger*, 515 U.S. at 828-29. The subpoenas intentionally target only two entities and are aimed specifically at preventing

"*utility* overspending and overparticipating ... in the elections of Corporation Commissioner." Transcript of Staff Meeting: Special Open Meeting 59, Docket No. AU-00000E-16-0270 (Aug. 11, 2016) (Ex. L) (emphasis added). Indeed, from the very start of his inquiry, Commissioner Burns has specifically focused on "APS's alleged contributions to political campaigns." Letter from Commissioners Bitter Smith and Burns 1, Docket No. AU-00000A-15-0309 (Sept. 8, 2015). Other speakers with other viewpoints, such as the rooftop solar leasing industry that has spent heavily on Arizona Corporation Commission elections, including in support of Commissioner Burns' own campaign for reelection,[10] have not been subject to any subpoena or compulsory disclosure requirement. Such selective regulation flatly violates the First Amendment. "[T]he First Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content." *Citizens United*, 558 U.S. at 340 (internal citations, quotation marks omitted); *Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 802 (2011) (government violates the First Amendment when a "particular speaker" is "singled out ... for disfavored treatment").

Second, the subpoenas violate the First Amendment's protections against retaliatory measures intended to punish or deter speech. The effort to force disclosure is clearly retribution for APS's refusal to commit to refrain from future political expenditures. Commissioner Burns' January 28, 2016 letter indicated that he was "broaden[ing]" his inquiry and "requir[ing]" cooperation because APS had previously "rejected" his request to voluntarily refrain from making contributions and then had "declined" to provide information regarding prior contributions. Notice of Investigation 1, Docket No. AU-00000A-15-0309 (Jan. 28, 2016) (Ex. I). In other words, the subpoenas are part of an effort to discourage the exercise of protected speech activity, and to do so because of suspicions that APS spent

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[10] *See, e.g.*, Howard Fischer, *Solar Interests Pour Money Into Corp Comm Race*, Capitol Media Services, Aug. 29, 2016.

money to support particular candidates in the 2014 election. That kind of retaliation is plainly unlawful. *See Wilkie v. Robbins*, 551 U.S. 537, 555 (2007) (noting the "longstanding recognition that the Government may not retaliate for exercising First Amendment speech rights").

B. The Subpoenas Violate the Arizona Constitution and Are Unauthorized by the Administrative Procedures Act.

The improper motivation behind the subpoenas violates the Arizona Constitution as well. Arizona courts have recognized that an administrative subpoena must be quashed when it is being used as a tool to harass and retaliate, rather than to further an agency's legitimate purposes. The Arizona Supreme Court has made clear that the Commission cannot use subpoenas to "harass a company and, for reasons unrelated to the agency's legitimate purposes, obstruct or destroy its ability to conduct its business." *Polaris Int'l Metals Corp. v. Ariz. Corp. Comm'n,* 133 Ariz. 500, 507 (1982); *accord Carrington*, 199 Ariz. at 305 ¶ 9.

Commissioner Burns' attempt to justify the subpoenas as connected to his new rulemaking docket only underscores the problem. The proposed rules would apply to all public service corporations in Arizona, as well as intervenors and other stakeholders appearing regularly before the Commission. Yet Commissioner Burns has selectively demanded *retroactive* disclosures from only two entities that he has repeatedly targeted for years. If the information he seeks really is needed for the rulemaking, then he should be "demanding" it from every entity to which the rules would apply. But the reality is that the information is not needed. The Commission can formulate prospective transparency and disclosure rules without mandating retroactive disclosures. The attempt to repackage the subpoenas as connected to the rulemaking is an arbitrary and oppressive ruse intended to compel the Companies to make disclosures that the law otherwise does not require.

Moreover, Arizona law does not authorize the issuance of subpoenas in the context of a rulemaking. The Arizona Administrative Procedures Act outlines the procedures that agencies, such as the Commission, must follow when enacting new rules. *See* A.R.S. §§ 41-1022 - 1057. Under the APA, public participation in an agency's rulemaking process is

voluntary. For example, A.R.S. § 41-1023(B) provides that agencies shall "***afford persons the opportunity*** to submit in writing statements, arguments, data, and views" on a proposed rule for "at least thirty days" after publishing a notice of proposed rulemaking (emphasis added). Accordingly, agencies may invite public comment or hold workshops or public hearings in which members of the public may voluntarily participate. These are examples of appropriate activities for a rulemaking docket, i.e., soliciting the voluntary participation of those parties interested in the topic. Indeed, the Companies may elect to voluntarily submit comments in connection with the new transparency and disclosure docket, or participate in the scheduled public workshop. However, there is simply no basis under Arizona law concerning rulemaking to force the Companies to submit information in connection with a process in which public participation is voluntary.

III. The Subpoenas' Demand for Testimony by the APS and Pinnacle West CEO, and Commissioner Burns' Threat to Publicly Disclose All Information Gathered, Is Wholly Improper and Confirms the Subpoenas' Improper Motive.

A. The Demand to Depose the Companies' CEO Is Improper.

The subpoenas' overbroad and improper document request is compounded with a demand to depose Donald Brandt, the CEO of APS and Pinnacle West. For the reasons set forth above, the request for a deposition of Mr. Brandt should be quashed along with the improper demand for documents. But even with respect to the narrow category of documents relevant to APS's test-year expenses reflected in rates, Commissioner Burns should not be able to handpick the person to answer questions about those documents.

The law constrains parties seeking depositions (by subpoena or otherwise) from "imposing undue burden" and protects witnesses from "annoyance, embarrassment, [or] oppression." Ariz. R. Civ. P. 45(e)(1); Ariz. R. Civ. P. 26(c)(1); *Am. Family Mut. Ins. Co. v. Grant*, 222 Ariz. 507, 513 (App. 2009) (requiring less intrusive means of discovery to avoid harassment). The Commission adheres to these principles as much as the state court. A.A.C. R14-3-109(P) ("The Commission, a Commissioner, or any party to any proceeding before it may cause the depositions of witnesses to be taken in the manner prescribed by law and of the civil procedure for the Superior Court of the state of Arizona.").

Courts have frequently concluded that depositions of high-ranking company officials are unduly burdensome and unwarranted. *See, e.g.*, *Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 334 (M.D. Ala. 1991) (noting that the "legal authority is fairly unequivocal" that sharp limits are placed on the ability to depose high-ranking officials). Efforts to depose high-level executives "create[] a tremendous potential for abuse or harassment." *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 282 F.R.D. 259, 263 (N.D. Cal. 2012). A party should not be permitted to force the deposition of a highly placed executive unless the requesting party can show that the executive has "knowledge that is both unique and relevant." *Guan Ming Lin v. Benihana Nat'l Corp.*, No. 10 CIV. 1335, 2010 WL 4007282, at *2 (S.D.N.Y. Oct. 5, 2010) (issuing order to prohibit deposition of high-ranking executive when executive had "no special personal knowledge" and others could testify to same topics).

By going straight to the top of the organization without regard to which employees would actually be best to provide information, Commissioner Burns has only underscored that his true purpose is to orchestrate political theater and harass the Companies, rather than seek out information. There is no basis set forth in the subpoenas (nor could there be) that Mr. Brandt is the proper person to address the topics raised. If *any* deposition is allowed (and one should not be, for the reasons given above), it should be of a person with relevant knowledge of how APS accounted for its expenses during the 2010 and 2015 test years. *See Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979) (affirming order prohibiting executive deposition until lower-level employees deposed); *Am. Family Mut. Ins Co.*, 222 Ariz. at 513 (prohibiting potentially harassing discovery until "litigants . . . at least initially pursue less intrusive discovery").

B. Commissioner Burns' Threat to Publicly Disseminate the Information Gathered by the Subpoenas Underscores Their Improper Purpose and Violates Commission Rules.

In issuing the subpoenas, Commissioner Burns declared his intention to make publicly available all the information produced. Not only does this threat underscore the true improper purpose of his subpoena, which is one of harassment and retaliation, but it also

flagrantly violates the Commission's rules and the statutory protections of confidential business information.

Arizona law protects the confidentiality of sensitive business data, such as trade secrets, even if that data is disclosed to the Corporation Commission. *See* A.R.S. § 40-204(C) ("No information furnished to the commission by a public service corporation, except matters specifically required to be open to public inspection, shall be open to public inspection or made public"). To be made public, there must be due process: an "order of the commission entered after notice" or an order entered "in the course of a hearing or proceeding." *Id.* Indeed, the Commission itself has established rules authorizing its staff to enter confidentiality agreements with reporting utility companies. *See* A.A.C. R14-2-703(L) (establishing procedure to enter agreements protecting confidentiality of information reported to Commission). Confidentiality agreements are routine in ACC proceedings and widely accepted. There is no basis for Commissioner Burns to unilaterally make confidential information public. In fact, such an act would be punishable as a crime. *See* A.R.S. § 40-204(D). Commissioner Burns' threat to disclose information that the Companies treat as confidential and have never publicly disclosed is yet more evidence of the improper nature of the whole subpoena.

IV. The Commission Should Reject Any Argument by Commissioner Burns That It Lacks the Authority to Quash the Subpoenas.

As discussed above, the Commission's rules recognize the Commission's authority to quash a subpoena that is "unreasonable or oppressive." A.C.C. R14-3-109(O). There should be no question about the Commission's authority to do so here. Nevertheless, Commissioner Burns may contend that the Commission lacks the authority to quash subpoenas he has issued. The Commission should roundly reject any such argument purporting to limit its authority. None of the authorities cited by Commissioner Burns would prevent the Commission from quashing these subpoenas.

A. A.R.S. 40-241 Does Not Prevent the Commission From Quashing the Subpoenas.

Commissioner Burns has cited A.R.S. 40-241, under which "each commissioner and person employed by the commission may, at any time, inspect the accounts, books, papers and documents of any public service corporation, and any of such persons who are authorized to administer oaths may examine under oath any officer, agent or employee of such corporation in relation to the business and affairs of the corporation." Nothing in that provision limits, or even addresses, the Commission's ability to quash a subpoena that it finds to be unreasonable or oppressive.

Moreover, that provision does not even authorize the subpoenas in the first place, for several reasons. First, it describes the power to "inspect" records, but does not describe any power to demand written responses.

Second, the powers granted by A.R.S. 40-241 must be read in context of Title 40 as a whole. An investigation undertaken pursuant to A.R.S. 40-241 must have been authorized by the Commission as a whole under A.R.S. 40-102(C). That provision states, "Any investigation, inquiry or hearing may be undertaken or held by or before any commissioner *designated by the commission for the purpose.*" (emphasis added). Nothing in Section 40-241 allows a single Commissioner to demand information independent of any Commission-authorized investigation and independent of any allegation of any wrongdoing.

Third, Section 40-241 limits the power to inspect records to those of "any public service corporation." That power does not extend to non-regulated affiliates. As the Attorney General explained in an Opinion issued in May 2016, *see* Ariz. Att'y Gen. Op. I16-005, Section 40-241 is limited by its terms to "public service corporation[s]," and that term "does not include affiliates."[11] *Id.*; *see id.* at 8 ("The authority conferred by Section 40-241 applies to inspections of PSCs and examinations of PSC personnel; it does not extend to affiliates of PSCs."). Thus, A.R.S. 40-241 cannot authorize the subpoena directed at Pinnacle West.

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[11] Of course, Attorney General Opinions are merely advisory, and "they are not a legal determination of what the law is . . . ." *Green v. Osborne*, 157 Ariz. 363, 365 (1988).

Fourth, as the Attorney General opined, A.R.S. 40-241 limits the permissible scope of an inspection of records to information related to the PSC's "financial well-being or effective operation." *Id.* at 10. Likewise, to the extent there is any power under Section 40-241 to request information from affiliates, that power exists only for the "purpose ... [of] ascertain[ing] any risks the affiliates create regarding the financial wellbeing or effective operation of the PSC." *Id.* at 10. The information sought by Commissioner Burns does not fall into that category, for the reasons discussed above in Part I.

B. Article 15, Section 4 Does Not Prevent the Commission From Quashing the Subpoenas.

Commissioner Burns has also cited Article 15, Section 4 of the Arizona Constitution. Article 15, Section 4 states:

> The corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purposes of the commission, and of the several members thereof, shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena . . . .

Nothing in that provision prevents the Commission from quashing subpoenas that are unreasonable or oppressive. To the contrary, the provision underscores that the Commission has exactly that power: it has the "power of a court of general jurisdiction" to enforce the attendance of witnesses and the production of evidence, *id.*, and that power encompasses the authority to quash demands that are unreasonable and oppressive. *See, e.g.*, *Carrington*, 199 Ariz. at 305 ¶ 9.

Commissioner Burns would read into Article 15, Section 4 an essentially unbounded authority for a single Commissioner to investigate and compel any information from any corporation doing business in Arizona without regard to the Commission's regulatory function, the existence of any Commission-authorized investigation, or any allegation of wrongdoing.

Such a broad reading of a commissioner's investigatory authority is not a reasonable reading of the authority given under Article 15, Section 4. The Supreme Court has already

considered, at length, the Commission's authority to impose reporting requirements on corporate affiliates of public service corporations which are themselves not subject to regulation by the Commission. In *Arizona Corp. Comm'n v. State ex rel. Woods*, 171 Ariz. 286 (1992), the Supreme Court held that the Commission did have authority to impose certain reporting requirements on affiliate companies pursuant to its powers under Article 15, Section 3 of the Arizona Constitution, but only insofar as the requirements are "reasonably connected to and necessary for its ... ratemaking power." *Id.* at 294-95. These reporting rules are now codified in Ariz. Admin. Code R14-2-801 to -806, and they do not require disclosure of the information sought by Commissioner Burns. It would have been nonsensical for the Supreme Court to engage in an extended analysis of the Commission's limited authority over affiliates under Article 15, Section 3 if the Commission or a single Commissioner could have simply bypassed those limitations by invoking Article 15, Section 4.

Moreover, the broad reading of Article 15, Section 4 favored by Commissioner Burns would have a damaging and destabilizing impact on the business climate in this State. Companies will be discouraged from doing business in this State if, by doing so, they open themselves up to have their confidential information inspected and made public, and their executives deposed, based on the whim of a single Commissioner in the absence of any Commission-authorized investigation or allegation of wrongdoing.

The Attorney General's Opinion likewise provides no analysis to support Commissioner Burns' reading of Article 15, Section 4. The Opinion quotes Article 15, Section 4 but does not analyze the scope of an individual Commissioner's authority to seek information under that section—let alone the Commission's authority to quash demands for information that are unreasonable or oppressive. Instead, the Attorney General's analysis focused on Article 15, Section 3, which provides the Commission (but not individual Commissioners) authority to "require reports pursuant to rules that are reasonably necessary for effective ratemaking," *id.* at 11, and Article 15, Section 13, which "authorizes the Commission, *but not individual Commissioners*, to require reports to the Commission under

oath from PSCs and Public Companies, and to require that such companies provide such information 'concerning their acts and operations' as may be required by law or by the Commission." Opinion at 5 (emphasis added).

It would be odd indeed for the framers of the Constitution to have provided this specific authorization for *the Commission* to gather *particular* information in Sections 3 and 13 under prescribed circumstances, while at the same time allowing individual Commissioners the unbounded authority claimed by Commissioner Burns to gather any information from any corporation under Section 4, unchecked by any power in the Commission to quash unreasonable or oppressive demands. Accordingly, the authority given to individual Commissioners under Section 4 must be interpreted as dependent upon the existence of an investigation authorized by the Commission as a whole and connected to the scope of the Commission's regulatory interests.

That interpretation of Section 4 is consistent with the Court's decision in *Arizona Public Service Company v. Arizona Corporation Commission*, 157 Ariz. 532, 760 P.2d 532 (1988). There, the Court analyzed Sections 4 and 13 of Article XV in tandem and repeatedly emphasized that these provisions addressed *the Commission*'s power to require reports from public companies. Nothing in the opinion even suggests the possibility that—contrary to the plain text of Section 13—a single Commissioner could conduct his own private investigation under Section 4, unchecked by the Commission as a whole.

Finally, the Attorney General also expressly did not consider the reasonableness of any specific demand made by a Commissioner or analyze the potential First Amendment implications (discussed below) of the subpoenas at issue here. Opinion at 7. *See* Part II, *supra*.

CONCLUSION

Despite the significant defects in the subpoenas, APS has voluntarily produced certain publicly available documents identified by the subpoenas, *see* Ex. A, Attach. A at 1, and, upon execution of the legally required confidentiality agreement, it will produce certain non-public documents. Pinnacle West has also adopted a broad corporate disclosure policy that

will provide information on its spending for 2016. No compelled retroactive disclosure is justified.

The Companies respectfully request that the Commission quash the subpoenas.

DATED this 10th day of March, 2017.

OSBORN MALEDON, P.A.

By _____

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EXHIBITS

Exhibit No. A

0000172866

COMMISSIONER

Direct Line: (602) 542-3682
Email: RBurns-web@azcc.gov

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

ARIZONA CORPORATION COMMISSION

ORIGINAL

August 25, 2016

Re: Arizona Public Service Company, Docket No. E-01345A-16-0036 | E-01345A-16-0123

Dear Mr. Brandt:

For nearly two years now, APS has refused to voluntarily answer my questions about any political expenditures that APS/Pinnacle West may have made. Consequently, it is necessary for me to proceed in a more direct way.

I now seek to continue my investigation to determine whether APS has used ratepayer funds for political, charitable or other expenditures. This includes all expenditures made by APS, Pinnacle West and under APS's brand name for any purpose.

In his May 4, 2016 legal opinion, Attorney General Brnovich specifically stated that an individual Commissioner's § 4 constitutional authority "could relate to an affiliate of a [public service corporation] only if the affiliate is a Public Company." Ariz. Att'y Gen. Op. I16-130 at 12. In other words, the constitutional powers conferred to individual commissioners in §4 extend to a publicly traded company, which Pinnacle West is.

Please see the attached subpoenas outlining the information I seek. I look forward to your full compliance in this matter. Please be aware that I intend to publicly file all documents related to this investigation.

Sincerely,

Robert L. Burns
Commissioner

Arizona Corporation Commission
DOCKETED
AUG 25 2016
DOCKETED BY

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL
2016 AUG 25 A 11:48

cc: Service list from E-01345A-16-0036

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.	DOCKET NO. E-01345A-16-0036 **SUBPOENA** **SUBPOENA DUCES TECUM**

TO: Arizona Public Service Company
P.O. Box 53999
Phoenix, AZ 85072

400 North 5th Street
Phoenix, AZ 85004

Donald E. Brandt
Chairman, President and Executive Officer
Arizona Public Service Company & Pinnacle West Capital Corporation
Mail Station 9042
P.O. Box 53999
Phoenix, AZ 85072

In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A.

YOU ARE HEREBY COMMANDED, pursuant to Article XV, Section 4 of the Arizona Constitution, A.R.S. §§ 40-241, -243, -244, and Ariz. R. Civ. P. 45, to appear and testify under oath in connection with the matters set forth in Attachment A (see Attachment B).

BEFORE WHOM APPEARANCE TO BE MADE:

Robert L. Burns, Commissioner
Arizona Corporation Commission
1200 W. Washington Phoenix, AZ 85007

I. YOU ARE COMMANDED to bring with you and produce for inspection and copying the following:

See Attachment A.

DATE AND TIME OF PRODUCTION OF DOCUMENTS FOR INSPECTION:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission
2nd Floor Conference Room
1200 W. Washington
Phoenix, AZ 85007

II. YOU ARE COMMANDED to bring with you written responses to the following questions:

See Attachment A.

DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission
2nd Floor Conference Room
1200 W. Washington
Phoenix, AZ 85007

III. YOU ARE COMMANDED to appear and give testimony concerning:

See Attachment A.

In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A.

DATE AND TIME OF APPEARANCE: October 6, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission
Hearing Room #1
1200 W. Washington
Phoenix, AZ 85007

For your convenience, prior to the appearance date for production of documents and written responses requested in I. and II. above, you may turn in the subpoenaed documents and responses to Commissioner Burns' Office located at the above address. If you elect to do this, you need not appear personally at the appointed place and time on September 15, 2016. Personal appearance(s), however, are required on October 6, 2016 at 10:00 a.m. as directed in III.

YOU HAVE BEEN SUBPOENAED BY: Robert L. Burns, Commissioner
Arizona Corporation Commission
1200 W. Washington Phoenix, AZ 85007
Telephone: 602-542-3682
E-mail: rburns@azcc.gov

DISOBEDIENCE OF THIS SUBPOENA constitutes contempt of the Arizona Corporation Commission and may subject you to further proceedings and penalties under law.

Issued this 25 day of August, 2016.

Robert "Bob" Burns, Commissioner
Arizona Corporation Commission

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive Assistant to the Executive Director, voice phone number 602-542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.	DOCKET NO. E-01345A-16-0036 **SUBPOENA** **SUBPOENA DUCES TECUM**

TO: Pinnacle West Capital Corporation
400 North 5th Street
Phoenix, AZ 85004

Donald E. Brandt
Chairman, President and Executive Officer
Arizona Public Service Company & Pinnacle West Capital Corporation
Mail Station 9042
P.O. Box 53999
Phoenix, AZ 85072

In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A.

YOU ARE HEREBY COMMANDED, pursuant to Article XV, Section 4 of the Arizona Constitution, A.R.S. §§ 40-241, -243, -244, and Ariz. R. Civ. P. 45, to appear and testify under oath in connection with the matters set forth in Attachment A (see Attachment B).

BEFORE WHOM APPEARANCE TO BE MADE:

Robert L. Burns, Commissioner
Arizona Corporation Commission
1200 W. Washington Phoenix, AZ 85007

I. YOU ARE COMMANDED to bring with you and produce for inspection and copying the following:

See Attachment A.

DATE AND TIME OF PRODUCTION OF DOCUMENTS FOR INSPECTION:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission
2nd Floor Conference Room
1200 W. Washington
Phoenix, AZ 85007

II. YOU ARE COMMANDED to bring with you written responses to the following questions:

See Attachment A.

DATE AND TIME OF PRODUCTION OF WRITTEN RESPONSES:

September 15, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission
2nd Floor Conference Room
1200 W. Washington
Phoenix, AZ 85007

III. YOU ARE COMMANDED to appear and give testimony concerning:

See Attachment A.

In addition to Mr. Brandt, please produce the appropriate person(s) to address questions regarding the documents and information requests set forth in Attachment A.

DATE AND TIME OF APPEARANCE: October 6, 2016 at 10:00 a.m.

PLACE OF APPEARANCE: Arizona Corporation Commission
Hearing Room #1
1200 W. Washington
Phoenix, AZ 85007

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Arizona Corporation Commission
1200 W. Washington Phoenix, AZ 85007
Telephone: 602-542-3682
E-mail: rburns@azcc.gov

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Issued this 25 day of August, 2016.

Robert L. Burns, Commissioner
Arizona Corporation Commission

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ATTACHMENT A

Documents

1) Please provide the FERC Form 1 filed by APS for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.

2) Please provide the SEC 10K filed by Pinnacle West for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.

3) Please provide Pinnacle West's annual report to shareholders for each of the following years: 2011, 2012, 2013, 2014, 2015, and 2016.

4) Please provide transcripts of Pinnacle West's quarterly earnings calls for 2011, 2012, 2013, 2014, 2015, and 2016.

5) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing Pinnacle West's use of APS's name or brand.

6) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing Pinnacle West's expenditures or donations of funds for any purpose under APS's name or brand.

7) Please provide all agreements, contracts, internal policy memoranda, or other documents of any kind that describe the arrangements governing the APS Foundation's expenditures or donations of funds for any purpose under APS's name or brand.

8) Please provide an organizational chart illustrating the officers, directors and managers for APS.

9) Please provide an organizational chart illustrating the officers, directors and managers for Pinnacle West.

For 2011, please provide written responses to the following:

1) For calendar year 2011, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

2) For calendar year 2011, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

3) For calendar year 2011, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.

4) For calendar year 2011, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations made by APS in 2011. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2012, please provide written responses to the following:

1) For calendar year 2012, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

2) For calendar year 2012, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

3) For calendar year 2012, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.

4) For calendar year 2012, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations made by APS in 2012. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2013, please provide written responses to the following:

1) For calendar year 2013, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

2) For calendar year 2013, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

3) For calendar year 2013, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.

4) For calendar year 2013, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2013. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2014, please provide written responses to the following:

1) For calendar year 2014, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

2) For calendar year 2014, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

3) For calendar year 2014, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.

4) For calendar year 2014, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix

Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2014. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2015, please provide written responses to the following:

1) For calendar year 2015, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

2) For calendar year 2015, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

3) For calendar year 2015, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.

4) For calendar year 2015, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2015. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

For 2016, please provide written responses to the following:

1) For year to date 2016, please list each charitable contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

2) For year to date 2016, please list each political contribution made by APS. Please indicate to whom the contribution was made, the amount of the contribution, the date, and the purpose.

3) For year to date 2016, please list each expenditure made by APS for lobbying purposes. Please indicate to whom the payment was made, the amount of the payment, the date, and the purpose.

4) For year to date 2016, please list each marketing/advertising expenditure made by APS. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

5) Please provide a list of all expenditures to 501(c)(3) and 501(c)(4) organizations by APS in 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for.

Affiliated Interests—Please provide written responses to the following:

1) Please provide a list of all charitable donations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate to whom the donation was made, the amount of the donation, and what the donation was for. Please indicate which, if any, were made under APS's name or brand.

2) Please provide a list of all donations for political purposes made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate to whom the donation was made, the amount of the donation, and what the donation was for. Please indicate which, if any, were made under APS's name or brand.

3) Please provide a list of all expenditures to 501(c)(3) organizations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015 and 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for. Please indicate which, if any, were made under APS's name or brand.

4) Please provide a list of all expenditures to 501(c)(4) organizations made by Pinnacle West in 2011, 2012, 2013, 2014, 2015 and 2016. Please indicate to whom the expenditure was made, the amount of the expenditure, and what the expenditure was for. Please indicate which, if any, were made under APS's name or brand.

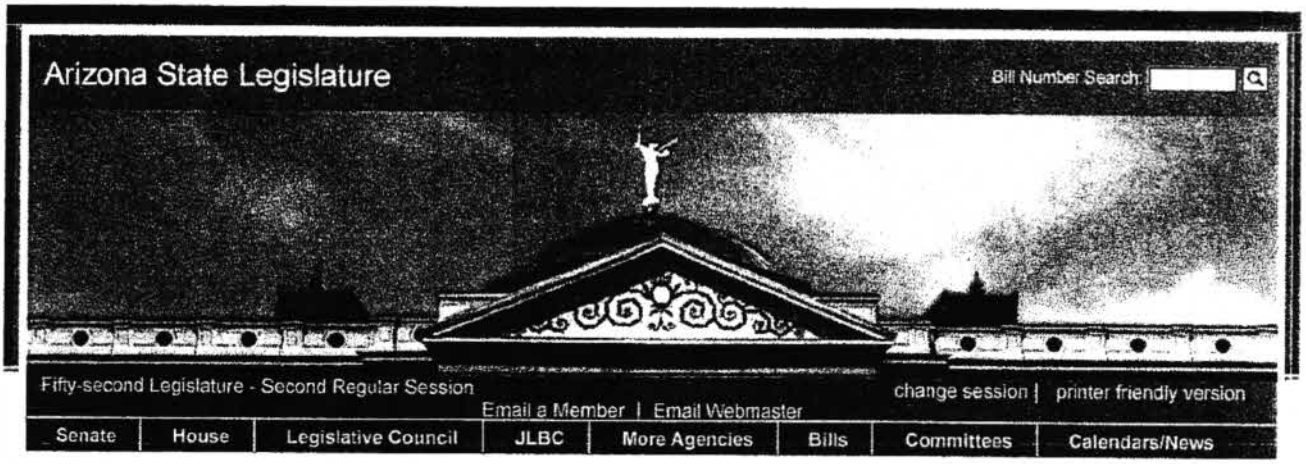
5) Please list each marketing/advertising expenditure made by Pinnacle West in 2011, 2012, 2013, 2014, 2015, and 2016. Please indicate the nature of the expenditure, the amount, the date, and the purpose. For example, Commissioner Burns has been informed that APS/Pinnacle West pays the Phoenix Suns to display the APS logo. Please address this particular example and list all similar circumstances.

6) Please describe any foundations or other entities (formed for charitable or other philanthropic purposes) that are related to APS and/or Pinnacle West. Please describe how these entities are funded. Please describe the arrangements governing the Foundation's use of APS's name or brand.

7) Please see the attached press releases from Pinnacle West, APS, and the APS Foundation (Attachment C). Please describe the relationships between these organizations. For example,

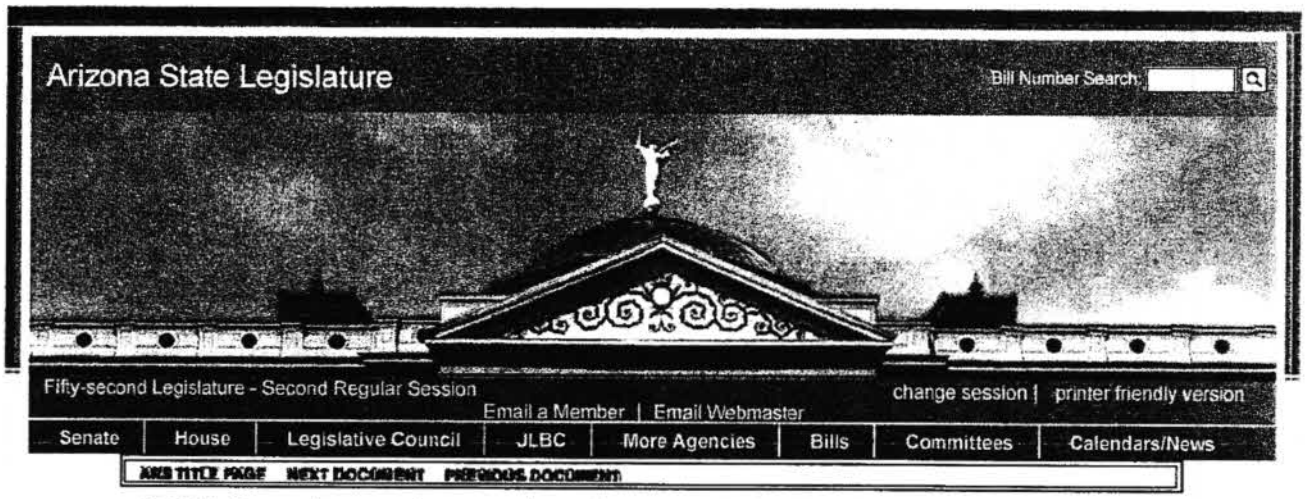
Alan Bunnell is listed as a media contact for all three organizations. Please indicate which entity he works for and which entity pays his salary.

ATTACHMENT B



4. Power to inspect and investigate

Section 4. The corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purpose of the commission, and of the several members thereof, shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the state. Said commission shall have power to take testimony under commission or deposition either within or without the state.

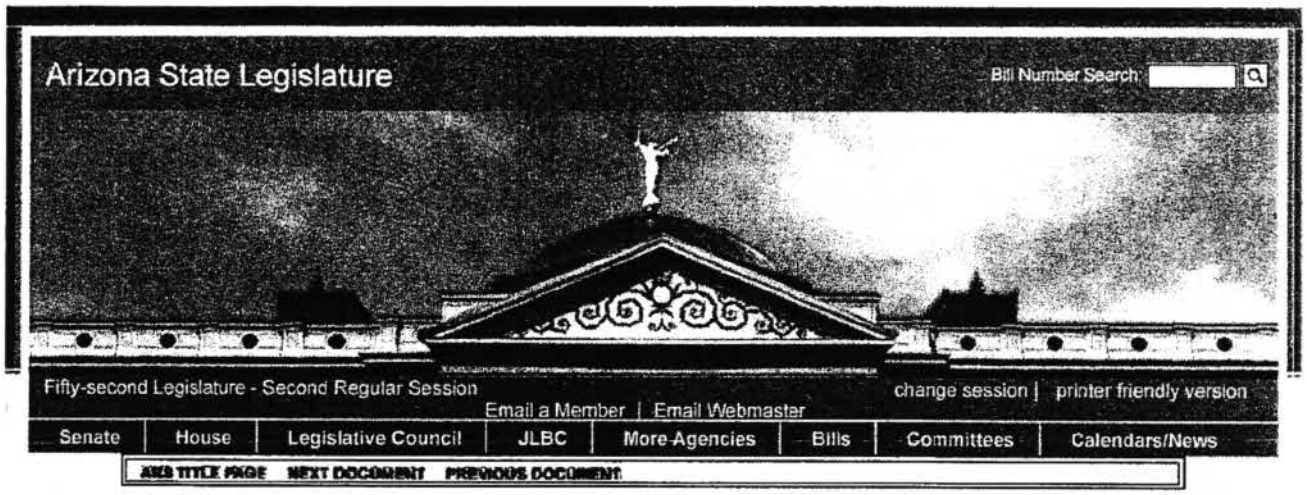


40-241. Power to examine records and personnel of public service corporations; filing record of examination

A. The commission, each commissioner and person employed by the commission may, at any time, inspect the accounts, books, papers and documents of any public service corporation, and any of such persons who are authorized to administer oaths may examine under oath any officer, agent or employee of such corporation in relation to the business and affairs of the corporation.

B. Any person other than a commissioner or an officer of the commission demanding such inspection shall produce under the hand and seal of the commission his authority to make the inspection.

C. A written record of such testimony or statement given under oath shall be made and filed with the commission.



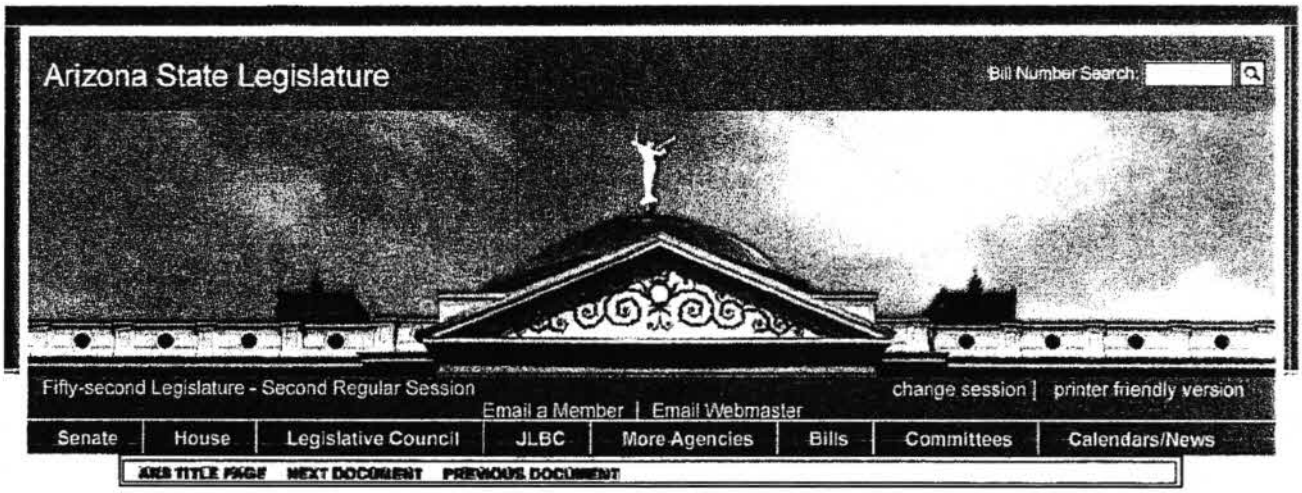
40-243. Conduct of hearings and investigations; representation by corporate officer or employee; arbitration

A. All hearings and investigations before the commission or a commissioner shall be governed by this article, and by rules of practice and procedure adopted by the commission. Neither the commission nor a commissioner shall be bound by technical rules of evidence, and no informality in any proceeding or in the manner of taking testimony before the commission or a commissioner shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission.

B. In a hearing or rehearing conducted pursuant to this article, a public service corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized the officer or employee to represent it.
2. The representation is not the officer's or employee's primary duty for the corporation but is secondary or incidental to such officer's or employee's duties relating to the management or operation of the corporation.

C. The commission may adopt or administer arbitration procedures to resolve complaints or disputes brought by a party against a telecommunications company, except that the commission shall not subject a wireless provider to arbitration unless the wireless provider and customer consent in writing. This section does not prohibit the commission from arbitrating disputes or complaints against a wireline service provider, involving telecommunications services contained in the bundle of services, to the extent the commission has jurisdiction as authorized pursuant to this chapter.



40-244. Administration of oaths and certification to official acts by commissioners; taking of depositions; witness fees and mileage

A. Each commissioner may administer oaths and certify to all official acts. The commission, or a commissioner, or any party, may take depositions as in a court of record.

B. Each witness who appears by order of the commission or a commissioner shall receive for his attendance the same fees allowed by law to a witness in civil actions, which shall be paid by the party at whose request the witness is subpoenaed. The fees of a witness subpoenaed by the commission shall be paid from the fund appropriated for the use of the commission as other expenses of the commission are paid. Any witness subpoenaed, except one subpoenaed by the commission, may, at the time of service, demand his mileage and one days attendance, and if not paid need not attend. A witness furnished free transportation shall not receive mileage.

Westlaw Next Arizona Court Rules

Home Table of Contents

Rule 45. Subpoena
Arizona Revised Statutes Annotated
Rules of Civil Procedure for the Superior Courts of Arizona

Arizona Revised Statutes Annotated
Rules of Civil Procedure for the Superior Courts of Arizona (Refs & Annos)
VI. Trials (Refs & Annos)

16 A.R.S. Rules of Civil Procedure, Rule 45

Rule 45. Subpoena

Currentness

(a) Form; Issuance.

(1) *General Requirements.* Every subpoena shall:

(A) state the name of the Arizona court from which it is issued;

(B) state the title of the action, the name of the court in which it is pending, and its civil action number;

(C) command each person to whom it is directed to do the following at a specified time and place:

(i) attend and give testimony at a hearing, trial, or deposition; or

(ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or

(iii) permit the inspection of premises; and

(D) be substantially in the form set forth in Rule 84, Form 9.

(2) *Issuance by Clerk.* The clerk shall issue a signed but otherwise blank subpoena to a party requesting it, and that party shall complete the subpoena before service. The State Bar of Arizona may also issue signed subpoenas on behalf of the clerk through an online subpoena issuance service approved by the Supreme Court of Arizona.

(b) For Attendance of Witnesses at Hearing, Trial or Deposition; Objections.

(1) *Issuing Court.* A subpoena commanding a person to attend and give testimony at a hearing or trial shall issue from the superior court for the county in which the hearing or trial is to be held. Except as otherwise provided in Rule 45.1, a subpoena commanding a person to attend and give testimony at a deposition shall issue from the superior court for the county in which the case is pending.

(2) *Combining or Separating a Command to Produce or to Permit Inspection.* A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be joined with a command to attend and give testimony at a hearing, trial, or deposition, or may be set out in a separate subpoena.

(3) *Place of Appearance.*

(A) Trial Subpoena. Subject to Rule 45(e)(2)(B)(iii), a subpoena commanding a person to attend and give testimony at a trial may require the subpoenaed person to travel from anywhere within the state.

(B) Hearing or Deposition Subpoena. A subpoena commanding a person who is neither a party nor a party's officer to attend and give testimony at a hearing or deposition may not require the subpoenaed person to travel to a place other than:

(i) the county in which the person resides or transacts business in person;

(ii) the county in which the person is served with a subpoena, or within forty miles from the place of service; or

(iii) such other convenient place fixed by a court order.

(4) *Command to Attend a Deposition--Notice of Recording Method.* A subpoena commanding a person to attend and give testimony at a deposition shall state the method for recording the testimony.

(5) *Objections; Appearance Required.* Objections to a subpoena commanding a person to attend and give testimony at a hearing, trial, or deposition shall be made by timely motion in accordance with Rule 45(e)(2). Unless excused from doing so by the party or

attorney serving a subpoena, by a court order, or by any other provision of this Rule, a person who is properly served with a subpoena is required to attend and give testimony at the date, time and place specified in the subpoena.

(c) For Production of Documentary Evidence or for Inspection of Premises; Duties in Responding to Subpoena; Objections; Production to Other Parties.

(1) *Issuing Court.* If separate from a subpoena commanding a person to attend and give testimony at a hearing, trial or deposition, a subpoena commanding a person to produce designated documents, electronically stored information or tangible things, or to permit the inspection of premises, shall issue from the superior court for the county in which the production or inspection is to be made.

(2) *Specifying the Form for Electronically Stored Information.* A subpoena may specify the form or forms in which electronically stored information is to be produced.

(3) *Appearance Not Required.* A person commanded to produce documents, electronically stored information or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena commands the person to attend and give testimony at a hearing, trial or deposition.

(4) *Production of Documents.* A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(5) *Objections.*

(A) Form and Time for Objection.

(i) A person commanded to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, may serve upon the party or attorney serving the subpoena an objection to producing, inspecting, copying, testing or sampling any or all of the designated materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested. The objection shall set forth the basis for the objection, and shall include the name, address, and telephone number of the person, or the person's attorney, serving the objection.

(ii) The objection shall be served upon the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) An objection also may be made to that portion of a subpoena that commands the person to produce and permit inspection, copying, testing, or sampling if it is joined with a command to attend and give testimony at a hearing, trial or deposition, but making such an objection does not suspend or modify a person's obligation to attend and give testimony at the date, time and place specified in the subpoena.

(B) Procedure After an Objection Is Made.

(i) If an objection is made, the party or attorney serving the subpoena shall not be entitled to compliance with those portions of the subpoena that are subject to the objection, except pursuant to an order of the issuing court.

(ii) The party serving the subpoena may move for an order under Rule 37(a) to compel compliance with the subpoena. The motion shall comply with Rule 37(a)(2)(C), and shall be served on the subpoenaed person and all other parties in accordance with Rule 5(c).

(iii) Any order to compel entered by the court shall protect any person who is neither a party nor a party's officer from undue burden or expense resulting from the production, inspection, copying, testing, or sampling commanded.

(C) Claiming Privilege or Protection.

(i) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(ii) If a person contends that information that is subject to a claim of privilege or of protection as trial-preparation material has been inadvertently produced in response to a subpoena, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(6) *Production to Other Parties.* Unless otherwise stipulated by the parties or ordered by the court, documents, electronically stored information and tangible things that are obtained in response to a subpoena shall be made available to all other parties in accordance with Rule 26.1(a) and (b).

(d) Service.

(1) *General Requirements; Tendering Fees.* A subpoena may be served by any person who is not a party and is not less than eighteen years of age. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering to that person the fees for one day's attendance and the mileage allowed by law.

(2) *Exceptions to Tendering Fees.* When the subpoena commands the appearance of a party at a trial or hearing, or is issued on behalf of the state or any of its officers or agencies, fees and mileage need not be tendered.

(3) *Service on Other Parties.* A copy of every subpoena shall be served on every other party in accordance with Rule 5(c).

(4) *Service within the State.* A subpoena may be served anywhere within the state.

(5) *Proof of Service.* Proving service, when necessary, requires filing with the clerk of the court of the county in which the case is pending a statement showing the date and manner of service and of the names of the persons served. The statement must be certified by the person who served the subpoena.

(e) Protection of Persons Subject to Subpoenas; Motion to Quash or Modify

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or an attorney responsible for the service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The issuing court shall enforce this duty and impose upon the party or attorney who breaches this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorneys' fee.

(2) *Quashing or Modifying a Subpoena.*

(A) When Required. On the timely filing of a motion to quash or modify a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued shall quash or modify the subpoena if:

(i) it fails to allow a reasonable time for compliance;

(ii) it commands a person who is neither a party nor a party's officer to travel to a location other than the places specified in Rule 45(b)(3)(B);

(iii) it requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) it subjects a person to undue burden.

(B) When Permitted. On the timely filing of a motion to quash or modify a subpoena, and to protect a person subject to or affected by a subpoena, the superior court of the county in which the case is pending or from which a subpoena was issued may quash or modify the subpoena if:

(i) it requires disclosing a trade secret or other confidential research, development, or commercial information;

(ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party;

(iii) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or

(iv) justice so requires.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(e)(2)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions, including any conditions and limitations set forth in Rule 26(c), as the court deems appropriate:

(i) if the party or attorney serving the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated.

(D) Time for Motion. A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(E) Service of Motion. Any motion to quash or modify a subpoena shall be served on the party or the attorney serving the subpoena in accordance with Rule 5(c). The party or attorney who served the subpoena shall serve a copy of any such motion on all other parties in accordance with Rule 5(c).

(f) Contempt. The issuing court may hold in contempt a person, who having been served, fails without adequate excuse to obey a subpoena. A failure to obey must be excused if the subpoena purports to require a person who is neither a party nor a party's officer to attend or produce at a location other than the places specified in Rule 45(b)(3)(B).

(g) Failure to Produce Evidence. If a person fails to produce a document, electronically stored information, or a tangible thing requested in a subpoena, secondary evidence of the item's content may be offered in evidence at trial.

Credits

Amended July 17, 1970, effective Nov. 1, 1970; July 6, 1983, effective Sept. 7, 1983; Sept. 15, 1987, effective Nov. 15, 1987; Oct. 9, 1996, effective Dec. 1, 1996; June 9, 2005, effective Dec. 1, 2005; Sept. 5, 2007, effective Jan. 1, 2008; Sept. 2, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

16 A. R. S. Rules Civ. Proc., Rule 45, AZ ST RCP Rule 45
Current with amendments received through 07/01/16

END OF DOCUMENT

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ATTACHMENT C

FOR IMMEDIATE RELEASE
Media Contact: Alan Bunnell, 602-250-3376
Website: aps.com/newsroom

APS INVESTED MORE THAN $10 MILLION IN ARIZONA NONPROFITS IN 2015

PHOENIX – For more than 125 years, APS has understood that – as one of the only large corporations headquartered in the state – the company has a responsibility to not only provide reliable energy service to its 1.2 million customers, but to strengthen and empower the communities it serves. This belief is embedded in the culture of the company, and starts at the top.

APS announced today that its 2015 community investment in Arizona totaled more than $10 million. This amount includes grants, sponsorships, and in-kind donations from APS and the APS Foundation to nonprofit organizations and educators throughout the state. In addition, APS employees donated more than 123,000 hours in volunteer time to Arizona nonprofits, an economic impact of $2.8 million.

"Our long history in the state has shown us that the success of APS is closely tied to the prosperity and health of the communities we serve," said Don Brandt, Chairman, President and CEO of APS. "We are committed to empowering nonprofits to do what they do best, and supporting education programs that will benefit our state's future leaders for years to come. This commitment is ingrained in our culture, and radiates through all of our 6,400 employees."

Among the nonprofits who received grants and contributions from APS and the APS Foundation in 2015:

- **The Arizona Science Center** received a grant for $415,500 to support education programs throughout the state. The Science Center's Rural Communities Education Program targets educators from rural school districts, bringing professional development opportunities to STEM teachers across the state. Additional support also was designated for new exhibits.
- **The Arizona Hispanic Chamber of Commerce Foundation** received a grant for $250,000 for the Ed and Verma Pastor Legacy Scholarship Program. This scholarship will benefit Latino students majoring in a STEM or a public policy field at any public university or college in Arizona.
- **MIND Research Institute** received a $200,000 grant to expand its ST Math program and to partner with ASU to implement a professional development exploratory study with English-language learner students. These programs will expand innovative teaching to low-income students throughout Arizona and will train teachers to use a visual approach that deepens students' problem-solving and reasoning skills, helping them advance their mathematical knowledge.
- **UMOM New Day Centers** received a grant for $150,000 to meet the needs of homeless women and families in Maricopa County. The funds will enable UMOM to provide comprehensive services, including housing, healthcare, vocational training and job placement, substance abuse counseling and housing service for residents while they focus on their case plan to end their homelessness.

- The Phoenix Symphony Association received $225,000 from APS to deliver relevant and entertaining content to a broad range of constituencies and provide civic value through programs that benefit the needs of the community and foster a culture of creativity and innovation.
- The Navajo United Way received a grant for $100,000 for its Operation Yellow Water Challenge Match. The Navajo United Way is working to ensure that farmers and communities impacted by the closure of the San Juan River, due to toxic waste contamination in August 2015, receive the support they need to irrigate fields and continue their livelihood.
- The Phoenix Art Museum received an $85,000 grant to support exhibitions, education and The James K. Ballinger American Art and Education Fund.

In addition, in 2015 the APS Foundation supported programs that enhance academic achievement in the areas of Science, Technology, Engineering and Math (STEM):

- Arizona Science Teachers Association received a grant for $86,000 for its Teacher Leadership Program.
- ASU Foundation for a New American University received a grant for $80,000 for its STEMSS (Science, Technology, Engineering, Math and Social Studies) Summer Institute for K-12 teachers.
- Lowell Observatory received a $56,500 grant for its Navajo-Hopi Astronomy Outreach Program.
- The Society of St. Vincent de Paul received a $50,000 grant for its Dream Center Digital Library, which will introduce young students to the practical uses of technology through instruction in STEM subjects.
- The Southern Arizona Research Science and Engineering Foundation (SARSEF) received a $50,000 grant to bring STEM education for students and teachers to 50 schools in low-income, rural areas.
- Teach for America Inc. received a grant of $50,000 for its Math/Science initiative, which recruits highly qualified individuals to teach math and science in low-income schools and provides preparation and support to enhance teacher effectiveness.

About APS Foundation

Privately endowed by Pinnacle West Capital Corp. in 1981 as an independent 501(c)(3) organization, the APS Foundation distributes an average of $1.5 to $2.5 million per year through a bi-annual grant process. Since its inception, the Foundation has invested nearly $35 million in Arizona nonprofits. For more information, please visit aps.com/corporategiving and click on the Foundation link.

About APS

APS, Arizona's largest and longest-serving electricity utility, serves nearly 1.2 million customers in 11 of the state's 15 counties. With headquarters in Phoenix, APS is the principal subsidiary of Pinnacle West Capital Corp. (NYSE: PNW).

-30-

aps NEWS

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FOR IMMEDIATE RELEASE

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APS ANNOUNCES EXECUTIVE CHANGES AT PALO VERDE

Edington transitioning to advisory role; Bement, Cadogan promoted

PHOENIX – Arizona Public Service announced today changes in its senior leadership team at the Palo Verde Nuclear Generating Station. Bob Bement has been appointed Executive Vice President, Nuclear and will continue to report to Randy Edington, Executive Vice President and Chief Nuclear Officer. Jack Cadogan, currently Vice President, Nuclear Engineering, has been named to replace Bement as Senior Vice President, Site Operations. Maria Lacal will continue to serve as Senior Vice President, Regulatory and Oversight. Cadogan and Lacal will report to Bement.

On October 31, Bement will take over as Executive Vice President and Chief Nuclear Officer while Edington shifts to Executive Vice President and Advisor to the CEO.

"I want to thank Randy Edington for his great service to our customers, our company and our state over the past nine years," said Don Brandt, APS Chairman, President and Chief Executive Officer. "When Randy arrived, Palo Verde faced difficult regulatory and operational challenges. He put together a great team, which included Bob Bement, and more quickly than anyone thought possible, restored confidence and operational excellence at the plant. I am proud to say that under Randy's leadership, Palo Verde has become a model for other plants nationally and around the world as one of the best in the industry."

In 2015, Palo Verde generated a record 32.5 million megawatt-hours of carbon-free electricity, marking the 24th consecutive year the plant was the nation's largest power producer. Palo Verde remains the only U.S. generating facility to ever produce more than 30 million megawatt-hours in a year – an operational accomplishment the plant has achieved each of the past seven years and a total of 11 times. In addition, Palo Verde produces 80 percent of Arizona's clean electricity, displacing more than 13.2 million metric tons of greenhouse-gas emissions that would otherwise have been produced to power homes and businesses from Texas to California.

Bement has led the day-to-day nuclear operations at Palo Verde for the past nine years. Prior to joining APS shortly after Edington's arrival in 2007, he held senior nuclear leadership positions at Exelon and with Arkansas Nuclear One and began his nuclear career in the United States Navy as a nuclear-trained electrician.

"Bob Bement has served side-by-side with Randy at Palo Verde almost from Randy's first day at APS. Bob understands the plant culture and was essential in Palo Verde's return to excellence," said Brandt. "Randy and I have always agreed that the true measure of a leader is the organization's ability to excel after that leader is gone. In Bob, we have the ideal successor to continue Randy's outstanding work and to ensure Palo Verde's enduring industry leadership."

Cadogan, who has served as Palo Verde's vice president of nuclear engineering since 2012, will assume Bement's former responsibilities overseeing site operations. Cadogan joined APS in 2009 as director of engineering support before being promoted to director of plant engineering in 2011. In his most recent role, he has been responsible for plant design and project engineering, as well as the nuclear fuels function. Prior to joining APS, Cadogan spent 30 years in the energy industry, holding numerous positions in power plant operations support, design and construction.

Palo Verde is operated by APS and jointly owned by APS, Salt River Project, El Paso Electric Co., Southern California Edison Co., Public Service Co. of New Mexico, Southern California Public Power Authority and the Los Angeles Department of Water & Power.

APS, Arizona's largest and longest-serving electric utility, serves nearly 1.2 million customers in 11 of the state's 15 counties. With headquarters in Phoenix, APS is the principal subsidiary of Pinnacle West Capital Corp. (NYSE: PNW).

-30-

PINNACLE WEST | NEWS
CAPITAL CORPORATION

FOR IMMEDIATE RELEASE

Media Contact: Alan Bunnell, (602) 250-3376
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Website: pinnaclewest.com

PINNACLE WEST REPORTS 2016 FIRST-QUARTER EARNINGS

- *Results in line with the company's expectations; full-year 2016 earnings guidance affirmed*
- *Major planned fossil power plant outages increase operations and maintenance expenses versus a year ago*
- *Retail sales continue to improve as Arizona's economy continues post-recession growth*

PHOENIX – Pinnacle West Capital Corp. (NYSE: PNW) today reported consolidated net income attributable to common shareholders of $4.5 million, or $0.04 per diluted share of common stock, for the quarter ended March 31, 2016. This result compares with $16.1 million, or $0.14 per diluted share, for the same period in 2015.

"Financial results were in line with our expectations, especially given the major fossil power plant overhauls and maintenance work that we had built into our budget," said Pinnacle West Chairman, President and Chief Executive Officer Don Brandt. "We remain optimistic that we will achieve our annual targets as customer and electricity sales growth continue to rebound, along with Arizona's improving economy."

Brandt cited a recent study by the U.S. Census Bureau that indicates the Phoenix-metropolitan area is the third-fastest growing of the top 15 metro areas in the U.S. A second report by Arizona's Office of Employment and Population Statistics shows the state has formally matched its pre-recession employment levels, amid expectations of continued solid growth in both population and jobs.

Looking to the immediate future, Brandt added that the company is focused on achieving constructive regulatory outcomes on a number of key energy policy issues, including Arizona's value and cost of distributed generation proceeding, as well as the company's upcoming rate case. "We will continue working with various stakeholders to achieve fair policies that benefit all our customers – and that help ensure a sustainable energy future for all of Arizona," he said.

The 2016 first-quarter results comparison was adversely impacted by increased operations and maintenance expenses, which decreased results by $0.17 per share compared with the prior-year period. The expense increase was largely comprised of higher fossil plant maintenance costs as a result of more planned work being completed in the 2016 first quarter compared to the 2015 first quarter.

The above costs were partially offset by the following items:

- *The effects of weather variations* improved results by $0.02 per share compared to the year-ago period despite temperatures that remained less favorable than normal. While residential heating degree-days (a measure of the effects of weather) were 57 percent higher than last year's first quarter, heating degree-days were still 18 percent below normal 10-year averages. A contributing factor was that February 2016 was the third-mildest February in the last 20 years and the fifth-mildest over the last 40 years.
- *Increased retail transmission revenue* positively impacted earnings by $0.02 per share.
- *Higher retail electricity sales* – excluding the effects of weather variations, but including the effects of customer conservation, energy efficiency programs and distributed renewable generation – improved earnings $0.01 per share. Compared to the same quarter a year ago, weather-normalized sales increased 1.3 percent (partly the result of an additional day of sales due to the leap year), while total customer growth improved 1.3 percent quarter-over-quarter.
- *The net effect of miscellaneous items* increased earnings $0.02 per share.

Financial Outlook

For 2016, the Company continues to expect its on-going consolidated earnings will be within a range of $3.90 to $4.10 per diluted share, on a weather-normalized basis, and to achieve a consolidated earned return on average common equity of more than 9.5 percent.

Key factors and assumptions underlying the 2016 outlook can be found in the first-quarter 2016 earnings presentation slides on the Company's website at pinnaclewest.com/investors.

Conference Call and Webcast

Pinnacle West invites interested parties to listen to the live webcast of management's conference call to discuss the Company's 2016 first-quarter results, as well as recent developments, at 12 noon ET (9 a.m. AZ time) today, April 29. A replay of the webcast can be accessed at pinnaclewest.com/presentations. To access the live conference call by telephone, dial (877) 407-8035 or (201) 689-8035 for international callers. A replay of the call also will be available until 11:59 p.m. (ET), Friday, May 6, 2016, by calling (877) 660-6853 in the U.S. and Canada or (201) 612-7415 internationally and entering conference ID number 13634257.

General Information

Pinnacle West Capital Corp., an energy holding company based in Phoenix, has consolidated assets of approximately $15 billion, about 6,200 megawatts of generating capacity and 6,400 employees in Arizona and New Mexico. Through its principal subsidiary, Arizona Public Service, the Company provides retail electricity service to nearly 1.2 million Arizona homes and businesses. For more information about Pinnacle West, visit the Company's website at pinnaclewest.com.

Dollar amounts in this news release are after income taxes. Earnings per share amounts are based on average diluted common shares outstanding. For more information on Pinnacle West's operating statistics and earnings, please visit pinnaclewest.com/investors.

NON-GAAP FINANCIAL INFORMATION

In this press release, we refer to "on-going earnings." On-going earnings is a "non-GAAP financial measure," as defined in accordance with SEC rules. We believe on-going earnings provide investors with useful indicators of our results that are comparable among periods because they exclude the effects of unusual items that may occur on an irregular basis. Investors should note that these non-GAAP financial measures involve judgments by management, including whether an item is classified as an unusual item. We use on-going earnings, or similar concepts, to measure our performance internally in reports for management.

FORWARD-LOOKING STATEMENTS

This press release contains forward-looking statements based on our current expectations, including statements regarding our earnings guidance and financial outlook and goals. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume" and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. These factors include, but are not limited to:

- our ability to manage capital expenditures and operations and maintenance costs while maintaining high reliability and customer service levels;
- variations in demand for electricity, including those due to weather, seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation;
- power plant and transmission system performance and outages;
- competition in retail and wholesale power markets;
- regulatory and judicial decisions, developments and proceedings;
- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
- current and future economic conditions in Arizona, including in real estate markets;
- the development of new technologies which may affect electric sales or delivery;
- the cost of debt and equity capital and the ability to access capital markets when required;
- environmental and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
- volatile fuel and purchased power costs;

- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
- new accounting requirements or new interpretations of existing requirements;
- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and Arizona Corporation Commission orders.

These and other factors are discussed in Risk Factors described in Part 1, Item 1A of the Pinnacle West/APS Annual Report on Form 10-K for the fiscal year ended December 31, 2015, and in Part II, Item 1A of the Pinnacle West/APS Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

# # #

PINNACLE WEST | NEWS
CAPITAL CORPORATION

FOR IMMEDIATE RELEASE

Media Contact: Alan Bunnell (602) 250-3376
Analyst Contacts: Ted Geisler (602) 250-3200
Chalese Haraldsen (602) 250-5643
Website: pinnaclewest.com

PINNACLE WEST REPORTS 2016 SECOND-QUARTER RESULTS

- *Hotter-than-normal weather positively impacted quarterly results*
- *Residential sales and customer growth improved as Arizona's economy keeps expanding*
- *Investments in planned fossil power plant maintenance and higher benefit costs contributed to increased O&M expenses versus a year ago*
- *Full-year 2016 earnings guidance maintained*

PHOENIX – Pinnacle West Capital Corp. (NYSE: PNW) today reported consolidated net income attributable to common shareholders of $121.3 million, or $1.08 per diluted share of common stock, for the quarter ended June 30, 2016. This result compares with earnings of $122.9 million, or $1.10 per share, in the same 2015 period.

"Hotter-than-normal weather – led by the warmest June on record – positively impacted our earnings compared to the year-ago period," said Pinnacle West Chairman, President and Chief Executive Officer Don Brandt. "The favorable weather helped partially offset an increase in operations and maintenance expenses at a time when we are investing significant resources in planned fossil power plant overhauls and maintenance, as well as new customer information and outage management systems that will improve operational efficiencies, enhance reliability, and create a modernized energy system for all our customers."

In total, O&M expenses during the 2016 second quarter decreased results by $0.19 per share compared with the prior-year-period. Quarter-over-quarter impacts primarily included the previously mentioned increase in planned fossil plant maintenance and higher employee benefit costs.

The favorable weather contributed $0.09 per share to the company's bottom line compared to the year-ago period. Highlighted by record June heat, which helped offset a relatively mild April and May, the average high temperature in the 2016 second quarter was 94.5 degrees, while the average high temperature in the same period a year ago was 94.2 degrees. As a result, residential cooling degree-days (a measure of the effects of weather) were 4 percent higher than last year's second quarter, which was impacted by mild weather and one of the coolest Mays on record. Cooling degree-days also were more than 2 percent better than normal 10-year historical averages.

In addition to the effects of weather, the 2016 second-quarter results comparison was positively influenced by the following major factors:

- *Higher retail electricity sales* – excluding the effects of weather variations, but including the effects of customer conservation, energy efficiency programs and distributed renewable generation – improved results $0.04 per share. Underlining an improving Arizona economy, total customer growth was 1.4 percent quarter-over-quarter, and mirrors recent census population data that indicates Phoenix is one of the five fastest-growing cities in the U.S.
- *Adjustment mechanisms* improved earnings by $0.04 per share compared to the 2015 second quarter. These adjustors included an increase in transmission revenues; revenue from the Company's AZ Sun Program; and higher lost fixed cost recovery (LFCR) revenue.

Financial Outlook

For 2016, the Company continues to expect its on-going consolidated earnings will be within a range of $3.90 to $4.10 per diluted share, on a weather-normalized basis, and to achieve a consolidated earned return on average common equity of more than 9.5 percent.

Key factors and assumptions underlying the 2016 outlook can be found in the second-quarter 2016 earnings presentation slides on the Company's website at pinnaclewest.com/investors.

Conference Call and Webcast

Pinnacle West invites interested parties to listen to the live webcast of management's conference call to discuss the Company's 2016 second-quarter results, as well as recent developments, at 12 noon ET (9 a.m. AZ time) today, August 2. The webcast can be accessed at pinnaclewest.com/presentations and will be available for replay on the website for 30 days. To access the live conference call by telephone, dial (877) 407-8035 or (201) 689-8035 for international callers. A replay of the call also will be available until 11:59 p.m. (ET), Tuesday, August 9, 2016, by calling (877) 660-6853 in the U.S. and Canada or (201) 612-7415 internationally and entering conference ID number 13639544.

Pinnacle West Capital Corp., an energy holding company based in Phoenix, has consolidated assets of more than $15 billion, about 6,200 megawatts of generating capacity and 6,400 employees in Arizona and New Mexico. Through its principal subsidiary, Arizona Public Service, the Company provides retail electricity service to nearly 1.2 million Arizona homes and businesses. For more information about Pinnacle West, visit the Company's website at pinnaclewest.com.

Dollar amounts in this news release are after income taxes. Earnings per share amounts are based on average diluted common shares outstanding. For more information on Pinnacle West's operating statistics and earnings, please visit pinnaclewest.com/investors.

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This press release contains forward-looking statements based on our current expectations, including statements regarding our earnings guidance and financial outlook and goals. These forward-looking statements are often identified by words such as "estimate," "predict," "may," "believe," "plan," "expect," "require," "intend," "assume" and similar words. Because actual results may differ materially from expectations, we caution readers not to place undue reliance on these statements. A number of factors could cause future results to differ materially from historical results, or from outcomes currently expected or sought by Pinnacle West or APS. These factors include, but are not limited to:

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- variations in demand for electricity, including those due to weather, seasonality, the general economy, customer and sales growth (or decline), and the effects of energy conservation measures and distributed generation;
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- new legislation, ballot initiatives and regulation, including those relating to environmental requirements, regulatory policy, nuclear plant operations and potential deregulation of retail electric markets;
- fuel and water supply availability;
- our ability to achieve timely and adequate rate recovery of our costs, including returns on and of debt and equity capital investment;
- our ability to meet renewable energy and energy efficiency mandates and recover related costs;
- risks inherent in the operation of nuclear facilities, including spent fuel disposal uncertainty;
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- the development of new technologies which may affect electric sales or delivery;
- the cost of debt and equity capital and the ability to access capital markets when required;
- environmental and other concerns surrounding coal-fired generation, including regulation of greenhouse gas emissions;
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- the investment performance of the assets of our nuclear decommissioning trust, pension, and other postretirement benefit plans and the resulting impact on future funding requirements;
- the liquidity of wholesale power markets and the use of derivative contracts in our business;
- potential shortfalls in insurance coverage;
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- generation, transmission and distribution facility and system conditions and operating costs;
- the ability to meet the anticipated future need for additional generation and associated transmission facilities in our region;
- the willingness or ability of our counterparties, power plant participants and power plant land owners to meet contractual or other obligations or extend the rights for continued power plant operations; and
- restrictions on dividends or other provisions in our credit agreements and Arizona Corporation Commission orders.

These and other factors are discussed in Risk Factors described in Part 1, Item 1A of the Pinnacle West/APS Annual Report on Form 10-K for the fiscal year ended December 31, 2015, which readers should review carefully before placing any reliance on our financial statements or disclosures. Neither Pinnacle West nor APS assumes any obligation to update these statements, even if our internal estimates change, except as required by law.

# # #

FOR IMMEDIATE RELEASE

Media Contact: Alan Bunnell, 602-250-3376
Website: aps.com/newsroom

APS FOUNDATION AWARDS OVER $2.9 MILLION IN 2015 TO NONPROFITS WITH A FOCUS ON STEM EDUCATION IN ARIZONA

PHOENIX – The APS Foundation is proud to be one of the leading supporters of science, technology, engineering and math (STEM) education in Arizona. Since 2012, the APS Foundation has focused its giving on STEM programs to benefit the state's students and teachers. In 2015, the Foundation distributed more than $2.9 million to nonprofits across Arizona.

"APS is committed to supporting the outstanding organizations doing great work throughout Arizona, particularly in the area of STEM education," said Tina Marie Tentori, Executive Director of the APS Foundation. "Arizona jobs will increasingly depend on science, technology, engineering and math skills. These are the areas of study that drive today's global economy."

The first round of education grants was provided in June 2015 and totaled $1.4 million to 17 organizations.

Nonprofits receiving grants from the APS Foundation for STEM-related programs in the Foundation's second round of grants for 2015 included:

- **Arizona Science Teachers Association** received a grant for $86,000 for its Teacher Leadership Program, which provides access to professional development focused on research-based practices aimed at increasing student achievement, building and maintaining the leadership of Arizona science educators and providing resources and information for effective science education for students.
- **Valley of the Sun United Way** received an $84,000 grant (the first of a three-year, $250,000 commitment) for its Thriving Together program, a cross-sector collaboration working together to improve academic achievement in Arizona.
- **ASU Foundation for a New American University** received two grants totaling $104,000. ASU Foundation received $24,000 for its ExSciTEM (Exploring Science, Technology, Engineering and Math) program at ASU West and an $80,000 grant for its STEMSS (Science, Technology, Engineering, Math and Social Studies) Summer Institute for K-12 teachers. This 10-day institute trains teachers how to integrate STEMSS across the curriculum through content lectures, hands-on activities, participation in science field studies and visits to local corporations showing STEM in practice.
- **Lowell Observatory** received a $56,500 grant for its Navajo-Hopi Astronomy Outreach Program, now in its 10th year. The program pairs a professional astronomer from Lowell with fifth through eighth grade reservation teachers for one school year. Astronomers visit the partner classroom to lead science discussions and hands-on activities in collaboration with the local teacher. Students also take a field trip to Lowell.

- **The Society of St. Vincent de Paul** received a $50,000 grant for its Dream Center Digital Library, which will introduce young students to the practical uses of technology in STEM subjects.
- **The Southern Arizona Research Science and Engineering Foundation** received a $50,000 grant to bring STEM education to 50 schools in low-income rural areas.
- **Southwest Autism Research and Resource Center (SARRC)** received a $50,000 grant to expand the number of teachers and clinicians educating Arizona's autism population and supporting the educators and districts working with them.
- **West-MEC Alliance** received a $50,000 grant for the APS Discover What's Within Program, which will enrich West-MEC's Southwest Campus with STEM programming.
- **Science Foundation Arizona** received $25,000 for its Navajo Code Writers STEM Initiative, a program that will introduce computer code writing curriculum to prepare Navajo students for the global economy.
- **Experience Matters Consortium Inc.** received a $15,500 grant for its Volunteers in Preparing Students for Success program that provides education and STEM career guidance to low-income high school students.
- **Yavapai College Foundation** received $8,200 for College for Kids, a summer educational program providing STEM classes for children aged 5-17.
- **Boys & Girls Club of Greater Scottsdale** received a grant for $6,500 for its Da Vinci Disciples and Johnny 5 Alive STEM-based programs.
- **Treasures 4 Teachers** received a $5,000 grant to STEM educational kits for hands-on classroom projects.

Videos showcasing STEM success stories resulting from APS Foundation STEM investment can be viewed at aps.com/next.

About APS Foundation

The APS Foundation is committed to making a deep impact in Arizona communities and does so through supporting statewide nonprofits that advance knowledge in the field of STEM (science, technology, engineering and math) education. The Foundation supports a wide range of educational initiatives that target both students and teachers in order to keep the next generation of Arizona's workforce strong and competitive.

Privately endowed by Pinnacle West Capital Corp. in 1981 as an independent 501(c)(3) organization, the APS Foundation distributes an average of $1.5 million to $2.5 million per year through a bi-annual grant process. Since its inception, it has invested nearly $38 million in Arizona nonprofits. For more information, please visit www.aps.com/corporategiving and click on the Foundation link.

# # #

FOR IMMEDIATE RELEASE **July 18, 2016**

Media Contact: Alan Bunnell (602) 250-3376 or alan.bunnell@aps.com

Website: aps.com/newsroom

APS FOUNDATION CONTINUES FOCUS ON STEM EDUCATION

More Than $1.2 Million Awarded in First Round of 2016 Funding

PHOENIX – Fourteen nonprofit organizations located throughout Arizona and the Four Corners area will receive more than $1.2 million in STEM-supported grants, the APS Foundation announced today. Supporting science, technology, engineering and math (also known as STEM) and other education programs has been the Foundation's principal focus since 2012.

"Arizona is blessed to have a number of local organizations doing impactful work in STEM educational areas," said Tina Marie Tentori, executive director of the APS Foundation. "These grants will help move their efforts forward, including encouraging and preparing Arizona students to pursue future jobs in technology, clean energy and other STEM-related careers."

The following nonprofits received grants from the APS Foundation:

- **American Indian College Fund** received a $100,000 grant for a scholarship fund that provides financial support to 15 Navajo college students pursuing majors in STEM or related fields at Navajo Nation-serving tribal colleges and mainstream universities in Arizona and New Mexico, with a particular emphasis around the Four Corners region.
- **Arizona Center for Afterschool Excellence** received $5,000 for its annual conference dedicated to training 700 childcare providers throughout Arizona on integrating STEM activities into daily programming.
- **Arizona Science Center** received a $385,000 grant to support the continuation of its Professional Learning and Development Rural Communities Expansion Project, which helps integrate STEM curriculum into rural school districts, including grades 3-8 in Cottonwood, Oak Creek, Humboldt, Winslow, Prescott, Sedona, Tonopah, Florence and Yuma.
- **Flagstaff Chamber of Commerce Foundation** received a $20,000 grant for its Ready.Set.Code. Digital Initiative which introduces area youth and teachers to the various roles and potential careers that make up the digital workplace eco-system.
- **HandsOn Greater Phoenix** received a $10,000 grant for its Your Experience Counts academic mentoring program that trains volunteers to work alongside elementary teachers in the classroom, helping with academic improvement in reading, writing, math and science.
- **Audubon Arizona** received a $25,000 grant for its River Pathways program, which introduces urban youth to environmental science-related careers and gives students access to natural resource professionals.
- **NTC Research Foundation** received a $108,000 grant for its BrainSTEM program, which brings 45-minute live performances by professional actor/educators to rural schools to introduce STEM principles to low income 5th through 8th graders. The program will reach 20,000 students, 700 teachers and 50 schools.

- **Teach for America** received a $50,000 grant for a targeted STEM initiative that will sponsor 10 math and science teachers in Title I schools in the Phoenix metropolitan area.
- **Valley of the Sun YMCA** received a $45,000 grant for its STEM Thursdays program, which provides fun, engaging, hands-on group STEM learning projects and encourages low income elementary school students in the Valley, Yuma, Somerton and Flagstaff to pursue STEM careers.
- **Arizona Chamber Foundation** received a $100,000 grant for A for Arizona, an initiative to improve and serve K-12 low-income schools throughout Arizona.

Additional organizations receiving grants during this funding cycle include: **Arizona State Parks Foundation, Expect More Arizona, Grand Canyon Association** and **Great Hearts Academies.**

The next cycle of APS Foundation grant applications opens on July 15 with a deadline of Sept. 1, 2016. Applications and more information on grant eligibility can be found at www.aps.com/corporategiving and clicking on the Foundation link.

About APS Foundation
The APS Foundation is committed to making a deep impact in Arizona communities and does so by supporting statewide nonprofits that advance knowledge in the field of STEM (science, technology, engineering and math) education. The Foundation supports a wide range of educational initiatives that target both students and teachers in order to keep the next generation of Arizona's workforce strong and competitive.

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# # #

CERTIFICATION OF SERVICE

On this 25 day of August, 2016, the foregoing document was filed with Docket Control as Correspondence from Commissioner Bob Burns and copies of the foregoing were mailed on behalf of the Commissioner to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link of the foregoing document to the following who have consented to email service.

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w6345789@yahoo.com
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By: _____
Jessica Perry
Executive Assistant to Commissioner Bob Burns

Exhibit No. B

0000161900

ORIGINAL

RECEIVED

September 8, 2015

AZ CORP COMMISSION
DOCKET CONTROL

2015 SEP 8 PM 4 22

RE: Docket No. AU-00000A-15-0309

Dear [Responsible Party]:

By this letter, we hereby request that all public service corporations and unregulated entities that appear before the Commission agree to voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates. We make this request because we believe that political contributions from such entities have damaged the public's perception of the Commission and have placed the Commission in a difficult position.

In the recent past, there have been repeated articles in the press concerning APS's alleged contributions to political campaigns. According to these sources, either APS or Pinnacle West, APS's parent company, allegedly contributed a significant amount of money to certain advocacy organizations, which in turn contributed money in support of or in opposition to a number of candidates. There have also been reports that other entities have also participated in campaign advocacy. When first reported, APS neither confirmed nor denied these claims. Later, however, Pinnacle West appears to have disclosed to its shareholders that it had made campaign contributions in an effort to defend APS against what it considered to be unfair attacks.

We acknowledge that public service corporations have a First Amendment right to support the candidates of their choice. We also recognize that this constitutional right carries with it the right to contribute to political campaigns. The laws governing campaign finance are not within the Commission's purview, and, at the present time, there do not appear to be assertions that Pinnacle West, APS or others have failed to comply with any applicable campaign finance laws. Unfortunately, this technical compliance has not adequately addressed the public's concerns. Especially concerning to us is the public's perception that the Commission, by its silence, has tacitly condoned this behavior.

At this time, we want to make it clear that we view it as unacceptable and inappropriate for public service corporations or others to make campaign contributions in support of or in opposition to any candidate for the Corporation Commission. This behavior has the strong potential to diminish the integrity of the Commission and to engender public doubt as to the Commission's ability to discharge its regulatory responsibilities in a fair and unbiased way. We therefore request that all entities that appear before the Commission—regulated and unregulated—voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates.

We view these requests as a first step in addressing the unfortunate perceptions that have been caused by alleged campaign contributions discussed above. At a future time, we will consider whether and to what extent an audit of any public service corporation would be warranted and whether a request for financial information from unregulated entities would be within the Commission's scope of authority.

In closing, we want to make it clear that we believe in a necessary and appropriate degree of independence and separation between the Commission and the entities—both regulated and unregulated—that appear before it. We will continue to work to preserve that separation. Please respond to this request in writing within 45 days of the date of this letter via the Commission's docket or return mail.

Sincerely,

Arizona Corporation Commission
DOCKETED
SEP 08 2015
DOCKETED BY

Susan Bitter Smith
Chairman

Robert L. Burns
Commissioner

Exhibit No. C

COMMISSIONERS
SUSAN BITTER SMITH- Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

ORIGINAL

0000167075

RECEIVED ARIZONA CORPORATION COMMISSION

2015 NOV 30 P 2: 17

AZ CORP COMMISSION
DOCKET CONTROL

November 30, 2015

RE: Docket No. AU-00000A-15-0309, In the Matter of a Generic Docket Regarding the Campaign Contribution Practices of Public Service Corporations and Other Entities that Appear Before the Commission

Dear Mr. Brandt:

In your recent letter, you state that it is both "unusual" and "unprecedented" for us to request information about APS's expenditures for political speech. I find these statements unwarranted, given the attention that these issues have generated over the past months. At the present time, the public appears to look upon the Commission with suspicion and mistrust because of your alleged campaign contributions. This current state of affairs is not in the Commission's best interests, nor is it in your best interests.

I recognize that both APS and Pinnacle West have a First Amendment right to participate in elections, and it is not my intention to interfere with the exercise of those rights. Intuitively, I understand that you have an interest in supporting candidates who may agree with your views. However, in my opinion, your support for any particular candidate should be open and transparent. Your unwillingness to disclose this information leads to a variety of unfortunate perceptions.

There has been discussion about the scope of the Commission's authority to require the disclosure of this information, especially as relates to Pinnacle West. While I contend that article XV, section 4 provides the Commission with the express authority to subpoena such information from both APS and Pinnacle West, I am—for the moment—content to focus my inquiry upon APS. Specifically, I would like to find out if APS has spent ratepayer money to support or oppose the election of Arizona Corporation Commission candidates. I would like to ensure that only APS's profits are being used for political speech.

Simply put, dollars that APS has received from ratepayers in order to recover the costs of providing utility service should not be used for political speech. Unfortunately, I have thus far seen no evidence that such funds are *not* being spent on political speech. Under the circumstances, transparency requires a full reporting of any campaign contributions expended by APS in the past election cycle. Therefore, I am asking APS to provide my office with a full report of all spending related in any way to the 2014 election cycle—including but not limited to direct contributions and indirect contributions to third-party organizations—within thirty days of the date of this letter. The report should be docketed and should include a description of the source of any such funds, *i.e.*, whether the funds originate from APS's profits or from money intended to cover APS's costs of providing service.

The Commission is APS's regulator, and as a duly elected commissioner, I look forward to APS's full compliance with my request.

Sincerely,

Robert L. Burns
Commissioner

Arizona Corporation Commission
DOCKETED
NOV 30 2015
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Exhibit No. D

ORIGINAL

COMMISSIONERS
SUSAN BITTER SMITH – Chairman
BOB STUMP
TOM FORESE
DOUG LITTLE
BOB BURNS

0000166057

Direct Line: (602) 542-3933
Fax: (602) 542-5560
E-mail: tforese@azcc.gov

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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2015 SEP -4 P 4: 19
AZ CORP COMMISSION
DOCKET CONTROL

September 4, 2015

Re: Docket No. AU-00000A-15-0309

Dear Commissioners and Interested Parties:

In response to Chairman Susan Bitter-Smith and Commissioner Bob Burns' letter docketed August 27, 2015, I summarize my concerns with requiring public service corporations to "refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates" and suggesting that the Commission will "consider whether and to what extent an audit of any public service corporation would be warranted" along with "request[s] for financial information."

Because of infrastructural challenges, public service corporations have been the only companies to provide service in specific areas, resulting in monopolies. The Arizona Constitution recognized the nature of the utility business and defined the scope of power the Arizona Corporation Commission would have over public service corporations as the power to assure "just and reasonable rates." This would provide a check in the absence of competition. Although this creates a powerful relationship between the two entities, we must understand the limits of this office and not buy into a false sense of omnipotence. Commissioners attempting to influence campaigns in their official capacity through this relationship would exceed the bounds of their constitutional mandate over public service corporations.

Adopting such a policy would also have severe implications to civil liberties. Public service corporations have a First Amendment right to support the candidates of their choice as a matter of free speech. Any attempt by this Commission to limit or restrain the rights of public service corporations to engage in political speech could well run afoul of the First Amendment of the U.S. Constitution pursuant to the Supreme Court's decisions in Pacific Gas & Electric Co. v. Public Utilities Com., 475 U.S. 1, 14 (1986) ("Appellant does not, of course, have the right to be free from vigorous debate. But it does have the right to be free from government restrictions that abridge its own rights in order to 'enhance the relative voice' of its opponents.") and Citizens United v. FEC, 558 U.S. 310, 340 (2010) ("Speech restrictions based on the identity of the speaker are all too often simply a means to control content.").

Commissioners at the Corporation Commission took an oath to uphold the Constitution and should respect this right of autonomy and freedom of speech and debate. Upholding the foundational laws of the land should not be brushed aside or viewed as unfortunate and unsatisfactory technical compliance. The Constitution should be revered as the bedrock of our society, not a pebble in one's shoe. Any actions that we take to restrict or limit the ability of public service corporations to engage in speech, especially core political speech, are subject to immediate and likely successful attacks in federal court. Such an action would be costly for the State to defend, time consuming for the Commission, and would likely be unsuccessful given the U.S. Supreme Court's clear perspective on the question of the First Amendment's application to speech by corporate entities.

Further, *any* coordination between the source of an independent expenditure and the respective candidate is unlawful. A candidate impacted by an independent expenditure (whether it be beneficial or detrimental) should stay entirely away from any attempts to influence the expenditure regardless of their reasons. It is unquestioned that a sitting Commissioner is flatly prohibited from coordinating with those making independent expenditures to influence that Commissioner's election. Thus, directing those involved to do the inverse is equally as alarming.

In the spirit of transparency and defending public interest, the Commission may also want to consider the broader ramifications to the other interests and influences that come before it. Checks and Balances, a Florida based 501(c)(4) social welfare organization, advocates for rooftop solar through a combination of tactics supporting or opposing regulators and regulations around the country. Clearly, their interests extend beyond transparency and public interest. As the Commission considers supporting transparency, the public would also deserve to know the financial involvement of these actors as well. However, the Commission's authority would not extend to the communications of organizations who are not under the purview of the Commission. Opponents of the action would not be subject to similar disclosures because they are not public service corporations. This would leave the public with incomplete information as a result of a government mandate.

The Supreme Court has never permitted a campaign finance regulatory system that favors certain speakers over others and treats candidates for the same office differently. See Davis v. FEC, 554 U.S. 724 (2008) ("We have never upheld the constitutionality of a law that imposes different contribution limits for candidates who are competing against each other, and [] this scheme impermissibly burdens [Davis's] First Amendment right. "). If the State of Arizona chooses to enact a statutory scheme that requires greater public disclosure of issue advocacy activities it may endeavor to do so but such an action is wholly within the jurisdiction of the legislature (subject to limits imposed by the State and Federal Constitutions). The Commission's enabling legislation simply does not empower or authorize the Commission to take such an action.

This issue, a significant moment to change the course of governance for the better, ends paradoxically. If independent spending from company x is shown for regulator y in support of an action, the informed public will look to how the regulator votes and perhaps assume the independent spending culminated in said vote. The reality is that issues handled at the Commission have a level of complexity that allow for many potential outcomes in each individual case. This complexity requires one who means to uphold the duty of their office and to carefully study the issues in order to find solutions that make sense. This should only be done in the interest of the people of Arizona.

Sincerely,

Tom Forese
Commissioner

Exhibit No. E

COMMISSIONERS
SUSAN BITTER SMITH – Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

0000166063

DOUG LITTLE
Commissioner

RECEIVED

ARIZONA CORPORATION COMMISSION

2015 SEP -8 A 9:30

September 8, 2015

Arizona Corporation Commission
DOCKETED
SEP 08 2015
DOCKETED BY

AZ CORP COMMISSION
DOCKET CONTROL

RE: Docket No. AU-00000A-15-0309

ORIGINAL

Dear Colleagues:

Based on the submission of a proposed Commission policy on candidate contributions by Commissioner Burns and Chairman Bitter Smith, I felt it important to make clear my views on that proposal by submitting this letter to the official docket.

The genesis of this conversation appears to be the frequent, unrelenting and unsupported allegations by the news media and other organizations that certain regulated entities inappropriately expended monies in the last election cycle using independent expenditure committees.

I'd like to begin my discussion of this matter by quoting the First Amendment to the United States Constitution. It states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The right to engage in free speech, with particular emphasis on political speech, and the right of free association[1] are two of this nation's most important founding principles. In the First Amendment, the framers recognized that freedom of speech not only serves to protect the rights of the individual, but also serves to protect our society as a whole. They also categorically rejected the notion that government gets to decide *who is allowed to speak and who is not.*

The Supreme Court has upheld this interpretation of the First Amendment many times. Justice Powell summarized these sentiments succinctly when he stated, "the inherent worth of speech in terms of its capacity for informing the public does not depend on the identity of its source, whether corporation, association, union or individual."[2] Justice Marshall's statement that, "Above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content"[3] is also highly relevant here. Any attempt to control who speaks or what is said runs counter to the First Amendment.

---

[1] The text of the First Amendment does not specifically mention the right to association. However, the United States Supreme Court held in NAACP v. Alabama that the freedom of association is an essential part of the freedom of speech because, in many cases, people can engage in effective speech only when they join with others.
[2] *First National Bank of Boston v. Bellotti (1978)*
[3] *Police Department of City of Chicago v. Mosley* (1972)

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www.cc.state.az.us

In the 2010 Citizens United case the Supreme Court addressed several issues relating to the First Amendment and political speech and found that restrictions on organizations' (including corporations) involvement in political advocacy are a clear violation of the First Amendment. The Court also recognized that organizations are associations of individuals and those individuals do not lose their right to free expression just because they choose to associate with other individuals. The Citizen's United decision affirms the freedom to discuss public issues and debate the qualifications of candidates during campaigns for public office. The Court clearly stated that the First Amendment protects political speech and by inference, spending money to engage in political speech.

I believe this is one of the core rights guaranteed by the First Amendment.

Moreover, political speech about candidates prior to an election is also a core Constitutional value. To attempt to prohibit people or organizations from spending money to engage in political speech is the same as prohibiting them from speaking.

In my personal view, more political speech, whether it comes from corporations, unions, associations, self-appointed "watch dog" groups or individuals is a good thing because the ability to engage in robust discussion about the qualifications of candidates in an election is a good thing.

It is also worth noting that corporations do not speak in one voice. In recalling my own recent campaign, there were many corporations, organizations and associations that held widely divergent views regarding who were the best qualified candidates for the office of Corporation Commissioner.

The Court also rejected the claim that independent expenditures by corporations or organizations cause corruption by their advocacy. In its decision the Court stated "The fact that speakers may have influence or access to elected officials does not mean those officials are corrupt." More importantly, "The fact that a corporation, or any other speaker is willing to spend money to try and persuade voters *presupposes that the people have the ultimate influence over elected officials.*" (emphasis added) In other words, "The First Amendment confirms the freedom to think for ourselves."

Citizens United allows *all* corporations and organizations free speech, small or large, non-profit or for profit. They are free to present their views in the marketplace of free expression.

Some will argue that these competing messages serve to confuse the voter or attempt to unfairly influence the voters. In my view, we need to respect the voter's ability to discern the truth of the various arguments and filter out the misrepresentations, distortions and outright lies that may be presented.

I also find it ironic that many in our local media, including members of the Arizona Republic editorial board, are perfectly content to argue to deprive Arizona corporations of their First Amendment rights as well as deprive the voters of all available information on candidates. One would think that the press, one of the primary beneficiaries of the First Amendment, would be more vigorously defending the First Amendment rights of all others. That does not seem to be the case here.

The point that my two colleagues and the news media seem to be missing is this: political discourse in a constitutional republic like the United States can be raucous, messy and sometimes very contentious.

Elections provide an open forum for the discussion and examination of issues and debate on the qualifications of candidates for public office. Voters have the right to know about every piece of information

that might be relevant to their decision making process. And individuals, associations, unions and corporations have the right to inform the voters by independent issue or candidate advocacy.

In addition to these fundamental constitutional issues, there are real legal and practical issues with the proposed policy. The Arizona Corporation Commission simply does not have the legal jurisdiction to enforce the voluntary compliance sought in the proposal.

Given the breadth of organizations that would be effected by the proposed policy, the Commission would have no practical means of knowing whether compliance was universal. I believe the proposed policy would have the practical effect of silencing the political speech of some, while allowing full-throated dialogue by others.

As a result of carefully considering the arguments above, I have reached several conclusions:

1. Campaign advocacy is fully permitted under the guarantees provided by the First Amendment and fully affirmed by the Supreme Court in the Citizens United case.

2. Any company, association, union or organization is entitled to engage in political speech, including independent advocacy for candidates and issues.

3. As written, the proposed policy would have the effect of violating the constitutional rights of any entity appearing before the Commission. This would include regulated entities, un-regulated entities, interveners, issue advocacy groups and virtually anyone else that would be a part of the regulatory process.

4. Any adoption of a policy by the Corporation Commission regarding campaign spending by any entity, whether they are regulated or not, is not a proper action by this Commission and if adopted would have a chilling effect on free speech by those entities and by direct implication would violate their First Amendment rights.

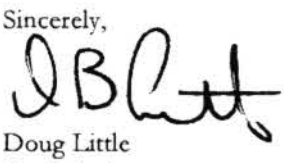
5. The proposed policy is legally and practically unenforceable.

It is for the reasons stated above that I cannot and will not support the proposal offered by Commissioner Burns and Chairman Bitter-Smith.

I believe that supporting such a proposal would be a violation of my oath of office in which I swore to protect and defend the Constitutions of the United States and of the State of Arizona.

Respectfully submitted this 8th day of September 2015.

Sincerely,



Doug Little
Commissioner
Arizona Corporation Commission

cc: See Service List

Exhibit No. F

COMMISSIONERS
SUSAN BITTER SMITH – Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
DOCKETED
SEP 11 2015
DOCKETED BY

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2015 SEP 11 P 3: 40
AZ CORP COMMISSION
DOCKET CONTROL

September 11, 2015

RE: Docket No. AU-00000A-15-0309

ORIGINAL

Dear Commissioners and Interested Parties:

In his statement at the Commission's September 8, 2015 Staff Meeting, Commissioner Burns expressed his desire to subpoena the financial records of Arizona Public Service to determine if they engaged in political spending in support of Corporation Commission candidates in the 2014 election.

It is not clear to me what purpose such a subpoena would serve.

There is nothing to indicate there was any violation of the law or Commission Rules. There is certainly nothing that would indicate such spending was included in rates. In fact, it would be impossible for any expenditure from that time frame to be included in rates because there has not been a rate case filed since that time.

Costs associated with political activities, including contributions to 501(c)(3)s are not recoverable in rates. During the course of a rate case an audit is performed that ensures (among other things) that no such expenditures are recovered through rates.

In my letter submitted to this docket on September 8, 2015, I explained why I believe the idea of a "voluntary" ban on campaign activities by entities that do business before the Commission is both unconstitutional and impractical. An attempt to subpoena such records will have similar constitutional and practical problems.

From a practical perspective, an examination of APS' activities during the campaign will not give us a complete picture. Many entities other than APS may have participated in the 2014 elections.

There are several entities that have substantial business interests in the decisions of this Commission that are not public service corporations and are not subject to the Commission's regulation.

To subpoena APS and leave all of these other entities unexamined would be inherently unfair and would lead to an incomplete picture of what actually was going on in the 2014 elections.

From a constitutional perspective, free speech and anonymous speech are intertwined. Anonymous speech has an important place in our political discourse. In fact, the Supreme Court has repeatedly ruled that the First Amendment protects the right to anonymous speech.

One of the most frequently quoted cases is *McIntyre v. Ohio Elections Commission* (1995). In that case, the decision, in relevant part reads: "Anonymity is a shield from the tyranny of the majority....It thus exemplifies the purpose behind the Bill of Rights and of the First Amendment in particular: to protect unpopular individuals from retaliation...at the hand of an intolerant society."

A second frequently referenced case is *Buckley v. Valeo* (1976) where the Court ruled that mandatory disclosure rules invariably chill the freedom of association and by implication, freedom of speech.

Under most state and federal laws, the identity of donors making contributions directly to a candidate must be reported. That is the case in Arizona. However, in 48 states, including Arizona, non-profits and other "independent expenditure committees" are not required to disclose their donors.

If Arizonans want to change that, the proper venue is in the Arizona Legislature, not the Arizona Corporation Commission.

I believe the subpoena contemplated by Commissioner Burns would put the Commission on very thin legal and constitutional ice. But the practical benefit of the subpoena would be minimal. Assuming the subpoena was not successfully challenged, it would only reveal information about one of many entities that potentially participated in the 2014 elections.

Rather than skate out onto the thin ice of campaign finance investigations with inherent First Amendment issues, I believe this Commission should stick to its core missions: regulating utility rates, regulating securities dealers, and enabling efficient registration of corporations.

Over the next few years almost every large utility in the state will be before us with rate cases and the multiple small utilities we regulate will continue to require our attention as well. Our attention should be there, not on pursuing a questionable subpoena that would have little practical value.

Sincerely,

Doug Little
Commissioner
Arizona Corporation Commission

Docketed September 11, 2015
Mailed September 11, 2016 to the Service List in Docket No. AU-00000A-15-0309

Exhibit No. G

ORIGINAL

PINNACLE WEST
CAPITAL CORPORATION

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2015 OCT 23 P 4: 29

AZ CORP COMMISSION
DOCKET CONTROL

DONALD E. BRANDT
Chairman, President and
Chief Executive Officer

Mail Station 9042
P.O. Box 53999
Phoenix, AZ 85072

Arizona Corporation Commission
DOCKETED

OCT 23 2015

DOCKETED BY KE

October 23, 2015

Chairman Susan Bitter Smith
Commissioner Bob Burns
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Re: September 8, 2015 Letter Concerning Campaign Contributions to ACC Candidates
Docket No. AU-00000A-15-0309

Dear Chairman Bitter Smith and Commissioner Burns:

On behalf of Arizona Public Service Company ("APS") and Pinnacle West Capital Corporation (the "Companies"), I write in response to the September 8, 2015 letter filed by you in this docket. In that letter, you request that "all public service corporations and unregulated entities that appear before the Commission agree to voluntarily refrain from making campaign contributions in support of or in opposition to Corporation Commission candidates." To say that this request is unusual, if not unprecedented in APS' 125-year history, only begins to highlight the critical nature of the issues it raises.

There is no disagreement that the First Amendment protects the right of individuals and corporations to engage in political speech through campaign expenditures. Indeed, the First Amendment "'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 223 (1989). APS has always been a major participant in the public life of the State, by virtue of its responsibility to deliver an essential public service to many of its citizens. APS has for many years availed itself of all lawful means to make its views on issues important to its customers, employees and shareholders known to legislators, public officeholders and all those who have an interest in the future of Arizona. Accordingly, a request from governmental officials with great authority over APS to relinquish one means of expression of this right is a serious matter.

The suggestion that political speech conducted in full compliance with law might threaten the Commission's integrity is troubling. Each Commissioner takes an oath to faithfully and impartially discharge the duties of his or her office. Each Commission decision is made in full public view, must be grounded in the record and must be based upon evidence. The Companies flatly reject any suggestion that Commissioners would base decisions affecting the well-being of the state's citizens other than on the evidence submitted to them, or would otherwise compromise his or her oath of office.

The concerns raised by your request extend beyond this particular Commission and implicate our broader political process. Much of the Commission's work involves legislative policy judgments, similar to work many elected and appointed commissions and public bodies do across the country. If the Companies, or other parties appearing before the Commission, seek to persuade voters to elect Commissioners who support certain policies instead of others, that choice to engage in a public political debate does not reflect on the integrity of commissioners. Nor does political speech reflect on the integrity of legislators in Arizona, or in any other state. This is simply how democracy works: consumers, businesses, and others with an interest in legislative decisions seek to inform voters and persuade them to support the candidates whose positions those speakers favor, and the voters decide which candidates to elect.

Under the Arizona Constitution, Corporation Commissioners are elected officials, accountable to the people of Arizona. Because Commissioners are elected through a democratic process, everyone, including the Companies, has a right to participate in that process.

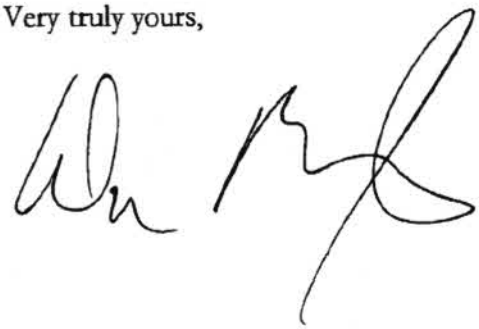
Vigorous debate about whether and how our system of democracy works has gone on since the founding of our Republic. Throughout, one theme has consistently emerged: if there is a disagreement about who should be elected, or the nature of the First Amendment, or how our system works, "the remedy to be applied is more speech, not enforced silence." *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring). As the U.S. Supreme Court explained decades later, "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." *Citizens United v. Federal Election Commission*, 558 U.S. 310, 339 (2010).

The request that the Companies refrain from exercising their First Amendment rights is particularly problematic because significant political expenditures will undoubtedly be

made by others who lack the permanence and presence of APS before the Commission and in the state of Arizona. It is no secret that many entities have strong economic interests in Commission decisions. The Commission will not possess jurisdiction over all of these entities. In that circumstance, the Commission will be unable to audit, much less enforce, the promises or practices of such parties in their future campaign financing activities. When one party muzzles itself, while others remain free to speak, the public debate is less informed, more skewed, and ultimately harmful to the "uninhibited marketplace of ideas in which truth will ultimately prevail." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014).

With respect, the Companies cannot agree to forfeit any of their First Amendment rights to speak on public issues. The Companies will continue to advocate for sound policies that enable a sustainable energy future for Arizona.

Very truly yours,



c: Commissioner Bob Stump
Commissioner Doug Little
Commissioner Tom Forese

Exhibit No. H

ORIGINAL

aps

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2015 DEC 30 P 4: 48

AZ CORP COMMISSION
DOCKET CONTROL

DONALD E. BRANDT
Chairman, President and
Chief Executive Officer

Mail Station 9042
P.O. Box 53999
Phoenix, AZ 85072

December 29, 2015

Commissioner Bob Burns
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Dear Commissioner Burns:

I write in response to your letter of November 30, 2015. In your letter, you note that dollars "received from ratepayers in order to recover the costs of providing utility service should not be used for political speech." APS agrees with that principle, and consistent with standard utility practice and Commission-established guidance, any political contribution made by a public service corporation should not be treated as an operating expense recoverable in rates.

If APS were to make a political contribution, these expenses would be paid for out of the money that the Commission has authorized as a return on shareholder capital—a return that must be offered so that investors are willing to invest money in Arizona's infrastructure.

You state in your letter "I would like to ensure that only APS's profits are being used for political speech." APS does not recover from customers the cost of any political contributions. Compelled disclosure about political contributions that APS or its affiliates may have made out of shareholder profits would go beyond what is required of all corporations under Arizona campaign finance law, and would impinge on APS's First Amendment rights.

I hope this answers your question.

Arizona Corporation Commission
DOCKETED
DEC 30 2015
DOCKETED BY

Sincerely,

Exhibit No. I

ORIGINAL

COMMISSIONERS
DOUG LITTLE- Interim Chairman
BOB STUMP
BOB BURNS
TOM FORESE
VACANT

0000167644

Direct Line: (602) 542-3682
Email: RBurns-web@azcc.gov

ARIZONA CORPORATION COMMISSION

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January 28, 2016

Arizona Corporation Commission
DOCKETED
JAN 28 2016
DOCKETED BY

NOTICE OF INVESTIGATION

RE: Docket No. AU-00000A-15-0309

Dear Mr. Brandt:

It is with regret that I now embark upon the next stage of my inquiry into APS's possible campaign contributions. Originally, I had hoped to address these concerns by focusing upon APS's future behavior, and to that end, I asked APS last year to voluntarily agree to refrain from making political contributions concerning the Corporation Commission in the upcoming election cycle. You rejected that proposal.

I next asked you to provide a report listing any campaign contributions provided by APS in 2014. You declined to provide this information, claiming that such disclosure would "impinge on APS's First Amendment rights." As I have previously stated, I recognize that both APS and Pinnacle West have a First Amendment right to make campaign contributions, and it is not my intention to interfere with the exercise of those rights. It is my position, however, that disclosure requirements do not offend the First Amendment when the information sought is related to the Commission's constitutional and statutory regulatory authority.

In the current climate, there is a public perception that APS has used funds earmarked for its costs of service to support various political campaigns. Recently, I have become concerned about the lack of transparency for all of APS's below-the-line expenditures. In sum, I intend to initiate an investigation pursuant to my authority under A.R.S. § 40-241 to determine whether APS has used above-the-line funds for political, charitable, or other donations. Although my inquiries were initially focused on potential campaign contributions, I now intend to broaden my inquiry to include funds expended on all political contributions, lobbying, and charitable contributions, *i.e.,* all donations made—either directly or indirectly—by APS or under APS's brand name for any purpose.

APS's 2014 FERC Form 1, page 117, reports "donations" (Account No. 426.1) in the amount of $1,998,442 and "expenses for civic, political & related activities" (Account No. 426.4) in the amount of $2,883,694. I am interested in examining APS's books and records to determine the specific expenditures that make up these amounts. In addition, I am under the impression that APS's affiliates sometimes make donations using affiliate funds, but under APS's brand name. I would like to examine the full parameters of this arrangement, including a full accounting of all contributions/donations given by APS's affiliates under APS's brand name.

Finally, I am aware that APS and its affiliates, especially Pinnacle West, share commonalities in terms of officers and directors, as well as other personnel. I would like to investigate the degree to which APS and Pinnacle West are intertwined in terms of organization, operation, and structure.

Pursuant to my authority under A.R.S. § 40-241, I hereby expressly direct APS to make its accounts, books, papers, and documents available for inspection. Also pursuant to A.R.S. § 40-241, APS is directed to make available the appropriate person(s) to answer questions about their books, records, and business affairs. I will designate a representative to perform the inspection and the interviews, and pursuant to A.R.S. § 40-241, I intend for those examinations to be conducted under oath so that a written record may be publicly filed pursuant to A.R.S. § 40-241.C.

My office will be in contact with you soon in order to schedule a mutually convenient series of dates for the conduct of this investigation. To be clear, unlike my previous communications, this letter is not intended as a request, but is instead a *requirement* for your cooperation under A.R.S. § 40-241. I look forward to your full compliance in this matter.

Sincerely,

Robert L. Burns
Commissioner

Exhibit No. J

1 BEFORE THE ARIZONA CORPORATION COMMISSION
2
3 IN THE MATTER OF THE APPLICATION OF) DOCKET NO.
ARIZONA PUBLIC SERVICE COMPANY FOR) E-01345A-11-0224
4 APPROVAL OF LOST FIXED COST RECOVERY)
MECHANISM.)
5) OPEN MEETING
6
7
8 At: Phoenix, Arizona
9 Date: April 12, 2016
10 Filed: April 13, 2016
11
12
13
REPORTER'S TRANSCRIPT OF PROCEEDINGS
14
AGENDA ITEM NO. 27
15
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17
18
19
COASH & COASH, INC.
20 Court Reporting, Video & Videoconferencing
1802 N. 7th Street, Phoenix, AZ 85006
21 602-258-1440 staff@coashandcoash.com
22
23
By: Colette E. Ross, CR
24 Certified Reporter
Certificate No. 50658
25

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on to be heard at Open Meeting as
3 Agenda Item No. 27 before of the Arizona Corporation
4 Commission, in Hearing Room 1 of said Commission, 1200
5 West Washington Street, Phoenix, Arizona, commencing at
6 12:22 p.m. on the 12th of April, 2016.
7
8
BEFORE: DOUG LITTLE, Chairman
9 BOB BURNS, Commissioner
TOM FORESE, Commissioner
10 ANDY TOBIN, Commissioner, via teleconference
11
12 APPEARANCES:
13
For the Applicant:
14
Mr. Tom Mumaw
15
16 For the Arizona Corporation Commission:
17 Mr. Thomas Broderick
Mr. Rick Lloyd
18 Ms. Janice Alward
19
20
21
22
23
24
25

1 CHMN. LITTLE: All right. Item No. 27, Arizona
2 Public Service Company, E-01345A-11-0224, the
3 application for approval of an annual lost fixed cost
4 recovery mechanism adjustment.
5 MR. BRODERICK: Rick Lloyd on behalf of Staff.
6 MR. LLOYD: Good morning, Chairman Little and
7 Commissioners.
8 Agenda 27 is an application by Arizona Public
9 Service Company for approval of its annual reset of its
10 lost fixed cost adjuster. APS is requesting that the
11 LFCR charge be reset from 1.4592 percent to
12 1.7095 percent of the customer's bill, which would
13 result in an increase of 34 cents per month for a
14 residential customer using the annual average of 1100
15 kilowatt hours per month. The impact on retail revenues
16 from the new LFCR charge is an overall estimated revenue
17 recovery of approximately $46.4 million for the 12-month
18 collection period.
19 Staff has reviewed the application and believes
20 the LFCR calculation has been completed in compliance
21 with the LFCR plan of administration. Accordingly,
22 Staff is recommending approval of this application.
23 Staff is proposing an amendment to correct two
24 minor errors. And I also note that the company would
25 like to sponsor an amendment, a minor amendment, as to

1 when the collection period would start.
2 I would be happy to answer any questions you may
3 have regarding this.
4 CHMN. LITTLE: So does the company have a
5 proposed amendment, or maybe not? I will address that
6 question to Mr. Mumaw.
7 Mr. Mumaw, how are you today?
8 MR. MUMAW: Just fine. Tom Mumaw on behalf of
9 Arizona Public Service Company.
10 Our amendment would be on page 6 of the
11 recommended order, line 3. And we would like to
12 substitute the word first for the word next, and then
13 substitute May for April. We would much prefer to begin
14 this charge on the first billing cycle of the month if
15 for no other reason that way everybody pays the same
16 amount of LFCR payments rather than some customers
17 paying 12 payments in the month -- in the year, excuse
18 me, and other customers paying only 11 payments in the
19 month.
20 CHMN. LITTLE: Okay. So give me that one more
21 time so I can write it down.
22 MR. MUMAW: Yes. Line 3, page 6, substitute the
23 word first for next, and so say first available billing
24 cycle of, and then May rather than April. And while I
25 am here, we also support the Staff amendment as well.

1 CHMN. LITTLE: Mr. Broderick, does Staff have
2 any issue with the proposed amendment from the company?
3 MR. LLOYD: We do not.
4 CHMN. LITTLE: Okay.
5 COM. FORESE: Mr. Chairman.
6 CHMN. LITTLE: Commissioner Tobin, please.
7 COM. TOBIN: Mr. Chairman, in the interest of
8 transparency, pursuant to A.R.S. 38-509, I filed in
9 Docket No. AU-00000D-16-0120 a disclosure of possible
10 substantial interest found in Arizona Revised Statute
11 38-502 for the following matter, E-01345A-11-0224,
12 Arizona Public Service's application for approval of its
13 annual lost fixed cost recovery mechanism.
14 Mr. Chairman, I may have a conflict of interest
15 due to my son-in-law being employed by SolarCity, who is
16 participating in this docket. While I, along with many
17 lawyers, disagree with the Special Counsel's
18 interpretation of 38-501, I will refrain from
19 participating in any manner in this docket.
20 I think the general public would agree with me
21 that I do not have a substantial interest in this item.
22 But in the interest of transparency, I would like to
23 file that with the Commission.
24 CHMN. LITTLE: Thank you, Commissioner Tobin.
25 Shay, please note that Commissioner Tobin will

1 be recusing himself from the vote.
2 Commissioner Burns, would you like to move the
3 amendment, excuse me, move the item so we can amend it?
4 COM. BURNS: Mr. Chairman, I move Item 27 be
5 adopted.
6 CHMN. LITTLE: Okay. And I will go ahead and
7 pick this up as Little Proposed Amendment No. 1.
8 Page 6, line 3, substitute the word first for next and
9 substitute the word May for April, and make any
10 conforming changes.
11 So I will propose that Little Amendment No. 1 as
12 I just read it.
13 Mr. Mumaw, does that accomplish what you are
14 looking for?
15 MR. MUMAW: Yes, it does. I think it is fairer
16 and it makes -- it is simpler for everyone.
17 CHMN. LITTLE: Okay. Very good.
18 Commissioner Burns, would you please move the
19 amendment.
20 COM. BURNS: I move the amendment.
21 CHMN. LITTLE: Sorry. I took care of that,
22 didn't I.
23 So could we have a vote on the amendment. All
24 in favor of the amendment, signify by saying aye.
25 (A chorus of ayes.)

1 CHMN. LITTLE: So three votes in favor, one
2 recusal, one not present, the amendment passes.
3 Commissioner Burns, would you please move the
4 item as amended.
5 COM. BURNS: Mr. Chairman, I move Item 27 as
6 amended to be adopted.
7 CHMN. LITTLE: Thank you.
8 Shay, would you please call the roll.
9 MR. MUMAW: Excuse me. Mr. Chairman, do you
10 need to vote on the Staff amendment?
11 CHMN. LITTLE: Oh, yes, I am sorry, we do. I am
12 being remiss.
13 MR. MUMAW: I didn't want to interject myself.
14 CHMN. LITTLE: I am glad you did. I am having
15 some challenges today.
16 Commissioner Burns, would you please move
17 Item -- excuse me, Staff Proposed Amendment No. 1.
18 COM. BURNS: Yes, Mr. Chairman, I move Staff
19 Proposed Amendment No. 1 be adopted.
20 CHMN. LITTLE: All in favor signify by saying
21 aye.
22 (A chorus of ayes.)
23 CHMN. LITTLE: Three votes in favor, Staff
24 Amendment No. 1 passes.
25 Now, Commissioner Burns, would you please move

1 Item No. 27 as amended.
2 COM. BURNS: Mr. Chairman, I move Item 27 as
3 amended be adopted.
4 CHMN. LITTLE: Shay, please call the roll.
5 SECRETARY BERNAL: Commissioner Burns.
6 COM. BURNS: Yes, I would like to explain my
7 vote. And I hope you will bear with me here. It is
8 going to take me a little while to explain, explain this
9 vote.
10 In the oath of office, we talk about the
11 Constitution and the laws of the State of Arizona. But
12 we also said in our oath that we will faithfully and
13 impartially discharge the duties of the office of
14 Corporation Commission Commissioner according to the
15 best of my ability. And I am attempting to do that.
16 And I believe that a vote is a tool in a -- in that
17 process.
18 So the issue that is troubling me is relative to
19 constitutional authority and statutory authority. And
20 so I would like to read a couple of items, one from the
21 Constitution and one from statute.
22 In the Constitution, Article 15, Section 4 says:
23 The power to inspect and investigate.
24 Section 4, the Corporation Commission, and the several
25 members thereof, shall have power to inspect and

1 investigate the property, books, papers, business,
2 methods and affairs of any corporation whose stock shall
3 be offered for sale to the public and of any public
4 service corporation doing business within the state, and
5 for the purpose of the Commission, and of the several
6 members thereof, shall have the power of a court of
7 general jurisdiction to enforce the attendance of
8 witnesses and the production of evidence by subpoena,
9 attachment, and punishment, which said power shall
10 extend throughout the state. Said Commission shall have
11 power to take testimony under commission or deposition
12 either within or without the state.
13 In Section 40, paragraph 241 of the Arizona
14 statutes, power to examine records and personnel of
15 public service corporations, filing record of
16 examination:
17 A, the Commission, each Commissioner and person
18 employed by the Commission may at any time inspect the
19 accounts, books, papers, and documents of any public
20 service corporation, and any such persons who are
21 authorized to administer oaths may examine under oath
22 any officer, agent, or employee of such corporation in
23 relation to the business and affairs of the corporation;
24 B, any person other than a Commissioner or an
25 officer of the Commission demanding such inspection

1 shall produce under the hand and seal of the Commission
2 his authority to make the inspection;
3 C, a written record of such testimony or
4 statement given under oath shall be filed with the
5 Commission.
6 There was a Supreme Court order that contains a
7 paragraph that I would also like to read:
8 The Court stated the Corporation Commission was
9 not designed to protect public service corporations and
10 their management but, rather, was established to protect
11 our citizens from the results of speculation,
12 mismanagement and abuse of power. To accomplish these
13 objectives, the Commission must have the power to obtain
14 information about and take action to prevent unwise
15 management or even mismanagement and to forestall its
16 consequences in intercompany transactions significantly
17 affecting a public service corporation's structure or
18 capitalization.
19 There is a Commission order that has been issued
20 to APS. APS has indicated that they may resist
21 compliance with that order. I am interested in
22 expediting this particular process.
23 If a judge in this state received a refusal or a
24 resistance to comply, I believe the recipient of that
25 order by a judge, a judge in one of the courts in the

1 state, I believe the recipient of that order would be
2 found in contempt of court. In this case, I believe APS
3 will be, without a timely response to this Commission's
4 order, in contempt of the Commission. If a contempt of
5 the court, one of the state courts, if there were
6 contempt in the court, all of the judges of that court
7 would, I believe, demand immediate compliance.
8 This Commission has the same level of
9 responsibility to the citizens of Arizona. And a
10 failure to respond to a Commission order would be, in my
11 mind, contempt of the Commission and should be met with
12 the same level of demand by the members of this
13 Commission.
14 APS has been granted monopoly status which
15 carries with it tremendous advantages. With those
16 advantages --
17 MS. ALWARD: Chairman.
18 COM. BURNS: -- comes a much higher level of
19 transparency and public reporting than is required by
20 the free competitive market --
21 MS. ALWARD: Chairman.
22 CHMN. LITTLE: Ms. Alward.
23 MS. ALWARD: I hate to interrupt Commissioner
24 Burns. But it seems to me that if Mr. Commissioner
25 Burns's comment is related to this item, then it should

1 be made clear. Otherwise, we are off the agenda, from
2 my view. I think that every Commissioner, of course,
3 can comment, but it needs to be related to this item.
4 And if Commissioner Burns would like to comment on Item
5 27 in light of his earlier statements, that's fine. But
6 I think we are going off agenda under the open meeting
7 law.
8 COM. BURNS: Well, Mr. Chairman, I believe that
9 I have the opportunity or the right to explain my vote.
10 And my vote is a tool of this Commission. All votes of
11 this Commission are a tool to be used. And I intend to
12 try and use that vote as a tool. And I am explaining so
13 that you will understand what I am trying to get to when
14 I do make my vote.
15 So I would like to be able to continue. I am
16 close to the end of my explanation.
17 CHMN. LITTLE: Commissioner Burns, please
18 continue.
19 And, Ms. Alward, your concern is noted.
20 COM. BURNS: As I stated, APS has been granted
21 monopoly status, which carries with it tremendous
22 advantages. With those advantages comes a much higher
23 level of transparency and public reporting than is
24 required by the free competitive market counterparts.
25 I am voting no on this item and will not support

1 any further action items requested by APS with the
2 exception of an item that might have health or safety
3 components until the Commission order that rests at the
4 APS corporate office is complied with in its entirety.
5 Furthermore, Mr. Chairman, I believe that you,
6 in your position as Chairman of this Commission, have
7 the authority to take that same type of position and
8 expedite an action that has been ordered by this
9 Commission.
10 And, again, with that, I vote no.
11 SECRETARY BERNAL: Commissioner Tobin, recused.
12 Commissioner Stump, excused.
13 Commissioner Forese.
14 COM. FORESE: Aye.
15 SECRETARY BERNAL: Chairman little.
16 CHMN. LITTLE: I am going to vote aye. But I
17 would also like to explain my vote.
18 I certainly understand and appreciate what
19 Commissioner Burns has just said. And in my considered
20 opinion, while he is correct that he has issued a demand
21 letter for information to APS, the ultimate question of
22 whether or not that letter is actually within his
23 authority is still, to my mind, up in the air.
24 I would simply direct anyone to the campaign
25 finances Docket No. last four digits, or, excuse me, the

1 last six digits are 15-0309, in which Commissioner Burns
2 has requested an advisory opinion from the Attorney
3 General, which has been to this point not forthcoming,
4 and my response to his letter to the Attorney General
5 outlining the concerns that I have.
6 I think certainly Commissioner Burns is entitled
7 to vote his conscience and is entitled to his particular
8 point of view on this. I personally disagree with that
9 point of view.
10 And since we do not have a majority, we cannot
11 move this item forward in this meeting. What we will
12 have to do is take this item under advisement in a
13 future open meeting, if I am not incorrect.
14 Is that correct, Ms. Alward?
15 MS. ALWARD: That's correct, Mr. Chairman. By
16 the fact the item hasn't passed, it has not been denied,
17 it just hasn't passed. So the way the Commission
18 typically handles this, it brings it back again for
19 another opportunity for consideration.
20 CHMN. LITTLE: So I will look at docketing this
21 item at a future open meeting. And certainly we will
22 let the parties know when that item is docketed.
23 Any other observations at this point,
24 Commissioner Forese, Commissioner Tobin, Commissioner
25 Burns?

COM. BURNS: No.
CHMN. LITTLE: Give everybody one last shot at it.
COM. FORESE: No.
CHMN. LITTLE: Commissioner Burns.
COM. BURNS: No.
CHMN. LITTLE: Okay. Commissioner Tobin?
COM. TOBIN: Mr. Chairman, I have no comments on this issue.
CHMN. LITTLE: Okay. Considering the hour, it is now 12:40 -- we have one item remaining that was not to be heard before 1:00 p.m., that item being No. 28, Black Mountain Sewer Corporation -- I am going to declare this open meeting in recess until 1:30 p.m.
(The Certified Reporter was excused.)
(TIME NOTED: 12:41 p.m.)

1 STATE OF ARIZONA)
COUNTY OF MARICOPA)
2
3 BE IT KNOWN that the foregoing proceedings were taken before me; that the foregoing pages are a full,
4 true, and accurate record of the proceedings all done to the best of my skill and ability; that the proceedings
5 were taken down by me in shorthand and thereafter reduced to print under my direction.
6
I CERTIFY that I am in no way related to any of
7 the parties hereto nor am I in any way interested in the outcome hereof.
8
I CERTIFY that I have complied with the
9 ethical obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206 (J)(1)(g)(1) and (2). Dated at Phoenix,
10 Arizona, this 13th day of April, 2016.
11
12

13 _____
COLETTE E. ROSS
Certified Reporter
14 Certificate No. 50658
15
I CERTIFY that Coash & Coash, Inc., has complied
16 with the ethical obligations set forth in ACJA 7-206 (J)(1)(g)(1) through (6).
17
18
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24 _____
COASH & COASH, INC.
Registered Reporting Firm
25 Arizona RRF No. R1036

Exhibit No. K

ORIGINAL

OPEN MEETING AGENDA ITEM

0000169824

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

ARIZONA CORPORATION COMMISSION

BOB BURNS
COMMISSIONER

Direct Line: (602) 542-3682
Email: RBurns-web@azcc.gov

April 20, 2016

RE: Arizona Public Service Lost Fixed Cost Recovery Mechanism, Docket No. E-01345A-11-0224

Dear Chairman Little and Commissioners:

When this matter was discussed at the April Open Meeting, I expressed my frustration with APS's refusal to comply with my ongoing requests for information. I am concerned about the way my statements have been portrayed and now seek to elucidate my position.

I will consider every case that comes before this Commission on its merits. In my role as an elected commissioner, I will not prejudge matters until I have fully considered the issues, the record, and any other related information. The health and safety of ratepayers is of the utmost importance to me, and other matters, such as potential rate changes, are also important issues for this Commission to decide. I will, however, continue to explore every means available to me to acquire the information that I have ordered from APS.

In his April 13, 2016 letter to this docket, Commissioner Tobin requested an "immediate emergency meeting of the Commission" to re-address this matter. While I do not believe this matter warrants an "emergency" meeting, I expect it will appear at a future open meeting based on the other commissioners' comments. At that time, I will consider it based on the relevant information, and I look forward to my future full consideration of all APS matters.

Sincerely yours,

Robert L. Burns
Commissioner

Arizona Corporation Commission
DOCKETED
APR 20 2016
DOCKETED BY

AZ CORP COMM
DOCKET CONTROL
2016 APR 20 A7 10 38

Exhibit No. L

DRAFT REVISED 1

BEFORE THE ARIZONA CORPORATION COMMISSION

In the Matter of: Commission discussion, consideration, and possible vote on whether to allocate funds from the Commission's budget for payment in furtherance of the scope of work associated with the August 2, 2016 contract with outside counsel, or, alternatively, to suspend the allocation of funds for that contract pending submission of a revised scope of work to be developed by the Executive Director, in consultation with each Commissioner, and presented to the Commission for consideration within 45 days. - Commissioner Tobin.	AU-00000E-16-0270 STAFF MEETING

At: Phoenix, Arizona

Date: August 11, 2016

TRANSCRIPT OF PROCEEDINGS

AGENDA ITEM 3

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CET**D-323

DRAFT REVISED 1

1 BE IT REMEMBERED that a Staff Meeting was held
2 at the Arizona Corporation Commission, 1200 West
3 Washington Street, Phoenix, Arizona, commencing on the
4 11th day of August, 2016.
5
6 BEFORE: DOUG LITTLE, Chairman
ANDY TOBIN, Commissioner
7 TOM FORESE, Commissioner
(Appeared telephonically)
8 BOB STUMP, Commissioner
BOB BURNS, Commissioner
9
10
11
APPEARANCES:
12
13 For the Arizona Corporation Commission:
14 Janet Wagner, Assistant Director, Legal Division
15
16
17
18
19
20
21
22
23
24 Katherine A. McNally
CERTIFIED TRANSCRIBER
25 CET**D-323

(Commencement of Item Number 3 at 00:32:30.)

CHMN. LITTLE: Moving to Item 3 of the agenda, Commissioner Tobin.

COM. TOBIN: Thank you. Mr. Chairman, I have -- I'm a little dismayed about the scope of work that I was presented with, in the announcement by our Executive Director, of the hiring. And there's a lot of reason for that, mostly because I have a lot of scope of work I'd like to see implemented as well.

And I get a sense like this was pretty particular and pretty specific to somebody's personal intentions from the Corporation, rather than all of our Commissioners getting together and speaking to the Executive Director and prioritizing those pieces that we think need attention -- or at least consulting services that may be able to make recommendations, whether it be budget or policy or process, procedure, rules.

I mean, I have a plethora, whether it be Staffing, elections issues, open meeting review. I mean, I think there's a plethora of items that I think is important for each Commissioner to be able to express to the Executive Director. And we'll pick our top 10 or whatever we think it works, and then have a conversation about what that scope of work is, and then make a decision going out for an RFP for somebody to handle

1 those specifics on that scope of work, rather than just
2 having each one of us now go to Jodi and just say, you
3 know, I have a procedure issue; I have a rules issue. I
4 want you to hire me an attorney. Here's the scope of
5 work. And here's -- by the way, here's the lawyer.
6 You know, so my view is that whatever we have
7 just done in hiring, I want it halted, so that this
8 Commission, as a whole, can coordinate what are the
9 priorities of the Commission and move forward. And I
10 don't see that that's happening with this current
11 process.
12 CHMN. LITTLE: Well, and Commissioner Tobin, I
13 share some of your concerns. I think my concerns are
14 slightly different than yours. One of the things that
15 I'm quite concerned about -- and I expressed this
16 concern after the announcement of this particular
17 contract.
18 First of all, in my opinion, I question whether
19 or not such a project as Commissioner Burns has
20 requested needs to happen at all, number one. And that
21 is based on my personal observation that over the past
22 year and a half here at the Commission one of the things
23 that he's requesting in this scope of work is that a
24 gentleman be hired to determine whether or not there is
25 undue influence being exerted on Commission Staff or

1 Commissioners from outside stakeholders. And in the
2 year and a half that I've been here, I have seen nothing
3 in any interaction with any outside stakeholders. I
4 have seen nothing in any interactions with Staff and
5 outside stakeholders that would lead me to believe that
6 we have an issue here, currently.
7 And to spend nearly $100,000 worth of taxpayer
8 money is concerning to me, because I, quite frankly,
9 don't see the specific need for it.
10 Now, that's the one issue.
11 I think the other issue is that after seeing the
12 scope of work, which I, by the way, expressed concerns
13 to Ms. Jerich that I thought the scope of work was
14 overly broad. And in response to that, I think you
15 actually have looked at the possibility of narrowing the
16 scope of work somewhat -- or at least clarifying the
17 scope of work.
18 But that really got me thinking about some
19 things. So I actually went out and did a little bit of
20 research on a couple things. And I found some things
21 that were very concerning to me because one of the
22 things that the scope of work identified was a desire to
23 have a neutral third party perform this work on, you
24 know, Commissioner Burns' behalf.
25 And when reviewing a -- I went out and reviewed

1 Scott Hempling's client list, I found a couple things
2 that were interesting. I found, one, that he has done
3 quite a bit of work for a public interest organization
4 called the Energy Foundation. And in fact, he's also
5 been funded for a special project called "Marrying
6 Federal Power Act law with cost-effective environmental
7 objectives". And that work was funded by a grant from
8 the Hewlett Foundation and the Energy Foundation.
9 So doing, again, a little bit of homework, I
10 pulled the Form 990s for the Energy Foundation, which is
11 located in San Francisco, and I found that in 2012,
12 former Commissioner Kris Mayes, who is on the board of
13 that organization, was paid for approximately two hours
14 of work a week. This is the pro forma for the -- for
15 the board members. She was paid $31,500 for
16 approximately two hours worth of work a week.
17 Now, that is remarkable because most of the rest
18 of the directors were paid either 6 or 40 -- $6,000 or
19 $4,500. That was '12.
20 In '13, she was paid $88,000 a year, again, for
21 a two-hour-per-week approximate workload. And again,
22 the vast majority of the other board members either
23 received compensation of either $6,000 or $4,500.
24 And in '14, the compensation did drop back more
25 into line, again, based on a two-hour-per-week

1 contribution, it was $6,500. But in a period of three
2 years, Commissioner Mayes received compensation in the
3 amount of $126,000.
4 Now, it strikes me as also very interesting that
5 a company -- or an organization called Save Our AZ
6 Solar, which is currently being administered by former
7 Commissioner Mayes has spent approximately $457,000 in
8 support of Commissioner Burns' campaign as an
9 independent expenditure committee.
10 It begins to ask the question in my mind whether
11 or not this Mr. Hempling is actually an independent
12 party or not. I would submit that he has enough of a
13 connection to the Energy Foundation and the Energy
14 Foundation has enough of a connection to former
15 Commissioner Mayes and former Commissioner Mayes has
16 enough connection to the independent expenditure
17 committee that I would submit that he probably is not an
18 appropriate choice for an independent investigation.
19 If there's a sense from the rest of the
20 Commissioners that there is indeed a need for some type
21 of investigation like that -- which personally I don't
22 feel that there is -- that if other Commissioners feel
23 that there is a need for it, I certainly think it's
24 worth talking about to determine whether or not there is
25 another person that we could possibly retain.

1 But the thing that I am very concerned about is
2 that any investigation -- and I hesitate to even call it
3 that -- even any examination that we might do of this
4 nature would of necessity need to be by someone who is
5 absolutely irreproachable in terms of their
6 independence. And I just don't feel, based on the
7 information that I've been able to discover on the
8 public Internet, that that's the case here.
9 COM. BURNS: Well, if I could have an
10 opportunity to respond.
11 I think that it's very clear in the constitution
12 and in the statutes that a single Commissioner has the
13 authority to examine records of a corporation. And so
14 with that authority, obviously comes a need to have
15 somebody to do that work, and representatives of the
16 Commissioner are certainly mentioned and allowed in that
17 process.
18 So I think I have the legal authority to go
19 forward with the attorney that I decide to hire.
20 That's -- if I have the independent authority, then I
21 have the authority to hire who I need to fill the bill.
22 And this gentleman has extensive experience, especially
23 in the utility -- the examination of utilities and so
24 forth. So I think he is independent, and I'm not sure
25 that that's the key point. I think it is a key point.

1 But it's somebody that based on his experience
2 and his resume I felt was the best person for the job.
3 I have the authority to hire, and so I went ahead and
4 hired him.
5 Now, if you want to expand the scope of work,
6 that was part of this plan. Part of this plan is to
7 have you talk to this man and express what you think
8 needs to be done different than what we have in our
9 scope of work. Now, obviously it's -- if we add things
10 to the scope of work, we're going to add costs, so I
11 think that needs to be considered as well.
12 Now, if you -- this was a part of the plan was
13 for all Commissioners -- he wants to talk to all the
14 Commissioners. He does not want to have just a single
15 contact; he would like to work with all of us. And so
16 that is part of the plan was to have you and each one of
17 you meet with him and discuss what you think -- if you
18 think there's something missing, then I think you
19 express that to him. But I think we ought to have -- we
20 ought at least have that opportunity to have that
21 discussion.
22 We have him scheduled to arrive here. He's
23 currently out of the country. So when he is available,
24 I think the first thing we ought to have is you ought to
25 have your discussion with this -- with this gentleman

1 and express what you think might be missing.

2 CHMN. LITTLE: And Commissioner Stump? Go

3 ahead, Commissioner Stump.

4 COM. STUMP: Yeah. I just -- they were

5 conferring.

6 COM. BURNS: It's just been pointed out here

7 that Mr. Hempling has worked for at least 27 state

8 Commissions. I mean, this guy is -- has extensive

9 experience. I mean, Texas and Oklahoma, Mississippi,

10 North Carolina. I mean --

11 CHMN. LITTLE: Commissioner Burns, I'm not

12 contesting his depth of experience. I'm contesting the

13 fact that he has been affiliated with an organization

14 who has been affiliated with an organization who has

15 funded a campaign on your behalf. How is that going to

16 make him an independent entity?

17 COM. BURNS: Well, if he had an affiliation in

18 the past with somebody, that doesn't mean he still has

19 that affiliation. I don't understand the connection. I

20 mean --

21 COM. FORESE: May I ask a question,

22 Mr. Chairman?

23 COM. BURNS: If you don't mind, I've got the

24 floor, Mr. Forese. I'd like to finish my comment.

25 I've worked with people in the past. I have

1 no -- I've had affiliations with, but I have no more
2 connection (indiscernible) my life. It -- you move on.
3 You don't have -- you don't stay connected forever.
4 CHMN. LITTLE: I think Commissioner Stump was up
5 next. And Commissioner Forese, I'll ask you to -- if
6 you don't mind waiting until Commissioner Stump makes
7 his comment.
8 COM. FORESE: Sure.
9 COM. STUMP: Thanks, Mr. Chairman. And Bob,
10 just so you know, you know, we've been -- we were seat
11 mates at the legislature for years and you're a good
12 man. I'm not questioning your motives or sincerity when
13 I ask the questions I'm about to ask. And let me sort
14 of lay out the issue as I see it.
15 To my mind -- and this is addressing the need --
16 the very need for this -- we have allegations about a
17 utility spending dark money to affect the outcome of an
18 election. This is legal. It may not be nice. But to
19 the best of my understanding, only changing the law will
20 prevent it from happening again. And as far as I know,
21 there's absolutely nothing that we, as Commissioners,
22 can do to prevent anyone from spending money in races
23 for the Commission, short of changing the law. So there
24 are allegations that are there.
25 We have proof, however, because they admitted it

1 when they were forced to do it, that the biggest entity
2 that has business before this Commission funded a dark
3 money group to harass and smear and sue sitting
4 regulators to try to alter regulatory outcomes.
5 It's anyone's right to engage in and spend money
6 in an election, obviously whether we like it or not.
7 But it's no one's right to spend dark money against
8 sitting regulators in a quasi judicial sitting.
9 So to my mind, it's outrageous for Solar City to
10 fund a dark money group to interfere with the sanctity
11 of this Commission's quasi judicial processes. So --
12 COM. BURNS: Well, could I --
13 COM. STUMP: Yeah. Well, I'm almost -- oh,
14 sure; oh, sure. And I'm almost done. That leads to my
15 question. So this is without a shadow of a doubt an
16 attempt in my view to exert undue influence upon the
17 Commission.
18 So that leads to my first question, Bob, in
19 terms of the scope of the inquiry, will this just
20 alleged utility attempt to exert undue influence? Or
21 will it include nonregulated entities which, needless to
22 say still have business before the Commission? So that
23 was my first question.
24 COM. BURNS: Well, okay. Well, it does include
25 some -- these outside groups.

1 COM. STUMP: Okay.

2 COM. BURNS: People that come before the

3 Commission. I mean, that's part of the goal here is to

4 find out what is going out, what is going on outside of

5 the Commission that might have some kind of negative

6 impact on our processes and on our manner of doing our

7 job and so forth.

8 COM. STUMP: Okay.

9 COM. BURNS: So this is a guy who does big

10 picture examinations. And so I would even say that with

11 the lien program, which we are certainly spending some

12 money on, sort of doing the inside drill down, if you

13 will, could be complemented by having this outside drill

14 down by an expert in the business to evaluate and

15 provide us with reports and information about what he

16 sees with his set of eyes that might be fixed.

17 Now, to say that there's nothing wrong, I think,

18 is just not dealing with reality. I mean, we have had a

19 hundred, and I think -- this morning, I think it was 107

20 records requests come before this Commission. Today --

21 this evening it's 109 -- we got two more today. So it's

22 a never-ending issue, and it's costing us a tremendous

23 amount of money.

24 So from that point alone, if we were to at least

25 have some information available for people out there to

1 understand what's going on, I would hope that this flood
2 of records requests could be turned back.
3 Now, the issue about spending taxpayer money, I
4 think was also brought up. And I'd like to go through
5 the list of what we've been spending for attorneys here
6 at the Commission.
7 We had Contalmi (phonetic), you know, his rates
8 were like $275 -- $295 an hour; the cost $81,863.26.
9 Tim LaSota, $235 an hour; ended up being $14,462. Kory
10 Langhofer, $275 an hour, $2,862.50. Edward Novak, $325
11 an hour, $90,000. We've got close to $35,000 that we
12 are spending on the lien program, as I understand, at
13 this point, a number that could increase.
14 The independent contractors hired by the
15 Commission in 2015 and 2016 for the UNS rate case,
16 $202,744.50. The TEP rate case, $240,887 total. Two
17 contracts, actually, TEP -- okay, it was broken down
18 between the two here at $215 and $25. The value and
19 cost of distributed generation, $50,000. APS rate case,
20 $131,500. Southwest Gas rate case, $154,950. So the
21 APS FERC formula rate filing 50,000. Arizona Water
22 Company rate case $22,900. Sulphur Springs Valley
23 Electric Coop, $27,274.
24 CHMN. LITTLE: We get the idea where you're
25 going.

COM. TOBIN: I'm all right to get rid of all of those, if it's all right with you.

CHMN. LITTLE: Well, and what I would object --

COM. BURNS: I don't think you're going to get rid of them.

MALE SPEAKER: Right.

COM. BURNS: It might sound good, but I don't think they're going anywhere.

CHMN. LITTLE: What I would -- what I would observe is that the legal expenses that we pay in prosecuting a rate case are considered a normal expense of doing business here. We have to, in some cases, hire outside counsel to work with our in-house counsel to prosecute those rate cases.

COM. BURNS: Well, if our processes here are out of whack and need to be fixed, then that's a legitimate expense (indiscernible).

CHMN. LITTLE: If you would -- you didn't let me finish my thought, okay? And I want to just say this, and then I want to let Commissioner Forese speak because he's been very patient and I don't -- I want to make sure he doesn't --

COM. FORESE: Yes, I have.

CHMN. LITTLE: -- I want to make sure that I don't forget it. We haven't forgotten you, Commissioner

1 Forese.

2 The first ones that you mentioned, Contalmi

3 and -- and LaSota and Langhofer and Novak were attorneys

4 that were hired to defend sitting Commissioners

5 (indiscernible) outside legal attacks.

6 This is an attorney that we are considering

7 hiring to essentially evaluate the practices that occur

8 here. And my original contention goes -- I'm going to

9 go right back to it -- you're basically saying in the

10 scope of work that you feel that there have -- and the

11 way the scope of work is worded, it says there may or

12 may not have been outside influence. And what I'm

13 saying is that I don't believe there is any evidence for

14 it. I think it's a fishing expedition, and I think it's

15 a waste of taxpayer money.

16 Now, if -- that's my personal opinion. If there

17 is disagreement on that and the Commissioners would like

18 to expend that money, that's fine. So that's -- I

19 wanted to -- but I wanted to bring that back around.

20 And Commissioner Forese, I'm going to let you

21 have the floor for a few minutes.

22 COM. FORESE: Yeah. And thank you. You know,

23 we're talking to a man who has a famous reputation as a

24 conservative Chairman of Appropriations who now is

25 saying that our correct course of action in the face of

1 this legal spending is to spend additionally. I think
2 the fact that this is blatantly political begs the
3 question, if you know that this attorney is tied to this
4 money being donated to your campaign, why not save the
5 taxpayers this money and just have him be paid out of
6 this money being donated to your guy by his other
7 clients?
8 COM. BURNS: Well, I'm not sure I understand
9 that question. There's no way -- if there's an
10 independent expenditure being done in a campaign, it's
11 the same situation that you and Mr. Little were in in
12 the year that you were running. You don't know --
13 COM. FORESE: Thank you.
14 COM. BURNS: -- about that (indiscernible).
15 COM. FORESE: You are now in the same exact
16 position that (indiscernible).
17 COM. BURNS: Well, and I'm not sure what the
18 point is. I mean, if you're --
19 CHMN. LITTLE: The point, Commissioner Burns, is
20 that you've been accusing Tom and I of being under the
21 undue influence of --
22 COM. BURNS: That is an absolute lie.
23 CHMN. LITTLE: I can --
24 COM. BURNS: And I don't know where you're
25 getting that information.

1 CHMN. LITTLE: I can read it in the Clean
2 Election --
3 COM. BURNS: I have not been doing that --
4 voters.
5 COM. BURNS: I have not done that.
6 LITTLE COM. ~~TOBIN~~: (Indiscernible.) You haven't
7 specifically named names.
8 COM. BURNS: I have not done that.
9 LITTLE COM. ~~TOBIN~~: But you've made the allusion very
10 clear that you believe that there was regulatory capture
11 that occurred as a result of APS spending -- allegedly
12 spending money in the 2014 election.
13 Now, I don't know who else was running in 2014
14 for the Corporation Commission, besides myself and
15 Commissioner Forese. So you -- if you slice and dice
16 the words --
17 COM. BURNS: If you --
18 CHMN. LITTLE: -- any way you want to, but
19 you've been basically impugning our integrity for a
20 year.
21 COM. BURNS: I have not. I have been protecting
22 your integrity every opportunity I get. When I speak to
23 a group, I tell them that you and Mr. Forese were
24 unaware of where that money came from until after the
25 election, just like everybody else, that you had no --

1 no knowledge of where that money was coming from.
2 CHMN. LITTLE: I want to be very clear. Today,
3 sitting here in this room, I still don't know who spent
4 that money and neither does Commissioner Forese.
5 COM. BURNS: Okay. Well, maybe we ought to find
6 out.
7 COM. TOBIN: The allegations are that it was
8 done by APS. Now, I submit -- and I'm going to go back
9 on this, because I've said this many times before --
10 there were many, many organizations that were business
11 organizations that supported Commissioner Forese and I
12 during our campaign. We were supported by the Arizona
13 Chamber. We were supported by the Home Builders. We
14 were supported by the Southern Arizona Home Builders.
15 We were supported by the Southern Arizona Chamber. We
16 were supported by the Cattle Association. We were
17 supported by the Realtors. Other people could have made
18 those expenditures -- somebody other than APS.
19 But that hasn't been the narrative in the media,
20 and that certainly hasn't been the narrative that you've
21 supported.
22 COM. BURNS: Well, and it hasn't been denied by
23 the APS either. So I think it would be a -- a service
24 to the public to find out what's going on with a
25 regulated utility.

And I'm not telling anybody that you're unduly influenced. I'm concerned about the future of who comes to run for the Corporation Commission and how they are perceiving these large sums of money being pumped into these campaigns. I think we end up attracting the wrong kind of people to run for the Commission. And I have over and over said that, in public, on the air waves, that I believe you guys, the two of you actually got in underneath the wire here in this situation where the dark money started flowing to the regulated -- from the regulated utility to the Commission candidates.

COM. TOBIN: So we can -- we can start off, if I can interrupt. You don't believe there's any regulatory capture here at the Corporation Commission?

COM. BURNS: Not at this point in time, no.

COM. TOBIN: Okay. So --

COM. BURNS: But I think the potential is extremely possible with -- you know, if the regulated utility -- and it doesn't have to be APS -- it can be any regulated utility -- continues to pump millions of dollars -- and it could be more than 3 or 2 or whatever the amount that was supposedly there, if there's continue -- continue to pump that kind of money into campaigns for regulators, there is a potential to have undue influence acquired by the utility at the risk of

1 the ratepayer. That's the issue to me. I think there
2 is a tremendous risk of that potential happening. So
3 it's --
4 CHMN. LITTLE: Okay. So --
5 COM. BURNS: I believe it's time for us -- it's
6 time for us to find out what's going on. Let's get the
7 record straight. We'll look at all of these guys from
8 the outside. We're not looking just at APS. The
9 investigation, or whatever you want to call it, the
10 review, will take place. And Mr. Hempling is, again,
11 like I said, big picture. He wants to look at the
12 outside influences and how they affect.
13 CHMN. LITTLE: But you can appreciate,
14 Mr. Burns, that you wrote -- this guy does not have a
15 financial or partial -- or partisan interest in our
16 decision. And then you just heard the Chairman say,
17 clearly --
18 COM. BURNS: What guy?
19 CHMN. LITTLE: This is what you wrote about
20 Mr. -- about your investigator, Mr. Scott Hempling. You
21 wrote that he does not have a financial or partisan
22 interest in our decision. That's what you stated.
23 COM. BURNS: I believe that. I don't believe he
24 has an --
25 CHMN. LITTLE: Well, I know you -- I'm sure you

1 believe it, Bob. I'm not saying you don't believe it.
2 I'm saying the Chairman just revealed that this guy
3 works for a company that gave you a --
4 COM. BURNS: He worked for a company some time
5 ago. He works for --
6 CHMN. LITTLE: (Indiscernible) -- a half a
7 million dollars.
8 COM. BURNS: He works for -- he works for a
9 hundred companies.
10 CHMN. LITTLE: That just spent half a million
11 dollars on (indiscernible).
12 COM. BURNS: He has no knowledge of where that
13 money was coming from or who spent it.
14 CHMN. LITTLE: But you can't argue that -- that
15 the Chairman and now others who have just listened to
16 this, shouldn't have some concern when you're trying to
17 say there's a regulatory capture and the first thing
18 we're going to do is hire a lawyer who is tied to money
19 that came --
20 COM. BURNS: Well, if he's --
21 CHMN. LITTLE: -- in the back door to -- to an
22 IE for you. (Indiscernible.)
23 COM. BURNS: Well, if the investigation shows
24 that I have undue influence, I suspect he'll -- he'll --
25 CHMN. LITTLE: He'll investigate himself for

DRAFT REVISED 1

(indiscernible)?

COM. BURNS: No, not him.

CHMN. LITTLE: He's going to investigate you?

COM. BURNS: He's going to talk to all of the Commissioners.

CHMN. LITTLE: So he's going to investigate you for the hundred -- for a half a million dollars?

COM. BURNS: No.

CHMN. LITTLE: You see where I'm going with this?

COM. BURNS: No, I don't. I don't see where you're going.

CHMN. LITTLE: All right. I'm sorry.

COM. BURNS: I think you're wandering around looking for straws.

CHMN. LITTLE: Well, I'm not really, because --

COM. BURNS: Well, I think you are.

CHMN. LITTLE: Okay. Well, excuse --

COM. BURNS: But then, you know --

CHMN. LITTLE: It seems to me --

COM. BURNS: I have -- I have the constitutional right, yeah, and the statutory right to hire an employee to do an investigation as a single Commissioner. And I would like to be able to carry out the duty that I swore to do as a constitutional -- I took an oath to do this,

so I have a job to do and I'm trying to do it.

CHMN. LITTLE: Right. Well --

COM. BURNS: And you're try -- and you're trying to block it.

CHMN. LITTLE: No, we all took an oath.

COM. BURNS: Actually, you're trying to block it.

CHMN. LITTLE: Yeah. I -- I -- no. Actually, I think you're completely unprepared to make this announcement on the day ballots go out, that you're going to hire this guy, which is (indiscernible).

COM. BURNS: I tried to hire this guy for six, eight months before -- before the election.

CHMN. LITTLE: Well, you (indiscernible) six, eight months before.

COM. BURNS: No, it didn't work that way.

CHMN. LITTLE: Of course, it didn't, because it was an election day.

COM. BURNS: Well --

CHMN. LITTLE: The ballots went out, Bob. So what I'm saying to you is why (indiscernible).

COM. BURNS: You're -- you're -- you're not telling the -- you're not sticking to the facts. The facts are I've been working on this for two years. I've been trying to get the records from APS. I asked for

1 them to voluntarily supply those records. I asked for
2 them -- I ordered them to provide those records. Never
3 happened. Never happened. No cooperation.
4 CHMN. LITTLE: Did you subpoena them?
5 COM. BURNS: So -- I haven't done that. I want
6 to --
7 CHMN. LITTLE: Why don't you do that?
8 COM. BURNS: Well, because what -- what would --
9 CHMN. LITTLE: Why don't you just subpoena
10 (indiscernible)?
11 COM. BURNS: What would be the next Staff
12 meeting if I subpoena, right?
13 CHMN. LITTLE: Well, they're going to probably
14 go to court, probably, so now what you want to
15 (indiscernible).
16 COM. BURNS: So I wanted to try and do this in a
17 better way. I want -- I wanted to try and do this in a
18 better way, so I looked for a different way to do that,
19 rather than to just subpoena and just go to APS only if
20 that's too targeted.
21 Let's look at the big picture. It took some
22 time to figure out a game plan. It took some time to
23 find the right person to do this. So that's what
24 happened. I mean, it -- it drug out and it drug out and
25 it drug out. And I would have loved to have this done

DRAFT REVISED 1

1 months ago.

2 CHMN. LITTLE: Well, on the other hand, you

3 could have -- you're saying, let's hire Mr. Hempling, he

4 can go and subpoena Pinnacle West, which is what you're

5 hoping for.

6 COM. BURNS: He could -- he could go and use a

7 subpoena.

8 CHMN. LITTLE: And they're going to put us in

9 court. So now --

10 COM. BURNS: And --

11 CHMN. LITTLE: So now, okay, so I mean, either

12 way, you're going to court. Why don't you just subpoena

13 (indiscernible) and save us all the aggravation and

14 spending the money and going no further?

15 COM. BURNS: Well, why -- why -- why don't we do

16 it right? Why don't we do it right and use -- and use

17 an expert? You hired an expert to do your lien program.

18 CHMN. LITTLE: You hired an expert.

19 COM. BURNS: Well --

20 CHMN. LITTLE: I brought it to this

21 (indiscernible).

22 COM. BURNS: And I voted to support that.

23 CHMN. LITTLE: Thank you. You voted on my

24 amendment to (indiscernible) I appreciate it.

25 COM. BURNS: And I have the -- I have the

1 authority as an individual Commissioner, based on the
2 constitution and the law, and that's what I'm trying to
3 do. I'm trying to do the --
4 CHMN. LITTLE: Well, do I not have the -- do I
5 not have the authority to bring to this Commission's
6 attention, this Item 3?
7 COM. BURNS: Yeah.
8 CHMN. LITTLE: All right. And that's all I did.
9 COM. BURNS: And you said you weren't going to
10 block it. I asked you when we were at the debate.
11 CHMN. LITTLE: I'm not -- I didn't say --
12 COM. BURNS: And you said you weren't going to
13 block it.
14 CHMN. LITTLE: I said I wanted to expand on it.
15 This is what --
16 COM. BURNS: Well, and I've offered you the
17 opportunity to do that.
18 CHMN. LITTLE: And I said, then just vote for
19 the amendment.
20 COM. BURNS: No.
21 CHMN. LITTLE: Well, that's what does it.
22 COM. BURNS: You can meet -- you can meet with
23 a -- with a man that already has a contract that we have
24 signed a contract with. He's willing to talk to you.
25 CHMN. LITTLE: Well, but you hired who I now

1 believe and agree with the Chairman is a mistake because
2 of what we just said. And I think you -- the public
3 should see that there's some -- that this clearly is not
4 somebody who has no interest in this (indiscernible)
5 especially in the solar (indiscernible). So it's odd,
6 Bob. That's all I'm saying.
7 CHMN. LITTLE: And Bob, just to go back to your
8 statement before, I'm going to read from -- this is --
9 I'm reading directly from the Clean Elections Candidate.
10 This is the Candidate's statement pamphlet from the
11 primary election. This is the -- the information that
12 is below your name. I assume that you have
13 responsibility for the content of this.
14 It says: A key responsibility of the
15 Corporation Commission is to provide oversight and
16 regulation of power and utility providers for Arizona
17 residents. In the 2014 elections, it is believed that a
18 certain utility spent over $3 million to support their
19 favorite candidates for the Corporation Commission.
20 This campaign activity was hidden behind political
21 nonprofit so ratepayers like you would have no idea that
22 utilities were actively trying to choose their own
23 regulators.
24 Now, if that is not telling somebody in public
25 that I am a pawn of APS --

1 COM. BURNS: I don't see that written -- I don't
2 read that that way.
3 CHMN. LITTLE: Bob, that is the most
4 disingenuous thing you have said to me ever in my life.
5 COM. BURNS: I mean, (indiscernible) see what
6 you've got there (indiscernible).
7 CHMN. LITTLE: It's right here. It's -- it's
8 the Candidate guide.
9 COM. BURNS: (Indiscernible) let me see it.
10 CHMN. LITTLE: It's right there. That -- that
11 particular document was mailed to every voter in the
12 state of Arizona.
13 COM. BURNS: Well, I think you're overreacting
14 here. I -- I think you're -- you're --
15 CHMN. LITTLE: I -- I -- my -- my father once
16 told me that a man only has his integrity; and without
17 his integrity, he is nothing. And you've basically
18 challenged my integrity. You (indiscernible) --
19 COM. BURNS: I did not challenge your integrity.
20 I challenged the integrity of APS.
21 CHMN. LITTLE: So --
22 COM. BURNS: APS is the one that's put the cloud
23 over this Commission and over your candidacy, and -- and
24 not --
25 CHMN. LITTLE: And -- and -- and --

COM. BURNS: It's not your fault.

CHMN. LITTLE: Commissioner Burns, I want you to present one piece of evidence that APS spent any money on the campaign at all, one.

COM. BURNS: Give me this investigator and I might be able to find that evidence. And then the public --

CHMN. LITTLE: You can do it without spending a hundred thousand dollars of the taxpayers' money on what I consider to be a wild goose chase.

COM. BURNS: Well, I don't consider it a wild goose chase. And I've had a lot of people that have told me that it's not a wild goose chase and that I should proceed. And I have the constitutional authority to proceed, and I intend to proceed.

CHMN. LITTLE: So --

COM. BURNS: And so, if you block this, to me, you're basically taking away my authority as an individual Commissioner to do my job.

CHMN. LITTLE: So your individual authority is certainly something that I would not restrict you from or strip from you, however --

COM. BURNS: Well, I wouldn't hope so, because you have the same authority.

CHMN. LITTLE: However, when we make an

1 expenditure of funds, I believe -- and I would be
2 looking for a legal opinion here, Ms. Wagner, and if we
3 need to go into executive session to discuss it, we
4 can --
5 COM. BURNS: Not according to the --
6 CHMN. LITTLE: -- but I believe that if we were
7 to be looking at an expenditure of Corporation
8 Commission funds with an external organization, that the
9 Commissioners could vote to either approve or defund
10 something if they chose to.
11 And I would be curious about your legal opinion
12 on that.
13 MS. WAGNER: Mr. Chairman, members of the
14 Commission, Janet Wagner for the Legal Division.
15 It's a difficult meeting. You're correct, the
16 way that you would move forward, if that is your desire,
17 would be to indicate that the allotment of the
18 Commission's budget would not be available for this
19 purpose.
20 CHMN. LITTLE: Now, Commissioner Burns, this
21 does not prevent you from doing it, because as I
22 understand it, you have an office budget that you
23 control the expenditure of your own office budget. And
24 you could disburse funds from your own office budget to
25 retain this attorney, if you chose to do so.

1 So we're not essentially preventing you from
2 moving forward with this, because if you look at the
3 constitutional authority that you have, it says that you
4 can use your Staff or other individuals that you might
5 retain and you have control of that office budget. You
6 have the ability to disburse that office budget as you
7 see fit. So if you want to spend your own office
8 budget, I would say that would be fine with me.
9 COM. BURNS: And you realize, of course, very
10 well, that that office budget would not cover the cost
11 of this investigation. So that would be a moot point.
12 And so --
13 CHMN. LITTLE: Well, sir, you also have the
14 opportunity to -- and -- and -- you know, I'm sure that
15 you could solicit contributions to a legal fund that
16 would -- would potentially fund it.
17 COM. BURNS: Well, I guess a couple of things.
18 I find it sort of odd that an investigation into the
19 potential undue influence on Commissioners, and not the
20 Commissioners sitting here presently, but Commissioners
21 in the future, isn't a problem. You don't see that as a
22 problem.
23 And so it's -- it just -- to just flat out
24 refuse to examine that possibility, just to do an
25 investigation to determine if there's the potential for

that to happen, to put the ratepayers of the state of Arizona at risk at having an unfair advantage when it comes time for rate setting, because of the influence that a utility -- and I'm -- it doesn't have to be APS, it could be any utility -- could gain undue influence by spending millions and millions of dollars in an election, I just don't get it that you are not concerned about that.

CHMN. LITTLE: So can --

COM. BURNS: Now, if it's -- if, for some reason, this whole thing has turned to the point where you believe I am attacking you, that is not true; absolutely not true. I have tried to tell everybody I've talked to that you guys did not know where the money was coming from. It was an independent expenditure, and by law you couldn't know. And so you guys got in under the wire, in my opinion, on this whole situation.

But in the future, in the future, if people believe that a utility is going to spend millions of dollars on their behalf in an election, what kind of people are we going to attract to this Commission? I think it has the potential of -- of corrupting the Commission. And so I think we need to do something about it.

CHMN. LITTLE: Commissioner Burns.

COM. BURNS: And the way we do something about it is we examine what's going on in -- in -- in the 2014 and beyond with the outside influences on the Commission.

CHMN. LITTLE: So perhaps I'm just a glass-half-full guy and maybe you're a glass-half-empty guy, because I believe that people seek public office in order to do public service. That is why I sought political office, to do public service.

COM. BURNS: As I did.

CHMN. LITTLE: And -- let me -- let me finish.

COM. BURNS: But there are people that are in public office that did not seek public office (indiscernible).

CHMN. LITTLE: So you can go and you can do the research. There was a -- a significant Supreme Court case in 2010 called Citizens United, and the Supreme Court was very clear in their decision on this. They believe that corporations are allowed to have political speech. And they believed -- and it's stated very clearly in that opinion -- that political speech -- spending money on a desired candidate or a desired ballot proposition or some referendum, spending money on behalf of that was considered political speech.

1 Now, the Court also went to great lengths to say
2 that by simply contributing to a particular candidate or
3 a particular ballot proposition, that that was not
4 considered to be, on its face, evidence that there would
5 be undue influence on that particular elected official.
6 You can go back and read the law.
7 COM. BURNS: Well, and you can also go back and
8 listen to some of the statements of some of those
9 Supreme Court Justices after that case, where they
10 pointed out that there ought to be disclosure, that
11 there should be disclosure.
12 CHMN. LITTLE: And if you go back and look at
13 the majority opinion -- and I believe it was written
14 by -- I honestly don't remember, and I don't want to
15 misstate -- the majority opinion basically said that
16 forced disclosure in this particular instance would have
17 a chilling effect on a corporation or an independent
18 group's ability to participate in the process.
19 Because, you know, here's the situation you run
20 into. Let's say a corporation -- let's say a water
21 company is supportive of a candidate. And let's say,
22 just for the sake of argument, that candidate is
23 pro-choice, and many of the customers of that water
24 company are pro-life. If they were to find through
25 disclosure that their preferred water company was

1 pro-choice, they may actually not want to do business
2 with that water company because they don't agree with
3 the political choice that water company made.
4 Is that fair to the water company? No, it's
5 not. Just like it's not --
6 COM. BURNS: Well, wait a minute, wait a minute.
7 We're dealing with monopolies here who have a captured
8 clientele.
9 CHMN. LITTLE: I'm talking about a regulated
10 monopoly.
11 COM. BURNS: That's right.
12 CHMN. LITTLE: I'm talking about one of our
13 regulated water companies.
14 COM. BURNS: And so the water company customer
15 is going to walk away because he doesn't like the
16 politics of the water company? I don't think so.
17 There's a difference between the nonregulated --
18 CHMN. LITTLE: They may not walk away --
19 COM. BURNS: -- the nonregulated corporation and
20 the regulated corporation.
21 CHMN. LITTLE: They may not walk away,
22 Commissioner. But they -- the relationship -- it would
23 be tainted. And this is precisely the reason that the
24 Court found as it did. And -- and when we had this
25 brouhaha back in September of this past year, I received

numerous phone calls from numerous companies after they were in receipt of your letter and the letter that Commissioner Bitter Smith send out, saying basically, does this mean that if we don't do what this letter says, that we're going to be on the political bad list at the Commission and our decisions are not going to be viewed in a favorable manner? They felt like it was blackmail.

COM. BURNS: Well, I'm sorry that they felt that way. It certainly was not. It was a notice and a request for them to voluntarily stay out of the elections.

CHMN. LITTLE: Come on. A request from a sitting regulator?

COM. BURNS: And they -- and every -- and -- I think we can do requests.

CHMN. LITTLE: That regulates them? Really?

COM. BURNS: I think we can do requests, yes, I think we can. And we did. And I'll tell you that the responses we got from the major utilities, Southwest Gas, TEP, UNS, was all that they would voluntarily stay out. The only major utility, regulated utility, that did not respond and say that they would stay out was APS.

CHMN. LITTLE: Commissioner Burns, you realize

1 that your letter -- and -- and this is shocking to me
2 for someone who claims to be a Republican -- your letter
3 basically asks those companies to abandon their first
4 amendment right.
5 COM. BURNS: No way. No way.
6 CHMN. LITTLE: Does -- does anybody else --
7 COM. BURNS: Nobody said -- no -- nobody said
8 they couldn't spend in the election. We still haven't
9 said that. I have not said that. I have repeatedly
10 said, when I talk to groups, the utility has the
11 constitutional right based on a Supreme Court order to
12 contribute to campaigns.
13 The issue is that they need to report. And why
14 are they so reluctant to report? Who is going to
15 retaliate against the utility that has a captured
16 clientele? They're not going to take their business
17 somewhere else. They can't. So the idea that they're
18 going to retaliate against -- and I -- I am opposed to
19 the retaliation that takes place against the
20 nonregulated corporations. I think it's terrible. I
21 think it's wrong. You've got people out there. You've
22 got groups that go out there and hire demonstrators who
23 boycott the companies and so forth. I think that's
24 wrong and needs to be addressed.
25 But the -- the regulated corporation is

completely different, completely different. It's two different structures. And so the regulated corporation -- the customers are captured. They have no other choice. They rely completely on the regulator to make sure that they get a fair return or a fair rate. And so if the regulator becomes unduly influenced by whatever means -- and -- and they -- Mr. Hempling is not focusing on just the election part of it; there are other means of gaining undue influence -- and so he was -- part of the study was to look at a number of different things to make sure that that's not happening or to advise us on how to prevent it from happening in the future now that we have these millions and millions of dollars being thrown at Corporation Commission races --

CHMN. LITTLE: Commissioner Stump.

COM. STUMP: Thanks. Bob, you know, Tom and Doug have been smeared for two years. And I've been smeared for over a year by Checks and Balances, funded by Solar City, in part. And I agree with you when you (indiscernible).

COM. TOBIN: -- I'm new to the smearing.

COM. STUMP: Yeah. Well, no, you've -- you've -- well, there's irony in that, too, because you talk about -- or not you, but in general people talk

about unregulated or regulated utilities versus entities that aren't regulated by us.

And I found it curious, Commissioner Tobin, in your case, that suddenly when you -- your political opponents say you have a conflict, suddenly Solar City becomes important. In every other instance they're not regulated by us, so whatever they do is beyond reproach.

Anyway, that's neither here nor there. But Commissioner Burns, I appreciated you saying on the Horizon debate that we're dealing with false perceptions that, in my opinion, that have been actually perpetuated for crass political purposes to try to cast a pall over the Commission to damage all of us.

So if it's a perception problem and Tom and Doug are lily white, as indeed they are, and there's no corruption at the Commission, then my question simply is, what is there to investigate?

And I understand the forward-looking nature of your inquiry, as you describe it. But unless there's a structural, inherent pattern of influence that's built into our processes down here that applies to future Commissioners, I don't know how you investigate something like that. So that was my concern and you don't investigate a false perception. You dispel it.

So, you know, I thought perhaps, you know, if

1 there's an unfair perception, a public education
2 campaign would be a better use of funds to try to
3 explain our processes to the public, to indeed enable
4 them to understand the issue of due process and how each
5 of us strives to serve the public interest and set just
6 and reasonable rates.
7 But my view -- and I would love to get your
8 thoughts on this -- if it's a false perception that's
9 not true, by definition, and you agree, as all of us do,
10 that Tom and Doug are good men who have been severely,
11 unfairly attacked by, quite frankly, not only moronic
12 op-eds in some papers, but by a dark -- in my case a
13 dark-money group funded by a nonregulated entity that
14 has business before the Commission.
15 So I'm just trying to understand, if it's a
16 perception problem that's -- that's simply a will o' the
17 wisp, as I said last week, how do we -- why don't we try
18 to dispel that? And maybe your argument is that this
19 investigation would dispel it.
20 COM. BURNS: I believe it would.
21 COM. STUMP: But --
22 COM. BURNS: Or I believe it could. I don't
23 know what it would -- I mean, I don't know what the
24 results of the investigation will end up being.
25 COM. STUMP: But --

1 COM. BURNS: But I think it's -- it's -- it's
2 the tool that we need to use to make the public -- give
3 the public some confidence that we are what we say we
4 are. And I -- I think the -- the issue that you bring
5 up about the investigation against you -- or not the
6 investigation -- the attack against you, I think this is
7 something that this man could look into as well. It's
8 all part of the deal here that --
9 COM. STUMP: But -- yeah. But it -- but they're
10 trying to exert undue influence, but obviously they
11 didn't succeed. You know, the company, quite frankly,
12 in my opinion, that funded them was trying to intimidate
13 regulators in Arizona and around the country. And this
14 group, Checks and Balances, continues to operate in
15 spite of Solar City's assurance that they are not
16 funding them. But they did unleash the Kraken, as it
17 were. And so they're trying to exert undue influence,
18 but because I have integrity, Tom does, all the
19 Commissioners, I believe, have integrity, they're not
20 getting anywhere.
21 APS, it's been until they're blue in the face,
22 they're not going to get anywhere. So if it's -- with
23 that in mind and the fact that it's an unfortunate
24 perception that they would, how do we proceed with an
25 investigation? And what is the end result?

1 You know, okay, well, let's say it's proven that
2 APS or other entities spent something. We maybe
3 confirmed our prejudices, but it doesn't mean that they
4 had any influence on these good men. It just meant they
5 spent money. We -- our suspicions were confirmed, so
6 that -- that's my confusion.
7 COM. BURNS: Well, but they -- I believe they
8 had a -- they certainly had influence on the election,
9 quite --
10 COM. STUMP: Well, sure. And --
11 COM. BURNS: And -- and -- and the perception
12 that you talk about, I mean, the perception in the
13 public, I -- how can you say that the public has a good
14 perception of this body?
15 Now, when I'm out campaigning, people come up to
16 me and say, you guys are bought and paid for. That's
17 part of the public perception that needs to be changed,
18 that we need to get -- get rid of. We need to
19 understand -- get people to understand --
20 MALE SPEAKER: Bob, they said --
21 COM. BURNS: That isn't happening.
22 MALE SPEAKER: -- (indiscernible) when you were
23 president of the Senate.
24 COM. BURNS: Well --
25 MALE SPEAKER: They did. I mean --

1 COM. BURNS: You keep dragging all of these --
2 off the --
3 MALE SPEAKER: Well, I'm sorry. I was there,
4 you know.
5 COM. BURNS: Well --
6 MALE SPEAKER: I just thought I would mention
7 it.
8 COM. STUMP: And -- and the reason -- and that
9 is -- that is -- that saddens me.
10 COM. BURNS: Yeah.
11 COM. STUMP: It's a -- it's a sadly cynical
12 response based on frankly the -- that is -- really was
13 caused by the efforts of, frankly, in my view, monomania
14 about the effects of a utility's alleged dark money
15 spending to corrupt men that I know are good men.
16 And if we don't like dark money -- I'm not a
17 huge fan of it -- why don't we go to the legislature or
18 seek other legal means to try to change the law?
19 Because going forward, an investigation will say, well,
20 okay, the utility did spend it. And then what are we
21 left with? The perception is -- the false perception is
22 still there.
23 I guess there's no nexus between the fact that,
24 okay, let's say we prove the utility spent it, fine.
25 There's still no nexus to that spending to the character

of Tom and Doug or any other commissioners.

Does that make sense?

COM. BURNS: I agree. I agree with you. But there's -- there's -- the problem is with -- at the election. All right. The -- the utility has the right to spend. They can go ahead and spend. But when they spend, they need to report. There needs to be a reporting process.

COM. STUMP: That's (indiscernible). Sure.

COM. BURNS: I believe that's our responsibility. It's not the legislature's responsibility. We have the responsibility to regulate utilities. You saw what happened here.

CHMN. LITTLE: And under no portion of the constitutional authority of this body is there anything that says that we have to compel disclosure of election spending on the part of our utilities. There's nothing in there that says that. Nothing.

COM. BURNS: No. We don't have to. But we can.

CHMN. LITTLE: No, we can't.

COM. STUMP: We don't have that authority is --

CHMN. LITTLE: We don't have that authority. We can open -- we can ask them to open their books, if we believe that there is a substantial nexus --

COM. BURNS: Well, that's a form of reporting, I

1 would say.

2 CHMN. LITTLE: You didn't let me finish.

3 COM. BURNS: Well --

4 CHMN. LITTLE: We have the authority to open

5 their books, but the purpose we use to open their books

6 is to understand whether or not there is an -- any

7 impropriety that exists in the rate making process.

8 It's not something that we have the ability to do.

9 We can't actually go and say to some company, we

10 want to understand how you spent your lawfully earned

11 profits. That is protected speech. That is protected

12 by the first amendment.

13 So, you know, I think we're -- we're at a spot

14 where, you know, we're -- we're starting to -- to move

15 around in circles.

16 COM. BURNS: Well, I guess we might -- we might

17 as well bring this to a close. I see where you guys are

18 going. You're going to defund --

19 CHMN. LITTLE: Well, first of all, I want to

20 make sure that --

21 COM. BURNS: -- and so -- you know --

22 CHMN. LITTLE: -- Commissioner Forese --

23 Commissioner Forese, you still on the line?

24 MALE SPEAKER: I think he had to drop off.

25 So --

1 COM. BURNS: So you're going to vote to defund.
2 So I think the next question would be then if
3 I'm going to do the subpoenas that I'm authorized to do,
4 I'd like to have Staff at the Commission here to help me
5 prepare those subpoenas so that I can move forward in
6 sort of a "stumble along" instead of a well-organized
7 effort, it will be not so well organized.
8 CHMN. LITTLE: So let -- let me -- let me just
9 summarize where I think we're at, okay, and -- and I
10 would appreciate the input from all of you.
11 There's a -- a question -- and -- and
12 Commissioner Tobin referenced this, there could be
13 rationale for pursuing some sort of project or
14 evaluation or examination -- and -- and the reason I
15 don't like to use the word "investigation", because
16 it -- to me, the investigation word implies improper
17 behavior. And to me there is no evidence of any
18 improper behavior, number one.
19 COM. BURNS: Because of no investigation, maybe.
20 CHMN. LITTLE: So --
21 COM. BURNS: (Indiscernible) make a point. I
22 mean, you know --
23 (Indiscernible - simultaneous speech.)
24 COM. BURNS: You don't investigate, you don't
25 know.

1 CHMN. LITTLE: Gentlemen, let me finish, let me
2 finish.
3 So Commissioner Tobin has said he would be
4 potentially willing to consider a project, but that
5 Mr. Hempling because of any -- to me, any remote
6 connection that would indicate that he was not an
7 impartial person, it would have to be somebody else. Or
8 we could say, nope, we're not going to fund this or any
9 other project of this type. And if you wish to pursue
10 it, you can pursue it using your own office budget and
11 your own Staff and that the legal Staff of the
12 Commission under your authority would be in a position
13 where they would issue subpoenas.
14 I believe that would be correct, would it not,
15 Ms. Wagner?
16 MS. WAGNER: Mr. Chairman, technically the
17 Executive Director's office issues subpoenas.
18 CHMN. LITTLE: But that Staff would assist in
19 the preparation of those subpoenas and they would be
20 issued by the Executive Director. Okay. So -- so I
21 think there are different choices. I -- I'd be curious,
22 based on this discussion, what the thoughts of
23 Commissioner Tobin and Commissioner Stump are, relative
24 to how they would like to move forward.
25 COM. TOBIN: Well, Mr. Chairman, I still like

1 my -- my Item Number 3. I think what it does is
2 redirect the Executive Director to go meet with all --
3 with all of the Commissioners -- the Commissioners, and
4 identify the top 5, 10 needs that we want to have
5 reviewed.
6 I have significant issues over secured -- I have
7 significant issue -- you talk about regulatory capture.
8 It's not just us. We have Staff who negotiates our --
9 our stuff. Are they supposed to be included? We
10 have -- they're included in this (indiscernible).
11 COM. BURNS: And that's what I'm saying.
12 COM. TOBIN: So maybe they -- maybe we need to
13 have this broadened. But I have issues with respect to
14 the priorities, the process. I have issues with
15 procedures here. I have issues with rules. I think we
16 direct -- you know, I mean, I think it's pretty cut and
17 dry what my statement says. Jodi goes around, meets
18 with all the Commissioners, gets their top 10
19 priorities, puts together a scope of work. We go out
20 for an RFP and let's go hire somebody if we -- if --
21 with our -- our top 10 list or top 5, whatever we can
22 afford to --
23 COM. BURNS: Well, based on the requirements of
24 the person to investigate, I -- I doubt that you'll find
25 one. You won't find one better than this gentleman

here. And if you're going to find one --

(Indiscernible - simultaneous speech.)

COM. BURNS: If you -- if you find somebody that has the expertise and the ability to do the job that we've prepared here, they're going to probably have some connection with some utility, some solar company, some other -- throughout the -- the industry. That's the way -- the way these people work. I mean, they work for a lot of different people. So I -- I --

MALE SPEAKER: I -- I just have to say, you're -- you're telling me that in all the world, there is only one lawyer that can do this job. That's just --

COM. BURNS: No. That's not what I said.

MALE SPEAKER: It sort of sounded like that.

COM. BURNS: I wish you could -- well, I'm telling you that he's one of the best. I didn't say he's the only one. He's one of the best, and -- and I -- I challenge you to find one better, and then find one without any connection whatsoever.

MALE SPEAKER: Well, he (indiscernible) have him bid.

COM. BURNS: Well, he doesn't have --

MALE SPEAKER: Have him bid on the process. Maybe you're right.

COM. BURNS: The man doesn't even have to bid.

He's -- he's got enough people coming to his door to get his -- to -- to have him work. He doesn't have to (indiscernible).

MALE SPEAKER: Well, I was in business all my life. I bid on everything, and I thought I was the best going forward too. So --

COM. BURNS: Well, I can -- I can believe you thought you were the best.

MALE SPEAKER: I tried.

MALE SPEAKER: (Indiscernible) Tobin, I entertain a motion.

MALE SPEAKER: I'd like to move my --

COM. BURNS: Well, I'd like to know something here first, before this.

CHMN. LITTLE: Um-hmm.

COM. BURNS: I want to make sure that I understand that Staff is available here at the Commission for me to move forward. I don't intend to delay another month, 2 months, 6 months. I've been on this for 2 years. I intend to move forward.

MALE SPEAKER: Well, go ahead.

COM. BURNS: And so I want to be assured that I have at least the Staff available for me to use.

MALE SPEAKER: Well, Mr. --

COM. BURNS: And then the other question is, if

I get a subpoena, are you going to squash it here? I mean, are we going to have a Staff meeting and squash it?

MALE SPEAKER: Well, Mr. Burns, first off, none of that's on the -- on the agenda. But you heard counsel will give you advice.

COM. BURNS: What do you mean it's not on the agenda?

MALE SPEAKER: You just said -- you wanted me to assure you that I would vote some way for -- for something. I'd say, well, that's not on the agenda here going forward. This is the piece that's on the agenda. I mean, you just asked me -- you said, I want to be assured going forward that if I -- I subpoena, I'm going to do something. I'm like, that -- first it's not on the agenda. Second, I don't even know what that means.

COM. BURNS: Well, I think there's been a few things discussed that weren't on the agenda from both sides of the table, quite possibly.

MALE SPEAKER: Well, well, I (indiscernible).

COM. BURNS: So I mean, if that's a --

MALE SPEAKER: (Indiscernible) back into the -- to the point, and it's Item Number 3.

COM. BURNS: And it's defund.

MALE SPEAKER: You can call it whatever you

1 want, you know.

2 COM. BURNS: I mean, the result is, it's defund.

3 MALE SPEAKER: Well, no, you just --

4 MALE SPEAKER: I just -- I want that to be

5 clear. I want people to understand.

6 MALE SPEAKER: It seems -- it seems that you

7 heard from counsel that she -- they said they could

8 issue your subpoena for you, so --

9 COM. BURNS: Okay.

10 MALE SPEAKER: And maybe you don't have -- you

11 should have done that six months ago.

12 COM. BURNS: Well, I was trying to do it a

13 better way.

14 MALE SPEAKER: Well, you --

15 COM. BURNS: Include -- I was trying to include

16 all of the Commissioners.

17 MALE SPEAKER: Well, this -- well, you didn't on

18 this scope of work, did you?

19 COM. BURNS: Yes, we did, on that scope of work.

20 MALE SPEAKER: You included all of these

21 Commissioners on this --

22 COM. BURNS: On the scope of work, the first

23 thing to happen would be interviews with all of the

24 members, all of the Commissioners --

25 MALE SPEAKER: It's to --

1 COM. BURNS: -- to find out what they would like
2 to have done.
3 MALE SPEAKER: So hire him and then do the scope
4 of work.
5 MALE SPEAKER: So just -- just to be clear.
6 MALE SPEAKER: That's what you just said --
7 MALE SPEAKER: Just to be clear -- I want to be
8 very clear about this. Just to be clear, I was handed
9 the scope of the work for this after the contract was
10 signed. I did not see the scope of work for this in
11 advance of the contract being signed, the scope of work
12 being written. I was never consulted about the scope of
13 work. It just magically appeared on my desk on Tuesday
14 morning, the day before early ballots went out.
15 COM. BURNS: At the authority of an individual
16 Commissioner that has the authority to do this, so, you
17 know.
18 MALE SPEAKER: Just making a point that this was
19 not something that all of us were involved in. This was
20 a project that you prepared on your own --
21 COM. BURNS: But nobody -- nobody here knew that
22 I was in the process of doing this, of course. I mean,
23 I asked for an attorney general's opinion to verify that
24 I had the authority to do this on my own. So you -- you
25 all didn't understand that that's what I was doing? I

1 mean, what else would -- what else was it? I mean, it's
2 been known --
3 MALE SPEAKER: Go file your -- go file your
4 subpoena, Bob. It's -- I've said that 10 times. Go
5 file it.
6 COM. BURNS: Well --
7 MALE SPEAKER: I'm not stopping you. I -- I --
8 COM. BURNS: Yeah, you are. You're -- you are
9 stopping me.
10 MALE SPEAKER: (Indiscernible.)
11 COM. BURNS: You're stopping me. Yes, you are.
12 You're -- you're -- you're stopping a well organized --
13 MALE SPEAKER: I'm not stopping you -- who is
14 organized?
15 COM. BURNS: -- scope of work.
16 MALE SPEAKER: By who?
17 COM. BURNS: Part of this -- this -- we have
18 somebody that has the knowledge and the expert -- and
19 experience to lay out a scope of work that gets the job
20 done. And that's what we used, okay? So --
21 MALE SPEAKER: That's why any government they
22 have what's called RFPs, where everybody has --
23 COM. BURNS: And they have in government -- they
24 also have in government individual Corporation
25 Commissioners can act to protect the ratepayer.

MALE SPEAKER: Which is exactly what I'm doing here today in Item 3. Just like you (indiscernible).

COM. BURNS: Yep. You're -- you're -- you're just -- you're stopping my ability to do my job.

MALE SPEAKER: I don't think so.

COM. BURNS: Oh, yes, you are.

MALE SPEAKER: I just invited you to do it.

I'd like to move my Item 3.

CHMN. LITTLE: Commissioner, Item 3 has been moved. I think we've had adequate discussion on it.

MALE SPEAKER: Yeah.

COM. BURNS: Well, actually, he's tried to stop me before. I mean, before we got the attorney general's opinion, there was a move to try and stop me.

MALE SPEAKER: For what?

COM. BURNS: So -- huh?

MALE SPEAKER: What did I do before?

COM. BURNS: You had it on the agenda. You've had it on the agenda -- this is the third time you've put something on the agenda that would have attempted to stop my progress.

MALE SPEAKER: Well, anything (indiscernible).

COM. BURNS: Well, we'll -- we'll get it back -- we'll get it for you.

MALE SPEAKER: Okay. (Indiscernible) send it my

DRAFT REVISED 1

1 way.

2 COM. BURNS: All right, yeah, yeah.

3 CHMN. LITTLE: Well, there's -- there's a

4 question on the table. I think I'm going to ask that

5 each individual Commissioner be polled.

6 MS. WAGNER: Mr. Chairman.

7 CHMN. LITTLE: Yes, Ms. Wagner.

8 MS. WAGNER: I'm sorry, so sorry to interrupt.

9 Item 3 has two parts to it. I was just -- it

10 might be helpful to clarify the first part and the

11 second part.

12 CHMN. LITTLE: Thank you, very much, Ms. Wagner.

13 Okay. So we have Commission discussion,

14 consideration, and possible vote on whether to allocate

15 funds from the Commission's budget for payment in

16 furtherance of the scope of work associated with the

17 August 2nd contract with outside counsel; or,

18 alternatively, to suspend the allocation of funds for

19 that contract pending submission of a revised scope of

20 work in consultation with each Commissioner and present

21 to the Commission for consideration within 45 days.

22 So Commissioner Tobin, which of the two are you

23 proposing?

24 COM. TOBIN: That alternatively -- after

25 alternatively, move forward, suspend the allocation

1 immediately for the contract pending submission of a
2 revised scope of work to be developed by the Executive
3 Director in consultation with each Commissioner and
4 present it to the Commission for consideration within
5 45 days.
6 CHMN. LITTLE: Okay. So we're voting to suspend
7 the allocation of funds for the contract pending with
8 Scott Hempling. And we're directing the Executive
9 Director, in consultation with each Commissioner, to
10 develop a revised scope of work to be presented to the
11 Commission for consideration within 45 days.
12 Commissioner Tobin, how do you vote?
13 COM. TOBIN: (Indiscernible.)
14 CHMN. LITTLE: Commissioner Stump, how do you
15 vote?
16 COM. STUMP: Mr. Chairman, may I explain my
17 vote?
18 CHMN. LITTLE: You may.
19 COM. STUMP: I just want to reiterate there's no
20 integrity problem in this Commission. There is a
21 perception problem. And it is as simple as that.
22 And I vote aye.
23 CHMN. LITTLE: Commissioner Burns, how do you
24 vote?
25 COM. BURNS: I'd like to explain my vote.

CHMN. LITTLE: You may.

COM. BURNS: I think this is just a disguised action to deny me the opportunity to do my constitutional duty of protecting the ratepayer, in this case from undue influence by utility overspending and overparticipating, if you will, in the elections of Corporation Commissioners.

I think the perception problem will always -- will continue to remain because we have failed to address it. The way to get rid of the perception is to get the facts and to take a path of corrective action as opposed to blocking the effort to do so.

And I vote no.

CHMN. LITTLE: For my own vote, I think my commissions have been very clearly expressed.

But to quickly reiterate, I believe that there is absolutely no evidence of any untoward influence on the part of any external stakeholders on this Commission or the Commission Staff.

I believe this is a waste of taxpayer money, should we have -- if we would have spent it.

I believe that the functioning of this Commission is exemplary and should be held up as an example of one of the finest Commissions in the country.

And I -- I am just very frustrated with the

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1 continued narrative that -- that has been presented that
2 there is something wrong here and that there is somehow
3 anything other than absolute integrity at this
4 Commission.
5 And with that, I vote aye.
6 Commissioner Forese, I don't believe is on
7 anymore. So his -- he's been excused.
8 Having exhausted the agenda --
9 COM. TOBIN: I forgot to mention the budget
10 process while we're looking. Did we -- is it too late?
11 Okay. I wrote my note and I forgot. Okay. Never mind.
12 THE COURT: All right. Thank you very much.
13 The -- the agenda is completed, and this meeting
14 is adjourned.
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25

Exhibit No. M

ORIGINAL

COMMISSIONERS
DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

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ARIZONA CORPORATION COMMISSION

February 22, 2016

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Arizona Corporation Commission
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AZ CORP COMMISSION
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2016 FEB 22 PM

Re Docket: AU-00000A-15-0309

Dear Attorney General Brnovich,

I am writing in regards to Commissioner Robert Burns' letter of February 9, 2016 requesting a formal legal opinion from you. I believe some background on utility ratemaking processes may benefit you as you consider Commissioner Burns' request.

Utility rates are set in proceedings known as rate cases. A rate case reviews the books and records of the utility for a specified 12 month period (the "test year.") The expenses and level of capital investment from the test year are used to determine how much revenue the utility needs to operate. So, unless a specific adjustor mechanism has been established in a prior rate case, expenses that occur outside of the test year are never included in rates. 2014 was not and will not be a test year in any APS rate case. Therefore, there is no avenue for 2014 expenses (other than those specified to be included in certain adjuster mechanisms) to ever influence APS' rates.

Within a rate case, expenses associated with political contributions, lobbying and charitable contributions are deemed to be unrecoverable in rates. The inability to recover these expenses in rates is a long standing component of utility ratemaking in Arizona. No Arizona utility in recent memory has argued that such expenses should be recoverable. Arizona is not unique in this respect. The inability to recover these types of expenses in rates is standard utility ratemaking as practiced in most (if not all) other states.

During a rate case, the Commission Staff performs an audit to ensure that only expenses that are deemed to be recoverable influence rates. For small utilities the Staff performs the audit themselves. For large utilities, such as APS, Staff typically employs professional and highly experienced consultants to perform the audit. These audits confirm that no expenses associated with political contributions, lobbying, and charitable contributions (or any other expenses deemed unrecoverable) influence the utility's rates.

In addition to the audit conducted by the ACC during a rate case, SEC requirements necessitate that an independent accounting firm review the books of most of our large utilities (including APS.) That review, among other things, ensures that all expenses are properly classified. This provides an extra layer of assurance on top of the rate case audit that expenses deemed unrecoverable are not included in rates.

In conclusion, the existing and long established rate case process at the ACC already ensures that expenses associated with political contributions, lobbying, and charitable contributions are not recovered through and do not influence utility rates. I am not aware of any evidence (or even allegations) that the existing rate case process is deficient in that regard. Any review of the appropriateness of extraordinary measures that are portrayed as related to the ACC's authority to set just and reasonable rates should take the above facts into consideration.

Sincerely,

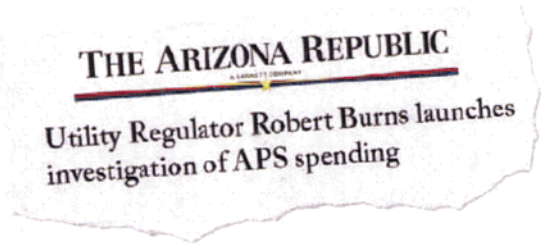
Chairman Doug Little
Arizona Corporations Commission
1200 W. Washington St.
Phoenix, AZ. 85007

Exhibit No. N

Bob Burns
Corporation Commission

On the Issues

Fighting for you against special interest groups


THE ARIZONA REPUBLIC

Utility Regulator Robert Burns launches investigation of APS spending

One of the key responsibilities of the Arizona Corporation Commission is to provide oversight and regulation of power and utility providers for Arizona residents. In the 2014 elections, it is believed that APS spent over $3 million dollars to support Corporation Commission candidates to gain loyalty to the power company instead of the ratepayers. This campaign activity was hidden behind political non-profits (commonly known as "dark money") so ratepayers like you would have no idea that a certain utility was actively trying to choose its own regulators! In the utility industry this is referred to as "Regulatory Capture" and could ultimately result in a loss of representation for Arizona ratepayers.

If regulated public service companies are going to financially support or oppose candidates campaigning for the Corporation Commission (as they have the legal right to do), it must be with full disclosure and transparency. As a member of the Commission, I have fought to require utilities to disclose their political campaign spending, particularly with regards to the elections for Corporation Commission. Ratepayers like you deserve to know if the company you write checks to each month is using that money to buy elections to diminish your influence over the rates you have to pay! I've endeavored to provide this transparency and I will continue this fight until we restore integrity and public confidence to the Arizona Corporation Commission.

Timeline of my battle with APS:

- July 2014 - Candidates push APS about involvement in campaign. Read more...
- July 2015 - What did APS spend to get the regulators it wants? Read more...
- December 2015 - Regulator Robert Burns wants APS to disclose 'dark money' donations Read more...
- December 2015 - APS refuses request to disclose political contributions Read more...
- January 2016 - Utility regulator Robert Burns launches investigation of APS political spending Read more...
- April 2016 - Corporation Commissioner Robert Burns refuses to vote for APS items until company discloses 'dark money' ties Read more...

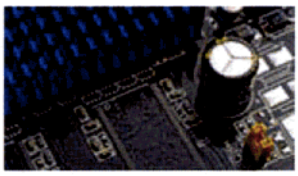
Standing up to the EPA

During my tenure at the commission, I have actively worked to prevent EPA overreach. I voted to sue the EPA over Clean Power Plan Rule 111(d) which would all but shut down coal production in our state and, consequently, lead to exorbitant electricity rates. While Arizona and the other states suing the EPA won a temporary victory when the U.S. Supreme Court stayed the implementation of Rule 111(d) pending the outcome of our litigation, I recognize this issue will not be going away and I plan to continue my vigilant fight to ensure an affordable and reliable power supply.

Effective Commission Divisions

The divisions within the Corporation Commission must remain vigilant not only for ratepayers, but all Arizonans. The Corporation Division must always strive to operate as swiftly and efficiently as possible in order to provide a user-friendly system for corporate entry into the Arizona business community. The Securities Division needs to stay on high alert in order to detect and eliminate not only fraud and abuse, but also to protect our senior population from fraudulent security sales. Finally the Safety Division must continue to provide a high level of railroad and pipeline safety. A watchful, efficient commission improves the lives of all Arizonans, not just ratepayers.

Leading the Charge on Emerging Technologies in Energy



I initiated the Commission's study on emerging technologies in energy. In 2014 and 2015, I led 7 workshops consisting of 73 presentations on technological advances in topics including energy storage, distributed generation, energy efficiency and demand response and how they will impact our current utility business model. Through this study, I learned the Commission never passed statewide interconnection rules, which is something we are now working to adopt in order to make the integration of technologies more streamlined and consistent. We also learned about ways to improve our resource planning for the future process and I continue to lead efforts to implement those improvements.

Ensuring Affordable and Reliable Electricity and Water Supplies

In my view, the most important role of a commissioner is to find the balance between safe, reliable electricity and affordable, reasonable prices. The commission's constitutional charge is to keep prices low while also ensuring our utilities are healthy enough to provide reliable service. Arizona is lucky to have one of the most reliable power systems and access to a balanced portfolio of natural gas, coal, nuclear, and renewable energy. Unfortunately, the EPA continues to make one of our cheapest generation sources, coal, more expensive as part of its climate change policies. For the past several years, I have stood up for ratepayers on numerous occasions and will continue to be a voice for ratepayers opposed to prohibitive price increases.

Contact Bob

Elect Robert "Bob" Burns
P.O. Box 6419
Peoria, AZ 85385

Phone: (602) 469-0799
Email: info@bobburns.gop

Take Action

Like on Facebook
Follow on Twitter
Contact Bob
Get Bob on the Ballot
Contribute
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Paid for by Elect Robert "Bob" Burns

EXHIBIT O

BASKINRICHARDS

William A. Richards
brichards@baskinrichards.com

February 7, 2017

VIA ELECTRONIC MAIL AND U.S. MAIL

Thomas Loquvam, Esq.
Arizona Public Service Company
400 North 5th Street, MS 8695
Phoenix, Arizona 85004

Re: Arizona Corporation Commission

Dear Thomas:

I write to inform Arizona Public Service Company ("APS") and Pinnacle West Corporation ("PWC") that Commissioner Robert Burns has initiated a new proceeding before the Arizona Corporation Commission aimed at investigating, discussing, and developing rules for transparency and disclosure concerning financial contributions by regulated monopolies or intervenors in Commission proceedings that might lead to or create the appearance of undue influence over Commissioners, Commission candidates, Commissioners' personal staff, or other key Arizona Corporation Commission staff members. Copies of Commissioner Burns' filings initiating the new proceedings and announcing the new proceedings to those persons or entities participating in Docket No. E-01345A-16-0036 are enclosed here.

As you will see from the filings, Commissioner Burns believes that a full exploration of the variety of circumstances by which regulated monopolies or their proxies may use expenditures to create influence over Commissioners, candidates or ACC staff is the first step in identifying the full spectrum of issues the new ACC rules must address. To that end, he is requiring that APS and PWC comply with the subpoenas previously issued in Docket No. E-01345A-16-0036. He is filing those subpoenas in the new docket matter and requiring compliance in that proceeding, as well. The information supplied pursuant to those subpoenas will be used in both proceedings.

This letter provides the notice Commissioner Burns previously agreed to provide should he require further compliance with the subpoenas. You will recall that he further agreed to allow six weeks for full compliance with the subpoenas, and you will see in the attached filings that he has set March 24, 2017, a few days over six weeks from now, as the deadline for full compliance.

Commissioner Burns wishes me to express his gratitude for the cooperative attitude APS and PWC have shown toward improving transparency and disclosure among Arizona's regulated

monopoly utilities, and trust this signals their desire to become a leader in transparency about past or existing practices and future improvements needed to protect the Arizona public and ensure the constitutionally mandated objectivity and independence of the ACC Commissioners today and for future generations of Arizonans.

I ask that APS and PWC inform Commissioner Burns, through me, immediately if they do not intend to fully comply with the subpoenas. I also welcome any questions you have.

Sincerely,

William A. Richards
For the Firm

Enclosures
cc: Mary O'Grady, Esq. (via electronic mail)
Joseph N. Roth, Esq. (via electronic mail)

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2017 FEB -7 A 11: 23

Memorandum

From the office of
Commissioner Bob Burns
Arizona Corporation Commission
1200 W. WASHINGTON
PHOENIX, ARIZONA
(602) 542-3682

TO: Docket Control

DATE: February 7, 2017

FROM: Commissioner Bob Burns' Office RU-00000A-17-0035

SUBJECT: Create New Docket

Commissioner Burns requests that a new docket entitled, "Development of New Transparency and Disclosure Rules related to Financial Expenditures by Regulated Monopolies, Intervenors and other Stakeholders" be created. The attached materials explain the purpose of the proceeding.

CERTIFICATION OF SERVICE

On this 7th day of February, 2017, the foregoing document was filed with Docket Control as correspondence from Commissioner Bob Burns and copies of the following who have not consented to email were mailed on behalf of the Commissioner to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commissioner's eDocket program will automatically email a link of the foregoing document to the following who have consented to email service.

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By: Lynn Jahnke
Lynn Jahnke
Executive Aide to Commissioner Bob Burns

COMMISSIONERS
TOM FORESE – Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD DUNN

BOB BURNS
Commissioner

ARIZONA CORPORATION COMMISSION

February 7, 2017

Dear Commissioners, Stakeholders and Parties:

Consistent with the detailed justification and objectives outlined in the memorandum attached to this letter, I have opened this docket aimed at studying and rectifying problems regarding financial contributions from regulated monopolies or other stakeholders who may appear before the Arizona Corporation Commission ("ACC") that may directly or indirectly benefit an ACC candidate, a sitting commissioner or key ACC staff. Obviously, such contributions can lead to undue influence over ACC personnel, and thereby undermine the objectivity and independence of our fourth branch of government that our state constitution and citizens so wisely demand. In the worst cases, such contributions can lead to "regulatory capture" in which ACC commissioners act as biased proxies for the regulated monopolies or other stakeholders who are financially backing them. These dangers warrant immediate, in-depth study and solutions created through robust new transparency and disclosure ("T&D") rules. A principal objective of this docket, then, is to develop robust new T&D rules governing regulated monopolies and intervenors, as well as effective new T&D rules governing ACC commissioner candidates, sitting commissioners, their personal staff and other key ACC staff members.

The comprehensive statement of the problem attached to this letter will guide the investigation required of current T&D issues threatening the independence and objectivity that is constitutionally demanded of the ACC and its elected commissioners. The investigation and study required under this docket will include submissions by the Commissioners, ACC staff, regulated monopolies, intervenors, members of the Arizona public, and other stakeholders regarding the variety of circumstances for possible undue financial influence outlined in the attached memorandum. I invite submissions to this docket on these important topics and will also be inviting submissions to this docket via a letter filed in Docket No. E-01345A-16-0036.

The investigation under this docket will also include obtaining responses to subpoenas I previously served on Arizona Public Service Co. and Pinnacle West Capital Corporation in Docket No. E-01345A-16-0036. Those subpoenas are being duplicately filed in this docket, and the information obtained from then will be used as part of the investigation and rule development undertaken in this proceeding.

The process to be followed in this docket shall be as follows:

February 10, 2017: This letter and all accompanying materials shall be posted for public review on my individual web page accessible through: http://www.azcc.gov/commissioners/RBurns/default.html.

I invite public comment, evidence and testimony regarding the T&D topics discussed in the Executive Summary by March 3, 2017. Please file your comments in this docket or email them to: RBurns-web@azcc.gov and I will file them in this docket your behalf.

March 3, 2017: Deadline for submissions of initial comments, evidence and testimony by regulated monopolies, intervenors and other stakeholders.

March 17, 2017: First workshop to gather input on and discuss the development of T&D rules at 10:00 a.m. in Hearing Room #2 at the Arizona Corporation Commission (1200 W. Washington Street Phoenix, AZ 85007).

March 24, 2017: Deadline for full compliance by Arizona Public Service Co. and Pinnacle West with the document production requirements of the subpoenas I previously issued to them.

Please look for additional information requests, workshop dates and times to be announced in this docket.

Sincerely yours,

Robert L. Burns
Commissioner

Executive Summary
Purpose of the Proceeding

Longstanding legal standards and the political and economic policy sentiments embedded in Arizona's Constitution support robust transparency and disclosure ("T&D") measures to ensure properly informed decision-making by regulators, consumers, intervenors, competitors, stakeholders, and even regulated corporate executives, boards, shareholders and investors. T&D rules that allow for comprehensive and proactive examination by all regulatory and non-regulatory interested parties of formal or informal practices by regulated monopolies that might lead to undue positive or negative influence on regulators or regulatory staff are particularly critical to ensuring a fair, trustworthy, efficient, and objective regulatory environment and sound regulatory decision-making.

Arizona's constitutional history encourages new answers to problems, and the very structure and purpose of the Arizona Corporation Commission represented a bold, innovative solution to issues of corruption, legislative and judicial intransigence, and consumer exclusion that had plagued traditional governmental forms. Yet, the financial resources of today's regulated monopolies and other interested corporate players can exploit vast, new loopholes that undermine the objectivity, independence, transparency and consumer focus constitutionally expected of Arizona Corporation Commission commissioners and the Commission's staff. The spirit of innovation and improvement that motivated the creation of Arizona's fourth branch of government calls the Commission to consider anew all available alternatives to guard the objectivity and independence that our state's constitutional framers expected, and that our current citizens deserve.

To maximize the effectiveness of T&D practices, they must run both directions – applied externally to regulated monopolies and intervenors and imposed internally on regulatory officials and key staff. Comprehensive integration of such T&D expectations in agency ethics rules supports the same objectives as T&D imposed on regulated monopolies or intervenors, creates disincentives for practices that might lead to or be perceived as establishing undue influence in the regulatory process, and provides a disclosure safety net in the case of any failures by regulated monopolies to fully observe their own T&D obligations.

Areas in which robust T&D may be required to gain all the benefits described above for Arizona consumers and protect the interests of regulated industries, their competitors and their shareholders and investors include:

- Contributions by regulated monopolies or their affiliates in support of individual campaigns of Commission candidates or their affiliates;

- Contributions by regulated monopolies or their affiliates in support of non-Commission elected officials who may exercise influence over Commission candidates or elected Commissioners;
- Arrangement by which regulated monopolies or other interested parties provide current employment or business opportunities for family, friends, and close associates of a candidate or Commissioner, or facilitate future employment of business opportunities for a Commissioner or their key staff;
- Contributions by regulated monopolies or their affiliates to publicly sponsored events or charities with whom a candidate, commissioner or their immediate family member is associated as an employee, officer or board member;
- Contributions by regulated monopolies to any other entity or program with whom a candidate, commissioner or their immediate family member is associated as an employee, officer or board member;
- Contracts or other arrangements between regulated monopolies or their affiliates and persons appearing before the Commission or Commission staff, whether on behalf of the regulated entity or ostensibly on behalf of other stakeholders or interested parties; and
- Contributions by intervenors in Commission proceedings of the same type or nature as contributions by regulated monopolies that create the potential for influence over individual Commissioners or key Commission staff.

At this time, the Arizona Corporation Commission does not employ robust T&D rules for regulated monopolies or intervenors, and it has not implemented comprehensive T&D requirements for Commissioners, their personal staff or other key Commission personnel. To develop appropriate policy and implementing rules, it is critical for the Commissioners to comprehensively study the problems associated with the lack of such rules, the benefits of implementing such rules, the impacts of different rule structures and alternatives on regulated monopolies and their affiliates, and all legal issues associated with implementation of such rules.

The purpose of this proceeding is to implement the study mentioned above, to develop rule proposals for consideration by the Commissioners, and to implement appropriate rules to improve the T&D practices of the Commission and ensure the objectivity, independence and consumer protection expected by Arizona's constitutional principles.

The Need for Transparency – A Constitutional Mandate

The Arizona Corporation Commission ("ACC") is a unique governmental body, crafted by the framers of the Arizona Constitution and modified by Arizona's voters over time to perform broad functions of critical importance to Arizona citizens. The ACC is one of only seven such state entities created by constitutional command, and only one of thirteen with elected commissioners. This unique history and make-up presents the opportunity for the robust, independent decision-making intended by the constitutional framers. However, the same

structural characteristics that open the doors to independent decision-makers who are daily accountable to the voters also create the potential for regulatory "capture", one of the societal and economic ills the ACC was principally designed to prevent.

Records of the Arizona Constitutional Convention confirm that the principal supporters of the various provisions of Arizona's Constitution concerning corporate regulation were attempting "'to remedy the accumulated evils and negligences of [the] period of industrial growth' that had preceded" the 1910 convention. John D. Leshy, *The Making of the Arizona Constitution*, 20 Ariz.St.L.J. 1, 88 (1988) (quoting R. Hofstadter, The Age of Reform, note 161, at 2-3). "[T]he framers . . . were particularly concerned with the need to avoid various pitfalls that they perceived the courts had put in the path of effective regulation" of corporate entities. *Id.* Among these were judicial decisions that had struck down corporate regulations under the federal constitutional clause preventing "impairment of contracts", or had otherwise voided state legislative attempts to address growing corruption scandals involving railroads and other large businesses. *See id.* at 88-89. According to relevant scholarship concerning the Arizona constitutional debates, the Arizona framers joined other western states "to head off such judicial challenges by constitutionalizing their 'suspicion of big business.'" *Id.* at 89. In short, the ACC was created to overcome the paralyzing influence large corporations had already proven adept at wielding in traditional legislative and judicial arrangements.

To overcome such corporate insulation tactics, the Arizona framers did not stop at merely constitutionally imbuing the state legislature with specific regulatory powers. Though they did that also, *see* Ariz.Const., art. XIV, §§ 2, 14, the framers created an entirely separate branch of state government, an elected Corporation Commission, "vested with broad powers to regulate the activities of 'public service corporations,' defined to include private utilities and common carriers." John D. Leshy, *supra,* at 88; Ariz.Const., art. XV. The ACC therefore holds an exceptional position as a constitutionally-established fourth branch of government; a branch uniquely assigned legislative, executive *and* judicial authorities. *See, e.g.* Ariz.Const., art. XV, §§ 3-5, 13-14, 17, 19; *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 305, 138 P. 781, 785 (1914) ("The functions of the Corporation Commission are not confined to any of the three departments named [legislative, executive and judicial branches], but its duties and powers pervade them all . . . .") The powers vested by Arizona's framers in the ACC are, at least in part, "supreme" and may not be invaded by the other branches of government. *Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 306 ("While [the ACC] is not so named, it is, in fact, another department of government, with powers and duties as well defined as any branch of the government, and where it is given exclusive power it is supreme. Its exclusive field may not be invaded by either the courts, the legislative or executive.")

The Arizona framers also intended that the ACC Commissioners be a uniquely protective form of governmental machinery assigned powers "primarily for the interest of the consumer." *Id.* at 308, 138 P. at 786. One of our Supreme Court's earliest pronouncements on the structure and intent of the ACC held:

> It is to be remembered that the framers, and the people who adopted it, designed that our Constitution abandon the beaten path of precedents in Constitution making, and handle modern problems and conditions by advanced and up-to-date methods and formulas. The supervision and control of public utilities has ever been, and probably always will be, one of the most vexatious as well as vital questions of government. All persons agree that the capital invested in public service should receive reasonable remuneration, and that the services rendered should be efficient and practicable and to all patrons upon equal terms and conditions. With a full knowledge that these things had not been accomplished under the laws heretofore existing in this and other jurisdictions, the people in their fundamental law created the Corporation Commission, and clothed it with full power to investigate, hear and determine disputes and controversies between public utility companies and the general public. This was done primarily for the interest of the consumer. If he is dissatisfied with the rates and charges exacted of him by his public service corporation, he may file his complaint with the commission and secure an investigation and determination of the wrong charged. With trained, capable and conscientious commissioners, it is fair to assume that he will be granted a speedy hearing and a reasonable adjustment of his complaint.

Id. at 307-308, 138 P. at 786.

The latter reference to "trained, capable and conscientious" commissioners acting in a fair and reasonable manner exposes the parallel constitutional objectives that ACC commissioners be unbiased, objective, and accountable to the voters who elect them and the consumers they primarily serve. The Arizona Supreme Court recognized very early on in the same opinion the wisdom of the framers in creating the ACC as a truly independent and fair department basing its decisions on publicly disclosed facts, not behind-the-scenes influence. The court in *Tucson Gas, Elec. Light & Power Co.,* 15 Ariz. at 305-306, 138 P. 785-786 specifically noted that the wisdom of an independent fourth branch to perform utility regulatory functions was demonstrated in the laments of federal precedent from Iowa which contrasted that state's lack of a corporation commission with the situation in states like New York, Massachusetts and Wisconsin which "'have state commission of competent men, who give public hearings, and who do nothing behind doors, nor in secrecy - - a commission with no member interested as a taxpayer of the city and ***with no member subject to influences other than the ascertaining of the truth and the facts***.'" (quoting *Des Moines Water Co. v. City of Des Moines (C.C.),* 192 Fed. 193, 195 (emphasis added)). Further explicating the efficiency of Arizona's utility regulation structure, the Arizona Supreme Court adopted a federal court's observation that much litigation and expense is avoided by a state that has "'an impartial and nonresident commission or tribunal, with power to fix . . . rates at a public hearing, and all interested parties present, with the tribunal selecting its own engineers, auditors, and accountants.'" *Tucson Gas, Elec. Light & Power Co.,* 15 Ariz. at 305-306, 138 P. 785-786 (quoting *Des Moines Gas Co. v. City of Des Moines (D.C.),* 199 Fed. 204, 205). Thus, the Supreme Court members closest in time to the constitutional birth of

the ACC acknowledged the framers' expectation that the Commissioners be competent, act publicly, have no personal interest in the matters being decided before them, and be subject to no influences "other than the ascertaining of the truth and the facts."

Transparency, objectivity, accountability to Arizona's utility consumers and an absence of influence by corporations affected by their decisions are thus hallmark expectations for ACC commissioners under the Arizona Constitution. The Commissioners, and all candidates who strive for such office, operate under a constitutional mandate to avoid influence by those who may or do appear before them, particularly those subject to their regulation. The Commissioners are legally bound to decide questions in their sphere of powers on facts and the objective principles that guide appropriate regulatory decisions in the fields for which they are delegated responsibility by the people. Deciding anything based on the promise or potential of financial or other support benefitting a commissioner or those close to him or her personally is constitutional blasphemy and rejects the sacred trust Arizona's constitutional framers so uniquely fixed upon the Commission.

The Need for Transparency – A Matter of Public Confidence

Given the unique responsibilities of ACC officials to give a primary consideration to the interests of Arizona consumers, it is logical that such consumers would recoil at the perception that ACC officials were primarily, or equally, or even just potentially influenced by considerations of personal benefit or association in performing their public duties. As the Supreme Court of Arizona explained in addressing ACC commissioner conflict of interest standards under A.R.S. § 40-101:

> The principle which governs our opinion is fundamental and lies at the core of representative government. Our three corporation commissioners are representatives of the people, elected to office with specific constitutional and statutory duties. They must be free of conflicts both at the point of election and during tenure in office.

Jennings v. Woods, 194 Ariz. 314, 316, 982 P.2d 274, 276 (1999). The Court added that "[p]ublic confidence in government officers is vital" as it held an ACC candidate ineligible because he held a securities registration and was affiliated with a registered securities dealer (making both of them subject to ACC regulation).

This notion of protecting public confidence in government operations is the same policy that compels that judicial officers avoid even the "appearance of impropriety". The simple conclusion emanating from such well-established policy is that even the potential of regulatory capture by regulated monopolies or other stakeholders can so destroy critical public confidence that even the potential that commissioner objectivity and independence might be compromised must be curbed.

Thus, binding Arizona law confirms as a "fundamental" and "core" concept of our state governmental structure that all ACC commissioner candidates, and all elected commissioners, must be free of conflicts through association with regulated monopolies, and that the principal objective of such standards is to ensure public confidence in ACC proceedings. There can be no greater justification for policies of the Commission than the preservation of the essential and unwavering public confidence in the objectivity and independence of ACC officials, elected and non-elected alike.

Undue and Undisclosed Influence Comes in Many Forms

The need for thoughtfully constructed, robust T&D rules is all the more pressing given the many different varieties of powerful, yet largely undetectable, avenues for influence our modern civic and economic structures offer. While outright bribery or graft is still possible, many far more subtle and pernicious approaches also exist for benefitting, and thereby influencing, an ACC candidate or official while maintaining secrecy and denying the electorate and utility consumers the ability to assess whose interests an ACC candidate may really be prioritizing. Most of these are difficult to identify for investigation, let alone to fully expose, without the help of voluntary disclosures. The following is a brief and incomplete list of alternative paths for surreptitiously generating influence with a candidate or elected official.

A. Contributions to "Independent" Expenditure Groups

One of the most efficient and pernicious forms of influence peddling available under the current Arizona system includes contributions made anonymously to support independent political expenditure groups that are purportedly unaffiliated with a registered candidate or political party. By making the contribution known to a candidate informally through a communication network that involves no written record, a contributor ensures the candidate knows of their lucrative support while allowing the candidate and their campaign plausible denial of any coordination with the independent group or its donors. Given the relatively small community of political campaign professionals, lobbyists, and elected officials in Arizona, such communication networks can be very small and effective at relaying messages of support and gratitude between candidates and donors without any public acknowledgement on either side of the arrangement. They can even very efficiently help a candidate direct the spending made possible by such donor largesse in a most informal and clandestine process.

The temptations to use such machinations to avoid disclosure rules and mislead the voting public are myriad. For instance, the principals of an independent expenditure group can be motivated by their own income interests – whether that be through salary they pay themselves to manage the organization or to supply it with advertising resources, or by bolstering their image as a "king-maker" or as carrying heavy political influence, key marketing tools for

other business pursuits in lobbying or campaign management. It is not hard to imagine those with lobbying aspirations or interests wanting to use independent expenditure groups to prove to large corporate donors or wealthy business people their personal dexterity at linking such entities or persons with the politically influential in our state. The independent expenditure group may alternatively be manned by party loyalists or operatives who gain power, prestige and positions within their chosen political organization by providing candidates from that party the monetary resources they need for campaigning.

On the donor side, the independent expenditure option allows corporate citizens to make sizeable and influential donations without having their customer base learn what side of the political aisle they are financially supporting. In the case of regulated monopolies, exposure that the entity supports candidates of any particular party risks upsetting a large customer constituency whose agitation can motivate regulatory complaints and adversarial appearances in proceedings where the regulated entity would otherwise falsely cultivate the perception of general customer support, or at least customer disinterest. Similarly, donors to independent expenditure groups may know that their open affiliation with a candidate risks votes for the candidate. For instance, opponents of an ACC candidate who openly courts financial backing from a regulated entity could mount an effective campaign charging the candidate with being "bought and paid for" by special interests he or she is supposed to oversee. By directing their contributions anonymously through an independent group, the regulated entity gets to improve the election potential of the candidates they believe will favor their interests without simultaneously offending voters who may dislike or distrust the corporate donor.

And there is little, if anything, stopping such motivated participants from communicating and coordinating with one another "under the radar" of election officials, the press, or the public. Consider, for example, a highly motivated independent expenditure group ("IEG") chair with a longstanding tie to a lobbying group and political aspirations for a state party chairmanship. It would take little effort for that person to "find" the governmental affairs officials at a regulated entity, arrange a lunch, and in the course of a few minutes of chatting about "what they are respectively up to" list various ACC candidates the IEG plans to support with advertising in the upcoming election and express how close the IEG chair is personally to the social circle Candidate X runs in. The regulated entity's employee can casually share how enthusiastic his or her employer is about Candidate X, express "regret" that they cannot express such support more directly to the candidate, but explain how willing they might be to help out the IEG with a large donation to help fund "whatever you think will help Candidate X the most." The expenditure group chair takes that and "thinks about it" by talking to an old lobbying friend who just happens to be close to Candidate X's campaign chair, mentioning the lunch recently with the regulated entity employee and asking how the lobbying friend thinks the IEG might best help candidate X if the IEG just happened to land a large donation. The lobbying friend makes one call to the campaign chair to inquire how the campaign is proceeding and what they wish they had more money for. When the circle is closed and the money flows to precisely what Candidate X desired,

the lobbying friend makes sure to mention to the candidate's campaign manager just how "generous" she hears the regulated entity is being with their parties' candidates this year, or otherwise share some relatively transparent "coded" confirmation of the support provided by the regulated donor.

The foregoing example exposes how easily coordination is accomplished surreptitiously and with plausible denial baked in. One can imagine many instances in which the participants would hardly make the efforts outlined above to keep their coordination secret but in which they would still feel relatively well protected from discovery. The misuse of so-called "dark money" arrangements therefore promises to entice less-than-scrupulous candidates, campaign officials, expenditure group principals, and regulated monopolies to engage in cloaked influence-peddling. What suffers, of course, is the electorate who will vote for candidates having no idea of their secret reliance on and allegiance to regulated monopolies and misplacing their trust in the integrity and independence of the candidates they vote for. Also harmed are consumers of ACC-regulated services who count on commissioner objectivity in making critical regulatory determinations and policy that will impact consumer costs and service reliability. Finally, the entire Arizona populace is harmed because the potential for such invisible influence schemes robs the public of the critical confidence they both need, and deserve, in one of their most vital government institutions.

B. Contributions to Events or Entities That Can Directly Benefit a Candidate, Commissioner or Their Family and Friends.

It is plausible to expect that Commission candidates and even sitting commissioners might retain private interests outside the Commission that could benefit from direct or indirect support of regulated monopolies. It would not be unusual for a candidate to come from a position on a private policy advocacy group or even from a "think tank" established within the state university system. After all, recent reporting indicates that both Arizona State University and the University of Arizona have established "centers" that can apparently receive substantial private sponsorship funding. Conceivably, under current ACC rules a candidate might approach, or be approached by, a regulated monopoly concerning substantial financial contribution to an institute or center that pays the candidate a salary or that underwrites other substantial travel or other expenses for the candidate. The contribution would not appear as a campaign contribution, though the support it provides a candidate by ensuring their ongoing employment compensation and allowing them to extend their personal "brand" and reputation extensively through appearances and communications on behalf of their institutional employer could undoubtedly have even greater impacts than a direct campaign contribution. This is especially so because the amount of contributions to the candidate's "think tank" affiliate would not be limited by campaign expenditure laws.

Consider the example of Candidate X who works in a director capacity for an economics policy center at an Arizona university and plans to run for an ACC seat in the general election that is a year-and-a-half away. As part of his or her regular fundraising efforts, the candidate might approach a regulated monopoly and seek general donations to the policy center efforts, knowing that when received such funds can be used to directly or indirectly benefit the candidate. A regulated monopoly that is eager to show its support – and in turn capture a commissioner for future cooperation – might generously contribute to the center's budget or works. And, they might attempt to do this anonymously so that the money trail is never easy to spot or unravel.

Of course, the potential for abuse seems even greater if a sitting commissioner attempts to maintain such sponsorship relationships with regulated monopolies outside their ACC position after taking their position on the ACC. Depending on how the commissioner benefits from such "moonlighting", their dual position can create substantial opportunities for undue financial influence, and even capture, by generous sponsoring regulated entities. Only a broad and robust transparency and disclosure program will force such relationships into the light.

It is also not surprising that individuals aspiring to elected ACC positions might have spouses, children, other relatives, or even close friends who could benefit either directly or indirectly by contributions that might be facilitated by a regulated entity. As just one example, it could be quite easy for the entity to arrange a job for the spouse, family member or friend of a candidate or Commissioner with a subcontractor or vendor that is economically beholden to the regulated entity. Such deals can be cut with a simple phone call and are just the most dramatic example of so-called "straw donor" practices in which a regulated entity uses a proxy to provide the benefit. Arizona's lack of disclosure requirements for such activities encourage them. After all, the role of the regulated entity in such transactions is completely shielded from the public, and even other regulators, under the current system.

Many other paths also allow a regulated entity to provide direct or indirect financial benefits to someone the candidate or commissioner cares about. Imagine, for instance, a candidate whose spouse works for a local business lobbying association, or a government policy study or advocacy group. It is not difficult for the regulated entity to find ways to ingratiate themselves with, and even to financially benefit, the spouse by making material contributions to their entity or cause. Consider a local chamber of commerce entity headed by the husband of an ACC candidate whose continued employment and salary are dependent on the revenue the chamber group can generate annually. Now imagine that when that individual's wife initiates her campaign for an ACC seat, a regulated entity initiates a sizeable donation to the chamber group headed by the husband, sending the message that the donation may be renewed annually if the regulated entity remains pleased with the chambers' efforts.

Other examples abound. For example, a Commissioner's child may be the co-founder of a non-profit charter school entitled to public funding under Arizona law, and may co-own a for-

profit entity that owns and leases to the non-profit its school facilities. The lease rates impact the owners' annual incomes, and they can be increased when the budget of the non-profit school increases. One simple way to provide such extra financial capacity for rent payments is for a regulated entity to make material annual charitable contributions to the non-profit entity. Such contributions might come via a separate charitable foundation sponsored by the regulated entity, by the regulated entity encouraging its employees to contribute to the charter school, or by its encouraging or arranging for even third party vendors or subcontractors to make such contributions. By such arrangements it is relatively easy for a regulated entity to "wash" contributions intended to buy candidate or Commissioner goodwill or allegiance through seemingly benign charitable activities. Ironically, a particularly bold regulated entity might even tout such activities as evidence of its laudable corporate citizenship.

Still other alternatives could involve arrangements to financially benefit third parties on whom the candidate or Commissioner relies for other critical political support. For instance, a regulated entity could hire on a contract basis an individual to run "marketing" or "community relations" activities, knowing the individual is also responsible for helping the candidate or Commissioner gather a substantial amount of their campaign financial support from other donors. The contracted individual might thereby have considerable persuasive influence on the candidate or Commissioner that is well known to the regulated entity. While the regulated entity could plausibly claim its exclusive objective is to obtain unique marketing insight or public relations skills from the contracted individual, it could subtly, or not so subtly, tie its continued employment of the individual to their exercising their influence over the candidate or Commissioner at critical points.

C. Contributions to Charitable or Political Organizations.

Even a candidate's or Commissioner's own seemingly benign association with a politically neutral charitable organization or policy study group could serve as a leverage opportunity by a financially well-heeled regulated entity. After all, a candidate or Commissioner who is personally committed to the organization or uses their affiliation with the association as a political selling point could be heavily influenced by an entity's support of their charitable interest. For most struggling charitable groups, even a relatively small annual contribution – say $10,000.00 - $25,000.00 – could mean the difference between continued existence and collapse. It could also allow the creation of a new program garnering considerable public interest and support for which a candidate could claim much-needed credit. And, once the regulated entity creates the threat that its continued support may be pulled, it owns a leverage tool that can be deployed at opportune times.

D. Contributions to Support Civic Events.

The history of the ACC includes regular inquiries and concerns submitted by utility consumer constituents about the seemingly large dollars being spent by some utility entities on sponsorship of public buildings, like stadiums or youth ballfields, or sponsorship of public events like parades, festivals, concerts or the like. While consumer interest most often stems from concerns that the cost of such sponsorships are passed on to consumers in utility rates, a more subtle concern is equally justified. Public officials who may have significant influence over a candidate or Commissioner may depend on such support for their government's large events or venues. They can be leveraged by threats that the sponsoring entity may end or curtail its sponsorship to lobby the Commissioners, and this can place dramatic political influence on Commissioners.

Imagine, for example, the influence that can be wielded by a long-time county supervisor or city council member who has served as a key state-wide political party leader and who can help quickly and effectively garner political support from other party leaders and donors, or who can alternatively help deny effective party support to a candidate. By providing substantial financial support to the county or city for its events and venues, a regulated entity can gain substantial leverage over the county or city official and thereby extend its influence through that official to all candidates or Commissioners that hope to have the support of that county or city official and his or her party. The regulated entity can then call upon the county or city official with threats that it will otherwise withhold further support to county or city events unless he or she applies appropriate pressure on the Commissioners within their sphere of influence. Again, then, contributions used to claim good corporate citizenship can be deftly used to wrest influence that undermines consumer interests, and there is no paper trail now that allows such influence or potential for influence to be exposed.

E. Contributions to Other Political Allies the Candidate or Commissioner Desires to Support.

As a final example, individual political influence and power can be derived through perceptions that an individual can obtain financial support for others from powerful and wealthy sources. A Commissioner who is relatively new to Arizona political office may wish to pad their goodwill with other political office holders or office seekers. On the other hand, even a politically experienced Commissioner may wish to build his or her resume as a difference-maker for other candidates or elected officials. By successfully obtaining from regulated monopolies financial support for other candidates or elected officials a Commissioner can avoid the taint of any direct personal financial gain, while nevertheless obtaining a reputation and allegiances that can lead to reciprocal support leading to other elected offices, political appointments, or even private business opportunities.

A particularly forward-thinking Commissioner might, for example, cultivate sponsorships by regulated monopolies for the governor, several mayors, various legislators, and even county officials hoping to curry favor with such officials for later reciprocal political endorsements, or for subsequent paid political appointments, or to cultivate a reputation as an influence-peddler with deep contacts that can be marketed in a future lobbying or government relations consultant career. No matter what the Commissioner's particular long-term objectives might be, however, gaining the cooperation of the regulated monopolies who can provide financial support at their behest is critical. Regulated monopolies should be able to quickly spot such opportunities and exploit them to gain *quid pro quo* arrangements with Commissioners that are so motivated. Again, such arrangements will rarely be publicly visible. Instead, the outcome will just look like sponsorship by a regulated entity of a non-ACC political figure. But, at their heart, such sponsorships can be used to assert considerable influence over Commissioners.

F. Other Alternative Leverage Arrangements.

The variety in the foregoing examples demonstrates that improper influence through financial contributions can be obtained in a very wide variety of creative arrangements. The "common denominators" in all such alternatives is that the regulated entity makes arrangements for or provides some sort of financial support or compensation that ultimately benefits a candidate or Commissioner. Such benefits may be incredibly direct and material, like arranging a job for a Commissioner's spouse with a vendor or a regulated entity. Or they may be very indirect, like making contributions that allow the regulated entity to call in political pressure from outside political figures that the Commissioner wishes to please for long-term political gains. But whether or not the arrangement puts dollars into a candidate or Commissioner's pockets or campaign accounts, the benefits accrued through such outlays can be compelling and can effectively encourage a candidate or Commissioner to overlook facts, spurn objectivity and independent analysis, disregard consumer interests, and to seek instead to satisfy the objectives of the supportive regulated entity. Given the constitutional mandates that ACC Commissioners behave objectively and independently with focus on the facts and primary concern for the affected consumers, any such influence is improper.

And, finally, such improper influence is not a threat merely when it encourages allegiance of a Commissioner who recognizes the benefits they are obtaining from the regulated entity. Commissioners rely on their personal and agency staff to provide objective research and input, and to help them independently assess critical policy issues. If key staff have been improperly influenced to favor a regulated entity through arrangements they perceive as personally beneficial they may intentionally mislead Commissioners in material ways. Thus, the opportunities to exercise improper influence in ACC proceedings extend to influence aimed at key staff.

Constitutional Paths for Enforcing Transparency and Disclosure

Despite all the attention that the U.S. Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission,* 558 U.S. 310 (2010) has given to constitutional protections for corporate donations in support of individual election campaigns, the *Citizens United* court did not abandon the federal courts' historic consensus about the importance, and constitutionality, of transparency requirements concerning political donations. Eight of the nine justices in *Citizens United* agreed that disclosure on funding issues is important because "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." The continued vitality of those objectives means there exist many constitutionally permissible alternatives for ensuring the public adequate transparency in connection with corporate financial activities that could garner undue influence with ACC candidates or the Commissioners.

T&D policies have also historically enjoyed uniquely consistent bi-partisan support for well over a century in this country. Candidates and supporters of all political parties acknowledge the powerful assist disclosure requirements offer in curing public political corruption and informing voters about the financial interests that might influence candidates. The modern campaign finance disclosure era commenced in about 1890, and by 1927 most states had passed some form of campaign finance disclosure requirement. On the federal level, Congress enacted the Publicity of Political Contributions Act of 1910, 36 Stat. 822 (1910), which required "political committees" to file post-election reports regarding contributions and expenditures with the House of Representatives. Thus, cross-party support for mandatory disclosure of campaign donations has fostered legislated disclosure commands in this country for over 100 years. T&D requirements are therefore a thoroughly American solution to the dangers of undue influence, particularly the type of influence that might be purchased by persons or entities who stand to gain financially from that influence. And, the long history of T&D efforts at both the national and state levels has allowed for considerable experimentation and development, creating alternative models crafted to avoid overreaching, pitfalls, and loopholes. Though the further improvement of T&D policies is always possible, the Commission enjoys access to considerable historical precedent defining legally permissible options—particularly where, as here, we are dealing with T&D policies involving regulated monopolies.

A. The Focus of T&D Mandates is On Disclosure, Not Substantive Control of Speech.

This proceeding is intended to consider transparency and disclosure rules, not rules that substantively prohibit or restrict the types or amounts of financial contributions or expenditures regulated monopolies or intervenors can make. That latter kind are the type of regulations rejected in *Citizens United.*

As for disclosure requirements, U.S. Supreme Court jurisprudence dating from *Buckley v. Valeo,* 424 U.S. 1 (1976) has noted that any free speech burdens imposed by mandatory

disclosure requirements are minimal because disclosure laws "impos[e] no ceiling on campaign-related activities." Therefore, while disclosure requirements must still bear sufficient relation to government interests, the federal courts have consistently endorsed the constitutionality of very broad disclosure regulations. *See Citizens United*, 558 U.S. at 369-371; *McConnell v. FEC*, 540 U.S. 93 (2002). The majority opinion in *Citizens United* even upheld the disclaimer and disclosure provisions of the Bipartisan Campaign Reform Act, noting that the challenged provisions "provide the electorate with information" and "insure that the voters are fully informed." *Citizens United*, 558 U.S. at 367.

In the case of the ACC, it is reasonable to expect that regulated monopolies or other stakeholders may well attempt to influence the outcome of ACC elections, and that they may even intend to curry favor or influence with candidates, sitting commissioners, or staff through their financial expenditures. But the counter expectation is that a fully informed candidate base, press and electorate will be able to appropriately assess the risks or dangers of undue influence arising from various forms of disclosed arrangements and will provide the counter-pressures necessary to discourage improper influence peddling and prevent regulatory capture. Thus, the Commissioners should have no concern, and make no objection, that this proceeding threatens to impinge any form of protected speech. The intent is to ensure disclosure and prevent the fraud that is practiced on the public when a candidate claims the ability and intent to act independently and objectively even though a regulated entity or other stakeholder holds the power to undermine that independence.

B. <u>The Federal and State Constitutions Permit Broad Disclosure Requirements.</u>

As noted, relevant federal and state law have for decades approved disclosure requirements tied to legitimate governmental interests. The U.S. Supreme Court has recognized that disclosure of campaign expenditures supports governmental interests by providing valuable information to the electorate and thereby "aid[ing] the voters in evaluating those who seek . . . office" and "alert[ing] voter[s] to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office." *Buckley*, 424 U.S. at 66-67. That court also acknowledged that campaign finance disclosure similarly meets legitimate government interests by "deter[ring] actual corruption and avoid[ing] the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Id.* at 67. The ACC and the constituency it serves certainly share those same important objectives.

Thus, so long as the disclosure requirements adopted for regulated monopolies or intervenors could help deter corruption, or help avoid the appearance of corruption among ACC candidates and Commissioners, or could aid voters in evaluating those who seek election to a commissioner seat, or could help alert the voters to interests of regulated monopolies or intervenors who are likely to appear before the ACC that a candidate or Commissioner may be supportive of, and so long as the rules do not impose substantive limits on contributions such entities or intervenors may make or benefits they may help facilitate for a candidate or Commissioner, the disclosure requirements should pass constitutional muster. This is not to say

that appropriate substantive limitations on benefits a regulated entity or intervenor might confer, or on benefits a candidate might accept, might not also be constitutionally permissible. However, the purpose of this proceeding is to develop appropriate transparency and disclosure rules and those rules need principally to be guided by determinations of what will help fulfill the government objectives outlined above.

C. Existing Rules, Scholarship and Proposals Offer Detailed Examples of Constitutionally Permissible T&D Requirements.

While the Commission's objectives should be to create an Arizona-specific set of rules fitted to real-time and anticipated circumstances in this state, enacted statutes and rules from other jurisdictions, as well as carefully constructed and thoughtful scholarship on the subject of disclosures, offer examples that can be borrowed and adjusted to our state's dynamics. The following are just a few examples of such disclosure standards and requirements that might be studied for adoption.

Federal Requirements

The statues and implementing regulations and guidance governing federal campaign finance disclosures offer examples of constitutionally permissible transparency mandates. For instance, the regulations of the Federal Election Commission ("FEC") contain substantial rules governing election finance reporting. *See* 11 C.F.R. §§ 102-108 (attached at Appendix A). And the FEC publishes explanatory materials that elaborate on such reporting/disclosure mandates, like the FEC's *Campaign Guide for Corporations and Labor Organizations* (excerpts attached at Appendix B).

State Laws

Existing Arizona statutes and regulations, for example the provisions at Article 1.4 of Chapter 6 of Title 16, Arizona Revised Statutes (A.R.S. §§ 16-925 – 16-928) (attached at Appendix C), the Citizens Clean Election Act implementing regulations at Arizona Administrative Code ("A.A.C.") R2-20-109 (attached as Exhibit D), reflect existing candidate and donor disclosure requirements. The Arizona Secretary of State also publishes less formal guidance, such as the Instruction for Financial Disclosure Statements (attached at Appendix E) that address mandatory disclosure and reporting requirements related to candidate funding.

State law requirements from other jurisdictions similarly address T&D expectations related to campaign contributions. And, examples exist in other states of special campaign contribution disclosure requirements aimed at those who may be doing business with the state government, such as contractors. *See, e.g.*, Md. Code, Elec. Law § 14-101, *et seq.*; R.I. Gen. Laws § 17-27-2, -3; 25 Pa. Cons. Stat. § 3260a(a) (requiring businesses awarded non-bid contracts to report all contributions made by their officers, directors, associates, partners, limited partners, owners, or employees, or their immediate family members, aggregating more than $1,000 annually) (*see* Appendix F, G and H attached to this memorandum). These latter disclosure

requirements are aimed specifically at exposing benefits conferred by constituent organizations that may earn material financial benefits in return for their contributions through actions of a candidate once in office.

Proposed and Summarized Rules

There also exist proposed rules and scholarship that evince attempts at broadening disclosure requirements to expose and deter "pay-to-play" practices in which candidates for public office informally require campaign support by those doing business with or appearing before public agencies to assure their consideration for government business or other government help. One example, attached as Appendix I here, was a proposed federal Executive Order from 2011. Other guidance is found in scholarship like the Campaign Legal Center's paper entitled *Disclosure Best Practices* (copy at Appendix J) which surveys the legal standards applicable to disclosure rules and summarizes current practices aimed at curbing improper economic influence over elected officials.

The bottom line is that many interested parties, government officials, and legal scholars have addressed, and continue to offer improvements to, effective T&D practices. The fruits of their efforts spreads a substantial array of alternatives for the ACC to consider, adopt or modify to meet its unique needs and circumstances.

The Roadmap Offered by Existing Rules and Scholarship

The examples of robust T&D practices provided in existing and recently proposed federal and state law demonstrate with some uniformity the key elements for creation of legally viable and practically effective regulations. Those elements include:

A. Identifying the circumstances that may give rise to undue financial influence over ACC candidates, sitting Commissioners, and key ACC staff;
B. Identifying which parties are required to make disclosures to properly inform voters and consumers about candidate ties to regulated monopolies or intervenors and to deter attempts at regulatory capture;
C. Establishing the appropriate timing for all required disclosures so that voters and consumers obtain meaningful data in a timely fashion when it is most needed and when exposure will be most effective at ensuring voter education and deterrence of attempts at improper influence;
D. Establishing what facts must be disclosed, including what level of detail must be disclosed to ensure the degree of public exposure needed for voter education and deterrence;
E. Establishing the format for the disclosures;
F. Establishing a mechanism for enforcement of the disclosure requirements, including investigatory processes, violation notice and hearing proceedings, and penalties or sanctions; and

G. Establishing appropriate vehicles for ensuring widespread and efficient public access to disclosed information.

In short, the process must begin with education about all the circumstances under which regulated monopolies or their proxies can, or may have, attempted to provide benefits to or create influence over ACC candidates, sitting Commissioners, and key ACC staff members. This means investigating in detail how ACC candidate campaigns are financially supported, what type of people are involved in that process, and, particularly, how regulated monopolies might use "straw donor" tactics or surreptitious coordination strategies through networks of government affairs specialists, entity contractors, lobbyists, and campaign and party officials to financially promote and support an ACC candidate. It also means ferreting out all other methods by which regulated monopolies or intervenor stakeholders can use their networks, proxies, influence or finances to provide indirect financial benefits to candidates, sitting Commissioners, or those close to them. Finally, it means surveying in detail all methods by which regulated monopolies or intervenors might contribute financially in ways that help an ACC candidate or Commissioner to build political power or influence, develop future job prospects, or develop future business opportunities. These investigations must be factual, must delve into real-world examples, must call upon the regulated communities to voluntarily expose their past tactics and help identify existing loopholes, and must report findings in public for the voters and Arizona consumers to hear. Only then can the Commissioners accurately understand all the problems they should aim to fix.

And once the potential problems are identified, the Commissioners must comb the existing legal precedents and scholarship to identify the T&D practices that most directly and genuinely ensure eradication of those problems under the unique circumstances in Arizona. And when the Commissioners at last craft and select the new T&D rules to apply to their regulated and intervenor communities, as well as to themselves and their key staff, the Commissioners must be guided by a common understanding of and commitment to the expectation of Arizona's constitutional framers that they are striving to achieve true objectivity and independence for every elected Commissioner and exposure to the voters of any circumstances that might call that objectivity and independence into question.

Appendix A

U.S. GOVERNMENT INFORMATION GPO

CODE OF FEDERAL REGULATIONS

Title 11
Federal Elections

Revised as of January 1, 2016

Containing a codification of documents
of general applicability and future effect

As of January 1, 2016

With Ancillaries

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Table of Contents

	Page
Explanation	v
Title 11:	
Chapter I—Federal Election Commission	3
Chapter II—Election Assistance Commission	365
Finding Aids:	
Indexes to Regulations:	
Administrative Regulations, Parts 1–8; 200–201	403
General, Parts 100–116	409
General Election Financing, Parts 9001–9007 and 9012	471
Federal Financing of Presidential Nominating Conventions, Part 9008	483
Presidential Primary Matching Fund, Parts 9031–9039	491
Table of CFR Titles and Chapters	509
Alphabetical List of Agencies Appearing in the CFR	529
Redesignation Table	539
List of CFR Sections Affected	541

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (52 U.S.C. 30103)

Sec.

102.1 Registration of political committees (52 U.S.C. 30103(a)).
102.2 Statement of organization: Forms and committee identification number (52 U.S.C. 30103(b), (c)).
102.3 Termination of registration (52 U.S.C. 30103(d)(1)).
102.4 Administrative termination (52 U.S.C. 30103(d)(2)).
102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers: Accounts and accounting.
102.6 Transfers of funds; collecting agents.
102.7 Organization of political committees (52 U.S.C. 30102(a)).
102.8 Receipt of contributions (52 U.S.C. 30102(b)).
102.9 Accounting for contributions and expenditures (52 U.S.C. 30102(c)).
102.10 Disbursement by check (52 U.S.C. 30102(h)(1)).
102.11 Petty cash fund (52 U.S.C. 30102(h)(2)).
102.12 Designation of principal campaign committee (52 U.S.C. 30102(e)(1) and (3)).
102.13 Authorization of political committees (52 U.S.C. 30102(e)(1) and (3)).
102.14 Names of political committees (52 U.S.C. 30102(e)(4) and (5)).
102.15 Commingled funds (52 U.S.C. 30102(b)(3)).
102.16 Notice: Solicitation of contributions (52 U.S.C. 30120).
102.17 Joint fundraising by committees other than separate segregated funds.

AUTHORITY: 52 U.S.C. 30102, 30103, 30104(a)(11), 30111(a)(8), and 30120.

SOURCE: 45 FR 15104, Mar. 7, 1980, unless otherwise noted.

§ 102.1 Registration of political committees (52 U.S.C. 30103(a)).

(a) *Principal campaign committees.* Each principal campaign committee shall file a Statement of Organization in accordance with 11 CFR 102.2 no later than 10 days after designation pursuant to 11 CFR 101.1. In addition, each principal campaign committee shall file all designations, statements and reports which are filed with such committee at the place of filing specified at 11 CFR part 105.

(b) *Authorized committees.* Each authorized committee(s) shall file only one Statement of Organization in accordance with 11 CFR 102.2 no later than 10 days after designation pursuant to 11 CFR 101.1. Such Statement(s) shall be filed with the principal campaign committee of the authorizing candidate.

(c) *Separate segregated funds.* Each separate segregated fund established under 52 U.S.C. 30118(b)(2)(C) shall file a Statement of Organization with the Federal Election Commission no later than 10 days after establishment. This requirement shall not apply to a fund established solely for the purpose of financing political activity in connection with State or local elections. Examples of establishment events after which a fund would be required to register include, but are not limited to: A vote by the board of directors or comparable governing body of an organization to create a separate segregated fund to be used wholly or in part for federal elections; selection of initial officers to administer such a fund; or payment of the initial operating expenses of such a fund.

(d) *Other political committees.* All other committees shall file a Statement of Organization no later than 10 days after becoming a political committee within the meaning of 11 CFR 100.5. Such statement(s) shall be filed at the place of filing specified at 11 CFR part 105.

[45 FR 15104, Mar. 7, 1980, as amended at 79 FR 77845, Dec. 29, 2014]

§ 102.2 Statement of organization: Forms and committee identification number (52 U.S.C. 30103(b), (c)).

(a) *Forms.* (1) The Statement of Organization shall be filed in accordance with 11 CFR part 105 on Federal Election Commission Form 1, which may be obtained from the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Statement shall be signed by the treasurer and shall include the following information:

(i) The name, address, and type of committee;

(ii) The name, address, relationship, and type of any connected organization or affiliated committee in accordance with 11 CFR 102.2(b);

(iii) The name, address, and committee position of the custodian of books and accounts of the committee;

(iv) The name and address of the treasurer of the committee;

(v) If the committee is authorized by a candidate, the name, office sought (including State and Congressional district, when applicable) and party affiliation of the candidate; and the address to which communications should be sent;

(vi) A listing of all banks, safe deposit boxes, or other depositories used by the committee;

(vii) The Internet address of the committee's official web site, if such a web site exists. If the committee is required to file electronically under 11 CFR 104.18, its electronic mail address, if such an address exists; and

(viii) If the committee is a principal campaign committee of a candidate for the Senate or the House of Representatives, the principal campaign committee's electronic mail address.

(2) Any change or correction in the information previously filed in the Statement of Organization shall be reported no later than 10 days following the date of the change or correction by filing an amended Statement of Organization or, if the political committee is not required to file electronically under 11 CFR 104.18, by filing a letter noting the change(s). The amendment need list only the name of the political committee and the change or correction.

(3) A committee shall certify to the Commission that it has satisfied the criteria for becoming a multicandidate committee set forth at 11 CFR 100.5(e)(3) by filing FEC Form 1M no later than ten (10) calendar days after qualifying for multicandidate committee status.

(b) For purposes of 11 CFR 102.2(a)(1)(ii), political committees shall disclose the names of any connected organization(s) or affiliated committee(s) in accordance with 11 CFR 102.2(b) (1) and (2).

(1) *Affiliated committee* includes any committee defined in 11 CFR 100.5(g), 110.3(a) or (b), or 110.14(j) or (k).

(i) A principal campaign committee is required to disclose the names and addresses of all other authorized committees that have been authorized by its candidate. Authorized committees need only disclose the name of their principal campaign committee.

(ii)(A) Political committees established by a single parent corporation, a single national or international union, a single organization or federation of national or international unions, a single national membership organization or trade association, or any other similar group of persons (other than political party organizations) are required to disclose the names and addresses of all political committees established by any subsidiary, or by any State, local, or other subordinate unit of a national or international union or federation thereof, or by any subordinate units of a national membership organization, trade association, or other group of persons (other than political party organizations).

(B) Political committees established by subsidiaries, or by State, local, or other subordinate units are only required to disclose the name and address of each political committee established by their parent or superior body, e.g., parent corporation, national or international union or organization or federation of such unions, or national organization or trade association.

(2) *Connected organization* includes any organization defined at 11 CFR 100.6.

(c) *Committee identification number.* Upon receipt of a Statement of Organization under 11 CFR part 102 by the Commission, an identification number shall be assigned to the committee, receipt shall be acknowledged, and the political committee shall be notified of the number assigned. This identification number shall be entered by the political committee on all subsequent reports or statements filed under the Act, as well as on all communications concerning reports and statements.

[45 FR 15104, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985; 54 FR 34109, Aug. 17, 1989; 54 FR 48580, Nov. 24, 1989; 58 FR 42173, Aug. 6, 1993; 65 FR 38122, June 21, 2000; 68 FR 3995, Jan. 27, 2003; 68 FR 64516, Nov. 14, 2003; 68 FR 67918, Dec. 1, 2003; 73 FR 79601, Dec. 30, 2008]

§ 102.3 Termination of registration (52 U.S.C. 30103(d)(1)).

(a)(1) A political committee (other than a principal campaign committee) may terminate only upon filing a termination report on the appropriate FEC Form or upon filing a written statement containing the same information at the place of filing specified at 11 CFR part 105. Except as provided in 11 CFR 102.4(c), only a committee which will no longer receive any contributions or make any disbursements that would otherwise qualify it as a political committee may terminate, provided that such committee has no outstanding debts and obligations. In addition to the Notice, the committee shall also provide a final report of receipts and disbursements, which report shall include a statement as to the purpose for which such residual funds will be used, including a statement as to whether such residual funds will be used to defray expenses incurred in connection with an individual's duties as a holder of federal office.

(2) An authorized committee of a qualified Member, as defined at 11 CFR 113.1(f), shall comply with the requirements of 11 CFR 113.2 before any excess funds are converted to such Member's personal use. All other authorized committees shall include in their termination reports a statement signed by the treasurer, stating that no noncash committee assets will be converted to personal use.

(b) Except as provided at 11 CFR 102.4, a principal campaign committee may not terminate until it has met the requirements of 11 CFR 102.3(a) and until all debts of any other authorized committee(s) of the candidate have been extinguished.

[45 FR 15104, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980; 56 FR 34126, July 25, 1991]

§ 102.4 Administrative termination (52 U.S.C. 30103(d)(2)).

(a) The Commission, on its own initiative or upon the request of the political committee itself, may administratively terminate a political committee's reporting obligation on the basis of the following factors:

(1) The committee's aggregate reported financial activity in one year is less than $5000;

(2) The committee's reports disclose no receipt of contributions for the previous year;

(3) The committee's last report disclosed minimal expenditures;

(4) The committee's primary purpose for filing its reports has been to disclose outstanding debts and obligations;

(5) The committee has failed to file reports for the previous year;

(6) The committee's last report disclosed that the committee's outstanding debts and obligations do not appear to present a possible violation of the prohibitions and limitations of 11 CFR parts 110 and 114;

(7) The committee's last report disclosed that the Committee does not have substantial outstanding accounts receivable;

(8) The committee's outstanding debts and obligations exceed the total of the committee's reported cash on hand balance.

(b) The Commission shall send a notification to the committee treasurer of its intent to administratively terminate that committee and may request the treasurer to submit information with regard to the factors set forth at 11 CFR 102.4(a). The treasurer shall respond, in writing, within 30 days of receipt of the Commission's notice or request and if the committee objects to such termination, the committee's response shall so state.

(c) The Commission shall administratively terminate a committee if such committee fails to object to the Commission's action under 11 CFR 102.4(b) and the Commission determines that either:

(1) The committee has complied with the debt settlement procedures set forth at 11 CFR part 116.

(2) The Commission has approved the forgiveness of any loan(s) owed the committee which would have otherwise been considered a contribution under the Act in violation of 11 CFR part 110;

(3) It does not appear from evidence available that a contribution in violation of 11 CFR parts 110 and 114 will result.

[45 FR 15104, Mar. 7, 1980, as amended at 60 FR 64273, Dec. 14, 1995]

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers: Accounts and accounting.

(a) *Organizations that are political committees under the Act, other than national party committees.* (1) Each organization, including a State, district, or local party committee, that finances political activity in connection with both Federal and non-Federal elections and that qualifies as a political committee under 11 CFR 100.5 shall either:

(i) Establish a separate Federal account in a depository in accordance with 11 CFR part 103. Such account shall be treated as a separate Federal political committee that must comply with the requirements of the Act including the registration and reporting requirements of 11 CFR parts 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate Federal account. *See* 11 CFR 103.3. All disbursements, contributions, expenditures, and transfers by the committee in connection with any Federal election shall be made from its Federal account, except as otherwise permitted for State, district and local party committees by 11 CFR part 300 and paragraph (a)(5) of this section. No transfers may be made to such Federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-Federal elections, except as provided by 11 CFR 300.33, 300.34, 106.6(c), 106.6(f), and 106.7(f). Administrative expenses for political committees other than party committees shall be allocated pursuant to 11 CFR 106.6(c) between such Federal account and any other account maintained by such committee for the purpose for financing activity in connection with non-Federal elections. Administrative expenses for State, district, and local party committees are subject to 11 CFR 106.7 and 11 CFR part 300; or

(ii) Establish a political committee that shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with Federal or non-Federal elections. Such organization shall register as a political committee and comply with the requirements of the Act.

(2) Only contributions meeting any of the conditions set forth in paragraphs (a)(2)(i), (ii), or (iii) of this section may be deposited in a Federal account established under paragraph (a)(1)(i) of this section, see 11 CFR 103.3, or may be received by a political committee established under paragraph (a)(1)(ii) of this section:

(i) Contributions designated for the Federal account;

(ii) Contributions that result from a solicitation which expressly states that the contribution will be used in connection with a Federal election; or

(iii) Contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act.

(3) State, district, and local party committees that intend to expend Levin funds raised pursuant to 11 CFR 300.31 for activities identified in 11 CFR 300.32(b)(1) must either:

(i) Establish one or more separate Levin accounts pursuant to 11 CFR 300.30(c)(2); or

(ii) Demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that whenever such organization makes a payment that organization has received sufficient funds subject to the limitations and prohibitions of the Act or the requirements of 11 CFR 300.30(c)(1) or (3) to make such payment. Such organization shall keep records of amounts received or expended under this paragraph and, upon request, shall make such records available for examination by the Commission.

(4) Solicitations by Federal candidates and Federal officeholders for State, district, and local party committees are subject to the restrictions

in 11 CFR 300.31(e) and 11 CFR part 300, subpart D.

(5) State, district, and local party committees and organizations may establish one or more separate allocation accounts to be used for activities allocable pursuant to 11 CFR 106.7 and 11 CFR 300.33.

(b) *Organizations that are not political committees under the Act.* (1) Any organization that makes contributions, expenditures, and exempted payments under 11 CFR 100.80, 100.87 and 100.89 and 11 CFR 100.140, 100.147 and 100.149, but that does not qualify as a political committee under 11 CFR 100.5, must keep records of receipts and disbursements and, upon request, must make such records available for examination by the Commission. The organization must demonstrate through a reasonable accounting method that, whenever such an organization makes a contribution or expenditure, or payment, the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure, or payment.

(2) Any State, district, or local party organization that makes payments for certain Federal election activities under 11 CFR 300.32(b) must either:

(i) Establish one or more Levin accounts pursuant to 11 CFR 300.30(b) into which only funds solicited pursuant to 11 CFR 300.31 may be deposited and from which payments must be made pursuant to 11 CFR 300.32 and 300.33. See 11 CFR 300.30(c)(2)(i); or

(ii) Demonstrate through a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) that whenever such organization makes a payment that organization has received sufficient funds subject to the limitations and prohibitions of the Act or the requirements of 11 CFR 300.31 to make such payment. Such organization shall keep records of amounts received or expended under this paragraph and, upon request, shall make such records available for examination by the Commission. See 11 CFR 300.30(c)(2)(ii).

(3) All such party organizations shall keep records of deposits to and disbursements from such Federal and Levin accounts, and upon request, shall make such records available for examination by the Commission.

(c) *National party committees.* Between November 6, 2002, and December 31, 2002, paragraphs (a) and (b) of this section apply to national party committees. After December 31, 2002, national party committees are prohibited from raising and spending non-Federal funds. Therefore, this section does not apply to national party committees after December 31, 2002.

[67 FR 49111, July 29, 2002, as amended at 67 FR 78680, Dec. 26, 2002; 69 FR 68067, Nov. 23, 2004]

§ 102.6 Transfers of funds; collecting agents.

(a) *Transfers of funds; registration and reporting required*—(1) *Who may make transfers under this section.* (i) Transfers of funds may be made without limit on amount between affiliated committees whether or not they are political committees under 11 CFR 100.5.

(ii) Subject to the restrictions set forth at 11 CFR 300.10(a), 300.31 and 300.34(a) and (b), transfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees under 11 CFR 100.5 and whether or not such committees are affiliated.

(iii) Transfers of joint fundraising proceeds may be made without limit on amount between organizations or committees participating in the joint fundraising activity provided that no participating committee or organization governed by 11 CFR 102.17 received more than its allocated share of the funds raised.

(iv) Transfers under paragraphs (a)(1)(i) through (iii) shall be made only from funds which are permissible under the Act. See 11 CFR parts 110, 114 and 115.

(2) *When registration and reporting required.* Except as provided in 11 CFR 102.6(b), organizations or committees making transfers under 11 CFR 102.6(a)(1) shall count such transfers against the reporting thresholds of the Act for determining whether an organization or committee is a political committee under 11 CFR 100.5.

(b) *Fundraising by collecting agents; No reporting required*—(1) *Definition of collecting agent.* A collecting agent is an organization or committee that collects and transmits contributions to one or more separate segregated funds to which the collecting agent is related. A collecting agent may be either:

(i) A committee, whether or not it is a political committee as defined in 11 CFR 100.5, affiliated with the separate segregated fund under 11 CFR 110.3; or

(ii) The connected organization of the separate segregated fund as defined in 11 CFR 100.6; or

(iii) A parent, subsidiary, branch, division, department, or local unit of the connected organization of the separate segregated fund; or

(iv) A local, national or international union collecting contributions on behalf of the separate segregated fund of any federation with which the local, national or international union is affiliated. *See* 11 CFR 114.1(e).

(2) *Collecting agent not required to report.* A collecting agent that is an unregistered organization and that follows the procedures of 11 CFR 102.6(c) is not required to register and report as a political committee under 11 CFR parts 102 and 104, provided that the organization does not engage in other activities such as making contributions or expenditures for the purpose of influencing federal elections.

(3) *Who is not a collecting agent*—(i) *Commercial fundraising firm.* A separate segregated fund or a collecting agent may hire a commercial fundraising firm to assist in fundraising; however, the commercial fundraising firm shall not be considered as a collecting agent for the purpose of this section. Rather, the commercial fundraising firm shall be considered to be the agent of the separate segregated fund or collecting agent.

(ii) *Individuals.* An individual who collects contributions for a separate segregated fund shall not be considered a collecting agent for the purpose of this section. Individuals who collect contributions are subject to the requirements of 11 CFR 102.8 and the provisions of 11 CFR part 110.

(4) *Separate segregated fund may collect contributions.* Nothing in this section shall preclude a separate segregated fund from soliciting and collecting contributions on its own behalf.

(c) *Procedures for collecting agents*—(1) *Separate segregated fund responsible for acts of collecting agent.* The separate segregated fund shall be responsible for ensuring that the recordkeeping, reporting and transmittal requirements of this section are met.

(2) *Solicitation for contributions.* A collecting agent may include a solicitation for voluntary contributions to a separate segregated fund in a bill for membership dues or other payments such as conference registration fees or a solicitation for contributions to the collecting agent. The collecting agent may only solicit contributions from those persons permitted to be solicited under 11 CFR part 114. The solicitation for contributions must meet all of the requirements for proper solicitations under 11 CFR 114.5.

(i) The collecting agent may pay any or all of the costs incurred in soliciting and transmitting contributions to the separate segregated fund.

(ii) If the separate segregated fund pays any solicitation or other administrative expense from its own account, which expense could be paid for as an administrative expense by the collecting agent, the collecting agent may reimburse the separate segregated fund no later than 30 calendar days after the expense was paid by the separate segregated fund.

(3) *Checks combining contributions with other payments.* A contributor may write a check that represents both a contribution and payment of dues or other fees. The check must be drawn on the contributor's personal checking account or on a non-repayable corporate drawing account of the individual contributor. Under a payroll deduction plan, an employer may write a check on behalf of its employees to a union or its agent, which check represents a combined payment of voluntary contributions to the union's separate segregated fund and union dues or other employee deductions.

(4) *Transmittal of contributions.* The full amount of each contribution collected by a collecting agent on behalf of a separate segregated fund shall be

transmitted to that fund within 10 or 30 days as required by 11 CFR 102.8.

(i) Checks made payable to the separate segregated fund shall be transmitted by the collecting agent directly to the separate segregated fund in accordance with 11 CFR 102.8.

(ii) To transfer all other contributions, a collecting agent shall either:

(A) Establish a transmittal account to be used solely for the deposit and transmittal of funds collected on behalf of the separate segregated fund. Funds deposited into this account are subject to the prohibitions and limitations of the Act. If any expenditure is made from the account, other than a transfer of funds to an affiliated committee, the account shall be considered a depository of the recipient committee and all activity of that account shall be reported; or

(B) Deposit the contributions collected into the collecting agent's treasury account. The collecting agent shall keep separate records of all receipts and deposits that represent contributions to the separate segregated fund and, in the case of cash contributions, the collecting agent shall make separate deposits of such funds; or

(C) Deposit the contributions collected into an account otherwise established solely for State or local election activity. The collecting agent shall keep separate records of all receipts and deposits that represent contributions to the separate segregated fund; or

(D) In the case of cash contributions, transmit the contributions to the separate segregated fund in the form of money orders or cashier's checks.

(5) *Contributor information.* The collecting agent shall comply with the requirements of 11 CFR 102.8 regarding transmittal of contributions and contributor information to the separate segregated fund, except that if contributions of $50 or less are received at a mass collection, a record shall be kept of the date, the total amount collected, and the name of the function at which the collection was made.

(6) *Retention of records.* The collecting agent shall retain all records of contribution deposits and transmittals under this section for a period of three years and shall make these records available to the Commission on request. The separate segregated fund shall keep a record of all transmittals of contributions received from collecting agents under this section, and shall retain these records for a period of three years.

(7) *Reporting of funds received through collecting agents.* A separate segregated fund receiving contributions collected by a collecting agent shall report the full amount of each contribution received as a contribution from the original contributor to the extent required by 11 CFR 104.3(a).

[48 FR 26300, June 7, 1983, as amended at 68 FR 451, Jan. 3, 2003; 69 FR 63920, Nov. 3, 2004]

§ 102.7 Organization of political committees (52 U.S.C. 30102(a)).

(a) Every political committee shall have a treasurer and may designate, on the committee's Statement of Organization, an assistant treasurer who shall assume the duties and responsibilities of the treasurer in the event of a temporary or permanent vacancy in the office or in the event the treasurer is unavailable.

(b) Except as provided in subsection (a), no contribution or expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of the treasurer.

(c) No expenditure shall be made for or on behalf of a political committee without the authorization of its treasurer or of an agent authorized orally or in writing by the treasurer.

(d) Any candidate who receives a contribution, as defined at 11 CFR part 100, subparts B and D, obtains any loan or makes any disbursement in connection with his or her campaign, shall be considered as having received the contribution, obtained the loan or made the disbursement as an agent of such authorized committee(s).

[45 FR 15104, Mar. 7, 1980, as amended at 67 FR 78680, Dec. 26, 2002]

§ 102.8 Receipt of contributions (52 U.S.C. 30102(b)).

(a) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receipt, forward such contribution to the treasurer. If the amount of

the contribution is in excess of $50, such person shall also forward to the treasurer the name and address of the contributor and the date of receipt of the contribution. If the amount of the contribution is in excess of $200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution.

(b)(1) Every person who receives a contribution of $50 or less for a political committee which is not an authorized committee shall forward such contribution to the treasurer of the political committee no later than 30 days after receipt.

(2) Every person who receives a contribution in excess of $50 for a political committee which is not an authorized committee shall, no later than 10 days after receipt of the contribution, forward to the treasurer of the political committee: The contribution; the name and address of the contributor; and the date of receipt of the contribution. If the amount of the contribution is in excess of $200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution.

(c) The provisions of 11 CFR 102.8 concerning receipt of contributions for political committees shall also apply to earmarked contributions transmitted by an intermediary or conduit.

§ 102.9 Accounting for contributions and expenditures (52 U.S.C. 30102(c)).

The treasurer of a political committee or an agent authorized by the treasurer to receive contributions and make expenditures shall fulfill all recordkeeping duties as set forth at 11 CFR 102.9(a) through (f):

(a) An account shall be kept by any reasonable accounting procedure of all contributions received by or on behalf of the political committee.

(1) For contributions in excess of $50, such account shall include the name and address of the contributor and the date of receipt and amount of such contribution.

(2) For contributions from any person whose contributions aggregate more than $200 during a calendar year, such account shall include the identification of the person, and the date of receipt and amount of such contribution.

(3) For contributions from a political committee, such account shall include the identification of the political committee and the date of receipt and amount of such contribution.

(4) In addition to the account to be kept under paragraph (a)(1) of this section, for contributions in excess of $50, the treasurer of a political committee or an agent authorized by the treasurer shall maintain:

(i) A full-size photocopy of each check or written instrument; or

(ii) A digital image of each check or written instrument. The political committee or other person shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission.

(b)(1) An account shall be kept of all disbursements made by or on behalf of the political committee. Such account shall consist of a record of:

(i) The name and address of every person to whom any disbursement is made;

(ii) The date, amount, and purpose of the disbursement; and

(iii) If the disbursement is made for a candidate, the name and office (including State and congressional district, if any) sought by that candidate.

(iv) For purposes of 11 CFR 102.9(b)(1), *purpose* has the same meaning given the term at 11 CFR 104.3(b)(3)(i)(A).

(2) In addition to the account to be kept under 11 CFR 102.9(b)(1), a receipt or invoice from the payee or a cancelled check to the payee shall be obtained and kept for each disbursement in excess of $200 by or on behalf of, the committee, except that credit card transactions, shall be documented in accordance with 11 CFR 102.9(b)(2)(ii) and disbursements by share draft or check drawn on a credit union account shall be documented in accordance with 11 CFR 102.9(b)(2)(iii).

(i)(A) For purposes of 11 CFR 102.9(b)(2), *payee* means the person who

provides the goods or services to the committee or agent thereof in return for payment, except for an advance of $500 or less for travel and subsistence to an individual who will be the recipient of the goods or services.

(B) For any advance of $500 or less to an individual for travel and subsistence, the expense voucher or other expense account documentation and a cancelled check to the recipient of the advance shall be obtained and kept.

(ii) For any credit card transaction, documentation shall include a monthly billing statement or customer receipt for each transaction and the cancelled check used to pay the credit card account.

(iii) For purposes of 11 CFR 102.9(b)(2), a carbon copy of a share draft or check drawn on a credit union account may be used as a duplicate record of such draft or check provided that the monthly account statement showing that the share draft or check was paid by the credit union is also retained.

(c) The treasurer shall preserve all records and accounts required to be kept under 11 CFR 102.9 for 3 years after the report to which such records and accounts relate is filed.

(d) In performing recordkeeping duties, the treasurer or his or her authorized agent shall use his or her best efforts to obtain, maintain and submit the required information and shall keep a complete record of such efforts. If there is a showing that best efforts have been made, any records of a committee shall be deemed to be in compliance with this Act. With regard to the requirements of 11 CFR 102.9(b)(2) concerning receipts, invoices and cancelled checks, the treasurer will not be deemed to have exercised best efforts to obtain, maintain and submit the records unless he or she has made at least one written effort per transaction to obtain a duplicate copy of the invoice, receipt, or cancelled check.

(e)(1) If the candidate, or his or her authorized committee(s), receives contributions that are designated for use in connection with the general election pursuant to 11 CFR 110.1(h) prior to the date of the primary election, such candidate or such committee(s) shall use an acceptable accounting method to distinguish between contributions received for the primary election and contributions received for the general election. Acceptable accounting methods include, but are not limited to:

(i) The designation of separate accounts for each election, caucus or convention; or

(ii) The establishment of separate books and records for each election.

(2) Regardless of the method used under paragraph (e)(1) of this section, an authorized committee's records must demonstrate that, prior to the primary election, recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made.

(3) If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors, redesignated in accordance with 11 CFR 110.1(b)(5) or 110.2(b)(5), or reattributed in accordance with 11 CFR 110.1(k)(3), as appropriate.

(f) The treasurer shall maintain the documentation required by 11 CFR 110.1(l), concerning designations, redesignations, reattributions and the dates of contributions. If the treasurer does not maintain this documentation, 11 CFR 110.1(l)(5) shall apply.

[45 FR 15104, Mar. 7, 1980, as amended at 52 FR 773, Jan. 9, 1987; 67 FR 69946, Nov. 19, 2002;79 FR 16663, Mar. 26, 2014]

§ 102.10 Disbursement by check (52 U.S.C. 30102 (h)(1)).

All disbursements by a political committee, except for disbursements from the petty cash fund under 11 CFR 102.11, shall be made by check or similar draft drawn on account(s) established at the committee's campaign depository or depositories under 11 CFR part 103.

§ 102.11 Petty cash fund (52 U.S.C. 30102(h)(2)).

A political committee may maintain a petty cash fund out of which it may make expenditures not in excess of $100 to any person per purchase or transaction. If a petty cash fund is maintained, it shall be the duty of the treasurer of the political committee to keep and maintain a written journal of all

disbursements. This written journal shall include the name and address of every person to whom any disbursement is made, as well as the date, amount, and purpose of such disbursement. In addition, if any disbursement is made for a candidate, the journal shall include the name of that candidate and the office (including State and Congressional district) sought by such candidate.

§ 102.12 Designation of principal campaign committee (52 U.S.C. 30102(e)(1) and (3)).

(a) Each candidate for Federal office (other than a nominee of a political party to the Office of Vice President) shall designate in writing a political committee to serve as his or her principal campaign committee in accordance with 11 CFR 101.1(a) no later than 15 days after becoming a candidate. Each principal campaign committee shall register, designate a depository and report in accordance with 11 CFR parts 102, 103 and 104.

(b) No political committee may be designated as the principal campaign committee of more than one candidate.

(c)(1) No political committee which supports or has supported more than one candidate may be designated as a principal campaign committee, except that, after nomination, a candidate for the office of President of the United States nominated by a political party may designate the national committee of such political party as his or her principal campaign committee. A national committee which is so designated shall maintain separate books of account with respect to its function as a principal campaign committee.

(2) For purposes of 11 CFR 102.12(c), the term *support* does not include contributions by an authorized committee in amounts aggregating $2,000 or less per election to an authorized committee of any other candidate, except that the national committee of a political party which has been designated as the principal campaign committee of that party's Presidential candidate may contribute to another candidate in accordance with 11 CFR part 110.

[45 FR 15104, Mar. 7, 1980, as amended at 71 FR 54899, Sept. 20, 2006]

§ 102.13 Authorization of political committees (52 U.S.C. 30102(e)(1) and (3)).

(a)(1) Any political committee authorized by a candidate to receive contributions or make expenditures shall be authorized in writing by the candidate. Such authorization must be filed with the principal campaign committee in accordance with 11 CFR 102.1(b).

(2) If an individual fails to disavow activity pursuant to 11 CFR 100.3(a)(3) and is therefore a candidate upon notice by the Commission, he or she shall authorize the committee in writing.

(b) A candidate is not required to authorize a national, State or subordinate State party committee which solicits funds to be expended on the candidate's behalf pursuant to 11 CFR part 109, subpart D.

(c)(1) No political committee which supports or has supported more than one candidate may be designated as an authorized committee, except that two or more candidates may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee.

(2) For purposes of 11 CFR 102.13(c), the term *support* does not include contributions by an authorized committee in amounts aggregating $2,000 or less per election to an authorized committee of any other candidate, except that the national committee of a political party which has been designated as the principal campaign committee of that party's Presidential candidate may contribute to another candidate in accordance with 11 CFR part 109, subpart D and 11 CFR part 110.

[45 FR 15104, Mar. 7, 1980, as amended at 67 FR 78680, Dec. 26, 2002; 71 FR 54899, Sept. 20, 2006]

§ 102.14 Names of political committees (52 U.S.C. 30102(e)(4) and (5)).

(a) The name of each authorized committee shall include the name of the candidate who authorized such committee. Except as provided in paragraph (b) of this section, no unauthorized committee shall include the name

of any candidate in its name. For purposes of this paragraph, "name" includes any name under which a committee conducts activities, such as solicitations or other communications, including a special project name or other designation.

(b)(1) A delegate committee, as defined at 11 CFR 100.5(e)(5), shall include the word *delegate(s)* in its name and may also include in its name the name of the presidential candidate which the delegate committee supports.

(2) A political committee established solely to draft an individual or to encourage him or her to become a candidate may include the name of such individual in the name of the committee provided the committee's name clearly indicates that it is a draft committee.

(3) An unauthorized political committee may include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate.

(c) The name of a separate segregated fund established pursuant to 11 CFR 102.1(c) shall include the full name of its connected organization. Such fund may also use a clearly recognized abbreviation or acronym by which the connected organization is commonly known. Both the full name and such abbreviation or acronym shall be included on the fund's Statement of Organization, on all reports filed by the fund, and in all notices required by 11 CFR 109.11 and 110.11. The fund may make contributions using its acronym or abbreviated name. A fund established by a corporation which has a number of subsidiaries need not include the name of each subsidiary in its name. Similarly, a separate segregated fund established by a subsidiary need not include in its name the name of its parent or another subsidiary of its parent.

[45 FR 15104, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980; 57 FR 31426, July 15, 1992; 59 FR 17269, Apr. 12, 1994; 59 FR 35785, July 13, 1994; 67 FR 78680, Dec. 26, 2002]

§ 102.15 Commingled funds (52 U.S.C. 30102(b)(3)).

All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members or associates of that committee, or with the personal funds of any other individual. See also 11 CFR 103.3 and part 114 and 52 U.S.C. 30118.

[45 FR 15104, Mar. 7, 1980, as amended at 79 FR 77846, Dec. 29, 2014]

§ 102.16 Notice: Solicitation of contributions (52 U.S.C. 30120).

Each political committee shall comply with the notice requirements for solicitation of contributions set forth at 11 CFR 110.11.

§ 102.17 Joint fundraising by committees other than separate segregated funds.

(a) *General.* Nothing in this section shall supersede 11 CFR part 300, which prohibits any person from soliciting, receiving, directing, transferring, or spending any non-Federal funds, or from transferring Federal funds for Federal election activities.

(1)(i) Political committees may engage in joint fundraising with other political committees or with unregistered committees or organizations. The participants in a joint fundraising effort under this section shall either establish a separate committee or select a participating committee, to act as fundraising representative for all participants. The fundraising representative shall be a reporting political committee and an authorized committee of each candidate for federal office participating in the joint fundraising activity. If the participants establish a separate committee to act as the fundraising representative, the separate committee shall not be a participant in any other joint fundraising effort, but the separate committee may conduct more than one joint fundraising effort for the participants.

(ii) The participants may hire a commercial fundraising firm or other agent to assist in conducting the joint fundraising activity. In that case, however, the fundraising representative shall still be responsible for ensuring that the recordkeeping and reporting requirements set forth in this section are met.

(2) The procedures in 11 CFR 102.17(c) will govern all joint fundraising activity conducted under this section. The participants in joint fundraising activity may include political party committees (whether or not they are political committees under 11 CFR 100.5), candidate committees, multicandidate committees, and unregistered organizations which do not qualify as collecting agents under 11 CFR 102.6(b).

(3) A fundraising representative conducting joint fundraising under this section is distinguished from an unregistered organization acting as a collecting agent under 11 CFR 102.6(b). If a separate segregated fund or an unregistered organization qualifies and acts as a collecting agent under 11 CFR 102.6(b), the provisions of 11 CFR 102.17 will not apply to that fundraising activity.

(b) *Fundraising representatives*—(1) *Separate fundraising committee as fundraising representative.* Participating committees may establish a separate political committee to act as fundraising representative for all participants. This separate committee shall be a reporting political committee and shall collect contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant.

(2) *Participating committee as fundraising representative.* All participating committees may select one participant to act as fundraising representative for all participants. The fundraising representative must be a political committee as defined in 11 CFR 100.5. The fundraising representative and any other participating committees may collect contributions; however, all contributions received by other participants shall be forwarded to the fundraising representative as required by 11 CFR 102.8. The fundraising representative shall pay fundraising costs from gross proceeds and from funds advanced by participants and shall disburse net proceeds to each participant.

(3) *Funds advanced for fundraising costs.* (i) Except as provided in 11 CFR 102.17(b) (3)(ii) and (iii), the amount of funds advanced by each participant for fundraising costs shall be in proportion to the allocation formula agreed upon under 11 CFR 102.17 (c)(1).

(ii) A participant may advance more than its proportionate share of the fundraising costs, however, the amount advanced which is in excess of the participant's proportionate share shall not exceed the amount that participant could legally contribute to the remaining participants. *See* 11 CFR 102.12(c)(2) and part 110.

(iii) If all the participants are affiliated under 11 CFR 110.3 or if the participants are all party committees of the same political party, there is no limit on the amount a participant may advance for fundraising costs on behalf of the other participants.

(c) *Joint fundraising procedures.* The requirements of 11 CFR 102.17(c)(1) through (8) shall govern joint fundraising activity conducted under this section.

(1) *Written agreement.* The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The formula shall be stated as the amount or percentage of each contribution received to be allocated to each participant. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

(2) *Fundraising notice.* In addition to any notice required under 11 CFR 110.11, a joint fundraising notice shall be included with every solicitation for contributions.

(i) This notice shall include the following information:

(A) The names of all committees participating in the joint fundraising activity whether or not such committees are political committees under 11 CFR 100.5; and

(B) The allocation formula to be used for distributing joint fundraising proceeds; and

(C) A statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and

(D) A statement informing contributors that the allocation formula may change if a contributor makes a contribution which would exceed the amount that contributor may give to any participant.

(ii) In the following situations, the notice shall include the following additional information:

(A) If one or more participants engage in the joint fundraising activity solely to satisfy outstanding debts, a statement informing contributors that the allocation formula may change if a participant receives sufficient funds to pay its outstanding debts; and

(B) If one or more participants can lawfully accept contributions that are prohibited under the Act, a statement informing contributors that contributions from prohibited sources will be distributed only to those participants that can accept them.

(3) *Separate depository account.* (i) The participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under the Act. Each political committee shall amend its Statement of Organization to reflect the account as an additional depository. If one or more participants can lawfully accept contributions that are prohibited under the Act, the participants may either establish a second depository account for contributions received from prohibited sources or they may forward such contributions directly to the nonfederal participants.

(ii) The fundraising representative shall deposit all joint fundraising proceeds in the separate depository account within ten days of receipt as required by 11 CFR 103.3. The fundraising representative may delay distribution of the fundraising proceeds to the participants until all contributions are received and all expenses are paid.

(iii) For contribution reporting and limitation purposes, the date of receipt of a contribution by a participating political committee is the date that the contribution is received by the fundraising representative. The fundraising representative shall report contributions in the reporting period in which they are received. Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR 102.17(c)(8) when such funds are received from the fundraising representative.

(4) *Recordkeeping requirements.* (i) The fundraising representative and participating committees shall screen all contributions received to insure that the prohibitions and limitations of 11 CFR parts 110 and 114 are observed. Participating political committees shall make their contributor records available to the fundraising representative to enable the fundraising representative to carry out its duty to screen contributions.

(ii) The fundraising representative shall collect and retain contributor information with regard to gross proceeds as required under 11 CFR 102.8 and shall also forward such information to participating political committees. The fundraising representative shall also keep a record of the total amount of contributions received from prohibited sources, if any, and of all transfers of prohibited contributions to participants that can accept them.

(iii) The fundraising representative shall retain the records required under 11 CFR 102.9 regarding fundraising disbursements for a period of three years. Commercial fundraising firms or agents shall forward such information to the fundraising representative.

(5) *Contribution limitations.* Except to the extent that the contributor has previously contributed to any of the participants, a contributor may make a contribution to the joint fundraising effort which contribution represents the total amount that the contributor could contribute to all of the participants under the applicable limits of 11 CFR 110.1 and 110.2.

(6) *Allocation of gross proceeds.* (i) The fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. If distribution according to the allocation formula extinguishes the debts of one or more participants and results in a surplus for those participants or if distribution under the formula results in a violation of the contribution limits of 11 CFR 110.1(a), the fundraising

representative may reallocate the excess funds. Reallocation shall be based upon the remaining participants' proportionate shares under the allocation formula. If reallocation results in a violation of a contributor's limit under 11 CFR 110.1, the fundraising representative shall return to the contributor the amount of the contribution that exceeds the limit.

(ii) Designated contributions which exceed the contributor's limit to the designated participant under 11 CFR part 110 may not be reallocated by the fundraising representative absent the prior written permission of the contributor.

(iii) If any participants can lawfully accept contributions from sources prohibited under the Act, any such contributions that are received are not required to be distributed according to the allocation formula.

(7) *Allocation of expenses and distribution of net proceeds.* (i) If participating committees are not affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity and are not committees of the same political party;

(A) After gross contributions are allocated among the participants under 11 CFR 102.17(c)(6), the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. If contributions from sources prohibited under the Act have been received and distributed under 11 CFR 102.17(c)(6)(iii), those contributions need not be included in the total receipts for the purpose of allocating expenses under this section. To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

(B) A participant may only pay expenses on behalf of another participant subject to the contribution limits of 11 CFR part 110.

(C) The expenses from a series of fundraising events or activities shall be allocated among the participants on a per-event basis regardless of whether the participants change or remain the same throughout the series.

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity or if participants are party committees of the same political party, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

(iii) Payment of expenses may be made from gross proceeds by the fundraising representative.

(8) *Reporting of receipts and disbursements*—(i) *Reporting receipts.* (A) The fundraising representative shall report all funds received in the reporting period in which they are received. The fundraising representative shall report the total amount of contributions received from prohibited sources during the reporting period, if any, as a memo entry. Each Schedule A filed by the fundraising representative under this section shall clearly indicate that the contributions reported on that schedule represent joint fundraising proceeds.

(B) After distribution of net proceeds, each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative. Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a).

(ii) *Reporting disbursements.* The fundraising representative shall report all disbursements in the reporting period in which they are made.

[48 FR 28301, June 7, 1983, as amended at 56 FR 35909, July 29, 1991; 67 FR 49112, July 29, 2002]

PART 103—CAMPAIGN DEPOSITORIES (52 U.S.C. 30102(h))

Sec.
103.1 Notification of the commission.
103.2 Depositories (52 U.S.C. 30102(h)(1)).
103.3 Deposit of receipts and disbursements (52 U.S.C. 30102(h)(1)).
103.4 Vice Presidential candidate campaign depositories.

AUTHORITY: 52 U.S.C. 30102(h), 30111(a)(8).

SOURCE: 45 FR 15108, Mar. 7, 1980, unless otherwise noted.

§ 103.1 Notification of the commission.

Each committee shall notify the Commission of the campaign depository(ies) it has designated, pursuant to 11 CFR 101.1 and 103.2.

§ 103.2 Depositories (52 U.S.C. 30102(h)(1)).

Each political committee shall designate one or more State banks, federally chartered depository institutions (including a national bank), or depository institutions the depositor accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories. One or more depositories may be established in one or more States. Each political committee shall maintain at least one checking account or transaction account at one of its depositories. Additional accounts may be established at each depository.

§ 103.3 Deposit of receipts and disbursements (52 U.S.C. 30102(h)(1)).

(a) All receipts by a political committee shall be deposited in account(s) established pursuant to 11 CFR 103.2, except that any contribution may be, within 10 days of the treasurer's receipt, returned to the contributor without being deposited. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt. A committee shall make all disbursements by check or similar drafts drawn on an account at its designated campaign depository, except for expenditures of $100 or less made from a petty cash fund maintained pursuant to 11 CFR 102.11. Funds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures.

(b) The treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limitations of 11 CFR 110.1 or 110.2.

(1) Contributions that present genuine questions as to whether they were made by corporations, labor organizations, foreign nationals, or Federal contractors may be, within ten days of the treasurer's receipt, either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution. The treasurer shall make at least one written or oral request for evidence of the legality of the contribution. Such evidence includes, but is not limited to, a written statement from the contributor explaining why the contribution is legal, or a written statement by the treasurer memorializing an oral communication explaining why the contribution is legal. If the contribution cannot be determined to be legal, the treasurer shall, within thirty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

(2) If the treasurer in exercising his or her responsibilities under 11 CFR 103.3(b) determined that at the time a contribution was received and deposited, it did not appear to be made by a corporation, labor organization, foreign national or Federal contractor, or made in the name of another, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered. If the political committee does not have sufficient funds to refund the contribution at the time the illegality is discovered, the political committee shall make the refund from the next funds it receives.

(3) Contributions which on their face exceed the contribution limitations set forth in 11 CFR 110.1 or 110.2, and contributions which do not appear to be excessive on their face, but which exceed the contribution limits set forth in 11 CFR 110.1 or 110.2 when aggregated with other contributions from the same contributor, and contributions which cannot be accepted under

the net debts outstanding provisions of 11 CFR 110.1(b)(3) and 110.2(b)(3) may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

(4) Any contribntion which appears to be illegal under 11 CFR 103.3(b) (1) or (3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

(5) If a contribution which appears to be illegal under 11 CFR 103.3(b) (1) or (3) is deposited in a campaign depository, the treasurer shall make and retain a written record noting the basis for the appearance of illegality. A statement noting that the legality of the contribution is in question shall be included in the report noting the receipt of the contribution. If a contribution is refunded to the contributor because it cannot be determined to be legal, the treasurer shall note the refund on the report covering the reporting period in which the refund is made.

[52 FR 774, Jan. 9, 1987]

§ 103.4 Vice Presidential candidate campaign depositories.

Any campaign depository designated by the principal campaign committee of a political party's candidate for President shall be the campaign depository for that political party's candidate for the office of Vice President.

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

Sec.
104.1 Scope (52 U.S.C. 30104(a)).
104.2 Forms.
104.3 Contents of reports (52 U.S.C. 30104(b), 30114).
104.4 Independent expenditures by political committees (52 U.S.C. 30104(b), (d), and (g)).
104.5 Filing dates (52 U.S.C. 30104(a)(2)).
104.6 Form and content of internal communications reports (52 U.S.C. 30101(9)(B)(iii)).
104.7 Best efforts (52 U.S.C. 30102(i)).
104.8 Uniform reporting of receipts.
104.9 Uniform reporting of disbursements.
104.10 Reporting by separate segregated funds and nonconnected committees of expenses allocated among candidates and activities.
104.11 Continuous reporting of debts and obligations.
104.12 Beginning cash on hand for political committees.
104.13 Disclosure of receipt and consumption of in-kind contributions.
104.14 Formal requirements regarding reports and statements.
104.15 Sale or use restriction (52 U.S.C. 30111(a)(4)).
104.16 Audits (52 U.S.C. 30111(b)).
104.17 Reporting of allocable expenses by party committees.
104.18 Electronic filing of reports (52 U.S.C. 30102(d) and 30104(a)(11)).
104.19 [Reserved]
104.20 Reporting electioneering communications (2 U.S.C. 434(f)).
104.21 Reporting by inaugural committees.
104.22 Disclosure of bundling by Lobbyist/Registrants and Lobbyist/Registrant PACs (52 U.S.C. 30104(i)).

AUTHORITY: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

SOURCE: 45 FR 15108, Mar. 7, 1980, unless otherwise noted.

§ 104.1 Scope (52 U.S.C. 30104(a)).

(a) *Who must report.* Each treasurer of a political committee required to register under 11 CFR part 102 shall report in accordance with 11 CFR part 104.

(b) *Who may report.* An individual seeking federal office who has not attained candidate status under 11 CFR 100.3, the committee of such an individual or any other committee may voluntarily register and report in accordance with 11 CFR parts 102 and 104.

An individual shall not become a candidate solely by voluntarily filing a report, nor shall such individual, the individual's committee, nor any other committee be required to file all reports under 11 CFR 104.5, unless the individual becomes a candidate under 11 CFR 100.3 or unless the committee becomes a political committee under 11 CFR 100.5.

§ 104.2 Forms.

(a) Each report filed by a political committee under 11 CFR part 104 shall be filed on the appropriate FEC form as set forth below at 11 CFR 104.2(e).

(b) Forms may be obtained from the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(c) A committee may reproduce FEC forms for its own use provided they are not reduced in size.

(d) With prior approval of the Commission a committee may use, for reporting purposes, computer produced schedules of itemized receipts and disbursements provided they are reduced to the size of FEC forms. The committee shall submit a sample of the proposed format with its request for approval.

(e) The following forms shall be used by the indicated type of reporting committee:

(1) *Presidential committees.* The authorized committees of a candidate for President or Vice President shall file on FEC Form 3–P.

(2) *Congressional candidate committees.* The authorized committees of a candidate for the Senate or the House of Representatives shall file on FEC Form 3.

(3) *Political Committees Other than Authorized Committees.* Political committees other than authorized committees shall file reports on FEC Form 3–X.

[45 FR 15108, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980; 50 FR 50778, Dec. 12, 1985]

§ 104.3 Contents of reports (52 U.S.C. 30104(b), 30114).

(a) *Reporting of receipts.* Each report filed under § 104.1 shall disclose the total amount of receipts for the reporting period and for the calendar year (or for the election cycle, in the case of an authorized committee) and shall disclose the information set forth at paragraphs (a)(1) through (a)(4) of this section. The first report filed by a political committee shall also include all amounts received prior to becoming a political committee under § 100.5 of this chapter, even if such amounts were not received during the current reporting period.

(1) *Cash on hand.* The amount of cash on hand at the beginning of the reporting period, including: currency; balance on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks owned by the committee; certificates of deposit, treasury bills and any other committee investments valued at cost.

(2) *Categories of receipts for all political committees other than authorized committees.* All committees other than authorized committees shall report the total amount of receipts received during the reporting period and, except for itemized and unitemized breakdowns, during the calendar year for each of the following categories:

(i) Contributions from persons other than any committees;

(A) Itemized contributions from persons, other than any committees, including contributions from individuals;

(B) Unitemized contributions from persons, other than any committees, including contributions from individuals;

(C) Total contributions from persons other than any committees, including contributions from individuals;

(ii) Contributions from political party committees, including contributions from party committees which are not political committees under the Act;

(iii) Contributions from political committees, including contributions from committees which are not political committees under the Act but excluding contributions from any party committees;

(iv) Total contributions;

(v) Transfers from affiliated committees or organizations and, where the reporting committee is a political party committee, transfers from other party committees of the same party, regardless of whether such committees are affiliated;

(vi) All loans;

(vii) Offsets to operating expenditures;

(A) Itemized offsets to operating expenditures (such as rebates and refunds);

(B) Unitemized offsets to operating expenditures (such as rebates and refunds);

(C) Total offsets to operating expenditures;

(viii) Other receipts:

(A) Itemized other receipts (such as dividends and interest);

(B) Unitemized other receipts (such as dividends and interest);

(C) The total sum of all other receipts.

(ix) The total sum of all receipts.

(3) *Categories of receipts for authorized committees.* An authorized committee of a candidate for Federal office shall report the total amount of receipts received during the reporting period and, except for itemized and unitemized breakdowns, during the election cycle in each of the following categories:

(i) Contributions from persons other than any committees;

(A) Itemized contributions from persons, other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees;

(B) Unitemized contributions from persons, other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees;

(C) Total contributions from persons other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees;

(ii) Contributions from the candidate, excluding loans which are reported under 11 CFR 104.3(a)(3)(vii));

(iii) Contributions from political party committees, including party committees which are not political committees under the Act, except that expenditures made under 11 CFR part 109, subpart D (52 U.S.C. 30116(d)),by a party committee shall not be reported as contributions by the authorized committee on whose behalf they are made;

(iv) Contributions from committees, including contributions from committees which are not political committees under the Act, but excluding contributions from any party committees;

(v) Total contributions;

(vi) Transfers from other authorized committee(s) of the same candidate, regardless of amount;

(vii) Loans:

(A) All loans to the committee, except loans made, guaranteed, or endorsed by a candidate to his or her authorized committee;

(B) Loans made, guaranteed, or endorsed by a candidate to his or her authorized committee including loans derived from a bank loan to the candidate or from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.83 and 100.143; and

(C) Total loans;

(viii) For authorized committee(s) of Presidential candidates, federal funds received under chapters 95 and 96 of the Internal Revenue Code of 1954 (Title 26, United States Code);

(ix) Offsets to operating expenditures;

(A) Itemized offsets to operating expenditures (such as refunds and rebates);

(B) Unitemized offsets to operating expenditures (such as refunds and rebates);

(C) Total offsets to operating expenditures;

(x) Other receipts;

(A) Itemized other receipts (such as dividends and interest);

(B) Unitemized other receipts (such as dividends and interest);

(C) Total other receipts;

(xi) Total receipts.

(4) *Itemization of receipts for all political committees including authorized and unauthorized committees.* The identification (as defined at §100.12 of this chapter) of each contributor and the aggregate year-to-date (or aggregate election-cycle-to-date, in the case of an authorized committee) total for such contributor in each of the following categories shall be reported.

(i) Each person, other than any political committee, who makes a contribution to the reporting political committee during the reporting period, whose contribution or contributions aggregate in excess of $200 per calendar year (or per election cycle in the case of an authorized committee), together with the date of receipt and amount of any such contributions, except that the reporting political committee may elect to report such information for contributors of lesser amount(s) on a separate schedule;

(ii) All committees (including political committees and committees which do not qualify as political committees under the Act) which make contributions to the reporting committee during the reporting period, together with the date of receipt and amount of any such contribution;

(iii) Transfers;

(A) For authorized committees of a candidate for Federal office, each authorized committee which makes a transfer to the reporting committee, together with the date and amount of such transfer;

(B) For committees which are not authorized by a candidate for Federal office, each affiliated committee or organization which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another party committee regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(iv) Each person who makes a loan to the reporting committee or to the candidate acting as an agent of the committee, during the reporting period, together with the identification of any endorser or guarantor of such loan, the date such loan was made and the amount or value of such loan;

(v) Each person who provides a rebate, refund or other offset to operating expenditures to the reporting political committee in an aggregate amount or value in excess of $200 within the calendar year (or within the election cycle, in the case of an authorized committee), together with the date and amount of any such receipt; and

(vi) Each person who provides any dividend, interest, or other receipt to the reporting political committee in an aggregate value or amount in excess of $200 within the calendar year (or within the election cycle, in the case of an authorized committee), together with the date and amount of any such receipt.

(b) *Reporting of disbursements.* Each report filed under § 104.1 shall disclose the total amount of all disbursements for the reporting period and for the calendar year (or for the election cycle, in the case of an authorized committees) and shall disclose the information set forth at paragraphs (b)(1) through (b)(4) of this section. The first report filed by a political committee shall also include all amounts disbursed prior to becoming a political committee under § 100.5 of this chapter, even if such amounts were not disbursed during the current reporting period.

(1) *Categories of disbursements for political committees other than authorized committees.* All political committees other than authorized committees shall report the total amount of disbursements made during the reporting period and, except for itemized and unitemized breakdowns, during the calendar year in each of the following categories:

(i) Operating expenditures;

(A) Itemized operating expenditures;

(B) Unitemized operating expenditures;

(C) Total operating expenditures;

(ii) Transfers to affiliated committees or organizations and, where the reporting committee is a political party committee, transfers to other political party committees regardless of whether they are affiliated;

(iii) Repayment of all loans;

(iv) Offsets;

(A) Itemized offsets to contributions (including contribution refunds);

(B) Unitemized offsets to contributions (including contribution refunds);

(C) Total offsets to contributions;

(v) Contributions made to other political committees;

(vi) Loans made by the reporting committee;

(vii) Independent expenditures made by the reporting committee;

(viii) Expenditures made under 11 CFR part 109, subpart D (52 U.S.C. 30116(d)), See 11 CFR 104.3(a)(3)(iii);

(ix) Other disbursements;

(A) Itemized other disbursements;

(B) Unitemized other disbursements;

(C) Total other disbursements;

(x) Total disbursements.

(2) *Categories of disbursements for authorized committees.* An authorized committee of a candidate for Federal office shall report the total amount of disbursements made during the reporting period and, except for itemized and unitemized breakdowns, during the election cycle in each of the following categories:

(i) Operating expenditures;

(A) Itemized operating expenditures;

(B) Unitemized operating expenditures;

(C) Total operating expenditures;

(ii) Transfers to other committees authorized by the same candidate;

(iii) Repayment of loans;

(A) Repayment of loans made, guaranteed, or endorsed by the candidate to his or her authorized committee including loans derived from a bank loan to the candidate or from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.83 and 100.143;

(B) Repayment of all other loans;

(C) Total loan repayments;

(iv) For an authorized committee of a candidate for the office of President, disbursements not subject to the limitations of 11 CFR 110.8 (52 U.S.C. 30116(b));

(v) Offsets;

(A) Itemized offsets to contributions (including contribution refunds);

(B) Unitemized offsets to contributions (including contribution refunds);

(C) Total offsets to contributions;

(vi) Other disbursements;

(A) Itemized other disbursements;

(B) Unitemized other disbursements;

(C) Total other disbursements;

(vii) Total disbursements.

(3) *Itemization of disbursements by political committees other than authorized committees.* Each political committee, other than an authorized committee, shall report the full name and address of each person in each of the following categories, as well as the information required by each category;

(i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount, and purpose of such operating expenditure;

(A) As used in 11 CFR 104.3(b)(3), *purpose* means a brief statement or description of why the disbursement was made.

(B) Examples of statements or descriptions which meet the requirements of 11 CFR 104.3(b)(3) include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as *advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote* and *voter registration* would not meet the requirements of 11 CFR 104.3(b)(3) for reporting the purpose of an expenditure.

(ii) Each affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(iii) Each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment;

(iv) Each person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution refund was reported under 11 CFR 104.3(b)(1)(iv), together with the date and amount of such refund or offset;

(v) Each political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution, and,

in the case of a contribution to an authorized committee, the candidate's name and office sought (including State and Congressional district, if applicable);

(vi) Each person who has received a loan from the reporting committee during the reporting period, together with the date and amount or value of such loan;

(vii) (A) Each person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure(s);

(B) For each independent expenditure reported, the committee must also provide a statement which indicates whether such independent expenditure is in support of, or in opposition to a particular candidate, as well as the name of the candidate and office sought by such candidate (including State and Congressional district, when applicable), and a certification, under penalty of perjury, as to whether such independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;

(C) The information required by 11 CFR 104.3(b)(3)(vii) (A) and (B) shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursements for any independent expenditure to any person exceed $200 per calendar year. Schedule E shall also include the total of all such expenditures of $200 or less made during the reporting period.

(viii) Each person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under 11 CFR part 109, subpart D (52 U.S.C. 30116(d)),together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by (including State and Congressional district, when applicable), the candidate on whose behalf the expenditure is made; and

(ix) Each person who has received any disbursement within the reporting period not otherwise disclosed in accordance with 11 CFR 104.3(b)(3) to whom the aggregate amount or value of disbursements made by the reporting committee exceeds $200 within the calendar year, together with the date, amount and purpose of any such disbursement.

(4) *Itemization of disbursements by authorized committees.* Each authorized committee shall report the full name and address of each person in each of the following categories, as well as the information required by each category.

(i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the election cycle is made by the reporting authorized committee to meet the authorized committee's operating expenses, together with the date, amount and purpose of each expenditure.

(A) As used in this paragraph, *purpose* means a brief statement or description of why the disbursement was made. Examples of statements or descriptions which meet the requirements of this paragraph include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as *advance*, *election day expenses*, *other expenses*, *expenses*, *expense reimbursement*, *miscellaneous*, *outside services*, *get-out-the-vote* and *voter registration* would not meet the requirements of this paragraph for reporting the purpose of an expenditure.

(B) In addition to reporting the purpose described in paragraph (b)(4)(i)(A) of this section, whenever an authorized committee itemizes a disbursement that is partially or entirely a personal use for which reimbursement is required under 11 CFR 113.1(g)(1)(ii)(C) or (D), it shall provide a brief explanation of the activity for which reimbursement is required.

(ii) Each authorized committee of the same candidate to which a transfer is made by the reporting committee during the reporting period, together with the date and amount of such transfer;

(iii) Each person who receives a loan repayment, including a repayment of a loan of money derived from an advance on a candidate's brokerage account,

credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.83 and 100.143, from the reporting committee during the reporting period, together with the date and amount of such loan repayment;

(iv) [Reserved]

(v) Each person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution refund was reported under 11 CFR 104.3(b)(2)(v), together with the date and amount of such refund or offset.

(vi) Each person who has received any disbursement(s) not otherwise disclosed under paragraph (b)(4) of this section to whom the aggregate amount or value of such disbursements exceeds $200 within the election cycle, together with the date, amount, and purpose of any such disbursement.

(c) *Summary of contributions and operating expenditures.* Each report filed pursuant to §104.1 shall disclose for both the reporting period and the calendar year (or the election cycle, in the case of the authorized committee):

(1)(i) The total contributions to the reporting committee;

(ii) The total offsets to contributions;

(iii) The net contributions (subtract total offsets from total contributions);

(2)(i) The reporting committee's total operating expenditures;

(ii) The total offsets to operating expenditures;

(iii) The net operating expenditures (subtract total offsets from total operating expenditures).

(d) *Reporting debts and obligations.* Each report filed under 11 CFR 104.1 shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Loans, including a loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.83, obtained by an individual prior to becoming a candidate for use in connection with that individual's campaign shall be reported as an outstanding loan owed to the lender by the candidate's principal campaign committee, if such loans are outstanding at the time the individual becomes a candidate. Where such debts and obligations are settled for less than their reported amount or value, each report filed under 11 CFR 104.1 shall contain a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the amount paid. *See* 11 CFR 116.7.

(1) In addition, when a political committee obtains a loan from, or establishes a line of credit at, a lending institution as described in 11 CFR 100.82(a) through (d) and 100.142(a) through (d), it shall disclose in the report covering the period when the loan was obtained, the following information on schedule C-1 or C-P-1:

(i) The date and amount of the loan or line of credit;

(ii) The interest rate and repayment schedule of the loan, or of each draw on the line of credit;

(iii) The types and value of traditional collateral or other sources of repayment that secure the loan or the line of credit, and whether that security interest is perfected;

(iv) An explanation of the basis upon which the loan was made or the line of credit established, if not made on the basis of either traditional collateral or the other sources of repayment described in 11 CFR 100.82(e)(1) and (2) and 100.142(e)(1) and (2); and

(v) A certification from the lending institution that the borrower's responses to paragraphs (d)(1)(i)–(iv) of this section are accurate, to the best of the lending institution's knowledge; that the loan was made or the line of credit established on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness; and that the lending institution is aware of the requirement that a loan or a line of credit must be made on a basis which assures repayment and that the lending institution has complied with Commission regulations at 11 CFR 100.82(a) through (d) and 100.142(a) through (d).

(2) The political committee shall submit a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C-1 or C-P-1. This paragraph (d)(2) shall not

apply to any Schedule C-1 or C-P-1 that is filed pursuant to paragraph (d)(4) of this section.

(3) The political committee shall file in the next due report a Schedule C-1 or C-P-1 each time a draw is made on a line of credit, and each time a loan or line of credit is restructured to change the terms of repayment. This paragraph (d)(3) shall not apply to any Schedule C-1 or C-P-1 that is filed pursuant to paragraph (d)(4) of this section.

(4) When a candidate obtains a bank loan or loan of money derived from an advance on the candidate's brokerage account, credit card, home equity line of credit, or other line of credit described in 11 CFR 100.83 and 100.143 for use in connection with the candidate's campaign, the candidate's principal campaign committee shall disclose in the report covering the period when the loan was obtained, the following information on Schedule C-1 or C-P-1:

(i) The date, amount, and interest rate of the loan, advance, or line of credit;

(ii) The name and address of the lending institution; and

(iii) The types and value of collateral or other sources of repayment that secure the loan, advance, or line of credit, if any.

(e) *Use of pseudonyms.* (1) To determine whether the names and addresses of its contributors are being used in violation of 11 CFR 104.15 to solicit contributions or for commercial purposes, a political committee may submit up to ten (10) pseudonyms on each report filed.

(2) For purposes of this section, a pseudonym is a wholly fictitious name which does not represent the name of an actual contributor to a committee.

(3) If a committee uses pseudonyms it shall subtract the total dollar amount of the fictitious contributions from the total amount listed as a memo entry on line 11(a) of the Detailed Summary page, *Unitemized contributions from individual persons other than political committees.* Thus, the committee will, for this purpose only, be overstating the amount of itemized contributions received and understating the amount of unitemized contributions received.

(4) No authorized committee of a candidate shall attribute more than $1,000 in contributions to the same pseudonym for each election and no other political committee shall attribute more than $5,000 in contributions to the same pseudonym in any calendar year.

(5) A committee using pseudonyms shall send a list of such pseudonyms under separate cover directly to the Reports Analysis Division, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, on or before the date on which any report containing such pseudonyms is filed with the Secretary of the Senate or the Commission. The Commission shall maintain the list, but shall exclude it from the public record. A committee shall not send any list of pseudonyms to the Secretary of the Senate or to any Secretary of State or equivalent state officer.

(6) A political committee shall not use pseudonyms for the purpose of circumventing the reporting requirements or the limitations and prohibitions of the Act.

(f) *Consolidated reports.* Each principal campaign committee shall consolidate in each report those reports required to be filed with it. Such consolidated reports shall include: (1) Reports submitted to it by any authorized committees and (2) the principal campaign committee's own report. Such consolidation shall be made on FEC Form 3–Z and shall be submitted with the reports of the principal campaign committee and with the reports, or applicable portions thereof, of the committees shown on the consolidation.

(g) *Building funds.* (1) A political party committee must report gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by the political party committee's Federal accounts to defray the costs of construction or purchase of the committee's office building. See 11 CFR 300.35. Such a receipt is a contribution subject to the limitations and prohibitions of the Act and reportable as a contribution, regardless of whether the contributor has designated the funds or

things of value for such purpose and regardless of whether such funds are deposited in a separate Federal account dedicated to that purpose.

(2) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are donated to a non-Federal account of a State or local party committee and are used by that party committee for the purchase or construction of its office building are not contributions subject to the reporting requirements of the Act. The reporting of such funds or things of value is subject to State law.

(3) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by a national committee of a political party to defray the costs of construction or purchase of the national committee's office building are contributions subject to the requirements of paragraph (g)(1) of this section.

(h) *Legal and accounting services.* A committee which receives legal or accounting services pursuant to 11 CFR 100.85 and 100.86 shall report as a memo entry, on Schedule A, the amounts paid for these services by the regular employer of the person(s) providing such services; the date(s) such services were performed; and the name of each person performing such services.

(i) *Cumulative reports.* The reports required to be filed under §104.5 shall be cumulative for the calendar year (or for the election cycle, in the case of an authorized committee) to which they relate, but if there has been no change in a category reported in a previous report during that year (or during that election cycle, in the case of an authorized committee), only the amount thereof need be carried forward.

(j) *Earmarked contributions.* Earmarked contributions shall be reported in accordance with 11 CFR 110.6. *See also* 11 CFR 102.8(c).

(k) *Reporting Election Cycle Activity Occurring Prior to January 1, 2001.* The aggregate of each category of receipt listed in paragraph (a)(3) of this section, except those in paragraphs (a)(3)(i)(A) and (B) of this section, and for each category of disbursement listed in paragraph (b)(2) of this section shall include amounts received or disbursed on or after the day after the last general election for the seat or office for which the candidate is running through December 31, 2000.

[45 FR 15108, Mar. 7, 1980]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §104.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§104.4 Independent expenditures by political committees (52 U.S.C. 30104(b), (d), and (g)).

(a) *Regularly scheduled reporting.* Every political committee that makes independent expenditures must report all such independent expenditures on Schedule E in accordance with 11 CFR 104.3(b)(3)(vii). Every person that is not a political committee must report independent expenditures in accordance with paragraphs (e) and (f) of this section and 11 CFR 109.10.

(b) *Reports of independent expenditures made at any time up to and including the 20th day before an election*—(1) *Independent expenditures aggregating less than $10,000 in a calendar year.* Political committees must report on Schedule E of FEC Form 3X at the time of their regular reports in accordance with 11 CFR 104.3, 104.5 and 104.9, all independent expenditures aggregating less than $10,000 with respect to a given election any time during the calendar year up to and including the 20th day before an election.

(2) *Independent expenditures aggregating $10,000 or more in a calendar year.* Political committees must report on Schedule E of FEC Form 3X all independent expenditures aggregating $10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election. Political committees must ensure that the Commission receives these reports by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $10,000 or more, the political committee must ensure that the Commission receives a new 48-hour report

of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the communication is publicly distributed or otherwise publicly disseminated. (*See* paragraph (f) of this section for aggregation.) Each 48-hour report must contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. In addition to other permissible means of filing, a political committee may file the 48-hour reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(c) *Reports of independent expenditures made less than 20 days, but more than 24 hours before the day of an election.* Political committees must ensure that the Commission receives reports of independent expenditures aggregating $1,000 or more with respect to a given election, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of the election, by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional $1,000 or more, the political committee must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. (See paragraph (f) of this section for aggregation.) Each 24-hour report shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. Political committees may file reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(d) *Verification.* Political committees must verify reports of independent expenditures filed under paragraph (b) or (c) of this section by one of the methods stated in paragraph (d)(1) or (2) of this section. Any report verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(1) For reports filed on paper (e.g., by hand-delivery, U.S. Mail or facsimile machine), the treasurer of the political committee that made the independent expenditure must certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(2) For reports filed by electronic mail, the treasurer of the political committee that made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(e) *Where to file.* Reports of independent expenditures under this section and 11 CFR 109.10(b) shall be filed as follows:

(1) For independent expenditures in support of, or in opposition to, a candidate for President or Vice President: with the Commission and the Secretary of State for the State in which the expenditure is made.

(2) For independent expenditures in support of, or in opposition to, a candidate for the Senate:

(i) For regularly scheduled reports, with the Secretary of the Senate and the Secretary of State for the State in which the candidate is seeking election; or

(ii) For 24-hour and 48-hour reports, with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(3) For independent expenditures in support of, or in opposition to, a candidate for the House of Representatives: with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(4) Notwithstanding the requirements of paragraphs (e)(1), (2), and (3) of this section, political committees and other persons shall not be required to file reports of independent expenditures with the Secretary of State if that State has

obtained a waiver under 11 CFR 108.1(b).

(f) *Aggregating independent expenditures for reporting purposes.* For purposes of determining whether 24-hour and 48-hour reports must be filed in accordance with paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), aggregations of independent expenditures must be calculated as of the first date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated, and as of the date that any such communication with respect to the same election is subsequently publicly distributed or otherwise publicly disseminated. Every person must include in the aggregate total all disbursements during the calendar year for independent expenditures, and all enforceable contracts, either oral or written, obligating funds for disbursements during the calendar year for independent expenditures, where those independent expenditures are made with respect to the same election for Federal office.

[68 FR 417, Jan. 3, 2003]

§ 104.5 Filing dates (52 U.S.C. 30104(a)(2)).

(a) *Principal campaign committee of House of Representatives or Senate candidate.* Each treasurer of a principal campaign committee of a candidate for the House of Representatives or for the Senate must file quarterly reports on the dates specified in paragraph (a)(1) of this section in both election years and non-election years, and must file additional reports on the dates specified in paragraph (a)(2) of this section in election years.

(1) *Quarterly reports.* (i) Quarterly reports must be filed no later than the 15th day following the close of the immediately preceding calendar quarter (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year must be filed no later than January 31 of the following calendar year.

(ii) The report must be complete as of the last day of each calendar quarter.

(iii) The requirement for a quarterly report shall be waived if, under paragraph (a)(2) of this section, a pre-election report is required to be filed during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(2) *Additional reports in the election year.* (i) *Pre-election reports.* (A) Pre-election reports for the primary and general election must be filed no later than 12 days before any primary or general election in which the candidate seeks election. If sent by registered or certified mail, Priority Mail or Express Mail with a delivery confirmation, or with an overnight delivery service and scheduled to be delivered the next business day after the date of deposit and recorded in the overnight delivery service's on-line tracking system, the postmark on the report must be dated no later than the 15th day before any election.

(B) The pre-election report must disclose all receipts and disbursements as of the 20th day before a primary or general election.

(ii) *Post-general election report.* (A) The post-general election report must be filed no later than 30 days after any general election in which the candidate seeks election.

(B) The post-general election report must be complete as of the 20th day after the general election.

(b) *Principal campaign committee of Presidential candidate.* Each treasurer of a principal campaign committee of a candidate for President shall file reports on the dates specified at 11 CFR 104.5(b) (1) and (2).

(1) *Election year reports.* (i) If on January 1 of the election year, the committee has received or anticipates receiving contributions aggregating $100,000 or more, or has made or anticipates making expenditures aggregating $100,000 or more, it shall file monthly reports.

(A) Each report shall be filed no later than the 20th day after the last day of each month.

(B) The report shall be complete as of the last day of each month.

(C) In lieu of the monthly reports due in November and December, a pre-election report shall be filed as prescribed at paragraph (a)(2)(i) of this section, a post-general election report shall be filed as prescribed at paragraph (a)(2)(ii) of this section, and a year-end

report shall be filed no later than January 31 of the following calendar year.

(ii) If on January 1 of the election year, the committee does not anticipate receiving and has not received contributions aggregating $100,000 and does not anticipate making and has not made expenditures aggregating $100,000, the committee shall file a preelection report or reports, a post general election report, and quarterly reports, as prescribed in paragraphs (a)(1) and (2) of this section.

(iii) If during the election year, a committee filing under 11 CFR 104.5(b)(1)(ii) receives contributions aggregating $100,000 or makes expenditures aggregating $100,000, the treasurer shall begin filing monthly reports at the next reporting period.

(2) *Non-election year reports.* During a non-election year, the treasurer shall file either monthly reports as prescribed by paragraph (b)(1)(i) of this section or quarterly reports as prescribed by paragraph (a)(1) of this section. A principal campaign committee of a Presidential candidate may elect to change the frequency of its reporting from monthly to quarterly or vice versa during a non-election year only after notifying the Commission in writing of its intention at the time it files a required report under its pre-existing filing frequency. The committee will then be required to file the next required report under its new filing frequency. The committee may change its filing frequency no more than once per calendar year.

(c) *Political committees that are not authorized committees of candidates.* Except as provided in paragraph (c)(4) of this section, each political committee that is not the authorized committee of a candidate must file either: Election year and non-election year reports in accordance with paragraphs (c)(1) and (2) of this section; or monthly reports in accordance with paragraph (c)(3) of this section. A political committee reporting under paragraph (c) of this section may elect to change the frequency of its reporting from monthly to quarterly and semi-annually or *vice versa*. A political committee reporting under this paragraph (c) may change the frequency of its reporting only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. Such political committee will then be required to file the next required report under its new filing frequency. A political committee may change its filing frequency no more than once per calendar year.

(1) *Election year reports*—(i) *Quarterly reports.* (A) Quarterly reports shall be filed no later than the 15th day following the close of the immediately preceding calendar quarter, (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year shall be filed on January 31 of the following calendar year.

(B) The reports shall be complete as of the last day of the calendar quarter for which the report is filed.

(C) The requirement for a quarterly report shall be waived if under 11 CFR 104.5(c)(1)(ii) a pre-election report is required to be filed during the period beginning on the fifth day after the close of the calendar quarter and ending on the fifteenth day after the close of the calendar quarter.

(ii) *Pre-election reports.* (A) Pre-election reports for the primary and general election shall be filed by a political committee which makes contributions or expenditures in connection with any such election if such disbursements have not been previously disclosed. Pre-election reports shall be filed no later than 12 days before any primary or general election. If sent by registered or certified mail, Priority Mail or Express Mail with a delivery confirmation, or with an overnight delivery service and scheduled to be delivered the next business day after the date of deposit and recorded in the overnight delivery service's on-line tracking system, the postmark on the report shall be dated no later than the 15th day before any election.

(B) The report shall disclose all receipts and disbursements as of the 20th day before a primary or general election.

(iii) *Post-general election reports.* (A) A post-general election report shall be filed no later than 30 days after any general election.

(B) The report shall be complete as of the 20th day after the general election.

(2) *Non-election year reports*—(i) *Semi-annual reports.* (A) The first report shall cover January 1 through June 30, and shall be filed no later than July 31.

(B) The second report shall cover July 1 through December 31, and shall be filed no later than January 31 of the following year.

(3) *Monthly reports.* (i) Except as provided at 11 CFR 104.5(c)(3)(ii), monthly reports shall be filed no later than 20 days after the last day of the month.

(ii) In lieu of the monthly reports due in November and December, in any year in which a regularly scheduled general election is held, a pre-election report shall be filed as prescribed at 11 CFR 104.5(a)(2)(i), a post general election report shall be filed as prescribed at 11 CFR 104.5(a)(2)(ii), and a year-end report shall be filed no later than January 31 of the following calendar year.

(4) *National party committee reporting.* Notwithstanding anything to the contrary in this paragraph, a national committee of a political party, including a national Congressional campaign committee, must report monthly in accordance with paragraph (c)(3) of this section in both election and non-election years.

(d) *Committees supporting Vice Presidential candidates.* The treasurer of a committee supporting a candidate for the office of Vice President (other than a nominee of a political party) shall file reports on the same basis that the principal campaign committee of a Presidential candidate must file reports under 11 CFR 104.5(b).

(e) *Date of filing.* A designation, report or statement, other than those addressed in paragraphs (f), (g), and (j) of this section, sent by registered or certified mail, Priority Mail or Express Mail with a delivery confirmation, or with an overnight delivery service and scheduled to be delivered the next business day after the date of deposit and recorded in the overnight delivery service's on-line tracking system, shall be considered filed on the date of the postmark except that a twelve day pre-election report sent by such mail or overnight delivery service must have a postmark dated no later than the 15th day before any election. Designations, reports or statements, other than those addressed in paragraphs (f), (g), and (j) of this section, sent by first class mail, or by any means other than those listed in this paragraph (e), must be received by the close of business on the prescribed filing date to be timely filed. Designations, reports or statements electronically filed must be received and validated at or before 11:59 p.m., eastern standard/daylight time on the prescribed filing date to be timely filed.

(f) *48-hour notification of contributions.* If any contribution of $1,000 or more is received by any authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01 a.m. of the day of the election, the principal campaign committee of that candidate shall notify the Commission, the Secretary of the Senate and the Secretary of State, as appropriate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be filed in accordance with 11 CFR 100.19. The notification shall be in addition to the reporting of those contributions on the post-election report.

(g) *Reports of independent expenditures*– (1) *48-hour reports of independent expenditures.* Every person that must file a 48-hour report under 11 CFR 104.4(b) must ensure the Commission receives the report by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate $10,000 or more, that person must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the $10,000 threshold is reached or exceeded. (*See* 11 CFR 104.4(f) for aggregation.)

(2) *24-hour reports of independent expenditures.* Every person that must file a 24-hour report under 11 CFR 104.4(c)

must ensure that the Commission receives the report by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate $1,000 or more, that person must ensure that the Commission receives a 24-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which the $1,000 threshold is reached or exceeded. (*See* 11 CFR 104.4(f) for aggregation.)

(3) Each 24-hour or 48-hour report of independent expenditures filed under this section shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

(4) For purposes of this part and 11 CFR part 109, a communication that is mailed to its intended audience is publicly disseminated when it is relinquished to the U.S. Postal Service.

(h) *Special election reports.* (1) Within 5 days of the setting of a special election, the Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and for political committees, other than authorized committees, which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall publish such reporting dates in the FEDERAL REGISTER and shall notify the principal campaign committees of all candidates in such election of the reporting dates. The Commission shall not require such committees to file more than one pre-election report for each election and one post-election report for the election which fills the vacancy.

(2) Reports required to be filed under 11 CFR 104.5(a) or (c) may be waived by the Commission for committees filing special election reports if a report under 11 CFR 104.5(a) or (c) is due within 10 days of the date a special election report is due. The Commission shall notify all appropriate committees of reports so waived.

(i) Committees should retain proof of mailing or other means of transmittal of the reports to the Commission.

(j) *24-hour statements of electioneering communications.* Every person who has made a disbursement or who has executed a contract to make a disbursement for the direct costs of producing or airing electioneering communications as defined in 11 CFR 100.29 aggregating in excess of $10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. The statement shall be filed under penalty of perjury and in accordance with 11 CFR 104.20.

[45 FR 15108, Mar. 7, 1980, as amended at 61 FR 3549, Feb. 1, 1996; 65 FR 31794, May 19, 2000; 65 FR 38423, June 21, 2000; 67 FR 12839, Mar. 20, 2002; 68 FR 418, Jan. 3, 2003; 68 FR 47414, Aug. 8, 2003; 69 FR 68238, Nov. 24, 2004; 70 FR 13091, Mar. 18, 2005; 79 FR 16663, Mar. 26, 2014]

§ 104.6 Form and content of internal communications reports (52 U.S.C. 30101(9)(B)(iii)).

(a) *Form.* Every membership organization or corporation which makes disbursements for communications pursuant to 11 CFR 100.134(a) and 114.3 shall report to the Commission on FEC Form 7 such costs which are directly attributable to any communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the election or defeat of a clearly identified candidate), if such costs exceed $2,000 for any election.

(1) For the purposes of 11 CFR 104.6(a), *election* means two separate processes in a calendar year, to each of which the $2,000 threshold described above applies separately. The first process is comprised of all primary elections for federal office, wherever and whenever held; the second process is comprised of all general elections for federal office, wherever and whenever held.

(2) The term election shall also include each special election held to fill

a vacancy in a Federal office (11 CFR 100.2(f)) or each runoff election (11 CFR 100.2(d)).

(b) *Filing dates.* Organizations required to report under 11 CFR 104.6(a) shall file such reports during a calendar year in which a regularly scheduled general election is held. Such reports shall be filed quarterly in accordance with 11 CFR 104.5(a)(1) and, with respect to any general election, in accordance with 11 CFR 104.5(a)(2)(i). The organization shall be required to file reports beginning with the first reporting period during which the aggregate cost for such communications exceeds $2,000 per election as defined in 11 CFR 104.6(a)(1), and for each quarter thereafter in which the organization makes additional disbursements in connection with the same election.

(c) Each report filed under 11 CFR 104.6 shall include, for each communication:

(1) The type of communication (such as direct mail, telephone or telegram);

(2) The date(s) of the communication;

(3) The name of the candidate, the office sought (and the district and state of the office, if applicable), and whether the communication was for the primary or general election;

(4) Whether the communication was in support of or in opposition to, a particular candidate; and

(5) The cost of the communication.

[45 FR 15108, Mar. 7, 1980, as amended at 67 FR 78680, Dec. 26, 2002; 79 FR 16663, Mar. 26, 2014]

§ 104.7 Best efforts (52 U.S.C. 30102(i)).

(a) When the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act.

(b) With regard to reporting the identification as defined at 11 CFR 100.12 of each person whose contribution(s) to the political committee and its affiliated political committees aggregate in excess of $200 in a calendar year (or in an election cycle in the case of an authorized committee) (pursuant to 11 CFR 104.3(a)(4)), the treasurer and the political committee will only be deemed to have exercised best efforts to obtain, maintain and report the required information if:

(1)(i) All written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer, and include an accurate statement of Federal law regarding the collection and reporting of individual contributor identifications.

(A) The following are examples of acceptable statements for unauthorized committees, but are not the only allowable statements: "Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in a calendar year;" and "To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per calendar year."

(B) The following are examples of acceptable statements for authorized committees, but are not the only allowable statements: "Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in an election cycle;" and "To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per election cycle."

(ii) The request and statement shall appear in a clear and conspicuous manner on any response material included in a solicitation. The request and statement are not clear and conspicuous if they are in small type in comparison to the solicitation and response materials, or if the printing is difficult to read or if the placement is easily overlooked.

(2) For each contribution received aggregating in excess of $200 per calendar year (or per election cycle, in the case of an authorized committee) which lacks required contributor information, such as the contributor's full name, mailing address, occupation or name of employer, the treasurer makes at least one effort after the receipt of

the contribution to obtain the missing information. Such effort shall consist of either a written request sent to the contributor or an oral request to the contributor documented in writing. The written or oral request must be made no later than thirty (30) days after receipt of the contribution. The written or oral request shall not include material on any other subject or any additional solicitation, except that it may include language solely thanking the contributor for the contribution. The request must clearly ask for the missing information, and must include the statement set forth in paragraph (b)(1) of this section. Written requests must include this statement in a clear and conspicuous manner. If the request is written, it shall be accompanied by a pre-addressed return post card or envelope for the response material;

(3) The treasurer reports all contributor information not provided by the contributor, but in the political committee's possession, or in its connected organization's possession, regarding contributor identifications, including information in contributor records, fundraising records and previously filed reports, in the same two-year election cycle in accordance with 11 CFR 104.3; and

(4)(i) If any of the contributor information is received after the contribution has been disclosed on a regularly scheduled report, the political committee shall either:

(A) File with its next regularly scheduled report, an amended memo Schedule A listing all contributions for which contributor identifications have been received during the reporting period covered by the next regularly scheduled report together with the dates and amounts of the contribution(s) and an indication of the previous report(s) to which the memo Schedule A relates; or

(B) File on or before its next regularly scheduled reporting date, amendments to the report(s) originally disclosing the contribution(s), which include the contributor identifications together with the dates and amounts of the contribution(s).

(ii) Amendments must be filed for all reports that cover the two-year election cycle in which the contribution was received and that disclose itemizable contributions from the same contributor. However, political committees are not required to file amendments to reports covering previous election cycles.

[45 FR 15108, Mar. 7, 1980, as amended at 58 FR 57729, Oct. 27, 1993; 62 FR 23386, Apr. 30, 1997; 65 FR 42624, July 11, 2000]

§ 104.8 Uniform reporting of receipts.

(a) A reporting political committee shall disclose the identification of each individual who contributes an amount in excess of $200 to the political committee's federal account(s). This identification shall include the individual's name, mailing address, occupation, the name of his or her employer, if any, and the date of receipt and amount of any such contribution. If an individual contributor's name is known to have changed since an earlier contribution reported during the calendar year (or during the election cycle, in the case of an authorized committee), the exact name or address previously used shall be noted with the first reported contribution from that contributor subsequent to the name change.

(b) In each case where a contribution received from an individual in a reporting period is added to previously unitemized contributions from the same individual and the aggregate exceeds $200 in a calendar year (or in an election cycle, in the case of an authorized committee) the reporting political committee shall disclose the identification of such individual along with the date of receipt and amount of any such contribution. Except for contributions by payroll deduction, each additional contribution from the individual shall be separately itemized. In the case of a political committee other than an authorized committee which receives contributions through a payroll deduction plan, such committee is not required to separately itemize each additional contribution received from the contributor during the reporting period. In lieu of separate itemization, such committee may report: the aggregate amount of contributions received

from the contributor through the payroll deduction plan during the reporting period; the identification of the individual; and a statement of the amount deducted per pay period.

(c) Absent evidence to the contrary, any contribution made by check, money order, or other written instrument shall be reported as a contribution by the last person signing the instrument prior to delivery to the candidate or committee.

(d)(1) If an itemized contribution is made by more than one person in a single written instrument, the treasurer shall report the amount to be attributed to each contributor.

(2)(i) If a contribution is redesignated by a contributor, in accordance with 11 CFR 110.1(b) or 110.2(b), the treasurer of the authorized political committee receiving the contribution shall report the redesignation in a memo entry on Schedule A of the report covering the reporting period in which the redesignation is received. The memo entry for each redesignated contribution shall be reported in the following manner—

(A) The first part of the memo entry shall disclose all of the information for the contribution as it was originally reported on Schedule A;

(B) The second part of the memo entry shall disclose all of the information for the contribution as it was redesignated by the contributor, including the election for which the contribution was redesignated and the date on which the redesignation was received.

(ii) If a contribution from a political committee is redesignated by the contributing political committee in accordance with 11 CFR 110.1(b) or 110.2(b), the treasurer of such political committee shall report the redesignation in a memo entry on Schedule B of the report covering the reporting period in which the redesignation is made. The memo entry for each redesignated contribution shall be reported in the following manner—

(A) The first part of the memo entry shall disclose all of the information for the contribution as it was originally reported on Schedule B;

(B) The second part of the memo entry shall disclose all of the information for the contribution as it was redesignated by the contributing political committee, including the election for which the contribution was redesignated and the date on which the redesignation was made.

(3) If an itemized contribution is reattributed by the contributor(s) in accordance with 11 CFR 110.1(k), the treasurer shall report the reattribution in a memo entry on Schedule A of the report covering the reporting period in which the reattribution is received. The memo entry for each reattributed contribution shall be reported in the following manner—

(i) The first part of the memo entry shall disclose all of the information for the contribution as it was originally reported on Schedule A;

(ii) The second part of the memo entry shall disclose all of the information for the contribution as it was reattributed by the contributors, including the date on which the reattribution was received.

(4) If a contribution is refunded to the contributor, the treasurer of the political committee making the refund shall report the refund on Schedule B of the report covering the reporting period in which the refund is made, in accordance with 11 CFR 103.3(b)(5) and 104.3(b). If a contribution is refunded to a political committee, the treasurer of the political committee receiving the refund shall report the refund on Schedule A of the report covering the reporting period in which the refund is received, in accordance with 11 CFR 104.3(a).

(e) For reports covering activity on or before December 31, 2002, national party committees shall disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's non-Federal account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent

to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

(f) For reports covering activity on or before December 31, 2002, national party committees shall also disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's building fund account(s). This information shall include the donating individual's or entity's name, mailing address, occupation or type of business, and the date of receipt and amount of any such donation. If a donor's name is known to have changed since an earlier donation reported during the calendar year, the exact name or address previously used shall be noted with the first reported donation from that donor subsequent to the name change. The memo entry shall also include, where applicable, the information required by paragraphs (b) through (d) of this section.

(g) The principal campaign committee of the candidate shall report the receipt of any bank loan obtained by the candidate or loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.83 and 100.143, as an itemized entry of Schedule A as follows:

(1) The amount of the loan that is used in connection with the candidate's campaign shall be reported as an itemized entry on Schedule A.

(2) *See* 11 CFR 100.83(c) for special reporting rules regarding certain loans used for a candidate's routine living expenses.

[45 FR 15108, Mar. 7, 1980, as amended at 52 FR 774, Jan. 9, 1987; 55 FR 26067, June 26, 1990; 65 FR 42624, July 11, 2000; 67 FR 38360, June 4, 2002; 67 FR 49112, July 29, 2002; 75 FR 31, Jan. 4, 2010]

§ 104.9 Uniform reporting of disbursements.

(a) Political committees shall report the full name and mailing address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year (or within the election cycle, in the case of an authorized committee) is made from the reporting political committee's federal account(s), together with the date, amount and purpose of such expenditure, in accordance with paragraph (b) of this section. As used in this section, *purpose* means a brief statement or description as to the reasons for the expenditure. *See* 11 CFR 104.3(b)(3)(i)(A).

(b) In each case when an expenditure made to a recipient in a reporting period is added to previously unitemized expenditures to the same recipient and the total exceeds $200 for the calendar year (or for the election cycle, in the case of an authorized committee), the reporting political committee shall disclose the recipient's full name and mailing address on the prescribed reporting forms, together with the date, amount and purpose of such expenditure. As used in this section, *purpose* means a brief statement or description as to the reason for the disbursement as defined at 11 CFR 104.3(b)(3)(i)(A).

(c) For reports covering activity on or before March 31, 2008, national party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's non-Federal account(s), together with the date, amount, and purpose of such disbursement, in accordance with paragraph (b) of this section. As used in this section, *purpose* means a brief statement or description as to the reasons for the disbursement. *See* 11 CFR 104.3(b)(3)(i)(A).

(d) For reports covering activity on or before March 31, 2008, national party committees shall report in a memo Schedule B the full name and mailing address of each person to whom a disbursement in an aggregate amount or value in excess of $200 within the calendar year is made from the committee's building fund account(s), together with the date, amount, and purpose of such disbursement, in accordance with paragraph (b) of this section. As used in this section, *purpose* means a brief statement or description as to the reasons for the disbursement. *See* 11 CFR 104.3(b)(3)(i)(A).

(e) For reports covering activity on or before December 31, 2002, national party committees shall report in a memo Schedule B each transfer from their non-Federal account(s) to the non-Federal accounts of a State or local party committee.

(f) The principal campaign committee of the candidate shall report its repayment to the candidate or lending institution of any bank loan obtained by the candidate or loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.83 and 100.143 as an itemized entry on Schedule B.

[45 FR 15108, Mar. 7, 1980, as amended at 55 FR 26067, June 26, 1990; 65 FR 42624, July 11, 2000; 67 FR 38361, June 4, 2002; 67 FR 49118, July 29, 2002; 79 FR 16663, Mar. 26, 2014]

§104.10 Reporting by separate segregated funds and nonconnected committees of expenses allocated among candidates and activities.

(a) *Expenses allocated among candidates.* A political committee that is a separate segregated fund or a nonconnected committee making an expenditure on behalf of more than one clearly identified candidate for Federal office shall allocate the expenditure among the candidates pursuant to 11 CFR part 106. Payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates shall also be allocated pursuant to 11 CFR part 106. For allocated expenditures, the committee shall report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate. If a payment also includes amounts attributable to one or more non-Federal candidates, and is made by a political committee with separate Federal and non-Federal accounts, then the payment shall be made according to the procedures set forth in 11 CFR 106.6(e), but shall be reported pursuant to paragraphs (a)(1) through (a)(4) of this section, as follows:

(1) *Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates.* In each report disclosing a payment that includes both expenditures on behalf of one or more Federal candidates and disbursements on behalf of one or more non-Federal candidates, the committee shall assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, shall state the allocation ratio calculated for the program or activity, and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts attributed to each candidate, to date, for each joint program or activity.

(2) *Reporting of transfers between accounts for the purpose of paying expenses attributable to specific Federal and non-Federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one program or activity, the committee shall itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates.

(3) *Reporting of allocated disbursements attributable to specific Federal and non-Federal candidates.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall also report each disbursement from its Federal account or its separate allocation account in payment for a program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If

the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. The committee shall also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate, and the total amount attributed to the non-Federal candidate(s). In addition, the committee shall report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocation on behalf of specific Federal and non-Federal candidates, in accordance with 11 CFR 104.14.

(b) *Expenses allocated among activities.* A political committee that is a separate segregated fund or a nonconnected committee and that has established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate between those accounts its administrative expenses and its costs for fundraising, generic voter drives, and certain public communications according to 11 CFR 106.6, and shall report those allocations according to paragraphs (b)(1) through (5) of this section, as follows:

(1) *Reporting of allocation of administrative expenses and costs of generic voter drives and public communications that refer to any political party.* In each report disclosing a disbursement for administrative expenses, generic voter drives, or public communications that refer to any political party, but do not refer to any clearly identified candidates, as described in 11 CFR 106.6(b)(1)(i), (b)(1)(iii) and (b)(1)(iv), as applicable, the committee shall state the allocation ratio to be applied to each category of activity according to 11 CFR 106.6(c).

(2) *Reporting of allocation of the direct costs of fundraising.* In each report disclosing a disbursement for the direct costs of a fundraising program, as described in 11 CFR 106.6(b), the committee shall assign a unique identifying title or code to each such program or activity, shall state the allocation ratio calculated for the program or activity according to 11 CFR 106.6(d), and shall explain the manner in which the ratio was derived. The committee shall also summarize the total amounts spent by the Federal and non-Federal accounts that year, to date, for each such program or activity.

(3) *Reporting of transfers between accounts for the purpose of paying allocable expenses.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the committee shall itemize the transfer, showing the amounts designated for administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b).

(4) *Reporting of allocated disbursements.* A political committee that pays allocable expenses in accordance with 11 CFR 106.6(e) shall also report each disbursement from its Federal account or its separate allocation account in payment for a joint Federal and non-Federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment of administrative expenses and generic voter drives, and for each fundraising program, as described in 11 CFR 106.6(b). The committee shall also report the total amount expended by the

committee that year, to date, for each category of activity.

(5) *Recordkeeping.* The treasurer shall retain all documents supporting the committee's allocated disbursements for three years, in accordance with 11 CFR 104.14.

[67 FR 49113, July 29, 2002, as amended at 69 FR 68067, Nov. 23, 2004]

§ 104.11 Continuous reporting of debts and obligations.

(a) Debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. See 11 CFR 104.3(d). These debts and obligations shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. Where such debts and obligations are settled for less than their reported amount or value, the reporting committee shall include a statement as to the circumstances and conditions under which the debt or obligation was extinguished and the amount paid.

(b) A debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is $500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is over $500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date. *See* 11 CFR 116.6. If the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate. Once the exact amount is determined, the political committee shall either amend the report(s) containing the estimate or indicate the correct amount on the report for the reporting period in which such amount is determined.

[45 FR 15108, Mar. 7, 1980, as amended at 55 FR 26386, June 27, 1990]

§ 104.12 Beginning cash on hand for political committees.

Political committees which have cash on hand at the time of registration shall disclose on their first report the source(s) of such funds, including the information required by 11 CFR 104.3(a)(1). The cash on hand balance is assumed to be composed of those contributions most recently received by the committee. The committee shall exclude from funds to be used for Federal elections any contributions not permissible under the Act. See 11 CFR parts 110, 114, and 115.

§ 104.13 Disclosure of receipt and consumption of in-kind contributions.

(a)(1) The amount of an in-kind contribution shall be equal to the usual and normal value on the date received. Each in-kind contribution shall be reported as a contribution in accordance with 11 CFR 104.3(a).

(2) Except for items noted in 11 CFR 104.13(b), each in-kind contribution shall also be reported as an expenditure at the same usual and normal value and reported on the appropriate expenditure schedule, in accordance with 11 CFR 104.3(b).

(b) Contributions of stocks, bonds, art objects, and other similar items to be liquidated shall be reported as follows:

(1) If the item has not been liquidated at the close of a reporting period, the committee shall record as a memo entry (not as cash) the item's fair market value on the date received, including the name and mailing address (and, where in excess of $200, the occupation and name of employer) of the contributor.

(2) When the item is sold, the committee shall record the proceeds. It shall also report the (i) name and mailing address (and, where in excess of $200, the occupation and name of employer) of the purchaser, if purchased directly from the candidate or committee (as the purchaser shall be considered to have made a contribution to the committee), and (ii) the identification of the original contributor.

§ 104.14 Formal requirements regarding reports and statements.

(a) Each individual having the responsibility to file a designation, report or statement required under this subchapter shall sign the original designation, report or statement except that:

(1) Reports or statements of independent expenditures filed by facsimile machine or electronic mail under 11 CFR 104.4(b) or 11 CFR 109.10 must be verified in accordance with those sections; and

(2) Reports, designations, or statements filed electronically under 11 CFR 104.18 must follow the signature requirements of 11 CFR 104.18(g).

(b) Each political committee or other person required to file any report or statement under this subchapter shall maintain all records as follows:

(1) Maintain records, including bank records, with respect to the matters required to be reported, including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness;

(2) Preserve a copy of each report or statement required to be filed under 11 CFR parts 102 and 104, and all records relevant to such reports or statements;

(3) Keep all reports required to be preserved under this section available for audit, inspection, or examination by the Commission or its authorized representative(s) for a period of not less that 3 years after the report or statement is filed (*See* 11 CFR 102.9(c) for requirements relating to preservation of records and accounts); and

(4) Candidates, who obtain bank loans or loans derived from an advance from the candidate's brokerage account, credit card, home equity line of credit, or other lines of credit available to the candidate, must preserve the following records for three years after the date of the election for which they were a candidate:

(i) Records to demonstrate the ownership of the accounts or assets securing the loans;

(ii) Copies of the executed loan agreements and all security and guarantee statements;

(iii) Statements of account for all accounts used to secure any loan for the period the loan is outstanding such as brokerage accounts or credit card accounts, and statements on any line of credit account that was used for the purpose of influencing the candidate's election for Federal office;

(iv) For brokerage loans or other loans secured by financial assets, documentation to establish the source of the funds in the account at the time of the loan; and

(v) Documentation for all payments made on the loan by any person.

(c) Acknowledgements by the Commission or the Secretary of the Senate, of the receipt of Statements of Organization, reports or other statements filed under 11 CFR parts 101, 102 and 104 are intended solely to inform the person filing the report of its receipt and neither the acknowledgement nor the acceptance of a report or statement shall constitute express or implied approval, or in any manner indicate that the contents of any report or statement fulfill the filing or other requirements of the Act or of these regulations.

(d) Each treasurer of a political committee, and any other person required to file any report or statement under those regulations and under the Act, shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it.

[45 FR 15108, Mar. 7, 1980, as amended at 61 FR 3549, Feb. 1, 1996; 67 FR 12840, Mar. 20, 2002; 67 FR 38361, June 4, 2002; 79 FR 16663, Mar. 26, 2014]

§ 104.15 Sale or use restriction (52 U.S.C. 30111(a)(4)).

(a) Any information copied, or otherwise obtained, from any report or statement, or any copy, reproduction, or publication thereof, filed under the Act, shall not be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose, except that the name and address of any political committee may

be used to solicit contributions from such committee.

(b) For purposes of 11 CFR 104.15, *soliciting contributions* includes soliciting any type of contribution or donation, such as political or charitable contributions.

(c) The use of information, which is copied or otherwise obtained from reports filed under 11 CFR part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

[45 FR 15108, Mar. 7, 1980, as amended at 61 FR 3549, Feb. 1, 1996]

§104.16 Audits (52 U.S.C. 30111(b)).

(a) The Commission may conduct audits of any political committee required to register under 11 CFR part 102 and to report under 11 CFR part 104. Prior to conducting any such audit or investigation, the Commission shall conduct an internal review of reports filed by selected committees to determine whether reports filed by a particular committee meet thresholds established by the Commission for substantial compliance with the Act. Such thresholds may vary according to the type of political committee being reviewed.

(b) The Commission may, upon affirmative vote of four members, conduct an audit and field investigation of any committee which meets the thresholds established pursuant to 11 CFR 104.16(a). All such audits and investigations shall commence within 30 days of such vote except that any audit or investigation of an authorized committee of a candidate shall be commenced within 6 months of the election for which such committee was authorized.

(c) The Commission may, upon affirmative vote of four members, conduct an audit and field investigation of any committee pursuant to 11 CFR 111.10.

(d) All audits and field investigations concerning the verification for and the receipt and use of payments under chapters 95 and 96 of title 26 shall be given priority over any audit or investigation of committees not receiving such payments.

§104.17 Reporting of allocable expenses by party committees.

(a) *Expenses allocated among candidates.* A national party committee making an expenditure on behalf of more than one clearly identified candidate for Federal office must report the allocation between or among the named candidates. A national party committee making expenditures and disbursements on behalf of one or more clearly identified Federal candidates and on behalf of one or more clearly identified non-Federal candidates must report the allocation among all named candidates. These payments shall be allocated among candidates pursuant to 11 CFR part 106, but only Federal funds may be used for such payments. A State, district, or local party committee making expenditures and disbursements for Federal election activity as defined at 11 CFR 100.24 on behalf of one or more clearly identified Federal and one or more clearly identified non-Federal candidates must make the payments from its Federal account and must report the allocation among all named candidates. A State, district, or local party committee making expenditures and disbursements on behalf of one or more clearly identified Federal and one or more clearly identified non-Federal candidates where the activity is not a Federal election activity may allocate the payments between its Federal and non-Federal account and must report the allocation among all named candidates. For allocated expenditures, the committee must report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each candidate. If a payment also includes amounts attributable to one or more non-Federal candidates, and is made by a State, district, or local party committee with separate Federal and non-Federal accounts, and is not for a Federal election activity, then the payment shall be made according to the procedures set forth in 11 CFR 106.7(f), but shall be reported pursuant to paragraphs (a)(1) through (a)(4) of this section, as follows:

(1) *Reporting of allocation of expenses attributable to specific Federal and non-Federal candidates.* In each report disclosing a payment that includes both expenditures on behalf of one or more Federal candidates and disbursements on behalf of one or more non-Federal candidates, the committee must assign a unique identifying title or code to each program or activity conducted on behalf of such candidates, state the allocation ratio calculated for the program or activity, and explain the manner in which the ratio applied to each candidate was derived. The committee must also summarize the total amounts attributed to each candidate, to date, for each program or activity.

(2) *Reporting of transfers between accounts for the purpose of paying expenses attributable to specific Federal and non-Federal candidates.* A State, district, or local party committee that pays allocable expenses in accordance with 11 CFR 106.7(f) shall report each transfer of funds from its non-Federal account to its Federal account or to its separate allocation account for the purpose of paying such expenses. In the report covering the period in which each transfer occurred, the State, district, or local party committee shall explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one program or activity, the State, district, or local party committee must itemize the transfer, showing the amounts designated for each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates.

(3) *Reporting of allocated disbursements attributable to specific Federal and non-Federal candidates.* A State, district, or local committee that pays allocable expenses in accordance with 11 CFR 106.7(f) shall also report each disbursement from its Federal account or its separate allocation account in payment for a program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. In the report covering the period in which the disbursement occurred, the State, district, or local party committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount, and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one program or activity, the committee shall itemize the disbursement, showing the amounts designated for payment of each program or activity conducted on behalf of one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates. The State, district, or local party committee must also report the amount of each in-kind contribution, independent expenditure, or coordinated expenditure attributed to each Federal candidate, and the total amount attributed to the non-Federal candidate(s). In addition, the State, district, or local party committee must report the total amount expended by the committee that year, to date, for each joint program or activity.

(4) *Recordkeeping.* The treasurer of a State, district, or local party committee must retain all documents supporting the committee's allocations on behalf of specific Federal and non-Federal candidates, in accordance with 11 CFR 104.14.

(b) *Allocation of activities that are not Federal election activities.* A State, district, or local committee of a political party that has established separate Federal and non-Federal accounts, including related allocation accounts, under 11 CFR 102.5 must report all payments that are allocable between these accounts pursuant to the allocation rules in 11 CFR 106.7. Disbursements for activities that are allocable between Federal and Levin accounts, including related allocation accounts, must be reported pursuant to 11 CFR 300.36.

(1) *Reporting of allocations of expenses for activities that are not Federal election activities.* (i) In the first report in a calendar year disclosing a disbursement allocable pursuant to 11 CFR 106.7, a State, district, or local committee shall state and explain the allocation percentages to be applied to each category of allocable activity (e.g., 36%

Federal/64% non-Federal in Presidential and Senate election years) pursuant to 11 CFR 106.7(d).

(ii) In each subsequent report in the calendar year itemizing an allocated disbursement, the State, district, or local party committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amounts expended from Federal and non-Federal accounts, or from allocation accounts, that year to date for each such category.

(iii) In each report disclosing disbursements for allocable activities as described in 11 CFR 106.7, the State, district, or local party committee shall assign a unique identifying title or code to each such program or activity, and shall state the applicable Federal/non-Federal percentage for any direct costs of fundraising. Unique identifying titles or codes are not required for salaries and wages pursuant to 11 CFR 106.7(c)(1), or for other administrative costs allocated pursuant to 11 CFR 106.7(c)(2).

(2) *Reporting of transfers between the accounts of State, district, and local party committees and into allocation accounts for allocable expenses.* A State, district, or local committee of a political party that pays allocable expenses in accordance with 11 CFR 106.7 shall report each transfer of funds from its non-Federal account to its Federal account, or each transfer from its Federal account and its non-Federal account into an allocation account, for the purpose of payment of such expenses. In the report covering the period in which each transfer occurred, the State, district, or local party committee must explain in a memo entry the allocable expenses to which the transfer relates and the date on which the transfer was made. If the transfer includes funds for the allocable costs of more than one activity, the State, district, or local party committee must itemize the transfer, showing the amounts designated for each category of expense as described in 11 CFR 106.7.

(3) *Reporting of allocated disbursements for certain allocable activity that is not Federal election activity.* (i) A State, district, or local committee of a political party that pays allocable expenses in accordance with 11 CFR 106.7 shall report each disbursement from its Federal account for allocable expenses, or each payment from an allocation account for such activity. In the report covering the period in which the disbursement occurred, the State, district, or local committee shall state the full name and address of each individual or vendor to which the disbursement was made, the date, amount, and purpose of each such disbursement, and the amounts allocated to Federal and non-Federal portions of the allocable activity. If the disbursement includes payment for the allocable costs of more than one activity, the State, district, or local party committee must itemize the disbursement, showing the amounts designated for payments of particular categories of activity as described in 11 CFR 106.7. The State, district, or local party committee must also report the total amount paid that calendar year to date for each category of allocable activity.

(ii) A State, district, or local committee of a political party that pays allocable expenses from a Federal account and a Levin account in accordance with 11 CFR 300.38 shall report disbursements from those accounts according to the requirements of 11 CFR 300.36.

(4) *Recordkeeping.* The treasurer of a State, district, or local party committee must retain all documents supporting the committee's allocations of expenditures and disbursements for the costs and activities cited at paragraph (b) of this section, in accordance with 11 CFR 104.14.

[67 FR 49114, July 29, 2002]

§ 104.18 Electronic filing of reports (52 U.S.C. 30102(d) and 30104(a)(11)).

(a) *Mandatory.* (1) Political committees and other persons required to file reports with the Commission, as provided in 11 CFR Parts 105 and 107, must file reports in an electronic format that meets the requirements of this section if—

(i) The political committee or other person has received contributions or has reason to expect to receive contributions aggregating in excess of $50,000 in any calendar year; or

(ii) The political committee or other person has made expenditures or has reason to expect to make expenditures aggregating in excess of $50,000 in any calendar year.

(2) Once any political committee or other person described in paragraph (a)(1) of this section exceeds or has reason to expect to exceed the appropriate threshold, the political committee or person must file electronically all subsequent reports covering financial activity for the remainder of the calendar year. All electronically filed reports must pass the Commission's validation program in accordance with paragraph (c) of this section. Reports filed on paper do not satisfy a political committee's or other person's filing obligations.

(3) *Have reason to expect to exceed.* (i) A political committee or other person shall have reason to expect to exceed the threshold stated in paragraph (a)(1) of this section for two calendar years following the calendar year in which the political committee or other person exceeds the threshold unless—

(A) The committee is an authorized committee, and has $50,000 or less in nets debts outstanding on January 1 of the year following the general election, and anticipates terminating prior to January 1 of the next election year; and

(B) The candidate has not qualified as a candidate for the next election and does not intend to become a candidate for federal office in the next election.

(ii) New political committees or other persons with no history of campaign finance activity shall have reason to expect to exceed the threshold stated in paragraph (a)(1) of this section within the calendar year if—

(A) It receives contributions or makes expenditures that exceed one quarter of the threshold amount in the first calendar quarter of the calendar year; or

(B) It receives contributions or makes expenditures that exceed one-half of the threshold amount in the first half of the calendar year.

(b) *Voluntary.* A political committee or other person who files reports with the Commission, as provided in 11 CFR part 105, and who is not required to file electronically under paragraph (a) of this section, may choose to file its reports in an electronic format that meets the requirements of this section. If a political committee or other person chooses to file its reports electronically, all electronically filed reports must pass the Commission's validation program in accordance with paragraph (e) of this section. The committee or other person must continue to file in an electronic format all reports covering financial activity for that calendar year, unless the Commission determines that extraordinary and unforeseeable circumstances have made it impracticable for the political committee or other person to continue filing electronically.

(c) *Definition of report.* For purposes of this section, *report* means any statement, designation or report required by the Act to be filed with the Commission.

(d) *Format specifications.* Reports filed electronically shall conform to the technical specifications described in the Federal Election Commission's Electronic Filing Specifications Requirements. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Electronic Filing Specifications Requirements.

(e) *Acceptance of reports filed in electronic format; validation program.* (1) Each political committee or other person who submits an electronic report shall check the report against the Commission's validation program before it is submitted, to ensure that the files submitted meet the Commission's format specifications and can be read by the Commission's computer system. Each report submitted in an electronic format under this section shall also be checked upon receipt against the Commission's validation program. The Commission's validation program and the Electronic Filing Specification Requirement are available on request and at no charge.

(2) A report that does not pass the validation program will not be accepted by the Commission and will not be considered filed. If a political committee or other person submits a report that does not pass the validation program, the Commission will notify

the political committee or other person that the report has not been accepted.

(f) *Amended reports.* If a political committee or other person files an amendment to a report that was filed electronically, the political committee or other person shall also submit the amendment in an electronic format. The political committee or other person shall submit a complete version of the report as amended, rather than just those portions of the report that are being amended. In addition, amendments must be filed in accordance with the Electronic Filing Specification Requirements.

(g) *Signature requirements.* The political committee's treasurer, or any other person having the responsibility to file a designation, report or statement under this subchapter, shall verify the report in one of the following ways: by submitting a signed certification on paper that is submitted with the computerized media; or by submitting a digitized copy of the signed certification as a separate file in the electronic submission. Each verification submitted under this section shall certify that the treasurer or other signatory has examined the report or statement and, to the best of the signatory's knowledge and belief, it is true, correct and complete. Any verification under this section shall be treated for all purposes (including penalties for perjury) in the same manner as a verification by signature on a report submitted in a paper format.

(h) *Schedules and forms with special requirements.* (1) The following are schedules and forms that require the filing of additional documents and that have special signature requirements:

(i) Schedules C-1 and C-P-1, Loans and Lines of Credit From Lending Institutions (see 11 CFR 104.3(d)); and

(ii) Form 8, Debt Settlement Plan (see 11 CFR 116.7(e)).

(2) If a person files a report electronically by submitting a diskette to the Commission and is required to file any of the schedules or forms listed in paragraph (h)(1) of this section, the person shall file a paper copy of the required schedule or form with the electronic submission, or a digitized version as a separate file in the electronic submission, by the close of business on the prescribed filing date.

(3) If a person files a report electronically by uploading the data to the Commission's electronic filing system and is required to file any schedules or forms listed in paragraph (h)(1) of this section, the person shall file a paper copy or a digitized version of the required schedule or form by the close of business on the prescribed filing date.

(i) *Preservation of reports.* For any report filed in electronic format under this section, the treasurer or other person required to file any report under the Act shall retain a machine-readable copy of the report as the copy preserved under 11 CFR 104.14(b)(2). In addition, the treasurer or other person required to file any report under the Act shall retain the original signed version of any documents submitted in a digitized format under paragraphs (g) and (h) of this section.

[65 FR 38423, June 21, 2000, as amended at 67 FR 12840, Mar. 20, 2002]

§ 104.19 [Reserved]

§ 104.20 Reporting electioneering communications (52 U.S.C. 30104(f)).

(a) *Definitions*—(1) *Disclosure date* means:

(i) The first date on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of $10,000; or

(ii) Any other date during the same calendar year on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of $10,000 since the most recent disclosure date during such calendar year.

(2) *Direct costs of producing or airing electioneering communications* means the following:

(i) Costs charged by a vendor, such as studio rental time, staff salaries, costs of video or audio recording media, and talent; or

(ii) The cost of airtime on broadcast, cable or satellite radio and television stations, studio time, material costs, and the charges for a broker to purchase the airtime.

(3) *Persons sharing or exercising direction or control* means officers, directors, executive directors or their equivalent, partners, and in the case of unincorporated organizations, owners, of the entity or person making the disbursement for the electioneering communication.

(4) *Identification* has the same meaning as in 11 CFR 100.12.

(5) *Publicly distributed* has the same meaning as in 11 CFR 100.29(b)(3).

(b) *Who must report and when.* Every person who has made an electioneering communication, as defined in 11 CFR 100.29, aggregating in excess of $10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. The statement shall be filed under penalty of perjury, shall contain the information set forth in paragraph (c) of this section, and shall be filed on FEC Form 9. Political committees that make communications that are described in 11 CFR 100.29(a) must report such communications as expenditures or independent expenditures under 11 CFR 104.3 and 104.4, and not under this section.

(c) *Contents of statement.* Statements of electioneering communications filed under paragraph (b) of this section shall disclose the following information:

(1) The identification of the person who made the disbursement, or who executed a contract to make a disbursement, and, if the person is not an individual, the person's principal place of business;

(2) The identification of any person sharing or exercising direction or control over the activities of the person who made the disbursement or who executed a contract to make a disbursement;

(3) The identification of the custodian of the books and accounts from which the disbursements were made;

(4) The amount of each disbursement, or amount obligated, of more than $200 during the period covered by the statement, the date the disbursement was made, or the contract was executed, and the identification of the person to whom that disbursement was made;

(5) All clearly identified candidates referred to in the electioneering communication and the elections in which they are candidates;

(6) The disclosure date, as defined in paragraph (a) of this section;

(7) If the disbursements were paid exclusively from a segregated bank account consisting of funds provided solely by persons other than national banks, corporations organized by authority of any law of Congress, or foreign nationals as defined in 11 CFR 110.20(a)(3), the name and address of each donor who donated an amount aggregating $1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year.

(8) If the disbursements were not paid exclusively from a segregated bank account described in paragraph (c)(7) of this section and were not made by a corporation or labor organization, the name and address of each donor who donated an amount aggregating $1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year.

(9) If the disbursements were made by a corporation or labor organization and were not paid exclusively from a segregated bank account described in paragraph (c)(7) of this section, the name and address of each person who made a donation aggregating $1,000 or more to the corporation or labor organization, aggregating since the first day of the preceding calendar year, which was made for the purpose of furthering electioneering communications.

(d) *Recordkeeping.* All persons who make electioneering communications

or who accept donations for the purpose of making electioneering communications must maintain records in accordance with 11 CFR 104.14.

(e) *State waivers.* Statements of electioneering communications that must be filed with the Commission must also be filed with the Secretary of State of the appropriate State if the State has not obtained a waiver under 11 CFR 108.1(b).

[68 FR 419, Jan. 3, 2003; 68 FR 5075, Jan. 31, 2003, as amended at 72 FR 72913, Dec. 26, 2007; 80 FR 62816, Oct. 21, 2014]

§104.21 Reporting by inaugural committees.

(a) *Definitions*—(1) *Inaugural committee.* Inaugural committee means the committee appointed by the President-elect to be in charge of the Presidential inaugural ceremony and functions and activities connected with the inaugural ceremony.

(2) *Donation.* For purposes of this section, donation has the same meaning as in 11 CFR 300.2(e).

(b) *Initial letter-filing by inaugural committees.* (1) In order to be considered the inaugural committee under 36 U.S.C. Chapter 5, within 15 days of appointment by the President-elect, the appointed committee must file a signed letter with the Commission containing the following:

(i) The name and address of the inaugural committee;

(ii) The name of the chairperson, or the name and title of another officer who will serve as the point of contact; and

(iii) A statement agreeing to comply with paragraphs (c) and (d) of this section and with 11 CFR 110.20(j).

(2) Upon receipt of the letter filed under this paragraph (b), the Commission will assign a FEC committee identification number to the inaugural committee. The inaugural committee must include this FEC committee identification number on all reports and supplements thereto required under paragraph (c) of this section, as well as on all communications with the Commission concerning the letter filed under this paragraph (b).

(c) *Reporting requirements for inaugural committees*—(1) *Who must report.* The chairperson or other officer identified in the letter-filing required by paragraph (b) of this section must file a report and any supplements thereto as required by this paragraph (c). Such person must sign the report and any supplements thereto in accordance with 11 CFR 104.14(a). The signature on the report and any supplements thereto certifies that the contents are true, correct, and complete, to the best of knowledge of the chairperson or other officer identified in the letter-filing required by paragraph (b) of this section.

(2) *When to file.* A report, and any supplements thereto, must be timely filed in accordance with 11 CFR 100.19 as follows:

(i) *Report.* An inaugural committee must file a report with the Commission no later than the 90th day following the date on which the Presidential inaugural ceremony is held.

(ii) *Supplements to the report.* (A) An inaugural committee must file a supplement to its report if it accepts a reportable donation, or makes a refund during the 90 days following the end of the covering period of its original report or its most recent supplement.

(B) Any supplement must be filed no later than the 90th day following the filing date of an original report, or if a supplement has already been filed, the filing date of the most recent supplement.

(3) *Where to file.* All letters, reports, and any supplements thereto, as required under this section, shall be filed with the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(4) *How to file.* An inaugural committee must file its letter, report, and any supplements thereto, in original form; however, an inaugural committee may choose to file its reports in an electronic format that meets the requirements of 11 CFR 104.18.

(5) *Form.* An inaugural committee must file the report required by this paragraph on FEC Form 13.

(6) *Content of report.* Each report, and any supplements thereto, filed with the Commission under this section must contain the following:

(i) Covering period beginning and ending dates, as follows:

(A) The covering period of a report means the period of time beginning on

the date of the inaugural committee's appointment by the President-elect and ending no earlier than 15 days before the day on which the inaugural committee files its report with the Commission.

(B) The covering period of a supplement to the report means the period of time beginning on the day after the ending date of the covering period of the original report, or the most recent supplement thereto, and ending no earlier than 15 days before the day on which the inaugural committee files such supplement with the Commission.

(ii) Cumulative totals from the date of the inaugural committee's appointment by the President-elect for all:

(A) Donations reported under paragraph (c)(6)(iii) of this section;

(B) Refunds reported under paragraph (c)(6)(iv) of this section; and

(C) Net reported donations;

(iii) Itemization of previously unreported donations of $200 or more, and donations that aggregate $200 or more, including:

(A) The full name of each person who made such a donation, including first name, middle name or initial, if available, and last name, in the case of an individual;

(B) The address of each such person;

(C) The amount of each such donation; and

(D) The date of receipt of each such donation; and

(iv) Itemization of previously unreported refunds of previously, or contemporaneously, reported donations, including:

(A) The full name of each person to whom such a refund was made, including first name, middle name or initial, if available, and last name, in the case of an individual;

(B) The address of each such person;

(C) The amount of each such refund; and

(D) The date of each such refund.

(d) *Recordkeeping.* All inaugural committees must maintain records in accordance with 11 CFR 104.14.

[69 FR 59779, Oct. 6, 2004]

§ 104.22 Disclosure of bundling by Lobbyist/Registrants and Lobbyist/Registrant PACs (52 U.S.C. 30104(i)).

(a) *Definitions.* (1) *Reporting Committee. Reporting committee* means:

(i) An authorized committee of a Federal candidate as defined at 11 CFR 100.5(f)(1);

(ii) A leadership PAC as defined at 11 CFR 100.5(e)(6); or

(iii) A party committee as defined at 11 CFR 100.5(e)(4).

(2) *Lobbyist/Registrant. Lobbyist/registrant* means a person who, at the time a contribution is forwarded to, or is received by, a reporting committee, is:

(i) A current registrant under Section 4(a) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(a)); or

(ii) An individual who is named on a current registration or current report filed under Section 4(b)(6) or 5(b)(2)(C) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(b)(6) or 1604(b)(2)(C)).

(3) *Lobbyist/Registrant PAC. Lobbyist/registrant PAC* means any political committee that a lobbyist/registrant "established or controls," as defined in paragraph (a)(4) of this section.

(4) *Established or Controls.* (i) For purposes of this section only, a lobbyist/registrant established or controls any political committee that the lobbyist/registrant is required to disclose to the Secretary of the U. S. Senate or Clerk of the U.S. House of Representatives as being established or controlled by that lobbyist/registrant under Section 203 of the Honest Leadership and Open Government Act of 2007, amending the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(d)(1)(C)).

(ii) If, after consulting guidance from the offices of the Secretary of the Senate or Clerk of the U.S House of Representatives, or communicating with such offices, a political committee is unable to ascertain whether it is established or controlled by a lobbyist/registrant, a lobbyist/registrant will be deemed to have established or to control a political committee if:

(A) The political committee is a separate segregated fund with a current registrant under Section 4(a) of the Lobbying Disclosure Act (2 U.S.C. 1603(a)) as its connected organization; or

(B) The political committee meets either of the following criteria:

(1) A lobbyist/registrant had a primary role in the establishment of the political committee, excluding the provision of legal or compliance services or advice; or

(2) A lobbyist/registrant directs the governance or operations of the political committee, excluding the provision of legal or compliance services or advice.

(5) *Covered Period. Covered period* means:

(i) *Semi-annually.* The semi-annual periods of January 1 through June 30, and July 1 through December 31; and the period described in paragraph (a)(5)(ii), (iii) or (iv), below, that applies to the reporting committee.

(ii) *Quarterly.* For reporting committees that file campaign finance reports under 11 CFR 104.5 on a quarterly basis, the covered period also includes the quarters beginning on January 1, April 1, July 1, and October 1 of each calendar year and the applicable pre- and post-election reporting periods in election years; in a nonelection year, reporting committees not authorized by a candidate need only observe the semi-annual period described in paragraph (a)(5)(i) above; or

(iii) *Monthly.* For reporting committees that file monthly campaign finance reports under 11 CFR 104.5, the covered period also includes each month in the calendar year, except that in election years the pre- and post-general election reporting periods shall constitute the covered period in lieu of the monthly November and December reporting periods.

(iv) *Alternative for monthly filers.* Any reporting committee that files monthly campaign finance reports under 11 CFR 104.5 may choose to file reports pursuant to the quarterly covered period in paragraph (a)(5)(ii) of this section instead of the monthly covered period in paragraph (a)(5)(iii) of this section. It shall do so by notifying the Commission in writing of its intention to do so at the time the reporting committee files a monthly report under paragraph (a)(5)(iii) of this section. The reporting committee will be required to file its next report under the new filing frequency. The reporting committee may change its filing frequency no more than once per calendar year.

(v) *Runoffs and Special Elections.* For special elections and runoff elections set by State law, the covered period shall be the same as the reporting periods set under 11 CFR 104.5(h).

(6) *Bundled Contribution. Bundled contribution* means any contribution that meets the definition set forth in either paragraph (i) or (ii) below:

(i) *Forwarded contribution* means a contribution delivered or transmitted, by physical or electronic means, to the reporting committee by a lobbyist/registrant or lobbyist/registrant PAC, or by any person that the reporting committee knows to be forwarding such contribution on behalf of a lobbyist/registrant or lobbyist/registrant PAC.

(ii) *Received and credited contribution* means a contribution received by the reporting committee from the contributor or contributors, and credited by the reporting committee or candidate involved to a lobbyist/registrant or lobbyist/registrant PAC through records, designations, or other means of recognizing that a certain amount of money has been raised by the lobbyist/registrant or lobbyist/registrant PAC.

(A) *Records, designations, or other means of recognizing. Records* means written evidence (including writings, charts, computer files, tables, spreadsheets, databases, or other data or data compilations stored in any medium from which information can be obtained) that the reporting committee or candidate involved attributes to a lobbyist/registrant or lobbyist/registrant PAC contributions raised by that person or entity and received by the reporting committee.

Designations or other means of recognizing bundled contributions means benefits given by the reporting committee to persons for raising a certain amount of contributions, including but not limited to:

(1) Titles that the reporting committee assigns to persons who have raised a certain amount of contributions;

(2) Tracking identifiers that the reporting committee assigns and that are included on contributions or contributions-related materials (for example,

contributor response devices, cover letters, or Internet Web site solicitation pages) for the purpose of maintaining information about the amounts of contributions that a person raises;

(3) Access (including offers or attendance) to events or activities given to the lobbyist/registrant or lobbyist/registrant PAC by the reporting committee as a result of raising a certain amount of contributions; and

(4) Mementos, such as photographs with the candidate or autographed copies of books authored by the candidate, given by the reporting committee to persons who have raised a certain amount of contributions.

(B) *The candidate involved. The candidate involved* means the candidate by whom the authorized committee is authorized; the candidate or individual holding Federal office who directly or indirectly established, finances, maintains or controls the leadership PAC; or the chairman of the committee in the case of a political party committee.

(iii) Bundled contributions do not include contributions made by the lobbyist/registrant PAC or from the personal funds of the lobbyist/registrant that forwards or is credited with raising the contributions or the personal funds of that person's spouse.

(b) *Reporting requirement for reporting committees*—(1) *FEC Form 3L.* Each reporting committee must file FEC Form 3L (Report of Contributions Bundled by Lobbyist/Registrants and Lobbyist/Registrant PACs) if it has received two or more bundled contributions (*see* paragraph (a)(6)) forwarded by or received and credited to a person reasonably known by the reporting committee to be a lobbyist/registrant or lobbyist/registrant PAC aggregating in excess of $15,000 during the covered period. The form shall set forth:

(i) The name of each lobbyist/registrant or lobbyist/registrant PAC;

(ii) The address of each lobbyist/registrant or lobbyist/registrant PAC;

(iii) The employer of each lobbyist/registrant; and

(iv) The aggregate amount of bundled contributions forwarded by or received and credited to each lobbyist/registrant or lobbyist/registrant PAC by the reporting committee during the covered period.

(2) *Determining whether a person is reasonably known to be a lobbyist/registrant or lobbyist/registrant PAC.* (i) In order to comply with paragraph (b)(1) of this section, a reporting committee must consult, in a manner reasonably calculated to find the name of each person who is a lobbyist/registrant or lobbyist/registrant PAC, the Web sites maintained by the Clerk of the House of Representatives, the Secretary of the Senate, and the Federal Election Commission to determine whether, at the time a contribution was forwarded to, or received by, the reporting committee:

(A) The person was listed as a current registrant under Section 4(a) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603(a)):

(B) The person was an individual listed on a current registration filed under Section 4(b)(6) or a current report filed under Section 5(b)(2)(C) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1603 or 1604);

(C) The person identified itself as a lobbyist/registrant PAC on its Statement of Organization, FEC Form 1, filed with the Commission; or

(D) The person was listed as a political committee established or controlled by a lobbyist or registrant on a report filed under Sec. 203(a) of the Honest Leadership and Open Government Act of 2007, amending the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604).

(ii) A manner reasonably calculated to find the name of each person who is a lobbyist/registrant or lobbyist/registrant PAC may be demonstrated by the reporting committee producing a computer printout or screen capture from a Web browser indicating that the name of the person sought was not listed in the results of the Web site consultations performed in accordance with paragraph (b)(2)(i) of this section. Such a computer printout or screen capture shall constitute conclusive evidence that the reporting committee has consulted such Web sites and not found the name of the person sought, but shall not be the exclusive means by which the reporting committee may provide evidence that it has consulted

such Web sites and not found the name of the person sought.

(iii) A reporting committee shall be subject to the reporting requirement under paragraph (b)(1) of this section if it had actual knowledge that, at the time a contribution was forwarded or received, the person whose name is sought was required to be listed on any registration or report described in paragraph (b)(2)(i) of this section.

(c) *Lobbyist/Registrant PAC reporting requirements.* Any political committee that is a lobbyist/registrant PAC as defined in paragraph (a)(3) of this section must identify itself as such on FEC Form 1 either upon registration with the Commission if it is a new political committee, or by amendment in accordance with 11 CFR 102.2(a)(2) if it is a political committee registered with the Commission.

(d) *Where to file.* Reporting committees shall file either with the Secretary of the Senate or with the Federal Election Commission in accordance with 11 CFR part 105.

(e) *When to file.* Reporting committees must file the forms required under this section with the first report that they file under 11 CFR 104.5 following the end of each covered period.

(f) *Recordkeeping.* In addition to any requirements to maintain records and accounts under 11 CFR 102.8, 102.9 and 110.6, each reporting committee must maintain for three years after the filing of the report to which the information relates a record of any bundled contributions (*see* 11 CFR 104.22(a)(6)) provided by a lobbyist/registrant or lobbyist/registrant PAC that aggregate in excess of $15,000 for any covered period. The information required to be maintained is:

(1) The name and address of the lobbyist/registrant or lobbyist/registrant PAC;

(2) The employer of the lobbyist/registrant; and

(3) The aggregate amount of bundled contributions forwarded by or received and credited to each lobbyist/registrant or lobbyist/registrant PAC by the reporting committee during the covered period.

(g) *Price index increase.* (1) The threshold for reporting bundled contributions established in paragraph (b)(1) of this section shall be increased by the percent difference between the price index as defined at 11 CFR 110.17(d), as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(2) Each contribution bundling threshold so increased shall be the threshold in effect for that calendar year.

(3) For purposes of this paragraph (g), the term base period means calendar year 2006.

(4) If any amount after the increases under this paragraph (g) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

[74 FR 7302, Feb. 17, 2009]

PART 105—DOCUMENT FILING (52 U.S.C. 30102(g))

Sec.

105.1 Place of filing; House candidates and their authorized committees (52 U.S.C. 30102(g)(1)).
105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (52 U.S.C. 30102(g), 30104(g)(3)).
105.3 Place of filing; Presidential candidates and their principal campaign committees (52 U.S.C. 30102(g)(4)).
105.4 Place of filing; political committees and other persons (52 U.S.C. 30102(g)(4)).
105.5 Transmittal of microfilm copies and photocopies of original reports filed with the Secretary of the Senate to the Commission (52 U.S.C. 30102(g)(3)).

AUTHORITY: 52 U.S.C. 30102(g), 30104, 30111(a)(8).

SOURCE: 45 FR 15116, Mar. 7, 1980, unless otherwise noted.

§ 105.1 Place of filing; House candidates and their authorized committees (52 U.S.C. 30102(g)(1)).

All designations, statements, reports, and notices, as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress, by his or her authorized committee(s), shall

be filed in original form with, and received by, the Federal Election Commission.

[61 FR 3550, Feb. 1, 1996]

§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (52 U.S.C. 30102(g), 30104(g)(3)).

(a) *General Rule.* Except as provided in paragraph (b) of this section, all designations, statements, reports, and notices as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of United States Senator, by his or her principal campaign committee or by any other political committee(s) that supports only candidates for nomination for election or election to the Senate of the United States shall be filed in original form with, and received by, the Secretary of the Senate, as custodian for the Federal Election Commission.

(b) *Exceptions.* 24-hour and 48-hour reports of independent expenditures must be filed with the Commission and not with the Secretary of the Senate, even if the communication refers to a Senate candidate.

[69 FR 420, Jan. 3, 2003]

§ 105.3 Place of filing; Presidential candidates and their principal campaign committees (52 U.S.C. 30102(g)(4)).

All designations, statements, reports, and notices, as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102 and 104 by a candidate for nomination for election or election to the office of President or Vice President of the United States or by his or her principal campaign committee shall be filed in original form with the Federal Election Commission.

§ 105.4 Place of filing; political committees and other persons (52 U.S.C. 30102(g)(4)).

All designations, statements, reports, and notices, as well as any modifications or amendments thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a political committee other than any principal campaign committee or any committee referred to in 11 CFR 105.2 or 105.3, by persons other than political committees making independent expenditures under 11 CFR part 109, and by persons required to report the cost of communications under 11 CFR 104.6, shall be filed in original form with the Federal Election Commission.

[45 FR 15116, Mar. 7, 1980, as amended at 61 FR 3550, Feb. 1, 1996]

§ 105.5 Transmittal of microfilm copies and photocopies of original reports filed with the Secretary of the Senate to the Commission (52 U.S.C. 30102(g)(3)).

(a) Either a microfilmed copy or photocopy of all original designations, statements, reports, modifications or amendments required to be filed pursuant to 11 CFR 105.2 shall be transmitted by the Secretary of the Senate to the Commission as soon as possible, but in any case no later than two (2) working days after receiving such designations, statements, reports, modifications, or amendments.

(b) The Secretary of the Senate shall then forward to the Commission a microfilm copy and a photocopy of each designation, statement, and report, or any modification or amendment thereto, filed with the Secretary pursuant to 11 CFR 105.2.

(c) The Secretary of the Senate shall place a time and date stamp on each original designation, statement, report, modification or amendment received.

[61 FR 3550, Feb. 1, 1996]

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

Sec.

106.1 Allocation of expenses between candidates.
106.2 State allocation of expenditures incurred by authorized committees of Presidential primary candidates receiving matching funds.
106.3 Allocation of expenses between campaign and non-campaign related travel.
106.4 Allocation of polling expenses.
106.5 Allocation of expenses between federal and non-federal activities by national party committees.

106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.
106.7 Allocation of expenses between Federal and non-Federal accounts by party committees, other than for Federal election activities.
106.8 Allocation of expenses for political party committee phone banks that refer to a clearly identified Federal candidate.

AUTHORITY: 52 U.S.C. 30111(a)(8), 30116(b), 30116(g).

§106.1 Allocation of expenses between candidates.

(a) *General rule.* (1) Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified Federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. In the case of a fundraising program or event where funds are collected by one committee for more than one clearly identified candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates. In the case of a phone bank, the attribution shall be determined by the number of questions or statements devoted to each candidate as compared to the total number of questions or statements devoted to all candidates. These methods shall also be used to allocate payments involving both expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-Federal candidates.

(2) An expenditure made on behalf of more than one clearly identified Federal candidate shall be reported pursuant to 11 CFR 104.10(a) or 104.17(a), as appropriate. A payment that also includes amounts attributable to one or more non-Federal candidates, and that is made by a political committee with separate Federal and non-Federal accounts, shall be made according to the procedures set forth in 11 CFR 106.6(e) or 106.7(f), but shall be reported pursuant to 11 CFR 104.10(a) or 104.17(a). If a State, district, or local party committee's payment on behalf of both a Federal candidate and a non-Federal candidate is for a Federal election activity, only Federal funds may be used for the entire payment. For Federal election activities, the provisions of 11 CFR 300.33 and 104.17(a) will apply to payments attributable to candidates.

(b) An authorized expenditure made by a candidate or political committee on behalf of another candidate shall be reported as a contribution in-kind (transfer) to the candidate on whose behalf the expenditure was made, except that expenditures made by party committees pursuant to §109.32 or 109.33 need only be reported as an expenditure.

(c) *Exceptions:* (1) Expenditures for rent, personnel, overhead, general administrative, fund-raising, and other day-to-day costs of political committees need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.

(2) Expenditures for educational campaign seminars, for training of campaign workers, and for registration or get-out-the-vote drives of committees need not be attributed to individual candidates unless these expenditures are made on behalf of a clearly identified candidate, and the expenditure can be directly attributed to that candidate.

(3) Payments made for the cost of certain voter registration and get-out-the-vote activities conducted by State or local party organizations on behalf of any Presidential or Vice-Presidential candidate(s) are exempt from the definition of a contribution or an expenditure under 11 CFR 100.89 and 100.149. If the State or local party organization includes references to any candidate(s) seeking nomination or election to the House of Representatives or Senate of the United States the portion of the cost of such activities allocable to such candidate(s) shall be considered a contribution to or an

expenditure on behalf of such candidate(s), unless such reference is incidental to the overall activity. If such reference is incidental to the overall activity, such costs shall not be considered a contribution to or expenditure on behalf of any candidate(s).

(d) For purposes of this section, *clearly identified* shall have the same meaning as set forth at 11 CFR 100.17.

(e) State, district, and local party committees, separate segregated funds, and nonconnected committees that make mixed Federal/non-Federal payments for activities other than an activity entailing an expenditure for a Federal candidate and disbursement for a non-Federal candidate, or that make mixed Federal/Levin fund payments, shall allocate those expenses in accordance with 11 CFR 106.6, 106.7, or 300.33, as appropriate.

(52 U.S.C. 30111(a)(8))

[41 FR 35944, Aug. 25, 1976, as amended at 45 FR 15117, Mar. 7, 1980; 45 FR 21209, Apr. 1, 1980; 55 FR 26069, June 26, 1990; 60 FR 35305, July 6, 1995; 67 FR 49115, July 29, 2002; 67 FR 78681, Dec. 26, 2002]

§ 106.2 State allocation of expenditures incurred by authorized committees of Presidential primary candidates receiving matching funds.

(a) *General*—(1) This section applies to Presidential primary candidates receiving or expecting to receive federal matching funds pursuant to 11 CFR parts 9031 *et seq.* The expenditures described in 11 CFR 106.2(b)(2) shall be allocated to a particular State if incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable. Expenditures required to be allocated to the primary election under 11 CFR 9034.4(c) shall also be allocated to particular states in accordance with this section.

(2) Disbursements made prior to the time an individual becomes a candidate for the purpose of determining whether that individual should become a candidate pursuant to 11 CFR 100.72(a) and 100.131(a), *i.e.*, payments for testing the waters, shall be allocable expenditures under this section if the individual becomes a candidate.

(b) *Method of allocating expenditures among States*—(1) *General allocation method.* Unless otherwise specified under 11 CFR 106.2(b)(2), an expenditure described in 11 CFR 106.2(b)(2) and incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate in more than one State shall be allocated to each State on a reasonable and uniformly applied basis. The total amount allocated to a particular State may be reduced by the amount of exempt fundraising expenses for that State, as specified in 11 CFR 110.8(c)(2).

(2) *Specific allocation methods.* Expenditures that fall within the categories listed below shall be allocated based on the following methods. The method used to allocate a category of expenditures shall be based on consistent data for each State to which an allocation is made.

(i) *Media expenditures*—(A) *Print media.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(i) (E) and (F), allocation of expenditures for the publication and distribution of newspaper, magazine and other types of printed advertisements distributed in more than one State shall be made using relative circulation percentages in each State or an estimate thereof. For purposes of this section, allocation to a particular State will not be required if less than 3% of the total estimated readership of the publication is in that State.

(B) *Broadcast media.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(i) (E) and (F), expenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, shall be made using industry market data. If industry market data is not available, the committee

shall obtain market data from the media carrier transmitting the advertisement(s).

(C) *Refunds for media expenditures.* Refunds for broadcast time or advertisement space, purchased but not used, shall be credited to the States on the same basis as the original allocation.

(D) *Limits on allocation of media expenditures.* No allocation of media expenditures shall be made to any State in which the primary election has already been held.

(E) *National advertising.* Expenditures incurred for advertisements on national networks, national cable or in publications distributed nationwide need not be allocated to any State.

(F) *Media production costs.* Expenditures incurred for production of media advertising, whether or not that advertising is used in more than one State, need not be allocated to any State.

(G) *Commissions.* Expenditures for commissions, fees and other compensation for the purchase of broadcast or print media need not be allocated to any State.

(ii) *Expenditures for mass mailings and other campaign materials.* Expenditures for mass mailings of more than 500 pieces to addresses in the same State, and expenditures for shipping campaign materials to a State, including pins, bumperstickers, handbills, brochures, posters and yardsigns, shall be allocated to that State. For purposes of this section, *mass mailing* includes newsletters and other materials in which the content of the materials is substantially identical. Records supporting the committee's allocations under this section shall include: For each mass mailing, documentation showing the total number of pieces mailed and the number mailed to each state or zip code; and, for other campaign materials acquired for use outside the State of purchase, records relating to any shipping costs incurred for transporting these items to each State.

(iii) *Overhead expenditures*—(A) *Overhead expenditures of State offices and other facilities.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(iii)(C), overhead expenditures of committee offices whose activities are directed at a particular State, and the costs of other facilities used for office functions and campaign events, shall be allocated to that State. An amount that does not exceed 10% of office overhead expenditures for a particular State may be treated as exempt compliance expenses, and may be excluded from allocation to that State.

(B) *Overhead expenditures of regional offices.* Except for expenditures exempted under 11 CFR 106.2(b)(2)(iii)(C), overhead expenditures of a committee regional office or any committee office with responsibilities in two or more States shall be allocated to the State holding the next primary election, caucus or convention in the region. The committee shall maintain records to demonstrate that an office operated on a regional basis. These records should show, for example, the kinds of programs conducted from the office, the number and nature of contacts with other States in the region, and the amount of time devoted to regional programs by staff working in the regional office.

(C) *Overhead expenditures of national campaign headquarters.* Expenditures incurred for administrative, staff, and overhead expenditures of the national campaign headquarters need not be allocated to any State, except as provided in paragraph (b)(2)(iv) of this section.

(D) *Definition of overhead expenditures.* For purposes of 11 CFR 106.2(b)(2)(iii), overhead expenditures include, but are not limited to, rent, utilities, equipment, furniture, supplies, and telephone service base charges. "Telephone service base charges" include any regular monthly charges for committee phone service, and charges for phone installation and intrastate phone calls other than charges related to a special program under 11 CFR 106.2(b)(2)(iv). Inter-state calls are not included in "telephone service base charges." Overhead expenditures also include the costs of temporary offices established while the candidate is traveling in the State or in the final weeks before the primary election, as well as expenses paid by campaign staff and subsequently reimbursed by the committee, such as miscellaneous supplies, copying, printing and telephone expenses. See 11 CFR 116.5.

(iv) *Expenditures for special telephone programs.* Expenditures for special telephone programs targeted at a particular State, including the costs of designing and operating the program, the costs of installing or renting telephone lines and equipment, toll charges, personnel costs, consultants' fees, related travel costs, and rental of office space, including a *pro rata* portion of national, regional or State office space used for such purposes, shall be allocated to that State based on the percentage of telephone calls made to that State. Special telephone programs include voter registration, get out the vote efforts, fundraising, and telemarketing efforts conducted on behalf of the candidate. A special telephone program is targeted at a particular State if 10% or more of the total telephone calls made each month are made to that State. Records supporting the committee's allocation of each special telephone program under this section shall include either the telephone bills showing the total number of calls made in that program and the number made to each State; or, a copy of the list used to make the calls, from which these numbers can be determined.

(v) *Public opinion poll expenditures.* Expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State. Except for expenditures incurred in conducting a public opinion poll on a nationwide basis, expenditures incurred for the taking of a public opinion poll covering two or more States shall be allocated to those States based on the number of people interviewed in each State. Expenditures incurred for the taking of a public opinion poll include consultant's fees, travel costs and other expenses associated with designing and conducting the poll. Records supporting the committee's allocation under this section shall include documentation showing the total number of people contacted for each poll and the number contacted in each State.

(3) *National consulting fees.* Expenditures for consultants' fees need not be allocated to any State if the fees are charged for consulting on national campaign strategy. Expenditures for consultants' fees charged for conducting special telephone programs and public opinion polls shall be allocated in accordance with paragraphs (b)(2) (iv) and (v) of this section.

(c) *Reporting.* All expenditures allocated under this section shall be reported on FEC Form 3P, page 3.

(d) *Recordkeeping.* All assumptions and supporting calculations for allocations made under this section shall be documented and retained for Commission inspection. In addition to the records specified in paragraph (b) of this section, the treasurer shall retain records supporting the committee's allocations of expenditures to particular States and claims of exemption from allocation under this section. If the records supporting the allocation or claim of exemption are not retained, the expenditure shall be considered allocable and shall be allocated to the State holding the next primary election, caucus or convention after the expenditure is incurred.

[56 FR 35909, July 29, 1991, as amended at 60 FR 31872, June 16, 1995; 67 FR 78681, Dec. 26, 2002]

§ 106.3 Allocation of expenses between campaign and non-campaign related travel.

(a) This section applies to allocation for expenses between campaign and non-campaign related travel with respect to campaigns of candidates for Federal office, other than Presidential and Vice Presidential candidates who receive federal funds pursuant to 11 CFR part 9005 or 9036. (See 11 CFR 9004.7 and 9034.7) All expenditures for campaign-related travel paid for by a candidate from a campaign account or by his or her authorized committees or by any other political committee shall be reported.

(b)(1) Travel expenses paid for by a candidate from personal funds, or from a source other than a political committee, shall constitute reportable expenditures if the travel is campaign-related.

(2) Where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes are reportable, and are calculated on the actual cost-per-mile of the means of transportation actually used, starting

at the point of origin of the trip, via every campaign-related stop and ending at the point of origin.

(3) Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.

(c)(1) Where an individual, other than a candidate, conducts campaign-related activities on a trip, the portion of the trip attributed to each candidate shall be allocated on a reasonable basis.

(2) Travel expenses of a candidate's spouse and family are reportable as expenditures only if the spouse or family members conduct campaign-related activities.

(d) Costs incurred by a candidate for the United States Senate or House of Representatives for travel between Washington, DC, and the State or district in which he or she is a candidate need not be reported herein unless the costs are paid by a candidate's authorized committee(s), or by any other political committee(s).

(e) Notwithstanding paragraphs (b) and (c) of this section, the reportable expenditure for a candidate who uses government accommodations for travel that is campaign-related is the rate for comparable accommodations. The reportable expenditure for a candidate who uses a government conveyance for travel that is campaign-related is the applicable rate for a comparable commercial conveyance set forth in 11 CFR 100.93(c). In the case of a candidate authorized by law or required by national security to be accompanied by staff and equipment, the allocable expenditures are the costs of facilities sufficient to accommodate the party, less authorized or required personnel and equipment. If such a trip includes both campaign and noncampaign stops, equivalent costs are calculated in accordance with paragraphs (b) and (c) of this section.

(52 U.S.C. 30111(a)(8))

[41 FR 35944, Aug. 25, 1976, as amended at 45 FR 15117, Mar. 7, 1980; 45 FR 43887, June 27, 1980; 48 FR 5234, Feb. 4, 1983; 68 FR 69595, Dec. 15, 2003]

§ 106.4 Allocation of polling expenses.

(a) The purchase of opinion poll results by a candidate or a candidate's authorized political committee or agent is an expenditure by the candidate. Regarding the purchase of opinion poll results for the purpose of determining whether an individual should become a candidate, see 11 CFR 100.131(a).

(b) The purchase of opinion poll results by a political committee or other person not authorized by a candidate to make expenditures and the subsequent acceptance of the poll results by a candidate or a candidate's authorized political committee or agent or by another unauthorized political committee is a contribution in-kind by the purchaser to the candidate or other political committee and an expenditure by the candidate or other political committee. Regarding the purchase of opinion poll results for the purpose of determining whether an individual should become a candidate, see 11 CFR 100.72(a). The poll results are accepted by a candidate or other political committee if the candidate or the candidate's authorized political committee or agent or the other unauthorized political committee—

(1) Requested the poll results before their receipt;

(2) Uses the poll results; or

(3) Does not notify the contributor that the results are refused.

(c) The acceptance of any part of a poll's results which part, prior to receipt, has been made public without any request, authorization, prearrangement, or coordination by the candidate-recipient or political committee-recipient, shall not be treated as a contribution in-kind and expenditure under paragraph (b) of this section.

(d) The purchase of opinion poll results by an unauthorized political committee for its own use, in whole or in part, is an overhead expenditure by the political committee under §106.1(c)(1) to the extent of the benefit derived by the committee.

(e) The amount of a contribution under paragraph (b) of this section or of any expenditure under paragraphs (a) and (b) of this section attributable

to each candidate-recipient or political committee-recipient shall be—

(1) That share of the overall cost of the poll which is allocable to each candidate (including State and local candidates) or political committee, based upon the cost allocation formula of the polling firm from which the results are purchased. Under this method the size of the sample, the number of computer column codes, the extent of computer tabulations, and the extent of written analysis and verbal consultation, if applicable, may be used to determine the shares; or

(2) An amount computed by dividing the overall cost of the poll equally among candidates (including State and local candidates) or political committees receiving the results; or

(3) A proportion of the overall cost of the poll equal to the proportion that the number of question results received by the candidate or political committee bears to the total number of question results received by all candidates (including State and local candidates) and political committees; or

(4) An amount computed by any other method which reasonably reflects the benefit derived.

(f) The first candidate(s) or committee(s) receiving poll results under paragraph (b) or (d) of this section and any candidate or political committee receiving poll results under paragraph (b) of this section within 15 days after receipt by the initial recipient(s) shall compute the amount of the contribution in-kind and the expenditure as provided in paragraph (e) of this section.

(g) The amount of the contribution and expenditure reported by a candidate or a political committee receiving poll results under paragraph (b) of this section more than 15 days after receipt of such poll results by the initial recipient(s) shall be—

(1) If the results are received during the period 16 to 60 days following receipt by the initial recipient(s), 50 percent of the amount allocated to an initial recipient of the same results;

(2) If the results are received during the period 61 to 180 days after receipt by the initial recipient(s), 5 percent of the amount allocated to an initial recipient of the same results;

(3) If the results are received more than 180 days after receipt by the initial recipient(s), no amount need be allocated.

(h) A contributor of poll results under paragraph (b) of this section shall maintain records sufficient to support the valuation of the contribution(s) in-kind and shall inform the candidate-recipient(s) or political committee-recipient(s) of the value of the contribution(s).

[41 FR 35944, Aug. 25, 1976, as amended at 45 FR 21209, Apr. 1, 1980; 67 FR 78681, Dec. 26, 2002]

§ 106.5 Allocation of expenses between federal and non-federal activities by national party committees.

(a) *General rules*—(1) *Disbursements from Federal and non-Federal accounts.* National party committees that make disbursements in connection with Federal and non-Federal elections shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Political committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to this section. Organizations that are not political committees but have established separate Federal and non-Federal accounts under 11 CFR 102.5(b)(1)(i), or that make Federal and non-Federal disbursements from a single account under 11 CFR 102.5(b)(1)(ii), shall also allocate their Federal and non-Federal expenses according to this section. This section covers:

(i) General rules regarding allocation of Federal and non-Federal expenses by party committees;

(ii) Percentages to be allocated for administrative expenses and costs of generic voter drives by national party committees;

(iii) Methods for allocation of administrative expenses, costs of generic voter drives, and of fundraising costs by national party committees; and

(iv) Procedures for payment of allocable expenses. Requirements for reporting of allocated disbursements are set forth in 11 CFR 104.10.

(2) *Costs to be allocated.* National party committees that make disbursements in connection with Federal and non-Federal elections shall allocate expenses according to this section for the following categories of activity:

(i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where Federal and non-Federal funds are collected by one committee through such program or event; and

(iii) [Reserved]

(iv) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

(b) *National party committees other than Senate or House campaign committees; fixed percentages for allocating administrative expenses and costs of generic voter drives*—(1) *General rule.* Each national party committee other than a Senate or House campaign committee shall allocate a fixed percentage of its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, to its Federal and non-Federal account(s) each year. These percentages shall differ according to whether or not the allocable expenses were incurred in a presidential election year. Such committees shall allocate the costs of each combined Federal and non-Federal fundraising program or event according to paragraph (f) of this section, with no fixed percentages required.

(2) *Fixed percentages according to type of election year.* National party committees other than the Senate or House campaign committees shall allocate their administrative expenses and costs of generic voter drives according to paragraphs (b)(2) (i) and (ii) as follows:

(i) *Presidential election years.* In presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their Federal accounts at least 65% each of their administrative expenses and costs of generic voter drives.

(ii) *Non-presidential election years.* In all years other than presidential election years, national party committees other than the Senate or House campaign committees shall allocate to their Federal accounts at least 60% each of their administrative expenses and costs of generic voter drives.

(c) *Senate and House campaign committees of a national party; method and minimum Federal percentage for allocating administrative expenses and costs of generic voter drives*—(1) *Method for allocating administrative expenses and costs of generic voter drives.* Subject to the minimum percentage set forth in paragraph (c)(2) of this section, each Senate or House campaign committee of a national party shall allocate its administrative expenses and costs of generic voter drives, as described in paragraph (a)(2) of this section, according to the funds expended method, described in paragraphs (c)(1)(i) and (ii) as follows:

(i) Under this method, expenses shall be allocated based on the ratio of Federal expenditures to total Federal and non-Federal disbursements made by the committee during the two-year Federal election cycle. This ratio shall be estimated and reported at the beginning of each Federal election cycle, based upon the committee's Federal and non-Federal disbursements in a prior comparable Federal election cycle or upon the committee's reasonable prediction of its disbursements for the coming two years. In calculating its Federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total Federal and non-Federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs.

(ii) On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual Federal and non-Federal disbursements made, to date. If the non-Federal account has paid more than its allocable share, the committee shall

transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports, submitted pursuant to 11 CFR 104.5.

(2) *Minimum Federal percentage for administrative expenses and costs of generic voter drives.* Regardless of the allocation ratio calculated under paragraph (c)(1) of this section, each Senate or House campaign committee of a national party shall allocate to its Federal account at least 65% each of its administrative expenses and costs of generic voter drives each year. If the committee's own allocation calculation under paragraph (c)(1) of this section yields a Federal share greater than 65%, then the higher percentage shall be applied. If such calculation yields a Federal share lower than 65%, then the committee shall report its calculated ratio according to 11 CFR 104.10(b), and shall apply the required minimum Federal percentage.

(3) *Allocation of fundraising costs.* Senate and House campaign committees shall allocate the costs of each combined Federal and non-Federal fundraising program or event according to paragraph (f) of this section, with no minimum percentages required.

(d)-(e) [Reserved]

(f) *National party committees; method for allocating direct costs of fundraising.* (1) If Federal and non-Federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising, as described in paragraph (a)(2) of this section, according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its Federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its Federal and non-Federal revenue from that program or event, and shall be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio.

(2) No later than the date 60 days after each fundraising program or event from which both Federal and non-Federal funds are collected, the committee shall adjust the allocation ratio for that program or event to reflect the actual ratio of funds received. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. If the Federal account has paid more than its allocable share, the committee shall make any transfers of funds from its non-federal to its federal account to reflect the adjusted allocation ratio within the 60-day time period established by this paragraph. The committee shall make note of any such adjustments and transfers in its report for any period in which a transfer was made, and shall also report the date of the fundraising program or event that serves as the basis for the transfer. In the case of a telemarketing or direct mail campaign, the date for purposes of this paragraph is the last day of the telemarketing campaign, or the day on which the final direct mail solicitations are mailed.

(g) *Payment of allocable expenses by committees with separate Federal and non-Federal accounts*—(1) *Payment options.* Committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i) shall pay the expenses of joint Federal and non-Federal activities described in paragraph (a)(2) of this section according to either paragraph (g)(1)(i) or (ii), as follows:

(i) *Payment by Federal account; transfers from non-Federal account to Federal account.* The committee shall pay the entire amount of an allocable expense from its Federal account and shall transfer funds from its non-Federal account to its Federal account solely to cover the non-Federal share of that allocable expense.

(ii) *Payment by separate allocation account; transfers from Federal and non-Federal accounts to allocation account.* (A) The committee shall establish a separate allocation account into which

funds from its Federal and non-Federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint Federal and non-Federal activities. Once a committee has established a separate allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its Federal and non-Federal accounts to its allocation account in amounts proportionate to the Federal or non-Federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) *Timing of transfers between accounts.* (i) Under either payment option described in paragraphs (g)(1)(i) or (ii) of this section, the committee shall transfer funds from its non-Federal account to its Federal account or from its Federal and non-Federal accounts to its separate allocation account following determination of the final cost of each joint Federal and non-Federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as determined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-Federal account to its Federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

(B) Except as provided in paragraph (f)(2) of this section, such funds may not be transferred more than 10 days before or more than 60 days after the payments for which they are designated are made.

(iii) Any portion of a transfer from a committee's non-Federal account to its Federal account or its allocation account that does not meet the requirements of paragraph (g)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-Federal account to a Federal account, in violation of the Act.

(3) *Reporting transfers of funds and allocated disbursements.* A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

(h) *Sunset provision.* This section applies from November 6, 2002, to December 31, 2002. After December 31, 2002, *see* 11 CFR 106.7(a).

[67 FR 49116, July 29, 2002]

§ 106.6 Allocation of expenses between federal and non-federal activities by separate segregated funds and nonconnected committees.

(a) *General rule.* Separate segregated funds and nonconnected committees that make disbursements in connection with federal and non-federal elections shall make those disbursements either entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5. Separate segregated funds and nonconnected committees that have established separate federal and non-federal accounts under 11 CFR 102.5 (a)(1)(i), or that make federal and non-federal disbursements from a single account under 11 CFR 102.5(a)(1)(ii), shall allocate their federal and non-federal expenses according to paragraphs (c), (d), and (f) of this section. For purposes of this section, "nonconnected committee" includes any committee which conducts activities in connection with an election, but which is not a party committee, an authorized committee of any candidate for federal election, or a separate segregated fund.

(b) *Payments for administrative expenses, voter drives and certain public communications*—(1) *Costs to be allocated.* Separate segregated funds and nonconnected committees that make disbursements in connection with Federal and non-Federal elections shall allocate expenses for the following categories of activity in accordance with paragraphs (c) or (d) of this section:

(i) Administrative expenses including rent, utilities, office supplies, and salaries not attributable to a clearly identified candidate, except that for a separate segregated fund such expenses

may be paid instead by its connected organization;

(ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where Federal and non-Federal funds are collected through such program or event, except that for a separate segregated fund such expenses may be paid instead by its connected organization;

(iii) Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate; and

(iv) Public communications that refer to a political party, but do not refer to any clearly identified Federal or non-Federal candidate;

(2) *Costs not subject to allocation.* Separate segregated funds and nonconnected committees that make disbursements for the following categories of activity shall pay for those activities in accordance with paragraph (f) of this section:

(i) Voter drives, including voter identification, voter registration, and get-out-the-vote drives, in which the printed materials or scripted messages refer to, or the written instructions direct the separate segregated fund's or nonconnected committee's employee or volunteer to refer to:

(A) One or more clearly identified Federal candidates, but do not refer to any clearly identified non-Federal candidates; or

(B) One or more clearly identified Federal candidates and also refer to candidates of a particular party or associated with a particular issue, but do not refer to any clearly identified non-Federal candidates;

(ii) Voter drives, including voter identification, voter registration, and get-out-the-vote drives, in which the printed materials or scripted messages refer to, or the written instructions direct the separate segregated fund's or nonconnected committee's employee or volunteer to refer to:

(A) One or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates; or

(B) One or more clearly identified non-Federal candidates and also refer to candidates of a particular party or associated with a particular issue, but do not refer to any clearly identified Federal candidates;

(iii) Public communications that refer to one or more clearly identified Federal candidates, regardless of whether there is reference to a political party, but do not refer to any clearly identified non-Federal candidates; and

(iv) Public communications that refer to a political party, and refer to one or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates.

(c) [Reserved]

(d) *Method for allocating direct costs of fundraising.* (1) If federal and non-federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising, as described in paragraph (a)(2) of this section, according to the funds received method. Under this method, the committee shall allocate its fundraising costs based on the ratio of funds received into its federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its federal and non-federal revenue from that program or event, and shall be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event shall be allocated according to this estimated ratio.

(2) No later than the date 60 days after each fundraising program or event from which both federal and non-federal funds are collected, the committee shall adjust the allocation ratio for that program or event to reflect the actual ratio of funds received. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary,

to reflect the adjusted allocation ratio. If the federal account has paid more than its allocable share, the committee shall make any transfers of funds from its non-federal to its federal account to reflect the adjusted allocation ratio within the 60-day time period established by this paragraph. The committee shall make note of any such adjustments and transfers in its report for any period in which a transfer was made, and shall also report the date of the fundraising program or event which serves as the basis for the transfer. In the case of a telemarketing or direct mail campaign, the "date" for purposes of this paragraph is the last day of the telemarketing campaign, or the day on which the final direct mail solicitations are mailed.

(e) *Payment of allocable expenses by committees with separate federal and non-federal accounts*—(1) *Payment options.* Nonconnected committees and separate segregated funds that have established separate federal and non-federal accounts under 11 CFR 102.5 (a)(1)(i) shall pay the expenses of joint federal and non-federal activities described in paragraph (b) of this section according to either paragraph (e)(1)(i) or (ii), as follows:

(i) *Payment by federal account; transfers from non-federal account to federal account.* The committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

(ii) *Payment by separate allocation account; transfers from federal and non-federal accounts to allocation account.* (A) The committee shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities. Once a committee has established an allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

(B) The committee shall transfer funds from its federal and non-federal accounts to its allocation account in amounts proportionate to the federal or non-federal share of each allocable expense.

(C) No funds contained in the allocation account may be transferred to any other account maintained by the committee.

(2) *Timing of transfers between accounts.* (i) Under either payment option described in paragraphs (e)(1) (i) or (ii) of this section, the committee shall transfer funds from its non-federal account or from its federal and non-federal accounts to its separate allocation account following determination of the final cost of each joint federal and non-federal activity, or in advance of such determination if advance payment is required by the vendor and if such payment is based on a reasonable estimate of the activity's final cost as determined by the committee and the vendor(s) involved.

(ii) Funds transferred from a committee's non-federal account to its federal account or its allocation account are subject to the following requirements:

(A) For each such transfer, the committee must itemize in its reports the allocable activities for which the tranferred funds are intended to pay, as required by 11 CFR 104.10(b)(3); and

(B) Except as provided in paragraph (d)(2) of this section, such funds may not be transferred more than 10 days before or more than 60 days after the payments for which they are designated are made.

(iii) Any portion of a transfer from a committee's non-federal account to its federal account or its allocation account that does not meet the requirements of paragraph (e)(2)(ii) of this section shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act.

(3) *Reporting transfers of funds and allocated disbursements.* A political committee that transfers funds between accounts and pays allocable expenses according to this section shall report each such transfer and disbursement pursuant to 11 CFR 104.10(b).

(f) [Reserved]

NOTE TO 11 CFR 106.6: On November 30, 2009, the United States District Court for the District of Columbia ordered that paragraphs (c) and (f) of §106.6 are vacated. *See Final*

Order, EMILY's List v. *FEC*, No. 05-0049 (D.D.C. Nov. 30, 2009).

[55 FR 26071, June 26, 1990, as amended at 57 FR 8993, Mar. 13, 1992; 69 FR 68067, Nov. 23, 2004; 74 FR 68662, Dec. 29, 2009; 75 FR 13224, Mar. 19, 2010]

§ 106.7 Allocation of expenses between Federal and non-Federal accounts by party committees, other than for Federal election activities.

(a) National party committees are prohibited from raising or spending non-Federal funds. Therefore, these committees shall not allocate expenditures and disbursements between Federal and non-Federal accounts. All disbursements by a national party committee must be made from a Federal account.

(b) State, district, and local party committees that make expenditures and disbursements in connection with both Federal and non-Federal elections for activities that are not Federal election activities pursuant to 11 CFR 100.24 may use only funds subject to the prohibitions and limitations of the Act, or they may allocate such expenditures and disbursements between their Federal and their non-Federal accounts. State, district, and local party committees that are political committees that have established separate Federal and non-Federal accounts under 11 CFR 102.5(a)(1)(i) shall allocate expenses between those accounts according to paragraphs (c) and (d) of this section. Party organizations that are not political committees but have established separate Federal and non-Federal accounts, or that make Federal and non-Federal disbursements from a single account, shall also allocate their Federal and non-Federal expenses according to paragraphs (c) and (d) of this section. In lieu of establishing separate accounts, party organizations that are not political committees may choose to use a reasonable accounting method approved by the Commission (including any method embedded in software provided or approved by the Commission) pursuant to 11 CFR 102.5 and 300.30.

(c) *Costs allocable by State, district, and local party committees between Federal and non-Federal accounts*—(1) *Salaries, wages, and fringe benefits.* State, district, and local party committees must either pay salaries, wages, and fringe benefits for employees who spend 25% or less of their time in a given month on Federal election activity or activity in connection with a Federal election with funds from their Federal account, or with a combination of funds from their Federal and non-Federal accounts, in accordance with paragraph (d)(2) of this section. *See* 11 CFR 300.33(d)(1).

(2) *Administrative costs.* State, district, and local party committees may either pay administrative costs, including rent, utilities, office equipment, office supplies, postage for other than mass mailings, and routine building maintenance, upkeep and repair, from their Federal account, or allocate such expenses between their Federal and non-Federal accounts, except that any such expenses directly attributable to a clearly identified Federal candidate must be paid only from the Federal account.

(3) *Exempt party activities that are not Federal election activities.* State, district, and local party committees may pay expenses for party activities that are exempt from the definitions of contribution and expenditure under 11 CFR 100.80, 100.87 or 100.89, and 100.140, 100.147 or 100.149, that are conducted in conjunction with non-Federal activity, and that are not Federal election activities pursuant to 11 CFR 100.24, from their Federal accounts, or may allocate these expenses between their Federal and non-Federal accounts.

(4) *Certain fundraising costs.* State, district, and local party committees may allocate the direct costs of joint fundraising programs or events between their Federal and non-Federal accounts according to the funds received method described in paragraph (d)(4) of this section. The direct costs of a fundraising program or event include expenses for the solicitation of funds and for the planning and administration of actual fundraising programs and events.

(5) *Voter-drive activities that do not qualify as Federal election activities and that are not party exempt activities.* Expenses for voter identification, voter registration, and get-out-the-vote drives, and any other activities that urge the general public to register or

vote, or that promote or oppose a political party, without promoting or opposing a candidate or non-Federal candidate, that do not qualify as Federal election activities and that are not exempt party activities, must be paid with Federal funds or may be allocated between the committee's Federal and non-Federal accounts.

(d) *Allocation percentages, ratios, and record-keeping*—(1) *Salaries and wages.* Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election. Allocations of salaries and wages shall be undertaken as follows:

(i) Except as provided in paragraph (d)(1)(iii) of this section, salaries, wages, and fringe benefits paid for employees who spend 25% or less of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election must either be paid only from the Federal account or be allocated as administrative costs under paragraph (d)(2) of this section.

(ii) Salaries, wages, and fringe benefits paid for employees who spend more than 25% of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election must be paid only from a Federal account. *See* 11 CFR 300.33(d)(1), and paragraph (e)(2) of this section.

(iii) Salaries, wages, and fringe benefits paid for employees who spend none of their compensated time in a given month on Federal election activities or on activities in connection with a Federal election may be paid entirely with funds that comply with State law.

(2) *Administrative costs.* State, district, and local party committees that choose to allocate administrative expenses may do so subject to the following requirements:

(i) *Presidential election years.* In any even year in which a Presidential candidate, but no Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 28% of administrative expenses to their Federal accounts.

(ii) *Presidential and Senate election year.* In any even year in which a Presidential candidate and a Senate candidate appear on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 36% of administrative expenses to their Federal accounts.

(iii) *Senate election year.* In any even year in which a Senate candidate, but no Presidential candidate, appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 21% of administrative expenses to their Federal account.

(iv) *Non-Presidential and non-Senate year.* In any even year in which neither a Presidential nor a Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 15% of administrative expenses to their Federal account.

(3) *Exempt party activities and voter drive activities that are not Federal election activities.* State, district, and local party committees that choose to allocate expenses for exempt activities conducted in conjunction with non-Federal activities and voter drive activities, that are not Federal election activities, must do so subject to the following requirements:

(i) *Presidential election years.* In any even year in which a Presidential candidate, but no Senate candidate appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 28% of these expenses to their Federal accounts.

(ii) *Presidential and Senate election year.* In any even year in which a Presidential candidate and a Senate candidate appear on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 36% of these expenses to their Federal accounts.

(iii) *Senate election year.* In any even year in which a Senate candidate, but no Presidential candidate, appears on the ballot, and in the preceding year, State, district, and local party committees must allocate at least 21% of these expenses to their Federal account.

(iv) *Non-Presidential and non-Senate year.* In any even year in which neither a Presidential nor a Senate candidate

appears on the ballot, and in the preceding year, State, district, and local party committee must allocate at least 15% of these expenses to their Federal account.

(4) *Fundraising for Federal and non-Federal accounts.* If Federal and non-Federal funds are collected by a State, district, or local party committee through a joint fundraising activity, that committee must allocate its direct fundraising costs using the funds received method and according to the following procedures:

(i) The committee must allocate its fundraising costs based on the ratio of funds received into its Federal account to its total receipts from each fundraising program or event. This ratio shall be estimated prior to each such program or event based upon the committee's reasonable prediction of its Federal and non-Federal revenue from that program or event, and must be noted in the committee's report for the period in which the first disbursement for such program or event occurred, submitted pursuant to 11 CFR 104.5. Any disbursements for fundraising costs made prior to the actual program or event must be allocated according to this estimated ratio.

(ii) No later than the date 60 days after each fundraising program or event from which both Federal and non-Federal funds are collected, the committee shall adjust the allocation ratio for that program or event to reflect the actual ratio of funds received. If the non-Federal account has paid more than its allocable share, the committee shall transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted allocation ratio. If the Federal account has paid more than its allocable share, the committee shall make any transfers of funds from its non-Federal to its Federal account to reflect the adjusted allocation ratio within the 60-day time period established by this paragraph. The committee shall make note of any such adjustments and transfers in its report for any period in which a transfer was made, and shall also report the date of the fundraising program or event that serves as the basis for the transfer. In the case of a telemarketing or direct mail campaign, the date for purposes of this paragraph is the last day of the telemarketing campaign, or the day on which the final direct mail solicitations are mailed.

(e) *Costs not allocable by State, district, and local party committees between Federal and non-Federal accounts.* The following costs incurred by State, district, and local party committees shall be paid only with Federal funds:

(1) Disbursements for State, district, and local party committees for activities that refer only to one or more candidates for Federal office must not be allocated. All such disbursements must be made from a Federal account.

(2) *Salaries and wages.* Salaries and wages for employees who spend more than 25% of their compensated time in a given month on activities in connection with a Federal election must not be allocated. All such disbursements must be made from a Federal account. *See* 11 CFR 300.33(d)(2).

(3) *Federal election activities.* Activities that are Federal election activities pursuant to 11 CFR 100.24 must not be allocated between Federal and non-Federal accounts. Only Federal funds, or a mixture of Federal funds and Levin funds, as provided in 11 CFR 300.33, may be used.

(f) *Transfers between accounts to cover allocable expenses.* State, district, and local party committees may transfer funds from their non-Federal to their Federal accounts or to an allocation account solely to meet allocable expenses under this section and only pursuant to the following requirements:

(1) *Payments from Federal accounts or from allocation accounts.* (i) State, district, and local party committees must pay the entire amount of an allocable expense from their Federal accounts and transfer funds from their non-Federal account to the Federal account solely to cover the non-Federal share of that allocable expense; or

(ii) State, district, or local party committees may establish a separate allocation account into which funds from its Federal and non-Federal accounts may be deposited solely for the purpose of paying the allocable expenses of joint Federal and non-Federal activities.

(2) *Timing.* (i) If a Federal or allocation account is used to make allocable

expenditures and disbursements, State, district, and local party committees must transfer funds from their non-Federal to their Federal or allocation account to meet allocable expenses no more than 10 days before and no more than 60 days after the payments for which they are designated are made from a Federal or allocation account, except that transfers may be made more than 10 days before a payment is made from the Federal or allocation account if advance payment is required by the vendor(s) and if such payment is based on a reasonable estimate of the activity's final costs as determined by the committee and the vendor(s) involved.

(ii) Any portion of a transfer from a committee's non-Federal account to its Federal or allocation account that does not meet the requirement of paragraph (f)(2)(i) of this section shall be presumed to be a loan or contribution from the non-Federal account to the Federal or allocation account, in violation of the Act.

[67 FR 49118, July 29, 2002, as amended at 67 FR 78681, Dec. 26, 2002; 70 FR 75384, Dec. 20, 2005]

§ 106.8 Allocation of expenses for political party committee phone banks that refer to a clearly identified Federal candidate.

(a) *Scope.* This section applies to the costs of a phone bank conducted by a national, State, district, or local committee or organization of a political party where—

(1) The communication refers to a clearly identified Federal candidate;

(2) The communication does not refer to any other clearly identified Federal or non-Federal candidate;

(3) The communication includes another reference that generically refers to other candidates of the Federal candidate's party without clearly identifying them;

(4) The communication does not solicit a contribution, donation, or any other funds from any person; and

(5) The phone bank is not exempt from the definition of "contribution" under 11 CFR 100.89 and is not exempt from the definition of "expenditure" under 11 CFR 100.149.

(b) *Attribution.* Each disbursement for the costs of a phone bank described in paragraph (a) of this section shall be attributed as follows:

(1) Fifty percent of the disbursement is not attributable to any other Federal or non-Federal candidate, but must be paid for entirely with Federal funds; and

(2) Fifty percent of the disbursement is attributed to the clearly identified Federal candidate and must be paid for entirely with Federal funds. This disbursement may be one or a combination of the following:

(i) An in-kind contribution, subject to the limitations set forth in 11 CFR 110.1 or 110.2; or

(ii) A coordinated expenditure or an independent expenditure, subject to the limitations, restrictions, and requirements of 11 CFR 109.10, 109.32, and 109.33; or

(iii) Reimbursed by the clearly identified Federal candidate or his or her authorized committee.

[68 FR 64520, Nov. 14, 2003, as amended at 69 FR 63920, Nov. 3, 2004]

PART 107—PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION AND REPORTS

Sec.

107.1 Registration and reports by political parties.
107.2 Registration and reports by host committees and municipal funds.

AUTHORITY: 52 U.S.C. 30105, 30111(a)(8).

SOURCE: 59 FR 33615, June 29, 1994, unless otherwise noted.

§ 107.1 Registration and reports by political parties.

Each convention committee established under 11 CFR 9008.3(a)(2) by a national committee of a political party and each committee or other organization, including a national committee, which represents a political party in making arrangements for that party's convention held to nominate a presidential or vice presidential candidate shall register and report in accordance with 11 CFR 9008.3(b).

§ 107.2 Registration and reports by host committees and municipal funds.

Each host committee and municipal fund shall register and report in accordance with 11 CFR 9008.51. The reports shall contain the information specified in 11 CFR part 104.

[68 FR 47414, Aug. 8, 2003]

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (52 U.S.C. 30113)

Sec.

108.1 Filing requirements (52 U.S.C. 30113(a)(1)).
108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (52 U.S.C. 30113(a)(2)).
108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (52 U.S.C. 30113(a)(2)).
108.4 Filing copies of reports by committees other than principal campaign committees (52 U.S.C. 30113(a)(2)).
108.5 Time and manner of filing copies (52 U.S.C. 30104(a)(2)).
108.6 Duties of State officers (52 U.S.C. 30113(b)).
108.7 Effect on State law (52 U.S.C. 30143).
108.8 Exemption for the District of Columbia.

AUTHORITY: 52 U.S.C. 30104(a)(2), 30111(a)(8), 30113, 30143.

SOURCE: 45 FR 15117, Mar. 7, 1980, unless otherwise noted.

§ 108.1 Filing requirements (52 U.S.C. 30113(a)(1)).

(a) Except as provided in paragraph (b) of this section, a copy of each report and statement required to be filed by any person under the Act shall be filed either with the Secretary of State of the appropriate State or with the State officer who is charged by State law with maintaining state election campaign reports. In States where reports are to be filed with a designated officer other than the Secretary of State, the chief executive officer of that State shall notify the Commission of such designation.

(b) The filing requirements and duties of State officers under this part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements filed with the Commission. Once a State has obtained a waiver pursuant to this paragraph, the waiver shall apply to all reports that can be electronically accessed and duplicated from the Commission, regardless of whether the report or statement was originally filed with the Commission. The list of States that have obtained waivers under this section is available on the Commission's website.

[45 FR 15117, Mar. 7, 1980, as amended at 65 FR 15223, Mar. 22, 2000; 68 FR 420, Jan. 3, 2003]

§ 108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (52 U.S.C. 30113(a)(2)).

Except as provided in §108.1(b), a copy of each report and statement required to be filed under the Act (including 11 CFR part 104) by a Presidential or Vice Presidential candidate's principal campaign committee, or under 11 CFR 104.4 or part 109 by any other person making independent expenditures, in connection with a candidate seeking nomination for election to the office of President or Vice-President, shall be filed with the State officer of each State in which an expenditure is made in connection with the campaign of a candidate seeking nomination for election to the office of President or Vice-President. The report and statement shall contain all transactions pertaining to that State during the reporting period. Any committee, other than a Presidential or Vice Presidential candidate's principal campaign committee and the candidate's authorized committee(s) shall also file a copy of each report and statement with the appropriate State officer of the State in which such committee has its headquarters pursuant to 11 CFR 108.4.

[45 FR 15117, Mar. 7, 1980, as amended at 65 FR 15224, Mar. 22, 2000]

§ 108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (52 U.S.C. 30113(a)(2)).

(a) Except as provided in § 108.1(b), a copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and the authorized committees of candidates, for nomination for election or election to the office of Senator; by other committees that support only such candidates; and by the National Republican Senatorial Committee and the Democratic Senatorial Campaign Committees shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(b) Except as provided in § 108.1(b), a copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and authorized committees of candidates, for nomination for election or election to the office of Representative in, Delegate or Resident Commissioner to the Congress, or by unauthorized committees, or by any other person under 11 CFR part 109, in connection with these campaigns shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(c) Unauthorized committees that file reports pursuant to paragraph (b) of this section are required to file, and the Secretary of State is required to retain, only that portion of the report applicable to candidates seeking election in that State.

[65 FR 15224, Mar. 22, 2000]

§ 108.4 Filing copies of reports by committees other than principal campaign committees (52 U.S.C. 30113(a)(2)).

Except as provided in § 108.1(b), any unauthorized committee that makes contributions in connection with a Presidential election and that is required to file a report(s) and statement(s) under the Act shall file a copy of such report(s) and statement(s) with the State officer of the State in which both the recipient and contributing committees have their headquarters.

[65 FR 15224, Mar. 22, 2000]

§ 108.5 Time and manner of filing copies (52 U.S.C. 30104(a)(2)).

A copy of any report or statement required to be filed with a State officer under 11 CFR part 108 shall be filed at the same time as the original report is filed. Each copy of such report or statement shall be a complete, true, and legible copy of the original report or statement filed.

§ 108.6 Duties of State officers (52 U.S.C. 30113(b)).

Except as provided in § 108.1(b), the Secretary of State, or the equivalent State officer, shall carry out the duties set forth in paragraphs (a) through (e) of this section:

(a) Receive and maintain in an orderly manner all reports and statements required to be filed;

(b) Preserve such reports and statements (either in original form or in facsimile copy by microfilm or otherwise) filed under the Act for a period of 2 years from the date of receipt, except that reports and statements that can be accessed and duplicated electronically from the Commission need not be so preserved;

(c) Make the reports and statements filed available as soon as practicable (but within 48 hours of receipt) for public inspection and copying during office hours and permit copying of any such reports or statements by hand or by duplicating machine, at the request of any person except that such copying shall be at the expense of the person making the request and at a reasonable fee;

(d) Compile and maintain a current list of all reports and statements or parts of such reports and statements pertaining to each candidate; and

(e) If the State has received a waiver of these filing requirements pursuant to § 108.1(b), allow access to and duplication of reports and statements covered by that waiver, except that such access and duplication shall be at the expense of the person making the request and at a reasonable fee.

[45 FR 15117, Mar. 7, 1980, as amended at 65 FR 15224, Mar. 22, 2000]

§ 108.7 Effect on State law (52 U.S.C. 30143).

(a) The provisions of the Federal Election Campaign Act of 1971, as amended, and rules and regulations issued thereunder, supersede and preempt any provision of State law with respect to election to Federal office.

(b) Federal law supersedes State law concerning the—

(1) Organization and registration of political committees supporting Federal candidates;

(2) Disclosure of receipts and expenditures by Federal candidates and political committees; and

(3) Limitation on contributions and expenditures regarding Federal candidates and political committees.

(c) The Act does not supersede State laws which provide for the—

(1) Manner of qualifying as a candidate or political party organization;

(2) Dates and places of elections;

(3) Voter registration;

(4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses;

(5) Candidate's personal financial disclosure; or

(6) Application of State law to the funds used for the purchase or construction of a State or local party office building to the extent described in 11 CFR 300.35.

[45 FR 15117, Mar. 7, 1980, as amended at 67 FR 49119, July 29, 2002]

§ 108.8 Exemption for the District of Columbia.

Any copy of a report required to be filed with the equivalent officer in the District of Columbia shall be deemed to be filed if the original has been filed with the Secretary or the Commission, as appropriate.

[45 FR 15117, Mar. 7, 1980, as amended at 61 FR 6095, Feb. 16, 1996]

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (52 U.S.C. 30101(17), 30116(a) AND (d), AND PUB. L. 107-155 SEC. 214(C))

Sec.

Subpart A—Scope and Definitions

109.1 When will this part apply?
109.2 [Reserved]
109.3 Definitions.

Subpart B—Independent Expenditures

109.10 How do political committees and other persons report independent expenditures?
109.11 When is a "non-authorization notice" (disclaimer) required?

Subpart C—Coordination

109.20 What does "coordinated" mean?
109.21 What is a "coordinated communication"?
109.22 Who is prohibited from making coordinated communications?
109.23 Dissemination, distribution, or republication of candidate campaign materials.

Subpart D—Special Provisions for Political Party Committees

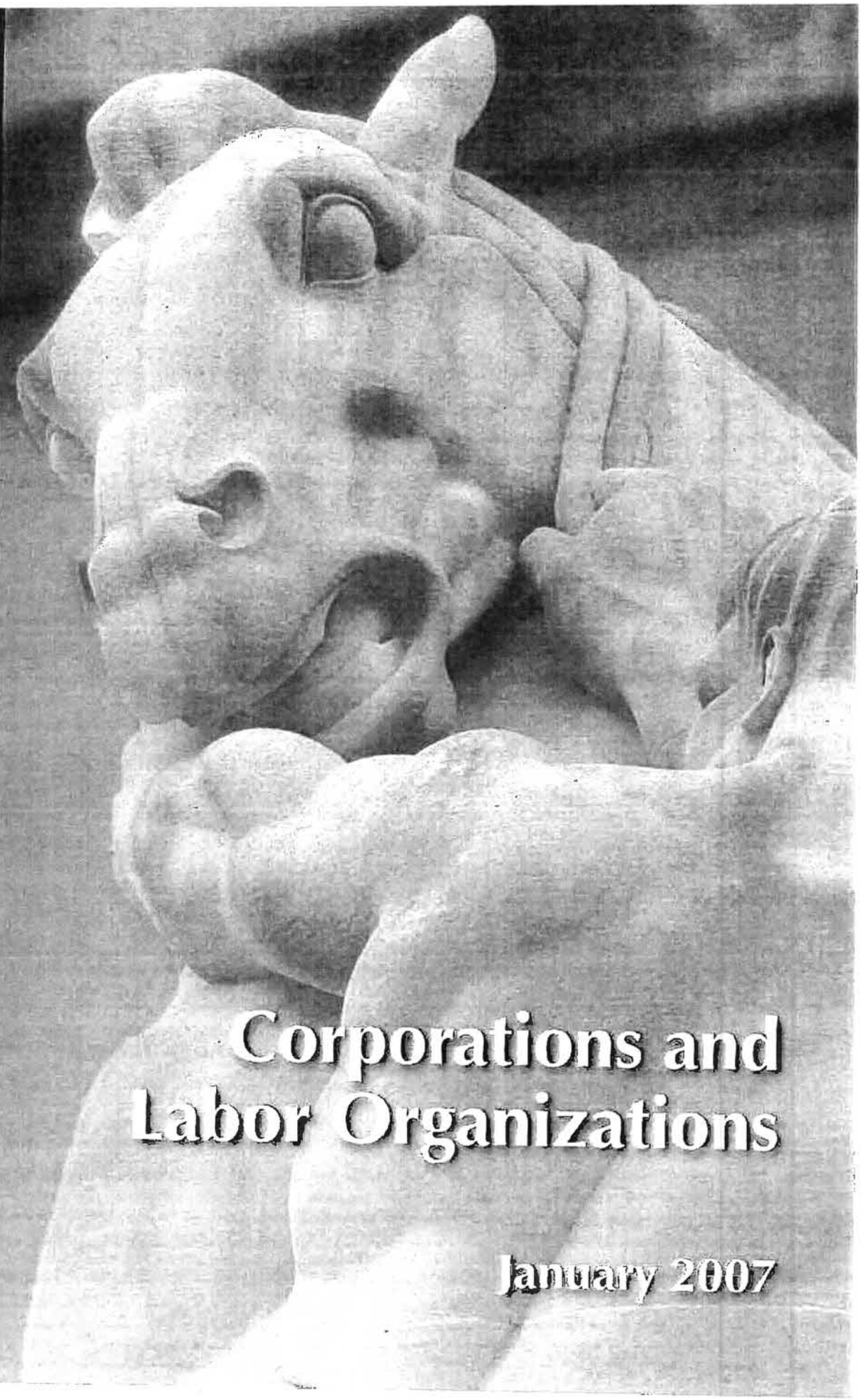
109.30 How are political party committees treated for purposes of coordinated and independent expenditures?
109.31 [Reserved]
109.32 What are the coordinated party expenditure limits?
109.33 May a political party committee assign its coordinated party expenditure authority to another political party committee?
109.34 When may a political party committee make coordinated party expenditures?
109.35 [Reserved]
109.36 Are there circumstances under which a political party committee is prohibited from making independent expenditures?
109.37 What is a "party coordinated communication"?

AUTHORITY: 52 U.S.C. 30101(17), 30104(c) 30111(a)(8), 30116, 30120; Sec. 214(c), Pub. L. 107-155, 116 Stat. 81.

SOURCE: 68 FR 451, Jan. 3, 2003, unless otherwise noted.

Appendix B

Federal Election Commission Campaign Guide



Corporations and Labor Organizations

January 2007

About this Guide

This *Guide* replaces the June 2001 edition of the *Campaign Guide for Corporations and Labor Organizations*. It summarizes the federal campaign finance laws applicable to corporations, labor organizations and their separate segregated funds as of January 2007. For updated information, please consult the monthy *Record* supplements to this *Guide* at www.fec.gov/info/publications.shtml#guides.

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Introduction

Using This Guide

The rules and procedures explained in this guide apply to labor organizations and to all types of corporations, including:

- Incorporated businesses;
- Incorporated membership organizations (including trade associations);
- National banks;
- Corporations without capital stock; and
- Incorporated cooperatives.

Citations

Authorities primarily cited in this Guide include FEC regulations and advisory opinions (AOs). All regulatory citations are to Title 11 of the Code of Federal Regulations, Parts 100–116 and 9001–9039 (2001). Copies of AOs may be obtained from the FEC; in addition, each AO is summarized in the Commission's monthly newsletter, the *Record*. AOs are also reported in the Federal Election Campaign Financing Guide, published by Commerce Clearing House, Inc.

Italicized Words

Terms printed in italics in this Guide have specific definitions under the election law. Definitions of these terms can be found in Appendix G.

Getting More Help

Advisory Opinions

Any person or group requiring a clarification of the election law with regard to an activity that they plan to undertake may request an AO from the FEC. Individuals and organizations involved in the activity specifically addressed in an AO (or in an activity that is materially indistinguishable) may rely on the opinion for legal guidance. AO requests may be addressed to the Office of General Counsel at:

Federal Election Commission
999 E Street, NW
Washington, DC 20463.

Toll-Free Line

Many questions about federal campaign finance law do not require formal advisory opinions. Such questions may be addressed to trained FEC staff members by calling the FEC's 800 number, below. Persons in the Washington, DC, area may call locally. The numbers are:

800/424-9530
202/694-1100
202/219-3336 (TDD)

Hearing-impaired persons may reverse the charges when calling long-distance on the TDD number.

Free Publications

In addition to this Guide, the FEC publishes a series of brochures and other publications on several aspects of campaign financing and the election law. Subscriptions to the Commission's newsletter, the *Record*, are available free of charge. Write or call the FEC for a list of publications currently available.

FEC Web Site

Filing forms and other informational materials, such as advisory opinions and recent changes in FEC regulations are also available on the FEC web site (www.fec.gov).

Compliance with Small Business Regulatory Enforcement Fairness Act of 1996

This guide serves as the small entity compliance guide for corporations and labor organizations, as required by section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

The Law

The *Federal Election Campaign Act* (the Act) prohibits corporations and labor organizations from using their general treasury funds to make contributions or expenditures in connection with federal elections. 52 U.S.C. §30118(a). In spite of this broad prohibition, there are many ways in which a corporation or union may legally participate in federal election activities.

The Federal Election Commission (FEC)—the agency that administers and enforces the Act—has prepared this Campaign Guide to help corporations and labor organizations pursue federal campaign activities within the limits of the law.

The SSF

While corporations and labor organizations are prohibited from making contributions or expenditures in connection with federal elections, the *Act* and Commission regulations permit them to set up political committees, which may make contributions to and expenditures on behalf of federal candidates and other committees.

Federal election law refers to a corporate or labor political committee as a "separate segregated fund" (SSF), though it is more commonly called a "political action committee" or PAC. (Unless otherwise indicated, the terms "SSF," and "the committee" are used interchangeably in this Guide.)

As the name implies, money contributed to a separate segregated fund is held in a separate bank account from the general corporate or union treasury.

The Connected Organization

A corporation or union that sponsors an SSF is called the connected organization. The connected organization may use its general treasury funds to pay for the costs of operating and raising money for the SSF.

The connected organization may also exercise control over its committee. 114.5(d). Corporations and unions often adopt bylaws to govern their SSFs, though bylaws are not required under the law and do not have to be filed with the FEC except when requested.

Contents

About this Guide i
Introduction i
Using This Guide i

CHAPTER 1
Getting Started 1
1. Registering with the FEC 1
2. Treasurer 1
3. Naming the SSF 2
4. Filling Out the Statement of Organization 2
5. Filing the Form 4
6. Updating Registration Information 4
7. Notification of Multicandidate Status 5
8. Affiliation 5
9. Affiliation & Corporate Restructuring 7
10. SSF and Nonconnected PAC 7
11. Operating Costs 8
12. Incorporating the SSF 8
13. Limited Liability Companies and SSFs 8

CHAPTER 2
Understanding Contributions 9
1. What Is a Contribution 9
2. Limits on Contributions Received by the SSF 10
3. Limits on Contributions Made by the SSF 10
4. Designation 13
5. Affiliation and Contribution Limits 14
6. Prohibited Corporate and Labor Contributions 15
7. Other Prohibited Contributions 16
8. Bank Loans 17
9. Other Receipts 18

CHAPTER 3
Fundraising for the SSF 19
1. General Rules on Solicitations 19
2. Corporations: Solicitable Personnel 20
3. Labor Organizations: Solicitable Personnel 21
4. Membership Organizations: Solicitable Personnel 21
5. Solicitation Methods 23
6. Fundraising Events and Special Promotions 25
7. Corporate Collection Methods Used by Labor Organizations 26
8. Handling Illegal Contributions 27
9. Collecting Agents 28
10. Investing SSF Funds 30

CHAPTER 4 Supporting Candidates 31
1. Contributions 31
2. Independent Expenditures 32
3. Electioneering Communication 34
4. Independent Expenditures and Electioneering Communications by Qualified Nonprofit Corporations 35
5. Disclaimer Notices 37

CHAPTER 5 Keeping Records 41
1. Three-Year Retention of Records 41
2. Receipts 41
3. Recording Contributions 41
4. Recording Other Receipts 42
5. Recording Disbursements 42
6. Treasurer's Best Efforts 43

CHAPTER 6 Filing FEC Reports 45
1. Treasurer's Duties 45
2. Filing Deadlines 45
3. Election Year Filing 46
4. Nonelection Year Filing 49
5. Special Elections 49
6. Electronic Filing 49
7. Where to File 51
8. Public Review of Reports 51

CHAPTER 7 Completing FEC Form 3X 53
1. Reporting Forms 53
2. Itemized Receipts: Schedule A 54
3. Reporting Receipts: The Detailed Summary Page 58
4. Itemized Disbursements: Schedule B 60
5. Reporting Disbursements: The Detailed Summary Page 63
6. Investments 64
7. Independent Expenditures 65
8. Reporting Loans 67
9. Reporting Debts Other Than Loans 69
10. The Summary Page 71
11. Filing Amendments 72

CHAPTER 8 Termination and Debt Settlement 73
1. Committees with No Outstanding Debts 73
2. Committees with Outstanding Debts: Debt Settlement 73

3. Committees with Outstanding Debts: Administrative Termination 74

CHAPTER 9 Communications 77
1. Introduction: Basic Terms 77
2. Paying for Communications to the Restricted Class 81
3. Candidate and Party Appearances 81
4. Publications 85
5. Endorsements 87
6. Registration and Get-Out-the-Vote Drives 88
7. Voter Education 88
8. Exception: Independent Expenditures by Qualified Nonprofit Corporations 89

CHAPTER 10 Use of Resources and Facilities 91
1. Individual Volunteer Activity 91
2. Use in Fundraising 91
3. Use of Offices and Equipment 93
4. Meeting Rooms 93
5. Transportation 93
6. Production of Campaign Materials 94

CHAPTER 11 Other Uses of Treasury Funds 95
1. Legal and Accounting Services 95
2. Donations to Nonfederal Candidates and Committees 95
3. Donations for Party Office Building 95
4. Corporate Vendor Discounts 95
5. Employee Participation Plans 96
6. Donations by Businesses for Presidential Conventions 96
7. Donations by Commercial Vendors for Presidential Conventions 97

APPENDIX A. Shared Federal and Nonfederal Activities 98
1. Using One SSF Account 98
2. Using Two Accounts 98
3. Allocation Between Accounts 99
4. Allocation Ratios 100
5. Reporting Allocated Administrative, Generic Voter Drive and Generic Public Communications Expenses 100
6. Allocating Committee Fundraising Expenses 101
7. Allocating Costs of Fundraising for Candidates 102
8. Allocating Costs of Public Communications and Voter Drives 103

APPENDIX B. Twice-Yearly Solicitations 105
1. Who May Be Solicited Twice Yearly 105
2. Custodial Arrangement 105
3. Collection Methods 106
4. Requirements for Corporations 106
5. Requirements for Labor Organizations 106

APPENDIX C. Solicitations by Trade Associations 107
1. Request for Corporate Approval 107
2. Approval by Corporate Member 107
3. Who May Be Solicited 108
4. Solicitations at Convention 108
5. Member-Provided Assistance 109
6. Trade Association Federations 109

APPENDIX D. Earmarked Contributions 111
1. Conduits 111
2. Contribution Limits 111
3. Forwarding Earmarked Contributions 112
4. Reporting Conduit Activity 112
5. Earmarking Via Payroll Deduction 113

APPENDIX E. Contributions from Partnerships/LLCs 115
1. Contribution Limits 115
2. Attribution Among Partners 115
3. Prohibited Partnership/LLC Contributions 115
4. Reporting Partnership/LLC Contributions 116

APPENDIX F. Compliance with Other Laws 117
1. Tax Laws 117
2. Communications Act 117
3. Hatch Act 117

APPENDIX G. Definitions 118

INDEX 125

CHAPTER 1
Getting Started

1. Registering with the FEC

Registration Form

The registration form is FEC Form 1, the Statement of Organization. Blank forms can be obtained from the FEC. 102.2.

Initial Registration

Who Must Register

All SSFs must register with the FEC, regardless of the size of the fund. 102.1(c). A committee established exclusively for state and local (i.e., nonfederal) activity, however, does not need to register or file reports with the FEC.

When to Register

An SSF must register with the FEC within 10 days of the date of its establishment—for example, within 10 days of the date when:

- The board of directors (or comparable governing body) votes to create the SSF;
- Officers are selected to administer the fund; or
- The SSF's initial operating expenses are paid. 102.1(c).

Electronic Registration

If a committee raises or spends more than $50,000 in a calendar year, or expects to do so, it must file electronically. For more information on electronic filing, see page 49.

2. Treasurer

Treasurer Required

An SSF must appoint a treasurer within 10 days of its establishment and may not raise or spend any funds when there is a vacancy in that office. Only a designated treasurer or assistant treasurer may sign FEC reports and statements. The Commission urges every committee to name an assistant treasurer who may assume the treasurer's duties when he or she is unavailable. 102.7(a) and (b).

If the SSF does not already have an assistant treasurer and the treasurer is unavailable to sign a report, the committee may appoint an assistant treasurer to sign the report. An amended Statement of Organization identifying the assistant treasurer may be filed simultaneously, but it must be filed within 10 days of the appointment. 102.2(a)(2). See Section 6 of this chapter.

Treasurer's Duties

The treasurer (or registered assistant treasurer) is responsible for:

- Filing complete and accurate reports and statements on time. 104.14(d).
- Signing all reports and statements. 102.2(a)and 104.14(a).
- Depositing receipts in the committee's designated bank within 10 days. 103.3(a).
- Authorizing expenditures or appointing an agent (either orally or in writing) to authorize expenditures. 102.7(c).
- Monitoring contributions to ensure compliance with the Act's limits and prohibitions. 103.3(b) and 110.1(k)(3).
- Keeping the required records of receipts and disbursements for three years after the transaction is last reported in FEC filings. 102.9(c) and 104.14(b).

Treasurer's Liability

Treasurers are personally responsible for carrying out the duties listed above and should understand these responsibilities, as well as their personal liability for fulfilling them.[1]

When the Commission brings an enforcement action against a *political committee*, the treasurer is usually named as a respondent along with the committee itself. In December 2004, the Commission approved a Statement of Policy[2] to clarify when, in the course of an enforcement proceeding, a treasurer is subject to Commission action in his or

1 Liability for payment of debts is generally governed by state law. See, generally, AOs 1990–11, 1989–2 and 1975–102.

2 70 FR 3 (January 3, 2005).

her official or personal capacity, or both. The policy explains that in an enforcement action where a *political committee* is a respondent, the committee's treasurer will typically be subject to Commission action only in his or her official capacity. However, when information indicates that a treasurer has knowingly and willfully violated the Act, recklessly failed to fulfill duties specifically imposed by the Act, or intentionally deprived himself or herself of facts giving rise to the violation, the Commission will consider the treasurer subject to action in a personal capacity and make findings accordingly.

If a committee changes treasurers, the Commission may substitute the new treasurer as a respondent in the enforcement proceeding in his or her official capacity because an official capacity action is an action against the treasurer's position. If an outgoing treasurer is personally liable, the Commission may pursue that predecessor treasurer individually (therefore not substituting the incoming successor in a personal capacity). The successor treasurer would, however, be named in the official capacity.

Vacancy in Office

The SSF may not receive contributions or make expenditures when the treasurer's office is vacant and the committee has no assistant treasurer. 102.7(b). Thus, when vacant, the treasurer's job must be filled as soon as possible. Changes in the treasurer's office must be disclosed within 10 days on an amended Statement of Organization. 102.2(a)(2). See Section 6.

3. Naming the SSF

Include Full Name of Sponsor

The official name of an SSF must include the full name of the *connected organization* (including "Inc." or "Corp." if applicable). An SSF's *connected organization*—often called the sponsoring organization—is the organization that establishes, administers, or financially supports the SSF. 100.6(a) and 102.14(c). In the SSF name, standard abbreviations for "Company," "Association" and similar words are acceptable. The full committee name may also include the acronym "*PAC*."

Thus, an acceptable name for an SSF sponsored by Acme Industries Corp. would be "Acme Industries Corp. *PAC*." See AOs 2000-34, 1999-20 and 1993-7.

Joint SSFs

If an SSF is jointly sponsored by two or more organizations, the full names of both organizations must appear in the name of the SSF. See AOs 1988–42 and 1988–14.

(If a *connected organization* has a parent company or several subsidiaries, however, the names of those corporations do not need to be included in the name of the SSF, unless more than one company is sponsoring the SSF. 102.14(c).)

Abbreviated Name

An SSF may use a shortened form of its official name on its checks and letterhead. The shortened name must include a clearly recognizable acronym or form of the *connected organization*'s name.

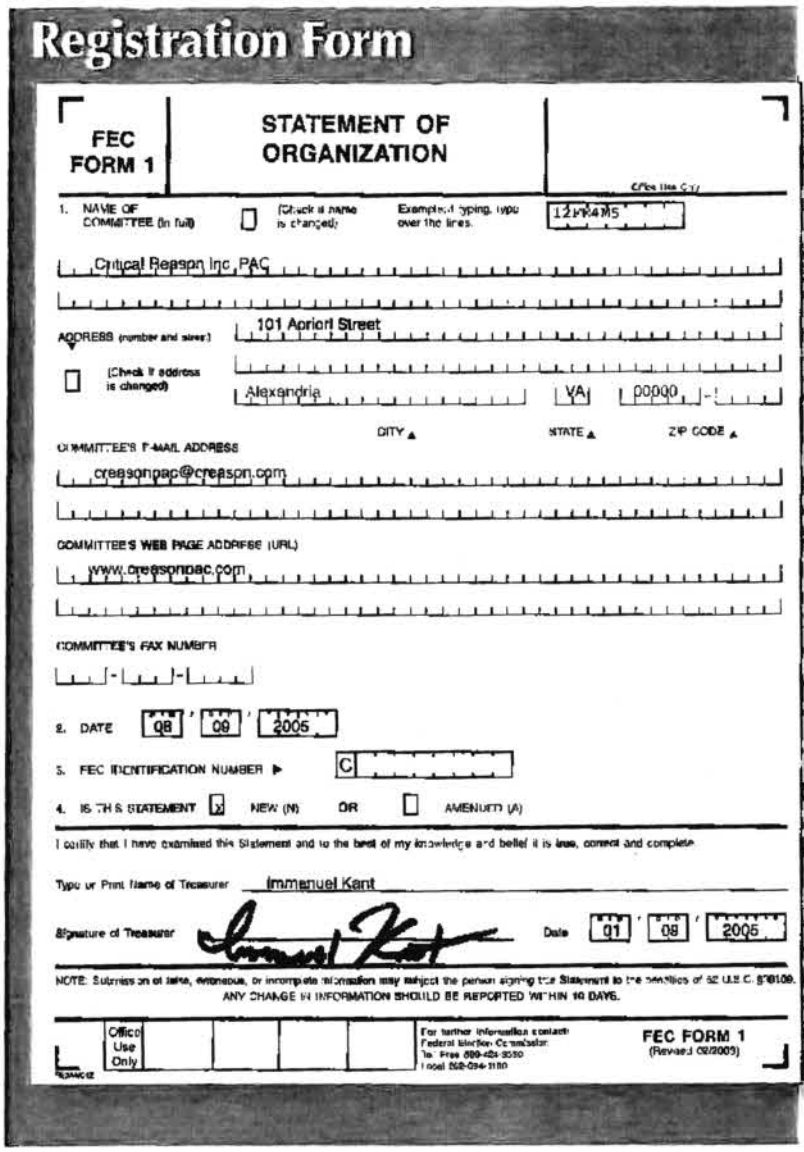
The SSF must include the abbreviated name, along with the full name, on:

- The Statement of Organization;
- All reports and notices filed by the committee; and
- Any disclaimer notices used by the committee in public political advertisements. 102.14(c) and 110.11; AOs 2004-4, 2000-34, 1980-23 and 1980-10.

EXAMPLES: In AO 2000-34, the Commission ruled that SAPPI *PAC* was an acceptable abbreviation for SAPPI Fine Paper North America/S.D. Warren Company *PAC* because the acronym "SAPPI" was used in various well-known financial reference sources, thus establishing that it was a clearly recognized acronym by which the *connected organization* was known. In AO 1980-23, "Mid–Am *PAC*" was not a permissible abbreviation for Mid-American Dairymen, Inc.'s SSF because it did not clearly identify the association sponsoring it.

4. Filling Out the Statement of Organization

Line-by-line instructions for filling out the Statement of Organization appear below. See the adjacent example of a correctly completed Form 1.



Registration Form

FEC FORM 1

STATEMENT OF ORGANIZATION

Office Use Only

1. NAME OF COMMITTEE (in full) ☐ (Check if name is changed) Examples: typing, type over the lines. 12345

Critical Reason Inc. PAC

ADDRESS (number and street) 101 Apricot Street

☐ (Check if address is changed)

Alexandria | VA | 00000 | -

CITY ▲ STATE ▲ ZIP CODE ▲

COMMITTEE'S E-MAIL ADDRESS

creasonpac@creason.com

COMMITTEE'S WEB PAGE ADDRESS (URL)

www.creasonpac.com

COMMITTEE'S FAX NUMBER

-

2. DATE 08 / 09 / 2005

3. FEC IDENTIFICATION NUMBER ▶ C

4. IS THIS STATEMENT ☒ NEW (N) OR ☐ AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Immanuel Kant

Signature of Treasurer Immanuel Kant Date 01 / 08 / 2005

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 52 U.S.C. §30109.
ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

Office Use Only

For further information contact: Federal Election Commission Toll Free 800-424-9530 Local 202-694-1100

FEC FORM 1 (Revised 02/2005)

Line 1. Name and Address of the Committee

Name

Enter the full, official name of the SSF. 102.14(c). Also enter any abbreviated name that the committee plans to use to identify itself. See "Naming the SSF," above, for more guidance.

Electronic Address

In addition to providing the mailing address of the committee, all filers (whether electronic or paper) must include the URL for their web site, if they maintain one. Electronic filers must also include their e-mail address, if they have one. 102.2(a)(1)(vii).

Fax Number

The committee is encouraged to provide a facsimile number, but is not required to do so.

Line 2. Date

When registering for the first time, enter the committee's date of establishment (not the date when the form is filled out). 102.1(c).

When filing an amended Statement of Organization, enter the date on which the new information took effect (e.g., the date when a new treasurer took office). See 102.2(a)(2).

Line 3. FEC Identification Number

The FEC assigns an ID number to a new SSF after the Commission receives the first Statement of Organization. Leave this space blank if the committee is filing its first Statement.

Always include the ID number on reports, statements and other communications sent to the FEC after the initial registration. 102.2(c).

Line 4. Is This Statement an Amendment?

Check "new" if the committee is registering for the first time. Check "amended" if the committee is updating information.

Line 5. Type of Committee

Check box (e), "Separate Segregated Fund."

Line 6. Connected Organization and Affiliated Committees

List the names and addresses of the *connected organization* and any *affiliated* committees, along with their relationship to the registering committee (i.e., "connected" or "affiliated").

Connected Organization

In addition to providing the name and mailing address of the *connected organization*, check the box

indicating the type of organization that is sponsoring the SSF—i.e., a *corporation*, a *corporation* without capital stock, a *labor organization*, a membership association, a *trade association* or a cooperative (check all boxes that apply).

Affiliated Committees

List political committees that are *affiliated* with the SSF.

An SSF set up by a parent organization with several subsidiaries or local units must list any SSFs established by those units. The SSF of a subsidiary or subordinate unit, however, only needs to list the SSF of the parent organization. It is not required to list other affiliates. 102.2(b)(1)(ii)(A) and (B). More information on affiliation is provided in Section 8.

Line 7. Custodian of Records

All federal political committees must keep records and accounts of their financial activities and retain them for three years after the relevant transaction is last reported in FEC filings. 102.9(a), (b) and (c) and 104.14(b).

On Line 7, enter the name and address of the person who has actual possession of those books and records. The committee's treasurer, assistant treasurer or another person (such as an accountant or bookkeeper) may serve as the custodian of records. 102.2(a)(1)(iii). The recordkeeping rules are discussed in detail in Chapter 5.

Line 8. Treasurer and Assistant

Provide the name and mailing address of the treasurer on Line 8. The Commission also urges all political committees to name an assistant treasurer (or "designated agent") on Line 8. Only a registered assistant treasurer may sign FEC reports and statements in the treasurer's absence. 102.7(a), 104.1(a) and 104.14(a).

The treasurer's responsibilities are discussed in detail in Section 2 of this chapter.

Line 9. Designated Campaign Depository

List the name and address of each bank where the committee deposits funds. The committee must have at least one checking account. 103.2.

Note that *affiliated* SSFs may not share the same bank account, though they may establish separate bank accounts at the same financial institution. AOs 1986–33 and 1979–53.

Signing and Dating the Form

The treasurer or designated assistant treasurer must sign and date the form on the bottom line. 104.14(a).

The signer's name must also be typed or printed where indicated.

5. Filing the Form

Send the completed Statement of Organization to the appropriate filing office (usually the FEC; see "Where to File" on page 51).

Only committees based in Puerto Rico and Guam are required to file copies of FEC reports and statements with the appropriate officer of the territory in which they are headquartered. All other states, territories, and the District of Columbia have received a waiver from the requirement to maintain copies of FEC statements and reports. See page 51 for details.

6. Updating Registration Information

Whenever any of the information disclosed on the Statement of Organization (Form 1) changes, the committee must report the change within 10 days by filing an amended Form 1 or, if the committee is not an electronic filer, by letter. 102.2(a)(2).

Amending Form 1

Electronic Filers

Committees filing electronically must make amendments to Form 1 electronically. The committee must complete the entire report, not just the sections requiring amendments.

Paper Filers

Committees filing on paper may either submit an amended Form 1 or report the changes by letter as described below.

Submitting the Amended Form 1

When submitting an amended Form 1, the committee needs to provide only:

- The full name and address of the SSF;
- The FEC ID number;

- The changed information;
- The date the change took effect; and
- The treasurer's name and signature.

The rest of the form may be left blank.

Reporting Changes by Letter

Instead of filing a new Form 1, a committee that files on paper may amend its Statement of Organization by sending the FEC a letter containing the information listed above. The treasurer or assistant treasurer must sign the letter.

7. Notification of Multicandidate Status

As the next chapter explains, a qualified *multicandidate committee* may give a *candidate* up to $5,000 per *election* (rather than $2,300). 110.2(b). An SSF generally qualifies as a *multicandidate committee* once it has:

- Received contributions from at least 51 persons;
- Been registered for at least 6 months; and
- Made contributions to at least five federal candidates. 100.5(e)(3).

An SSF that is *affiliated* with a committee that has met these criteria is automatically qualified to share that committee's $5,000 per-*candidate* limit. AOs 2001-18, 1997-25, 1997-13, 1986–42 and 1980–40. See below for more information on affiliation.

Once a committee qualifies as a *multicandidate committee*, the treasurer must file FEC Form 1M, "Notification of Multicandidate Status" within 10 days of satisfying the criteria for multicandidate status.[3] 100.5(e)(3) and 102.2(a)(3). It is important to note that the committee must operate under the *contribution* limits for a *multicandidate committee* as soon as the criteria for multicandidate status are met. The treasurer must also indicate that the committee has qualified as a *multicandidate committee* on the Summary Page of each report filed (see page 71).

When making contributions to candidates, a multicandidate SSF must give the recipient *candidate* or campaign committee a written notification that it has qualified as a *multicandidate committee*. 110.2(a)(2). For convenience, the statement may be pre-printed on the committee's checks, letterhead or other appropriate materials.

3 Committees that notified the Commission of their multicandidate status on Form 3X prior to January 1, 1994, do not have to file Form 1M.

8. Affiliation

Definition

Under FEC rules, affiliation between SSFs results when committees are established, financed, maintained or controlled by the same organization. 100.5(g)(2).

Why Important

Contribution Limits

When two or more committees are *affiliated*, they share a single limit on the contributions they make to candidates and to other political committees. A single limit also applies to the aggregate contributions a person makes to committees *affiliated* with each other. 110.3(a)(1). (Application of the *contribution* limits to *affiliated* committees is explained in Chapter 2.) See also AOs 2004-32, 2004-23, 2001-18, 1999-40, 1997-25, 1997-13 and 1996-38.

EXAMPLE: Prior to becoming *affiliated*, X *PAC* (a *multicandidate committee*) contributed $1,000 to a *candidate*'s general *election* campaign, while Y *PAC* contributed $250 to the same *candidate*'s general *election* campaign and $750 to the primary campaign. After becoming *affiliated*, X *PAC* and Y *PAC*'s additional contributions could not exceed $3,750 for the *candidate*'s general *election* campaign and $4,250 for the primary campaign. See AO 1985-27.

Solicitable Class

Additionally, when two or more committees are *affiliated*, they may solicit each other's restricted class. 114.5(g)(1). AOs 2004-32, 1999-15 and 1995-12.

Automatic Affiliation

When SSFs are established by different parts of one organization, they are automatically *affiliated*. For example:

- An SSF established by a parent *corporation* is *affiliated* with an SSF established by a subsidiary *corporation*. 100.5(g)(3)(i).
- An SSF established by a national or international union is *affiliated* with any SSFs established by local or regional units of the same union. 100.5(g)(3)(ii).

Multicandidate Status Notification

NOTIFICATION OF MULTICANDIDATE STATUS

(See reverse side for instructions)
This form should be filed after the Committee qualifies as a multicandidate committee.

1. (a) NAME OF COMMITTEE IN FULL
Critical Reason Inc. PAC

(b) Number and Street Address
101 Apriori Street

(c) City, State and ZIP Code
Alexandria, VA 00000

2. FEC IDENTIFICATION NUMBER
00000001

3. TYPE OF COMMITTEE (check one)
STATE PARTY
X OTHER

I certify that one of the following situations is correct (complete line 4 or 5)

4. **STATUS BY AFFILIATION:** The committee submitted its Statement of Organization (FEC FORM 1) on _____ and simultaneously qualified as a multicandidate committee through its affiliation with:

Committee Name: _____

FEC Identification Number: _____

5. **STATUS BY QUALIFICATION:**

(a) **Candidates:** The committee has made contributions to the five (5) federal candidates listed below (ONLY State party committees may leave this blank.):

	Name	Office Sought	State/District	Date
(i)	Marcus Aurelius	House	NY/23	2/2/05
(ii)	Thomas Hobbes	House	VA/3	2/9/05
(iii)	Giadorno Bruno	Senate	CA	4/2/05
(iv)	Scott Erugina	Senate	ND	5/5/05
(v)	Tom Aquinas	House	MI/7	6/4/05

(b) **Contributors:** The committee received a contribution from its 51st contributor on: 7/1/2005

(c) **Registration:** The committee has been registered for at least 6 months. FEC FORM 1 was submitted on: 1/9/2005

(d) **Qualification:** The committee met the above requirements on: 7/9/2005

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

TYPE OR PRINT NAME OF TREASURER	SIGNATURE OF TREASURER	DATE
Immanuel Kant	Immanuel Kant	7/11/2005

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 52 U.S.C. §30109.
ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHING 10 DAYS.

For further information contact:
Federal Election Commission, Washington, DC 20463
Toll-free 800-424-9530
Local 202-694-1100

FEC FORM 1M
(Revised 1/2001)

- SSFs established by a federation of national or international unions and the SSFs of the federation's state and local central bodies are *affiliated* (see further explanation below). 100.5(g)(3)(iii).
- An SSF of a national membership organization (including a national *trade association*) is *affiliated* with the SSFs established by its related state and local entities. 100.5(g)(3)(iv).

Circumstances Indicating Affiliation

When committees are not automatically *affiliated* under the conditions described above, the Commission may consider the following factors to determine whether two or more committees are *affiliated*. If one committee or its sponsoring organization:

- Owns a controlling interest in the voting stock or securities of another organization sponsoring a *political committee*;
- Has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through its constitution, bylaws, contracts or other rules, or through formal or informal practices or procedures;
- Has the authority or ability to hire, appoint, demote or otherwise control the officers or employees of another sponsoring organization or committee;
- Has a common or overlapping membership, or common or overlapping officers or employees, with another sponsoring organization or committee, indicating a formal or ongoing relationship between them;
- Has members, officers or employees who were members, officers or employees of another sponsoring organization or committee, indicating a formal or ongoing relationship or the creation of a successor;
- Provides or arranges for the provision of funds or goods in a significant amount or on an ongoing basis to another organization or committee, such as through payments for fundraising and administrative costs;
- Had an active or significant role in the formation of another organization or committee; or
- Makes or receives contributions in a pattern similar to that of another organization or committee, indicating a formal or ongoing relationship between them. 100.5(g)(4)(ii)(A)-(J), 110.3(a)(3).

Labor Federations and Member Unions

If a union belongs to a national or international federation of labor organizations, the SSF of the *member* union is not automatically *affiliated* with the SSF of the federation and the SSFs of other *member* unions.[4]

Usually, if a union is part of the AFL-CIO, the SSFs of that union's national and state organizations are *affiliated* with each other, but they are not *affiliated* with the SSFs of the national and state divisions of the AFL-CIO.

Registration

An SSF must list *affiliated* political committees on its Statement of Organization, as explained in Section 4.

9. Affiliation & Corporate Restructuring

Disaffiliation

Occasionally, the restructuring of an organization can result in two or more *affiliated* SSFs becoming disaffiliated. The Commission has applied the factors listed above to determine whether two or more committees remain *affiliated*. Disaffiliation may occur when there is significantly diminished commonality of maintenance, finance and control among the connected organizations of *affiliated* SSFs. See AOs 2004-41, 2003-21, 2002-12, 2000-36, 2000-28, 1999-39, 1996-50, 1996-42 and 1996-23.

Impact of Disaffiliation

When SSFs become disaffiliated, they no longer share limits on the *receipt* and making of contributions, and neither of their connected organizations may solicit SSF contributions from the restricted class of the other's organization. Furthermore, when making contributions after disaffiliation, SSFs must take into account the contributions they made prior to disaffiliation. To determine the amount that each SSF may contribute to a *candidate* after disaffiliation, the SSF must add the amounts given by both SSFs before disaffiliation and attribute that sum to its per-*election contribution* limit for that same *candidate*. AOs 2004-41, 2003-21, 2002-12, 2000-36, 2000-28 and 1996-42.

EXAMPLE: If, prior to disaffiliation, X *PAC* (a multicandidate *PAC*) gave $2,000 to a *candidate* for the general *election* and Y *PAC* gave $1,000 to the same *candidate* for the same *election*, then, after disaffiliation, the two PACs may each contribute just $2,000 more to that *candidate* for the general *election*.

Mergers and Spin-Offs

When corporations merge, their PACs become *affiliated*. Newly *affiliated* PACs must take into account the *contribution* history of all of their formerly *affiliated* and newly *affiliated* PACs. See example above. AOs 2001-18 and 1997-25.

10. SSF and Nonconnected PAC

Nonconnected PAC Affiliated with SSF

In *advisory opinion* 1996-38, the Commission determined that, when a nonconnected *PAC* became *affiliated* with the SSF of a *trade association*, it could solicit only that SSF's restricted class and had to follow the rules governing SSF solicitations. See also page 107, "Solicitations by Trade Associations."

Joint Venture Partnerships/LLCs

The Commission has stated that, when a *PAC* is sponsored by a joint venture partnership or LLC owned entirely by one or more corporations and *affiliated* with at least one of them, the nonconnected *PAC* becomes *affiliated* with the SSF of any *corporation affiliated* with the joint venture partnership. The *affiliated corporation* is allowed to pay the establishment, administration and solicitation costs of the *nonconnected committee*; in that case, the *nonconnected committee* has to identify it as the *connected organization* on its Statement of Organization (Form 1). AOs 2004-42, 2003-28, 2001-18, 2001-7, 1997-13 and 1996-49.

Corporate Personnel and Nonconnected PAC

Individuals associated with an incorporated entity may establish a nonconnected *PAC*. To do so, the individuals must demonstrate that their *PAC* is financially and organizationally independent of the incorporated entity by, for example:

- Reimbursing the *corporation* for any use of facilities associated with the nonconnected *PAC* within a commercially reasonable time and at the *usual and normal charge*;

4 *FEC v. Sailors Union of the Pacific Political Fund*, 624 F. Supp. 492 (N.D. Cal. 1986) aff d 828 F 2d 502 (9th Cir. 1987). See also MUR 1605.

- Paying in advance for any use of corporate staff, customer/mailing lists, catering services and any other goods and services that the *corporation* does not supply in the ordinary course of business (AO 1997-15); and
- Having a diversified leadership ensuring that individuals *affiliated* with a particular incorporated entity will not form the majority of the committee's board.

Under these circumstances, the nonconnected *PAC* is not considered to be *affiliated* with the SSF of the incorporated entity. AOs 2000-20, 1997-26 and 1997-15.

11. Operating Costs

Using Treasury Funds

The costs of running the SSF (operating expenditures) may be defrayed with the treasury funds of the *connected organization*, that is, with funds derived from commercial activities or dues payments. 114.5(b).

Treasury money can be used, for example, to pay for office space, phones, salaries, utilities, supplies, bank charges and fundraising activities. 114.1(b). There are no dollar limits on these disbursements, and they are not reported to the FEC.

The *connected organization* may either pay these costs directly or establish a separate administrative account to be used solely for the SSF's administrative and fundraising expenses. The funds contained in the administrative account may never be commingled with the SSF's own funds, which are derived solely from lawful contributions. AOs 1981–19 and 1980–59.

Trade associations sponsoring SSFs can solicit their members for donations to their administrative accounts under certain circumstances. See Appendix C. Regarding the payment of operating costs generally, see 114.5(b).

Using the SSF's Own Funds

Although the law permits the *connected organization* to pay start-up, administrative and fundraising expenses for an SSF, the committee may use its own funds to pay those costs. (The SSF may also pay only some expenses, such as bank service charges that are automatically deducted from its account, while the *connected organization* pays others.) All disbursements by the SSF for these purposes are reportable as operating expenditures, as explained in Chapter 7.

Note that the *connected organization* may reimburse the SSF for those operating expenditures, provided that the reimbursement is made within 30 days of the SSF's disbursement. These reimbursements are reportable. 114.5(b)(3). See also AOs 2000-3 and 1983–22.

12. Incorporating the SSF

An SSF may incorporate for liability purposes. 114.12(a). Political committees that incorporate only for liability purposes may make lawful contributions and expenditures. Note that incorporation of a *political committee* does not diminish the treasurer's liability for the committee's compliance with campaign finance law.

13. Limited Liability Companies and SSFs

Under FEC regulations, a *limited liability company (LLC)* may be treated as a *corporation*, depending upon its tax status. An LLC that elects to be treated as a *corporation* by the Internal Revenue Service (IRS) or that has publicly traded shares will be treated as a *corporation* under FEC regulations and, therefore, may serve as the *connected organization* for an SSF. 114.1-114.13.

An LLC that elects to be treated as a partnership by the IRS is treated as a partnership under FEC regulations and may make contributions and serve as the sponsoring organization for a *nonconnected committee*.[5] 110.1(g)(2).

LLCs that elect to be treated neither as partnerships nor as corporations by the IRS are treated as partnerships according to FEC regulations. 110.1(g)(2). Regarding LLCs and *contribution* limits, see page 10 of this Guide and Appendix E.

5 See the *Campaign Guide for Nonconnected Committees*

CHAPTER 6
Filing FEC Reports

As explained in Chapter 1, a separate segregated fund (SSF) must register within 10 days of its establishment, regardless of how much money it raises or spends.

Once the committee has registered, the SSF must begin to file reports of *receipts* and *disbursements* according to the schedules described in this chapter. The first report filed by an SSF must disclose any financial activity that took place prior to registration. 104.3(a) and (b).

1. Treasurer's Duties

General

The treasurer of an SSF has the following responsibilities regarding filing FEC reports:

- Signing and filing complete, accurate reports and statements on time. 102.2, 104.14(a) and (d).
- Making "best efforts" to obtain and report required information. See page 43 for more information. 102.9(d); 104.7.
- Keeping the required records of receipts and disbursements. 102.9 and 104.14(d).
- Continuing to file required reports until the committee has filed a termination report, as explained in Chapter 8. 102.3(a).

In the treasurer's absence, only an assistant treasurer designated on the SSF's Statement of Organization may sign reports and assume the treasurer's duties. 102.7(a). See Chapter 1 for information on appointing an assistant treasurer.

Electronic Filing

The treasurer must obtain a password from the FEC and use it when filing any electronic report or statement. See also 104.18(g) and page 50 "Verification Requirements" for alternatives.

2. Filing Deadlines

Report on Time

Committee treasurers must file reports on time. The Commission cannot grant extensions to reporting deadlines. Filing reports late or not at all may result in enforcement action, including administrative fines. See below.

Filing Date

Unless sent by registered or certified mail, priority or express mail having a delivery confirmation or an overnight delivery service with an online tracking system, a report is considered to be filed on time if it reaches the appropriate federal and state filing offices by close of business on the filing date. 104.5(e). Thus, reports filed by first class mail or by hand delivery must be received by the FEC by the close of business on the filing date.

A filing date is not extended even if it falls on a weekend or holiday, when filing offices are closed. In such cases, the report should reach the filing offices by the close of business on the last working day before the filing date.

Registered, Certified, Priority or Express Mailing Date

If a report is sent by registered or certified mail, or by priority or express mail having a delivery confirmation, it is considered filed on time if postmarked by the filing date. Exception: In the case of a pre-*election* report, the report must be postmarked at least three days before the filing date. 100.19(b) and 104.5(e).

Overnight Delivery

Reports sent by overnight delivery service are considered timely if they are:

- Received by the delivery service on or before the filing date;
- Scheduled for delivery on the next business day; and

- Recorded in the delivery service's online tracking system. 100.19(b)

Committees should keep the mailing receipt with its postmark, or a similar document if a overnight delivery service is used, as proof of filing. 104.5(i). Exception: In the case of a pre-*election* report, the report must be delivered to the overnight service at least three days before the filing date. 100.19(b)(1)(c)(ii).

Electronic Filing

An electronic report is considered "filed" when it is received and validated by the Commission's computer system on or before 11:59 p.m. (in Washington, D.C.) on the filing date. Incomplete or inaccurate reports that do not pass the FEC's validation program will not be considered filed. The Commission will notify the filer if the report is not accepted. If the report is accepted, the Commission will send the filer a *receipt*. 100.19(c).

An electronic filer that files its report on paper, instead of electronically, is considered a nonfiler. 104.18(e)(2).

Administrative Fines for Late Filers and Nonfilers

The Commission has implemented an Administrative Fines Program, based on amendments to the *Federal Election Campaign Act*,[1] for assessing civil money penalties for violations involving:

- Failure to file reports on time;
- Failure to file reports at all; and
- Failure to file 48-hour notices.

If the Commission finds "reason to believe" (RTB) that a committee violated the law, the Commission will notify the committee in writing of its finding and the amount of the civil money penalty.[2] The committee will have 40 days to either pay the penalty or submit a written challenge to the Commission action. If the committee challenges the finding, the Commission will turn the case over to an independent reviewing officer. After the Commission considers the reviewing officer's recommendation and the committee's response to it, the Commission will make a final determination as to whether the committee violated 52 U.S.C. §30104(a) and, if so, will assess a civil money penalty. If the committee does not respond to the Commission's original RTB finding, the Commission will make a final determination with an appropriate civil money penalty. The committee will then have 30 days to pay the penalty or seek court review of the case.[3] After the Commission's final determination, the respondents can challenge the penalty by taking the matter to federal district court, but they cannot raise any new arguments not raised during the administrative process.

Deadline Information

To ensure timely filing, treasurers should consult the FEC's monthly newsletter, the *Record*, or the FEC web site (www.fec.gov) for up-to-date information on reports required for particular elections.

3. Election Year Filing

Election years are years in which there are regularly scheduled federal elections (i.e., even-numbered years).

During an *election* year, an SSF must file on either a quarterly or a *monthly* filing schedule.

Quarterly Filing

An SSF that opts to file quarterly must file a minimum of five (and possibly more) reports during an *election* year:

- April Quarterly
- July Quarterly
- October Quarterly
- Post-General
- Year-End; and possibly
- Pre-Election Reports

Three Quarterly Reports

Under the quarterly schedule, an SSF must file three quarterly reports, due respectively on the 15th of April, July and October. A quarterly report

1 On November 30, 2005, President Bush signed the, Transportation, Treasury, Housing and Urban Development, Judiciary, District of Columbia and Independent Agencies Act, 2006, which extended the Administrative Fine Program to cover violations of 52 U.S.C. §30104(a) that relate to reporting periods through December 31, 2008.

2 The civil penalty is calculated according to a set schedule that may be viewed on the FEC web site (www.fec.gov/af.shtml). 111.43. In those cases where the report in question has not been filed, the civil money penalty included with the RTB finding will be based upon the estimated level of activity.

3 For more information on the Administrative Fines Program, see 111.30 to 111.46.

SSF Filing Schedule

Filing Schedule	Report	Filing Date
Quarterly (Election Years Only)	12-Day Pre-Primary	*
	First Quarterly	April 15
	Second Quarterly	July 15
	Third Quarterly	October 15
	12-Day Pre-General	**
	30-Day Post-General	**
	Year-End	January 31
Semiannual (Nonelection Years Only)	Mid-Year (January through June)	July 31
	Year-End (July through December)	January 31
Monthly	February (covering January)	February 20
	March (covering February)	March 20
	April (covering March)	April 20
	May (covering April)	May 20
	June (covering May)	June 20
	July (covering June)	July 20
	August (covering July)	August 20
	September (covering August)	September 20
	October (covering September)	October 20
	November (covering October)***	November 20
	December (covering November)***	December 20
	12-Day Pre-General***	***
	30-Day Post-General***	***
	Year-End	January 31

* Filing dates vary from state to state, according to the primary election dates in each state. Filing dates for all states are announced each election year in the January *Record*.

** Filing dates vary from year to year, according to the date of the general election. The general election is always held the Tuesday following the first Monday in November.

*** A monthly filer files November and December monthly reports only during a nonelection year. During an election year, a monthly filer files pre- and post-election reports instead of the November and December reports.

covers activity that occurred after the closing date of the previous report filed through the end of the calendar quarter (i.e., through March 31, June 30 and September 30).

The Commission will waive a quarterly report if a pre-*election* report (see below) is due between the 5th and the 15th of the month following the close of the calendar quarter. 104.5(c)(1)(i)(C). Committees should check with the FEC to verify whether a report has been waived.

12-Day Pre-Primary Reports[4]

An SSF must file pre-primary reports only if the committee has made previously undisclosed contributions or expenditures in connection with a primary *election*.

The report, due 12 days before the *election*, covers activity from the close of books of the most recent report filed through the 20th day before the primary *election*. The FEC must receive the report at least 12 days before the *election*—unless it is sent by registered, certified or overnight mail,[5] in which case the report must be postmarked no later than the 15th day before the *election*. 104.5(c)(1)(ii).

Primary *election* dates vary from state to state, so a quarterly filer might have to file several pre-primary reports if the SSF contributes to primary candidates in several states. Filing dates for each state's primary *election* are published each *election* year in the January *Record* and posted on the FEC web site (http://www.fec.gov).

Note that the FEC does not automatically send committee treasurers notices and forms for pre-primary *election* reports. The treasurer is responsible for determining whether the SSF must file a pre-*election* report.

12-Day Pre-General Election Report

An SSF must file a pre-general *election* report covering activity from October 1 through the 20th day before the general *election*. The report is required only if the committee makes contributions or expenditures (including independent expenditures in connection with the general *election*) during that period; it must be received by the FEC no later than the 12th day prior to the general *election*—unless sent by registered, certified or overnight mail in which case the report must be postmarked no later than the 15th day before the *election*. 104.5(c)(1)(ii).

30-Day Post-General Election Report

An SSF must file a post-general *election* report 30 days after the general *election*, regardless of activity. (Post-primary reports are not required.) A post-*election* report covers activity that occurred after the closing date of the last report through the 20th day after the general *election*. The report is due 30 days after the *election*. 104.5(c)(1)(iii).

Year-End Report

A year-end report, covering activity from the close of the post-general report through December 31, is due on January 31 of the following year.

Monthly Filing

SSFs contributing to federal candidates in several states may find it easier to file monthly reports, since monthly filers do not have to file pre-primary reports or *special election* reports.

Monthly Filing Schedule

During an *election* year, a report covering each month from January through September is due on the 20th of the following month. The last monthly report, covering September, is filed October 20. The committee also files a 12-day pre-general *election* report and a 30-day post-general *election* report (see the chart for information on filing dates). Finally, the committee files a year-end report on January 31 of the next year. 104.5(c)(3)(ii).

Changing Filing Schedule

During an *election* year, an SSF may change its filing schedule from quarterly to monthly (or vice versa). The treasurer must notify the FEC in writing before making such a change. Electronic filers must file the request electronically.

A committee may change its filing schedule only once per calendar year. 104.5(c).

Special Reports of Independent Expenditures

An SSF may have to file special reports of independent expenditures in addition to the regular reports. See page 65 for more information.

4 This section also applies to special and runoff elections, and to conventions that have the authority to select the nominee.

5 Overnight mail includes priority mail having a delivery confirmation, or express mail having a delivery confirmation, or an overnight delivery service with an on-line tracking system. 100.19(b)(1)(i).

4. Nonelection Year Filing

Nonelection years are years in which there are no regularly scheduled federal elections (i.e., odd-numbered years).

Semiannual Reports

During a *nonelection year*, quarterly filers automatically switch to a semiannual reporting schedule. Two semiannual reports are required:

- The mid-year report, covering activity from January 1 through June 30, must be filed by July 31; and
- The year-end report, covering activity from July 1 through December 31, must be filed by January 31 of the following year.

104.5(c)(2)(i).

Monthly Reports

Monthly Filing Schedule

Reports covering each month's activity are due on the 20th of the following month. The first monthly report, covering January, is due February 20; the final monthly report covers November and is due December 20. The committee reports December's activity in the year-end report, due the following January 31. 104.5(c)(3).

Changing Filing Schedule

An SSF that filed monthly reports during the *election* year continues to file monthly during the *nonelection year*. However, the committee may change to a semi-annual filing schedule if it first notifies the FEC of that change in writing (committees filing electronically must file this notification electronically).

An SSF may change its filing schedule only once per calendar year. 104.5(c).

5. Special Elections

SSFs making contributions or expenditures in connection with a *special election* may be required to file *special election* reports, including reports of independent expenditures (if appropriate). Filing dates for special elections are published in the *Federal Register*, the *FEC Record* and on the FEC web site. (Committees filing on a monthly basis are not required to file *special election* reports.) 104.5(h).

If a regularly scheduled report is due within 10 days of the date a *special election* report is due, the Commission may waive the regular report. 104.5(h). Committees should check with the FEC to verify whether a report has been waived.

6. Electronic Filing

Under the Commission's mandatory electronic filing rules, a committee must file all reports and statements electronically if it raises or spends more than $50,000 in any calendar year, or expects to do so. Committees that are required to file electronically, but that file on paper or fail to file, will be considered nonfilers and may be subject to enforcement action. 104.18(a)(2). See page 46, "Administrative Fines for Late Filers and Nonfilers."

Because electronic filing is more efficient and cost effective than paper filing, even committees that do not meet the $50,000 threshold requirement are encouraged to voluntarily file their reports electronically. Please note, however, that voluntary electronic filers must continue to file electronically for the remainder of the calendar year unless the Commission determines that extraordinary and unforeseeable circumstances make continued electronic filing impractical. 104.18(b).

Methods of Electronic Filing

Most committees filing electronically find it convenient to do so via an Internet connection with a password (see "Treasurer's Duties" on page 45). Committees may, however, submit their electronic reports on 3.5" diskettes (either hand delivered or sent by other means such as U.S. Postal Service). Electronic filers must file all their reports electronically, and the reports must adhere to the FEC's Electronic Filing Specifications Requirements.[6] 104.18(d). Committees filing electronically on diskette must also submit a written certification - signed by the treasurer or assistant treasurer - either on paper or as a separate file with the electronic report, verifying that the treasurer has examined the documents and that, to the best of his or her knowledge, the report is correct, complete and true. 104.18(d).

6 Available online at the FEC web site or on paper from the FEC.

Calculating the Threshold

Committees should use the following formulas to determine if their total expenditures or total contributions are over $50,000 per calendar year:

Total Contributions Received[7]
- (Refunds of Contributions + Transfers from *Affiliated* Committees)
= Total Contributions

or

Total Federal Operating Expenditures
+ Federal Contributions Made
+ Transfers to *Affiliated* Federal Committees
+ Independent Expenditures
= Total Expenditures

Have Reason to Expect to Exceed the Threshold

Once committees actually exceed the $50,000 yearly threshold, they have "reason to expect to exceed" the threshold in the following two calendar years. 104.18(a)(3)(*i*). Consequently, committees must continue to file electronically for the next two calendar years (January through December).

Committees With No History

New committees with no history of campaign finance activity have reason to expect to exceed the $50,000 yearly threshold if:

- The committee receives contributions or makes expenditures that exceed one-quarter of the threshold amount in the first calendar quarter of the calendar year (i.e., exceeds $12,500 by the end of March); or
- The committee receives contributions or makes expenditures that exceed one-half of the threshold amount in the first half of the calendar year (i.e., exceeds $ 25,000 by the end of June). 104.18(a)(3)(ii).

Verification Requirements

The *political committee*'s treasurer must verify the electronically filed reports by:

- Using a personal password obtained from the FEC (see below);
- Submitting a signed certification on paper along with the diskette; or
- Submitting a digitized copy of the signed certification as a separate file in an electronic submission.

The signed verification must certify that the treasurer or assistant treasurer has examined the submitted report, and that, to the best of his or her knowledge, the report is true, correct and complete. 104.18(a).

Obtaining a Password

Requesting a Password

A committee's treasurer or assistant treasurer can obtain a password by faxing a request to the password office at 202/219-0674. Requests may also be mailed to the Federal Election Commission, 999 E Street N.W., Washington, DC 20463. A password request must:

- Include the committee's name and nine-digit FEC identification number;
- Be signed by the treasurer and also by the assistant treasurer if the assistant treasurer is the individual requesting the password;
- Include the treasurer's phone number and, if applicable, the phone number of the assistant treasurer; and
- Be printed on the committee's letterhead (if the committee has official letterhead).

A sample request can be viewed on the FEC's web site at http://www.fec.gov/elecfil/passwords.shtml.

Requests sent by fax can usually be processed within a few hours. However, committees are encouraged to request a password as early as possible. Requests received near a filing deadline may not be processed in time for a committee to use the password to file a timely report.

Assigning the Password

Once the password office receives the letter requesting a password, it will verify that the requester is listed as the treasurer (and assistant treasurer, if applicable) of that committee on that committee's Statement of Organization (FEC Form 1). Only the committee's treasurer and assistant treasurer can receive a password. If the requester is not correctly listed on the committee's Form 1, then he or she must file an amended Statement of Organization before receiving a password.

If the requester is listed on the Statement of Organization, then a representative from the password office will call the requester and ask him or her to choose a password. This password will be assigned immediately. Passwords are case sensitive and must be entered exactly as initially assigned.

7 Including the outstanding balance of any loans.

Lost or Forgotten Password

The Commission cannot provide a treasurer's password to a treasurer or committee if a treasurer forgets or loses the password because the passwords are encrypted. Instead, the treasurer must ask for a new password, repeating the process described above.

New Treasurers

When a committee appoints a new treasurer, it must amend its Statement of Organization within 10 days of the appointment to disclose the change. In order to do so, the new treasurer must request a password. Since the treasurer's name and signature do not appear on the committee's existing Statement of Organization, the new treasurer must include the following sentence in the password request letter: "I represent that I am the duly appointed treasurer and have authority as such to sign FEC reports for the above committee."

Once a password is received, the new treasurer can file the amended Form 1 to indicate the change of position.

Special Requirements

The following documents have special signature and submission requirements:

- Schedule C1 (Loans and Line of Credit), including copies of loan agreements;
- Schedule E (Independent Expenditures); and
- Form 8 (Debt Settlement Plan).

These three forms, in addition to being included in the electronic report, must be submitted on paper or in a digitized format (submitted as a separate file in the electronic report). 104.18(h).

7. Where to File

Committees must file all reports and statements simultaneously with the appropriate federal and state offices.

Federal Filing

SSFs generally file reports and statements with the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. 105.4.

Note, however, that quarterly reports of independent expenditures supporting or opposing Senate candidates must be filed with the Secretary of the Senate. (It is important to note, however, that 24-hour and 48-hour reports of independent expenditures are filed with the FEC and not with the Secretary of the Senate even if the communication refers to a Senate *candidate*. 104.4(b)(2) and (c) and 104.5(g).

State Filing

State Filing Waiver

All 50 states participate in the FEC's state filing waiver program; therefore, SSFs no longer have to file copies of their federal reports and statements because the states:

- Have provided the public with the means to access and duplicate the reports available on the FEC web site; and
- Have been granted a waiver by the Commission exempting them from the requirement to receive and maintain copies of FEC reports.

See 108.1(b).

For elections in Guam and Puerto Rico, an SSF must file a report with the appropriate authority if it:

- Supports House or Senate candidates running in an *election* in that territory; or
- Maintains headquarters in that territory and supports Presidential candidates; or
- Supports a Presidential *candidate* whose headquarters are based in that territory.

See 108.2, 108.3 and 108.4.

8. Public Review of Reports

All reports, notices and statements filed by political committees are available for public inspection and copying (for a minimal fee) in the FEC's Public Records Office. The reports are also posted on the Commission web site at http://www.fec.gov/disclosure.shtml. Copies of reports may also be purchased by mail. For more information, call 800/424-9530 ext. 3 or 202-694-1120.

Reports are also available for public review in designated state election offices.

"Sale or Use" Restriction

The *Act* prohibits anyone from selling or using the names and addresses of individual contributors copied from FEC reports for commercial purposes or for the purpose of soliciting funds. This "sale or use" restriction, however, does not apply to the names

and addresses of political committees that are listed in FEC reports. 104.15. See also AOs 2004-24 and 2003-24.

"Salting" Reports to Detect Misuse

When preparing a report to be filed, a committee may "salt" the report with up to 10 fictitious names in order to detect impermissible uses of individual contributor information by other organizations. 104.3(e).

Salting can be done by taking a portion of the subtotal for unitemized contributions and allocating it, as itemized contributions, among several fictitious contributors. The committee itemizes each fictitious *contribution* on a Schedule A, providing a real address (such as the address of a campaign staff member) for each fictitious contributor. The committee must adjust its subtotals for itemized and unitemized contributions accordingly on the Detailed Summary Page. If a solicitation or commercial mailing is sent to one of the fictitious names, the committee will know that someone has illegally used the names of contributors disclosed on its reports. The committee may then file a complaint with the FEC.

When a committee files a report containing fictitious names, a list of the fictitious names must be sent under separate cover directly to the FEC's Reports Analysis Division. The list will be kept confidential.

CHAPTER 7
Completing FEC Form 3X

1. Reporting Forms

Form 3X

FEC Form 3X is the form used by SSFs to disclose receipts and disbursements. The same form is used for all types of reports, including quarterly reports, semiannual reports, pre- and post-*election* reports and termination reports.

The Form 3X booklet includes:

- The Summary Page
- The Detailed Summary Page
- Schedule A: Itemized Receipts
- Schedule B: Itemized Disbursements
- Schedule C: Loans
- Schedule C-1: Loans and Lines of Credit from Lending Institutions
- Schedule D: Debts and Obligations
- Schedule E: Itemized Independent Expenditures
- Schedules H1–H6: Allocation of Federal and Nonfederal Expenses (See Appendix A for information on the allocation schedules.)

Information entered on the Summary Page and Detailed Summary Page is based on information from the schedules. The schedules, therefore, are normally filled out first. The instructions in this Chapter (starting in Section 2) begin with Schedule A.

Paper Forms

Paper versions of FEC Forms should be typed; printing in ink is also acceptable as long as the forms are legible. Because reports will be photocopied, it is important that paper filers submit original documents (not copies) with the FEC. Committees submitting illegible documents will be required to refile.

Electronic Filing

Committees filing with the FEC can take advantage of the electronic filing program. Reports can be filed electronically on a 3.5" disk, via modem or via the Internet. For more information about the electronic filing requirement, see page 49 of this guide or contact the FEC.

Computerized Forms

A committee may use computer-produced versions of FEC Forms, but they must first be submitted to the Commission for approval. This rule applies even if the committee is using commercial software designed for FEC reporting. 104.2(d). Committees may also submit computer-generated Summary and Detailed Summary Pages, but these pages must be reproductions of the original FEC forms. See AO 1992–11.

The committee must send samples of its proposed forms and schedules to the FEC's Reports Analysis Division. 104.2(d); FEC Directive 37 (available through the FEC's Office of Public Records).

Forms Available on Faxline and FEC Web Site

Faxline

The reporting forms are available on the FEC's fax-on-demand service, Faxline 202/501-3413. Below are the document numbers of the reporting forms for SSFs:

- Form 1—Statement of Organization—#801
- Form 3X—Financial Reporting for SSFs Committees—#804
- Schedule A—Itemized Receipts—#825
- Schedule B—Itemized Disbursements—#826
- Schedule C and C-1—Loans—#827
- Schedule D—Debts and Obligations—#828
- Schedule E— Independent Expenditures--#829
- Schedule H1-H6 – Allocation -- #831

Web site

The forms mentioned above are also available on the FEC web site (www.fec.gov/info/forms.shtml).

2. Itemized Receipts: Schedule A

When to Itemize Receipts

Regardless of Amount

Several types of receipts must be itemized on

Schedule A regardless of amount. They include:

- Contributions from political committees and similar organizations;
- Transfers from affilated SSFs;
- Loans received;
- Loan payments received; and
- Refunded contributions received from political committees.

$200 Threshold

A *receipt* in any of the following categories must be itemized if it exceeds $200 per calendar year, either by itself or when aggregated with other receipts from the same source:

- Contributions from individuals and groups other than political committees;
- Offsets to operating expenditures (rebates, refunds and returns of deposits), if the operating expenditures were paid by the SSF; and
- Other receipts (such as interest and dividends earned on invested funds).

Note that, although a committee only has to itemize contributions in its reports for persons (other than political committees) giving more than $200 per year, the committee's records must identify the sources of contributions of more than $50. See Chapter 5.

Itemizing Receipts When Not Required

A committee that chooses to itemize all its receipts, regardless of the $200 threshold, should use a separate Schedule A to itemize the receipts that do not aggregate over $200. The committee must include those receipts in the total for Line 11(a)(ii), "Unitemized Receipts," on the Detailed Summary Page.

Categorizing Receipts

Before beginning to itemize the committee's receipts, separate them into the different categories listed on the Detailed Summary Page ("Contributions from Individuals," "Contributions from Political Committees," etc.; an illustration of a completed Detailed Summary Page appears on page 68). The receipts in each category must be itemized on a separate Schedule A designated for that category.

Indicate the type of *receipt* itemized on a particular Schedule A by checking the box for the corresponding line number from the Detailed Summary Page where indicated in the upper right corner of the schedule. The appropriate category of *receipt* may also be written at the top of each page.

Some categories may require several pages. The total for each category should be entered on the bottom line of the last page for that category.

Itemized Information

For each itemized *contribution*, provide:

- The full name and address (including zip code) of the contributor or other source;
- The name of the contributor's employer (if the contributor is an individual);
- The contributor's occupation (if the contributor is an individual);
- The date of *receipt*;
- The amount; and
- The aggregate year-to-date total of all receipts (within the same category) from the same source. 104.3(a)(3).

The space indicating the *election* for which an itemized *contribution* was made ("Receipt For") does not apply to SSFs; leave those boxes blank.

Special Employer Information

If a contributor is self-employed, that should be recorded in the Employer space. If a contributor is not employed, the Employer space should be left blank, but the Occupation space should always be completed (e.g., "unemployed," "retired," "homemaker").

Best Efforts Required

Note that committees and their treasurers must use "best efforts" to obtain and report the information listed above. See page 43 for more information.

Payroll Deductions

Once an individual's deductions aggregate over $200 in a calendar year, report the total amount deducted from the donor's paychecks during the reporting period on Schedule A. In parentheses indicate the amount that was deducted each pay period. Instead of stating a specific date of *receipt*, type "payroll deduction" under "Date." The other itemized information, including the year-to-date total, must be completed for each donor. 104.8(b).

EXAMPLE: During an *election* year, a corporate manager authorizes her employer to deduct $15 per pay period (each pay period is two weeks) for the company's SSF. The SSF, which files FEC reports on a quarterly schedule, includes the manager's first-quarter contributions ($90 for six pay periods) as "unitemized contributions" on Line 11(a)(ii) in the April quarterly report.

Payroll Deductions

SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: PAGE OF
(check only one)
X 11a 11b 11c 12 13 14 15 16 17

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
Critical Reason Inc. PAC

A. Full Name (Last, First, Middle Initial)
Kant, Immanuel

Mailing Address
3 Critiques Ave.

City: Konigsburg State: VA Zip Code: 33333

FEC ID number of contributing federal political committee. C

Name of Employer: Critical Reason Inc.
Occupation: Brand Manager

Receipt For:
☐ Primary ☐ General
☐ Other (specify)

Aggregate Year-to-Date: 285.00

Date of Receipt: payroll deduction*

Amount of Each Receipt this Period: 90.00
($15.00 biweekly)**

*Adding Extra Text/Explanation: When using FECFile electronic filing software, this information can be entered using the "memo text" window. To make a memo text entry, select the "view" menu on the FECFile toolbar. Select "All Transactions." Single click (highlight) the transaction to which the memo text will be attached. Then select the "Edit" menu on the toolbar and select "memo text."

**When using FECFile electronic filing software, enter this information in the "description" field.

By June 30 (the closing date for the July quarterly report), 13 pay periods have passed, and the manager's aggregate contributions are $195—still below the $200 itemization threshold. The manager's second-quarter contributions again are included in "unitemized contribtutions" in the July report.

By September 30 (the closing date for the October quarterly report), 19 pay periods have passed, and the manager's contributions reach $285. Now the committee itemizes the total contributions received from the manager during the third quarter ($90), providing the year-to-date total in the appropriate space. (See the illustration above.)

In-Kind Contributions

When determining whether to itemize an *in-kind contribution* received, follow the same guidelines listed above under "When to Itemize Receipts." See page 9 for information on how to determine the dollar value of an *in-kind contribution*.

In addition, add the value of the *in-kind contribution* to the operating expenditures total on Line 21(b) (in order to avoid inflating the cash-on-hand amount). 104.13(a)(2).

If the *in-kind contribution* must be itemized on Schedule A, then it must also be itemized on a Schedule B for operating expenditures. See the illustration on page 56.

Appreciated Goods

When a committee receives an *in-kind contribution* whose value may appreciate over time, such as stock or artwork, special reporting rules apply:

- Itemize the initial gift, if necessary, as a *memo entry* on Schedule A (see "When to Itemize Receipts," on page 53). Under "Amount," report the fair market value of the *contribution* on the date the item was received. Do not include that amount in the total for Line 11(a)(i) on the Detailed Summary Page.
- Once the item is sold, report the sale price as a *contribution* on Line 11(a)(i) if the purchaser is known or as an "other *receipt*" on Line 15 if the purchaser is unknown. Itemize the transaction on Schedule A if necessary. 104.13(b). See also AO 1989-6.

Joint Contributions

A *joint contribution* is made by a single check that bears two signatures. A check with one signature may also be a *joint contribution* if an accompanying form or letter, signed by both contributors, instructs the committee to treat it as a *joint contribution*. (A check drawn on a joint bank account but signed by only one person does not qualify as a *joint contribution*. Attribute the full amount of such a check only to the person who signed it. Alternatively, a reattribution may be sought using the procedures described below.)

For the purposes of itemization, report a *joint contribution* as though the joint contributors had given separately.

A *joint contribution* is itemized in items A and B in the illustration on page 57. In this case, the committee received a $1,000 check from a married couple, signed by both spouses. Because there were no

In-Kind Contributions Received

SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) PAGE OF
X 11a 11b 11c 12 13 14 15 16 17

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
Critical Reason Inc. PAC

A. Full Name (Last, First, Middle Initial)
Hume, David

Mailing Address
1711 Empirical Ave.

City: Alexandria State: VA Zip Code: 33333

FEC ID number of contributing federal political committee: C

Name of Employer: Critical Reason Inc.
Occupation: Systems Analyst

Receipt For: Primary / General / Other (specify)

Aggregate Year-to-Date

Date of Receipt: 08 / 19 / 2005

Amount of Each Receipt this Period: 3990.00

In-kind (raffle prize)*

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) PAGE OF
X 21b 22 23 24 25 26 27 28a 28b 28c 29 30b

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
Critical Reason Inc. PAC

A. Full Name (Last, First, Middle Initial)
Hume, David

Mailing Address
1711 Empirical Ave.

City: Alexandria State: VA Zip Code: 33333

Purpose of Disbursement: Raffle Prize

Candidate Name

Category/Type

Office Sought: House / Senate / President

State: District:

Disbursement For: Primary / General / Other (specify)

Date of Disbursement: 08 / 19 / 2005

Amount of Each Disbursement this Period: 3990.00

In-kind

*When using FECFile electronic filing software, enter this information in the "description" field.

instructions as to how to attribute the check, the committee must divide it equally between the two spouses—$500 from each. 110.1(k)(2).

By contrast, if the committee received instructions to attribute $100 to the husband and $900 to the wife, the committee would itemize the wife's *contribution*. The husband's $100 *contribution* would have to be itemized only if he had previously given more than $100 in the same calendar year, since his total contributions would then aggregate over $200.

Reattributions

This section describes how to report contributions which the committee has presumptively reattributed or for which the committee has requested reattributions from contributors. (See Chapter 3, Section 8.)

Receipt of Original Contribution

When itemizing a *contribution* that must be reattributed to correct an excessive amount, include a statement on Schedule A noting that a reattribution has been requested. 103.3(b)(5).

Receipt of Reattribution

In the report covering the period during which the reattribution is received, itemize as memo entries:

- Information on the *contribution* as it was previously disclosed; and
- Information on the *contribution* as it was reattributed, including the date the reattribution was received; and
- For presumptive reattributions, note "presumptive reattribution". 104.8(d)(3).

An example of how to report a reattribution is in the illustrations on pages 57 and 58. The excessive *contribution* ($6,000) is recorded in the reporting period in which it was received (July report). Then, in the report covering the period during which the reattribution is received (the October report) the initial *contribution* ($6,000) is reported as a *memo entry* followed by the portions reattributed between the original contributor (Gottfried Leibniz) and his spouse (Tina Leibniz).

Refund of Excessive Portion

If the SSF does not receive the reattribution, the committee must refund the excessive portion within 60 days of the treasurer's *receipt* of the *contribution*. Disclose the refund on the next report. 103.3(b)(3) and (5); 104.8(d)(4). See also "Refunds Made by the SSF," later in this chapter.

Keep Verification Records

The SSF must also keep documentation for each reattribution to verify it was received within the 60-day time limit. Documentation for a reattribution must include one of the following:

Joint Contributions

SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) [X] 11a [ ] 11b [ ] 11c [ ] 12 [ ] 13 [ ] 14 [ ] 15 [ ] 16 [ ] 17

PAGE OF

Any information copied from such Reports and Statements may not be sold or used by any persons for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full): Absolute Spirit Inc. PAC

A. Full Name (Last, First, Middle Initial): Hegel, George
Mailing Address: 33 Dialectic Circle
City: Arlington | State: VA | Zip Code: 33333
FEC ID number of contributing federal political committee: C
Name of Employer: Absolute Spirit Inc. | Occupation: System Designer
Receipt For: [ ] Primary [ ] General [ ] Other (specify)
Aggregate Year-to-Date: 575.00
Date of Receipt: 07 / 08 / 2005
Amount of Each Receipt this Period: 500.00

B. Full Name (Last, First, Middle Initial): Hegel, Marie
Mailing Address: 33 Dialectic Circle
City: Arlington | State: VA | Zip Code: 33333
FEC ID number of contributing federal political committee: C
Name of Employer: Prussian State Wine Shop | Occupation: Proprietor
Receipt For: [ ] Primary [ ] General [ ] Other (specify)
Aggregate Year-to-Date: 500.00
Date of Receipt: 07 / 08 / 2005
Amount of Each Receipt this Period: 500.00

Reattributions (July Report)

SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) [X] 11a [ ] 11b [ ] 11c [ ] 12 [ ] 13 [ ] 14 [ ] 15 [ ] 16 [ ] 17

PAGE OF

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full): Critical Reason Inc. PAC

A. Full Name (Last, First, Middle Initial): Leibniz, Gottfried
Mailing Address: 111 Monad Street.
City: Strasburg | State: VA | Zip Code: 33333
FEC ID number of contributing federal political committee: C
Name of Employer: Rationalist Solutions. | Occupation: Vice President
Receipt For: [ ] Primary [ ] General [ ] Other (specify)
Aggregate Year-to-Date: 6000.00
Date of Receipt: 06 / 14 / 2006
Amount of Each Receipt this Period: 6000.00
(Reattribution requested)*

*For FECFile, use the "description" field.

- A copy of the postmarked envelope bearing the contributor's name, return address or other identifying code;
- A copy of the signed statement reattributing the *contribution* with a date stamp showing the date of the SSF's *receipt*; or
- A copy of the written reattribution dated by the contributor. 110.1(l)(6).

Memo Entries

Use a *memo entry* on a schedule to provide information that is not included in the schedule's total dollar figure. Memo entries are used, for example, to disclose a reattribution of a *contribution*.

Filers should exercise caution not to confuse "memo entries" with the "memo text" function used to supply additional information when filing electronically on FECFile.

Bounced Checks

If a committee reports the *receipt* of a check and later finds it cannot be negotiated because of insufficient funds in the donor's account, the committee deducts the amount from its next report as follows:

- If the *receipt* was not itemized in a previous report, deduct the amount of the check from the total for unitemized contributions (Line 11(a)(ii) on the Detailed Summary Page).
- If the *receipt* was itemized previously, itemize the return of the check as a *negative entry* on a Schedule A for the appropriate line number.

Checks received and returned by the bank in the same reporting period do not need to be reported.

Negative Entry

A *negative entry* is usually shown as a dollar amount with a negative sign in front. The amount is always deducted from the total for that schedule (and the corresponding line number on the Detailed Summary Page). A *negative entry* is used, for example, when a contributor's check bounces or is returned to the contributor without having been deposited in the committee's account.

Reattributions (October Report)

SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) 11a 11b 11c 11d 12 13 14 15 16 17

PAGE OF

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
Critical Reason Inc. PAC

A. Full Name (Last, First, Middle Initial): Leibniz,Gottfried
Mailing Address: 111 Monad Street.
City: Strasburg State: VA Zip Code: 33333
FEC ID number of contributing federal political committee: C
Name of Employer: Rationalist Solutions. Occupation: Vice President
Receipt For: Primary General Other (specify)
Aggregate Year-to-Date: 6000.00
Date of Receipt: 06 / 14 / 2006
Amount of Each Receipt this Period: 6000.00
MEMO*
Originally reported 6/14/06
$1,000 reattributed below**

B. Full Name (Last, First, Middle Initial): Leibniz,Gottfried
Mailing Address: 111 Monad Street.
City: Straaburg State: VA Zip Code: 33333
FEC ID number of contributing federal political committee: C
Name of Employer: Rationalist Solutions. Occupation: Vice President
Receipt For: Primary General Other (specify)
Aggregate Year-to-Date: 5000.00
Date of Receipt: 07 / 11 / 2006
Amount of Each Receipt this Period: - 1000.00
MEMO
Reattribution below

C. Full Name (Last, First, Middle Initial): Leibniz,Tina
Mailing Address: 111 Monad Street.
City: Strasburg State: VA Zip Code: 33333
FEC ID number of contributing federal political committee: C
Name of Employer: The Best of All Possible Firms Occupation: Attorney
Receipt For: Primary General Other (specify)
Aggregate Year-to-Date: 1000.00
Date of Receipt: 07 / 11 / 2006
Amount of Each Receipt this Period: 1000.00
MEMO
Reattribution

*When using FECfile, this is entered automatically by checking the memo dialog box. For entries of more than 40 characters, use the memo text function.
**When using FECfile, enter this information in the "description" field.

3. Reporting Receipts: The Detailed Summary Page

Listed below are the categories of receipts found on the Detailed Summary Page. For each category, enter a total for the current period and for the calendar year to date. An illustration of a completed Detailed Summary Page can be found on page 68.

Line 11. Contributions Received

Report total monetary and in-kind contributions received, both itemized and unitemized.

Line 11(a). Contributions from Individuals and Other Persons/ Groups

Itemize contributions from individuals and other groups on Schedule A for Line 11(a)(i). Rules concerning when to itemize contributions from individuals are explained on page 54.

Line 11(b). Political Party Committees

If the committee has received any unsolicited contributions from party committees (including party organizations that do not qualify as political committees), itemize them on Schedule A for Line 11(b) and enter the total on the Detailed Summary Page.

Line 11(c). Other Political Committees

If the committee has received any unsolicited contributions from other types of political committees (including SSFs, nonconnected committees and committees that do not qualify as political committees), itemize them on Schedule A for Line 11(c) and enter the total on Line 11(c) of the Detailed Summary Page. Transfers of funds received from *affiliated* SSFs, however, are reported on Line 12.

Line 11(d). Total Contributions

Enter the total of Lines 11(a), (b) and (c).

Line 12. Transfers-In

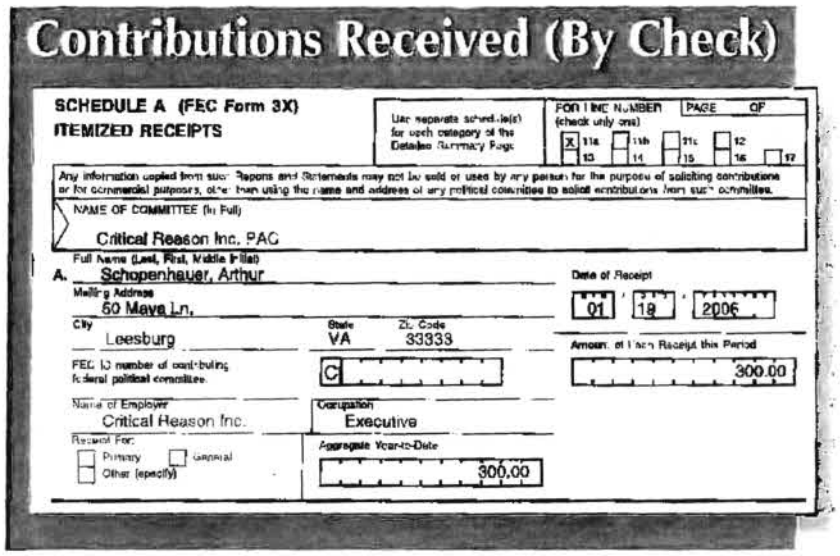
Itemize any transfers of funds received from *affiliated* SSFs on Schedule A for Line 12. See the example at right. Enter the total on Line 12.

Line 13. Loans Received

Itemize any loans received on Schedule A for Line 13. Enter the total amount on Line 13. Committees receiving loans must also file Schedule C. See Section 8 for more information.

Line 14. Loan Repayments Received

Itemize any repayments received on loans made by the SSF on Schedule A for Line 14. Enter the total on Line 14. Committees receiving loan repayments



Contributions Received (By Check)

SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS

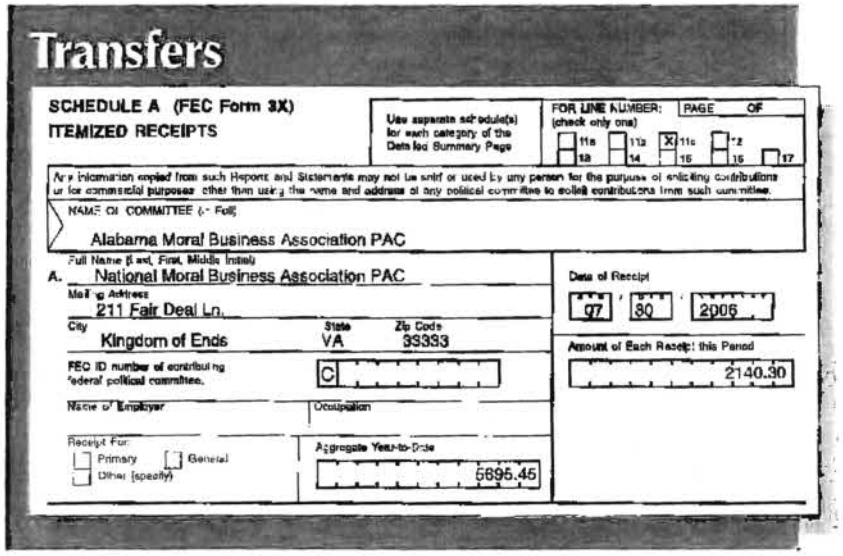
Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER (check only one): PAGE OF

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full): Critical Reason Inc. PAC

A. Full Name (Last, First, Middle Initial): Schopenhauer, Arthur
Mailing Address: 50 Maya Ln.
City: Leesburg State: VA Zip Code: 33333
FEC ID number of contributing federal political committee: C
Name of Employer: Critical Reason Inc.
Occupation: Executive
Receipt For: Primary General Other (specify)
Aggregate Year-to-Date: 300.00
Date of Receipt: 01 / 18 / 2006
Amount of Each Receipt this Period: 300.00



Transfers

SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: PAGE OF

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full): Alabama Moral Business Association PAC

A. Full Name (Last, First, Middle Initial): National Moral Business Association PAC
Mailing Address: 211 Fair Deal Ln.
City: Kingdom of Ends State: VA Zip Code: 33333
FEC ID number of contributing federal political committee: C
Name of Employer:
Occupation:
Receipt For: Primary General Other (specify)
Aggregate Year-to-Date: 5695.45
Date of Receipt: 07 / 30 / 2006
Amount of Each Receipt this Period: 2140.30

must also file Schedule C. See Section 8 for information.

Line 15. Offsets to Operating Expenditures
Refunds, rebates and returns of deposits are considered offsets to operating expenditures. Report them only if the SSF (not the *connected organization*) paid the original expenses.

Itemize offsets on Schedule A for Line 15 once the committee receives more than $200 from the same source during a calendar year. Enter the total on Line 15.

If the *connected organization* made the original operating *expenditure* with its own funds, then the offset must be given to the *connected organization* and is not reportable.

Line 16. Refunds of Contributions
Itemize refunds of contributions made by the SSF on Schedule A for Line 16 regardless of their amount. See Section 5 for more information on how to report them. Enter the total on Line 16.

Line 17. Other Receipts
This category includes interest and dividends earned on investments. Itemize these receipts on Schedule A for Line 17 once the committee receives more than $200 from the same source during a calendar year. Enter the total under this category on Line 17. See Section 6 for more information on interest and dividends.

Line 18. Transfers from Nonfederal Account for Joint Activity
If the committee maintains a *nonfederal account* for state and local *election* activities and pays its own administrative expenses, the federal account (the SSF) may accept a *transfer* of funds from the *nonfederal account* for the sole purpose of covering its portion of a shared federal and nonfederal expense. 106.6(e)(1)(i). Report the total amount transferred from the *nonfederal account* during the period (i.e., the total from Schedule H3) on Line 18(a).

Other rules concerning these transfers are explained in Appendix A.

4. Itemized Disbursements: Schedule B

When to Itemize Disbursements

Regardless of Amount
Several types of disbursements must be itemized regardless of amount:

- Transfers to *affiliated* SSFs;
- Contributions to candidates and political committees;

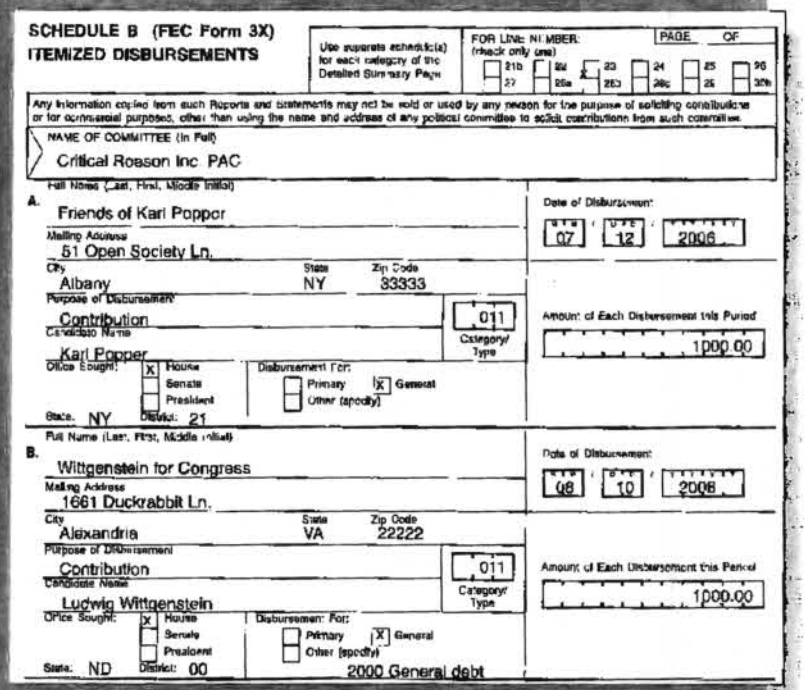
- Expenditures for allocated federal/nonfederal activity (on Schedule H4);
- Loan repayments; and
- Loans made by the SSF.

Note that refunds of contributions (Line 28 on the Detailed Summary Page) must be itemized on Schedule B only if the incoming *contribution* had to be itemized on Schedule A, as explained earlier in this chapter.

Other Disbursements: $200 Threshold

A disbursement that does not fall under one of the categories listed above (such as a donation to a nonfederal *candidate*) must be itemized if it exceeds $200 when aggregated with other disbursements made to the same payee during the calendar year.

Contributions to Candidates (By Check)



SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) 21b 27 22 28a X 23 28b 24 28c 25 29 26 30b

PAGE OF

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NAME OF COMMITTEE (In Full): Critical Reason Inc. PAC

A. Full Name (Last, First, Middle Initial): Friends of Karl Popper
Mailing Address: 51 Open Society Ln.
City: Albany State: NY Zip Code: 33333
Purpose of Disbursement: Contribution
Candidate Name: Karl Popper
Office Sought: X House / Senate / President
State: NY District: 21
Disbursement For: Primary / X General / Other (specify)
Date of Disbursement: 07 12 2006
Category/Type: 011
Amount of Each Disbursement this Period: 1000.00

B. Full Name (Last, First, Middle Initial): Wittgenstein for Congress
Mailing Address: 1661 Duckrabbit Ln.
City: Alexandria State: VA Zip Code: 22222
Purpose of Disbursement: Contribution
Candidate Name: Ludwig Wittgenstein
Office Sought: X House / Senate / President
State: ND District: 00
Disbursement For: Primary / X General / Other (specify)
2000 General debt
Date of Disbursement: 08 10 2008
Category/Type: 011
Amount of Each Disbursement this Period: 1000.00

Itemize contributions to federal candidates regardless of amount. See Chapter 2, Section 4 on "Designation" for contributions to retire debt.

How to Itemize Disbursements

Categorizing Disbursements

Before beginning to itemize the committee's disbursements, separate them into the different categories listed on the Detailed Summary Page ("Operating Expenditures," "Contributions to Federal Candidates," etc; an illustration of a completed Detailed Summary Page appears on page 68). The disbursements in each category must be itemized on a separate Schedule B designated for that category.

Indicate the type of disbursement itemized on a particular Schedule B by checking the appropriate box for the corresponding line number from the Detailed Summary Page in the upper right corner of the schedule.

Some categories may require several pages. The total for each category should be entered on the bottom line of the last page for that category.

Itemized Information

Itemized disbursement information includes:

- Name of payee;
- Address of payee;
- Purpose of disbursement (a brief but specific description of why the disbursement was made—see Schedule B instructions and 104.3(b)(3)(i)(B));
- Category Code (see Instructions for Schedules B and E);
- Date of payment; and
- Amount. 104.3(b)(3); 104.9.

Additional Information on Candidates

Further information is required when itemizing a *contribution* to a *candidate committee* on Schedule B. Include the *candidate*'s name and the office sought (including the state and, if applicable, Congressional district). When itemizing a *contribution* or loan to a *candidate committee*, specify the *election* for which the payment was made by checking the appropriate category in the *election* designation box. 104.3(b)(3)(v). See illustrations above.

Redesignations of Contributions Made

Use memo entries to show any redesignations of contributions made.

If a *contribution* to a *candidate* is redesignated after the close of books, show the redesignation on the next report and indicate the report on which the original *contribution* was itemized.

In the illustration on page 62, the committee originally made a $5,000 *contribution* to a *candidate*'s campaign, intending it to count toward the primary *election*. The committee itemized the *contribution* in its year-end report. The following month, the campaign requested that the SSF redesignate $4,500 to help retire debts from the previous general *election* campaign. The committee itemized the redesignation in its April quarterly report.

Return or Refund of Contributions Made

If an SSF receives a refund of a *contribution* it has made, it must report the refund in one of two ways, depending on the circumstances described below.

Contribution Made by SSF: Original Check Not Deposited

If a check to a *candidate committee* or other *political committee* is not deposited (e.g., if it is returned uncashed or is lost), report the amount as a *negative entry* on a Schedule B for Line 23, "Contributions to Federal Candidates and Other Political Committees." (The amount is subtracted from the total for Line 23.) An example is illustrated on page 63.

Refunded by Recipient's Check

If the recipient committee deposits the *contribution* and then refunds it with its own check, itemize the refund, regardless of amount, on a Schedule A for Line 16, "Contribution Refunds."

In-Kind Contributions to Candidates

Disclosure of In-Kind Contribution Made:

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) PAGE OF

21b 27 | 22 28a | X 23 28b | 24 28c | 25 29 | 26 30b

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full): Critical Reason Inc. PAC

A. Full Name (Last, First, Middle Initial): Prytaneum Hotel

Mailing Address: 399 Agora Ave.

City: Athens State: GA Zip Code: 33333

Purpose of Disbursement: Meals

Candidate Name: John Socrates

Office Sought: X House / Senate / President

State: GA District: 4

Disbursement For: Primary / X General / Other (specify)

Category/Type: 011

Date of Disbursement: 08 / 19 / 2006

Amount of Each Disbursement this Period: 975.00

In-kind

Additional Reporting of Payment to Vendor — If Made After Goods/Services Provided.

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) PAGE OF

21b 27 | 22 28a | X 23 28b | 24 28c | 25 29 | 26 30b

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full): Critical Reason Inc. PAC

A. Full Name (Last, First, Middle Initial): Prytaneum Hotel

Mailing Address: 399 Agora Ave.

City: Athens State: GA Zip Code: 33333

Purpose of Disbursement: Meals

Candidate Name: John Socrates

Office Sought: X House / Senate / President

State: GA District: 4

Disbursement For: Primary / X General / Other (specify)

Category/Type: 011

Date of Disbursement: 09 / 19 / 2006

Amount of Each Disbursement this Period: 975.00

MEMO (in-kind; see Schedule B, Line 23)

Refunds Made by the SSF

When an SSF refunds a *contribution* to a donor, the committee must include the disbursement in the total for the appropriate category of refund on the Detailed Summary Page (Line 28(a), (b) or (c)). If the SSF previously itemized the incoming *contribution* on Schedule A, then it must itemize the refund on a Schedule B for the appropriate line number. 104.8(d)(4).

(An SSF may return a *contribution* to the donor without depositing it, although the return must be made within 10 days of the treasurer's *receipt* of the *contribution*. 103.3(a). In this case, the committee

does not have to report either the *receipt* or the return of the *contribution*.)

5. Reporting Disbursements: The Detailed Summary Page

Line-by-line instructions for filling out the Disbursements portion of the Detailed Summary Page are given below. See Section 4 for information on how to itemize disbursements on Schedule B. An example of a completed Detailed Summary Page appears on page 68. More information on reporting loans, debts and independent expenditures appears later in this chapter.

Line 21. Operating Expenditures
Operating expenditures—also called *administrative expenses* and fundraising expenses—are only reportable if the SSF pays for them. (Normally, the *connected organization* pays these expenses.)

Line 21(a)
Report the federal and nonfederal shares of allocable activities separately on Lines 21(a)(i) and (ii). These numbers will be transferred from Schedule H4 (see Appendix A). Note, however, that Line 21(a) is rarely used by SSFs. See Appendix A.

Line 21(b)
Report the total of operating expenditures for unshared SSF activities (i.e., activities paid for exclusively from a federal account) on Line 21(b).

Itemize them on Schedule B for Line 21(b) once payments to any payee exceed $200 in a calendar year.

Redesignation

Original Designation: Year-End Report

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) 21b 27 / 22 28a / X 23 28b / 24 28c / 25 29 / 26 30b

PAGE OF

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full): Stoic Solutions Inc. PAC

A. Full Name (Last, First, Middle Initial): Committee to Elect Marcus Aurelius
Mailing Address: 109 Via Sacra Ln.
City: Rome State: NY Zip Code: 33333
Purpose of Disbursement: Contribution
Candidate Name: Marcus Aurelius
Office Sought: X House / Senate / President
State: NY District: 23
Disbursement For: X Primary / General / Other (specify)
Date of Disbursement: 08 / 12 / 2005
Category/Type: 011
Amount of Each Disbursement this Period: 5000.00

April Report

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) 21b 27 / 22 28a / X 23 28b / 24 28c / 25 29 / 26 30b

PAGE OF

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full): Stoic Solutions Inc. PAC

A. Full Name (Last, First, Middle Initial): Committee to Elect Marcus Aurelius
Mailing Address: 109 Via Sacra Ln.
City: Rome State: NY Zip Code: 33333
Purpose of Disbursement: Contribution
Candidate Name: Marcus Aurelius
Office Sought: X House / Senate / President
State: NY District: 23
Disbursement For: X Primary / General / Other (specify)
Date of Disbursement: 11 / 12 / 2005
Category/Type: 011
Amount of Each Disbursement this Period: 5000.00
MEMO* (As disclosed in 2005 year-end report)**

B. Full Name (Last, First, Middle Initial): Committee to Elect Marcus Aurelius
Mailing Address: 109 Via Sacra Ln.
City: Rome State: NY Zip Code: 33333
Purpose of Disbursement: Contribution
Candidate Name: Marcus Aurelius
Office Sought: X House / Senate / President
State: NY District: 23
Disbursement For: Primary / General / X Other (specify) 2004 General debt
Date of Disbursement: 02 / 12 / 2006
Category/Type: 011
Amount of Each Disbursement this Period: 4500.00
MEMO (Redesignation of above contribution)

*When using FECfile, this is entered automatically by checking the memo dialog box. For entries of more than 40 characters, use the memo text function.
**When using FECfile, enter this information in the "description" field.

Line 22. Transfers-Out
Itemize transfers to *affiliated* SSFs, regardless of amount, on Schedule B for Line 22. Enter the total from that schedule on the Detailed Summary Page on Line 22.

Line 23. Contributions to Federal Candidates and Other Political Committees
Itemize all monetary and in-kind contributions made to *candidate* committees and other political committees, regardless of amount, on Schedule B for Line 23. Report the total from that schedule on Line 23 of the Detailed Summary Page. Examples of itemized contributions to candidates are provided on pages 60-61.

Line 24. Independent Expenditures
Unlike other categories of disbursements, independent expenditures are itemized on Schedule E, as explained on page 66. Enter the total from Schedule E, line (c), on Line 24.

Line 26. Loan Repayments Made
See Section 8 for information on how to itemize the payments on Schedules B and C. Enter the total paid on loans on Line 26.

Line 27. Loans Made
See Section 8 for information on how to report loans made by the committee on Schedules B and C. Enter the total amount loaned during the period on Line 27.

Line 28. Refunds of Contributions
Itemize a refund made by the committee only if the original *contribution* was itemized. Other rules for reporting *contribution* refunds made by an SSF are described in Section 5. Enter the total amount refunded during the period on Line 28.

Line 29. Other Disbursements
"Other disbursements" include donations made by the SSF to nonfederal candidates and committees. Itemize "other disbursements" on Schedule B for Line 29 when they exceed $200 to the same payee during a calendar year. Enter the total of itemized and unitemized other disbursements on the Detailed Summary Page.

Returned or Voided Contributions

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) 21b, 22, 23 [X], 24, 25, 26, 27, 28a, 28b, 28c, 29, 30b

PAGE OF

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NAME OF COMMITTEE (In Full)
Dellan League Association PAC

A. Full Name (Last, First, Middle Initial)
Al Cibiades for Congress

Mailing Address
2020 Hubris Street

City: Syracuse State: NY Zip Code: 00000

Purpose of Disbursement:
Contribution

Candidate Name:
Al Cibiades

Category/Type: 011

Office Sought: [X] House [ ] Senate [ ] President

State: NY District: 25

Disbursement For: [ ] Primary [X] General [ ] Other (specify)

Date of Disbursement: 08 / 12 / 2005

Amount of Each Disbursement this Period: - 5000.00

(check returned or voided)

Refunded Contribution

SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) 11a, 11b, 11c, 12, 13, 14, 16, 16, X 16, 17

PAGE OF

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NAME OF COMMITTEE (In Full)
Critical Reason Inc. PAC

A. Full Name (Last, First, Middle Initial)
Hegel for Congress

Mailing Address
33 Dialectic Ln.

City: Leesburg State: VA Zip Code: 33333

FEC ID number of contributing federal political committee: C

Name of Employer

Occupation

Receipt For: [X] Primary [ ] General [ ] Other (specify)

Aggregate Year-to-Date: 1000.00

Date of Receipt: 07 / 19 / 2006

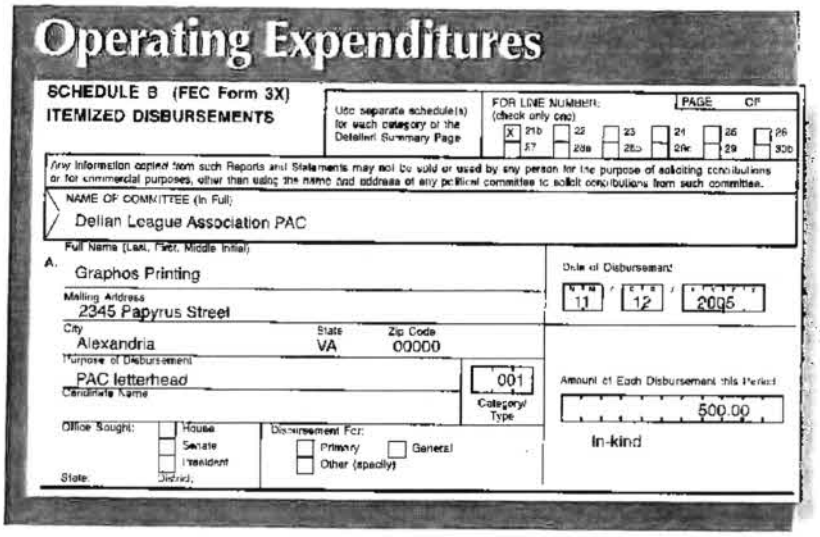
Amount of Each Receipt this Period: 1000.00

(Contribution itemized in the July quarterly report)

6. Investments

Principal

When the committee invests funds in a savings account, money market fund, certificate of deposit or similar type of account, the principal deposited must be included in the committee's cash-on-hand total. (Investment properties, such as shares of stock, are not included in cash-on-hand.) The


Operating Expenditures

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

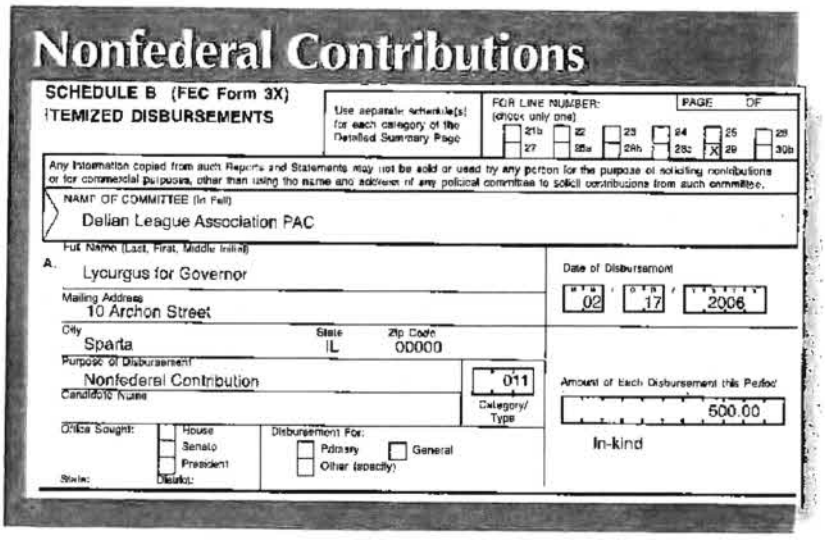
FOR LINE NUMBER: (check only one) [X] 21b [ ] 22 [ ] 23 [ ] 24 [ ] 25 [ ] 26 [ ] 27 [ ] 28a [ ] 28b [ ] 28c [ ] 29 [ ] 30b

PAGE OF

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full): Delian League Association PAC

A. Full Name (Last, First, Middle Initial): Graphos Printing
Mailing Address: 2345 Papyrus Street
City: Alexandria State: VA Zip Code: 00000
Purpose of Disbursement: PAC letterhead
Candidate Name:
Category/Type: 001
Date of Disbursement: 11 / 12 / 2005
Amount of Each Disbursement this Period: 500.00
In-kind
Office Sought: [ ] House [ ] Senate [ ] President
State: District:
Disbursement For: [ ] Primary [ ] General [ ] Other (specify)


Nonfederal Contributions

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) [ ] 21b [ ] 22 [ ] 23 [ ] 24 [ ] 25 [X] 29 [ ] 30b [ ] 27 [ ] 28a [ ] 28b

PAGE OF

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full): Delian League Association PAC

A. Full Name (Last, First, Middle Initial): Lycurgus for Governor
Mailing Address: 10 Archon Street
City: Sparta State: IL Zip Code: 00000
Purpose of Disbursement: Nonfederal Contribution
Candidate Name:
Category/Type: 011
Date of Disbursement: 02 / 17 / 2006
Amount of Each Disbursement this Period: 500.00
In-kind
Office Sought: [ ] House [ ] Senate [ ] President
State: District:
Disbursement For: [ ] Primary [ ] General [ ] Other (specify)

committee does not report this type of investment as a disbursement because the money is still a committee asset. 104.3(a)(1). See also AO 1990-2. (See page 18 for more information on committee investments.)

Additional Depositories

Funds Invested with Banks

If the committee invests its funds in an account at a bank that was not previously identified as a campaign depository on the SSF's Statement of Organization (FEC Form 1), the SSF must file an amended Statement disclosing the name and address of the additional depository. The amendment must be filed within 10 days of opening the account. 102.2(a)(2).

Funds Invested with Other Establishments

If committee funds are invested in an account that is not operated by a bank (such as a money market account operated by a brokerage firm), no amendment to the Statement of Organization is required. However, before disbursing the funds in the account (principal and interest), the committee must first *transfer* them to a designated campaign checking account. 102.10 and 103.3(a). See also AOs 1999-8, 1997-6, 1986–18 and 1980–39.

Investment Income

Report interest income received during the reporting period in the "Other Receipts" category (Line 17) of the Detailed Summary Page. If investment income received from one source aggregates over $200 during a calendar year, itemize the interest on a Schedule A for Line 17. 104.3(a)(4)(vi).

Income Tax

Report taxes paid by the SSF as operating expenditures on Line 21. Itemize income tax payments on Schedule B only if they aggregate over $200 per year to the same payee—i.e., the local, state or federal government.

Unlike other operating expenditures, taxes on an SSF's earnings are not payable by the *connected organization*. AO 1977–19.

7. Independent Expenditures

Schedule E

Itemize any *independent expenditure* which, by itself or when added to other independent expenditures made to the same payee during the same calendar year, exceeds $200. Independent expenditures are itemized on Schedule E. A subtotal for itemized independent expenditures is entered on Line (a). Independent expenditures made (i.e., publicly dis-

Credit Card Transactions

SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one) 21b 22 23 24 25 26 27 28a 28b 28c 29 30b

PAGE OF

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full): Critical Reason Inc. PAC

A. Full Name (Last, First, Middle Initial): Credit Card Corp.
Mailing Address: 101 Charge Street
City: Alexandria State: VA Zip Code: 33333
Purpose of Disbursement: Credit Card Payment (see below)
Candidate Name:
Category/Type: 011
Office Sought: House / Senate / President
State: District:
Disbursement For: [X] Primary [ ] General [ ] Other (specify)
Date of Disbursement: 12 / 30 / 2006
Amount of Each Disbursement this Period: 504.50

B. Full Name (Last, First, Middle Initial): Prime Cut Steakhouse
Mailing Address: 1643 Calbert Street
City: Washington State: DC Zip Code: 33333
Purpose of Disbursement: Fundraising Luncheon
Candidate Name: John Amenable
Category/Type: 011
Office Sought: [X] House / Senate / President
State: ND District: 00
Disbursement For: [X] Primary [ ] General [ ] Other (specify)
Date of Disbursement: 11 / 01 / 2006
Amount of Each Disbursement this Period: 237.25
MEMO*
See Schedule B, Line 23

C. Full Name (Last, First, Middle Initial): Zack's House of Cakes
Mailing Address: 1223 Connecticut Ave
City: Washington State: DC Zip Code: 33333
Purpose of Disbursement: Fundraising Luncheon
Candidate Name: John Amenable
Category/Type: 011
Office Sought: [X] House / Senate / President
State: ND District: 00
Disbursement For: [X] Primary [ ] General [ ] Other (specify)
Date of Disbursement: 11 / 01 / 2006
Amount of Each Disbursement this Period: 287.25
MEMO
See Schedule B, Line 23

*In FECFile, click "memo" in the dialog box.

seminated) prior to payment should be disclosed as "memo" entries on Schedule E and as reportable debt on Schedule D. 104.11.

Independent expenditures of $200 or less do not need to be itemized, though the committee must report the subtotal of those expenditures on Line (b). 104.3(b)(3)(vii)(C) and 104.4(a).

Enter the total of itemized and unitemized independent expenditures on Line (c) of Schedule E and on Line 24 of the Detailed Summary Page.

48-Hour Independent Expenditure Reports

SSFs and other persons who make independent expenditures at any time during a calendar year—up to and including the 20th day before an *election*—must disclose this activity within 48 hours each time that the expenditures aggregate $10,000 or more. This reporting requirement is in addition to the requirement to file 24-hour reports of independent expenditures each time that disbursements for independent expenditures aggregate to or above $1,000 during the last 20 days—up to 24-hours—before an *election*. 52 U.S.C. §§30104(b), (d) and (g). For information on such last-minute *independent expenditure* reports, see below.

Note: expenditures that have already been disclosed in a previous report do not have to be included on the 48-hour report.

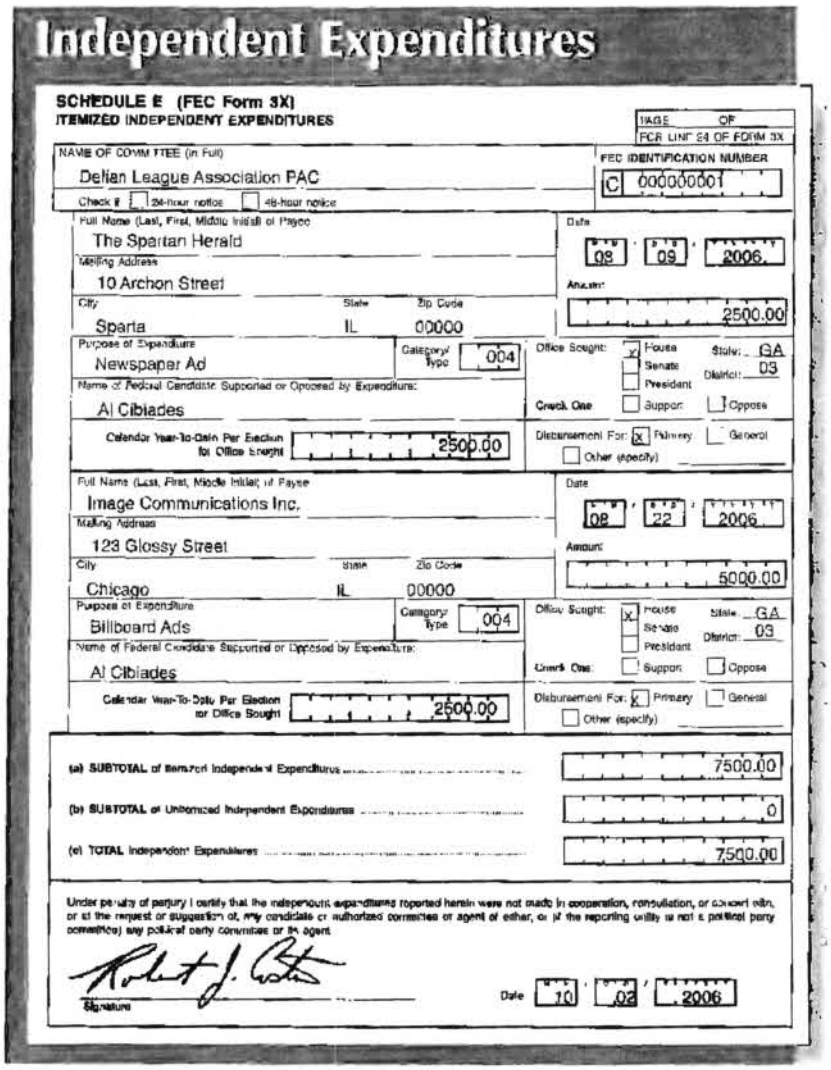
The SSF must report a last-minute *expenditure* a second time on a Schedule E filed with its next regular report. 104.4(a). Electronic filers must file these reports electronically. Paper filers may file by fax or email. Additionally, electronic filers and paper filers may file 48-hour reports using the FEC web site's online program. 104.4(b)(2), 109.10(c) and 100.19(d)(3).

Independent expenditures aggregating less than $10,000.

SSFs must report on Schedule E, as part of their regularly scheduled filing, independent expenditures that aggregate less than $10,000 with respect to a given *election* during the calendar year that are made up to and including the 20th day before an *election*. 104.4(a) and (b)(1).

Independent expenditures aggregating $10,000 and above.

Once an SSFs independent expenditures in connection with a given *election* reach or exceed $10,000 in the aggregate at any time up to and including the 20th day before an *election*, they must be reported within 48 hours of the date that the *expenditure* is publicly distributed. All 48-hour reports must be filed with and received by the Commission at the end of the second day after the *independent expenditure* is publicly distributed.



Independent Expenditures

SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES

PAGE OF
FOR LINE 24 OF FORM 3X

NAME OF COMMITTEE (in Full): Delian League Association PAC
FEC IDENTIFICATION NUMBER: C 000000001
Check if: 24-hour notice / 48-hour notice

Full Name (Last, First, Middle Initial) of Payee: The Spartan Herald
Date: 08 / 09 / 2006
Mailing Address: 10 Archon Street
City: Sparta State: IL Zip Code: 00000
Amount: 2500.00
Purpose of Expenditure: Newspaper Ad
Category/Type: 004
Office Sought: [x] House [ ] Senate [ ] President State: GA District: 03
Name of Federal Candidate Supported or Opposed by Expenditure: Al Cibiades
Check One: [ ] Support [ ] Oppose
Calendar Year-To-Date Per Election for Office Sought: 2500.00
Disbursement For: [x] Primary [ ] General [ ] Other (specify)

Full Name (Last, First, Middle Initial) of Payee: Image Communications Inc.
Date: 08 / 22 / 2006
Mailing Address: 123 Glossy Street
City: Chicago State: IL Zip Code: 00000
Amount: 5000.00
Purpose of Expenditure: Billboard Ads
Category/Type: 004
Office Sought: [x] House [ ] Senate [ ] President State: GA District: 03
Name of Federal Candidate Supported or Opposed by Expenditure: Al Cibiades
Check One: [ ] Support [ ] Oppose
Calendar Year-To-Date Per Election for Office Sought: 2500.00
Disbursement For: [x] Primary [ ] General [ ] Other (specify)

(a) SUBTOTAL of Itemized Independent Expenditures: 7500.00
(b) SUBTOTAL of Unitemized Independent Expenditures: 0
(c) TOTAL Independent Expenditures: 7500.00

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of either, or if the reporting entity is not a political party committee, any political party committee or its agent.

Signature: Robert J. Costa
Date: 10 / 02 / 2006

Aggregating independent expenditures for reporting purposes.

Independent expenditures are aggregated toward the various reporting thresholds on a per-*election* and per-office sought basis within the calendar year. Consider, as examples, the following scenarios, all of which occur outside of the 20-day window before an *election* when 24-hour reports are required:

- If an SSF makes $5,000 in independent expenditures with respect to a Senate *candidate*, and $5,000 in independent expenditures with respect to a House *candidate*, then the SSF is not required to file 48-hour reports, but must disclose this activity on its next regularly-scheduled report.
- If the SSF makes $5,000 in independent expenditures with respect to a clearly-identified *candidate* in the primary, and an additional $5,000 in independent expenditures with respect to the same *candidate* in the general, then again no 48-hour report is required and the expenditures are disclosed on the SSF's next report.
- If the SSF makes $6,000 in independent expenditures supporting a Senate *candidate* in the primary *election* and $4,000 opposing that Senate *candidate*'s opponent in the same *election*, then the SSF must file a 48-hour report.

The date that a communication is publicly disseminated serves as the date that an SSF must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts of $10,000. A 48-hour report is required for each additional $10,000 in aggregate expenditures.

The calculation of the aggregate amount of the independent expenditures must include both disbursements for independent expenditures and all contracts obliging funds for disbursements of independent expenditures. 11 CFR 104.4(f). Expenditures that have already been disclosed in a previous report do not have to be included on the 48-hour report.

Last-Minute Independent Expenditure Reports (24 Hour Notices)

Any independent expenditures aggregating $1,000 or more and made after the 20th day but more than 24 hours before the day of an *election* must be reported and the report must be received by the Commission within 24 hours after the *expenditure* is made. A 24-hour report is required for each additional $1,000 that aggregates. The 24-hour report must be filed on a Schedule E. 104.4(c) and 104.5(g). The date that a communication is publicly disseminated serves as the date that an SSF must use to determine whether the total amount of indepen-

dent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of $1,000.

The SSF must report a last-minute *expenditure* a second time on a Schedule E filed with its next regular report. 104.4(a).

Electronic filers must file these reports electronically, and paper filers may file by fax or email. Additionally, electronic filers and paper filers may file 24-hour reports using the FEC web site's online program. 11 CFR 104.4(c) and 109.10(d).

Certification

All 24- and 48-hour reports must contain, among other things, a verification under penalty of perjury as to whether the *expenditure* was made in cooperation, consultation or concert with a *candidate*, a *candidate's* committee, a *political party committee* or an agent of any of these. 11 CFR 104.4(d)(1) and 109.10(e)(1)(v).

For reports filed on paper, the treasurer must sign the Schedule E. For reports filed by email, the treasurer must type his or her name on the Schedule E following the certification.

8. Reporting Loans

Continuously itemize all loans received and made by the SSF until they are repaid. All repayments made or received on a loan must also be itemized. 104.3(a)(4)(iv); 104.3(b)(3)(iii) and (vi); 104.3(d); 104.11. Procedures for reporting loans and loan repayments are explained below.

Reminder: Loans are considered contributions to the extent of the outstanding balance of the loan. 100.52(b). Loans from banks, however, are not considered contributions if made in the ordinary course of business. Endorsements and guarantees of bank loans, however, do count as contributions. 100.52(b) and 100.82(a) through (d).

Loans Received by the SSF– Schedule A: Initial Receipt of Loan

Itemize the *receipt* of a loan, regardless of amount, on a separate Schedule A for Line 13 ("Loans Received").

Schedule B: Interest and Principal Payments

Report the interest paid on a loan as an operating *expenditure*, itemizing the payment on a Schedule B for Line 21(b) ("Operating Expenditures") once interest payments to the payee aggregate over $200 in a calendar year. 100.111(b) and 104.3(b)(3)(i).

Payments to reduce the principal must be itemized, regardless of amount, on a separate Schedule B for Line 26 ("Loan Repayments Made"). 104.3(b)(3)(iii).

Schedule C: Continuous Reporting

In addition, report both the original loan and payments made to repay the loan on Schedule C each reporting period until the loan is repaid. 104.3(d) and 104.11. Instructions on the back of Schedule C explain what information must be disclosed. Use separate Schedule C forms to itemize loans received and loans made.

The Schedule C balance of the total amount owed on loans is entered on line 10 of the Summary Page ("Debts and Obligations Owed by the Committee") or, if the committee has other debts, the balance is carried over to Schedule D (see Section 9).

Schedule C-1: Additional Information for Bank Loans

A committee that obtains a loan from a bank must also file Schedule C-1 with the first report due after a new loan or line of credit has been established. 104.3(d)(1). A new Schedule C-1 must also be filed with the next report if the terms of the loan or line of credit are restructured.

Additionally, in the case of a committee that has obtained a line of credit, a new Schedule C-1 must be filed with the next report whenever the committee draws on the line of credit. 104.3(d)(1) and (3).

Line-by-line instructions for filling out the schedule appear on the back of Schedule C-1. The committee treasurer or designated assistant treasurer must sign the schedule on Line G and attach a copy of the loan agreement. 104.3(d)(2).

Finally, an authorized representative of the lending institution must sign the statement on Line I.

Loans Made by the SSF

Schedule B: Outgoing Loan

When making a loan to another organization, itemize the disbursement, regardless of amount, on a Schedule B for Line 27 ("Loans Made"). 104.3(b)(3)(vi).

Schedule A: Interest and Principal Payments Received

Report interest received on a loan on a Schedule A

Detailed Summary Page

DETAILED SUMMARY PAGE
of Receipts

FEC Form 3X (Rev. 02/2003) Page 3

Write or Type Committee Name
Critical Reason Inc. PAC

Report Covering the Period: From: 07 / 01 / 2006 To: 09 / 30 / 2006

I. Receipts	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
11. Contributions (other than loans) From:		
(a) Individuals/Persons Other Than Political Committees		
(i) Itemized (use Schedule A)	10562.27	
(ii) Unitemized	9982.57	
(iii) TOTAL (add Lines 11(a)(i) and (ii)	20544.84	97967.46
(b) Political Party Committees	0	0
(c) Other Political Committees (such as PACs)	0	0
(d) Total Contributions (add Lines 11(a)(iii), (b), and (c)) (Carry Totals to Line 39, page 6)	20544.84	97967.46
12. Transfers From Affiliated/Other Party Committees	2156.85	5605.69
13. All Loans Received	0	0
14. Loan Repayments Received	0	0
15. Offsets To Operating Expenditures (Refunds, Rebates, etc.) (Carry Totals to Line 37, page 5)	250.00	250.00
16. Refunds of Contributions Made to Federal Candidates and Other Political Committees	1000.00	1000.00
17. Other Federal Receipts (Dividends, Interest, etc.)	181.69	851.88
18. Transfers from Non-Federal and Levin Funds		
(a) Non-Federal Account (from Schedule H3)	0	0
(b) Levin Funds (from Schedule H5)	0	0
(c) Total Transfers (add 18(a) and 18(b))	0	0
19. Total Receipts (add Lines 11(d), 12, 13, 14, 15, 16, 17, and 18(c))	24133.38	105675.03
20. Total Federal Receipts (subtract Line 18(c) from Line 19)	24133.38	105675.03

FEC FORM 3X.PDF

for Line 17 ("Other Federal Receipts") if the payments aggregate over $200 from the same source during the calendar year.

Itemize payments received that reduce the principal owed on a separate Schedule A for Line 14 ("Loan Repayments Received").

Schedule C: Continuous Reporting

The original amount loaned and repayments received on it must be itemized on Schedule C each reporting period until the loan is repaid in full. Schedule C instructions (see the back of the page) explain what information must be disclosed. (Note that separate Schedule C forms are used to itemize loans received and loans made.)

The Schedule C balance of the total outstanding loans owed to a committee is entered on Line 9 of the Summary Page ("Debts and Obligations Owed to the Committee") unless other types of debts are owed to the committee. In that case, the Schedule C total is carried over to Schedule D (see below).

9. Reporting Debts Other Than Loans

Unpaid bills and written contracts or agreements to make expenditures are considered debts. 100.112. Report debts and obligations (other than loans) on Schedule D according to the following rules:

- A debt of $500 or less is reportable once it has been outstanding 60 days from the date incurred (the date of the transaction, not the date the bill is received). The debt is disclosed on the next regularly scheduled report.
- A debt exceeding $500 must be reported on the next report filed after the debt is incurred.[1] 104.3(d) and 104.11.

Use separate Schedule D forms for debts owed by the committee and debts owed to the committee. Label each schedule accordingly.

Debts Owed by an SSF

Use Schedule D to report:

- The outstanding amount owed on a debt or obligation; and
- Payments made to reduce the debt.
- Schedule D instructions explain what additional information is required.

Enter the Schedule D total of outstanding debts,

1 Regularly recurring administrative expenses like rent and salaries, if paid by the SSF and not by the connected organization, do not have to be reported until payment is due. 104.11(b); see 116.6(c)

Detailed Summary Page (Page 2)

DETAILED SUMMARY PAGE
of Disbursements

FEC Form 3X (Rev. 02/2003)

Page 4

II. Disbursements	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
21. Operating Expenditures:		
(a) Allocated Federal/Non Federal Activity (from Schedule H4)		
(i) Federal Share	0	0
(ii) Non-Federal Share	0	0
(b) Other Federal Operating Expenditures	1195.00	2542.91
(c) Total Operating Expenditures (add 21(a)(i), (ii)(ii) and (b))	1195.00	2542.91
22. Transfers to Affiliated/Other Party Committees	0	0
23. Contributions to Federal Candidates/Committees and Other Political Committees	24200.00	60975.00
24. Independent Expenditures (Use Schedule E)	18751.68	18751.68
25. Coordinated Party Expenditures (52 U.S.C. §30116(d)) (Use Schedule F)	0	0
26. Loan Repayments Made	0	0
27. Loans Made	0	0
28. Refunds of Contributions To:		
(a) Individuals/Persons Other Than Political Committees	120.00	120.00
(b) Political Party Committees	0	0
(c) Other Political Committees (such as PACs)	0	0
(d) Total Contribution Refunds (add Lines 28(a), (b), and (c))	120.00	120.00
29. Other Disbursements	600.00	990.00
30. Federal Election Activity (52 U.S.C.§30101(20))		
(a) Allocated Federal Election Activity (from Schedule H6)		
(i) Federal Share	0	0
(ii) "Levin" Share	0	0
(b) Federal Election Activity Paid Entirely With Federal Funds	0	0
(c) Total Federal Election Activity (add Lines 30(a)(i), 30(a)(ii) and 30(b))	0	0
31. Total Disbursements (add Lines 21(c), 22, 23, 24, 25, 26, 27, 28(d), 29 and 30(c))	50966.68	88579.79
32. Total Federal Disbursements (subtract Line 21(a)(ii) and Line 30(a)(ii) from Line 31)	50966.68	88579.79

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plus the balance of loans owed by the committee (carried over from Schedule C, as explained above) on Line 10 of the Summary Page. Note that payments to reduce debts must also be reported under the appropriate category of disbursement on the Detailed Summary Page (for example, Line 21(b) for a payment on a bill for an operating *expenditure*).

Settlement of Debts

Special rules apply to debts that are forgiven or settled for less than their full amount. See Chapter 8 for more information.

Special Debt Reporting Problems

Debts of Unknown Amount

If the exact amount of a debt is not known, report the estimated amount of the debt. The committee should amend the report once a correct figure is known or include the correct figure in a later report. 104.11(b).

Unpayable Debts

If a debt cannot be paid because the creditor has gone out of business or cannot be located, the SSF may write to the FEC to request permission to discontinue reporting the debt. The letter must demonstrate that the debt is at least two years old and that efforts to reach the creditor have been made. The committee must continue to report the debt until the Commission determines that the debt is unpayable. See 116.9.

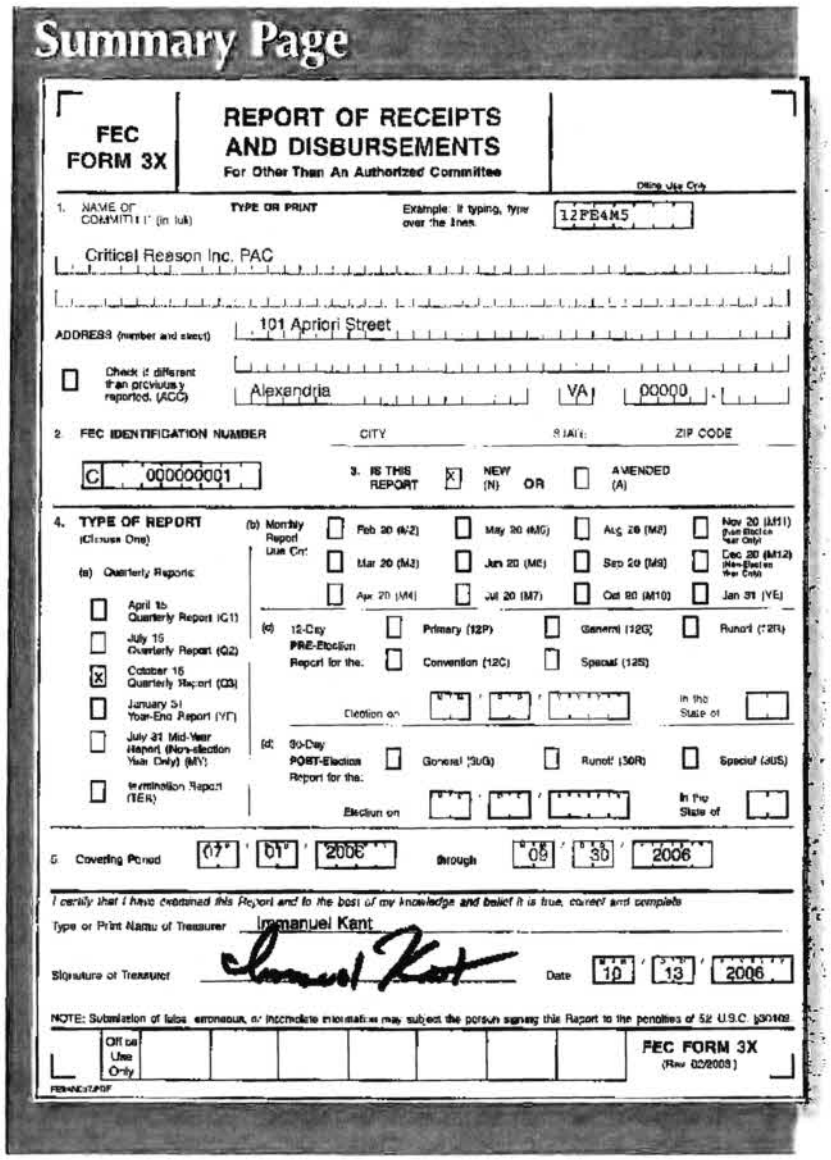
Disputed Debts

A disputed debt is a bona fide disagreement between the creditor and the committee as to the existence of a debt or the amount owed by the committee. 116.10. Until the creditor and committee resolve the dispute (assuming the creditor did provide something of value), the SSF must disclose:

- The amount the committee admits it owes;
- The amount the creditor claims is owed; and
- Any amounts the committee has paid the creditor.

Debts Owed to an SSF

Continuously report a debt owed to an SSF on Schedule D if the debt exceeds $500 or has been outstanding 60 days. 104.3(d) and 104.11. Payments received on the debt are also reported on Schedule D until the debt is retired. The payments must also be reported on the appropriate line number of the Detailed Summary Page and itemized on Schedule A if necessary.



Summary Page

FEC FORM 3X

REPORT OF RECEIPTS AND DISBURSEMENTS
For Other Than An Authorized Committee

Filing Use Only

1. NAME OF COMMITTEE (in full) — TYPE OR PRINT — Example: If typing, type over the lines. 12PB4M5

Critical Reason Inc. PAC

ADDRESS (number and street) 101 Apriori Street

☐ Check if different than previously reported. (ACC)

Alexandria | VA | 00000

CITY | STATE | ZIP CODE

2. FEC IDENTIFICATION NUMBER C 000000001

3. IS THIS REPORT ☒ NEW (N) OR ☐ AMENDED (A)

4. TYPE OF REPORT (Choose One)

(a) Quarterly Reports:
☐ April 15 Quarterly Report (Q1)
☐ July 15 Quarterly Report (Q2)
☒ October 15 Quarterly Report (Q3)
☐ January 31 Year-End Report (YE)
☐ July 31 Mid-Year Report (Non-election Year Only) (MY)
☐ Termination Report (TER)

(b) Monthly Report Due On:
☐ Feb 20 (M2) ☐ May 20 (M5) ☐ Aug 20 (M8) ☐ Nov 20 (M11) (Non-Election Year Only)
☐ Mar 20 (M3) ☐ Jun 20 (M6) ☐ Sep 20 (M9) ☐ Dec 20 (M12) (Non-Election Year Only)
☐ Apr 20 (M4) ☐ Jul 20 (M7) ☐ Oct 20 (M10) ☐ Jan 31 (YE)

(c) 12-Day PRE-Election Report for the: ☐ Primary (12P) ☐ General (12G) ☐ Runoff (12R) ☐ Convention (12C) ☐ Special (12S)
Election on ___ In the State of ___

(d) 30-Day POST-Election Report for the: ☐ General (30G) ☐ Runoff (30R) ☐ Special (30S)
Election on ___ In the State of ___

5. Covering Period 01 / 01 / 2006 through 09 / 30 / 2006

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Immanuel Kant

Signature of Treasurer Immanuel Kant Date 10 / 13 / 2006

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 52 U.S.C. §30109.

Office Use Only

FEC FORM 3X (Rev. 02/2003)

Enter the Schedule D total of outstanding debts owed to a committee, plus the balance of outstanding loans carried over from Schedule C, on Line 9 of the Summary Page.

10. The Summary Page

Line 1. Name and Address

Fill in the SSF's full name (including any abbreviations used) and mailing address. (See "Naming the SSF" on page 2.)

Line 2. ID Number

Enter the committee's FEC identification number on Line 2. If the SSF is filing its first report, it may not have yet received an ID number; in that case, the committee should leave this space blank.

Once a committee has received its FEC identification number, it must include that number in all reports, statements, notices and other written communications with the FEC.

Line 3. New or Amended Report

Check the appropriate box to indicate whether the report is new (N) or amended (A).

Line 4. Type of Report

Check the appropriate box under (a) indicating the type of disclosure report being filed (quarterly, monthly, pre-*election* or post-*election*); see Chapter 6.

Line 5. Coverage Dates

The period covered by the report begins the day after the close of books of the last report filed by the SSF. If the report is the first one filed by a committee, then the reporting period begins with the date of the committee's first activity.

Line 6. Cash on Hand

What Is Cash on Hand

Cash on hand includes funds held in checking and savings accounts, certificates of deposit, petty cash funds, traveler's checks, treasury bills and other investments valued at cost. 104.3(a)(1).

Line 6(a)

On this line enter cash on hand as of January 1st of the reporting year.

Summary Page (Page 2)

SUMMARY PAGE
OF RECEIPTS AND DISBURSEMENTS

FEC Form 3X (Rev. 02/2003) Page 2

Write or Type Committee Name
Critical Reason Inc. PAC

Report Covering the Period: From: 07 / 01 / 2006 To: 09 / 30 / 2006

	COLUMN A This Period	COLUMN B Calendar Year-to-Date
6. (a) Cash on Hand January 1, 2006		87820.25
(b) Cash on Hand at Beginning of Reporting Period	118894.35	
(c) Total Receipts (from Line 19)	30333.38	111875.03
(d) Subtotal (add Lines 6(b) and 6(c) for Column A and Lines 6(a) and 6(c) for Column B)	149227.73	199695.28
7. Total Disbursements (from Line 31)	57166.88	107634.43
8. Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(d))	92060.85	92060.85
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)	0	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	0	

[X] This committee has qualified as a multicandidate committee. (see FEC FORM 1M)

For further information contact:

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Toll Free 800-424-9530
Local 202-694-1100

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Line 6(b) Cash on Hand at Beginning of Reporting Period.

The amount entered on this line should be the same as your cash on hand at the close of books of your last report.

First Report

Beginning cash on hand—i.e., money that the committee had in its possession at the time of registration—is subject to the *contribution* limits, prohibitions and disclosure requirements of federal law. (The committee must exclude any contributions that are not permissible under federal law.) The committee may have to itemize contributions and other receipts included in the beginning cash-on-hand balance. See "When to Itemize Receipts," on page 53. 104.12.

Treasurer's Name and Signature

The treasurer must sign and date Form 3X at the bottom of the cover page. Only a treasurer or assistant treasurer designated on Form 1 (Statement of Organization) may sign the report. 104.14(a). See Chapter 1 for more information on the treasurer's responsibilities. See also Chapter 6, Section 5 "Electronic Filing."

11. Filing Amendments

The committee must file an amended report if it:

- Discovers that an earlier report contained erroneous information; or
- Does not obtain required reporting information concerning a particular transaction until after the transaction has been reported.

Paper Filers

When filing an amendment to an original report, complete the Summary Page (including the treasurer's signature), indicating on #3 by checking the appropriate box that the document is an amended report. In addition to the Summary Page, submit a corrected version of the schedule that contained the incomplete or incorrect itemized information in the earlier report, along with a revised Detailed Summary Page, if appropriate. Transactions originally reported correctly do not have to be itemized again. The Commission recommends that the treasurer attach a cover letter explaining the change.

Electronic Filers

Electronic filers must electronically resubmit the entire report, not just the amended portions. The amendments must be formatted to comply with the Electronic Filing Specifications Requirements mentioned in Chapter 6, Section 5.

Appendix C.1

Session:

Arizona Legislature

VIEW DOCUMENT

ARS TITLE PAGE (HTTP://WWW.AZLEG.GOV/ARSTITLE)

PREVIOUS SECTION (VIEWDOCUMENT/?DOCNAME=HTTP://WWW.AZLEG.GOV/ARS/16/00922.HTM)

NEXT SECTION (VIEWDOCUMENT/?DOCNAME=HTTP://WWW.AZLEG.GOV/ARS/16/00926.HTM)

PRINTABLE VERSION (HTTP://WWW.AZLEG.GOV/ARS/16/00925.HTM)

16-925. Advertising and fund-raising disclosure statements

A. A person that makes an expenditure for an advertisement or fund-raising solicitation, other than an individual, shall include the following disclosures in the advertisement or solicitation:

1. The words "paid for by", followed by the name of the person making the expenditure for the advertisement or fund-raising solicitation.

2. Whether the expenditure was authorized by any candidate, followed by the identity of the authorizing candidate, if any.

B. In addition to the disclosure required by subsection A of this section, a political action committee that makes an expenditure for an advertisement shall include a disclosure stating the names of the three political action committees making the largest aggregate contributions to the political action committee making the expenditure and that exceed twenty thousand dollars during the election cycle, as calculated at the time the advertisement was distributed for publication, display, delivery or broadcast.

C. If a disclosure contains any acronym or nickname that is not commonly known, the disclosure shall also spell out the acronym or provide the full name.

D. If the advertisement is:

1. Broadcast on radio, the disclosure shall be clearly spoken at the beginning or end of the advertisement.

2. Delivered by hand or mail or electronically, the disclosure shall be clearly readable.

3. Displayed on a sign or billboard, the disclosure shall be displayed in a height that is at least four percent of the vertical height of the sign or billboard.

4. Broadcast on television or in a video or film, both of the following requirements apply:

(a) The disclosure shall be both written and spoken at the beginning or end of the advertisement, except that if the written disclosure statement is displayed for the greater of at least one-sixth of the broadcast duration or four seconds, a spoken disclosure statement is not required.

(b) The written disclosure statement shall be printed in letters that are displayed in a height that is at least four percent of the vertical picture height.

E. This section does not apply to:

1. Social media messages, text messages or messages sent by a short message service.

2. Advertisements that are placed as a paid link on a website, if the message is not more than two hundred characters in length and the link directs the user to another website that complies with this section.

3. Advertisements that are placed as a graphic or picture link, if the statements required in this section cannot be conveniently printed due to the size of the graphic or picture and the link directs the user to another website that complies with this section.

4. Bumper stickers, pins, buttons, pens and similar small items on which the statements required in this section cannot be conveniently printed.

5. A solicitation of contributions by a separate segregated fund.

6. A communication by a tax-exempt organization solely to its members.

7. A published book or a documentary film or video.

Location (/location/)

Frequently Asked Questions (FAQs) (/FAQ)

Accessibility/accommodation (/access-accessibility)

Reference Material

Sunset/Sunrise Process (/sunset_review.pdf)
2016 Sunrise Applications (/sunrise-review-process)
General Effective Dates (/general-effective-dates/)
Legislative Maps (http://azredistricting.org/districtlocator/)
Bill Process (http://www.azleg.gov/alisPDFs/hbillaw.pdf)
Bill To Law (http://www.azleg.gov/alisPDFs/BillToLaw.pdf)
Abbreviations (/faq/abbreviations)

Miscellaneous

Wireless Internet Access (http://hotzona.com/AZPower/AZPower/Welcome.html)
Careers (/careerOpportunity)
Internships (/azleginternships)
Arizona Openbooks (https://ptl.az.gov/app/transparency/index.html)

Contact Webmaster (/emailazleg)

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16-925. Advertising and fund-raising disclosure statements

A. A person that makes an expenditure for an advertisement or fund-raising solicitation, other than an individual, shall include the following disclosures in the advertisement or solicitation:

1. The words "paid for by", followed by the name of the person making the expenditure for the advertisement or fund-raising solicitation.

2. Whether the expenditure was authorized by any candidate, followed by the identity of the authorizing candidate, if any.

B. In addition to the disclosure required by subsection A of this section, a political action committee that makes an expenditure for an advertisement shall include a disclosure stating the names of the three political action committees making the largest aggregate contributions to the political action committee making the expenditure and that exceed twenty thousand dollars during the election cycle, as calculated at the time the advertisement was distributed for publication, display, delivery or broadcast.

C. If a disclosure contains any acronym or nickname that is not commonly known, the disclosure shall also spell out the acronym or provide the full name.

D. If the advertisement is:

1. Broadcast on radio, the disclosure shall he clearly spoken at the beginning or end of the advertisement.

2. Delivered by hand or mail or electronically, the disclosure shall be clearly readable.

3. Displayed on a sign or billboard, the disclosure shall be displayed in a height that is at least four percent of the vertical height of the sign or billboard.

4. Broadcast on television or in a video or film, both of the following requirements apply:

(a) The disclosure shall be both written and spoken at the beginning or end of the advertisement, except that if the written disclosure statement is displayed for the greater of at least one-sixth of the broadcast duration or four seconds, a spoken disclosure statement is not required.

(b) The written disclosure statement shall be printed in letters that are displayed in a height that is at least four percent of the vertical picture height.

E. This section does not apply to:

1. Social media messages, text messages or messages sent by a short message service.

2. Advertisements that are placed as a paid link on a website, if the message is not more than two hundred characters in length and the link directs the user to another website that complies with this section.

3. Advertisements that are placed as a graphic or picture link, if the statements required in this section cannot be conveniently printed due to the size of the graphic or picture and the link directs the user to another website that complies with this section.

4. Bumper stickers, pins, buttons, pens and similar small items on which the statements required in this section cannot be conveniently printed.

5. A solicitation of contributions by a separate segregated fund.

6. A communication by a tax-exempt organization solely to its members.

7. A published book or a documentary film or video.

Appendix C.2

Session:

Arizona Legislature

VIEW DOCUMENT

ARS TITLE PAGE (HTTP://WWW.AZLEG.GOV/ARSTITLE)

PREVIOUS SECTION (VIEWDOCUMENT/?DOCNAME=HTTP://WWW.AZLEG.GOV/ARS/16/00925.HTM)

NEXT SECTION (VIEWDOCUMENT/?DOCNAME=HTTP://WWW.AZLEG.GOV/ARS/16/00927.HTM)

PRINTABLE VERSION (HTTP://WWW.AZLEG.GOV/ARS/16/00926.HTM)

16-926. Campaign finance reports; contents

A. A committee shall file campaign finance reports with the filing officer. The secretary of state's instructions and procedures manual adopted pursuant to section 16-452 shall prescribe the format for all reports and statements.

B. A campaign finance report shall set forth:

1. The amount of cash on hand at the beginning of the reporting period.

2. Total receipts during the reporting period, including:

(a) An itemized list of receipts in the following categories, including the source, amount and date of receipt, together with the total of all receipts in each category:

(i) Contributions from individuals whose contributions exceed fifty dollars for that election cycle, including identification of the contributor's occupation and employer.

(ii) Contributions from candidate committees.

(iii) Contributions from political action committees.

(iv) Contributions from political parties.

(v) Contributions from partnerships.

(vi) For a political action committee or political party, contributions from corporations and limited liability companies, including

identification of the corporation's or limited liability company's file number issued by the corporation commission.

(vii) For a political action committee or political party, contributions from labor organizations, including identification of the labor organization's file number issued by the corporation commission.

(viii) For a candidate committee, a candidate's contribution of personal monies.

(ix) All loans, including identification of any endorser or guarantor other than a candidate's spouse, and the contribution amount endorsed or guaranteed by each.

(x) Rebates and refunds.

(xi) Interest on committee monies.

(xii) The fair market value of in-kind contributions received.

(xiii) Extensions of credit that remain outstanding, including identification of the creditor and the purpose of the extension.

(b) The aggregate amount of contributions from all individuals whose contributions do not exceed fifty dollars for the election cycle.

3. An itemized list of all disbursements in excess of two hundred fifty dollars during the reporting period in the following categories, including the recipient, the recipient's address, a description of the disbursement and the amount and date of the disbursement, together with the total of all disbursements in each category:

(a) Disbursements for operating expenses.

(b) Contributions to candidate committees.

(c) Contributions to political action committees.

(d) Contributions to political parties.

(e) Contributions to partnerships.

(f) For a political action committee or political party, contributions to corporations and limited liability companies, including identification of the corporation's or limited liability company's file number issued by the corporation commission.

(g) For a political action committee or political party, contributions to labor organizations, including identification of the labor organization's file number issued by the corporation commission.

(h) Repayment of loans.

(i) Refunds of contributions.

(j) Loans made.

(k) The value of in-kind contributions provided.

(l) Independent expenditures that are made to advocate the election or defeat of a candidate, including identification of the candidate, office sought by the candidate, election date, mode of advertising and distribution or publication date.

(m) Expenditures to advocate the passage or defeat of a ballot measure, including identification of the ballot measure, ballot measure serial number, election date, mode of advertising and distribution or publication date.

(n) Expenditures to advocate for or against the issuance of a recall election order or for the election or defeat of a candidate in a recall election, including identification of the officer to be recalled or candidate supported or opposed, mode of advertising and distribution or publication date.

(o) Any other disbursements or expenditures.

4. The total sum of all receipts and disbursements for the reporting period.

5. A certification by the committee treasurer, issued under penalty of perjury, that the contents of the report are true and correct.

C. For the purposes of reporting under subsection B of this section:

1. A contribution is deemed to be received either on the date the committee knowingly takes possession of the contribution or the date of the check or credit card payment. For an in-kind contribution of services, the contribution is deemed made either on the date the services are performed or the date the committee receives the services.

2. An expenditure or disbursement is deemed made either on the date the committee authorizes the monies to be spent or the date the monies are withdrawn from the committee's account. For a transaction by check, the expenditure or disbursement is deemed made on the date the committee signs the check. For a credit card transaction on paper, the expenditure or disbursement is deemed made on the date the committee signs the authorization to charge the credit card. For an electronic transaction, an expenditure or disbursement is deemed made on the date the committee electronically authorizes the charge. For an agreement to purchase goods or services, the expenditure or disbursement is deemed made either on the date the parties enter into the agreement or the date the purchase order is issued.

3. A committee may record its transactions using any of the methods authorized by this subsection but for each type of contribution, expenditure or disbursement made or received, the committee shall use a consistent method of recording transactions throughout the election cycle.

D. The amount of an in-kind contribution of services shall be equal to the usual and normal charges for the services on the date

D. The amount of an in-kind contribution of services shall be equal to the usual and normal charges for the services on the date performed.

E. If any receipt or disbursement is earmarked, the committee shall report the identity of the person to whom the receipt or disbursement is earmarked.

F. Candidate committee reports shall be cumulative for the election cycle to which they relate. Political action committee and political party reports shall be cumulative for a two-year election cycle ending in the year of a statewide general election. If there has been no change during the reporting period in an item listed in the immediately preceding report, only the amount need be carried forward.

G. For a political action committee that receives individual contributions through a payroll deduction plan, that committee is not required to separately itemize each contribution received from the contributor during the reporting period. In lieu of itemization, the committee may report all of the following:

1. The aggregate amount of contributions received from the contributor through the payroll deduction plan during the reporting period.

2. The individual's identity.

3. The amount deducted per pay period.

H. An entity that makes independent expenditures or ballot measure expenditures in excess of one thousand dollars during a reporting period shall file an expenditure report with the filing officer for the applicable reporting period. Expenditure reports shall identify the candidate or ballot measure supported or opposed, office sought by the candidate, if any, election date, mode of advertising and first date of publication, display, delivery or broadcast of the advertisement.

General Effective Dates (/general-effective-dates/)
Legislative Maps (http://azredistricting.org/districtlocator/)
Bill Process (http://www.azleg.gov/alisPDFs/hbillaw.pdf)
Bill To Law (http://www.azleg.gov/alisPDFs/BillToLaw.pdf)
Abbreviations (/faq/abbreviations)
Internships (/azleginternships)
Arizona Openbooks (https://ptl.az.gov/app/transparency/index.html)

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16-926. Campaign finance reports; contents

A. A committee shall file campaign finance reports with the filing officer. The secretary of state's instructions and procedures manual adopted pursuant to section 16-452 shall prescribe the format for all reports and statements.

B. A campaign finance report shall set forth:

1. The amount of cash on hand at the beginning of the reporting period.

2. Total receipts during the reporting period, including:

(a) An itemized list of receipts in the following categories, including the source, amount and date of receipt, together with the total of all receipts in each category:

(i) Contributions from individuals whose contributions exceed fifty dollars for that election cycle, including identification of the contributor's occupation and employer.

(ii) Contributions from candidate committees.

(iii) Contributions from political action committees.

(iv) Contributions from political parties.

(v) Contributions from partnerships.

(vi) For a political action committee or political party, contributions from corporations and limited liability companies, including identification of the corporation's or limited liability company's file number issued by the corporation commission.

(vii) For a political action committee or political party, contributions from labor organizations, including identification of the labor organization's file number issued by the corporation commission.

(viii) For a candidate committee, a candidate's contribution of personal monies.

(ix) All loans, including identification of any endorser or guarantor other than a candidate's spouse, and the contribution amount endorsed or guaranteed by each.

(x) Rebates and refunds.

(xi) Interest on committee monies.

(xii) The fair market value of in-kind contributions received.

(xiii) Extensions of credit that remain outstanding, including identification of the creditor and the purpose of the extension.

(b) The aggregate amount of contributions from all individuals whose contributions do not exceed fifty dollars for the election cycle.

3. An itemized list of all disbursements in excess of two hundred fifty dollars during the reporting period in the following categories, including the recipient, the recipient's address, a description of the disbursement and the amount and date of the disbursement, together with the total of all disbursements in each category:

(a) Disbursements for operating expenses.

(b) Contributions to candidate committees.

(c) Contributions to political action committees.

(d) Contributions to political parties.

(e) Contributions to partnerships.

(f) For a political action committee or political party, contributions to corporations and limited liability companies, including identification of the corporation's or limited liability company's file number issued by the corporation commission.

(g) For a political action committee or political party, contributions to labor organizations, including identification of the labor organization's file number issued by the corporation commission.

(h) Repayment of loans.

(i) Refunds of contributions.

(j) Loans made.

(k) The value of in-kind contributions provided.

(l) Independent expenditures that are made to advocate the election or defeat of a candidate, including identification of the candidate, office sought by the candidate, election date, mode of advertising and distribution or publication date.

(m) Expenditures to advocate the passage or defeat of a ballot measure, including identification of the ballot measure, ballot measure serial number, election date, mode of advertising and distribution or publication date.

(n) Expenditures to advocate for or against the issuance of a recall election order or for the election or defeat of a candidate in a recall election, including identification of the officer to be recalled or candidate supported or opposed, mode of advertising and distribution or publication date.

(o) Any other disbursements or expenditures.

4. The total sum of all receipts and disbursements for the reporting period.

5. A certification by the committee treasurer, issued under penalty of perjury, that the contents of the report are true and correct.

C. For the purposes of reporting under subsection B of this section:

1. A contribution is deemed to be received either on the date the committee knowingly takes possession of the contribution or the date of the check or credit card payment. For an in-kind contribution of services, the contribution is deemed made either on the date the services are performed or the date the committee receives the services.

2. An expenditure or disbursement is deemed made either on the date the committee authorizes the monies to be spent or the date the monies are withdrawn from the committee's account. For a transaction by check, the expenditure or disbursement is deemed made on the date the committee signs the check. For a credit card transaction on paper, the expenditure or disbursement is deemed made on the date the committee signs the authorization to charge the credit card. For an electronic transaction, an expenditure or disbursement is deemed made on the date the committee electronically authorizes the charge. For an agreement to purchase goods or services, the expenditure or disbursement is deemed made either on the date the parties enter into the agreement or the date the purchase order is issued.

3. A committee may record its transactions using any of the methods authorized by this subsection but for each type of contribution, expenditure or disbursement made or received, the committee shall use a consistent method of recording transactions throughout the election cycle.

D. The amount of an in-kind contribution of services shall be equal to the usual and normal charges for the services on the date performed.

E. If any receipt or disbursement is earmarked, the committee shall report the identity of the person to whom the receipt or disbursement is earmarked.

F. Candidate committee reports shall be cumulative for the election cycle to which they relate. Political action committee and political party reports shall be cumulative for a two-year election cycle ending in the year of a statewide general election. If there has been no change during the reporting period in an item listed in the immediately preceding report, only the amount need be carried forward.

G. For a political action committee that receives individual contributions through a payroll deduction plan, that committee is not required to separately itemize each contribution received from the contributor during the reporting period. In lieu of itemization, the committee may report all of the following:

1. The aggregate amount of contributions received from the contributor through the payroll deduction plan during the reporting period.

2. The individual's identity.

3. The amount deducted per pay period.

H. An entity that makes independent expenditures or ballot measure expenditures in excess of one thousand dollars during a reporting period shall file an expenditure report with the filing officer for the applicable reporting period. Expenditure reports shall identify the candidate or ballot measure supported or opposed, office sought by the candidate, if any, election date, mode of advertising and first date of publication, display, delivery or broadcast of the advertisement.

Appendix C.3

16-927. Campaign finance reporting period

A. A political action committee and political party shall file a campaign finance report covering each reporting period as follows:

1. For a calendar quarter without an election, the political action committee or political party shall file a quarterly report. The quarterly report shall be:

(a) Filed not later than the fifteenth day after the calendar quarter.

(b) Complete through the last day of the calendar quarter.

2. For a calendar quarter with an election, the political action committee or political party shall file a preelection and postelection report as follows:

(a) A preelection report shall be:

(i) Filed not later than ten days before the election.

(ii) Complete from the first day of the applicable calendar quarter through the seventeenth day before the election.

(b) A postelection report shall be:

(i) Filed not later than the fifteenth day after the applicable calendar quarter.

(ii) Complete from the sixteenth day before the election through the last day of the applicable calendar quarter.

B. A candidate committee shall file a campaign finance report only during the four calendar quarters comprising the twelve-month period preceding the general election for the office for which the candidate is seeking election, or for cities and towns, the city's or town's second, runoff or general election, however designated by the city or town. The reporting period for a candidate committee's first campaign finance report of the election cycle shall include the entire election cycle to date.

C. A committee shall file campaign finance reports until terminated.

Appendix C.4

16-928. Filing officer; statements and reports

A. A person who is required to file any statements and reports required by this article and articles 1, 1.1, 1.2, 1.3, 1.5, 1.6 and 1.7 of this chapter shall file with the filing officer in charge of that election, as follows:

1. The secretary of state is the filing officer for statewide and legislative elections, including retention elections for supreme court justices and court of appeals judges. The secretary of state is also the filing officer for committees that support or oppose a recall election or the circulation of a petition for a recall election for a statewide or legislative officeholder, for committees that support or oppose a statewide initiative or referendum or other statewide ballot measure, question or proposition or the circulation of a petition for a statewide initiative or referendum or other statewide ballot measure, question or proposition.

2. The county officer in charge of elections is the filing officer for county, school district, community college district and special taxing district elections, including retention elections for superior court judges. The county officer in charge of elections is also the filing officer for committees that support or oppose a recall election or the circulation of a petition for a recall election for an officeholder of a county office, a school district governing board office, a community college district governing board office or a special taxing district governing board office, for committees that support or oppose a county, school district, community college district or special taxing district initiative or referendum or other ballot measure, question or proposition, including bond, tax, budget and budget override measures or that oppose or support the circulation of a petition for a county, school district, community college district or special taxing district initiative or referendum or other county, school district, community college district or special taxing district ballot measure, question or proposition.

3. The city or town clerk is the filing officer for city and town elections. The city or town officer in charge of elections is also the filing officer for committees that support or oppose a recall election or the circulation of a petition for a recall election for a city or town officeholder, for committees that support or oppose a city or town initiative or referendum or other city or town ballot measure, question or proposition or the circulation of a petition for a city or town initiative or referendum or other city ballot measure, question or proposition.

B. Notwithstanding subsection A of this section, a standing committee shall only file reports with the secretary of state.

C. A filing officer shall provide the option for electronic filing and shall make all statements and reports publicly available on the internet. A filing officer may comply with this section by opting into the secretary of state's electronic filing system and paying a fee as determined by the secretary of state.

Appendix D

until the withdrawal is approved by the Commission. The Commission shall act on the withdrawal request within seven days. If the Commission takes no action within the seven-day time period, the withdrawal is automatic.

B. A candidate's participating candidate status shall automatically terminate if:
   1. The candidate fails to make such submissions to the Secretary of State as prescribed in R2-20-105(B) within seven days after the end of the qualifying period, or
   2. The candidate is denied Clean Elections funding by the Secretary of State and the candidate is ineligible to make a supplemental filing with the Secretary of State in accordance with R2-20-105(G).

C. A candidate whose participating candidate status has been terminated in accordance with this Section shall be ineligible to receive Clean Elections funding for that election cycle unless he/she reapplies for certification and is in compliance with R2-20-104(A) and (C).

D. In the event that a candidate who has collected qualifying contributions decides not to seek certification as a participating candidate, the candidate shall return all qualifying contributions received from contributors who have not given written permission to use their qualify contributions as campaign contributions. Written permission may include a check box on the original $5 form that authorizes a candidate to treat the qualifying contribution as a general campaign contribution if he or she decides not to participate in the Clean Elections system. If a good faith anempt to return the funds to the contributor is unsuccessful, the contributions shall be submitted to the Fund.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 17 A.A.R. 1950, effective August 25, 2011 (Supp. 11-3).

R2-20-109. Reporting Requirements

A. In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if expressly provided otherwise by another Commission rule.

B. All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:
   1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.
   2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.
   3. 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.
   4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:
      a. Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.
      b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.
      c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.
      d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the nnreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.
   5. For the purposes of the Act and Commission rules, 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.

C. Timing of reporting expenditures.
   1. Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
   2. In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
      a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.

b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.

c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.

D. Transportation expenses.

1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.

2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:

a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.

b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.

3. Use of airplanes.

a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of $150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to $150 per hour of flying time.

b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection (3)(a), above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.

4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.

E. Reports and Refunds of Excess Monies by Participating Candidates

1. In addition to the campaign finance reports filed pursuant to A.R.S. §16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:

a. Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.

b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.

i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.

ii. If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. §16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.

2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund.

a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.

b. The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).

3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

F. Independent Expenditure Reporting Requirements.

1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.

2. Any person required to comply with A.R.S. § 16-917 shall provide a copy of the literature and advertisement to the Commission at the same time and in the same manner as prescribed by A.R.S. § 16-917(A) and (B). For purposes of this subsection (F), "literature and advertisement" includes electronic communications, including emails and social media messages or postings, sent to more than 1,000 people.
3. Any person making an independent expenditure on behalf of a candidate, participating or non-participating, and not timely filing a campaign finance report as required by A.R.S. § 16-941(D), A.R.S. § 16-958, or A.R.S. § 16-913 shall be subject to a civil penalty as described in A.R.S. § 16-942(B). An expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. This subsection and A.R.S. § 16-942(B) applies to any political committee that accepts contributions or makes expenditures on behalf of any candidate, participating or nonparticipating, regardless of any other contributions taken or expenditures made. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. Penalties shall be assessed as follows:
   a. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.
   b. For an election involving a legislative candidate, the civil penalty shall be $100 per day.
   c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
   d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission's Executive Director.
5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:
   a. is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and
   b. has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).
6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B).
7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption.
   a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.
   b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:
      i. The specific facts constituting the denial;
      ii. A description of the respondent's right to request a hearing and to request and informal settlement conference; and
      iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.
8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02 (A)-(J) and (b) remains in compliance with section part (2) of this subsection (F). All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit these entities.
9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in part (8) of this subsection (F); or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or parts (1), (2), or (6) of this subsection (F). Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and part (3) of this subsection (F), in addition to any other penalties applicable pursuant to rule or statute.
10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9958 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.
11. Any entity that has been granted an exemption as of September 11, 2014 is deemed compliant with the requirements of subpart (5) of this subsection (F) for the election cycle ending in 2014.
12. For the purposes of this rule, the following apply:
   a. An entity shall not be found to be a political committee under A.R.S. § 16-901(20)(f) unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity plus the total reportable expenditures made by the entity exceeds both $500 and fifty percent (50%) of the entity's total spending during the election cycle.

i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. A contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.

ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.

iii. For purposes of this provision, grants to other organizations shall be treated as follows:

(1) A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.

(2) If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.

vi. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (F)(12)(a)(v) shall count as a reportable contribution or reportable expenditure.

v. Notwithstanding subsections (F)(12)(a)(iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:

(1) The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus

(2) The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.

b. Notwithstanding subsection (F)(12)(a), the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.

G. Non-participating Candidate Reporting Requirements and Contribution Limits. Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:

1. Penalties under A.R.S. § 16-942(B), for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):

a. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.

b. For an election involving a legislative candidate, the civil penalty shall be $100 per day.

c. The penalties in (G)(1)(a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.

d. The dollar amounts in items (G)(1)(a) and (b), and the spending limits in item (G)(1)(c) are subject to adjustment of A.R.S. § 16-959.

2. Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limit specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.

3. Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 16 A.A.R. 152, effective January 29, 2010 (Supp. 10-1). Subsections R2-20-109(A), (A)(4), and (B) through (E) amended by exempt

rulemaking at 19 A.A.R. 2923, effective October 6, 2011; Subsections R2-20-109(A) and (C)(2) amended by exempt rulemaking at 19 A.A.R. 2923, effective August 29, 2013; Subsection R2-20-109(C)(3) amended by exempt rulemaking at 19 A.A.R. 2923, effective January 1, 204 (Supp. 13-3). Amended by exempt rulemaking at 19 A.A.R. 3519, effective September 27, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1329, effective May 22, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 2804, effective September 11, 2014 (Supp. 14-3). Subsection R2-20-109(D) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 29, 2015; subsection R2-20-109(F) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 30, 2015 (Supp. 15-4).

R2-20-110. Candidate Campaign Bank Account

A. Each participating candidate shall designate a single campaign bank account for conducting campaign financial activity. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single, current election campaign bank account and any petty cash accounts as are permitted by law.

B. A participating candidate may maintain a campaign bank account other than the current election campaign bank account described in subsection (A) if the other campaign bank account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.

C. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the bank account for that prior campaign. A candidate shall not deposit debt-retirement contribntions into the current election campaign bank account.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 19 A.A.R. 1693, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 21 A.A.R. 1629, effective July 23, 2015 (Supp. 15-3).

R2-20-111. Books and Records Requirements

A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.

B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:

1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
   a. All contributions or other monies received by or on behalf of the candidate.
   b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.
   c. Cumulative totals contributed by each individual or political committee.
   d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
   e. All periodic bank statements or other statements for the candidate's campaign bank account.
   f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in A.R.S. § 16-948(C) for each vendor.
2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasnrer shall record the amount to be attribnted to each contributor as specified.
4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records reqnired to be kept pursuant to this Section.

C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.

1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying reqnest and fees.
3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:

Appendix E

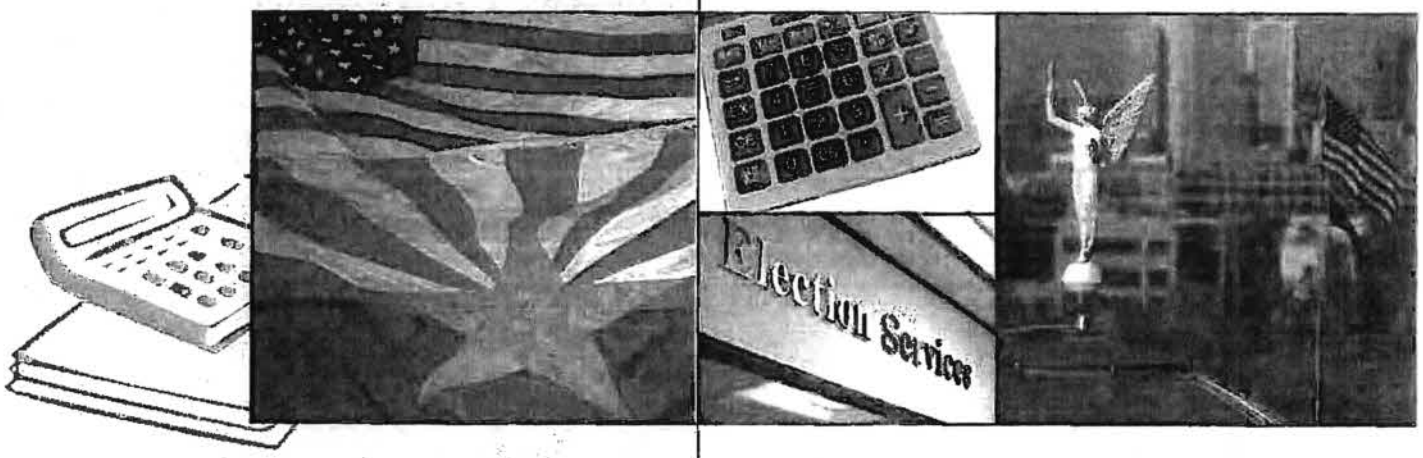
ARIZONA

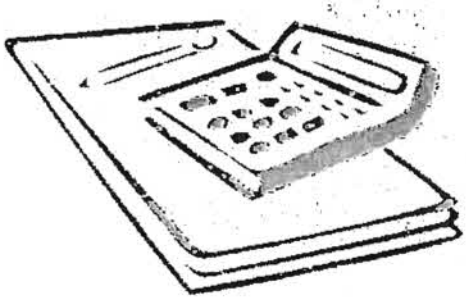
DEPARTMENT OF STATE
Office of Secretary of State
AN ELECTION SERVICES DIVISION PUBLICATION

Instructions for

Financial Disclosure Statements

DECEMBER 2013





About this publication:

This Financial Disclosure handbook aids in the understanding of filing requirements for Financial Disclosure Reports as a candidate and as a public officer in Arizona. Our staff is available to help you understand your filing requirements with this office.

FINANCIAL DISCLOSURE STATEMENTS

A PUBLICATION OF
THE ARIZONA SECRETARY OF STATE'S OFFICE
ELECTION SERVICES DIVISION

INTRODUCTION

This booklet provides instructions on how to prepare financial disclosure statements that are filed with this office.

As a candidate and public officer you must follow guidelines established in Arizona Revised Statutes. These statutes have been provided for your review. We've also included a sample financial disclosure statement to help you understand how to fill out the form.

If you have any questions feel free to contact our office. Our staff is ready to help and assist you with your filing needs.

CONTACT US

Office of the Secretary of State
1700 W. Washington Street, 7th Floor
Phoenix, Arizona 85007
Telephone:
(602) 542-4285
Toll-free (in Arizona)
1-877-THE VOTE
TDD: (602) 255-8683

Election Services
Telephone:
(602) 542-8683
Facsimile number:
(602) 542-6172
e-mail address:
elections@azsos.gov

For additional copies of this booklet send your request to:
Secretary of State
Attention: Election Services Division
1700 W. Washington Street, 7th Floor
Phoenix, Arizona 85007

Visit us on the World Wide Web at
www.azsos.gov

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If the user finds a misprint or error, please contact our office at (602) 542-8683.
Rev. November 30, 2012

TABLE OF CONTENTS

INTRODUCTION 2

CONTACT US 2

COMMON QUESTIONS AND ANSWERS 4

ABOUT FINANCIAL DISCLOSURE STATEMENTS 4

1. Who must file a Financial Disclosure Statement? 4

2. Do public officers and candidates in counties, cities, and towns have to file Financial Disclosure Statements? 4

3. When do I have to file my Annual Financial Disclosure Statement? 4

Public Officers 4

Newly Appointed Public Officers 4

Newly Appointed Justices and Judges 4

Candidates for Public Office and Superior Court 5

4. Where do I get a Financial Disclosure Statement? 5

Public Officers 5

Newly Appointed Public Officers, Justices and Judges 5

Candidates for Public Office and Superior Court 5

County, City, and Town Public Officers and Candidates 5

5. What laws govern Financial Disclosure Statements? 5

6. What is the penalty for failing to file a Financial Disclosure Statement? 6

7. Where do I file my Financial Disclosure Statement? 6

8. Note to Public Officers: 6

ARIZONA REVISED STATUTES 7

TITLE 38 PUBLIC OFFICERS AND EMPLOYEES 7

Chapter 3.1 Standards for Financial Disclosure 7

Article 1. General Provisions 7

§ 38-541. Definitions 7

§ 38-542. Duty to file financial disclosure statement; contents; exceptions 7

§ 38-543. Duty to file financial disclosure statement by candidate for public office 9

§ 38-544. Violation; classification 9

§ 38-545. Local public officers financial disclosure 10

ATTORNEY GENERAL OPINION 78-18 (R78-9) 11

AZ SUPREME COURT ADMINISTRATIVE ORDER 2012-93 13

AZ CODE OF JUDICIAL ADMINISTRATION SECTION 1-307 14

SAMPLE: FINANCIAL DISCLOSURE STATEMENT 16

COMMON QUESTIONS AND ANSWERS

ABOUT FINANCIAL DISCLOSURE STATEMENTS

1. WHO MUST FILE A FINANCIAL DISCLOSURE STATEMENT?

If at any time during the past calendar year you held one of the positions listed below, you must file a Financial Disclosure Statement with the Secretary of State:

- a statewide officer, whether elected or appointed
- a member of the Arizona legislature, whether elected or appointed
- a justice or judge of the Arizona Supreme Court, Arizona Court of Appeals or superior court, whether elected or appointed
- a full time judge pro tempore, commissioner, or juvenile hearing officer serving the appellate courts or the superior court

If you are a candidate for a statewide or legislative office, you must also file a Candidate's Financial Disclosure Statement with the Secretary of State at the same time as and as part of your nomination papers.

2. DO PUBLIC OFFICERS AND CANDIDATES IN COUNTIES, CITIES, AND TOWNS HAVE TO FILE FINANCIAL DISCLOSURE STATEMENTS?

Probably–but the forms may not be the same as the ones the Secretary of State provides. Section 38-545, A.R.S., says counties, incorporated cities and towns must adopt their own standards for Financial Disclosure Statements. Check with the clerk or the filing office where you filed your nomination papers.

3. WHEN DO I HAVE TO FILE MY ANNUAL FINANCIAL DISCLOSURE STATEMENT?

Public Officers

If you were a public officer at any time during a calendar year (even for a day), you must file an annual Financial Disclosure Statement between January 1 and January 31 of the following calendar year. Public officers whose final terms expire less than 31 days into the immediately following calendar year may file their final financial disclosure statement between January 1 and January 31 of the year in which they leave office. That Financial Disclosure Statement covers the entire year in which you served, January 1 through December 31, even if you only served for a day and later left office due to resignation, retirement or another reason. If you additionally run for the same or any other office, you must file an additional candidate Financial Disclosure Statement on the day you file your nomination papers and petitions.

Newly Appointed Public Officers

If you are newly appointed to fill a vacancy in a statewide or a legislative office, you must file a Financial Disclosure Statement within 60 days of the date you take office. That Financial Disclosure Statement covers the 12 month period ending with the last full month prior to the date of taking office. If you also run for that or any other office, you must file a second Financial Disclosure Statement on the day you file your nomination papers and petitions.

Newly Appointed Justices and Judges

If you are newly appointed as a Justice of the Arizona Supreme Court, a Judge on the Arizona Court of Appeals, or a Judge of the Superior Court, you must file a Financial Disclosure Statement within 60 days of

the date you take office. That Financial Disclosure Statement covers the 12 month period ending with the last full month prior to the date of taking office.

Full time judges pro tempore, commissioners and juvenile hearing officers shall file a financial disclosure statement as provided by A.R.S. § 38-541 et. seq. upon appointment and annually. Financial disclosure statements cover the entire year served, January 1 through December 31, even if service was for only one day. Please refer to Section 1-307 of the Arizona Code of Judicial Administration on pg. 14, made effective by administrative order 2012-93.

Candidates for Public Office and Superior Court

If you are a candidate for a statewide or legislative office, or for a judgeship on the Superior Court in a county where judges are elected, you must file a Financial Disclosure Statement at the same time and as part of your nomination papers. If you are applying for merit selection to the Superior Court, you do not need to file a Financial Disclosure Statement with the Secretary of State until 60 days from the date you take office, if appointed. The Financial Disclosure Statement covers the 12 months prior to the date you file your nomination papers.

4. WHERE DO I GET A FINANCIAL DISCLOSURE STATEMENT?

Public Officers

Statewide officers, legislators, justices of the Arizona Supreme Court and judges of the Arizona Court of Appeals receive a Financial Disclosure packet from the Secretary of State's office. The packets are mailed or delivered in late November to the office address of the public officer. Also in November, the Secretary of State sends Financial Disclosure Statements to each presiding judge or court administrator of the superior court for distribution to the judges and the appropriate judges pro tempore in that court.

Newly Appointed Public Officers, Justices and Judges

Statewide officers, legislators, Arizona Supreme Court justices, and Arizona Court of Appeals judges newly appointed to fill vacancies receive a Financial Disclosure packet in the mail from the Secretary of State Election Services office. Newly appointed judges and judges pro tempore to the superior court receive the packet from the presiding judge or court administrator or upon request from the Secretary of State Election Services office by calling (602) 542-8683 or by sending an e-mail to elections@azsos.gov. Printable versions are available through the Web site www.azsos.gov.

Candidates for Public Office and Superior Court

A copy of the Financial Disclosure Statement is included in the packet of nomination materials provided to you by the Secretary of State Election Services office or can be picked up from the Secretary of State's Election Services counter. Additional copies will be sent out upon request by calling (602) 542-8683 or by sending an e-mail to elections@azsos.gov. Printable versions are available through the Web site www.azsos.gov.

County, City, and Town Public Officers and Candidates

Public officers and candidates for offices in counties, cities and towns should contact the appropriate clerks or election filing offices for information on obtaining Financial Disclosure Statements. The forms provided by the Secretary of State may not be acceptable to those filing offices.

5. WHAT LAWS GOVERN FINANCIAL DISCLOSURE STATEMENTS?

Arizona Revised Statutes §§ 38-541 through 38-545 and Attorney General Opinion No. I 78-018 govern the filing of financial disclosure statements by public officers. The Arizona Code of Judicial Conduct, Canon 3, Rule 3.15, and Arizona Code of Judicial Administration, Section 1-307 further govern the filing of Financial Disclosure Statements by Arizona justices, judges, full time judges pro tempore, commissioners and juvenile hearing officers.

Counties, cities and towns may have additional ordinances, rules, resolutions or regulations that govern the filing of Financial Disclosure Statements by their public officers and candidates.

6. WHAT IS THE PENALTY FOR FAILING TO FILE A FINANCIAL DISCLOSURE STATEMENT?

Upon referral by the Secretary of State, the Attorney General enforces the filing requirement against public officers who fail to file by the deadline. Enforcement may include a civil penalty of $50 for each day the Statement is late, until it is filed.

In addition, if any public officer or candidate is found to have knowingly filed an incomplete or a false Financial Disclosure Statement, the public officer or candidate may be found guilty of a class 1 misdemeanor.

The Secretary of State can refuse to accept nomination papers from candidates who fail to include a Financial Disclosure Statement. If you are a candidate in a county, city or town that requires Financial Disclosure Statements, your filing officer can refuse to accept your nomination packet if you do not include the Statement.

7. WHERE DO I FILE MY FINANCIAL DISCLOSURE STATEMENT?

If you are one of the public officers or candidates discussed above, deliver or mail it to:

Arizona Secretary of State
Attn: Election Services Division
1700 West Washington Street, 7th Floor
Phoenix, Arizona 85007

If you are a county, city, town or special district public officer or candidate, contact your clerk or election office for information on where to file.

8. NOTE TO PUBLIC OFFICERS:

Gifts as defined in Title 38 must be reported, even if it was given by a lobbyist who properly reported it under Title 41.

ARIZONA REVISED STATUTES

TITLE 38 PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 3.1 STANDARDS FOR FINANCIAL DISCLOSURE

Article 1. General Provisions

§ 38-541. Definitions

In this chapter, unless the context otherwise requires:

1. "Business" includes any enterprise, organization, trade, occupation or profession, whether or not operated as a legal entity or for profit, including any business trust, corporation, partnership, joint venture or sole proprietorship.

2. "Compensation" means anything of value or advantage, present or prospective, including the forgiveness of debt.

3. "Controlled business" means any business in which the public officer or any member of his household has an ownership or beneficial interest, individually or combined, amounting to more than a fifty per cent interest.

4. "Dependent business" means any business in which the public officer or any member of his household has an ownership or beneficial interest, individually or combined, amounting to more than a ten per cent interest, and during the preceding calendar year the business received from a single source more than ten thousand dollars and more than fifty per cent of its gross income.

5. "Gift" includes any gratuity, special discount, favor, hospitality, service, economic opportunity, loan or other benefit received without equivalent consideration and not provided to members of the public at large.

6. "Local public officer" means a person holding an elective office of an incorporated city or town, a county or a groundwater replenishment district established under title 48, chapter 27.

7. "Member of household" means a public officer's spouse and any minor child of whom the public officer has legal custody.

8. "Public officer" means a member of the legislature and any judge of the court of appeals or the superior court, or a person holding an elective office the constituency of which embraces the entire geographical limits of this state. Members of Congress are not public officers as defined in this paragraph.

§ 38-542. Duty to file financial disclosure statement; contents; exceptions

A. In addition to other statements and reports required by law, every public officer, as a matter of public record, shall file with the secretary of state on a form prescribed by the secretary of state a verified financial disclosure statement covering the preceding calendar year. The statement shall disclose:

1. The name and address of the public officer and each member of his household and all names and addresses under which each does business.

2. The name and address of each employer and of each other source of compensation other than gifts amounting to more than one thousand dollars received during the preceding calendar year by the public officer and members of his household in their own names, or by any other person for the use or benefit of the public officer or members of his household, a description of the services for which the compensation was received and the nature of the employer's business. This paragraph shall not be construed to require the disclosure of individual items of compensation that constituted a portion of the gross income of the business from which the public officer or members of his household derived compensation.

3. For a controlled business, a description of the goods or services provided by the business, and if any single source of compensation to the business during the preceding calendar year amounts to more than ten thousand dollars and

is more than twenty-five per cent of the gross income of the business, the disclosure shall also include a description of the goods or services provided to the source of compensation. For a dependent business the statement shall disclose a description of the goods or services provided by the business and a description of the goods or services provided to the source of compensation from which the dependent business derived the amount of gross income described in section 38-541, paragraph 4. If the source of compensation for a controlled or dependent business is a business, the statement shall disclose a description of the business activities engaged in by the source of compensation.

4. The names and addresses of all businesses and trusts in which the public officer or members of his household, or any other person for the use or benefit of the public officer or members of his household, had an ownership or beneficial interest of over one thousand dollars at any time during the preceding calendar year, and the names and addresses of all businesses and trusts in which the public officer or any member of his household held any office or had a fiduciary relationship at any time during the preceding calendar year, together with the amount or value of the interest and a description of the interest, office or relationship.

5. All Arizona real property interests and real property improvements, including specific location and approximate size, in which the public officer, any member of his household or a controlled or dependent business held legal title or a beneficial interest at any time during the preceding calendar year, and the value of any such interest, except that this paragraph does not apply to a real property interest and improvements thereon used as the primary personal residence or for the personal recreational use of the public officer. If a public officer, any member of his household or a controlled or dependent business acquired or divested any such interest during the preceding calendar year, he shall also disclose that the transaction was made and the date it occurred. If the controlled or dependent business is in the business of dealing in real property interests or improvements, disclosure need not include individual parcels or transactions as long as the aggregate value of all parcels of such property is reported.

6. The names and addresses of all creditors to whom the public officer or members of his household, in their own names or in the name of any other person, owed a debt of more than one thousand dollars or to whom a controlled business or a dependent business owed a debt of more than ten thousand dollars which was also more than thirty per cent of the total business indebtedness at any time during the preceding calendar year, listing each such creditor. This paragraph shall not be construed to require the disclosure of debts owed by the public officer or any member of his household resulting from the ordinary conduct of a business other than a controlled or dependent business nor shall disclosure be required of credit card transactions, retail installment contracts, debts on residences or recreational property exempt from disclosure under paragraph 5 of this subsection, debts on motor vehicles not used for commercial purposes, debts secured by cash values on life insurance or debts owed to relatives. It is sufficient disclosure of a creditor if the name and address of a person to whom payments are made is disclosed. If the public officer, any member of his household or a controlled or dependent business incurred or discharged a debt which is reportable under this subsection during the preceding calendar year, the report shall disclose that the transaction was made and the date it occurred.

7. The identification and amount of each debt exceeding one thousand dollars owed at any time during the preceding calendar year to the public officer and members of his household in their own names, or to any other person for the use or benefit of the public officer or any member of his household. The disclosure shall include the identification and amount of each debt exceeding ten thousand dollars to a controlled business or dependent business which was also more than thirty per cent of the total indebtedness to the business at any time during the preceding calendar year. This paragraph shall not be construed to require the disclosure of debts from the ordinary conduct of a business other than a controlled or dependent business. If the public officer, any member of his household or a controlled or dependent business incurred or discharged a debt which is reportable under this

subsection during the preceding year, the report shall disclose that the transaction was made and the date it occurred.

8. The name of each source of any gift, or accumulated gifts from a single source, of more than five hundred dollars received by the public officer and members of his household in their own names during the preceding calendar year, or by any other person for the use or benefit of the public officer or any member of his household except gifts received by will or by virtue of intestate succession, or received by way of distribution from any inter vivos or testamentary trust established by a spouse or by an ancestor, or gifts received from any other member of the household or relatives to the second degree of consanguinity. Political campaign contributions shall not be construed as gifts if otherwise publicly reported as political campaign contributions as required by law.

9. A list of all business licenses issued to, held by or in which the public officer or any member of his household had an interest at any time during the preceding calendar year, including the name in which the license was issued, the type of business and its location.

10. A list of all bonds, together with their value, issued by this state or any political subdivision of this state and held at any time during the preceding calendar year by the public officer or any member of his household, which bonds issued by a single entity had a value in excess of one thousand dollars. If the public officer or any member of his household acquired or divested any bonds during the preceding calendar year which are reportable under this paragraph, the fact that the transaction occurred and the date shall also be shown.

B. If an amount or value is required to be reported pursuant to this section, it is sufficient to report whether the amount or value of the equity interest falls within:

1. Category 1, one thousand dollars to twenty-five thousand dollars.

2. Category 2, more than twenty-five thousand dollars to one hundred thousand dollars.

3. Category 3, more than one hundred thousand dollars.

C. This section does not require the disclosure of any information that is privileged by law.

D. The statement required to be filed pursuant to subsection A shall be filed by all persons who qualified as public officers at any time during the preceding calendar year on or before January 31 of each year with the exceptions that a public officer appointed to fill a vacancy shall, within sixty days following his taking of such office, file a financial disclosure statement covering as his annual period the twelve month period ending with the last full month prior to the date of his taking office, and a public officer whose final term expires less than thirty-one days into the immediately following calendar year may file the public officer's final financial disclosure at the same time as the disclosure for the last immediately preceding year.

E. The secretary of state shall prepare written guidelines, forms and samples for completing the financial disclosure statement required by this section. A copy of the guidelines, forms and samples shall be distributed to each public officer and shall be made available to each candidate required to file a financial disclosure statement pursuant to section 38-543.

§ 38-543. Duty to file financial disclosure statement by candidate for public office

A candidate for public office as specified in section 38-541, paragraph 8 shall file a financial disclosure statement covering the preceding twelve month period and containing the information described in section 38-542 on a form prescribed by the secretary of state at the time of filing of nomination papers.

§ 38-544. Violation; classification

A. Any public officer, local public officer or candidate who knowingly fails to file a financial disclosure statement required pursuant to section 38-542, 38-543 or 38-545, who knowingly files an incomplete financial disclosure statement or

who knowingly files a false financial disclosure statement is guilty of a class 1 misdemeanor.

B. Any public officer, local public officer or candidate who violates this chapter is subject to a civil penalty of fifty dollars for each day of noncompliance but not more than five hundred dollars that may be imposed as prescribed in section 16-924.

§ 38-545. Local public officers financial disclosure

Notwithstanding the provisions of any law, charter or ordinance to the contrary, every incorporated city or town or county shall by ordinance, rule, resolution or regulation adopt standards of financial disclosure consistent with the provisions of this chapter applicable to local public officers.

ATTORNEY GENERAL OPINION 78-18 (R78-9)

DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

February 2, 1978

Honorable Jules M. Klagge
Assistant Secretary of State
State House
Phoenix, Arizona

Re: 78 -18 (R78-9)

Dear Mr. Klagge:

On January 5, 1978, you asked our opinion whether the financial disclosure statement required to be filed with your office by A.R.S. § 38-542 applies to "local public officers" as defined in A.R.S. § 38-541(5). "Public officers", defined in § 38-541(4), are required to make such filings.

We do not believe that "local public officers" should file financial disclosure statements with your office. Their disclosures should be filed with offices appropriately designated in the manner prescribed by A.R.S. § 38-545.

Since A.R.S. §§ 38-541 to 545 were added to Title 38 at the same time (1974), it is proper to assume that they may be interpreted in a consistent pattern. Therefore when distinctions are made within the definition of A.R.S. § 38-541 between "public officer" and "local public officer", it should be expected that these definitions have significance.

The major apparent significance between "public officer" and "local public officer" is that the financial disclosure requirement imposed upon a "local public officer" is more properly the concern of the local governmental entities. A.R.S. § 38-545. Consistent with the view that the locus of concern regarding a "local public officer" should be with the appropriate incorporated city, town or county, financial disclosure statements required by A.R.S. § 38-545 should be filed with the local authority charged with the duty of accepting nomination papers. This system then parallels the statewide system set out in A.R.S. § 38-542 and A.R.S. § 38-543.

Hon. Jules M. Klagge
February 2, 1978
Page Two

Our view of A.R.S. § 38-541(4) and (5) is consistent with that of our Supreme Court in Armer v. Superior Court, 112 Ariz. 478 (1975). The Court held that directors of multi-county water conservation districts "are not state public officers for the purpose of financial disclosure" under § 38-542, since they are not among the office holders enumerated in paragraph 4 of § 38-541. Neither, of course, are justices of the peace, and the Armer reasoning would equally apply to them.

If we can be of further assistance, please let us know.

Very truly yours,

BRUCE E. BABBITT
Attorney General

JOHN A. LASOTA, JR.
Chief Assistant
Attorney General

JAL:db

AZ SUPREME COURT ADMINISTRATIVE ORDER 2012-93

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
ARIZONA CODE OF JUDICIAL ADMINISTRATION § 1-307: SPECIAL JUDICIAL OFFICER FINANCIAL DISCLOSURE	)	Administrative Order No. 2012 - 93

The above-captioned provision implements the recommendations of the Presiding Judges and the Committee on Superior Court to uniformly apply to judges pro tempore, commissioners, and juvenile hearing officers the duty to file financial disclosure statements as provided by A.R.S. § 35-542 consistent with the purposes of financial disclosure statutes and the Code of Judicial Conduct. The above-captioned provision having come before the Arizona Judicial Council on June 18, 2012, and having been approved and recommended for adoption,

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the above-captioned provision, attached hereto, is adopted as a section of the Arizona Code of Judicial Administration, effective January 1, 2013.

Dated this 5th day of December, 2012

REBECCA WHITE BERCH
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION SECTION 1-307

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Proposal Cover Sheet
Part 1: Judicial Branch Administration
Chapter 3: Judicial Officers and Employees
Section 1-307: Special Judicial Officer Financial Disclosure

1. **Effect of the proposal:** To uniformly apply to judges pro tempore, commissioners, and juvenile hearing officers the duty to file financial disclosure statements as provided by A.R.S. § 38-542 consistent with the purposes of financial disclosure statutes and the Code of Judicial Conduct.

2. **Significant new or changed provisions:**

   This is a codification of Administrative Order 95-1 requiring financial disclosure by persons appointed to full time judicial offices. Secretary of State financial disclosure instructions implement this requirement by providing notices and the necessary forms with the exception that currently judges pro tempore are not required to file the initial disclosure statement for the twelve months prior to appointment. The proposed code section makes the following changes in current requirements and practices:
   - Requires filing financial disclosure statement for previous twelve months upon appointment.
   - Removes coverage of part-time continuing, scheduled and compensated judges pro tempore because the Code of Judicial Conduct exempts all pro tempore part-time judges from the financial disclosure requirement of Rule 3.15.
   - Adds coverage of commissioners and juvenile hearing officers because they are included in the Code of Judicial Conduct definition of "judge" and are therefore subject to the financial disclosure requirement of Rule 3.15.

3. **Committee actions and comments:** Presiding judges at their March 28 meeting recommended changes that were included in the proposal and the Committee on Superior Court at their May 18 meeting recommended adoption of the code section as proposed.

4. **Controversial issues:** None known.

5. **Recommendation:** Recommend approval of code section.

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 3: Judicial Officers and Employees
Section 1-307: Special Judicial Officer Financial Disclosure

A. Definitions. In this section the following definitions apply:

"Commissioner" means a person appointed pursuant to A.R.S. § 12-213.

"Judge pro tempore" means a person appointed pursuant to Article 6, § 3 of the Arizona Constitution and A.R.S. §§ 12-141 or 12-145.

"Juvenile hearing officer" means a person appointed pursuant to A.R.S. § 8-323.

B. Applicability. All judges pro tempore serving an appellate court or the superior court and all commissioners and juvenile hearing officers serving the superior court on a full time basis.

C. Purpose. To uniformly apply the duty to file financial disclosure statements as provided by A.R.S. § 38-541 et. seq. to full time judges pro tempore, commissioners and juvenile hearing officers consistent with the purposes of the financial disclosure statutes and Rule 3.15 of the Code of Judicial Conduct.

D. Reporting Procedures.

1. Full time judges pro tempore, commissioners and juvenile hearing officers shall file a financial disclosure statement as provided by A.R.S. §38-541 et. seq. upon appointment and annually. Financial disclosure statements cover the entire year served, January 1 through December 31, even if service was for only one day.

2. Pursuant to A.R.S. § 38-542(E), financial disclosure statements shall be filed between January 1 and January 31 and delivered or mailed to Arizona Secretary of State, Attn: Election Services Division, 1700 West Washington Street, 7th Floor, Phoenix, Arizona 85007.

3. Financial disclosure packets may be obtained from the presiding judge or court administrator or upon request from the Secretary of State Election Services. Printable versions are available through the Secretary of State web site www.azsos.gov.

SAMPLE: FINANCIAL DISCLOSURE STATEMENT

FINANCIAL DISCLOSURE STATEMENT

(For use by Public Officers and Candidates of the State of Arizona)

Name of Public Officer or Candidate: Al Doe

Address: 9130 North Ballot Avenue, Vote Falls, AZ 86000

Public Office Held or Sought: Arizona State Representative District # 32

Please select the appropriate box that reflects your service for this filing year:

- ☒ I am a **public officer** filing this statement covering the 12 months of calendar year 20 13 .
- ☐ I have been **appointed** to fill a vacancy in a public office within the last 60 days and am filing this Financial Disclosure Statement covering the 12 month period ending with the last full month prior to the date I took office.
- ☐ I am a **public officer who has served in the last full year of my final term**, which expires less than thirty-one days into calendar year 20_____. This is my final Financial Disclosure Statement covering the last 12 months plus the final days of my term for the current year.
- ☐ I am a **candidate** for a public office, and am filing this Financial Disclosure Statement covering the 12 months preceding the date of this statement, from the month of _____ 20____, to the month of _____ 20_____.

VERIFICATION

I do solemnly swear that the Financial Disclosure Statement filed herewith is in all things true and correct, and fully shows all information I am required to report pursuant to A.R.S. § 38-542.

Al Doe

Signature of Public Officer or Candidate

State of Arizona)
)
County of Drake)

Subscribed and sworn to (or affirmed) before me this 7th day of January, 2013,

Alberta Roberts

Notary Public

December 15, 2013

My Commission expires

(Seal)

OFFICIAL SEAL
ALBERTA ROBERTS
NOTARY PUBLIC
DRAKE COUNTY
My comm. Expires December 15, 2013

SECTION A: PERSONAL DISCLOSURE

1. Names

What to disclose: Your and your spouse's names and the names of minor children of whom you have legal custody.

YOUR NAME	AL DOE
YOUR SPOUSE'S NAME	Martha Doe
CHILDREN'S NAMES	Robert Doe
	Donna Doe

2. Sources of Personal Compensation

What to disclose: The name and address of each employer who paid you, your spouse, or any member of your household more than $1,000 in salary, wages, commissions, tips or other forms of compensation during the period covered by this report. Describe each employer's business and the services for which you or a member of your household were compensated.

Also, list anything of value that any other person, outside your household, received for your use or benefit of you or any member of your household. For example, if a person was paid by your employer to be your housekeeper, list that person's wages and the name of the employer.

You need not disclose: Any money you or any member of your household received that was gross income paid to a business you or your household member owned.

PUBLIC OFFICER OR MEMBER OF HOUSEHOLD	NAME AND ADDRESS OF EMPLOYER OR OTHER SOURCE OF COMPENSATION OVER $1,000	DESCRIPTION OF EMPLOYER'S BUSINESS AND SERVICES PROVIDED BY PUBLIC OFFICER OR MEMBER OF HOUSEHOLD
Al Doe	State of Arizona	State Legislature
	1700 West Washington	
Martha Doe	Vote Falls Unified School Dist.	Principal
	456 South 1st St., Vote Falls	

3. Professional, Occupational and Business Licenses

What to disclose: List all licenses issued to or held by you or any member of your household at any time during the period covered by this Statement.

TYPE OF LICENSE OR PERMIT	NAME IN WHICH LICENSE IS ISSUED	PUBLIC OFFICER OR HOUSEHOLD MEMBER HOLDING LICENSE, IF NOT ISSUED IN OWN NAME	JURISDICTION(S) OF LICENSE	Location OF Business
Real Estate Broker	Al Doe		Arizona	Inactive
Teaching Certificate	Martha Doe		Arizona	Vote Falls
Food Handler	Burgers to Go	Robert Doe	Vote Falls	Vote Falls

4. Personal Creditors

What to disclose: The name and address of each creditor to whom you, or a member of your household owed a personal debt over $1,000 during the period covered by this Statement. If the debt was incurred or discharged during this period, list the date and whether it was incurred or discharged.

You need not disclose: Debts resulting from the ordinary conduct of a business (disclose those in Section C). Debts on residences or recreational property, ou motor vehicles not used for commercial purposes, on debts secured by cash values on life insurance, or debts you owe to relatives, personal credit card transactions or installment contracts.

PERSONAL DEBTS OVER $1,000		
NAME AND ADDRESS OF CREDITOR (OR PERSON TO WHOM PAYMENTS ARE MADE)	PUBLIC OFFICER OR MEMBER OF HOUSEHOLD OWING THE DEBT	DATE INCURRED AND/OR DISCHARGED
Carol Winters 2398 North Elm Street, Vote Falls, AZ. 86000	Martha Doe	05/02/2004 ☐ Incurred ☒ Discharged
		☐ Incurred ☐ Discharged
		☐ Incurred ☐ Discharged

5. Personal Debtors

What to disclose: The name of each debtor who owed you or a member of your household a debt over $1,000 at any time during the period covered by this Statement, and the approximate value of the debt (See last page of value categories). If the debt was incurred or discharged during the period covered by this Statement, report the date and whether the debt was incurred or discharged.

DEBTS OVER $1,000 OWED TO YOU PERSONALLY			
NAME OF DEBTOR	PUBLIC OFFICER OR MEMBER OF HOUSEHOLD TO WHOM THE DEBT IS OWED	AMOUNT BY VALUE CATEGORY	DATE INCURRED AND/OR DISCHARGED
NONE			☐ Incurred ☐ Discharged
			☐ Incurred ☐ Discharged
			☐ Incurred ☐ Discharged

6. Gifts

What to disclose: The name of the donor who gave you or a member of your household a single gift or an accumulation of gifts with a value over $500, if that gift does NOT fit into a category below.

You need not disclose: Gifts you or a household member received by will, intestate succession, *inter vivos* (living) trusts, or testamentary trusts established by a spouse or ancestor. Gifts received from any other member of the household or relatives to the second degree of consanguinity (parents, grandparents, siblings, children and grandchildren) or political contributions reported on campaign finance reports.

NAME OF DONOR OF GIFTS OVER $500	PUBLIC OFFICER OR MEMBER OF HOUSEHOLD – RECIPIENT
City College Scholarship Fund	Robert Doe
Young Writers of America	Donna Doe
American Legislative Exchange Council	Al Doe

SECTION B: REPORTABLE INTERESTS

7. Offices or Fiduciary Relationships in Businesses, Nonprofit Organizations or Trusts

What to disclose: The name and address of each business, organization, trust or nonprofit organization or association in which you or any member of your household held any office OR had a fiduciary relationship during the period covered by this Statement. Describe the office or relationship.

NAME OF ORGANIZATION AND ADDRESS	NAME OF PUBLIC OFFICER OR MEMBER OF HOUSEHOLD	OFFICE OR FIDUCIARY RELATIONSHIP
Tri-County Library Guild 210 South Main, Vote Falls, AZ 86000	Martha Doe	Chairwoman Publicity Committee
Vote Falls Good Citizens 1739 West Wicken Drive, Vote Falls, AZ 86000	Al Doe	Immediate Past President

8. Ownership or Financial Interest in Trusts, or Investment Funds

What to disclose: The name and address of each business, trust, investment or retirement fund in which you or any member of your household had an ownership or beneficial interest of over $1,000. This includes stocks, partnerships, joint ventures, sole proprietorships, annuities, mutual funds and retirement accounts. List the percentage of ownership or interest, and categorize the value of the equity. (See last page for value categories.)

NAME AND ADDRESS OF BUSINESS OR TRUST	PUBLIC OFFICER OR MEMBER OF HOUSEHOLD	DESCRIPTION OF INTEREST	EQUITY BY VALUE CATEGORY
Old Town Retirement Fund New York, NY	Al & Martha Doe	100%	3
Arizona State Elected Officials Phoenix, AZ	Al & Martha Doe	100%	1

9. Bonds

What to disclose: Bonds issued by a single agency worth more than $1,000 that you or a member of your household hold, or held during the period covered by this Statement. If the bonds were acquired or divested during the period, report the date that occurred.

BONDS OVER $1,000	ISSUING AGENCY	PUBLIC OFFICER OR MEMBER OF HOUSEHOLD	VALUE CATEGORY	DATE ACQUIRED AND/OR DIVESTED
Waterworks	City of Vote Falls	Doe Family	2	05/02/2004 ☒ Acquired ☐ Divested
				☐ Acquired ☐ Divested
				☐ Acquired ☐ Divested

10. Real Property Ownership

What to disclose: Arizona real property and improvements to which you or a member of your household hold, or held title during the period covered by this Statement. Describe the property's location and approximate size. Using the value categories (see last page) report the value of your equity. If that property was acquired or divested during the period covered by this Statement, list the date and what occurred.

You need not disclose: Your primary residence or property you use for personal recreation.

LOCATION AND APPROXIMATE SIZE OF ARIZONA REALTY	PUBLIC OFFICER OR MEMBER OF HOUSEHOLD OR BUSINESS	EQUITY BY VALUE CATEGORY	DATE ACQUIRED OR DIVESTED
Townhouse 1/16th lot Central Phoenix	Al Doe	2	03/25/2004 ☒ Acquired ☐ Divested
			☐ Acquired ☐ Divested
			☐ Acquired ☐ Divested

SECTION C: BUSINESS INTERESTS

11. Business Names

What to disclose: The name of any business under which you or any member of your household did business during the period covered by this Statement. Include corporations, limited liability companies, partnerships and trade names. Using the definitions provided in statute, disclose if the business named is controlled or dependent. If the business is both controlled and dependent, mark both boxes.

PUBLIC OFFICER OR MEMBER OF HOUSEHOLD	BUSINESS NAME	BUSINESS ADDRESS	CONTROLLED AND/OR DEPENDENT BUSINESS
Robert Doe	Burgers to Go	910 North Ballot Drive Vote Falls, AZ 86000	☐ Controlled ☒ Dependent
			☐ Controlled ☐ Dependent
			☐ Controlled ☐ Dependent
			☐ Controlled ☐ Dependent

IMPORTANT: IF A BUSINESS LISTED ABOVE DID NOT GROSS MORE THAN $10,000 OR PROVIDE MORE THAN 10% OF YOUR PERSONAL COMPENSATION DURING THE PERIOD COVERED BY THIS STATEMENT, YOU DO NOT NEED TO COMPLETE THE REST OF THIS STATEMENT.

12. Controlled Business Information

What to disclose: The name of each controlled business you listed above, and the goods or services provided by the business. If a single client or customer (person or business) accounts for more than $10,000 and 25% of the gross income, describe what it is your business provides to that customer or client. Then, in column 4, describe what the client/customer's business does (if your major client is a person, leave the last column blank). If you do not have a major client, leave the last two columns blank.

You need not disclose: The name of any customer or client, or the activities of any customer or client who is an individual rather than a business.

NAME OF YOUR CONTROLLED BUSINESS	GOODS OR SERVICES PROVIDED BY YOUR BUSINESS	WHAT YOUR BUSINESS PROVIDES TO YOUR MAJOR CUSTOMER OR CLIENT	BUSINESS ACTIVITY OF MAJOR CUSTOMER OR CLIENT
NONE			

13. Dependent Business Information

What to disclose: The name of each dependent business, the goods or services provided by the dependent bnsiness, the goods or services provided to the major customer or client and the business activity if the major customer or client is a business. If the dependent business is also a controlled business, disclose it only in response to #12, above.

You need not disclose: The name or identity of the customer or client, or the amount of income from the customer or client. If the customer or client is an individual (rather than a business), you are not required to disclose that person's activities.

NAME OF DEPENDENT BUSINESS	GOODS OR SERVICES PROVIDED BY THE BUSINESS	GOODS OR SERVICES PROVIDED TO THE MAJOR CUSTOMER OR CLIENT	BUSINESS ACTIVITY OF THE MAJOR CUSTOMER OR CLIENT, IF A BUSINESS
Burgers to Go	Food and Beverage		

14. Real Property Owned by Business

What to disclose: Arizona real property and improvements the titles to which were held by a controlled or dependent business listed above. If the business is one that deals in real property and improvements, list the aggregate value of all parcels held in the period covered by this Statement. Describe the property's location and approximate size. Using the value categories (see last page) report the value of equity in your business. If the property was acquired or divested during the period covered by this Statement, list that and the date.

LOCATION AND APPROXIMATE SIZE OF ARIZONA REALTY	PUBLIC OFFICER OR MEMBER OF HOUSEHOLD OR BUSINESS	EQUITY BY VALUE CATEGORY	DATE ACQUIRED OR DIVESTED
NONE			☐ Acquired ☐ Divested
			☐ Acquired ☐ Divested
			☐ Acquired ☐ Divested
			☐ Acquired ☐ Divested

15. Business' Creditors

What to disclose: The name and address of each creditor to which your business owed more than $10,000, if that amount was also more than 30% of your total business indebtedness at any time during the period covered by this Statement. If the debt was incurred or discharged during the period covered by this Statement, report that and the date.

You need not disclose: Debts resulting from a business other than a controlled or dependent business.

BUSINESS DEBTS OVER $10,000 AND 30%		
NAME AND ADDRESS OF CREDITOR (OR PERSON TO WHOM PAYMENTS ARE MADE)	NAME OF CONTROLLED OR DEPENDENT BUSINESS (FROM ITEM 3 OR 4)	DATE INCURRED AND/OR DISCHARGED
NONE		☐ Incurred ☐ Discharged
		☐ Incurred ☐ Discharged
		☐ Incurred ☐ Discharged

16. Business' Debtors

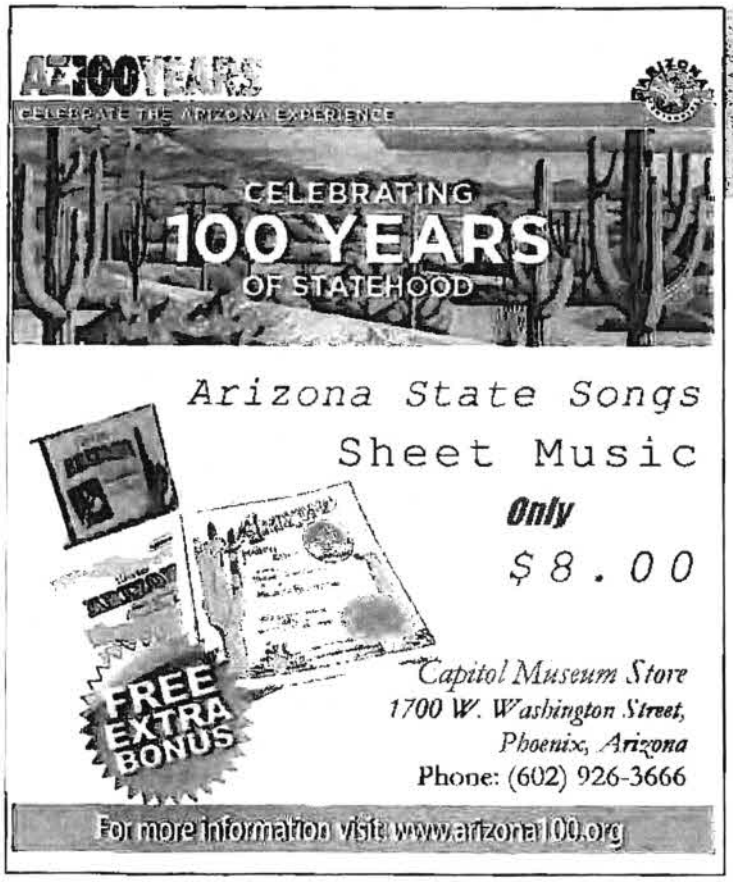
What to disclose: The name of the debtor for each debt exceeding $10,000 owed to a controlled or dependent business which was also more than 30% of the total indebtedness to the business which was owed at any time during the preceding calendar year. If the debt was incurred or discharged during the year, list that and the date. List value category.

DEBTS OVER $10,000 AND 30% OWED TO YOUR BUSINESS			
NAME OF DEBTOR	NAME OF CONTROLLED OR DEPENDENT BUSINESS TO WHOM THE DEBT IS OWED	AMOUNT BY VALUE CATEGORY	DATE INCURRED AND/OR DISCHARGED
NONE			☐ Incurred ☐ Discharged
			☐ Incurred ☐ Discharged

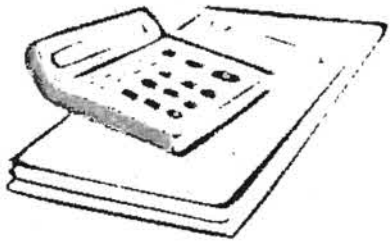
Value Categories: (from A.R.S. § 38-542(B))
Category 1 - $1,000 to $25,000
Category 2 – More than $25,000 to $100,000
Category 3 - More than $100,000

Arizona Secretary of State
1700 W. Washington Street, Fl. 7
Phoenix, Arizona 85007-2808

TO:



ARIZONA



INSTRUCTIONS FOR FINANCIAL DISCLOSURE STATEMENTS

An Election Services Division Publication

Appendix F

View Previous Versions of the Maryland Code

2015 Maryland Code
ELECTION LAW
Title 14 - DISCLOSURE BY PERSONS DOING PUBLIC BUSINESS
§ 14-104 - Statement of contributions

Universal Citation: MD Elec Law Code § 14-104 (2015)

(a) In general. -- A person doing public business shall file a statement with the State Board as provided in this section.

(b) Requirements. --

(1) When a contract is awarded that causes a person to be doing public business, an initial statement shall be filed at that time, covering the preceding 24 months.

(2) (i) A person who files an initial statement under paragraph (1) of this subsection, a person who was doing public business on December 31, 2014, or a person who has obtained approval from the State Board under subsection (c)(2) of this section, shall file a semi-annual statement in accordance with this paragraph for each reporting period specified in subparagraph (ii) of this paragraph if performance remains uncompleted on the contract that caused the person to be doing public business.

(ii) 1. The statements required by subparagraph (i) of this paragraph shall cover 6-month reporting periods ending on April 30 or October 31.

2. A statement required by subparagraph (i) of this paragraph shall be filed on or before the last day of the month immediately following the day on which the reporting period ends.

(c) Contents and oath. --

(1) The statement required by this section shall be made under oath and, except as provided in paragraph (2) or (3) of this subsection, shall contain:

(i) the name of each candidate, if any, to whom one or more applicable contributions in a

(ii) the office sought by each candidate named in item (i) of this paragraph;

(iii) the amount of aggregate contributions made to each candidate named in item (i) of this paragraph;

(iv) the name of each unit of a governmental entity with which the person did public business during the reporting period;

(v) the nature and amount of public business done with each unit of a governmental entity; and

(vi) if the public business was done or the contribution was made by another person but is attributed to the person filing the statement, the name of the person who did the public business or made the contribution and the relationship of that person to the person filing the statement.

(2) (i) The information required by paragraph (1)(iv) and (v) of this subsection may be omitted on the written approval of the State Board if the State Board finds that:

1. requiring the information would be unduly burdensome;

2. the public interest would not be impaired substantially by the omission of this information; and

3. the person filing the statement stipulates that the person has done public business during the reporting period.

(ii) A person who has obtained approval from the State Board under this paragraph:

1. is not required to file an initial statement under subsection (b)(1) of this section;

2. shall file the statements required under subsection (b)(2) of this section if performance remains uncompleted on any contract that causes the person to be doing public business; and

3. shall include in each statement the information required under paragraph (1)(i), (ii), (iii), and (vi) of this subsection for all contributions by the person or attributed to the person in a

cumulative amount of $ 500 or more to or for the benefit of a candidate for an office of any governmental entity.

(3) If a person doing public business did not make applicable contributions in a cumulative amount of $ 500 or more to a candidate during the reporting period, the statement filed by the person under this section is required to contain only the following:

during the reporting period, unless the person has obtained approval from the State Board under paragraph (2) of this subsection to omit this information; and

(ii) a stipulation that the person did not make applicable contributions in a cumulative amount of $ 500 or more to a candidate during the reporting period.

(d) Retaining statements; public availability. -- The State Board shall retain each statement filed under this title as a public record for at least 2 years after its receipt and shall make the statement publicly available on the Internet.

(e) Filing. -- A person shall file a statement required under this section in an electronic format required by the State Board.

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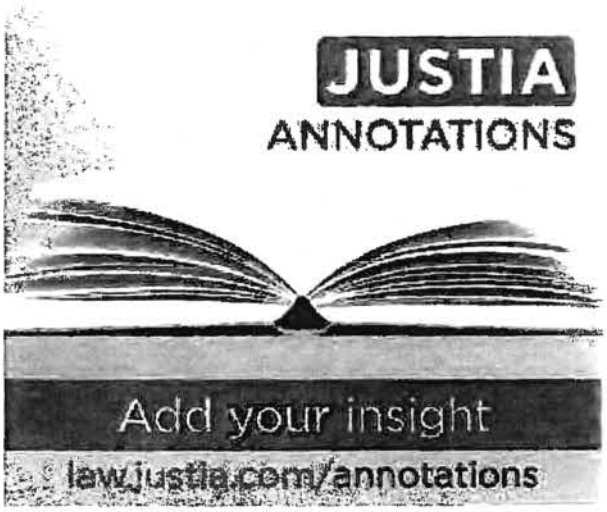

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Appendix G

View the 2015 Rhode Island General Laws | View Previous Versions of the Rhode Island General Laws

2012 Rhode Island General Laws
Title 17 - Elections
Chapter 17-27 - Reporting of Political Contributions by State Vendors
Chapter 17-27-2 - Affidavits required.

Universal Citation: RI Gen L § 17-27-2 (2012)

§ 17-27-2 Affidavits required. – In connection with contracts for goods or services to be provided at a cost of five thousand dollars ($5,000) or more between a state vendor and a state agency, whether written or unwritten, the state vendor shall execute, under oath, an affidavit concerning reportable contributions pursuant to chapter 25 of this title. If the state vendor has, within the twenty-four (24) months preceding the date of the contract, contributed an aggregate amount in excess of two hundred fifty dollars ($250) within a calendar year to any general officer, any candidate for a general office, any member of the general assembly or candidate for the general assembly, or any political party; the state vendor shall file the affidavit with the board of elections and shall list the name of the general officer, member of the general assembly or candidate or political party, the amount and date of each contribution made during the preceding twenty-four (24) months and the total gross amount, in dollars, of contracts entered into between the state vendor and all state agencies during that period of time.

History of Section.
(P.L. 1993, ch. 249, § 1; P.L. 2001, ch. 176, § 3; P.L. 2006, ch. 428, § 3; P.L. 2006, ch. 429, § 3.)

Disclaimer: These codes may not be the most recent version. Rhode Island may have more current or

Appendix H

THOMSON REUTERS WESTLAW Unofficial Purdon's Pennsylvania Statutes from Westlaw

Home Table of Contents

§ 3260a. Reports by business entities; publication by Secretary of the Commonwealth
Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 25 P.S. Elections & Electoral Districts

Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 25 P.S. Elections & Electoral Districts (Refs & Annos)
Chapter 14. Election Code (Refs & Annos)
Article XVI. Primary and Election Expenses (Refs & Annos)

25 P.S. § 3260a

§ 3260a. Reports by business entities; publication by Secretary of the Commonwealth

Currentness

(a) Any business entity including but not limited to a corporation, company, association, partnership or sole proprietorship, which has been awarded non-bid contracts from the Commonwealth or its political subdivisions during the preceding calendar year, shall report by February 15 of each year to the Secretary of the Commonwealth an itemized list of all political contributions known to the business entity by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner or individual owner that has been made by:

(1) any officer, director, associate, partner, limited partner, individual owner or members of their immediate family when the contributions exceed an aggregate of one thousand dollars ($1,000) by any individual during the preceding year; or

(2) any employe or members of his immediate family whose political contribution exceeded one thousand dollars ($1,000) during the preceding year.
For the purposes of this subsection, "immediate family" means a person's spouse and any unemancipated child.

(b) It shall be the duty of the Secretary of the Commonwealth to publish sixty (60) days after February 15 of each year a complete itemized list of all contributions given under the provisions of subsection (a). This list shall be a matter of public record open to public inspection and copies made available at cost to any individual who requests them.

Credits

1937, June 3, P.L. 1333, § 1641, added 1978, Oct. 4, P.L. 893, No. 171, § 2, effective Jan. 1, 1979. Amended 1980, July 11, P.L. 649, No. 134, § 6, imd. effective.

25 P.S. § 3260a, PA ST 25 P.S. § 3260a
Current through 2016 Regular Session Acts 1 to 169 and 171 to 175

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Appendix I

THE
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Disclosure Best Practices

In the current era of deregulatory campaign finance jurisprudence, disclosure remains a constitutionally viable method of regulating political spending. Since *Buckley v. Valeo*, the Supreme Court has consistently endorsed campaign finance disclosure as an important tool for "provid[ing] the electorate with information as to where political campaign money comes from and how it is spent."[1] The Court also has recognized that disclosure works to prevent actual and apparent corruption, and aids in the enforcement of contribution limits.[2]
Even the Roberts Court, notwithstanding its unabashedly hostile posture toward other forms of campaign finance regulation, has consistently upheld federal disclosure requirements as vital and minimally restrictive alternatives to political spending limits.[3]

Despite disclosure's clear constitutionality, substantial sums of "dark money" continue to permeate both federal and state elections.[4] Jurisdictions can, however, adopt various measures to improve the transparency of campaign-related spending,. These include provisions requiring more frequent reporting by candidates and political parties, event-based report filing by non-PAC organizations, disclaimers on online political advertisements, and others. This memo outlines:

- The background & constitutionality of campaign finance disclosure.
- Key components of an effective disclosure regime.
- "Nuts and Bolts" of disclosure statutes.

I. Background & Constitutionality of Campaign Finance Disclosure

Originating in the Progressive era, campaign finance disclosure laws have historically enjoyed bipartisan support as a means of combating political corruption and informing the public about the financial interests behind candidates for public office. New York became the first state to pass disclosure legislation in 1890, and nearly every state mandated some measure of campaign

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The description of disclosure laws and their constitutionality in this document are intended to provide a general summary of the law. They do not capture all of the nuances and exceptions in the law. They should not be relied upon as legal advice for particular circumstances or situations. If you have specific questions, or if you would like assistance drafting legislative language, please contact the Campaign Legal Center at (202) 736-2200.

[1] Buckley v. Valeo, 424 U.S. 1, 66 (1976) (per curiam).

[2] *Id.* at 67-68; McCutcheon v. FEC, 134 S. Ct. 1434, 1459 (2014) (quoting Buckley, 424 U.S. at 67) (explaining that "'disclosure laws deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity'").

[3] *See* Citizens United v. FEC, 558 U.S. 310, 371 (upholding BCRA disclaimer and disclosure requirements against as-applied challenge); McCutcheon v. FEC, 134 S. Ct. 1434, 1459-60 (2014).

[4] "Dark money" refers to political spending by entities not legally obligated to disclose their donors. The Center for Responsive Politics estimates that over $178 million in undisclosed political spending was made to influence the 2016 federal elections. *See* CENTER FOR RESPONSIVE POLITICS, *Political Nonprofits (Dark Money)*, https://www.opensecrets.org/outsidespending/nonprof_summ.php.

finance disclosure by 1927.[5] The Publicity of Political Contributions Act of 1910 marked Congress's first legislative effort to bolster the transparency of federal election spending, and required "political committees," defined as national party committees and political organizations active in multiple states, to file post-election reports of contributions and expenditures with the Clerk of the House of Representatives.[6] In 1925, Congress amended the Publicity Act's transparency requirements with the Federal Corrupt Practices Act (FCPA), and this disclosure framework governed federal election campaigns until the early 1970s.[7] Despite sweeping statutory language, the amended Publicity Act and FCPA regime was easily and frequently evaded, and its provisions did not apply to presidential candidates or congressional primary elections.[8]

Congress instituted most current components of federal campaign disclosure in the Federal Election Campaign Act of 1971 (FECA) and the Act's1974 and 1976 amendments.[9] FECA expanded the coverage of federal disclosure laws to presidential candidates as well as to congressional primaries, and generally obligated ongoing reporting by all candidates and political committees active in federal elections.[10] FECA also facilitated increased public access to campaign finance data by requiring campaign finance reports to be made available for public inspection within 48 hours of filing.[11] The 1974 amendments to FECA further tweaked federal disclosure requirements, and tasked the newly-created Federal Election Commission (FEC) with administering the intake and public dissemination of disclosure reports.[12]

After passage of the 1974 FECA amendments, the Supreme Court broadly endorsed the constitutionality of campaign finance disclosure in the seminal case of *Buckley v. Valeo*.[13] *Buckley* involved a host of challenges to FECA, including to the Act's reporting and disclosure provisions, and principles from the per curiam decision continue to delineate the constitutional parameters of campaign finance jurisprudence. Regarding disclosure, the Court recognized that, even though compelled disclosure implicated rights protected by the First Amendment, any burdens on those rights were minimal because disclosure laws "impos[e] no ceiling on campaign-related activities."[14] Accordingly, the Court explained that disclosure laws are subject to "exacting scrutiny," requiring "a substantial relation between the governmental interest and the information required to be disclosed."[15]

The Court identified three governmental interests advanced by disclosure that justified its modest infringement upon protected rights. First, disclosure supplied valuable information to the electorate. By providing information "as to where political campaign money comes from and how it is spent by the candidate," disclosure works both to "aid the voters in evaluating those who seek federal office" and to "alert the voter[s] to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office."[16] Second,

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[5] Trevor Potter & Bryson B. Morgan, *The History of Undisclosed Spending in U.S. Elections & How 2012 Became the "Dark Money" Election*, 27 NOTRE DAME J.L. ETHICS & PUB. POL'Y 383, 400 (2013).
[6] *See* 36 Stat. 822 (1910); Potter & Morgan, *supra* note 5, at 403.
[7] Potter & Morgan, *supra* note 5, at 405.
[8] *Id.*
[9] *Id.* at 412-15.
[10] Id. at 412.
[11] *Id.*
[12] *Id.* at 415.
[13] 424 U.S. 1 (1976) (per curiam).
[14] *Id.* at 64.
[15] *Id.*
[16] *Id.* at 66-67.

disclosure laws "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity."[17] Finally, the Court recognized that disclosure's reporting and recordkeeping mechanisms aid in the enforcement of contribution limits.[18]

The Court did acknowledge that, in the rare case in which a group could show that compelled disclosure would expose its members to substantial threats, harassment, or reprisals, an as-applied exemption might be warranted.[19] The factual record in *Buckley* presented no such instance, however, and the Court broadly upheld FECA's disclosure and reporting provisions. In all, *Buckley* gave firm constitutional validation to FECA's disclosure provisions, and courts continue to apply the decision's framework in evaluating disclosure laws.

Since *Buckley*, the Court has consistently upheld campaign finance disclosure statutes against constitutional challenge, with one peripheral exception.[20] Indeed, disclosure represents one of the few areas of campaign finance regulation that the current Supreme Court, led by Chief Justice Roberts, has sanctioned as constitutionally permissible. In *Citizens United v. FEC*, which campaign finance proponents have lambasted for its dismantling of corporate and union independent spending restrictions, the Court upheld, eight to one,[21] the disclaimer and disclosure provisions of the Bipartisan Campaign Reform Act (BCRA).[22] In the majority opinion, Justice Kennedy commends disclosure "as a less restrictive alternative to more comprehensive regulations of speech,"[23] and approvingly cites *Buckley* and *McConnell v. FEC* for the propositions that disclaimers "'provide the electorate with information'" and "'insure that the voters are fully informed.'"[24]

In *McCutcheon v. FEC*, the Court again pointed to disclosure as a constitutionally valid method of campaign finance oversight.[25] As part of an explication on the failure of aggregate contribution limits to prevent corruption or its appearance, the Court noted disclosure laws minimize potential abuses of campaign finance laws that aggregate limits were intended to address.[26] The Court further highlighted the internet's capacity to augment disclosure's effect by facilitating near-instantaneous access to massive amounts of campaign finance data.[27]

II. Key Components of an Effective Disclosure Regime

a. Ongoing Reporting by Candidates, Political Parties, and Political Committees

Even in this era of increasing dark money, candidates, political parties, and political committees (PACs) continue to function as the primary vehicles for political campaign spending. As the principal funders of campaigns, these entities must disclose comprehensive information about

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[17] *Id.* at 67.
[18] *Id.* at 67-68.
[19] *Id.* at 69.
[20] In McIntyre v. Ohio Elections Comm'n, 514 U.S. 334 (1994), the Court invalidated an Ohio state law prohibiting the distribution of anonymous campaign literature.
[21] Justice Thomas was the lone dissenter.
[22] 558 U.S. 310, 371 (2010).
[23] *Id.* at 369.
[24] *Id.* at 367 (quoting McConnell v. FEC, 540 U.S. 93, 196 (2002); Buckley v. Valco, 424 U.S. 1, 66 (1976)).
[25] 134 S.Ct. 1434 (2014).
[26] *Id.* at 1459-1460.
[27] *Id.* at 1460.

their contributions and expenditures on a continuing basis. These groups generally file quarterly or monthly reports with specific information about the money they receive and expend.

In the immediate days before an election, candidates, parties, and PACs are commonly required to file pre-election reports that disclose late contributions made during the final surge toward election day. Likewise, these committees must file post-election reports documenting any receipts or spending from the pre-election report's filing through election day. In non-election years, candidates, parties, and PACs continue to file quarterly reports until their formal termination.

b. Special Pre-Election Reports for Large Contributions & Expenditures

During the temporal gap between the filing of the final pre-election report and the election date, candidates, political parties, and PACs may make or receive large contributions and expenditures in a final pre-election spending barrage. To ensure that these substantial contributions are disclosed when public interest in the election is at its peak, these groups should be required to file a special report within 24 hours of making or receiving a contribution or expenditure, including an independent expenditure, that exceeds a specified value during this time.

c. Defining "Political Committee"

In order to guard against evasion of disclosure obligations, it is enticing to define "political committee" such that any group raising or spending substantial sums to influence elections becomes a PAC subject to the attendant disclosure and reporting obligations. Due to constitutional overbreadth concerns, however, some jurisdictions restrict PAC status to groups with a (or "the") major or primary purpose of influencing elections.[28] At the federal level, for example, a two-part analysis determines whether a group is a political committee subject to FECA's continuing reporting requirements. First, the organization must receive contributions or make expenditures aggregating over $1,000 during a calendar year.[29] Second, the organization must have the "major purpose" of nominating or electing federal candidates. The Supreme Court formulated the second part of this analysis shortly after FECA's enactment as a narrowing statutory construction aimed at preventing multipurpose issue advocacy groups from falling into FECA's regulatory ambit.[30] Critics highlight that the major purpose prong of the federal analysis has enabled multipurpose organizations that engage in substantial political spending to thwart PAC status. While it is a narrowing qualification, a major purpose standard does help to safeguard the constitutionality of disclosure requirements.

Other jurisdictions do not incorporate a major purpose criterion for conferring PAC status. In many of these jurisdictions, an organization will qualify as a PAC upon raising or spending a

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[28] *See, e.g.*, ARIZ. REV. STAT. 16-901 ("Political Committee Includes: (f) An association or combination of persons that meets both of the following requirements:(i) Is organized, conducted or combined for the primary purpose of influencing the result of any election in this state or in any county, city, town or other political subdivision in this state, including a judicial retention election.(ii) Knowingly receives contributions or makes expenditures of more than five hundred dollars in connection with any election during a calendar year, including a judicial retention election.); VA. CODE. § 24.2-945.1 ("'Political action committee' means any organization, person, or group of persons, established or maintained to receive contributions for the primary purpose of expressly advocating the election or defeat of a clearly identified candidate.").

[29] 52 U.S.C. § 30101.

[30] *Buckley*, 424 U.S. at 79.

threshold amount to influence elections.[31] Some of these more inclusive PAC definitions have faced constitutional challenge based on their wide application. The Supreme Court has never applied the major purpose test to a state or local statute regulating PAC status, and the outcome of these challenges has varied by federal circuit.[32] Consequently, a jurisdiction drafting a definition of political committee should examine any relevant case law from its circuit to gauge the permissibility of regulating multipurpose organizations as PACs.

d. Robust Event-Based Reporting for Non-PAC Organizations

Since *Citizens United* invalidated restrictions on corporate independent expenditures, political campaign spending by corporations, particularly I.R.C. § 501(c)(4) and (c)(6) nonprofits, has increased dramatically at both the federal and state levels.[33] Often, these groups operate outside the bounds of campaign finance disclosure laws since they are not exclusively operated for political purposes like PACs. These entities are often referred to as "dark money" groups, since they are not legally obligated to disclose the sources funding their political spending.

While dark money groups typically do not have to file ongoing reports like a PAC, jurisdictions can require non-PAC organizations to file event-based reports when they spend organizational funds to influence elections. These event-based reports generally detail the expenditure, and list any donors who gave to the organization for the purpose of making political expenditures or who donated in response to a solicitation for contributions to make political expenditures. If the funds received or solicited for the purpose of making political expenditures do not fully account for the expenditure's cost, jurisdictions may require the organization to disclose its general donors.

There are three general varieties of non-PAC political spending that trigger an obligation to file an event-based report:

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[31] *See, e.g.*, ALA. CODE § 17-5-2 (13) (defining political action committee as "[a]ny committee, club, association, political party, or other group of one or more persons, whether in-state or out-of-state, which receives or anticipates receiving contributions and makes or anticipates making expenditures to or on behalf of any Alabama state or local elected official, proposition, candidate, principal campaign committee or other political action committee."); HAW. REV. STAT. § 11-302 ("'Noncandidate committee' means an organization, association, party, or individual that has the purpose of making or receiving contributions, making expenditures, or incurring financial obligations to influence the nomination for election, or the election, of any candidate to office, or for or against any question or issue on the ballot ....").

[32] *See* Yamada v. Snipes, 786 F.3d 1182, 1201 (9th Cir. 2015) (upholding Hawaii's "noncandidate committee" definition, and accompanying reporting obligations, against First Amendment challenge as substantially related to important government interests in informing electorate, preventing corruption and the appearance thereof, and avoiding the circumvention of state's campaign finance laws), *cert. denied*, 136 S. Ct. 569 (2015); Ctr. for Individual Freedom v. Madigan, 697 F.3d 464 (7th Cir. 2012) (upholding Illinois's requirement that any group accepting contributions or making expenditures in excess of $3,000 within 12-month period register as a political committee); Nat'l Org. for Marriage v. McKee, 649 F.3d 34, 59 (1st Cir. 2011) (upholding Maine's non-major purpose test PAC definition against constitutional overbreadth challenge). *But see* Iowa Right to Life Comm. v. Tooker, 717 F.3d 576 (8th Cir. 2013) (holding that Iowa's ongoing reporting requirements was unconstitutional as applied to groups whose major purpose was not nominating or electing candidates).

[33] *See* CENTER FOR RESPONSIVE POLITICS, *Political Nonprofits (Dark Money)*, https://www.opensecrets.org/outsidespending/nonprof_summ.php.

- Independent Expenditures: an expenditure expressly advocating the election or defeat of a clearly identified candidate that is not made in concert or cooperation with or at the request or suggestion of, or otherwise coordinated with, a candidate or political party.
- Electioneering Communications: a public communications that (i) refers to a clearly identified candidate; (ii) is publicly distributed within the timeframe preceding an election;[34] and (iii) is targeted to the relevant electorate.
- Covered Transfers: A covered transfer report is a means of uncovering the individual or group actually responsible for a contribution that is channeled through multiple persons or organizations in an effort to hide the true source of the funds. "Covered transfer" is generally defined as a contribution by one person to another, where the first person (i) designates, requests, or suggests that the contribution be used for campaign-related expenditures or making a transfer to a subsequent person for the purpose of making campaign-related expenditures; (ii) made the contribution in response to a solicitation for making campaign-related expenditures; or (iii) engaged in discussions with the recipient of the contribution about making campaign-related expenditures or transferring the contribution to a subsequent person for the making of campaign-related expenditures.

e. Segregated Account Option

Segregated accounts operate as the campaign spending arm of an association, union, corporation, or other non-PAC entity, and file ongoing reports in the same manner as political committees. A segregated account discloses donors who directly contributed to the account, which is exclusively operated for campaign spending, and is not required to disclose the parent organization's general donors. As an incentive to establish segregated accounts, a jurisdiction may require an organization that conducts campaign spending with general funds, rather than through a segregated account, to disclose its general donors on event-based reports, including donors who did not give for political purposes. To lessen the severity of this requirement, a jurisdiction may permit these groups to exempt from disclosure the names of any general donors who prohibited, in writing, the use of donated funds for political campaign spending when the contribution was made.

f. Political Advertising Disclaimers for Online Communications

Disclaimers are the most instantaneous form of campaign finance disclosure, and most states require a disclaimer to accompany political advertisements and in print publications, direct mailings, television, and radio. In recent elections, internet communications have assumed a prominent role in many campaigns' advertising strategy. Despite online ads' growing significance, many jurisdictions' disclaimer statutes are silent or ambiguous as to their application to internet communications.[35] Accordingly, jurisdictions may require online advertisements and paid communications, such as blogs and email blasts, to include

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[34] FEC regulations limit this timeframe to 30 days before a primary and 60 days before a general election. 11 C.F.R. § 100.29(a)(2). Some states have expanded this window to cover a greater time period. For instance, Alabama's definition of "electioneering communication" covers communications "made within 120 days of an election in which the candidate will appear on the ballot." ALA. CODE §17-5-2.

[35] *See, e.g.*, VA. CODE. § 24.2-955 (limiting the scope of disclaimer requirements to a "sponsor of an advertisement in the print media or on radio or on television."); IDAHO CODE ANN. § 67-6614A (requiring a disclaimer for political communications "through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising....").

disclaimers.[36]

g. Electronic Filing of Reports

In *McCutcheon v. FEC*, the Supreme Court extolled the internet's capacity both to furnish the electorate with real-time information about campaign-related spending and "offer[] much more robust protections against corruption."[37] The FEC's website has a comprehensive campaign finance disclosure portal through which visitors may sort extensive campaign finance data on federal candidates, political parties, and outside groups spending in national elections.[38] Websites like Follow The Money[39] and OpenSecrets[40] supplement the FEC's site with even greater distillation of the contents of federal campaign finance reports, making this data more accessible than ever before.

State and local jurisdictions can emulate, to the greatest extent possible, the FEC's use of the internet for transparency purposes. An important initial step is to require mandatory electronic filing of campaign finance reports by statewide and legislative candidates, state political parties, and PACs that raise or spend money in any significant amount. Correspondingly, jurisdictions should mandate that anyone required to file an event-based report must file it electronically. Administrative agencies that receive campaign finance reports should make the data searchable, sortable, and machine-readable.

h. Straw Donor Prohibitions & Restrictions on Anonymous and Cash Contributions

Past schemes to circumvent contribution limits often have involved the use of "straw donors," in which the true source of a political contribution funnels money through an intermediary in order to thwart contribution caps and disclosure requirements. To address this potential gap, jurisdictions may require contributions to be made in the contributor's legal name. Additionally, jurisdictions may prohibit the making or acceptance of anonymous and cash contributions, at least above a threshold amount, to foreclose another method of skirting contribution limits.

i. Time- & Situation-Sensitive Enforcement

In the context of campaign finance, not all violations are created equal. Generally, violations occurring closer to the election date, when public interest in election developments is high, are more serious than those happening in the early days of a campaign. Correspondingly, an effective enforcement regime is time and situation sensitive, and structured toward pre-election disclosure of campaign finance violations.

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[36] Some states have addressed internet communications in their disclaimer laws. Nevada requires disclaimers for websites and electronic mailings to over 500 people if they expressly advocate a candidate's election or solicit contributions. NEV. REV. STAT. 294A.348.

[37] 134 S.Ct. 1434, 1460 (2014); *see also* Citizens United v. FEC, 558 U.S. 310, 370 (2010) (explaining that electronic disclosure of campaign finauce data "can provide...citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.").

[38] *Campaign Finance Disclosure Portal*, FEDERAL ELECTION COMMISSION, http://www.fec.gov/pindex.shtml.

[39] *See Scorecard: Essential Disclosure Requirements for Contributions to State Campaigns*, NAT'L INSTITUTE ON MONEY IN STATE POLITICS, March 15,2016, http://www.followthemoney.org.

[40] CENTER FOR RESPONSIVE POLITICS, https://www.opensecrets.org.

For some minor violations, such as a late filing of a report, a "speeding ticket" approach is warranted. Establishing a system of pre-determined fines for lesser violations helps to conserve resources and time for election administrators so that they may more assiduously pursue more serious infractions.

III. Nuts & Bolts of Disclosure Statutes

The following section details specific policy and drafting recommendations for statutes within a disclosure regime.

a. Contribution & Expenditure Information for Ongoing Reports

i. Contributions

Total Amount of Contributions Received: Each ongoing report should list both the total amount of contributions received during the relevant reporting period (e.g. quarter or month) and the total amount of contributions received during either the election cycle or calendar year, depending on how the jurisdiction structures contribution limits.

Threshold for Itemized Contributors: Reports should include an itemized listing of every donor whose aggregate contributions have exceeded a specified threshold value. Once a donor exceeds the threshold, any subsequent contribution by that person should be listed on the next ongoing report, even if their contribution during that reporting period alone did not meet or exceed the threshold amount. Setting the threshold is a matter of policy, dependent on the elected office involved and the practical realities of campaigning in a particular jurisdiction. Setting this amount too low, however, could provoke legal challenge. A common state-level threshold for itemizing contributors is $100.[41]

Donor Information: For each itemized contributor, the name and address of the donor, along with the date and amount of any contribution made in the reporting period, should be given. The cumulative amount of contributions from that donor during the election cycle or calendar year should be listed as well. If the donor is an individual, his occupation and employer should be provided. If the contributor is not an individual, the report should indicate if the donor is a political committee, political party, or other entity. If the contribution is from a corporation, the type of business and the place of business should be listed. Any sponsoring or parent entity of a corporation or segregated account should be provided.

Transaction Types: For itemized contributors, the report should identify the form of the contribution, such as monetary contribution; in-kind contribution; loan; loan repayment; non-contribution income; or returned contributions.

Non-itemized contributions (i.e. those not meeting the threshold amount): Report should include the total number of non-itemized contributions received in the reporting period that do not meet the threshold amount as well as the cumulative value of such contributions.

ii. Expenditures

Total Expenditures: Each report should include both the total amount spent in the relevant reporting period and the total amount spent in the election cycle or calendar year to date.

Itemized Expenditures: Each report should list all expenditures exceeding a threshold amount

[41] CAL. GOV'T CODE § 84211; VA. CODE § 24.2-947.4.

made during the reporting period. The report should include the name and address of payees, along with the date and amount of the expenditure. The filer should provide a specific description of each itemized expenditure to ensure that reports give a meaningful explanation of how campaign funds are expended.

Expenditures Supporting or Opposing Candidates: If the expenditure is made in relation to a candidate, the report should indicate:

- The candidate's name, office sought, and district;
- Whether the expenditure was made to support or oppose the candidate;
- The expenditure type (monetary contribution; in-kind contribution; independent expenditure; or description of the expense if none of the foregoing)
- The date and amount of the expenditure;
- The cumulative amount expended in relation to that candidate in the election cycle or calendar year.

b. Filing Schedule for Ongoing Reports

Quarterly Reports: Until the committee's formal termination (including in non-election years), candidates, parties, and PACs should electronically file quarterly reports within 15 days of the close of each calendar quarter that disclose all contribution and expenditure activity up through the last day of the preceding quarter.

Pre-Election Reports: No later than a certain number of days prior to both the primary and general election, candidates, parties, and PACs should electronically file pre-election reports that detail all contribution and expenditure activity in the immediate days before an election.

Post-Election Reports: Within a certain number of days following the general election, candidates, parties and PACs should electronically file a post-election reporting, detailing all contribution and expenditure activity since the filing of the last pre-election report.

c. Event-Based Reports

Large Pre-Election Contribution & Expenditure Reports: If candidates, parties, or PACs make or receive a contribution or expenditure exceeding a threshold amount between the filing of their last pre-election report and the election date, they should electronically file a special statement detailing the contribution or expenditure within 24 hours. This statement should generally include the same information as required for itemized contributions in ongoing reports.

Independent Expenditure & Electioneering Communication Reports: When a non-PAC entity or an individual makes independent expenditures or electioneering communications in an aggregate amount exceeding a statutory threshold during an election cycle or calendar year, the spender should file an event-based report within 24 hours of the expenditure or obligating to make the expenditure. Once a person has exceeded the threshold amount, the spender should file a report detailing any subsequent independent expenditures or electioneering communications, even if that expenditure or communication does not itself exceed the threshold. These reports generally should require:

- The person's name and address;
- The date and amount of the expenditure or communication;
- A description of the expenditure or communication, including its form (e.g. broadcast, mailing);
- Whether the expenditure was made in support of or in opposition to any candidate or candidates, and the name of such candidate or candidates;

- Any donors who made a contribution to the non-PAC person for the purpose of making independent expenditures or electioneering communications, or who gave in response to a solicitation for contributions for such purposes. If the funds received or solicited for the purpose of making such expenditures or communications do not fully account for the expenditure's cost, the organization should disclose its general donors on the report. An exemption from disclosure may be provided for any donor who prohibited, in writing, the use of his contribution for political campaign spending.

Covered Transfer Report: If a non-PAC entity or an individual makes a covered transfer, the person should file an event-based report within 24 hours that details the transfer. The report generally should require the filer to list any donor who has given a contribution to the person making the covered transfer, unless the covered transfer is made from a segregated account, in which case only contributors to that account are disclosed.

The statutory definition of "Covered transfer" should include a contribution by one person to another, where the first person:

(i) designates or suggests the contribution be used for independent expenditures or for giving the contribution to a subsequent person to make independent expenditures;
(ii) makes the contribution in response to a solicitation for making independent expenditures or making a contribution to a subsequent person to make independent expenditures;
(iii) engaged in discussions with the recipient about making independent expenditures or making a contribution to a subsequent person to make independent expenditure;
(iv) made independent expenditures or electioneering communications in excess of some aggregate amount during the election cycle, or knew or had reason to know that the person receiving the transfer made such expenditures or communications exceeding the aggregate amount during the election cycle; or
(v) knew or had reason to know that the recipient of the transfer would make independent expenditures or electioneering communications exceeding an aggregate amount for the election cycle following the date of the transfer.

d. Straw Donor Prohibition

Contributions Must be Made Under Contributor's Legal Name: To prevent straw donors, it should be unlawful:

(i) to make a contribution in the name of another person;
(ii) to permit the use of one's name for a contribution made by another;
(iii) to assist anyone in making a contribution in the name of another; or
(iv) to accept a contribution by one person in the name of another.[42]

[42] *See* 11 C.F.R. § 110.4.

Appendix J

Draft 4/13/11; 4:00 pm

EXECUTIVE ORDER

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DISCLOSURE OF POLITICAL SPENDING BY GOVERNMENT CONTRACTORS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 et seq., and to ensure the integrity of the federal contracting system in order to produce the most economical and efficient results for the American people, it is hereby ordered that:

Section 1. The Federal Government must ensure that its contracting decisions are merit-based in order to deliver the best value for the taxpayer. It is incumbent that every stage of the contracting process - from appropriation to contract award to performance to post-performance review - be free from the undue influence of factors extraneous to the underlying merits of contracting decision making, such as political activity or political favoritism. It is important that the contracting process not only adhere to these principles, but also that the public have the utmost confidence that the principles are followed. When the public lacks confidence that the contracting system works fairly, it may deter participation and deprive the government of the most robust competition and the best providers. And without the full complement of tools to hold the system accountable, the possibility of actual misconduct or the appearance thereof is increased.

In order to begin to address these problems, the Federal Government prohibits federal contractors from making certain contributions during the course of negotiation and performance of a contract. Notwithstanding these measures and the diligent work of the government's contracting officers and other acquisition professionals, additional measures are appropriate and effective in addressing the perception that political campaign spending provides enhanced access to or favoritism in the contracting process. Several states have adopted "pay-to-play" laws that go further by limiting not only contributions by the contracting entity itself, but also by certain officers and affiliates to prevent circumvention and in other cases by requiring disclosure. This state innovation towards better government should be encouraged and the Federal government should draw from the best practices developed by the states.

Sec. 2. Therefore, in order to increase transparency and accountability to ensure an efficient and economical procurement process, every contracting department and agency shall require all entities submitting offers for federal contracts to disclose certain political contributions and expenditures that they have made within the two years prior to submission of their offer. Certification that disclosure of this information has been made in the manner established by the Federal Acquisition Regulatory Council (FAR Council) pursuant to Sec. 4 shall be required as a condition of award.

This disclosure shall include:

(a) All contributions or expenditures to or on behalf of federal candidates, parties or party committees made by the bidding entity, its directors or officers, or any affiliates or subsidiaries within its control; and

(b) Any contributions made to third party entities with the intention or reasonable expectation that parties would use those contributions to make independent expenditures or electioneering communications.

This disclosure shall be required whenever the aggregate amount of such contributions and expenditures made by the bidding entity, its officers and directors, and its affiliates and subsidiaries exceeds $5,000 to a given recipient during a given year.

Sec. 3. All disclosed data shall be made publicly available in a centralized, searchable, sortable, downloadable and machine readable format on data.gov as soon as practicable upon submission.

Sec. 4. On or before the end of this calendar year, the FAR Council shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to carry out this order. Such rules, regulations, and orders shall minimize the costs of compliance for contractors and shall not interfere with the ability of contractors or their officers or employees to engage in political activities to the extent otherwise permitted by law.

Sec. 5. Each contracting department or agency shall cooperate with the FAR Council and provide such information and assistance as the FAR Council may require in the performance of its functions under this order.

Sec. 6. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 7. This order shall become effective immediately, and shall apply to contracts resulting from solicitations issued on or after the effective date of the action taken by the FAR Council under section 4 of this order.

THE WHITE HOUSE,

COMMISSIONERS
TOM FORESE – Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD DUNN

BOB BURNS
Commissioner

ARIZONA CORPORATION COMMISSION

February 7, 2017

Re: Arizona Public Service Company
Docket No. E-01345A-16-0036/E-01345A-16-0123

Dear Commissioners, Parties and Stakeholders:

I am providing notice to all persons and entities who have made any appearance or contributed any filings in this matter that I have today opened a new docket entitled, "Development of New Transparency and Disclosure Rules related to Financial Expenditures by Regulated Monopolies, Intervenors and other Stakeholders", Docket No. RU-0000A-17-0035, aimed at studying and rectifying problems with transparency and disclosure ("T&D") regarding financial contributions from regulated monopolies or other stakeholders who may appear before the Arizona Corporation Commission ("ACC") that may directly or indirectly benefit an ACC candidate, a sitting commissioner, or key ACC staff. Obviously, such contributions can lead to undue influence over ACC personnel, and thereby undermine the objectivity and independence of our fourth branch of government that our state constitution and citizens so wisely demand. In the worst cases, such contributions can lead to "regulatory capture" in which ACC commissioners act as biased proxies for the regulated monopolies or other stakeholders who are financially backing them. These dangers warrant immediate, in-depth study and solutions.

In opening the new T&D docket, I have provided a comprehensive statement of the problem and the variety of circumstances for possible undue financial influence that must be studied. I outlined in the T&D docket a specific procedure and timeline for investigation of the transparency and disclosure problem and development, adoption and implementation of new rules for regulated monopolies and stakeholders, as well as for all Commissioners, their personal staff, and other key ACC staff. A copy of my letter and related materials filed in the T&D docket is attached to this letter.

As part of the new T&D docket, I am also filing a copy of the subpoenas I previously issued to Arizona Public Service Co. and Pinnacle West Corporation in the T&D docket. Enforcement and full disclosure of the information requested in the subpoenas is critical to the study and rulemaking procedure initiated there. I hereby invite all persons participating in this rate case to carefully consider what I have filed to open the new T&D docket and to appear and contribute relevant thoughts, materials, evidence and testimony for the T&D docket.

Sincerely,

Robert L. Burns
Commissioner

EXHIBIT P

Transcript of Feb. 1, 2017 Pebble Creek Meeting Featuring Commissioner Burns

Speaker:

We are making two changes in the website and um so we are combating (inaudible)... consider your input for the web site, um, such things have we recently had the Martin Luther King Jr celebration, but, uh, we didn't sponsor but many of us participated. We also had post memorance February is ... and February African History month. If you have issues that you like to or events you would like to get on the website, please let us know and we can, uh, also I would like to recognize special guests from, um, the Grand Democratic Club in Sun City Grand. First of all president Bill Shingles and past president Frank Reid. At this time Kathy Langstrom will introduce our speaker. First speaker we have 2 speakers tonight.

Bob Burns: ... sort of introduce myself. Thank you, Kathy, for giving me the opportunity to introduce myself ... care of that. ... I get to come back sometime in the daylight. This is quite interesting part of the neighborhood, very nice.

I will give you a little personal background real quick. I grew up on a small far in Iowa. My dad was crippled by polio at the age of 4 and so my mom and I had kind of got the sort of the chore type thing. My dad was able to work with heavy machinery and tractors and stuff but he couldn't get around very well to do some of the chore thing, so that was kind of my thing growing up. Went to the navy out of high school. Came here to Arizona with the Navy. I went to work for General Electric as a Computer Programmer, uh, then my wife and I got into our own business. We were in the childcare business for a number of years, and the childcare business is a heavily regulated business. We were licensed by the Department of Health Services. We served low-income families through the Department of Economic Security. Before we got out of the business we actually were on a food program known through the Department of Education. So we dealt a lot with government interaction, sometimes not always so pleasant and, uh, it actually ended up driving me to the legislature. So, went into the legislature with sort of the idea of working for representing small businesses and concerned about new process because I had concerns about how things were happening, at least in our business. Um, I ended up being the Corporation's chairman after a couple of years in the legislature, and the Corporation's chairman doesn't have anything to do with the business community. They strictly work with agencies and budget and so forth, so the Corporation's chairman is in the house for 8 years. I then termed out; did two years on the Central Arizona Project board of directors (inaudible) then I ran for senate, and I was in senate for eight years and I was recreational chairman there for 6 years and then president of senate for two and now I am currently in the Corporation Commission and I am just starting my second, four-year term ...elected in 2012 the first time. The Corporate Commission is amazing. When I campaigned in 2012 there were a lot of people that didn't realize we had an election. I found that some even this last time in 2016; however, I think we created a lot more notice than we used to have so I think more people know that it's there. Arizona has a very unique Corporate Commission. We are only one of seven states that have our corporate commission defined in our constitution, and we are elected statewide now. Originally it was a three-member commission set up on the constitution, and the voters -- I think 2000 was the year--that the voters approved expanding the commission to five members. So now we are five members and one of the reasons probably why it was expanded would be so we can talk to each other more because with only three, two people could not talk that was based off the open meeting. Well it hasn't really improved things all that much. If I want to talk to another commissioner on a single subject,

I can do this, but I can't talk to two and I can't voice (inaudible) I have to reserve that issue because (inaudible) I have commissioners. So if I work on two different issues I have to gotta make sure I don't talk with that person, so we kind of end up in our little silos. Being very careful not to violate because the commission is under a constant sort of spy glass, if you will, magnifying glass to make sure we do everything exactly right because we are constantly the arbitrators, or basically the judges, between two conflicting partners. And so if we violated any kind of a rule, the party that loses comes to us saying reverse that decision, so we have to be very, very careful. Then we also have what is called ex parte, and we are right now in (inaudible). APS has applied for a rate increase. We have a rate increase request from Tucson Electric Power that we are working on right now, so those are open cases. I cannot take a position until I have heard all the evidence. So, I can talk about process, but I can't talk about the actual issues of the case or otherwise I violate, or if I talk to one party without the other party being present, then I am violating ex parte if I talk about any provisions of the case. So we have some very strict restrictions on our communications. It's pretty frustrating because if you knew a policy you want to move forward, it's very difficult. It's a census of three. When you can only talk to one, you can get two but you have to have three. So anyway, a number of things at the commission in 2012 election and what I would like to talk about a little bit is the APS, basically the APS participation in the election process with money. In 2012 was the first time I ran, and as is it turned out, APS actually did put some money into the 2012 election through the Arizona State Chamber of Commerce, and that money was used partly in support of my election. And I don't remember the exact number. I don't know if it was ever actually determined because it wasn't reported, but it was somewhere in the 20k to 30k range for three candidates, so there was three of us running together in the 2014 election. Well, back up a little. After being elected in 2013, the commission voted unanimously to take an examination of a business model of how we regulate and how power is generated, how the bills are set up, all this kind of thing would be in the business model. And it was kind of labeled the re-regulation, if you will, because regulated utilities we have a set of rules and they have to follow. And so we were talking about re-regulation changes on Google that put an idea that improved service and hopefully cut costs to the consumers. Well APS decided they didn't like us looking at this business model and they went out and spent $5 million to stop the study, and they did it by bringing up prorate (inaudible). I think they ran what I consider a fear campaign. They, you know, all kinds of things--all things that can go bad. (Inaudible) deregulate or regulate utilities consistent, which would obviously be to their disadvantage. So they spend $5 million. Well that kind of upset me a little bit because my take on that was if an elected commission representing the voters and rate payers decides to do a study on a regulated utility, the utility are bias and patient in facts so we can do a (inaudible) and make some sense of it instead of going out and turning it into a public fight in a campaign on the street, which is what they actually did. So I actually asked them to report to me how much they did. Let me come to the 2014 election. We had two open seats. We had two democrats for the primary and two republicans, and a campaign was run on the street without reporting. So, after the fact, after the election was over, the media was able to do some digging and figure out that APS spent about $3.2 million dollars in that 2014 election. Well, that just added fuel to the fire as far as I was concerned based on $5 million they spent earlier, and now they were spending this kind of money in the election. And so my first plan just was to basically write a letter and say it's time for you to stop, and if you continue to do this, you need to report. And I was hopeful the commission--the other members of the commission--would support me in that effort. Well, it didn't

work out that way. So anyway, as time evolved and I continued to study this I determined the constitution in the State of Arizona is written in such a way that a single commissioner has the authority to subpoena records from a utility--regulated utility. Now I believe the reason that's that way is because there is a determined industry called the regulatory captures, and what happens in regulatory catchers is pretty obvious, right? I mean if the utility can capture the regulatory through whatever means, and obviously spending lots of money on an election to get someone elected is one possibility, there's others then when it comes time to set what you pay for electricity and what the utility wants as income. Then you have a commission that is captured basically in favor of or being for what the utility is requesting. Then obviously the rate payer and the citizens are, you know, in harm's way. There's basically a situation that would be like having an additional tax put on your income. You would be paying more than you needed to be paying for your electrical service. So I think the reason that framers of the constitution put that provision in there, they wanted to make it as absolutely as difficult as they possibly could for a commissioner to be protected. So if one person could look at the records and they would have a problem if they couldn't convince all the members to help them out. So that was what I found out through my research and so forth. So I had originally decided I was going to subpoena the records. I had a lot of resistance of that and so I decided to take a different track, and I wanted convince them it would be a good idea to hire an expert, which would be basically an attorney and accountant, that actually would be two people, and then ask the utility to voluntarily provide the records. And so my policy advisor and I, and our legal staff, went through this long system of recruiting an investigator, developing a scope of work, developing a contract and hiring an investigator--a person that was advertised as one of the best in the country at examining records of the utility. Well, I obviously had part of the contract on how much he would be paid. I got that all done, and other members of the commission called for a vote and denied me my funding so I couldn't pay the man (inaudible) So I went back to the step of subpoena, and something I did was subpoena the records. And I wanted to look at records from 2011 all the way up to present because in addition to the amount of money that the utility, they can all do it but APS is the one that had done it. I don't know if you notice when you go by past the baseball stadium or you are an attendee of a large unity luncheon wherever it may be, APS is right on the top as major funder of many, many of these activities. They provide many activities in different cities in fact, or if I back up a little, during this investigation that we were doing as an entire commission to determine whether we (inaudible) to change the regulatory business model, I had a mayor come up to me and say, "You guys need to quit, you need to back off. If you guys change the business model, we are going to lose some of the money we get from APS for our events." I don't know how that was presented to the mayor and was friendly way or (inaudible) I don't know which way that went, but anyway, that to me, that was not the way the system is supposed to work, especially when you are capturing customers. You don't have any choice who you give your electricity so the amount of advertising they do should be very limited and be an educational type of communication with the users of power, not get into this "we are the best company of the world." In fact I asked some of the management people one time, "How come you put APS up here as a major contributor to a lunch or an advertising?" I said Pinnacle West is your parent company and if you want to be the good citizen--the good corporate citizen--why doesn't it say Pinnacle West. They said, "Well, we want to keep our, the, name people are familiar with and we want to make sure we win our JD Power award."(inaudible) Anyway, I think we are going to have some questions here at the end if you want to hold off. So anyway, back to the fact that I issued these

subpoenas. When I issued these subpoenas, APS sued me. They sued me to block me from getting the records. The argument they think that (inaudible) APS came to me after they had sued me and said well maybe this isn't the best way to do this. Let's sit down and work out some kind of agreement here on what we should do. The main parts of the argument that I have been making is that if a utility, a regulated utility, (inaudible) for a campaign, they have the legal right to do that based on the United States Supreme Court order. To have the right to, then they ought to report the time they contribute so you, the voters, know where the money is coming from and what the message, what the amount of support (inaudible.). They came back to me and said they are willing to support changing the rules. Which is fine but there's a problem: they wanted to bring people in that weren't regulated -- basically the solar companies. They wanted to run it through our regular rule-making process at the commission, which is a very cumbersome system. We, the commission is actually (inaudible) even though we have state we have elected commissioners that oversee operation of the commission. We are an agency, and when we make rules, we have to follow the rule-making process like any other agency--any other agency that state government does. So to change the rules as we as suggested would take 18 months. There is a lot of issues that can happen in 18 months, so it just didn't, to me, didn't, it wasn't a good response to the issue. So we are back right now, currently back at the position where we are going to go forward again and see about getting into court. And I think the court is going to have to decide does the single commissioner have the authority to ask for records and does the commission have the authority to look at the records as I believe we currently do. So that is kind of the whole bottom line of all this, and I have all kinds of resistance as I said. The money was taken away from me when I wanted to do the investigation. I was challenged when I hired an attorney, when APS sued me. And the fact they didn't sue everybody on the commission, our legal staff was split. Our legal staff couldn't represent me because some of the commissioners didn't agree with what I was trying to do. So they would have been in conflict. So I had to hire an outside attorney, and the commission gave me a little bit of heat on that situation, and finally agreed to pay for my attorney. It wasn't without some arguing. But anyway that's kind of that story. So, um, again we are looking at APS as we speak. We are looking at Tucson Electric Power's rate case. APS has come in and requested 11% increase on your power bill. Uh, it's my understanding, and I haven't seen all the documents at this point, but it's my understanding that our staff has recommended (inaudible) this. And RUCO is the Residential Utility Consumer advocate; it is an agency that was created by the (inaudible) to focus on residential consumers' issues. And RUCO has come out and represented an actual decrease. So we'll see what happens. For example when a utility comes in and asks for a rate adjustment, typically up it goes in through a--especially as far as a utility as large as APS-- it goes into an evidentiary hearing where we have an administrative law judge that conducts the hearing and there is sworn testimony and APS, or whatever, whoever the utility is, has to be sworn ... they take an oath to tell the truth and they have to justify all their numbers and they pick a year, typically the year before they come in. They call it the test year. They pick that year, and the system is supposed to be based on their cost of doing business. The commission is supposed to allow them, provide them, enough money in the rates to cover the cost of doing their operation, plus they are entitled to make a profit in order to pay the people who invested money to build the infrastructure, the generating plants and so forth. So that's over simplication, but that's kind of how the system started up. (Someone asks a question inaudible) Yes, our staff, we have auditors and our staff, they do a complete audit of those records to determine whether or not they are accurate. People can come, and RUCO

would be one, our staff would be another, typically real large utility users like mines or Walmart, somebody like that, will intervene in the case, and they will cross examine APS to make sure those records are accurate and they go through that process. Then they can also, following the evidentiary hearing process, they can go into a settlement. What happens in a settlement is that the parties APS--or the utility whichever it is--APS, our staff, RUCO and the interveners, whoever the interveners might be, HOA in some cases, get intervener status, sit down around the table and negotiate the rate. And when that's going on commissioners cannot be party to any of that. We cannot be party to any of that information. We can be told how the process, but we can't be told what kind of agreement or disagreements are taking place, and we can't talk to the party that's part of that ex parte that I told you about earlier. We can't talk to any parties around the table. And so what happens a lot of times those people come to an agreement on what the rate should be, and then it comes to the commission and an order by the judge, by the administrative law judge, and we vote on that order. And we can take the order as it is submitted or we can reject in all and whole or we can amend it, typically small amendments when it is a settle agreement. We don't get into a lot of major changes. If we do, the party that loses will sue, and then we end back at step one and do the whole process again. So there's a lot of pressure that goes on. So, any rate, I wanted to tell you is that there is a return on equity provision in the rates, and the return on equity is part of the money that goes back to the investors to build a plant. It's a very simple vote (inaudible). Utility will come in and maybe ask for a 10% return on equity. RUCO might recommend 8, our staff might recommend 8 ½, and it's up to the commission to vote on what number. Well, a 1% swing in the 2012 rate case was $50 million, so if you get ½ % squeezed of that you're doing okay. Now something to add: typically it runs in the 8 to 9 range, and the argument always it has to be competitive with the other states in the nation or else you won't be able to attract money to Arizona (inaudible). So that's part of the game. Now when I am starting to this, this is sort of a process ratcheting up. It's almost in that the process (inaudible) it may not be the 8 or the 9 or whatever the utility wants, but it still went up (inaudible). Now I got an email just last week from a gentleman, and I don't know if it's legitimate yet or I still have to check this out, but he has paper work. He basically does government affairs that shows that utilities in the State of Arizona and state employees (inaudible). So I think that tells you want good people working there. It's a serious situation. You don't want your lights to go out (inaudible) when it's a 115, so we need a good, healthy utility as part of this whole process to make sure we've got reliability. The monopoly model in my mind is heading to become obsolete. The reason I say that is because in the power generation part of the issue you've got transmission, generation, distribution--basically the generation system is changing. You've got rooftop solar. You've got privately built utility-scale solar, so called solar farms. You've got wind. You've got fuel cells. You've got (inaudible) power. There's a number of different ways now to generate electricity. When the utility model, the monopoly model, was set up there wasn't any sort of this. One method of generation of electricity, and model became the big power plant, which is extremely expensive and takes a lot of transmission. In many cases we have power (inaudible), so it's changing. And now the latest is the storage issue. We have a lot of talk going on about storage-- the potential and probability actually of the cost of storage going down similar to what happened with solar panels. Solar panels have decreased in cost significantly, and so that is, all of these things are the things that are changing the whole system. And I think we need to think about making it easier for these different types of energy generation to be part of the big picture. I would like to use the example of one power plant in the southwest valley. Two

guys from southwest valley and 45 years working for APS between the two of them, and they decided to build this little power plant. It will do 2 megawatts of power, and it uses cow manure as its fuel. The way it does it is they have these lagoons, which they call them adjusters. They are 25 feet deep; one of them is 6 acres, one of them is 11 acres, so it's about a football field per acre. So you know that is a big pool. Well, they capture the methane. First of all they killed the odor, they get rid of the odor, which is pretty significant (inaudible). After the methane they clean, it's actually pipeline, when it's cleaned they run it through a 16 cylinder engine and generator. Well, there's a couple of ways that they can sell their power. One of them is ways they can contract with APS, and since they were inside APS territory they had (inaudible) They actually were the low bidder and got turned down, so they went to federal government and draw a renewable energy generator, which they are eligible to tie into the system of the home franchise of APS in a program called PERCA where they were able to sell their power to APS. And they have to sell it for the lower cost, the cost it took them three years to get connected to APS. They lost track of the number of (inaudible) they ended up spending a million dollars of their own money because they had to run their own power plant to hook up so (inaudible) and found out they were open in 2007, and hasn't finalized yet, so we are still working on it. Those connection rules to make sure (inaudible). You probably have or been aware and understand there is a lot of solar that they made a decision recently at the commission to go away from net metering. We went to a system called the value of solar. I actually believe that there is a possibility the value of solar will end up in a situation where we might get more money than net metering. The reason I say that is it is my understanding that in Minnesota they do have a value of solar program statewide ... funded solar system of use and the utility currently has a choice (inaudible). The problem, and this is why I voted no against the declaration, is the value of solar doesn't have the right components. You can't leave some of the components out and expect to it be a true value of solar. So I think that whole argument needs to continue (inaudible). I open up to questions.

Question: First question is the commission still being investigated by the FBI

Answer: the commission is part of the investigation by the FBI. I think it's only a part. I am not sure what all of the FBI investigation covers exactly, but that investigation to my knowledge is still in progress and has to do, part of it has to do, with 2014 election and the amount of money that was spent and not reported. Part of it has to do with how the study I told you about earlier, that I talked to you about as a re-regulation study, how that study was shut down. There is some suspicion of impropriety in the way that comes up. All five commissioners for starting this study, then three voted against it, the continuing ... now I voted to discontinue it because I knew the votes were there to discontinue, but I offered a substitute motion. I said I will agree to vote to stop the study, but there must be a docket as we call and a workshop established to look into the new technology that is coming available in the area, especially generation. And so my policy advisor and my administrative assistant assisted me in setting up a workshop via three days, three full days of workshops. We had over 70 presenters. We had presentations on storage. We are going to go back and revisit storage now because this was in the end of '13 and '14, so we are going to go back and visit storage. This is where we found out about the dairy out in the southwest valley. And so the purpose of those workshops was to educate the commissioners and the public and our staff about what was happening in the, especially in the area of new generation.

So they're investigating how that got shut down because they think there is some impropriety or improper action. (Inaudible) statement the chair, he was not the chairman at the time one of the commissioner's sons ran for the secretary of state position. APS put about $750,000 apparently in that election, and so there's some question about why, and so that is part of their investigation.

Second question: I wonder if you can explain, I am not sure of the right term for it, the dark or black money.

Answer: Dark money. Well, the dark money in 2014, the term dark money got thrown around a lot. And what happened was that APS is believed, and they have not denied it; we don't know the exact amount, but the media was able to figure out the amount of $3.2 million was given to I think two nonprofit organizations. And so the nonprofit organizations don't have to disclose their donors, okay? And that's legal. They don't have to do it because people have retaliated against organizations when they get involved with the public, and the nonprofit organization has to report what they spend on the campaign. So they reported what they spend on these candidates for and against. They were for two, there were actually four they were against--they were against two of the republicans and two of the democrats in 2014. So that money was unreported, and so that is where you get the term dark money. Now in this last election, 2016, APS spent over $4 million, but they did report, and they actually spent money on me that I didn't want, and I told them I don't think its right for them to even spend any money at all. That's when I had to go all the way back to the Supreme Court of the United States in order to change that. And Congressman (inaudible) is no longer congressman but he was my campaign advisor chairman, and he believes that this needs to be challenged in court and needs to go back to the US Supreme Court, and the difference will be that corporations that are unregulated could go ahead and play in these elections. I mean they are sort of a different animal, but a regulated corporation like APS or so forth-- somebody that is regulated--should not, they should not be in these campaigns electing people that set the rates that you pay. Now it even goes beyond state corporation commissions; it also ends up in municipalities because if you are in a municipal area that has their power--a city that supplies power--the city council is the one that determines what you pay for your electricity. And so you've got the same issue if you've got a utility spending millions of dollars to get a city council person elected then that puts a pretty bad smell on that whole situation as well. And I don't know if that gets back there but I think that's one of the reasons why it's very important I stay with this issue and push. I think it needs to go to the Supreme Court here in the State of Arizona. I, again, I am probably going to run up against a lack of funding. The commission could basically vote to defund my attorney, and I'd be just hanging out here by myself for a while. I had a number of attorneys, actually firms, before I had an attorney, volunteer to help me pro bono. I don't know what will happen if that occurs; we will see.

Question: I would like to thank you for your service. (Applause) I am curious, can the commission take into account when APS comes in, for example, for a rate case, can you take into account monies that are spent outside of providing electricity to the consumer and rate payers? Because these trash cans over here don't do anything for my electricity. As you mentioned, ball parks, I know, and city councils and mayors are hesitant to say anything against APS because APS donates, contributes to the cities. So the golf tournament that's happening in Phoenix, area ball parks, etc. All that money is taken into account that they can give out? I understand it is goodwill, but as you said, we don't have any other choice. We

can't go to Salt River. We can't go to anyone else to get it, so can the commission say they cannot spend that or take that into account in the rate?

Answer: They can, in extreme, vote. That's why it's important that there's no regulatory capture or no downwind will come at the commission. The commission actually at one time did take away one of the advertisements that APS was doing (inaudible) Using their dryers at wrong time of the day, that commercial was voted by the commission to be taken off. The money is supposed to be separated. APS money gets through rates is supposed to just cover their cost. So any money, and there's this problem part, the return on equity that supposedly entitles Pinnacle West. And so if the advertising is done, it's my belief it should say Pinnacle West and it ought to be a fine line that is Pinnacle West money not APS money. Now when I hired this investigator, he told me that he believed that separation was probably there. They would have to be crazy not to keep that separate, but they don't list that as the garbage can says APS; the advertising on the stadium says APS, and so there is some real gray area about how that all works, but that's part of what I think I need to find out when I subpoena those records. Now I think we've got some good staff; we have good people doing the audits and so forth, but they are over loaded and they are out gunned and out manned when it comes to the accountants and so forth that the utility can hire to do the rate. So there I believe they are at a disadvantage with some of these situations on how to do a complete, thorough audit of those books. Now I am going be sort of at a disadvantage myself because I am not an accountant, and so I am going to have to hire someone. Now I am going to, in the situation I am trying to get money to do that. I think those books need to be opened up. We need to look. We need to know, people need to know, is your rate money being used for that kind of advertising? It's not necessary. We don't need to do it.

Question: What can we do as rate payers that help us in this process?

Answer: Well, I think it is starting to happen. I think no matter who you are as an elected official you are going to listen to the public. If you want to get reelected, you are going to listen because that's the way it works. So I think public (inaudible) is extremely important, and pressure needs to be put on the commission, but it's not just the commission--it's the legislature as well. I don't know if you, maybe you remember the start of this last legislative session. There was an effort to get a proposal on the ballot to protect net metering. The solar companies went out, and the way it works when you put something on the ballot in the State of Arizona, you go out and hire people to get the signatures. And so you get a certain number of signatures on the ballot, and it's argued through the TV and however, then you have the vote. It is very expensive. I think they were starting at $5 a signature and had to have 200,000 plus signatures in order to get it on the ballot. APS went to the legislature and in one day had two provisions written and on to be referred to the ballot by the legislature at no cost. So the solar folks said whoa, wait a minute, and so they agreed to sit down and negotiate. The negotiation lasted half a day and was over, so.

Question: What is the most effective way apply for (inaudible)

Answer: Well, that is a good question. Um, then again I spent 20 years and (inaudible) Numbers are important (inaudible) legislature and 500 postmarks, if they are all exactly the same, you kind of know what you train there is two to three people sort of doing the whole job. So it's important to kind of have that group together, but then you need to focus your message and you need to have a spokesperson. And this is, people don't like lobbyists, but one of the things lobbyists do is they bring the message. And the lobbyists argue both sides, so a lot of times it's important to get that representative. Homeowners associations can do I think a lot because they represent a large number of people. They can get, they even have someone very well-versed on the issue, and you gotta be focused on your issue. You can't have five different groups out there all going in different directions where it is just confusing, but (inaudible) So I mean obviously there's ... you go the whole route contributions to candidates (inaudible)

Question: (Inaudible) does it work?

Answer: Well, I think it does to a certain degree. I think having people educated on the issue and making a good, sound, reasonable argument to win your case, it's an uphill battle. One of the problems with the legislature is every few years it changes, so you have a never ending education process that never ends.

Question: One more (inaudible)

Answer: Rate case will be finished? We are going to go to Tucson and vote on the dereg case coming up next week. APS is estimated to happen somewhere in June/July, maybe a little sooner. (Inaudible) question" so we have what we call dockets at the commission. So APS rate case is in a docket. If you write a letter expressing your concerns to the commission, you write it to me or one of the other commissioners, we will put it in the docket and then it goes into the docket for everybody to see. I call this like quality pull. And the people that are involved in the case like APS and mines and RUCO and staff, they look at every one of them in that docket, so that's one.

Question: (inaudible) on website?

Answer: Yeah, or you can call the office. Each docket has a number. You get a docket number (inaudible).