

**Scharf-Norton Center for Constitutional Litigation at the  
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**IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

NO TAXPAYER MONEY FOR  
POLITICIANS and JONATHAN PATON,  
Plaintiffs,

vs.

TODD LANG in his official capacity as  
Executive Director of the Arizona Citizens  
Clean Elections Commission (CCEC) and  
personal capacity, LORI S. DANIELS in  
her official capacity as Commissioner of  
CCEC and personal capacity, LOUIS  
HOFFMAN in his official capacity as  
Commissioner of CCEC and personal  
capacity, TIMOTHY J. RECKART in his  
official capacity as Commissioner of  
CCEC and personal capacity, THOMAS J.  
KOESTER in his official capacity as  
Commissioner of CCEC and personal  
capacity, MICHAEL BECKER in his  
official capacity as Voter Education  
Manager of CCEC and personal capacity,  
COLLEEN McGEE in her official capacity  
as Deputy Director of CCEC and personal  
capacity, and JEFFREY L. FAIRMAN in  
his official capacity as Chairman of CCEC  
and personal capacity,

Defendants.

Case No.

**COMPLAINT for Special Action and  
Declaratory and Injunctive Relief**

**and**

**APPLICATION FOR ORDER TO  
SHOW CAUSE**

## **INTRODUCTION**

1. Defendant officers and employees of Arizona Citizens Clean Elections Commission have engaged in a pattern of illegally spending tax dollars on an unauthorized advertising campaign to promote the Commission and to oppose the repeal of public funding for political candidate campaigns. Plaintiffs seek to enforce the Commission's limited statutory authority, which does not include public spending for self-promotion and which mandates the amount of spending for voter education to be 10% of the Commission's budget for limited activities.

## **PARTIES, JURISDICTION, AND VENUE**

2. Plaintiff No Taxpayer Money for Politicians is a ballot committee registered with the Arizona Secretary of State for the purpose of supporting a constitutional amendment for the November 6, 2012 election to end public funding for political candidate campaigns.

3. Plaintiff Jonathan Paton is chairman of No Taxpayer Money for Politicians and a taxpayer who objects to the Commission's self-promotion and opposition campaign against the proposed measure.

4. Defendant Todd Lang is Executive Director of Arizona Citizens Clean Elections Commission. He is sued in his official capacity and personal capacity.

5. Defendant Lori S. Daniels is a Commissioner of Arizona Citizens Clean Elections Commission. She is sued in her official capacity and personal capacity.

6. Defendant Louis Hoffman is a Commissioner of Arizona Citizens Clean Elections Commission. He is sued in his official capacity and personal capacity.

7. Defendant Timothy J. Reckart is a Commissioner of Arizona Citizens Clean Elections

Commission. He is sued in his official capacity and personal capacity.

8. Defendant Thomas J. Koester is a Commissioner of Arizona Citizens Clean Elections Commission. He is sued in his official capacity and personal capacity.

9. Defendant Michael Becker is a Voter Education Manager of Arizona Citizens Clean Elections Commission. He is sued in his official capacity and personal capacity.

10. Defendant Colleen McGee is Deputy Director of Arizona Citizens Clean Elections Commission. She is sued in her official capacity and personal capacity.

11. Defendant Jeffrey L. Fairman is Chairman of Arizona Citizens Clean Elections Commission. He is sued in his official capacity and personal capacity.

12. Jurisdiction over this action and its claims and application for order to show cause is provided by A.R.S. §§ 12-123, 12-1831, and 12-1801, Ariz. R. P. for Spec. Actions 3, and Ariz. R. Civ. P. 6(d).

13. Venue is proper pursuant to A.R.S. § 12-401.

### **FACTS COMMON TO ALL CLAIMS**

14. Arizona Citizens Clean Elections Commission is a state agency formed by A.R.S. § 16-955 to enforce the Citizens Clean Elections Act. The Commission receives public funding for expenditures authorized by statute, including public funding for political candidate campaigns.

15. Defendants have the power and obligation to spend Commission funds in accordance with Arizona laws.

16. The Commission's revenues totaled approximately \$20 million for fiscal year 2010.

17. Pursuant to A.R.S. § 16-949, the Commission "shall apply ten percent" of its budget for

voter education.

18. A.R.S. § 16-956 defines voter education to include publishing and mailing a Citizens Clean Elections Commission Voter Education Guide and sponsoring candidate debates.

19. The Commission also distributes funds (approximately half of its revenues for fiscal year 2010) to political candidates participating in the clean elections candidate campaign system.

20. In 2011, the Legislature passed SCR 1025 to refer a constitutional amendment to the voters for the November 2012 election that, if passed, would end public funding for political candidate campaigns and therefore eliminate a substantial part of the Commission's function and budget.

21. The measure was invalidated on separate amendment grounds in *Ariz. Advocacy Network Fnd'n v. Bennett*, CV2011-009646 (Maricopa County Super. Ct., Oct. 24, 2011). Final judgment is pending.

22. Plaintiffs intend to pursue a revised referendum in the 2012 legislative session to accomplish the same purpose as SCR 1025 to repeal public funding for political candidate campaigns.

23. Defendants spent and continue to spend millions in public funds to promote the Commission with messages such as "Everybody Wins" with Clean Elections and "80% of voters believe Clean Elections is important."

24. According to Arizona OpenBooks, during fiscal year 2011, Defendants paid \$78,000 in Commission funds to lobbying firm Williams & Associates for "professional services." They currently pay \$6,500 each month to keep the firm on retainer.

25. Defendants also paid \$5.5 million in Commission funds to media firm Moses Anshell since July 2008.

26. Defendants commissioned Moses Anshell to develop an annual Education Plan, and a Marketing Plan, to “maximize the efficiency of the . . . Commission’s marketing efforts” by defining objectives and developing strategies and tactics to achieve them (*e.g.*, Citizens Clean Election Commission 2011 Education Plan, Oct. 2010 (“2011 Education Plan”), p. 2; 2010 Marketing Plan for Partner Citizens Clean Elections Commission, Jan. 28, 2010 (“2010 Marketing Plan”), p. 1). The plans include the following:

- a. “Discuss the major accomplishments for Clean Elections”: “Critics of Clean Elections have been vocal about their opposition to the system and intent to eliminate it. That underscores the importance of educating the public about all the good that Clean Elections has accomplished since its inception. Clean Elections needs to raise its profile and needs to begin laying the groundwork now to counter charges that the system doesn’t work. Clean Elections has to have a clear and concise message to answer critics. In addition, Clean Elections needs to show how it has benefited Arizona and improved the political system. Clean Elections needs to remind voters why it has been a good thing for Arizona” (2010 Marketing Plan, pp. 6-7; *see also* 2011 Education Plan, p. 8);
- b. “If the voter is not educated about Clean Elections, there is a chance to be swayed by misunderstandings of the funding system, negative press, etc.” (2011 Education Plan, p. 3; 2010 Marketing Plan, p. 2);

- c. “[H]eading into the 2010 election cycle . . . Clean Elections is faced with numerous threats, including both legal and political challenges,” which “need to be addressed by increasing awareness of CCEC, better educating the public on the effectiveness and importance of Clean Elections . . . and working to dispel any myths, regarding funding, etc.” (2010 Marketing Plan, p. 3);
- d. “Once the deadline has past [sic] for clean candidate registration on August 19th, 2010, we will refocus efforts to simply reach politically aware voters who will . . . ultimately determine the fate of the Clean Elections fund” (2010 Marketing Plan, p. 5); and
- e. “Increase the percentage of voters surveyed that believe the Clean Elections Act is important to Arizona” and that “have a favorable impression of Clean Elections” (2010 Marketing Plan, p. 10).

27. The Commission’s Marketing and Voter Education plans also include:

- a. Messaging that “[n]ot a single dollar of Clean Elections funds comes from Arizona’s General Fund” (2011 Education Plan, p. 6) and the Commission does not take money from taxpayers (2011 Education Plan, p. 5-6);
- b. “[I]f Arizona voters chose to eliminate Clean Elections, there would be no funds to redistribute to other initiatives. In fact, not only would voting against Clean Elections eliminate a valuable program . . . , but it would remove a program that donates additional money to the Arizona General Fund to support our schools, police, health services and more” (2011 Education Plan, p. 6); and

- c. “Specific PR steps we would take include: Educating the public and press about the funding source for Clean Elections, clarifying that this is not General Fund money; you cannot kill Clean Elections and use the money for schools, etc. If you wipe out Clean Elections, the funding source goes away” (2010 Marketing Plan, p. 7).

28. The Citizens Clean Elections Commission 2010 Education Plan (“2010 Education Plan”) summarized results from a 2009 survey “to determine the public’s support for the Clean Elections system” (p. 1). The plan includes recommendations to “distribute monthly op-eds that support and encourage public funding of campaigns throughout the country” (2010 Education Plan, § 3).

29. Throughout 2011, Defendants continuously corresponded and coordinated with representatives of Arizona Advocacy Network Foundation, an interest group that lobbied against SCR 1025 and filed a lawsuit to strike SCR 1025 from the ballot (*Ariz. Advocacy Network Fnd’n v. Bennett*, CV2011-009646 (Maricopa County Super. Ct., Oct. 24, 2011) (judgment pending)).

30. Defendant Lang’s correspondence with the Foundation’s Executive Director Linda Brown includes the following:

- a. In an email on February 7, 2011, Defendant Lang wrote to Ms. Brown, “We need your help on the SCR.”
- b. In an email later that day, Ms. Brown sent a draft press release by Arizona Advocacy Network Foundation to Defendant Lang on the passage of SCR 1025.

Defendant Lang replied the next day with suggested edits to the press release (“I would suggest you not attack Sen[sic] McComish personally. I think the more interesting point is . . .”). On February 9, 2011, Defendant Lang replied, “Please call me to discuss.”

- c. In an email on April 11, 2011, Defendant Lang sent a Yellow Sheets report on the status of legislative votes for SCR 1025 to Ms. Brown, her colleagues, and representatives of Williams & Associates. Ms. Brown replied to all, asking her colleague to “push” three legislators. The following day, Defendant Lang replied to all, “Perhaps we could at least get the three of them to commit to voting no unless the proposition is a straight-up repeal?”
- d. In an email on April 12, 2011, Kendra Leiby of Williams & Associates and Ms. Brown continued correspondence about lobbying legislators, including Rep. Heinz, against SCR 1025. Defendant Lang replied to all, “I think a positive, friendly communication with Mr. Heinz will be more effective than a confrontation.”
- e. In an email on January 25, 2011, Ms. Brown asked Defendant Lang, “[D]oes Mike Williams have a plan around Smith’s repeal referendum?” Defendant Lang replied, “Call me to discuss.”
- f. In an email on March 29, 2011, Defendant Lang forwarded to Ms. Brown an invitation to call into an NPR affiliate radio show to discuss the “Citizens Clean Elections Act and Senator McComish’s threat against it.” Defendant Lang wrote



to Ms. Brown, “Please consider making online comments or questions at the link below. Radio show starts at 1:40.”

- g. In emails on March 1, 2011, Defendant Lang agreed to host a meeting at his office with Ms. Brown and Jeannette Galanis, National Field Director for Public Campaign, a private special interest group based on Washington, D.C. that promotes public funding for political candidate campaigns across the country.
- h. In an email on May 2, 2011, Sam Wercinski of Arizona Advocacy Network Foundation asked Defendant Lang, “Is there a time tomorrow afternoon we can schedule for a short call regarding voter education?” Defendant Lang replied, “Sure. Most of the day.”
- i. In an email on April 29, 2011, Ms. Brown asked Defendant Lang to help her find plaintiffs to file a lawsuit to strike SCR 1025 from the ballot.

31. Defendant Lang also corresponded with Ms. Brown in 2010 to oppose legislation to reduce Commission powers and funding:

- a. In an email on February 17, 2010, Ms. Brown shared with Defendant Lang “a spreadsheet . . . so that we can track our contacts and vote tallies.” Ms. Brown wrote in the email, “In particular I’d like to flesh out the opinion leaders, allies and foes so we can dole out targets and hold ourselves accountable for follow up.”
- b. In an email on March 29, 2010, Ms. Brown told Defendant Lang and Mike Williams, “I met with [Rep.] Barnes this morning. . . His objections and the reason he still favors SCR 1009 and SCR 1043: . . . Would it be possible for a

Republican former commissioner to call [Rep.] Barnes?” Defendant Lang replied, “I’m out of the state due to my father’s illness. I would suggest having Gene Lemon call him.”

- c. In an email on April 1, 2010, Ms. Brown forwarded correspondence to Defendant Lang, explaining, “Travis is a Repub who supports CE.” Defendant Lang replied, “Thanks. Good work. I think [SCR] 1043 will be held.”
- d. In an email on December 8, 2010, Defendant Lang asked Ms. Brown, “Any thoughts [on “Hybrid bill”]?” Ms. Brown replied, “We are working on something that will include provisions I have on a disk . . . Gallardo and McCune Davis are helping as are Common Cause, Public Campaign and John Loreda. Looking for Rs. You and I should have coffee early next week.” Defendant Lang replied, “But are u ok with my more limited proposals?” Ms. Brown replied, “We are working those into the bill. Is that ok?” Defendant Lang replied, “Sure.”
- e. In an email on January 15, 2010, Ms. Brown wrote to Defendant Lang and others, “Chad is only available Tues at 3pm for the mtg to map out the hybrid bill. After that we will be working with Peter Silverman to finalize language. . . . Chad says if matching funds are invalidated AND there is no stay then Paton will not have the votes for his defunding SCR.”
- f. In an email on March 25, 2010, Defendant Lang forwarded to Ms. Brown a press release for a website organized by Arizona Advocacy Network Foundation and other private groups to “support Arizona’s Citizens Clean Elections Act and

strongly oppose any attempts to repeal or de-fund it.” Defendant Lang commented, “Very nice! Don’t forget to add tabs for people to post on facebook and twitter, etc.”

32. Upon information and belief, Defendants are responsible for providing a \$12,500 grant in Commission funds listed on Arizona Advocacy Network Foundation’s 2005 tax return for “door-to-door canvass campaigns in Tucson and Phoenix, educating more than 2,500 voters about Arizona’s Clean Elections system and enrolling more than 150 as members of the Advocacy Network.”

33. On April 29, 2010, Defendant Lang introduced Bart Turner and Mike Valder to the Commissioners as members of Arizona Advocacy Network Foundation “who have certainly done a lot of work on behalf of Clean Elections, fighting against the repeal” (Tr., p. 43:15-19).

34. Defendants engaged and are continuing to engage in a coordinated campaign to spend public funds and otherwise act to:

- a. Support public financing of political candidate campaigns;
- b. Engage in marketing efforts against legal and political threats to the Commission;
- c. Promote a perception that the Commission does not use money from the state General Fund, despite the fact that the Commission does in fact receive and spend General Fund money;
- d. Promote the Commission’s accomplishments and positive image among voters;
- e. Encourage the public funding of political candidate campaigns outside Arizona;
- f. Lobby against a constitutional amendment to end public funding for political

candidate campaigns; and

- g. Assist and coordinate with Arizona Advocacy Network Foundation to lobby against a constitutional amendment to end public funding for political candidate campaigns.

35. Defendants' marketing, lobbying, and advertising go beyond neutral "voter education" and constitute overt advocacy and propaganda, all to the detriment of Plaintiffs and their efforts to curb public funding of political candidate campaigns.

### **Count I: Unauthorized Spending for Self-Promotion**

36. Defendants' powers are limited to those expressly defined by statute. *Sims v. Moeur*, 41 Ariz. 486, 493-94, 19 P.2d 679, 682 (1933).

37. No statute authorizes Defendants to spend Commission funds to promote the Commission.

38. Defendants acted and continue to act beyond their statutory authority to spend public funds, and the illegal expenditures are not binding upon the state and are null and void. A.R.S. § 35-154.

### **Count II: Unauthorized Spending for Voter Education**

39. The Commission "shall apply ten percent" of its budget for "voter education, including the activities specified in § 16-956, subsection A." A.R.S. § 16-949.

40. Section 16-956(A) describes the Citizens Clean Elections Commission Voter Education Guide, sponsoring candidate debates, and other general reporting and bookkeeping activities.

41. The Commission spends approximately double the statutory amount for activities it

deems to be voter education.

42. On January 28, 2010, during the vote by Commissioners to approve the Commission's 2010 Agency Budget, Defendant Lang told Commissioners, "[a]s you know, we're required to spend more than 10 percent for education."

43. Defendants are neither required nor authorized to spend "more than" ten percent of the Commission's budget for voter education.

44. By spending substantially more than ten percent of the Commission's budget for voter education, Defendants violated and continue to violate A.R.S. § 16-949.

### **Count III: Illegal Attempt to Influence the Outcome of an Election**

45. Arizona voters will be asked in the November 2012 election to amend the state constitution to end public funding for political candidate campaigns.

46. If passed, the amendment will eliminate a substantial function of the Commission and a significant part of the Commission's spending.

47. Defendants may not spend public funds to lobby, coordinate with a special interest group to lobby, or otherwise spend public funds or act in an attempt to influence the outcome of an election. *Sims*, 41 Ariz. 486, 19 P.2d 679.

48. Defendants impermissibly spent and acted, and continue to spend and act, to thwart the legislative referral and passage of a constitutional amendment to end public funding for political candidate campaigns.

### **Count IV: Liability to Pay for Illegal Public Expenditures and to Pay Penalties**

49. Every person incurring, or ordering or voting for the incurrence of any unauthorized state

expenditure shall be deemed jointly and severally liable for payment. A.R.S. § 35-154.

50. Any state officer or employee who expends any state money for an unauthorized purpose shall be liable for payment and a penal sum of 20%. A.R.S. § 35-196.

51. Defendants incurred, ordered, and/or voted for illegal and unauthorized expenditures to promote the Commission, and for greater spending than authorized for voter education.

52. Defendants failed to act reasonably or in good faith, and acted negligently, fraudulently, and in willful neglect of their duty in spending Commission funds without authority.

53. Defendants are jointly and severally liable for the illegal Commission expenditures, plus a penalty of 20%.

54. In a letter dated September 19, 2011, counsel for Plaintiffs put Defendants and the Attorney General on notice of Plaintiffs' claims and Defendants' liability.

#### **APPLICATION FOR ORDER TO SHOW CAUSE**

As set forth above, Defendants are prohibited from spending public funds to promote the Commission and spending more than the statutory amount for voter education. Accordingly, pursuant to Rule 6(d), Ariz. R. Civ. P., and Rule 4(c), Ariz. R. of P. for Spec. Actions, it is appropriate and proper for this Court to issue an Order to Show Cause why the requested relief should not be granted.

## **REQUEST FOR RELIEF**

Plaintiffs request that this honorable Court award the following relief:

- A. Declare that Arizona Citizens Clean Elections Commission illegally expended public funds and attempted to influence the outcome of an election, in violation of Plaintiffs' constitutional and statutory rights;
- B. Enjoin the Commission from continuing the illegal conduct;
- C. Order repayment of the illegal public expenditures, and assess fines and penalties pursuant to statute;
- D. Award damages and costs according to proof at trial;
- E. Award costs and attorney fees pursuant to A.R.S. §§ 12-341, 12-348, and 12-2030, Rule 4(g) of the Ariz. Rules of Procedure for Special Actions, and the private attorney general doctrine; and
- F. Order such additional relief as may be just and proper.

**RESPECTFULLY SUBMITTED** this 21st day of November, 2011 by:

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**Verification in Support of Complaint and Order to Show Cause**

Pursuant to Arizona Rule of Civil Procedure 80(i), Jonathan Paton declares as follows:

1. I am an individual Plaintiff in this action, and chairman of Plaintiff No Taxpayer Money for Politicians.
2. I have read the foregoing and know the contents thereof.
3. The statements and matters alleged are true of my own personal knowledge, except as to those matters stated upon information and belief, and as to such matters, I reasonably believe them to be true.
4. The statements and matters alleged show cause for the granting of an Order to Show Cause.

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jonathan Paton