Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
Clint Bolick (021684)
Diane Cohen (027791)
Carrie Ann Sitren (025760)
Christina Sandefur (027983)
500 E. Coronado Rd., Phoenix, AZ 85004
(602) 462-5000
litigation@goldwaterinstitute.org
Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

NO TAXPAYER MONEY FOR POLITICIANS, *et al.*, Plaintiffs, vs. LANG, *et al.*, Defendants.	Case No. CV2011-020916 **REPLY IN SUPPORT OF AMENDED ORDER TO SHOW CAUSE** **and** **RESPONSE TO DEFENDANTS' MOTION TO DISMISS FOR LACK OF STANDING** *Hon. Mark H. Brain* Hearing set Feb. 2, 2012 at 9:45 a.m.

"An election which takes place in the shadow of omniscient government is a mockery—an exercise in futility—and therefor a sham." *Palm Bch. Cty. v. Hudspeth*, 540 So.2d 147, 154 (Fla. D. Ct. App. 1989). Defendants' unauthorized public spending and campaign activities to tip the balance against a referendum to take away their power must be immediately enjoined in order to preserve the integrity of the November 2012 election and to prevent illegal spending. This reply brief in support of an injunction or order of prohibition addresses matters related to

Plaintiff NTMP's Brief in Support of Amended Order to Show Cause (Brief) and Defendants' response to it. As instructed by the Court, Defendants combined their response to the Brief with their reply on their Motion to Dismiss (Resp./Reply). Plaintiffs do not address arguments related to the dismissal, except in Response to Standing, *infra*, because Defendants raised new arguments for the first time in their reply.[1] For the reasons and exhibits presented here and in Plaintiffs' initial Brief, an order should be entered to prohibit or restrain Defendants' spending and activities as itemized in the proposed Amended Order.

REPLY BRIEF ON AMENDED ORDER TO SHOW CAUSE

I. Unauthorized Spending and Activities for "Voter Education."

A.R.S. § 16-949(C) requires the Commission to spend 10% of its budget on "voter education," and A.R.S. § 16-956(A) defines Voter Education. While Defendants admit to spending twice the amount, and on activities not authorized, they dispute that the statute limits them. Issues of an agency's statutory interpretation are questions of law that the court resolves *de novo*. *Siegel v. Ariz. State Liquor Bd.*, 167 Ariz. 400, 401, 807 P.2d 1136, 1137 (App. 1991). NTMP noted in its initial Brief (p. 5) that the voters could have set spending as "at least" 10% on Voter Education if they intended more than 10%. Defendants, in turn, noted (Resp./Reply p. 8) that the voters did not set spending as a "cap" at 10% (despite the title of the provision "Caps on spending"). In actuality, the text of the statute sets spending *at* 10%. A.R.S. § 16-949(C) (Defendants "shall apply ten percent"). The Court should enforce that mandate.

[1] Plaintiffs cite and address matters discussed under Defendants' heading of "Reply Re: Motion to Dismiss" (pp. 2-11) only to the extent that such matters challenge the merits of NTMP's arguments in support of their Amended Order to Show Cause.

Despite the plain text of the statute, Defendants (p. 8) make the circular argument that the statute does not fix spending at 10% of the Commission's budget on Voter Education because in 2010, the Commission spent more than 10% on its Voter Education pamphlet. Defendants (*id.*) also assert that the statute does not fix spending at 10% because there is no index to account for population growth. But the voters had discretion to allocate the Commission's budget, and the Commission may not adjust that mandate. In addition, one would not expect the voters to account for population changes in the Commission's budget. The statute fixes the amount as a *percentage* of the budget relative to other Commission activities, not a fixed dollar amount. The amount need not follow population growth because growth in population means a growth in the source of Commission revenues – the number of people who can donate to the Commission's fund, who can designate money on their tax returns for Commission funding, and who are subject to civil fines and penalties. Therefore, it is not "impossible" for the people to have set Voter Education spending at 10% of the Commission's budget regardless of population; and that is exactly what they did.

A plain reading of the statute is required: the Commission "shall apply ten percent" of its budget on Voter Education. Under Defendants' reading of the statute, the Commission can spend any amount of its budget on Voter Education, even if it cannibalizes the core functions of the Clean Elections Act. By admittedly spending twice the statutory amount, Defendants are in violation, and the Court should stop further spending.

Not only are Defendants spending more than what is permissible for Voter Education, they improperly assert unlimited and unreviewable discretion to define what is Voter Education

(Resp./Reply pp. 13 & 16). But Defendants ignore that the voters defined Voter Education in A.R.S. § 16-956(A). The validity of public expenditures is a question of law. *Hudspeth*, 540 So. 2d at 153; *Bd. of Regents v. Frohmiller*, 69 Ariz. 50, 55-57, 208 P.2d 833, 836-37 (1949). Here, the statute specifies Voter Education, for example, as publishing a "voter education guide," sponsoring candidate debates, and publishing instructions for record keeping. A.R.S. § 16-956(A). Commission activities such as broadcasting commercials to advertise that "80% of voters believe Clean Elections is important" (Ex. 19-20)[2] and helping a special interest group find plaintiffs for a private lawsuit (Ex. 10), are well outside the scope of what is permissible under the statute. Nor under the guise of "voter education" can Defendants campaign in the November 2012 election by commissioning public opinion polls (Ex. 22 at Bates p. 244), publishing monthly opinion editorials (*id.* at Bates p. 245), submitting arguments in pro-con television news debates (Ex. 28), or lobbying and marketing for the defeat of a ballot measure (*see generally* Brief pp. 12-15).

The Legislature need not explicitly authorize every Commission advertisement, as Defendants note (p. 16), but statutory mandates and definitions may not be ignored or "expanded by agency fiat." *Cochise County v. Ariz. Health Care Cost Containment Syst.*, 170 Ariz. 443, 445, 825 P.2d 968, 970 (App. 1991). An immediate order should be entered to stop Defendants' unauthorized spending and promotional activities.

[2] Citations to Exhibits 1-27 refer to the Exhibits attached to NTMP's initial Brief, and the numbering of Exhibits continues here.

II. Commission's Limited Powers.

At least some of the Commission's improper "voter education" activities are also unauthorized because they are advocacy against the passage of a ballot measure, which is not a proper government function. As a threshold matter, Defendants invert the presumption of their powers by suggesting that they are authorized to spend and act freely unless NTMP identifies a statute to specifically prohibit them (Resp./Reply p. 6; *see also*. p. 7 ("Plaintiffs have identified no statute that limits the Commission's authority. . . "); p. 8 ("They have identified no statute that bars . . ."); p. 19 ("If the legislature intended to restrict [Defendants'] activities, it would have done so")). The rule is the opposite. Defendants may not act unless a statute specifically authorizes it. A state agency "has no powers other than those the legislature has delegated to it." *Facilitec, Inc. v. Hibbs*, 206 Ariz. 486, 488, 80 P.3d 765, 767 (2003).

In *Facilitec*, the Arizona Supreme Court determined that two statutes authorized the Director of the Arizona Department of Administration to delegate a quasi-judicial function to a deputy director. The Court noted, "Nothing in section 41-702.A or 41-703.11 prohibits the ADOA Director from delegating" powers to a deputy. *Id.* at 489, 80 P.3d at 768 (emphasis removed). But the Court based its finding that there was authority for the delegation on the conclusion that the statutes expressly permitted the delegation of administrative functions and required the deputy to assist the director in administration. *Id.* at 488-89, 80 P.3d at 767-68. By contrast, there is no statute here that authorizes Defendants to spend public funds or engage in activities for self-promotion or campaign against a voter referendum. As such, the activities are illegal and should be enjoined.

There is no statute authorizing Defendants' conduct, and no authority contrary to the rule that a state agency "has no powers other than those the legislature has delegated to it." *Id.* at 488, 80 P.3d at 767 (quoting *Cochise County v. Kirschner*, 171 Ariz. 258, 261–62, 830 P.2d 470, 473–74 (App. 1992); *Swift & Co. v. State Tax Comm'n*, 105 Ariz. 226, 230, 462 P.2d 775, 779 (1969), *overruled on other grounds by Pittsburgh & Midway Coal Mining Co. v. Arizona Dep't of Revenue*, 161 Ariz. 135, 776 P.2d 1061 (1989)); *Arizona Health Care Cost Containment Sys. v. Bentley*, 187 Ariz. 229, 232, 928 P.2d 653, 656 (App. 1996); and *Cochise County v. Arizona Health Care Cost Containment Sys.*, 170 Ariz. at 445, 825 P.2d at 970; *see also Cox v. Pima County Law Enforcement Merit System Council*, 27 Ariz.App. 494, 495, 556 P.2d 342, 343 (1976) (state agencies "have no common law or inherent powers. The powers and duties of an . . . agency are to be measured by the statute creating them").

Defendants lack authority to campaign against the measure limiting the Commission's power particularly because the measure is a referendum. Because the Commission is a creature of the state, "it seems absurd to say that an agent of the state may be permitted to expend money of the state for the purpose of defeating a proposed curtailment of the powers of that [agent] by the state." *State ex rel. Port of Seattle v. Superior Court*, 160 P. 755, 756 (Wash. 1916). Here, the referendum at issue would eliminate a substantial function of the Commission and significantly reduce its funding. The legislature, which empowers a commission by statute, may destroy it if it chooses, and of course "the right of the people to unmake laws . . . is unquestioned." *Sims v. Moeur*, 41 Ariz. 486, 493, 19 P.2d 679, 681 (1933). Defendants may not use the Commission's public funds to campaign against a referendum that would limit their

power.[3] This was precisely the holding in *State ex rel. Port of Seattle*, *supra*. The court held that the commissioners wrongfully advertised, lobbied, and spent public funds to campaign against a referendum that would dilute their powers and reduce their access to public funds. *Id.*, 160 P. at 756. Just as the court enjoined the activities in that case, so must the Court enjoin Defendants here. *Id.*

Sims, 41 Ariz. 486, 19 P.2d 679, is controlling. In that case, members of the state Industrial Commission used public resources to file a lawsuit to remove from the ballot and influence voters against passing an initiative to repeal the state Compensation Fund. *Id.* at 492, 19 P.2d at 681. Likewise here, Defendants' actions apparently include helping a special interest group find plaintiffs in a lawsuit seeking to remove NTMP's referendum from the ballot (Ex. 10), submitting arguments in a pro-con television news debate (Ex. 28), publishing monthly newspaper opinion editorials (Ex. 22 at Bates p. 245), and even airing commercials advocating that "80% of voters believe Clean Elections is important" (Ex. 19-20) to influence voters. The Arizona Supreme Court held in *Sims* that the commissioners' actions "cannot be justified on the ground that the initiated measure proposed to abolish their offices." *Sims*, 41 Ariz. at 493, 19 P.2d at 682. There was no statutory authority for the Commissioners' activities in *Sims*, and there is none here.

[3] Defendants dispute that they receive funding from the General Fund, which arguments are refuted in Response to Standing, *infra*. But regardless of their source, "public monies" include "all monies coming into the lawful possession, custody or control of state . . . commissions," and therefore their use is limited to prescribed public purposes. *See* A.R.S. § 35-212(B).

III. Impermissible Advocacy.

Not only do Defendants lack statutory authority to spend public resources campaigning against a ballot measure, but doing so violates fundamental fairness in elections. In *Hudspeth*, 540 So. 2d at 152, the county commission expressly authorized spending $50,000 in public funds to promote the passage of a voter referendum. The court held the question to be whether the expenditure violated the state laws or constitution or "fundamental concepts of justice and fair play." *Id.* at 153. The court summarized the theme of cases across jurisdictions, "reinforced by logic and common notions of fair play," as follows:

> While the county not only may but should allocate tax dollars to educate the electorate on the purpose and essential ramifications of referendum items, it must do so fairly and impartially. Expenditures for that purpose may properly be found to be in the public interest. It is never in the public interest, however, to pick up the gauntlet and enter the fray. The funds collected from taxpayers theoretically belong to proponents and opponents of county action alike. To favor one side of any such issue by expending funds obtained from those who do not favor that issue turns government on its head and is the antithesis of the democratic process.

Id. at 154. In other words, the "appropriate function of government in connection with an issue placed before the electorate is to enlighten, NOT to proselytize." *Id.* (capitals in original). Defendants are using public funds to enter the fray, and they must be stopped.

Defendants (Resp./Reply p. 14) assert they need not be neutral in their position on NTMP's referendum, and they cite *Kromko v. City of Tucson*, 202 Ariz. 499, 502, 47 P.3d 1137, 1140 (App. 2002). In that case, the court held that cities may, consistent with limitations in A.R.S. § 9-500.11, selectively present facts regarding a ballot measure and need not be neutral. However, that statute applies to cities, not the Citizens Clean Elections Commission. Therefore,

the standard in *Kromko* is not controlling, nor can it be interpreted to reject the holdings of *Mtn. States Legal Fndn. v. Denver Sch. Dist.*, 459 F. Supp. 357 (D. Colo. 1978) or *Hudspeth*, 540 So. 2d 147, which are on point. At any rate, the court in *Kromko*, 202 Ariz. at 502-03, 47 P.3d at 1140-41, maintained that *advocacy* for or against a measure is prohibited under A.R.S. § 9-500.11, and that characterizes Defendants' actions here.[4] "[J]urisdictions that have addressed the issue so far agree almost uniformly that during an election, communication from the state may inform but not attempt to sway the electorate." *Coffman v. Colo. Common Cause*, 102 P.3d 999, 1010 (Colo. 2004) (citations omitted).

A neutral position on ballot measures is specifically required by the statutory obligations of Defendants to maintain the integrity of impartial elections, and by the very purpose of the Commission's existence to promote "clean elections." Defendants are expressly required to commit to carrying out their official duties in an "independent and impartial fashion" and to uphold the integrity of the electoral system. A.R.S. § 16-955(B); *see also* A.R.S. § 16-940(A). While Defendants may provide information (even information about how a ballot measure may affect the Commission), their duty of impartiality and commitment to fair elections require a neutral presentation of facts.[5]

---

[4] The published opinion of counsel for Defendants in 2007, Ariz. Op. Atty. Gen. No. I07-009, 2007 WL 1461141 at *5 (May 10, 2007), consistent with its earlier opinion, No. I00-020, 2000 WL 1364213 at *5 (Sept. 11, 2000), is in harmony with *Kromko*, that materials need not use direct terms such as "vote against" or "defeat" to constitute impermissible advocacy under A.R.S. § 9-500.11. *Id.*, 202 Ariz. at 502, 47 P.3d at 1140.

[5] Defendants' specific duty and purpose to uphold impartiality in elections may not be compromised by a generally accepted practice of "lobbying" by other government entities, whether such lobbying is authorized or not. A.R.S. § 41-772, which requires any public entities

Here, Defendants go well beyond merely providing information. In an obvious expression of advocacy, the Commission's media firm apparently arranged for Defendants to submit a "'pro' argument for the pro-con issues debate on Channel 15's website," in addition to publishing opinion pieces in half a dozen local newspapers, making appearances on four media networks, and planning three roadtrips (Ex. 28). Defendants are further using public resources to actively campaign against a ballot measure, including coordinating with special interest groups for that purpose (*see* Brief pp. 12-15). For example, Defendants assisted opposition groups with press releases (Ex. 15) and coordinated lobbying efforts (Exs. 3, 5-9, 12-14), and they commissioned and engaged in an expressed media campaign to influence voters against the passage of the referendum (Exs. 19-24). It may not be clear in every application, but submitting a "pro" argument in a television news pro-con issues debate is clearly advocacy, not information. There is line between unauthorized campaigning and authorized informational activities, and Defendants crossed it. *See Stanson v. Mott*, 551 P.2d 1, 11-12 (Cal. 1986) (discussing the difference, and noting that the need for disseminating information about ballot measures is diminished by existing statutory requirements for pro and con ballot arguments and an impartial analysis of ballot measures by a legislative analyst).

Defendants present no argument that their spending and activities fall on the permissible side of the line. Instead, Defendants seem to argue merely that the line itself is blurred (*see, e.g.*,

---

that "lobby" to register with the state, does not categorically release Defendants from using public resources and offices to campaign against voters for passage of a referendum. In addition, regardless of whether Defendants can lobby the Legislature under any circumstance, they may never use public funds to lobby voters. *See League of Women Voters v. Countywide Crim. Justice Coord. Comm.*, 203 Cal. App. 3d 529, 544-46 (Cal. Ct. App. 1988) (comparing the two).

Resp./Reply p. 6 (suggesting that an order in this case would compromise Defendants' authority to promote participation under the Citizens Clean Elections Act, such as "making $5 contributions to candidates (A.R.S. § 16-946), running as a participating candidate (A.R.S. § 16-950), and making donations to Clean Elections (A.R.S. § 16-954)"). Yet there is an obvious difference between providing potential candidates with information about how to take advantage of the Commission's programs, and publishing "monthly op-eds that support and encourage public funding of campaigns throughout the country" (*compare* Resp./Reply p. 14 *with* Ex. 22 at Bates p. 245). The former neutrally educates and informs the public about government programs, while the latter expresses an opinion about the subject matter of a ballot proposal for the November election. This Court should not hesitate to enforce that line merely because Defendants cry it is "vague" (Resp./Reply p. 14). *See Carter v. City of Las Cruces*, 915 P.2d 336, 339 (N.M. Ct. App. 1996) ("Although it may be a fine line between education, on the one hand, and advocating a partisan position, on the other, courts have enjoined officials from crossing it).

Nor should the Court hesitate when Defendants go too far in arguing that promoting "favorable impressions" of Clean Elections is permitted because it "correlates directly to participation in Clean Elections programs" (Resp./Reply p. 7). Defendants clearly may not, for example, use taxpayer funds to campaign for political candidates who participate in the Clean Elections program and against candidates who choose not to participate, even though the successful election of participating candidates also presumably "correlates directly to participation in Clean Elections programs." For the same reason, Defendants may not spend and

campaign for themselves, in opposition to a ballot measure to limit their power. *State ex rel. Port of Seattle*, 160 P. at 756; *Burt v. Blumenauer*, 699 P.2d 168, 175 (Or. 1985); *Sims*, 41 Ariz. 486, 19 P.2d 679. There is a line between authorized information and unauthorized advocacy, and this Court must enforce it.

"[B]y lending their support to the campaign underway for the [defeat of a ballot measure], defendants not only provide certain promotional and advertising assistance, but they endow that campaign with all the prestige and influence naturally arising from any endorsement of a governmental authority." *Stern v. Kramarsky*, 84 Misc.2d 447, 450 (N.Y. Sup. Ct. 1975). Defendants' coordination with special interest groups opposing the referendum does precisely that (*see* Brief pp. 12-15). It appears that coordination recently went even further, when the Commission's logo and web link appeared on a special interest group's mailer urging citizens to ask their legislators to "VOTE NO" (Ex. 29). Whether or not Defendants approved or had knowledge of their most recent endorsement on the opposition campaign, their coordination with the special interest group towards defeating the ballot measure is uncontroverted.[6]

"[T]he cases come to uniform results, that is, they consistently disallow government advocacy in support of one side of issues before the voters." *Burt*, 699 P.2d at 174-75; *accord*, *Mtn. States Legal Fndn.*, 459 F. Supp. at 360 (D. Colo. 1978) ("every court which has addressed the issue to date has found the use of public funds for partisan campaign purposes improper"); *see also Coffman*, 102 P.3d at 1010 (citations omitted); *Carter*, 915 P.2d at 339 (citations

[6] Plaintiffs request that the Court direct Defendants take corrective action to have this and similar endorsements removed from the publications of special interest groups campaigning against the passage of the referendum.

omitted). As state Supreme Court Justice (later U.S. Supreme Court Justice) William Brennan explained, "simple fairness and justice to the rights of dissenters require that the use by public bodies of public funds for advocacy be restrained." *Citizens to Protect Pub. Funds v. Bd. of Ed.*, 98 A.2d 673, 678 (N.J. 1953). "The public funds entrusted to the [government] belong equally to the proponents and opponents of the proposition," and Defendants may not use "funds to finance not the presentation of facts merely but also arguments to persuade the voters that only one side has merit." *Id.* at 677. Defendants' activities go far beyond information and extend to advocacy, which is impermissible and should be immediately enjoined.

IV. Speech Laws Inapplicable.

A defense to the challenged activities cannot be found in any laws on speech. Government officials and officers can "speak" in their official capacities, but this action does not implicate Defendants' *right* to speech. Nor can it, because there is no government right to speech (*see* Brief pp. 6-7).[7] "[A]ssuming governments may engage in some forms of speech, they are still prohibited from advocacy intended to perpetuate themselves in power." *Burt*, 699 P.2d at 175. Where there is a legal challenge to government advocacy, as here, the issue "is not one concerning freedom of speech . . ., but whether it is a proper function of a State agency to actively support a [ballot measure] which is about to be presented to the electorate in a State-wide referendum." *Stern*, 84 Misc. 2d at 450.

[7] NTMP challenges and seeks an order to stop Defendants' speech and spending exclusively in their official capacities, not in their personal capacities.

Further, the speech cases relied upon by Defendants (Resp./Reply pp. 6 & 13) do not apply because those cases involved private speech, not government speech. (By its terms, the First Amendment is directed toward limiting government power, not enlarging it.) For example, in *Bd. of Regents v. Southworth*, 529 U.S. 217, 229 (2000), the speech was not financed by public money, and public officials were not responsible for its content. The Court there specifically did not reach the question whether "government can speak for itself," because the government had "disclaimed that the speech is its own." *Id.* Likewise, in *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 835 (1995), the student groups that were speaking were not the university's agents, subject to the university's control, or under the university's responsibility. The Court did note that government may regulate the content when government itself is the speaker. *Id.* at 833. But it does not follow that government has an unlimited right and unreviewable discretion to communicate any content whatsoever, as Defendants suggest (Resp./Reply p. 13)—particularly when Defendants' exercise of that discretion directly contravenes citizen efforts to amend the state constitution. Indeed, under Defendants' reading, they could spend public funds to advertise one political candidate over another–content that is clearly the antithesis of the Commission's purpose. The Court must restrain them.

Defendants note, apparently in passing, that some of the Commission's offending plans and goals were developed by media firm Moses Anshell (*see* Resp./Reply p. 7 (noting Moses Anshell's statement of a Commission "goal of increasing favorable impressions of Clean Elections"); p. 9 (noting marketing and education plans containing evidence of electioneering

were proposed by Moses Anshell)).[8] Yet the challenged statements, goals, and written plans, which Defendants publicly commissioned, were adopted as the Commission's statements, goals, and plans.[9] This corroborates Defendants' spending, media, and other efforts to thwart the passage of NTMP's ballot measure in violation of authority, and the activities should be stopped.

V. Unauthorized Campaign Spending and Activities.

Defendants failed to offer evidence controverting the facts alleged in the complaint, each of which is demonstrated by exhibits, except for one. The uncontroverted evidence shows that Defendants acted and intend to continue acting unlawfully, and an immediate order should be entered to stop them. NTMP made only one factual allegation "upon information and belief," that "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 (Compl. ¶ 32; *see* Ex. 18 to NTMP's Brief). Defendants have submitted the 2005 tax form of Clean Elections Institute Action Fund showing that the grant came from that nonprofit organization and not from Defendants.[10] The remainder of the facts as demonstrated in the

[8] Indeed, in some instances, courts have recognized that government speech on public policy issues may constitute impermissible compelled speech for those forced to subsidize it, though Plaintiffs do not make that claim here because the issues can be resolved on statutory grounds. *See Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550 (2005).

[9] Plaintiffs request the opportunity to conduct discovery on this matter as necessary.

[10] Contrary to Defendants' assertion (Resp./Reply p. 2), the allegation was verified (*see* Compl., p. 16) and further supported by Arizona Advocacy Network Foundation's 2005 tax return, which identified the source of the grant as "Clean Elections" (Ex. 18). The 2005 tax return of the Clean Elections Institute, which is now defunct, could not be found after due diligence at the

exhibits show Defendants' engaged in unauthorized spending and campaign activities to influence voters.

Defendants (Resp./Reply pp. 18-19) offer two objections to NTMP's "characterizations" of the facts demonstrated in the exhibits to NTMP's Brief. First, instead of "editing" the draft press release of Arizona Advocacy Network Foundation opposing the subject matter of NTMP's ballot measure, Defendants (Resp./Reply p. 19) propose that Defendant Lang in his email "simply made several suggestions regarding [the] draft release" (*see* Ex. 15). Second, instead of soliciting comments from the special interest group on a radio program discussing the subject matter of the ballot measure, Defendants (Resp./Reply pp. 18-19) propose that that the subject matter of the program was a lawsuit challenging the Commission's matching funds program.[11] However characterized, these actions are beyond Defendant Lang's statutory authority, and they are illegal exercises of government advocacy. The uncontroverted facts demonstrate that Defendants are campaigning, coordinating, spending public funds, and engaging in other efforts to sway voters against NTMP's ballot measure. This conduct is unlawful, causes irreparable harm, and should be stopped immediately.

---

time the allegation was made.

[11] The radio discussion included the subject of NTMP's ballot measure, which would stop General Funds from being distributed from the Commission to political campaigns. Defendant Lang emphasized (incorrectly) at his first opportunity on the show that no Commission funding is derived from the General Fund (*see* http://www.scpr.org/programs/patt-morrison/2011/03/29/18447/arizona-clean-election), and the show extensively discussed public funding for political campaigns.

VI. Judicial Authority to Order Relief.

a. Jurisdiction.

This Court has the power to grant the proposed Amended Order to Show Cause under its power to grant special action relief as well as its power to grant injunctive relief. Defendants (Resp./Reply p. 12) incorrectly assert that special action relief "can *only* issue where the alleged acts are judicial or quasi-judicial. *Johnson v. Betts*, 21 Ariz. 365, 188 P. 271 (1920)" (emphasis added). In *Johnson*, 21 Ariz. at 371, 188 P. at 273, the Arizona Supreme Court held that a writ of prohibition *was* the proper remedy to prevent judicial or quasi-judicial action that was outside the Corporation Commission's power. However, the Court did not hold or even imply that writs of prohibition are limited to only judicial or quasi-judicial acts. In fact, the Court recently accepted special action jurisdiction to decide whether to prohibit the Secretary of State from placing a candidate's name on the ballot – which clearly is not a judicial or quasi-judicial action. *Ingram v. Shumway*, 164 Ariz. 514, 515-16, 794 P.2d 147, 148-49 (1990); *see also State v. Lassen*, 102 Ariz. 318, 428 P.2d 996 (1967) (deciding a special action to prohibit the State Land Commissioner from enforcing a rule granting rights-of-way). Special action relief prohibiting the Citizens Clean Elections Commission from unauthorized spending and activity is a proper remedy.

Defendants (Resp./Reply pp. 4-5) also complain that NTMP did not file this special action sooner, but that does not divest the Court from its power to grant special action relief. As a threshold matter, "where the public interest is involved neither estoppel nor laches can be permitted to override that interest." *George v. Ariz. Corp. Comm'n*, 83 Ariz. 387, 392, 322 P.2d

369, 372 (1958). This action implicates principles of fair elections and ongoing public expenditures, and it can be properly brought at any time. *See Pac. Greyhound Lines v. Sun Valley Bus Lines*, 70 Ariz. 65, 72, 216 P.2d 404, 409 (1950) (injunctive actions are appropriate at any time to challenge harms that are continuing). NTMP is continuing to act diligently to protect its interest in a fair election on the referendum.[12]

Defendants (Resp./Reply p. 5) suggest that immediate relief should not be granted because NTMP had prior knowledge of illegal activities.[13] Yet regardless of when NTMP knew of the unauthorized activities, Defendants' spending and activities were never so staggering and unprecedented than during their 2011 public campaign against NTMP's ballot measure, which necessitates immediate judicial relief. Defendants never before spent so much, and their media plans were never so explicit in that purpose. Special action jurisdiction is proper, and an immediate order of prohibition should be entered to stop Defendants from continuing to illegally expend public resources to sway voters in the upcoming election.

---

[12] Counsel for Plaintiffs presented their legal concern to the Commission in May 2011 and requested that the improper conduct cease (*see* Ex. 30). Receiving no assurance, they promptly filed a public records request in May 2011 for records demonstrating the challenged conduct (*see* Ex. 31). Defendants did not complete their response to the request until September 2011 (*see* Ex. 32). Thereafter, counsel for Plaintiffs promptly filed the required notices of claim (Exs. 33-34), waited the required 60 days, and then immediately filed this action.

[13] NTMP's prior knowledge was, in fact, limited until Defendants completed their response to the request for public records in September 2011. Additionally, it is impossible, for example, for NTMP to have seen the Commission's 2011 Education Plan before February of 2010, as Defendants assert, because that plan was not even developed until October (*see* Ex. 24; *see also, e.g.*, Ex. 4-7, 9-12, 13-17, and 22 at Bates p. 247 (other activities occurring after Feb. 2010 that are challenged in this action)).

Alternatively, NTMP meets the standard for injunctive relief.[14] As the Commission notes, an injunction is demonstrated if there is either (1) a probability of success on the merits and the possibility of irreparable injury, or (2) the presence of serious questions and the balance of hardships are strongly in favor of an injunction. *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990). Arizona uses a sliding scale. For example, "[t]he greater and less reparable the harm, the less the showing of a strong likelihood of success on the merits need be," and vice versa. *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410-11, 132 P.3d 1187, 1190-91 (2006). Although NTMP must only meet one of the two standards on a sliding scale, both are satisfied.

First, there is a strong likelihood of success on the merits, as demonstrated here and in NTMP's Brief in Support of Amended Order to Show Cause. Defendants' written plans and goals are clear, and they do not deny their intent to continue using Commission resources to campaign against NTMP's ballot measure. The Commission "is likely to use public funds to campaign against a future [referendum] and therefore to injure [Plaintiffs'] interests as municipal taxpayers," which demonstrates the need for an injunction. *D.C. Common Cause v. Dist. of Columbia*, 858 F.2d 1, 9 (D.C. Cir. 1988).[15] The possibility of irreparable injury is

[14] Injunctive relief may be a concurrent remedy, but it is not equally as plain, speedy, and adequate as special action unless the injunction is immediate. A special action order of prohibition "immediately interdicts the threatened wrong" and preserves Plaintiffs' rights "until the question of the commission's power to act is settled." *Johnson*, 21 Ariz. at 371-72, 188 P. at 274.

[15] Defendants object that their intent is relevant, but the Court must consider their intent to engage in future conduct when Plaintiffs seek to enjoin such conduct. *See Baldwin v. Ariz. Flame Rest., Inc.*, 82 Ariz. 385, 392, 313 P.2d 759, 764 (1957). Defendants additionally object

staggering. The Commission's campaign and spending efforts threaten NTMP's ability to petition for redress by ballot measure. Financial penalties aside, no amount of money can compensate NTMP for thwarting the passage of a constitutional amendment at the November 2012 election.[16]

This alone satisfies the standard for an immediate injunction. The district court for Colorado held the standard was met when a school board threatened to continue using public resources to campaign against a voter initiative. *Mntn. States Legal Fndn.*, 459 F. Supp. at 361. The court explained, "the right of the electorate to a free discussion of the reasons why the electors should approve or disapprove of this proposed [ballot measure] without the partisan participation by the school board is a right which would be irretrievably lost without the intervention of this Court." *Id.* Likewise, the Court here must enjoin Defendants from using public resources to engage in partisan campaigning to avoid irreparable harm in the election.

Additionally, the standard for an injunction is met because the case presents a serious question of law: whether the Commissioners have power to spend public funds and campaign against citizens pursuing a constitutional amendment. The balance of hardships sharply favors

---

that there is a ripe controversy because a corrected ballot measure is pending reapproval in the legislature; but judicial action to enjoin future conduct is appropriate when there is "a reasonable expectation that the same complaining party would be subjected to the same action again." *See Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (per curium).

[16] The Commission (Resp./Reply p. 12) incorrectly assumes that because the Complaint includes a request of financial penalty, there is no irreparable harm. Certainly the Commission is not free to continue spending its multi-million dollar public budget for any illegal purpose merely because the individual Commissioners are personally liable to repay the public coffers. There is irreparable harm to NTMP's efforts to pass a constitutional amendment, and an immediate injunction or special action relief is the only way to stop it.

NTMP to pursue a voter referendum without government's vast resources and public access competing against it. *See, e.g.*, *Hudspeth*, 540 So. 2d at 154, and cases cited, *supra*. NTMP need only demonstrate a sliding scale of *either* probability of success and the possibility of irreparable injury, *or* serious questions and relative hardship. But both standards are satisfied. The Court should order a preliminary injunction or special action relief to prohibit Defendants from spending and campaigning against votes on NTMP's ballot measure.

b. Prohibited Activities.

Defendants object to the proposed Amended Order to Show Cause by asserting that certain prohibitions are overbroad or encompass legitimate Commission activities. Plaintiffs carefully crafted the proposal to permit authorized functions and preclude only those categories of spending and activities that are beyond Defendants' authority. But regardless of the language Plaintiffs propose, this Court may fashion whatever order it finds prudent to immediately stop the harm. *See* A.R.S. § 12-123(B) ("The court . . . shall have all powers and may issue all writs necessary to the complete exercise of its jurisdiction"). "[F]or every wrong there is a remedy," *La Raia v. Superior Court*, 150 Ariz. 118, 121, 722 P.2d 286, 289 (1986) (citation omitted), and it "should be commensurate with the violation ascertained." *Columbus Bd. of Ed. v. Penick*, 443 U.S. 449, 465 (1979). When "[n]o *per se* rule can adequately embrace all the difficulties of reconciling the competing interests involved," the court may consider the history of the violation and craft a remedy accordingly. *Id.* at 460. The only competing interest here is Defendants' interest in using the vast public resources of a state agency to campaign against a referendum that would reduce its power—an interest entirely antithetical to the very fabric of democracy and

directly contrary to the very purpose of the Commission to improve the integrity of elections. *See, e.g.*, *Hudspeth*, 540 So. 2d at 154; *Stanson*, 551 P.2d at 9; *Stern*, 84 Misc.2d at 450. Therefore, Defendants' objections to the proposed order fail, and the Court should immediately enjoin their conduct.

The order proposed by Plaintiffs has no chilling effect on Defendants in their personal capacities, as they allege (Resp./Reply p. 15, n.10). Defendants are free to speak, spend, and campaign against ballot measures in their personal capacities. The order only precludes conduct in their official capacities as officials and employees of the Citizens Clean Elections Commission. Despite their asserted concern (*id.*), Defendants would not have to "think twice" before speaking on any matter as long as they did so on their personal time, using personal email and phone, and outside Commission offices.[17]

The proposed order is narrowly crafted to prohibit illegal conduct in light of Defendants' prior activities, and does not seek to prohibit all illegal conduct in which the Commission could engage. For example, NTMP seeks to restrict lobbying only by restricting Defendants' lobbyists (and subordinates and agents) from engaging in the same limited conduct from which they seek to enjoin Defendants. Similarly, Plaintiffs seek to specifically prohibit certain illegal

[17] To the extent Defendants suggest that they will have to "think twice" about their *official* actions for fear of personal liability, they should. Defendants are public officers and employees of a State agency, entrusted with public funds and media access. They are made individually liable for public expenditures as a matter of statewide policy (*see* A.R.S. §§ 35-154 & 35-196), and they should carefully exercise discretion in carrying out their powers.

promotional communications with special interest groups who oppose the ballot measure, even though the Commission's prohibited conduct extends beyond such limited communications.[18]

Plaintiffs do not seek to categorically prohibit the use of taglines or public opinion polls. The most simple order would limit voter education expenditures to 10% of the Commission's budget. Beyond that, Plaintiffs do not seek to preclude Defendants' use of rhetorical devices to communicate legitimate information pursuant to authorized Commission functions. Rather, an order should issue prohibiting editorial commentary about the Commission (AOSC ¶ 4). Should rhetorical devices be necessary for the Commission to fulfill its educational obligations in publishing candidate information, sponsoring debates, or explaining instructions for record-keeping (*see* A.R.S. § 16-956(A)), for example, Defendants may do so within Plaintiffs' proposed AOSC. However, a characterization that "everybody wins" with the Commission serves no educational purpose (*see* Ex. 19). It influences voters to vote against NMTP's ballot measure, which is impermissible and should be prohibited.

Similarly, Defendants may conduct surveys and research to determine and enforce provisions under the Clean Elections Act, but there is no authority to use public resources to poll

[18] Defendants (Resp./Reply p. 17) attempt to frame this as a viewpoint-based restriction under the First Amendment. It is not. Plaintiffs do not seek to restrict any private person (or Defendants in their personal capacities) from speaking to their public officials or government employees. Nor do Plaintiffs seek to restrict anyone from requesting and receiving information about the Commission's programs. *Contrast Ruiz v. Hull*, 191 Ariz. 441, 957 P.2d 284 (1998) (striking down a law requiring the exclusive use of English in government communications) (cited by Defendants in Resp./Reply pp. 17-18). Defendants may fairly respond to any constituent questions as to *how* a ballot measure would affect the Commission's functions; what they may not do is initiate and participate in coordinated strategies with special interest groups to campaign against the passage of a ballot measure (*see, e.g.,* Ex. 15 (Defendant Lang editing press release of Arizona Advocacy Network Foundation); Ex. 3 at Bates p. 538 (coordinating efforts to "push" votes against the measure); *see generally* Brief pp. 12-13).

voters about the subject of NTMP's ballot measure or their opinions about Commission itself (*see* AOSC ¶ 5). *See Carter*, 375 P.2d at 337-39 (city using public funds to conduct public opinion surveys for partisan, rather than educational or informational, purposes). The proposed order is narrowly tailored, and should be immediately entered to stop the irreparable harm.

VII. Conclusion.

It is ironic that an agency devoted to leveling the playing field in elections asserts that it is permissible for a government agency not to merely put its thumb on the scale, but its entire hulking weight. Defendants' actions, from using public funds to promote itself so as to defeat the possibility that its powers will be reduced, to coordinating and campaigning against a referendum that would refer the question to the ballot, are all as part of an overt, systemic strategy to preserve its hegemony. Unless restrained, Defendants will render the vote on the referendum a farce, if it does not thwart it altogether. It will pull apart the foundation of American government:

> The spectacle of State agencies campaigning for or against propositions or proposed constitutional amendments to be voted on by the public, albeit perhaps well-motivated, can only demean the democratic process. As a State agency supported by public funds they cannot advocate their favored position on any issue or for any candidates, as such. So long as they are an arm of the State Government they must maintain a position of neutrality and impartiality. . . . Improper expenditure of funds, whether directly through promotional and advertising activities or indirectly through the use of government employees or facilities cannot be countenanced.

Stern, 84 Misc.2d at 452. Beyond impermissible advocacy, Defendants are admittedly spending more than twice the statutory amount for Voter Education. This Court should enter immediate relief.

RESPONSE TO DEFENDANTS' MOTION TO DISMISS FOR LACK OF STANDING

For the first time in their reply on the Motion to Dismiss, Defendants challenged Plaintiffs' standing to raise the claims at issue here.[19] Courts will not consider new arguments raised for the first time in a reply brief. *Zeagler v. Buckley*, 223 Ariz. 37, 39, 219 P.3d 247, 249 (App. 2009). This is because due process guarantees Plaintiffs the opportunity to respond to adverse arguments. *See Blakeway v. Tex. Bus. Invs. Co.*, 12 Ariz. App. 390, 391, 470 P.2d 710, 711 (1970). Plaintiffs are therefore entitled to present the following response.

> The Arizona Supreme Court has summarized its approach to standing as follows:
>
> > We have previously determined that the question of standing in Arizona is not a constitutional mandate since we have no counterpart to the "case or controversy" requirement of the federal constitution. In addressing the question of standing, therefore, we are confronted only with questions of prudential or judicial restraint. We impose that restraint to insure that our courts do not issue mere advisory opinions, that the case is not moot and that the issues will be fully developed by true adversaries. Our court of appeals has explained that these considerations require at minimum that each party possess an interest in the outcome.

Armory Park Neighborhood Ass'n v. Episcopal Comm. Services in Ariz., 148 Ariz. 1, 6, 712 P.2d 914, 919 (1985) (citations omitted).[20] Those requisites are readily met here.

---

[19] In their Motion to Dismiss (pp. 7-8), Defendants appeared to challenge Plaintiffs' standing to raise their claim for repayment of funds illegally expended, arguing that the repayment statutes (A.R.S. §§ 35-154 and 196) did not provide a private right of action. The Court ordered the parties to table briefing on that issue (*see* 12/15/11 Minute Entry). Defendants did not extend any standing argument to challenge Plaintiffs' standing to make their other claims until their reply.

[20] Indeed, because standing is not a constitutional requirement, courts may waive standing in "exceptional circumstances, generally in cases involving issues of great public importance that are likely to recur." *Sears v. Hull*, 192 Ariz. 65, 71, 961 P.2d 1013, 1019 (1998). That is the case here, when Defendants are spending twice as much in public funds as the amount specified by statute and purport to continue to do so annually, and when Defendants' intend to continue

First, the Court's opinion will not be advisory. Defendants have made, and have adopted written goals and plans to continue making, unauthorized expenditures for self-promotion and Voter Education. An immediate ruling will limit Defendants' spending on Voter Education to the amount and activities specified by the Legislature. *See* A.R.S. §§ 16-949 & 16-956(A). This is not advisory. In addition, Plaintiffs are pursuing a ballot measure in the Legislature to end public funding for political campaigns (*see* Compl. ¶ 22 & p. 16), which Arizona voters will be asked to approve in the November 2012 election (*see* Compl. ¶ 45, p. 16).[21] Meanwhile, Defendants are continuing to engage in illegal conduct to thwart the passage of that measure (*see, e.g.*, Defs.' Education Plan (Ex. 24 to Brief)). A ruling will have the real-world impact of immediately narrowing Defendants' "groundwork" to oppose the measure "heading into" into the 2012 election cycle (*see* Compl. ¶ 26(a), Ex. 23 at Bates pp. 254-55 & Ex. 24 at Bates p. 322, and Compl. ¶ 26(c), Ex. 23 at Bates p. 252). Therefore, the standing principle is met.

There is no question that the parties are true adversaries. Plaintiff No Taxpayer Money for Politicians is pursuing a constitutional amendment that would substantially limit Defendants' power, functions and budget (Compl. ¶ 2 & p. 16); and Defendants, using public resources, actively oppose those efforts. Plaintiff Paton is a taxpayer who opposes Defendants' spending

---

campaigning against NTMP's ballot measure through the November election and presumably campaign against any other ballot measures in the future. The Court need not use its discretion to waive standing to decide important and recurring issues, however, because plaintiffs readily meet the applicable criteria.

[21] Plaintiff No Taxpayer Money for Politicians (NTMP) is the ballot committee registered with the Arizona Secretary of State for that purpose (Compl. ¶ 2 & p. 16), and Plaintiff Jonathan Paton is its chairman and a taxpayer who objects to the Commission's self-promotion and opposition campaign (Compl. ¶ 3 & p. 16).

of public funds for self-promotion and other activities and spending beyond statutory limitations, and who opposes the spending of public funds for political candidates (Compl. ¶ 3 & p. 16), whereas Defendants spent and intend to continuing spending public funds for self-promotion, and to defeat NTMP's ballot measure and promote public funding for political campaigns. The case is fully developed by true adversaries and real parties in interest. For these reasons, Plaintiffs meet the prudential requirements for standing.

Plaintiff Paton separately has standing as a taxpayer to challenge illegal expenditures of public resources. Arizona courts consistently have conferred broad taxpayer standing to challenge unlawful government expenditures. This is unlike federal standing law, where taxpayers generally do not have standing. *See Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011). Unlike federal law, there is no "case or controversy" requirement in the Arizona Constitution. *Sears*, 192 Ariz. at 71, 961 P.2d at 1019. Therefore, *Winn* (cited by Defendants (Resp./Reply p. 3)) does not apply. Instead, taxpayer standing in Arizona is controlled by *Ethington v. Wright*, 66 Ariz. 382, 387, 189 P.2d 209, 213 (1948), which recognizes "the right of a taxpayer to question expenditure of state funds on any grounds of illegality or unconstitutionality" Accord, *Bennett v. Napolitano*, 206 Ariz. 520, 527, 81 P.3d 311, 318 (2003) (taxpayers have standing to challenge unlawful expenditures). "The right to maintain such suits is based upon the taxpayers' equitable ownership of such funds and their liability to replenish the public treasury for the deficiency which would be caused by the misappropriation." *Ethington*, 66 Ariz. at 386, 189 P.2d at 212. Taxpayers have standing to challenge illegal public expenditures "made or threatened," and that is the case here. *Secrist v.*

Diedrich, 6 Ariz. App. 102, 104, 430 P.2d 448, 450 (1967). Defendants have spent and intend to continue illegally spending state money.

Defendants dispute that the Commission receives money from the State General Fund. But the Commission is funded by taxpayers as follows:

> For tax years beginning on or after January 1, 1998, a taxpayer who files on a state income tax return form may designate a five-dollar voluntary contribution per taxpayer to the fund by marking an optional check-off box on the first page of the form. A taxpayer who checks this box shall receive a five-dollar reduction in the amount of tax, and *five dollars from the amount of taxes paid shall be transferred by the department of revenue to the fund*.

A.R.S. § 16-954(A) (emphasis added). Therefore, the State unquestionably transfers money from the General Fund to the Commission each time a taxpayer marks the box on his or her tax form. It is undisputed that many taxpayers cause the transfer to occur each year.

The Commission's funding structure as provided in A.R.S. § 16-954(A) is unique. It is nothing like a typical voluntary tax credit program, where an individual who donates his or her own money receives a credit for that amount in his or her taxes owed. *Compare Winn*, 131 S. Ct. at 1440 (relied upon by Defendants in Resp./Reply (p. 3)). It is also unlike a typical tax designation program, where an individual designates a portion of his or her own taxes owed. *Compare Kotterman v. Killian*, 193 Ariz. 273, 285, 972 P.2d 606, 618 (1999) (relied upon by Defendants in Resp./Reply (p. 16)).[22] Unlike those programs, taxpayers who participate in Commission funding under A.R.S. § 954(A) contribute nothing: they neither donate their own money, nor do they designate a portion of the taxes they pay. Instead, participating taxpayers trigger two actions: the State contributes funds (in the amount of $5 to the Commission), and the

[22] Taxpayers were the plaintiffs in *Kotterman*, 193 Ariz. at 275, 972 P.2d at 608.

taxpayer increases the amount of their own tax refund or decrease the amount of liability (also in the amount of $5) – again, without making any contribution to anyone. For each person who checks the box, there is a net loss of $10 to the General Fund: $5 is transferred from the General Fund to the Commission, and the General Fund is reduced by another $5 for the reduction in liability or increase in refund to the taxpayer. Because General Fund money is involved in this manner, taxpayers have standing to challenge Commission expenditures.

Despite that the Arizona Joint Legislative Budget Committee estimated that "$8.5 million is transferred from the General Fund to the Citizens Clean Election Fund" for fiscal year 2011 (*see* Ex. 27 at p. 5), Defendants assert that "[n]ot a single dollar of Clean Elections funds comes from Arizona's General Fund" (Ex. 24 at Bates p. 320); *see also* Resp./Reply p. 3 ("the Clean Elections program is not supported by taxes")). Their denial is apparently based on the unrelated fact that the Commission is required to return any excess funds each year—if any—to the General Fund. *See* A.R.S. § 16-954(D). But a return of funds to the State might not necessarily occur in some years, and the amount returned will not necessarily "offset" the amount received (*see* Resp./Reply p. 16 n.12). And even when it does, the millions of dollars the Commission has illegal spent have reduced the amount it remits to the General Fund, which still harms taxpayers. Whether through direct payments from the General Fund, reduced General Fund revenues, or both, the taxpayers bear the burden. Taxpayers have standing to enjoin the illegal payment of all public funds, including "monies coming in the lawful possession . . . of state . . . commissions . . . irrespective of the source from which, or the manner in which, the monies are received." A.R.S. §§ 35-212 and 35-213. This confers standing on

Plaintiff Paton as a taxpayer to challenge illegal Commission expenditures, independently of NTMP's and Paton's standing under the prudential standards of *Armory Park*, and also independently of this Court's discretion to waive standing because the case presents important issues that are likely to recur.

RESPECTFULLY SUBMITTED this 24th day of January, 2012 by:

/S/ Carrie Ann Sitren
Clint Bolick (021684)
Diane Cohen (027791)
Carrie Ann Sitren (025760)
Christina Sandefur (027983)
Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
500 E. Coronado Rd., Phoenix, AZ 85004
(602) 462-5000
litigation@goldwaterinstitute.org
Attorneys for Plaintiffs

E-FILED this 24th day of January, 2012 with:

Clerk of Court
201 W. Jefferson St.
Phoenix, AZ 85003

MAILED this 24th day of January, 2012 to:

Hon. Mark H. Brain
Maricopa County Superior Court
East Court Building 814
101 W. Jefferson St.
Phoenix, AZ 85003

E-MAILED this 24th day of January, 2012 to:

Tom Collins
Michael Goodwin
Office of the Attorney General
1275 W. Washington St.
Phoenix, AZ 85007-2926

/S/ Sulane Voyles