

June 15, 2016

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

By electronic mail (IRS.Commissioner@IRS.gov) and First Class mail

Re: Complaint against Arizona Future Fund

Dear Commissioner Koskinen:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests the Internal Revenue Service (“IRS”) investigate whether the Arizona Future Fund (“AFF”), a non-profit organization exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code (“Code”), and its general counsel, William Canfield, violated federal law by falsely representing AFF spent no money on political activity in 2014.¹ CREW further requests the IRS investigate whether AFF was operated primarily to influence political campaigns in violation of the Code.

In the weeks before the 2014 Arizona Republican primary for governor, AFF ran television, newspaper, digital, and billboard advertisements promoting Mesa Mayor Scott Smith’s candidacy, saying he was a “better choice” than his rivals and that “Governor Scott Smith sounds just right.” After complaints were filed with Arizona campaign finance authorities alleging AFF failed to report its spending on the ads, AFF and Mr. Canfield acknowledged in a settlement that the advertisements were independent expenditures with no reasonable meaning other than to advocate for Mayor Smith’s election. Nevertheless, AFF told the IRS it did not participate in any political activity in 2014, and thus appears to have made false statements.

In addition, AFF admitted it spent \$315,575 on these advertisements, which accounts for more than 66% of its total spending in 2014. As a result, politics appears to have been AFF’s primary activity.

Following the pattern of another group advised by Mr. Canfield that also failed to disclose its political spending, made false representations to the government, and was operated primarily to influence political campaigns, AFF simply went out of business at the end of 2014, claiming that it had achieved its social welfare purposes.

¹ CREW submits this letter in lieu of Form 13909; a copy is being sent to the Dallas office.

Arizona Future Fund's Political Activity

AFF was a non-profit unincorporated association established in 2014 in Washington, D.C.² Lee Cowen was its executive director and treasurer, and Mr. Canfield was its general counsel.³ In addition to his role with AFF, Mr. Canfield is a “nationally recognized GOP election and political attorney” who has twice been chair of the ABA’s Standing Committee on Election Law.⁴ Mr. Canfield has extensive experience filing Form 990 tax returns.⁵

Less than two weeks before the August 26, 2014 Arizona Republican gubernatorial primary, AFF placed newspaper advertisements in substance urging Arizonans to vote for Mesa Mayor Scott Smith.⁶ Over a photo of Mr. Smith, the ad said Mr. Smith “brought better jobs, schools and roads as Mayor. - Just what we need in a governor.”⁷ “On August 26,” the ad continued, “Arizona Republicans can nominate for governor the candidate who has a proven record of accomplished leadership and real plans for the future,” and concluded by saying “Arizona needs a governor to lead not bicker.”⁸ The ad did not mention any candidate other than Mr. Smith.

At around the same time, AFF’s Facebook page also advocated voting for Mr. Smith. On August 11, 2014, AFF posted a Facebook entry that said:

On August 26, Arizona voters will go to the polls to elect the next Republican nominee for Governor – and the stakes couldn’t be any higher.

That’s why Republicans and Independents agree: Arizona needs Scott Smith. As Mayor, Scott Smith has balanced budgets, cut taxes and created jobs. Imagine what he can do for Arizona.⁹

² Arizona Future Fund 2014 Form 990-EZ, at 1 (attached as Exhibit A); Nonprofit Locator, Arizona Future Fund (listing ruling date as June 1, 2014), available at <https://nonprofitlocator.org/organizations/dc/washington/464739838-arizona-future-fund>.

³ Arizona Future Fund 2014 Form 990-EZ, Part IV.

⁴ Twitter page, William B. Canfield, available at <https://twitter.com/willsjii>.

⁵ See, e.g., Commission on Hope, Growth and Opportunity, 2010 Form 990 (signed by Mr. Canfield); Coalition for Mortgage Security, 2014 Form 990 (signed by Mr. Canfield).

⁶ See, e.g., *Arizona Range News*, Aug. 13, 2014, at 5, available at <http://azr.stparchive.com/Archive/AZR/AZR08132014P05.php>; *Sahuarita Sun*, Aug. 13, 2014, at A6, available at <http://bloximages.chicago2.vip.townnews.com/sahuaritasun.com/content/tncms/assets/v3/edition/0/a5/0a53002f-65b6-5348-83d8-f28a910619ed/53caa7ac3eb0a.pdf.pdf>. See also MUR 14-014, Arizona Future Fund, Arizona Citizens Clean Elections Commission, Statement of Reasons of the Executive Chair, Dec. 9, 2014 (“CCEC Statement of Reasons”) (describing similar ad in the *Prescott Daily Courier*) (attached as Exhibit B).

⁷ *Id.*

⁸ *Id.*

⁹ Facebook page for Arizona Future Fund, Aug. 11, 2014 post, available at <https://www.facebook.com/arizonafuturefund/> and attached as Exhibit C.

AFF also purchased Internet advertising urging voters to “take action” by “support[ing] Scott Smith’s real leadership.”¹⁰

Included in AFF’s Facebook post was a video advertisement similarly touting Mr. Smith’s candidacy.¹¹ The ad opens with video of two other gubernatorial candidates talking over each other, then asserts: “There’s a better choice for Governor. Scott Smith.”¹² While showing a photograph of Mr. Smith, the narrator lauds him, declaring that “as mayor of Mesa, Scott Smith cut taxes, created jobs, and reduced crime.”¹³ The ad then asserts that “now Scott’s ready to put the same proven government and entrepreneurial experience to work for all of Arizona,” and concluded: “Republicans and independents agree. Governor Scott Smith sounds just right.”¹⁴ According to a news report, AFF also placed the ads on its website in August 2014.¹⁵

AFF posted an almost identical version of the advertisement on its YouTube page on August 20, 2014.¹⁶ This ad concluded “Scott Smith sounds just right” instead of “Governor Scott Smith sounds just right.”¹⁷ At that same point in the advertisement, however, this version showed an image of a newspaper headline reading: “Brewer Endorses Scott Smith for Governor.”¹⁸ As discussed below, both versions of the ad constituted political activity, as did the newspaper ad and the Facebook post.

AFF ran a version of the television advertisement in at least the Phoenix, Tucson, and Yuma cable and broadcast markets in the days before the primary.¹⁹

AFF later acknowledged spending \$315,575 on the Smith advertisements. According to disclosures AFF provided to the Arizona Citizens Clean Elections Commission (“CCEC”) but not, for unknown reasons, currently posted on the Arizona Secretary of State’s campaign finance

¹⁰ *Id.*; see also CCEC Statement of Reasons, at 3; Complaint against Arizona Future Fund, filed with the Arizona Secretary of State and the Arizona Citizens Clean Elections Commission, Aug. 20, 2014 (“Joint Complaint”) (attached as Exhibit D).

¹¹ Facebook page for Arizona Future Fund, Aug. 11, 2014 post.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Yvonne Wingett Sanchez, ‘Dark Money’ Group Funds Pro-Smith Effort, *Arizona Republic*, Aug. 12, 2014, available at <http://www.azcentral.com/story/news/arizona/politics/2014/08/12/dark-money-group-funds-pro-smith-effort/13967429/>. The website has since been taken down. See www.arizonafuturefund.org.

¹⁶ See <https://www.youtube.com/watch?v=xD7uWHqtYEg>.

¹⁷ *Id.*

¹⁸ *Id.* Brewer presumably is then-Arizona Gov. Jan Brewer.

¹⁹ See Email from Mike Liburdi to Christina Estes-Werther, Aug. 12, 2014 (“Secretary of State Complaint”) (alleging AFF spent at least \$74,247 on cable ads) (attached as Exhibit E); Complaint against Arizona Future Fund, filed with the Arizona Citizens Clean Elections Commission, Aug. 13, 2014 (“CCEC Complaint”) (attached as Exhibit F); Invoice from KGUN, Aug. 31, 2014 (\$10,475 for broadcasting ads), available at [https://stations.fcc.gov/collect/files/36918/Political%20File/2014/Non-Candidate%20Issue%20Ads/Arizona%20Future%20Fund/534748/534748-1%20\(14102050894156\).pdf](https://stations.fcc.gov/collect/files/36918/Political%20File/2014/Non-Candidate%20Issue%20Ads/Arizona%20Future%20Fund/534748/534748-1%20(14102050894156).pdf); Invoice from KOLD, Aug. 31, 2014 (\$17,556 for broadcasting ads), available at [https://stations.fcc.gov/collect/files/48663/Political%20File/2014/Non-Candidate%20Issue%20Ads/AZ%20FUTURE%20FUND%20INV%20AUG%20\(14106526851354\).pdf](https://stations.fcc.gov/collect/files/48663/Political%20File/2014/Non-Candidate%20Issue%20Ads/AZ%20FUTURE%20FUND%20INV%20AUG%20(14106526851354).pdf).

website, AFF spent \$215,575 on television advertising, \$40,000 on billboards, \$32,500 on newspaper ads, and \$27,500 on website and social media advertising.²⁰ All of the spending was for “independent expenditures” on behalf of Mayor Smith’s campaign for governor, and all the expenditures were made between July 28 and August 11, 2014.²¹

Arizona Campaign Finance Complaints Against the Arizona Future Fund

After AFF began running its advertisements in the weeks before the primary, several complaints regarding the ads and AFF were filed with Arizona campaign finance authorities.²² The complaints asserted AFF’s ads were expenditures made for the purpose of influencing an election, and alleged AFF had violated Arizona law by failing to register as an independent expenditure organization and file disclosure reports.²³ AFF, in filings submitted by Mr. Canfield, initially disputed the advertisements were independent expenditures that triggered reporting and registration requirements.²⁴ CCEC, however, concluded there was reason to believe AFF violated Arizona law.²⁵ Specifically, CCEC explicitly found in a Statement of Reasons that the ads “unequivocally constitute express advocacy under Arizona law and are independent expenditures on behalf of Scott Smith” and “had no reasonable meaning other than to advocate for the election of Smith for governor.”²⁶

To resolve the complaints, AFF, CCEC, and the Arizona Attorney General’s Office entered into a conciliation agreement on December 18, 2014.²⁷ The agreement stated that AFF “made independent expenditures and filed no reports,” and in agreeing to it AFF acknowledged the violations set forth in the Statement of Reasons based on the fact that the ads constituted express advocacy and had no reasonable meaning other to advocate for Mayor Smith’s election.²⁸ AFF agreed to pay a \$10,000 fine and file reports disclosing the independent expenditures.²⁹ Mr. Canfield signed the agreement on behalf of AFF.³⁰

²⁰ Arizona Future Fund, Independent Expenditures, Smith Governor 2014 (attached as Exhibit G). This document apparently was attached to an email Mr. Canfield sent to CCEC. Email from William Canfield to Sara Larsen, Dec. 23, 2014 (attached as Exhibit H).

²¹ *Id.*

²² See Secretary of State Complaint, filed Aug. 12, 2014; CCEC Complaint, filed Aug. 13, 2014; Joint Complaint, filed Aug. 20, 2014.

²³ *Id.*

²⁴ See Arizona Future Fund, Response in CCEC MUR No. 14-014, Aug. 28, 2014 (attached as Exhibit I); Arizona Future Fund, Response in CCEC MUR No. 14-014, Nov. 17, 2014 (attached as Exhibit J).

²⁵ CCEC Statement of Reasons at 1.

²⁶ *Id.*, at 3-4.

²⁷ MUR 14-014, Conciliation Agreement, Dec. 18, 2014 (attached as Exhibit K).

²⁸ *Id.* at 1-2.

²⁹ *Id.* at 2.

³⁰ *Id.* at 5.

On December 23, 2014, Mr. Canfield emailed CCEC a copy of the reports it submitted to the Arizona Secretary of State.³¹ Those reports disclosed \$315,575 AFF spent on “independent expenditures” in the “Smith Governor 2014” race.³²

Arizona Future Fund’s Representations to the IRS

As a section 501(c)(4) tax-exempt organization, AFF is required to file annual Form 990 tax returns. Tax-exempt organizations engaged in any “direct or indirect political campaign activities on behalf of or in opposition to candidates for public office” also must file a Schedule C with their tax returns, which requires disclosure of the amount spent on “political expenditures.”³³ “Political expenditures” include all “political campaign activities” – defined as “[a]ll activities that support or oppose candidates for elective federal, state, or local public office.”³⁴

On February 12, 2015, just two months after Mr. Canfield signed the conciliation agreement acknowledging the Smith advertisements were independent expenditures and AFF submitted disclosures detailing its spending on them, AFF filed its 2014 Form 990-EZ tax return with the IRS.³⁵ Mr. Canfield signed the tax return under penalty of perjury.³⁶ Despite the conciliation agreement and the Arizona disclosures, AFF asserted on the tax return it did not engage in any “direct or indirect political campaign activities on behalf of or in opposition to candidates for public office.”³⁷ As a result, AFF did not file a Schedule C reporting the amount it spent on political activities.

According to the tax return, AFF spent a total of \$474,600 in 2014.³⁸ The vast majority of this spending, \$432,500, paid for “public broadcast issue advertising in Arizona media markets.”³⁹

On December 30, 2014, AFF terminated its activities and voted to notify the IRS of its decision.⁴⁰ According to AFF, “the social welfare purpose for which the association was created [was] achieved within calendar year 2014” and “no additional purpose exists as to which the association might become engaged.”⁴¹

³¹ Email from William Canfield to Sara Larsen, Dec. 23, 2014.

³² Arizona Future Fund, Independent Expenditures, Smith Governor 2014.

³³ Form 990-EZ, Part V, Question 46; 2014 Instructions for Form 990-EZ, at 24; 2014 Instructions for Schedule C, at 1, 3.

³⁴ *Id.* at 1; 2014 Instructions for Form 990, at 64.

³⁵ Arizona Future Fund 2014 Form 990-EZ, at 4. Mr. Canfield erroneously dated his signature on the tax return as February 12, 2014, instead of February 12, 2015.

³⁶ *Id.*, at 4.

³⁷ *Id.*, Part V, Line 46.

³⁸ *Id.*, Part I, Line 17.

³⁹ *Id.*, Part III, Line 28.

⁴⁰ *Id.*, Schedule N, Part III and attached Resolution of the Board.

⁴¹ Arizona Future Fund, Resolution of the Board, Dec. 30, 2014. AFF, however, told CCEC it was terminating because “there is absolutely no prospect of the Fund being able to obtain additional donations going forward” as a

Political Activity Under Section 501(c)(4)

When an advertisement explicitly advocates the election or defeat of an individual to public office, the expenditure unquestionably is political campaign activity.⁴²

Advertisements and other communications that support or oppose a candidate but stop short of expressly advocating for or against the candidate's election also can constitute political campaign intervention. In Revenue Ruling 2007-41, the IRS promulgated guidance on the distinction between issue advocacy and political campaign intervention. The IRS takes into consideration all the facts and circumstances of a particular communication and identified the key factors as: (1) whether the statement identifies one or more candidates; (2) whether the statement expresses approval or disapproval for a candidate's position; (3) whether the statement is delivered close to an election; (4) whether the statement makes reference to voting or an election; (5) whether the issue addressed has been raised as an issue distinguishing candidates for an office; (6) whether the communication is part of an ongoing series of communications by the organization on the issue that are made independent of the timing of any election; and (7) whether the timing of the communication is related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder running in an election.⁴³

As AFF admitted in signing the conciliation agreement and in filing the independent expenditure disclosures, the newspaper, television, digital, and billboard advertisements AFF ran in August 2014 qualify as political campaign activity. Even though the ads did not use words like "vote for" Mayor Smith, they "unequivocally constitute express advocacy" and "are independent expenditures on behalf of Scott Smith" that have "no reasonable meaning other than to advocate for the election of Smith for governor."

The newspaper ad, for example, referred specifically to the August 26 gubernatorial primary election, asserted that Mr. Smith was "just what we need in a governor," and urged Arizona Republicans to nominate a candidate who has a proven record. Both versions of the television ad similarly can only be interpreted as advocating Mr. Smith's election. Both started by asserting Mr. Smith is a "better choice for Governor," stated he is ready to put his experience to work for the whole state, and concluded that Republicans and independents agree "Governor Smith sounds just right." In the context of the advertisement's discussion of Mr. Smith as a better choice for governor and display of a newspaper headline saying then-Gov. Brewer had endorsed Smith for governor, leaving the word "governor" out of the last line does not change that its message of advocating Mr. Smith's election. AFF's Facebook post also referred to the primary election, asserted Republicans and independents agree that "Arizona needs Scott Smith," and concluded by urging readers to imagine what Mr. Smith can do for the state.

result of CCEC's investigation." Arizona Future Fund, Response in CCEC MUR No. 14-014, Nov. 17, 2014 (emphasis in original).

⁴² Rev. Rul. 2004-06; *see also* Judith E. Kindell and John Francis Reilly, Election Year Issues, 2002 EO CPE Text, at 349, 388.

⁴³ Rev. Rul. 2007-41; *see also* Rev. Rul. 2004-06.

Even if the ads somehow could be thought of as stopping just short of expressly advocating Mr. Smith's election, they still constitute political campaign activity. All of the ads identified Mr. Smith, expressed approval for him and his positions, and were broadcast immediately before the election. The ads also distinguished the candidates, were not part of any ongoing series of communications by AFF, and their timing was related to the primary election, not any non-electoral event.

Section 501(c)(4) provides tax-exempt status to organizations "not organized for profit but operated exclusively for the promotion of social welfare."⁴⁴ IRS regulations interpret the statute to mean a section 501(c)(4) organization must be "primarily engaged in promoting in some way the common good and general welfare of the people of the community."⁴⁵ The regulations further provide that "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office" does not promote social welfare.⁴⁶

The IRS has not further defined the "primary activity" standard, and provides only that all the facts and circumstances are to be taken into account in determining the "primary activity" of a section 501(c)(4) organization.⁴⁷ Internal IRS training materials, however, assert section 501(c) organizations (other than section 501(c)(3) charities) "may generally make expenditures for political activities as long as such activities, in conjunction with any other non-qualifying activities, do not constitute the organization's *primary activity* (51%)."⁴⁸

AFF admitted it spent \$315,575 on independent expenditures during its entire existence when it spent a total of \$474,600. Accordingly, AFF's political spending constituted at least 66.5% of its total expenditures.

Mr. Canfield's Previous Involvement with an Organization That Engaged in Similar Conduct

This is not the first time Mr. Canfield has signed tax returns that did not disclose political activity by a section 501(c)(4) organization. Starting in 2010, Mr. Canfield served as the general counsel to the Commission on Hope, Growth and Opportunity ("CHGO") which, like AFF, was organized as an unincorporated association in Washington, D.C.⁴⁹ In 2010, CHGO spent

⁴⁴ 26 U.S.C. § 501(c)(4).

⁴⁵ Treas. Reg. § 1.501(c)(4)-1(a)(2)(i). By allowing section 501(c)(4) organizations to be only "primarily" engaged in social welfare, the regulation misinterprets the plain meaning of the word "exclusively" in the statute. This complaint analyzes AFF's conduct using the "primarily" standard. Under a correct interpretation of the statute, AFF's political spending unquestionably would violate its tax-exempt status.

⁴⁶ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

⁴⁷ Rev. Rul. 68-45, 1968-1 C.B. 259.

⁴⁸ Exempt Organizations Determinations Unit 2, Student Guide, Training 29450-002 (Rev. 9-2009), at 7-19 (emphasis added), available at [http://www.taxanalysts.com/www/freefiles.nsf/Files/EO%204.pdf/\\$file/EO%204.pdf](http://www.taxanalysts.com/www/freefiles.nsf/Files/EO%204.pdf/$file/EO%204.pdf).

⁴⁹ See CREW FEC Complaint against CHGO, MUR No. 6471, available at http://www.citizensforethics.org/page/-/PDFs/Legal/4-26-12_CHGO_FEC_Complaint_Amended.pdf?nocdn=1.

millions of dollars on political advertisements – nearly all of its spending – but falsely told the IRS it did not engage in any political activity and failed to report any of its spending on the ads to the FEC.⁵⁰ CREW filed IRS and FEC complaints against the group,⁵¹ and in September 2014 the FEC found reason to believe most of CHGO’s ads were independent expenditures or electioneering communications that should have been reported.⁵² Similar to AFF, CHGO went out of business without engaging in any other substantive activity.⁵³ Mr. Canfield represented CHGO throughout its existence.

Violations

26 U.S.C. § 6652

Under the Code, a tax-exempt organization that, without reasonable cause, fails to include any of the information required on a Form 990 tax return or fails to provide the correct information, is liable for civil penalties.⁵⁴ By failing to report that it engaged in political campaign activities on its 2014 Form 990-EZ and by failing to report the amount it spent on them, AFF appears to have violated 26 U.S.C. § 6652 and should be subject to monetary penalties.

26 U.S.C. § 7206

Under the Code, any person who “[w]illfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter,” is guilty of a felony and subject to up to three years in prison and a fine of up to \$100,000.⁵⁵ The money spent on political campaign activities a tax-exempt organization reports to the IRS on its Schedule C is material for several reasons, including: (1) the amounts reported can be used by the IRS to determine whether the organization is complying with its tax-exempt status; (2) the amount an organization expended on section 527 exempt activities in part determines exempt function taxes the organization must pay;⁵⁶ and (3) accurate public disclosure

⁵⁰ See Hit and Run: How One Supposed Non-Profit Spent Millions on Campaigns, Broken the Law, the Disappeared, CREW (“Hit and Run Report”), available at <http://www.citizensforethics.org/pages/chgo-hit-and-run-commission-hope-growth-opportunity>; Stuart McPhail, Newly Disclosed Internal Documents Reveal Group’s Lies to IRS, FEC, CREW, Apr. 20, 2016, available at <http://www.citizensforethics.org/blog/entry/newly-disclosed-internal-documents-reveal-groups-lies-to-irs-fec>.

⁵¹ Hit and Run Report.

⁵² Federal Election Commission, MURs 6391 and 6471, Factual and Legal Analysis, Sept. 30, 2014, available at <http://eqs.fec.gov/eqsdocsMUR/15044380341.pdf>.

⁵³ Adam Rappaport, FEC Fails To Do Its Job, CREW, Nov. 10, 2015, available at <http://www.citizensforethics.org/blog/entry/fec-fails-to-do-its-job>. CHGO hurried to terminate to avoid the FEC investigation. *Id.*

⁵⁴ 26 U.S.C. §§ 6652(c)(1)(A)(ii), 6652(c)(4); see also 2014 Instructions for Form 990, at 6.

⁵⁵ 26 U.S.C. § 7206(1).

⁵⁶ 26 U.S.C. § 527(f)(1).

of the amount of political activity conducted by tax-exempt organizations is critical to the objective of transparency that underlies the reporting required on Form 990.⁵⁷

AFF's 2014 Form 990-EZ was signed by Mr. Canfield under a written declaration that it was made under penalty of perjury, and that Mr. Canfield had examined the return and it was true, correct, and complete to the best of his knowledge.⁵⁸ The tax return, however, appears to be false and incorrect as to the material matters of the fact that AFF engaged in political campaign activities in 2014 and the amount it spent on them.

AFF and Mr. Canfield's representations appear to be willful. Mr. Canfield is an election and political law attorney with extensive experience filing Form 990 tax returns. Moreover, his involvement with CHGO demonstrates Mr. Canfield was aware of his obligation to report political activity to the IRS and the standards for evaluating political campaign activity. As a result, the representation that AFF spent nothing at all on political activity appears to be willfully false.

18 U.S.C. § 1001

Federal law further prohibits anyone from "knowingly and willfully" making "any materially false, fictitious, or fraudulent statement or representation" in any matter within the jurisdiction of the executive, legislative, or judicial branch.⁵⁹ The prohibition also includes anyone who "falsifies, conceals, or covers up by any trick, scheme, or device a material fact."⁶⁰ Violations are punishable by up to five years in prison.⁶¹ By falsely stating that AFF did not engage in any political campaign activity on the 2014 Form 990, Mr. Canfield and AFF appear to have violated 18 U.S.C. § 1001.

26 U.S.C. § 501(c)(4)

Even under the IRS's misinterpretation of section 501(c)(4), and certainly under the plain language of the statute, AFF's political activity in the 2014 election cycle exceeded the amount permitted, violating the organization's tax-exempt status. AFF admitted it spent \$315,575 on independent expenditures during its entire existence, which constituted 66.5% of its total spending in 2014.⁶²

⁵⁷ IRS, Background Paper, Summary of Form 990 Redesign Process, August 19, 2008, at 1.

⁵⁸ Arizona Future Fund 2014 Form 990-EZ, at 4.

⁵⁹ 18 U.S.C. § 1001(a)(2).

⁶⁰ 18 U.S.C. § 1001(a)(1).

⁶¹ *Id.*

⁶² AFF reported spending \$432,500 on broadcast advertising, but it is unclear if it ran any ads other than the Smith advertisements. If AFF actually spent that amount on political activities, that would constitute 91.1% of its total spending in 2014.

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Conclusion

AFF and Mr. Canfield appear to have falsely represented that AFF did not engage in any political activity in 2014 and omitted hundreds of thousands of dollars in spending on political activity from AFF's 2014 tax return. The IRS should investigate AFF and Mr. Canfield and, should it find they made false or incomplete statements on AFF's tax return, take appropriate action. AFF's activities also may not comport with its claimed status as a section 501(c)(4) tax-exempt organization. Therefore, the IRS should investigate AFF and, should it find that AFF has violated its tax-exempt status, take appropriate action, which may include revoking its section 501(c)(4) status, imposing any applicable excise taxes under section 4958 for excess benefit transactions, and treating AFF as a taxable corporation or a section 527 political organization.

Thank you for your prompt attention to this matter.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

Encls.

cc: IRS-EO Classification

EXHIBIT A

ORIGINAL

Form **990-EZ**

Short Form

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

OMB No. 1545-1150

2014**Open to Public Inspection**Department of the Treasury
Internal Revenue Service

▶ Do not enter social security numbers on this form as it may be made public.

▶ Information about Form 990-EZ and its instructions is at www.irs.gov/form990.

A For the 2014 calendar year, or tax year beginning January 1, 2014, and ending December 31, 2014

B Check if applicable:
☐ Address change
☐ Name change
☐ Initial return
☒ Final return/terminated
☐ Amended return
☐ Application pending

C Name of organization
Arizona Future Fund
 Number and street (or P O box, if mail is not delivered to street address) Room/suite
1900 M Street, NW **600**
 City or town, state or province, country, and ZIP or foreign postal code
Washington, D.C. 20036

D Employer identification number
46-4739838

E Telephone number
202-530-3332

F Group Exemption Number ▶ **N/A**

G Accounting Method: ☒ Cash ☐ Accrual Other (specify) ▶ _____

H Check ☐ if the organization is not required to attach Schedule B (Form 990, 990-EZ, or 990-PF).

I Website: ▶ **N/A**

J Tax-exempt status (check only one) — ☐ 501(c)(3) ☒ 501(c)(4) (insert no.) ☐ 4947(a)(1) or ☐ 527

K Form of organization: ☐ Corporation ☐ Trust ☐ Association ☒ Other **Unincorporated association of individuals.**

L Add lines 5b, 6c, and 7b to line 9 to determine gross receipts. If gross receipts are \$200,000 or more, or if total assets (Part II, column (B) below) are \$500,000 or more, file Form 990 instead of Form 990-EZ. ▶ \$

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances (see the instructions for Part I)Check if the organization used Schedule O to respond to any question in this Part I ☐

Revenue		Expenses		Net Assets	
1	Contributions, gifts, grants, and similar amounts received	1	474600.00	10	Grants and similar amounts paid (list in Schedule O)
2	Program service revenue including government fees and contracts	2	0.00	11	Benefits paid to or for members
3	Membership dues and assessments	3	0.00	12	Salaries, other compensation, and employee benefits
4	Investment income	4	0.00	13	Professional fees and other payments to independent contractors
5a	Gross amount from sale of assets other than inventory	5a	0.00	14	Occupancy, rent, utilities, and maintenance
b	Less: cost or other basis and sales expenses	5b	0.00	15	Printing, publications, postage, and shipping
c	Gain or (loss) from sale of assets other than inventory (Subtract line 5b from line 5a)	5c	0.00	16	Other expenses (describe in Schedule O)
6	Gaming and fundraising events			17	Total expenses. Add lines 10 through 16
a	Gross income from gaming (attach Schedule G if greater than \$15,000)	6a	0.00		
b	Gross income from fundraising events (not including \$ of contributions from fundraising events reported on line 1) (attach Schedule G if the sum of such gross income and contributions exceeds \$15,000)	6b	0.00	18	Excess or (deficit) for the year (Subtract line 17 from line 9)
c	Less: direct expenses from gaming and fundraising events	6c	0.00	19	Net assets or fund balances at beginning of year (from line 27, column (A)) (must agree with end-of-year figure reported on prior year's return)
d	Net income or (loss) from gaming and fundraising events (add lines 6a and 6b and subtract line 6c)	6d	0.00	20	Other changes in net assets or fund balances (explain in Schedule O)
7a	Gross sales of inventory, less returns and allowances	7a	0.00	21	Net assets or fund balances at end of year. Combine lines 18 through 20
b	Less: cost of goods sold	7b	0.00		
c	Gross profit or (loss) from sales of inventory (Subtract line 7b from line 7a)	7c	0.00		
8	Other revenue (describe in Schedule O)	8	0.00		
9	Total revenue. Add lines 1, 2, 3, 4, 5c, 6d, 7c, and 8	9	474,600.00		
10	Grants and similar amounts paid (list in Schedule O)	10	0.00		
11	Benefits paid to or for members	11	0.00		
12	Salaries, other compensation, and employee benefits	12	0.00		
13	Professional fees and other payments to independent contractors	13	463,227.47		
14	Occupancy, rent, utilities, and maintenance	14	11,372.53		
15	Printing, publications, postage, and shipping	15	0.00		
16	Other expenses (describe in Schedule O)	16	0.00		
17	Total expenses. Add lines 10 through 16	17	474,600.00		
18	Excess or (deficit) for the year (Subtract line 17 from line 9)	18	0.00		
19	Net assets or fund balances at beginning of year (from line 27, column (A)) (must agree with end-of-year figure reported on prior year's return)	19	0.00		
20	Other changes in net assets or fund balances (explain in Schedule O)	20	0.00		
21	Net assets or fund balances at end of year. Combine lines 18 through 20	21	0.00		

For Paperwork Reduction Act Notice, see the separate instructions.

Cat No 106421

Form **990-EZ** (2014)

55 12

Part V Other Information (Note the Schedule A and personal benefit contract statement requirements in the instructions for Part V) Check if the organization used Schedule O to respond to any question in this Part V ☐

	Yes	No
33 Did the organization engage in any significant activity not previously reported to the IRS? If "Yes," provide a detailed description of each activity in Schedule O	33	✓
34 Were any significant changes made to the organizing or governing documents? If "Yes," attach a conformed copy of the amended documents if they reflect a change to the organization's name. Otherwise, explain the change on Schedule O (see instructions)	34	✓
35a Did the organization have unrelated business gross income of \$1,000 or more during the year from business activities (such as those reported on lines 2, 6a, and 7a, among others)?	35a	✓
b If "Yes," to line 35a, has the organization filed a Form 990-T for the year? If "No," provide an explanation in Schedule O	35b	
c Was the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization subject to section 6033(e) notice, reporting, and proxy tax requirements during the year? If "Yes," complete Schedule C, Part III	35c	✓
36 Did the organization undergo a liquidation, dissolution, termination, or significant disposition of net assets during the year? If "Yes," complete applicable parts of Schedule N	36	✓
37a Enter amount of political expenditures, direct or indirect, as described in the instructions ▶ 37a 0.00		
b Did the organization file Form 1120-POL for this year?	37b	✓
38a Did the organization borrow from, or make any loans to, any officer, director, trustee, or key employee or were any such loans made in a prior year and still outstanding at the end of the tax year covered by this return?	38a	✓
b If "Yes," complete Schedule L, Part II and enter the total amount involved	38b	
39 Section 501(c)(7) organizations. Enter:		
a Initiation fees and capital contributions included on line 9	39a	
b Gross receipts, included on line 9, for public use of club facilities	39b	
40a Section 501(c)(3) organizations. Enter amount of tax imposed on the organization during the year under: section 4911 ▶ ; section 4912 ▶ ; section 4955 ▶		
b Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. Did the organization engage in any section 4958 excess benefit transaction during the year, or did it engage in an excess benefit transaction in a prior year that has not been reported on any of its prior Forms 990 or 990-EZ? If "Yes," complete Schedule L, Part I	40b	✓
c Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. Enter amount of tax imposed on organization managers or disqualified persons during the year under sections 4912, 4955, and 4958 ▶ 0.00		
d Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. Enter amount of tax on line 40c reimbursed by the organization ▶ 0.00		
e All organizations. At any time during the tax year, was the organization a party to a prohibited tax shelter transaction? If "Yes," complete Form 8886-T	40e	✓
41 List the states with which a copy of this return is filed ▶ District of Columbia		
42a The organization's books are in care of ▶ W.B Canfield Telephone no. ▶ 202-530-3332 Located at ▶ 1900 M Street, N.W., Washington, D.C. ZIP + 4 ▶ 20036		
b At any time during the calendar year, did the organization have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? If "Yes," enter the name of the foreign country: ▶ See the instructions for exceptions and filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).	42b	✓
c At any time during the calendar year, did the organization maintain an office outside the U.S.? If "Yes," enter the name of the foreign country: ▶	42c	✓
43 Section 4947(a)(1) nonexempt charitable trusts filing Form 990-EZ in lieu of Form 1041 —Check here ▶ <input type="checkbox"/> and enter the amount of tax-exempt interest received or accrued during the tax year ▶ 43		
44a Did the organization maintain any donor advised funds during the year? If "Yes," Form 990 must be completed instead of Form 990-EZ	44a	✓
b Did the organization operate one or more hospital facilities during the year? If "Yes," Form 990 must be completed instead of Form 990-EZ	44b	✓
c Did the organization receive any payments for indoor tanning services during the year?	44c	✓
d If "Yes" to line 44c, has the organization filed a Form 720 to report these payments? If "No," provide an explanation in Schedule O	44d	
45a Did the organization have a controlled entity within the meaning of section 512(b)(13)?	45a	✓
b Did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? If "Yes," Form 990 and Schedule R may need to be completed instead of Form 990-EZ (see instructions)	45b	✓

46 Did the organization engage, directly or indirectly, in political campaign activities on behalf of or in opposition to candidates for public office? If "Yes," complete Schedule C, Part I

	Yes	No
46		<input checked="" type="checkbox"/>

Part VI Section 501(c)(3) organizations only

All section 501(c)(3) organizations must answer questions 47-49b and 52, and complete the tables for lines 50 and 51.

Check if the organization used Schedule O to respond to any question in this Part VI ☐

47 Did the organization engage in lobbying activities or have a section 501(h) election in effect during the tax year? If "Yes," complete Schedule C, Part II

	Yes	No
47		

48 Is the organization a school as described in section 170(b)(1)(A)(ii)? If "Yes," complete Schedule E

48		
----	--	--

49a Did the organization make any transfers to an exempt non-charitable related organization?

49a		
-----	--	--

b If "Yes," was the related organization a section 527 organization?

49b		
-----	--	--

50 Complete this table for the organization's five highest compensated employees (other than officers, directors, trustees and key employees) who each received more than \$100,000 of compensation from the organization. If there is none, enter "None."

(a) Name and title of each employee	(b) Average hours per week devoted to position	(c) Reportable compensation (Forms W-2/1099-MISC)	(d) Health benefits, contributions to employee benefit plans, and deferred compensation	(e) Estimated amount of other compensation

f Total number of other employees paid over \$100,000 ▶

51 Complete this table for the organization's five highest compensated independent contractors who each received more than \$100,000 of compensation from the organization. If there is none, enter "None."

(a) Name and business address of each independent contractor	(b) Type of service	(c) Compensation

d Total number of other independent contractors each receiving over \$100,000 ▶

52 Did the organization complete Schedule A? **Note.** All section 501(c)(3) organizations must attach a completed Schedule A

☐ Yes ☐ No

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here Signature of officer William B. Canfield Date 2/12/14
 William B. Canfield - General Counsel
 Type or print name and title

Paid Preparer Use Only Preparer's name William B. Canfield Preparer's signature William B. Canfield Date 2/12/14 Check ☐ if self-employed PTIN
 Firm's name ▶ Firm's EIN ▶
 Firm's address ▶ Phone no

May the IRS discuss this return with the preparer shown above? See instructions

☐ Yes ☐ No

Liquidation, Termination, Dissolution, or Significant Disposition of Assets

▶ Complete if the organization answered "Yes" to Form 990, Part IV, lines 31 or 32; or Form 990-EZ, line 36.

► Attach certified copies of any articles of dissolution, resolutions, or plans.

- ▶ **Attach to Form 990 or 990-EZ.**
- ▶ **Information about Schedule N (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.**

Employer identification number

46-4739838

Liquidation, Termination, or Dissolution. Complete this part if the organization answered "Yes" to Form 990, Part IV, line 31, or Form 990-EZ, line 36.

1	(a) Description of asset(s) distributed or transaction expenses paid	(b) Date of distribution	(c) Fair market value of asset(s) distributed or amount of transaction expenses	(d) Method of determining FMV for asset(s) distributed or transaction expenses	(e) EIN of recipient	(f) Name and address of recipient	(g) IRC section of recipient(s) (if tax-exempt) or type of entity
	Administrative Services Fee	12/17/14	5,000.00	Invoice	267796957	Cowan Consulting LLC 14 Rock Falls Ct. Rockville MD 20854	N/A
	Broadcast Issue Ad Disclosure Filing Fee	12/17/14	10,000.00	Written Agreement	N/A	State of Arizona (CCEC) Suite 110 1616 W Adams, Phoenix AZ 85007	N/A
	Legal Services Fee	12/17/14	4977.47	Invoice	47-3009530	Canfield Law Office Suite 600, 1900 M Street NW, Washington, DC 20036	N/A

2 Did or will any officer, director, trustee, or key employee of the organization:

- a Become a director or trustee of a successor or transferee organization?
- b Become an employee of, or independent contractor for, a successor or transferee organization?
- c Become a direct or indirect owner of a successor or transferee organization?
- d Receive, or become entitled to, compensation or other similar payments as a result of the organization's sale?
- e If the organization answered "Yes" to any of the questions on lines 2a through 2d, provide the name of the organization to which the payments were made:

e If the organization answered "Yes" to any of the questions on lines 2a through 2d, provide the name of the person involved and explain in Part III.

or Paperwork Reduction Act Notice, see the Instructions for Form 990 or Form 990-EZ.

Cat. No 50087Z

Schedule N (Form 990 or 990-EZ) (2014)

५. परिचय

[illegible]

- | | | |
|----|---|---|
| 3 | ✓ | |
| 4a | | ✓ |
| 4b | | ✓ |
| 5 | | ✓ |
| 6a | | ✓ |
| 6b | | ✓ |

Sale, Exchange, Disposition, or Other Transfer of More Than 25% of the Organization's Assets. Complete this part if the organization answered "Yes" to Form 990, Part IV, line 32, or Form 990-EZ, line 36. Part II can be duplicated if additional space is needed.

[illegible]

- SECRET

- | | | |
|----|--|---|
| 2a | | ✓ |
| 2b | | ✓ |
| 2c | | ✓ |
| 2d | | ✓ |

Part III **Supplemental Information.** Provide the information required by Part I, lines 2e and 6c, and Part II, line 2e.
Also complete this part to provide any additional information.

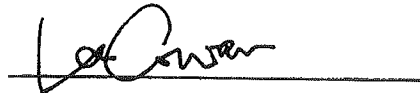
The purposes of the social welfare organization having been accomplished and all outstanding invoices duly paid, the Board of the
Arizona Future Fund, by resolution dated december 30, 2014, terminated its activities and closed its books preparatory to notifying the
Internal Revenue Service of such termination through the filing of a terminating Form 990 EZ. A copy of the Resolution of the Board as
adopted on Dcember 30, 2014 is attached hereto.

Arizona Future Fund
A Tax-Exempt Social Welfare Organization
EIN: 46-4739838

Resolution of the Board

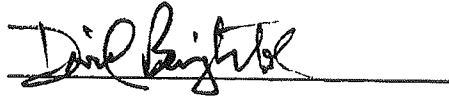
The Board of the Arizona Future Fund, an unincorporated association of individuals, with its place of business in Washington, D.C. , having determined that the social welfare purpose for which the association was created having been achieved within calendar year 2014 and that no additional purpose exists as to which the association might become engaged, has this 30TH day of December, 2014 agreed, by unanimous consent, to a Resolution to **terminate** immediately the activities of the Arizona Future Fund and to notify the Internal Revenue Service of said decision by the filing of a termination Form 990-EZ before the close of the entity's tax year on December 31, 2014.

AGREED TO:



Lee Cowen

Executive Director/Treasurer



David Beightol

Vice President/Secretary

ATTEST:



William B. Canfield – General Counsel

EXHIBIT B

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION
MUR 14-014

Arizona Future Fund
STATEMENT OF REASONS OF THE EXECUTIVE DIRECTOR

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

I. Procedural Background

On August 13 and August 20, 2014, Michael Liburdi (“Complainant”) filed complaints (collectively the “Complaint”) with the Commission and with the Arizona Secretary of State’s Office against an entity known as the Arizona Future Fund (“AFF” or “Respondent”) alleging that Respondent had violated Arizona’s campaign finance laws, including the Citizens Clean Elections Act. Exhibits 1, 2. Respondent filed two timely responses at the request of Commission staff, on August 28 and November 18, 2014. Exhibits 3, 4 The Arizona Secretary of State referred the matter to the Maricopa County Recorder’s Office, who, in turn, referred the matter to an outside attorney. Exhibit 5. That attorney concluded that there was reasonable cause to believe a violation of Article 1 of Chapter 6, Title 16. *Id.* Based on that conclusion, the Secretary of State’s office issued a reasonable cause determination on September 10, 2014 stating “the [Respondent] has violated provisions of Title 16, Chapter 6, Article 1 of the Arizona Revised

Statutes, specifically A.R.S. § 16-914.02(A)(1), 16-914.02(F) and 16-914.02(K), and other applicable statutes related to the failure to perform a duty as required by law.” *Id.*

II. Legal Analysis

This complaint involves a television advertisement and a newspaper advertisement involving Mayor Scott Smith, then a candidate for the Republican Nomination for Governor.

The script of the television advertisement is as follows:

[Voice Over]: Tired of Empty Promises and All the He Said She Said

[VO] There’s a better choice.

[VO] As Mayor of Mesa Scott Smith cut taxes, created jobs, and reduced crime.

[VO] The result has been called the Mesa Miracle

[VO] Now Scott’s ready to put the same proven government and entrepreneurial experience to work for all of Arizona.

[VO] He knows the best solutions for problems on our border come from here, not Washington.

[VO] Republicans and independents agree, Scott Smith sounds just right.

Screen shots are attached as Exhibit 6. These show two of Smith’s opponents for the Republican nomination, then pictures of Smith with text underscoring the advertisement’s script, stating “There’s a better choice for governor” and concluding with the words “Scott Smith.” *Id.* The value of the television advertisement was \$74,247. Exhibit 1.

The print advertisement, which ran in the Prescott Daily Courier, is reproduced in Exhibit 2. It includes a campaign photograph of Smith and

advertises Governor Jan Brewer’s endorsement of Smith and stated that Smith “[b]rought better jobs, schools and roads as Mayor—Just what we need in a Governor.”

Finally, internet advertising was purchased urging viewers to “take action” by “support[ing] Scott Smith’s real leadership.” This advertisement is reproduced in Exhibit 2.

These advertisements unequivocally constitute express advocacy under Arizona law and are independent expenditures on behalf of Scott Smith that were required to be reported under the Clean Elections Act. A.R.S. §§ 16-901(14); -901.01; -941(D); -942(B); -958. Arizona law defines “expressly advocates” as:

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

[2.] referring to one or more clearly identified candidates and

[3.] targeted to the electorate of that candidate(s)

[4.] that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement or timing of the communication or the inclusion of statements of the candidate(s) or opponents.

A.R.S. § 16-901.01(A)(2).

The pro-Smith advertisements easily satisfy all of the requirements. The advertisements appeared in broadcast, print media and on the Internet and referred clearly to Smith, a candidate for governor. *See* A.R.S. § 16-901(4) (defining

clearly identified candidate as the appearance of “the name, a photograph or a drawing of the candidate.”). The targets included areas that reached the Republican gubernatorial electorate. Finally, in context, the communications cannot be viewed as urging anything other than a vote for Scott Smith: The advertisements stated:

Television: there was a “better choice” for governor and that Republicans and independents supported Smith;

Print: Smith and his mayoral record are what is “needed in a Governor”;

Internet: viewers should “take action” by supporting Smith.

These advertisements ran in the weeks leading up to the 2014 primary election. Based on a review of the text, video, voice-over, and timing of the advertisements in relation to Smith’s candidacy for governor, the advertisements had no reasonable meaning other than to advocate for the election of Smith for governor. *See Comm. for Justice & Fairness v. Arizona Sec’y of State’s Office*, 235 Ariz. 347 ¶ 26, 332 P.3d 94, 101 (App. 2014) (holding that plaintiff’s advertisement constituted express advocacy under the Arizona statute).

In its responses AFF argues that the definition of express advocacy in Arizona should be limited to so-called magic words and that the term “purpose of influencing the results of an election” as used in A.R.S. § 16-901(8) defining expenditures must be limited in order to be constitutional. Exhibits 3, 4 (citing *Buckley v. Valeo*, 424 U.S. 1 (1976)). This argument is foreclosed by the text of the Clean Elections Act, including A.R.S. § 16-901.01, and is inconsistent with the

Court of Appeals' decision in *Comm. for Justice & Fairness*, which recognizes that Arizona is not limited to so-called magic words in providing for disclosure of election spending.

The entity AFF is not a corporation and does not appear to dispute the value of the expenditures involved.

III. Recommendation

Because AFF made express advocacy communications and filed no reports, it is subject to enforcement under the Citizens Clean Elections Act and Rules for violating A.R.S. §§ 16-941(D) and -958(A) and (B). If the Commission determines by an affirmative vote of at least three (3) of its members that it has reason to believe AFF has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify AFF of the Commission's finding setting forth: (i) the sections of the statute or rule alleged to have been violated; (ii) the alleged factual basis supporting the finding; and (iii) an order requiring compliance within fourteen (14) days. During that period, the Respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission. A.R.S. § 16-957(A) & Ariz. Admin. Code R2-20-208(A).

If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, the Commission shall conduct an investigation. Ariz. Admin. Code R2-20-209(A). The Commission

may authorize the Executive Director to subpoena all of the Respondent's records documenting disbursements, debts, or obligations to the present, and may authorize an audit.

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

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

Dated this 9th day of December, 2014.

By: s/Thomas M. Collins
Thomas M. Collins, Executive Director

EXHIBIT C

[Forgot account?](#)[Log Out](#)[Timeline](#)[About](#)[Photos](#)[Likes](#)[Videos](#)

Organization

Search for posts on this Page

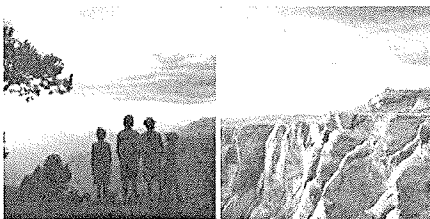
PEOPLE

241 likes

ABOUT

<http://arizonafuturefund.org/>

PHOTOS



VIDEOS

VISITOR POSTS

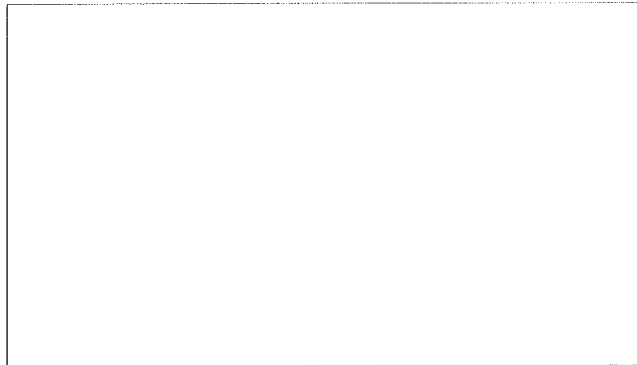


Arizona Future Fund

August 11, 2014 ·

On August 26, Arizona voters will go to the polls to elect the next Republican nominee for Governor - and the stakes couldn't be any higher.

That's why Republicans and Independents agree: Arizona needs Scott Smith. As Mayor, Scott Smith has balanced budgets, cut taxes and created jobs. Imagine what he can do for Arizona.

[Like](#) [Comment](#) [Share](#)

Margo Fishel, Eric L. McDonald, Colleen Mealey and 48 others like this. [Top Comments](#)

5 shares



Jeffrey Hamilton Scott Smith is a liar, he doubled his pay as mayor. Did nothing about illegals. Not for gov.

1 · August 19, 2014 at 12:18pm

[1 Reply](#)

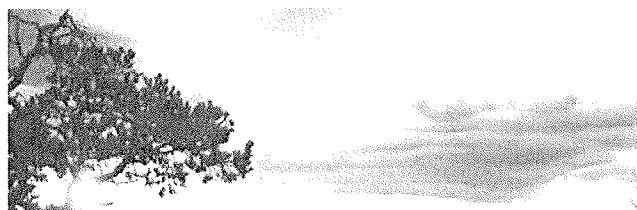
Johanne Kelly It doesn't matter how you vote ... The government always gets in!... [See More](#)

1 · August 16, 2014 at 9:17pm

[View 24 more comments](#)

Arizona Future Fund updated their cover photo.

August 6, 2014 ·





Elsa Awale
October 6, 2014 at 9:59am

[Greece Aims to Cut Taxes and Ease Austerity](#)



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Harris, Powers & Cunningham, PLLC
Law Practice



Metro Hearing
Audiologist



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EXHIBIT D

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

Michael T. Liburdi
602.382-6170
mlliburdi@swlaw.com

ARIZONA FUTURE FUND

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

August 20, 2014

VIA EMAIL AND U.S. MAIL

Christina Estes-Werther
Election Director
Secretary of State's Office
1700 West Washington, 7th Floor
Phoenix, AZ 85007
cwerther@azsos.gov

Thomas M. Collins
Executive Director
Citizens Clean Elections Commission
1616 West Adams, Suite 110
Phoenix, AZ 85007
Thomas.Collins@azcleanelections.gov

Re: Arizona Future Fund

Dear Ms. Estes-Werther and Mr. Collins:

This is a campaign finance complaint against Arizona Future Fund ("AFF"), which purports to be an entity recognized by the IRS as having 501(c)(4) status. See www.arizonafuturefund.com. As we mentioned in our August 13, 2014 complaint letter, we believe that AFF is an association that obtained 501(c)(4) status from the IRS in June 2014. The contact person is William B. Canfield III, and its address is 1900 M. Street NW, Washington, DC 20036.

Today, August 20, 2014, AFF ran an advertisement in the *Prescott Daily Courier* advocating the election of Scott Smith. Attached hereto are three photographs of the advertisement.

AFF has also paid for advertisements on the internet advocating the election of Mr. Smith. Attached hereto is a screenshot of one of the advertisements.

Legal Violation: Failure to Register as a Political Committee and Disclose (A.R.S. §§ 16-902, 16-902.01, 16-914.02(A)(1), (F) & (K), 16-941(D) and 16-958)

For an independent expenditure made in a statewide race, A.R.S. § 16-914.02(A) mandates that a corporation, limited liability company, or labor organization file a registration to the Secretary of State "not later than one day after making the expenditure, excluding Saturdays,

Christina Estes-Werther
Thomas M. Collins
August 20, 2014
Page 2

Sundays and other legal holidays.” The expenditure threshold is any single expenditure or aggregate expenditures of \$5,000 or more. A.R.S. § 16-914.02(A)(1). As we mentioned in our August 13, 2014 letter, AFF’s broadcast advertisement expenditures (\$74,247) exceeded the \$5,000 mark on or about August 8, 2014. To this day, AFF has not registered with the Secretary of State’s office and provided reports as required by the Arizona Citizens Clean Elections Act.

AFF has now made another electioneering expenditure with the *Prescott Daily Courier*, and yet another expenditure on internet advertising, but is still has not registered with the Secretary of State nor has it submitted the required reports.

As you know, A.R.S. § 16-914.02(K) states that an entity “that is organized primarily for the purpose of influencing an election” must register and report with the Secretary of State as a political committee. In a matter of weeks, AFF has spent tens of thousands of dollars – perhaps over \$100,000 – advocating for the election of their favored candidate and, despite media coverage and our August 13, 2014 complaint, has failed to register the organization and report their spending. As far as we can tell, AFF has no activity other than to advocate the election of their favored Arizona candidate and it appears to us that it is not eligible for the registration and reporting procedures under A.R.S. § 16-914.02 but, instead, must register as a political committee.

Moreover, at this point in the cycle, their failure to follow the law and heed the public call to do so suggests that they have no intention of registering and reporting and perhaps have made the calculated decision to either (i) evade responsibility for their actions or (ii) pay any fines after the election simply as a cost of doing business. This, if true, is absolutely unacceptable.

Finally, AFF’s disclaimers fail to include the required statement “not authorized by any candidate or candidate’s committee.” A.R.S. § 16-914.02(F).

For these reasons, there is reason to believe that AFF has violated A.R.S. §§ 16-902, 16-902.01, 16-914.02(A)(1), (F) & (K), 16-941(D) and 16-958, among other laws. We respectfully ask for the following relief:

1. That the Secretary of State refer this matter to the Attorney General under A.R.S. § 16-924 without delay for the reasons stated herein; and
2. That the Citizens Clean Elections Commission find reasonable cause that a campaign finance violation of the Citizens Clean Elections Act’s reporting requirements has occurred under A.R.S. §§ 16-941(D) and 16-958.

Christina Estes-Werther
Thomas M. Collins
August 20, 2014
Page 3

I declare under penalty of perjury that the foregoing is true and correct.

Michael T. Liburdi

Michael T. Liburdi

State of Arizona)
)
County of Maricopa)

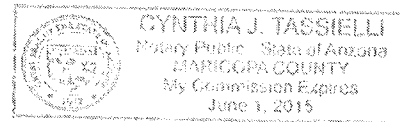
Subscribed and sworn (or affirmed) before me this 20th day of August, 2014, by
Michael T. Liburdi.

Cynthia J. Tasselli
Notary Public

Enclosures:

1. Prescott Daily Courier (Aug 20, 2014) photographs
2. Screenshot of AFF internet advertisement

ML/ct
19938797 1



19 AUG 21 PM 11:44 CCEC

BADGERS

From page 1B

It was a tough, hard-fought game, but the Badgers were able to pull out a win in the end. The game was a testament to the team's resilience and determination. The coach was proud of the players' effort and the way they handled the pressure of the game.

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BEARS

From page 1B

The Bears were looking to make a statement in their home game. The coach was confident in the team's ability to win, but he knew it would be a tough challenge. The game was a testament to the team's resilience and determination.

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D-BACKS

From page 1B

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WOMEN

From page 1B

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Recent game results

Date	Opponent	Score
Sept. 10	at Phoenix Coyotes	4-3
Sept. 11	at Phoenix Coyotes	4-3
Sept. 12	at Phoenix Coyotes	4-3
Sept. 13	at Phoenix Coyotes	4-3
Sept. 14	at Phoenix Coyotes	4-3
Sept. 15	at Phoenix Coyotes	4-3
Sept. 16	at Phoenix Coyotes	4-3
Sept. 17	at Phoenix Coyotes	4-3
Sept. 18	at Phoenix Coyotes	4-3
Sept. 19	at Phoenix Coyotes	4-3
Sept. 20	at Phoenix Coyotes	4-3
Sept. 21	at Phoenix Coyotes	4-3
Sept. 22	at Phoenix Coyotes	4-3
Sept. 23	at Phoenix Coyotes	4-3
Sept. 24	at Phoenix Coyotes	4-3
Sept. 25	at Phoenix Coyotes	4-3
Sept. 26	at Phoenix Coyotes	4-3
Sept. 27	at Phoenix Coyotes	4-3
Sept. 28	at Phoenix Coyotes	4-3
Sept. 29	at Phoenix Coyotes	4-3
Sept. 30	at Phoenix Coyotes	4-3

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Date	Opponent	Score
Sept. 10	at Phoenix Coyotes	4-3
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Sept. 15	at Phoenix Coyotes	4-3
Sept. 16	at Phoenix Coyotes	4-3
Sept. 17	at Phoenix Coyotes	4-3
Sept. 18	at Phoenix Coyotes	4-3
Sept. 19	at Phoenix Coyotes	4-3
Sept. 20	at Phoenix Coyotes	4-3
Sept. 21	at Phoenix Coyotes	4-3
Sept. 22	at Phoenix Coyotes	4-3
Sept. 23	at Phoenix Coyotes	4-3
Sept. 24	at Phoenix Coyotes	4-3
Sept. 25	at Phoenix Coyotes	4-3
Sept. 26	at Phoenix Coyotes	4-3
Sept. 27	at Phoenix Coyotes	4-3
Sept. 28	at Phoenix Coyotes	4-3
Sept. 29	at Phoenix Coyotes	4-3
Sept. 30	at Phoenix Coyotes	4-3

Scott Smith

Brought better jobs, schools and roads as Mayor.

Just what we need in a Governor.

When Arizonans choose a new governor, what's more important?

What former governors of other states think?

Or what your own governor thinks?

"It is of the utmost importance that our next governor tells us the truth about where we stand, not feel-good sound bites that litter modern-day politics."

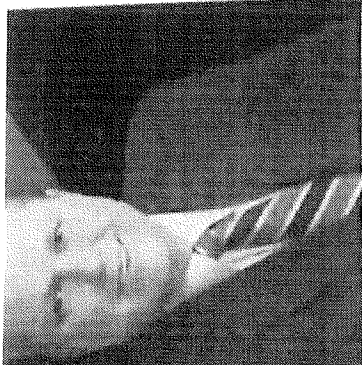
— Governor Janet Brewer

Paid For By Arizona Future Fund, A Tax Exempt 501(c4) Organization. Donations Are Not Deductible for Federal Income Tax Purposes

Scott★Smith

Brought better jobs, schools and roads as Mayor.

- Just what we need in a Governor.



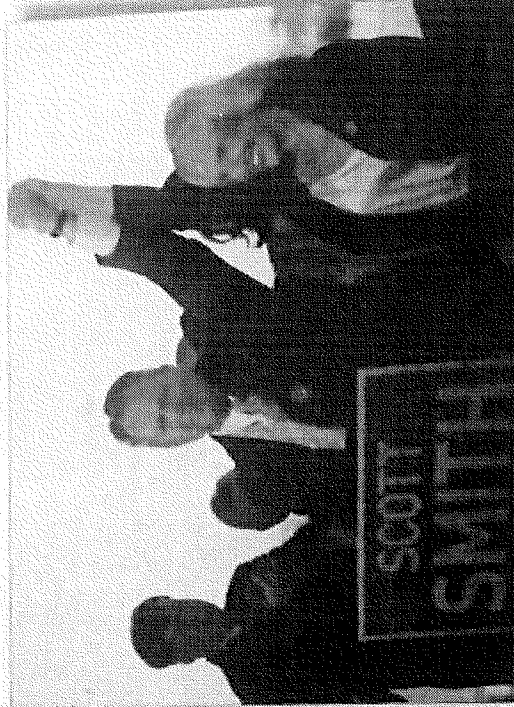
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— Governor Janet Brewer



***feel-good sound bites that litter
modern-day politics.”***

— Governor Janet Brewer

id For By Arizona Future Fund, A Tax Exempt 501c4 Organization. Donatio



The Beatles
Here Comes The Sun
Abbey Road



x

Please confirm your account information.



**TIRED OF PARTISAN
BICKERING?
SUPPORT SCOTT SMITH'S
REAL LEADERSHIP.**

TAKE ACTION

PAID FOR BY ARIZONA FUTURE FUND



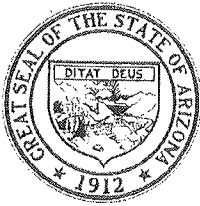
Information
Copyright © 2011
www.azfuturefund.org



0:01

-3:04

EXHIBIT E



KEN BENNETT
SECRETARY OF STATE
STATE OF ARIZONA



August 12, 2014

Karen Osborne, Director
Maricopa County Elections
111 South 3rd Avenue, #102
Phoenix, Arizona 85003

Dear Ms. Osborne:

Our office has received the enclosed email complaint alleging that Arizona Future Fund may have failed to comply with Arizona campaign finance requirements.

The Secretary of State's office is conflicted out of reviewing this complaint so we are referring this complaint to Maricopa County Elections for your reasonable cause review.

If you have any questions, please contact Nancy Read at (602) 364-1562 or by email at nread@azsos.gov.

Sincerely,

Christina Estes-Werther

Christina Estes-Werther
State Election Director

Enclosures

cc: Michael T. Liburdi

Estes-Werther, Christina

From: Liburdi, Mike <miburdi@swlaw.com>
Sent: Tuesday, August 12, 2014 5:16 PM
To: Estes-Werther, Christina
Subject: Campaign Finance Complaint -- Arizona Future Fund (ARS 16-914.02(A) & (F))
Attachments: Scott Smith_Just Right.mp4

Categories: Immediate

Dear Ms. Estes-Werther:

This is a campaign finance complaint against Arizona Future Fund ("AFF"), which purports to be an entity recognized by the IRS as having 501(c)(4) status. See www.arizonafuturefund.com. On Friday, August 8, the Ducey 2014 campaign was informed that AFF made a \$74,247 media buy for television advertisements in the Phoenix, Tucson, and Yuma cable markets. See Table 1, below. The start date of the advertisement is reported as of Saturday, August 9, 2014. The advertisement expressly advocates in favor of Scott Smith. AFF's advertisement is available on its website and we have attached a video file copy to this email.

Table 1: AFF Cable Buy

Phoenix	Cable ONE/Arizona Regional, AZ	
Phoenix	Cox Media/DirectTV- I+ Phoenix IC, AZ	
Phoenix	Cox Media/DISH- I+ Phoenix IC, AZ	
Phoenix	Cox Media/Phoenix Interconnect, AZ	\$ 61,188
Tucson/Nogales	Cox Media/Tucson DMA Interconnect, AZ	\$ 10,553
Yuma/El Centro	Time Warner/El Centro, CA	\$ 2,506
Total:		\$ 74,247

I. Failure to Register as an Independent Expenditure Organization (A.R.S. 16-914.02(A))

For an independent expenditure made in a statewide race, A.R.S. 16-914.02(A) mandates that a corporation, limited liability company, or labor organization file a registration to your office "not later than one day after making the expenditure, excluding Saturdays, Sundays and other legal holidays." The expenditure threshold is any single expenditure or aggregate expenditures of \$5,000 or more. A.R.S. 16-914.02(A)(1). Arizona law broadly defines "expenditure" to include events where money is exchanged and also those events in which a person makes a promise of future payment. A.R.S. 16-901(8) (defining "expenditure" to include any "purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by a person for the purpose of influencing an election in this state . . . and a contract, promise or agreement to make an expenditure resulting in an extension of credit . . ."). According to the law, AFF's expenditure was made, at the latest, on Friday, August 8, 2014 because AFF made a "purchase, payment, distribution, loan, advance, [or] deposit" or otherwise entered into a "contract, promise, or agreement" to purchase airtime on or before that date.

At \$74,247, AFF's media buy from last week well exceeds the \$5,000 registration threshold. Assuming that it made the expenditure on Friday, August 8, 2014, AFF was required to register with your office no later than Monday, August 11, 2014. Of course, AFF's expenditure could have been made earlier than August 8, 2014, and the requirement to register with your office would have been one day following the actual expenditure date.

For these reasons, there is reason to believe that AFF has violated A.R.S. 16-914.02(A)(1), and we ask that your office refer the matter to the Attorney General.

I. **Failure to Include Disclaimer (A.R.S. 16-914.02(F))**

A.R.S. 16-914.02(F) requires that any corporation, limited liability company, or labor organization making an independent expenditure include the words "paid for by," followed by its name, and also include the additional disclaimer "not authorized by any candidate or candidate's committee." Attached hereto is a video file of AFF's advertisement, captured on August 12, 2014. The video does not include the phrase "not authorized by any candidate or candidate's committee." The lack of this disclaimer violates A.R.S. 16-914.02(F), and we ask that your office refer the matter to the Attorney General.

Please let me know if I can provide you any further information.

Best regards,
Michael T. Liburdi

MICHAEL T. LIBURDI
Snell & Wilmer L.L.P.
One Arizona Center
400 East Van Buren Street, Suite 1900
Phoenix, Arizona 85004
mlliburdi@swlaw.com
(602) 382-6170 (direct)
(602) 369-6070 (cell)
(602) 382-6070 (fax)
Twitter: @mlliburdi

EXHIBIT F

Snell & Wilmer

L.L.P.
LAW OFFICES

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

Michael T. Liburdi
602.382-6170
mliburdi@swlaw.com

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

August 13, 2014

VIA EMAIL AND U.S. MAIL

Thomas.Collins@azcleanelections.gov
Thomas M. Collins
Executive Director
Citizens Clean Elections Commission
1616 West Adams, Suite 110
Phoenix, AZ 85007

Re: Arizona Future Fund

Dear Mr. Collins:

This is a campaign finance complaint against Arizona Future Fund ("AFF"), which purports to be an entity recognized by the IRS as having 501(c)(4) status. See www.arizonafuturefund.com. Our research indicates that AFF is an association that obtained 501(c)(4) status from the IRS in June 2014. The contact person is William B. Canfield III, and its address is 1900 M. Street NW, Washington, DC 20036.

On Friday, August 8, the Ducey 2014 campaign was informed that AFF made a \$74,247 media buy for television advertisements in the Phoenix, Tucson, and Yuma cable markets. See Table 1, below. The start date of the advertisement is reported as of Saturday, August 9, 2014. The advertisement expressly advocates in favor of Scott Smith. AFF's advertisement is available on its website.

Table 1: AFF Cable Buy

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	Total:	\$ 74,247

Thomas M. Collins
August 13, 2014
Page 2

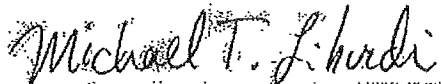
Legal Violation: Failure to Register as an Independent Expenditure Organization (A.R.S. §§ 16-914.02(A), 16-941(D) and 16-958)

For an independent expenditure made in a statewide race, A.R.S. § 16-914.02(A) mandates that a corporation, limited liability company, or labor organization file a registration to the Secretary of State "not later than one day after making the expenditure, excluding Saturdays, Sundays and other legal holidays." The expenditure threshold is any single expenditure or aggregate expenditures of \$5,000 or more. A.R.S. § 16-914.02(A)(1). Arizona law broadly defines "expenditure" to include events where money is exchanged and also those events in which a person makes a promise of future payment. A.R.S. § 16-901(8) (defining "expenditure" to include any "purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by a person for the purpose of influencing an election in this state . . . and a contract, promise or agreement to make an expenditure resulting in an extension of credit . . ."). According to the law, AFF's expenditure was made, at the latest, on Friday, August 8, 2014 because AFF made a "purchase, payment, distribution, loan, advance, [or] deposit" or otherwise entered into a "contract, promise, or agreement" to purchase airtime on or before that date.

At \$74,247, AFF's media buy from last week well exceeds the \$5,000 registration threshold. Assuming that it made the expenditure on Friday, August 8, 2014, AFF was required to register with the Secretary of State no later than Monday, August 11, 2014. Of course, AFF's expenditure could have been made earlier than August 8, 2014, and the requirement to register with the Secretary of State would have been one day following the actual expenditure date. Moreover, under the Clean Elections Act, A.R.S. §§ 16-941(D) and 16-958, AFF was required to submit expenditure reports with the Secretary of State, according to a specified schedule, which it has not done.

For these reasons, there is reason to believe that AFF has violated A.R.S. §§ 16-914.02(A)(1), 16-941(D) and 16-958, and we ask that you recommend that the Commission find reasonable cause that a campaign finance violation has occurred.

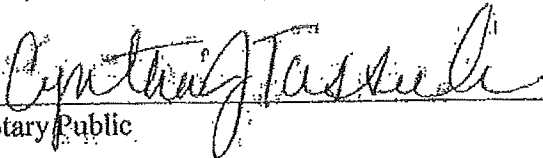
I declare under penalty of perjury that the foregoing is true and correct.


Michael T. Liburdi

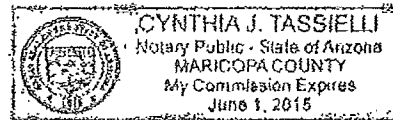
Thomas M. Collins
August 13, 2014
Page 3

State of Arizona)
)
County of Maricopa)

Subscribed and sworn (or affirmed) before me this 13th day of August, 2014, by
Michael T. Liburdi,


Notary Public

cc: Christina Estes-Werther
Karen Osborne



ML/ct
19904709.1

EXHIBIT G

All Transactions for Committee: 201600031 *

Transactions Between 7/28/2014 and 12/23/2014

Name:	Clear Channel Outdoor	Date	Amount
Address:	4686 E Van Buren St, Ste 200, Phoenix, AZ 85008	07/28/2014	\$40000.00
Category:	Communications - Advertising - <i>BILLBOARDS</i>		Cash*
Trans. Type:	Independent Expenditure - Pay Cash/Check		
Name:	Moret Associates		
Address:	1517 N Wilmot Rd, # 305, Tucson, AZ 85712	08/06/2014	\$32500.00
Category:	Communications - Newspapers		Cash*
Trans. Type:	Independent Expenditure - Pay Cash/Check		
Name:	Campaign Solutions		
Address:	117 N Saint Asaph St, Alexandria, VA 22314	08/10/2014	\$27500.00
Category:	Communications - Advertising - <i>WEBSITE AND SOCIAL MEDIA</i>		Cash*
Trans. Type:	Independent Expenditure - Pay Cash/Check		
Name:	Meridian Strategies		
Address:	1215 19th St NW, Fl 3, Washington, DC 20036	08/11/2014	\$215575.00
Category:	Communications - TV		Cash*
Trans. Type:	Independent Expenditure - Pay Cash/Check		

TOTAL \$315,575.00

* ARIZONA FUTURE FUND
INDEPENDENT EXPENDITURES
SMITH GOVERNOR 2014

EXHIBIT H

Sara Larsen

From: William Canfield <canfieldwilliam@gmail.com>
Sent: Tuesday, December 23, 2014 9:26 AM
To: Sara Larsen; Read, Nancy
Subject: Fwd: Scan from a Xerox WorkCentre
Attachments: DOC.PDF

Sara: I managed to make a copy of the IE expenditure report before I hit the submit button. Nancy Read suggested that I send the attached PDF of thate report to you and to her just as a back-up in case the report wasn't received via the Secretary of State's website. Thanks for all of your help. Bill Canfield.

-----Original Message-----

From: XR5790@smcalaw.com [mailto:XR5790@smcalaw.com]
Sent: Tuesday, December 23, 2014 11:08 AM
To: JPena
Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Attachment File Type: PDF

WorkCentre Location: machine location not set
Device Name: XR0000AADD0BA

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

--

William B. Canfield III
Attorney at Law
Suite 600
1900 M Street, N.W.
Washington, D.C. 20036
(202) 530-3332 - office
(202) 345-5547 - mobile
canfieldwilliam@gmail.com
iiicapitol@a.com

EXHIBIT I

William B. Canfield III
Attorney at Law
Suite 600
1900 M Street, North West
Washington, D.C. 20036
(202) 530-3332
canfieldwilliam@gmail.com

14 SEP 2 PM 1:47 CCEC

August 28, 2014

Ms. Sara A. Larsen
Campaign Finance Manager
Citizens Clean Elections Commission
1616 W. Adams
Suite 110
Phoenix, AZ 85007

Re: **CCEC MUR NO. 14-014**

Dear Ms. Larsen:

As you know, I represent the Arizona Future Fund (the "AFF"). The AFF is an unincorporated association of individuals formed pursuant to the statutes of the District of Columbia. The AFF was organized as such on February 6, 2014. The AFF is recognized by the Internal Revenue Service as a social welfare organization under paragraph 501c4 of the Internal Revenue Code of 1986, as amended. The Internal Revenue Service formally granted the AFF its status as a tax-exempt, social welfare organization on July 10, 2014.

This letter will serve as the response of the AFF to the unsubstantiated assertions made by Michael T. Liburdi in his letter to your office of August 20, 2014. I have carefully reviewed the assertions made in Mr. Liburdi's letter and respectfully suggest to you that these assertions are without any factual basis and more importantly, the assertions are not supported by any factual evidence. As a result, the assertions should be determined to be unsupported and thus dismissed. In addition, I note for the record that, upon information and belief, Mr. Liburdi does not come before the Citizens Clean Elections Commission with the requisite "clean hands" of a disinterested amicus curiae for the reason that Mr. Liburdi now represents Arizona Treasurer Doug Ducey, a public office holder currently seeking a higher office in the state. It is without argument that Mr. Liburdi's vested interest in seeing that Mr. Ducey will be elevated to higher office appears to be best served by limiting a robust public debate on the very policy issues embraced by the AFF.

The AFF was created for one purpose and one purpose only, to communicate with the public on a set of public policy issues facing the citizens of Arizona over the next decade. In developing the criteria by which AFF embraced certain public policy issues and not others, AFF initiated a comprehensive review of media commentary within the state on a broad range of public policy issues and AFF established a website that contains an on-line forum through which the citizens of Arizona can express their opinion as to the specific public policy issues of most concern to them. The results of that public policy polling are prominently displayed on the AFF website and were the factual basis upon which AFF selected the policy issues which it supports.

Having used the website opinion poll and media commentary to determine the policy issues to be embraced by AFF, the AFF thereafter reviewed the public policy positions and pronouncements of a large number of opinion leaders within Arizona. The policy pronouncements of opinion leaders reviewed by AFF included those made by newspaper editors, business executives, labor leaders and public office holders. In the considered judgment of AFF, one opinion leader, former mayor Scott Smith of Mesa had the public policy background and leadership skills that would be most likely to advance the policy initiatives of the AFF. For this reason, and this reason only, AFF initiated a public communications effort with the citizens of the state to explain the policy initiatives of AFF and to commended former mayor Smith for his leadership on those very same policy issues.

In communicating with the public on the policy issues embraced by AFF, which had been previously supported by Smith during his successful term as mayor of Mesa, the AFF did NOT seek to influence any election in Arizona. As a social welfare organization operating under paragraph 501c4 of the IRC of 1986, AFF was guided by experienced counsel and took considerable care to insure that no language or text employed in these public communications might constitute an endorsement of any candidate for public office. Similarly, AFF took great care to insure that no language or text employed in these public communications could be construed as advocating the election or defeat of an identified candidate for public office. As you know, the United States Supreme Court has provided definitive guidance on what can be deemed an "electioneering communication" and thus be the subject of a narrowly defined governmental regulation that remains consistent with the strict protections offered to free public speech under the First Amendment to the U. S. Constitution.

Mr. Liburdi appears to suggest that AFF should have chosen to conduct its communications efforts as an "independent expenditure" committee under ARS § 16-914.02A rather than as a social welfare organization under paragraph 501c4 of the IRC of 1986. I respectfully disagree with that premise. An "independent expenditure" committee is, under both federal and state law, a political committee whose principal purpose is to influence an election by making an "electioneering expenditure." As "evidence" to support his thesis, Mr. Liburdi simply asserts that an AFF communication in the Prescott (AZ) Daily Courier of August 20, 2014 and unspecified AFF internet communications constituted electioneering communications because they advocated "the election of Mr. Smith." Unfortunately, Mr. Liburdi fails to cite any specific language used by AFF in either of these two communications that he contends advocated the election of Mr. Smith. In these communications, AFF was careful to reference the public policy positions undertaken by Mr. Smith during his service as mayor of Mesa and simply asked the reader or viewer to judge for themselves whether former mayor Smith's policy initiatives were the kinds of public policies that should be adopted broadly within Arizona over the next decade.

Because the AFF is not a political committee and does not seek to advocate the election or defeat of any identified candidate, the AFF could not have carried out its social welfare and public

communications mission as an "independent expenditure" committee under Arizona law. However, under the regulations of the Internal Revenue Service, the AFF, as a tax-exempt 501c4 organization, is completely free to coordinate any or all of its efforts, including content, placement and forum, with any third party, to include former mayor Smith. However, the AFF chose not to coordinate any of its public communications efforts with any third party. The facts are that the AFF **did not** coordinate any of its activities with either Mr. Smith or any individuals consulting with Mr. Smith. Neither Mr. Smith nor any of his colleagues exercised any direction or control over the communications initiated by the AFF.

As a social welfare organization operating under paragraph 501c4 of the IRC of 1986, the AFF has an on-going obligation to the Internal Revenue Service to insure that its social welfare obligation is met and that its principal purpose remains the education of the public on substantive policy issues. As regulated by the Internal Revenue Service, the AFF files an annual informational tax return (IRS Form 990). On its Form 990 return, AFF discloses to the Internal Revenue Service all donations received and expenditures made in furtherance of its social welfare obligation. In addition, the Form 990 filed with the Internal Revenue Service discloses to the Service the identity of all donors to the AFF. A copy the AFF Form 990 return will be made available for public inspection at my office, once it has been filed.

Because there is no evidence to support the generalized assertions made by M. Liburdi in his letter of August 20, 2014 and because of obvious function as a partisan agent for Mr. Ducey, I would respectfully request that the Citizens Clean Elections Commission dismiss the complaint and take no further action with respect to the AFF. If I can be of any additional assistance, please feel free to contact me directly.

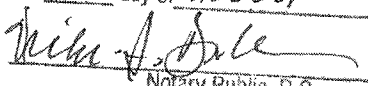
With best wishes,

Sincerely,



William B. Canfield III
Counsel to the Arizona Future Fund

JURAT:

District of Columbia : SS
Subscribed and Sworn to before me, in my presence,
this 29th day of AUGUST, 2014

Notary Public, D.C.
My commission expires 4/30/2015

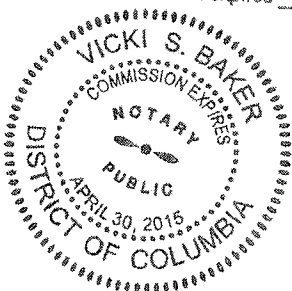


EXHIBIT J

William B. Canfield III
Attorney at Law
Suite 600
1900 M Street, North West
Washington, D.C. 20036
(202) 530-3332
canfieldwilliam@gmail.com

November 17, 2014

Ms. Sara A. Larsen
Mr. Thomas Collins
Citizens Clean Elections Commission
1616 W. Adams
Suite 110
Phoenix, AZ 85007

Re: **CCEC MUR NO. 14-014**

Dear Ms. Larsen and Mr. Collins:

I received, via an email attachment on Friday, November 14, 2014, your cover letter of that date as well as a complaint dated August 13, 2014 which appears to have been received by your office on that same date. As we discussed by phone on November 14, 2014, your email attaching the complaint of August 13, 2014 was the **first and only indication** I had as to the very existence of this complaint. Had I been timely apprised of your receipt of this complaint, I would have immediately responded to it as required by the rules of the Commission. Notwithstanding the more than ninety days that have transpired since the complaint was filed, I now respond out of deference to the Commission and in a good-faith effort to settle MUR NO. 14-014 in a mutually agreeable manner.

The complaint of August 13, 2014, prepared and filed by an attorney for the committee supporting Governor-elect Ducey, suggests that the Arizona Future Fund (the "Fund"), a tax-exempt association of individuals conducting its social welfare purpose under section 501c4 of the Internal Revenue Code of 1986, as amended, violated certain specified sections of Arizona Statutes, to wit, sections 16-914.02(A), 16-941(D) and 16-958, by failing to file as an "independent expenditure" committee and disclose its activities to the State of Arizona. As defined in A.R.S. 16-901(8), the term "expenditure" means a payment made "for the purpose of influencing an election." As set forth in my letter to the Commission of August 28, 2014, which is specifically incorporated by reference hereby, the Arizona Future Fund did not make an "independent expenditure" and is not a "political committee" for the reasons set forth in my letter of August 28, 2014. The phrase to "influence an election" is so amorphous and subjective that the United States Supreme Court in the seminal decision of Buckley v. Valeo held that the term could withstand a First Amendment challenge only if the speech at issue contained words of "express advocacy" such as "elect," "defeat," "vote for," or "vote against" an identified candidate. The complainant in this matter fails to cite a single word or phrase in the print or broadcast messages paid for by the Fund that constitute "express advocacy" as outlined in the Buckley decision. Because the public policy speech paid for by the Fund is Constitutionally-protected by the First Amendment, as applied to the states by the Fourteenth Amendment, the burden of the complainant and the Commission is extremely high when seeking to regulate the legitimate issue advocacy speech of a tax-exempt social welfare entity such as the Fund. That burden remains unmet.

As we have discussed over the last few months, the Fund is prepared to enter into a good-faith conciliation effort with the Commission so as to put this matter behind us and allow the Fund to terminate its activities by the close of its tax year on December 31, 2014 and file a terminating Form 990 (the Informational Return) with the Internal Revenue Service thereafter. The Fund has neither raised nor expended any financial resources since the end of August of this year. Because of the publicity generated by the complainant following the filing of these complaints, there is absolutely no prospect of the Fund being able to obtain additional donations going forward. As we have also discussed, funds remaining available to the Fund from prior donations are extremely limited at this point. Additional expenses incurred by counsel in bringing this matter to a mutually agreeable conclusion simply serve to further deplete the Fund's remaining resources. It is in that context that I would seek the cooperation of the Commission in framing a draft conciliation agreement for my review. As I have also discussed with you, any such conciliation agreement that is suitable to the Commission must also be agreed to by the Arizona Attorney General's Office so as to preclude the necessity of the Fund reaching an agreement with the Commission only to find that the Office of the Attorney General opposes that agreement.

In that context, I would like the record before the Commission to reflect the fact that I wrote to the State Elections Director on September 17, 2014 (a copy of which was provided to your office on that date) to point out that the private attorney retained by Maricopa County (Jeffrey Messing) to render findings of fact and law regarding the complaint of the Ducey committee filed with the Secretary of State's Office utterly failed in his obligation to allow the Fund timely notice and the right to respond to the complaint he was retained to review by the County. That obligation is required by the "due process" clause of the Fifth Amendment as applied to the states by the Fourteenth Amendment to the U.S. Constitution. I also note for the record that notwithstanding the Constitutional "due process" challenge raised in my letter of September 17, 2014, the State Elections Director referred the compromised findings of fact and law of Mr. Messing to the office of the Attorney General on a date unknown to me. The record should further reflect that since that referral, the Office of the Attorney General has not contacted me nor sought to explain exactly why that Office intends to rely upon the challenged findings of fact and law referred to it by the State Elections Director.

Should the Commission entertain my proposal to conduct a good-faith negotiation that would lead to a mutually agreeable conciliation agreement between the Commission, the Attorney General's Office and the Fund, please feel free to apprise me of the Commission's determination at the earliest possible date.

With best wishes,

Sincerely,

William B. Canfield III
Counsel to the Arizona Future Fund

EXHIBIT K

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

In the Matter of:
Arizona Future Fund, Respondent

MUR Nos. 14-014
CONCILIATION AGREEMENT

Pursuant to ARS § 16-957(A), the Citizens Clean Elections Commission (the "Commission"), the Arizona Attorney General's Office and Arizona Future Fund ("AFF" or "Respondent") enter this Conciliation Agreement (the "Conciliation Agreement") in the manner described below:

- A. On December 18, 2014, the Commission adopted the Statement of Reasons (the "Statement of Reasons"), a copy of which is attached hereto and incorporated herein by reference, setting forth the recommendation of the Executive Director that there is reason to believe Respondent may have committed a violation of the Citizens Clean Elections Act and Commission rules (collectively, the "Act").
- B. Any person making independent expenditures must abide by the Clean Elections Act and Rules and the Commission has authority to enforce the Act and Rules pursuant to A.R.S. § 16-956(A)(7), including penalties that apply for failure to file reports.
- C. Respondent made independent expenditures and filed no reports.
- D. The Arizona Secretary of State issued a reasonable cause notice to Respondent concluding there was reason to believe Respondent violated A.R.S. §§ 16-914.02(A)(1); -914.02(F) and -914.02(K), and other applicable statutes.

1 E. This Conciliation Agreement concludes the Commission's enforcement proceeding
2 respecting the facts outlined in the attached Statement of Reasons. The Arizona
3 Attorney General's Office agrees to be bound by this agreement and concludes its
4 enforcement based on the Reasonable Cause notice described above.
5

6 WHEREFORE, the Commission enters the following orders in lieu of any other action regarding this
7 matter:

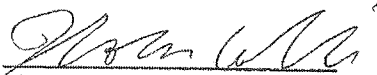
- 8 1. Respondent acknowledges that pursuant to A.R.S. §§ 16-941(D) and -958 any person
9 who makes an independent expenditure above a threshold set forth in the Clean
10 Elections Act must file reports required by the person and that under A.R.S. § 16-
11 942(B) the statutory penalty for any reporting violation is up to \$860 per day up to twice
12 the value of the unreported amount.
- 13 2. Respondent acknowledges the violations set forth in the attached Statement of
14 Reasons.
- 15 3. Respondent agree to settles this matter for \$10,000.00.
- 16 4. To satisfy the debt amount acknowledged above, Respondent shall pay to the
17 Commission \$10,000.00 by December 26, 2014.
- 18 5. Respondent agrees to file reports accounting for all independent expenditures and
19 agrees to provide the Commission with receipts verifying the amount of the
20 expenditures. The receipts shall be provided no later than December 26, 2014 and the
21 filing shall be completed no later than December 26, 2014. Respondent agrees to
22 provide Commission staff with any supplemental information necessary in view of
23 Commission staff to verify their existing, amended or proposed amended reports.
- 24 6. All payments shall be made by check or money order payable to the Citizens Clean
25 Elections Fund and delivered to the Citizens Clean Elections Commission, 1616 West
26 Adams, Suite 110, Phoenix, Arizona, 85007.

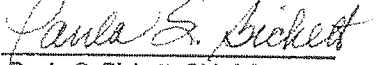
- 1 7. The Commission shall not commence any legal action against Respondent to collect
2 the claims so long as they are not in default.
- 3 8. Respondent shall be in default of this Agreement and any outstanding matters will be
4 forwarded to the Office of the Attorney General upon the occurrence of any of the
5 following:
 - 6 a. Respondent fails to make any payment required hereunder within five (5) working
7 days following the date due;
 - 8 b. Respondent files a petition under the bankruptcy laws or any creditor of the
9 Respondent files any petition under said laws against the Respondent;
 - 10 c. Any creditor of Respondent commences a foreclosure action to foreclose (by suit
11 or trustee sale) on real property of the Respondent or commences garnishment,
12 attachment, levy or execution against the Respondent's property; or;
 - 13 d. Respondent provides false information to the Commission.
- 14 9. In the event of default hereunder, at the option of the Commission, all unpaid amounts
15 hereunder shall be immediately due and payable. In addition, interest shall accrue on
16 the unpaid balance from the date that the payments become due and payable. Interest
17 shall accrue at the statutory rate of ten percent (10%) pursuant to A.R.S. § 44-1201(A).
- 18 10. Nothing contained in this Agreement shall be construed to prevent any state agency
19 which issues licenses for any profession from requiring that the debt in issue be paid in
20 full before said agency will issue Respondent a new license.
- 21 11. The Commission may waive any condition of default without waiving any other
22 condition of default and without waiving its rights to full, timely future performance of
23 the conditions waived.
- 24 12. In the event legal action is necessary to enforce collection hereunder, Respondent shall
25 additionally pay all costs and expenses of collection, including without limitation,
26 reasonable attorneys' fees in an amount equal to thirty-five percent (35%) of monies
recovered.

13. The Attorney General's Office has exercised its discretion and concluded not to take additional enforcement actions against Respondent beyond this Conciliation Agreement.
14. Respondent acknowledges that all obligations payable pursuant to this Agreement constitute a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss; and that pursuant to 11 USC § 523 such obligations are not subject to discharge in bankruptcy.
15. This Agreement shall be construed under the laws of the State of Arizona.
16. In the event that any paragraph or provision hereof shall be ruled unenforceable, all other provisions hereof shall be unaffected thereby.
17. This Agreement shall constitute the entire agreement between the parties regarding the subject matter. This Agreement shall not be modified or amended except in a writing signed by all parties hereto.
18. This Agreement shall not be subject to assignment.
19. No delay, omission or failure by the Commission to exercise any right or power hereunder shall be construed to be a waiver or consent of any breach of any of the terms of this Agreement by the Respondent.
20. Respondent has obtained independent legal advice in connection with the execution of this Agreement or have freely chosen not to do so. Any rule construing this Agreement against the drafter is inapplicable and is waived.
21. This Agreement shall be void unless executed by the Respondent and delivered to the Commission not later than December 19, 2014.
22. All proceedings commenced by the Commission in this matter will be terminated and the matter closed upon receipt of the final payment of the civil penalty and compliance with the other terms set forth in this Agreement. The Arizona Attorney General's Office agrees to conclude any enforcement matter pending from the Reasonable Cause notice identified in the recitals and be bound by this Agreement.

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Dated this 18th day of December, 2014.

By: 
Thomas M. Collins, Executive Director
Citizens Clean Elections Commission

By: 
Paula S. Bickett, Chief Counsel, Civil Appeals
Arizona Attorney General's Office

By:  12/19/14
Bill Canfield for AFF, Respondent