

STATE OF ARIZONA

CITIZENS CLEAN ELECTIONS COMMISSION

MUR: No. 12-0007 RAQUEL TERAN

STATEMENT OF REASONS OF EXECUTIVE DIRECTOR

On behalf of the Citizens Clean Elections Commission (“Commission”), the Executive Director hereby provides the Statement of Reasons showing reason to believe that violations of the Citizens Clean Elections Act and or the Commission rules (collectively, the “Act”) may have occurred.

I. Procedural Background

On July 30, 2012, Robert Meza (“Complainant”) filed a complaint (“Complaint”) against Raquel Teran (“Respondent Teran”), a participating candidate for the Arizona State Senate in District 30, alleging the Respondent was an officer of Promise Arizona in Action Political Action Committee (“Respondent PAZ”) during the same election Respondent PAZ made an independent expenditure expressly advocating for her as a candidate. Complainant also argues the expenditure made by Respondent PAZ does not meet the definition of an independent expenditure as prescribed by A.R.S. §16-901(14) and therefore, is an in-kind contribution. **(Exhibit A)** On August 7, 2012, Respondent PAZ, through its attorney, James Ahlers, responded to the Complaint. **(Exhibit B)** Respondent PAZ supplemented its response on August 13, 2012. **(Exhibit C)** On August 17, 2012, Respondent, through her attorney, Daniel Ortega, submitted a reply to the complaint. **(Exhibit D)**

II. Alleged Violations

1. Independent Expenditure Violation

A.R.S. §16-901(14) provides the legal standard for an independent expenditure. “‘Independent expenditure’ means an expenditure by a person or political committee, other than a candidate’s campaign committee, that expressly advocates the election or defeat of a clearly identified candidate, that is made without cooperation or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate.”

Arizona law also lists specific circumstances which do not constitute “independent expenditures.” *See A.R.S. §16-901(14)(a-d)*. In particular, pursuant to A.R.S. §16-901(14)(c), an expenditure does not fit the definition of an independent expenditure if “in the same election the person making the expenditure, including any officer, director, employee or agent of that person, is or has been... [a]uthorized to raise or expend monies on behalf of the candidate or the candidate’s authorized committees.”

Complainant alleges that the electioneering communications by Respondent PAZ fail to meet the definition of “independent expenditure” set forth at A.R.S. §16-901(14). Complainant

asserts Respondent PAZ is not able to make independent expenditures expressly advocating Respondent Teran's election or her opponent's defeat because she was a PAZ officer during the same election.

Respondent PAZ acknowledges Respondent Teran was an officer of PAZ but asserts her active work was only during the Russell Pearce recall campaign in the fall of 2011. Respondent PAZ claims they are able to make independent expenditures in the legislative district 30 senate race because Respondent Teran was not involved in PAZ activity during this election. Respondent PAZ claims PAZ suspended activities for the months following the Pearce recall election and only resumed activities after Respondent Teran decided to run for office. Respondent PAZ also states Chairwoman Petra Falcon and Treasurer Darryl Tattrie made the independent expenditure in July 2012, approximately three months after Respondent Teran left PAZ.

Respondent Teran acknowledges she was the treasurer for PAZ during fall of 2011 for the Russell Pearce recall election. She also asserts she completed her active involvement with PAZ shortly after the November 8, 2011 election and was not aware she "had any authority to raise money or make any expenditure on behalf of PAZ after the recall election." She resigned from Promise Arizona, a 501(c)(3) organization, on March 30, 2012. Respondent Teran believes she was not an officer of PAZ during the same election as her campaign for the State Senate, although she acknowledges that documents indicating she was no longer treasurer of the PAC were not filed with the State of Arizona until May 4, 2012. **(Exhibit E)**

On September 16, 2011, Respondent PAZ filed a statement of organization with Secretary of State's Office naming Respondent Teran as treasurer. **(Exhibit F)** A.R.S. §16-902.01(D) requires a political committee to file an amended statement of organization reporting any change in the chairman or treasurer of the committee within five business days. Accordingly, Respondent Teran, as treasurer, was an officer, employee or agent of Respondent PAZ until May 4, 2012, when Respondent PAZ filed an amended statement of organization with the Secretary of State's Office naming Darryl Tattrie as treasurer. Although Respondents assert Respondent Teran ended her active work on behalf of Respondent PAZ after the Pearce recall election, Respondent PAZ continued to make expenditures every month since its inception. Respondent Teran is listed as treasurer on all campaign finance reports for Respondent PAZ until the committee's 2012 June 30th Report. Pursuant to A.R.S. §16-904, as a treasurer for Respondent PAZ, Respondent Teran was obligated to:

- 1) authorize expenditures made for or on behalf of the political committee;
- 2) maintain record of all petty cash disbursements;
- 3) obtain required contributor information;
- 4) keep an account of all contributions and expenditures; and,
- 5) preserve all records for three years.

Accordingly, Respondent Teran was required to authorize every expenditure made for or on behalf of Respondent PAZ after the Pearce recall election. *See A.R.S. §16-904(A)* Even if the expenditures were authorized by "the treasurer's designated agent," Respondent Teran would have designated such an individual. Therefore, Respondent Teran's affiliation with Respondent PAZ could not have terminated as a matter of law shortly after the November 8, 2011 election as claimed.

On March 15, 2012, Respondent Teran filed her statement of organization with the Secretary of State's Office establishing her political committee, "Raquel Teran for Legislature." **(Exhibit G)** As a candidate, Respondent Teran was authorized to receive contributions and make expenditures for her campaign immediately upon filing her statement of organization with the Secretary of State's Office. *See A.R.S. §16-901(2); A.R.S. §16-902* Respondent Teran collected \$5 qualifying contributions for her legislative campaign the same day she filed her statement of organization, as listed in her June 30th Report. **(Exhibit H)** At the same time she remained officially listed as the treasurer for PAZ.

During this election Respondent PAZ has filed a January 31st Report and a June 30th Report. The January 31st Report (filed 1/30/12) lists Respondent Teran as the organization's treasurer. **(Exhibit I)** Respondent Teran was not replaced as the organization's treasurer until May 4, 2012 when an amended statement of organization was filed with the Secretary of State's Office. By the time the amended statement of organization that named a new treasurer was filed on May 4th, Respondent PAZ had raised \$155,000.00 in 2012 alone. As of August 14, 2012, PAZ had spent a total of \$3,085.88 on four campaign mailers in the District 30 Senate race –all benefitting Respondent Teran. Respondent PAZ has spent no money on any other race in the State of Arizona this election cycle.

The following is a chronological list of events in the matter:

DATE	Event
9/16/2011	Promise Arizona in Action Political Committee (PAZ) files statement of organization with SOS naming Teran as Treasurer
9/16/2011	PAZ receives \$15,000 from Unite Here
11/8/2011	Russell Pearce Recall Election
12/8/2011	PAZ files Amended 2011 Post-Recall Election Report- Teran, Treasurer
1/30/2012	PAZ files 2012 January 31 st Report – Teran, Treasurer
3/13/2012	PAZ receives \$2,000 from Promise in Action
3/15/2012	Raquel Teran for Legislature files statement of organization with SOS; Files amended statement of organization with SOS
3/15/2012	Teran receives \$5 qualifying contribution from Otoniel Navarrete
3/23/2012	Teran files amended statement of organization with SOS
3/24/2012	Teran receives \$5 qualifying contribution from Karen Trudell
3/26/2012	Teran receives \$150 individual contribution from Daniel Ortega for her state senate campaign.
4/1/2012	Teran resigns from Promise Arizona, 501(c)(3)
4/2/2012	Falcon tells Teran to disassociate with PAZ, Promise Arizona
4/30/2012	PAZ receives \$100,000 from Unite Here
5/1/2012	PAZ receives \$53,000 from Unite Here
5/4/2012	PAZ files amended statement of organization with SOS naming Darryl Tattrie as treasurer

6/26/2012	Primary Election Period begins A.R.S. §16-961(B)(4).
7/1/2012	PAZ files 2012 June 30 th Report- Tattrie, Treasurer
7/3/2012	PAZ receives \$100,000 from Unite Here
7/5/2012	PAZ receives \$53,000 from Unite Here
7/30/2012	Robert Meza files complaint #2 against Teran (MUR #12-0007)
8/1/2012	PAZ is invoiced by J&R Graphics and Printing for two cards/flyers
8/1/2012	PAZ makes independent expenditure for flyer/handout advocating Meza's defeat. \$495.00
8/1/2012	PAZ makes independent expenditure for flyer/handout advocating Teran's election. \$515.00
8/9/2012	PAZ makes independent expenditure for flyer/handout advocating Meza's defeat. \$1,090.81
8/9/2012	PAZ makes independent expenditure for flyer/handout advocating Teran's election. \$985.07

Respondent PAZ argues there was no violation of A.R.S. §16-901(14) because Respondent Teran was not an “officer, member, employee or agent of the political committee” at the time the expenditure was made and she was not authorized to raise funds for herself through PAZ. Respondent PAZ believes that because Respondent Teran was only affiliated with PAZ during the Russell Pearce recall election, which is a different election, than her legislative race, that expenditures by PAZ are in fact “independent” under Arizona law. Both Respondents assert that A.R.S. §16-901(14)(c)(i) only applies if the expenditure was made during the same election that Respondent Teran was affiliated with PAZ. Respondent PAZ notes that A.R.S. §16-961(B)(4) defines “primary election” as the “nine-week period ending on the day of the primary election,” and concludes that because Respondent Teran had resigned from her employment before the primary election period began on June 26, 2012, that the exclusion from independent expenditures at issue here does not apply.

As a legal matter, however, these arguments are not persuasive. First, the distinction between “election” and “election cycle” is not relevant here. By March 15, 2012, Respondent Teran was a candidate for the legislature and that election had begun. *See A.R.S. 16-961(B)(4)* (defining qualifying period for funding). In this context, the definition of election in 16-901 only serves to describe which elections campaign finance reporting requirements apply to, not to limit the time period of when an election campaign is running.

Second, it is undisputed that Respondent Teran, as a candidate on at the latest March 15, 2012 was authorized to raise or expend monies on behalf of herself. Respondent PAZ argues that so long as a PAC officer is not presently, nor has ever been, authorized to raise and spend money on behalf of a candidate, the expenditure does not become a contribution.¹ Assuming that were so, it does not address the phrase “in the same election.”

¹ A.R.S. § 16-901(14)(a) already expressly provides that a current officer of a PAC cannot be the “officer, member, employee or agent of the committee of the candidate whose election. . . is being advocated.” Thus, present officers are already covered under the statute.

That phrase could simply be read as clarifying that the PAC's officer is making expenditures in an election for a different office from the one for which the agent is authorized to make expenditures. Thus, for example, an expenditure would remain independent if a person is the treasurer of a PAC that opposes a candidate for governor, and is also themselves a candidate for a different office. But such reading would render "in the same election" meaningless. The statute already assumes that the expenditure in question expressly advocates for or against a candidate in the election for that particular office. Thus, if an independent expenditure refers to the governor, and the PAC treasurer is a candidate for the legislature, an expenditure on advocating in favor of the governor provides is not an expenditure advocating for the legislative candidate.

The better reading is that "in the same election" means spending in the election for the candidate. That election is ongoing. The limitation then is that if a PAC is a going committee and a new election begins, then the expenditure is independent. Had Respondent Teran resigned before she became a candidate, this issue would be less significant. But the problem in this case is that Respondent Teran was an officer of PAZ "in the same election" because she did not resign as an officer until after she had become a candidate.

The exclusion from "independent expenditure" at A.R.S. §16-901(14)(c) is broader than suggested by Respondents. It expressly applies to activity occurring in the "same election" –not merely the primary or general election portion of a particular race. Otherwise, campaigns could subvert the statute by simply making the role switch at the end of the primary election and spending the money in the general election. This is true whether the particular facts involve campaign workers moving to political committees or officers of political committees moving to a individual candidate's campaign.

The exclusion reflects the State's policy decision to find coordination where there is sufficient indicia to show corruption or the appearance of corruption and to ensure that contribution limits remain enforceable. This is true in the case of campaign staff of a particular candidate joining a political committee that then advocates on behalf of that candidate and also when a former director and employee of a political committee leaves to run for office and then is actively endorsed through political ads by the prior political committee. Thus, if Respondent Teran is an officer of a political committee during the same election that the committee in question engaged in express advocacy on her behalf, the exclusion applies.

The purpose of the statutory exclusion is reflected in the operation of Respondent PAZ. The confidence of Arizona Voters could be undermined when insiders can work on behalf a political committee that raises thousands of dollars and then run for office and claim expenditures by that committee are "independent" because she resigned before the expenditure occurred. Though most of this money was raised after Respondent Teran alleges she resigned on April 1, 2012, she was already a declared candidate for office by then.

This is a reasonable policy designed to protect Arizona elections and avoid loopholes. There is nothing in the record thus far indicating actual coordination between the Respondents with regard to the specific expenditure at issue here or that Respondent Teran had any knowledge at all of these particular independent expenditures. The record is thus far silent as to whether or not Respondent Teran discussed her candidacy with other PAZ officers, apprised

them of her campaign strategy (including the decision to seek public financing) or otherwise identified any campaign needs she would have.

Respondents' proposed interpretation could easily subvert the policy nonetheless. Unscrupulous potential candidates could raise hundreds of thousands of dollars for an "independent expenditure committee" and then resign from that committee and run for office under the limited funding provided participating clean elections candidates, and then enjoy the substantial benefits of the putative "independent expenditures" from their former political committees run by political allies. This would undermine the Clean Elections Act and subvert the purpose of the exclusion and erode public confidence in campaigns and elected officials.

Because Respondent Teran was an officer of her own campaign and an officer of PAZ during the same election, there is reason to believe that Respondents PAZ and Teran violated A.R.S. § 16-901(14) and the expenditure is not independent.

2. Exceeded In-Kind Contribution Limits

In accordance with A.R.S. §16-917(C), an expenditure made by a political committee that does not meet the definition of an independent expenditure is considered an in-kind contribution to the candidate. A.R.S. §16-945(A) requires participating candidates to accept early contributions from individuals only and not to exceed the early contribution limit of \$150.00. Participating candidates may not accept contributions from political action committees as set forth in A.A.C. R2-20-104(D)(1).

Complainant alleges that Respondent violated A.A.C. R2-20-104(D)(1) because PAZ expenditure cannot be considered an independent expenditure pursuant to A.R.S. §16-901(14). Complainant also alleges the expenditure exceeds the early contribution limit of \$150.00 prescribed by A.R.S. §16-945(A).

Respondents PAZ and Teran believe the expenditure to be an independent expenditure rather than an in-kind contribution to the candidate.

The August 1, 2012 expenditures made by PAZ are not independent and are, therefore in-kind contributions pursuant to A.R.S. §16-917(C). According the August 14, 2012 Independent Expenditure Report filed by Respondent PAZ, the expenditures reportedly total \$3,085.88, which exceed the early contribution limits set forth by A.R.S. §16-945(A). **(Exhibit J)**

Participating candidates may not accept contributions from political action committees and early contributions must not exceed early contribution limits; therefore, there is reason to believe that Respondent violated A.R.S. §16-945(A) and A.A.C. R2-20-104(D)(1).

III. Investigation After Reason to Believe Finding

If the Commission determines by an affirmative vote of at least three (3) of its members that it has reason to believe a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding setting forth: (i) the sections of the statute or rule alleged to have been violated; (ii) the alleged factual basis supporting the finding; and (iii) an order requiring compliance within

fourteen (14) days. During that period, the Respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission. A.R.S. § 16-957(A) & A.A.C. R2-20-208(A).

After 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. A.A.C. 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. A.A.C. 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). A.A.C. R2-20-217.

Dated this 22nd day of August, 2012.

By: 
Todd F. Lang, Executive Director