ARIZONA COURT OF APPEALS

DIVISION ONE

THE ARIZONA ADVOCACY NETWORK FOUNDATION, et al., Plaintiffs/Appellees, v. CITIZENS CLEAN ELECTIONS COMMISSION, Defendant/Appellee, and STATE OF ARIZONA, et al., Defendants/Appellants.	Court of Appeals Division One No. 1 CA-CV 19-0489 Maricopa County Superior Court No. CV2017-096705

CITIZENS CLEAN ELECTIONS COMMISSION'S COMBINED ANSWERING BRIEF AND SEPARATE APPENDIX

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Authorities

Statutes

INTRODUCTION

In 1998, Arizona voters enacted two initiative measures relevant to this case. First, the Citizens Clean Elections Act, A.R.S. §§ 16-940 to 16-961 and § 16-901.01, created a comprehensive clean elections system intended to, among other things, "diminish[] the influence of special-interest money." A.R.S. § 16-940(A). Second, in the same election, voters enacted the Voter Protection Act, a constitutional amendment that prohibits the legislature from amending or superseding a voter-approved measure "unless the proposed legislation 'furthers the purposes' of the initiative or referendum measure and is approved by a three-fourths vote" supermajority. *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 4 ¶ 9 (2013) (quoting Ariz. Const. art. 4, pt. 1, § 1(6)(c)).[1]

With S.B. 1516, the legislature made sweeping changes to many of Arizona's campaign finance laws in Article 1 of Title 16, §§ 16-901 to 16-938. A handful of those changes—few in number but great in significance—materially change the meaning of words in the Clean Elections Act. S.B.

[1] This brief refers to the Citizens Clean Elections Act as the Clean Elections Act or simply the "Act." The brief refers to the Voter Protection Act as the VPA. S.B. 1516 refers to Laws 2016, ch. 79. Citations to statutory provisions are to the most current version except where noted.

1516, however, did not pass with a three-fourths majority. Accordingly, the parts of S.B. 1516 that amend the Clean Elections Act cannot apply to the Clean Elections Act without violating the VPA.

Although S.B. 1516 changes the meaning of the Clean Elections Act, the State insists that these changes are not "amendments" because they can be "harmonized" with the Act. The State's argument fails. If S.B. 1516 applies to the Clean Elections Act, the same words in the Act now have very different meanings, defined in different places, and some terms no longer exist at all. There is nothing to "harmonize." The changes at issue here can in no sense be considered "consistent" or in "harmony" with the Act.

S.B. 1516 is dissonant with the Act, disrespects the voters who approved the Clean Elections Act and ignores the protections the VPA provides to current voters. The Court should reject the State's request to duck the VPA and affirm the superior court's narrow but important judgment. At a minimum, the Court should hold that S.B. 1516 does not apply to the Act.

STATEMENT OF FACTS AND CASE*

I. The Clean Elections Act.

The purpose of the Clean Elections Act is "to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, [] encourage citizen participation in the political process, and [] promote freedom of speech under the U.S. and Arizona Constitutions." A.R.S. § 16-940(A).

In service of those goals, the Act includes several campaign finance reforms that are significant here. The Act:

(1) Creates a system for public financing of candidates for state office, under which participating candidates receive public funding for their candidacy if they agree to various conditions, including foregoing most other "contributions" and limiting the amount of "expenditures" that may be made. A.R.S. § 16-941(A).

(2) Reduces the amount of contributions a traditional candidate (i.e., a "nonparticipating" candidate who does not receive clean elections funding) may accept." § 16-941(B).

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* Record items are cited with "IR-" followed by the record number. The Opening Brief is cited as "OB at __."

(3) Requires disclosure reports for certain election-related expenditures known as "independent expenditures." A.R.S. § 16-941(D).

(4) Authorizes civil penalties for violations of "any contribution or expenditure limit in § 16-941" and for "any reporting requirement imposed by this chapter." A.R.S. § 16-942(A), (B). "This chapter" is Chapter 6 of Title 16, which contains §§ 16-901 through 16-961.

In addition to these substantive reforms, the Act creates the Citizens Clean Elections Commission to administer and enforce the Act. *See* A.R.S. §§ 16-955, 16-956. The Commission is required to, among other things, "[e]nforce this article," which includes the reforms listed above. A.R.S. § 16-956(A)(7). The Act also provides an "[e]nforcement procedure" under which the commission may "issue an order assessing a civil penalty in accordance with § 16-942(B)."

The Clean Elections Act defines certain terms used throughout the Act in § 16-961. Some terms are unique to the functioning of the Clean Elections Act (such as "participating candidate" and "nonparticipating candidates"), and some were already defined elsewhere and are incorporated directly into the Clean Elections Act: "The terms 'candidate's campaign committee,'

'contribution,' 'expenditures,' 'exploratory committee,' 'independent expenditure,' 'personal monies,' 'political committee' and 'statewide office' are defined in § 16-901." A.R.S. § 16-961(A). The Act also adds a new section in Article 1 of chapter 6, A.R.S. § 16-901.01, which defines "expressly advocates," a phrase used in the definition of "independent expenditure."

II. The Voter Protection Act.

Arizona's 1998 election also saw the passage of the Voter Protection Act, a constitutional amendment that limits—but does not remove—the ability of the legislature to amend or supersede citizen initiatives or voter-approved referenda. Ariz. Const. art. 4, pt. 1, § 1(6)(B)-(C), (14). Specifically, the legislature may only amend or supersede a measure if the change "furthers the purposes" of the voter-approved measure "and at least three-fourths of the members of each house of the legislature" pass the change. *Id.* In addition, "[n]othing in [the VPA] shall be construed to deprive or limit the legislature of the right" to refer a measure to the people for a vote. *Id.* § 1(15).

The VPA applies to the Clean Elections Act and all other initiatives and referenda "decided by the voters at and after the November 1998 general election." Voter Protection Act, Proposition 105, § 2 (1998) (APP144).

III. S.B. 1516 replaces and significantly changes § 16-901 and much of Article 1, Chapter 6 of Title 16, but passed with less than three-fourths support.

In March 2016, the legislature passed S.B. 1516 with less than a three-fourths vote. (APP118.) S.B. 1516 dramatically changes Arizona's campaign finance regime, replacing much of the pre-existing Article 1 of Chapter 6 of Title 16 with revised and in many cases new provisions. As the Senate Fact Sheet explains, the "[p]urpose" was to "[r]epeal[], reorganize[], reinsert[] and modif[y] campaign finance requirements." Ariz. State Senate Fact Sheet for S.B. 1516 (2016) (Final Revised/Amended Version) DAPP049 (Senate Fact Sheet at 1).*

S.B. 1516's changes to § 16-901 fall generally into three categories: (1) rewrite of the labels and definitions of "committees" into three categories of "political committees," (2) amend significantly what does and does not

* The Senate Fact Sheet is included in the Commission's Appendix combined with this brief. References to it will be labeled "DAPP___," which will also operate as a link to the page.

qualify as a "contribution," and (3) amend significantly what does and does not qualify as "expenditures." DAPP049-50 (Senate Fact Sheet at 1-2).

A. S.B. 1516 amends and expands the exemptions from the definitions of "contribution" and "expenditure".

The Clean Elections Act incorporates the definitions of "contribution" and "expenditure" directly from § 16-901. A.R.S. § 16-961(A). Until S.B. 1516, those terms did not materially change since the passage of the Act in 1998. *Compare* 1997 Ariz. Sess. Laws, ch. 5, § 37 (2d Spec. Sess.) *with* 2015 Ariz. Sess. Laws, ch. 297, § 1 (1st Reg. Sess.).[2]

S.B. 1516 changed the terms dramatically. The bill split the definitions into two separate sections by moving, revising, and adding to the list of exemptions from each category into new code sections. *See* A.R.S. § 16-901(11), (25) (definitions); A.R.S. §§ 16-911, 16-921 (exemptions).

The changes to the exemptions are significant. Substantial amounts of money that would have unquestionably qualified as "contributions" and

[2] The only definitional change occurred in 2013, when the legislature amended "contribution" to clarify that when a candidate uses "personal monies" to pay for "campaign assets," such as signs, the "acquisition or use" of the campaign assets "is a contribution and is reportable." 2013 Ariz. Sess. Laws, ch. 254, § 6 (1st Reg. Sess.).

"expenditures" before S.B. 1516 are converted to non-contributions and non-expenditures. Some examples:

Pre-S.B. 1516 Exemptions	S.B. 1516 Exemptions
Cost of "invitations, food and beverage" for fundraisers and similar meetings, up to a cumulative maximum of $100, is not a contribution. § 16-901(5)(b)(iii) (2015)	The "[c]ost of invitations, food or beverages" is not a contribution or expenditure regardless of amount. § 16-911(B)1(c); § 16-921(B)(1)(c)
Political party payments for certain expenses and written materials that "substantially promote three or more nominees" and other expenses for "activities not related to a specific candidate" are not contributions. § 16-901(5)(b)(v) (2015)	"The payment by a political party to support its nominee" is not a contribution. § 16-911(B)(4) "Coordinated party expenditures" — a party's payment for goods or services for a nominee—are not contributions. § 16-911(B)(4)(b) Any payment by any person "to defray a political party's operating expenses or party-building activities" is not a contribution or expenditure. § 16-911(B)(5); § 16-921(B)(3)
The value of pro bono legal or accounting services "solely for the purpose of compliance" with Title 16 is not a contribution. § 16-901(5)(b)(ix)	Any payment for legal or accounting expenses, regardless of purpose, is not a contribution or expenditure. § 16-911(B)(6)(c); § 16-921(B)(4)(c), (B)(7)

Pre-S.B. 1516 Exemptions	S.B. 1516 Exemptions
	A company or other group's costs of fundraising for a candidate from employees, stockholders, members, retirees, are not contributions, even if fundraising communications are made in coordination with a candidate. § 16-911(B)(9), (B)(10)
	The cost to publish a book or make a documentary film about the candidate is not a contribution or expenditure. § 16-911(B)(15); § 16-921(B)(8)

This is not an exhaustive list but suffice it to say that S.B. 1516 significantly alters the terms under which candidates receive contributions and how the public receives information about contributions and expenditures to candidate campaigns.

B. S.B. 1516 deletes the term "political committee" and creates "political action committees".

The Clean Elections Act incorporates the definition of the term "political committee" from § 16-901(19). A.R.S. § 16-961(A). The definition remained materially the same from 1998 until 2015, when the legislature revised and reorganized the definition. *See* 2015 Ariz. Sess. Laws, ch. 297, § 1 (1st Reg. Sess.). S.B. 1516, however, deleted the term entirely—it now

does not exist in § 16-901 or elsewhere outside the Clean Elections Act.[3] Instead, S.B. 1516 created three different types of "committees:" "candidate committee, a political action committee or a political party." A.R.S. § 16-901(10). The changes to the meaning of the types of "committees" are found in § 16-905 and in the definitions of § 16-901.

In addition, S.B. 1516 exempts certain entities from being considered a "political action committee," and thus exempts those entities from the related reporting and other obligations of Chapter 6 of Title 16.[4] Only entities that are "organized for the primary purpose of influencing the result of an election" need to "register as a political action committee." A.R.S. § 16-905(C)(1). And, under S.B. 1516, "an entity is not organized for the primary purpose of influencing an election if" the entity has federal tax-exempt status (e.g., a 501(c)(4) entity), has not had its tax status revoked or denied by the IRS, and has filed a yearly form with the IRS. A.R.S. § 16-901(43).

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[3] S.B. 1516 also made the incorporated term "exploratory committee" disappear, so that incorporation in the Act, § 16-961(A), now points to nothing.

[4] For example, a "political action committee" must file campaign finance reports under A.R.S. § 16-926 that disclose contributions and expenditures.

C. S.B. 1516 permits only the "filing officer" and not the commission to investigate campaign finance violations.

The legislature made other changes as well. At issue in this case, S.B. 1516 includes procedures for the enforcement of A.R.S. §§ 16-901 through 16-938, including the filing and reporting requirements. The law provides that "[a] filing officer is the sole public officer who is authorized to initiate an investigation into alleged violations of" §§ 16-901 to 16-938. A.R.S. § 16-938(A). As the Opening Brief notes, that language purports to functionally replace a short-lived provision in a pre-S.B. 1516 law stating that the "citizens clean elections commission has no authority to accept, investigate, or otherwise act on any complaint involving an alleged violation of" Article 1 of Chapter 6. *See* 2014 Ariz. Sess. Laws, ch. 225, § 2 (2nd Reg. Sess.) (amending then § 16-905 to add subsection (O) relating to the Commission).[5]

IV. Plaintiffs-Appellees sue and obtain an injunction of certain narrow aspects of S.B. 1516.

The Plaintiffs-Appellees sued to enjoin only a narrow set of the changes in S.B. 1516. IR-1. Although the complaint names the Commission as a defendant, the Commission supported Appellees' position below.

[5] This provision, in the books for only a brief time, was never the subject of a legal challenge.

As stated in the Opening Brief (at 16), the "challenged provisions of S.B. 1516 are small in comparison to the substantial changes in S.B. 1516 and generally fall into two overarching categories:" (1) those relating to changes to the meaning of certain terms that § 16-961(A) of the Clean Elections Act expressly incorporates into the Act and (2) the purported restriction on the Commission's enforcement authority in A.R.S. § 16-938(A).

Following cross-motions for summary judgment, IR-31, 36, the superior court granted Appellees' motion. IR-49. Based on the parties' joint submission, IR-72, the superior court entered judgment for Appellees and enjoined the following few provisions of S.B. 1516 because they amended aspects of the Clean Elections Act without satisfying the VPA:

- A.R.S. § 16-901(43) and § 16-905(D) (relating to the definition of "primary purpose" as it relates to who must register as a political action committee);
- A.R.S. § 16-911(B)(4)(b) (exempting unlimited "coordinated party expenditures"—expenses to pay for a candidate's goods and services—from "contribution").

- A.R.S. § 16-911(B)(6)(c) and § 16-921(B)(4)(c), B(7) (exempting any payment for legal and accounting expenses from "contribution" and "expenditure").
- The phrase "is the sole public officer who" in A.R.S. § 16-938(A).

See IR-74 at 3 (6/5/2019 Final Judgment). The State appealed. IR-75.

STATEMENT OF THE ISSUES

1. Any amendment to the Clean Elections Act must comply with the VPA, which among other things requires any amendment to be passed with a three-fourths vote. Section 16-961(A) of the Clean Elections Act provides that the terms "contribution," "expenditure," and "political committee" "are defined in section 16-901." S.B. 1516 repeals, replaces, and alters the definitions of those terms, but was passed with less than a three-fourths vote. Did S.B. 1516 amend the terms incorporated into the Clean Elections Act in violation of the VPA?

2. To avoid voiding the challenged portions of S.B. 1516 entirely, should the Court affirm but remand with instructions to enjoin S.B. 1516 from applying to the Act?

3. The Clean Elections Act requires the Commission to enforce the Act, which provides for civil penalties for a violation for any reporting

requirement in §§ 16-901 to 16-961. Under S.B. 1516, § 16-938(A) makes officials other than the Commission the "sole public officer" authorized to investigate alleged violations of §§ 16-901 to 16-938. Did S.B. 1516 amend the Commission's enforcement authority in violation of the VPA?

STANDARD OF REVIEW

The Commission agrees with the State (at 23) that the standard of review here is de novo. The State, however, is incorrect (at 24) that Plaintiffs start the analysis with a separate "heavy burden" to show that it is "clearly" impossible to interpret S.B. 1516 in a constitutional way. The Court's "primary objective in construing" voter-approved measures "is to give effect to the intent of the electorate." *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 470, ¶ 10 (2009) (internal quotation marks and citation omitted). *See also Cave Creek*, 233 Ariz. at 6-7, ¶ 21 (same standard for constitutional measures). "If the statute is subject to only one reasonable interpretation, we apply it as written without further analysis." *Ariz. Citizens Clean Elections Comm'n v. Brain*, 234 Ariz. 322, 325, ¶ 11 (2014). Only if the statute is ambiguous does the Court consider secondary canons of interpretation, such as the constitutional avoidance doctrine. *Id.* *See also Nielsen v. Preap*, 139 S. Ct. 954, 972 (2019) ("The [constitutional avoidance]

canon has no application absent ambiguity.") (internal quotation marks and citation omitted).

ARGUMENT SUMMARY

S.B. 1516 deleted, redefined, and materially changed the meaning of words that are written in the Clean Elections Act. If S.B. 1516 applies to the Clean Elections Act, the bill unambiguously and directly changes the meaning of the Act. To say this is not an "amendment" to the Clean Elections Act is to ignore the obvious.

Moreover, S.B. 1516's amendments are plainly inconsistent with the Clean Elections Act. The challenged provisions could only be "harmonized" if one ignores—as the State does—the first stated purpose of the Act: to "diminish the influence" of money in elections.

The State's other arguments to preserve S.B. 1516's amendments fail. The *Brain* case supports Appellees, not the State. Unlike in *Brain*, there is no textual support whatsoever for the State's position. If the voters intended that the incorporated terms would be amended, they surely intended that the legislature would amend in compliance with the Arizona Constitution.

As a result, the Court should either affirm the judgment or hold that the challenged provisions of S.B. 1516 do not apply to the Act because

subsequent amendments to the incorporated definitions do not apply to the Act. The State is wrong that the "incorporation-by-reference" doctrine is abandoned. That doctrine allows the Court to respect the VPA's protections of the Clean Elections Act without deciding the constitutionality of S.B. 1516's challenged provisions.

Finally, the superior court correctly enjoined the legislature's effort to curtail Commission enforcement authority in § 16-938(A). The Clean Elections Act authorizes the Commission to enforce and impose penalties for violations of campaign finance reporting requirements in §§ 16-901 to 16-961. The legislature may not implicitly repeal that authority by stating that other public officials are the "sole public officers" who may initiate an investigation of such violations.

ARGUMENT

I. If applied to the Clean Elections Act, the challenged provisions of S.B. 1516 amend the Act and thus violate the VPA.

The Clean Elections Act uses the terms "contribution," "expenditure," and "political committee." Section 16-961(A) of the Act states that those terms are defined in § 16-901. S.B. 1516 deletes § 16-901 and replaces it with

a new § 16-901 and other new sections that change the definitions of "contribution" and "expenditure" and delete the term "political committee."

No party disputes that the VPA applies to the Clean Elections Act. "The VPA limits the legislature's power to amend, repeal, or supersede voter initiatives." *State v. Maestas*, 244 Ariz. 9, 13, ¶ 14 (2018). The "threshold question, therefore, is whether the legislature amended, repealed, or superseded" the Clean Elections Act when it passed S.B. 1516. *Id.* This question is dispositive because the legislature unquestionably did not comply with the VPA when it passed S.B. 1516.

Despite the State's linguistic gymnastics—the State says a change in meaning is not an amendment—the threshold question is easily answered: if allowed to apply to the Clean Elections Act, S.B. 1516 amends the Clean Elections Act.

A. An amendment occurs when a later statute alters, modifies, or adds to a prior act.

An implied amendment occurs when "an act . . . purports to be independent" but "in substance alters, modifies, or adds to a prior act." *Meyer v. State*, 246 Ariz. 188, 192, ¶ 11 (App. 2019) (quoting *Cave Creek*, 233

Ariz. at 7, ¶ 24) (holding that legislation impliedly amended the Minimum Wage Act in violation of the VPA).

B. If applied to the Clean Elections Act, S.B. 1516 amends the Act because S.B. 1516 significantly alters and modifies the Act.

Although, S.B. 1516 did not enact line edits to the Clean Elections Act, there can be no serious question that S.B. 1516 "alters, modifies, or adds to" the Act.

First, § 16-961(A) itself is changed: "contribution", "expenditure" and "political committee" are no longer "defined in § 16-901." "Contribution" is now defined in § 16-901 and separately defined in § 16-911, where S.B. 1516 moved and modified substantially the exemptions that used to be listed in § 16-901. The same is true for "expenditure"; its exemptions are now in § 16-921. "Political committee" no longer exists at all. It was deleted from the statutory scheme. These changes can hardly be called implied; they are direct changes to the Act. What once meant X now means Y.

Second, the redefinition of what categories of spending do or do not count as a "contribution" or "expenditure" amends many aspects of the Act. The most obvious is § 16-941, which is titled "Limits on spending and contributions for political campaigns." Under that section, a "participating"

candidate (a candidate using the clean elections system) "[s]hall not accept any contributions, other than a limited number of five-dollar qualifying contributions," and certain other very limited contributions. A.R.S. § 16-941(A)(1).

Between 1998 and 2016, this meant, among other things, that a candidate could not allow someone to pay unlimited amounts for food and beverages for campaign activities, for the campaign's legal and accounting fees, or let a political party pay the candidate's staff, office supply goods, and any other goods or services. *See above* Fact and Case Section III.A. Before S.B. 1516, if a candidate accepted those payments, they would be accepting "contributions" in violation of the law. After S.B. 1516, each of those payments no longer qualifies as a "contribution" or "expenditure," so can flow freely to a participating candidate without violating § 16-941. *See* A.R.S. §§ 16-911(B)(1), (4), & (6); § 16-921(B)(1), (4).

There are many examples. A participating candidate before S.B. 1516 could not use more than a small amount ($500 or $1000 depending on the office) of their "personal monies" to pay for campaign expenditures, such as legal bills, food, etc. *See* A.R.S. § 16-941(A)(2)-(4) (limiting "expenditures" to certain amounts). That spending would now be allowed and unlimited

under § 16-921(B)(1) and (B)(4). *See also* A.R.S. § 16-941(B) ("a nonparticipating candidate shall not accept contributions" over a certain amount); A.R.S. § 16-945(A) (imposing limits on "contributions" permitted during the "qualifying period" before a candidate is a "participating candidate").

Third, S.B. 1516's repeal and replacement of "political committee" also materially amends the Act. S.B. 1516 deletes that term entirely and regenerates it as "political action committee," with a more narrow and different definition. *See* A.R.S. § 16-901(41) (defining "political action committee"). Before, a "political committee" was defined as an entity "that is organized, conducted or combined for the purpose of influencing" elections. *See* A.R.S. § 16-901(19) (Supp. 1998). S.B. 1516 repealed that term.[6]

Now, an entity is a "political action committee" only if its "primary purpose" is to influence elections. *See* A.R.S. § 16-905(D). And, regardless

[6] As the State notes (at 35), the legislature added the "primary purpose" limitation to the definition of "political committee" in 2015 but not the same version that is challenged here. *See* 2015 Ariz. Sess. Laws, ch. 297, § 1 (1st Reg. Sess.). The 2015 change was in force for only one election cycle and was not the subject of a VPA challenge. Before 2015, the definition had not been materially changed since the Clean Elections Act became a law.

of its activities, an entity that has certain federal tax-exempt status is not a "political action committee." *Id*; A.R.S. § 16-901(43) (defining "primary purpose"). The effect of these changes is that many entities that would have been "political committees" are not "political action committees," and therefore no longer have to file campaign finance reports or be subject to the Commission's penalties for violating reporting requirements. *See* A.R.S. § 16-926 (describing reports required from "committees," including political action committees); A.R.S. § 16-942(b) (establishing penalties for a violation of "any reporting requirement imposed by this chapter").

These amendments are no different than the one the Supreme Court struck down in *State v. Maestas*, 244 Ariz. 9 (2018). There, the Court voided legislation that indirectly amended the Arizona Medical Marijuana Act (AMMA) because the amendment did not comply with the VPA. *Id*. at 13, ¶¶ 16-18. The AMMA, a voter-approved initiative, "sets forth a list of locations where the AMMA's immunities from civil and criminal penalties related to marijuana possession did not apply." *Id*. ¶ 15. The legislature wanted to add to that list. Rather than amend the AMMA directly, the legislature enacted a separate law stating that it was unlawful to possess or

use marijuana on college campuses, even if the possession or use was AMMA-compliant. *Id.* at 11, ¶ 1.

The Court held that this new provision amended the AMMA because it converted conduct that the AMMA made lawful ("AMMA-compliant possession or use of marijuana on public college and university campuses") into criminal conduct. *Id.* at 13, ¶ 15. The fact that the amendment occurred indirectly was immaterial. *See Cave Creek*, 233 Ariz. at 7, ¶ 23 ("The legislature may not do indirectly what it is prohibited from doing directly" (quoting *Caldwell v. Bd. of Regents*, 54 Ariz. 404, 410 (1939).). Accordingly, the Court held that "the VPA's restrictions apply to the legislature's enactment . . . because it amends the AMMA." *Maestas*, 244 Ariz. at 13, ¶ 18 (going on to hold that the legislation violated the VPA because it did not further the purposes of the AMMA).

If applied to the Act, the challenged portions of S.B. 1516 are amendments for the same reason. S.B. 1516 indirectly but unambiguously amends the Act to permit conduct the Clean Elections Act prohibited. Consequently, to apply to the Act, S.B. 1516's amendments must comply with the VPA.

C. The State's arguments to the contrary fail.

The State raises several arguments to persuade the Court that these changes to the Clean Elections Act are not amendments and are thus not subject to the VPA. Each fails.

1. The State's preferred "construction" of the VPA is wrong.

The lynchpin of the State's Opening Brief is its proposed rule that legislative changes to the terms incorporated in § 16-961 are not amendments "offending the VPA . . . as long as they can be harmonized with the Act." OB at 27, 38. The premise of this argument is flawed.

The State characterizes its rule this way: "there is no implied amendment for purposes of the VPA if the allegedly conflicting statutes can be 'harmonized to give each effect and meaning.'" Op. Br. at 39 (quoting *Cave Creek*). The State misconstrues *Cave Creek*. Under that case, a court "*is required*" to find an implied repeal "when conflicting statutes cannot be harmonized." *Cave Creek*, 233 Ariz. at 7, ¶ 24 (holding legislation violated VPA) (emphasis added). *Cave Creek* does not, however, hold that an implied amendment *only* occurs when a court first finds the statutes cannot be harmonized.

The VPA itself presumes that the legislature can both amend a law and be consistent with that law. In fact, the VPA insists on it. The legislature may amend a voter-approved measure only if the amendment "furthers the purposes of such measure." Ariz. Const. art. 4, pt. 1, § 1(6)(C).

The amendments here are unambiguous and straightforward: S.B. 1516 changes the meaning of the text of the Clean Elections Act. The analysis should end there. *See Maestas*, 244 Ariz. at 13, ¶¶ 15-19 (concluding that statute indirectly amends voter-approved act "by its terms" and separately assessing whether the amendment "furthers the purposes" of the voter-approved act).

2. S.B. 1516 cannot be "harmonized" with the Clean Elections Act.

The State is also incorrect on the merits of its proposed rule. Although the State says "S.B. 1516's changes can be harmonized with the Act," its argument depends on sticking its head in the sand about the printed-in-black-and-white purposes of the Act.

The Court can look in the State's brief, but it will not find an explanation how the challenged portions of S.B. 1516 are "consistent" or in "harmony" with the "intent" of the "people of Arizona . . . to create a clean

elections system that will improve the integrity of Arizona state government **by diminishing the influence of special interest money**." A.R.S. § 16-940(A) (emphasis added). The State does not address this important anticorruption purpose in its analysis at all.

Nor will the Court find where the State explains how the replacement of "political committee" with the narrower "political action committee"—a change that results in fewer entities filing campaign finance reports—is consistent with the stated "intent" to promote greater transparency so that "there will be no need to challenge the sources of campaign money." A.R.S. § 16-940(A).

The State's choice to skip over § 16-940(A) is understandable. There is no credible argument that S.B. 1516 is consistent with the Act on this point. And the arguments the State does advance fall flat. First, the State says (at 40-41) that whether "legal and accounting expenses" or "coordinated party expenditures" are considered "contributions" makes "no difference to the efficacy of the Act" because the Commission can still "police" contributions and expenditures.

That argument does not get far. Changing which categories of spending qualify as a "contribution" impacts the "efficacy" of the Act.

Before S.B. 1516, a participating candidate could not allow a third party to pay for legal fees; now they can. *See* A.R.S. § 16-911(B)(6)(c).[7] Before S.B. 1516, a political party could not use unlimited money to support a single specific nominee; now it can. *See* A.R.S. § 16-911(B)(4). The Act previously limited how parties could spend on candidate campaigns. The expanded exemption for spending by political parties surely impacts the "efficacy" of the Act in "diminishing the influence of special-interest money" and in "becom[ing] more issue-oriented and less negative because there will be no need to challenge the sources of campaign money." A.R.S. § 16-940(A).

Second, the State argues (at 40-41) that these categories of spending are irrelevant to the Act because the Act's Publicity Pamphlet said nothing about

[7] The State infers (at 40) that S.B. 1516's "legal and accounting expenses" exemption is consistent with the Act because the "1998 version of § 16-901 actually excluded from the definition of 'contribution' 'legal or accounting services rendered to or on behalf of a political committee or a candidate.'" The State's quote is incomplete and its inference is incorrect. The provision the State refers to excludes the value of *pro bono* legal and accounting services only, and only for the purpose of compliance with Title 16. *See* § 16-901(5)(ix) (1998) (excluding "[l]egal or accounting services rendered . . . **if the only person paying for the services is the regular employer of the individual rendering the services** and if the services are **solely for the purpose of compliance with this title**" (emphasis added)) (APP149). That definition stayed the same until S.B. 1516. S.B. 1516 excludes all amounts paid by anyone, and removes the restriction on purpose.

those expenses. Of course it doesn't. "Coordinated party expenses" did not exist as a term until S.B. 1516—it is a new category of "noncontributions." And "legal and accounting" expenses were already among the types of payments that qualified as contributions and expenditures. The publicity pamphlet also says nothing about whether brown paper bags of cash count as contributions, but surely if the legislature exempted such forms of payment from "contribution" the State agrees that such legislation would be inconsistent with the Act.

3. *Brain* does not exempt S.B. 1516's amendments from the VPA.

The State contends that S.B. 1516's changes are not amendments at all, relying on *Arizona Clean Elections Commission v. Brain*. *See* OB at 28-32. According to the State (at 29), "the instruction of *Brain*" is that "§ 16-961(A)'s cross-reference to § 16-901's definitions does not enshrine those definitions as they were in 1998 when voters passed § 16-961." The State's implicit argument is that, under *Brain*, changes to § 16-961's incorporated terms are both **not** amendments subject to the VPA yet **do** apply to change the meaning of the Act. The State is incorrect for several reasons.

To begin, the State oversells *Brain* as much broader than it is. The Court did not "resolve whether the legislature could amend statutes that were cross-referenced in the Act." OB at 28. The Court decided only a "single statutory issue: whether A.R.S. § 16-941(B) provides a formula for calculating campaign contribution limits for nonparticipating candidates or instead fixes those limits." *Brain*, 234 Ariz. at 324, ¶ 10. The Court was not assessing whether a change to an expressly incorporated term is an amendment, or whether a "cross-reference" can be changed without regard to the VPA as the State implies.

Similarly, Appellees do not ask the Court to issue such a broad holding here. The judgment below enjoins amendments to specific words that the Act expressly incorporates into the Act, not mere cross-references.

Next, the Court's holding that § 16-941(B) is a "formula" with fluctuating outputs goes against the State's interpretation of § 16-961(A). Most significantly, the State's interpretation of § 16-961(A) lacks the single most important factor in the Court's holding: any text supporting its interpretation. In *Brain*, the "first and foremost" reason for its holding is that the text of § 16-941(B) uses a "percentage for calculating contribution limits," which is "characteristic of a formula." 234 Ariz. at 325, ¶ 15. In other words,

the text included a percentage to be applied to a variable, which could change over time. Here, there is nothing of the sort; § 16-961(A) unambiguously incorporates specific definitions of specific words as defined in § 16-901. Thus, unlike in *Brain*, there are no textual clues indicating that the voters did anything other than incorporate into the Act the terms as they were written in § 16-901.

Finally, the State's assertion (at 30-31) that a reasonable voter may have anticipated that the legislature would amend § 16-901 from time to time does not help the State's case. The State argues as though the Court's choice is between VPA-unrestricted amendment on one hand and freezing all legislation on the other. It is not. The Commission does not contend that the incorporated definitions are "enshrined" or "frozen" in 1998. Nor does the Commission assert that the voters would be shocked that a law passed in 1998 might be amended from time to time, whether it is a change to the incorporated definitions from § 16-901 or any other aspect of the Clean Elections Act. But any amendments must be done *lawfully*. For amendments to voter-approved measures, that means that any amendments must comply with the VPA.

II. To avoid enjoining the challenged portions of S.B. 1516, the Court could hold that S.B. 1516's amendments do not apply to the Clean Elections Act.

Because S.B. 1516 did not pass with a three-fourths majority, the sections challenged here may not apply to the Clean Elections Act without violating the VPA. In briefing below, the Commission urged a narrower result: that these purported amendments do not apply to the Clean Elections Act.

A longstanding rule of statutory construction provides that when a statute incorporates the provisions of another statute, the incorporating statute is unaffected by amendments to or repeal of the other statute. *Dairy & Consumers Co-op. Ass'n v. Ariz. Tax Comm'n*, 74 Ariz. 35, 37-38 (1952). *See also* Ariz. Op. Att'y Gen. No. I16-001 (Mar. 3, 2016) (approving and applying rule, explaining that "[a]s a general rule, when a statute adopts part or all of another statute, the adoption takes the statute as it exists at the time and does not include subsequent additions or modifications absent clear intent" (quoting Ariz. Op. Att'y Gen. No. I78-171 (1978)). *See also United States v. Myers*, 553 F.3d 328, 331 (4th Cir. 2009) (applying rule and explaining that "when one statute adopts a provision of another statute by specific reference, it is as if the adopting statute had itself spelled out the terms of the

adopted provision"); *Hassett v. Welch*, 303 U.S. 303, 314 (1938) ("wellsettled" rule applies when "one statute adopts the particular provisions of another by a specific and descriptive reference").

This situation fits squarely within this interpretive rule. The Act states that the terms "contribution," "expenditure," and "political committee" "are defined in § 16-901." A.R.S. § 16-961(A). Accordingly, subsequent amendments (in the case of "contribution" and "expenditure") or repeals (in the case of "political committee," which no longer exists) do not affect the Clean Elections Act.

The State contends (at 32-33) that this interpretative rule is no longer good law after *Brain* and a recent statute seemingly rejecting the canon, A.R.S. § 1-255. The State oversells the impact of *Brain* and A.R.S. § 1-255. At most, the Court showed some skepticism toward the rule. *See* 234 Ariz. at 328, ¶ 27. The Court concluded that the doctrine did not shed light on the voters' intent or outweigh the evidence of intent already compiled, so the Court "decline[d] to apply the canon." *Id.* As for § 1-255, it does not close off this narrower path because the legislature enacted it in 2015, long after the Clean Elections Act, and so sheds little light on this case. *See* A.R.S. § 1-

244 ("No statute is retroactive unless expressly declared therein."). Moreover, § 1-255 did not receive a three-quarters vote of both houses.

The State also argues (at 33) that applying the doctrine here would be "nonsensical" because the Clean Elections Act has "multiple cross-referenced statutes to non-VPA protected statutes." But the Commission's position does not ask about the "multiple cross-referenced statutes." The judgment here concerns a tiny subset of the definitions incorporated from § 16-901. The Commission is suggesting that this interpretive rule permits the Court to narrow the already-narrow judgment further.

III. S.B. 1516's effort to limit the Commission's enforcement authority violates the VPA.

The superior court also enjoined A.R.S. § 16-938(A)'s requirement that the filing officer is "the sole public officer" who may "initiate an investigation into alleged violations of [article 1.7] and articles 1, 1.1, 1.2, 1.3, 1.4, 1.5 and 1.7 of [title 16, chapter 6]." The parties' dispute concerns whether A.R.S. § 16-938(A), as enacted in S.B. 1516, limits the Commission's enforcement authority under the Act. To the extent it does so, it violates the VPA.

The State argues that the reference to the "sole public officer" in A.R.S. § 16-938(A) does not affect the Commission's jurisdiction for two reasons. First, it argues (at 42) that the Commission has enforcement authority, but no investigative authority regarding reporting violations subject to A.R.S. § 16-942(B). Second, it argues (at 42) that the Commission has no authority to enforce statutes subject to A.R.S. § 16-938(A). Both arguments are incorrect. The Commission has jurisdiction to investigate any violations of law that it enforces, and the Commission has authority under the Act to enforce statutes listed in A.R.S. § 16-938(A). To the extent A.R.S. § 16-938(A) prohibits the Commission from investigating violations within its jurisdiction under the Act, it violates the VPA, and the superior court's injunction should be affirmed.

A. The Commission has jurisdiction to enforce violations of statutes within A.R.S. § 16-938(A).

The Act gives the Commission broad enforcement authority over campaign finance violations. *See Clean Elections Inst. v. Brewer*, 209 Ariz. 241, 245, ¶ 13 (2004) (describing Commission enforcement responsibilities). For example, the Act charges the Commission with the authority to "[e]nforce this article [and] monitor reports filed pursuant to this *chapter*. A.R.S. § 16-

956(7) (emphasis added). In turn, it gives the Commission authority to impose penalties for violations of "***any*** reporting requirement imposed by ***this chapter*** [Title 16, chapter 6]." A.R.S. § 16-942(B) (emphasis added). The Act also gave the Commission independent investigative authority, including the authority to issue subpoenas for information "material to the performance of the commission's duties or the exercise of its powers," A.R.S. § 16-956(B), and established an enforcement process that the Commission must follow to impose penalties, A.R.S. § 16-957. The Commission's authority to enforce Article 2 includes the authority to enforce *any* campaign finance reporting violation following the process established in the Act. This includes campaign finance reporting requirements now included in Article 1.4 because they are reporting requirements in the chapter over which the Commission has enforcement responsibilities. To the extent S.B. 1516 attempts to limit the Commission's enforcement under the Act by declaring the filing officer to be the "sole public officer" who can investigate certain campaign finance reporting violations, it violates the VPA by improperly amending the Act.

Similarly, the Commission has jurisdiction over violations of contribution limits for participating and non-participating candidates.

A.R.S. §§ 16-941(A), (B) (setting limits for participating candidates), 16-941(C) (setting formula for contribution limits for non-participating candidates). Under the Act, the Commission may disqualify candidates for violations of these requirements that exceed a specified amount. A.R.S. § 16-942(C). To the extent S.B. 1516 attempts to limit the Commission's ability to enforce § 16-942(C), it violates the VPA by improperly amending the Act.

B. The legislature cannot limit the Commission's authority to investigate reporting violations within its jurisdiction under the Act.

The State argues (at 42) that § 16-938(A) does not affect the Commission's jurisdiction because the Commission has enforcement authority, but no investigative authority, regarding reporting violations subject to § 16-942(B). This is wrong. The Commission has authority to investigate violations of law that it enforces. Otherwise, there would be no reason for the Commission to have subpoena power, A.R.S. § 16-956(B), or its multi-step enforcement process in A.R.S. § 16-957.

The State's argument ignores the Commission's statutory investigatory authority and enforcement process. A.R.S. §§ 16-956(B), 16-957. The Act contemplates the Commission conducting its own investigations and reaching its own conclusions regarding whether a

violation of law occurred that supports imposing a penalty under the Act. *Id.*

Section 16-938(A), on the other hand, establishes a process that begins with a third-party complaint followed by an investigation by the Secretary of State (the filing officer) and then advances to further investigation and enforcement by the Attorney General (the enforcement officer). Under § 16-938(A), after receiving a complaint only the filing officer initiates an investigation into alleged violations of certain campaign finance laws, and under § 16-938(F) the enforcement officer "has the sole and exclusive authority to initiate" enforcement proceedings. This process applies to the penalties established in Articles 1, 1.1, 1.2, 1.3, 1.4, 1.5 1.6, and 1.7. A.R.S. § 16-938(A). It also applies only to complaints that a filing officer receives, not to complaints the Commission receives or to violations that are not the subject of a third-party complaint. It does not, however, apply to any provisions in Article 2.

The Act does not restrict the Commission's authority to investigate violations of reporting requirements subject to the Commission's jurisdiction under § 16-942. Yet that is what S.B. 1516's A.R.S. § 16-938(A) attempts to do by declaring the filing officer to be the "sole officer" who can

initiate and investigate complaints concerning any violations of campaign finance laws outside of Article 2, including reporting violations that are plainly subject to the Commission's jurisdiction, A.R.S. § 16-942(B).

The references to this "article" in the Act do not justify ignoring the Commission's authority *within* Article 2 to impose penalties that implicate statutes outside of Article 2. Section 16-942(B) plainly gives the Commission enforcement authority that extends to reporting requirements throughout all of Title 16, Chapter 6, and the Act's independent investigative and enforcement processes apply to any exercise of Commission enforcement authority.

Therefore, to the extent § 16-938(A) prohibits the Commission from investigating violations of law within its jurisdiction under the Act, it violates the VPA, and the superior court's injunction should be affirmed.

C. Section 16-941(B) does not restrict the Commission's investigative and enforcement authority.

The State (at 45-6) incorrectly relies on § 16-941(B)'s reference to the penalties and procedures outside of the Act to justify bypassing the Commission's independent investigation and enforcement process. Section 16-941(B) addresses violations of contribution limits by non-participating

candidates and refers to the then-existing enforcement process through the Secretary of State and Attorney General. This is the *only* place the Act refers to that separate enforcement process. The State ignores § 16-942(C) which gives the Commission specific and independent authority to disqualify candidates and officials for significant violations of contribution limits established in § 16-941. The State also elides the Commission's authority under § 16-956(A)(7) and the longstanding interpretation of the Arizona Supreme Court. *See Brewer*, 209 Ariz. at 245, ¶ 13 (listing Commission's enforcement responsibilities, including over reporting requirements). The separate and independent enforcement process through the Secretary of State has no impact on the Commission's authority to impose penalties under § 16-942, to initiate enforcement actions under § 16-957 or to use its investigative powers under § 16-956(B). The Commission's jurisdiction to enforce Article 2 necessarily includes the power to impose penalties authorized under § 16-942 using the Commission's powers and processes that the voters approved in the Act.

D. Section 16-938(A) could be construed to respect the Commission's investigative and enforcement authority.

The only plausible reading that could avoid a conflict between § 16-938(A) and the Commission's authority recognizes that, as a matter of statutory construction, § 16-938(A) does not limit the Commission's authority to initiate investigations into violations of any law within the Commission's jurisdiction under the Act, including all reporting violations under the chapter and contributions limits subject to the penalties under § 16-941(C). This interpretation recognizes that § 16-938(A) has no application to Commission enforcements to impose penalties under Article 2, even if the enforcement involves a statute in an article listed in § 16-938(A).

Absent that construction that preserves the Commission's enforcement and related investigative authority, § 16-938(A) violates the VPA by altering the Commission's authority, and the superior court's injunction against the reference to the "sole officer" in A.R.S. § 16-938(A) should be affirmed.

CONCLUSION

The judgment should be affirmed, or, in the alternative remanded with instruction that the relevant provisions of S.B. 1516 do not apply to the Clean Elections Act.

RESPECTFULLY SUBMITTED this 3rd day of December, 2019.

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ARIZONA STATE SENATE

Fifty-Second Legislature, Second Regular Session

FINAL REVISED/AMENDED*

FACT SHEET FOR S.B. 1516

campaign finance amendments

Purpose

Repeals, reorganizes, reinserts and modifies campaign finance requirements.

Background

Generally, political committees fall into three broad categories: candidate committees, political parties and political action committees (PACs). Within each of these categories, political committees are dedicated for specific functions, such as making contributions to candidates, supporting or opposing ballot measures or making independent expenditures. Certain committees may qualify for special status. For example, super PACs registered with the Secretary of State (SOS) may give contributions to candidates at a higher contribution limit. To qualify, the committee must have received $10 contributions from 500 contributors in the two-year period before applying for the status. A committee with standing committee status has consolidated reporting requirements; the committee must file campaign finance reports with the SOS but is exempt from the filing requirements of other Arizona jurisdictions. To qualify, the committee must be active in more than one reporting jurisdiction for more than one year and pay an annual $250 fee.

Generally, a *contribution* is any gift, loan, advance, deposit of money or anything of value made for the purpose of influencing an election. However, statute outlines exemptions to contributions, meaning some of the money, loans or in-kind goods and services do not have to be reported. A contribution does not include: 1) the value of services provided without compensation by a volunteer on behalf of a committee; 2) money or the value of anything directly or indirectly provided to defray the expense of an elected official meeting with constituents, or provided by the state or political subdivision to an elected official for communication with constituents, if the official is engaged in the duties of his office; 3) the use of real or personal property used on a regular basis by members of a community for noncommercial purposes, and the cost of invitations, food and beverages voluntarily provided by an individual in rendering voluntary personal services on the individual's residential premises or other property, to the extent that the cumulative value does not exceed $100 in any single election; 4) any unreimbursed payment for travel expenses for a volunteer; 5) the payment by a political party for party operating expenses as outlined; 6) independent expenditures; 7) monies loaned by a bank made in accordance with applicable law in the ordinary course of business, as specified; 8) a gift, loan or deposit of anything of value to a national or state committee of a political party specifically designated to defray any cost for the construction or purchase of an

office facility not acquired for the purpose of influencing the election of a candidate in any particular election; 9) legal or accounting services if the only person paying is the regular employer of the individual and if the services are solely for the purpose of complying with campaign finance law; 10) the payment by a political party of the costs of campaign materials used by the party in connection with volunteer activities on behalf of any nominee or the payment of the costs of voter registration and get-out-the-vote activities as outlined; 11) transfers between political committees to distribute monies raised through a joint fundraising effort as specified; 12) an extension of credit for goods and services if the terms are substantially similar to extensions of credit to nonpolitical debtors and if the creditor makes a reasonable attempt to collect the debt, except debts that remain unsatisfied by the candidate after six months; and 13) interest or dividends earned on any bank accounts, deposits or other investments.

Similarly, there are exemptions from the definition of *expenditures*. An expenditure is 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. However, an expenditure does not include: 1) a news story, commentary or editorial distributed through the facilities of any telecommunications system or periodical publication, unless the facilities are owned or controlled by a political committee, political party or candidate; 2) nonpartisan activity designed to encourage individuals to vote or register to vote; 3) the payment by a political party of the costs of preparation, display, mailing or other distribution incurred by the party with respect to any printed slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held, except that this exception does not apply to costs with respect to a display of any listing of candidates made on any telecommunications system or in newspapers, magazines or similar types of general public political advertising; 4) the payment by a political party of the costs of campaign materials as specified used by the party in connection with volunteer activities on behalf of any nominee of the party or payment as outlined of the costs of get-out-the-vote activities; and 5) any deposit or other payment filed with the SOS or any similar officer to pay any portion of the cost of printing an argument in a publicity pamphlet advocating or opposing a ballot measure.

The fiscal impact to the state General Fund associated with this legislation is unknown.

Provisions

General

1. Repeals and reorganizes the campaign finance statutes.

2. Consolidates the different types of political committees into three types of committees: candidate committees, PACs and political parties.

3. Removes the concept of *exploratory committee*.

4. Defines *person* as an individual or a candidate, nominee, committee, corporation, limited liability company (LLC), labor organization, partnership, trust, association, joint venture, cooperative or unincorporated organization or association.

Committee Registration

5. Increases the contribution or expenditure threshold for requiring a candidate to register as a candidate committee from $500 to $1,000, in connection with that candidacy.

6. Increases the contribution or expenditure threshold for requiring an entity to register as a PAC from $500 to $1,000 in connection with any election during a calendar year.

7. Adds to the criteria requiring an entity to register as a PAC that the entity must be organized for the primary purpose of influencing the result of an election.

8. Defines *primary purpose* as an entity's predominant purpose. Specifies that an entity is not organized for the primary purpose of influencing an election if all of the following apply at the time the contribution or expenditure is made:
   a) the entity has tax exempt status under section 501(a) of the Internal Revenue Code;
   b) except for a religious organization, assembly or institution, the entity has properly filed a Form 1023 or Form 1024 with the Internal Revenue Service (IRS) or the equivalent successor form designated by the IRS;
   c) the entity's tax-exempt status has not been denied or revoked by the IRS;
   d) the entity remains in good standing with the Arizona Corporation Commission (ACC); and
   e) the entity has properly filed a Form 990 with the IRS, or the equivalent successor form designated by the IRS, in compliance with the most recent filing deadline established by IRS regulations or policies.

9. Establishes a rebuttable presumption that an entity is organized for the primary purpose of influencing the result of an election if the entity:
   a) except for a religious organization, assembly or institution, claims tax exempt status but had not filed Forms 1023 or 1024, or its equivalent, with the IRS before making a contribution or expenditure;
   b) made a contribution or expenditure and at that time had its tax exempt status revoked by the IRS;
   c) made a contribution or expenditure and at that time failed to file Form 990, or its equivalent, with the IRS if required by law; or
   d) at the time of making a contribution or expenditure was registered by the ACC but was not in good standing.

10. Specifies that committees are not subject to state income tax and not required to file income tax returns.

11. Requires the SOS to increase the threshold dollar amounts by $100 in January of odd-numbered years.

12. Eliminates the requirement for a committee that intends to accept contributions or make expenditures below the threshold to file an exemption statement before it makes expenditures, accepts contributions, distributes campaign literature or circulates petitions.

Statement of Organization

13. Requires a committee to file a statement of organization with the filing officer within 10 days after qualifying as a committee. Currently, if a committee that has filed a $500 threshold exemption statement receives contributions or makes expenditures of more than $500, the committee must file a statement of organization within 5 business days.

14. Modifies the statement of organization as follows:
    a) requires the email address of the committee, chairperson, treasurer and sponsor;
    b) requires the telephone number and website, if any, of the committee and sponsor;
    c) removes the requirement for the sponsor to list the relationship and type;
    d) only requires the candidate's part affiliation for a partisan office;
    e) allows the sponsor to list the sponsor's commonly known nickname; and
    f) instead of a statement that the chairperson and treasurer have read all applicable laws relating to campaign finance and reporting, requires the statement to specify that they have read the filing officer's campaign finance and reporting guide, agree to comply with these laws and agree to accept all notifications and service of process via the email address provided by the committee.

15. Requires the committee to file an amended statement of organization within 10 days after any change, rather than within 5 business days.

16. Eliminates the requirement for a standing committee to include in its statement of organization a statement with the notarized signature of the chairman or treasurer declaring the committee's status as a standing committee. Removes the ability of the SOS to charge an annual $250 fee.

17. Specifies that on filing a statement of organization, a PAC or political party may perform any lawful activity, including making contributions or expenditures or conducting issue advocacy without establishing a separate committee for each activity or specifying each activity in its statement of organization.

18. Permits the *best effort* of the treasurer or treasurer's agent to obtain the required contribution information to be by email, text message or private message through social media.

Recordkeeping

19. Requires committee bank accounts to be segregated as follows:
    a) committee monies must be segregated in different accounts from personal monies;
    b) contributions from individuals ~~and committees~~, partnerships, candidate committees, PACs or political parties must be segregated in different accounts from contributions from other donors ~~corporations, LLCs and labor organizations~~;
    c) contributions to a political party to defray operating expenses or support party-building activities must be segregated in different accounts from contributions used to support candidates;

d) allows a political party committee to commingle monies from any source in a single bank account if the account is maintained pursuant to a specified federal regulation; and
e) requires the committee to segregate contributions intended to influence a recall election into accounts different from those intended to influence any other election, and those recall contributions cannot be used to influence any other election.

20. Limits the identification of contributors of which the committee must keep record to contributors who contribute at least $50 in the aggregate to the committee during the election cycle.

~~21. Deems a contribution made when tendered to the committee's possession.~~ *(see provision #76)*

~~22. Deems an expenditure or disbursement made when promised, obligated, contracted for or spent.~~ *(see provision #76)*

23. Specifies that a committee may accept a cash contribution.

24. Requires the committee to keep all records for two years following the end of the election cycle, rather than three years after filing of the finance report.

25. Requires a person that qualifies as a committee to report all contributions, expenditures and disbursements that occurred before qualifying as a committee and to maintain and produce records as prescribed.

26. Removes the requirement for the banks used by committees to be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

Mega PAC Status

27. Renames committees commonly referred to as *super PACs* as *Mega PACs*.

28. Extends the period that a committee must receive the requisite number of $10 contributions from two years to four years immediately before application to the SOS.

Contributions

29. Specifies that a person may make any contribution not otherwise prohibited by law.

30. Modifies the exemptions from the definition of *contribution*. Specifies that the following are not contributions:
a) the value of an individual's volunteer services or expenses that are provided without compensation or reimbursement, including the individual's travel expenses; use of real or personal property; cost of invitations, food or beverages; use of email, internet activity or social media messages, but only if the individual's use is not paid for by the individual or any other person and if the activities do not contain or include transmittal of a paid advertisement or paid fundraising solicitation;

b) the costs incurred for covering or carrying a news story, commentary or editorial by a broadcasting station or cable television operator, an internet website, a newspaper or another periodical publication, including an internet-based or electronic publication, if the cost for the news story, commentary or editorial is not paid for by and the medium is not owned or under the control of a candidate or committee;
c) any payment to defray the expense of an elected official meeting with constituents or attending an informational tour, conference, seminar or presentation, if the payor or the elected official does not attempt to influence the result of an election and the payment is reported if required pursuant to statutes regarding financial disclosure for public officers or regulation of lobbyists, or both;
d) the payment by a political party to support its nominee, including the printing or distribution of, or postage expenses for, voter guides, sample ballots, pins, bumper stickers, handbills, brochures, posters, yard signs and other similar materials distributed through the party; or coordinated political party expenditures;
e) the payment by any person to defray a political party's operating expenses or party-building activities, including party staff and personnel; studies and reports; voter registration, recruitment, polling and turnout efforts; party conventions and meetings; and construction, purchase or lease of party buildings or facilities;
f) the value of interest earned on the committee's deposits or investments;
g) the value of transfers between committees to reimburse expenses and distribute monies raised through a joint fundraising effort, ~~except that contributions shall be allocated as described in the fundraising solicitation and expenses shall be allocated in the same proportion as contributions~~ if the transfers comply with a written agreement to reimburse and distribute monies that was executed before the joint fundraising effort occurred;
h) the value of payment of a committee's legal or accounting expenses by any person;
i) the value of an extension of credit for goods and services on a committee's behalf by a creditor if the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. The creditor must make a commercially reasonable attempt to collect the debt, except that if an extension of credit remains unsatisfied by the committee after six months the committee is deemed to have received a contribution but the creditor is not deemed to have made a contribution;
j) the value of nonpartisan communications intended to encourage voter registration and turnout efforts;
k) any payment to a filing officer for arguments in a publicity pamphlet;
l) the payment by any sponsor or its affiliate for the costs of establishing, administering and soliciting contributions from its employees, members, executives, stockholders and retirees and their families to the sponsor's separate segregated fund;
m) any payment by any entity for the costs of communicating with its employees, members, executives, stockholders and retirees and their families about any subject, without regard to whether those communications are made in coordination with any candidate or candidate's agent;
n) the value of allowing a candidate or a committee's representative to appear at any private residence or at the facilities of any entity to speak about the candidate's campaign or about a ballot measure, if the venue is furnished by the venue's owner, is not paid for by a third party and is not a sports stadium, coliseum, convention center, hotel ballroom, concert hall or other similar arena that is generally open to the public;

o) the costs of hosting a debate or candidates' forum, if at least two opposing candidates, with respect to any given office sought, or representatives of at least two opposing ballot measure campaigns, with respect to any measure on the ballot, are invited with the same or similar advance notice and method of invitation;
p) the preparation and distribution of voter guides, subject to the prohibitions below;
q) monies that are loaned by a financial institution in the ordinary course of business and not for the purpose of influencing the results of an election, except that the loan is deemed a pro rata contribution by any endorser or guarantor, other than the candidate's spouse; and
r) the costs of publishing a book or producing a documentary, if the publication and production are for distribution to the general public through traditional distribution mechanisms or a fee is obtained for the purchase of the publication or viewing of the documentary.

31. Subjects the preparation and distribution of voter guides to the following:
    a) prohibits a featured candidate or ballot measure from receiving greater prominence or substantially more space in the voter guide than any other candidate or ballot measure; and
    b) prohibits the voter guide from including any message that constitutes express advocacy.

32. Specifies that the exemptions do not imply that any transactions not specifically listed are contributions unless those transactions otherwise meet the definition of *contribution*.

33. Specifies that in addition to individuals, candidate committees, PACs, partnerships, corporations, LLCs and labor organizations may make unlimited contributions to persons other than candidate committees.

34. Permits an individual only to make contributions using personal monies.

~~35. Prohibits a candidate committee from contributing more than the contribution limits per election cycle to a candidate committee for another candidate.~~

36. Prohibits a candidate committee from making contributions to a candidate committee for another candidate.

37. Allows a candidate committee that intends to terminate to contribute surplus monies to a candidate committee for another candidate under the following conditions:
    a) a candidate committee makes the contribution after the statutory time period for filing a nomination paper;
    b) the candidate associated with the candidate committee that makes the contribution did not file a nomination paper to run for election in the current election cycle;
    c) in the case of a candidate committee for legislative office, the candidate committee makes the contribution when the Legislature is not in regular legislative session; and
    d) the candidate committee makes the contribution within the campaign contribution limits for individuals.

38. Allows a candidate committee to transfer unlimited contributions to any one or more other candidate committees for the same candidate without regard to the office sought under the following conditions:
    ~~a) both candidate committees must be registered with a filing officer in charge of a city, town, county or district elections for any one or more offices, including offices with different aforementioned filing officers, or both must be registered with the SOS for any one or more offices for which the SOS is the filing officer; and~~
    a) allows a city or town candidate committee to transfer contributions to a county candidate committee;
    b) prohibits a city or town candidate committee from transferring contributions for the candidate committee for a statewide or legislative office;
    c) prohibits a county committee from transferring contributions received from a city or town candidate committee to a committee for a statewide or legislative office for 24 months immediately following the transfer; and
    d) contributions originally made to the transferring candidate committee are deemed to be contributions to the receiving candidate committee.

39. Prohibits an individual's aggregate contributions to both candidate committees, as specified above, during the election cycle from exceeding the individual's contribution limit for that candidate.

~~40. Prohibits a PAC or political party from contributing to a candidate committee or a nominee using monies contributed by a corporation, LLC or labor organization.~~

41. Clarifies that a PAC or political party may only contribute to a candidate committee or nominee using monies contributed by an individual, partnership, candidate committee, PAC or political party.

42. Prohibits a political party from contributing to candidate committees other than nominees.

43. Clarifies that candidate committees may only accept contributions from an individual, partnership, candidate committee, PAC or political party.

44. Prohibits a candidate committee from knowingly accepting contributions in excess of the contribution limits.

45. Requires a candidate committee that unknowingly accepts an excess contribution to refund or reattribute excess contributions within 60 days after receipt of the contribution.

46. Permits a candidate committee to reattribute an excess contribution only if both the following apply:
    a) the excess contribution was received from an individual contributor; and
    b) the individual contributor authorizes the candidate committee to reattribute the excess amount to another individual who was identified as a joint account holder in the original instrument used to make the excess contribution.

47. Stipulates that a political party may make unlimited contributions to persons other than candidate committees and nominees.

48. Permits the sponsor or its affiliate to pay the administrative, personnel and fundraising expenses of its separate segregated fund, which are not deemed contributions. Current law specifies that the establishment, administration and solicitation of voluntary contributions to a separate segregated fund are not political contributions.

49. Permits a sponsor or its segregated fund to solicit contributions from the sponsors, sponsor's affiliates or subsidiaries' employees, members, executives, stockholders, retirees and their families. Currently, such solicitation is limited to no more than two written solicitations per year from a non-stockholder or non-executive.

50. Allows a trade association to solicit contributions from its members' employees, subsidiaries and retirees.

51. Requires a partnership to provide the recipient committee written notice identifying the contributing partners and the amount attributed to each.

52. Prohibits a partnership from attributing any contribution to a partner that is a corporation, LLC or labor organization.

53. Specifies that partnership contributions need not be accompanied by the signature of each contributing partner.

54. Stipulates that a partnership may establish a separate segregated fund.

Expenditures

55. Allows a person to make any expenditure not otherwise prohibited by law.

56. Specifies that the following are not expenditures:
    a) the value of an individual's volunteer services or expenses that are provided without compensation or reimbursement, including the individual's travel expenses; use of real or personal property; cost of invitations, food or beverages; use of email, internet activity or social media messages, but only if the individual's use is not paid for by the individual or any other person and if the activities do not contain or include transmittal of a paid advertisement or paid fundraising solicitation;
    b) the value of any news story, commentary or editorial by any broadcasting station, cable television operator, programmer or producer, newspaper, magazine, website or other periodical publication that is not owned or operated by a candidate, candidate's spouse or any committee;
    c) the payment by any person to defray a political party's operating expenses or party-building activities, including party staff and personnel; studies and reports; voter registration, recruitment, polling and turnout efforts; party conventions and meetings; and construction, purchase or lease of party buildings or facilities;
    d) the value of interest earned on the committee's deposits or investments;

e) the value of transfers between committees to reimburse expenses and distribute monies raised through a joint fundraising effort, except that contributions shall be allocated as described in the fundraising solicitation and expenses shall be allocated in the same proportion as contributions;
f) the value of payment of a committee's legal or accounting expenses;
g) the value of an extension of credit for goods and services on a committee's behalf by a creditor if the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. The creditor must make a commercially reasonable attempt to collect the debt, except that if an extension of credit remains unsatisfied by the committee after six months the committee is deemed to have received a contribution but the creditor is not deemed to have made a contribution;
h) the value of nonpartisan communications intended to encourage voter registration and turnout efforts;
i) any payment by a person that is not a committee to a filing officer for arguments in a publicity pamphlet;
j) any payment for legal or accounting services that are provided to a committee; and
k) the payment of costs of publishing a book or producing a documentary, if the publication and production are for distribution to the general public through traditional distribution mechanisms or a fee is obtained for the purchase of the publication or viewing of the documentary.

57. Specifies that the exemptions do not imply that any transactions not specifically listed are expenditures unless those transactions otherwise meet the definition of expenditure.

58. Stipulates that any person may make independent expenditures.

59. Specifies that an expenditure is not an independent expenditure if there is *actual* coordination. Current law specifies it is not independent if "there is any arrangement, coordination or direction" with respect to the candidate and the person making the expenditure.

60. Specifies an expenditure is not an independent expenditure if it is based on *non-public* information about the candidate's plans or needs.

61. Allows, instead of requires, the filing officer or enforcement officer to consider specified evidence of coordination in evaluating whether an expenditure is an independent expenditure. Specifies that the evidence is rebuttable.

62. Modifies such evidence. Instead of considering whether the person making the expenditure has received any form of compensation or reimbursement in the same election from the candidate, requires consideration of whether the candidate is or has been authorized to raise money or solicit contributions on behalf of the person making the expenditure in the same election cycle.

63. Deems an expenditure coordinated with a candidate, other than a coordinated party expenditure, an in-kind contribution to the candidate.

64. Removes the requirement for a corporation, LLC or labor organization that makes certain independent expenditures over specified thresholds to register and notify the appropriate filing officer within one day.

Disclosure Statements

65. Requires an advertisement or fundraising solicitation to include the words "paid for by" followed by the name of the person making the expenditure, rather than the name of the committee that appears on its statement or organization or $500 exemption statement.

66. Maintains the requirement for a PAC to include the names of the three political committees making the largest contribution to the PAC making the expenditure, but specifies it is the three largest aggregate contributions that exceed $20,000 during the election cycle, as calculated at the time the advertisement was distributed for publication, display, delivery or broadcast. Removes the requirement to also include the telephone numbers.

67. Allows the disclosure to be at the beginning or at the end of the radio or video broadcast.

68. Exempts the advertisement from spoken disclosure if the written disclosure statement is displayed for the greater of one-sixth of the broadcast duration or four seconds.

69. Requires the disclosure for a billboard advertisement to be displayed in a height at least four percent of the vertical height of the sign or billboard.

70. Exempts the following from the disclosures:
    a) social media messages, text messages or messages sent by a short message service;
    b) advertisements placed as a paid link on a website, if the message is not more than 200 characters in length and the link directs the user to another website that complies with the disclosure requirements;
    c) advertisements placed as a graphic or picture link, if the disclosure statements cannot be conveniently printed due to the size of the graphic or picture and the link directs the user to another website that complies with the disclosure requirements;
    d) a solicitation of contributions by a separate segregated fund;
    e) a communication by a tax-exempt organization solely to its members; and
    f) a published book or documentary film or video.

71. Removes the separate disclosure requirements for political committees that make expenditures in connection with any literature or advertisement to support or oppose a ballot proposition. Current law requires disclosure of the four largest major funding sources over a particular threshold.

Campaign Finance Reports

72. Requires the SOS's instructions and procedures manual to prescribe the format for all reports and statements. Maintains the current reporting requirements.

73. Requires PACs and political parties to report contributions from and disbursements to corporations, LLCs and labor organizations, including identification of their file numbers issued by the ACC.

74. Requires campaign finance reports to list disbursements in excess of $250 during the reporting period.

75. Requires the campaign finance report to list expenditures to advocate:
    a) the passage or defeat of a ballot measure, including identification of the ballot measure, the serial number, election date, mode of advertising and distribution or publication date; and
    b) for or against the issuance of a recall election order or for the election or defeat of a candidate in a recall election, including identification of the officer to be recalled or a candidate supported or opposed, mode of advertising and distribution or publication date.

76. Specifies, for the purpose of campaign finance reporting:
    a) a contribution is deemed received either on the date the committee takes possession of the contribution or the date of the check or credit card payment;
    b) an in-kind contribution of services is deemed made either on the date the services are performed or the date the committee receives the services;
    c) an expenditure or disbursement is deemed made either on the date the committee authorizes the monies to be spent or the date the monies are withdrawn from the committee's account;
    d) for a transaction by check, the expenditure or disbursement is deemed made on the date the committee signs the check;
    e) for a credit card transaction on paper, the expenditure or disbursement is deemed made on the date the committee signs the authorization to charge the credit card;
    f) for an electronic transaction, an expenditure or disbursement is deemed made on the date the committee electronically authorizes the charge; and
    g) for an agreement to purchase goods or services, the expenditure or disbursement is deemed made either on the date the parties enter into the agreement or the date the purchase order is issued.

77. Permits a committee to record its transactions using any of the methods authorized above, but for each type of contribution, expenditure or disbursement made or received, requires the committee to use the same method of recording transactions throughout the entire election cycle.

78. Specifies that in-kind contributions are equal to the usual and normal charges for the services on the date *performed*, instead of on the date received by the committee.

79. Requires a certification by the committee treasurer, issued under penalty of perjury, that the contents of the report are true and correct.

80. Requires a committee to report the identity of the person to whom a receipt or disbursement is earmarked.

81. Modifies the independent expenditure report as follows:
    a) requires an entity that makes independent expenditures or ballot measure expenditures in excess of $1,000 during a reporting period to file an expenditure report with the filing officer for the applicable reporting period;
    b) requires the report to identify the ballot measure supported or opposed, election date, mode of advertising and first date of publication, display, delivery or broadcast;
    c) eliminates the requirement for the report to contain the name and address of any person to whom an independent expenditure was made; and the names, occupations, employers and amount contributed by each of the three contributors that contributed the most money within the preceding six months; and
    d) removes the certification under penalty of perjury stating whether or not the claimed independent expenditure is made in cooperation, consultation or concert with or at the request or suggestion of any candidate or any campaign committee.

82. Eliminates the requirement for campaign committees and ballot measure committees to report contributions made from a single source less than 20 days before the election day if the contribution meets specified thresholds.

83. Removes *no activity* reports.

Reporting Periods

84. Modifies the reporting periods as follows, using 2016 as an example:

Current report periods:		
	Time Period Covered	Report Due Between
January 31 report	21 days after the date of the election in the preceding calendar year through December 31 of a nonelection year. November 25, 2014 through December 31, 2015	No later than January 31 of the following year. January 1, 2016 and February 1, 2016
June 30 report	January 1 through May 31	June 1 and June 30
Pre-Primary report	Complete through the 12th day before the election. 2016: June 1 through August 18	Not more than 4 days before any election. 2016: August 19 and August 26
Post-Primary report	Complete through the 20th day after the election. 2016: August 19 through September 19	Not more than 30 days after any election. 2016: September 20 and September 29
Pre-General report	Complete through the 12th day before the election. 2016: September 20 through October 27	Not more than 4 days before any election. 2016: October 28 and November 4
Post-General report	Complete through the 20th day after the election. 2016: October 28 through November 28	Not more than 30 days after any election. 2016: November 29 and December 8

S.B. 1516 report periods:

	Time Period Covered	Report Due Between
Non-election year quarterly reports	January 1 through March 31	April 1 and April 15
	April 1 through June 30	July 1 and July 15
	July 1 through September 30	October 1 and October 15
	October 1 through December 31	January 1 through January 15
Pre-Primary report	July 1 through 17 days before election 2016: July 1 through August 13	10 days before election 2016: August 14 and August 20
Post-Primary report	16 days before election through October 1 2016: August 14 through October 1	2016: October 2 and October 15
Pre-General report	October 1 through 17 days before election 2016: October 1 through October 22	10 days before election 2016: October 23 and October 29
Post-General report	16 days before election through December 31 2016: October 23 through December 31	2016: January 1 and January 15

85. Requires a candidate committee to file a campaign finance report only during the four calendar quarters comprising the 12-month period preceding the general election for the office for which the candidate is seeking election; or for cities and towns, the city's or town's second, runoff or general election, however designated by the city or town.

86. Requires the reporting period for a candidate committee's first campaign finance report of the election cycle to include the entire election cycle to date.

Violations

~~87. Eliminates the following penalties:~~
~~a) the class 2 misdemeanor for a corporation, LLC or labor organization that makes an expenditure or contribution for the purpose of influencing an election; and~~
~~b) the class 6 felony for the person through whom that violation is effected.~~

88. Removes the following campaign finance violations:
~~a) making a contribution in another person's name, knowingly allowing a person's name to be used to effect a contribution for another person or knowingly accepting such a contribution, which were class 6 felonies;~~
~~b) for a fund established by a corporation or labor organization to make a contribution or expenditure secured by physical force, job discrimination, financial reprisals or a related threat, or by dues, fees or other monies required as a condition of membership in a labor organization or as a condition of employment or by monies obtained in any commercial transaction;~~
c) volunteering services for expected compensation, which was a class 2 misdemeanor; and
d) false filing related to an independent expenditure, which was a class 1 misdemeanor.

89. Reinserts the class 2 misdemeanor penalty for a corporation, LLC or labor organization that makes a contribution to a candidate committee and the class 6 felony penalty for the individual through whom the violation is effected.

90. Specifies that the above penalties do not apply to a committee incorporated or organized for limitation of liability.

91. Restores the class 6 felonies for making a contribution in another person's name, knowingly allowing a person's name to be used in such a way or knowingly accepting such a contribution.

92. Reestablishes the following actions as unlawful, broader than originally written, as they only used to apply to corporations and labor organizations:
    a) a person making a contribution or expenditure using money or anything of value secured by physical force, job discrimination or financial reprisal, including threats of such; and
    b) a person making a contribution or expenditure using dues, fees or other monies required as a condition of membership in a labor organization or as a condition of employment.

93. Classifies the above two offenses as class 6 felonies.

Enforcement

94. Requires the filing officer, if a committee fails to file a timely report, to send a written notice by email within 5 days after the deadline, instead of by certified mail within 15 days.

95. Requires the notice to identify the late report, describe how fines accrue and identify methods of payment, rather than provide with reasonable particularity the nature of the failure and the penalties.

96. Removes the maximum $450 late fee.

97. Suspends temporarily the committee's authority to operate in the jurisdiction on receipt of the notice, rather than within 30 days.

98. Requires the notice to state that failure to comply with all filing and payment requirements within 30 days will result in permanent suspension.

99. Deems the filing officer, on receipt of a complaint from a third party, the sole public officer who is authorized to initiate an investigation into alleged violations of these provisions, including the alleged failure to register as a committee.

100. Requires the filing officer to limit an investigation to violations within the officer's jurisdiction.

101. Permits the filing officer to declare a conflict of interest and refer the investigation to any other filing officer in the state who agrees to accept the referral.

102. Requires the SOS to establish guidelines in the instructions and procedural manual that outline the procedures, timelines and other processes that apply to filing officers' investigations.

103. Requires the filing officer to refer the matter to the enforcement officer as follows:
   a) the SOS must refer matters to the AG;
   b) a county filing officer must notify the county attorney; and
   c) a city or town filing officer must notify the city or town attorney.

104. Prohibits a filing officer, enforcement officer or any other public officer or employee from ordering a person to register as a committee before a reasonable cause determination is made.

105. Specifies that the officers listed above do not have audit or subpoena powers to compel the production of evidence or the attendance of witnesses concerning a potential campaign finance violation.

106. Permits a filing officer to request the voluntary production of evidence or attendance of witnesses in making a reasonable cause determination.

107. Allows the enforcement officer to do the following after receiving a referral from the filing officer:
   a) conduct an investigation using the enforcement officer's subpoena powers, but prohibits the officer from compelling a person to file campaign finance reports unless the officer has determined that the person is a committee;
   b) serve the alleged violator with a notice of violation; and
   c) keep any non-public information gathered by the enforcement officer in the course of the committee status investigation confidential until the final disposition of any enforcement order appeal.

108. Requires the notice, in addition to current requirements, to specify the fine or penalty imposed.

109. Requires the enforcement officer to impose a presumptive civil penalty equal to the value or amount of money that has been received, spent or promised in violation of these provisions, but allows the enforcement officer, after a finding of special circumstances, to impose a penalty up to three times the amount of the presumptive civil penalty, based on the severity, extent or willful nature of the alleged violation.

110. Specifies that if the notice of violation requires a person to file campaign finance reports, the reports are not required to be filed until the notice of violation has been upheld after any timely appeal.

111. Confers on the enforcement officer the sole and exclusive authority to initiate any applicable administrative or judicial proceedings to enforce an alleged violation that has been referred by the filing officer.

112. Removes the $1,000 cap on the civil penalty.

113. Requires the enforcement officer to:

a) impose the penalty set forth in the notice if the alleged violator does not take corrective action within 20 days after the date of issuance of the notice of violation; and
b) provide formal notice that the imposition of the penalty is an appealable agency action.
c) removes the good cause defenses to an enforcement action.

Transition

114. Requires the authorized officers of a political committee in existence on November 8, 2016, to terminate the committee by June 30, 2017.

115. Prohibits the political committee from conducting any activity after November 8, 2016, except for winding down its operations.

116. Permits the filing officer for the appropriate jurisdiction to administratively terminate or convert any political committee that has not terminated by June 30, 2017 to the appropriate committee as prescribed in these provisions, as follows:
a) the filing officer may convert an exploratory committee to a candidate committee;
b) the filing officer may convert a political organization to a political party; or
c) the filing officer may convert a recall committee, ballot measure committee, candidate campaign committee, independent expenditure committee, separate segregated fund or any other type of political committee to a PAC.

117. Allows a jurisdiction's filing officer to reasonably adjust the campaign finance filing deadlines if that jurisdiction conducts an election on March 14, 2017, if compliance with the new filing requirements would create a substantial hardship.

Miscellaneous

118. Specifies a person is not eligible to:
a) be a candidate for nomination or election to or serve simultaneously in more than one statewide office;
b) be a candidate for nomination or election to or service simultaneously in more than one legislative office; or
c) be a candidate for nomination or election to or serve simultaneously in both a legislative office and a statewide office.

119. Allows a committee to terminate if it has outstanding debts or obligations that are more than five years old and the creditors have agreed to discharge them.

120. Eliminates the ability for a committee to transfer its debts and obligations to a subsequent committee for that candidate.

121. Removes the requirement for the SOS to biennially adjust the contribution limits by the percentage change in the consumer price index and instead requires the SOS to increase them by $100 in January of each odd-numbered year.

122. Requires the SOS to publish and make available to election officials, candidates, committees and the public the revised amounts of committee registration thresholds and contribution limits.

123. Removes a requirement related to independent expenditures made within 60 days before the election day.

124. Eliminates the statute that enumerates unlawful actions by corporations and labor organizations.

125. Removes statutes specifying that:
   a) certain religious institutions do not have to register as committees;
   b) it is illegal for a person to volunteer for expected compensation; and
   c) simulating a government document in an attempt to influence the outcome of an election is prohibited.

126. Requires filing officers to provide the option for electronic filing and to make all statements and reports publicly available on the internet.

127. Permits filing officers to comply with the above requirement by opting into the SOS electronic filing system and paying a fee as determined by the SOS.

128. Specifies the following for any jurisdiction that opts into the SOS's electronic campaign finance filing system:
   a) prohibits the jurisdiction from being charged any initial or ongoing fee until after December 31, 2018; and
   b) allows subsequent costs for maintenance of or upgrades to the system to be charged to participating jurisdictions, but requires the SOS to disclose the costs no later than December 1 in the year before the fiscal year in which the costs will be assessed to allow for budget planning by the jurisdictions.

129. Removes the requirement for a committee to be designated as a standing committee that the committee must be active in more than one reporting jurisdiction for more than one year.

130. Deems petition signatures ineligible if the date on which the petitioner signed the petition is before the date that the serial number was assigned, rather than the date the statement of organization was filed.

131. Eliminates the designation of signatures on recall petitions before the filing of the committee's statement of organization as void.

132. ~~Increases the deadline to file nomination papers from 90 to 180 days before the primary election.~~ Establishes a window of 90 to 120 days before the primary election for filing nomination papers.

133. Removes the requirement for a person to provide a nomination petition and a political committee statement of organization or $500 threshold exemption statement for the filing officer to accept the nomination paper of the candidate.

134. Removes terms from the Clean Elections statutes that are no longer defined in the campaign finance statutes. The bill failed to receive a three-fourths vote; therefore, these and related sections were deleted.

135. Contains conforming changes, some of which are subject to the affirmative vote of at least three-fourths of the members of each house of the Legislature (Proposition 105). S.B. 1516 did not receive a three-fourths vote on 3rd Read in the Senate.

136. Becomes effective ~~January 1, 2017~~ November 5, 2016.

Amendments Adopted by the JUD Committee

1. Adds a notice regarding Proposition 105 to advertisement or fundraising solicitation disclosures and ballot measure publicity pamphlets.

2. Modifies the ineligible signatures for initiative, referendum and recall petitions.

3. Makes technical and conforming changes.

Amendments Adopted by Committee of the Whole

1. Removes the notice regarding Proposition 105 on advertisement disclosures and ballot measure publicity pamphlets, which was added by the Judiciary Committee amendment.

2. Requires an entity that makes a ballot measure expenditure of over $1,000 to file an expenditure report.

3. Fills in the blanks related to the campaign finance reporting periods.

4. Limits candidate committee reporting to the 12-month period preceding the general election.

5. Prohibits candidate committees from accepting contributions above the limits.

4. Eliminates the exemptions from *contributions* and *expenditures* related to paid internet advertisements or paid fundraising solicitations.

5. Removes the exemption for an individual and a committee from filing independent expenditure reports for expenditures of over $1,000.

6. Allows a candidate committee to contribute up to the contribution limits to another candidate's candidate committee, by removing the restriction.

7. Removes the exemption from public records requests for information gathered by the enforcement officer in the course of a committee status investigation.

8. Requires the initiation of an investigation to be based on a third-party complaint.

9. Removes the presumption that an entity is organized for the primary purpose of influencing an election if it had its tax-exempt status revoked at *any* time. Instead, establishes that presumption if it is revoked at the time of making the contribution or expenditure.

10. Permits political parties to commingle monies pursuant to federal regulations.

11. Requires recall-related contributions to be segregated from other election contributions. Prohibits them from being used in those other elections.

12. Adds affiliates to those who may take various actions related to separate segregated funds.

13. Specifies an expenditure is not an independent expenditure if it is based on *non-public* information about the candidate's plans or needs.

14. Removes terms from the Clean Elections statutes that are no longer defined under the campaign finance statutes.

15. Expands the itemized list of disbursements in a campaign finance report related to recall elections.

16. Clarifies that a person is not eligible to be a candidate or serve simultaneously in more than one statewide or legislative office.

17. Clarifies that laws outside these articles may also limit contributions and expenditures.

18. Adds and modifies definitions.

19. Establishes a delayed effective date of January 1, 2017.

Amendments Adopted in H.B. 2296

1. Alters the requirements related to joint fundraising efforts for related reimbursements and distributions to be exempt from the definition of *contribution*.

2. Provides guidance, for purposes of campaign finance reporting, on the following:
   a) when a contribution, expenditure or disbursement is deemed received or made; and
   b) methods of recording transactions.

3. Makes these provisions effective November 5, 2016.

Amendments Adopted in H.B. 2297

1. Prohibits a candidate committee from making a contribution to a candidate committee for another candidate; however, allows a candidate committee that intends to terminate to contribute surplus monies to a candidate committee for another candidate under specified conditions.

2. Reinserts certain criminal penalties related to campaign finance violations.

3. Places restrictions on candidate committees' ability to reattribute excess contributions.

4. Requires a candidate committee's first campaign finance report to include the entire election cycle to date.

5. Clarifies the origins of contributions candidate committees may accept and PACs and political parties may contribute.

6. Modifies committee bank account segregation requirements.

7. Expands the ability of candidate committees to transfer contributions between committees for that same candidate, but adds a time limit to ensure an illegal transfer above the contribution limits does not occur.

8. Establishes a window of 90 to 120 days before the primary election for filing nomination papers.

9. Establishes guidelines for transitioning political committees to the new system and for the SOS to charge fees for jurisdictions that opt into its filing system.

10. Modifies definitions.

11. Changes the delayed effective date of S.B. 1516 and these modifications from January 1, 2017, to November 5, 2016.

Senate Action				House Action			
GOV	2/17/16	DP	4-3-0	ELECT	3/15/16	DP	4-2-0
JUD	2/18/16	DPA	4-3-0	3rd Read	3/29/16		23-33-4
3rd Read	3/8/16		18-10-2				

RFEIR failed: Secs 13-19

Signed by the Governor 3/30/16
Chapter 79

*Summarizes Laws 2016, Chapter 79, as amended by H.B. 2296 and H.B. 2297. For the provisions of S.B. 1516 as originally passed by the Legislature and signed by the Governor, please see the *As Enacted* Fact Sheet for S.B. 1516.

Prepared by Senate Research
February 22, 2016
AW/rf