IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

THE ARIZONA ADVOCACY
NETWORK FOUNDATION, et al., *Plaintiffs/Appellees*,

v.

STATE OF ARIZONA, et al., *Defendants/Appellants*.

No. 1 CA-CV 19-0489
FILED 9-29-2020
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Appeal from the Superior Court in Maricopa County
No. CV2017-096705
The Honorable David J. Palmer, Judge

AFFIRMED IN PART;
VACATED AND REMANDED IN PART

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OPINION

Judge David B. Gass delivered the opinion of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Maria Elena Cruz joined.

G A S S, Judge:

¶1 This opinion addresses the application of Arizona's Voter Protection Act (the VPA) to the voter-approved Citizens Clean Elections Act (the Act). In 2016, Senate Bill 1516 (SB1516) made comprehensive changes to Arizona's campaign-finance laws. *See* 2016 Ariz. Sess. Laws, ch. 79 (2d Reg. Sess.). Though SB1516 made no changes to the Act itself, at issue is whether some of SB1516's provisions nonetheless violate the VPA.

¶2 Arizona Advocacy Network (AAN) and the Citizens Clean Election Commission (collectively, appellees) challenge some of SB1516's amendments to the definitions of "contribution" and "expenditures," arguing those terms are VPA-protected. Applying the analysis in *Arizona Citizens Clean Elections Commission v. Brain*, 234 Ariz. 322 (2014), we hold the Act does not permanently establish or fix those definitions. The superior court, therefore, erred when it enjoined those amendments.

¶3 Citing *State v. Maestas*, 244 Ariz. 9 (2018), appellees also challenge SB1516's new definition of the term "primary purpose." The new definition effectively immunizes tax-exempt entities from some registration and reporting requirements. Appellees argue the new definition indirectly amends or undermines the purpose of the Act. Because the new definition neither directly nor indirectly impacts the substance of the Act, it does not run afoul of the VPA. The superior court, therefore, erred when it enjoined A.R.S. §§ 16-901(43) and -905.D.[1]

¶4 Finally, appellees challenge the "sole public officer" limitation that SB1516 added to subsection 16-938.A. Because this provision limits the Citizens Clean Election Commission's investigative authority under the Act, it violates the VPA. The superior court, therefore, did not err when it enjoined this language as to the Commission only.

[1] Statutes cited refer to the current version unless otherwise indicated.

¶5 Accordingly, we affirm in part, vacate in part, and remand for the superior court to redetermine its award of attorney fees and costs consistent with this opinion.

FACTUAL HISTORY

¶6 The Act, a 1998 voter initiative, "established an alternative campaign financing system for primary and general elections and created [the Commission] to administer it." *Brain*, 234 Ariz. at 323, ¶ 3. With one exception, the Act is codified as title 16, chapter 6, article 2. *See* A.R.S. §§ 16-940 to -961. The Act also added a section to chapter 6, article 1 defining the term "expressly advocates." *See* A.R.S. § 16-901.01. Until SB1516's enactment, Arizona's other campaign-finance laws were contained in chapter 6, article 1.

¶7 The VPA, a separate voter initiative, also passed in 1998. The VPA amended Arizona's Constitution to "limit[] the legislature's authority to modify laws enacted by voters at or after the November 1998 general election." *See Brain*, 234 Ariz. at 323, ¶ 4 (citations omitted). The VPA applies to the Act. *See id.* Specifically, the VPA eliminated the legislature's authority to repeal a voter-approved law. *See* Ariz. Const. art. 4, pt. 1, § 1(6)(B). The VPA also prohibits the legislature from amending or superseding a voter-approved law unless the proposed legislation (1) "furthers the purposes" of the voter-approved law and (2) is approved by "at least three-fourths of the members of each house of the legislature." *See id.* § 1(6)(C), (14).

¶8 Before SB1516 was enacted, title 16, chapter 6, article 1 consisted of sections 16-901 through 16-925. Except for § 16-901.01, SB1516 entirely repealed the existing article 1, replacing and reorganizing it with articles 1 through 1.7.[2] *See* 2016 Ariz. Sess. Laws, ch. 79, §§ 10–12 (2d Reg. Sess.). The current articles 1 through 1.7 consist of sections 16-901 through 16-938.

¶9 The first issue involves the terms "contribution" and "expenditures." Though the Act uses those terms, it does not explicitly define them. Instead, it states both terms "are defined in section 16-901." *See* A.R.S. § 16-961.A.

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[2] SB1516 also proposed corresponding changes to the Act itself. Those changes were not enacted because they did not receive the VPA-required three-fourths vote. As a consequence, the text of the Act was left unaltered.

¶10 When the Act passed, § 16-901 defined "contribution" and "expenditures" by specifying categories of items included in, and exempted from, each definition. *See* A.R.S. § 16-901(5), (8) (1998). SB1516 left the definitions in § 16-901 but relocated and expanded the related exemptions. *See* A.R.S. §§ 16-901(11) (defining "contribution"), -911 (exemptions from definition of "contribution"), -901(25) (defining "expenditure"), -922 (exemptions from definition of "expenditure"). As relevant here, because of SB1516's changes, "payment by a political party to support its nominee, including . . . [c]oordinated party expenditures," and payment "of a committee's legal or accounting expenses" are no longer "contribution[s]." *See* A.R.S. § 16-911.B.4(b), .B.6(c). Similarly, payment "of a committee's legal or accounting expenses" or "for legal or accounting services that are provided to a committee" are no longer "expenditures." *See* A.R.S. § 16-921.B.4(c), .B.7.

¶11 The second issue involves the term "primary purpose." SB1516 defines "primary purpose" as "an entity's predominant purpose." *See* A.R.S. § 16-901(43). The definition further provides that entities with a fully compliant "tax exempt status under section 501(a) of the internal revenue code" are "not organized for the primary purpose of influencing an election." *See id.* Appellees challenge the new definition because it insulates some pre-SB1516 "political committees" from certain campaign-finance registration and reporting requirements. Appellees also challenge the related subsection 16-905.D, which provides an entity without fully compliant tax-exempt status faces "a rebuttable presumption [it] is organized for the primary purpose of influencing the result of an election."

¶12 Appellees' challenge relates to SB1516's repeal of the term "political committee" from § 16-901. The Act references that definition in subsection 16-961.A. In 1998, § 16-901 defined "political committee," in part, as:

> a candidate or any association or combination of persons that is organized, conducted or combined for the purpose of influencing the result of any election . . . notwithstanding that the association or combination of persons may be part of a larger association, combination of persons or sponsoring organization not primarily organized, conducted or combined for the purpose of influencing the result of any election in this state or in any county, city, town or precinct in this state.

A.R.S. § 16-901(19) (1998).

¶13 SB1516 repealed the definition of "political committee" and created a similar term, "committee." Under SB1516, "committee" means "a candidate committee, a political action committee or a political party." A.R.S. § 16-901(10). SB1516 in turn defines "political action committee" as an entity "organized *for the primary purpose of influencing the result of an election*" that "knowingly receives contributions or makes expenditures, in any combination, of at least one thousand dollars in connection with any election during a calendar year." A.R.S. § 16-905.C (emphasis added); *see also* A.R.S. § 16-901(41) (defining "political action committee" as an entity required to register under § 16-905.C). Importantly, appellees do not challenge, and the superior court did not enjoin, § 16-905.C's definition of "political action committee" or its use of "primary purpose."

¶14 The third issue involves the phrase "sole public officer." SB1516 revised and renumbered the investigation and enforcement provisions of the previous article 1—now articles 1 through 1.7. SB1516 specified that "a filing officer is *the sole public officer* who is authorized to initiate an investigation into alleged violations of" articles 1 through 1.7. *See* A.R.S. § 16-938.A (emphasis added). SB1516 defines "filing officer" as "the [S]ecretary of [S]tate or the county, city or town officer in charge of elections for that jurisdiction who accepts statements and reports for those elections." A.R.S. § 16-901(27). The Commission is not a filing officer under SB1516.

PROCEDURAL HISTORY

¶15 AAN filed suit against the State, the Secretary of State, the Commission, and the Governor's Regulatory Review Council. Though the Commission was a named defendant, it supported AAN's position in the superior court and joins AAN as an appellee here. Appellees challenge SB1516's amendments as outlined above, arguing they are unconstitutional under the VPA because they amend the Act but were neither passed with a three-fourths majority nor further the Act's purpose.

¶16 On cross-motions for summary judgment, the superior court entered judgment for appellees. The superior court found SB1516 (1) "effectively amend[s] the Act by altering key definitions" and (2) restricts the Commission "from enforcing requirements . . . that are within the scope of the Commission's enforcement jurisdiction under the Act." The superior court, therefore, enjoined the following provisions of SB1516:

1. Regarding the definition of "contribution," the exemption of "payment by a political party to support its nominee,

including . . . [c]oordinated party expenditures" (A.R.S. § 16-911.B.4(b)) and the value to a committee of the "[p]ayment of a committee's legal or accounting expenses by any person" (A.R.S. § 16-911.B.6(c));

2. Regarding the definition of "expenditures," the exemption of the value to a committee of "[p]ayment of a committee's legal and accounting expenses" (A.R.S. § 16-921.B.4(c)) and of "[a]ny payment for legal or accounting services that are provided to a committee" (A.R.S. § 16-921.B.7);

3. Regarding "primary purpose," the term's definition (A.R.S. § 16-901(43)) and the rebuttable presumption a non-compliant 501(a) tax-exempt entity making contributions or expenditures is "organized for the primary purpose of influencing the result of an election" (A.R.S. § 16-905.D); and

4. Regarding investigative authority under A.R.S. § 16-938.A as it relates to the Commission only, the phrase "is the sole public officer who."

¶17 The superior court awarded AAN $51,564.13 in attorney fees and costs. The State timely appealed. This court has jurisdiction under Article 6, Section 9, of the Arizona Constitution, and A.R.S. § 12-2101.A.1.

ANALYSIS

¶18 This court reviews the constitutionality and interpretation of statutes *de novo*. *See Maestas*, 244 Ariz. at 11, ¶ 6; *Brain*, 234 Ariz. at 325, ¶ 11. "When the statute in question involves no fundamental constitutional rights or distinctions based on suspect classifications, we presume the statute is constitutional and will uphold it unless it clearly is not." *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 5, ¶ 11 (2013). The party challenging the statute bears the burden of proving its unconstitutionality. *Id.*

¶19 The "primary objective in interpreting a voter-enacted law is to effectuate the voters' intent." *Brain*, 234 Ariz. at 325–26, ¶ 11. If the statute's language is clear and unambiguous, courts "must give effect to that language without employing other rules of statutory construction." *Parsons v. Ariz. Dep't of Health Servs.*, 242 Ariz. 320, 323, ¶ 11 (App. 2017). If the language, however, is ambiguous, courts "look to the rules of statutory construction and consider the statute's context; its language, subject matter, and historical background; its effects and consequences; and its spirit and

purpose." *Stein v. Sonus USA, Inc.*, 214 Ariz. 200, 201, ¶ 3 (App. 2007) (quotations omitted).

I. Subsection 16-961.A's reference to the definitions of "contribution" and "expenditures" in § 16-901 does not extend VPA protections to those definitions.

¶20 Appellees argue that by referencing the definitions of "contribution" and "expenditures" in § 16-901, the Act incorporates those definitions as they existed in 1998 into the Act and therefore extends the VPA's protection to them.

¶21 Beginning—as this court must—with the statute's language, subsection 16-961.A provides:

> The terms "candidate's campaign committee," "contribution," "expenditures," "exploratory committee," "independent expenditure," "personal monies," "political committee" and "statewide office" are defined in section 16-901.

¶22 As with the provision at issue in *Brain*, this language "can be reasonably read as either providing" instruction on where a definition can be found, as the State argues, or fully incorporating the relevant definitions into the Act, as appellees argue. *See* 234 Ariz. at 325, ¶ 13. Accordingly, we must "look to the rules of statutory construction." *See Stein*, 214 Ariz. at 201, ¶ 3 (quotation omitted).

¶23 In *Brain*, the Commission challenged the legislature's power to amend contribution limits then defined in § 16-905 because the Act references those limits. Specifically, subsection 16-941.B of the Act prohibits nonparticipating candidates (meaning candidates who have chosen to forego public financing under the Act) "from accepting contributions greater than eighty percent of the campaign contribution limits specified in A.R.S. § 16-905." *See Brain*, 234 Ariz. at 323, ¶ 1 (referencing pre-SB1516 version of § 16-905). The issue in *Brain* was "whether the Act fixes campaign contribution limits at eighty percent of the amounts that existed [when the Act was passed] or instead provides a formula for calculating limits." *Id.*

¶24 In *Brain*, the supreme court held the Act did not permanently fix the contribution limits as they existed when it was passed. *See id.* at 325, ¶ 14. Instead, it recognized the limits in then-§ 16-905 were variables in a formula under the Act, and as variables, the VPA did not protect them. *See id.* at 325–26, ¶¶ 15–16. If "voters intended to fix static contribution limits,

they could have easily and clearly done so by specifying dollar amounts." *See id.* at 325, ¶ 15. Because voters provided "fixed monetary amounts" in other parts of the Act, "no sound reason exists to conclude that the voters intended to establish fixed contribution limits . . . by using a percentage formula that expressly incorporates another, existing statute, [then] § 16-905." *Id.* at 326, ¶ 16.

¶25 The supreme court reached this conclusion after considering five factors:

1. Does the Act use the term in a formula?

2. Does the Act treat the disputed term differently than other terms?

3. Would the Commission's position create anomalies that are not fair and reasonable?

4. Would the Commission's position create a needlessly confusing system?

5. Did anything in the ballot and attendant publicity pamphlet suggest voters intended the Act to fix the 1998 terms?

See id. at 325–27, ¶¶ 14–21. Applying each of these factors here shows the terms "contribution" and "expenditures" are not VPA protected.

¶26 As to the first factor, a formula is "a set form of words for indicating procedure to be followed." *Id.* at 325, ¶ 15 (quoting Random House Webster's Unabridged Dictionary (2d ed. 2001)). A formula typically will specify how certain variables must be treated. *See Brain*, 234 Ariz. at 325, ¶ 15 ("Application of a percentage to a given amount is characteristic of a formula."). A variable is "something that may or does vary; a variable feature or factor." *See* Random House Webster's Unabridged Dictionary (2d ed. 2001). It comes from the verb, to vary, which means "to change or alter, as in form, appearance, character, or substance." *Id.* Variables referenced in a formula in a VPA-protected statute do not enjoy VPA protections unless they also are specifically defined within a VPA-protected statute. *See Brain*, 234 Ariz. at 325–26, ¶¶ 15–16.

¶27 The statute at issue in *Brain* references two variables, contributions and contribution limits. *See* A.R.S. § 16-941.B. The specific issue in *Brain* involved only the latter—contribution limits. If the sum of a

nonparticipating candidate's contributions exceeds the contribution limit under subsection 16-941.B, the candidate violates Arizona's campaign-finance laws. Defined contributions—at issue here—and the defined contribution limits—at issue in *Brain*—are variables on opposite sides of the same formula. This point is equally true of expenditures and expenditure limits. *See, e.g.*, A.R.S. § 16-941.A.2 (addressing participating candidate expenditure limits).

¶28 In short, the definitions of "contribution" and "expenditures" are variables in the Act's formula for calculating total contributions and total expenditures. Assistance in the form of a "contribution" is subject to the contribution limits, but assistance in a form that does not constitute a "contribution" is not. "Expenditures" work the same way. And nothing in SB1516 changes those formulas.

¶29 Moving to the second factor, the Act treats the terms in subsection 16-961.A—including "contribution" and "expenditures"—differently from the other terms in § 16-961. Only subsection 16-961.A references an *entire definition* from another statute. The remainder of § 16-961 provides fixed, specific definitions for terms used within the Act. *See, e.g.*, A.R.S. § 16-961.B.1 (defining "election cycle"), .C (defining "participating candidate" and "nonparticipating candidate"), .F.1 (defining "party nominee"). Consistent with the reasoning in *Brain*, if "voters intended to fix [the definitions in subsection 16-961.A], they could have easily and clearly done so" by including the definitions within the terms of the Act itself. *See* 234 Ariz. at 325, ¶ 15. They did not. "The fact that voters treated the § 16-9[61.A terms] differently" suggests the voters did not intend to fix the definitions of those terms when they referenced § 16-901. *See id.* at 326, ¶ 17.

¶30 "In short, no sound reason exists to conclude that voters intended to establish fixed [definitions] in § 16-9[61.A] by using a [reference to] another, existing statute, § 16-90[1]." *See id.* at 326, ¶ 16; *see also Cleckner v. Ariz. Dep't of Health Servs.*, 246 Ariz. 40, 43, ¶ 9 (App. 2019) (courts interpret statutes "to give meaning to each word, phrase, clause and sentence so that no part of the legislation will be void, inert or trivial").

¶31 Under the third factor, appellees' position would create unfair and unreasonable anomalies, resulting in an uneven playing field. *See Brain,* 234 Ariz. at 326–27, ¶¶ 18–19. This factor rebuts an argument the Commission makes on appeal. The Commission argues we could apply the 1998 definitions to candidates for offices governed by the Act but allow the post-SB1516 definitions to apply to candidates for offices that are not. This

approach would allow a mayoral or county attorney candidate to accept contributions a gubernatorial or attorney general candidate could not. *Compare* A.R.S. § 16-911.B.6(c) (exempting "[p]ayment of a committee's legal or accounting expenses" from "contribution"), *with* § 16-901(5)(b)(ix) (1998) (exempting "[l]egal or accounting services [only if the] 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"). The same is true for calculating "expenditures," resulting in different treatment depending on the office sought. It also would tie candidates for offices governed by the Act to definitions that have become antiquated in part because of technology, while allowing others the benefit of updated definitions. *See, e.g.*, A.R.S. § 16-911.B.1(d) (exempting certain email, internet activity, and social-media messages from definition of "contribution"). As with the contribution limits at issue in *Brain*, nothing here indicates the voters intended such a result. *See* 234 Ariz. at 326, ¶ 18.

¶32 As to the fourth factor, each of appellees' proposed solutions would create a needlessly confusing system. *See id.* at 327, ¶ 20. Appellees' two solutions are (1) fixing the 1998 definitions only for candidates governed by the Act (meaning, candidates who run for statewide office and the legislature) or (2) holding that any cross-reference to a statute outside the Act extends VPA protections to the referenced statute.

¶33 Appellees' first proposed solution would become a trap for the unwary, potentially driving up the cost of running for office because of a needlessly complex campaign-finance system, possibly discouraging the uninitiated from running for office. Candidates and contributors would have the challenging task of trying to determine which laws, including some that are no longer found in the books, control what they could and could not do for a candidate based on the office sought. It also would limit candidates' ability to change the office sought during the campaign or transfer funds between campaign accounts. The differences in the definitions could cause campaign-finance violations for the new office even if the conduct were appropriate for the original office. All these potential impacts run counter to the goals laid out for the Act. *See* A.R.S. § 16-940.B.

¶34 Turning to appellees' second proposed solution, the Act cross-references more than two dozen statutes, reaching far beyond title 16, chapter 6. *See, e.g.*, A.R.S. §§ 16-946.B.6 (citing the definition of an electronic signature from § 41-351); -957.B (citing timeframe to appeal a penalty issued by the Commission "to the superior court as provided in title 12, chapter 7, article 6"). In the nearly two decades between passage of the Act and SB1516, the legislature amended several of these cross-referenced statutes

without the VPA-requisite three-fourths' vote. *See, e.g.*, 2012 Ariz. Sess. Laws, ch. 321, § 116 (2d Reg. Sess.) (repealing title 41, chapter 4, article 5—cross-referenced in subsection 16-955.J).[3] As the State rightly notes, "[c]onstruing the VPA to encompass these amended statutes merely because they were cross-referenced in the Act calls into question the constitutionality of" these amendments and countless others. In response, the Commission asserts its position "concerns a tiny subset of the definitions incorporated from § 16-901." But appellees do not offer, and this court cannot identify, any principled way to limit an adoption of their "specific reference" argument to only "a tiny subset" of § 16-961.A. Such an unworkable result "cannot be supposed to have been within the [voters'] intention." *See State v. Estrada*, 201 Ariz. 247, 251, ¶ 17 (2001) (quotation omitted).

¶35 As a final point on this factor, notwithstanding appellees' argument to the contrary, the "specific reference" statutory construction canon does not apply here because it does not aid in determining voters' intent. *See Brain*, 234 Ariz. at 328, ¶ 27. "Specific reference" is a "statutory construction canon providing that when a statute adopts another statute by specific reference, the adopted statute is taken as it then exists and does not include subsequent amendments, unless the enactors of the adopting statute expressly intended otherwise." *See id.* Relying on that canon, appellees argue the Act expressly incorporates the challenged definitions as they existed in 1998. The Commission made the same "specific reference" argument in *Brain*. *See id.* In *Brain*, the supreme court declined to apply the canon, saying it "does not help ascertain the voters' intent," particularly when, as here, other evidence demonstrates that intent. *See id.* The *Brain* dissent agreed the canon did not apply and urged disclaiming it altogether. *See id.* at 329, ¶ 35 (Bales, V.C.J., dissenting). For these same reasons, we will not apply the canon here.

¶36 The State also argues § 1-255 precludes this court from applying the "specific reference" canon. That section says, "A reference to a statute or portion of a statute applies to all reenactments, revisions or amendments of the statute or portion of the statute." A.R.S. § 1-255. If the statute applied, it would compel the conclusion the Act did not fix the definitions. As discussed above, we conclude—independent of the statute—the canon provides no useful guidance, so we need not address whether it applies.

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[3] *See* https://apps.azleg.gov/BillStatus/BillOverview/30531 (last visited Sept. 15, 2020).

¶37 Addressing the fifth and final factor, "nothing in the ballot or attendant publicity pamphlet for the 1998 election informed voters that § 16-9[61.A] permanently fixed" the definitions of "contribution" or "expenditures." *See Brain*, 234 Ariz. at 327, ¶ 21; *see also* 1998 Publicity Pamphlet, Proposition 200 (Publicity Pamphlet) at 60–92.[4] This court may "consider ballot materials and publicity pamphlets circulated in support of the initiative." *See Brain*, 234 Ariz. at 327, ¶ 21. The description from the Legislative Council merely said participating candidates were "[p]rohibited from accepting other contributions, except as specified for emergency situations" and did not mention any impact on contributions for nonparticipating candidates. *See* Publicity Pamphlet at 85. The language on the ballot described the Act, and the effect of a "yes" vote, as:

> ESTABLISHING 5-MEMBER COMMISSION TO ADMINISTER ADDITIONAL ALTERNATIVE CAMPAIGN FINANCING SYSTEM; PROVIDING PUBLIC FUNDING AND ADDITIONAL REPORTING FOR PARTICIPATING CANDIDATES; REDUCING CURRENT CONTRIBUTION LIMITS BY 20% FOR NON-PARTICIPATING CANDIDATES; SETTING PERSONAL MONIES AND SPENDING LIMITS FOR PARTICIPATING CANDIDATES; LIMITING PRIVATE CONTRIBUTIONS FOR PARTICIPATING CANDIDATES UNLESS COMMISSION DECLARES EMERGENCY.
>
> A "yes" vote shall have the effect of establishing a 5-member commission to administer an additional alternative campaign financing system which includes spending limits and public funding for participating candidates; additional reporting for all candidates, and reducing the current contribution limits for non-participating candidates by 20%.

See Publicity Pamphlet at 92.

¶38 This ballot language and the other *Brain* factors do not support the outcome appellees seek. For these reasons, the VPA does not protect the definitions of "contribution" and "expenditures." The superior

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[4] The Publicity Pamphlet can be found online at https://azmemory.azlibrary.gov/digital/collection/statepubs/id/35610 (last visited Sept. 15, 2020).

court, therefore, erred in enjoining the challenged portions of SB1516's changes.

II. Because SB1516's definition of "primary purpose" neither directly nor indirectly impacts the substance of the Act, it does not run afoul of the VPA.

¶39 Appellees argue SB1516's exemption will undermine the Act because far fewer entities are required to register and file campaign-finance reports. The Act originally defined "political committee" to include an entity even if it "may be part of a larger association, combination of persons or sponsoring organization *not primarily organized, conducted or combined for the purpose of influencing the result of any election*." A.R.S. § 16-901(19) (1998) (emphasis added). The parties discuss the legislature's 2015 amendments limiting the definition of "political committee" to entities whose "primary purpose" was to influence the outcome of an election. *See* 2015 Ariz. Sess. Laws, ch. 297, § 1 (1st Reg. Sess.). Because SB1516 repealed those amendments, they are not relevant here. By excluding tax-exempt entities, SB1516 limited the scope of the registration and filing requirements as they existed in 1998. Significantly, nothing in SB1516 changes any substantive registration or reporting requirements imposed by the Act.

¶40 In 1998, of Arizona's campaign-finance registration and reporting requirements were in title 16, chapter 6, article 1—now articles 1 through 1.7. *See, e.g.*, A.R.S. § 16-905 (registration as a "committee"), -926 (content of reports), -927 (report filing periods), -928 (filing officer), -937 (penalties), -938 (enforcement). All but one of the Act's provisions are found in article 2. Though the Act imposes a handful of reporting requirements, nothing about the term "primary purpose," or SB1516's definition of it, changes the reports a person or entity—political action committee or not—must file under the Act. *See, e.g.*, A.R.S. §§ 16-941.D (independent expenditure), -947.A (candidate certification), -950.B (qualifying contributions), -958.A (independent expenditure). Simply stated, the registration and reporting requirements outside of article 2 and at issue here are not VPA protected.

¶41 Close scrutiny of appellees' other arguments reveals additional flaws. To begin, appellees do not challenge SB1516's repeal of the term "political committee" from § 16-901. Appellees also do not ask us to reinstate the term as it was defined in 1998. SB1516 replaced the term "political committee" with the term "committee." It defines "committee" to include any "political action committee." Under SB1516, a "political action committee" is an entity "organized for the primary purpose of influencing

the result of an election." *See* A.R.S. § 16-905.C. Appellees do not challenge that definition here. Therefore, even if appellees prevail, entities whose "primary purpose" is not to influence an election will not need to register or file reports. *See id.*

¶42 Next, contrary to appellees' arguments, the term "political committee" is not central to the Act's regulation of candidates' campaign finances. Indeed, the Act only uses the term "political committee" three times, one of which is the reference to the definition in § 16-901. *See* A.R.S. § 16-961.A. The other two references have little to do with the operation of Arizona's campaign-finance laws. The first, in subsection 16-955.I, prohibits members of the Commission from serving "as an officer of any political committee" during their tenure "or for three years thereafter." The second, in subsection 16-958.E, obligates the Secretary of State to "distribute computer software to political committees to accommodate" electronic report filing.

¶43 With that understanding, SB1516 has little—if any—effect on requirements imposed by the Act. True, the Commission's members may be able to serve as an officer for some entities they could not before SB1516. Even so, the Commission members, as public officers, are still bound by Arizona's conflict of interest statute. *See* A.R.S. § 38-503. And though the Secretary of State may not be mandated to distribute software to as many entities, this court takes judicial notice[5] of the fact that separate software is no longer distributed. Indeed, reports are now filed through a publicly-accessible, online-reporting system.[6] The system is available to any person or entity required to file a finance report, and the Secretary of State provides the general public with a system user guide.[7]

¶44 Appellees suggest the change will diminish the Commission's power over "dark money" in non-candidate elections, such as campaigns for initiatives or referenda. The Act, however, imposes no requirements on such campaigns, and for good reason. The Act addresses candidate campaign financing, not initiative or referendum financing. Indeed,

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5 *See* Ariz. R. Evid. 201; *In re Sabino R.*, 198 Ariz. 424, 425, ¶ 4 (App. 2000).

6 *See Beacon*, https://beacon.arizona.vote/Account/Login (last visited Sept. 15, 2020).

7 *See* Secretary of State, User Guide for Campaign Finance Reporting (2019), https://azsos.gov/sites/default/files/CFS4%20User%20Guide%20May%202019.pdf.

subsection 16-940.A states a general intent to create a "clean election system." Subsection 16-940.B then sets out eight findings in support of the Act. Six of the eight findings exclusively focus on candidates and their access to constituents and resources to run for office. The other two focus on contributors' access to the candidates once they are elected and the ensuing special privileges. *See* A.R.S. § 16-940.B.4 (addressing concern about "[e]ffectively suppress[ing] the voices and influence of the vast majority of Arizona citizens in favor of a small number of wealthy special interests"), .B.6 (identifying concern about tax dollars spent "in the form of subsidies and special privileges for campaign contributors"). The financing of non-candidate campaigns simply is not relevant to the Act.

¶45 In short, if a nonparticipating candidate receives a "contribution" from an entity that is not required to register as a "political action committee," the candidate still must report the "contribution." *See* A.R.S. § 16-926. Indeed, participating candidates generally cannot even accept such a contribution. *See* A.R.S. §§ 16-945, -946. And if the entity makes an independent expenditure, it must file reports under the Act, whether or not it is a registered "political action committee." *See* A.R.S. § 16-941.D. For these reasons, the term "primary purpose" and the related exemption for tax-exempt entities do not run afoul of the VPA.

III. *Maestas* does not apply to the definitional issues in this case.

¶46 Despite the above issues, appellees argue the changes should fail under *Maestas* because SB1516 "indirectly but unambiguously amends the Act to permit conduct the [] Act prohibit[s]." The holding in *Maestas* does not change the above analysis.

¶47 In *Maestas*, the supreme court addressed a different voter initiative—the Arizona Medical Marijuana Act (AMMA). *See* 244 Ariz. at 10, ¶ 1. As relevant here, the AMMA broadly immunizes the use of medical marijuana except in three specific locations. *See id.* (discussing A.R.S. § 36-2802.B). After voters approved the AMMA, the legislature enacted a separate statute explicitly adding college campuses to the locations in which AMMA-immunity does not apply. *See id.* at 13, ¶ 16 (discussing A.R.S. § 15-108.A). The supreme court held § 15-108 violated the VPA because the new statute deprived cardholders of a right otherwise guaranteed under the AMMA. *See id.* at 13–14, ¶¶ 16, 20.

¶48 The holding in *Maestas* does not apply to the definitions challenged here because SB1516 does not repeal, amend, or supersede any express terms of the Act. Subsection 16-961.A lists several terms but does

not define them. By contrast, the Act explicitly defines the other terms in § 16-961. *See* A.R.S. § 16-961.B–.I. Though the *Maestas* analysis might be appropriate if SB1516 modified those definitions, it does not apply to subsection 16-961.A's references. *See* 244 Ariz. at 13, ¶ 16.

¶49 Further, as with the references at issue in *Brain*, "[v]oters in 1998 constructively knew that the legislature would at some point likely amend § 16-90[1] . . . as it had done [six] times in the preceding twelve years, including [twice] the year before the election." *See* 234 Ariz. at 326, ¶ 18. Notably, in 1997—just one year before voters enacted the Act—the legislature amended the definition of each term at issue here. *See* 1997 Ariz. Sess. Laws, ch. 201, § 1 (1st Reg. Sess.) (amending "contribution," "expenditures," and "political committee"); 1997 Ariz. Sess. Laws, ch. 5, § 37 (2d Sp. Sess.) (again amending "contribution" and "expenditures"). And since 1998, the legislature twice amended the term "political committee" without challenge. *See* 2012 Ariz. Sess. Laws, ch. 361, § 16 (2d Reg. Sess.); 2015 Ariz. Sess. Laws, ch. 297, § 1 (1st Reg. Sess.).

¶50 In short, the amendment in *Maestas* is not analogous to the amended definitions in SB1516.

IV. SB1516 violates the VPA to the extent it limits the Commission's investigative authority under the Act.

¶51 The State argues subsection 16-938.A creates no conflict because it delegates only investigative authority to the filing officer, while the Commission retains its enforcement authority under the Act. Appellees respond that "[t]o the extent A.R.S. § 16-938(A) prohibits the Commission from investigating violations within its jurisdiction under the Act, it violates the VPA." When interpreting a statute, this court strives "to give meaning to each word, phrase, clause and sentence so that no part of the legislation will be void, inert or trivial." *See Cleckner*, 246 Ariz. at 43, ¶ 9. Consistent with the Commission's position, the superior court found subsection 16-938.A violates the VPA by "attempt[ing] to prohibit the [Commission] from enforcing requirements in title 16, chapter 6, articles 1–1.6 that are within the scope of the Commission's enforcement jurisdiction under the Act."

¶52 To begin, the Commission, as an administrative agency, has the power "authorized by the express provisions of its enabling statutes." *See Peeples, Inc. v. Ariz. State Land Dep't ex rel. Anable*, 204 Ariz. 66, 71, ¶ 18 (App. 2002). Because the Commission's investigatory authority comes from

the Act, the legislature may not limit that authority unless it complies with the VPA. *See Maestas*, 244 Ariz. at 13, ¶ 14.

¶53 The Act obligates the Commission to "[e]nforce *this article*"—article 2—while "monitor[ing] reports filed pursuant to *this chapter*"—meaning chapter 6 of title 16, comprised of articles 1 through 1.7and article 2. *See* A.R.S. § 16-956.A.7 (emphasis added). Further, the Act requires participating candidates to file a signed application certifying, under oath, compliance with "*all* campaign finance reports required under *article 1 of this chapter*." *See* A.R.S. § 16-947.B.2 (emphasis added). The Act also contemplates the Commission denying an application "for failure to file all *complete and accurate* campaign finance reports." *See* A.R.S. § 16-947.C (emphasis added).

¶54 The Act creates specific "contribution" and "expenditure" limits. *See* A.R.S. § 16-941. The Commission is empowered to force the "disqualification of a candidate or forfeiture of office" on the basis of "[*a*]*ny campaign finance report* filed indicating a violation of" those limits. *See* A.R.S. § 16-942.C (emphasis added); *see also Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 411, ¶ 14 (2006).

¶55 The Act also imposes reporting obligations on "*any person* who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle." *See* A.R.S. § 16-941.D (emphasis added). The Commission is charged with enforcing this provision, which includes investigating alleged violations by reviewing any campaign-finance reports the entity may have filed under articles 1 through 1.7—for example, as a "political action committee." *See* A.R.S. § 16-956.A.7.

¶56 Under the Act's express language, the Commission has broad enforcement authority. To that end, the Act expressly authorizes the Commission to investigate:

> The [C]ommission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items *material to the performance of the* [C]*ommission's duties or the exercise of its powers*.

A.R.S. § 16-956.B (emphasis added). *But cf.* A.R.S. § 16-905.E (prohibiting "a filing officer, enforcement officer or other officer of a city, town, county or other political subdivision of this state" from issuing subpoenas to 501(a)

tax-exempt entities). The Commission's duties and powers include investigating potential violations of articles 1 through 1.7 to the extent they would identify a violation of the Act—violations the Commission alone is empowered to enforce. *See, e.g.*, *Smith*, 212 Ariz. at 411, ¶ 14.

¶57 Not only may the Commission act in furtherance of its powers *sua sponte*, the Act expressly contemplates the Commission receiving—and acting upon—third-party complaints about violations within its purview. *See* A.R.S. § 16-956.A.7 (prohibiting "action on any external complaint that is filed more than ninety days after the postelection report is filed or ninety days after the completion of the canvass of the election to which the complaint relates, whichever is later"). Those third-party complaints may be based, in part, on information included in, or omitted from, campaign-finance reports filed under articles 1 through 1.7. For the Commission to act upon such an external complaint, it must use its investigative authority regarding those reports, or no enforcement would be possible.

¶58 The superior court, therefore, correctly enjoined the "sole public officer" limitation in subsection 16-938.A as it relates to the Commission.

CONCLUSION

¶59 For these reasons, we vacate the superior court's judgment regarding A.R.S. §§ 16-901(43), -905.D, -911.B.4(b), -911.B.6(c), -921.B.4(c), and -921.B.7. The portion of the judgment permanently enjoining the phrase "is the sole public officer who" in A.R.S. § 16-938.A as it relates to the Commission is affirmed. Finally, we vacate the award of attorney fees and costs and remand to the superior court to exercise its discretion in recalculating any award of fees or costs, consistent with this opinion.