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OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

IN RE THE MATTER OF SUSAN
BITTER SMITH, Chair and Commissioner
of the Arizona Corporation Commission,

VERIFIED COMPLAINT
QUO WARRANTO

Case No. _____

(Hon. Mark Brnovich, Atty. Gen.)

Thomas M. Ryan, a citizen, a taxpayer, a ratepayer, and elector of the State of Arizona, submits his Verified Complaint *Quo Warranto* to the Attorney General of the State of Arizona to remove Commissioner Susan Bitter Smith from the office of Commissioner of the Arizona Corporation Commission. Commissioner Bitter Smith has engaged in substantial violations of A.R.S. §40-101 which make her a usurper of the office. In addition, her conduct has violated A.R.S. §38-503. This verified complaint is submitted pursuant to A.R.S. §12-2041.

BACKGROUND

1. The Arizona Corporation Commission (“Commission”) operates under the authority of the Arizona Constitution. See Ariz. Const. Art. XV.

2. The primary purpose of the Commission is to regulate all corporations in the State of Arizona. See, Leshy, John D., *The Arizona State Constitution: A Reference Guide* (1993), “Article XV: The Corporation Commission,” at p. 285. But the Commission’s most important and extensive grant of power is over “public service corporations” as defined by the State Constitution. *Id.*

3. The Arizona Constitution defines “public service corporation” in relevant part, to include telecommunication corporations as follows:

All corporations other than municipal engaged in... transmitting messages or **furnishing public** telegraph or **telephone service...**
shall be deemed public service corporations. (Emphasis added.)

See Ariz. Const., Art. XV, § 2.

4. Professor Leshy, in his book on the Arizona Constitution summarizes the issue of public service corporations having state granted monopoly and quasi-monopoly powers in Arizona as follows:

Public service corporations are basically private enterprises (“other than municipal”) providing utility to the public. They are usually regarded as “natural” or “legalized” monopolies not subject to the competition of the marketplace. (*General Alarm, Inc., v. Underdown*). They are regulated by the commission as a substitute for marketplace competition, and to eliminate duplication of facilities and services. (*Corporation Comm. V. Peoples Freight Line, Inc.*,) But this section does not expressly define public service corporations as those exercising monopoly power, and the commission can regulate public service corporations operating in a

competitive marketplace, although it cannot regulate those corporate activities that are not an “integral or essential part of the public service performed by the company.” (*Mountain States Tel. & Tel Co. v. Arizona Corporation Commn.*, 1982).

See *The Arizona State Constitution: A Reference Guide*, *supra*, at p. 284.

5. Regulating the telecommunications industry is an essential part of the Commission’s constitutional duty. The telecommunications industry has tried in the past to be exempted from the Commission’s regulatory powers, but the telecommunications industry has been rebuffed. By way of example, the Arizona State Legislature referred a ballot measure in 1986 to eliminate the Commission’s authority over the telecommunications industry. In the 1986 state wide General Election, Proposition 100, “Arizona Telecommunications Corporations, Definitions,” was soundly defeated by Arizona’s voting public, and the Commission retained the right to control and regulate the telecommunications industry¹. In 2000, the telecommunications industry again attempted to be exempted from regulation by the Commission. Arizona Proposition 108, also known as the Consumer Choice and Fair Competition Telecommunications Amendment, was on the November 7, 2000, statewide election ballot in Arizona as an initiated constitutional amendment. It was defeated with 1,152,998 votes against the proposition to only 281,017 votes in favor of it². A nearly 4 to 1 crushing defeat.

6. The powers of the Commission are set forth in Ariz. Const., Art. XV, §3. The Commission is unique in that it is granted executive powers, legislative powers and judicial powers over the public service corporations it regulates. No other branch of

¹ http://ballotpedia.org/Arizona_Telecommunications_Corporations_Definitions,_Proposition_100_%281986%29

² http://ballotpedia.org/Arizona_Consumer_Choice_and_Fair_Competition_Telecommunications,_Proposition_108_%282000%29

government in the State of Arizona has such unique powers. The Commission is expected to exercise these powers to control and regulate public service corporations to be fair to the ratepayers of Arizona as well as these corporations engaged in monopolies or quasi-monopolies.

7. In light of these unique and extensive powers granted to the Commission, and because public service corporations are granted monopoly powers in the marketplace, our State has enacted a very strict anti-conflict of interest statute governing the conduct of the Commissioners. The language of this anti-conflict of interest statute is so broad as to include *even the conduct of a candidate seeking election to the office of Commissioner*. A.R.S. §40-101 states:

Interest of commissioner or employee prohibited in corporation

subject to regulation:

A person in the employ of, or holding an official relation to a corporation or person subject to regulation by the commission, or a person owning stocks or bonds of a corporation subject to regulation, or a person who is pecuniarily interested therein, shall not be elected, appointed to, or hold the office of commissioner or be appointed or employed by the commission. If a commissioner, or appointee or employee of the commission becomes the owner of such stocks or bonds, or becomes pecuniarily interested in such a corporation involuntarily, he shall within a reasonable time divest himself of such stocks, bonds or interest. If he fails to do so, he thereby vacates his office or employment.

8. The Arizona Supreme Court has ruled that the remedy for a violation of A.R.S. §40-101 where a Commissioner is employed by, holds an official relation to, or is pecuniarily interested in a corporation during their candidacy for office is removal. See *Jennings v. Woods, (West Real Party in Interest)*, 194 Ariz. 314, 982 P. 274, (1999).

9. Complainant respectfully submits that Commissioner Susan Bitter Smith is a usurper of the Office of Commissioner of the Arizona Corporation Commission within the meaning of A.R.S. §12-2041, for the following conflicts of interest that are in clear violation of A.R.S. §40-101.

COMMISSIONER BITTER SMITH REGISTERED TELECOM LOBBYIST

Commissioner Bitter Smith is listed in the Arizona Secretary of State Lobbyist System (Lobbyist System) as being the lobbyist for the following telecommunications entities³:

- Cox Communications Arizona, LLC
- Coxcom, Inc.
- Southwest Cable Communications Association
- Technical Solutions

See **Exhibit 1**, attached. According to the Lobbyist System Commissioner Bitter Smith is a registered lobbyist for Cox Communications Arizona, LLC, and has been since February 12, 2007; is a registered lobbyist for Coxcom, Inc., and has been since February 12, 2007; is a registered lobbyist for Southwest Cable Communications Association, and has been since January 1, 1997; and is a registered lobbyist for

³ http://apps.azsos.gov/scripts/Lobbyist_Search.dll/ZoomLOB?LOB_ID=3100137

Technical Solutions, and has been since January 1, 2001⁴. Commissioner Bitter Smith was the lobbyist for each of these telecommunication entities while she was a candidate in 2012, as well as since she has been sworn into office. These conflicts of interest make Commissioner Bitter Smith disqualified for office within the meaning of A.R.S. §40-101, and, *Jennnings v. Woods, supra*. We will now take each of these entities in turn to discuss the conflict of interest violations.

1. Cox Communications Arizona, LLC:

As late as March 12, 2014, Commissioner Bitter Smith was actively lobbying on behalf of Cox Communications in matters pending before the Federal Communications Commission⁵ (FCC). See **Exhibit 2** attached. Commissioner Bitter Smith wrote to Marlene Dortch, Secretary of the FCC on behalf of Cox Communications⁶ to confirm discussions between the FCC and her clients about the "Connect America Fund." The Connect America Fund is an \$8,000,000,000 fund established by Congress to bring internet and telecommunications to rural and poor areas in America. This March 12, 2014, letter deals with both cable TV and telecommunications issues. Commissioner Bitter Smith reminds the FCC Secretary that her clients were urging the FCC "...to use a light touch when creating [the new rules.] The fact that this letter is signed by Commissioner Bitter Smith as the Executive Director of the SWCCA does not in any way relieve her of the fact that she was lobbying on behalf of Cox Communications while a Commissioner for the Commission.

"After all these years, it's still the bundle, baby!"

⁴ Commissioner Bitter Smith includes as one of her credentials on her company's (Technical Solutions) that she "is an Arizona registered lobbyist." This has economic value to her as a principal in her company. See <http://www.technicalsolutionsaz.com/principals.html>

⁵ <http://apps.fcc.gov/ecfs/comment/view?id=6017608686>

⁶ She also wrote on behalf of another client, Suddenlink Communications.

Much like Pinnacle West's ownership of Arizona Public Service (APS), Cox Communications Arizona controls all of the Cox subsidiary companies. Cox Communications Arizona, LLC, is clearly conducting business in Arizona as a telecommunications company subject to regulation by the Commission through its wholly owned subsidiary, Cox Telcom Arizona, LLC. Cox sells bundled internet/cable television/telephone services to residences and businesses in Arizona⁷. See **Exhibit 3** attached. When Cox provides these services it does so through a single cable to the residence or business. In so doing Cox is able to "bundle" its services. But bundling services drives Cox's bottom line⁸. See "Cox Sees Lowest Monthly Customer Churn In Its History," attached as **Exhibit 4**. Cox crows about its telephone service being bundled as follows:

Cox Communications, Inc. announced today that **its winning bundle** of video, Internet and **telephone services** is continuing to improve customer satisfaction and reduce customer defection even in the face of increasing competition. **Total monthly customer churn for the second quarter was 2.5%, the lowest in the company's history.**

"Cox proved long ago that a **unified bundle of video, Internet and telephone services would be compelling to consumers**, and today our competitors are striving to imitate us," said Pat Esser, president.

...

"**After all these years, it's still the bundle, baby,**" said Joe Rooney, chief marketing officer. "**With Cox Digital Telephone**, advanced video

⁷ <http://coxauthorizedoffers.com/cox-digital-phone-chandler-arizona/>

⁸ <http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=1032065&>

and Internet services available **in our markets, our arsenal is stocked**. And, **our aim is clear** with the use of marketing sciences to establish relationships with more of the households in our footprint as well as **to deepen the existing relationships by getting more customers to bundle**. It's about approaching customers with the right offers to meet their needs."

...

The company's own proprietary research shows increasing customer satisfaction driven by perceptions of greater value thanks to bundling. Triple-play customers are 44% more satisfied with the "value for the money" Cox provides than are video-only customers, and they **are 40% less likely to consider switching to Cox competitor**. "Our business is more competitive than ever. **We're fully immersed in the phone business and successfully taking customers away from the former Bell companies**," said Esser. "**We're also facing stiff video competition from satellite and telco competitors**. (Bolding added for emphasis.)

See **Exhibit 4** attached. According to this report from Cox, it experienced a national explosion of new telephone subscribers with 2.2 million telephone subscribers at the end of 2007, for an incredible 20.2% growth rate between 2006 and 2007, as the result of its bundling efforts. **Id.** In short, the efforts in marketing, promoting, and installation of residential and business telecommunication services by Cox Telecom Arizona, LLC, directly impact the bottom line of its parent entity, Cox Communications Arizona, LLC.

Cox Communications is regulated by the Commission. The Commission is responsible for supervising the telecommunication rates to be charged to customers in Arizona. This is not a minor issue. By way of example we attach the Commission approved Tariff Rates for Cox effective July 15, 2014, which comprises 111 pages!⁹ See **Exhibit 5** attached.

Next, we refer this Office to the "Cox Customer Service Agreement"¹⁰ for residential telephone services. See **Exhibit 6** attached. In the very last paragraph Cox states:

Specifically, the **Cox Communications affiliates include**, but are not limited to **Cox Arizona Telcom, LLC...** (Emphasis added.)

Id., at page 5.

Lastly, we point out that the Arizona State Procurement Office just this year sent out Requests for Proposals to find providers of Telecommunications and Broadband Services¹¹. Cox submitted its Offeror Questionnaire leaving no doubt that it was willing to provide a vast array of telecommunications services as well as cable and internet services in response to the State's request. See **Exhibit 7** attached.

2. CoxCom, LLC

CoxCom, LLC, is a wholly-owned subsidiary of Cox Communications, Inc., and is headquartered in Atlanta, Georgia¹². See **Exhibit 8** attached. Cox Communications,

⁹ <http://www.cox.com/wcm/en/aboutus/datasheet/regulatory/az-tariff-access.pdf>

¹⁰ <http://www.cox.com/aboutus/policies/residential-telephone-agreement.cox>

¹¹ <https://spo.az.gov/statewide-e-rate-contracts>

¹² <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=4367598>

Inc., also serves as the managing partner of CoxCom, LLC¹³. See **Exhibit 9** attached.

According to vault.com¹⁴, CoxCom, LLC holds itself out as follows:

Sales and Marketing

The cable company has been heavily marketing bundled service packages that include digital phone and broadband Internet access.

...

Strategy

The Cox organization has invested heavily in digital media and services in conjunction with its telecommunications infrastructure.

See **Exhibit 10** attached. In short, CoxCom, LLC is fully involved in the telecommunications industry.

3. Southwest Cable Communications Association

Southwest Cable Communications Association (SWCCA) (from 1995 until 2006 known as the Arizona *Telecommunications* Association) is an Arizona Corporation¹⁵ that shares its headquarters with Technical Solutions at 4350 E. Camelback Road, Suite G-200, Phoenix, Arizona, 85018. Its Board of Directors reads like a relative "Who's Who" of industry giants in the cable and telecommunications industry^{16, 17}. By way of example, one of the Board members is John Wolfe, who not only is a Senior Vice President and General Counsel for Cox Communications, but is a lobbyist for Cox Communications Arizona, LLC and CoxCom, Inc., as well¹⁸. See **Exhibit 11** attached.

¹³ <http://www.bizapedia.com/fl/COXCOM-LLC.html>

¹⁴ <http://www.vault.com/company-profiles/media-entertainment/coxcom,-inc/company-overview.aspx>

¹⁵ <http://ecorp.azcc.gov/Details/Corp?corpId=%2000621813>

¹⁶ <http://www.swcable.org/board-of-directors.html>

¹⁷ <http://ecorp.azcc.gov/Details/Corp?corpId=%2000621813>

¹⁸ http://apps.azsos.gov/scripts/Lobbyist_Search.dll/ZoomLOB?LOB_ID=3610438

The Executive Director of SWCCA is Commissioner Susan Bitter Smith. According to the SWCCA's IRS Form 990 signed by Commissioner Bitter Smith for 2013 and 2014, she received an annual base salary of \$153,665, and \$5400 in other compensation for her work for a total of **\$159,065**. See **Exhibits 12 & 13** attached, at p. 8, line 21. Incredibly, in the IRS Form 990, Commissioner Bitter Smith claims she works an average of 40 hours a week for the SWCCA^{19, 20}. *Id.*

On February 15, 2013, Commissioner Bitter Smith submitted a letter to Jodi Jerich, the Executive Director of the Commission stating that Commissioner Bitter Smith did not see any conflict of interest in her role as Executive Director of the SWCCA²¹. See **Exhibit 14** attached. This letter references the general conflict of interest statute, A.R.S. §38-501, *et seq.*²², but fails to include the Commission's more stringent anti-conflict of interest statute, A.R.S. §40-101.

¹⁹ Keep in mind; this is in addition to working for Technical Solutions and for the taxpayers of Arizona as **Chair** of the Arizona Corporation Commission, a position that is considered full time. This should raise an additional avenue of inquiry by the Office of the Attorney General about non-commission work being done by ACC staff during staff hours and on behalf of Commissioner Bitter Smith's outside business interests. Upon information and belief, we allege that Commissioner Bitter Smith brought her secretary Theresa Tenbrink from the SWCCA to work for Commissioner Bitter Smith at the Commission. Ms. Tenbrink's computer should be secured and examined for non-Commission work being performed for both the SWCCA and Technical Solutions. Additionally, Commissioner Bitter Smith's computer and cell phone should be secured and examined for non-Commission work being performed for both the SWCCA and Technical Solutions.

²⁰ The IRS Form 990 at page 8, line 16, also shows that SWCCA paid rent in 2013 in the amount of \$21,900, and \$18,580 for 2014. The SWCCA shares the same office as Commissioner Bitter Smith's company Technical Solutions at 4350 E. Camelback Rd, Suite G-200, Phoenix, Arizona 85018. This should raise an additional avenue of inquiry by the Office of the Attorney General as to the market value of this rent being paid and who is receiving this rent. If it is Technical Solutions, this may raise further conflict of interest issues.

²¹ In 2006, the Arizona Telecommunications Association formally changed its name to the Arizona New Mexico Cable Communications Association. In 2013 Commissioner Bitter Smith filed papers to change the name to the Southwest Cable Communications Association.

²² <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=ars/38/00503.htm&Title=38&DocType=ARS>

Commissioner Bitter Smith admits that she voted on matters involving the telephone side of the SWCCA's members. According to a report filed by KJZZ investigative reporter Kristena Hansen²³:

Since Bitter Smith took office in 2013, records show the commission has voted at least seven times on matters involving the telephone side of the cable association's members. She recused herself four of those times, such as last year when a tariff increase was approved for Cox. But she didn't recuse herself on three matters, which she said was accidental, including another tariff increase for Cox approved in 2013. "Probably should have, just didn't catch it," she said. "It was on the consent agenda, I zoomed through." She also didn't recuse herself in May from voting to rescind a \$225,000-bond requirement for Mercury Voice & Data, an entity identified in public documents as doing business in Arizona as Suddenlink Communications. She said she missed that one accidentally as well. "Suddenlink is my member, Mercury Voice & Data is not an entity that I'm familiar with," Bitter Smith said. "If I had understood, I probably would have, you know, just for optics sake. There's no legal reason I would need to do that but, had I understood that there was another entity that they now form with a new name, separate entity with a new name, I probably would have."

Commissioner Bitter Smith's voting/recusal record on telecommunications companies shows (1) she knows she has conflicts of interest and will *occasionally*

²³ <http://kjzz.org/content/181550/arizona-utility-regulators-business-ties-called-question>

recuse herself, and (2) engage in conflicts of interests on other matters. Commissioner Bitter Smith has voted or recused herself on SWCCA members as follows:

Cox Arizona Telecom – 1 vote, 1 recusal:

<http://images.edocket.azcc.gov/docketpdf/0000152814.pdf>

<http://images.edocket.azcc.gov/docketpdf/0000148360.pdf>

Suddenlink-1 vote:

<http://images.edocket.azcc.gov/docketpdf/0000162144.pdf>

Verizon-3 votes:

Verizon Long Distance

<http://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=18554#docket-detail-container3>

MCI Communications Services dba Verizon Business Services

<http://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=18209#docket-detail-container3>

Verizon Wireless

<http://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=17745#docket-detail-container3>

AT&T-3 votes:

SBC Long Distance dba AT&T Long Distance

<http://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=18719#docket-detail-container3>

<http://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=18366#docket-detail-container3>

<http://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=18717#docket-detail-container3>

Qwest—2 votes:

Qwest Long Distance/Qwest LD Corp.

<http://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=18270#docket-detail-container3>

<http://edocket.azcc.gov/Docket/DocketDetailSearch?docketId=18006#docket-detail-container3>

See **Exhibits 15-25** attached.

Commissioner Bitter Smith's involvement with SWCCA *during her 2012 run* for the Commission made her candidacy void *ab initio*. In her campaign biography she states:

Susan Bitter Smith has served as Executive Director of the

Arizona-New Mexico Cable Communications Association since

1980. She earned both undergraduate and graduate degrees in

Business Administration from Arizona State University and is a Past

Chairman of the ASU Alumni Association. In addition, she serves as the

Honorary Chair of the ASU MBA Alumni Association, is a Past

Chairman of the Walter Cronkite Foundation²⁴, Past Chairman of the

Arizona First Amendment Coalition, **and is the Chairman of the**

Arizona Competitive Telecommunications Coalition²⁵. (Emphasis

added.)

See **Exhibit 26** attached. It should be noted that Commissioner Bitter Smith on the official website page for the Commission still boasts of being the Executive Director of SWCCA and the Arizona Competitive Telecommunications Coalition²⁶:

²⁴ An internet search failed to show a "Walter Cronkite Foundation."

²⁵ <http://www.bittersmith.com/biography>

²⁶ http://www.azcc.gov/commissioners/Bitter_Smith/default.html

Chairman Susan Bitter Smith:

Susan Bitter Smith was elected to a four year term on the Arizona Corporation Commission starting in January 2013. She is a member of the National Association of Regulatory Commissioners, currently serving on NARUC's Water Committee as well as the Subcommittee on Education and Research. She is the President of the Western Conference of Public Service Commissioners. She is serving as Executive Director of the Southwest Cable Communications Association since 1980 and as Vice President of Technical Solutions since 1988. She earned both undergraduate and graduate degrees in Business Administration from Arizona State University and is a Past Chairman of the ASU Alumni Association. In addition, she serves as the Honorary Chair of the ASU MBA Alumni Association, is a Past Chairman of the Walter Cronkite Foundation, Past Chairman of the Arizona First Amendment Coalition, and is the Chairman of the Arizona Competitive Telecommunications Coalition. (Emphasis added.)

See **Exhibit 27** attached. These admissions are in clear violation of the anti-conflict of interest provisions of A.R.S. §40-101 and §38-503 because one cannot simply unbundle the telecommunications from the cable side of SWCCA's members. As the Arizona Supreme Court noted in *Jennings v. Woods, supra*:

They must be free of conflict ... **at the point of election.... Public confidence in government officers is vital.** The purpose of section 40-101 is to promote ethics in government and avoid conflicts of interest.

See 194 Ariz. at 316, 982 P.2d at 276. Commissioner Bitter Smith resoundingly failed to be free of these conflicts of interest **at the point of election**, and now must be removed from office.

4. Technical Solutions:

Commissioner Bitter Smith and her husband Paul Smith own Technical Solutions which is located at 4350 E. Camelback Road, Suite G-200, Phoenix, Arizona, 85018. As noted above Technical Solutions shares office space and the same fax number with the SWCCA. Technical Solutions describes its work as follows²⁷:

Background

Technical Solutions is a full service management, public relations, government relations, and media management firm headquartered in Phoenix, Arizona. **The principals are Susan Bitter Smith, CAE and Paul Smith**, as well as an additional staff of ten.

Technical Solutions provides full service government affairs services including direct federal, state, and local *lobbying activities with agencies ranging from the Federal Communications Commission, to the Arizona Corporation Commission, to the Arizona Legislature and Arizona municipalities.* In addition, we perform campaign management, issue research and management,

²⁷ <http://www.technicalsolutionsaz.com/background.html>

public and media relations, media placement, and grassroots organization and fulfillment.

. . .

Grass roots organization is one of our specialties, particularly in light of our extensive political campaign experience. Technical Solutions has considerable expertise in managing grass roots neighborhood outreach for development and redevelopment projects, having recently successfully completed two such outreach campaigns in Scottsdale, Arizona: the Main Street Plaza (Loloma) redevelopment and the Scottsdale Waterfront development. We continue to work on similar grassroots efforts in Phoenix, Scottsdale, Mesa, Tempe, Goodyear and various other valley cities. (Emphasis added.)

See **Exhibit 28** attached. Technical Solutions holds itself out as being involved in the telecommunications industry²⁸:

Telecommunications

Technical Solutions provides full real estate affairs services specializing in land acquisition for telecommunications sites throughout the state of Arizona. We develop site plans, apply for the necessary permits from local and county government, and work with the appropriate city staffs to expedite the goals of our clients.

Present and past telecommunications clients include the Arizona Cable Telecommunications Association, Alltel, Arizona Competitive Telecommunications Association, American Tower, AT&T Wireless,

²⁸ <http://www.technicalsolutionsaz.com/telecommunications.html>

Cellular One, Eagle West, Optel Communications, McKenzie
Telecommunications Group, Sprint Spectrum, Wireless Facilities Inc.
(WFI), Metricom, Qwest Wireless, Verizon, and Western Wireless.

See **Exhibit 29** attached.

Since Commissioner Bitter Smith has been in office at the Commission she has filed three annual Financial Disclosure Statements with the Arizona Secretary of State's Office. In reviewing Commissioner Bitter Smith's Financial Disclosure Statement covering 2012, she does disclose that she is employed by Technical Solutions, but does not disclose that Technical Solutions lobbies the Arizona Corporation Commission or is engaged in the telecommunications industry.²⁹ See **Exhibit 30** attached³⁰. Instead, the Financial Disclosure Statement asks to provide a "Description of Employer's Business and Services" she merely indicates "Public Affairs Firm." *Id.*, at page 2. This is a material omission of important and relevant facts. Simply indicating "Public Affairs" does nothing to inform anyone of the fact that Technical Solutions holds itself out as lobbying the Arizona Corporation Commission or working for the telecommunications industry! Commissioner Bitter Smith provides the same ineffective disclosure for the years 2013 and 2014^{31, 32}. See **Exhibits 31 & 32** attached.

When local billionaire Bob Parsons of GoDaddy fame needed muscle to get the Via Dona APS Substation moved so that he could develop his golf course in Scottsdale, he knew exactly who had the right muscle to get that job done. His company paid

²⁹ http://apps.azsos.gov/election/Financial_Disclosure/Documents/Bitter%20Smith%202012.pdf

³⁰ At page 5, Section 8, of Exhibit 30, Commissioner Bitter Smith discloses that she and her husband are Limited Partners and investors in a company called "**Telecom Wrap Up Investors, LLC.**" If this is a company involved in the telecommunications industry it would be a violation of A.R.S. §40-101 and §38-503.

³¹ http://apps.azsos.gov/election/Financial_Disclosure/Documents/Bitter%20Smith%202013.pdf

³² http://apps.azsos.gov/election/Financial_Disclosure/Documents/Bitter%20Smith%202014.pdf

Technical Solutions to do the job. Technical Solutions made perfect sense with Commissioner Bitter Smith as the former Vice-Mayor of Scottsdale and the current Chair of the Arizona Corporation Commission on its team. However, given the anti-conflict of interest mandates of A.R.S. §40-101 and §38-503, Commissioner Bitter Smith and her company, Technical Solutions should not have been within 100 miles of this project since it involved moving an APS 69KV line and substation. And yet there they were.

The moving of APS Via Dona Substation to allow the golf course development was not without controversy. The Parson's development firm wanted to move the APS Via Dona Substation with its 55 feet tall towers next to homes in the Desert Crown III Homeowners Association (Desert Crown). On December 4, 2014, Technical Solutions sent out a letter addressed to "Dear Neighbor" telling homeowners nearby that APS was processing a Conditional Use Permit to move the Via Dona Substation. See **Exhibit 33** attached. Technical Solutions invited the "dear neighbors" to an open house at The Four Seasons Resort to discuss the proposal, to be held on December 16, 2014³³. *Id.*

Commissioner Bitter Smith was actively involved in quelling any neighborhood disagreements over the moving of the APS Via Dona Substation. After the December 16, 2014, Four Seasons Resort meeting neighbors realized that the APS Via Dona Substation was going to be moved next to their properties in order to accommodate the redesign of Bob Parson's golf course project. One such neighbor wrote an email to Jesus Murillo, City of Scottsdale's Planning Department Manager to find out more about

³³ The signup sheet shows that 16 residents of the Desert Crown III HOA were present at the meeting to discuss the relocation of the APS Via Dona Substation. Yet Technical Solutions in other documents reflect that 19 people attended. Inquiry should be made as to the identity of the other three individuals. If in fact further investigation reveals the presence of Commissioner Bitter Smith at this meeting, it would constitute further evidence of violations of A.R.S. §40-101.

the relocation of the APS Via Dona Substation behind his home. But instead of getting an email from Mr. Murillo, the neighbor received an email dated Wednesday, January 7 at 3:42 p.m., from Susan Bitter Smith³⁴. See **Exhibit 34** attached. The essence of Commissioner Bitter Smith's reply was to discuss the moving of the APS Via Dona Substation. Commissioner Bitter Smith again contacted the neighbor on Thursday, January 8, 2015 at 3:34 p.m., in response to an earlier email that day about the APS substation. See **Exhibit 35** attached.

On January 14, 2015, the neighbor again contacted Commissioner Bitter Smith about his objections to moving the APS Via Dona Substation, and indicated he wanted to meet with her about the issues. See **Exhibit 36** attached. Later that afternoon the neighbor emailed Commissioner Bitter Smith again to inform her that in the meantime he had heard back from Brad Larsen at APS about the placement of the Via Dona Substation. *Id.* Commissioner Bitter Smith responded later that day by telling the neighbor she was "hearing support for the movement [of the APS substation] to the east from the majority of the residents close to the proposed site," and offered to talk to the neighbor about it. *Id.*

On February 2, 2015, the Desert Crown III Homeowners Association held an executive board meeting about the relocation of the APS Via Dona Substation. See **Exhibit 37** attached. Present at the meeting in addition to the Desert Crown Board were "Susan Bitter Smith an employee of Mr. Bob Parsons and Brad Larsen, a

³⁴ It is important to note that the email from Commissioner Bitter Smith was sent on a Wednesday at 3:42 p.m. Even though it is sent on her sbsmith@technicalsolutionsaz.com email address, it still raises the specter that Commissioner Bitter Smith was using State time and resources to conduct her private business.

representative from APS.” *Id.* To be clear, the purpose of the February 2, 2015 meeting was to discuss the APS Via Dona Substation:

February 3, 2015

To: Desert Crown Homeowners

From: Board of Directors

Re: APS Via Dona Substation Update

The Board of Directors would like to take this opportunity to update you on the Via Dona Substation situation. We have held two Executive meetings concerning this issue. At the second meeting which happened last night, we met with Susan Bitter Smith an employee for Mr. Bob Parsons and Brad Larsen, a representative from APS. They presented a new blueprint showing the relocation of the Substation and the Maintenance shed. Upon seeing the updated plans the BOD has asked Ms. Bitter Smith and Mr. Larsen to go back to their Research & Development team and make further adjustments.

We expect to hear from them with the updated plans in a few weeks.

(Emphasis added.)

Id.

On March 23, 2015, Commissioner Bitter Smith’s firm, Technical Solutions, submitted its “Citizen Review & Neighborhood Involvement Report: Scottsdale National Golf Club,” to the City of Scottsdale Planning Department. See **Exhibit 38** attached. A reading of this Report indicates that surrounding homeowners were supportive and only

a "couple of neighbors" had questions about the placement of the APS substation³⁵.

This was not accurate. The Desert Crown III HOA retained the services of Brian Morgan of Maxwell & Morgan to write a "Position Statement on Relocation of Via Dona APS Substation." See **Exhibit 39** attached. This Position Statement was addressed to

- Scottsdale City Council Members
- **Arizona Power Plant and Transmission Line Siting Committee Members**³⁶
- Developer of Scottsdale National Golf Club

The Position Statement notes on page 1:

The Association has had discussions with various parties during the approval process, including representatives from the developer of the golf course, **representatives from APS** and individuals affiliated with the Scottsdale City Council **and the Arizona Corporation Commission.** (Emphasis added.)

Upon information and belief, I allege that the only person from the Arizona Corporation Commission involved in these meetings regarding the moving of the APS Via Dona

³⁵ "Attendees were generally supportive of the project, with a couple of neighbors with questions regarding the placement and setback of the APS substation." See **Exhibit 38**, at page 2.

³⁶ In 1971, the Arizona Legislature required that the Arizona Corporation Commission establish a power plant and line siting committee. The Committee provides a single, independent forum to evaluate applications to build power plants (of 100 megawatts or more) or transmission projects (of 115,000 volts or more) in the state. The Committee holds meetings and hearings that are open to the public. **The Committee was created after the Legislature found that existing law did "not provide adequate opportunity for individuals, groups interested in conservation and the protection of the environment, local governments, and other public bodies to participate in timely fashion the decision to locate a specific major facility at a specific site."** (Historical Notes, Laws 1971, Ch. 67, §1) The Chair of this Committee is either the Chair of the Arizona Corporation Commission or designee. Since this Committee only deals with transmission projects of 115KV or above, it would not have had jurisdiction over the relocation of the APS Via Dona Substation which was 69kv. But the confusion is understandable that the Arizona Corporation Commission had jurisdiction because its Chair was heavily involved in this controversial process.

Substation was Commissioner Bitter Smith. If true, this would be a serious and substantial violation of A.R.S. §40-101 and §38-503.

After discovering where the APS Via Dona Substation was going to be relocated the members of Desert Crown were very concerned about the proposed placement. Mr. Morgan on behalf of Desert Crown stated in the Position Statement:

This office has been retained to represent Desert Crown III Homeowners Association ("Association") in regards to the APS Via Dona Substation ("Substation") that is being installed within the proposed development of the Scottsdale National Golf Club. The Substation was initially approved to be installed just west of the golf course (See Figure 1). The developer of the golf course has since proposed to expand the golf course and move the site of the proposed Substation to the southwest portion of 118th Street. **We have been asked to notify all interested parties of the Association's concerns regarding the direction the relocation process may be moving, and to encourage all decision makers to ensure the proposed site for the Substation is relocated in a place that will minimize the negative impact on the neighboring residential communities.**

...

The Association has become concerned that even though various discussions and representations were made indicating the Substation would be relocated to the east of 118th Street as depicted in Figure 3, the Association has been unable to receive

any written confirmation of the agreement. Furthermore, attempts to communicate with relevant parties have gone largely unanswered or have resulted in suggestions that the develop of the golf course was once again contemplating the original proposal to move the Substation to the west of 118th Street as depicted in Figure 2. (Emphasis added.)

Id. Others expressed similar concerns that this matter was being ramrodded through without neighbors getting a fair shot at a hearing on the location of the APS Via Dona Substation. See **Exhibit 40** attached.

DEMAND TO PROCEED QUO WARRANTO

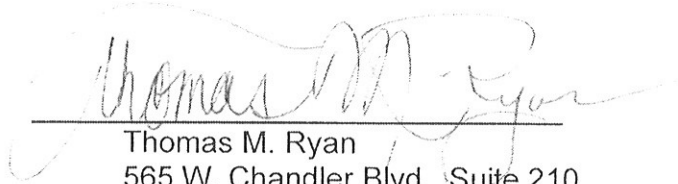
The citizens of the State of Arizona benefit by granting market monopolies to public service corporations, but that benefit is achieved only when there is effective oversight free from *any* conflicts of interest. To ensure this rigorous type of oversight, our Founding Fathers passed the anti-conflict of interest statute which is now referred to as A.R.S. §40-101. Moreover, our Founding Fathers were so concerned about conflicts of interest that even *a candidate* for the office of Commissioner had to be free of any such conflicts, *while running for office*. See *Jennings v. Woods, supra*.

This Verified Complaint sets forth facts that show Commissioner Bitter Smith violated A.R.S. §40-101 which made even her candidacy void *ab initio*. Sadly, these conflicts continue on through today and also constitute multiple violations of A.R.S §38-503.

For the reasons set forth in this Complaint, I respectfully demand that the Office of the Attorney General for the State of Arizona initiate action to remove Commissioner Bitter Smith from office without delay.

Dated this 1st day of September, 2015.

LAW OFFICE OF THOMAS M. RYAN

A handwritten signature in cursive script, appearing to read "Thomas M. Ryan", is written over a horizontal line.

Thomas M. Ryan
565 W. Chandler Blvd., Suite 210
Chandler, Arizona 85225
Complainant, Pro Se

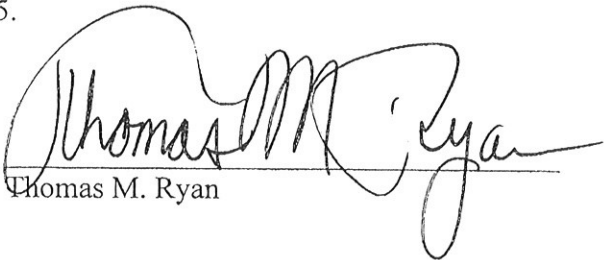
VERIFICATION

STATE OF ARIZONA)
) ss.
County of Maricopa)

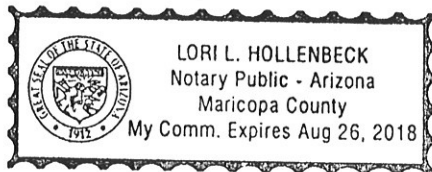
Thomas M. Ryan, being first duly sworn upon his oath deposes and says that:

1. He is the complainant in the above-entitled action; and
2. He has read the foregoing Verified Complaint and Exhibits and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein alleged upon information and belief, and as to those matters, he believes them to be true.

DATED this 1st day of September, 2015.


Thomas M. Ryan

SUBSCRIBED AND SWORN TO before me this 1ST day of September, 2015 by
Thomas M. Ryan.




Notary Public

My Commission Expires:

August 26, 2018