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September 24, 2015

Arizona Attorney General Mark Brnovich
1275 West Washington Street
Phoenix, AZ 85007-2926

Re: Complaint and Demand *Quo Warranto* pursuant to A.R.S. 12-2041

Mark Brnovich;

With this letter I am making a demand upon your office to proceed in *Quo Warranto* against Arizona Corporation Commission commissioner Robert (Bob) Burns for violating A.R.S. 40-101. Additionally, it appears that Mr. Burns has also violated A.R.S 38-503.

In support of this demand *Quo Warranto* I offer the following:

As of this writing, Burns is a registered lobbyist for the Arizona Telecommunication and Information Council (ATIC). This fact is recorded at the website of the Arizona Secretary of State here: http://apps.azsos.gov/scripts/Lobbyist_Search.dll/ZoomLOB?LOB_ID=3609126 . That webpage is printed and enclosed. Note that Burns became a lobbyist for ATIC on February 1, 2012 and, unlike his registration as a lobbyist for the University of Arizona, his ATIC lobbyist registration is still current.

At its website, <http://www.arizonatele.com/> , ATIC presents itself as noble promoter of economic development, education and health care. However, in ATIC's incorporation registration page at the Arizona Corporation Commission (ACC), ATIC is listed as "Business Type: PROFESSIONAL, COMMERCIAL, INDUSTRIAL, OR TRADE." See: <http://ecorp.azcc.gov/Details/Corp?corpId=07629711> , also printed and enclosed. Indeed, information freely available online shows that the officers of the ATIC corporation are all involved in the telecommunications and information technology (IT) industries, giving ATIC every appearance of an industry promotional organization.

At his LinkedIn profile, Robert Backie, ATIC Chairman, lists companies with which he is involved. You will note that some of the names are ones regulated by the ACC. Here is his client list: Samsung, Intel, Texas Instrument (TI), HP, AMD, TSMC, Ford, Microchip, Insight, Verizon, AT&T, PACNET, Level 3, Zayo, Insight , Taser, and VMWare. Backie's LinkedIn page is here: <https://www.linkedin.com/in/robertbackie> . For your convenience, I have printed out his LinkedIn profile in full and enclosed it with this letter.

Brenda Beall, ATIC Vice-President, is an "Account Executive" with Cox Communications, a company regulated by the ACC. Her LinkedIn profile is here: <https://www.linkedin.com/pub/brenda-beall/5/69/206> . For your convenience, I have printed out Beall's LinkedIn profile in full and enclosed it with this letter.

Matthew Dostal, ATIC Treasurer, is an “Executive Director” with APC Towers. APC Towers “invests in wireless communications opportunities that leverage its principals’ experience and relationships. APC offers unique financial solutions, which include acquiring, funding and developing partnerships for all types of tower and DAS communication infrastructure.” I would imagine that some of APC Tower’s “relationships” involve companies regulated by the ACC but it is beyond this citizen’s ability to know for sure. Finding out can be your job, Mark Brnovich. Dostal’s LinkedIn profile is here: <https://www.linkedin.com/in/mddostal> . For your convenience, I have printed out Dostal’s LinkedIn profile in full and enclosed it with this letter.

Mark Goldstein, ATIC Secretary, is, among other things, President of International Research Center (IRC). Cox Communications, a company regulated by the ACC, is listed as one of Goldstein’s clients at the IRC website (here: <http://www.researchedge.com/clients.html>). For your convenience, I have printed out both Goldstein’s LinkedIn profile (which is here: <https://www.linkedin.com/in/markgoldstein>) and the IRC client list, and enclosed them with this letter.

Michael Keeling, an attorney, holds the position of “Other Officer” at the ATIC. According to the Arizona Secretary of State, Keeling is also a registered lobbyist for ATIC (see here or the enclosed printout of same: http://apps.azsos.gov/scripts/Lobbyist_Search.dll/ZoomLOB?LOB_ID=3604508) . Keeling’s Zoominfo profile is here as well as printed out and enclosed: <http://www.zoominfo.com/p/Mike-Keeling/58413235> . Zoominfo shows Keeling as being President of Data Site Consortium, Inc., a telecommunications consulting business. I would imagine that some of Keeling’s clients are companies regulated by the ACC but it is beyond this citizen’s ability to know for sure. Finding out can be your job, Mark Brnovich.

Most remarkably, ATIC even claims the ACC as a member of its organization! It is my belief that ATIC has claimed the ACC as a member because commissioner Burns is its lobbyist. In ATIC Vice-President Brenda Beall’s LinkedIn profile, note this description of what ATIC does:

What We Do...

ATIC develops public policy positions and publications as well as facilitates open discussion and productive engagement between stakeholders. ATIC also serves to help educate community members on telecommunications and information technology issues, markets, and opportunities thus supporting the broad dissemination of awareness and knowledge necessary for adoption and use of modern communications capabilities.

ATIC’s public and private partners include large and small businesses, economic development organizations, educational institutions, libraries, consumer organizations, health care and social services, local and state government agencies, **the Arizona Corporation Commission**, the Arizona legislature, and information technology, telecommunications companies and their employees.

In plain English, it looks to me like ATIC is posing as a benevolent non-profit organization but its real purpose is to further the business interests of its directors. Some of those business interests involve companies regulated by the ACC. It is therefore not just inappropriate that a sitting commissioner is their lobbyist. It places that sitting commissioner and lobbyist, Robert Burns, as usurper of office, as ineligible to hold his ACC office according to A.R.S 40-101 which states:

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.
(emphasis mine)

As mentioned previously, according to the Arizona Secretary of State, Burns has been an ATIC lobbyist since February 1st, 2012. His election to a four year term as ACC commissioner starting in January of 2013 was – and is – therefore illegal. Were Burns to resign now as ATIC lobbyist, it would not fix the fact that his election to the office of ACC commissioner is void and that he is a usurper. The Arizona Supreme Court ruled that the remedy for a violation of A.R.S. 40-101 where a commissioner holds an official relation to 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).

Additionally, 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.
(Emphasis mine. See 194 Ariz. at 316, 982 P.2d at 276.)

In my view, lobbyist Burns compounded his lawlessness by voting on issues before the commission that involved companies that were clients of the ATIC officers. In my opinion, such votes are conflicts of interest prohibited by A.R.S. 38-503 which states:

- A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.
- B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

The following are some examples of lobbyist Burns' conflicted ACC votes (printouts of these ACC decisions with Burns' signature on them are enclosed):

- ACC Decision # 74455 involving Cox, here:
<http://images.edocket.azcc.gov/docketpdf/0000152814.pdf>
- ACC Decision # 74150 involving Cox, here:
<http://images.edocket.azcc.gov/docketpdf/0000148360.pdf>

- ACC Decision # 74858 involving AT&T, here: <http://images.edocket.azcc.gov/docketpdf/0000159367.pdf>
- ACC Decision # 74488 involving AT&T, here: <http://images.edocket.azcc.gov/docketpdf/0000153539.pdf>
- ACC Decision # 74854 involving AT&T, here: <http://images.edocket.azcc.gov/docketpdf/0000159363.pdf>
- ACC Decision # 73727 involving Verizon, here: <http://images.edocket.azcc.gov/docketpdf/0000142946.pdf>

The *Arizona Republic* newspaper quoted Burns as saying he was never paid by ATIC. 1) That's his problem. 2) Whether Burns was paid or not is irrelevant to his violation of A.R.S. 40-101 since Burns held – and continues to hold – “an official relation to a corporation or person subject to regulation by the commission.”

In that same *Arizona Republic* article, “Second Arizona Corporation Commission regulator found to be lobbyist” (here and enclosed: <http://www.azcentral.com/story/money/business/energy/2015/09/15/second-regulator-found-registered-lobbyist-robert-burns/72260846/>), lobbyist Burns and fellow ATIC lobbyist Michael Keeling tell a fantastic story portraying the entire matter as a simple mistake. Their story reads like a convoluted variation on “the dog ate the homework.” Burns thought he was a lobbyist for some other similar outfit but not ATIC. Keeling really and truly meant to un-register Burns as a lobbyist but he too thought Burns meant some other similar outfit.

However, even if true, their tale is irrelevant. As someone who has held various elected positions in Arizona state government since 1989, Burns should know full well it is incumbent upon him to know what the requirements of office are, and if he, as a candidate, meets those requirements. He knew he was a lobbyist; it is entirely his problem if he did not check to see if he was still registered as one or not.

As a side note, it is remarkable that, in the same *Arizona Republic* article, ACC “... spokesman Barrett Marson said Burns resigned from ATIC when he took office as a commissioner. He said ATIC should have terminated Burns' registration as a lobbyist.” 1) According to the Arizona Secretary of State's records, Marson is lying because Burns never resigned. 2) Isn't it a misuse of the State's time and resources for a State employee, Marson, to be defending the misconduct of an elected official?

Mark Brnovich, Burns's disregard for A.R.S. 40-101 and A.R.S. 38-503 is just a part of the overall pattern of ACC lawlessness I have brought to your office's attention over the years, and about which you (and your predecessor) have done nothing. Many Arizonans and I are wondering if you will *ever* do your job and enforce the law at the ACC. Will you surprise us all and do it this time? Yes or no?

Sincerely,

Warren Woodward

Cc: Phoenix FBI