



Office of Arizona Attorney General

Mark Brnovich

Legislator Request for Attorney General Investigation of Alleged State-Law Violation by County, City, or Town (Continued)



*Identify the member(s) of the Legislature submitting this request for investigation (attach additional sheet if necessary):

Senator Vince Leach

*Provide a contact person for communications from the Attorney General's Office regarding this request (may be a Legislator listed above or an employee of the Legislature).

*Name: Vince Leach / Greg Jernigan

*Email address: vleach@azleg.gov / gjernigan@azleg.gov

*Phone number: 602-926-3106 / 602-926-5418

*Mailing address: 1700 W. Washington St.

Room 303

Phoenix, AZ 85007

*The specific question for the Attorney General to investigate is: Whether the City of Tempe though its ordinance is violating ASRS 16-905(E)

*The name of the county, city, or town that is the subject of this request: City of Tempe

*The specific ordinance, regulation, order, or other official action adopted or taken by the governing body of the county, city, or town and the date thereof: Ordinance 01017.51

November 30, 2017

*The specific Arizona statute(s) and/or constitutional provision(s) with which the action conflicts :

ASRS 16-905 (E)

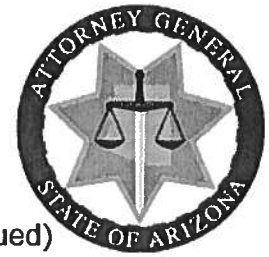
* required field Rev. 8-2016



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*All relevant facts of which you are aware (attach separate sheet if necessary):

See attached letter

*All relevant legal authority, including federal and state case law, of which you are aware (attach separate sheet if necessary):

ASRS 16-905 (E)

* Any litigation involving this issue of which you are aware (include case name, number, and court where filed) :

None

Check this box if you are attaching supporting documentation.

NOTE: This form and other information submitted to the Attorney General's Office is subject to the public records law, A.R.S. § 39-121 et seq.

I, a current member of the Legislature, verify that I and the other Legislators listed on the previous page (if any) are submitting this request for investigation under A.R.S. § 41-194.01.

*First Name: Vince *Last Name: Leach

*Signature: [Handwritten Signature] Date: 3-11-2019

Please submit the completed form to: Arizona Attorney General's Office Attn: Appeals and Constitutional Litigation/A.R.S. 41-194.01 2005 North Central Avenue Phoenix, AZ 85004 governmentaccountability@azagov

* required field Rev. 8-2016

Senator Vince Leach
District 11

STATE SENATOR
FIFTY-FOURTH LEGISLATURE

CAPITOL COMPLEX, SENATE BUILDING
PHOENIX, ARIZONA 85007-2890
PHONE: (602) 926-3106
EMAIL: vleach@azleg.gov



Arizona State Senate

COMMITTEES:

Appropriations
Vice Chairman
Finance
Government
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March 11, 2019

The Honorable Mark Brnovich
Arizona Attorney General
2005 N. Central Avenue
Phoenix, AZ 85004

Re: Investigation into City of Tempe Violation of H.B. 2153

On April 5, 2018, Governor Doug Ducey signed H.B. 2153, now codified at A.R.S. § 16-905(E), which states that a “city, town, or other political subdivision of this state may not require an entity that claims tax exempt status under Section 501(a) of the Internal Revenue Code and that maintains good standing with the Internal Revenue Service to ... register as a political action committee[,] report or otherwise disclose personally identifying information relating to individuals who have made contributions to that entity[, or] disclose its Schedule B, Form 990[.]”

The City of Tempe’s Ordinance 02017.51 requires any “association of persons or entity ... regardless of legal form ... that makes expenditures to influence the result of a local City of Tempe election totaling more than \$1,000 within an election cycle [to] disclose the original source ... of all major contributions.” This includes the “name, address, and employer” of anyone donating more than \$1,000.

Tempe Ordinance 02017.51 was approved by the City Council, the governing body of the City of Tempe, on November 30, 2017.

Tempe Ordinance 02017.51, by its plain language, directly conflicts with A.R.S. § 16-905(E). A.R.S. § 16-905(E) provides that a city “may not” require a 501(a) entity to “disclose personally identifying information” about that entity’s donors. Yet, Ordinance 02017.51 requires 501(a) groups to disclose the “name, address, and employer” of anyone donating more than \$1,000 during an election cycle. Tempe thus requires the disclosure of personally identifying information by 501(a) groups in violation of state law.

There is no way to reconcile the Ordinance with A.R.S. § 16-905(E)—they directly conflict with one another. And in the event of a conflict between a municipal ordinance and state law, state law controls. Presumably in response to this, Tempe will argue, as it does in the preamble to the ordinance, that Ordinance 02017.51 involves the governance of local elections in a charter city, and that the Ordinance therefore controls in the event of a conflict with state law. This is incorrect. While the Arizona Supreme Court has held in, for example, *City of Tucson v. State of Arizona*, 229 Ariz. 172 (Ariz. 2012), that cities enjoy some latitude to control their local

elections, this authority is not absolute. For instance, in a previous Tucson case, *City of Tucson v. State of Arizona*, 191 Ariz. 436 (Ariz. 1997), the Court held that cities cannot prevent the State from establishing uniform election dates. The Court has also consistently held that Arizona's Constitution provides even "greater scope than the first amendment" when protecting free-speech rights. *State v. Stummer*, 219 Ariz. 137, 143 (Ariz. 2008).

One thing is clear: the State of Arizona always has the authority to protect the constitutional rights of its citizens, and no local ordinance may violate those rights. The U.S. Supreme Court has held that non-profit groups and their donors enjoy a First Amendment right anonymity when those groups seek to effect change through the political process. *See National Association for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958). Tempe can no more violate this right than it could require voters to allow City officials to inspect their filled-out ballots. Local control ends where constitutional rights begin.

Because Tempe may not require 501(a) groups to disclose their donors' personally identifying information, Tempe Ordinance 02017.51 plainly violates state law.

Respectfully,

A handwritten signature in black ink, appearing to read "Vince Leach". The signature is written in a cursive, flowing style.

Senator Vince Leach
State Senator, District 11