

C A M P A I G N F O R ACCOUNTABILITY

June 1, 2015

Honorable Mark Brnovich
Attorney General
State of Arizona
1275 West Washington Street
215 North Sanders, Third Floor
Phoenix, AZ 85007-2926

VIA EMAIL: AGINFO@AZAG.GOV

Dear Attorney General Brnovich:

Campaign for Accountability respectfully requests that you investigate Utah State Representative Ken Ivory (R-West Jordan) for engaging in a scheme to defraud Arizona local government officials out of taxpayer funds.

Background

Rep. Ivory not only serves in the Utah state legislature, but also runs a non-profit called the American Lands Council (“ALC”). ALC’s stated mission is to transfer federal lands to state governments.¹ According to ALC’s website, ALC provides state leaders with the “knowledge and courage to battle for the only solution big enough to ensure better access, better health and better productivity through the transfer of public lands to local stewardship.”² Rep. Ivory is the president of ALC, where he “dedicates his time to educating legislators and community leaders throughout the states about their jurisdictional rights and duties to manage, protect, and care for the lands within our borders.”³ As part of that effort, Rep. Ivory developed and secured passage of the Transfer of Public Lands Act (“TPLA”) in Utah.⁴ ALC also employs Rep. Ivory’s wife, Becky, as communications director. The group’s website states Ms. Ivory works “most often behind the scenes to support her husband in his role as state legislator and president” of ALC.⁵

According to ALC’s 2012 tax form 990, it received \$122,854 in contributions, grants, and gifts.⁶ The group raised substantially more money in 2013, reporting \$209,177 in membership dues, contributions, grants, and gifts.⁷ It appears that ALC is supported largely, if not primarily, through contributions made by county governments. Membership in ALC is

¹ http://www.americanlandscouncil.org/our_mission.

² *Id.*

³ http://www.americanlandscouncil.org/our_team.

⁴ *Id.*

⁵ *Id.*

⁶ American Lands Council, Tax Form 990, filed November 18, 2013 (attached as Exhibit A).

⁷ American Lands Council, Tax Form 990, dated November 18, 2014 (attached as Exhibit B).

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available at various levels. Municipal and county governments can pay \$1,000 for the bronze level, \$5,000 for the silver level, \$10,000 for the gold level, and \$25,000 for the platinum level.⁸ A significant portion of the money Rep. Ivory raises from local governments for ALC goes to pay him and his wife. In 2013, ALC paid Rep. Ivory \$95,000 and Becky Ivory \$19,715.⁹

In 2013 and 2014, as part of a broader effort to enlist support for ALC among Western states, Rep. Ivory made numerous presentations throughout Arizona, paid for with taxpayer funds from dozens of out-of-state counties. In 2013, Rep. Ivory made presentations to the Southern Arizona Conservative Pact in August;¹⁰ to audiences in Phoenix, Show Low and Kingman in September;¹¹ and to an audience in Mohave in October.¹² Also in September, Rep. Ivory made a presentation to an audience at Arizona's state capitol that included lawmakers, urging them to pass legislation ceding control of public lands to the state.¹³

Rep. Ivory returned to Arizona in 2014, speaking to the Tea Party on February 1 in Ft. McDowell;¹⁴ to a group in Scottsdale on May 17, 2014;¹⁵ and to county supervisors in Kingman on May 20, 2014. Two days later Rep. Ivory made a presentation before the Mohave County Board of Commissioners in which he touted the benefits of membership in ALC purchased by contributions ranging from \$1,000 to \$25,000.¹⁶ More recently, Rep. Ivory appeared before a joint meeting of the Arizona House Agriculture, Water & Lands, and Federalism committees on April 1, 2015,¹⁷

⁸ <http://www.americanlandscouncil.org/membership>.

⁹ American Lands Council, Tax Form 990, filed November 18, 2013.

¹⁰ A video of his presentation is available at <https://www.youtube.com/watch?v=ZcGzoJKI9HE>.

¹¹ A video of this presentation is available at

<https://www.youtube.com/watch?v=6UYS0IVNtxc>; Press Release, *American Lands Council's Ken Ivory Here in Show Low!!!*, *White Mountain Conservatives*, available at <http://whitemountainsconservatives.ning.com/events/american-lands-council-s-ken-ivory-here-in-show-low>; Suzanne Adams-Ockrassa, *Federal Land Use Policies Harm State, Kingman Audience Hears*, *Daily Miner*, September 15, 2013.

¹² A video of this presentation is available at <https://www.youtube.com/watch?v=rN0NSe2qTvQ>.

¹³ Amy Gleich, *Leader of Utah Sovereignty Effort Makes Case in Arizona*, *Tucson Sentinel*, September 15, 2013, available at http://www.tucsonsentinel.com/local/report/091513_public_lands/leader-utah-sovereignty-effort-makes-case-arizona/.

¹⁴ http://www.teaparty-scottsdale.com/business_league.

¹⁵ Press Release, *Speaking About Land Grabs by the Government – Tombstone, Arizona, Texas, Nevada, Colorado, Central California*, *Arizona Freedom Alliance*, available at <http://arizona-freedomalliance.ning.com/events/american-lands-council-presents-ken-ivory>.

¹⁶ A video of Rep. Ivory's presentation is available at <http://www.mohavecounty.us/VideoMeetingViewer.aspx?group=1&agenda=44&template=1>.

¹⁷ Rachel Leingang, *Utah Lawmaker Says Arizona Should Take Mismanaged Federal Lands*, *Arizona Capitol Times*, April 1, 2015, available at <http://azcapitoltimes.com/news/2015/04/01/utah-lawmaker-says-arizona-should-take-mismanaged-federal-lands/>.

In his presentations Rep. Ivory urged Arizona to follow Utah's lead and enact legislation demanding the return of federal lands, which, he claims, will force the federal government to turn control of federal lands over to the states.¹⁸ Rep. Ivory's speeches were part of a larger strategy to line ALC's coffers. His fundraising efforts in Arizona were quite successful; according to ALC's website, Apache County, the Eastern Counties Organization, and Mohave County all joined ALC as silver members, and Navajo County joined at the bronze level.¹⁹

Rep. Ivory's claim that contributions to his organization will result in the federal government returning land to states is completely spurious. In Utah, where his bill has already passed, the Utah Office of Legislative Research and General Counsel has said the Transfer of Public Lands Act has "a high probability of being declared unconstitutional."²⁰ Legal scholars at the University of Utah have explained, "the federal government has absolute control over federal public lands, including the constitutional authority to retain lands in federal ownership. Statutes authorizing Western states to join the Union required the states to disclaim the right to additional lands and that disclaimer cannot be spun into a federal duty to dispose."²¹ As a result, any claim by Utah to federal land is "doomed to failure."²²

Any similar legislation by Arizona also would fail. As one legal expert has explained, "the plain text of most Western state enabling acts expressly renounces state claims to federal land."²³ Martin Nie, a professor of natural resources policy at the University of Montana's College of Forestry and Conservation, has called ALC's interpretation of the state enabling acts "farfetched."²⁴ And former Arizona Governor Jan Brewer, in a letter to state legislative leaders, described a 2012 bill aimed at transferring control of public lands to Arizona as "'not reconcilable' with the U.S. Constitution and Arizona's Enabling Act[.]"²⁵ ALC's demand for the

¹⁸ Robert Gehrke, *Utah Rep. Ken Ivory's Quest for State Control of Public Lands is All-Consuming* *Salt Lake Tribune*, May 19, 2014, available at <http://www.sltrib.com/sltrib/politics/57952776-90/ivory-lands-utah-state.html.csp>.

¹⁹ <http://www.americanlandscouncil.org/arizona>.

²⁰ H.B. 148, Legislative Review Note, February 12, 2012 available at <http://le.utah.gov/~2012/bills/hbillint/hb0148.htm>.

²¹ Robert B. Keiter and John C. Ruple, *A Legal Analysis of the Transfer of Public Lands Movement*, Stegner Center White Paper No. 2014-2, Wallace Stegner Center for Land, Resources and the Environment, University of Utah S.J. Quinney College of Law, Oct. 27, 2014, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2516004.

²² *Id.*

²³ Alex Sakariassen, *Land Grab*, *Missoula Independent*, April 9, 2015 (quoting American Constitution Society blog), available <http://missoulanews.bigskypress.com/missoula/land-grab/Content?oid=2129205>.

²⁴ Karl Puckett, *Do States Have Rights to Federal Land?*, *Great Falls Tribune*, April 26, 2015, available at <http://www.greatfallstribune.com/story/news/local/2015/04/23/states-rights-federal-lands/26232615/>.

²⁵ Robert Gehrke, *Utah Alone in Sagebrush Rebellion After Arizona Governor's Veto*, *Salt Lake Tribune*, May 15, 2012, available at <http://www.sltrib.com/54120702>.

return of federal land conflicts with congressional authority under the Property Clause to retain and manage public lands.²⁶ The Supreme Court has read the Property Clause broadly and the Supremacy Clause dictates that federal law overrides that of the states. “Challenges of federal ownership and management of public land have failed repeatedly.”²⁷

Further, the alleged benefits derived from a return of public lands also are illusory. Former Gov. Brewer told the state legislature in 2012 it would cost Arizona \$25 million to manage the land currently controlled by the federal government, along with “an untold increase in staff and resources.”²⁸ A 2015 report by the Bozeman, Montana-based Property and Environment Research Center comparing state and federal management of Western lands found that per acre of federal land, federal expenditures were “more than six times higher . . . than state expenditures.”²⁹ The report found further that “state trust lands generate ten times more revenue per full-time employee than federal land agencies.”³⁰

Similarly, a report on the Utah bill prepared for the City Council of Ivins, Utah concluded the TPLA actually would result in *less* revenue for Utah. Transfer of 30 million acres of federal land to the state not only is unconstitutional, it would “pose complex economic challenges to the state.”³¹ The federal government pays for the protection and management of federal lands and provides Payment in Lieu of Taxes (PILT) to Utah. In 2011, shared revenues paid to Utah were \$163.4 million and the PILT was \$34.7 million.³² Not only would Utah lose these payments, but the state also would be forced to incur both the direct and indirect costs of managing all of this land. “In terms of economics, the Act would not create a viable education funding mechanism because it mandates that 95% of all revenue from any lands goes to the US Treasury, leaving 5% for the state.”³³

Despite the fact that legislation demanding the return of federal lands to states is almost certainly unconstitutional and doomed to fail, Rep. Ivory knowingly and willfully travels throughout Arizona and other Western states in an effort to persuade local lawmakers to contribute to ALC and support his cause, never revealing the constitutional defects of his claim or that the majority of ALC’s funds go toward paying him and his wife. By soliciting taxpayer

²⁶ Nick Lawton, *Utah’s Transfer of Public Lands Act: Demanding a Gift of Federal Lands*, 16 VT Journal of Environmental Law, at 17 (2014), *citing* *Kleppe v. New Mexico*, 426 U.S. 539, 543 (1976).

²⁷ *Id.*

²⁸ Gehrke, *Salt Lake Tribune*, May 15, 2012.

²⁹ Sakariassen, *Missoula Independent*, Apr. 9, 2015 (internal quotation omitted).

³⁰ *Id.* (internal quotation omitted).

³¹ Kelly Tucker, *Utah’s Transfer of Public Lands Act of 2012: Controversy and Dissent* 11 (2013), available at <http://citizensfordixie.org/wp-content/uploads/2013/03/TPLA-2012-Opposing-Position.pdf>.

³² *Id.*

³³ *Id.*

funds for an organization that exists largely to funnel money to both Rep. Ivory and his wife, Rep. Ivory appears to be engaging in fraud.

Violations of Arizona Law

As you know, pursuant to § 13-2310(A) of the Arizona Code a person “who, pursuant to a scheme or artifice . . . defraud[s], knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions” is guilty of a class 2 felony. Further, the offense of fraud does not require “[r]eliance on the part of any person[.]” § 13-2310(B). The Arizona Code also makes it illegal to “defraud or deceive, knowingly falsif[y], conceal[] or cover[] up a material fact by any trick, scheme or device” in “any matter related to the business conducted by any department or agency of this state or any political subdivision thereof[.]” § 13-2311(A).

In apparent violation of §§ 13-2310 and 13-2311, Rep. Ivory knowingly and purposely made false statements to Arizona commissioners and officials to persuade them to donate to his personal non-profit organization, which exists primarily to pay him and his wife. With a reckless disregard for the truth – if not outright knowingly and intentionally – Rep. Ivory has travelled throughout Arizona and other states pedaling the fiction that the federal government is legally required to return public land to the state. In making his case, Rep. Ivory has made demonstrably untrue statements about the U.S. Constitution and Supreme Court case law – all designed to persuade local government officials to write checks to a group that does little more than pay Rep. Ivory and his wife and fund his travel.

This would be egregious enough if Rep. Ivory were defrauding individuals out of their own money, but the fact that he – as a government official – is persuading other government officials to give him taxpayer money, which then winds up in his family’s bank account, makes it all the more offensive.

Finally, Rep. Ivory appears to be operating as a lobbyist within the meaning of Arizona law, which defines lobbying as including an attempt to influence the passage or defeat of any legislation by directly communicating with any legislator,³⁴ but does not appear to have complied with Arizona’s registration and reporting requirements.³⁵ A search of the publicly available database of registered lobbyists revealed no registration information for Rep. Ivory.³⁶ Yet, as outlined above, Rep. Ivory has lobbied state and local elected officials on multiple occasions seeking the passage of an Arizona law that would give the state control over public lands.

Conclusion

Relying on his credibility and authority as a Utah state legislator, Rep. Ivory has attempted to persuade unsuspecting Arizona officials that if they contribute Arizona taxpayer

³⁴ Arizona Code § 41-1231.11.

³⁵ Arizona Code § 41-1232.

³⁶ See http://apps.azsos.gov/scripts/lobbyist_search.dll.

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dollars to his charity, they can help their state acquire federal land and increase revenues. This is tantamount to selling unwitting victims the Brooklyn Bridge. Therefore, your office should immediately investigate whether Rep. Ivory has engaged in a scheme to defraud local Arizona governments and Arizona citizens through the use of deceptive practices.

Thank you for your prompt attention to this matter.

Sincerely,



Anne L. Weismann
Executive Director

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