



**NOTICE OF PUBLIC MEETING
AND POSSIBLE EXECUTIVE SESSION OF THE
STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION**

Location: Citizens Clean Elections Commission Virtual Meeting
1110 W. Washington, Suite 250
Phoenix, Arizona 85007

Date: Thursday, May 16, 2024

Time: 11:00 a. m.

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the Commissioners of the Citizens Clean Elections Commission and the general public that the Citizens Clean Elections Commission will hold a regular meeting, which is open to the public on May 16, 2024. This meeting will be held at 11:00 a.m. **This meeting will be held virtually. The virtual meeting room will be open by 10:45 a.m. at the latest.** The Commission offices will not be available for public viewing or participation unless prior arrangements are made. Instructions on how the public may participate in this meeting are below. For additional information, please call (602) 364-3477 or contact Commission staff at ceec@azcleelections.gov. If you require assistance in viewing or participating in the meeting, please contact us immediately.

The meeting may be available for live streaming online at <https://www.youtube.com/c/AZCCEC/live>. You can also visit <https://www.azcleelections.gov/clean-elections-commission-meetings>. Members of the Citizens Clean Elections Commission may attend in person, by telephone, video, or internet conferencing.

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Please note that members of the public that choose to use the Zoom video link must keep their microphone muted for the duration of the meeting. If a member of the public wishes to speak, they may use the Zoom raise hand feature and once called on, unmute themselves on Zoom once the meeting is open for public comment. Members of the public may participate via Zoom by computer, tablet or telephone. A dial-in option is also available but you will not be able to use the Zoom raise hand feature, so the meeting administrator will assist phone attendees. Please keep yourself muted unless you are prompted to speak. The Commission may allow time for public comment on any item on the agenda.

Commission members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing Commission staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date. The Commission may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item listed on the agenda, pursuant to A.R.S. § 38-431.03 (A)(3). The Commission reserves the right at its discretion to address the agenda matters in an order different than outlined below.

Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Commission at (602) 364-3477. Requests should be made as early as possible to allow time to arrange accommodations.

The agenda for the meeting is as follows:

- I. Call to Order.
- II. Discussion and Possible Action on Meeting Minutes for April 18, 2024.
- III. Discussion and Possible Action on Executive Director’s Report, Enforcement and Regulatory Updates, and Legislative Update.

Note: The executive director’s report includes announcements about elections and campaign finance, a report on voter education activities, including Clean Elections debates and the Clean Elections Voter Education Guide, administrative information and correspondence from other agencies (including correspondence from the Department of Administration regarding the state budget), information on candidates running clean, reports on legal proceedings involving Clean Elections and other Arizona election officials, status of enforcements, and the Commission regulatory agenda. It is included in the Commission packet available on the Commission’s website or by request at ccec@azcleelections.gov.

- IV. Discussion and Possible Action on Advisory Opinion Request 24-02 and Draft Advisory Opinion 24-04 relating to whether activities performed by an employee of a political party qualify as campaign media spending as defined in the Voter’s Right to Know Act requested by the Arizona Democratic Party’s Arizona Democratic Legislative Campaign Committee.
- V. Public Comment.
This is the time for consideration of comments and suggestions from the public. Action taken as a result of public comment will be limited to directing staff to study the matter or rescheduling the matter for further consideration and decision at a later date or responding to criticism
- VI. Adjournment.
This agenda is subject to change up to 24 hours prior to the meeting. A copy of the agenda background material provided to the Commission (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission’s office, 1110 W Washington St, #250, Phoenix, AZ 85007.

Dated this 14th day of May, 2024
Citizens Clean Elections Commission
Thomas M. Collins, Executive Director

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

April 18, 2024

9:30 a.m.

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1 PUBLIC MEETING, BEFORE THE CITIZENS CLEAN ELECTIONS
 2 COMMISSION, convened at 9:30 a.m. on April 18, 2024, at the
 3 State of Arizona, Citizens Clean Elections Commission, 1110
 4 West Washington, Suite 250, Phoenix, Arizona, in the
 5 presence of the following Board Members:
 6 Mr. Mark S. Kimble, Chairman
 7 Mr. Galen Paton
 8 Ms. Christina Estes-Werther
 9 Ms. Amy Chan (virtual)
 10 Mr. Steve Titla (virtual)

9 OTHERS PRESENT:

10 Thomas M. Collins, Executive Director
 11 Paula Thomas, Executive Officer
 12 Mike Becker, Policy Director
 13 Gina Roberts, Voter Education Director
 14 Avery Xola, Voter Education Manager (virtual)
 15 Alec Shaffer, Web Content Manager (virtual)
 16 Kara Karlson, Assistant Attorney General
 17 Emma Cone-Roddy, Osborn Maledon (virtual)
 18 Jessica Painter, KCA
 19 Damien Meyer, Member of the Public (virtual)

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1 Governor Brewer, state election director, and currently is a
 2 partner at a Phoenix law firm advising municipalities. She
 3 has served as general counsel for the Arizona League of
 4 Cities and Towns and served on Governor Hobbs' bipartisan
 5 Election Task Force.
 6 In announcing her appointment, Governor Hobbs said,
 7 "Christina Estes-Werther is among Arizona's foremost experts
 8 in election law and administration. With her years of
 9 practical experience and elections at the state, county, and
 10 local level, I'm confident she will bring valuable insight
 11 to the Commission as it continues its important work."
 12 I agree with that. Please welcome Commissioner
 13 Werther.
 14 Commissioner, is there anything you would like to
 15 say?
 16 COMMISSIONER ESTES-WERTHER: Yes. I'm just happy
 17 to be here; I've admired the work of the Commissioner for a
 18 long time. And so hopefully I will have a positive
 19 contribution. So thank you all for the welcome.
 20 CHAIRMAN KIMBLE: Thank you very much; we're very
 21 happy to have you here.
 22 I would also be remiss if I didn't acknowledge the
 23 service of former Commissioner Damien Meyer who was on the
 24 Commission for 10 years. I learned quite a bit from Damien,
 25 probably more than I learned from -- from anyone else here.

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P R O C E E D I N G

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3 CHAIRMAN KIMBLE: Good morning. My name is Mark
4 Kimble.
5 Agenda Item I is the call to order. It's 9:30 a.m.
6 on April 18th, 2024, and I call this meeting of the Citizens
7 Clean Elections Commission to order.
8 With that, we will take attendance. Commissioners
9 please identify yourselves for the record.
10 COMMISSIONER ESTES-WERTHER: Commissioner Werther.
11 COMMISSIONER PATON: Galen Paton.
12 COMMISSIONER CHAN: Amy Chan.
13 CHAIRMAN KIMBLE: Commissioner Titla, I see you are
14 present but muted. Can you hear us?
15 COMMISSIONER TITLA: Yeah, Steve Titla. Good
16 morning.
17 CHAIRMAN KIMBLE: Good morning, Steve.
18 We have all five Commissioners with us this
19 morning, thank you.
20 Item II. I want to welcome Commissioner Christina
21 Estes-Werther to the Commission. Governor Hobbs announced
22 her -- her appointment with April 5th. Commissioner Werther
23 has an impressive résumé that includes deep and bipartisan
24 experience as an attorney focused on elections and
25 government. She has served as deputy general counsel to

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1 Damien also treated everyone with respect. He's really a
2 good and a very fair individual, which is certainly a rarity
3 in the world of politics.
4 Damien has become a good friend. The Commission
5 will miss him, and I will miss him, too.
6 With that, we will move on to Item III. Discussion
7 and possible action on minutes for the February 29th, 2024,
8 meeting.
9 Commissioners, you have the minutes from our March
10 meeting in the packet. Is there any discussion?
11 (No audible response.)
12 CHAIRMAN KIMBLE: Hearing none, do I have a motion
13 to approve the minutes?
14 Mr. --
15 COMMISSIONER PATON: I would make a motion to
16 approve the minutes.
17 CHAIRMAN KIMBLE: Commissioner Paton has moved we
18 approve the minutes.
19 Is there a second?
20 COMMISSIONER CHAN: I'll second.
21 CHAIRMAN KIMBLE: Thank you, Commissioner Chan, for
22 seconding it.
23 I will call the roll.
24 Commissioner Chan.
25 COMMISSIONER CHAN: Aye.

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1 CHAIRMAN KIMBLE: Commissioner Titla.
2 COMMISSIONER TITLA: Aye.
3 CHAIRMAN KIMBLE: Commissioner Paton.
4 COMMISSIONER PATON: Aye.
5 CHAIRMAN KIMBLE: Commissioner Werther.
6 COMMISSIONER ESTES-WERTHER: Aye.
7 CHAIRMAN KIMBLE: Chair votes aye.
8 The minutes are approved 5-to-nothing.
9 Item IV, discussion and possible action on
10 Executive Director's report.
11 Tom?
12 MR. COLLINS: Yes. Thank you very much,
13 Mr. Chairman and Commissioners, and welcome to Commissioner
14 Werther.
15 A couple of quick announcements. The next local
16 election will be coming up between now and the next time we
17 meet, that's on May 21st. The voter registration deadline
18 for that is April 22nd and voting begins on April 24th.
19 Information about those elections -- we've started
20 to roll that out on our -- on our website. There are local
21 elections around the state, so please check the website.
22 Also on May 7th, the oral argument will be held on
23 the legislative leadership's appeal in the case called Toma
24 versus Fontes, which is a case that concerns Proposition 211
25 and the sort of separation of powers type of arguments that
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1 His panel was about Arizona's impact on American democracy,
2 and he was a panelist along with Maricopa County Supervisor
3 Bill Gates and Don Henninger who is a -- who has been hired
4 by the Carter Center. The moderator was Dawn Wallace of the
5 Flinn Foundation.
6 So I thought that was a very exciting thing. I
7 think that, again, demonstrates that, you know, our voter
8 education program is operating in to a variety of different
9 audiences and at a variety, and I think that's an important
10 recognition.
11 As you see in the report you have, Gina is a
12 co-author of the Arizona Town Hall report Voting and
13 Elections in Arizona, which is attached to your report.
14 I think that you'll find that as you go through
15 that report, that the work that Clean Elections has done
16 over the course of the last -- of the last 10 years is
17 featured quite prominently, including research that we've
18 done in conjunction with the Morrison Institute and a
19 vari- -- and citations and examples from our voter education
20 program.
21 So I believe that was a very important report for
22 folks to review. And it, again, demonstrates how our
23 efforts in voter education and civic engagement are -- made
24 us part of -- you know, important partner of different -- of
25 different ways of reaching different populations on these
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1 the legislative leadership is making.
2 I wanted to talk -- spend a little time on our
3 voter education and outreach update for the month. It's
4 been a very busy month.
5 Just to put what we're doing in context, right now
6 we are in the midst of ramping up the debate program as you
7 heard about last month. So that will be launching in
8 earnest -- the debates themselves on May 15. So that has
9 been -- and then we are also putting the Voter Education
10 Guide into production. So we are trying to track down a
11 handful of candidates who have not submitted their
12 statements yet in order to get them in the book, if we can,
13 before they -- before that time as we are completely out of
14 time.
15 So if you're listening to this, even if you're not
16 actually attending via Zoom and you have clients who are
17 candidates, please make sure they've submitted their
18 statements. They're going to want to do it, and they're
19 going to miss it later. So you can really earn some points
20 with them.
21 I want to also talk a little bit about some of the
22 activities specifically. You know, Avery was featured on a
23 panel at the McCain Institute event sponsored by the McCain
24 Institute and ASU's Cronkite School of Journalism on --
25 called Defending the Democracy in this Disinformation Age.
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1 issues.
2 We just completed our pre-primary election poll,
3 our survey of voters. That's also attached. This is an
4 important document. We initiated this in 2022 as part of
5 our effort to -- to, as the Act talks about, trying to make
6 elections issue-based and provide issue-based discussions.
7 This -- this survey feeds directly into our debate program.
8 The information of the survey will be available to voters,
9 candidates, moderators to form a sort of common set of -- of
10 information about issues that matter to Arizonans from --
11 and I think it's one of the things that we're especially
12 proud of is the fact that we -- that we have been able to
13 break down to some extent regional issues and to -- to look
14 across different -- how different issues stack up in
15 different districts around the state.
16 As I mentioned the Voter Education Guide, we are
17 looking at the translation with the Arizona Commission for
18 the Deaf and Hard of Hearing.
19 And Avery was also at U of A last week for a town
20 hall where he was featured along with the Pima County
21 Recorder and the Secretary of State.
22 We are -- Gina and I have been meeting with the
23 party leaderships of the two major parties so far who -- who
24 have candidates debating to talk about the debate program
25 and will continue to do that.
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1 While we're on the topic of voter education,
 2 we're -- we are, as you know, you approved the voter
 3 education plan back in January. As part of that we -- you
 4 approved and we recommended a couple of events that will be
 5 coming up in the next few weeks and months. You know,
 6 specifically as we have over the last 10 years tried to make
 7 sure that we are reaching every community and any community
 8 we can in all four corners of the state as
 9 Commissioner Titla says. And so to -- you know, we are
 10 working on getting approval through the Department of
 11 Administration for a couple of those sponsored events.
 12 One is a -- the African American Conference on
 13 Disabilities hosted by the Arizona Center for Disability
 14 Law, which is now called I think Disability Rights Arizona.
 15 We have sponsored this event for some time. We have had it
 16 approved by DOA previously under the same exact terms.
 17 We're not entirely -- so this year we have run into, we're
 18 not quite sure yet what, but at least some additional
 19 scrutiny I guess would be the way I would put it. And then
 20 additionally we have you approved sponsoring the Navajo
 21 Voters Conference which again I think we've been present at
 22 since its inception in 2016 at D'yani College and now it is
 23 at the Twin -- Twin Arrows Facility on the Nation.
 24 You know, again, we got -- we've tried to -- we
 25 have a meeting with a number of relatively high-ranking DOA

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1 the issue that we are -- so we'll see if that -- if that
 2 goes again.
 3 But I did want to flag it because it was something
 4 that was directly approved by the Commission and -- and, you
 5 know, we want to make sure that obviously we want to be able
 6 to work effectively with DOA, but we also, at the end of the
 7 day, the policy and legal decision-making on these issues
 8 resides with the Commission. So we will see how that goes.
 9 COMMISSIONER CHAN: Mr. Chairman?
 10 CHAIRMAN KIMBLE: Commissioner Chan.
 11 COMMISSIONER CHAN: Mr. Chairman, Tom, okay, so
 12 ADOA has a rule in approving -- has a role in approving our
 13 voter ed program? Or can you --
 14 MR. COLLINS: Sure.
 15 COMMISSIONER CHAN -- explain that a little more?
 16 MR. COLLINS: So, yes. Mr. Chairman, if I may?
 17 Commissioner Chan, so there's a policy in what's
 18 called the State Accounting Manual which is a manual that,
 19 as far as I can tell, the authority is not expressed. It's
 20 apparently implied by Title 35 and Title 41, and they have a
 21 policy about of sponsorships which says if you want to
 22 sponsor something, you need to go through the following
 23 steps and provide us with a justification. Fair enough. We
 24 submitted our -- submitted those memos to them I think last
 25 week for these events coming up in June.

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1 officials on Monday, which is sort of a little surprising.
 2 These are not significant expenditures. These are -- one of
 3 these is around \$10,000; the other one is \$2,500. So given
 4 the state of -- you know, given our budget, given the
 5 overall state budget, these are not significant
 6 expenditures. Nevertheless, you know, the scrutiny. So the
 7 scrutiny is a little odd.
 8 We've asked DOA for some detail on what
 9 specifically they have issue with. So far we've only been
 10 provided a list of issues which really strike me as legal
 11 and policy issues that are dedicated to the Commission.
 12 They're not accounting issues that I can underst- -- as I
 13 understand them.
 14 So the reason I wanted to mention this is because,
 15 you know, look, we understand and we have always experienced
 16 a heavy amount of scrutiny of our transactions over the
 17 course of the last -- certainly the last 10 years and even
 18 the last 25 years. But we do do, I think, a good job of
 19 documenting our decision-making for anybody to see.
 20 So, you know, we'll keep an eye on it. Again, it
 21 wouldn't strike me as so odd except for the fact that one of
 22 these was approved under the exact same circumstances one
 23 year ago basically to the day. So we're not sure if there's
 24 a policy change that's not expressly available to us, but
 25 the -- you know, the -- the -- some of the issues that --

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1 So -- so it's not an issue with the approval
 2 itself, it's more of an issue of we're not quite sure why,
 3 for example, one of them was approved last year under
 4 essentially the same circumstances with the same process,
 5 and this year, you know, we -- we have sort of a list --
 6 we've been given a list of topics to discuss in a half hour
 7 on Monday that range everything from the gift clause to --
 8 to an implication there may be a conflict of interest
 9 involved here. And we can't identify the basis for any of
 10 those, and we haven't gotten very express information about
 11 them.
 12 COMMISSIONER CHAN: Mr. Chairman, Tom. I -- I just
 13 want to say that I'm very concerned to hear about this and
 14 I'm hoping that, you know, just because -- I'm not sure what
 15 the reason for such a meeting would be, other than an issue
 16 that ADOA is trying to raise suddenly.
 17 But I am somewhat familiar with the State of
 18 Arizona Accounting Manual and working for an agency have --
 19 have, you know, it's very voluminous, frankly, and adds just
 20 a layer of -- I think it serves an important role, but it
 21 does add a layer of things. But it sounds like we've
 22 complied with the requirements, so I guess my main concern
 23 is if -- if -- maybe you can provide a report, Tom, to us
 24 via e-mail --
 25 MR. COLLINS: Sure.

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1 COMMISSIONER CHAN: -- would that be acceptable
 2 after the meeting on Monday so that we're -- we're able to
 3 get an update as soon as possible on that?
 4 Because, frankly, if ADOA were to say that we
 5 couldn't sponsor these type of events anymore -- for those
 6 two conferences in particular, for example -- I think that
 7 would be very concerning and problematic from my perspective
 8 anyway as a Commissioner.
 9 MR. COLLINS: Mr. -- Mr. Chairman, Commissioner
 10 Chan, yeah, we'll -- we'll -- we will -- I'm happy to report
 11 out as I do for any kind of, I mean whether it's for
 12 litigation or other things where I report out to you-all in
 13 writing as the events develop.
 14 I don't want to -- I want to be clear, I'm not --
 15 I'm not -- the reason I'm raising this now is because
 16 there's -- there's six weeks between now and the next
 17 meeting. So if this were to go badly, it would be -- the
 18 time lapse would be too long for me to properly inform you.
 19 So what -- I'm sure -- my experience with state
 20 government tells me that generally agencies get angry or
 21 upset when you disclose that you have a dispute with them in
 22 public. But the way I do this job and the way that we have
 23 arranged our business here at this commission is that it's
 24 important for you to be fully informed about things as they
 25 develop. And so, you know, so there's a risk here that

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1 MR. COLLINS: Thank you very much.
 2 I just wanted to mention, you know, we are
 3 continuing to see candidates at candidate workshops, and
 4 Mike has been working with candidates on a -- on a daily
 5 basis, too, as they move through the process.
 6 And then obviously I mentioned the -- we have the
 7 three big Prop 211 cases, one of them May 7th is the
 8 argument; the other one is the Center or Arizona Policy has
 9 filed a motion to accelerate their appeal, that's pending.
 10 We filed a response this week, and then the Freedom -- or
 11 I'm sorry, Americans for Prosperity has filed an appeal in
 12 the Federal District Court.
 13 So with that, I think that's all I had. There's
 14 some other information in the report, but I don't think we
 15 need -- unless anyone has any questions for me.
 16 CHAIRMAN KIMBLE: Any discussions or questions from
 17 members of Commission?
 18 COMMISSIONER PATON: I have a comment.
 19 CHAIRMAN KIMBLE: Commissioner Paton.
 20 COMMISSIONER PATON: I'm very glad that you met
 21 with -- you're meeting with the two -- two parties, I mean
 22 the two major parties about our debates and voter education.
 23 That way we -- we can clear the air with either one of them
 24 so we don't have all the drama that we've had in the past
 25 about the debates. Because I really think the debates are

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1 maybe this -- you know, DOA will be unhappy that I've raised
 2 this with you-all, but it's my obligation to do that on a
 3 timeline that works for our schedule so that we -- we can
 4 get this -- get this squared away.
 5 CHAIRMAN KIMBLE: Tom, I -- I echo Commissioner
 6 Chan's concerns, and I -- I hope that as soon as you know
 7 what happens, you'll let all of us know so that if there's a
 8 problem --
 9 MR. COLLINS: Yeah.
 10 CHAIRMAN KIMBLE: -- we don't have to wait six
 11 weeks.
 12 MR. COLLINS: And if it's a matter of I didn't
 13 check a box on the -- on the memo, that is -- that's on the
 14 table, right? But the information we've been given thus far
 15 is not specific enough to say "you failed to check this
 16 box." Right? If it was a discrete issue like that, I think
 17 I would -- we would have tried to resolve it, so --
 18 CHAIRMAN KIMBLE: Okay.
 19 MR. COLLINS: -- again, it's -- it's one of those
 20 things.
 21 I have just a couple of quick things I wanted to...
 22 CHAIRMAN KIMBLE: Anyone else have any comments on
 23 before we move on?
 24 (No audible response.)
 25 CHAIRMAN KIMBLE: Okay, Tom.

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1 very important that we could, you know, explain the
 2 candidate, how the candidates feel about their various
 3 issues and...
 4 So anyway, that's what I have to say about that.
 5 So I'm glad you -- you were anticipating getting
 6 ahold of these people.
 7 CHAIRMAN KIMBLE: Thank you, Commissioner Paton.
 8 Any other comments or questions from the
 9 Commission?
 10 (No audible response.)
 11 CHAIRMAN KIMBLE: Okay. Thank you.
 12 Item V. Discussion and possible action on Advisory
 13 Opinion Request 24-01 and Draft Advisory Opinion 24-03
 14 relating to the application of the definition of campaign
 15 media spending in A.R.S. 16-971 to public communications
 16 involving candidates, elected officials, and parties.
 17 Last month we discussed this advisory opinion
 18 request and initial draft; we received additional public
 19 comment and a revised draft. The new draft narrows the
 20 application of the so-called PASO standard -- which to those
 21 of us speaking English and not lawyers means promotes,
 22 supports, attacks, or oppose the standard -- to the public
 23 communications presented and expands on the reasoning
 24 regarding the term, quote, clearly identified candidate, end
 25 quote.

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1 Tom is going to provide an overview of the issues
 2 in the draft, and then we'll take questions.
 3 Tom?
 4 MR. COLLINS: Yes. Thank you, Mr. Chairman.
 5 Jessica, I think we're going to try to -- let's
 6 see, see if this -- see if this works.
 7 So this is the PowerPoint we did revise from last
 8 time. I guess we can go to the first real -- next slide,
 9 please. If we can.
 10 I don't know, do I have the clicker?
 11 Oh, yeah.
 12 Okay. So I wanted to sort of recap where we were
 13 last -- last month. The principal questions in front of the
 14 Commission were essentially the application of these three
 15 definitions of campaign media spending in the Voter's Right
 16 to Know Act to a set of public communications from a group
 17 called Opportunity Arizona.
 18 You can see them there, the three sort of
 19 categories are: Promotes, supports, attacks or opposes
 20 within six months. So that's the PASO standard.
 21 If you ever want to Google and you sort out all the
 22 "El Pasos," you get a lot of tourist information about
 23 El Paso first, but eventually you'll find some information
 24 about this legal standard.
 25 And then this public communication that refers to a
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1 that perhaps because the Senator mentioned in the ad, you
 2 know, is under the facts presented, a candidate, that
 3 perhaps an express -- direct -- expressed mention of the
 4 candidacy was not required, rather that, you know, that this
 5 would support the candidate insofar as it is supportive of
 6 the Senator, right?
 7 So the dichotomy here is between officeholder,
 8 what -- where you're talking about an officeholder, where
 9 you're talking about a candidate, you know, and -- and how
 10 that -- how that line gets drawn.
 11 When we talked about this, Commissioner --
 12 Commissioners Paton and -- and Kimble, you both mentioned
 13 that, you know, there was -- there is within that maybe too
 14 much gray area and you wanted a clearer, more easily
 15 applicable rule. So we think that this -- we think this
 16 application satisfies that as well.
 17 So in other words, this creates a -- a situation
 18 where if the -- if the public communication is within six
 19 months of the election is directed at the -- at the
 20 officeholder and not at the candidacy, that's not promoting,
 21 supporting, opposing or attacking the candidate.
 22 So that's -- that's what -- that's -- we think that
 23 that's -- we think that that's -- you know, obviously as
 24 staff we -- we take the public comment we get very seriously
 25 and we also wanted to recognize that the Commissions, you
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1 clearly identified candidate within 90 days. And then an
 2 activity or public communication that supports the electoral
 3 prospects of an identified political party.
 4 So those were the main three categories that we
 5 were evaluating a set of several of public communications
 6 regarding.
 7 So, Jessica if we could...
 8 So the question -- this is the first question, you
 9 know, with the example be of a public communication that
 10 promotes, supports, attacks, or opposes.
 11 And then we can go to the next one. Thank you.
 12 So the -- this slide here illustrates the change
 13 that based on the feedback we got. So as you see in your
 14 packet, the four comments we got from the regulated
 15 community on this: One from the Campaign Legal Center, one
 16 from the Elias Law Group, one from Progress Arizona, and
 17 then a last from Stand for Children Arizona. Those -- all,
 18 all four of those, the consensus was that -- that -- that
 19 the staff's proposed application of the -- of the standard
 20 here was -- was too broad and was going to sweep in
 21 information that -- or I should say communications that,
 22 that in the view of -- essentially the consensus was, was
 23 not -- shouldn't be the reach of the -- of the standard.
 24 And as we talked about at the last meeting, you
 25 know, we had proposed with this particular communication,
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1 know, Commissioner Paton's and Commissioner Kimble's
 2 comments around wanting to have a -- an application that
 3 folks would not need to spend too much time evaluating in
 4 order to know where we're headed, and so we think that this
 5 achieves -- achieves that.
 6 COMMISSIONER PATON: I have a question.
 7 MR. COLLINS: Please.
 8 COMMISSIONER PATON: So, so this thing that we're
 9 looking at --
 10 MR. COLLINS: Yeah.
 11 COMMISSIONER PATON: -- that would be -- if it's
 12 within six months --
 13 MR. COLLINS: Yeah.
 14 COMMISSIONER PATON: -- that would be covered under
 15 the -- our deal?
 16 MR. COLLINS: This would be -- this would be not.
 17 This would -- because this focus is on the Senator and their
 18 legislative activity without any -- without any mention --
 19 without any attack, promotion, support or opposition of them
 20 as a candidate.
 21 So -- so -- so we --
 22 COMMISSIONER PATON: So even though they're an
 23 officeholder --
 24 MR. COLLINS: Right.
 25 COMMISSIONER PATON: How does that -- how does that
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1 get us out of the gray area?
 2 MR. COLLINS: Sure.
 3 COMMISSIONER PATON: It sounds gray to me.
 4 MR. COLLINS: Okay. That's a very good question.
 5 COMMISSIONER PATON: I don't know if "sound gray"
 6 is the right term.
 7 MR. COLLINS: Fair enough.
 8 COMMISSIONER PATON: But, anyway.
 9 MR. COLLINS: No, no. No, I understand. I take
 10 your point.
 11 So I think that in order to -- to -- to illustrate
 12 that I would point to -- and we'll talk about this as we
 13 move through it.
 14 The -- and I think that the, the Progress Arizona
 15 letter actually explains this very well. The Progress
 16 Arizona letter lays out how -- how the big -- the sort of,
 17 the definition works differently under different time
 18 frames.
 19 This is six months out. So, so what this says is
 20 six months out if you're -- to in order to promote or
 21 support or attack a candidate, you have to tell the public
 22 it's a candidate.
 23 So if you're up there and you're a practitioner and
 24 you're writing something like this, "Thanks to Senator
 25 So-and-So for this," this particular ad, you know without
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1 COMMISSIONER PATON: And some of this is -- but
 2 that makes -- but that makes sense to me, so.
 3 MR. COLLINS: Yeah. Yeah, no, that's -- that's
 4 exactly what we're -- that's exactly what we're trying to
 5 do. That's exactly what we're trying to do.
 6 COMMISSIONER PATON: Okay.
 7 MR. COLLINS: So, so --
 8 COMMISSIONER PATON: I'm happy with that then.
 9 MR. COLLINS: Good, thanks. Wonderful. Good to
 10 hear.
 11 COMMISSIONER PATON: If that matters.
 12 MR. COLLINS: No, it does -- well to me it matters
 13 more than anything.
 14 Okay. So Jessica, I can guess we can go to the
 15 next one.
 16 Again, same, same, same. All right? So this was
 17 one, you know, where, you know, with the public comment,
 18 same line; same line applies; yes.
 19 And as the opinion itself mentions any of these,
 20 especially if they refer to a candidate and it's 90 days,
 21 you can get a different outcome. So you're trying -- we're
 22 trying to tell the regulated community: At six months
 23 you'll have Standard X, at 90 days you'll have Standard Y,
 24 and that -- and that seems to be at least, you know --
 25 obviously, there's folks that would prefer none of this --
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1 having to go to an attorney, you know, that because I'm not
 2 talking about Senator -- you know, Senator Burch who is
 3 running for re-election, I'm not talking about Senator Burch
 4 who is running for the House or running for the County --
 5 whatever else Senator Burch may be doing, I know that if I'm
 6 in the six-month window and I do this, that there's no --
 7 there's not going to be an additional filing that I have to
 8 worry about.
 9 And -- and so our goal was -- so that's the black
 10 letter here: Six months out, you're talking about
 11 officeholder but not their candidacy, you're -- you're --
 12 the black letter here is that's not going to require --
 13 COMMISSIONER PATON: So this -- but 90 days this
 14 would?
 15 MR. COLLINS: 90 days this would, yes.
 16 COMMISSIONER PATON: Okay. And that makes sense to
 17 me.
 18 MR. COLLINS: Yes.
 19 COMMISSIONER PATON: And the reason we were talking
 20 earlier, that -- that I used to be a coach for many years
 21 and we had rules --
 22 MR. COLLINS: Right.
 23 COMMISSIONER PATON: -- and everybody understood
 24 the rules.
 25 MR. COLLINS: Right.
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1 none of this existed, but that's within the framework we
 2 have that -- that seemed to be where the public comment
 3 comes out and that seems -- that's fine with us.
 4 Jessica, if we could...
 5 Okay. So this one was just -- didn't have a
 6 candidate at all.
 7 Then we can go to the next slide, please.
 8 This one just -- just to recapitulate, this was
 9 unchanged. This is a -- the patch call.
 10 So this was a scenario where a -- a person is
 11 basically calling a list. I call you, I call Chairman
 12 Kimble, I say, "Chairman Kimble, do you care about my
 13 issue?" You say, "Yes"; I say, "Okay, I'm going to patch
 14 you through to the -- your state senator right now or your
 15 state lawmaker," and -- and after I go through and make sure
 16 that you're -- you agree to that.
 17 So we don't think that is a promote, support,
 18 attack or oppose; and we didn't either the first draft
 19 either. That is a direct solicitation to immediately
 20 contact the elected official.
 21 Okay, Jessica.
 22 And then this one, you know, we -- we -- we
 23 continue to believe is not a -- is not a -- does not meet
 24 the promote, support, attack or oppose.
 25 Okay.
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1 And so the second question we spent a little -- a
2 little time on in view of the -- and I wanted to actually if
3 I can, really quickly, I want to thank Austin Yost and Jim
4 Barton and Jon Berkon and his colleagues at Elias, and
5 Elizabeth Shimek and her colleagues at the Campaign Legal
6 Center for their very helpful comments on this draft.
7 CHAIRMAN KIMBLE: If I can clarify one thing, so
8 these examples we've just gone through --
9 MR. COLLINS: Yeah.
10 CHAIRMAN KIMBLE: -- the issue here is the timing
11 of when they are, not the content of the message?
12 MR. COLLINS: So Mr. Chairman, that's a really good
13 question. It's -- it's a little of both.
14 The timing tells you what statute you need to look
15 at. So I am -- you know, there -- there's no way to not to
16 do this without at least looking at the statute. And the
17 statute sets forth three specific sort of places on the
18 timeline where you are going to get -- where you're going to
19 have to potentially -- you'll have to campaign media
20 spending as defined by the Act.
21 The first is if you have expressed advocacy which
22 is a different legal standard. We're not really -- we're
23 not called on to talk about here, but if you have expressed
24 advocacy in -- in a campaign, that's always going to be --
25 that's always going to be campaign media spending.
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1 promote, you're going to promote the candidate, not just the
2 fact -- not a separate issue or the meet -- or -- or, you
3 know, just their office status, right? If you're promoting
4 a candidate, you're promoting the actual candidacy.
5 Clearly -- clearly identified candidate standard
6 talks about, as you see in the second bullet, refers to a
7 particularly identified candidate. "Refers" being -- being
8 a less active, less action than "promoting," right? So
9 you're referring to a person.
10 And there as we'll talk about in a moment, we get
11 into a little bit different analysis around what the courts
12 have said about, you know, what counts as reference and --
13 and whether or not it needs to be expressed. The only thing
14 that matters there is it's clear who you're talking about.
15 Right?
16 So, for example, it would not be a clearly
17 identified candidate if you were to say -- you would have
18 to -- you're-- you're not talking about the candidacy, but
19 you definitely have to be talking about the person.
20 So I hope that start -- that answers the question.
21 COMMISSIONER PATON: I have a comment.
22 CHAIRMAN KIMBLE: It -- it does for now, yes.
23 MR. COLLINS: Okay.
24 CHAIRMAN KIMBLE: Commissioner Paton.
25 COMMISSIONER PATON: So you're going around circles
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1 Then you have six months, you get a little broader,
2 and that's the promote, support, attack or oppose. And then
3 at 90 days, you get the reference, so.
4 Okay, so it's first thing you find yourself in the
5 timeline and then you're looking at what is the action.
6 Right? What is the verb? What is the action with respect
7 to the candidacy?
8 So to focus on the promote, support or attack
9 versus the reference to a clearly identified candidate,
10 promote, support, attack a candidate we think in order for
11 that -- for that verb to make sense in this context --
12 proper sense, I think it makes sense under, you know -- to
13 make proper sense under this -- under this application,
14 you -- you wouldn't -- you're not promote -- you have to
15 make reference to the candidate.
16 And if you look at the dictionary definition of
17 "promote" in particular, the dictionary definition that we
18 relied on, the opinion, talks about how promote in the sense
19 of advertise or solicit business or have -- or have a
20 promotion at a business.
21 Well, if you are selling something at Target, you
22 know, you're -- you're going to need to promote "go to
23 Target," right? Not "go to a retail establishment" with
24 a -- or not "go shopping." Right?
25 So the idea here was that if you're going to
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1 so much that hopefully I don't get confused even more.
2 MR. COLLINS: No, you're --
3 COMMISSIONER PATON: So the way I'm seeing it now,
4 is six months out, you can say the officeholder's name, but
5 if you don't say that she's running re- -- she's running
6 again, then that's okay. Within 90 days if you say the
7 officeholder's name, you don't have to say that she's a
8 candidate --
9 MR. COLLINS: Yes, sir.
10 COMMISSIONER PATON: -- it's still -- it's against
11 this, you'd have to file.
12 MR. COLLINS: Yeah. Yeah, you got it.
13 COMMISSIONER PATON: Over the \$5,000, whatever the
14 thing is. So, is that correct?
15 MR. COLLINS: Mr. Chairman, Commissioner Paton,
16 that is -- that is exactly right.
17 COMMISSIONER PATON: Okay. So to me that -- that
18 clears the air kind of.
19 MR. COLLINS: Yeah.
20 COMMISSIONER PATON: It makes it to where
21 there's -- it's not subjective.
22 MR. COLLINS: Right.
23 COMMISSIONER PATON: The one that, the Burch
24 person --
25 MR. COLLINS: Yeah.
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1 COMMISSIONER PATON: -- was the officeholder, but
2 didn't it say that he was running again?
3 MR. COLLINS: Right.
4 COMMISSIONER PATON: And -- but if it was 90 days,
5 that would -- they would have to file if they're spending
6 \$5,000 or more?
7 MR. COLLINS: Right; or whatever the appropriate
8 amount is.
9 COMMISSIONER PATON: So I'm okay with that, because
10 it's taken the subjectivity out.
11 I mean, if it doesn't say they're running then -- I
12 mean we know they're probably running, but maybe they're
13 just finishing out their term, correct?
14 MR. COLLINS: Mr. Chairman, Commissioner Paton, I
15 don't see -- I agree. I think that that analysis would
16 work.
17 I mean, that's how -- that's how we're proposing
18 it --
19 COMMISSIONER PATON: So that makes -- that makes
20 sense to me and I think it's easier to -- because when
21 Commissioner Kimble is asking more questions, then that
22 starts to confuse me more, and -- and maybe he's not
23 confused on it, but I started to get confused -- and I
24 thought -- you know, in my mind I thought I was okay there.
25 So -- so I think if we have something like that, it
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1 result.
2 The staff's point of view on that is a couple of
3 things. Number one, if a voter actually went through -- and
4 maybe they did -- and Googled "clearly identified
5 candidate," they're going to get a definition that sounds a
6 lot like what you would intuit the terms "clearly identified
7 candidate" means, right? So it's essentially an unambag- --
8 an unambiguous reference to the person who is running for
9 office. And in Arizona we know -- and in federal law we
10 know that that does not require a reference to the
11 candidacy.
12 That's this, in the Committee for Justice and
13 Fairness case, for example, the folks who ran an ad against
14 then-Superintendent Tom Horne while running for AG, didn't
15 mention that he was running for AG, but it was very close to
16 the election, close in time. So under this scenario, the
17 90 days is the operative issue, and so you wouldn't have to
18 do that.
19 COMMISSIONER PATON: I have a question.
20 MR. COLLINS: Sure.
21 COMMISSIONER PATON: Okay. How is it to be
22 ambiguous that somebody is clearly identified a candidate?
23 Did they file for -- to run for office?
24 MR. COLLINS: So that's a good question. At
25 90 days, I would think that it would be -- it would be -- if
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1 makes sense even though it's kind of skirting, you know.
2 But it makes sense. And it's all about the English that
3 we're using, the copy, and it's easy for candidates and the
4 people that are trying to promote them or -- or drag them
5 down, it makes sense for everybody: Lawyer, nonlawyer.
6 CHAIRMAN KIMBLE: Okay. Tom, continue.
7 MR. COLLINS: So if we could Jessica, thanks.
8 So -- so here we wanted -- so one of the things,
9 this is -- this is going to get a little into the weeds.
10 COMMISSIONER PATON: More so?
11 MR. COLLINS: Yeah, I'm -- I'm sorry, but -- so we
12 have this phrase in the statute "clearly identified
13 candidate." It's not act- -- it's not defined in the
14 Voters' Right to Know Act, but it is a term that is used in
15 both Arizona and federal law with a definition. The
16 definition that is in state statute that's applicable to
17 every other communication that happens in campaigns in
18 Arizona and the federal definition are consistent with the
19 plain meaning of the terms "clearly identified candidates."
20 In other words, the -- one of our public
21 commenters, the Stand for Children organization says, "Hey,
22 you know, given that there's not a specific definition of
23 "clearly identified candidate" in the Voters' Right to Know
24 Act, you should define it, essentially, however you think it
25 should be and it should require a different -- a different
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1 you wanted to -- to do an effective public communication, I
2 would think you would want to be clear.
3 COMMISSIONER PATON: Kara is nodding at me, so she
4 has something.
5 MR. COLLINS: You think we need to go in executive
6 session?
7 MS. KARLSON: I don't think so.
8 Chairman Kimble, can I respond?
9 CHAIRMAN KIMBLE: Sure.
10 MS. KARLSON: Under current state law by -- well
11 before 90 days, you would have to be identified in order to
12 be a candidate on the general election ballot, and so I
13 think that should foreclose any question about whether
14 someone was a candidate for an office or not just because of
15 the deadlines.
16 COMMISSIONER PATON: Because they would have won
17 the primary.
18 MS. KARLSON: Yes. I mean, they would have at the
19 very least had all of their paperwork filed long before the
20 90-day mark. So they would absolutely be a candidate or
21 not.
22 COMMISSIONER PATON: So the ambiguousness is not
23 there, correct?
24 MS. KARLSON: That's a different question.
25 I'm not trying to avoid you, Commissioner Kimble.
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1 I apologize but...

2 CHAIRMAN KIMBLE: No.

3 MR. COLLINS: Mr. Chairman, if I could on that

4 point, I think -- if I'm understanding this correctly,

5 Commissioner Paton, you're asking what would -- what would

6 an advertisement that would be ambiguous look like? Like,

7 what -- what would, you know what I mean. Like we have

8 here --

9 COMMISSIONER PATON: No, I think -- I think if

10 they're filing and they're running for office --

11 MR. COLLINS: Yep.

12 COMMISSIONER PATON: -- they're a candidate. I

13 don't care what their -- their advertisement says --

14 MR. COLLINS: Sure.

15 COMMISSIONER PATON: -- they're running for office.

16 MR. COLLINS: Right.

17 COMMISSIONER PATON: And if it's within the six

18 months, then it should count.

19 MR. COLLINS: Right. You mean the 90 days.

20 COMMISSIONER PATON: I mean, so...

21 MR. COLLINS: Yeah, you're right. You're right.

22 COMMISSIONER PATON: That -- you're causing the

23 gray area by -- by all these shenanigans with the English;

24 and I think you should, if they're filed for it, then

25 they're running.

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1 CHAIRMAN KIMBLE: Okay.

2 MR. COLLINS: So essentially, and definition of

3 "candidate," exactly as Commissioner Paton just referenced,

4 is a person who is offering themselves for office and

5 run- -- and raising money. That's the definition of

6 "candidate" that's in the Voters' Right to Know Act.

7 So we will know by virtue of the fact they're out

8 there raising money, they have filed their statement of

9 interest in all likelihood, and these kinds of thing we know

10 they're a candidate.

11 COMMISSIONER PATON: I mean, it -- it's like when

12 Senator Sinema, they were saying "she going to run; she

13 going to not run" -- she never filed.

14 MR. COLLINS: Right.

15 COMMISSIONER PATON: So if she finally filed, then

16 she was running and then that -- that covers the deal. In

17 my mind.

18 I think if -- if we do all these other things,

19 we're making this difficult.

20 MR. COLLINS: Sure.

21 CHAIRMAN KIMBLE: Okay, Tom.

22 MR. COLLINS: Yeah. You know, I don't know -- let

23 me take a look here real quick.

24 Here we go. Just one moment please, Mr. Chair.

25 Okay. Actually, and then the rest of this I don't

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1 MR. COLLINS: Right.

2 COMMISSIONER PATON: And I think that you're making

3 all these things to where we're going to have all these

4 subjectivity problems 'cause we have to deal with this. And

5 I don't want somebody coming up and saying well -- well, I

6 wasn't -- you know how we've had to fine people and whatever

7 in the past.

8 MR. COLLINS: Sure.

9 COMMISSIONER PATON: And it's much better if

10 everybody knows that person did something that was against

11 the law -- I mean against this rule or whatever.

12 MR. COLLINS: Mr. Chairman, if I -- if I could?

13 CHAIRMAN KIMBLE: Yes; Tom.

14 MR. COLLINS: I just want to say, you have it

15 precisely. So I may be using too many words, but I'm

16 definitely -- you are saying exactly what -- I'm in a

17 hundred percent agreement with what you are saying.

18 COMMISSIONER PATON: Okay. Good.

19 CHAIRMAN KIMBLE: Can I just ask one other

20 question?

21 We're talking about 90 days. Are we talking about

22 90 days -- are all these time periods from the general

23 election?

24 MR. COLLINS: So the 90 -- the 90 days runs from

25 the primary back, so it 's --

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1 think we have to go through.

2 So --

3 COMMISSIONER ESTES-WERTHER: Mr. Chairman, Tom, can

4 I ask a clarifying question just about -- so, for me, I

5 understand just because the deadline for filing if you want

6 your name on the ballot is 120 days. So to me, I mean,

7 that's clear if you're out there and you've filed. But I

8 mean there is a possibility of write-in candidates and

9 that's 40 days before an election, so that sort of falls

10 under.

11 Is there another definition or something else that

12 would kind of help us to clearly identify them if they

13 haven't filed write-in paperwork yet?

14 MR. COLLINS: Mr. Chairman, Commissioner Werther,

15 that's a -- that's a very good question. That may be the

16 ambiguity that would -- we would deal with under

17 Commissioner Paton's prior hypothetical.

18 That -- that's -- and I'm -- we can certainly take

19 that -- take that under consideration in terms of whether or

20 not we want to either solicit or get or issue some kind of

21 specific guidance for a write-in candidate because that is a

22 real thing that happens every year.

23 We have in our practice here at the Commission

24 with respect to enforcements we've done in the Clean

25 Elections Act, we have always looked to objective factors

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1 that would confirm that a person was, in fact, running as a
 2 candidate even -- you know, and so we -- so we've always
 3 done that. So I think that what every permeation of a
 4 clearly identified candidate might be, we would -- we would
 5 certainly want to consider -- consider that, and that's a
 6 good one that we can look at, so.
 7 I mean... yeah, sorry.
 8 CHAIRMAN KIMBLE: Are you done, Tom --
 9 MR. COLLINS: I am.
 10 CHAIRMAN KIMBLE: -- with your presentation?
 11 MR. COLLINS: I am, yeah.
 12 CHAIRMAN KIMBLE: Okay. So are there any other
 13 questions or clarifications from members of the Commission?
 14 (No audible response.)
 15 CHAIRMAN KIMBLE: Is there any member of the public
 16 or any other interested parties who want to make a comment
 17 on this?
 18 (No audible response.)
 19 CHAIRMAN KIMBLE: Okay. Hearing none.
 20 Tom, I guess -- well, I'll entertain a motion to
 21 approve Advisory Opinion 24-01. And just to be clear, is
 22 this what we're talking about here?
 23 MR. COLLINS: Yeah, I'm sorry, and I think I put
 24 the wrong number in there.
 25 It's Advisory Opinion Request 24-01. It's Advisory
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1 CHAIRMAN KIMBLE: Just to clarify, Commissioner
 2 Paton you're talking about Advisory Opinion 2024-03?
 3 COMMISSIONER PATON: Correct.
 4 CHAIRMAN KIMBLE: Okay. Is there a second to
 5 Commissioner Paton's motion to approve Advisory Opinion
 6 2024-03?
 7 COMMISSIONER ESTES-WERTHER: I second.
 8 CHAIRMAN KIMBLE: Seconded by Commissioner Werther.
 9 I will call the roll.
 10 Commissioner Chan.
 11 COMMISSIONER CHAN: Aye.
 12 CHAIRMAN KIMBLE: Commissioner Titla.
 13 COMMISSIONER TITLA: Aye.
 14 CHAIRMAN KIMBLE: Commissioner Paton.
 15 COMMISSIONER PATON: Aye.
 16 CHAIRMAN KIMBLE: Commissioner Werther.
 17 COMMISSIONER ESTES-WERTHER: Aye.
 18 CHAIRMAN KIMBLE: Chair votes aye.
 19 The Advisory Opinion 2024-03 is approved 5-to-zero.
 20 Thank you.
 21 Item VI, discussion and possible action on Advisory
 22 Opinion Request 24-02 and draft Advisory Opinion 24-02
 23 relating to whether activities performed by an employee of a
 24 political party qualify as campaign media spending as
 25 defined in A.R.S. 16-971.
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1 Opinion 24-03.
 2 CHAIRMAN KIMBLE: Oh, okay. I'm sorry.
 3 So I will entertain a motion to approve Advisory
 4 Opinion 24-03.
 5 And I just want to make sure that we're all on the
 6 same page about what we're approving here, and in our
 7 material, I have a -- under Item V, I have a 12-page draft
 8 from you dated April 18, 2024, Advisory Opinion 2024-03.
 9 This is what we're voting to approve if we get a motion; am
 10 I correct?
 11 MR. COLLINS: Mr. Chairman, you are correct. We
 12 will take the draft watermark off; we will apply your name
 13 to it, and we will publish it if you approve it.
 14 CHAIRMAN KIMBLE: Okay. So with that
 15 clarification, any more comments or questions from members
 16 of the Commission?
 17 COMMISSIONER PATON: So.
 18 CHAIRMAN KIMBLE: Commissioner Paton.
 19 COMMISSIONER PATON: So all of what we just
 20 discussed is -- is that draft?
 21 MR. COLLINS: Yes.
 22 CHAIRMAN KIMBLE: Okay.
 23 COMMISSIONER PATON: I would make a motion to --
 24 I'll have to see the exact number -- 24-03 that we would
 25 approve that motion.
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1 Commissioners, we have an advisory opinion request
 2 filed by the Arizona Democratic Party's Arizona Democratic
 3 Legislative Campaign Committee. This question has to do
 4 with how the parties should address activities that are
 5 included in the definition of campaign media spending.
 6 Tom will provide a brief overview.
 7 Tom?
 8 MR. COLLINS: Yes, Mr. Chairman. Thank you.
 9 So this is the second -- yes, the second -- the
 10 second prop -- yeah, Jessica, do we have that one?
 11 I wonder if I forgot to change the title card.
 12 Okay. All right, if we could go to the next slide
 13 'cause I'm afraid we're -- yeah. So, okay, this isn't
 14 the -- this isn't the one.
 15 Do you have another one possibly?
 16 MS. THOMAS: That's the one you sent yesterday.
 17 MR. COLLINS: Okay. Then I sent the wrong one.
 18 There were two.
 19 MS. THOMAS: Yeah, this is the second one.
 20 MR. COLLINS: Okay, then I sent the wrong one.
 21 Could we take a break so I can get the correct
 22 PowerPoint?
 23 CHAIRMAN KIMBLE: Okay. Let's take a five-minute
 24 break here. We're going to take a five-minute break.
 25 (Recess taken from 10:22 a.m. to 10:27 a.m.)
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1 CHAIRMAN KIMBLE: Okay. Our meeting is resuming
2 with Item VI, discussion and possible action on Advisory
3 Opinion Request 24-02 and draft Advisory Opinion 2024-04.
4 MR. COLLINS: Correct.
5 CHAIRMAN KIMBLE: Tom.
6 MR. COLLINS: Okay. Thank you, Commissioners and
7 thank you for your indulgence.
8 So we have -- this is -- I guess we can go to the
9 next page of this if we could, Jessica. Thank you.
10 Okay. So we received this request on April 3rd
11 from the Arizona Democratic Party's Arizona Democratic
12 Legislative Campaign Committee, and it -- the -- the request
13 focuses on basically these two parts of the definition of
14 "campaign media spending."
15 So campaign media spending is inclusive of an
16 activity, not just a public communication, that supports the
17 election or defeat of candidates of unidentified politic- --
18 of an identified political party or the electoral prospects
19 of an identified political party. And then it sets forth
20 examples, including partisan voter registration, partisan
21 get-out-the-vote activity or other partisan campaign
22 activity.
23 Then there is another definition that talks about
24 the preparation that goes into other campaign media
25 spending. So that means the research, the design, the
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1 other activities.
2 So part of the other question here is, well, what
3 does this specifically mean?
4 What we had in mind and in -- in when we drafted
5 this rule and recommended it for your adoption was something
6 along -- was something along the lines of -- and this is not
7 an all-inclusive thing but just an example -- a person has a
8 poll that says that voters -- that somebody did for in, you
9 know, a prior year for some other purpose, they were doing
10 something else. And then later on somebody, you know, pulls
11 out that poll in the midst of doing their work getting ready
12 for a campaign ad bot, right, that poll doesn't
13 retroactively become a part of their campaign media spending
14 preparation if it was done on another occasion for another
15 purpose, so.
16 So that, that's just an example an illustration of
17 what that rule does.
18 So Jessica, if we could; thank you.
19 So the question that the Arizona Democratic Party's
20 Arizona Democratic Legislative Campaign Committee asked
21 basically, you know, do -- if we hire employees and we pay
22 their salary and benefits and other costs like training or
23 coaching and travel, can that constitute campaign media
24 spending? And does that turn on -- essentially does that,
25 you know, does accounting for that require an evaluation of
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1 production, polling, data analytics, and any other activity
2 that's conducted in preparation for or in conjunction with
3 these activities, so.
4 So we have two question -- the question really asks
5 us two things. Number one, if I hire an employee to do an
6 activity and that activity is -- includes, you know,
7 activities, you know, partisan voter registration or
8 get-out-the-vote activity, and if I hire someone who is
9 going to do the research or design or polling for -- in
10 preparation for or in conjunction with other activities in
11 the statute such as public communications, advertising or
12 the -- or also this partisan get-out-the-vote activity,
13 that's -- that's what we're -- that's the framework we're
14 talking about.
15 In other words, I pay a person to do something that
16 is covered under the Act, under what circumstances did that
17 become the kind of activity that needs to be reported or
18 accounted for under the Act.
19 Jessica, if we could; thank you.
20 So in an effort to provide some additional guidance
21 around the terms "activities," we adopted a rule last year
22 that said that -- that said that we will not consider
23 something campaign media spending if it's an activity like
24 research, polling, et cetera, unless it's specifically
25 conducted in preparation for or in conjunction with those
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1 the duties of the employee in question?
2 And so that's the question; and as you see in the
3 draft, we think the answer is to those questions is -- both
4 those questions -- is yes.
5 So, sorry. I'm sorry, Jessica, you're right.
6 You're on it.
7 So we -- the -- the letter lays out a factual
8 background. The party is already a covered person -- that's
9 my mistake on apostrophe there -- under the Voters' Right to
10 Know Act.
11 So what does it mean they're already a covered
12 person? It means that they have already spent more than
13 \$25,000 or more than \$50,000 on a -- on a -- on a campaign
14 in Arizona.
15 So they're already subject to reporting of their
16 original sources and -- and greater than \$5,000, you know,
17 and -- and the range of -- of reports required by Prop 211.
18 They're going to do some hiring. The letter
19 articulates that, you know, the general -- the primary and
20 general election are approaching, the ADLCC is going to hire
21 staff for that purpose. The goal of that staff is to
22 support the general mission of electing Democrats to the
23 legislature, you know, the goal to helping elect Democrats.
24 The duties that these folks they're hiring may
25 include crafting the messaging and design of a public
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1 advertising [verbatim] and the research related to that,
2 crafting the language of polling instruments, communications
3 and fundraising support, and organizing canvasses in
4 targeted areas to allow volunteers to go door to door in
5 support of Democratic candidates and policies.
6 So I thought that, you know, this -- this was, you
7 know -- so this is a very clear picture of what -- of
8 what -- of what the -- the circumstances under which these
9 hires are being made, so we have that in mind.
10 And we'll now if we can go to the next one,
11 Jessica.
12 So I wanted to break down. This is, again, this is
13 the same language, the language from the statute that we
14 talked about in the first, just a couple slides ago. So we
15 can tick through how the activities that are discussed in
16 the factual background, check off the boxes in the statute
17 and activity -- we know, it's an activity, we know it's to
18 support the election or defeat of candidates of the
19 identified political party or the electoral prospects of the
20 identified political party. That is laid out expressly in
21 the letter. There's no dispute about that.
22 We also know partisan get-out-the the vote activity
23 is expressly contemplated in the Act and expressly
24 contemplated as one of the job duties here. We know that
25 research is expressly contemplated in the Act where it's in
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1 service of -- of influencing the results of an election.
2 And so they -- the request discusses how that -- that, you
3 know, that we should be looking at this in that context to
4 more narrowly approach the issue -- to narrowly approach the
5 issue.
6 We in looking at the activities here in view of the
7 specifically conducted rule, so, you know, we say, first of
8 all, it's an objective test. And so -- and there again
9 you'll see the illustration we talked about earlier:
10 Another poll, another purpose, another time, it doesn't
11 retroactively become campaign media spending because someone
12 later uses it, that information.
13 But it does mean for example here where you know
14 the assignments they're hiring for and they're included in
15 the statutes, then those activities are specifically
16 conducted for those purposes.
17 So what we're concerned about there is, so let's
18 say you -- you post a job ad that says the Commission --
19 the -- "The People's Party of Arizona is hiring for people
20 to do -- to do work during the campaign, duties to be
21 assigned on an ad hoc basis." And -- and you know as a
22 party, that you need to have people organizing canvases and
23 you need to have people working on your advertising copy,
24 but you don't refer to that in the ad and you just sort of
25 on an ad hoc basis assignment, you know, it creates this
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1 service of other campaign media spending. Here we have
2 research for the purpose of developing advertisements. We
3 know polling, you know, is -- is -- is other, you know, is
4 going to be part of that, you know.
5 And additionally, depending upon the circumstances
6 of the fundraising and other communications where it could
7 be -- it could be, you know, design production and other
8 activities there, those could become campaign media spending
9 under certain circumstances, not all circumstances, and we
10 talk a little bit about that in the opinion as well, so.
11 So basically, but the point I'm trying to drive
12 home here is, that based on the terms of the letter we know
13 it's activity, it's partisan, it's promoting the candidacy
14 of the party's candidates or the party itself, and it
15 includes activities that are specifically identified in the
16 statute.
17 Jessica, if we can go to the next one.
18 So one of the things that the request talks about
19 is whether or not, you know, these would be specifically
20 conducted. In other words, you know, one way to look at
21 this would be, you know, if some activities in the view of
22 the ADP, the Arizona Democratic Party, might be -- might --
23 might not be respectable under Arizona's regular campaign
24 finance code because they are either exceptions from the
25 definition of expenditure or -- or else are not actually in
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1 sort of -- to Commissioner Paton's point on the other
2 matter, you know, it creates a kind of a semantic problem,
3 right?
4 Well, we don't think that the statute or the rule
5 could allow you to hire an employee to engage in these
6 activities and then -- and then -- and then say they weren't
7 hired specifically for that purpose because, well, we posted
8 this job ad that just said we're looking for employees and
9 we know in our minds what we're -- what we're doing for, we
10 know what our needs are, we kind of articulate them in this
11 letter but nevertheless we didn't -- we didn't say it, we
12 didn't write it down, and so we have some form of plausible
13 deniability about whether or not this was conducted for some
14 other purpose.
15 I think that that's why it has to be objective. It
16 can't be based on, well, we didn't say the magic words in
17 the hiring process to trigger that.
18 So that's -- that's the upshot of our analysis.
19 The next, I guess the next slide please, Jessica.
20 Now that doesn't mean -- and this is an important
21 point -- that every activity that you hire somebody to do is
22 necessarily going to be an activity that's going to count
23 towards their campaign media spending. In other words, you
24 know, an example you used in the draft is -- and I think
25 this is true -- if you hire someone to do press relations
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1 for a campaign, right, that person is not necessarily or
2 inherently going to be writing the ad copy for a mailer or
3 for a television, 30-second television spot. Those have
4 different audiences; they have different purposes and,
5 therefore, they -- they could be treated differently under
6 the Act depending on what you did.
7 If you put the press release in the television ad,
8 I mean, that might be an issue and -- and then, you know,
9 that that would be something that folks can look at. But as
10 a general proposition, we know what the activities are, we
11 know -- you'll be able to delineate which activities you
12 assign people to are in the categories that are captured by
13 the Act. And if they're not captured in by the categories
14 of Act, then those activities are not part of totaling up
15 that amount of money.
16 Does everybody follow that so far?
17 COMMISSIONER PATON: I have a comment.
18 MR. COLLINS: Please.
19 CHAIRMAN KIMBLE: Commissioner Paton.
20 COMMISSIONER PATON: Almost everybody that works
21 for either one of those parties, their purpose is to --
22 MR. COLLINS: Right.
23 COMMISSIONER PATON: I mean everything they do --
24 MR. COLLINS: Right.
25 COMMISSIONER PATON: -- on the job --
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1 go- -- drills down and -- and takes certain specific types
2 of activities and says those are going to be reportable.
3 And so it's the statutes that's putting that on the covered
4 person, not a policy decision.
5 And as -- and so that in the -- in the opinion, one
6 of the things we do to avoid those circumstances, we do two
7 things. Number one, first we do not opine on what happens
8 with the permanent staff of the -- of the Arizona Democratic
9 Party or Arizona Democratic Legislative Campaign Committee
10 because we know -- in this context they're asking about
11 people being staffed up for the election itself, right?
12 So there may be some different circumstances to
13 your point if it was their sort of permanent set of staff.
14 So the first, so we're narrowing -- that narrows
15 the group people we're talking about potentially depending
16 on how that...
17 Second we're saying --
18 COMMISSIONER PATON: So --
19 MR. COLLINS: Yeah.
20 COMMISSIONER PATON: Pardon me.
21 MR. COLLINS: No, please.
22 COMMISSIONER PATON: So that means the people that
23 are there all the time don't count?
24 MR. COLLINS: Well, I think that to, Mr. Chairman,
25 to that point, I think that -- I don't -- we don't say
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1 MR. COLLINS: Right.
2 COMMISSIONER PATON: -- is to promote candidates,
3 whatever. So I -- I'm not sure how you parse that.
4 MR. COLLINS: Right, so.
5 COMMISSIONER PATON: I mean...
6 MR. COLLINS: That -- that's --
7 COMMISSIONER PATON: That sounds like a nightmare.
8 I mean, I hate to be a devil's advocate, but...
9 MR. COLLINS: No, no. I think that --
10 CHAIRMAN KIMBLE: Because I've been -- I've been
11 involved in campaigns and -- and it's like being on a team,
12 you're -- everybody is involved, even the person doing the
13 scorebook and the ball -- the batboy or, you know, whatever.
14 That's -- everybody is involved in it, right?
15 So I'm not sure how you -- how you can parse that
16 out.
17 MR. COLLINS: So Mr. Chairman, may I?
18 So, so it's a good question. And -- and -- and
19 two -- two answers of that, one of which is what we're doing
20 going to talk about here and one of which goes back to the
21 earlier part of the statute, so I'll start there.
22 The first -- the first -- to answer the first
23 question is it's not -- from a staff's point of view, it's
24 not a decision, it's not a policy decision by the
25 Commission, it's the definition of the statute. The statute
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1 anything about that in the opinion, but there's a
2 different -- there's a different analysis potentially
3 because some of the activity of the permanent staff, this
4 may -- it may be a wash, it may be more in the nature of,
5 you know, a very small percentage of what they're doing
6 or -- you know, we just -- it's a different circumstance.
7 Because we -- we're not saying that every single --
8 this is the most important part. We're not saying that
9 every single thing that a party does is covered by the
10 statute. We are -- we are -- we are reading the statute by
11 its own terms, we're not going past -- you know, we don't go
12 past what it specifically talks about.
13 So if it's a, you know -- and there are reasons in
14 terms of how a party is set up why the activities of the
15 permanent staff may turn out to be very different from and
16 need to be distinguished from campaign media spending, but
17 that would be something, you know, someone could ask about
18 and we would do a full analysis on. But we want to make
19 clear that, that we haven't flushed it out yet for purposes
20 of this. But we wanted to reserve that question to be asked
21 at another time if someone wants to go down that road.
22 So we're saying -- so -- so to your point we're
23 saying the statute does not reach everybody on the team, it
24 reaches the activities of people on the team.
25 And is there a -- is there a reporting, you know,
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1 issue there in terms of, you know, how that affects the
2 ability -- the terms under which the covered person does
3 business? In the run of things, not very much because this
4 is already a covered person. In other words, they're
5 already having to disclose for the most part, you know, the
6 original sources of their donations.

7 So what this really says is, if we're paying
8 employees for activities that are included under the Act,
9 can the -- can our donors for their salaries remain
10 anonymous? That's really what this is about.

11 And -- and the answer to that under the Act is, if
12 it's a defined term under the Act, that donor if the donor
13 is paying for the activity, they're not entitled to that
14 anonymity if they're above \$5,000 and they don't have some
15 other reason to be granted that anonymity. So that's really
16 what this comes down to.

17 I hire a bunch of employees; I want to essentially
18 be in a position where I don't have to disclose who is
19 paying for those employees' salary. Our answer to that is
20 we're not saying you have to disclose every dollar that goes
21 to their employees, but if there is a dollar, you know, that
22 is being used for, you know, the partisan get-out-the-vote
23 effort that the statute says has to be reported and it hits
24 all the thresholds we've talked about, then that's gonna --
25 that's something that you got to keep track of.

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1 get-out-the-vote effort, that's a specific term that the
2 statute talks about. You're going to have to keep track of
3 that and -- and potentially report that if you get to a
4 certain level.

5 I will say that most of the organizations, whether
6 they're parties or 501(c)(4)s if they were involved in this
7 somehow, most of these organizations have to keep track of
8 that to some extent.

9 For example, if a party is -- is a state party is
10 working for a federal party under the federal law, how the
11 administrative overhead gets allocated depends upon what
12 percentage of time they spend on federal races versus state
13 races. So they already have to do those kinds of
14 calculations anyways.

15 Similarly if you work for a 501(c)(4) with an
16 affiliated 501(c)(3), you know, how you designate your
17 activity -- just for example in our letters today -- not to
18 this one, but the other one -- the Campaign Legal Center
19 will say, "In this context we are talking as Campaign Legal
20 Center the 501(c)(3), but when we worked on the campaign we
21 were talking as Campaign Legal Center the 501(c)(4)," right.

22 So what that means is the attorneys -- it's the
23 same attorney -- but that attorney is telling us that
24 they're delineating their activities based on whether it's
25 501(c)(3) work or 501(c)(4) work.

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1 But it's the law.

2 COMMISSIONER PATON: But even the -- even the, I
3 mean, the chairman of the party, they're going door to door
4 getting people. You know, they're all doing it. I mean...

5 MR. COLLINS: Well...

6 COMMISSIONER PATON: Or else they wouldn't be a
7 team player.

8 MR. COLLINS: The bottom -- well, I mean. I think
9 that there may be -- I mean, there -- there -- that's -- I
10 think that that may be true, however I think --

11 COMMISSIONER PATON: That's not their main job?

12 MR. COLLINS: Well, I think if we got a question
13 about the chairman of the party or executive director of the
14 party, we would analyze that potentially different. But
15 that's not the circumstances we're analyzing because we are
16 analyzing specific people who were picked up just for the
17 purposes of the election, and they're being told they're
18 going to do activities that are covered by the statute.

19 So this is narrower than your question. But that
20 doesn't mean your question is a bad one. It's a good
21 question; it's just we haven't had it presented to us yet.

22 So I -- there may be some room to -- to work
23 through that, but basi- -- but the bottom line here is, if
24 you're staffing up for the election cycle itself, you're
25 going to have people detailed to do the partisan

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1 So in a sense although it does, you know, create a
2 modicum of -- of additional work, it's not inconsistent with
3 what we think they're probably going to have to do anyways.

4 COMMISSIONER CHAN: Mr. Chairman and Tom, can I
5 just make a -- to that point?

6 CHAIRMAN KIMBLE: Yeah, Commissioner Chan.

7 COMMISSIONER CHAN: And I hope I'm not wrong about
8 this. But when Commissioner Paton was mentioning, you know,
9 the party chairman, there's two different entities here.
10 The party is registered as a political committee, and as
11 such I don't they're subject to Voters' Right to Know Act
12 because they're already reporting all of their things, all
13 of their campaign finance stuff, but the AZDLC is not a
14 committee and does not report that way, and that's why
15 they're subject to Voters' Right to Know Act because of
16 their activities that put them under that disclosure
17 requirement.

18 Am I oversimplifying or misstating?

19 CHAIRMAN KIMBLE: Tom.

20 MR. COLLINS: Mr. Chairman, Commissioner Chan, the
21 way I would put it is this, is that the parties are covered
22 under the Act up -- the difference between the way the
23 parties report and the way that let's say a 501(c)(4) that
24 did campaign media spending money might have to report, is
25 that the parties aren't driven by the timelines that the

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1 501(c)(4)s are.
2 In other words it's 6972 I think or -973 talks
3 about how, you know, a party that fulfills all of the other
4 reporting requirements need only file on their regular
5 filing schedule. So that's -- that's the main relief here.
6 You know, I -- I will be -- I will be candid, I --
7 in this context, I don't know enough about -- and I didn't,
8 I honestly didn't see a need to pursue an additional
9 question of the ADP as to where the ADLCC in their view
10 fits. What the opinion request letter says is that the
11 Arizona Democratic Party has and -- and therefore by
12 extension, or words to that effect, the Democratic
13 Legislative Campaign Committee have recently become covered
14 persons.
15 So, I mean, so I -- I think for purposes of this
16 particular draft and the question raised, the proposed --
17 the request itself doesn't delineate it in that way.
18 Although that may be a delineation for other purposes.
19 I just, I'm not -- in other words what I'm
20 trying -- what I'm saying is I don't know if you're -- I
21 don't know if you're right or wrong for purposes of other
22 circumstances, but for this purpose, I think that the
23 request itself doesn't distinguish the two entities in a way
24 that required us to unpack that.
25 COMMISSIONER CHAN: Thank you.
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1 you're paying somebody \$10,000 or more during the election
2 cycle for activities that are covered by the statute, then
3 you're going to have to report that. So you have to keep
4 track of it somewhere. The statute says if you get to
5 10,000, it's going to be reportable, so. Now none of these
6 folks may ever get to 10,000, I mean that's possible, in
7 which case they're never going to get reported. But --
8 COMMISSIONER PATON: They may be volunteers.
9 MR. COLLINS: Oh, and absolutely. If they're
10 volunteers, that's not -- they're not even contemplated
11 here, right. This is paid -- paid staff for these purposes.
12 But, you know, so our -- so basically the tradeoff
13 it seems to me that the statute alloc- -- allows is is the
14 statute does not say that everything that a person does has
15 to be reported nor does it require the reporting of every
16 single payment to a staff member. But, you know, where you
17 know as we have in this case that you're hiring someone
18 specifically for the election and you know that one of the
19 duties that you need attended to is partisan get out the
20 vote, then you should have some reasonable way of assuring
21 yourself and the -- and the reporting in the reports that
22 you've tracked that sufficiently so you know when they hit,
23 if they hit, greater than \$10,000.
24 You know, that's --
25 COMMISSIONER PATON: In the aggregate.
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1 CHAIRMAN KIMBLE: Thank you, Commissioner Chan.
2 MR. COLLINS: So, so I think if I may,
3 Mr. Chairman, I think that Commissioner Paton's question do
4 bring us to this slide which is about trying to get at how
5 do you address the concern that you raise about -- about,
6 you know, reporting and that being complicated. And,
7 obviously, you know, we're empathetic about to the extent
8 which the law may change the existing presumptions under
9 which -- which the party operates, but that's not a decision
10 for the Commission or for the Commission staff. It's a
11 decision the voters made.
12 So our recordkeeping standard. The standards that
13 the Commission articulated were a standard of
14 reasonableness. In other words, all -- if you were subject
15 somehow to some kind of enforcement around this, you know,
16 you base- -- you've got to just -- you've got to just keep
17 reasonable records. So we're just -- we're just saying, you
18 know, if you, you know, so basically like, look, if
19 you're -- and so presumably, again, fitting into your
20 existing framework, you may have with your interactions with
21 the federal party, state party, and the other tracking you
22 may have in place, you know we think that, you know, we just
23 want -- we want to be able to -- we just want to be able to
24 justify that your reports were -- were accurate.
25 And then the -- the Act mandates that, you know, if
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1 MR. COLLINS: In the aggregate, yeah.
2 COMMISSIONER PATON: So I guess you're going to
3 have to get one person to keep track of all that for your
4 party from Bisbee to Lake Havasu.
5 MR. COLLINS: Well that is -- that is,
6 Mr. Chairman, that is true only insofar as you are trying to
7 keep the folks who are paying the salary of your elections
8 staffers anonymous.
9 So in other words, you know, if -- the issue here
10 is the disclosure. So if you -- if you -- I mean, if
11 you're -- if you're comfortable, right, with your donors for
12 this activity being disclosed, then it's a moot point
13 because you don't really have to worry about it because you
14 would just allocate it effectively.
15 The real -- the crux of this is, if this is not
16 campaign media spending somehow despite the -- you know,
17 then that salary payment, the person who pays that salary
18 would not be disclosed.
19 And -- and so -- but so -- so all the tracking here
20 is designed in a sense to -- to show the line where somebody
21 would be obligated to disclose the source of funds for that
22 activity, that employee's activity or not. And so this
23 really has nothing to do -- so the only -- what I'm trying
24 to say is, the only reason you would want to track this in
25 this way is because you have a group of donors to the
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1 Democratic party who you do not want to disclose. Then if
2 you want -- if you want to carve out ways to pay those folks
3 that -- that -- that don't disclose -- that aren't
4 disclosed, you're free to do that in whatever reasonable way
5 you want, provided that you can under the rules allocate
6 the -- a source for those activities that are covered.

7 So you're really -- so the administrative burden
8 here to the extent there is any is induced by, if a party
9 choose to do this this way, a party's desire from my point
10 of view to have some of its donors disclosed and other
11 donors not disclosed.

12 And that -- you know, that's fine, but that's not
13 really -- but for the legal issue here is, the law doesn't
14 particularly -- the law is not -- the law is telling us what
15 activities trigger the disclosure.

16 So and -- and we think that if it's an activity
17 covered by the Act, you know, ultimately if it hits the, you
18 know, you're going to be -- you're going to have the
19 disclosures, you know, is going to have to be made. That's
20 just -- that's just what the -- that's just what the Act
21 says.

22 If there's a -- you know, some of these things a
23 people may have different views on and there are very
24 clear -- and it seems to me when the Clean Elections Act
25 passed, there were some efforts to, when people thought that

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1 election itself is -- is under -- is underway. So what we
2 did here is we endeavored to get on this agenda because the
3 next -- the next -- the next meeting we have scheduled, now
4 we could ultimately move that, is not 'til, you know, the
5 last week of May.

6 So we haven't seen a specific response from --
7 from -- from the Democratic Party. We sent this draft out
8 the day after the public comment period closed. We haven't
9 heard back from anybody and we never heard from anybody
10 during.

11 So -- so every other advisory opinion draft, every
12 other advisory opinion request we've gotten, we received at
13 least one, if not more, comments from the regulated
14 community about the request itself. This one we did not
15 receive any. And we circulated this on -- on the 16th. We
16 did not receive any immediate response and it doesn't look
17 like -- I don't see anybody in attendance from the -- from
18 the -- that represents the party.

19 So I don't have a -- I don't have an answer to that
20 other than we haven't. Obviously, we could -- I mean -- let
21 me put it this way.

22 The staff is not -- I mean, I would say I'm not
23 adverse to if you want to do what we did last month and --
24 and see if there's additional -- and solicit additional
25 comments on this, that would be -- that would be -- that's

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1 certain aspects of the Act were -- I'm looking at Mike
2 because he was here and involved in that, you know, things
3 that didn't work or might be unworkable, you know, it was
4 actually relatively comparatively easy to get a
5 three-quarter vote to -- to change them.

6 We haven't gotten to that point yet with -- with --
7 in this legislative session. We probably won't this year.
8 But, you know, I think that the staff here is more than
9 happy to work with both parties on areas in which, you know
10 this -- that the law has created a tradeoff that's -- that
11 doesn't work for them and the public interest is -- is not
12 significant, you know, we're -- we have always throughout
13 the history of the agency been willing to make those -- make
14 those -- make to work on those kinds of legislative changes.

15 But -- but this case really has to do with what we
16 see as the specific activities that are currently in the
17 Act.

18 CHAIRMAN KIMBLE: Tom, this is a request for an
19 advisory opinion and we have the draft here. Has the
20 Arizona Democratic Party had the opportunity to respond to
21 the draft? Do they have any comments that you're aware of?

22 MR. COLLINS: We -- we actually received no
23 comments about this request at all, I believe.

24 In the request e-mail the party, you know,
25 recognized that they're under a time crunch here because the

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1 fine with us.

2 CHAIRMAN KIMBLE: Well, I'm not -- I'm not fishing
3 for comments, on the other hand, I'm somewhat hesitant to
4 approve the --

5 MR. COLLINS: Sure.

6 CHAIRMAN KIMBLE: -- the advisory opinion if -- if
7 in a day or two, they're going to say, wait a minute.

8 MR. COLLINS: I think that's -- I mean, I think
9 that's up to your -- up to your discretion.

10 The best we could do -- the think we felt like we
11 ought to do given the time circumstances as staff is give
12 them as quickly as we could what the staff point of view
13 was. I'm -- I'm not adverse to -- to -- and then if we get
14 something faster or we need to expedite it, we might have to
15 get you together, you know, before the 31st if necessary.

16 But I mean, you know -- I think your caution is
17 fine, is perfectly reasonable under the circumstances so if
18 we -- you know.

19 CHAIRMAN KIMBLE: Well, so when was this advisory
20 opinion, this draft, available to the Democratic Party?

21 MR. COLLINS: Tuesday morning.

22 CHAIRMAN KIMBLE: Well, knowing how lawyer's
23 operate two days seems like a tenth of a second.

24 MR. COLLINS: Well, we got it done in -- in record
25 time so far for us.

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1 So let me -- hang -- bear with me real quick. I'm
 2 checking to see -- okay.
 3 I just want to check to see...
 4 All right. So at least three attorneys who purport
 5 to represent the Democratic Party, including the two whose
 6 name are on this, got this at around -- at 11:27 on the
 7 16th.
 8 So I, again, Mr. Chairman I agree with you, at
 9 least I think it's perfectly reasonable to -- to just
 10 give -- give another, you know, period of time.
 11 Last -- last time we gave an additional week. You
 12 know, we could give more than a week here if you would like
 13 because of various issues that, I know a lot of election
 14 lawyers, including Kara, are busy with nomination petition
 15 challenges. I don't have a...
 16 CHAIRMAN KIMBLE: Well, I -- I'm interested in the
 17 views of my colleagues, but to me I would -- I would rather
 18 give them plenty of time instead of --
 19 MR. COLLINS: Sure.
 20 CHAIRMAN KIMBLE: -- approving an opinion then
 21 having problems raised and then we have to unapprove it and
 22 approve a new one.
 23 And if we need to have a meeting earlier in May
 24 instead of later in May, that can probably be arranged.
 25 MR. COLLINS: Yeah.

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1 we actually took a vote to accept additional public comment
 2 through -- through the date we identified. So I'm
 3 thinking -- I guess we go to May 3rd, that's Friday. People
 4 like to get stuff done on Fridays rather than Thursdays, so.
 5 May 3rd.
 6 CHAIRMAN KIMBLE: So is there a motion by any
 7 member of the Commission to extend the comment period to
 8 May 3rd for Advisory Opinion 2024-04?
 9 COMMISSIONER ESTES-WERTHER: Mr. Chairman, I'll
 10 make a motion to extend the comment period until May 3rd.
 11 CHAIRMAN KIMBLE: Thank you, Commissioner Werther.
 12 Is there a second?
 13 COMMISSIONER PATON: I'll second.
 14 CHAIRMAN KIMBLE: Thank you. Seconded by
 15 Commissioner Paton.
 16 I will call the roll on the motion to extend the
 17 comment period to May 3rd.
 18 Commissioner Chan.
 19 COMMISSIONER CHAN: Aye.
 20 CHAIRMAN KIMBLE: Commissioner Titla.
 21 COMMISSIONER TITLA: Aye.
 22 CHAIRMAN KIMBLE: Commissioner Paton.
 23 COMMISSIONER PATON: Aye.
 24 CHAIRMAN KIMBLE: Commissioner Werther.
 25 COMMISSIONER ESTES-WERTHER: Aye.

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1 CHAIRMAN KIMBLE: I'm interested in what my
 2 colleagues think.
 3 COMMISSIONER ESTES-WERTHER: Mr. Chairman?
 4 CHAIRMAN KIMBLE: Commissioner Werther.
 5 COMMISSIONER ESTES-WERTHER: I agree; I also just
 6 because I also I do recognize it's a very busy time for
 7 election attorneys this week and next with all the election
 8 challenges, I would prefer also to just give a little more
 9 time to see if we get more public comment.
 10 MR. COLLINS: Sure.
 11 CHAIRMAN KIMBLE: Any of the other Commissioners
 12 wish to weigh in?
 13 Commissioner Chan.
 14 COMMISSIONER CHAN: I agree with that.
 15 CHAIRMAN KIMBLE: Okay. So how -- what kind of
 16 time frame should -- should we say we will give them, an
 17 additional week, an additional two weeks to respond or what,
 18 what, Tom, would be a reasonable --
 19 MR. COLLINS: Just to deal with the issues that
 20 Commissioner Werther mentioned and just make this whole
 21 thing with Kara here, if we did the 2nd of May is two weeks
 22 from today, so. And with appeals and everything, there may
 23 still be folks, but that should be enough time for folks to
 24 be able to work through a response if they want to, so.
 25 And then last month, what we asked was -- was that

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1 CHAIRMAN KIMBLE: Chair votes aye. Unanimously
 2 approved extension until May 3rd.
 3 Thank you, Tom.
 4 MR. COLLINS: No, thank you.
 5 CHAIRMAN KIMBLE: Where are we now?
 6 Item VII. This is the time for consideration of
 7 comments and suggestions from the public. Action taken as
 8 the result of public comment will be limited to directing
 9 staff to study the matter or rescheduling the matter for
 10 further consideration and decision at a later date or
 11 responding to criticism.
 12 Please limit your comment to no more than two
 13 minutes.
 14 Does any member of the public wish to make comments
 15 at this time? Anyone on Zoom? I don't see anyone on Zoom.
 16 Anyone raising their hand or signaling they want to
 17 be heard?
 18 (No audible response.)
 19 CHAIRMAN KIMBLE: The public may also send comments
 20 to the Commission by e-mail at
 21 ccec@arizonacleanelections.gov.
 22 Item VIII. Adjournment. At this time, I would
 23 entertain a motion to adjourn.
 24 COMMISSIONER PATON: I'll make a motion to adjourn.
 25 CHAIRMAN KIMBLE: Thank you, Commissioner Paton.

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1 Is there a second?
 2 COMMISSIONER ESTES-WERTHER: I'll second.
 3 CHAIRMAN KIMBLE: Seconded by Commissioner Werther.
 4 I'll call the roll.
 5 Commissioner Chan.
 6 COMMISSIONER CHAN: Aye.
 7 CHAIRMAN KIMBLE: Commissioner Titla.
 8 COMMISSIONER TITLA: Aye.
 9 CHAIRMAN KIMBLE: Commissioner Paton.
 10 COMMISSIONER PATON: Aye.
 11 CHAIRMAN KIMBLE: Commissioner Werther.
 12 COMMISSIONER ESTES-WERTHER: Aye.
 13 CHAIRMAN KIMBLE: The Chair votes aye.
 14 We are adjourned until May. Thank you.
 15 (Proceeding concludes at 11:08 a.m.)

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CERTIFICATE

1
 2
 3 STATE OF ARIZONA)
 4) ss.
 5 COUNTY OF MARICOPA)
 6
 7 BE IT KNOWN that the foregoing proceedings were
 8 taken before me, Angela Furniss Miller, Certified Reporter
 9 No. 50127, all done to the best of my skill and ability;
 that the proceedings were taken down by me in shorthand and
 thereafter reduced to print under my direction.


10 I CERTIFY that I am in no way related to any of the
 11 parties hereto nor am I in any way interested in the outcome
 thereof.

12 I FURTHER CERTIFY that I have complied with the
 13 requirements set forth in ACJA 7-206. Dated at Litchfield
 14 Park, Arizona, this 23rd of April, 2024.


 Angela Furniss Miller, RPR, CR
 CERTIFIED REPORTER (AZ50127)

* * *

17
 18 I CERTIFY that Miller Certified Reporting, LLC, has
 19 complied with the requirements set forth in ACJA 7-201 and
 20 7-206. Dated at LITCHFIELD PARK, Arizona, this 23rd of
 April, 2024.


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**CITIZENS CLEAN ELECTIONS COMMISSION
EXECUTIVE DIRECTOR REPORT
May 16, 2024**

Announcements:

Clean Elections Debate Series 2024 has begun!

- Debates are underway and the schedule is available on the website. Voters can submit questions to debates@azcleaselections.gov.
- The first broadcast debate was held on May 15th for CD1 Democratic candidates. Attached is the carriage plan and pictures of the stage.

Website relaunched!

- Our redesigned website launched this month. The full overhaul implemented under Alec's leadership is very exciting. Our website is well recognized by voters and election officials as the State's best one-stop-shop for voter information.
- Among the features:
 - The Voter Dashboard, which is set off by a unique color scheme not used anywhere else on site.
 - Dynamic flip tiles on the home page.
 - A new debates page format including moderator profiles.
 - New I.D. at polls page, with a new color scheme.

Voter Education Guide Goes to Print!

- The Voter Education Guide for the primary election goes to print on Friday, May 17th. There are 196 candidates on the ballot for Corporation Commissioner and the legislature.

The next local election is May 21, 2024.

- Voter Registration Deadline: April 22nd
- Voting Begins: April 24th

Voter Education and Outreach:

- Avery maintains his connections with the Arizona African American Legislative Council, NAU Votes, The Ed Pastor Center and actively participates in the AZSOS Engagement Advisory Board committee.
- Avery appeared at the 2024 Voting and Election Seminar hosted by the Salt River Pima-Maricopa Indian Community
- In a collaboration with nonpartisan organization, New Voters, Avery presented at the Graduating into Civic Engagement Virtual event
- Gina served as a facilitator in the Secretary of State's Table Top Exercise for state and national media.
- Gina was guest speaker on the podcast 3P's in a Pod, which was developed by the Arizona K12 Center to dissect practice, policy, and passion in the field of education. Gina spoke on the Clean Elections civics curriculum and comic book. The episode is expected to air on May 17th. <https://www.azk12.org/podcast/>

- Commissioner Chan and Tom presented at the biannual State Bar Association Election Law seminar. We covered campaign finance with an emphasis on Proposition 211.

Administration and Correspondence from Other Agencies:

- 24 Candidate Workshops have been held, with more to be scheduled through the end of the year. Workshops are held virtually on Tuesdays from 1-2pm. 67 candidates have attended the workshops.
- Filing for the Voter's Right to Know Act is available via the Secretary of State's Beacon system.
- Late last month, the Governor's Office announced a hiring cap for all state agencies and required most state agencies to propose plans to cut their budget's in the FY 24. The Department of Administration has been administering this process. Although the Commission was not subjected to the proposed cuts, as non-general fund agency. DOA nevertheless has indicated that it believes we are subject to the hiring cap, including for contractors, and a "pause" on both pay increases and performance incentives.

DOA has indicated that they believe that all agencies should be treated the same, but is accepting requests for specific exceptions. We understand that DOA recognizes the potential need for additional staffing during the election.

The Commission has not been subjected to these kinds of exercises before because funding is independent of the general fund and the Court's have recognized the structure of the act places the Commission outside day-to-day oversight of the Governor's Office. *Clean Elections Comm'n v. Myers*, 1 P. 3d 706, 713 (Ariz. 2000). More generally, staff is not certain where DOA's broad claims to authority find support.

At this time, staff is inclined to see how the exception process operates in practice before addressing whether or not DOA has the authority to impose any particular budget restraints on the Commission.

- The Commission received approval from DOA for two sponsorships that were part of our Voter Education Plan. Our sponsorship of the 2024 African American Conference on Disabilities by Disability Rights Arizona, and the Navajo Voters Coalition's election summit were approved.

Legal:

Commission

- Center for Arizona Policy v. Arizona Secretary of State, 1CA-CV24-0272, Arizona Court of Appeals.
 - Appeal from the Superior Court. Plaintiffs' motion to accelerate appeal was granted. Briefing ongoing.
- Americans for Prosperity v. Meyer, No. 2:23-cv-00470-ROS (D. Ariz.)
 - Plaintiff filed its notice of appeal.
- Toma v. Fontes, CV2023-011834, Superior Court for Maricopa County.
 - Oral argument in Plaintiffs' appeal from the denial of a motion for preliminary injunction was held May 7. We expect a decision at any time.
- The Power of Fives, LLC v. Clean Elections, CV2021-015826, Superior Court for Maricopa County & Clean Elections v. The Power of Fives, LLC et al. CV2022-053917, Superior Court for Arizona. No new developments.

Others

- Arizona Free Enterprise Club v. Fontes, SI300CV202300202 (Yavapai County). Lawsuit challenges process Maricopa and many other counties use to verify signatures on vote by mail affidavit envelopes.
- Arizona Free Enterprise Club v. Fontes (Yavapai County). Lawsuit challenging the use of what the Complaint refers to as "unstaffed" drop boxes for the return of mail ballots to the county recorder pursuant to the Elections Procedures manual. Case number unavailable at this time.
- Challenges to the Elections Procedures Manual. There are three challenges filed against aspects of EPM. Some lawsuits challenge particular procedures adopted in the manual, a set of rules for election procedures that, like other administrative rules, carry the force of law. On Tuesday, the Superior Court in Maricopa County rejected one suit, which challenged procedural and substantive aspects of the EPM, granting the State's motion to dismiss.

Appointments:

- No additional information.

Enforcement:

- MUR 21-01, TPOF, pending.

2024 Regulatory Agenda:

The Commission may conduct a rulemaking even if the rulemaking is not included on the annual regulatory agenda. The following information is provided under A.R.S. § 41-1021.02:

- Notice of Docket Opening: **None.**
- Notice of Proposed Rulemaking: **None.**
- Federal funds for proposed rulemaking: **None**
- Review of existing rules: **None pending**
- Notice of Final Rulemaking: **None.**
- Rulemakings terminated: **None.**
- Privatization option or nontraditional regulatory approach considered: **None Applicable.99**



U.S. House Congressional District 1 DEMOCRATIC

Primary Debate (Wednesday, May 15)

Coverage Plan (as of May 10):

LIVE TV - ENGLISH	Arizona PBS (KAET, Channel 8, Phoenix) CW7 (KZAT, Channel 7, Phoenix/Prescott)
LIVE TV - SPANISH	Telemundo – (KTAZ, Channel 39, Phoenix)
LIVE RADIO - ENGLISH	
LIVE RADIO - SPANISH	La Onda 1190am (KNUV, Phoenix)
LIVE STREAMING - ENGLISH	12news.com (12News, Phoenix) abc15.com (ABC15, Phoenix) azcentral.com (The Arizona Republic, statewide) azfamily.com (3TV/CBS5, Phoenix) azpbs.org (Arizona PBS, Phoenix) azpm.org (AZPM PBS, Tucson) cw7az.com (CW7, Phoenix) dcourier.com (The Daily Courier, Prescott) espntucson.com (ESPN Tucson) fox10phoenix.com (Fox10, Phoenix) kfma.com (KFMA, Tucson) kjzz.org (KJZZ NPR, Phoenix) klpx.com (KLPX, Tucson) ktar.com (KTAR News, Phoenix) mixfm.com (KMXZ, Tucson) realrydazonlyradio.com (Real Rydaz Only, Phoenix) tribunenewsnow.com (The Tribune, Holbrook/Snowflake/Taylor/Winslow) verdenews.com (The Independent/Campe Verde Bugle, Verde Valley) williamsnews.com (Williams-Grand Canyon News, Williams) yourvalley.net (Independent News Media, Maricopa + Pinal County)
STREAMING - SPANISH	azpbs.org (Arizona PBS, Phoenix) univision.com/local/arizona-ktvw (Univision Arizona, Phoenix/Tucson) azpm.org (AZPM PBS, Tucson) radiostationusa.fm/online/onda-1190-am (KNUV, Phoenix) azcentral.com (The Arizona Republic, statewide) tribunenewsnow.com (The Tribune, Holbrook/Snowflake/Taylor/Winslow)
RECORDING FOR NON-LIVE AIRING IN FULL OR PART	Arizona’s Family (pending) KPHO/KTVK/KPHE/KAZF/KAZS/azfamily.com Arizona’s Family (3TV/CBS5, Phoenix) Arizona PBS (Arizona PBS, Phoenix, azpbs.org) AZPM (AZPM PBS, Tucson, azpm.org) CW7 (CW7, Phoenix, cw7az.com) KTAR (KTAR News, Phoenix, ktar.com) KVOA News 4 (KVOA, Tucson, kvoa.com) Real Rydaz Only (Phoenix, realrydazonlyradio.com) Telemundo (KTAZ, Phoenix/Tucson, telemundoarizona.com) The Arizona Republic (statewide, azcentral.com)

Katie Hobbs
Governor

Thomas M. Collins
Executive Director



Mark S. Kimble
Chair

Steve M. Titla
Amy B. Chan
Galen D. Paton
Christina Werther
Commissioners

State of Arizona
Citizens Clean Elections Commission

1110 W. Washington St. - Suite 250 - Phoenix, Arizona 85007 - Tel (602) 364-3477
Fax (602) 364-3487 - www.azcleelections.gov

April 18, 2024
Advisory Opinion 2024-04

D. Andrew Gaona
Austin Yost
Coppersmith Brockelman
2800 N. Central Ave., Ste. 1900
Phoenix, Arizona 85004

Dear Mr. Gaona:

We are responding to your advisory opinion request (“AOR”) on behalf of the Arizona Democratic Party project known as the Arizona Democratic Legislative Campaign Committee concerning whether activities by employees may be campaign media spending subject to the reporting requirements of the Voter’s Right Know Act (the “Act” or the “VRKA”), A.R.S. §§ 16-971 to 16-979.

Question Presented¹

Does the payment of employee salary and selected benefits (health, dental, vision, and retirement) and other select costs (such as training, coaching, and travel) constitute campaign media spending and does the determination turn on the duties of a particular employee?

¹ The questions presented have been condensed from the request to avoid redundancy. The question presented identified each benefit category and the select costs in separate questions. Because those differences are not relevant to the Commission’s analysis, this response does not repeat them.

Summary answer

Yes, salaries, benefits and other costs associated with an employee who is hired for the election and who works on projects that are specifically conducted in preparation for or in conjunction with campaign media spending under the Act are included in determining the amount of campaign media spending in which the employer has engaged.

Background

The facts presented in this advisory opinion are based on your AOR received April 3, 2024 and publicly available information.

The Arizona Democratic Party is a political party organized in Arizona. AOR at 1. The Arizona Democratic Legislative Campaign Committee (“ADLCC”) describes itself as a project of the ADP. *Id.* The project “recruits, trains, and supports legislative candidates by vetting, selecting, and managing award winning direct mail [and] digital consultants; providing comprehensive legal services; investing in high-quality polling and opposition research; and connecting local and national donors to the most competitive legislative races.” *Id.* The Arizona Democratic Party is a covered person. *Id.*

The ADLCC intends to begin hiring additional staff for the election to help it in its “general mission of electing Democrats.” *Id.* The staff members are in addition to the ADLCC’s existing staff. *Id.* If hired, an ADLCC employee will receive a salary and “traditional benefits” like health and vision insurance *Id.* Employees may also receive a stipend for transportation expenses and other expenses. *Id.* Employees may receive retirement benefits. *Id.* They will also receive training. *Id.*

Describing the staff role as having a “common goal: helping elect Democrats,” ADLCC states that staff members may

- “craft the messaging and design of a public advertisement (including conducting research),”
- “craft the language of poll[s]”
- “work with candidates on strategy (including communications strategy) and fundraising appeals (which may take the form of individual communications or mass email appeals). *Id.*
- additionally, other staff members “may be responsible for helping organize and arrange the logistics of canvasses in targeted areas to

allow volunteers to go door-to-door in support of Democratic candidates and policies.” *Id.*

The AOR notes that while ADLCC employees may work on advertisements, the advertisements themselves will be run by third party vendors, as will any polls.

Legal analysis

Voters passed the VRKA as Proposition 211 at the 2022 General Election and it was certified by Governor Doug Ducey in December 2022. The Act provides for reports by covered persons, that is, “any person whose total campaign media spending or acceptance of in-kind contributions to enable campaign media spending, or a combination of both, in an election cycle is more than \$50,000 in statewide campaigns or more than \$25,000 in any other type of campaigns.” A.R.S. § 16-971(7)(a). “For the purposes of [the VRKA], the amount of a person’s campaign media spending includes campaign media spending made by entities established, financed, maintained or controlled by that person.” *Id.*

Campaign media spending is a defined term under the Act. This AOR principally addresses one definition of campaign media spending:

Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision.

A.R.S. § 16-971(2)(a)(vii).

The activities in items (i) through (vi) include public communications about a variety of campaigns as well as “[a]n activity or public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party, including partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity.” *Id.* § 16-971(a)(a)(i)-(vi).

Under the Commission's rules:

[f]or purposes A.R.S. § 16-971(2)(a)(vii), research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the other activities described in A.R.S. § 16-971(2)(a) shall not be considered campaign media spending unless these activities are *specifically conducted* in preparation for or in conjunction with those other activities.

Ariz. Admin. Code § R2-20-802(B), available at <https://storageccec.blob.core.usgovcloudapi.net/public/docs/957-Arizona-Administrative-Register-for-R2-20-801-to-R2-20-808.pdf> (emphasis added).

Question: Does the payment of employee salary and selected benefits (health, dental, vision, and retirement) and other select costs (such as training, coaching, and travel) constitute campaign media spending and does the determination turn on the duties of a particular employee?

The question presented by the AOR essentially asks when a political party hires staff for the election, for the purpose of electing its nominees and candidates, and identifies research, polling design, and communications work to be used in the preparation for or in conjunction with public communications and activities, could monies spent on staff for those purposes count as campaign media spending.² With respect to staff salaries, benefits, reimbursements, and other employee related expenses, the answer is yes.

Similarly, where, as the AOR proposes, a person is hired to work on the election of party candidates whose duties involve preparing for canvassing and similar activities that will later involve volunteers, and those activities “support[] the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party” payments to the person involve campaign media spending under the Act.

The Commission's rule providing that activities, in order to be campaign media spending, must be “specifically conducted” in preparation or conjunction with other campaign media spending, is met under these facts. The AOR identifies the employees as hired for the election and identifies the activities the employees

² This response does not address the permanent staff of the party referred to at 1.

would undertake that are in conjunction with or in preparation for campaign media spending.

If one of an employee's several duties may be to work on projects in preparation for other campaign media spending, or some of the employee's work may be used for campaign media spending but not all of it, the employee's activities that are included under the definition may still be "specifically conducted" in preparation or conjunction with campaign media. A contrary analysis would be subjective, allowing a party, by avoiding certain words in a job posting or description, or in assigning a particular activity, to claim the activity was not "specifically conducted" in preparation or conjunction with campaign media spending despite objective evidence to the contrary.

On the other hand, where an activity is undertaken for another purpose and later used for campaign media spending, it would not be "specifically conducted" in preparation or in conjunction with campaign media spending.³ For example, if the ADLCC hires a press aide for the election, that person's salary and benefits are not in and of themselves campaign media spending. But a press release is not ad copy for a mailer or a television script for a 30-second spot. These instruments generally have different purposes, serve different audiences, and result in different products, one of which may be a public communication in the form of a political advertisement or mailer.

To illustrate the point, the statute provides that partisan get-out-the-vote efforts, such as canvassing, are campaign media spending. A.R.S. § 16-971(2)(a)(vi). The Act and rules also provide that work specifically conducted in preparation for or in conjunction with campaign media spending is to be included in calculating the amount of campaign media spending. A.R.S. § 16-971(2)(a)(vii); Ariz. Admin. Code R2-20-801(B). Consequently, under the facts presented, if a staff person organizes a partisan canvassing effort to be performed by volunteers, those preparatory activities fit squarely within the statutory definition and their costs must be included in determining the amount of campaign media spending.⁴

The ADLCC is correct that the Act did not alter the definition of expenditure in Chapter 6, Article 1. However, there is no conflict here where the facts presented demonstrate that staff is being hired for the election in order to support

³ General management and training costs attributable to an employee are not in preparation or conjunction with campaign media spending.

⁴ The AOR itself acknowledges that some staff may do preparation for paid advertising, but other staff will be paid to organize get out the vote efforts. AOR at 1-2.

party candidates by performing activities that fit squarely under the statute and the rule.

This analysis necessarily means that an employee's particular job duties (i.e. activities) are bound up in determining whether or not the activity itself is specifically conducted in preparation or conjunction with other campaign media spending, or is an activity that itself is campaign media spending, such as "partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity."

A party need not attribute the entirety of an employee's salary and benefits to campaign media spending just because an employee performs some work in preparation for or in conjunction with campaign media spending. The party need only keep "records required to be retained by Chapter 6.1 of Title 16 in such order that a reasonable person could confirm the accuracy of transactions, transfer records, reports, opt out notices, and other information by review of the documents and other information." Ariz. Admin. Code R2-20-807(A).

Because the statute requires at least disclosure of outlays greater than \$10,000, A.R.S. § 16-973(A)(8), the party must track its campaign media spending in a reasonable manner, including personnel costs of activities that are campaign media spending.⁵

⁵ The AOR argues that the Act and related campaign materials were not focused on the kinds of activities identified in the request. Whatever descriptions were involved, the terms of the statute here are clear. Although the Commission recognizes the potential for too much information cluttering reports, spending must reach the \$10,000 threshold to be required on the reports.

Conclusion

A Commission advisory opinion “may be relied upon by any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered, and any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.” Ariz. Admin. Code § R2-20-808(C)(3). A “person who relies upon an advisory opinion and who acts in good faith in accordance with that advisory opinion shall not, as a result of any such act, be subject to any sanction provided in Chapter 6.1 of Title 16.” *Id.* at (C)(4). Advisory opinions may be affected by later events, including changes in law.

Sincerely,

April 3, 2024

Arizona Citizens Clean Elections Commission
c/o Thomas Collins, Executive Director
thomas.collins@azcleelections.gov

**Re: Advisory Opinion Request – Arizona Democratic Legislative
Campaign Committee**

Dear Commissioners:

Pursuant to A.A.C. R2-20-808, the Arizona Democratic Legislative Campaign Committee (“ADLCC”) seeks an advisory opinion from the Arizona Citizens Clean Elections Commission regarding whether its payment of compensation, provision of benefits, and payment of training and travel expenses for the benefit of its employees qualify as “campaign media spending” under the Voters’ Right to Know Act (“Act”).

Background

ADLCC is a project of the Arizona Democratic Party (“ADP”). It “recruits, trains, and supports legislative candidates by vetting, selecting, and managing award-winning direct mail & digital consultants; providing comprehensive legal services; investing in high-quality polling and opposition research; and connecting local and national donors to the most competitive legislative races.”¹

ADP – and by extension, ADLCC – recently became a “covered person” under the Act, and is thus subject to the Act’s strictures. As the primary and general election quickly approach, ADLCC will begin hiring staff to support its general mission of electing Democrats to the Legislature. As employees of ADLCC/ADP, those staff members (like current staff members) will be paid a regular salary. But they also receive traditional benefits that ADLCC/ADP either covers entirely or subsidizes, including (1) health insurance, (2) dental insurance, and (3) vision insurance. Some employees may also be paid a stipend for transportation expenses, cell phone use, and laptop use. If resources were sufficient, ADLCC/ADP would consider contributing to a retirement account for its employees’ benefit. And lastly, ADLCC/ADP pays for other staff-related expenses, including staff coaching, management training and support (with related expenses such as food), and travel expenses associated with attending to ADLCC/ADP business.

ADLCC/ADP employees have various titles and roles, but all are essentially working toward the same common goal: helping elect Democrats. For example, some employees may help craft the messaging and design of a public advertisement (including conducting

¹ <https://adlcc.com/about> (last visited Apr. 3, 2024).

research), but the advertisement itself will only become “public” through a third-party vendor. Others may help craft the language of polling instruments, but the polls themselves will be conducted by a third-party vendor. Others may work with candidates on strategy (including communications strategy) and fundraising appeals (which may take the form of individual communication or mass email appeals). And still others may be responsible for helping organize and arrange the logistics for canvasses in targeted areas to allow volunteers to go door-to-door in support of Democratic candidates and policies.

Historically, ADLCC/ADP paid its employees (and paid for staff-related expenses) through various sources. Most significantly, however, it paid them using funds exempted by Title 16 from the definition of either a “contribution” or “expenditure.” See A.R.S. §§ 16-911(B)(5), 16-921(B)(3) (the payment by any person “to defray a political party’s operating expenses or party-building activities,” including “party staff and personnel,” is neither a “contribution” nor “expenditure”); see also *Arizona State Democratic Party v. State*, 210 Ariz. 527, 528 ¶ 2 (2005) (describing donations to cover party operating expenses such as these as falling outside the realm of reportable “contributions” because they weren’t made “for the purpose of influencing an election”). Now, however, questions have arisen regarding the source of funds that can be used to pay ADLCC/ADP employees because the Act defines “campaign media spending” to include “[a]n activity or public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party.” A.R.S. § 16-901(2)(a)(vii) (emphasis added). Neither the statute nor the Commission’s rules define the term “activity” or provide ADLCC/ADP with guidance on whether it must now pay the salaries and benefits (and other staff-related expenses) of these employees with funds for which a donor has not “opted out” under the Act, or whether it can continue to use “exempt” funds (A.R.S. §§ 16-911(B)(5), 16-921(B)(3)) for that purpose.

Questions Presented

Based on these facts, ADLCC requests an advisory opinion from the Commission answering these questions:

1. Does the ADLCC’s payment of its employees’ salaries constitute “campaign media spending” under the Act?
2. Does ADLCC’s payment of the health insurance premiums for its employees constitute “campaign media spending” under the Act?
3. Does ADLCC’s payment of the dental insurance premiums for its employees constitute “campaign media spending” under the Act?
4. Does ADLCC’s payment of the vision insurance premiums for its employees constitute “campaign media spending” under the Act?
5. Would ADLCC’s contribution to a retirement account on behalf of its employees constitute “campaign media spending” under the Act?

6. Does ADLCC's payment of staff-related expenses (such as training, coaching, and travel) for the benefit of its employees constitute "campaign media spending" under the Act?

7. Does the answer to any of these questions depend on the duties of a particular employee?

Discussion

In November 2022, Arizonans approved the Act, which (at § 2(A)) "establishes that the People of Arizona have the right to know the original source of all major contributions used to pay . . . for campaign media spending." In adopting the Act (*see* § 2(C)), "the People of Arizona affirm their desire to stop 'dark money,' the practice of laundering political contributions, often through multiple intermediaries, to hide the original source."

The Act did not directly alter any existing provision of campaign finance law, including the definitions of "contribution" and "expenditure" set forth in Chapter 9 of Title 16. And no part of the Act even implies that the people intended it to require the disclosure of the "original source" of funds that do not have to be reported as either a "contribution" or "expenditure" under Arizona's longstanding campaign finance regime. This is reason enough to answer all the questions presented above in the negative.

Beyond that, ADLCC paying its employees' salaries, benefits, and other staff expenses is not itself an "activity" that triggers "campaign media spending" under A.R.S. § 16-901(2)(a)(vii). The Act doesn't define "activity," meaning that the Commission must "apply a practical and commonsense construction" and may "refer to a widely use dictionary to determine its meaning." *State v. Jernigan*, 221 Ariz. 17, 19 ¶ 9 (App. 2009) (cleaned up). Merriam-Webster², for example, defines "activity" to mean many things, including:

- "the quality or state of being active: behavior or actions of a particular kind";
- "vigorous or energetic action";
- "natural or normal function";
- "an active force";
- "a pursuit in which a person is active";
- "a form of organized, supervised, often extracurricular recreation"; and
- "an organizational unit for performing a specific function."

² https://www.merriam-webster.com/dictionary/activity?utm_campaign=sd&utm_medium=serp&utm_source=jsonld (last visited Apr. 3, 2024).

And the Oxford English Dictionary³ defines the term as “[t]he state of being actively occupied; brisk or vigorous action; busyness, liveliness, vigour.” None of these definitions suggest that “activity,” as used in this context, includes the mere payment of employees’ salaries, benefits, and other expenses by a political party whose entire existence is intended to enhancing its own “electoral prospects.”

This conclusion finds more support in the structure of the Act as compared to other campaign finance provisions in Title 16. The Act did not remove (or impliedly repeal) the existing exemptions to the definition of “contribution” and “expenditure” in Title 16 under which any person can “defray a political party’s operating expenses or party-building activities” in the form of “party staff and personnel.” This contrasts with other existing provisions of Title 16’s exemptions which the Act arguably did affect. For example, A.R.S. § 16-911(B)(5)(c) and 16-921(B)(3)(c) say that a person’s payment to defray a political party’s efforts in “[v]oter registration, recruitment, polling and turnout efforts” are neither a “contribution” nor an “expenditure.” The Act, however, says that “partisan voter registration,” “partisan get-out-the-vote-activity,” and “polling” are all “campaign media spending” and thus reportable under the Act. A.R.S. § 16-971(2)(a)(vi), (vii). That the Act specified these items to the exclusion of others is evidence that the people did not intend to upend existing law related to the latter. *See State v. Maestas*, 244 Ariz. 9, 13 ¶ 15 (2018) (“In general, when the legislature (or voters) expressly prescribes a list in a statute (or initiative), we assume the exclusion of items not listed.”) (cleaned up).

This conclusion is also in line with the Commission’s treatment of A.R.S. § 16-971(2)(a)(vii). Under A.A.C. R2-20-801, “[r]esearch, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi),” is not campaign media spending “unless these activities are specifically conducted in preparation for or in conjunction with those other activities.” This is a valuable interpretation of the statute to ensure that its application accurately reflects the will of the voters. It also avoids diluting the value of reporting by disclosing funding information that has no relationship to campaign media spending. Similarly, the employee compensation, benefits, and expenses at issue in this Request are not “specifically” directed to the activity described in A.R.S. § 16-971(2)(a)(vi) or elsewhere.

Lastly, we note that nothing in the Act or the Act’s supporting materials sent to voters before the 2022 general election suggests that the people expressed any opinion about whether a political party paying its employees’ salaries, benefits, and other staff-related expenses is something that should require any new disclosure. *See Heath v. Kiger*, 217 Ariz. 492, 496 ¶ 13 (2008) (“To determine the intent of the electorate, courts may also look to the publicity pamphlet distributed at the time of the election.”). Indeed, the Act’s sponsoring political action committee and co-chairs told voters that voters “should know who is actually behind political ads” and that the Act would change Arizona law that “allow[ed] unlimited

³ <https://www.oed.com/search/dictionary/?scope=Entries&q=activity> (last visited Apr. 3, 2024).

money to be spent on anonymous political ads.”⁴ As the sponsors pointedly explained, “[w]e believe knowing who is running political ads is critical to understanding their message and motivation. Without accountability for what is said, those running misleading or inaccurate ads face no consequences and politics becomes dirtier.” *Id.* This (and nearly every other) supportive statement focuses narrowly on political advertisements, not on personnel expenses like those at issue in this Request.

At bottom, neither the plain language of the Act nor the intent of the electorate that adopted it supports an interpretation under which a political party’s payment of salaries and benefits to its employees and personnel (or covering staff-related expenses on their behalf) constitutes “campaign media spending.” At the very least, the Commission should conclude that paying for employee benefits is exempt, as it is hard to see why the public has any interest in knowing the original source of funds that paid for someone’s dental insurance. ADLCC supports transparency in campaign finance, but not to that level of absurdity.

Conclusion

Please let me know if I can provide any further information that will help you in responding to these important questions. ADLCC thanks the Commission for its hard work in implementing the Act and looks forward to an advisory opinion that will benefit both it and the public at large.

Sincerely,



D. Andrew Gaona

DAG:djh

⁴ Arizona 2022 General Election Publicity Pamphlet, at 236, *available at* http://apps.azsos.gov/election/BallotMeasures/2022/azsos_2022_publicity_pamphlet_standard_english_web_version.pdf.



250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

May 3, 2024

BY EMAIL

Arizona Citizens Clean Elections Commission
1110 W. Washington St., Suite 250
Phoenix, AZ 85007
Email: ccec@azcleelections.gov

Re: Comment Regarding AOR 2024-02

Dear Commissioners:

Pursuant to A.A.C R2-20-808(B)(3)-(4), the undersigned attorney at Elias Law Group LLP (“**ELG**”) submits this comment in response to the Arizona Citizen Clean Elections Commission (“**Commission**”) Advisory Opinion Request Draft 2024-02 (hereinafter, the “**Draft**”). The Draft was issued to the Arizona Democratic Legislative Campaign Committee (“**ADLCC**”) regarding the Voters’ Right to Know Act (“**the VRKA**”). ELG is a national, mission-driven law firm that represents organizations that engage in electoral and issue advocacy programming, including in Arizona. We hope to provide our clients clarity as to how the VRKA will impact their electoral and issue advocacy programming in 2024. We commend the Commission for its thoughtful guidance regarding the VRKA’s implementation.

Nonetheless, the Commission erred in Draft 2024-02 in how it construed the “specifically conducted” standard set forth in Ariz. Admin. Code R2-20-801(B). In our view, the “specifically conducted” standard is met only where the *expense itself* can be directly attributed to “activities [that] are specifically conducted in preparation for or in conjunction with any of the [enumerated campaign media spending] activities.” For exempt salaried employees, covered persons should make a one-time determination whether the employee’s hiring is directly attributable to campaign media spending. If the answer is “yes,” the covered person would treat the entirety of the staffer’s salary and benefits as campaign media spending; if the answer is “no,” the covered person would not treat the staffer’s salary or benefits as campaign media spending. Such a rule is consistent with how the Federal Election Commission (“**FEC**”) regulates the issue and forestalls the need for covered persons to engage in the painstaking and burdensome task of allocating every hour of their employees’ time between campaign media spending and other activities – a paperwork requirement that the VRKA simply does not authorize the Commission to impose.

I. Legal Background

The VRKA enumerates seven categories of campaign media spending. For purposes of this opinion, the most relevant category is the seventh – which covers “[r]esearch, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in

preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision.” Ariz. Rev. Stat. Ann. § 16-971(2)(a). In its implementing regulations, the Commission clarified that “[f]or purposes A.R.S. § 16-971(2)(a)(vii), research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the other activities described in A.R.S. § 16-971(2)(a) shall not be considered campaign media spending unless these activities are specifically conducted in preparation for or in conjunction with those other activities.” Ariz. Admin. Code R2-20-801(B).

In its implementation of the VRKA, the Commission has carefully balanced the paramount need to effectuate the voters’ intent in enacting Proposition 211 with the potential burdens on constitutionally protected First Amendment activities. The VRKA requires covered persons to maintain “transfer records.” *See* Ariz. Rev. Stat. § 16-972(A). The implementing regulations further define this obligation to mean that “a reasonable person could confirm the accuracy of transactions, transfer records, reports, opt out notices, and other information by review of the documents and other information.” Ariz. Admin. Code R2-20-807. In Advisory Opinion 2024-02, the Commission further underscored that “transfer records” are records relating to *transactions* that a covered person (or donors to a covered person) undertakes. *See* Advisory Opinion 2024-02 at 2. Notably, there is no requirement that covered persons maintain timesheets for their employees. This absence is significant.

The conundrum of how to attribute staff time is not unique to Arizona, of course. FEC regulations direct that “[e]xpenditures for rent, personnel, overhead, general administrative fund-raising, and other day-to-day costs of political committees need not be attributed to individual candidates, *unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.*” 11 C.F.R. § 106.1(c)(1) (emphasis added). Under this rule, a PAC that hires a staffer specifically to assist a candidate would need to treat the salary as in-kind contribution to that candidate. But a PAC that hires a staffer to perform a range of services does not need to track each hour (or fraction of an hour) spent assisting candidates because the PAC does not incur any additional costs for this assistance. *See generally* FEC Adv. Op. 1988-22 (San Joaquin Republicans) at 6. On the other hand, if the PAC spent \$1,500 flying the staffer to the candidate’s district to perform services for the candidate, the \$1,500 cost would be an in-kind contribution. *Id.*

II. Analysis

Draft 2024-02 would require covered persons to maintain detailed timesheets for its employees – a requirement that simply does not appear in the VRKA or its implementing regulations. Such a requirement is unduly burdensome and is not supported by law. Instead, the Commission should construe the VRKA and its implementing regulations to require the covered person to determine whether its financial obligations to the salaried employee – their compensation, benefits, and any associated taxes – are directly attributable to campaign media spending. In practice, this would require each covered person to make a one-time determination whether the employee was hired specifically to undertake campaign media spending activity, and to categorize associated expenses accordingly. Of course, any *additional costs* associated with any

employee's work in furtherance of campaign media spending – such as travel, lodging, trainings, etc. – would have to be treated as campaign media spending.

Such an approach aligns with the recordkeeping requirements of the VRKA – which focus on financial transactions, not personnel timesheets – and the regulatory approach that the FEC has taken in this area. Moreover, it is more consistent with Ariz. Admin. Code R2-20-801(B) than the current draft because it cabins the definition of campaign media spending for non-communicative activity to financial transactions that are “specifically conducted” in preparation for the communicative activities that the VRKA seeks to regulate.

We thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan S. Berkon".

JONATHAN S. BERKON
PARTNER

Katie Hobbs
Governor

Thomas M. Collins
Executive Director



Mark S. Kimble
Chair

Steve M. Titla
Amy B. Chan
Galen D. Paton
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State of Arizona
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May 16, 2024
Advisory Opinion 2024-04

D. Andrew Gaona
Austin Yost
Coppersmith Brockelman
2800 N. Central Ave., Ste. 1900
Phoenix, Arizona 85004

Dear Mr. Gaona:

We are responding to your advisory opinion request (“AOR”) on behalf of the Arizona Democratic Party project known as the Arizona Democratic Legislative Campaign Committee concerning whether activities by employees may be campaign media spending subject to the reporting requirements of the Voter’s Right Know Act (the “Act” or the “VRKA”), A.R.S. §§ 16-971 to 16-979.

Question Presented¹

Does the payment of employee salary and selected benefits (health, dental, vision, and retirement) and other select costs (such as training, coaching, and travel) constitute campaign media spending and does the determination turn on the duties of a particular employee?

¹ The questions presented have been condensed from the request to avoid redundancy. The question presented identified each benefit category and the select costs in separate questions. Because those differences are not relevant to the Commission’s analysis, this response does not repeat them.

Summary answer

Yes, salaries, benefits and other costs associated with an employee who is hired for the election and who works on projects that are activities contained in the definition of campaign media spending or specifically conducted in preparation for or in conjunction with campaign media spending under the Act are included in determining the amount of campaign media spending in which the employer has engaged.

Background

The facts presented in this advisory opinion are based on your AOR received April 3, 2024 and publicly available information.

The Arizona Democratic Party is a political party organized in Arizona. AOR at 1. The Arizona Democratic Legislative Campaign Committee (“ADLCC”) describes itself as a project of the ADP. *Id.* The project “recruits, trains, and supports legislative candidates by vetting, selecting, and managing award winning direct mail [and] digital consultants; providing comprehensive legal services; investing in high-quality polling and opposition research; and connecting local and national donors to the most competitive legislative races.” *Id.* The Arizona Democratic Party is a covered person. *Id.*

The ADLCC intends to begin hiring additional staff for the election to help it in its “general mission of electing Democrats.” *Id.* The staff members are in addition to the ADLCC’s existing staff. *Id.* If hired, an ADLCC employee will receive a salary and “traditional benefits” like health and vision insurance *Id.* Employees may also receive a stipend for transportation expenses and other expenses. *Id.* Employees may receive retirement benefits. *Id.* They will also receive training. *Id.*

Describing the staff role as having a “common goal: helping elect Democrats,” ADLCC states that staff members may

- “craft the messaging and design of a public advertisement (including conducting research),”
- “craft the language of poll[s]”
- “work with candidates on strategy (including communications strategy) and fundraising appeals (which may take the form of individual communications or mass email appeals). *Id.*
- additionally, other staff members “may be responsible for helping organize and arrange the logistics of canvasses in targeted areas to

allow volunteers to go door-to-door in support of Democratic candidates and policies.” *Id.*

The AOR notes that while ADLCC employees may work on advertisements, the advertisements themselves will be run by third party vendors, as will any polls.

Legal analysis

Voters passed the VRKA as Proposition 211 at the 2022 General Election and it was certified by Governor Doug Ducey in December 2022. The Act provides for reports by covered persons, that is, “any person whose total campaign media spending or acceptance of in-kind contributions to enable campaign media spending, or a combination of both, in an election cycle is more than \$50,000 in statewide campaigns or more than \$25,000 in any other type of campaigns.” A.R.S. § 16-971(7)(a). “For the purposes of [the VRKA], the amount of a person’s campaign media spending includes campaign media spending made by entities established, financed, maintained or controlled by that person.” *Id.*

Background

Reports of disbursements and receipts by political committees and parties

Arizona law requires political committees, including political parties, to disclose their “receipts” and “disbursements”, including contributions that these organizations receive and expenditures that they make. A.R.S. § 16-926(B)(2)-(3). Expenditure is a defined term that means “any purchase, payment or other thing of value that is made by a person for the purpose of influencing an election.” A.R.S § 16-901(25).

However, eight categories of spending are excluded from the definition of expenditure:

1. The value of an individual's volunteer services or expenses that are provided without compensation or reimbursement, including the individual's:
 - (a) Travel expenses.
 - (b) Use of real or personal property.
 - (c) Cost of invitations, food or beverages.
 - (d) Use of e-mail, internet activity or social media messages, only if the individual's use is not paid for by the individual or any other person and if the e-mails, social media messages or other internet activities do not contain or include transmittal of a paid advertisement or paid fund-raising solicitation.

2. The value of any news story, commentary or editorial by any broadcasting station, cable television operator, video service provider, programmer or producer, newspaper, magazine, website or other periodical publication that is not owned or operated by a candidate, a candidate's spouse or any committee.
3. The payment by any person to defray a political party's operating expenses or party-building activities, including:
 - (a) Party staff and personnel.
 - (b) Studies and reports.
 - (c) Voter registration, recruitment, polling and turnout efforts.
 - (d) Party conventions and party meetings.
 - (e) Construction, purchase or lease of party buildings or facilities.
4. The value of any of the following to a committee:
 - (a) Interest earned on the committee's deposits or investments.
 - (b) Transfers between committees to reimburse expenses and distribute monies raised through a joint fund-raising effort, except that contributions shall be allocated as described in the fund-raising solicitation and expenses shall be allocated in the same proportion as contributions.
 - (c) Payment of a committee's legal or accounting expenses.
 - (d) An extension of credit for goods and services on a committee's behalf by a creditor if the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. The creditor must make a commercially reasonable attempt to collect the debt, except that if an extension of credit remains unsatisfied by the committee after six months the committee is deemed to have received a contribution but the creditor is not deemed to have made a contribution.
5. The value of nonpartisan communications that are intended to encourage voter registration and turnout efforts.
6. Any payment by a person that is not a committee to a filing officer for arguments in a publicity pamphlet.
7. Any payment for legal or accounting services that are provided to a committee.
8. The payment of costs of publishing a book or producing a documentary, if the publication and production are for distribution to the general public through traditional distribution mechanisms or a fee is obtained for the purchase of the publication or viewing of the documentary.

Reports by covered person's donations and disbursements

Covered persons are required to report donations of traceable monies and disbursements of traceable monies over \$10,000 under the Voter's Right to Know Act. A.R.S. § 16-973(A)(8). "All records required to be retained by Chapter 6.1 of Title 16 shall be kept in such order that a reasonable person could confirm the accuracy of transactions, transfer records, *reports*, opt out notices, and other information by review of the documents and other information." Ariz. Admin. Code § R2-20-807(A) (emphasis added). Traceable monies means "[m]onies that have been given, loaned or promised to be given to a covered person and for which no donor has opted out of their use or transfer for campaign media spending [and] [m]onies used to pay for in-kind contributions to a covered person to enable campaign media spending." A.R.S. § 16-971(18). Political action committees and parties are subject to the same substantive reporting requirements as other covered persons. A.R.S. § 16-973.

Campaign media spending is a separately defined term under the Voter's Right to Know Act. The definition includes a number of public communications related to types of campaigns, including candidate campaigns, ballot measure campaigns, and recalls. A.R.S. § 16-971(2)(a)(i)-(v). The definition also includes two other provisions that address spending in addition to public communications. These include:

An activity or public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party, including partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity.
[and]

Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision.

A.R.S. § 16-971(a)(vi)-(vii).²

² The VRKA also provides for exceptions. Section 16-971(2)(b)(i)-(iv) provides that campaign media spending does not include:

(i) A news story, commentary or editorial by any broadcasting station, cable television operator, video service provider, programmer or producer, newspaper, magazine, website or other periodical publication that is not owned or operated by a candidate, a candidate's spouse or a candidate committee, political party or political action committee.

(ii) A nonpartisan activity intended to encourage voter registration and turnout.

(iii) Publishing a book or producing a documentary, if the publication or production is for distribution to the general public through traditional distribution mechanisms or if a fee is required to purchase the book or view the documentary.

Under the Commission's rules:

[f]or purposes A.R.S. § 16-971(2)(a)(vii), research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the other activities described in A.R.S. § 16-971(2)(a) shall not be considered campaign media spending unless these activities are *specifically conducted* in preparation for or in conjunction with those other activities.

Ariz. Admin. Code § R2-20-802(B), available at <https://storageccec.blob.core.usgovcloudapi.net/public/docs/957-Arizona-Administrative-Register-for-R2-20-801-to-R2-20-808.pdf> (emphasis added).

Question: Does the payment of employee salary and selected benefits (health, dental, vision, and retirement) and other select costs (such as training, coaching, and travel) constitute campaign media spending and does the determination turn on the duties of a particular employee?

The question presented by the AOR essentially asks when a political party hires staff for the election, for the purpose of electing its nominees and candidates, and identifies research, polling design, and communications work to be used in the preparation for or in conjunction with public communications and activities, could monies spent on staff for those purposes count as campaign media spending.³ With respect to staff salaries, benefits, reimbursements, and other employee related expenses, the answer is yes.

Similarly, where, as the AOR proposes, a person is hired to work on the election of party candidates whose duties involve preparing for canvassing and similar activities that will later involve volunteers, and those activities “support[] the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party” payments to the person involve campaign media spending under the Act.

(iv) Primary or nonpartisan debates between candidates or between proponents and opponents of a state or local initiative or referendum and announcements of those debates.

³ This response does not address the permanent staff of the party referred to at 1.

The Commission's rules provide that, for purposes of A.R.S. § 16-971(2)(a)(vii), "research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity," in order to be campaign media spending, must be "specifically conducted" in preparation or conjunction with other campaign media spending. This standard is met under these facts. The AOR identifies the employees as hired for the election and identifies the activities the employees would undertake that are in conjunction with or in preparation for campaign media spending.

If one of an employee's several duties may be to work on projects in preparation for other campaign media spending, or some of the employee's work may be used for campaign media spending but not all of it, the employee's activities that are included under the definition may still be "specifically conducted" in preparation or conjunction with campaign media. A contrary analysis would turn compliance into a semantic exercise where a party, by avoiding certain words in a job posting or description, or in assigning a particular activity, could claim that hiring employee to engage in campaign media spending and other activities was not a hiring "specifically conducted" in preparation or conjunction with campaign media spending despite objective evidence to the contrary.

On the other hand, where an activity is undertaken for another purpose and later used for campaign media spending, it would not be "specifically conducted" in preparation or in conjunction with campaign media spending.⁴ For example, if the ADLCC hires a press aide for the election, that person's salary and benefits are not in and of themselves campaign media spending. But if the press aide wrote ad copy for a mailer or a television script for a 30-second spot that are subject to the definition of campaign media spending, the press aide's salary and benefits for those activities would be campaign media spending, while other job duties, such as writing press releases or communicating with journalists, would not be. These acts generally have different purposes, serve different audiences, and result in different products, one of which may be a public communication in the form of a political advertisement or mailer.

To illustrate the point, the statute provides that partisan get-out-the-vote efforts, such as canvassing, are campaign media spending. A.R.S. § 16-971(2)(a)(vi). The Act and rules also provide that work specifically conducted in preparation for or in conjunction with campaign media spending is to be included in calculating the amount of campaign media spending. A.R.S. § 16-971(2)(a)(vii);

⁴ General management and training costs attributable to an employee are not in preparation or conjunction with campaign media spending.

Ariz. Admin. Code R2-20-801(B). Consequently, under the facts presented, if a staff person organizes a partisan canvassing effort to be performed by volunteers, those preparatory activities fit squarely within the statutory definition and their costs must be included in determining the amount of campaign media spending.⁵

The ADLCC is correct that the Act did not alter the definition of expenditure in Chapter 6, Article 1. However, the analysis here is not based on the definition of expenditure in Article 1. It is based on the definition of campaign media spending. Where the facts presented demonstrate that staff is being hired for the election in order to support party candidates by performing activities that fit squarely under the Act's relevant statutes, disclosure is required subject to the Act's thresholds.

Comparing the definitions of traceable monies and campaign media spending in the Act to the definition of expenditure under A.R.S. § 16-901(25) and the exemptions under A.R.S. § 16-921 leads to the conclusion that spending that is not an "expenditure" under those statutes can be "campaign media spending" under the VRKA. For example, A.R.S. § 16-921(B)(3) provides for an exemption for certain "party building activities" like voter registration. The Act, on the other hand, specifically includes partisan voter registration as campaign media spending. A.R.S. § 16-971(2)(a)(vi). With regard to disclosure requirements, the Act chose to use different terms and different definitions than the Legislature chose to use in Article 1. The result is merely additional disclosure. Nothing in the definition of campaign media spending blocks or limits spending.

This analysis necessarily means that an employee's particular job duties (i.e. activities) determine whether or not the activity itself is specifically conducted in preparation or conjunction with other campaign media spending or is an activity that itself is campaign media spending, such as "partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity."

A party need not attribute the entirety of an employee's salary and benefits to campaign media spending just because an employee performs some work in preparation for or in conjunction with campaign media spending. The party need only keep "records required to be retained by Chapter 6.1 of Title 16 in such order that a reasonable person could confirm the accuracy of . . . reports . . . and other information . . ." Ariz. Admin. Code R2-20-807(A).

⁵ The AOR itself acknowledges that some staff may do preparation for paid advertising, but other staff will be paid to organize get-out-the vote efforts. AOR at 1-2.

The Federal Election Commission has enacted a rule providing that “[e]xpenditures for rent, personnel, overhead, general administrative fund-raising, and other day-to-day costs of political committees need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.” The upshot of this rule is that costs such as overhead that would exist regardless of a specific candidate’s campaign are not attributable to that candidate for reporting purposes. This FEC rule, however, doesn’t really address the issue raised in the AOR. The FEC rule contemplates that a political committee need not allocate certain spending to individual candidates it supports as an expenditure in support of that candidate. The VRKA requires covered persons to disclose disbursements of “traceable monies” over \$10,000 on reports filed with the Secretary of State. These are distinct requirements.

The party may make reasonable determinations about how to keep records of “activities” included in the definition of campaign media spending and spending in conjunction or in preparation for campaign media spending to accurately reflect their campaign media spending. For instance, the Act does not require time sheets be kept for each employee. But the Act’s definition of campaign media spending does not grant an exemption comparable to the federal rule described above for candidate expenditures. Consequently, the party may not take expenses contemplated by the Act’s plain terms “off the books.”

Because the statute requires at least disclosure of outlays greater than \$10,000, A.R.S. § 16-973(A)(8), the party must track its campaign media spending in a reasonable manner, including personnel costs of activities that are campaign media spending.⁶

Conclusion

A Commission advisory opinion “may be relied upon by any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered, and any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.” Ariz. Admin. Code § R2-20-808(C)(3). A “person who relies upon an advisory opinion and who acts in good faith in accordance with that advisory opinion shall not, as a result of any such act,

⁶ The AOR argues that the Act and related campaign materials were not focused on the kinds of activities identified in the request. Whatever descriptions were involved, the terms of the statute here are clear. Although the Commission recognizes the potential for too much information cluttering reports, spending must reach the \$10,000 threshold to be required on the reports.

be subject to any sanction provided in Chapter 6.1 of Title 16.” *Id.* at (C)(4).
Advisory opinions may be affected by later events, including changes in law.

Sincerely,

DRAFT

Katie Hobbs
Governor

Thomas M. Collins
Executive Director



Mark S. Kimble
Chair

Steve M. Titla
Amy B. Chan
Galen D. Paton
Christina Werther
Commissioners

State of Arizona
Citizens Clean Elections Commission

1110 W. Washington St. - Suite 250 - Phoenix, Arizona 85007 - Tel (602) 364-3477
Fax (602) 364-3487 - www.azcanelections.gov

~~April 18~~

May 16, 2024

Advisory Opinion 2024-04

D. Andrew Gaona
Austin Yost
Coppersmith Brockelman
2800 N. Central Ave., Ste. 1900
Phoenix, Arizona 85004

Dear Mr. Gaona:

We are responding to your advisory opinion request (“AOR”) on behalf of the Arizona Democratic Party project known as the Arizona Democratic Legislative Campaign Committee concerning whether activities by employees may be campaign media spending subject to the reporting requirements of the Voter’s Right Know Act (the “Act” or the “VRKA”), A.R.S. §§ 16-971 to 16-979.

Question Presented¹

Does the payment of employee salary and selected benefits (health, dental, vision, and retirement) and other select costs (such as training, coaching, and travel) constitute campaign media spending and does the determination turn on the duties of a particular employee?

¹ The questions presented have been condensed from the request to avoid redundancy. The question presented identified each benefit category and the select costs in separate questions. Because those differences are not relevant to the Commission’s analysis, this response does not repeat them.

Summary answer

Yes, salaries, benefits and other costs associated with an employee who is hired for the election and who works on projects that are activities contained in the definition of campaign media spending or specifically conducted in preparation for or in conjunction with campaign media spending under the Act are included in determining the amount of campaign media spending in which the employer has engaged.

Background

The facts presented in this advisory opinion are based on your AOR received April 3, 2024 and publicly available information.

The Arizona Democratic Party is a political party organized in Arizona. AOR at 1. The Arizona Democratic Legislative Campaign Committee (“ADLCC”) describes itself as a project of the ADP. *Id.* The project “recruits, trains, and supports legislative candidates by vetting, selecting, and managing award winning direct mail [and] digital consultants; providing comprehensive legal services; investing in high-quality polling and opposition research; and connecting local and national donors to the most competitive legislative races.” *Id.* The Arizona Democratic Party is a covered person. *Id.*

The ADLCC intends to begin hiring additional staff for the election to help it in its “general mission of electing Democrats.” *Id.* The staff members are in addition to the ADLCC’s existing staff. *Id.* If hired, an ADLCC employee will receive a salary and “traditional benefits” like health and vision insurance *Id.* Employees may also receive a stipend for transportation expenses and other expenses. *Id.* Employees may receive retirement benefits. *Id.* They will also receive training. *Id.*

Describing the staff role as having a “common goal: helping elect Democrats,” ADLCC states that staff members may

- “craft the messaging and design of a public advertisement (including conducting research),”
- “craft the language of poll[s]”
- “work with candidates on strategy (including communications strategy) and fundraising appeals (which may take the form of individual communications or mass email appeals). *Id.*
- additionally, other staff members “may be responsible for helping organize and arrange the logistics of canvasses in targeted areas to

allow volunteers to go door-to-door in support of Democratic candidates and policies.” *Id.*

The AOR notes that while ADLCC employees may work on advertisements, the advertisements themselves will be run by third party vendors, as will any polls.

Legal analysis

Voters passed the VRKA as Proposition 211 at the 2022 General Election and it was certified by Governor Doug Ducey in December 2022. The Act provides for reports by covered persons, that is, “any person whose total campaign media spending or acceptance of in-kind contributions to enable campaign media spending, or a combination of both, in an election cycle is more than \$50,000 in statewide campaigns or more than \$25,000 in any other type of campaigns.” A.R.S. § 16-971(7)(a). “For the purposes of [the VRKA], the amount of a person’s campaign media spending includes campaign media spending made by entities established, financed, maintained or controlled by that person.” *Id.*

~~Campaign media spending is a defined term under the Act. This AOR principally addresses one definition of campaign media spending:~~

~~Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision.~~

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~~A.R.S. § 16-971(2)(a)(vii).~~

Background

Reports of disbursements and receipts by political committees and parties
Arizona law requires political committees, including political parties, to disclose their “receipts” and “disbursements”, including contributions that these organizations receive and expenditures that they make. A.R.S. § 16-926(B)(2)-(3). Expenditure is a defined term that means “any purchase, payment or other thing of value that is made by a person for the purpose of influencing an election.” A.R.S. § 16-901(25).

However, eight categories of spending are excluded from the definition of expenditure:

1. The value of an individual's volunteer services or expenses that are provided without compensation or reimbursement, including the individual's:

- (a) Travel expenses.
- (b) Use of real or personal property.
- (c) Cost of invitations, food or beverages.
- (d) Use of e-mail, internet activity or social media messages, only if the individual's use is not paid for by the individual or any other person and if the e-mails, social media messages or other internet activities do not contain or include transmittal of a paid advertisement or paid fund-raising solicitation.

2. The value of any news story, commentary or editorial by any broadcasting station, cable television operator, video service provider, programmer or producer, newspaper, magazine, website or other periodical publication that is not owned or operated by a candidate, a candidate's spouse or any committee.

3. The payment by any person to defray a political party's operating expenses or party-building activities in items (i) through (vi) include public, including:

- (a) Party staff and personnel.
- (b) Studies and reports.
- (c) Voter registration, recruitment, polling and turnout efforts.
- (d) Party conventions and party meetings.
- (e) Construction, purchase or lease of party buildings or facilities.

4. The value of any of the following to a committee:

- (a) Interest earned on the committee's deposits or investments.
- (b) Transfers between committees to reimburse expenses and distribute monies raised through a joint fund-raising effort, except that contributions shall be allocated as described in the fund-raising solicitation and expenses shall be allocated in the same proportion as contributions.
- (c) Payment of a committee's legal or accounting expenses.
- (d) An extension of credit for goods and services on a committee's behalf by a creditor if the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. The creditor must make a commercially reasonable attempt to collect the debt, except that if an extension of credit remains unsatisfied by the committee after six months the committee is deemed to have received a

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contribution but the creditor is not deemed to have made a contribution.

5. The value of nonpartisan communications about a variety that are intended to encourage voter registration and turnout efforts.

6. Any payment by a person that is not a committee to a filing officer for arguments in a publicity pamphlet.

7. Any payment for legal or accounting services that are provided to a committee.

8. The payment of costs of publishing a book or producing a documentary, if the publication and production are for distribution to the general public through traditional distribution mechanisms or a fee is obtained for the purchase of the publication or viewing of the documentary.

Reports by covered person's donations and disbursements

Covered persons are required to report donations of traceable monies and disbursements of traceable monies over \$10,000 under the Voter's Right to Know Act. A.R.S. § 16-973(A)(8). "All records required to be retained by Chapter 6.1 of Title 16 shall be kept in such order that a reasonable person could confirm the accuracy of transactions, transfer records, reports, opt out notices, and other information by review of the documents and other information." Ariz. Admin. Code § R2-20-807(A) (emphasis added). Traceable monies means "[m]onies that have been given, loaned or promised to be given to a covered person and for which no donor has opted out of their use or transfer for campaign media spending . . . [and] [m]onies used to pay for in-kind contributions to a covered person to enable campaign media spending." A.R.S. § 16-971(18). Political action committees and parties are subject to the same substantive reporting requirements as other covered persons. A.R.S. § 16-973.

Campaign media spending is a separately defined term under the Voter's Right to Know Act. The definition includes a number of public communications related to types of campaigns as well as "[a]n, including candidate campaigns, ballot measure campaigns, and recalls. A.R.S. § 16-971(2)(a)(i)-(v). The definition also includes two other provisions that address spending in addition to public communications. These include:

An activity or public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party, including partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity."

~~Id. § 16-971(a)(a)(i)-(vi).~~

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[and]

Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision.

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A.R.S. § 16-971(a)(vi)-(vii).²

Under the Commission's rules:

[f]or purposes A.R.S. § 16-971(2)(a)(vii), research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the other activities described in A.R.S. § 16-971(2)(a) shall not be considered campaign media spending unless these activities are *specifically conducted* in preparation for or in conjunction with those other activities.

Ariz. Admin. Code § R2-20-802(B), available at <https://storage.googleapis.com/core.usgovcloudapi.net/public/docs/957-Arizona-Administrative-Register-for-R2-20-801-to-R2-20-808.pdf> (emphasis added).

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Question: Does the payment of employee salary and selected benefits (health, dental, vision, and retirement) and other select costs (such as training, coaching, and travel) constitute campaign media spending and does the determination turn on the duties of a particular employee?

The question presented by the AOR essentially asks when a political party hires staff for the election, for the purpose of electing its nominees and candidates, and identifies research, polling design, and communications work to be used in the

² The VRKA also provides for exceptions. Section 16-971(2)(b)(i)-(iv) provides that campaign media spending does not include:

(i) A news story, commentary or editorial by any broadcasting station, cable television operator, video service provider, programmer or producer, newspaper, magazine, website or other periodical publication that is not owned or operated by a candidate, a candidate's spouse or a candidate committee, political party or political action committee.

(ii) A nonpartisan activity intended to encourage voter registration and turnout.

(iii) Publishing a book or producing a documentary, if the publication or production is for distribution to the general public through traditional distribution mechanisms or if a fee is required to purchase the book or view the documentary.

(iv) Primary or nonpartisan debates between candidates or between proponents and opponents of a state or local initiative or referendum and announcements of those debates.

preparation for or in conjunction with public communications and activities, could monies spent on staff for those purposes count as campaign media spending.³ With respect to staff salaries, benefits, reimbursements, and other employee related expenses, the answer is yes.

Similarly, where, as the AOR proposes, a person is hired to work on the election of party candidates whose duties involve preparing for canvassing and similar activities that will later involve volunteers, and those activities “support[] the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party” payments to the person involve campaign media spending under the Act.

The Commission’s ~~rule providing that activities, rules provide that, for purposes of A.R.S. § 16-971(2)(a)(vii), “research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity,”~~ in order to be campaign media spending, must be “specifically conducted” in preparation or conjunction with other campaign media spending. ~~This standard~~ is met under these facts. The AOR identifies the employees as hired for the election and identifies the activities the employees would undertake that are in conjunction with or in preparation for campaign media spending.

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If one of an employee’s several duties may be to work on projects in preparation for other campaign media spending, or some of the employee’s work may be used for campaign media spending but not all of it, the employee’s activities that are included under the definition may still be “specifically conducted” in preparation or conjunction with campaign media. A contrary analysis would ~~be subjective, allowing turn compliance into a semantic exercise where~~ a party, by avoiding certain words in a job posting or description, or in assigning a particular activity, ~~to claim the activity was not could claim that hiring employee to engage in campaign media spending and other activities was not a hiring~~ “specifically conducted” in preparation or conjunction with campaign media spending despite objective evidence to the contrary.

On the other hand, where an activity is undertaken for another purpose and later used for campaign media spending, it would not be “specifically conducted” in preparation or in conjunction with campaign media spending.⁴ For example, if the

³ This response does not address the permanent staff of the party referred to at 1.

⁴ General management and training costs attributable to an employee are not in preparation or conjunction with campaign media spending.

ADLCC hires a press aide for the election, that person's salary and benefits are not in and of themselves campaign media spending. But ~~if the press release is not~~ wrote ad copy for a mailer or a television script for a 30-second spot ~~that are subject to the definition of campaign media spending, the press aide's salary and benefits for those activities would be campaign media spending, while other job duties, such as writing press releases or communicating with journalists, would not be.~~ These ~~instruments~~ acts generally have different purposes, serve different audiences, and result in different products, one of which may be a public communication in the form of a political advertisement or mailer.

To illustrate the point, the statute provides that partisan get-out-the-vote efforts, such as canvassing, are campaign media spending. A.R.S. § 16-971(2)(a)(vi). The Act and rules also provide that work specifically conducted in preparation for or in conjunction with campaign media spending is to be included in calculating the amount of campaign media spending. A.R.S. § 16-971(2)(a)(vii); Ariz. Admin. Code R2-20-801(B). Consequently, under the facts presented, if a staff person organizes a partisan canvassing effort to be performed by volunteers, those preparatory activities fit squarely within the statutory definition and their costs must be included in determining the amount of campaign media spending.⁵

The ADLCC is correct that the Act did not alter the definition of expenditure in Chapter 6, Article 1. ~~However, there is no conflict here where~~ However, the analysis here is not based on the definition of expenditure in Article 1. It is based on the definition of campaign media spending. Where the facts presented demonstrate that staff is being hired for the election in order to support party candidates by performing activities that fit squarely under the ~~statute and the rule.~~ Act's relevant statutes, disclosure is required subject to the Act's thresholds.

Comparing the definitions of traceable monies and campaign media spending in the Act to the definition of expenditure under A.R.S. § 16-901(25) and the exemptions under A.R.S. § 16-921 leads to the conclusion that spending that is not an "expenditure" under those statutes can be "campaign media spending" under the VRKA. For example, A.R.S. § 16-921(B)(3) provides for an exemption for certain "party building activities" like voter registration. The Act, on the other hand, specifically includes partisan voter registration as campaign media spending. A.R.S. § 16-971(2)(a)(vi). With regard to disclosure requirements, the Act chose to use different terms and different definitions than the Legislature chose to use in Article 1. The result is merely additional disclosure. Nothing in the definition of campaign media spending blocks or limits spending.

⁵ The AOR itself acknowledges that some staff may do preparation for paid advertising, but other staff will be paid to organize get-out-the vote efforts. AOR at 1-2.

This analysis necessarily means that an employee's particular job duties (i.e. activities) ~~are bound up in determining~~ determine whether or not the activity itself is specifically conducted in preparation or conjunction with other campaign media spending, or is an activity that itself is campaign media spending, such as "partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity."

A party need not attribute the entirety of an employee's salary and benefits to campaign media spending just because an employee performs some work in preparation for or in conjunction with campaign media spending. The party need only keep "records required to be retained by Chapter 6.1 of Title 16 in such order that a reasonable person could confirm the accuracy of ~~transactions, transfer records, . . . reports, opt-out notices, . . .~~ and other information by review of the documents and other information." . . ." Ariz. Admin. Code R2-20-807(A).

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The party may make reasonable determinations about how to keep records of "activities" included in the definition of campaign media spending and spending in conjunction or in preparation for campaign media spending to accurately reflect their campaign media spending. For instance, the Act does not require time sheets be kept for each employee. But the Act's definition of campaign media spending does not grant an exemption comparable to the federal rule described above for candidate expenditures. Consequently, the party may not take expenses contemplated by the Act's plain terms "off the books."

Because the statute requires at least disclosure of outlays greater than \$10,000, A.R.S. § 16-973(A)(8), the party must track its campaign media spending in a

reasonable manner, including personnel costs of activities that are campaign media spending.⁶

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⁶ The AOR argues that the Act and related campaign materials were not focused on the kinds of activities identified in the request. Whatever descriptions were involved, the terms of the statute here are clear. Although the Commission recognizes the potential for too much information cluttering reports, spending must reach the \$10,000 threshold to be required on the reports.

Conclusion

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A Commission advisory opinion “may be relied upon by any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered, and any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.” Ariz. Admin. Code § R2-20-808(C)(3). A “person who relies upon an advisory opinion and who acts in good faith in accordance with that advisory opinion shall not, as a result of any such act, be subject to any sanction provided in Chapter 6.1 of Title 16.” *Id.* at (C)(4). Advisory opinions may be affected by later events, including changes in law.

Sincerely,

DRAFT