



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

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

Date: Thursday, July 25, 2024

Time: 9:30 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 July 25, 2024. This meeting will be held at 9:30 a.m. **This meeting will be held in person and virtually. The meeting location will be open by 9:15 a.m. at the latest.** 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 ccec@azcleanelections.gov.

The meeting may be available for live streaming online at <https://www.youtube.com/c/AZCCEC/live>. You can also visit <https://www.azcleanelections.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 June 27, 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 and information about elections and campaign finance, a report on voter education activities, administrative information, information on candidates running clean, reports on legal proceedings involving Clean Elections and other Arizona election officials, a report on correspondence from other agencies, appointments, enforcement status, and 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 Debate Preparation and Scheduling for the 2024 General Election.
- V. Discussion and Possible Action on Advisory Opinion Regarding Disclaimers Required Under A.R.S. § 16-974(C).
- VI. Discussion and Possible Action On Notice of Claim by Bob Branch and the Power of Fives, LLC against Commissioners and *Branch v. Collins*, CV2024-004136 (Maricopa County).

The Commission may choose to go into executive session on this item for discussion or consultation with its attorneys to consider its position and instruct its attorneys regarding its position regarding contracts, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation. A.R.S. § 38-431.03(A)(4).

- VII. 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

- VIII. 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 23rd day of July, 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

June 27, 2024

9:30 a.m.

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PO Box 513, Litchfield Park, AZ 85340
(P) 623-975-7472
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Reported By:
Angela Furniss Miller, RPR
Certified Reporter (AZ 50127)

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1 PUBLIC MEETING, BEFORE THE CITIZENS CLEAN ELECTIONS
 2 COMMISSION, convened at 9:30 a.m. on June 27, 2024, at the
 3 State of Arizona, Citizens Clean Elections Commission, 1110
 4 West Washington, Suite 250, Phoenix, Arizona, in the presence
 5 of the following Board Members:
 6 Mr. Mark S. Kimble, Chairman
 7 Mr. Galen Paton
 8 Ms. Amy Chan (videoconference)
 9 Ms. Christina Estes-Werther

10 OTHERS PRESENT:

11 Thomas M. Collins, Executive Director
 12 Paula Thomas, Executive Officer
 13 Mike Becker, Policy Director
 14 Gina Roberts, Voter Education Director
 15 Avery Xola, Voter Education Manager
 16 Alec Shaffer, Web Content Manager
 17 Kara Karlson, Assistant Attorney General
 18 Cathy Herring, KCA
 19 Paige Jarrell, KCA
 20 Emma Cone-Roddy, Osborn, Maledon (videoconference)
 21 Jonathan Berkon, Elias Law Group (videoconference)
 22 Rivko Knox, Member of the Public (videoconference)

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1 P R O C E E D I N G

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3 CHAIRMAN KIMBLE: Good morning. Agenda Item I
 4 is the call to order.
 5 It is 9:30 a.m. on June 27th, 2024. I call
 6 this meeting of the Citizens Clean Elections Commission to
 7 order.
 8 With that, we will take attendance.
 9 Commissioners, please identify yourself for the record.
 10 COMMISSIONER ESTES-WERTHER: Christina
 11 Werther.
 12 COMMISSIONER PATON: Galen Paton.
 13 COMMISSIONER CHAN: Amy Chan.
 14 CHAIRMAN KIMBLE: And I'm Mark Kimble, and we
 15 do have a quorum. Thank you.
 16 Item II, discussion and possible action on
 17 minutes for the May 16th, 2024, meeting.
 18 Commissioners, you have the minutes from our
 19 last meeting in the packet. Is there any discussion?
 20 Hearing none, do I have a motion to approve
 21 the minutes?
 22 COMMISSIONER ESTES-WERTHER: Motion to
 23 approve.
 24 CHAIRMAN KIMBLE: Is there a second?
 25 COMMISSIONER PATON: I'll second.

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1 CHAIRMAN KIMBLE: It's been moved and seconded
 2 that we approve the meeting -- the minutes from our last
 3 meeting.
 4 I will call the roll. Commissioner Chan.
 5 COMMISSIONER CHAN: Aye.
 6 CHAIRMAN KIMBLE: Commissioner Werther.
 7 COMMISSIONER ESTES-WERTHER: Aye.
 8 CHAIRMAN KIMBLE: Commissioner Paton.
 9 COMMISSIONER PATON: Aye.
 10 CHAIRMAN KIMBLE: Chair votes aye.
 11 Minutes are approved 4-to-nothing.
 12 Item III, discussion and possible action on
 13 Executive Director's report.
 14 Tom.
 15 MR. COLLINS: Hi. So four minutes ago, the
 16 Court of Appeals released an opinion in the case Toma v.
 17 Fontes, which is our -- one of the cases regarding Prop 211.
 18 The challenge is on separation of powers' grounds; I haven't
 19 had a chance to read it because it came out four minutes ago.
 20 The bottom line is part of it was -- part of
 21 the trial court's decision was affirmed; part of it was
 22 reversed, and part of it was -- and it was remanded.
 23 It looks like the main issue there on remand
 24 has to do with 6974 which is a statute that talks about how
 25 the delegation of authority to the Commission to -- to do

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1 certain things -- operates. So we'll try to get you a
 2 summary of that as soon as we can. I got it just the time
 3 the meeting started. So that's about all I have, just a
 4 heads-up.
 5 COMMISSIONER PATON: Until the next.
 6 MR. COLLINS: That's right.
 7 And if -- if Emma, if you happen to get a
 8 chance to digest this in the next 45 minutes, let me know.
 9 So, this has been an exciting month and Gina
 10 is going to talk in the next agenda item about our voter
 11 education efforts, but, you know, last night we concluded our
 12 broadcast debate part of the primary. Legislative debates
 13 will continue through next weeks -- next week.
 14 You know, Gina will have more to say about
 15 this, but I want to say that the broadcast debates, I think,
 16 have been exceptional and well-received and -- and really
 17 supported the overall mission of the Commission to provide
 18 information to voters, and -- and so we're really -- I mean,
 19 I really can't say enough about it or I'll get verklempt.
 20 Likewise the voter education guide is being
 21 delivered across the state; those have started arriving.
 22 Interesting, I really think the baseline of questions we're
 23 getting from folks writing in about the voter education
 24 guide, we're getting more attention to it than we have in the
 25 past. We're getting specific questions about, you know,

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1 content; we're getting questions about the details. Things
 2 that we haven't really gotten in the past and I think that,
 3 again, that's an attribute to the fact that we're getting
 4 some traction here in this.

5 You can see we've had in addition to those
 6 on-site and -- and activities, we've continued to do a range
 7 of -- of appearances at a variety of different events. Just
 8 to highlight a few, Gina and the Maricopa County Recorder's
 9 Office did a tele-town hall that reached 4,000 voters about
 10 election process. Avery and I were at the Navajo Voters
 11 Coalition Conference last week in -- outside of Flagstaff.
 12 We all were at the Phoenix Fan Fusion, which is basically
 13 Phoenix's equivalent of Comic-Con where we launched
 14 Captain Activate!, which is without a doubt my favorite
 15 one -- probably my favorite thing we've ever done. This is
 16 Avery's comic book; it was well received. Captain Activate!
 17 was there in person. And -- I mean, it was great. It was a
 18 great event, and it was really cool.

19 So we're just -- we've got a -- it's -- we
 20 just got a really a lot of stuff going on and I -- and I
 21 think that we're reaching a broad variety of different folks
 22 around -- around the state. And we're reaching
 23 essentially -- I mean, you know, I don't think that four
 24 years ago, certainly during COVID, I guess, or even six years
 25 ago, we were in a position to be in as many places as we've

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1 and I think it's worth talking about because it will be an
 2 ongoing issue, you know. *Arizona Republic*, there's a big
 3 long story about filings in Maricopa County particularly
 4 around campaign finance, how the failure to file system
 5 works, and so I think that's something that we will be
 6 keeping an eye on.

7 But I think that basically completes my --
 8 my -- my report and what I wanted to highlight.

9 And as I said, if we'll get more of -- soon as
 10 I get -- before the end of the meeting, if I -- if I have a
 11 better understanding of where the -- the -- and how the Toma
 12 v. Fontes breaks down on remand, I will let you know.

13 We did just want to make clear that we did put
 14 in the executive report we expected a decision at any time,
 15 and "any time" includes 9:30 on Thursday morning, so.
 16 Everybody had notice that we could talk about this.

17 CHAIRMAN KIMBLE: Thank you, Tom.

18 I think I speak for all Commissioners when I
 19 say, is Captain Activate! going to be coming to any of our
 20 upcoming meetings?

21 Possibly?

22 Well, we don't need to do it right now, but
 23 it's something we can look forward to.

24 Are there any other questions --

25 COMMISSIONER PATON: I have a --

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1 been as staff members and representative commission as we've
 2 been just over the past month.

3 The -- we have an update on our participating
 4 candidates. We now have 43 participating candidates; we've
 5 funded 26. I think we're getting to a place now our numbers
 6 are on relative parity with what we've had in -- in the past
 7 couple of election cycles.

8 There's been a little bit of a lag as
 9 candidates are more likely to be -- not file their
 10 application for certain until they file their -- their whole
 11 filing, so there's a lag now in terms of knowing what the
 12 number is; but I think that's good.

13 We have another advisory opinion request.
 14 That was filed this week and then -- and then
 15 I'd also want to highlight that we have a -- that we have a
 16 report that we worked on with Arizona State Senate for
 17 Independent and Sustainable Democracy that's attached that
 18 gets into the views and attitudes of younger voters, which we
 19 think is designed to provide some ballast to both election
 20 officials and -- and the public generally. But -- and
 21 policymakers on the administrative side, in terms of trying
 22 to understand where those voters are coming from.

23 So that's -- that's really the main -- the
 24 main issues I wanted to highlight.

25 You know, I think one other thing I will note,
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1 CHAIRMAN KIMBLE: -- or discussions --
 2 COMMISSIONER PATON: I have a discussion --
 3 comments.

4 CHAIRMAN KIMBLE: -- from the -- Commissioner
 5 Paton.

6 COMMISSIONER PATON: So I got my Voter
 7 Election Guide [verbatim], and I noticed that there were one
 8 or two candidates that didn't fill anything out. I mean,
 9 what's the -- the reason for that?

10 They just don't think it matters or?

11 MR. COLLINS: You want to --

12 COMMISSIONER PATON: They're late or...

13 I mean, I find it very peculiar I guess.

14 CHAIRMAN KIMBLE: Well, and it's not unique to
 15 the voter's guide. In our debates last night in the U.S.
 16 Senate debate, two of the three candidates opted not to
 17 appear, so.

18 Gina.

19 MS. ROBERTS: Mr. Chairman, Commissioners, out
 20 of the entire, I think, approximately 200 candidates that
 21 were eligible to appear in the guide, we had maybe 6 I think
 22 off the top of my head that did not do a submission. We
 23 still do list their name and their details in there.

24 We do extensive outreach to try to connect
 25 with these candidates, and so these are the ones that we just

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1 get zero response from. So we don't actually know why they
 2 don't submit anything, but we do extensive outreach to
 3 connect with them, and they just did not complete the
 4 submission.
 5 COMMISSIONER PATON: You would think that it
 6 would be to their detriment to not let somebody know what --
 7 what their -- their purpose is. And I find it just either
 8 "I don't care that -- about the voters," or "I'm so sure that
 9 I don't even have to do it."
 10 I guess that's it, I don't know.
 11 MS. ROBERTS: I -- I can -- Mr. Chairman,
 12 Commissioners, I can tell you the voters do notice because we
 13 get inquires from the voters saying, "Where's this person's
 14 statement?" Or "Why didn't this person participate in the
 15 debate?"
 16 So the voters do notice and they do reach out
 17 to us asking why.
 18 COMMISSIONER PATON: Exactly. Well, I
 19 noticed.
 20 CHAIRMAN KIMBLE: And let me just say, I know
 21 Gina hammers these people to respond.
 22 COMMISSIONER PATON: Oh, yeah. I would -- I
 23 would think so.
 24 CHAIRMAN KIMBLE: And if they don't, I think
 25 that speaks for their interest in -- in running and I don't
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1 incredible program.
 2 Last night I had the opportunity to observe
 3 the debate program at BitFire Studios, and I can say I was
 4 greatly impressed. The technology, the facility, the
 5 professionalism of our partners, the Arizona Media
 6 Association, Riester; our moderators, Jim Nintzel, Steve
 7 Goldstein, Mary Rábago, and Richard Ruelas have brought this
 8 program to a new level.
 9 We've heard remarkably positive feedback from
 10 candidates about their experiences.
 11 I also was impressed that members of the
 12 Arizona media have set aside their natural competitive
 13 concerns to bring these debates to all the voters of Arizona.
 14 Should the voters be interested enough to tune in, it's very
 15 easy to -- to watch the debates.
 16 Gina is going to update us on the progress of
 17 your voter education efforts.
 18 Gina.
 19 MS. ROBERTS: Thank you, Mr. Chairman,
 20 Commissioners. I do have some slides to share mostly to keep
 21 me on track.
 22 If we can pull those up.
 23 All right, if we can get to the first slide,
 24 please; thank you.
 25 So as -- as the Chairman mentioned, our
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1 know what more we can do.
 2 COMMISSIONER PATON: I mean, I don't -- I
 3 don't think it's on our end or anything like that, other than
 4 maybe they think that we're doing something nefarious with
 5 their content, I don't know. But it's just -- and the parts
 6 that people don't debate that -- that bothers me as well.
 7 Like, if you're so sure about yourself or whatever, then tell
 8 everybody and let everybody hear it instead of being, you
 9 know, surreptitious about stuff; I don't know.
 10 Just bothersome to me.
 11 CHAIRMAN KIMBLE: Thank you, Commissioners.
 12 Are there any other discussion or questions
 13 from the Commission on Tom's report?
 14 (No audible response.)
 15 CHAIRMAN KIMBLE: Okay, thank you.
 16 Item IV, discussion possible action on updates
 17 for the 2024 voter education efforts.
 18 As Tom mentioned, this week, the Commission
 19 wrapped up our broadcast debate program for the primary
 20 election. Our legislative debates wrap up early next week
 21 and the voter education guide is hitting mailboxes around the
 22 state.
 23 This -- this is crunch time for the Clean
 24 Elections staff and I want to thank Gina, Alec, Paula, Avery,
 25 Mike, and Tom for the effort it takes to pull off this
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1 debates, our broadcast debates, have wrapped up and we still
 2 have some legislative debates that are occurring, and we will
 3 get those wrapped up as well. And we are working on our
 4 general elections schedule now.
 5 So essentially what we'll be doing is
 6 identifying the debates that we wish to host through our
 7 broadcast method and also the debates that we are capable of
 8 hosting through our streaming method. And we will create a
 9 schedule as well as potentially having items such as ballot
 10 measures bringing -- bringing those into the fold as well,
 11 too, for discussion. That way voters have access to the
 12 information.
 13 So as soon as we get that schedule finalized,
 14 we will be making it public so that all of our candidates can
 15 save the dates until our formal invitations go out.
 16 But as far as our debates from the primary
 17 election have gone, to echo what the Chairman has said, we
 18 have received nothing but positive feedback from both voters
 19 and from the candidates. From the candidates, they have said
 20 that this is the most professional debate progression that
 21 they've seen; they were so overwhelmed with the reach that it
 22 has. The voters, we got an e-mail from a voter saying thank
 23 you for making these available on TV, and that's a great
 24 service.
 25 We continue to get that type of feedback from
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1 the voters and from the candidates. The campaigns have been
 2 really amazing to work with as well, and so we do so -- we
 3 have seen a great effort from those candidates that have
 4 chosen to participate in them to be a part of this
 5 production.
 6 So they, again, overwhelming praise from all
 7 of the parties that have been participating in the debate
 8 process.
 9 And, again, as going back through the reach
 10 through this partnership with the Arizona Media Association,
 11 we still have to tally up our numbers, and, of course, keep
 12 track of -- of our data points so that we can measure success
 13 but, again, it has been unprecedented. So far we have seen
 14 everything from the, you know, the live broadcast from when
 15 we are actually conducting the debate live to it being reran
 16 over the weekend to we have had news stations where they have
 17 their 6 o'clock news, and they will cut to the live stream
 18 and say, "Hey, here is a clip of this debate" and then "Go
 19 watch it live now."
 20 An amazing amount of media partners across the
 21 state who have been streaming it on their platforms, airing
 22 it on the radio, doing post-debate analysis shows on their
 23 programs about these. And then of course, too, the imagery
 24 from it. We have -- for every debate, we've had a pool
 25 of photographer come in which essentially means we have a single
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1 system, which means that we have the ability to, again, reach
 2 every household in the State of Arizona and across the nation
 3 through all of our media affiliates, the network affiliates,
 4 through the system we currently have. And, again, the format
 5 that they're looking for is what we already have in place.
 6 So because of the nature of our production and
 7 how we have built it, we believe we are in a great position
 8 to offer a formal invitation to the presidential candidates
 9 to come here to Arizona and debate, and so we will be
 10 extending that invitation today. We have a press release
 11 that is available to go out. We also have created some
 12 information that we think will help drive the support of
 13 this, and we have some great contacts that we have for the
 14 campaigns as well, too. So we believe we can certainly make
 15 a great effort to pitch a debate, a Clean Elections debate,
 16 with the presidential candidates.
 17 We do have a video here of some filming that
 18 we did with sort of "behind the scenes," if you will, of how
 19 our debate productions work. Again, this is in the hope of,
 20 one, showcasing all of the work that goes into and the
 21 professionalism that goes into the productions of our
 22 debates. And we do intend to use this as part of our pitch
 23 to the presidential candidates.
 24 So we can play that now, please.
 25 (Video plays.)
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1 photographer come in that does these professional photos
 2 throughout the debate, and then we make those available to
 3 all the candidates, the campaigns, the media outlets. And so
 4 they are getting used widely right now, which is great
 5 because part of this debate process and -- and for all of our
 6 voter education efforts, we know that it is important for
 7 voters to understand where this information is coming from in
 8 this day and age of misinformation. So we make sure that
 9 it's very clear that these are Clean Elections productions so
 10 that they know it's coming from a trusted brand.
 11 And so far our primary election debates have
 12 been successful, and we will report back more thoroughly
 13 on -- on our metrics at the end of the year when we have that
 14 data available.
 15 So we can move to the next slide.
 16 Because of the success of our primary election
 17 debates, we have seen in the news that our presidential
 18 campaigns have put forth criteria that they wish to see in
 19 their debates that they would be willing to participate in,
 20 and we are very pleased to say that those criteria match the
 21 production and the format of our current debate program
 22 almost to a "T."
 23 And so with the program that we have built,
 24 we're in a very unique position to offer the presidential
 25 candidates to come here to Arizona and debate with our
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1 (Applause.)
 2 MS. ROBERTS: Mr. Chairman, Commissioners, so
 3 with our current lineup of -- of debates we have done federal
 4 debates, our state debates, our legislative debates, and we
 5 also have county debates that we have done as well, too. And
 6 so we are continuing to hear from candidates; they are
 7 reaching out to us saying, "Can you do a debate for my race
 8 that I'm -- I'm running for?"
 9 So we know that the appeal is there for
 10 candidates at all levels and the voters looking forward as
 11 well, too, and so we hope to make what is hopefully a very
 12 successful pitch to our presidential candidates. So we got
 13 to at least try, right?
 14 So we can go to the next slide and we can talk
 15 about our Voter Education Guide now that -- is -- has been
 16 completely delivered to the United States Postal Services.
 17 And they still are -- we have a handful that are still
 18 arriving in homes, but they will all be delivered within the
 19 next few days, certainly before the start of early voting
 20 which is July 3rd. We sent out approximately 2.3 million
 21 pieces.
 22 And, again, as Tom had mentioned in his
 23 Executive Director report, we do really feel that voters are
 24 certainly reading this information because we are getting a
 25 lot of inquiries, again, just based off of what they are
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1 reading, questions. And it's great because we're seeing
 2 community groups who want bulk shipments of the guides.
 3 Avery has done a lot of outreach to our -- our libraries,
 4 our -- our Native American communities such as Chapter Houses
 5 and the Postal Services that actually serve those communities
 6 as well, so we can have stacks available there too; we send
 7 them to teachers, to our educators who are interested in
 8 them.

9 So we're seeing the community, again, looking
 10 forward to this as a resource. So we're very excited with
 11 the production of the guide. We also had great feedback,
 12 too, that for the first time ever we put a sticker, an
 13 English and voter Spanish "I voted" sticker in there and that
 14 is certainly a great piece of social currency. So we know
 15 people are/were excited about receiving that as well too.
 16 So, our primary voter guide has gone off without a hitch.

17 And we can go to our next slide, please.
 18 And, again, we will have full metrics
 19 available and data points for you at the end of the year.
 20 These are just some high-level updates.

21 So with our website right now, as part of the
 22 Governor's task force that she had put together and convened,
 23 one of the recommendations was very specific to the Clean
 24 Elections' website to utilizing the website as a central
 25 source for voters across the state for information. And to

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1 "Hey, go to the Clean Elections website; create your
 2 profile."
 3 So we have candidates ranging from, you know,
 4 city council to mayor to -- to school boards, to all of these
 5 offices; to justice of the peace, who are creating profiles
 6 on our website. Which, again, that just creates a better
 7 picture and more information for our voters.

8 And then we are working on launching our
 9 candidate compass tool. Just a reminder, that tool is
 10 essentially a questionnaire that we present to both the
 11 candidates and the voters, the same questions, and then we
 12 just mirror up how they respond together. So that way, it's
 13 a binary question, but we do allow the candidates a sentence
 14 or two to kind of explain why they chose this, because we've
 15 heard voters in the past say just tell us quickly; give us
 16 the bullet points, where do you stand on this issue.

17 And so of course, through that process, they
 18 can always dive deeper into going into the candidate
 19 statement or going to look at the candidate in action in a
 20 debate.

21 So that is an update for our website.
 22 Next slide, please.
 23 We are continuing, of course, to work with all
 24 of our county partners across the state. This is just a
 25 small snapshot of the work that we are doing.

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1 be able to fully do that, we have been working with the
 2 Secretary of State's Office on getting access to additional
 3 information on voters so that way when they come to the Clean
 4 Elections website, they can securely look up their
 5 information, confirm that they're a registered voter, confirm
 6 all of their districts, which when we have their district
 7 information, that gives us the ability to show them, here is
 8 all the candidates who are running and will be on your
 9 ballot. So essentially creating this sample ballot for them
 10 if you will.

11 And so we currently do that to some extent
 12 within our site as well, but having access to this data will
 13 just create a more -- a full -- create a fuller picture for
 14 the voters.

15 So we are working on testing that data now.
 16 We are updating our dashboard with all of the primary voting
 17 locations so we can be ready for the start of early voting
 18 and election day voting.

19 And our website is available to every
 20 candidate in the State of Arizona, not just statewide and
 21 legislative and federal, but any candidate who is running to
 22 create a profile on our website. And this has been really
 23 great this year because we are seeing so many more local
 24 candidates wanting to utilizing this service. We're seeing
 25 city clerks contacting all of their candidates and sharing,

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1 We recently created an infographic at the
 2 request of Pima County that just talks about how to
 3 participate in the primary election, which is very important
 4 this year.

5 So, as we know, every election, the rules
 6 change. And for our primary elections, we do have where
 7 Independent voters can participate. And we have five
 8 recognized political parties. We have the Democratic Party,
 9 the Republican Party, the Green Party, Libertarian, and the
 10 No Labels Party.

11 Independent voter cans participate by
 12 selecting either the Republican or the Democratic ballot.
 13 The Green Party and the Libertarian Party have closed
 14 primaries, and which means Independents cannot select that
 15 ballot.

16 And then the No Labels Party, they're actually
 17 not having a primary. So that means that -- that they have
 18 gone to court and as a result of this litigation, there will
 19 be -- we have approximately 30,000 No Label voters in the
 20 State of Arizona, so there will be a ballot created for them,
 21 but there will be no federal, statewide or legislative
 22 candidate -- no partisan candidates, I should say, on that
 23 ballot for them.

24 So when a voter who is registered with the No
 25 Labels Party right now, if they get their ballot in the mail

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1 or go to the polls, they will see one of two things. They
 2 will see either a completely blank ballot or they will see a
 3 ballot that only has local races on there if they happen to
 4 be in a jurisdiction that has a local nonpartisan race.
 5 And so we're making sure that we are doing
 6 education to that for those voters. We're also making sure
 7 that they understand that the No Labels Party is a political
 8 party, and that you are not an Independent if you are
 9 registered as a No Labels voter.
 10 So lots of education points around there, and
 11 where we are working with our counties to -- to do that.
 12 And then we also have the opportunity, which I
 13 think this was something that I personally thought was pretty
 14 cool, we have worked with Coconino County specifically, but
 15 this is also for Navajo and Apache County to create
 16 additional ads in the Navajo language of Diné.
 17 Coconino County has recognized that -- so when
 18 we talk about voter education, we know that we have to meet
 19 voters where they are, and that is different for -- you know,
 20 we're a diverse state in terms of geography and so we have to
 21 look at all of the methods that we utilize to reach voters.
 22 There is a movie theater in Coconino County
 23 that is the single location that services voters from Apache,
 24 Coconino, and Navajo County and they have a high population
 25 of Navajo voters that visit that. So we through this
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1 ad.
 2 And we can go to the next slide.
 3 And this is my final slide that I wanted to
 4 leave. This is kind of a teaser, like a very exciting
 5 thing that -- we have a lot of exciting things we get to do
 6 in vote ed.
 7 But one of the things that we have coming up
 8 in July is we have four cast members from *Hamilton*, which is
 9 currently playing right now at ASU, who have agreed to come
 10 in and talk to Clean Elections and talk about voting. So
 11 it's very exciting just given the history and the story of
 12 the *Hamilton* play and how it, you know, goes over the
 13 biography of Alexander Hamilton and talks about the early
 14 United States of America and in our political history.
 15 We thought it would be a great opportunity to
 16 talk with voters through this creative idea and get those
 17 *Hamilton* cast members into studio and talk about, okay, let's
 18 talk about voting today and any connections and correlations
 19 to what you've seen in the play, talk about political
 20 discourse and, you know, apathy towards actually taking
 21 action and wanting to vote and participate. So this is
 22 something that we have that is on the horizon as well.
 23 So these are, again, just some very -- you
 24 know, few highlights of what we have going on right now.
 25 Again, towards the end of the year, we will have a full wrap
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1 partnership with the counties, we created this ad which we
 2 will play for you, and it will air in English in this Harkins
 3 theater, but we are also utilizing our resources through
 4 digital targeting where any voter in the vicinity of this
 5 location will receive the ad in this Diné language as well,
 6 too.
 7 So it's a great opportunity to reach voters
 8 where they are and give them voter education in the format
 9 that they are looking for in their native language.
 10 So we can go to that -- we can actually play
 11 that video, please.
 12 (Video played.)
 13 MS. ROGERS: Mr. Chairman, Commissioners, that
 14 phone number that you saw in there, that is a toll-free
 15 number that Clean Elections has set up for many years --
 16 thank you to Paula for helping us with this -- where it's
 17 actually an auto-attendant line. So any voter in those
 18 counties, they can call this phone number and then get, okay,
 19 press 1, you go to Apache County; 2, Navajo; 3, Coconino; and
 20 4 Clean Elections.
 21 When they go to the counties, they are
 22 automatically connected with their staff members there that
 23 speak Diné. So it's a service for them to be able to connect
 24 directly with the staff people who can help them in their
 25 language. So we're excited that we were able to create this
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25

1 up for you. But with that, we can end with if there's any
 2 questions, Chairman and Commissioners.
 3 CHAIRMAN KIMBLE: Thank you, Gina. Let me
 4 just say that's -- that was a very impressive video you did
 5 of the tour of BitFire Studios; and kudos to you for standing
 6 outside the studio --
 7 MS. ROBERTS: It was hot.
 8 CHAIRMAN KIMBLE: -- in 115-degree heat and --
 9 and recording that.
 10 But that was a very helpful video, and I hope
 11 the presidential candidates take us up on that.
 12 Any comments or questions from Commissioners?
 13 COMMISSIONER PATON: Yes.
 14 CHAIRMAN KIMBLE: Commissioner Paton.
 15 COMMISSIONER PATON: I would just like to say
 16 I went to some debates in the 1990s. I remember one in
 17 particular in Sierra Vista and there was like 12 people
 18 there, all family and friends of the people debating. So
 19 this has come, you know, a long way that you're inviting the
 20 presidential candidates to -- to come and debate. So very
 21 good job, and I'm proud of our whole situation that's
 22 developed out of all this.
 23 CHAIRMAN KIMBLE: Very well said Commissioner,
 24 thank you.
 25 Any other comments or questions from
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1 Commissioners?

2 COMMISSIONER ESTES-WERTHER: Chairman.

3 CHAIRMAN KIMBLE: Commissioner Werther.

4 COMMISSIONER ESTES-WERTHER: Also just well

5 done everybody and Gina. That was -- yeah, that's fantastic

6 all the work that you've been doing for voter education.

7 And I also just really want to highlight and

8 thank you for reaching out more to the local candidates and

9 the local government, and I think as most of you know,

10 they're always at the end of the ballot, and so it's really

11 nice to have the opportunity to at least be sort of on that

12 same -- that same presence, that same level on the -- on the

13 website and have that opportunity. So just wanted to thank

14 you.

15 CHAIRMAN KIMBLE: Thank you, Commissioners.

16 Any other comments from Commissioners?

17 (No audible response.)

18 CHAIRMAN KIMBLE: Thank you, Gina.

19 MS. ROBERTS: Thank you, Mr. Chairman.

20 CHAIRMAN KIMBLE: Very impressive job.

21 Moving on to Item V, advisory opinion

22 advisory -- excuse me. Advisory opinion arising from a

23 request by Star Spangled Media under the Voters Right to Know

24 Act.

25 Commissioners, we have advisory opinion
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1 questions that are asked and raised by the regulated

2 community in this context is, you know, that some of these

3 tests, the tests that exist in law already that we're

4 applying and in some cases that we're working through

5 ourselves are pretty complicated.

6 And this one, based on my understanding and

7 our understanding of staff of how the FEC analyzes these

8 kinds of questions around the media exception, you know,

9 it's -- it's literally -- it's supposed to be a two-part

10 test, but it's a two-part test where each individual part has

11 two parts. And I don't -- I'm -- and I don't -- so getting

12 to a place where there's a -- and I think -- I think we've

13 ticked through and we'll go through this in a second those --

14 that -- that list, and then we get to one that's one area

15 where it's harder under our understanding of the existing

16 test to have sort of a black letter, bright-line rule that we

17 can apply here. But, you know, so we -- as you'll see in the

18 draft -- as you've seen in the draft we don't -- we have sort

19 of a non conclusion.

20 So with the issues presented by this -- and

21 these are the issues that we drafted. So the issues that

22 were presented in the draft which were fine would -- was --

23 was -- was the -- the -- you know, whether or not Star

24 Spangled Media is a covered person, whether or not there is

25 campaign media spending.

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1 request filed by Star Spangled Media. This question deals

2 principally with how the media exception to Proposition 211

3 applies as well as whether a grant qualifies as business

4 income under the law.

5 Tom, do you want to summarize the opinion

6 draft?

7 MR. COLLINS: Yeah. I'm going to do my -- do

8 my best. I think -- I always feel like we've -- you guys --

9 we've had the Commission eat dessert first when I...

10 COMMISSIONER PATON: This is the liver and

11 onion?

12 MR. COLLINS: Yeah.

13 First, I want to thank Jon Berkon and his

14 colleague Emma Anspach, if I'm pronouncing their name

15 correctly, for their submission of the request. You know,

16 Jon is here and I think that, you know, these requests we've

17 been getting regularly I hope -- I hope the process is being

18 effective. We certainly from -- from our end in analyzing

19 these, think that they are helpful and we hope that -- you

20 know, that so we hope to continue working on them.

21 So I was going to sort of summarize where --

22 where we are. This -- if we could -- Cathy, if we could go

23 to the next slide.

24 One of the things that, you know, you know,

25 we've talked about in analyzing statute and in addressing the
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1 The reason we have redrafted the questions

2 presented is because we think for the broader public we think

3 that this is more helpful for creating -- broader regulated

4 community, we think that this is a better way of giving folks

5 notice of what is covered in the opinion; and -- and I think

6 that in -- and we hope that the regulated body that asked for

7 it can -- you know, can apply the analysis as relevant to

8 their questions.

9 If that becomes a thing that folks don't --

10 you know, especially the regulated folks don't think works or

11 what have you and we need to -- you know, I'm -- I'm happy to

12 talk about that, but that's the reason why we're actually

13 kind of taking the questions presented and trying to present

14 them in a way that focuses we think on the specific issues.

15 So those -- those really are the issues.

16 And -- and you can -- based on the overall -- the overarching

17 principles behind the Voter Right to Know Act are: If you

18 are a covered person, that is to say if you spent at the

19 threshold of the Act on campaign media spending, you know,

20 then you have certain reports that are due and those reports

21 have to contain particular information.

22 So broadly speaking what that means is if

23 you're an entity like the Star Spangled Media or any other

24 entity that finds itself in a -- in a position where it might

25 be subject to the Act, you know, determining whether or not
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1 you are a covered person is a -- is a question of their own.
2 And -- and then the subsidiary question to determine that is
3 whether or not you engaged in campaign media spending. Those
4 are both defined terms.
5 Here -- so here there question is if you have
6 a news website, you know there's an exception then, as there
7 is in all campaign finance laws, at least that I know of in
8 the U.S. to -- for -- for the media, for the press.
9 And so -- so, you know, that really is a focus
10 here because this is a website that produces news content.
11 So that's issue one.
12 And I guess we can go on to the next slide,
13 Cathy.
14 So we tried to break down at the two-part test
15 that's a three-part test and that's the first part of the
16 test there, so. And we'll -- so that -- that's in the -- we
17 put this figure into the opinion draft to try to hopefully
18 help folks understand at least how we think the test works.
19 So you -- you go through is -- is the entity a
20 press entity, is it owner controlled, owner controlled by a
21 party committee or a candidate. And then is the activity
22 itself part of a legitimate press function. Those are what
23 we think are the big -- big steps along the way.
24 And then if we can go to next slide.
25 And then -- and I -- you know, I put that typo
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1 wouldn't say there is -- I should back up a second.
2 There are some more positive profiles than
3 others, but the bottom line is that they're profiles of
4 candidates and elected officials.
5 And "Is it owned or controlled by a party,
6 committee, or candidate?" No, and we have no reason to
7 believe otherwise.
8 So we can go to the next slide.
9 "Are the materials available to the general
10 public?" Again, yes, we think that they -- they are; it's on
11 a website; you can look it up, you know.
12 "Comparable in form?" This is where we came
13 to the sort of nonconclusion that at this point it's --
14 it's -- we're not in a position to say whether or not this
15 particular aspect would apply to Star Spangled Media.
16 We know some things for certain. The fact
17 that it is a new website is not a factor. So -- so it's --
18 so when doing the analysis, we're -- we're -- we're saying,
19 you know, it is, in fact, you know, a relatively new website
20 but that's not -- that's not really the -- the issue that we
21 consider on its own terms, right? The fact it's new is not
22 an issue.
23 And ideology is not a factor. In other words,
24 you can -- the press exception does not require you to -- a
25 news outlet to have its news coverage or its editorial
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1 in there as a watermark so everybody knows this is not
2 generated by AI. The "Are the" -- and it's reproduced in the
3 opinion in case anybody is worried about that.
4 Are the materials available to the general --
5 so in 2B, these are subsidiary questions to 2B. Step 1,
6 Step 2, Step 3, Step 4, Step 5. But they're nested, you
7 know.
8 So are the materials available to the general
9 public and are the materials comparable in form to those
10 ordinarily issued by the press entity.
11 So that that -- you know, are the materials
12 available to the general public we'll see is, we think, are
13 pretty simple. The materials comparable in form we think is
14 a somewhat more complicated question based on the
15 circumstances and -- and -- of the entity.
16 So I guess can we go to the next one, Cathy;
17 thank you.
18 So first question: "Is it a press entity?"
19 We think the answer to that question is it is a press entity.
20 The company, you know, regularly disseminates political and
21 nonpolitical news stories, commentaries and editorials. And
22 we reviewed the website and confirmed that, in fact, there
23 are news stories on nonpolitical topics as well as other --
24 other stories. Both positive and negative stor- -- I mean,
25 there are both positive and negative stories. Or, I mean, I
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1 policies be neutral in some kind of way or some kind of --
2 some kind of, you know, Associated Press, you know, sort of
3 approach to journalism.
4 And -- so but then the -- the real issue comes
5 in for us now in terms of trying to gauge this is treatment
6 of political and nonpolitical coverage, we concluded that we
7 would need some more information and/or perhaps the site
8 might in its -- in its -- in its correlated issue of boosting
9 the coverage, we'd need more information.
10 So really what we're looking there to just
11 boil it down as much as possible is, you know, the site's
12 been available since at least -- at least March, and there's
13 content dating until at least April. There is significant
14 amount of candidate profile-type content. You know, there is
15 less noncandidate or nonpolitical-type coverage.
16 And so on the record, we have, when you
17 compare it to the FEC General Counsel's analysis to which
18 the -- the company cites, we think it's not -- we're not
19 really in a position to say if -- if that particular part of
20 the test is met in a way that would -- you know, the idea of
21 this opinion, right, this opinion is to create essentially a
22 safe harbor for the folks who are -- who are asking for them.
23 And -- and we don't think we have enough information to do
24 that yet because the -- the baseline on the coverage in terms
25 of the breakdown we think is -- is just not sort of developed
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1 well enough yet for us to make that determination.
2 That -- that could change, you know,
3 obviously. And -- and -- you know, but...
4 So we want to be clear, though, that we're not
5 saying that this organization is outside of -- of the press
6 exception, right. So, so it's important to say that as much
7 as we are saying we need more information that is not --
8 we're not asking or -- or suggesting to the Commission in
9 contemplating this issue we've issued the contrary
10 conclusion. That's not -- not -- not the case.
11 So that's sort of the brass tacks of that
12 issue because of -- yeah.
13 So, again, the business income question I
14 think on this record is somewhat simpler. So why does this
15 income matter? Going back to if you're a covered person
16 engaged in campaign media spending, your business income is
17 not -- does not make you a covered person.
18 So, for example, the sort of, you know, very
19 obvious example of -- would be if Circle K Corporation, you
20 know, sells sodas and then goes out and spend adver- -- buys
21 advertising as Circle K Corporation, they're -- they would
22 not be a covered person under the Act. And the notion behind
23 that is that that regular commercial transactions that
24 generate revenue for the company are not something that
25 involves any sort of donation and -- and so it's essentially

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1 And, you know, there may be, you know -- so --
2 so -- so how does this fit in here? You know, what it means
3 is that the fact that this is not, at least as we understand
4 it from the AOR, business income, you know, what does that --
5 what does that mean here practically?
6 What it means is that it does not mean that
7 Star Spangled Media is a covered person. That's not the
8 consequence of -- of this at all. It simply says that --
9 that if -- you know, as we understand the grant, it -- and if
10 this company or another company went out and spent money from
11 a grant like this and that turned out -- and they did it on
12 campaign media spending above the thresholds, that they might
13 have to report who those donors are.
14 But -- but the opinion does not say and -- and
15 the question presented is not whether or not -- whether or
16 not the -- the -- we're not saying that Star Spangled Media
17 is necessarily a covered person. We can't make that
18 determination because we don't -- we are -- we are -- we are
19 back to the first part of the opinion saying specifically
20 that media exception could apply, for example.
21 So, you know, that's -- that's where we left
22 things. You know, it's a -- it's a little complex, but our
23 endeavor here was to try to provide as much as we could some
24 clarity to the -- to the transactions that the company's
25 engaged in. We do, I want to note, you know, do check off

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1 the company's own money.
2 So this is sort of the -- for -- for, you
3 know, especially for Commissioner Chan and Commissioner
4 Werther when you think about the -- the Halcyon days
5 immediately after Citizens United came down when -- when, you
6 know, this sort of perception that I think folks had, you
7 know, who might have been outside of the intricacies of -- of
8 the -- of campaign finances -- how campaigns are, in fact,
9 financed, there was sort of a notion of, oh, okay, so
10 corporation spending money.
11 Well if Coca-Cola goes out and spends money
12 that it has from selling Coca-Cola or Cherry Coke Zero, you
13 know that money there's -- there's no way to trace; there's
14 no influence there. There's no corruption there; it's simply
15 the company spending money, its own money. And so that's
16 where the definition gets at.
17 If we can go to the next slide then.
18 So here we have a for-profit LLC that is
19 receiving grants sort of that as I understand the request are
20 looking at sort of underwriting the overall operations of
21 Star Spangled Media. There's no -- there's nothing in the
22 AOR that suggests that, you know, there's an exchange here in
23 terms in the -- in the nature you might see in -- on a -- on
24 a national public radio station where your, you know, your
25 underwriting is actually advertising.

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1 those things that we think are, in fact, already satisfied.
2 In other words, they would -- they would from
3 a reliance perspective on the AOR, you know, it's designed to
4 say: Look, you've got this, this, and this. And we're
5 just -- we don't -- we have a question here.
6 And then likewise on the grant piece, the
7 grants as we understand them, are not -- are not under the
8 business income definition. But that would only be relevant
9 in the event that the company took an action that made it a
10 covered person by engaging in campaign media spending.
11 And also, obviously, if the grants turn out to
12 be different from what we've described or what we understand
13 them to be, you know, there's -- there's some nuances there
14 potentially.
15 So this is a long way of saying, you know,
16 this is an opinion that in some ways we hope provides some
17 can -- sheds some light on how to walk through the analysis
18 here, but it's not -- it's not designed to say a person is --
19 is a covered person. It's simply saying that a -- that a
20 person could be a covered we're simply -- we're just not --
21 we're just not providing an answer saying they're
22 definitively not a covered person.
23 So, you know, I thought about how to try to
24 make this simpler. I don't know that I succeeded.
25 But that -- that is our goal with is to try

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1 to -- try to provide an analytical framework for
2 practitioners who are trying to advise their clients on
3 navigating the -- both the media exception and the business
4 income issues.

5 And, you know, so that -- that's sort of where
6 we are -- where we end up.

7 So I guess I would -- I would leave it there,
8 Commissioners. If you have questions -- and then when we
9 do -- and I do have a correction to the -- to the -- that's
10 on the -- on the supplement that I sent out last night to
11 clarify the -- really does seek to make clear that particular
12 box along the way regarding the ownership control was
13 checked.

14 So that's -- that's sort of where we leave
15 things. Like I said, Mr. Chairman, I -- Jon is here so I'm
16 sure he -- well, I don't know, but he may want to -- he may
17 have comments or observations on any number of things.

18 CHAIRMAN KIMBLE: Any questions or comments
19 from members of the Commission?

20 (No audible response.)

21 CHAIRMAN KIMBLE: Tom, I -- let me see if I
22 can explain my concerns on this.

23 MR. COLLINS: Sure.

24 CHAIRMAN KIMBLE: There are a number of -- of
25 websites that purport to be news websites that have names
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1 *New Republic* or the *National Review*, right, those -- those
2 organizations are clearly media -- I mean, I don't think
3 anyone would dispute that -- and they clearly have a point of
4 view.

5 And so I think recognizing the First Amendment
6 concerns there, the FEC says: Look, ideology is not the
7 issue. You can't be just like: Hey, this is too much
8 coverage of Democrats or Republicans or whatever. That's not
9 the issue.

10 What -- and in the MUR that -- that -- that is
11 discussed in the opinion and in the AOR the, you know,
12 General Counsel's office talks about that and other -- other
13 opinions of the FEC talk about that.

14 What then the question is and what the Supreme
15 Court has looked at in the First Amendment context is what
16 are the notion -- what are the -- what the Supreme Court
17 calls "considerations of form." So the paradigm example in
18 the Supreme Court case law is a case involving the group
19 Massachusetts Citizens For Life.

20 Massachusetts Citizens For Life had a
21 newsletter that went out regularly. And then during the
22 election they did a bonus issue, if you will, of a newsletter
23 with a different production staff, with a broader
24 distribution. They, I think, printed it in a different
25 place, and so the Supreme Court, in looking at that said,
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1 such -- you know, generic names that would lead you to
2 believe that it was a news website. And they have
3 primarily -- well, maybe not primarily, but they have a lot
4 of political coverage about favored candidates, and they
5 cloak some of this with other news not about those
6 candidates, general news from other sources and stuff. But
7 to even the casual reader, it is clear the purpose of the
8 website is to support certain candidates or certain points of
9 view.

10 If I'm right about the kind of websites I'm
11 talking about and would -- would other -- would they be
12 covered -- would they be exempt because they are cloaking
13 their political views with some kind of canned news?

14 And I don't know if I've explained what I mean
15 but...

16 MR. COLLINS: Mr. Chairman, I think -- no, I
17 mean, I think that's -- that's -- that's -- I think that's
18 sort of -- I mean, that is an issue here in -- in -- in this
19 general zone.

20 The -- the way that the FEC has analyzed that
21 specific question takes some of the things that you're
22 concerned about off the table. It takes off the table
23 ideological predisposition from the -- from the content. In
24 other words, if you're -- I mean, and that, you know, that
25 kind of makes sense in the sense that if you read the
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1 Well, here's what they do and here's what they did here and
2 there's -- there's a break there.

3 And -- and so in the context of exactly the
4 news, the type of news sites that you're talking about which
5 is the Star Spangled Media pointed to, is that the FEC has,
6 in fact, dealt with this in the context of a different -- I
7 believe different company that had, you know, a similar
8 business model. And, for example, they looked specifically
9 at memo -- in that case, they looked specifically at memos
10 that the publisher in that publication wrote that said
11 quite -- in black and white: The purpose of our -- or a
12 purpose of our publication and a benefit of our publication
13 will be to benefit Democratic candidates, etc.

14 And the FEC said that's not -- that's not the
15 issue, right.

16 So you've got essentially in the FEC records
17 in the case -- sort of case that has all these -- has all
18 those similarities to this one, they said: Look, the fact
19 that you got a memo from the publisher that says the purpose
20 of this website to promote Democratic party interest is
21 not -- that's not -- that's not an issue that we're going to
22 cause them to lose their media exception. Rather, we're
23 going to look at, you know, what are they doing as an
24 editorial policy? Are they running, you know, different --
25 are they -- are they actually running a mix of nonpolitical
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1 and political news, what's their -- what's their general
2 approach to this, and are they operating consistent with
3 that?
4 And in that particular case based on, you
5 know, sort of our reading of the General Counsel's FEC's
6 report in that case versus this one, we don't know as much
7 now about where this group is at, at least in our
8 perspective, because we -- as we counted it, you know, we
9 have, you know, somewhere around ten general interest stories
10 in different categories and then somewhere -- a larger number
11 of profiles of public officials and -- and -- and candidates.
12 So, so you know it's a little hard for us --
13 it's a little hard for us to gauge that exactly what you're
14 talking about from a forum issue. But I think the most
15 important takeaway is as much as someone might be concerned
16 about ideology or the fact that a publication, you know,
17 necessarily has an ideological interest, that's -- that's
18 not, for First Amendment purposes and for regulatory
19 purposes, that's just not the factor we're going to look at.
20 Does that make sense?
21 CHAIRMAN KIMBLE: It makes sense. I guess my
22 bottom -- bottom line concern is, are we potentially opening
23 up a loophole that Proposition 211 was designed to close
24 telling people that if you put some general other stuff
25 around your political message, it therefore becomes media.

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1 because the fact it's a new publication and the fact that
2 it's a -- you know, and the -- and the amount of content
3 available. So we're -- we're simply saying, you know, on
4 balance here, you know, is the -- the AOR emphasizes: We do
5 both; we do nonpolitical and political. You know, with
6 emphasis. There's an emphasis on the "and" in the AOR.
7 But then looking at that in context it's like,
8 well. That's exactly where we are; we just don't have -- we
9 don't feel like we have enough information setting this.
10 Because what the FEC analysis sort of asks is: Are we trying
11 to -- is trying to establish a baseline, a comparison
12 essentially, going forward.
13 So, you know, we did -- you know, we struggled
14 with that, but we think that -- and we think that for the
15 time being the -- the -- the correct answer is to sort of try
16 to point to where the General Counsel -- why the General
17 Counsel concluded that the courier case which it had which
18 dealt with a lot of these same issues, that -- how that works
19 and why we don't think that we can on the record say that --
20 say that the monitor, the Star Spangled Media, fits -- fits
21 within that at that point, so.
22 COMMISSIONER PATON: I have a
23 question/comment.
24 MR. COLLINS: Sure.
25 CHAIRMAN KIMBLE: Commissioner Paton.

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1 MR. COLLINS: Well, I guess I wouldn't say
2 that we are opening a loophole at all. That -- that rather
3 what we're trying to deal with is the -- the outskirts of the
4 media exception, right.
5 So there is -- there are a number of different
6 theories on why there ought to be a media exception, most of
7 them are grounded in some kind of way within the First
8 Amendment's press protections.
9 So if you -- to go back to the example of
10 *National Review/New Republic*, which I know dates me
11 significantly in the current climate, but we know -- we know
12 that those publications have different ideologies and
13 definitely promote the issues of their -- their ideologies at
14 a minimum, not the parties.
15 So -- so we're trying -- what we're trying to
16 do is say, okay, there's still -- you know, is it -- is it a
17 legitimate -- I mean, that's the words in the test --
18 legitimate test function, so that we are trying to probe on
19 the question of whether or not it's legitimate. But
20 legitimacy, the framework of answering the question, is going
21 to have to do with whether or not there's a norm established
22 that -- that we can -- that, within the publication
23 essentially, that -- that we can look to.
24 And here, right, so we get -- we have a ver --
25 we have limited facts and I understand there's some tension

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1 COMMISSIONER PATON: So I'd like to see a ball
2 or a strike.
3 MR. COLLINS: I know. I know.
4 COMMISSIONER PATON: And so -- I mean, the
5 great minds are thinking of all this, you know, that's why
6 they're proposing this -- this -- this question to us.
7 Should we have like a percentage? Are you
8 going to sit down and say, well, its got to be 51 percent dog
9 bite stories compared to, you know, Trump or Biden or
10 whatever?
11 Is that what you're fishing for?
12 CHAIRMAN KIMBLE: Well before you answer, Tom,
13 let me follow up on what Commissioner Paton said.
14 Your -- your draft says: "Because the
15 Commission cannot conclude the press exception
16 applies, the Commission cannot conclude the Star
17 Spangled Media is not a covered person, does not
18 intend to engage in campaign media spending.
19 Equally important however, the Commission is not
20 including the oppo- -- is not concluding the
21 opposite. Simply put, more facts about Star
22 Spangled Media's internal operation and news
23 presence in Arizona would be necessary for the
24 Commission to reach a reasoned conclusion about
25 whether the press exception applies."

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1 So what use is this to Star Spangled Media?
2 Does this provide them any guidance or not?
3 MR. COLLINS: Well -- well, if I could answer
4 Commissioner Paton's question then your question, and I
5 assume at this point Jon would love to answer your -- your
6 question. So I guess I'll get to go first on that.
7 To your question, I don't read the FEC as --
8 as saying there's a percentage and I -- I'm -- I would be
9 real hesitant to do that in an opinion. You know, if -- if
10 it's -- it's -- there's a -- there's a -- there's a -- I
11 mean, there's -- the problem is there's a real -- is that it
12 is just is really right in the -- in the -- in the
13 intersection between, you know, core First Amendment issues
14 of press protection, which are their own thing --
15 COMMISSIONER PATON: Yeah.
16 MR. COLLINS: -- and -- and the regulation of
17 money and politics, and -- you know, so I don't -- I think
18 that quite honestly, Commissioner Paton, as much as it, you
19 know, pains us, we will end in a qualitative universe not a
20 percentage universe.
21 COMMISSIONER PATON: Except for this is going
22 to come before us and --
23 MR. COLLINS: No, I understand.
24 COMMISSIONER PATON: -- and we're going to be
25 hashing this --

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1 MR. COLLINS: Sure, sure.
2 COMMISSIONER PATON: It's all about the
3 language; it's all about how far can we stretch this or that
4 or whatever.
5 MR. COLLINS: Right, right.
6 COMMISSIONER PATON: So I think we -- I hate
7 to do this 'cause I don't like a bunch of rules.
8 MR. COLLINS: Right.
9 COMMISSIONER PATON: But I think if we said:
10 All right, if it's 50 percent dog bite stories, then that's
11 enough -- a lot of filler, that's a lot of other stuff --
12 MR. COLLINS: Right.
13 COMMISSIONER PATON: -- then I -- then maybe
14 they're okay. You know?
15 MR. COLLINS: I -- I mean, Mr. Chairman,
16 Commissioner, I think -- I take -- I take all those points.
17 I think that there's -- I think there's a case being made
18 there. I think if we -- if we -- just before we get to back
19 to Commissioner Kimble's other question, what I will say
20 about that is this, there's -- as much as I'm sure that --
21 well, I'm not sure, but -- but as much as there is an
22 incentive institutionally to get this voted on today and
23 produced and out, right, that's not -- that's not -- there's
24 nothing -- there's nothing that requires that.
25 So if there's stuff we think we would want to

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1 MR. COLLINS: Right.
2 COMMISSIONER PATON: -- and we're going to
3 say: Well, Tom, can you count how many articles were about
4 dog bite stories --
5 MR. COLLINS: Right, right.
6 COMMISSIONER PATON: -- and we're going to
7 have to go from there.
8 MR. COLLINS: Right.
9 COMMISSIONER PATON: I think if we have a
10 target --
11 MR. COLLINS: Yeah.
12 COMMISSIONER PATON: -- then they know what
13 they can do and what they can do I think. Do you understand
14 what I'm saying?
15 MR. COLLINS: Mr. Chairman, I do --
16 COMMISSIONER PATON: This is -- this is
17 gobbledygook to me right now.
18 MR. COLLINS: No, I understand.
19 MR. PATON: I tried to read this last night
20 and I was --
21 MR. COLLINS: Yeah --
22 COMMISSIONER PATON: You know.
23 MR. COLLINS: Well, I --
24 COMMISSIONER PATON: This is what lawyers do,
25 you know. And you're a lawyer so I can pick on you, too.

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1 revisit as far as trying to look at what we might do to get
2 to a brighter line rule here and/or whether or not we would
3 as a staff want to make a recommendation that that -- if we
4 are going to go that route, that it go through a different
5 regulatory avenue, right, those are both real questions --
6 COMMISSIONER PATON: Yeah.
7 MR. COLLINS: -- and we could come back to
8 those in a subsequent meeting.
9 COMMISSIONER PATON: Maybe we could ask Kara,
10 is this something that -- that you see coming to us and that
11 we're going to be stewing about on --
12 MR. COLLINS: This is -- this is the Executive
13 Director's role --
14 COMMISSIONER PATON: Okay.
15 MR. COLLINS: -- it's not a Kara question.
16 COMMISSIONER PATON: Okay.
17 MR. COLLINS: It's just not, I'm sorry.
18 But the -- so -- so I take your point. And I
19 think that if we want to work through that question, we would
20 need some more time to talk to internally, come back with a
21 recommendation on two points.
22 Number one, whether or not we can in
23 reanalyzing the -- the -- reanalyzing this question, looking
24 for more -- a better, more black-and-white, definitive way
25 that provides more guidance and/or maybe reaches a conclusion

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1 that's we could -- I mean, I don't know, we would have to do
2 that research.

3 And secondly, to specifically answer the
4 question of, you know, what would be a rule that anybody
5 could pick up and be like, boom, this is it.

6 COMMISSIONER PATON: Right.

7 MR. COLLINS: What is the avenue to do that --

8 COMMISSIONER PATON: Right.

9 MR. COLLINS: -- because that's through an
10 AOR, too. I'm happy to do that.

11 COMMISSIONER PATON: Maybe we can ask him what
12 he wants.

13 MR. COLLINS: Yeah, I think -- well, I think
14 that's what Mark wants to do so, yeah.

15 CHAIRMAN KIMBLE: Okay, yes. So Mr. Berkon,
16 the floor is yours.

17 MR. BERKON: Thank you, and, first of all,
18 very much appreciate giving me the time and your
19 consideration of this opinion and the others that -- that our
20 firm has submitted. As -- as Mr. Collins noted, I think this
21 process is very helpful to the regulated community in order
22 to get a sense of how these issues will be flushed out, and
23 so we -- we very much appreciate that.

24 Regarding the draft opinion, I mean, my own
25 view is I -- I do find the opinion to be helpful both to my
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1 So I do think it provides an objective test.
2 I know it kind of takes a number of pages into the opinion to
3 get there just because I think it was necessary to explain
4 why that might be the test, but I do think it actually sets
5 forth a test that practitioners in this space fundamentally
6 understand and are familiar with.

7 CHAIRMAN KIMBLE: Okay. So to summarize, you
8 are supportive of Mr. Collins' analysis and his
9 recommendation?

10 MR. BERKON: Yeah, I am. And, obviously, you
11 know, we have our views about our particular -- our client,
12 but I understand the reservations given the newness of the
13 organization. And frankly, this is a bit of an iterative
14 process I think we've seen with some of the other advisory
15 opinions: There's a request, there's kind of a
16 back-and-forth. Because the regulative community doesn't
17 have a clear understanding necessarily of what all the
18 grounds rules are going to be, I think figuring out kind of
19 the -- the factual presentation is necessary in order to get
20 a firm answer of something we are all trying to figure out.

21 So I think, you know, given the timeline here,
22 this provides us with a significant amount of guidance.

23 I think, clearly, the Commission is not saying
24 yes or no such that if we wanted an advisory opinion to say
25 "you have a shield from enforcement," we would have to come
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1 client but also to the regulated community at large insofar
2 as I do think it -- first of all, I think it notes that the
3 Commission would follow the Federal Election Commission's
4 test, both the judicial precedence and also the Federal
5 Election Commission's own enforcement of its comparable media
6 exception.

7 So that in and of itself is enormously helpful
8 because there is a -- at this point, almost a 40-year history
9 regarding enforcement of this -- of this rule. So that's I
10 think very, very helpful.

11 The consideration -- and I think it applies
12 the right test. Right? I think the hard part here, which
13 all of you have touched on -- and it is, it is legitimately a
14 hard area of the law, is I think we get into trouble -- "we"
15 meaning kind of like those who try to figure out how speech
16 is regulated generally -- when we engage in content-based
17 rules in this area.

18 And so the emphasis on forum and
19 considerations of forum which the Federal Election Commission
20 has focused and on which this -- this opinion focuses on, I
21 think is actually the right test and provides a standard
22 against which, you know, both my client and other media
23 entities in the space can -- you know, can determine whether
24 or not their conduct conforms to it and, if not, to conform
25 their conduct to it.

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1 back with another advisory opinion, right, to provide the
2 information that's requested. But, obviously, it's not, you
3 know.

4 But setting us aside from the regulated
5 community, there are those that prefer to proceed without an
6 advisory opinion, and I think they can look at this and have
7 an understanding of how in the case of an enforcement action,
8 the Commission would deal with it. Those who prefer the
9 security of the advisory opinion, like my client, I think,
10 you know, would have to come back with -- with additional
11 facts.

12 But I think the test articulated is -- is the
13 right one, and I think that provides a helpful structure.

14 CHAIRMAN KIMBLE: Okay. Thank you very much,
15 Mr. Berkon.

16 Are there any other questions or comments from
17 members of the Commission?

18 COMMISSIONER ESTES-WERTHER: Mr. Chairman.

19 CHAIRMAN KIMBLE: Commissioner Werther.

20 COMMISSIONER ESTES-WERTHER: So I also
21 understand sort of the reasoning for why we'd like a
22 bright-line test; I think that always helps everyone. But in
23 this instance, we do have an existing test, and I think
24 people are comfortable and the community is comfortable kind
25 of relying on what the FEC has already outlined, as well as
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1 the fact that there is already case law to support it.

2 So I think from our perspective, while we

3 could create a rule that has a certain percentage or

4 something like that, we would sort of be charting new

5 territory in a sense versus if something like this come

6 forward to us as a complaint, we actually have something else

7 we can look at and look at maybe some other cases that have

8 been handled by the FEC if we are relying on this test.

9 So I'm hopeful that that will -- we won't get

10 too much in that situation, although I know that might occur.

11 But I think I would be more in favor of just relying on the

12 analysis and sort of the test that's already existing.

13 CHAIRMAN KIMBLE: Thank you, Commissioner.

14 Any other comments from members of the

15 Commission?

16 (No audible response.)

17 CHAIRMAN KIMBLE: Any other comments from

18 members of the public or any other interested parties?

19 (No audible response.)

20 CHAIRMAN KIMBLE: Any other comments you

21 Mr. -- you wanted to make, Mr. Berkon?

22 MR. BERKON: Nothing more from me, thank you.

23 CHAIRMAN KIMBLE: Okay. Thank you.

24 Okay. So does any member of the Commission

25 wish to make -- make a motion whether to approve the advisory

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1 for consideration of comments and suggestions from the

2 public. Action taken as a result of public comment will be

3 limited to directing staff to study the matter or

4 rescheduling the matter for further consideration and

5 decision at a later date or responding to criticism.

6 Please limit your comment to no more than two

7 minutes.

8 Anyone wish to make a comment? Anyone on Zoom

9 wish to make a comment?

10 (No audible response.)

11 CHAIRMAN KIMBLE: Not seeing anyone.

12 The public may also send comments to the

13 Commission by e-mail at ccec@arizonacleanelections.gov.

14 Item VII, adjournment. At this time, I would

15 entertain a motion to adjourn.

16 COMMISSIONER ESTES-WERTHER: I make a motion

17 to adjourn.

18 CHAIRMAN KIMBLE: Is there a second?

19 COMMISSIONER PATON: Second.

20 CHAIRMAN KIMBLE: It's been moved and seconded

21 that we adjourn. I will call the roll.

22 Commissioner Chan.

23 COMMISSIONER CHAN: Aye.

24 CHAIRMAN KIMBLE: Commissioner Werther.

25 COMMISSIONER ESTES-WERTHER: Aye.

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1 opinion or send it back for more work or whatever your

2 pleasure?

3 COMMISSIONER ESTES-WERTHER: Mr. Chairman.

4 CHAIRMAN KIMBLE: Commissioner Werther.

5 COMMISSIONER ESTES-WERTHER: I motion to

6 approve the Advisory Opinion 2024-05.

7 CHAIRMAN KIMBLE: Okay, there's a motion to

8 approve the advisory opinion. Is there a second?

9 COMMISSIONER PATON: I'll second.

10 CHAIRMAN KIMBLE: Thank you, Commissioner

11 Paton.

12 It's been moved and seconded that we approve

13 the advisory opinion as written. I'll call the roll.

14 Commissioner Werther.

15 COMMISSIONER ESTES-WERTHER: Aye.

16 CHAIRMAN KIMBLE: Commissioner Paton.

17 COMMISSIONER PATON: Aye.

18 CHAIRMAN KIMBLE: Commissioner Chan.

19 COMMISSIONER CHAN: Aye.

20 CHAIRMAN KIMBLE: Chair votes aye.

21 The motion is approved 4-to-nothing.

22 Thank you very much, Tom. And thank you very

23 much, Jon, for your comments.

24 MR. BERKON: Thank you so much; appreciate it.

25 CHAIRMAN KIMBLE: Item VI. This is the time

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1 CHAIRMAN KIMBLE: Commissioner Paton.

2 COMMISSIONER PATON: Aye.

3 CHAIRMAN KIMBLE: Chair votes aye.

4 We are adjourned. Thank you very much.

5 (Proceeding concludes at 10:49 a.m.)

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C E R T I F I C A T E

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing proceedings were taken before me, Angela Furniss Miller, Certified Reporter 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.

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

I FURTHER CERTIFY that I have complied with the requirements set forth in ACJA 7-206. Dated at Litchfield Park, Arizona, this 2nd of July, 2024.



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

* * *

I CERTIFY that Miller Certified Reporting, LLC, has complied with the requirements set forth in ACJA 7-201 and 7-206. Dated at LITCHFIELD PARK, Arizona, this 2nd of July, 2024.



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**CITIZENS CLEAN ELECTIONS COMMISSION
EXECUTIVE DIRECTOR REPORT
July 25, 2024**

Announcements:

- **The Primary Election is July 30, 2024.**
 - Last Day to Vote Early In-Person July 26, 2024
- **The General Election is November 5, 2024**
 - The voter registration deadline is October 7
 - Early voting begins October 9
- **Presidential Nomination Process:**

With the announcement that President Biden will not accept the nomination of the Democratic Party for President, we wanted to outline the presidential election process from an Arizona Election Official point of view:

<p>1. Arizona Presidential Preference Election (PPE) Results The PPE was held on March 19, 2024, where Joe Biden received the most Democratic votes, was just the first step. It's important to note that it didn't automatically make him the official party candidate.</p>
<p>2. Party Delegates' Role Arizona Democratic Party delegates are typically bound to vote for the PPE winner at the national convention. However, since Joe Biden has withdrawn from the race, these delegates are now free to vote for any candidate they choose.</p>
<p>3. Official Party Nomination The Democratic Party must now select its official presidential candidate through internal processes. This decision is made by party officials and delegates, not directly by voters. The Democratic National Convention is August 19 – 22.</p>
<p>4. Filing Nomination Paperwork Once the party has chosen its nominee, the state party chair must file official nomination paperwork with the Arizona Secretary of State. This paperwork includes the names of the presidential and vice-presidential candidates, along with their 11 electors (representing Arizona's electoral votes).</p>
<p>5. Ballot Deadline While the nomination paperwork for the 11 electors must be filed by August 9, 2024, the final deadline for the Democratic Party to notify the Arizona Secretary of State of the official presidential nominee is August 25th. These dates are determined by Arizona's statutes and procedural processes, including proofing and printing requirements.</p>
<p>6. UOCAVA Ballot Deadline Voting officially begins when ballots for overseas and military voters (UOCAVA ballots) are sent out on September 21, 2024, which is the date established by federal law.</p>
<p>7. Early Voting Arizona early ballots will officially go out in the mail on October 9th.</p>

Voter Education and Outreach:

- Staff has been distributing Voter Education Guides outreach to Tribal offices, facilities and Post offices on reservations
- Tom and Avery attended Disability Rights Arizona's African American Conference on Disabilities. Tom participated in a panel discussion with federal Election Assistance Commission member Thomas Hicks and Secretary Fontes discussing policy and legal issues facing voters with a disability.
- Gina and her team continue to work with partners such as the Secretary of State, County Recorders and Elections administrators on voter education efforts. For example, they recently met with the Coconino County Recorder's office on social media and voter education efforts and developed new website content in response to their requests. A recent project resulted in new content for voters who are eligible to vote in federal elections but not state elections, an issue of increasing concern to election officials.
- Avery presented at Ability 360 for Vote The Spectrum
- Avery maintains his connections with the Arizona African American Legislative Council, NAU Votes, Maricopa Community colleges, Ed Pastor Center and actively participates in the AZSOS Engagement Advisory Board committee.
- Avery represented Clean Elections at the 76th Anniversary of the Native Right to Vote event with the Inter Tribal Council of Arizona and the Arizona Native Vote.
- Avery held morning and evening workshops for Rio Salado Student Life & Leadership covering the 2024 Primary Election ballot.

Administration and Correspondence from Other Agencies:

- Update on Primary Participating Candidates:
Total Participating Candidates - 47
Legislative Participating Candidates - 42
Statewide Participating Candidates - 5
Funded Candidates - 36
- The Secretary of State worked with our staff to update the filing process for Voter's Right to Know Act reports. We are optimistic the new mechanism will help make information publicly available more readily. You can view the filing information here: <https://azsos.gov/elections/campaign-finance/vrka-reporting>.
- The Legislative Council, an agency of the legislature, voted on descriptions of statewide initiatives and referendums that will get into the Secretary of State's Publicity Pamphlet, the booklet containing all of the ballot propositions. A full list of statewide ballot measures and the descriptions is available at this link: <https://www.azleg.gov/ballot-measures-2024-analyses/>.

- The table below identifies the statewide ballot measures currently set to be on the ballot in November. There will be additional county and local measures. Election officials expect that with this many ballot measures as well as the judicial retention election, the ballot will require additional sheets.

Bill		Description
Prop. 133	HCR2033 (2023)	primary elections; eligible candidates
Prop. 134	SCR1015 (2023)	initiative; referendum; signatures; legislative districts
Prop. 135	HCR2039 (2023)	governor; emergency; powers
Prop. 136	SCR1041 (2024)	ballot measures; challenges
Prop. 137	SCR1044 (2024)	judicial retention elections
Prop. 138	SCR1040 (2024)	tipped workers; wages
Prop. 311	SCR1006 (2023)	death benefit; assault; first responders.
Prop. 312	HCR2023 (2024)	property tax; refund; nuisance enforcement
Prop. 313	SCR1021 (2024)	sex trafficking; child; natural life
Prop. 314	HCR2060 (2024)	border; benefits; fentanyl; illegal entry
Prop. 315	SCR1012 (2024)	rulemaking; legislative ratification; regulatory costs
Prop. ___	I-02-2024	One Fair Wage Act
Prop. ___	I-05-2024	Arizona Abortion Access Act
Prop. ___	I-14-2024	Make Elections Fair Arizona Act

Source:azleg.gov

- July 3 marked the last day to file initiative petition signatures. Three measures were filed by organizations, including measures related to abortion, an overhaul of Arizona elections including the Presidential Preference Election, the State primary and the General Election, and an effort to increase wages for workers. Two of these measures have competing issues placed on the ballot. The Secretary of State has been reviewing the petitions for compliance. After their review is complete, a sample of petitions is sent to the county for review. When that is complete statute mandates a calculation to determine if the measure qualifies.

Legal:

Commission

- Center for Arizona Policy v. Arizona Secretary of State, 1CA-CV24-0272, Arizona Court of Appeals.
 - Appeal from the Superior Court. Briefing ongoing.
- Americans for Prosperity v. Meyer, No. 24-2933 (9th Cir.).
 - Plaintiff filed its notice of appeal.
- Toma v. Fontes, 1CA-CV24-0002, Arizona Court of Appeals.
 - Following the Court of Appeals decision last month, we anticipate a Petition for Review to the Arizona Supreme Court by the legislative leaders.
- 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

Lawsuits have been filed challenging several legislative referendums as well as the Legislative Council descriptions above. Anticipate additional suits over many aspects to the ballot measure process. Previous election years have features challenges to the sufficiency of signatures on petitions, legal flaws in petitions, and the ballot language drafted by state officials.

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.**

1001 North Central Avenue, Suite 404
Phoenix, Arizona 85004

July 3, 2024

Via Email

Arizona Citizens Clean Elections Commission
c/o Thomas Collins, Executive Director
1110 West Washington Street
Phoenix, Arizona 85007

RE: Request for Advisory Opinion

Dear Commissioners:

Pursuant to A.A.C. R2-20-808, Solutions for Arizona PAC (“Solutions”) and Greater Phoenix Leadership, Inc. (“GPL”) seek an advisory opinion from the Arizona Citizens Clean Elections Commission regarding Solutions’ proposed activities. Solutions intends to engage in activity that it assumes for the purposes of this request will constitute campaign media spending under the Voters’ Right to Know Act (the “Act”) and seeks this advisory opinion in order to clarify the Act’s advertisement disclaimer requirements. *See* A.R.S. § 16-974(C); R2-20-805. GPL, in turn, seeks clarification as to whether it will appear on such a disclaimer.

Further, Solutions and GPL request an expedited advisory opinion from the Commission within 20 calendar days under R2-20-808(C)(2) because it submits this request within 60 calendar days of the Arizona primary on July 30, 2024. Solutions intends to place various advertisements, in the form of street signs and digital advertisements, in Maricopa County to influence multiple county and state legislative races. Accordingly, time is of the essence for Solutions to have clarity as to its activity.

I. Background

A. Solutions for Arizona PAC and its donors

Solutions for Arizona is an Arizona political action committee. Solutions accepts corporate contributions and engages in non-contribution activity, including but not limited to the independent production and distribution of advertisements in

support of state and local candidates. During the 2022–2024 election cycle, Solutions’ largest source of contributions is the Committee for Arizona Leadership (“CAL”). In turn, CAL’s largest source of contributions is GPL.¹ GPL is a nonprofit incorporated under the laws of Arizona. It is organized and operated as a 501(c)(6) membership organization, with local business owners who pay annual membership dues.²

B. Solutions’ proposed campaign media spending

Solutions intends to create and distribute street signs and digital advertisements in support of certain candidates seeking county or legislative office. For the purposes of this request, we assume that Solutions will spend more than \$25,000 on these efforts during the current election cycle, and that the ads will constitute “public communications” that satisfy the definition of “campaign media spending” under A.R.S. § 16-971(2)(i), (ii), or (iii).

To create and distribute these ads, Solutions intends to use funds contributed by CAL during the current election cycle. CAL has indicated that the funds it contributed to Solutions all came from GPL. GPL contributed more than \$5,000 to CAL and did not opt out of the use of its funds for campaign media spending. Of the money GPL contributed to CAL, no GPL subdonor (which for the purposes of this request should be assumed to be “original source” or “sources of original monies”) contributed more than \$5,000.

Because none of the contributions from original sources to GPL exceed \$5,000, none should appear on the disclaimer. *See* R2-20-805(C). Solutions has one other direct donor (“Third Donor”) who has contributed over \$5,000, but that donor does not have any subdonors or original sources who have given over \$5,000. Accordingly, Solutions intended to list CAL, GPL, and Third Donor in its ad disclaimer as its “top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle.”

II. Questions Presented

¹ CAL is a nonconnected committee—that is, it has no corporate sponsor and is accordingly not registered as a separate segregated fund.

² For the purposes of this request, we assume that GPL members pay more than \$5,000 total annually in dues, thus preventing their funds from constituting GPL’s “business income” under A.R.S. §16-971(1)(b).

Does A.R.S. §16-974(C) or R2-20-805 require Solutions to list *only* sources of original monies on its ad disclaimer?

III. Proposed Answers

No. The Act does not require Solutions to list *only* original sources of money—assuming an ultimate, intermediary donor to Solutions is among its top three contributors during an election cycle, an ultimate, intermediary donor should be listed.

IV. Analysis

The Act requires public communications from covered persons to include a disclaimer that lists “the names of the top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle to the covered person.” A.R.S. § 16-974(C). Only donors who have made contributions “in excess of \$5,000 for the election cycle” appear on the disclaimer. R2-20-805(C).

Accordingly, in this instance where no entity donor has any subdonors in excess of \$5,000, depending on the Commission’s interpretation of the disclaimer requirement, Solutions’ ads will either identify its top three entity donors (CAL, GPL, and Third Donor) or *no one*. Because the latter seems to create an absurd interpretation of the Act, Solutions seeks clarity in order to ensure its compliance.

Requiring “*donors* who directly or indirectly made . . . contributions of *original monies*” to appear on the disclaimer is not the same as requiring only *original sources*. A direct donor who received money from elsewhere and then contributed it to a covered person may still contribute original monies, despite not being the original source of such funds.

The Act itself makes clear that “donors,” “original sources,” and “original monies” are distinct concepts. The statutory disclaimer requirement directs covered persons to list the “top three donors” in the disclaimer. Using “donors” here is broader than “original source,” which is notably used elsewhere in the Act. *See* A.R.S. § 16-973(A)(7) (requiring covered persons to disclose “[t]he identity of each person that acted as an intermediary and that transferred, in whole or in part, traceable monies of more than \$5,000 from *original sources* to the covered person” (emphasis added)); A.R.S. § 16-973(G) (“This section does not require public disclosure of or a disclaimer regarding the identity of *an original source* that contributes, directly or through intermediaries, \$5,000 or less in monies or in-kind contributions during an election cycle to a covered person for campaign media spending.” (emphasis added)).

Section 16-974(C) requiring “donors” on the disclaimer as opposed to “original source” indicates the broader reading applies here. *See Egan v. Fridlund-Horne*, 221 Ariz. 229, 239 ¶ 37 (App. 2009) (courts “presume that when the legislature uses different wording within a statutory scheme, it intends to give a different meaning and consequence to that language.” (citation omitted)). Indeed, the Act refers to “sources” and “intermediaries” as distinct, *see* A.R.S. § 16-973(D), but -974(C) does not discriminate between the two and requires “donors,” whether they be original sources or intermediaries between an original source and the covered person. An intermediary donor, therefore, is a “donor” subject to the Act’s disclaimer requirement.

The Act’s text and structure further supports this interpretation. To start, the Act makes clear that original monies do not lose their nature as original monies simply because they have left the hands of the original source. Accordingly, an intermediary donor can be a “top . . . donor[] who directly or indirectly made the three largest contributions of original monies” under A.R.S. § 16-974(C).

Under A.R.S. § 16-971(19) a “transfer record” is “a written record of the identity of each person that directly or indirectly contributed or *transferred more than \$2,500 of original monies* used for campaign media spending, the amount of each contribution or transfer and the person to whom those monies were transferred.” (Emphasis Added.) Because original monies can be *transferred* from person to person, they do not lose their nature of being “original monies” simply because they have left the possession of the original source.³ Otherwise, the moment the original source donated the original monies to some other entity, they would cease to be “original monies” and *no* monies would appear on the transfer record. Instead, the transfer record requirement contemplates “original monies” changing hands, meaning a top donor that was the last in the transfer chain to the covered person may still make a contribution of “original monies” and thus be a “top . . . donor” listed in the disclaimer.

³ Based on the definitions of “original monies” and “traceable monies,” funds remain “original” until such time when they are contributed to the covered person and then become “traceable monies.” Section 16-971(18) defines “traceable monies” as those that “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” These can only be funds at the end stage of their 211 journey—those that have already been given to a covered person for opt out or use in campaign media spending. Before that, funds aren’t yet traceable monies, and must remain “original monies” even as they pass through the hands of intermediaries.

Further, the disclaimer rule speaks only to “contributions.” which are defined broadly to include any “money, donation, gift, loan or advance or other thing of value” A.R.S. § 16-971(6). The use of the term “contributions” indicates that money at any stage may qualify as a top contribution for purposes of the disclaimer, even if an “intermediary” makes a contribution to a covered person.

Beyond the Act’s text, requiring *only* original sources on the disclaimer would undermine the Act’s purpose and intent. If the Act required only original sources, then Solutions’ disclaimer for its planned public communications would list no sources because no original source exceeds \$5,000. Interpreting the Act’s disclaimer requirement to mandate the top three donors, whether they be direct donors, intermediary subdonors, or original sources, ensures *some* donors are always publicly listed rather than create the potential no one is listed.

Solutions has considered that interpreting “top three donors” in § 16-974(C) to include intermediary donors result in accounting twice (or even three times) for the same funds in the disclaimer because the donors listed on the disclaimer could have at separate times, possessed the same dollars as they eventually made their way to the covered person. But even in that scenario, the disclaimer promotes transparency because it would capture the full line of who touched the money and provide more disclosure, rather than less, for the voters.

In another telling example, interpreting the disclaimer to require only original sources would help to shield the conduct of intermediary groups. If a wealthy but unrecognizable individual donor gave to a well-known but politically controversial nonprofit, who then gave to another politically controversial nonprofit, who then gave to a covered person who ultimately spends the funds, voters would have no idea the spending really came from these politically controversial groups because the disclaimer would *only* list the unknown wealthy donor. Voters seeing the public communication would not know to associate the communication with the more salient identity of the intermediary. Solutions’ proposed construction of A.R.S. § 16-974(C) and R2-20-805, on the other hand, would require, in this example, to state “funding provided by Nonprofit Group 1, Nonprofit Group 2, and Unrecognizable Wealthy Donor.” This disclaimer is far more informative to voters than just “funding provided by Unrecognizable Wealthy Donor.”

V. Conclusion

In an effort to comply with the Act’s disclaimer requirements and avoid an interpretation that may create absurd results, Solutions and GPL seek guidance as to whether A.R.S. § 16-974(C) and R2-20-805 contemplate not just *original sources* in

the Act's disclaimer requirements but any donor (original or intermediary) among the "top three donors who directly or indirectly made the three largest contributions of original monies" to the covered person.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy Herrera", with a stylized flourish at the end.

Roy Herrera
Jillian L. Andrews
Austin T. Marshall

1001 North Central Avenue, Suite 404
Phoenix, Arizona 85004

July 3, 2024

Via Email

Arizona Citizens Clean Elections Commission
c/o Thomas Collins, Executive Director
1110 West Washington Street
Phoenix, Arizona 85007

RE: Comment on Request for Advisory Opinion from Forward Majority Action

Dear Commissioners:

Opportunity Arizona submits this public comment pursuant to A.A.C. R2-20-808(B) and in response to the request for an advisory opinion submitted by Forward Majority Action (“FMA”) on June 24, 2024 (the “Request”). The Request seeks clarification as to the disclaimer the Voters’ Right to Know Act (“the Act”) requires on public communications.

In the Request, FMA advanced several hypothetical scenarios and asked the Commission what should appear on the disclaimer for each. Opportunity Arizona requests that, for any of the scenarios FMA advances, the Commission construe A.R.S. § 16-974(C) and R2-20-805 to mean that the Act’s disclaimer does not require covered persons to list *only* original sources.

Requiring *only* original sources on the disclaimer would undermine the Act’s purpose and intent. If the Act required *only* original sources to the exclusion of intermediary donors, then covered persons could evade putting key information on disclaimers as there is a chance no sources would be listed. For example, if an entity exclusively collected small-dollar contributions of \$5,000 or less, and then gave those funds to a covered person, the covered person would have no one to list. The intermediary aggregating entity that seeks to influence Arizona elections would never be associated to the public on the disclaimer.

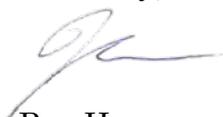
Interpreting the Act’s disclaimer requirement to instead mandate the listing of the top three donors, regardless of whether they be direct donors, intermediary

subdonors, or original sources, ensures *some* donors are always publicly listed rather than create the potential no one is listed.

Similarly, interpreting the disclaimer to require only original sources would help to shield the conduct of intermediary groups. If a wealthy but unrecognizable individual donor named Bob Smith gave to a well-known but politically controversial nonprofit (“Nonprofit Group 1”), who then gave to another politically controversial nonprofit (“Nonprofit Group 2”), who then gave to a covered person who ultimately spent the funds, voters would have no idea the spending really came from these politically controversial groups because the disclaimer would *only* list Bob Smith. The alternative construction of A.R.S. § 16-974(C) and R2-20-805, on the other hand, would require, in this example, to state “funding provided by Nonprofit Group 1, Nonprofit Group 2, and Bob Smith.” This disclaimer is far more informative to voters than just “funding provided by Bob Smith.”

However the Commission chooses to analyze the Request’s hypothetical scenarios, it should not construe A.R.S. § 16-974(C) and R2-20-805 to require *only* original sources in the public communications disclaimer. Intermediary donors, if they are among a covered person’s top three donors of the three largest contributions or original monies to the covered person, can and should be required to be listed on the disclaimer.

Sincerely,



Roy Herrera
Jillian L. Andrews
Austin T. Marshall

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

July 25, 2024
Advisory Opinion 2024-06

Jonathan S. Berkon
Emma R. Anspach
Elias Law Group
250 Massachusetts Ave. NW, Suite 400
Washington, D.C. 20001

Roy Herrera
Jillian Andrews
Austin Marshall
1001 N. Central Ave., Suite 404
Phoenix, AZ 85004

Re: Advisory Opinion Request of Forward Majority Action
Advisory Opinion Request of Solutions for Arizona PAC and Greater
Phoenix Leadership, Inc.

Dear Mr. Berkon and Mr. Herrera:

We are responding to your advisory opinion requests (“AOR”) on behalf of Forward Majority Action (FMA) and Solutions for Arizona PAC and Greater Phoenix Leadership, Inc, (SFA-GPL) respectively. The requests in effect ask the Commission how a covered person should identify the “the names of the top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle to the covered person” that must be stated on public communications under A.R.S. § 16-974(C).¹

¹ The organizations requested expedited opinions under Ariz. Admin. Code § R2-20-808(C).

Question Presented

How should a covered person identify the “names of the top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle to the covered person” for purposes of the disclaimer required on public communications?

Summary answer

A covered person should include the names of the top three original donors of monies. The names should be those of the persons whose business income or, in the case of an individual, their personal monies, that make up “the three largest contributions of original monies during the election cycle to the covered person.”

Background

The facts presented in this advisory opinion are based on your AORs received June 24, 2024 and July 3, 2024 and publicly available information.

Forward Majority Action is a federal political committee. FMA AOR at 1. The organization “anticipates that it will either sponsor paid communications that qualify as ‘campaign media spending’ or that it will contribute to covered persons that finance “campaign media spending.” *Id.* at 1; *see also* A.R.S. § 16-971(2)(defining campaign media spending). It identifies several scenarios where a disclaimer is necessary under A.R.S. § 16-974(C) and requests the Commission explain how that determination should be made. Those scenarios and a proposed analysis are outlined below.

Solutions for Arizona is a political action committee that intends to engage in public communications that require a disclaimer. SFA-GPL AOR a 2. It intends to use monies from the Committee for Arizona Leadership, which is an intermediary between Solutions and Greater Phoenix Leadership, “a nonprofit incorporated under the laws of Arizona . . . organized and operated as a 501(c)(6) membership organization, with local business owners who pay annual membership dues.” *Id.* None of the sources of monies to GPL have given over \$5,000. *Id.* Consequently, none of those names would be disclosed under the VRKA and related rules. *Id.* This scenario is also analyzed below.

Legal Background

Section 16-974 directs the Commission “to establish disclaimer requirements for public communications by covered persons.” The statute states that “Public communications by covered persons shall state, at a minimum, the names of the top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle to the covered person.”

Contribution under the Act means “means money, donation, gift, loan or advance or other thing of value, including goods and services.” A.R.S. § 16-971(6). ““Original monies’ means business income or an individual's personal monies.” A.R.S. § 16-971(12). Donor is not defined under the Act. Commonly “donor” means “one that gives, donates, or presents something.” <https://www.merriam-webster.com/dictionary/donor> (last checked July 16, 2024). Consequently, A.R.S. § 16-974(C) provides that covered persons must include at a minimum the names of the person who gave the covered person directly or indirectly business income or personal monies.

The Commission’s rule reflects this, reiterating that “[p]ublic communications by covered persons shall state the names of the top three donors who directly or indirectly made the three largest contributions of original monies” but applying that requirement to those contributions “in excess of \$5,000 for the election cycle and who have not opted out pursuant to A.R.S. § 16-972 or a rule of the Commission during the election cycle to the covered person.” Ariz. Admin. Code R2-20-805(B). The rule also provides that this determination shall be made “as calculated by the covered person at the time the advertisement was distributed for publication, display, delivery, or broadcast.” *Id.*

The upshot of the question presented is whether or not the phrase directly or indirectly should be read to include only the contributions by a person who earned the business income or an individual’s personal monies or to include both that person and an intermediary or pass-through organization.

The illustration below simplifies the problem by assuming the law only required identifying a single top donor:

Bob Ballpark has \$20,000 he saved from his salary over the years. He gives \$10,000 to the covered person Arizona Spending Committee and he gives \$10,000 to Good Stuff Action. Good Stuff Action gives \$10,000 to the Arizona Spending Committee.

Bob has given \$10,000 to Arizona Spending Committee directly and has given \$10,000 to Arizona Spending Committee indirectly. Therefore, Bob would be the identified source as the person who has given \$20,000 directly or indirectly.

Bob and Good Stuff Action have each given Bob's money to Arizona Spending Committee. Nominally, they have each given the same amount: \$10,000, even if all of that money comes from Bob. Which should be identified as the top donor? The answer to this question is that Bob must be identified as the top donor who has directly or indirectly made contributions of original monies to ASC under the terms of A.R.S. § 16-974(C). Good Stuff Action is an intermediary.

Figure 1

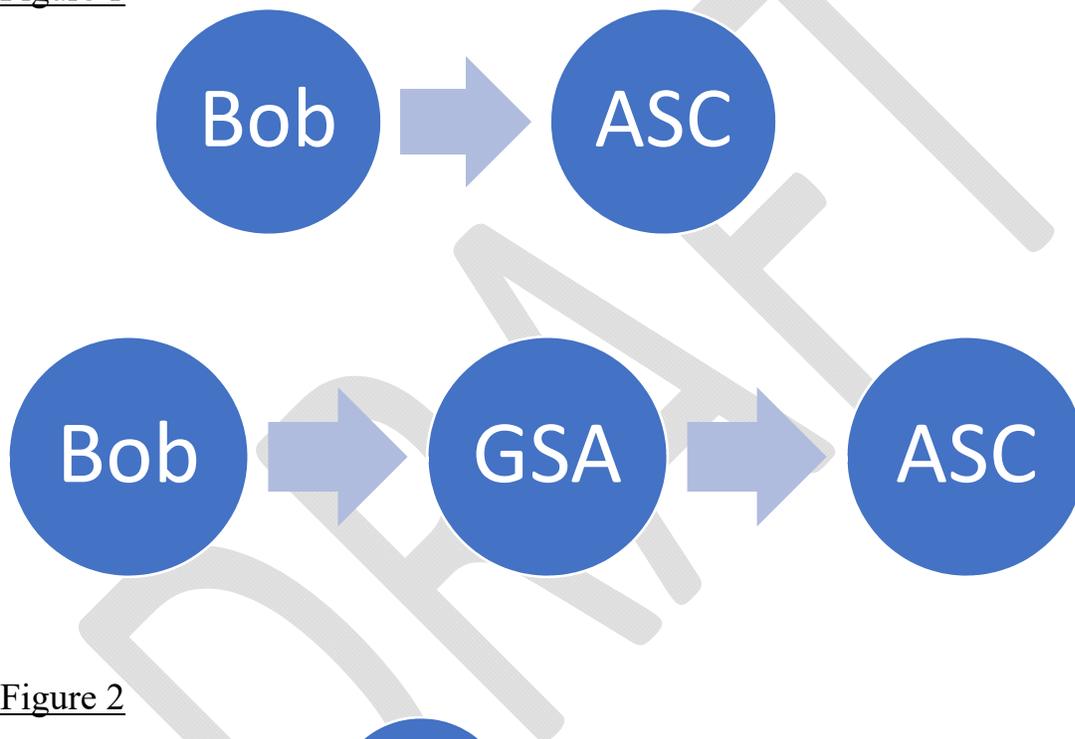


Figure 2



Legal analysis

The best reading A.R.S. § 16-974(C) is that the disclosure reaches the original source of donations over thresholds of the VRKA even if that leaves intermediaries undisclosed on public communications.

First, this reading is consistent with the reporting requirements provided for under the Act. Section 16-973(A) provides that covered persons must identify “each donor of original monies who contributed, directly or indirectly, more than \$5,000 of traceable monies or in-kind contributions for campaign media spending during the election cycle to the covered person and the date and amount of each of the donor's contributions.” A.R.S. 16-973(A)(6). The covered person must separately provide the “identity of each person that acted as an intermediary and that transferred, in whole or in part, traceable monies of more than \$5,000 from original sources to the covered person and the date, amount and source, both original and intermediate, of the transferred monies.” A.R.S. § 16-973(A)(7). Here, the terms donor and original monies should be read consistently between the reports required by the act and the disclaimers required by the act. *Wyatt v. WehmueLLer*, 167 Ariz. 281, 284 (1991) (“A court also should interpret two sections of the same statute consistently, especially when they use identical language.”).

Second, “[w]ords and phrases shall be construed according to the common and approved use of the language,” while “[t]echnical words and phrases and those which have acquired a peculiar and appropriate meaning in the law shall be construed according to such peculiar and appropriate meaning. A.R.S. § 1-213. Arizona statutes are replete with use of the phrase “directly or indirectly.” In Arizona statute these terms are not separately defined, typically. *See, e.g.*, A.R.S. 42-5001(1) (“‘Business’ includes all activities or acts, personal or corporate, that are engaged in or caused to be engaged in with the object of gain, benefit or advantage, either directly or indirectly. . . .”).

The phrase “directly or indirectly” is often used to prevent evasion of some legal requirement, such as preventing the use of intermediaries to subvert the requirement. *E.g.*, A.R.S. § 38-505(A) (“No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.”), *see also* Ariz. Att’y Gen. Op. I24-004 at 6, *available at* www.azag.gov/sites/default/files/2024-02/I24-004.pdf. (“[B]oard members are not prohibited from gathering information independently outside of a public meeting, nor are they prohibited from discussing matters with another board member so long as the discussion does not directly or indirectly involve a quorum

of board members.”). Here, the alternative reading would allow covered persons to obscure the donors of original sources by identifying intermediaries. Applying “directly or indirectly” to limit identification of the person who provided the original monies would be contrary to the “appropriate meaning” of the phrase.

Third, an alternative reading would lead to absurd results. *State v. Medrano-Barraza*, 190 Ariz. 472,474 (App. 1997). (“We presume the framers of the statute did not intend an absurd result and our construction must avoid such a consequence.”). Under this reading, the covered person would be left to choose among original sources and intermediaries in calculating the top three donors identified in the disclaimer. A covered person could identify an intermediary and its original donor as top three donors thus double counting the original source’s donation in determining the top three donors identified.

Finally, this reading of the statute does not itself lead to absurd results in view of the express purpose of the law. *Calik v. Kongable*, 195 Ariz. 496, 501, 990 P.2d 1055, 1061 ¶ 20 (1999) (“Courts should avoid hypertechnical constructions that frustrate legislative intent.”). The purpose and intent clause the voters approved states: “This act establishes that the People of Arizona have the right to know the original source of all major contributions used to pay, in whole or part, for campaign media spending.” Proposition 211, § 2(A) (Ariz. Sec. of State, Arizona 2022 General Election Publicity Pamphlet 227 (2022), available at https://apps.azsos.gov/election/BallotMeasures/2022/azsos_2022_publicity_pamphlet_standard_english_web_version.pdf). Thus, this analysis properly results in a disclaimer that highlights the original source of monies.²

² “Public communications by covered persons shall state, *at a minimum*, the names of the top three donors” A.R.S. § 16-974(C)(emphasis added).

Application

Having established how a covered person should determine the minimum statutory requirements for a VRKA disclaimer, this Advisory Opinion turns to the examples proposed by the requestors.

Scenario #1

Donations and transfers

- Individual 1 contributes \$125,000 to Covered Person.
- Individual 2 contributes \$100,000 to Covered Person.
- Individual 3 contributes
 - \$50,000 to PAC 1
 - \$25,000 to PAC 2,
 - \$75,000 to PAC 3
- Individual 4 contributes \$500,000 to PAC 1.
- PAC 1 transfers \$550,000 to Covered Person, and attributes \$50,000 to Individual 3 and \$500,000 to Individual 4 in response to the notice prescribed by Ariz. Rev. Stat. § 16972.
- PAC 2 transfers \$25,000 to Covered Person, and attributes all \$25,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.
- PAC 3 transfers \$75,000 to Covered Person, and attributes all \$75,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972

Original monies

Individual 1:	\$125,000
Individual 2:	\$100,000
Individual 3:	PAC 1: \$50,000
	PAC 2: \$25,000
	PAC 3: \$75,000
	Total: \$150,000
Individual 4:	\$500,000

Only the individuals have given more than \$5,000 of original monies directly or indirectly to the covered person. Consequently “at a minimum” the covered person must include the names of Individuals 1, 3 and 4 on its disclaimer.

Scenario #2

Donations and transfers

- Individual 1 contributes \$125,000 to Covered Person.
- Individual 2 contributes \$100,000 to Covered Person.
- Individual 3 contributes
 - \$50,000 to PAC 1,
 - \$25,000 to PAC 2,
 - \$75,000 to PAC 3
- Individual 4 contributes \$500,000 to PAC 1.
- PAC 1 transfers \$50,000 to Covered Person – and attributes it to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972; and
 - PAC 1 transfers \$500,000 to PAC 2, which PAC 2 then transfers to Covered Person. PAC 2 attributes the \$500,000 to Individual 4 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972, and identifies PAC 1 as the intermediary that previously transferred the \$500,000.
- PAC 2 transfers \$25,000 to Covered Person, and attributes all \$25,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.
- PAC 3 transfers \$75,000 to Covered Person, and attributes all \$75,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.

Original monies

Individual 1:	\$125,000
Individual 2:	\$100,000
Individual 3:	PAC 1: \$50,000
	PAC 2: \$25,000
	PAC 3: \$75,000
	Total: \$150,000
Individual 4:	PAC 1: PAC 2: \$500,000

Again, only the individuals have given more than \$5,000 of original monies directly or indirectly to the covered person. Consequently, “at a minimum” the covered person must include the names of Individuals 1, 3 and 4 on its disclaimer.

Scenario #3

Donations and transfers

- Individual 1 contributes \$125,000 to Covered Person.
- Individual 2 contributes \$100,000 to Covered Person.
- Individual 3 contributes \$50,000 to PAC 1, \$25,000 to PAC 2, and \$75,000 to PAC 3
- Individual 4 contributes \$500,000 to PAC 1.
- PAC 1 transfers \$550,000 to Covered Person, and attributes \$50,000 to Individual 3 and \$500,000 to Individual 4 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.
- PAC 2 transfers \$25,000 to Covered Person, and attributes all \$25,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.
- PAC 3 transfers \$75,000 to Covered Person, and attributes all \$75,000 to Individual 3 in response to the notice prescribed by Ariz. Rev. Stat. § 16-972.
- Labor PAC (no donors of greater than 5,000) contributes \$750,000 to Covered Person.

Original monies

Individual 1:	\$125,000
Individual 2:	\$100,000
Individual 3:	PAC 1: \$50,000 PAC 2: \$25,000 PAC 3: \$75,000
	Total: \$150,000
Individual 4:	PAC 1: PAC 2: \$500,000
Labor PAC:	No donors of greater than \$5,000

The individuals have given more than \$5,000 of original monies directly or indirectly to the covered person. Labor PAC does not have any donors greater than \$5,000, so its donors of original monies will not be included.

Consequently, “at a minimum” the covered person must include the names of Individuals 1, 3 and 4 on its disclaimer.

Scenario #4:

Donations and transfers

- GPL (no donors over \$5,000 to disclose) donates to CAL
- CAL donates to SFA
- Third Group (no donors over \$5,000) donates to SFA directly.

Original monies

GPL: No donors of greater than \$5,000

CAL: Intermediary

Third Group: No donors of greater \$5,000

None of the organizations have donors of greater than \$5,000. Consequently, the minimum threshold for A.R.S. § 16-974(C) is not met.

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,



July 16, 2024

Submitted electronically to ccec@azcleaselections.gov.

Arizona Citizens Clean Elections Commission
c/o Thomas Collins, Executive Director
1110 West Washington Street
Phoenix, Arizona 85007

Re: Comments regarding AOR by Solutions for Arizona and Greater Phoenix Leadership

Dear Commissioners,

Campaign Legal Center (“CLC”) respectfully submits these written comments in response to the request for an Advisory Opinion submitted by Solutions for Arizona and Greater Phoenix Leadership (“the AOR”) regarding the Voters’ Right to Know Act (“the Act”).¹

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy through law at all levels of government. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court and in numerous other federal and state court proceedings. Our work promotes every American’s right to an accountable and transparent democratic system.²

CLC appreciates the Commission’s ongoing commitment to developing thorough, clear, and functional guidance to implement the Voters’ Right to Know Act and is grateful for the opportunity to submit comments during the Advisory Opinion development process.

DISCUSSION

Solutions for Arizona (“SFA”) and Greater Phoenix Leadership (“GPL”) request clarification of the application of the top donor disclaimer requirement in R2-20-805: Where no original

¹ Request for Advisory Opinion from Solutions for Arizona and Greater Phoenix Leadership (July 3, 2024), <https://storageccec.blob.core.usgovcloudapi.net/public/docs/1199-2024-07-03-Ltr-re-AO-Request--Solutions-for-AZ-and-GPL.pdf> (hereinafter “AOR”).

² CLC's affiliated 501(c)(4) organization, CLC Action, represents Voters’ Right to Know, the political committee established to support Proposition 211, in ongoing litigation relating to the Act.

source has exceeded the \$5,000 threshold for public disclosure under that provision, who—if anyone—should a covered person include in the top donor disclaimer for campaign media spending?

SFA and GPL present two potential solutions to this specific fact pattern. Either no donors are listed on the ad, or—as SFA and GPL prefer—the Commission should require ads to list intermediary donors who passed along funds from others in excess of the \$5,000 reporting threshold.³

While identifying large intermediary donors in the disclaimer under the precise facts presented in the AOR may provide voters with some additional information, the absence of any identified donors in a disclaimer also provides voters with useful information—specifically, that the spender has not directly or indirectly received funds from an original source in excess of \$5,000. More importantly, SFA and GPL’s proposed interpretation of the operative language in the disclaimer rule—“top three donors who directly or indirectly made the three largest contributions of original monies”—could undermine the statute and its intent, resulting in both confusion for voters and depriving them of the very information the Act sought to shine a light on. Accordingly, we urge the Commission to interpret the current rule as requiring *only* original sources—not intermediaries who only pass along funds—be included in the top three donor disclaimer on campaign media spending.

To the extent the specific scenario presented by the AOR invites weighing competing disclosure values between the identities of top intermediaries and the lack of identities of original sources, we recommend the Commission initiate a rulemaking to evaluate those different approaches and, if necessary, adopt clear guidelines for any alternative disclaimers.

1. The Act Is Focused on Disclosure of Original Sources.

While information regarding top intermediaries may be useful to voters, as the Act’s requirements and stated purpose make clear, the law places primacy on identification and public disclosure of original sources of money spent to influence Arizona elections. Indeed, the Act’s explicit stated intent, as described in the “Purpose and Intent” section of the original proposition’s language, makes this goal clear:

This act establishes that the People of Arizona have the right to know the *original source* of all major contributions used to pay, in whole or part, for campaign media spending. This right requires the prompt, accessible, comprehensible and public disclosure of the identity of all donors who give more than \$5,000 to fund campaign media spending in an election cycle and the source of those monies, regardless of whether the monies passed through one or more intermediaries.⁴

³ AOR at 3.

⁴ Proposition 211, § 2(A) (Ariz. 2022) (emphasis added); see Ariz. Sec. of State, *Arizona 2022 General Election Publicity Pamphlet 227* (2022), https://apps.azsos.gov/election/BallotMeasures/2022/azsos_2022_publicity_pamphlet_standard_english_web_version.pdf.

Unsurprisingly, the Act’s reporting and opt-out provisions similarly focus on guidelines for identifying and reporting original sources of money spent on Arizona elections.⁵ The Act also requires identification and reporting of intermediaries that transfer money from original sources to covered persons, although in at least some cases—such as direct donors to political committees—that information was already required to be reported.⁶

The on-ad disclaimer requirement thus must be understood as specifically furthering voters’ First Amendment informational interest in knowing—at the time they see a political ad—who is really funding that ad and as serving the Act’s clear purpose: to vindicate the “right to know the *original source* of all major contributions used to pay, in whole or part, for campaign media spending.”⁷

2. The Proposed Interpretation of R2-20-805 Would Contradict the Act.

The AOR largely turns on what meaning should be given to R2-20-805’s requirement to identify the “top three donors who directly or indirectly made the three largest contributions of original monies in excess of \$5,000” Although the specific facts of the AOR present a scenario where there are *no* original sources that exceed \$5,000, SFA and GPL’s proposed solution is not so limited. Instead, SFA and GPL seek a determination from the Commission that this requirement encompasses “any donor (original or intermediary)”⁸; in other words, their proposal would interpret the requirement to include intermediaries regardless of whether any original sources have contributed more than \$5,000. This proposed interpretation, though, would contradict the terms of the Act.

Throughout the Act, a person who “directly or indirectly contributes” original monies is synonymous with the original source of those monies and distinct from an intermediary who transfers those funds. In detailing the information required to be provided by direct donors of more than \$5,000 of traceable monies to covered persons, the Act specifies that direct donors must identify every “person that directly or indirectly contributed more than \$2,500 in original monies being transferred” and the amount of those persons’ original monies.⁹ The Act then separately provides that “[i]f the original monies were previously transferred,” the direct donor “must disclose all such previous transfers of more than \$2,500 and identify the *intermediaries*.”¹⁰

This distinction is also reinforced by the Act’s reporting requirements themselves. Under A.R.S. § 16-973(a)(6), after exceeding certain spending thresholds, a covered person must report “[t]he identity of each *donor* of original monies who *contributed*, directly or

⁵ See A.R.S. §§ 16-972, 16-973.

⁶ See A.R.S. § 16-926(B).

⁷ Proposition 211, § 2(A) (Ariz. 2022) (emphasis added); see Ariz. Sec. of State, *Arizona 2022 General Election Publicity Pamphlet 227* (2022), https://apps.azsos.gov/election/BallotMeasures/2022/azsos_2022_publicity_pamphlet_standard_english_web_version.pdf.

⁸ AOR at 6.

⁹ A.R.S. § 16-972(D); see also § 16-972(E) (same for funds used to pay for in-kind contributions to covered persons).

¹⁰ A.R.S. § 16-972(D) (emphasis added); see also § 16-972(E) (same for previous transfers of funds used to pay for in-kind contributions to covered persons).

indirectly, more than \$5,000” and “the date and amount of each of the *donor’s contributions*” (emphasis added). Separately, a covered person must report “[t]he identity of each person that acted as an *intermediary* and that *transferred*, in whole or in part, traceable monies of more than \$5,000,” along with the full chain of the transfer from original source through other intermediaries.¹¹

Finally, the Act’s definition of “transfer record” is consistent with this meaning. In requiring covered persons to maintain transfer records, the Act requires an accounting of the traceable monies received by a covered person, including both original sources and intermediaries.¹² In the terms of the Act, the definition requires a transfer record to identify two categories of people: each person who “directly or indirectly contributed ... more than \$2500 of original monies” (original sources) and each person who “transferred more than \$2500 or original monies” (intermediaries).

In short, the Act makes clear that acting as an intermediary by “transferring” original monies—i.e., passing along funds that are, in whole or in part, someone else’s original monies to the covered person—is distinct from being an original source who is “directly or indirectly contribut[ing]” their own original monies to a covered person.¹³ R2-20-805, which implements the top donor disclaimer requirement specified in § 16-974(C), specifically requires “the names of the top three donors who *directly or indirectly* made the three largest *contributions* of original monies.”¹⁴ Consistent with the other provisions of the Act discussed above, §16-974(C) and R2-20-805 clearly apply only to original sources—that is, the person whose personal monies or business income the funds originated from.

SFA and GPL resist this outcome by attempting to distinguish between “original sources” and “donors of original monies.” As discussed above, though, the Act repeatedly uses “person” or “donor” who “directly or indirectly contributes” original monies to mean “original source.”¹⁵ Despite attempts to create ambiguity, the consistent use of these terms throughout the Act contradicts the AOR’s proposed solution.

Finally, we note that, while CAL and GPL may not have any original source that contributed more than \$5,000 of the funds they are transferring to SFA, it is possible that the original sources that contributed to GPL might still appear as top donors.¹⁶ Specifically, the Act requires intermediaries like CAL and GPL—and “Third Donor”—to share information regarding any original sources contributing over \$2,500 to the covered person—

¹¹ A.R.S. § 16-973(a)(7) (emphases added).

¹² A.R.S. § 16-972(A).

¹³ See A.R.S. § 16-971(19) (defining “transfer records”) and § 16-972(D) (outlining the process by which a donor must provide information regarding the identity of each other person that “directly or indirectly contributed more than \$2,500 in original monies being transferred”).

¹⁴ R2-20-805(B) (emphases added).

¹⁵ Indeed, while pointing to the use of “original source” in the Act’s requirement to report the full chain of transfers for intermediaries in A.R.S. § 16-973(A)(7), the AOR ignores that §16-937(A)(6) uses functionally identical language as §16-974(C) and R2-20-805 in requiring the reporting of the identities of original sources.

¹⁶ A.R.S. § 16-972(D) and (E). While the intermediary must share information regarding donors contributing more than \$2,500 of the donation with the covered person, the covered person does not publicly report such information unless the specific source has exceeded the \$5,000 threshold in aggregate.

in this case, SFA.¹⁷ If funds from an original source reached SFA through a separate intermediary or direct contribution, SFA must aggregate the original source's contributions and report on the entire amount contributed by the original source, if the contribution in aggregate exceeds the \$5,000 threshold.¹⁸

3. The AOR's Proposed Interpretation Would Deprive the Public of Critical Information and Provide Inaccurate Information to the Public.

While the requesters assert that interpreting the disclaimer provisions in R2-20-805 to only disclose the original sources would “create an absurd interpretation,”¹⁹ such an interpretation ensures that voters receive critical information about who is really spending money to influence their votes. As previously noted, R2-20-805's on-ad disclaimer furthers voters' First Amendment informational interest and is specifically meant to serve the Act's intent: to vindicate the “right to know the *original source* of all major contributions used to pay, in whole or part, for campaign media spending.”²⁰

Contrary to the implication that a disclaimer with no top donors identified would be an absurd outcome because it would not provide information to the public, such an outcome would, in fact, provide important information about the spender to voters. Specifically, the fact that none of the original sources funding a political spender have given more than \$5,000—and, therefore, none are listed in its ads—is *also* important information voters about the nature of that spender's funding. In the same way that knowing the identity of a large funder may help voters evaluate the message they are receiving, so too could knowing that all of the funders are relatively small aid in their evaluation of that message.

Furthermore, in circumstances where covered persons have both original sources and intermediaries that have provided funds in excess of \$5,000, treating original sources and intermediaries identically for purposes of the disclaimer could both deprive the public of information about original sources and confuse the public as to the nature of the donors identified. For example, in a scenario where a covered person has one original source in excess of \$5000 and two intermediaries in excess of \$5,000, applying the AOR's proposed solution would lead to all three being listed identically in a top donor disclaimer. But reading the text of the Act and the Commission's regulations, a viewer of that ad might understandably interpret the disclaimer to mean all three are original sources, which would be incorrect.

¹⁷ *Id.*

¹⁸ A.R.S. § 16-973(A)(6).

¹⁹ AOR at 3.

²⁰ See Proposition 211, § 2(A) (Ariz. 2022); see Ariz. Sec. of State, *Arizona 2022 General Election Publicity Pamphlet 227* (2022), https://apps.azsos.gov/election/BallotMeasures/2022/azsos_2022_publicity_pamphlet_standard_english_web_version.pdf (emphasis added). Section 2(A), outlining the purpose and intent of the Act, specifically states “This act establishes that the People of Arizona have the right to know the original source of all major contributions used to pay, in whole or part, for campaign media spending. This right requires the prompt, accessible, comprehensible and public disclosure of the identity of all donors who give more than \$5,000 to fund campaign media spending in an election cycle and the source of those monies, regardless of whether the monies passed through one or more intermediaries.” *Id.*

Even worse is a scenario where a covered person has multiple original sources and intermediaries that have provided more than \$5,000. If some or all of the intermediaries have transferred more than the original sources—as will often be the case, given that intermediaries by their nature are often aggregating money from multiple original and intermediate sources—the AOR’s proposed solution would seemingly require the covered person to identify intermediaries *instead of* original sources in its disclaimers, depriving voters of the very information the Act intends to provide them.

In other words, following the AOR’s proposed solution could entirely collapse the Act’s distinction between original sources and intermediaries for purposes of the required disclaimers. Under this interpretation, *any* original source whose money is passed through an intermediary that aggregates their funds with even a small amount from other original sources could avoid being identified in a top donor disclaimer because the original source would have, necessarily, given less than the intermediary passing along its money. This would perpetuate the very dark money shell-game the Act is designed to penetrate.²¹

4. The Commission May Consider Alternative Rules for the Specific Scenario Identified by the AOR via Rulemaking.

In circumstances like those identified in the AOR, where no original source exceeds the threshold for public disclosure under the Act but there are intermediaries passing along large amounts of funds to a covered person, we recognize that there are potentially competing disclosure interests to balance. On the one hand, as discussed above, the lack of any donors in the disclaimer informs the public that no original source funding the ad exceeds \$5,000. On the other hand, providing the identities of intermediaries passing along large amounts of funds could also provide the public with helpful information about the source and nature of the ad’s funding. We believe the weighing of the competing interests in this specific scenario would be best handled through an administrative rulemaking with a public comment period, providing interested stakeholders with a more comprehensive opportunity to provide their perspective and ensuring clarity for the public as to the meaning of a top donor disclaimer in this scenario.

The Act clearly permits the Commission to adopt additional disclaimer requirements via the rulemaking process.²² While the Act specifically requires, “at a minimum,” that the Commission adopt rules requiring the top three original sources over \$5,000 to be included in on-ad disclaimers, the Act does not prohibit the Commission from creating additional requirements for disclaimers, particularly where there are no original sources that exceed the Act’s public disclosure threshold.²³ Limiting such a rule to specific circumstances where there are no original sources that exceed \$5,000 both would allow the Commission to weigh competing values and avoid, as discussed above, an outcome that could contradict and undermine the Act.

²¹ Proposition 211, § 2 (Ariz. 2022) (emphasis added); see Ariz. Sec. of State, *Arizona 2022 General Election Publicity Pamphlet 227* (2022), https://apps.azsos.gov/election/BallotMeasures/2022/azsos_2022_publicity_pamphlet_standard_english_web_version.pdf.

²² A.R.S. § 16-974(C).

²³ *Id.*

CONCLUSION

We thank the Commission for the opportunity to share comments regarding the AOR. We would be happy to answer questions or provide additional information to assist the Commission's development of its Advisory Opinion.

Respectfully submitted,

/s Elizabeth D. Shimek

Elizabeth D. Shimek

Senior Legal Counsel, Campaign Finance

Campaign Legal Center

1101 14th St. NW, Suite 400

Washington, DC 20005

elizabeth.shimek@campaignlegalcenter.org



Brett W. Johnson PC
O 602.382.6312 | F 602.382.6070
bjohnson@swlaw.com

Tracy A. Olson
O 602.382.6431 | F 602.382.6070
tolson@swlaw.com

VIA EMAIL

TIME SENSITIVE

July 24, 2024

Arizona Citizens Clean Elections Commission
c/o Thomas M. Collins, Executive Director
1110 West Washington Street
Phoenix, Arizona 85007
Thomas.collins@azcleelections.gov

Re: Public Comment on Draft Advisory Opinion 2024-06

Dear Commissioners:

Pursuant to A.A.C. § R2-20-808(4), Arizona Senate Victory Fund (“ASVF”), an Arizona political action committee opposes adoption of the Draft Advisory Opinion 2024-06 (“DAO 2024-06”) as contrary to the plain language of the statute, unworkable, and simply absurd. Submission past the ten-day window is appropriate given the developments disclosed in the DAO 2024-06, circulated to the public on July 22, 2024.

To begin, ASVF has serious concerns regarding the constitutionality of Prop 211 and the Commission’s implementing rules, as articulated in various pending lawsuits including *Americans for Prosperity et al. v. Meyer, et al.*, *Center for Arizona Policy et al. v. Arizona Secretary of State*, and *Toma et al. v. Fontes et al.* This public comment is, in no way, a concession regarding the legality of Prop 211 or the Commission’s rules validity, including the ability of the Commission to issue advisory opinions, and ASVF preserves all rights related to the same.

Notwithstanding this reservation, the Commission’s DAO 2024-06 presents grave concerns regarding the interpretation of the law and notions of fair notice.

On the merits, DAO 2024-06 is simply wrong. Prop 211 requires covered persons to list “the names of the top three donors who directly *or* indirectly made the three largest contributions of original monies during the election cycle to the covered person.” A.R.S. § 16-974(C) (emphasis added). The plain and natural reading of this provision requires a covered person to disclose both direct *and indirect* contributions of original monies. By definition, individuals and organizations can contribute original monies directly. A.R.S. § 16-971(1) (defining business income); (12) (defining original monies); (14) (defining personal monies). If original monies are given to a PAC or other organization, those entities can contribute original monies indirectly.

Had Prop 211 wanted to require covered persons to list only original sources (an undefined term) of original monies, it could have said so directly. For example, it could have required the disclosure of the “top three sources of original monies, directly or indirectly contributed to the covered person.” But, it did not. Rather, Prop 211 attributes the direct or indirect modifiers to the full phrase “contributions of original monies” which in context, means the contributions received by the covered person. For these reasons, and for those articulated in Greater Phoenix Leadership, Inc. and Solutions for Arizona PAC’s request for advisory opinion, DAO 2024-06 is not supported by Prop 211’s text.

In addition, DAO 2024-06’s interpretation conflicts with the purposes of Prop 211 and notions of fair notice. For instance, the proposed interpretation will result in less disclosure than pre-Prop 211 requirements. Before Prop 211, a PAC would be required to list its top three PAC donors over \$20,000 on all advertisements or fundraising solicitations. See A.R.S. § 16-925(A)(B)(1). However, under DAO 2024-06, the same PAC, if it is a covered person, could be listing zero donors. This is illustrated by DAO 2024-06’s “Scenario #4” with a few facts changed. Imagine GPL, CAL, and the “Third Group” are all PACs and contribute more than \$20,000 to SFA, and each contributing PAC has no donors greater than \$5,000. If SFA is not a covered person, it is required to list GPL, CAL, and the Third Group as its top three donors. If SFA is a covered person, then it is not required to list *any* donors in its top three. This is non-sensical.

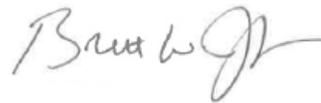
Moreover, because AO 2024-02 advises that donors that are not covered persons have no obligation to “provide the opt out to their own donors before a covered person may use or transfer a donor’s money for campaign media spending,” DAO 2024-06’s interpretation may require covered persons to list an individual or organization as a “top donor” who has no idea that his money is used for this purpose. As a result, a donor could find out that he is a “top donor” of a PAC he has never heard about for the first time when watching an ad on television in his living room.

Finally, and perhaps most importantly, the Commission is considering DAO 2024-06 at its July 25, 2024, meeting—a mere five days before Arizona’s primary election. This is when campaign media spending is arguably at its highest and disclosures are *already* printed on mailers and included in media spots. Even if the Commission believes it is “clarifying” Prop 211, most, if not all, covered persons did not previously read Prop 211’s top three donor requirement in the same manner. At the very least, ASVF, Greater Phoenix Leadership, Solutions for Arizona, Forward Majority Action and Opportunity Arizona’s correspondance to the Commission is evidence that the provision is subject to reasonable dispute. Under such circumstances, the Commission should resist the urge to change the rules on the eve of an election. Cf. *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam); *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 434 (2020) (“This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the elections rules on the eve of an election.”).

Adoption of DAO 2024-06 now—five days before the election—will cause substantial public confusion and disruption to covered persons' operations. Accordingly, ASVF respectfully requests that the Commission allow public comment *prior* to any consideration or vote on DAO 2024-06 and delay an implementation until *after* the 2024 election cycle.

Very truly yours,

Snell & Wilmer

A handwritten signature in black ink, appearing to read "Brett W. Johnson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Brett W. Johnson PC
Tracy A. Olson

July 24, 2024

Citizens Clean Election Commission
Attn: Thomas M. Collins, Executive Director
1110 West Washington Street, Suite 250
Phoenix, Arizona 85007
ccec@azcleelections.gov
VIA EMAIL ONLY

Re: Comments on Draft Advisory Opinion 2024-06

Dear Director Collins:

On behalf of House Victory Fund, an Arizona political action committee, I respectfully submit the following comment in connection with the draft of Advisory Opinion 2024-6 that was circulated in advance of the Commission's July 25, 2024 meeting.

The draft opinion concludes that A.R.S. § 16-974(C), which generally requires covered persons to identify in the disclaimer affixed to their public communications their top three donors, “reaches the original source of donations over thresholds of the [Voters Right to Know Act] even if that leaves intermediaries undisclosed on public communications.” For the reasons set forth in the request of Greater Phoenix Leadership and in the comment submitted by the Senate Victory Fund, we respectfully disagree with that conclusion.

But we also believe that the analysis errs in another crucial respect: it presupposes that every immediate donor to a covered person other than an “original source” is necessarily an “intermediary.” That reasoning, however, is dissonant with the plain meaning of the word “intermediary,” as well its connotation in the campaign finance realm. The primary definition of the term “intermediary” is “mediator, go-between.” MERRIAM-WEBSTER ONLINE DICTIONARY. Thus, an “intermediary” between an original source donor and a covered person is an entity that facilitates a *coordinated* transfer of funds from the original source to the covered person. Consistent with this commonsense construction, the Federal Election Commission's regulations likewise define a “conduit or intermediary” as “any person who receives and forwards an earmarked contribution” from an original source to its ultimate recipient. *See* 11 C.F.R. § 110.6(b)(1). By contrast, if an immediate donor to a covered person makes a contribution to a covered person that consists of funds over which the immediate donor has complete legal custody and control, and the contribution is made without an earmark, designation or instruction from an original source, the immediate donor is not—as a matter of law or logic—an “intermediary” for anyone.

The distinction is highly consequential. Certain of House Victory Fund's major contributors are out-of-state political action committees that solicit and accept funds from individuals and businesses without any understanding or agreement with those underlying sources concerning how the PAC will use the money. Any subsequent contribution made by the PAC to House Victory Fund is the product of the PAC's own

independent judgment, made without any consultation with, or even the knowledge of, the PAC's own donors. The logic of the draft advisory opinion, however, would compel House Victory Fund to disregard the PAC as merely an "intermediary," a legal and factual fiction that undermines the VRKA's professed aspirations of transparency. As the Senate Victory Fund noted, application of the opinion's logic could easily result in a covered person identifying as a "top three" donor an original source has never even heard of the covered person, let alone knew that the funds she donated to an unrelated PAC would end up in the covered person's account. Any mandated disclaimer that so publicly and prominently suggests a knowing association between that original source and the covered person would affirmatively mislead the audience, and derogate the First Amendment rights of both the covered person and the original source.

We accordingly urge the Commission not to adopt the draft advisory opinion in its current form.

Thank you for your consideration of the foregoing comment.

Respectfully,

/s/ Thomas Basile

Thomas Basile