

# STATE OF ARIZONA

## Citizens Clean Elections Commission

# ANNUAL REPORT

JANUARY 1, 2003 - DECEMBER 31, 2003



Issued: February 2004  
CITIZENS CLEAN ELECTIONS COMMISSION  
1616 West Adams, Suite 110  
Phoenix, Arizona 85007

Telephone: 602-364-3477  
Toll Free: 1-877-631-8891  
Fax: 602-364-3487  
Website: <http://www.ccec.state.az.us>

**TABLE OF CONTENTS**

---

<b>EXECUTIVE SUMMARY .....</b>	<b>4</b>
<b>INTRODUCTION TO THE COMMISSION .....</b>	<b>5</b>
<b>COMMISSION MEMBERS .....</b>	<b>7</b>
<b>SUMMARY OF COMMISSION ACTIVITIES .....</b>	<b>9</b>
<b>CITIZENS CLEAN ELECTIONS ACT .....</b>	<b>11</b>
<b>VOTER EDUCATION AND OUTREACH .....</b>	<b>14</b>
<b>ENFORCEMENT .....</b>	<b>17</b>
<b>RULE CHANGES.....</b>	<b>18</b>
<b>LITIGATION.....</b>	<b>20</b>
<b>RECOMMENDATIONS FOR CHANGES TO THE LAW.....</b>	<b>22</b>
<b>STAFF DUTIES.....</b>	<b>24</b>
<b>PROJECTED FUNDING .....</b>	<b>27</b>
<b>FINANCIAL INFORMATION .....</b>	<b>28</b>

**Janet Napolitano**  
Governor

**Colleen Connor**  
Executive Director



**David G. McKay**  
Chair

**Kathleen Detrick**  
**Ermila Jolley**  
**Marcia Busching**  
**Tracey Bardorf**  
Commissioners

**State of Arizona**  
**Citizens Clean Elections Commission**

1616 W. Adams, Suite 110 - Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - [www.ccec.state.az.us](http://www.ccec.state.az.us)

---

To The Honorable Janet Napolitano  
Governor of Arizona

February 24, 2004

Dear Governor Napolitano:

Pursuant to Arizona Revised Statutes (A.R.S.) § 16-956(B) (3), the Citizens Clean Elections Commission (Commission) submits its Annual Report.

In 1998, the voters of Arizona passed the Citizens Clean Elections Act. The Commission celebrates the fifth anniversary of the Act through the continued commitment of upholding the letter and spirit of the Act. With the knowledge and experience gained through the last two election cycles, the Commission strives to improve the effectiveness of the administration of the public funding program, voter education, and candidate training.

The Commission accomplished its goals set in 2003, and looks forward to a productive and exciting election year.

Respectfully Yours,

A handwritten signature in black ink that reads "David G. McKay". The signature is written in a cursive style with a large, sweeping flourish at the end.

David G. McKay, Chair

## **EXECUTIVE SUMMARY**

---

The Citizens Clean Elections Commission is charged with the administration of the Clean Elections Act. Although 2003 was not an election year, the Commission remained active on a variety of levels.

The Commission continued the voter education and outreach program through speaking engagements, media outreach, news releases and presentations at civic events. Following a report issued by the United States General Accounting Office, the Commission began monitoring public awareness of the Act. In July 2003, a telephone survey conducted by the Behavior Research Center showed broad based support for the Clean Elections system. The survey revealed that 63% of Arizonans who were aware of the program had a favorable view compared with only 22% with unfavorable impressions. Additionally, 71% of Arizonans believe that Clean Elections is important to voters.

Pursuant to the Commission's voter education duties, the Commission made substantial changes to the contents of the Candidate Statement Pamphlet for the 2004 election. The 2004 Candidate Statement Pamphlets for the primary and general elections will allow for candidate statements up to 200 words, a candidate photograph, separate statements for the primary and general election, and the initiation of a cover design contest. For the candidate debates, the Commission started the process of solicitation and selection of debate sponsors for the 2004 Corporation Commission races and all 30 legislative districts.

In October 2003, the Commission began the Candidate Workshop and Training to be held twice a month and throughout the State. Then in November 2003, the Commission proposed a number of changes to the administrative rules that were designed to detail reporting requirements, shorten the enforcement and compliance process, and respond to input from the public. The Commission also concluded the remaining enforcement actions from the last election cycle.

The Clean Elections Fund revenue steadily increased over the year. With the 4-year revenue projections exceeding the spending cap, the Commission transferred monies to the general fund: \$1.7 million in January and \$3.82 million in December.

## **INTRODUCTION TO THE COMMISSION**

---

### **Mission Statement:**

To fairly, faithfully and fully implement and administer the Arizona Citizens Clean Elections Act.

### **Vision Statement:**

Through the successful implementation of the Arizona Citizens Clean Elections Act, the Commission seeks to improve the integrity of Arizona state government and promote public confidence in the Arizona political process.

### **Authority:**

The Citizens Clean Elections Commission was established by the enactment of the Citizens Clean Elections Act, A.R.S., Title 16, Chapter 6, Article 2. In addition to administering the provisions of Article 2, the Commission promulgates rules and enforces A.R.S. §§ 16-940 through 16-961.

### **Membership:**

The Commission consists of 5 members:

- No more than 2 shall be members of the same political party.
- No more than 2 shall be residents of the same county.
- No one shall be appointed who does not have a party registration that has been continuously recorded for at least 5 years immediately preceding appointment, with the same political party or as an independent.
- Each candidate shall be a qualified elector who has not, in the previous 5 years in this state, been appointed to, elected to or run for any public office, including precinct committeeman, or served as an officer of a political party.
- A member of the Commission shall serve no more than one term and is not eligible for reappointment.
- No Commissioner, during his or her tenure or for 3 years thereafter, shall seek or hold any other public office, serve as an officer of any political committee or employ or be employed as a lobbyist.

### **Function:**

The Commission holds regular meetings, which are open to the public. In 2003, the Commission held 13 regular meetings.

The Commission annually elects a chair. In December 2003, Commissioner Dave McKay was elected as the Chair of the Commission for 2004.

Core functions of the Commission include provision of public funding to qualified candidates; publishing voter education pamphlets and sponsoring debates; administering the Clean Elections Fund; and enforcing campaign finance laws.

#### *Voter Education*

- Prior to the primary and general elections, the Commission shall publish a candidate statement pamphlet for statewide and legislative office candidates to be mailed to every household that contains a registered voter.
- The Commission shall sponsor debates among candidates, require participating candidates to attend and participate in debates, and invite nonparticipating candidates to participate in debates.

#### *Clean Elections Fund*

- The Commission shall ensure that money from the Fund is placed in candidate campaign accounts or otherwise spent as specified in the Act and not otherwise.
- The Commission shall ensure that money required by the Act to be paid to the Fund is deposited in the Fund.

#### *Enforcement*

- The Commission shall monitor reports and financial records of candidates as needed to ensure that equalization monies are paid promptly to opposing qualified candidates.

## **COMMISSION MEMBERS**

---

### **Chair Leslie Gene Lemon – Republican - Maricopa County**

Governor Jane Dee Hull appointed Phoenix resident Gene Lemon to the Citizens Clean Elections Commission in 1999 for a term ending January 31, 2004. Mr. Lemon served as the first Chair of the Commission, first elected by the Commission in 1999, and continued to serve as the Chair for calendar years 2000, 2001 and 2003. Mr. Lemon received his bachelor's and law degrees from the University of Illinois. He retired as vice president-administration from VIAD Corp. (formerly Dial Corp. and Greyhound Corp.), where he also spent 27 years (1972-1999) as assistant general counsel and general counsel. From 1964-1969 Mr. Lemon was senior attorney for Armour and Co. From 1964-1969, Mr. Lemon served as assistant general counsel to the American Farm Bureau Federation and affiliated companies.

Mr. Lemon has served on numerous boards, including board of directors (1992-1997) and chairman of the audit committee (1993-1995) for FINOVA Group Inc.; board of directors (1995-1997) for the Food & Drug Law Institute; board of directors (1989-1995) for the Phoenix Chamber of Commerce; board of directors (1985-1998) and chairman of the board (1993-1995) for the Phoenix Children's Hospital; board of trustees (1985-1998) and president (1990-1992) for the Phoenix Art Museum; and grand president (1974-1976) and currently serves on the board of directors of the American Arbitration Association; the National Conference of Commissioners of Uniform State Laws; the board of directors and the steering committee for the Arizona Voice for Crime Victims and the board of visitors for the University of California-Davis School of Medicine. Mr. Lemon is a member of the American Bar Association; the Association of General Counsel, Arizona State Bar; Maricopa County Bar Association and Paradise Valley Country Club.

### **David G. McKay – Republican – Coconino County**

Governor Jane Dee Hull appointed Flagstaff resident Dave McKay to the Citizens Clean Elections Commission in 2000 for a term that will expire in 2005. Mr. McKay was elected by the Commission to serve as chair for 2004. Mr. McKay received his bachelor's and master's degrees from Northern Arizona University. He retired after 35 years with the Flagstaff Unified School District, where he served as principal of Thomas Knoles Elementary School (1987-1998); principal of Christensen Elementary School (1982-1987); assistant principal of Christensen and Killip Elementary Schools (1976-1982); title III coordinator for Flagstaff Public Schools (1973-1976); assistant principal for Mt. Elden Elementary School (Killip) (1968-1973); guidance counselor for Flagstaff Elementary Schools (1966-1968); and science teacher for Flagstaff Junior High School (1963-1966). Mr. McKay founded Big Brothers of Flagstaff in 1968 and has served as executive director since. He also has served as a member of the Arizona School Administrators (1982-1997) and as a member of the State Dental Board (2000 – 2002).

### **Kathleen S. Detrick – Independent – Pima County**

Attorney General Janet Napolitano appointed Tucson resident Kathleen Detrick to the Citizens Clean Elections Commission in 2001 for a term that will expire in 2006. Ms. Detrick has served as the City Clerk and Campaign Finance Administrator for the City of Tucson, Arizona since 1991. The City Clerk is a Charter officer appointed by the Mayor and Council for a two-year term of office. The Campaign Finance Administrator serves at the will of the Mayor and Council. Ms. Detrick has been employed by the Tucson City Clerk's office since 1971. In 1981 Ms. Detrick was appointed Chief Deputy City Clerk and served as the City Elections Director from 1981 until the appointment as City Clerk in 1991. The City of Tucson has the only other public campaign-funding program in the State of Arizona and has been used as a model by other jurisdictions interested in implementing a similar program. Ms. Detrick was a member of the team that developed the Tucson public campaign-funding program and has been part of the administration of the program since its approval by electorate in 1985.

### **Ermila Jolley– Democrat – Yuma**

Governor Jane Hull appointed Yuma resident Ermila Jolley to the Citizens Clean Elections Commission in 2002 for a five-year term that will expire in 2007. She is filled the seat formerly held by Commissioner Carl Lopez, a Tucson resident. Ms. Jolley was appointed to the Yuma County Redistricting Commission in May 2001 and currently serves as president of the Yuma Community Hispanic Forum. Ms. Jolley served as a Democratic precinct committee person in Yuma County until 1992. Ms. Jolley received her bachelor's degree from the Northern Arizona University.

### **Marcia Busching- Democrat- Phoenix**

Marcia J. Busching was appointed by Governor Janet Napolitano to the Citizens Clean Elections Commission in 2003 for a term that will expire in 2008. Ms. Busching has been a resident of Phoenix, Arizona since 1976. A practicing business and real estate attorney since 1977, Ms. Busching is certified by the Arizona State Bar as a specialist in a real estate law and is employed with the law firm of Sacks Tierney, P.A.



## **SUMMARY OF COMMISSION ACTIVITIES**

---

The Citizens Clean Elections Act incorporates four major programs: public funding for certified candidates, campaign finance disclosure, voter education and enforcement. The following are highlights of the Commission's accomplishments and events during the year 2003:

### *Voter Education and Outreach*

- For the candidate debates in 2004, the Commission approved the scope of work for civic organizations to sponsor the debates. By December 2003, the Commission had approved sponsors for the corporation commission debates and debates for 18 of the 30 legislative districts.
- For the Candidate Statement Pamphlets in 2004, the Commission changed the contents by adding candidate photographs, allowing candidates to submit up to 200-word statements for the primary and general elections, adding information about Help America Vote Act (HAVA), Sun Sounds of Arizona, and Kids Voting Arizona, and initiating a cover design contests for high school juniors and seniors.
- L3 Creative, the primary contractor for advertising and public relations, subcontracted with Barclay Communications to assist the Commission with public relations.
- During tax season, continues the Five-Dollar Bill campaign using billboards and radio advertisements to promote the Clean Elections "five dollar check-off" on Arizona tax returns.

### *Training*

- Commenced training classes for both participating and nonparticipating candidates to assist in understanding reporting requirements, using the Campaign Finance Software, and to provide information to help comply with the Clean Elections Act.
- Approved a rule change requiring training classes specifically for candidates and campaign treasurers.
- Produced a 2003-2004 informational brochure regarding clean elections
- Updated the *Act, Rules and Policy Manual* and produced the *2004 Candidate Guide*.
- The Behavior Research Center conducted a telephone survey: 60% of Arizonans are familiar with the clean elections funding program. Of those who are aware of the Act, 63% of respondents have favorable impressions with only 22% having unfavorable impressions of the Act. The survey also revealed that 71% of Arizona voters believe that Clean Elections is important to voters.
- Executive Director Connor, Assistant Attorney General Diana Varela, and Commissioner Busching attended the COGEL meeting in Austin, Texas during the week of September 21-24, 2003.

### *Clean Elections Fund*

- In January 2003, the Commission approved the Fund revenue projections for next 4 years. Approximately \$1.7 million was transferred to the general fund.
- The Commission again considered the 4 year revenue projection in December. Based on the projections, the Commission approved the transfer of \$3,825,577 to the general fund.
- The Auditor General's Office selected the Commission for a review of financial systems.
- In December 2003, the Commission approved its 2004 budget with \$5,770,000 budgeted for candidate campaign funds.

### *Staff and Office Operations*

- Autumn Southard was hired as the Voter Education Manager.
- Eric Gorseigner was hired as the Deputy Director.
- Diana Varela was selected as the agency's Assistant Attorney General. Assistant Attorney General Todd Lang's last day was July 25, 2003.
- Office relocated from the office space on Third Street to 1616 W. Adams, the Capitol Complex, to be closer to the day to day activity of State government.
- Completed the incoming phone call tracking system and staff began implementing its usage for monitoring telephone information.
- Staff completed Arizona election officer certification and training program.
- Secretary of State completed the Campaign Finance Software for 2004.
- U.S General Accounting Office issued its report about the clean elections systems in Arizona and Maine.

### *Candidates*

- All 7 participating statewide candidates from the 2002 election were notified that they were required to file an inaugural report due March 3, 2003.
- Secretary of State's Office made the inflationary adjustments to the contribution and spending limits for the 2003-2004 election cycle.
- Commission adjusted the minimum number of \$5 qualifying contributions.

### *Enforcement*

- Random Audits on June 30<sup>th</sup> Campaign Finance Reports were approved.
- Concluded 21 enforcement matters remaining from the 2002 election.

## **CITIZENS CLEAN ELECTIONS ACT**

---

The Citizens Clean Elections Act, which was passed by voters in the November 1998 General Election, fundamentally changed Arizona's campaign finance laws by establishing a system for publicly funding candidate election campaigns. The system is voluntary; candidates may choose to participate in the system or they may choose to raise funds in the traditional manner.

The Governor proclaimed the Act as law on December 10, 1998. On February 16, 1999, the United States Department of Justice precleared the Act, thereby allowing the Act to go into effect. Then, the Citizens Clean Elections Commission was formed.

### *Qualifying for Funding*

The Act applies to candidates for legislative and statewide offices. To receive public funding for a campaign, a candidate must raise a limited number of \$5 contributions during the qualifying period. Qualifying contributions may be made by qualified electors in the candidate's legislative district. The minimum number of \$5 qualifying contributions candidates must obtain during the qualifying period are as follows:

Legislature	210
Mine Inspector	525
Corporation Commissioner	1,575
Superintendent of Public Instruction	1,575
Treasurer	1,575
Attorney General	2,625
Secretary of State	2,625
Governor	4,200

To qualify for funding, participating candidates must apply for public funding with the Secretary of State within one week after the end of the qualifying period. The candidate also must file a list of the persons that made qualifying contributions and give the Secretary of State a check in the amount of the \$5 qualifying contributions received, as well as the original signed contributor slips.

### *Primary Election Spending Limit*

Candidates who qualify for funding in contested party primary elections may receive an amount equal to the original primary election spending limit. The primary election spending limit, as adjusted in 2003 for the 2004 election, are as follows:

Legislature:	\$ 11,320
Mine Inspector:	\$ 22,640
Corporation Commissioner:	\$ 45,280
Superintendent of Public Instruction:	\$ 45,280

Treasurer:	\$ 45,280
Attorney General:	\$ 90,560
Secretary of State:	\$ 90,950
Governor:	\$430,149

### *General Election Spending Limit*

The day after the primary election, qualifying candidates who are major party candidates in opposed elections may receive the following amounts:

Legislature:	\$ 16,980
Mine Inspector:	\$ 33,960
Corporation Commissioner:	\$ 67,920
Superintendent of Public Instruction:	\$ 67,920
Treasurer:	\$ 67,920
Attorney General:	\$135,840
Secretary of State:	\$135,840
Governor:	\$645,224

- An independent candidate is eligible to receive 70 percent of the sum of the original primary and general election spending limits.
- An unopposed candidate is eligible to receive only his or her qualifying contributions as the spending limit for that election.

### *Personal Monies and Early Contributions*

Participating candidates may use a limited amount of personal monies for their campaigns: \$550 for legislative office candidates and \$1,100 for statewide office candidates.

Participating candidates may raise a limited number of private contributions, which are called early contributions, during the exploratory and qualifying periods. The early contributions are limited to \$110 per contributor. The limits on the amounts that candidates may raise in early contributions are as follows:

Legislature:	\$ 2,830
Mine Inspector:	\$ 5,660
Corporation Commissioner:	\$11,320
Superintendent of Public Instruction:	\$11,320
Treasurer:	\$11,320
Attorney General:	\$22,640
Secretary of State:	\$22,640
Governor:	\$44,140

### *Matching Funds*

Participating candidates are entitled to receive matching funds when an opposing, nonparticipating candidate exceeds the primary or general election spending limits. Matching funds also will be provided to participating candidates when independent expenditures are made to advocate the election or defeat of a candidate in the race.

### *Trigger Reports*

Nonparticipating candidates must comply with additional campaign finance reporting requirements. Nonparticipating candidates must file “original” and “supplemental” campaign finance reports with the Secretary of State when the candidates make expenditures that exceed 70 percent of the primary election spending limit, or receive contributions, less the expenditures through the primary, that exceed 70 percent of the general election spending limit.

Campaign finance reports must be filed electronically with the Secretary of State and bank accounts, campaign finance reports and financial records relating to the campaign must be available for public inspection.

Any individual or entity making an independent expenditure to advocate the election or defeat of a candidate must report the expenditure once it exceeds \$550 in an election cycle. Subsequently, a supplemental campaign finance report must be filed by the next due date whenever previously unreported independent expenditures exceed \$1,000.

## **VOTER EDUCATION AND OUTREACH**

---

Pursuant to A.R.S. § 16-949(C), the Commission shall apply ten percent of the calendar year budget on expenses associated with voter education. The Commission's voter education and outreach activities during 2003 are set forth below.

### **Candidate Debates:**

Pursuant to A.R.S. § 16-956(A) (2), the Commission shall sponsor debates among candidates. The Commission sponsors debates among candidates in both the primary election period and the general election period. Participating candidates are required to attend and participate in debates, and nonparticipating candidates are invited to participate in debates.

In preparation for the 2004 election, the Commission began the planning for sponsoring the candidate debates by seeking other organizations to host the debates within the Commission's scope of work. The Commission chooses sponsors and ensures the debates are carried out in a strictly nonpartisan and professional manner.

A debate committee was established to evaluate potential sponsors based on predefined evaluation criteria. The evaluation criteria were as follows, listed in the relative order of importance: method of approach, debate experience and expertise, cost, and perception of nonpartisanship. The Commission distributed solicitations, which included a sponsor application and sponsor criteria sheet, to potential debate sponsors in September 2003. The deadline for application submission was October 31, 2003. The Commission received a total of 13 applications and approved five potential debate sponsors at the December 2003 Citizens Clean Elections Commission meeting.

### **Candidate Statement Pamphlet:**

Pursuant to A.R.S. § 16-956(A) (1), the Commission will produce primary and general election candidate statement pamphlets. The Commission will produce and mail candidate statement pamphlets to every household in Arizona containing a registered voter before the start of early voting for both the primary and general elections. The approximate number of Arizona households containing a registered voter is approximately 1.4 million. The candidate statement pamphlets will also be mailed to interested parties in the State of Arizona such as: the chambers of commerce, motor vehicle department, and local libraries.

Participating and nonparticipating candidates may supply the Commission with a statement for inclusion in the pamphlets. All candidates who will appear on either the primary or general election ballot may submit a statement. The pamphlets will include the office sought, as well as the candidate's name, party affiliation, funding

source, web address and statement. Candidates will be allowed to submit separate statements for the primary and general election pamphlets.

The Commission adopted changes to the candidate statement pamphlets to increase the amount of information given to voters. In 2004, the pamphlets will include candidate photographs, increase the length of candidate statements to 200 words, allow candidates to submit two separate statements—one for the primary and one for general election pamphlet, and add information on the Help America Vote Act, Sun Sounds and Kids Voting in Arizona. The cover of the pamphlets will be the result of a statewide cover design contest for high school students.

The Commission contracted with Tieken/Moret for the layout of the pamphlets and Trend Printing for the printing and distribution of the pamphlets. An on-line Candidate Statement Submission Kit was created to take candidates through every step of submitting a statement and a photo for inclusion in the pamphlets.

**Publications:**

The Citizens Clean Elections Commission issued the following publications:

- Annual Report for 2002
- *Citizens Clean Elections Act, Rules and Policies Manual*
- *2004 Candidate Guide*
- Ten new informational handouts for participating candidates

**Website (<http://www.ccec.state.az.us>):**

The Commission maintains an Internet site that provides many client services, including the following:

- Notices for Commission meeting agenda and meeting minutes
- List of candidates who received public funding for the 2000 and 2002 elections
- Publications and forms
- Staff contact information and e-mail access
- Biographies of current Commissioners
- Press releases
- Substantive policy statements
- Proposed legislative changes
- Proposed rules for public comment
- *Citizens Clean Elections Act, Rules, and Policies Manual*
- Links to the Arizona Statutes, State of Arizona, Secretary of State and Arizona State Legislature

### **Voter Outreach:**

Educating Arizonans about the Clean Elections Act is a major function of the Commission. The outreach in 2003 consisted of speaking to social service organizations, civic clubs, and other interested parties. The Commission also maintained a presence at civic events to distribute informational literature. From April-December 2003, the following is a list of voter outreach events:

- 43 speaking engagements
- 23 media relations
- 11 news releases
- 5 civic events
- 1 promotional item was implemented (bookmarks distributed to libraries across Arizona)

### **Candidate Guide:**

The *Candidate Guide* is an informational tool produced by the Commission to walk candidates through all aspects of the Clean Elections Act. The *Guide* provides a valuable resource to enhance candidates' knowledge of the Act. The 2003-2004 *Candidate Guide* will also be available on compact disc.

### **Candidate Workshops:**

The Commission has undertaken the implementation of educational workshops. The workshops are intended to provide candidates with in-depth information regarding the provisions of the Clean Elections Act in order to ensure that candidates are fully equipped to abide by the Act. The Participating Candidate Workshops began in October 2003. Organization of the workshops included developing an informational PowerPoint presentation, handouts, and a schedule of workshops.

In 2003, six rounds of postcards were sent to approximately 250 candidates and potential candidates per round to inform them of the Commission's scheduled workshops (for a total of 1500 postcards sent). Ads were created for *The Capitol Times*, which will run continuously for 7 months (Oct. 2003-May 2004). Ads were also created for inclusion in *The Arizona Republic* and *The Tucson Citizen*, which will run in once a month for four months (Jan. 2004-April 2004).



## **ENFORCEMENT**

---

In 2003, the following enforcement cases remaining from the 2001-2002 election cycle were finalized:

Dismissals: The Commission dismissed 10 complaints for lack of jurisdiction or there was no reason to believe a violation had occurred

Settlement Agreements: The Commission entered into the following settlement agreements:

- 2 participating candidates who had accepted contributions in excess of the early contribution limits: (1) candidate agreed to return \$1,875 to the contributor and to pay the Commission a civil penalty of \$1,875; (2) candidate agreed to pay the Commission a civil penalty of \$550.
- 2 participating candidates who had exceeded the personal money limits: (1) candidate agreed to pay the Commission a civil penalty of \$2,500; (2) candidate agreed to reimburse \$1,250 to the family members who contributed to his campaign, and to pay the Commission a civil penalty of \$1,250.
- 3 nonparticipating candidates for failing to file the trigger campaign finance reports. The candidates agreed to pay penalties of \$1,500, \$4,500, and \$500, respectively.
- 2 participating candidates for making expenditures that were not directly related to the campaign, using campaign account for personal use, failing to pay monies from campaign account directly to the person providing the goods or services, having more than \$1,000 in his petty cash account at one time, making single cash expenditures in excess of \$100, failing to retain records for receipts and expenditures, and failing to maintain a list of capital assets with a purchase price greater than \$300. The candidates each agreed to repay \$15,000, and to surrender specified assets acquired with the clean elections funding.

Administrative Hearings:

- 1 nonparticipating candidate for failing to file the trigger campaign finance reports. The Commission accepted the Administrative Law Judge's recommendation to assess a civil penalty of \$3,471.75
- 1 participating candidates for making expenditures that were not directly related to the campaign, using campaign account for personal use, failing to pay monies from campaign account directly to the person providing the goods or services, having more than \$1,000 in his petty cash account at one time, making single cash expenditures in excess of \$100, failing to retain records for receipts and expenditures, and failing to maintain a list of capital assets with a purchase price greater than \$300. The administrative hearing was conducted from July 2, 2003 through December 3, 2003 before candidate withdrew his appeal. The candidate was ordered to repay the entirety of the \$41,155.43 of clean elections funding received from the Commission.

## **RULE CHANGES**

---

At the November 18, 2003 Commission meeting, the Commission proposed numerous changes to its rules. The rules were then subject to public comment for 60 days. At the January 28, 2004 Commission meeting, the Commission would address the proposed changes for final adoption. The proposed rule changes were developed based on input from staff, Commissioners, the Assistant Attorney General, the Secretary of State, the Clean Elections Institute, candidates, attorneys and various other interested parties.

The following is a summary of the approved changes:

### Article 1. General Provisions

- Provides definitions of the terms “audit,” “candidate,” and “examination.”
- Consolidates rules for computing periods of time and the procedure for the Commission’s methods of communication with candidates.
- Explains how a nonparticipating candidate may dispose of monies from a prior campaign if the candidate wants to become a participating candidate.
- Expands the time that a candidate may become a participating candidate after being a nonparticipating candidate- during the exploratory and qualifying periods.
- Requires a participating candidate to file an amended application for certification if there are any changes to the candidate’s information.
- Requires each participating candidate and the candidate’s treasurer to attend a training seminar hosted by the Commission.
- Provides that a participating candidate may not incur debt prior to qualifying for Commission funding in excess to the cash on hand.
- Specifies which candidates are permitted to participate in Commission sponsored debates and under which circumstances no debate will be held.
- Requires a campaign finance report that reports all \$5 qualifying contributions be filed prior to applying for funding.
- Establishes deadlines for Qualifying Period recap campaign finance and Primary Election recap campaign finance report.
- Provides the procedure for rectifying matching funds provided to participating candidates when the nonparticipating candidate files an amended campaign finance report in order to correct previously reported inaccurate information.
- Itemizes books and records retention requirements for all candidates, and the responsibilities of the treasurer.
- Provides two options for changes to the inaugural expenses rule: eliminates the rule or limits monies raised for inaugural expenses to individuals only and not in excess of the early contribution limits.
- Identifies the calculation procedure for matching funds for participating candidates.

## Article 2. Compliance and Enforcement Procedures

- Changes the time period allowed for an alleged violator to respond to a complaint from 14 days to 5 days.
- Eliminates language regarding public disclosure of Commission actions because all Commission actions are always public information.

## Article 4. Audits

- Eliminates language for the conduct of fieldwork. The procedure for conducting fieldwork will be determined by the auditing firm contracted by the Commission.
- Eliminates the requirement for the auditor to produce a preliminary audit report and provides that if a preliminary audit report cannot be completed by the auditor, the Commission shall notify the candidate in writing that the audit report will not be completed.

## Article 7. Use of Funds and Repayment

- Establishes a list of prohibited use of campaign funds for a participating candidate and reiterates that all campaign expenditures must be directly related to the campaign.
- Defines fixed assets.
- Increases fixed assets allowable purchases to \$600.
- Increases the time limit that the Commission may order a participating candidate to repay monies to the Commission to one year after the election.

## LITIGATION

---

### ***McConnell v. Federal Election Commission***

The Bipartisan Campaign Reform Act of 2002 (BCRA) amended the Federal Election Campaign Act of 1971 (FECA), the Communications Act of 1934, and other portions of the United States Code. On December 10, 2003, the U.S. Supreme Court upheld the following provisions in the campaign finance law: The prohibition on national political parties from raising unregulated “soft money,” including donations of any size from corporations and unions and unlimited contributions from any source; The ban on the solicitation and spending of soft money by federal candidates and incumbent’s; and the restrictions on election-time political ads by special-interest groups and others, including a ban on such ads mentioning federal candidates in those candidates’ districts in the month before a primary election and within two months of the general election.

### ***May v. Brewer (May v. Bayless in state court)***

Steve May, a former state legislator, challenged the constitutionality of the 10% “surcharge” on civil penalties and criminal fines. May argued that the “surcharge” violated the First Amendment rights of all persons required to pay those fines or penalties because those monies were then used to fund political speech of participating candidates. In October 2002, the Arizona Supreme Court reversed the Court of Appeals and opined that the surcharge did not violate the First Amendment. May then filed a petition for a Writ of Certiorari, which the United States Supreme Court denied in March 2003.

### ***Arizona Right to Life v. Brewer***

Arizona Right to Life, a political committee, challenged the definition of “expressly advocates,” adopted as part of the Clean Elections Act. The plaintiff alleged that part of the express advocacy definition, A.R.S. §16-901.01(A)(2)(b), relating to the sixteen-week period preceding the general election, was unconstitutionally overbroad and vague resulting in a chilling effect on the committee’s speech. The Attorney General’s Office argued that the definition itself does not constitute an independent expenditure, and that the definition had not been and will not be enforced as the plaintiff’s interpreted. In September, the federal district court upheld the constitutionality of the statute. Arizona Right to Life appealed to the Ninth Circuit. Following the United States Supreme Court’s decision in *McConnell v. FEC* (interpreting the McCain Feingold Act), Arizona Right to Life asked to withdraw its appeal.

***Arizona at its Best v. Brewer***

Arizona at its Best, a not-for-profit organization, challenged the constitutionality of the definition of “expressly advocates.” The organization alleged that A.R.S. § 16-901.01(A) (2) (b) is vague and overly broad resulting in a chilling effect on the organization’s free speech. The case is still pending in the federal court.

## **RECOMMENDATIONS FOR CHANGES TO THE LAW**

---

- I. Remove the provisions that Arizona courts have found unconstitutional:
  - A. Lobbyist fee provision (A.R.S § 16-944), and
  - B. Duties of Commission on Appellate Court Appointments and Supreme Court Justices (A.R.S. § 16-955)

*Unconstitutional provisions in the statutes must be removed.*

- II. Modify the Filing Timeframes:
  - A. Begin the Qualifying Period after the preceding general election, and
  - B. End the Qualifying Period 60 days before the primary election, which would be 30 days after nomination papers are due (A.R.S § 16-961 (B) (3))

*Currently, the qualifying period begins on August 1<sup>st</sup> in the year prior to an election and ends 75 days prior to the general election. This change requires candidates to qualify earlier and to receive funding when it may be beneficial to their campaigns, not when the campaigns are almost over.*

- III. Modify reporting requirements for candidates:
  - A. Additional filings for Participating Candidates:
    - i. File a report after the end of the qualifying period to determine if early contributions have been spent or need to be returned to the Clean Elections Fund (A.R.S. § 16-947)
    - ii. File a report when applying for certification to be a participating Clean Elections candidate (A.R.S § 16-947)

*These changes conform the statutes to Commission rules. Require a report to be filed at the time a candidate applies for certification (registers intent to run as a "clean" candidate.)*

- B. Reduce the reporting requirements for Nonparticipating Candidates:
    - i. File trigger reports after the start of the qualifying period (A.R.S. § 16-941(B) (2))
    - ii. Trigger reports are due only if a nonparticipating candidate is opposed in the primary and general elections by a participating candidate (A.R.S. §§ 16-941(B) (2) and -958)

*To remove unnecessarily burdensome reporting requirements currently placed on Nonparticipating Candidates.*

- IV. **Qualifying for funding:** Application for funding is due at the end of the qualifying period; slips first checked by the Secretary of State's Office; and verification of contribution during qualifying period and only after candidate has been certified. Include provision regarding a supplemental filing of qualifying contributions if the candidate fails to qualify for funding with the first application for funding (A.R.S §§ 16-946 & -950)

*This provision allows the Secretary of State to reduce paperwork transmitted to the County Recorders and the cost associated with verification by permitting the Secretary of State to disqualify slips that are invalid on their face. It adds a provision to statute allowing a candidate to file a one-time supplemental filing of qualifying contributions if the first filing is deficient. This conforms the statute to the Commission rule.*

V. **Enforcement**

- A. **Complaint and recommendation to the Commission** would be public records available to the public; investigation documents would remain confidential until conclusion of investigation. This change adds an administrative appeal and provides for confidentiality during an investigation. (A.R.S. § 16-957)
- B. **General enforcement authority** is given to impose civil penalty up to \$1,000 for any violation where no penalty is specified (A.R.S. § 16- 942)
- C. **Requires that clean elections funding** only be used for campaign expenses (A.R.S. § 16-948)

*Currently the entire process from filing the complaint, through the investigation, to the staff recommendation, is an open public record. In common law enforcement practice, investigations are confidential. Under this change, a complaint filed would remain public record. A confidential investigation would be conducted and would be made public with the staff recommendation to the Commission. This would provide consistency with general law enforcement investigative practices. The enhanced reporting is recommended to ensure that Participating Candidates spend public funds in compliance with the rule.*

- VI. **Express Advocacy Definition:** This change provides more guidance for matching funds for independent expenditures (A.R.S. § 16-901.1)

## **STAFF DUTIES**

---

### **Executive Director**

Facilitate achievement of the Commission's goals and objectives. Direct agency operations and supervise staff, advise and support the Commission, oversee and monitor the implementation of the Commission policies and procedures, publications and forms. Advise the Commission on potential and pending issues and provide and establish efficient and effective mechanisms of communication among various stakeholders of the Act. Oversee and monitor the implementation of Commission policies and procedures. Set agenda and prepare materials for Commission and committee meetings. Serve as the Commission's representative to the Legislative and Executive Branch. Educate and assist candidates in compliance with reporting requirements, limits, and prohibitions, and assist candidates in participating and obtaining public funding.

### **Deputy Director**

Serve as advisor to the Executive Director and assist in the daily administration and management of agency operations. Provide assistance and support to Executive Director in all aspects of staff supervision including program management, performance evaluations, strategic planning, implementation of Commission policies and special projects as requested. Provide oversight, direction and assistance to agency staff on voter education, public relations, candidate education, candidate debates, compliance programs, budgeting, annual reports, financial systems and other areas as directed or needed. Serve in an external relations function through public speaking engagements, and through membership, participation and involvement in relevant civic and professional organizations. Assist Executive Director in serving as a liaison to state agencies, legislators, other intergovernmental jurisdictions.

### **Executive Assistant**

Manage human resource procedures and systems requirements. Serve as agency liaison to candidates and other state agencies. Provide technical service, assistance and training to Commission staff. Assist the Executive Director in the development of operating policies and procedures; assist in long-range organization planning; conduct special studies; recommend changes to correct operating deficiencies; recommend improvements to the provision of services to the public; prepare administrative directives; provide assistance and guidance as requested; represent the Executive Director at meetings involving personnel, government officials, political candidates and public leaders; prepare a variety of administrative reports; supervise personnel; assist Executive Director in executing the Citizens Clean Elections Act.



### **Fiscal Services Manager**

Review, monitor and control amounts expended from the budget to assure that expenditures do not exceed funds available; report problems to Executive Director; and read and analyze budget requests, gather data, confer with agency personnel, and make budget recommendations. Serve as the primary liaison between the Commission and the General Accounting Office, vendors and other subcontractors for the proper functioning of all financial systems and transactions. Develop standard operating procedures for all financial procedures relating to Commission activity. Gather and compile data and write detailed reports summarizing financial transactions and status of accounts for a given period; allocate funds to agency programs including voter education, administration and enforcement; and compose directives and procedures as these relate to financial activities of the agency. Develop, maintain, and manage complex database applications to support administration of all Commission programs and activities. Maintains agency's inventory; Acts as the agency's Information & Technology coordinator.

### **Voter Education Manager**

Responsible for the development and distribution of the Candidate Statement Pamphlet to every household with a registered voter. Provide advice and guidance to debate sponsors and candidates for candidate debates. Manage all aspects of publicity, marketing and educational publications for the Commission, including advertising the Commission activities for debates, candidate statement pamphlets, and tax donations in newspapers, on radio, and other media. Travel statewide to provide educational seminars to candidate committees and community groups. Work with elected officials, community leaders, large and small employers, political parties, media and other state and local officials to enhance the understanding of the Act. Develop and circulate a quarterly *Bulletin*, updating interested parties on topics of interest regarding the Act. Provide updates for the website. Create informational brochures and handouts for distribution to voters. Establish fundamental measures for the execution of bi-yearly market research. Develop, maintain, and manage complex database applications to support administration of all Commission programs and activities.

### **Campaign Finance Analyst**

Monitor and review both participating and nonparticipating candidate campaign finance reports. Calculate matching funds for participating candidates based on nonparticipating candidate campaign finance reports. Maintain contact with campaign treasurers and Secretary of State Elections staff. Responsible for all aspects of the candidate complaint process, including investigation and analysis; making recommendations to the Executive Director regarding the statute or rule violation; and tracking each complaint on the complaint tracking database program. Determines one-party-dominant legislative districts. Monitor and track independent expenditures for possible matching funds.

### **Administrative Assistant III**

Provide administrative assistance to the Executive Director and Commission. Provide support in the preparation and execution of monthly Commission meetings, including posting meeting agendas, drafting meeting mailings, ensuring meeting materials are delivered to commissioners prior to meetings. Maintain records for compliance with open meeting law requirements, organizes and maintains meeting materials, and responsible for audiotape recording of regular meetings and executive sessions. Monitor inventory and office supplies. Produce computer-generated letters, memorandum and reports, and assists with front desk duties when necessary.

### **Administrative Assistant II**

Provide administrative support to staff as needed. Answer incoming calls, draft letters, memos, agendas, and faxes. Schedule project and client meetings on and off-site, and contact attendees to determine availability and to confirm meetings. Photocopy and distribute memos, correspondence and routine mailings. Prepare documents for mailing, open and distribute mail, and oversee mail meter. Monitor receipt of facsimiles, ensures supplies for copy machines and printer, and organize electronic mail distribution lists.

## **PROJECTED FUNDING**

---

Pursuant to A.R.S. § 16-954(D) “at least once per year the Commission shall project the amount of monies that the Fund will collect over the next four years and the time such monies shall become available.”

On November 18, 2003, the Commission adopted the following revenue projections:

<b>Calendar Year</b>	<b>Income Tax Returns</b>	<b>Cap on Spending</b>
2003	2,110,441	\$10,552,205
2004	2,152,650	\$10,763,250
2005	2,195,703	\$10,978,515
2006	2,239,617	\$11,198,085

The grand total projected candidate disbursements for the 2004 election cycle is \$5,770,000. The monies in the Fund will be sufficient to fund all participating candidates in the 2004 election cycle.

## **FINANCIAL INFORMATION**

---

### **Caps on Expenditures**

The Act prescribes certain caps on expenditures from the Citizens Clean Elections Fund. Pursuant to A.R.S. § 16-949(A), the Commission shall not spend more than \$5 times the number of Arizona resident personal income tax returns filed during the previous calendar year on all costs incurred under the law during a particular calendar year.

In calendar year 2002, there were 2,110,441 personal income tax returns filed with the Arizona Department of Revenue. The cap on total expenditures for calendar year 2003 from the Citizens Clean Elections Fund was \$10,552,205.

In addition, the Act imposes a cap on expenditures for administration and enforcement activities. The Commission may use up to 10 percent of the annual limit on costs for reasonable and necessary expenditures for administration and enforcement pursuant to A.R.S. § 16-949(B). The amount of was the cap for reasonable and necessary expenditures for administration and enforcement in calendar year 2003. The Commission spent \$629,974 or 6.0 percent of the amount specified in § 16-949(A), well below the authorized cap for expenditures for administration and enforcement.

Moreover, the Commission is required to spend 10 percent of its annual cap on revenue for voter education pursuant to A.R.S. § 16-949(C). In 2003, the Commission spent \$777,578 or 7.4 percent of the amount specified in A.R.S. § 16-949(A).

## FINANCIAL INFORMATION

---

Sources of Revenue  
Citizens Clean Elections Fund  
AFIS Fund Number 2425  
For calendar year 2003  
(Unaudited)

<b>SALES &amp; CHARGES FOR SERVICES</b>	
Lobbyist Filing Fees <sup>1</sup>	(S1,800)
<b>FINES, FORFIETURES &amp; PENALTIES</b>	
Court Assessments <sup>2</sup>	\$6,791,355
Commission Assessments <sup>3</sup>	\$16,854
<b>OTHER REVENUE</b>	
\$5 Tax Reduction Check-offs	\$3,979,509
Voluntary Donations	\$13,010
Tax Credit Donations	\$105,797
Candidate Qualifying Contributions	\$355
<b>TOTAL REVENUE</b>	<b>\$10,905,081</b>

<sup>1</sup>In April 2002, the Arizona Superior Court ruled that the lobbyist fee was unconstitutional. The Commission was also ordered to refund all lobbyist fees collected. This line item reflects the amount the Commission returned to the individual lobbyists in 2003.

<sup>2</sup>This line item reflects the 10% surcharge imposed on all civil and criminal fines and penalties.

<sup>3</sup>This line item reflects Commission imposed penalties on candidates.

**Expenditures**  
**Citizens Clean Elections Fund**  
**AFIS Fund Number 2425**  
**For Calendar Year 2003**  
**(Unaudited)**

EXPENDITURES	Administrative and Enforcement	Voter Education	Campaign Funds	Total
Personal Services	\$239,529	\$170,235	\$0	\$409,764
Employee-Related Expenditures	47,042	35,336	0	82,378
Professional & Outside Services	188,626	516,244	0	704,870
Travel In-State	5,651	2,169	0	7,820
Travel Out-of-State	1,892	0	0	1,892
Aid to Individuals and Organizations	0	0	(135,891)	(135,891)
Other Operating Expenditures	111,463	45,531	0	156,994
Capital Equipment	0	0	0	0
Non-Capital Equipment	35,771	8,064	0	43,835
<b>TOTAL EXPENDITURES*</b>	<b>(\$629,974)</b>	<b>(\$777,578)</b>	<b>\$135,891</b>	<b>(\$1,271,662)</b>

\*Total does not reflect the 1.7 and 3.82 million dollar transfers to the State General Fund

**Summary of Sources of Revenues and Expenditures  
Citizens Clean Elections Fund  
AFIS Fund Number 2425  
For Calendar Year 2003  
(Unaudited)**

Beginning Fund Balance (January 1, 2003)		<u>\$7,180,398</u>
<b>REVENUES</b>		
Lobbyist Filing Fees	(\$1,800)	
Fines, Forfeitures & Penalties	\$6,808,209	
Other	\$4,098,671	
<b>TOTAL REVENUES</b>	<b>\$10,905,081</b>	
<b>EXPENDITURES</b>		
Administrative and Enforcement	(\$1,963,639)	
Voter Education	(\$1,221,227)	
Campaign Funds	<u>\$135,891</u>	
<b>TOTAL EXPENDITURES</b>	<b>(\$1,271,662)</b>	
Transfers to State General Fund*	(\$5,602,890)	
Adjustment to AFIS**	\$726	\$6,375
Beginning Fund Balance (January 1, 2004)		<u>\$11,211,653</u>

\* Whenever the Commission determines that the fund contains more monies than the Commission determines that is required to meet current debts plus expected expenses, under the assumption that expected expenses will be at the expenditure limit in A.R.S. § 16-949 (A), and taking into account the projections of collections, the Commission shall designate such monies as excess monies and so notify the state treasurer, who shall thereupon return the excess monies to the general fund A.R. S. § 16-954(D).

\*\*The Commission operates on a calendar year basis and the state accounting system operates on a state fiscal year basis (July 1 to June 30). This line item reflects adjustments for calendar versus fiscal year balance.