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Re: Follow up Regarding Clean Elections Commission Five-Year Review

Dear Council Members:

I wanted to briefly follow up on some of the issues raised at last Tuesday's meeting (January 26, 2016) regarding the Clean Elections Commission's Five-Year Review.

First, there were questions about the probable costs and burdens of the Commission's rules. These rules that are under review do not impose additional burdens on the regulated community. As detailed in our previous submissions, the Clean Elections Act itself gives the Commission the authority and responsibility to address the campaign finance enforcement issues addressed in the rules. Any regulatory burdens are imposed by the statutes, not the rules.

More specifically, the rules do not impose additional burdens on businesses. Indeed, Rule 2-20-109(F)(4) – (10), which establish an exemption procedure for corporations, limited liability companies and labor organizations, attempt to eliminate potentially duplicative reports in a manner that is consistent with the Commission's statutory responsibilities. And the new rule concerning political committees (R2-20-109(F)(12)) should impose no burden on small

businesses because it concerns only organizations whose “primary purpose” is to influence elections, which includes a very narrow group of organizations. As is true of the other rules, this rule merely implements the statutes governing political committees and the related reporting requirements to give clear guidance to the regulated community.

The Commission’s report noted that there were no anticipated costs associated with these rules, and nothing presented to the Council through this five-year review process or to the Commission during the rule-making process suggests otherwise. The Chamber of Commerce expressed generalized concerns about the impact of the rules and increased costs, but those concerns are really about the statute and campaign finance enforcement generally, rather than the Commission’s rules that are part of this review.

Second, at last Tuesday’s Council meeting, one of the lawyers for the Legacy Foundation Action Fund provided his client’s case as an example of the burdens of the Commission’s rules. While we are happy to provide you with more information on that enforcement, we do not think it is appropriate to re-litigate that case before the Council. The important point, however, is that the core legal issue before the Commission in that case was whether LFAF made an independent expenditure to influence the 2014 Governor’s race. The analysis is based on a statute defining “express advocacy” that was part of the Clean Elections Act. And the report at issue in that case was the report that the Clean Elections Act requires “any person” making an independent expenditure of more than \$500 to file. The regulatory responsibility is established by the Act itself. That obligation has nothing to do with the Commission’s rules.

Third, at GRRC’s meeting opponents of the Commission’s rules argued that these regulations may chill speech. These rules – and the related statutes – do not limit speech. The reporting requirements associated with independent expenditures seek only disclosure and, unless a group’s primary purpose is influencing elections, the disclosure requirements are minimal. And again, the disclosure requirements are imposed by statute, not by the Commission’s rules.

Finally, questions were raised about the extent of GRRC’s oversight of the Commission. As we’ve previously noted, the Commission has an explicit exemption from Article 3, Chapter 6, Title 41 and has a self-contained rule-making process set forth in A.R.S. 16-956(C). That process prescribed by the Act does not include GRRC approval of Commission rules. The exemption from GRRC approval of Commission rules is reinforced by A.R.S. § 41-1030(A), one of the statutes from which the Commission is exempt, which establishes that rules are invalid unless they are made in compliance with Article 3, 4, 4.1 and 5 “unless otherwise provided by law.” Thus, GRRC’s rule review and approval process is part of the Article 3 rule-making process from which the Commission is exempt. Despite the exemption, the Commission has participated in GRRC’s five-year review process and, until this year, there have never been issues of concern through that process.

There is no support for finding that the Commission's analysis in its five-year review report demonstrates that the rules are "materially flawed." Again, we ask Council to accept its staff recommendation and approve the Commission's report.

Sincerely,

S/Thomas Collins
Thomas Collins
Executive Director